

MILLER ENERGY RESOURCES, INC.

Form S-8

September 27, 2012

As filed with the Securities and Exchange Commission on September 27, 2012

Registration No. 333-\_\_\_\_\_

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM S-8**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**MILLER ENERGY RESOURCES, INC.**

(Exact name of registrant as specified in its charter)

**Tennessee**

(State or other jurisdiction of incorporation or organization)

**62-1028629**

(I. R. S. Employer Identification No.)

**9721 Cogdill Road, Suite 302, Knoxville, TN**

(Address of Principal Executive Offices)

**37932**

(Zip Code)

**2011 Equity Compensation Plan**

(Full title of the plans)

**Mr. Kurt C. Yost**

**SVP and General Counsel**

**Miller Energy Resources, Inc.**

**9721 Cogdill Road, Suite 302**

**Knoxville, TN 37932**

(Name and address of agent for service)

**(865) 223-6575**

(Telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="radio"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="radio"/>	Smaller reporting company	<input type="radio"/>

## CALCULATION OF REGISTRATION FEE

<b>Title of securities to be registered</b>	<b>Amount to be registered</b>	<b>Proposed maximum offering price per share</b>	<b>Proposed maximum aggregate offering price</b>	<b>Amount of registration fee</b>
Common stock, par value \$0.001 per share (1) (2)(3)	250,000	\$ 5.07	\$ 1,267,500	\$ 145.26
Common stock, par value \$0.001 per share (2)(4)	10,000	\$ 5.07	\$ 50,700	\$ 5.81
Common stock, par value \$0.001 per share (2)(5)	100,000	\$ 5.07	\$ 507,000	\$ 58.10
Common stock, par value \$0.001 per share (2)(6)	45,000	\$ 5.07	\$ 228,150	\$ 26.15
Common stock, par value \$0.001 per share (2)(7)	250,000	\$ 5.07	\$ 1,267,500	\$ 145.26
Common stock, par value \$0.001 per share (2)(8)	20,000	\$ 5.07	\$ 101,400	\$ 11.62
Common stock, par value \$0.001 per share (2)(9)	350,000	\$ 5.25	\$ 1,837,500	\$ 210.58
Common stock, par value \$0.001 per share (2)(10)	2,300,000	\$ 5.35	\$ 12,305,000	\$ 1,410.15
Common stock, par value \$0.001 per share (2)(11)	1,235,000	\$ 5.89	\$ 7,274,150	\$ 833.62
Common stock, par value \$0.001 per share (2)(12)	2,500,000	\$ 6.00	\$ 15,000,000	\$ 1,719.00
Common stock, par value \$0.001 per share (2)(13)	868,638	\$ 5.07	\$ 4,403,995	\$ 504.70
Common stock, par value \$0.001 per share (2)(13)	221,362	\$ 5.07	\$ 1,122,305	\$ 128.62
<b>Total</b>	<b>8,150,000</b>			<b>\$ 5,198.85</b>

(1)

Estimated solely for purposes of calculating the registration fee pursuant to Rule 457 under the Securities Act of 1933 based on the minimum exercise price of options to be granted under the 2011 Equity Compensation Plan, where such price exceeds current fair market value.

(2)

To the extent permitted by Rule 416, this registration statement also covers such additional number of shares of common stock as may be issuable as a result of the anti-dilution provisions of the options granted under the 2011

Equity Compensation Plan in the event of stock splits, stock dividends or similar transactions.

(3)

Includes shares of common stock underlying outstanding options granted under the 2011 Equity Compensation Plan with an exercise price of \$3.24 per share.

(4)

Includes shares of common stock underlying outstanding options granted under the 2011 Equity Compensation Plan with an exercise price of \$3.60 per share.

(5)

Includes shares of common stock underlying outstanding options granted under the 2011 Equity Compensation Plan with an exercise price of \$3.84 per share.

(6)

Includes shares of common stock underlying outstanding options granted under the 2011 Equity Compensation Plan with an exercise price of \$3.85 per share.

(7)

Includes shares of common stock underlying outstanding options granted under the 2011 Equity Compensation Plan with an exercise price of \$4.01 per share.

(8)

Includes shares of common stock underlying outstanding options granted under the 2011 Equity Compensation Plan with an exercise price of \$4.99 per share.

(9)

Includes shares of common stock underlying outstanding options granted under the 2011 Equity Compensation Plan with an exercise price of \$5.25 per share.

(10)

Includes shares of common stock underlying outstanding options granted under the 2011 Equity Compensation Plan with an exercise price of \$5.35 per share.

(11)

Includes shares of common stock underlying outstanding options granted under the 2011 Equity Compensation Plan with an exercise price of \$5.89 per share.

(12)

Includes shares of common stock underlying outstanding options granted under the 2011 Equity Compensation Plan with an exercise price of \$6.00 per share.

(13)

Estimated solely for purposes of calculating the registration fee pursuant to Rule 457 under the Securities Act of 1933 based on the average of the high and low prices for our common stock as reported on the New York Stock Exchange on September 24, 2012.

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**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

This registration statement relates to separate prospectuses.

Items 1 and 2 of this Part I, and the documents incorporated herein by reference pursuant to Item 3 of Part II of this Form S-8, constitute the first prospectus relating to issuances to our employees, directors, consultants and others of up to 8,150,000 shares of common stock pursuant to our 2011 Equity Compensation Plan, or 2011 Plan. Pursuant to the requirements of Form S-8 and Rule 428, we will deliver or cause to be delivered to plan participants any required information as specified by Rule 428(b)(1). The second prospectus, referred to as the reoffer prospectus, relates to the reoffer or resale of any shares that are deemed to be control securities or restricted securities under the Securities Act of 1933, as amended.

**Item 1. Plan Information.**

We established the 2011 Plan effective January 17, 2011 covering 8,250,000 shares of our common stock to permit us to offer to our employees, officers, directors and consultants whose past, present and/or potential contributions to our company have been, are or will be important to our success, an opportunity to acquire a proprietary interest in our company. The issuance of grants under the plan will be made to persons who are closely related to us and who provide bona fide services to us in connection with our business which are not in connection with the offer or sale of our securities in a capital raising transaction and do not directly or indirectly promote or maintain a market for our securities. Grants of options or shares may be awarded under the plan pursuant to individually negotiated compensation contracts or as determined and/or approved by our board of directors. The eligible participants include our directors, officers, employees and non-employee consultants and advisors. The 2011 Plan places an annual limit on stock-denominated awards of 3,000,000 shares per year, plus any unused shares, up to 3,000,000, from the previous year's annual limit, on any single participant.

The 2011 Plan does not require restrictions on the transferability of securities issued thereunder. However, such securities may be restricted as a condition to their issuance where the board of directors deems such restrictions appropriate. The 2011 Plan is not subject to the Employee Retirement Income Securities Act of 1974. Restricted shares awarded under the 2011 Plan are intended to be fully taxable to the recipient as earned income. As of the date hereof, we have made restricted stock grants or granted options to purchase a total of 8,037,172 shares of common stock under our plan and are registering the shares underlying options to purchase 7,060,000 shares underlying outstanding options in the registration statement of which this prospectus forms a part, together with 877,172 shares granted as restricted stock grants, and 212,828 shares available for grant under future options under the plan.

**Item 2. Registrant Information and Employee Plan Annual Information.**

We will provide without charge, upon written or oral request, the documents incorporated by reference in Item 3 of Part II of this registration statement. These documents are incorporated by reference in the Section 10(a) prospectus.

We will also provide without charge, upon written or oral request, all other documents required to be delivered to recipients pursuant to Rule 428(b). Any and all such requests shall be directed to Miller Energy Resources, Inc. at our executive offices at 9721 Cogdill Road, Suite 302, Knoxville, TN 37932, telephone number (865) 223-6575.

**THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, NOR HAS THE COMMISSION PASSED ON THE ACCURACY OR ADEQUACY OF THE PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

No person has been authorized by us to give any information or to make any representation other than as contained in this prospectus and, if given or made, such information or representation must not be relied upon as having been authorized by us. Neither the delivery of this prospectus nor any distribution of the shares of common stock issuable under the terms of 2011 Plan shall, under any circumstances, create any implication that there has been no change in our affairs since the date hereof.

Our executive offices are located at 9721 Cogdill Road, Suite 302, Knoxville, TN 37932 and our telephone number at that location is (865) 223-6575. Our fiscal year end is April 30. Information which appears on our web site at [www.millerenergyresources.com](http://www.millerenergyresources.com) is not part of this prospectus.

**THIS PROSPECTUS DOES NOT CONSTITUTE AN OFFER TO SELL SECURITIES IN ANY STATE TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER IN SUCH STATE.**

**REOFFER PROSPECTUS**

**MILLER ENERGY RESOURCES, INC.**

**8,150,000 Shares of Common Stock**

This prospectus forms a part of a registration statement, which registers an aggregate of 8,150,000 shares of common stock issuable from time-to-time under the 2011 Equity Compensation Plan.

This prospectus also covers the resale of shares granted under the 2011 Equity Compensation Plan by persons who are our "affiliates" within the meaning of federal securities laws. Affiliated selling security holders may sell all or a portion of the shares from time to time on the New York Stock Exchange or any stock exchange on which our common stock may then be listed, in the over-the-counter market, in negotiated transactions, directly or through brokers or otherwise, and at market prices prevailing at the time of such sales or at negotiated prices, but which may not exceed the average weekly reported volume of trading in our common stock on the New York Stock Exchange during the four calendar weeks preceding such sale.

We will not receive any proceeds from sales of shares by selling security holders.

For a description of the plan of distribution of these shares, please see page 18 of this prospectus.

Our common stock is listed on the New York Stock Exchange under the symbol MILL. On September 24, 2012 the last sale price of our common stock was \$5.13.

**Investing in our common stock involves a high degree of risk. See Risk Factors beginning on page 3 of this prospectus to read about the risks of investing in our common stock.**



**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is September 27, 2012

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When used herein, the terms Miller, "we," "our," and "us" refers to Miller Energy Resources, Inc., a Tennessee corporation, formerly known as Miller Petroleum, Inc., and our subsidiaries. In addition, when used herein fiscal 2012 refers to the fiscal year ended April 30, 2012, fiscal 2011 refers to the year ended April 30, 2011 and fiscal 2010 refers to the fiscal year ended April 30, 2010.

**AVAILABLE INFORMATION**

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended, and, in accordance therewith, we file reports, proxy statements and other information with the Securities and Exchange Commission (SEC). Certain of our SEC filings are available over the Internet at the SEC's web site at <http://www.sec.gov>. You may also read and copy any document we file with the SEC at its public reference facilities:

Public Reference Room Office

100 F Street, N.E.

Room 1580

Washington, D.C. 20549

You may also obtain copies of the documents at prescribed rates by writing to the Public Reference Section of the SEC at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Callers in the United States can also call 1-202-551-8090 for further information on the operations of the public reference facilities.

**INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The following documents filed by us with the SEC are incorporated herein by reference and made a part hereof:

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Annual Report on Form 10-K for the year ended April 30, 2012 as filed on July 16, 2012 and as amended on August 28, 2012 and September 6, 2012,

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Current Report on Form 8-K as filed on July 26, 2012,

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Current Report on Form 8-K as filed on July 27, 2012 and amended on August 1, 2012,

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Current Report on Form 8-K as filed on July 31, 2012,

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Current Report on Form 8-K as filed on August 17, 2012,

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Current Report on Form 8-K/A as filed on August 27, 2012,

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Current Report on Form 8-K as filed on September 4, 2012,

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Quarterly Report on Form 10-Q as filed on September 10, 2012,

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Current Report on Form 8-K as filed on September 21, 2012,

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Current Report on Form 8-K as filed on September 24, 2012, and

Current Report on Form 8-K as filed on September 26, 2012.

In addition, all reports and documents filed by us pursuant to Sections 13, 14 or 15(d) of the Securities Exchange Act of 1934, as amended, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the respective date of filing of such documents. Any statement incorporated by reference herein shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained herein or in any other subsequently filed document, which also is or is deemed to be incorporated by reference herein, modifies or supersedes such statement. Any statement modified or superseded shall not be deemed, except as so modified or superseded, to constitute part of this prospectus.

We hereby undertake to provide without charge to each person, including any beneficial owner, to whom a copy of the prospectus has been delivered, on the written request of any such person, a copy of any or all of the documents referred to above which have been or may be incorporated by reference in this prospectus, other than exhibits to such documents. Written requests for such copies should be directed to Corporate Secretary, Miller Energy Resources, Inc., at 9721 Cogdill Road, Suite 302, Knoxville, TN 37932, telephone number (865) 223-6575.

## **OUR COMPANY**

We are an independent exploration and production company that utilizes seismic data, and other technologies for geophysical exploration and development of oil and gas wells in the Appalachian region of eastern Tennessee and the Cook Inlet Basin in south central Alaska. In addition to our engineering and geological capabilities, we provide land drilling services on a contract basis to customers primarily engaged in natural gas exploration and production.

Our principal executive offices are located at 9721 Cogdill Road, Suite 302, Knoxville, TN 37932 and our telephone number is (865) 223-6575. Our fiscal year end is April 30. We maintain a corporate web site at [www.millerenergyresources.com](http://www.millerenergyresources.com). The information which appears on this web site is not part of this prospectus.

Unless specifically set forth to the contrary, when used in this prospectus the terms "we," "us," "ours," and similar terms refers to Miller Energy Resources, Inc., a Tennessee corporation formerly known as Miller Petroleum, Inc. and our subsidiaries, Miller Rig & Equipment, LLC, Miller Drilling TN, LLC and Miller Energy Services, LLC, East Tennessee Consultants, Inc., East Tennessee Consultants II, LLC, Miller Energy GP, LLC, and Cook Inlet Energy, LLC.

## **RISK FACTORS**

Investing in our securities involves risk. Our business, financial condition, operating results and cash flows can be impacted by a number of factors, any of which could cause our results to vary materially from recent results or from our anticipated future results. See the risk factors described in our Annual Report on Form 10-K for fiscal 2012, as

amended, together with any material changes thereto contained in subsequent filed Quarterly Report on Form 10-Q, and those contained in our other filings with the SEC for our most recent fiscal year, which are incorporated by reference in this prospectus and any accompanying prospectus supplement. Before making an investment decision, you should carefully consider these risks as well as other information we include or incorporate by reference in this prospectus and any prospectus supplement. These risks could materially affect our business, results of operations or financial condition and cause the value of our securities to decline. You could lose all or part of your investment.

### **SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

We have made forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 concerning our operations, economic performance and financial condition in this prospectus and our Annual Report on Form 10-K for fiscal 2012, as amended, and in our subsequent filings with the SEC, and may make other forward-looking statements from time to time in other public filings, press releases and discussions with our management. These forward-looking statements include information concerning future production and reserves, schedules, plans, timing of development, contributions from oil and gas properties, marketing and midstream activities, and also include those statements preceded by, followed

by or that otherwise include the words may, could, believes, expects, anticipates, intends, estimates, project, goal, plans, objective, should or similar expressions or variations on such expressions. For these statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. Although we believe that the expectations reflected in such forward-looking statements are reasonable, we can give no assurance that our expectations will prove to be correct. We undertake no obligation to publicly update or revise any forward-looking statements whether as a result of new information, future events or otherwise. These forward-looking statements involve risk and uncertainties. Important factors that could cause actual results to differ materially from our expectations include, but are not limited to, the following risks and uncertainties:

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the potential for Miller to experience additional operating losses;

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high debt costs under our existing senior credit facility;

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potential limitations imposed by debt covenants under our senior credit facility on our growth and our ability to meet our business objectives;

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our need to enhance our management, systems, accounting, controls and reporting performance;

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litigation risks;

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our ability to perform under the terms of our oil and gas leases, and exploration licenses with the Alaska DNR, including meeting the funding or work commitments of those agreements;

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our ability to successfully acquire, integrate and exploit new productive assets in the future;

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our ability to recover proved undeveloped reserves and convert probable and possible reserves to proved reserves;

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risks associated with the hedging of commodity prices;

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our dependence on third party transportation facilities;

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concentration risk in the market for the oil we produce in Alaska;

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the impact of natural disasters on our Cook Inlet Basin operations;

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adverse effects of the national and global economic downturns on our profitability;

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the imprecise nature of our reserve estimates;

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drilling risks;



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fluctuating oil and gas prices and the impact on our results from operations;

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the need to discover or acquire new reserves in the future to avoid declines in production;

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differences between the present value of cash flows from proved reserves and the market value of those reserves;

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the existence within the industry of risks that may be uninsurable;

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constraints on production and costs of compliance that may arise from current and future environmental, FERC and other statutes, rules and regulations at the state and federal level;

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the impact that future legislation could have on access to tax incentives currently enjoyed by Miller;

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that no dividends may be paid on our common stock for some time;

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cashless exercise provisions of outstanding warrants;

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market overhang related to restricted securities and outstanding options, and warrants;

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the impact of non-cash gains and losses from derivative accounting on future financial results; and

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risks to non-affiliate shareholders arising from the substantial ownership positions of affiliates.

Most of these factors are difficult to predict accurately and are generally beyond our control. You should consider the areas of risk described in connection with any forward-looking statements that may be made herein. Readers are cautioned not to place undue reliance on these forward-looking statements, and readers should carefully review our Annual Report on Form 10-K for fiscal 2012, as amended, in its entirety, including the risks described in Item 1A. Risk Factors, as well as our subsequent filings with the SEC. Except for our ongoing obligations to disclose material information under the Federal securities laws, we undertake no obligation to release publicly any revisions to any forward-looking statements, to report events or to report the occurrence of unanticipated events. These forward-looking statements speak only as of the date of this prospectus, and you should not rely on these statements without also considering the risks and uncertainties associated with these statements and our business.

#### **USE OF PROCEEDS**

We will not receive any proceeds upon the sale of shares by the selling security holders. Any proceeds we may receive from the exercise of options granted under the 2011 Plan will be used for general working capital.

## **2011 EQUITY COMPENSATION PLAN**

On January 17, 2011, our board of directors approved the 2011 Plan, and recommended the adoption of the 2011 Plan by our stockholders. On March 11, 2011 at our 2011 Annual Meeting of Shareholders, our shareholders approved and adopted the 2011 Plan.

The purpose of the 2011 Plan is to advance the interests of our company by providing an incentive to attract, retain and motivate highly qualified and competent persons who are important to us and upon whose efforts and judgment the success of our company is largely dependent. We believe that the 2011 Plan provides an incentive to such persons to continue in our service, to perform at and above targeted levels, and to give them a greater interest as shareholders in our success. We have reserved 8,250,000 shares of our common stock for issuance under this plan. Options and restricted stock awards may be granted under the 2011 Plan only to our employees, officers, directors, or consultants. As of September 24, 2012, we have granted options and restricted stock awards in the amount of 8,028,638 shares of our common stock under the plan, with exercise prices ranging from \$3.24 per share to \$6.00 per share.

### **Administration and Eligibility**

The 2011 Plan is administered by the Compensation Committee of our board of directors. The Compensation Committee determines, from time to time, those of our employees, officers, directors or consultants to whom options, stock appreciation rights, restricted stock, other stock-based awards or cash incentive awards will be granted, the terms and provisions of each such grant, the dates such grants will become exercisable or be settled, the number of shares subject to each equity grant, the exercise price or base price of awards, where applicable, vesting and performance terms and conditions, and all other terms and conditions, subject to the specific requirements of the 2011 Plan. All other questions relating to the administration of the 2011 Plan and the interpretation of its provisions are to be resolved at the sole discretion of the Compensation Committee.

### **Amendment and Termination of the 2011 Plan**

The board of directors may amend, suspend, discontinue or terminate the 2011 Plan or the Compensation Committee's authority to grant awards thereunder without shareholder approval, except as required by law or regulation or under applicable New York Stock Exchange Rules or rules of any stock exchange on which our common stock may then be listed. New York Stock Exchange Rules require shareholder approval of material modifications to plans such as the 2011 Plan, including increases in the number of shares reserved for awards. Under these rules, however, shareholder approval will not necessarily be required for all amendments which might increase the cost of the 2011 Plan or broaden eligibility. The Compensation Committee is authorized to amend the 2011 Plan, to the extent within the scope of its authority under its charter, subject to the same restrictions that apply to the Board.

Unless the plan is suspended or terminated by the board of directors, the 2011 Plan will terminate on January 17, 2021, and the 2011 Plan will terminate when no shares remain available and we have no further obligation with respect to any outstanding award. Any termination of the 2011 Plan will not affect the validity of any options previously granted thereunder.

### **Grants under the 2011 Plan**

The 2011 Plan provides for the grant of incentive stock options, or ISOs, qualifying as ISOs under Section 422 of the Internal Revenue Code and non-statutory stock options, or NSOs, that do not so qualify. Any option granted under the 2011 Plan must provide for an exercise price of not less than 100% of the fair market value of the underlying shares on the date of such grant, but the exercise price of any ISO granted to an eligible employee owning more than 10% of our common stock must be at least 110% of such fair market value as determined on the date of the grant.

Options may be exercised by payment of the exercise price in cash or, if permitted by the Compensation Committee, shares having a fair market value equal to the exercise price. This may include withholding of option shares to pay the exercise price. The Compensation Committee also is permitted to establish procedures for broker-assisted cashless exercises.

Stock appreciation rights may be granted under the 2011 Plan. Such awards entitle a holder to receive, upon exercise, the spread between the exercise-date fair market value of a share of common stock and the base price specified for the SAR, with payment in either cash or shares as determined by the Compensation Committee. The base price must be at least 100% of the fair market value of the underlying shares on the date of grant.

The maximum term of options and stock appreciation rights is ten years from the date of grant.

Full-value awards that may be granted under the 2011 Plan include restricted stock and other stock-based awards. Other stock-based awards are awards denominated or payable in, valued in whole or in part by reference to, or

otherwise based on or related to common stock. Typically, other stock-based awards are contractual commitments to deliver shares at a future date, subject to specified conditions such as service requirements or performance conditions. These types of awards may be designated as restricted stock units.

The 2011 Plan also authorizes cash incentive awards. We have implemented annual incentive awards to executive officers under this authorization, in order that amounts earned under the awards will be fully tax deductible by us.

The Compensation Committee has discretion in setting the vesting schedule of options, stock appreciation rights, restricted stock, other stock-based awards, and cash incentive awards, the circumstances resulting in forfeiture of awards, the post-termination exercise periods of options and stock appreciation rights, and the events resulting in acceleration of the right to exercise and the lapse of restrictions, or the expiration of any deferral period, on any award.

Shares used for stock grants and plan options may be authorized and unissued shares or shares reacquired by us, including shares purchased in the open market.

### **Per-Person Award Limitations**

The 2011 Plan includes a limitation on the amount of awards that may be granted to any one participant in a given fiscal year in order to qualify awards as performance-based compensation not subject to the limitation on deductibility under Section 162(m) of the Internal Revenue Code. Under this annual per-person limitation, no participant may in any year be granted share-denominated awards under the 2011 Plan relating to more than his or her "annual limit". The annual limit equals 3.0 million shares plus the amount of the participant's unused annual limit relating to share-based awards as of the close of the previous year, subject to adjustment for splits and other extraordinary corporate events. In the case of cash-denominated awards, the 2011 Plan limits the granting of such awards so that they do not authorize the earning by a participant during any fiscal year in excess of the participant's defined annual limit, which for this purpose equals \$6 million plus the amount of the participant's unused cash annual limit as of the close of the previous year. The per-person limit for cash-denominated performance awards does not operate to limit the amount of share-based awards, and vice versa. These limits apply only to awards under the 2011 Plan, and do not limit our ability to enter into compensation arrangements outside of the 2011 Plan.

### **Performance-Based Awards**

The Compensation Committee may grant performance awards, which may be awards of a specified cash amount or may be share-based awards. Generally, performance awards require satisfaction of pre-established performance goals, consisting of one or more business criteria and a targeted performance level with respect to such criteria, as a condition of awards being granted or becoming exercisable or settleable, or as a condition to accelerating the timing of such events. Performance may be measured over a period of any length specified by the Compensation Committee. If so determined by the Compensation Committee, in order to avoid the limitations on tax deductibility under Section 162(m), the business criteria used by the Compensation Committee in establishing performance goals applicable to performance awards to the named executive officers will be selected from among the following:

net sales or revenues;

oil or gas production, or increases in proven reserves, or other measures of discovery or recovery of oil, gas and other natural resources;

earnings measures, including earnings from operations, earnings before or after taxes, earnings before or after interest, depreciation, amortization, or extraordinary or special items;

net income or net income per common share, basic or diluted;

return measures, including return on assets, gross or net, return on investment, return on capital, or return on equity;

cash flow, free cash flow, cash flow return on investment, discounted or otherwise, net cash provided by operations, or cash flow in excess of cost of capital;

interest expense after taxes;

net economic profit, which means our operating earnings minus a charge for capital, or economic value created;

operating margin or profit margin;

shareholder value creation measures, including stock price or total shareholder return;

dividend payout levels, including as a percentage of net income;

expense targets, working capital targets, or operating efficiency; and

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strategic business criteria, consisting of one or more objectives based on meeting specified market penetration, geographic business expansion goals, cost targets, total market capitalization, agency ratings of financial strength, completion of capital and borrowing transactions, business retention, new product development, customer satisfaction, employee satisfaction, management of employment practices and employee benefits, supervision of litigation and information technology, and goals relating to acquisitions or divestitures of subsidiaries, affiliates or joint ventures.

The Compensation Committee retains discretion to set the level of performance for a given business criteria that will result in the earning of a specified amount under a performance award. These goals may be set with fixed, quantitative targets, targets relative to our past performance, targets compared to the performance of other companies, such as a published or special index or a group of companies selected by the Compensation Committee for comparison, or in such other way as the Compensation Committee may determine. The Compensation Committee may specify that these performance measures will be determined before payment of bonuses, capital charges, non-recurring or extraordinary income or expense, or other financial and general and administrative expenses for the performance period.

Nothing in the 2011 Plan precludes the Compensation Committee from authorizing payment of other compensation, including bonuses based upon performance, to officers and employees, including the executive officers, outside of the 2011 Plan.

#### **Adjustment Upon Changes in Capitalization or other Corporate Events**

The 2011 Plan provides that, in the event of any dividend, other than a cash dividend, payable on shares of our common stock, stock split, reverse stock split, combination or exchange of shares, or other similar event occurring after the grant of an award which results in a change in the shares of our common stock as a whole:

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the number of shares issuable in connection with any such award and the purchase price thereof, if any, will be proportionately adjusted to reflect the occurrence of any such event, and

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the Compensation Committee will determine whether such change requires an adjustment in the aggregate number and kind of shares reserved for issuance under the 2011 Plan.

If any person is or becomes the beneficial owner of 30% or more of the combined voting power of our outstanding securities and the Board does not authorize or otherwise approve such acquisition, then outstanding awards under the 2011 Plan will become vested. The Compensation Committee may, in the event of an acquisition of substantially all of our assets or at least 50% of the combined voting power of our outstanding common stock, including by way of merger or reorganization, which has been approved by the Board accelerate the vesting of any or all outstanding awards and compel the participant to relinquish any outstanding award in exchange for payment of the fair market value of the underlying shares.

### **Assignability of Plan Options and Termination of Employment**

All awards are nonassignable and nontransferable, except by will or by the laws of descent and distribution, and in the case of exercisable awards, during the lifetime of the participant, may be exercised only by the participant, except as provided by the Compensation Committee. The 2011 Plan contains default provisions specifying the post-termination exercise period of options in the event of death, disability, retirement and certain other terminations of employment. The Compensation Committee retains discretion, however, regarding all vesting and post-termination exercise terms of awards under the 2011 Plan.

### **Summary of Federal Tax Consequences**

The following is only a brief summary of the effect of federal income taxation on an optionee under the 2011 Plan. Effective January 1, 2006, we adopted Financial Accounting Standards Board, or FASB, ASC Topic 718. This Statement requires that compensation costs related to share-based payment transactions, such as stock options or restricted stock award, be recognized in the financial statements. Under ASC Topic 718, an optionee,

recipient of a restricted stock award and our company will be subject to certain tax consequences and accounting charges, regardless of the type of option or restricted stock award.

Options granted under the 2011 Plan may be either ISOs which satisfy the requirements of Section 422 of the Internal Revenue Code or NSOs which do not meet such requirements. The federal income tax treatment for the two types of options differs, as summarized below.

· *ISOs.* No taxable income is recognized by an optionee at the time of the grant of an ISO, and no taxable income is generally recognized at the time an ISO is exercised. However, the excess of the fair market value of the common stock received upon the exercise of an ISO over the exercise price is includable in the employee's alternative minimum taxable income and may be subject to the alternative minimum tax, or AMT. For AMT purposes only, the basis of the common stock received upon exercise of an ISO is increased by the amount of such excess.

An optionee will recognize taxable income in the year in which the purchased shares acquired upon exercise of an ISO are sold or otherwise disposed. For federal tax purposes, dispositions are divided into two categories - qualifying and disqualifying. An optionee will make a qualifying disposition of the purchased shares if the sale or disposition is made more than two years after the grant date of the option and more than one year after the exercise date. If an optionee fails to satisfy either of these two holding periods prior to sale or disposition, then a disqualifying disposition of the purchased shares will result.

Upon a qualifying disposition, an optionee will recognize long-term capital gain or loss in an amount equal to the difference between the amount realized upon the sale or other disposition of the purchased shares and the exercise price paid for the shares except that, for AMT purposes, the gain or loss would be the difference between the amount realized upon the sale or other disposition of the purchased shares and the employee's basis increased as described above. If there is a disqualifying disposition of the shares, then the optionee will generally recognize ordinary income to the extent of the lesser of the difference between the exercise price and the fair market value of the common stock on the date of exercise, or the amount realized on such disqualifying disposition. Any additional gain recognized upon the disposition will be capital gain. If the amount realized is less than the exercise price, the optionee will, in general, recognize a capital loss. If the optionee makes a disqualifying disposition of the purchased shares, we are required to report such ordinary income on form W-2, and we will then be entitled to an income tax deduction, for the taxable year in which such disposition occurs, to the extent the optionee recognizes ordinary income. In no other instance will we be allowed a deduction with respect to the optionee's disposition of the purchased shares.

· *NSOs.* No taxable income is recognized by an optionee upon the grant of an NSO. The optionee will in general recognize ordinary income, in the year in which an NSO is exercised, equal to the excess of the fair market value of purchased shares on the date of exercise over the exercise price paid for such shares, and the optionee will be required to satisfy the tax withholding requirements applicable to such income. Upon a subsequent sale of the purchased shares, the optionee will generally recognize either a capital gain or a capital loss depending on whether the amount realized is more or less than the exercise price. We are required to report such ordinary income on form W-2 or 1099 as appropriate, and we will then be entitled to a business expense deduction equal to the amount of ordinary income recognized by the optionee with respect to an exercised NSO. The deduction will in general be allowed for our taxable

year in which ordinary income is recognized by the optionee in connection with the acquisition of the option shares.

· *Restricted Stock.* Unless the recipient of a restricted stock grant elects to treat such grant as ordinary income at the time the grant is made, the recipient does not recognize taxable income upon the grant of restricted stock. Instead, the recipient will recognize ordinary income at the time of vesting, *i.e.* when the restrictions on the grant lapse, equal to the fair market value of the restricted shares on the vesting date minus any amount paid for the restricted shares. At the time that the recipient recognizes ordinary income in respect of the restricted stock grant, we are required to report such ordinary income on form W-2 or 1099 as appropriate and we will then be entitled to a tax deduction for compensation expense equal to the amount of ordinary income recognized by the recipient except as discussed below.

*Other Stock-Based Awards and Incentive Awards.* In many cases a stock-based award or an incentive award will be granted in a form in which we make a contractual commitment to deliver shares or pay cash to the recipient at a future date, subject to specified conditions such as performance or other vesting terms. The recipient will recognize ordinary income at the time he or she actually or constructively receives the payment of shares or cash, with the amount of ordinary income relating to shares to the fair market value of the shares at the time they are received by the recipient. At the time that the recipient recognizes ordinary income in respect of such an award, we would be entitled to a tax deduction for compensation expense equal to the amount of ordinary income recognized by the recipient, except as discussed below.

Any award that is deemed to be a deferral arrangement, that is, not excluded or exempted under the tax regulations, will be subject to Internal Revenue Code Section 409A. The establishment of the timing of any distribution of cash or shares under such an award, including any right of a participant to elect to defer compensation under such an award, must meet requirements under Section 409A in order for income taxation to be deferred upon vesting of the award and tax penalties avoided by the participant.

Compensation that qualifies as "performance-based" compensation is excluded from the \$1 million deductibility cap of Internal Revenue Code Section 162(m), and therefore would remain fully tax deductible by the company that pays it. Under the 2011 Plan, options and stock appreciation rights granted with an exercise price or base price at least equal to 100% of fair market value of the underlying stock at the date of grant, performance awards to employees the Compensation Committee expects to be named executive officers, other than the Chief Financial Officer, at the time compensation is received and certain other awards which are conditioned upon achievement of performance goals generally will be intended to qualify as such "performance-based" compensation. A number of requirements must be met in order for particular compensation to so qualify, however, so there can be no assurance that such compensation under the 2011 Plan will be fully deductible under all circumstances. In addition, other awards under the 2011 Plan, such as non-performance-based restricted stock and restricted stock units, generally will not so qualify, so that compensation paid to certain executives in connection with such awards may, to the extent it and other compensation subject to Section 162(m)'s deductibility cap exceed \$1 million in a given year, not be deductible by us as a result of Section 162(m). Compensation to certain employees resulting from vesting of awards in connection with a change in control or termination following a change in control also may be non-deductible by us under Internal Revenue Code Sections 4999 and 280G.

The foregoing is only a summary of the effect of federal income taxation upon us and the participants under the 2011 Plan. This discussion is not intended as tax guidance to participants in the 2011 Plan, as the consequences may vary with the types of awards made, the identity of the recipients and the method of payment or settlement. Different tax rules may apply, including in the case of variations in transactions that are permitted under the 2011 Plan, such as payment of the exercise price of an option by surrender of previously acquired shares, or in the event of the participant's death. The summary does not address in any detail the effects of other federal taxes, including possible "golden parachute" excise taxes, or taxes imposed under the tax laws of any state, municipality, or foreign country in which the participants may reside.

## **Restrictions Under Securities Laws**

The sale of all shares issued under the 2011 Plan must be made in compliance with federal and state securities laws. Our officers, directors and 10% or greater stockholders, as well as certain other persons or parties who may be deemed to be "affiliates" of ours under federal securities laws, should be aware that resales by affiliates can only be made pursuant to an effective registration statement, Rule 144 or other applicable exemption. Our officers, directors and 10% and greater stockholders may also become subject to the "short swing" profit rule of Section 16(b) of the Securities Exchange Act of 1934.

**SELLING SECURITY HOLDERS**

At September 24, 2012 there were 43,168,837 shares of our common stock issued and outstanding. The information under this heading relates to resales of shares covered by this prospectus by persons who are our "affiliates" as that term is defined under federal securities laws. These persons will be members of our board of directors, executive officers and/or employees of our company. Shares issued pursuant to this prospectus to our affiliates are "control" shares under federal securities laws.

The following table sets forth:

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the name of each affiliated selling security holder,

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the amount of common stock owned beneficially, directly or indirectly, by each affiliated selling security holder,

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the maximum amount of shares to be offered by the affiliated selling security holders pursuant to this prospectus, and

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the amount of common stock to be owned by each affiliated selling security holder following sale of the shares.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power with respect to securities and includes any securities which the person has the right to acquire within 60 days through the conversion or exercise of any security or other right. The information as to the number of shares of our common stock owned by each affiliated selling security holder is based upon our books and records and the information provided by our transfer agent.

We may amend or supplement this prospectus from time to time to update the disclosure set forth in the table.

Because the selling security holders identified in the table may sell some or all of the shares owned by them which are included in this prospectus, and because there are currently no agreements, arrangements or understandings with

respect to the sale of any of the shares, no estimate can be given as to the number of shares available for resale hereby that will be held by the affiliated selling security holders upon termination of the offering made hereby. We have therefore assumed, for the purposes of the following table, that the affiliated selling security holders will sell all of the shares owned by them, which are being offered hereby, but will not sell any other shares of our common stock that they presently own.

Persons who receive stock grants under the 2011 Plan and/or the non-plan employee options and are deemed affiliates, may effect sales of shares of common stock covered hereby not in excess of 1% of our outstanding common stock in any three-month period.

Grants may be made to affiliates in the future which we are not able to identify at this time. Before any of our affiliates sell any of his shares received under the 2011 Plan and/or the non-plan employee options, we will supplement this prospectus with the required information regarding the names of the persons selling, the total number of shares owned by these persons and the number of shares proposed to be sold under this prospectus.

Name of selling security holder	Number of shares owned (1)	Shares to		% owned after offering
		be offered	be owned after offering	
Deloy Miller (2)	2,388,134	230,110	2,274,691	5.2%
Scott Boruff (3)	5,440,395	3,026,754	4,555,308	9.8%
Herman Gettelfinger (4)	842,579	46,012	796,567	1.8%
David M. Hall (5)	1,648,451	305,000	1,590,118	3.6%
Gerald Hannahs (6)	328,297	100,000	328,297	<1%
General Merrill A. McPeak (7)	295,120	50,120	245,000	<1%
Catherine A. Rector (8)	-	45,000	-	<1%
Charles Stivers (9)	153,780	47,114	106,666	<1%
Don A. Turkleson (10)	82,050	148,717	-	<1%
David J. Voyticky (11)	985,301	2,685,301	125,000	<1%
Kurt C. Yost (12)	41,670	251,960	-	<1%

1

The inclusion of any shares as deemed beneficially owned does not constitute an admission of beneficial ownership by the named shareholder.



2

The number of shares owned by Mr. Miller includes 200,000 shares of common stock underlying options with an exercise price of \$5.94 per share, 33,333 shares of common stock underlying options with an exercise price of \$6.534 per share, and 58,333 shares of common stock underlying options with an exercise price of \$5.89 per share. The number of shares owned by Mr. Miller excludes options to purchase 100,000 shares of our common stock exercisable at \$5.94 per share, options to purchase 16,666 shares of our common stock at \$6.534 per share, and options to purchase 116,667 shares of our common stock at \$5.89 per share which have not yet vested. The number of shares to be offered includes:

175,000 shares of common stock underlying options with an exercise price of \$5.89 per share granted under the 2011 Plan, and

55,110 shares of common stock granted as a restricted stock award under the 2011 Plan.

3

The number of shares owned by Mr. Boruff includes 8,000 shares owned for the benefit of his minor children, 250,000 shares of our common stock underlying options with an exercise price of \$0.33 per share, 300,000 shares of our common stock underlying options with an exercise price of \$5.94 per share, 33,334 shares of our common stock underlying options with an exercise price of \$6.534 per share, 625,000 shares of our common stock underlying options with an exercise price of \$6.00 per share, and 83,333 shares of our common stock underlying options with an exercise price of \$5.89 per share. The number of shares owned by Mr. Boruff excludes options to purchase an additional 150,000 shares of our common stock exercisable at \$5.94, options to purchase an additional 16,666 shares exercisable at \$6.534, options to purchase an additional 1,875,000 shares exercisable at \$6.00, and options to purchase an additional 166,667 shares exercisable at \$5.89 which have not yet vested. The number of shares to be offered include