TIME WARNER INC.
Form 8-K
November 05, 2008

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K
CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): November 5, 2008

TIME WARNER INC.
(Exact Name of Registrant as Specified in its Charter)

Delaware	1-15062	13-4099534
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

One Time Warner Center, New York, New York 10019
(Address of Principal Executive Offices) (Zip Code)
212-484-8000
(Registrant s Telephone Number, Including Area Code)
Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2 below):

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 2.02 Results of Operations and Financial Condition.

The following information is furnished pursuant to Item 2.02, Results of Operations and Financial Condition.

On November 5, 2008, Time Warner Inc. (Time Warner) issued a press release setting forth its financial results for its third quarter ended September 30, 2008. A copy of Time Warner s press release is attached as Exhibit 99.1 to this report. Time Warner does not intend for this Item 2.02 or Exhibit 99.1 to be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934 or to be incorporated by reference into filings under the Securities Act of 1933, as amended.

Item 9.01 Financial Statements and Exhibits.

Exhibit	Description
99.1	Press release issued November 5, 2008 by Time Warner Inc. and furnished pursuant to Item 2.02, Results of Operations and Financial Condition.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

TIME WARNER INC.

By: /s/ John K. Martin, Jr.
Name: John K. Martin, Jr.
Title: Executive Vice President and Chief Financial Officer

Date: November 5, 2008

EXHIBIT INDEX

Exhibit	Description
99.1	Press release issued November 5, 2008 by Time Warner Inc. and furnished pursuant to Item 2.02, Results of Operations and Financial Condition.

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Costs associated with unevaluated interests are excluded from the full cost pool until a determination as to the existence of proved reserves is able to be made. The inclusion of the Partnership's unevaluated costs into the amortization base is expected to be completed within three years to five years.

Under the full cost method of accounting, the Partnership is required to perform a ceiling test each quarter. The test determines a limit, or ceiling, on the book value of the proved oil and gas interests. Net capitalized costs are limited to the lower of unamortized cost or the cost center ceiling. The cost center ceiling is defined as the sum of (a) estimated future net revenue including estimated expenditures (based on current costs) to be incurred in developing and producing the proved reserves, discounted at 10% per annum, from proved reserves, based on the trailing 12-month unweighted average of the first-day-of-the-month price, adjusted for any contract provisions or financial derivatives, if any, that hedge the Partnership's oil and natural gas revenue, (b) the cost of interests not being amortized, if any, and (c) the lower of cost or market value of unproved interests included in the cost being amortized. If the net book value exceeds the ceiling, an impairment or non-cash write down is required.

6. DEBT

Credit Agreement-Wells Fargo Bank

On July 8, 2014, the Partnership entered into a secured revolving credit agreement as amended and restated, (the "credit facility") with Wells Fargo, as administrative agent, certain other lenders, and the Partnership's consolidated subsidiary, Viper Energy Partners LLC (the "Operating Company"), as guarantor. On May 8, 2018, the Operating Company assumed all liabilities as borrower under the credit agreement and the Partnership became a guarantor of the credit agreement. On July 20, 2018, the Operating Company, the Partnership, Wells Fargo and the other lenders amended and restated the credit agreement to reflect the assumption by the Operating Company. The credit agreement, as amended and restated, provides for a revolving credit facility in the maximum credit amount of $2.0 billion and a borrowing base based on its oil and natural gas reserves and other factors (the "borrowing base") of $555.0 million, subject to scheduled semi-annual and other borrowing base redeterminations. The borrowing base is scheduled to be re-determined semi-annually with effective dates of May 1st and November 1st. In addition, the Operating Company and Wells Fargo each may request up to three interim redeterminations of the borrowing base during any 12-month period. As of March 31, 2019, the borrowing base was set at $555.0 million, and there was $157.0 million of outstanding borrowings and $398.0 million available for future borrowings under the credit facility.

The outstanding borrowings under the credit agreement bear interest at a rate elected by the Operating Company that is equal to an alternative base rate (which is equal to the greatest of the prime rate, the Federal Funds effective rate plus 0.50% and 3-month LIBOR plus 1.0%) or LIBOR, in each case plus the applicable margin. The applicable margin ranges from 0.75% to 1.75% per annum in the case of the alternative base rate and from 1.75% to 2.75% per annum in the case of LIBOR, in each case depending on the amount of loans and letters of credit outstanding in relation to the commitment, which is defined as the lesser of the maximum credit amount and the borrowing base. The

Operating Company is obligated to pay a quarterly commitment fee ranging from 0.375% to 0.500% per year on the unused portion of the commitment, which fee is also dependent on the amount of loans and letters of credit outstanding in relation to the commitment. Loan principal may be optionally repaid from time to time without premium or penalty (other than customary LIBOR breakage), and is required to be repaid (a) to the extent the loan amount exceeds the commitment or the borrowing base, whether due to a borrowing base redetermination or otherwise (in some cases subject to a cure period), (b) in an amount equal to the net cash proceeds from the sale of property when a borrowing base deficiency or event of default exists under the credit agreement and (c) at the maturity date of November 1, 2022. The loan is secured by substantially all of the assets of the Partnership and the Operating Company.

The credit agreement contains various affirmative, negative and financial maintenance covenants. These covenants, among other things, limit additional indebtedness, additional liens, sales of assets, mergers and consolidations, dividends and distributions, transactions with affiliates and entering into certain swap agreements, and require the maintenance of the financial ratios described below:

Financial Covenant	**Required Ratio**
Ratio of total net debt to EBITDAX, as defined in the credit agreement	Not greater than 4.0 to 1.0
Ratio of current assets to liabilities, as defined in the credit agreement	Not less than 1.0 to 1.0

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Viper Energy Partners LP
Condensed Notes to Consolidated Financial Statements - (Continued)
(unaudited)

The covenant prohibiting additional indebtedness allows for the issuance of unsecured debt of up to $400.0 million in the form of senior unsecured notes and, in connection with any such issuance, the reduction of the borrowing base by 25% of the stated principal amount of each such issuance. A borrowing base reduction in connection with such issuance may require a portion of the outstanding principal of the loan to be repaid.

As of March 31, 2019, the Operating Company was in compliance with the financial covenants under its credit agreement. The lenders may accelerate all of the indebtedness under the revolving credit facility upon the occurrence and during the continuance of any event of default. The credit agreement contains customary events of default, including non-payment, breach of covenants, materially incorrect representations, cross-default, bankruptcy and change of control. With certain specified exceptions, the terms and provisions of the credit agreement generally may be amended with the consent of the lenders holding a majority of the outstanding loans or commitments to lend.

7. RELATED PARTY TRANSACTIONS

Partnership Agreement

The second amended and restated agreement of limited partnership, dated as of May 9, 2018, as amended as of May 10, 2018 (the “Partnership Agreement”), requires the Partnership to reimburse the General Partner for all direct and indirect expenses incurred or paid on the Partnership’s behalf and all other expenses allocable to the Partnership or otherwise incurred by the General Partner in connection with operating the Partnership’s business. The Partnership Agreement does not set a limit on the amount of expenses for which the General Partner and its affiliates may be reimbursed. These expenses include salary, bonus, incentive compensation and other amounts paid to persons who perform services for the Partnership or on the Partnership’s behalf and expenses allocated to the General Partner by its affiliates. The General Partner is entitled to determine the expenses that are allocable to the Partnership. For the three months ended March 31, 2019 and 2018, the General Partner allocated $0.6 million to the Partnership.

Advisory Services Agreement

In connection with the closing of the IPO, the Partnership and General Partner entered into an advisory services agreement with Wexford Capital LP (“Wexford”) dated as of June 23, 2014 (the “Advisory Services Agreement”), under which Wexford provides the Partnership and the General Partner with general financial and strategic advisory services related to the Partnership’s business in return for an annual fee of $0.5 million, plus reasonable out-of-pocket expenses. For the three months ended March 31, 2019 and 2018, the Partnership did not pay any amounts under the Advisory Services Agreement. The Advisory Services Agreement was terminated on November 12, 2018; however, the Partnership’s payment obligation thereunder continues through the end of the current term in June 2019.

Tax Sharing

In connection with the closing of the IPO, the Partnership entered into a tax sharing agreement with Diamondback, dated June 23, 2014, pursuant to which the Partnership agreed to reimburse Diamondback for its share of state and local income and other taxes for which the Partnership’s results are included in a combined or consolidated tax return filed by Diamondback with respect to taxable periods including or beginning on June 23, 2014. The amount of any such reimbursement is limited to the tax the Partnership would have paid had it not been included in a combined group with Diamondback. Diamondback may use its tax attributes to cause its combined or consolidated group, of which the Partnership may be a member for this purpose, to owe less or no tax. In such a situation, the Partnership agreed to reimburse Diamondback for the tax the Partnership would have owed had the tax attributes not been available or used for the Partnership's benefit, even though Diamondback had no cash tax expense for that period. For the three months ended March 31, 2019, the Partnership accrued state income tax expense of $47,364 for its share of Texas margin tax for which the Partnership's results are included in a combined tax return filed by Diamondback.

Lease Bonus

During the three months ended March 31, 2019, Diamondback paid the Partnership $198 in lease bonus payments to extend the term of one lease, reflecting an average bonus of $125 per acre and $3,101 in lease bonus payments for two new leases, reflecting an average bonus of $14,766 per acre. During the three months ended March 31, 2018, Diamondback did not pay the Partnership any lease bonus payments.

Viper Energy Partners LP
Condensed Notes to Consolidated Financial Statements - (Continued)
(unaudited)

8. UNIT-BASED COMPENSATION

In connection with the IPO, the board of directors of the General Partner adopted the Viper Energy Partners LP Long Term Incentive Plan ("LTIP"), effective June 17, 2014, for employees, officers, consultants and directors of the General Partner and any of its affiliates, including Diamondback, who perform services for the Partnership. The LTIP provides for the grant of unit options, unit appreciation rights, restricted units, unit awards, phantom units, distribution equivalent rights, cash awards, performance awards, other unit-based awards and substitute awards. As of March 31, 2019, a total of 8,943,806 common units had been reserved for issuance pursuant to the LTIP. Common units that are cancelled, forfeited or withheld to satisfy exercise prices or tax withholding obligations will be available for delivery pursuant to other awards. The LTIP is administered by the board of directors of the General Partner or a committee thereof.

For the three months ended March 31, 2019, the Partnership incurred $0.4 million of unit–based compensation.

Phantom Units

Under the LTIP, the board of directors of the General Partner is authorized to issue phantom units to eligible employees and non-employee directors. The Partnership estimates the fair value of phantom units as the closing price of the Partnership's common units on the grant date of the award, which is expensed over the applicable vesting period. Upon vesting the phantom units entitle the recipient to one common unit of the Partnership for each phantom unit.

The following table presents the phantom unit activity under the LTIP for the three months ended March 31, 2019:

	Phantom Units	Weighted Average Grant-Date Fair Value
Unvested at December 31, 2018	125,053	$ 23.44
Granted	11,001	$ 33.30
Vested	(60,133)	$ 21.38
Unvested at March 31, 2019	75,921	$ 26.51

The aggregate fair value of phantom units that vested during the three months ended March 31, 2019 was $1.3 million. As of March 31, 2019, the unrecognized compensation cost related to unvested phantom units was $1.5 million. Such cost is expected to be recognized over a weighted-average period of 0.99 years.

9. UNITHOLDERS' EQUITY AND PARTNERSHIP DISTRIBUTIONS

The Partnership has general partner and limited partner units. At March 31, 2019, the Partnership had a total of 62,628,357 common units issued and outstanding and 72,418,500 Class B units outstanding, of which 731,500 common units and 72,418,500 Class B units were owned by Diamondback, representing approximately 54% of the total Partnership's units outstanding. The Operating Company units and the Partnership's Class B units owned by Diamondback are exchangeable from time to time for the Partnership's common units (that is, one Operating Company unit and one Partnership Class B unit, together, will be exchangeable for one Partnership common unit).

The following table summarizes changes in the number of the Partnership's common units:

	Common Units
Balance at December 31, 2018	51,653,956
Common units issued in public offerings	10,925,000
Common units vested and issued under the LTIP	60,133
Units repurchased for tax withholding	(10,732)
Balance at March 31, 2019	62,628,357

The Partnership had a total of 72,418,500 Class B units outstanding as of March 31, 2019 and December 31, 2018, respectively.

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In February 2019, the Partnership completed an underwritten public offering of 10,925,000 common units, which included 1,425,000 common units issued pursuant to an option to purchase additional common units granted to the underwriters. Following this offering, Diamondback owned approximately 54% of the total Partnership units then outstanding. The Partnership received net proceeds from this offering of approximately $340.6 million, after deducting underwriting discounts and commissions and offering expenses. The Partnership used the net proceeds to purchase units of the Operating Company. The Operating Company in turn used the net proceeds to repay a portion of the outstanding borrowings under the revolving credit facility and finance acquisitions during the period.

The board of directors of the General Partner has adopted a policy for the Partnership to distribute all available cash generated on a quarterly basis, beginning with the quarter ended September 30, 2014.

The following table presents information regarding cash distributions approved by the board of directors of the General Partner for the periods presented:

	Amount per Common Unit	Declaration Date	Unitholder Record Date	Payment Date
Q4 2018	$ 0.51	January 30, 2019	February 19, 2019	February 25, 2019

Cash distributions will be made to the common unitholders of record on the applicable record date, generally within 60 days after the end of each quarter. Available cash for each quarter will be determined by the board of directors of the General Partner following the end of such quarter. Available cash for each quarter will generally equal Adjusted EBITDA reduced for cash needed for debt service and other contractual obligations and fixed charges and reserves for future operating or capital needs that the board of directors of the General Partner deems necessary or appropriate, if any.

10. EARNINGS PER UNIT

The net income per common unit on the consolidated statements of operations is based on the net income of the Partnership for the three months ended March 31, 2019 and 2018, since this is the amount of net income that is attributable to the Partnership’s common units.

The Partnership’s net income is allocated wholly to the common units. Payments made to the Partnership’s unitholders are determined in relation to the cash distribution policy described in Note 9—Unitholders’ Equity and Partnership Distributions.

Basic net income per common unit is calculated by dividing net income by the weighted-average number of common units outstanding during the period. Diluted net income per common unit gives effect, when applicable, to unvested common units granted under the LTIP.

	Three Months Ended March 31,	
	2019	**2018**

	(In thousands, except per unit amounts)	
Net income attributable to the period	$33,779	$42,896
Weighted average common units outstanding:		
Basic weighted average common units outstanding	55,448	113,901
Effect of dilutive securities:		
Potential common units issuable	27	90
Diluted weighted average common units outstanding	55,475	113,991
Net income per common unit, basic	$0.61	$0.38
Net income per common unit, diluted	$0.61	$0.38

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Viper Energy Partners LP
Condensed Notes to Consolidated Financial Statements - (Continued)
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11. INCOME TAXES

As discussed further in Note 1, on March 29, 2018, the Partnership announced that the Board of Directors of the General Partner had unanimously approved a change of the Partnership’s federal income tax status from that of a pass-through partnership to that of a taxable entity, which change became effective on May 10, 2018. Subsequent to the Partnership’s change in tax status, the Partnership’s provision for income taxes for the period ended March 31, 2019 is based on the estimated annual effective tax rate plus discrete items.

The Partnership’s effective income tax rate was (87.17)% for the three months ended March 31, 2019. Total income tax benefit for the three months ended March 31, 2019 differed from amounts computed by applying the United States federal statutory tax rate to pre-tax income for the period primarily due to the revision of estimated deferred taxes recognized as a result of the Partnership’s change in tax status and net income attributable to the non-controlling interest.

For the three months ended March 31, 2019, the Partnership recorded a discrete income tax benefit of approximately $35.2 million related to the revision of estimated deferred taxes on the Partnership’s investment in the Operating Company arising from the change in the Partnership’s federal tax status. Under federal income tax provisions applicable to the Partnership’s change in tax status, the Partnership’s basis for federal income tax purposes in its interest in the Operating Company consists primarily of the sum of the Partnership’s unitholders’ tax bases in their interests in the Partnership on the date of the tax status change. The Partnership prepared its best estimate of the resultant tax basis in the Operating Company for purposes of the Partnership’s income tax provision for the period of the change, but information necessary for the partnership to finalize its determination is not expected to be available until unitholders’ tax basis information is fully reported and the Partnership finalizes its federal income tax computations for 2018. Based on information available as of the balance sheet date, the Partnership has revised its estimate of the difference between its tax basis and its basis for financial accounting purposes in the Operating Company on the date of the tax status change, resulting in deferred income tax benefit of $35.2 million included in the Partnership’s income tax provision for the three months ended March 31, 2019.

Prior to May 10, 2018, the effective date of the Partnership’s change in income tax status, the Partnership was organized as a pass-through entity for income tax purposes. As a result, the Partnership’s partners were responsible for federal income taxes on their share of the Partnership’s taxable income.

12. FAIR VALUE MEASUREMENTS

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs.

The fair value hierarchy is based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value. The Partnership’s assessment of the significance of a particular input to the fair value measurements requires judgment and may affect the valuation of the assets and liabilities being measured and their placement within the fair value hierarchy. The Partnership uses appropriate valuation techniques based on available inputs to measure the fair values of its assets and liabilities.

Level 1 - Observable inputs that reflect unadjusted quoted prices for identical assets or liabilities in active markets as of the reporting date.

Level 2 - Observable market-based inputs or unobservable inputs that are corroborated by market data. These are inputs other than quoted prices in active markets included in Level 1, which are either directly or indirectly observable as of the reporting date.

Level 3 - Unobservable inputs that are not corroborated by market data and may be used with internally developed methodologies that result in management's best estimate of fair value.

Financial assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurement.

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Viper Energy Partners LP
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The Partnership’s cost method investment is reported at fair value on a recurring basis. The fair value of the Partnership’s investment at March 31, 2019 and December 31, 2018 was determined using the March 31, 2019 and December 31, 2018 quoted market prices. The investment is a Level 1 classification in the fair value hierarchy. See Note 2—Summary of Significant Accounting Policies. The following table summarizes the changes in fair value of the Partnership’s investment:

	(in thousands)
Fair Value of investment as of December 31, 2017	$ 33,851
Impact of adoption of Accounting Standards Update 2016-01	(18,651)
Gain on investment	899
Fair Value of investment as of March 31, 2018	$ 16,099

	(in thousands)
Fair Value of investment as of December 31, 2018	$