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EXCLUSIVE REPORT

DEALMAKERS AND THEIR DEALS

Twenty Top Transactions

Kinder Morgan's 180-Degree Turn

ENERGY MAGNATE Richard Kinder helped pioneer the master limited partnership, so when he reversed course last August, saying he would merge two of his MLPs and a limited liability corporation into a conventional C-corporation, it was news—and a big challenge for two of his regular outside counsel, Weil's Michael Aiello and Bracewell's Gregory Bopp.

The deal called for the C-corporation, Kinder Morgan Inc., to buy all the outstanding stock of the MLPs, Kinder Morgan Energy Partners LP and El Paso Pipeline Partners LP, and the LLC, Kinder Morgan Management, for $44 billion and assumption of $27 billion in debt. The companies store and transport oil and gas.

The primary benefit of MLPs is that they aren't taxed at the entity level, which allows more cash to be distributed to investors. (In a C-corporation, income is taxed once at the corporate level and again when distributed to investors.) Kinder believed that consolidating the four companies into the C-corporation would simplify earnings distribution and allow the merged company to grow faster by borrowing at a lower cost and making more acquisitions.

The complication was that some unit holders in the MLPs could take a big tax hit. And the deal's related-party nature raised the possibility of potential conflict of interest accusations. In fact, investors have filed at least three suits trying to stop the deal, which were consolidated in Delaware. The litigation is pending.

KMI turned to Bracewell, its longtime outside tax counsel, in late 2013 to start structuring the complex transaction. "Each of the entities was treated differently for tax purposes, and each had its own unique tax characteristics," Bopp says. "My role was to work closely with senior management to analyze the impact on each company," Bopp says.

THE DEAL INVOLVED

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IN STOCK

AND

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IN DEBT.

Aiello's duties, meanwhile, included planning for expected litigation. "Kinder had spun the companies and now they were rolling them back up, so we knew there was going to be litigation, and the company wasn't afraid of that," he says. His job, he adds, was to think, "How do we make this case less attractive for a plaintiffs lawyer?"

Aiello also directed the deal's moving parts, no small task. For tax purposes, all the mergers had to be executed in sequence and close on the same day. "It required three different negotiations and four different shareholder votes," Aiello says.

By the time the deal closed in November, increases in Kinder Morgan stock price had added $5 billion to the value of the deal, bringing it to $76 billion. And the lawyers involved had a new set of war stories. "I have worked on $20 billion all-cash hostile deals," Aiello says. But "this was seriously the most complicated deal I worked on."

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THE DEAL: Kinder Morgan conversion