

Q&A With Baker Botts' Hillary Holmes

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Hillary H. Holmes is a partner in Baker Botts LLP's Houston, Texas, office. Her practice is focused on capital markets transactions for master limited partnerships (MLPs) and corporations in the energy industry. Holmes also has experience with mergers, acquisitions and spinoffs in the energy industry and general SEC, securities and corporate matters. Her clients include issuers and underwriters in securities offerings; buyers, sellers and special committees in M&A transactions; and public corporations and MLPs in day-to-day corporate counseling. Holmes is recognized in Chambers USA, The Legal 500 U.S., Who's Who Legal - Energy, and International Who's Who of Business Lawyers - Energy and was the sole recipient of the Houston Outstanding Young Lawyer of the Year Award.



Hillary H. Holmes

Q: What is the most interesting or challenging problem you've worked on to date within your capital markets practice?

A: I have worked on many interesting challenges in my practice. Capital markets transactions in the energy industry move at a rapid pace. I once had a client who, in an extremely short timeframe, needed to complete a complicated private MLP structuring, an upstream acquisition from a difficult seller, a multimillion-dollar financing and a private placement of a new equity security, all the while preparing to complete an IPO within a month of the private placement. It was a difficult but exciting time and my team gave their all to help the client achieve an excellent outcome within the desired timeframe. These demanding timelines require thorough and detailed planning based on past experience, anticipating SEC issues and expectations in advance, and quickly addressing crises that inevitably arise. It is also important to provide clear legal advice and practice guidance and to keep the client very well informed so they know what to expect and how to best allocate resources. It can be a challenge to meet the aggressive goals that energy companies set for themselves, but it is extremely rewarding to assist them in their accomplishments.

Another challenge that I faced at the start of my career was finding comfort in being one of few women in the energy capital markets area. I regularly expect to find myself as the only woman in an IPO organizational meeting or bond offering drafting session. When I began my practice as a young lawyer, I viewed being in the minority as a problem, and I downplayed anything that could be viewed as feminine and tried to sit quietly. Many years ago, as I shared more successes with my clients, I realized that it is

important to be myself. I find I serve my clients better, and make the transaction more successful, by listening carefully, really connecting with my clients and understanding the larger business context for the capital markets transaction. This allows me to effectively balance the legal issues with the commercial goals and realities. This can be particularly challenging when the deal is moving at a very fast pace. But by always ensuring the highest quality legal work and promoting teamwork among all constituencies, the deal is more successful and it is entirely irrelevant whether I am the only woman in the room.

Q: Currently, what is a pressing concern for your clients in this practice area, and how are you addressing it?

A: A continuing concern for both my issuer clients and investment banking clients in energy capital markets involves staying on top of frequent changes in securities laws and staying in front of market opportunities. We have experienced a significant amount of reform to various securities laws, including through the enactment of the Dodd-Frank Act and the JOBS Act, and rules of the stock exchanges. Since the statutory changes are often unclear on certain points, new SEC, NYSE or FINRA guidance is needed to provide clarity; but it often lags behind by several months. My clients rely on outside counsel to make them aware of changes and navigate the new territory with them. For instance, for the first eight months after the JOBS Act was enacted, there was uncertainty as to whether a certain research blackout period after an offering applied to the new category of issuer called emerging growth companies, which has material impact on the conduct of investment banks. In determining how to modify their policies and practices, our clients worked with us to review legislative history and evaluate best practices. This is intellectually intense work that must be done prudently but quickly as the market opportunities may not wait for the legal analysis. My clients also face the challenge of staying on top of the market for master limited partnerships (MLPs) and YieldCos / TRVs, a rapidly changing landscape. For instance, we have noticed shifts in the focus of SEC comments on IPO prospectuses and seen new debt structures develop for high yield and lower end investment grade issuers. More participants in all aspects of the energy industry (e.g., upstream, midstream, downstream, offshore, LNG, renewables) are taking advantage of the MLP structure as a better way to access capital and achieve higher asset values. We keep close tabs and detailed surveys of new IRS private letter rulings, new issues, structural legal changes and changing commercial terms. In order to take advantage of the latest developments for MLPs, my clients rely on experts like me and my team, who work in the space day in and day out.

Q: What do you anticipate being the biggest challenge in your practice in the coming year and why?

A: A challenge for my clients who are developing MLPs in the pre-IPO stage is finding the perfect time to execute on their strategy for an MLP IPO. The MLP market is very active and open right now. The size of new issues has a lower minimum in recent years and the types of energy-related businesses in the MLP structure are larger than ever. Yields are lower and there is more institutional interest. This creates an interesting dynamic market condition in which there is more opportunity that potentially requires greater self-discipline. For instance, a company with a solid well services business that generates a healthy amount of qualifying income and a decent EBITDA, but whose assets are concentrated in one geographic area with a very small number of customers, may be eligible for an IPO but may see more success in the transaction and in the long run if it waits until it acquires some additional assets and broadens its scope. Although it is exciting to take the company public, especially in an MLP structure, management may decide to wait with the goal of greater deferred gain. This decision not only requires discipline and patience but the willingness to work hard to achieve the desired size and scope. The poker playing can be even more difficult when commodity prices and energy legislation are as volatile as they have been lately. The decision also involves the challenge of forecasting whether the market will still be as welcoming to the IPO at a later time.

Q: Outside of your own firm, who is an attorney in your practice area whom you admire, and what is the story of how s/he impressed you?

A: While I work with the best energy capital markets lawyers in the United States and have learned much from many of them, I admire the work and style of my contemporary, Matt Pacey. Capital markets transactions frequently require quick decision-making regarding legal issues that do not have clear cut answers but serious commercial implications. When we are in such a situation, Matt keeps a cool head, works through the most complicated of securities law issues in a constructive manner, and owns the decision that is made by the collective group. I always find that, when working with Matt, we can provide both our clients with excellent legal advice and protection while contributing to the success of the transaction.

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