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Dealmakers Q&A: Husch Blackwell's Steve Carman, *Law360*

Husch Blackwell LLP partner Steven F. Carman applies his Wharton MBA to the strategic advice that he delivers to boards of directors and senior executives of publicly traded and private companies operating and investing in the energy industry. Now serving as leader of the firm's energy and natural resources industry team, Carman has structured mergers and acquisitions, strategic alliances and capital formation transactions in excess of \$7 billion. His capital markets and corporate governance guidance is sought by boards of directors and special committees of public companies and by fund managers.

Within the energy and natural resources industry, Carman has represented the closed-end fund Tortoise MLP Fund Inc. in its \$1.2 billion initial public offering, advised CorEnergy Infrastructure Trust Inc. in its \$40 million acquisition of a petroleum products terminal in Portland, Oregon, and represented the independent directors on the Conflicts Committee of Inergy LP in its merger with Inergy Holdings LP, creating an entity with \$6 billion in enterprise value.

As a participant in Law360's Q&A series with dealmaking movers and shakers, Steve Carman shared his perspective on five questions:

Q: What's the most challenging deal you've worked on, and why?

A: Our client, which was in the process of converting from a business development company to a real estate investment trust, was the buyer/lessor in a first-of-its-kind sale leaseback transaction of a liquids gathering system in western Wyoming. Our client had a very savvy minority co-investor, needed to go to a skeptical public market to raise equity, chose to borrow a portion of the purchase price from a bank group, and was working with an appropriately cautious seller/tenant. The property our client was acquiring was leased from the federal government, and one of the many accounting issues we

encountered required a meeting in D.C. with the office of chief accountant at Corp Fin to obtain required relief. In the process of going to the equity market, the deal was modified to include the sale by my client to the seller/tenant of certain third-party securities.

Naturally, it all had to be done by year-end so that our client could elect REIT status for the following calendar year. About two minutes after I sent out the traditional email saying “we are officially closed,” the lead lawyer representing the seller/tenant called and said, “I don’t know what your client is going to pay you, but I can tell you it is not enough.” It is always satisfying to help a client do something new and different, and that particular client is now well on its way to building a very robust business.

Q: What aspects of regulation affecting your practice are in need of reform, and why?

A: We have a very active alternative energy practice — wind, solar and biofuels. The inconsistency and unpredictability of federal tax credits and the “REIT ability” of certain critical energy infrastructure assets needs to be addressed in a way that provides greater clarity over a longer time period.

Q: What upcoming trends or under-the-radar areas of deal activity do you anticipate, and why?

A: Power is going to be generated at smaller facilities that are more distant from the ultimate point of use. That will have a significant impact on the country’s infrastructure needs, the way in which infrastructure is financed, and the role of the traditional utility.

Q: What advice would you give an aspiring dealmaker?

A: The first thing you should do on every transaction is develop a clear understanding of your client’s goals. Then go back and remind yourself of those goals regularly during the course of the transaction. I recently worked on a stock sale in which it was very important to our clients, the selling stockholders, that the buyer have no recourse against them for any amounts our clients received at closing. As we were forced to provide an unusually high escrow and broaden the scope of the items covered by the post-closing indemnity, it was helpful to remind myself that these were necessary trade-offs to help our clients achieve one of their goals. It helps you prioritize your negotiating capital, concede issues your client identifies as unimportant, and focus on achieving what is important to them.

Q: Outside your firm, name a dealmaker who has impressed you, and tell us why.

A: In a series of public offerings in which I represented the issuers, the underwriters have been represented by Rich Kronthal at the New York office of Andrews Kurth. Rich treats the offering process as a continuing and collective effort at problem solving. He is open minded on different

disclosure alternatives and never leaves tough issues for others to resolve without some constructive input.