

CHENIERE ENERGY INC  
Form PRE 14A  
December 03, 2008

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the

Securities Exchange Act of 1934

(Amendment No. )

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Under §240.14a-12

**CHENIERE ENERGY, INC.**

(Name of Registrant as Specified in its Charter)

N/A

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

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(2) Aggregate number of securities to which transaction applies:

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(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

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(4) Proposed maximum aggregate value of transaction:

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(5) Total fee paid:

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.. Fee paid previously with preliminary materials.

.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount previously paid:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:



**CHENIERE ENERGY, INC.**

**700 Milam Street, Suite 800**

**Houston, Texas 77002**

**(713) 375-5000**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

**TIME AND DATE**

9:00 a.m., Central Standard Time on January 30, 2009

**PLACE**

Cheniere Energy, Inc. Board Room  
700 Milam Street, Suite 800  
Houston, Texas 77002

**ITEMS OF BUSINESS**

To consider and act upon a proposal to amend the Company's Restated Certificate of Incorporation to increase the number of shares of authorized common stock of the Company from 120,000,000 to 240,000,000.

To consider and act upon Amendment No. 4 to the Cheniere Energy, Inc. Amended and Restated 2003 Stock Incentive Plan to increase the number of shares of common stock available for issuance under the plan from 11,000,000 to 21,000,000, increase the maximum number of shares that can be granted to any one individual during a calendar year from 1,000,000 to 3,000,000 and to add an additional permissible business criteria pursuant to which Performance Awards may be granted under the plan.

To transact other business as may properly come before the Meeting and any adjournment or postponement thereof.

**RECORD DATE**

You can vote if you were a stockholder of record on December 1, 2008.

**PROXY VOTING**

It is important that your shares be represented and voted at the Meeting. You can vote your shares by completing and returning your proxy card or, in certain cases, by voting on the Internet or by telephone. See details under the heading "How do I vote if I am a stockholder of record?" or "How do I vote if I am a beneficial owner?"

**ELECTRONIC AVAILABILITY OF PROXY MATERIALS**

We are making this Proxy Statement, including the Notice of Special Meeting of Stockholders and 2007 Annual Report on Form 10-K, available on our website at

[http://www.cheniere.com/corporate/2009\\_special\\_meeting.shtml](http://www.cheniere.com/corporate/2009_special_meeting.shtml).

BY ORDER OF THE BOARD OF DIRECTORS

Anne V. Vaughan

Corporate Secretary

December 22, 2008

**CHENIERE ENERGY, INC.**

**700 Milam Street, Suite 800**

**Houston, Texas 77002**

**(713) 375-5000**

**PROXY STATEMENT**

**Why did I receive these proxy materials?**

We are providing these proxy materials in connection with the solicitation by the Board of Directors of Cheniere Energy, Inc. (Cheniere, the Company, we, us or our), a Delaware corporation, of proxies to be voted at a Special Meeting of Stockholders and any adjournment or postponement thereof.

You are invited to attend the Special Meeting of Stockholders (Meeting) on January 30, 2009, beginning at 9:00 a.m., Central Standard Time. The Meeting will be held in the Boardroom at Cheniere's corporate offices, 700 Milam Street, Suite 800, Houston, Texas 77002.

This Notice of Special Meeting of Stockholders, Proxy Statement and proxy card are being mailed to stockholders starting December 22, 2009.

**Do I need a ticket to attend the Meeting?**

You will need an admission ticket or proof of ownership to enter the Meeting.

If your shares are held beneficially in the name of a bank, broker or other holder of record and you plan to attend the Meeting, you must present proof of your ownership of Cheniere stock, as of December 1, 2008, such as a bank or brokerage account statement, to be admitted to the Meeting. If you would rather have an admission ticket, you can obtain one in advance by mailing a written request with proof of your ownership of Cheniere stock as of December 1, 2008, to:

Cheniere Energy, Inc.

Attention: Investor Relations

700 Milam Street, Suite 800

Houston, Texas 77002

If you have any questions about attending the Meeting, you may contact Investor Relations at [info@cheniere.com](mailto:info@cheniere.com) or 713-375-5100.

Stockholders also must present a valid government-issued picture identification in order to be admitted to the Meeting.

*No cameras, recording equipment, electronic devices, large bags, briefcases or packages will be permitted at the Meeting.*

**Who is entitled to vote at the Meeting?**

Holders of Cheniere common stock at the close of business on December 1, 2008 (the Record Date), are entitled to receive this Notice and to vote their shares at the Meeting. As of the Record Date, there were 50,697,308 shares of common stock outstanding and entitled to vote. Each share of common stock is entitled to one vote on each matter properly brought before the Meeting.

**What is the difference between holding shares as a stockholder of record and as a beneficial owner?**

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If your shares are registered directly in your name with Cheniere's transfer agent, Computershare Trust Company, N.A., you are considered the stockholder of record of those shares. The Notice of Special Meeting of Stockholders, Proxy Statement and proxy card have been sent directly to you by Cheniere.

If your shares are held in a stock brokerage account or by a bank or other holder of record, you are considered the beneficial owner of such shares held in street name. The Notice of Special Meeting of Stockholders, Proxy Statement and proxy card have been forwarded

to you by your broker, bank or other holder of record, who is considered the stockholder of record of those shares. As the beneficial owner, you have the right to direct your broker, bank or other holder of record on how to vote your shares by using the voting instruction card included in the mailing or by following their instructions for voting by telephone or on the Internet.

**How do I vote if I am a stockholder of record?**

You may vote either by mail or in person.

***By Mail***

Be sure to complete, sign and date the enclosed proxy card and return it in the prepaid envelope. If you do not indicate your voting preferences, your shares will be voted as recommended by the Board of Directors.

If the prepaid envelope is missing, please mail your completed proxy card to Cheniere Energy, Inc., c/o Computershare Trust Company, N.A., P.O. Box 43102, Providence, RI 02940-5068.

***In Person at the Meeting***

All stockholders of record on December 1, 2008, may vote in person at the Meeting. You may also be represented by another person at the Meeting by executing a proper proxy designating that person.

**How do I vote if I am a beneficial owner?**

You may vote using any of the following methods:

***By Mail***

Be sure to complete, sign and date the enclosed proxy card and return it in the prepaid envelope. If you do not indicate your voting preferences, your shares will be voted as recommended by the Board of Directors.

***By telephone or on the Internet***

The availability of telephone and Internet voting will depend on the voting processes of your broker, bank or other holder of record. Therefore, we recommend that you follow the voting instructions in the materials you receive.

***In person at the Meeting***

All stockholders may vote in person at the Meeting. You may also be represented by another person at the Meeting by executing a proper proxy designating that person. You must obtain a legal proxy from your broker, bank or other holder of record and present it to the inspector of election with your ballot to be able to vote at the Meeting.

**Can I revoke my proxy?**

If you are a stockholder of record, you can revoke your proxy before it is exercised by:

written notice to the Corporate Secretary of the Company;

timely delivery of a valid, later-dated proxy; or

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voting by ballot at the Meeting.

If you are a beneficial owner of shares, you may submit new voting instructions by contacting your bank, broker or other holder of record. You may also vote in person at the Meeting if you obtain a legal proxy as described in the answer to the preceding questions.

### **What shares are included on the proxy card?**

If you are a stockholder of record, you will receive a proxy card for the shares you hold in certificate form or in book-entry form.

If you are a beneficial owner, you will receive voting instructions from your bank, broker or other holder of record.

### **Is there a list of stockholders entitled to vote at the Meeting?**

The names of stockholders of record entitled to vote at the Meeting will be available



at the Meeting and for ten days prior to the Meeting for any purpose germane to the Meeting. The list will be available between the hours of 8:30 a.m. and 4:30 p.m., at our offices at 700 Milam Street, Suite 800, Houston, Texas 77002, by contacting the Corporate Secretary of the Company.

**What are the voting requirements to approve each of the proposals discussed in this Proxy Statement?**

The presence of the holders of a majority of the outstanding shares of common stock entitled to vote at the Meeting, present in person or represented by proxy, is necessary to constitute a quorum. Abstentions and broker non-votes are counted as present and entitled to vote for purposes of determining a quorum. Abstentions and broker non-votes occur when a bank, broker or other holder of record holding shares for a beneficial owner does not vote on a particular proposal because that holder does not have discretionary voting power for that particular item and has not received instructions from the beneficial owner.

If you are a beneficial owner, your bank, broker or other holder of record is not permitted to vote your shares on Proposal 1 to amend the Restated Certificate of Incorporation and Proposal 2 to adopt Amendment No. 4 to the Amended and Restated 2003 Stock Incentive Plan.

Proposal 1 to amend the Restated Certificate of Incorporation will require the affirmative vote of at least a majority of the Company's outstanding shares of common stock.

Proposal 2 to adopt Amendment No. 4 to the Amended and Restated 2003 Stock Incentive Plan will (i) require the affirmative vote of at least a majority of the Company's shares that are entitled to vote and are present at the meeting and (ii) be subject to the approval by the stockholders of Proposal 1.

Broker non-votes and abstentions with respect to Proposal 1 to amend the Restated Certificate of Incorporation will have the same effect as a vote against the proposal. Broker non-votes will have no effect on Proposal 2 to adopt Amendment No. 4 to the Amended and Restated 2003 Stock Incentive Plan. Abstentions will have the same effect as a vote against Proposal 2.

**Could other matters be decided at the Meeting?**

As of the date of this Proxy Statement, we do not know of any matters to be raised at the Meeting other than those referred to in this Proxy Statement.

If other matters are properly presented for consideration at the Meeting, the persons named in your proxy card will have the discretion to vote on those matters for you.

**Who will pay for the cost of this proxy solicitation?**

We will pay the cost of soliciting proxies. Proxies may be solicited on our behalf by directors, officers or employees in person or by telephone, electronic transmission and facsimile transmission. We have hired The Altman Group to solicit proxies. We will pay The Altman Group a fee of \$9,500 plus expenses, for these services.

**Who will count the vote?**

Representatives of our transfer agent, Computershare Trust Company, N.A., will tabulate the votes.

**Important Notice Regarding the Availability of Proxy Materials for the Special Meeting of Stockholders to be held on January 30, 2009.**

The Proxy Statement, including the Notice of Special Meeting of Stockholders and 2007 Annual Report on Form 10-K for the year ending December 31, 2007, are available on our website at [http://www.cheniere.com/corporate/2009\\_special\\_meeting.shtml](http://www.cheniere.com/corporate/2009_special_meeting.shtml)

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**PROPOSAL 1 APPROVAL OF AMENDMENT TO RESTATED CERTIFICATE OF INCORPORATION TO INCREASE THE NUMBER OF AUTHORIZED SHARES**

Our Restated Certificate of Incorporation currently authorizes us to issue up to 120,000,000 shares of common stock, \$.003 par value, and 5,000,000 shares of preferred stock, \$.001 par value. The Board of Directors has adopted, subject to stockholder approval, an amendment to our Restated Certificate of Incorporation to increase the authorized number of shares of our common stock from 120,000,000 shares to 240,000,000 shares. Attached hereto as Exhibit A is the amendment, as approved by the Board of Directors and as submitted to our stockholders for their approval.

As of December 1, 2008, of the 120,000,000 shares of common stock presently authorized, 50,697,308 shares were issued and outstanding, 5,422,860 shares were reserved for issuance under our stock plans, 9,175,595 shares were reserved for issuance under our \$325,000,000 convertible notes due 2012, 50,000,000 shares were reserved for issuance under a convertible loan agreement entered into in August 2008 and 4,704,237 shares were not reserved for any specific use and were available for future issuance. In addition, in this Proxy Statement we are seeking the approval from the stockholders to increase the number of shares of common stock available for issuance under the 2003 Plan from 11,000,000 shares to 21,000,000 shares (see Proposal 2 beginning on page 2 of this Proxy Statement). If our stockholders approve Proposals 1 and 2, we will have 114,704,237 shares of common stock that are not reserved for any specific use and are available for future issuances.

The Board of Directors believes that the 4,704,237 shares of common stock that are not reserved for any specific use and which currently are available for issuance do not provide the Company with sufficient flexibility to act in a timely manner in meeting future stock needs. We anticipate that the Company may in the future need to issue additional shares in connection with one or more of the following:

incentive and employee benefit plans;

strategic investments;

financing transactions, such as public offerings of common stock or convertible securities; and

otherwise for corporate purposes that have not yet been identified.

In order to provide the Board of Directors with certainty and flexibility to undertake such transactions to support the Company's future business growth, the Board of Directors believes that it is in the best interests of the Company at this time to increase the number of authorized shares of our common stock. Although the Board of Directors and the Compensation Committee have begun considering compensation matters for 2009 and thereafter, no decisions have been made about equity grants under the 2003 plan relating thereto for executive officers of the Company.

If this Proposal 1 is adopted, the additional authorized shares of common stock may be issued upon the approval of the Board of Directors at such times, in such amounts, and upon such terms as the Board of Directors may determine, without further approval of the stockholders, unless such approval is expressly required by applicable law, regulatory agencies or any exchange or quotation service on which our common stock may then be listed. The ability of the Board of Directors to issue shares from the additional authorized shares will allow the Board of Directors to perform the functions for which

they are currently empowered under our Restated Certificate of Incorporation and Amended and Restated By-laws in executing certain transactions, such as acquisitions, investments, or other transactions, pursuant to which such additional authorized shares could be issued without further stockholder approval of the specific transaction.

Our stockholders do not have preemptive rights with respect to future issuances of additional shares of common stock, which means that current stockholders do not have a prior right to purchase any new issue of common stock of the Company in order to maintain their proportionate ownership interest. As a result, the issuance of a significant amount of additional authorized common stock (other than as the result of a stock split or other pro rata distribution to stockholders) would result in a significant dilution of the beneficial ownership interests and/or voting power of each stockholder who does not purchase additional shares to maintain his or her pro rata interest. As additional shares are issued, the shares owned by our existing stockholders will represent a smaller percentage ownership interest in the Company. In addition, the issuance of additional shares of our common stock could result in a decrease in the trading price of our common stock, depending on the price at which such shares are issued.

#### **Recommendation of the Board of Directors**

The Board of Directors unanimously approved the amendment to our Restated Certificate of Incorporation and has determined that such amendment is advisable and in the best interests of the Company and our stockholders. **The Board of Directors recommends a vote FOR approval of the amendment to our Restated Certificate of Incorporation to increase the number of authorized shares of common stock to 240,000,000 shares.**

#### **PROPOSAL 2 APPROVAL OF AMENDMENT NO. 4 TO THE CHENEIRE ENERGY, INC. AMENDED AND RESTATED 2003 STOCK INCENTIVE PLAN**

The Board of Directors unanimously adopted the Cheniere Energy, Inc. Amended and Restated 2003 Stock Incentive Plan (the 2003 Plan ) in November 2003, and the stockholders approved the 2003 Plan in January 2004. The 2003 Plan was amended and restated in September 2005. The stockholders approved an increase in the number of shares of common stock available for issuance under the 2003 Plan in February 2005 and in May 2006.

#### **Proposed Amendment**

On November 18, 2008, the Board of Directors adopted Amendment No. 4 to the 2003 Plan ( Amendment No. 4 ). Amendment No. 4 effects an increase in the number of shares of common stock available for issuance under the 2003 Plan from 11,000,000 shares to 21,000,000 shares (subject to adjustment for stock dividends, stock splits and certain other changes in capitalization, pursuant to the terms of the 2003 Plan), an increase to the maximum number of shares that can be granted to any one individual during a calendar year from 1,000,000 to 3,000,000 shares of common stock and adds an additional business criteria relating to contracted LNG quantity to the list of permissible business criteria pursuant to which Performance Awards may be granted under the 2003 Plan. The Board of Directors adopted Amendment No. 4 to ensure that there will be a sufficient reserve of shares to permit further award grants under the 2003 Plan to employees, consultants and non-employee directors at levels to be determined by management and the Compensation Committee.

Approval of Amendment No. 4 (i) requires the affirmative vote of the holders of a majority of the shares entitled to vote on such matter and are present at the Meeting and (ii) is subject to the approval by the stockholders of Proposal 1. If the stockholders approve Proposal 1 and Proposal 2, Amendment No. 4 will be effective as of the date of the adoption by the stockholders. Attached hereto as Exhibit B is Amendment No. 4 to the 2003 Plan, as approved by the Board of Directors and as submitted to our stockholders for their approval.

### **Summary of the 2003 Plan**

Below is a summary of the terms of the 2003 Plan, as amended by Amendment No. 4, which is qualified in its entirety by reference to the full text of the 2003 Plan, which may be obtained, at no cost, from the Company.

### **Purpose of the 2003 Plan**

The 2003 Plan is designed to promote the interests of the Company and our stockholders by encouraging employees, consultants and non-employee directors of the Company or its affiliates to acquire or increase their equity interests in the Company, thereby giving them added incentive to work toward the continued growth and success of the Company. A further purpose of the 2003 Plan is to enable the Company and its affiliates to better compete for the services of the individuals needed for the continued growth and success of the Company. Accordingly, the 2003 Plan provides for the following:

discretionary grants to employees of the Company or our affiliates of stock options that constitute incentive stock options ( Incentive Stock Options ) as defined in Section 422 of the Code; and

discretionary grants to employees, consultants, and non-employee directors of the Company or our affiliates of (a) stock options that do not constitute Incentive Stock Options ( Non-qualified Stock Options ), (b) shares of common stock for a cash purchase price not greater than the fair market value of such shares ( Purchased Stock Awards ), (c) the right to receive shares of common stock or cash payments, each up to the amount by which the fair market value of a share of common stock on the date of exercise exceeds the grant price of a share of common stock on the date the stock appreciation right was granted ( Stock Appreciation Rights ), (d) shares of common stock ( Bonus Stock Awards ), (e) the right to receive a specified number of shares of common stock or cash equal to the fair market value of a specified number of shares of common stock at the end of a Restricted Period (as defined in the 2003 Plan) or on the last day of a specified deferral period ( Phantom Stock Awards ), (f) shares of common stock that are subject to restrictions on disposition and forfeiture to the Company under certain circumstances ( Restricted Stock Awards ), (g) cash and/or stock payments that may be earned based on the satisfaction of various performance measures ( Performance Awards ), and (h) other stock or performance-based awards ( Other Stock or Performance-Based Awards ).

We believe that the 2003 Plan is a valuable compensation component for the Company and can help further the success of the Company by aligning the interests of our employees, officers, directors and consultants with those of the Company and stockholders through ownership of the Company's common stock.

### **Historical Grant Information**

As of December 1, 2008, there were 1,886,976 shares of common stock available for issuance under the 2003 Plan. An aggregate of 1,194,577 stock options were outstanding under the 2003 Plan on December 1, 2008. Based on 50,697,308 shares of common stock issued and outstanding as of December 1, 2008, the shares subject to existing stock options and the shares currently available for issuance under the 2003 Plan represent approximately 6% of the Company's outstanding shares.

### **Administration**

The 2003 Plan is administered by the Compensation Committee or, if there is no Compensation Committee, the Board of Directors. With respect to any award granted to a Covered Employee that is intended to be performance-based compensation for purposes of Section 162(m) of the Code, the Section 162(m) Subcommittee, which is comprised solely of two or more non-employee directors who also qualify as outside directors (as described under Section 162(m) of the Internal Revenue Code of 1986, as amended (the Code)), makes performance-based award decisions (such Committee or the Compensation Committee, as applicable, the Committee). A Covered Employee is the Chief Executive Officer of the Company and each other officer of the Company that is required to be treated as a covered employee for purposes of applying Section 162(m) of the Code to awards.

The Committee has full authority, subject to the terms of the 2003 Plan, to establish rules that it deems relevant for the proper administration of the 2003 Plan, to select the employees, consultants and non-employee directors to whom awards are granted, and to set the type and size of awards that are made and the other terms of the awards. When granting awards, the Committee may consider any factors that it deems relevant.

The Board has established an Equity Grant Committee and has appointed Charif Souki, Chairman of the Board, Chief Executive Officer and President of the Company, as the sole member of that Committee to act on behalf of the Board and the Compensation Committee to grant Restricted Stock Awards and stock options to eligible employees and consultants (other than Covered Employees). Restricted Stock Awards made by the Equity Grant Committee in a calendar year cannot exceed 25,000 shares of restricted stock per recipient or an aggregate of 400,000 shares of restricted stock to all recipients. Stock option awards made by the Equity Grant Committee in a calendar year cannot exceed 100,000 stock options per recipient or an aggregate of 1,000,000 stock options to all recipients. The Compensation Committee periodically ratifies all stock options and Restricted Stock Awards granted by the Equity Grant Committee.

### **Eligibility**

All employees, consultants, and non-employee directors of the Company and our affiliates are eligible to participate in the 2003 Plan. The selection of those employees, consultants, and non-employee directors, from among those eligible, who will receive Incentive Stock Options, Non-qualified Stock Options, Purchased Stock Awards, Stock Appreciation Rights, Bonus Stock Awards, Phantom Stock Awards, Restricted Stock Awards, Performance Awards, Other Stock or Performance-Based Awards, or any combination thereof is within the discretion of the Committee. However, Incentive Stock Options may be granted only to employees of the Company or our affiliates. As of December 1, 2008, there were approximately 215 employees, 1 consultant and 11 non-employee directors eligible to participate in the 2003 Plan.

#### **Term of 2003 Plan**

The 2003 Plan became effective on January 29, 2004. If not sooner terminated, the 2003 Plan will terminate after the tenth anniversary of the effective date, and no further awards may be granted thereafter. The Board of Directors, in its discretion, may terminate the 2003 Plan at any time with respect to any shares of common stock for which awards have not theretofore been granted.

#### **Term of Awards**

The term of any stock option, Stock Appreciation Right, Phantom Stock Award or Restricted Stock Award may not exceed a period of ten years.

#### **Stock Options**

- a. **Term of Option.** The term of each stock option is as specified by the Committee at the date of grant but cannot exceed ten years.
- b. **Acceleration of Vesting.** Unless an individual award agreement provides otherwise, stock options vest upon termination by the Company without cause or by the participant with good reason, termination for any reason within one year of a change of control, termination upon death or disability or such other events as the Committee determines.
- c. **Exercise Price.** The exercise price is determined by the Committee and can be no less than the fair market value of the shares on the date that the stock option is granted.
- d. **Special Rules for Certain Stockholders.** If an Incentive Stock Option is granted to an employee who then owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or a subsidiary, then the term of the stock option cannot exceed five years, and the exercise price must be at least 110% of the fair market value of the shares on the date that the stock option is granted.
- e. **Size of Grant.** Subject to the aggregate maximum number of shares available to be granted under the 2003 Plan, the number of shares for which a stock option is granted to an employee, consultant or non-employee director is determined by the Committee. The Committee may adjust the number and kind of shares for which a stock option is granted to reflect certain corporate transactions and changes in capitalization.
- f. **Status of Stock Options.** The status of each stock option granted to an employee as either an Incentive Stock Option or a Non-qualified Stock Option is designated by the Committee at the time of grant. If, however, the aggregate fair market value (determined as of the date of grant) of shares with respect to which Incentive Stock Options become exercisable for the first time by an employee exceeds \$100,000 in any calendar year, the stock options with respect to the excess shares are Non-qualified Stock Options. All stock options granted to consultants and non-employee directors are Non-qualified Stock Options.
- g. **Payment.** The Committee may determine the method by which the stock option price may be paid upon exercise, including in cash, check, other shares of Common Stock or stock options to purchase Common Stock owned by the optionee. The 2003 Plan also allows the Committee, in its discretion, to establish procedures pursuant to which an optionee may affect a cashless exercise of a stock option.

**h. Amendment.** The Committee may amend an exercisable stock option with the consent of the optionee. As to stock options not immediately exercisable, the Committee may accelerate the terms at which such stock options may be exercised. The Committee may also grant new stock options in exchange for outstanding stock options having a lower exercise price than the surrendered stock options.

**i. Transferability.** An Incentive Stock Option is not transferable other than by will or the laws of descent and distribution, and may be exercised during the employee's lifetime only by the employee or his or her guardian or legal representative. A Non-qualified Stock Option is not transferable other than by will or the laws of descent and distribution, pursuant to a domestic relations order, or with the consent of the Committee, for estate planning purposes to one or more immediate family members or related family trusts or partnerships or similar entities.

**j. Reload Options.** In the discretion of the Committee, a Non-qualified Stock Option may include a right which entitles the participant, upon (i) the exercise of such stock option prior to termination of employment or service and (ii) payment of the exercise price in shares of common stock owned for at least six months, to receive a new Non-qualified Stock Option called a Reload Option to purchase shares of common stock equal to the number of whole shares delivered in payment of the exercise price at the fair market value per share of common stock on the date of exercise of the original Non-qualified Stock Option.

**k. Limitations on Exercise.** No Incentive Stock Option may be exercised more than (i) three months after the optionee ceases to be an employee for any reason other than death or disability or (ii) one year after the optionee ceases to be an employee due to death or disability. No Non-qualified Stock Option may be exercised more than (i) six months after the optionee ceases to be an employee for any reason other than death or disability or (ii) one year after the optionee ceases to be an employee due to death or disability.

**l. Other Terms and Conditions.** The Committee may establish other terms and conditions of the grant of Non-qualified Stock Options and Incentive Stock Options under the 2003 Plan.

#### **Purchased Stock Awards**

**a. Eligible Persons.** The Committee has authority to sell shares of common stock to such employees, consultants and non-employee directors as it selects.

**b. Purchase Price.** The purchase price per share is determined by the Committee, but cannot exceed the fair market value per share at the time of purchase. The purchase price is to be paid in cash.

**c. Other Terms and Conditions.** The Committee may establish other terms and conditions of the grant of Purchased Stock Awards under the 2003 Plan.

#### **Stock Appreciation Rights**

**a. Rights Related to Stock Options.** A Stock Appreciation Right granted in connection with a stock option entitles the participant to surrender all or part of the stock option for a cash payment at such time and to the extent such stock option is exercisable. Any such Stock Appreciation Right is transferable only to the extent the related stock option is transferable.

b. **Rights Without Stock Options.** A Stock Appreciation Right granted independently of a stock option is exercisable as determined by the Committee and set forth in the applicable award agreement.

c. **Terms.** The Committee determines at the date of grant the times at which and the circumstances under which a Stock Appreciation Right may be exercised (including based on achievement of performance goals and/or future service requirements), the method of exercise, whether the Stock Appreciation Right is in combination with another award, and any other terms and conditions of any Stock Appreciation Right.

d. **Other Terms and Conditions.** The Committee may establish other terms and conditions of the grant of Stock Appreciation Rights under the 2003 Plan.

#### **Bonus Stock Awards**

The Committee may grant shares of common stock to employees, consultants and non-employee directors on terms and conditions established by the Committee, which grant shall constitute a transfer of unrestricted shares of common stock to such recipients without payment.

#### **Phantom Stock Awards**

a. **Restrictions and Forfeiture.** Phantom Stock Awards under the 2003 Plan are subject to such restrictions (which may include a risk of forfeiture) as the Committee may impose. A Phantom Stock Award terminates if the recipient's employment with or service to the Company terminates during the applicable restricted or deferral period, except as otherwise determined by the Committee or set forth in any agreement pertaining to a Phantom Stock Award.

b. **Performance Goals.** If the Committee determines a Phantom Stock Award constitutes performance-based compensation for purposes of Section 162(m) of the Code, the grant or settlement of the award shall, in the Committee's discretion, be subject to the achievement of performance goals.

c. **Other Terms and Conditions.** The Committee may establish other terms and conditions of the grant of Phantom Stock Awards under the 2003 Plan.

#### **Restricted Stock Awards**

a. **Transfer Restrictions and Forfeiture Obligations.** Restricted Stock Awards are subject to certain restrictions on the disposition thereof and certain obligations to forfeit and surrender such shares to the Company as may be determined in the discretion of the Committee. Prior to the lapse of such restrictions, the participant may not transfer such shares. The Company may purchase or recover such shares for the amount of cash paid therefore, if any, if (i) the participant terminates his or her employment with or service to the Company prior to the lapse of such restrictions, subject to accelerated vesting or (ii) the Restricted Stock Award is forfeited by the participant pursuant to the terms of the award. Upon the issuance of shares of common stock pursuant to a Restricted Stock Award, except for the foregoing restrictions and unless otherwise provided, the recipient of the award will have all of the rights of a stockholder of the Company with respect to such shares, including the right to vote such shares and to receive all dividends or other distributions paid with respect to such shares.



b. **Accelerated Vesting.** Unless the individual award agreement provides otherwise, any unvested shares of a Restricted Stock Award vest if the participant's employment with or service to the Company is terminated without cause by the Company, the participant terminates his or her employment with or service to the Company for good reason or the participant is terminated for any reason within one year of a change of control or due to death or disability.

c. **Other Terms and Conditions.** The Committee may establish other terms and conditions of the grant of Restricted Stock Awards under the 2003 Plan.

#### **Performance Awards**

a. **Performance Period.** The Committee may grant Performance Awards under the 2003 Plan that may be paid in common stock, cash or a combination thereof as determined by the Committee. Performance Awards are granted based on performance criteria measured over a period of not less than one year and not more than three years.

b. **Performance Measures.** The Committee uses one or more of the following business criteria in establishing performance goals for Performance Awards with respect to the Company, on a consolidated basis, and/or for specified subsidiaries, divisions or business or geographical units of the Company: earnings per share; increase in revenues; increase in cash flow; increase in cash flow return; return on net assets; return on assets; return on investment; return on equity; economic value added; gross margin; net income; pretax earnings; pretax earnings before interest, depreciation and amortization; earnings before taxes and depreciation; pretax operating earnings after interest expense and before incentives, service fees and extraordinary or special items; operating income; stock price measures (including growth measures and total stockholder return); price per share of common stock; debt reduction; or any of the above goals determined on an absolute or relative basis as compared to the performance of a published or special index deemed applicable by the Committee.

c. **Payment.** Following the end of the performance period, the Committee determines and certifies in writing the amount payable to the holder of the Performance Award based on the achievement of the performance measures for such performance period. Payments are made in cash, common stock or a combination thereof as determined by the Committee. The Committee may exercise its discretion to increase amounts payable under any Performance Award except for awards designed to comply with Section 162(m) of the Code.

d. **Performance Awards Under Section 162(m) of the Code.** A Performance Award granted to a person designated by the Committee who is likely to be a Covered Employee constitutes performance-based compensation within the meaning of Section 162(m) of the Code, and the terms of such awards are to be interpreted consistently with Section 162(m).

e. **Other Terms and Conditions.** The Committee may establish other terms and conditions for Performance Awards under the 2003 Plan.

#### **Other Stock or Performance-Based Awards**

a. **General.** The Committee may grant to employees, consultants and non-employee directors Other Stock or Performance-Based Awards which consist of a right denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to, shares of common stock or cash.

b. **Other Terms and Conditions.** The Committee may establish other terms and conditions for Other Stock or Performance-Based Awards under the 2003 Plan.

#### **Amendments**

The Board of Directors may amend, suspend or terminate the 2003 Plan; however, any change that would terminate an award or impair the rights of a participant in any material respect with respect to an award previously granted requires the participant's consent. Furthermore, any amendment which would constitute a material revision of the 2003 Plan (as that term is used in the rules of the NYSE Alternex US (NYSE Alternex)) is subject to stockholder approval.

#### **Federal Income Tax Aspects of the 2003 Plan**

The following is a brief summary of certain of the U.S. federal income tax consequences of certain transactions under the 2003 Plan as normally operated and is not intended to provide or supplement tax advice to eligible employees, consultants or directors. The summary contains general statements based on current U.S. federal income tax statutes, regulations and currently available interpretations thereof. This summary is not intended to be exhaustive and does not describe state, local or foreign tax consequences or the effect, if any, of gift, estate and inheritance taxes.

*Incentive Stock Options.* Incentive Stock Options are subject to special federal income tax treatment. No federal income tax is imposed on the optionee upon the grant of an Incentive Stock Option. The optionee would recognize no ordinary taxable income upon exercise of an Incentive Stock Option or later disposition of shares acquired pursuant to his or her exercise of an Incentive Stock Option if the optionee (a) does not dispose of the shares acquired pursuant to the exercise within the two-year period beginning on the date that the stock option was granted or within the one-year period beginning on the date that the stock option was exercised (collectively, the holding period) and (b) is an employee of the Company or any of our subsidiaries at all times beginning on the day of grant and ending on the day three months before the date of exercise. With respect to an Incentive Stock Option, the difference between the fair market value of the stock on the date of exercise and the exercise price must generally be included in the optionee's alternative minimum taxable income for the year in which such exercise occurs. However, if the optionee exercises an Incentive Stock Option and disposes of the shares received in the same taxable year and the amount realized is less than the fair market value of the shares on the date of exercise, then the amount included in the alternative minimum taxable income of the optionee will not exceed the amount realized over the adjusted basis of the shares.

Upon disposition of the shares received upon exercise of an Incentive Stock Option after the holding period, any appreciation of the shares above the exercise price should constitute capital gain. In such event, the Company would not be entitled to any deduction for federal income tax purposes in connection with the grant or exercise of the Incentive Stock Option or the disposition of the shares so acquired. If an optionee disposes of shares acquired pursuant to his or her exercise of an Incentive Stock Option prior to the end of the holding period, the optionee will be treated as having received, at the time of disposition, compensation taxable as ordinary income. In such event, and subject to the application of Section 162(m) of the Code as discussed below, the Company may claim a deduction for compensation paid at the same time and in the same amount as compensation is treated as received by the optionee. The amount treated as ordinary income is the excess of the fair market value of the shares at the time of exercise (or in the case of a sale in which a loss would be recognized, the amount realized on the sale if less) over the exercise price; any amount realized in excess of the fair market value of the shares at the time of exercise would be treated as short-term or long-term capital gain, depending on the holding period of the shares.

*Non-qualified Stock Options and Stock Appreciation Rights.* As a general rule, no federal income tax is imposed on the optionee upon the grant of a Non-qualified Stock Option such as those under the 2003 Plan (whether or not including a Stock Appreciation Right), and the Company is not entitled to a tax deduction by reason of such grant. Generally, upon the exercise of a Non-qualified Stock Option, the optionee will be treated as receiving compensation taxable as ordinary income in the year of exercise in an amount equal to the excess of the fair market value of the shares of stock at the time of exercise over the option price paid for such shares. In the case of the exercise of a Stock Appreciation Right, the optionee will be treated as receiving compensation taxable as ordinary income in the year of exercise in an amount equal to the cash received and/or the fair market value of the shares distributed to the optionee. Upon the exercise of a Non-qualified Stock Option or a Stock Appreciation Right, and subject to the application of Section 162(m) of the Code as discussed below, the Company may claim a deduction for compensation paid at the same time and in the same amount as compensation income is recognized by the optionee assuming any federal income tax reporting requirements are satisfied.

Upon a subsequent disposition of the shares received upon exercise of a Non-qualified Stock Option or a Stock Appreciation Right, any difference between the fair market value of the shares at the time of exercise and the amount realized on the disposition would be treated as capital gain or loss.

*Restricted Stock Awards.* The recipient of a Restricted Stock Award will not realize taxable income at the time of grant, and the Company will not be entitled to a deduction at that time, assuming that the restrictions constitute a substantial risk of forfeiture for federal income tax purposes. When the risk of forfeiture with respect to the stock subject to the award lapses and the individual vests in the underlying shares, the holder will realize ordinary income in an amount equal to the fair market value of the shares of common stock at such time, and, subject to Section 162(m) of the Code, the Company will be entitled to a corresponding deduction. All dividends and distributions (or the cash equivalent thereof) with respect to a Restricted Stock Award paid to the holder before the risk of forfeiture lapses will also be compensation income to the holder when paid and, subject to Section 162(m) of the Code, deductible as such by the Company.

Upon a subsequent disposition of the shares received pursuant to a Restricted Stock Award, other than a share for which the Section 83(b) election is made as discussed below, the difference between the amount realized on the disposition of the shares and the fair market value of the shares on the vest date would be treated as a capital gain or loss.

Notwithstanding the foregoing, the holder of a Restricted Stock Award may elect under Section 83(b) of the Code to be taxed at the time of grant of the Restricted Stock Award based on the fair market value of the shares of common stock on the date of the award, in which case (a) subject to Section 162(m) of the Code, the Company will be entitled to a deduction at the same time and in the same amount, (b) dividends paid to the recipient during the period the forfeiture restrictions apply will be taxable as dividends and will not be deductible by the Company, and (c) there will be no further federal income tax consequences when the risk of forfeiture lapses. Such election must be made not later than 30 days after the grant of the Restricted Stock Award and is irrevocable.

Upon a subsequent disposition of Restricted Stock Award shares for which the Section 83(b) election is made, the difference between the fair market value of the shares on the disposition date and the fair market value of the shares on the date of grant would be treated as a capital gain or loss.

*Performance Awards, Phantom Stock Awards and Other Stock or Performance-Based Awards.* An individual who has been granted a Performance Award, Phantom Stock Award or Other Stock or

Performance-Based Award generally will not realize taxable income at the time of grant, and the Company will not be entitled to a deduction at that time. Whether a Performance Award, Phantom Stock Award or Other Stock or Performance-Based Award is paid in cash or shares of common stock, the individual will have taxable compensation and, subject to the application of Section 162(m) of the Code as discussed below, the Company will have a corresponding deduction. The measure of such income and deduction will be the amount of any cash paid and the fair market value of any shares of common stock either at the time the Performance Award, Phantom Stock Award or Other Stock or Performance-Based Award is paid or at the time any restrictions on the shares (including restrictions under Section 16(b) of the Securities Exchange Act of 1934 (the Exchange Act )) subsequently lapse, depending on the nature, if any, of the restrictions imposed and whether the individual elects to be taxed without regard to any such restrictions. Any dividend equivalents paid with respect to a Performance Award, Phantom Stock Award, or Other Stock or Performance-Based Award prior to the actual issuance of shares under the award will be compensation income to the individual and, subject to the application of Section 162(m) of the Code as discussed below, deductible as such by the Company.

Upon a subsequent disposition of the shares received pursuant to a Performance Award, Phantom Stock Award or Other Stock or Performance-Based Award, the difference between the amount realized on the disposition of the shares and the fair market value of the shares on the vest date would be treated as a capital gain or loss.

*Bonus Stock Awards.* In general, a participant who receives a Bonus Stock Award will be taxed on the fair market value of the shares of common stock on the date the shares are issued to the individual. The Company will be entitled to a deduction for a corresponding amount. Upon a subsequent disposition of the shares received pursuant to a Bonus Stock Award, the difference between the amount realized on the disposition of the shares and the fair market value of the shares on the vest date would be treated as a capital gain or loss.

*Purchased Stock Awards.* In general, a participant who is given the right to purchase stock at fair market value does not recognize taxable income, and the Company is not entitled to a deduction until such right is exercised. If and when stock is purchased by a participant at less than its fair market value at the date of purchase, the participant recognizes income and the Company receives a deduction for the amount of the difference. Upon a subsequent disposition of the shares received pursuant to a Purchased Stock Award, the difference between the amount realized on the disposition of the shares and the fair market value of the shares on the purchase date would be treated as a capital gain or loss.

*Section 162(m) of the Code.* Section 162(m) of the Code precludes a public corporation from taking a deduction for annual compensation in excess of \$1,000,000 paid to its chief executive officer or any of its three other highest-paid executives (excluding the chief executive officer and chief financial officer). However, compensation that qualifies under Section 162(m) of the Code as performance-based is specifically exempt from the deduction limit. Based on Section 162(m) of the Code and the regulations issued thereunder, the Company's ability to deduct compensation expense generated in connection with the exercise of stock options granted by the Committee under the 2003 Plan should not be limited by Section 162(m) of the Code. Furthermore, the Company believes that compensation expense generated in connection with Performance Awards granted by the Committee under the 2003 Plan should not be limited by Section 162(m) of the Code. The 2003 Plan has been designed to provide flexibility with respect to whether Restricted Stock Awards or Phantom Stock Awards granted by the Committee will qualify as performance-based compensation under Section 162(m) of the Code and, therefore, be exempt from the deduction limit. Assuming no election

is made under Section 83(b) of the Code with respect to a Restricted Stock Award, if the lapse of the forfeiture restrictions relating to a Restricted Stock Award or Phantom Stock Award granted by the Committee is based solely upon the satisfaction of one of the performance criteria set forth in the 2003 Plan, then the Company believes that the compensation expense deduction relating to such an award should not be limited by Section 162(m) of the Code if the Restricted Stock Award or Phantom Stock Award becomes vested. However, compensation expense deductions relating to Restricted Stock Awards or Phantom Stock Awards granted by the Committee will be subject to the Section 162(m) deduction limitation if the Restricted Stock Award becomes vested based upon any other criteria set forth in such award (such as the occurrence of a change of control or vesting based solely upon continued service with the Company). Furthermore, the income generated in connection with all awards granted under the 2003 Plan by the Equity Grant Committee will not qualify as performance-based compensation and, accordingly, the Company's deduction for such compensation may be limited by Section 162(m) of the Code.

The 2003 Plan is not qualified under Section 401(a) of the Code.

#### **Section 409A of the Internal Revenue Code**

Some awards issued under the 2003 Plan may be considered non-qualified deferred compensation that is subject to special rules under Section 409A of the Code. In such event, the Committee will generally design and administer such award to comply with the rules of Section 409A; however, there is no commitment or guarantee that any federal, state, or local tax treatment will apply or be available to any person who participates in the 2003 Plan.

#### **Inapplicability of ERISA**

Based upon current law and published interpretations, the Company does not believe that the 2003 Plan is subject to any of the provisions of the Employee Retirement Income Security Act of 1974, as amended.

#### **Plan Awards**

On November 21, 2008, the Compensation Committee approved an aggregate grant of 1.7 million shares of restricted stock under the 2003 Plan to non-officer employees effective December 15, 2008 (the 2008 Employee Grants). The following table sets forth the number of shares of restricted stock issuable under the 2008 Employee Grants and the number of shares issuable upon the exercise of outstanding stock options issued under the 2003 Plan to the following persons: (i) each of the named executive officers as of December 31, 2007, (ii) all current executive officers, as a group, (iii) all current directors who are not executive officers, as a group, and (iv) all employees, including all current officers who are not executive officers, as a group. Discretionary grants to officers, directors and employees are permitted under the 2003 Plan and are not determinable at this time.

## New Plan Benefits

Name and Position	Number of shares Underlying Outstanding Stock Options	Number of shares of Restricted Stock underlying 2008 Employee Grants
Charif Souki		
Chairman, Chief Executive Officer and President Stanley C. Horton (1)		
Former President and Chief Operating Officer Zurab S. Kobiashvili		
Senior Vice President and General Counsel Jonathan S. Gross (2)	200,000	
Former Senior Vice President - Exploration Don A. Turkleson		
Senior Vice President and Chief Financial Officer Executive Group, 7 persons total,	168,734	
Non-Executive Director Group	50,000	
Non-Executive Officer Employee Group	544,953	1,702,600

(1) Mr. Horton resigned from the Company in April 2008.

(2) Mr. Gross was terminated from the Company effective July 31, 2008.

**Recommendation of the Board of Directors**

The Board of Directors unanimously approved Amendment No. 4 to the 2003 Plan and believes Amendment No. 4 is in the best interests of the Company and our stockholders. **The Board of Directors recommends that the stockholders approve Amendment No. 4 to the 2003 Plan and, accordingly, recommends a vote FOR Proposal 2.**

**Equity Compensation Plan Information**

The following table provides information about our compensation plans as of December 31, 2007. The equity compensation plans approved by our stockholders include the Cheniere Energy, Inc. Amended and Restated 1997 Stock Option Plan (the 1997 Plan ) and the 2003 Plan.

	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in Column (a))
Equity compensation plans approved by security holders	4,441,675	\$ 38.84	1,664,490
Equity compensation plans not approved by security holders			
<b>Total</b>	<b>4,441,675</b>	<b>\$ 38.84</b>	<b>1,664,490</b>

In 1997, we established the 1997 Plan, which was amended and restated in September 2005. The 1997 Plan allowed for the issuance of stock options to purchase up to 5,000,000 shares of common stock. Substantially all of the shares authorized under the 1997 Plan have been awarded, and no further grants will be made under the 1997 Plan. As of December 1, 2008, 69,952 shares were reserved for the exercise of stock options under the 1997 Plan. All stock options granted under the 1997 Plan have exercise prices equal to or greater than the fair market value of common stock at the date of grant.

**SECURITY OWNERSHIP**

As of December 1, 2008, there were 50,697,308 shares of common stock outstanding. The information provided below summarizes the beneficial ownership of directors, named executive officers as set forth in the Summary Compensation Table below, and owners of more than 5% of outstanding common stock. Beneficial Ownership generally includes those shares of Company common stock that a person has the power to vote, sell or acquire within 60 days. It includes shares of Company common stock that is held directly and also shares held indirectly through a relationship, a position as a trustee or under a contract or understanding.

**Directors and Executive Officers**

The following table sets forth information with respect to shares of common stock of the Company owned of record and beneficially as of December 1, 2008, by each current director, by each person who was a named executive officer as of December 31, 2007 and by all current directors and executive officers of Cheniere as a group. On December 1, 2008, the directors and executive officers of the Company beneficially owned an aggregate of 3,210,011 shares of common stock (approximately 6.3% of the outstanding shares entitled to vote at the time).

The table also presents the ownership of common units of Cheniere Energy Partners, L.P. ( Cheniere Partners ) owned of record or beneficially as of December 1, 2008, by each current director, by each person who was a named executive officer of the Company as of December 31, 2007 and by all

current directors and executive officers of the Company as a group. The Company owns a majority interest in Cheniere Partners through its wholly-owned subsidiaries, Cheniere LNG Holdings, LLC, Cheniere Subsidiary Holdings, LLC, Cheniere Common Units Holding, LLC and Cheniere Energy Partners GP, LLC. As of December 1, 2008, there were 26,416,357 common units, 135,383,831 subordinated units and 3,302,045 general partner units of Cheniere Partners outstanding, respectively.

Name of Beneficial Owner (1)	Cheniere Energy, Inc.		Cheniere Energy Partners, L.P.	
	Amount and Nature of Beneficial Ownership	Percent of Class	Amount and Nature of Beneficial Ownership	Percent of Class
Charif Souki	572,552	1.1%	323,496 (13)	1.5%
Walter L. Williams	333,448 (4)	*	5,388	*
Don A. Turkleson	178,433 (5)	*	25,000 (14)	*
Keith F. Carney	289,916 (6)	*	20,000	*
Nuno Brandolini	215,417 (7)	*	5,000	*
Paul J. Hoenmans	210,417	*		*
David B. Kilpatrick	178,582	*		*
Zurab S. Kobiashvili	145,235	*		*
John M. Deutch	78,842 (8)	*	5,000	*
J. Robinson West	61,888 (9)	*		*