

MASTER MECHANICS

BY CLAIRE POOLE

When John M. Fox, founder and former chairman of Denver-based MarkWest Energy Partners LP and MarkWest Hydrocarbon Inc., decided he was ready to cash in, he knew there were stumbling blocks before he could do it. Fox believed his midstream natural gas companies needed to get rid of their so-called incentive distribution rights — a common feature of master limited partnerships — which over time provide certain shareholders higher and higher payouts, sometimes eating up as much as half of all distributions. IDRs kept MarkWest's cost of capital high and put it at a disadvantage when seeking new acquisitions.

MarkWest Hydrocarbon's deal committee enlisted the help of Michael Dillard and Vincent Kendrick at Akin Gump Strauss Hauer & Feld LLP in Houston, two partners steeped in energy-related M&A as well as MLPs. In September MarkWest Energy announced it would acquire its public parent, MarkWest Hydrocarbon, for \$734 million, which effectively jettisoned the companies' IDRs, thereby reducing the future cost of equity capital. As a result, the master limited partnership, MarkWest Energy Partners, is better positioned to improve return on investments and compete more effectively for new assets.

"We couldn't have done it without teamwork," Dillard says.

Dillard and Kendrick's combined years of experience certainly helped. Trained at Southern Methodist University's Dedman School of Law, where he graduated cum laude, Dillard, 49, has spent almost his entire legal career at Akin Gump. To

date, he has completed about \$75 billion worth of deals, such as Anadarko Petroleum Corp.'s \$21 billion acquisition of Kerr-McGee Corp. and Western Gas Resources Inc. in 2006. He also knew three of MarkWest's board members, including Don Wolf, the former CEO of Westport Resources Corp., which he counseled on its sale to Kerr-McGee Corp. in 2004.

Meanwhile, Kendrick, 50, has specialized in energy-related MLPs. Before becoming a lawyer, Kendrick spent time in the private sector, including a stint as a CPA at PricewaterhouseCoopers and one as a corporate executive at privately held pipeline owner and operator Tatham Corp. Since graduating from the University of Houston Law Center with honors, he, too, has spent most of his legal career at Akin Gump.

"Michael is extremely well grounded and attuned to working through tough issues. He has a good rapport with boards," says one lawyer requesting anonymity. "Vince has a very analytical mind, and he can deal with financial issues that come up."

MarkWest was a difficult one, though. The operating company was buying the parent. A major shareholder, Fox in this case, controlled the sale. And the purchase by an MLP of a corporation raised tax issues. After 2-1/2 months, Dillard and Kendrick had the deal structure down "as good as we could get it," Dillard says. It

involved among other things freezing the amount of income/distributions attributable to both entities to mitigate the tax risks.

Another complication came in the form of at least one other interested bidder, Targa Resources Partners LP. Targa was interested in buying both MarkWest entities; MarkWest Energy Partners wasn't interested in selling. In

the end, Fox was happy to get a 22% premium, and the deal closed Feb. 21.

The popularity of energy MLPs has waned some lately, but Kendrick believes they'll rebound. "There's tremendous uncertainty in the market, which affects pricing," he says. "There's still a decent market for middle-market companies; it's just choppy right now."

Likewise, Dillard expects more companies to come to market with MLPs, whose tax-free structure allows them to pay more for assets.

Despite general expectations that business will likely slow down this year, Dillard believes there will be a lot of M&A activity in the energy sector to keep the firm busy.

"Public energy companies are printing money," he quips. "Their stock prices are doing well, and they can't do much more with what they have."

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Dillard, Kendrick

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