TULSA WORLD

Williams lawsuit alleges ETE exec violated merger agreement

By CASEY SMITH World Business Writer | Posted: Thursday, April 7, 2016 12:01 am

Tulsa-based money manager Fred Russell said that Williams Cos.' decision to sue Kelcy Warren personally in addition to filing suit against Energy Transfer Equity is a bold move but one that makes sense.

"He is the one who introduced this highly, highly unusual private offering," Russell said. "He's the leader, the spokesman, and he's by far the majority unitholder. He is Energy Transfer."

Williams Cos. made the announcement early Wednesday that it is suing both ETE and Warren as a response to the private offering of Series A Convertible Preferred Units that ETE disclosed on March 9 and as part of Williams' efforts to protect its own shareholders' rights.

The litigation against ETE in the Delaware Court of Chancery seeks to unwind the private offering of Series A Convertible Preferred Units. The lawsuit against Warren in the district court of Dallas County, Texas, is for tortious, or wrongful, interference with the merger agreement executed on Sept. 28 as a result of the private offering of Series A Convertible Preferred Units.

The private offering that ETE made in March was available to certain common unitholders defined as "accredited investors" under financial law.

Under the deal, unitholders would forgo a portion of their future potential cash distributions on common units for a period of up to nine fiscal quarters beginning when distributions for the fiscal quarter ending March 31, 2016, were declared. Those who elected to participate in the plan received one convertible unit for each common unit.

According to the Dallas County lawsuit, "Mr. Warren specifically designed the Special Offering to enrich himself as ETE's largest unitholder at the expense of other ETE common unitholders, as well as future ETC shareholders (i.e., current Williams stockholders)."

According to the suit, Warren owns approximately 18 percent of all outstanding ETE common units. The lawsuit alleges that Warren induced ETE to issue the preferred units to himself and certain other investors in knowing and direct breach of numerous covenants in the Williams-ETE merger agreement.

In an email that Williams CEO Alan Armstrong sent to employees Wednesday morning, he emphasized that the Williams board is unanimously committed to enforcing Williams' stockholder rights under the merger agreement entered into with ETE on Sept. 28.

"We reviewed ETE's private offering and concluded it is a breach of the merger agreement," Armstrong writes in the document obtained by the Tulsa World.

"Among other things, the offering provides select ETE investors with preferential treatment on ETE distributions. The litigation is entered into to protect the Williams stockholder rights as established under the merger agreement."

ETE filed a document with the U.S. Securities and Exchange Commission on Wednesday acknowledging the litigation but stating that Williams' claims were not true.

"ETE believes that it has complied, and it intends to continue to comply, with its obligations under the merger agreement with Williams and intends to vigorously defend against the claims made by Williams," the document says.

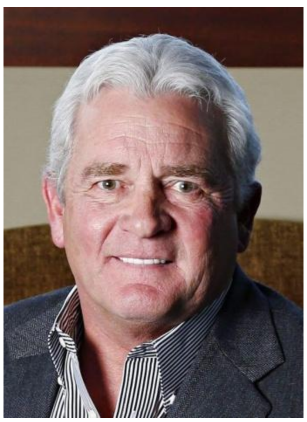
Russell, the CEO of Fredric E. Russell Investment Management Co., has previously called the private offering a "country club deal." He said the announcement March 9 was strange because it was essentially a move to raise money for a merger that hasn't even been completed yet.

"You have an offering, an attempted agreement, while a major agreement — the most important agreement — still has not been settled," Russell said. "There's been no vote for or against a merger. You have an attempt to raise more money when the deal is not complete."

Equally important and outrageous is the possible negative impact that the private offering could have on the investors who are not included, Russell said.

A columnist for Bloomberg and other analysts have noted that the private offering is structured in a way that it protects investors who participate. Even if Energy Transfer cuts its dividends dramatically or altogether, those investors who participate will still eventually get paid.

"Before they even agreed to anything, they're already being diluted if this private deal goes through," Russell said of Williams' shareholders.



Kelcy Warren

Warren

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