
From: Orfano, Joseph E. - Treasurer [orfaje@jea.com]
Sent: 7/26/2019 9:35:57 PM
To: Marth, Stuart [Stuart.Marth@morganstanley.com]; Wannemacher, Ryan F. - Chief Financial Officer [wannrf@jea.com]
Subject: Fwd: Preliminary Thoughts on the Draft ITN

Stuart/Ryan:

Forwarding Nixon Peabody's comments on the draft ITN.

Thanks,
Joe

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----- Forwarded message -----

From: "Columbo, Elizabeth" <EColumbo@nixonpeabody.com>
Date: Fri, Jul 26, 2019 at 5:31 PM -0400
Subject: FW: Preliminary Thoughts on the Draft ITN
To: "Orfano, Joseph E. - Treasurer" <orfaje@jea.com>
Cc: "Rothchild, Barry (NYC)" <brothchild@nixonpeabody.com>

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Joe,

While we have not had a chance to confirm that the financial and other operating information included in the draft ITN is consistent with the ADR or other publicly available information as to JEA, below are some general thoughts and specific comments on the draft ITN. A number of comments we had were clean-up but given the timing we will hold off on providing those until the next draft.

1. The Board has given JEA management the authorization to move forward with the ITN because the status quo option is not attractive for JEA and so unless disclosure of the status quo scenario is intended to provide full (positive and negative) disclosure to potential investors about JEA we are not sure why there is a discussion of this in the forepart of the ITN. The business highlights and description should be reviewed to be sure they are accurate and do not contain hyperbole. For example, Slide 10 – we would suggest inserting “currently” and deleting “very” before “profitable and well-run operationally”.
2. There are a number of places throughout the discussion of the process/timeline that need to be reviewed very carefully for accuracy and consistency – both in the summary and overview as well as in the specific sections and the charts.
3. All section references will need to be confirmed when the draft is closer to completion.
4. Discussion of the minimum table stakes should be very specific and detailed so that there is no confusion for the proposed respondents.
5. Page 22 – Section 1.1 – first bullet “of value” should be “net proceeds”

6. Page 22 – Section 1.1 – third bullet “Rates lower than status quo” – explain what status quo means...is this rates lower than those projected in status quo scenario? If so, put the projected rates and years in the ITN.
7. Page 22 – Section 1.1 – bullet on retention bonuses - “of” should be “equal to” and what year is meant by current base compensation? 2019? The year the recapitalization takes place? Needs to be more specific.
8. Page 23 – Section 1.3 – consider revising the last sentence to read “In addition, any future process initiated by JEA (if any) may be limited to only those interest parties who have participated in this ITN process and JEA may give preference to or otherwise reward those interested parties who have participated in this ITN process.”
9. Page 24 – 2.1.1(B) – Section “2.1” should be “2.11” and consider inserting “which can be found” after “Timeline of Events” in the third line and “formal posting” should be “formal written communication” and should reference where such communication will be posted.
10. Page 25 – Section 2.2 – last sentence “ – insert “open, review or” between “not” and “consider”. It would read “JEA will not open, review or consider documents submitted after a deadline.” Same in Section 7 of the FAQs on page 45.
11. Page 50 – The MEAG language must be carefully reviewed by litigation counsel and must be accurate as of date of ITN.

Happy to discuss in more detail if needed. Have a great weekend.

Best,

Liz

Elizabeth M. Columbo
Nixon Peabody LLP
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