
From: Davis, Gardner F. [GDavis@foley.com]
Sent: 11/19/2019 3:21:15 PM
To: Kirwan, Michael B. [MKirwan@foley.com]
Subject: FW: Project Scampi: IPO Catch Up - couple of fundamental concerns

Hope you agree with my corporate law analysis

From: Davis, Gardner F.
Sent: Tuesday, November 19, 2019 2:52 PM
To: 'Pedersen, William' <William.Pedersen@morganstanley.com>
Cc: scampi-ms <scampi_ms@morganstanley.com>; Hyde, Kevin E. <KHyde@foley.com>; Hosay, Robert H. <RHosay@foley.com>; Marth, Stuart <Stuart.Marth@morganstanley.com>
Subject: Project Scampi: IPO Catch Up - couple of fundamental concerns

Bill-

In advance of our call, I write to share my concern that some items on the agenda for this afternoon may be premised on some assumptions that have yet to be proven correct.

Foley initially analyzed whether JEA could drop down a wholly owned subsidiary the instant before a sale for the purpose of accomplishing the sale as a merger transaction. At the risk of overgeneralizing our conclusion, we concluded that although this issue has never been addressed by the Florida Courts, we can probably structure a sale as a subsidiary merger.

As part of that discussion, Foley pointed out that Article 7, Section 10 of the Florida Constitution prohibits a state governmental entity from being a shareholder or joint owner of any corporation or person. The section has an exception for joint ownership of joint electrical energy generating or transmission facilities. We do not have any case law on point, but I believe it's more likely than not that this exception was designed to permit power projects where a municipal utility owns a part interest in a generating facility. We concluded, however, that this prohibition would not prevent creating of the subsidiary as part of the sale transaction structured as a merger.

Foley did follow-up research about whether JEA could structure the sale as an IPO, using a new wholly-owned subsidiary to own the JEA business immediately before the sale to the public by an IPO. Again at the risk of overgeneralization, we concluded that the structure probably would work. However, our guidance was based on the premise that all the stock would be sold in the IPO – the purpose was a sale of the JEA.

During a call, I recall we discussed generally at a high-level the possibility of distributing some of the JEA stock to taxpayers as a part of the IPO. I noted during that call that distribution of shares to taxpayers would create a logistical problem of having a very large number of very small shareholders.

Your agenda below may suggest that the City would retain stock of a public company following the IPO. I find that very problematic. The idea of a city being the controlling shareholder of a public for profit corporation is far beyond ownership of an "electrical energy generating and transmission facilities". In addition, the JEA being a controlling shareholder of a public company is likely to create corporate governance conflicts of interest between the economic interests of the shareholders and the wellbeing of the citizens/ratepayers.

The use of an independent trust to hold the residual shares at closing of the IPO may be a way to prevent the municipal ownership of stock. But to the extent the City will receive future economic benefit from the Trust, significant issues will be created about whether this is disguised, prohibited ownership of a corporation.

I have three preliminary concerns about transfer of the stock of the new public company to the taxpayers via a trust:

- I believe “giving away” an asset of substantial value without consideration would create potential fiduciary duty issues for those authorizing the distribution. You could argue that citizens are beneficial owners and this is in the nature of a dividend. However, I believe interested parties may have standing to attack the decision on the grounds that it is only going to a select minority of the interested constituencies. The argument would be similar to a corporate waste legal theory.
- The transfer without adequate consideration could raise creditors rights issues if the City was ever determined to be insolvent.
- The Jacksonville Charter, at 21.04, requires City Council approval to transfer real estate for less than appraised value.

I look forward to the call this afternoon.

Gardner F. Davis

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From: Pedersen, William <William.Pedersen@morganstanley.com>

Sent: Tuesday, November 19, 2019 9:44 AM

To: Kebudi, Izzet <Izzet.Kebudi@morganstanley.com>; dykemh@jea.com; orfaje@jea.com; Petersen, Allyssa B. <peteab@jea.com>; Tremain, Shannon E. - Financial Associate <tremse@jea.com>; stephen.amdur@pillsburylaw.com; augusto.lima@pillsburylaw.com; david.lillevand@pillsburylaw.com; justin.platt@pillsburylaw.com; Hyde, Kevin E. <KHyde@foley.com>; Hosay, Robert H. <RHosay@foley.com>; Grossman, Benjamin J. <BJGrossman@foley.com>; Long, Mariah D. <mlong@foley.com>; Steverson, Jon <jsteverson@foley.com>; Spear, Tim <tspear@foley.com>; Davis, Gardner F. <GDavis@foley.com>; scampi-ms <scampi_ms@morganstanley.com>; Gredell, Jason <jason.gredell@jpmchase.com>; Giardinelli, Todd <Todd.Giardinelli@morganstanley.com>; Manheimer, Edward <Edward.Manheimer@MorganStanley.com>; Marth, Stuart <Stuart.Marth@morganstanley.com>; Spitzley, Ray <Ray.Spitzley@morganstanley.com>; Molloy, Edward <Edward.Molloy@morganstanley.com>; Watts, James <James.Watts@morganstanley.com>; Zahn, Aaron F. - Managing Director/CEO <zahnaf@jea.com>; Weissman, Andrew D. <andrew.weissman@pillsburylaw.com>; Cochrane, John <John.Cochrane@fticonsulting.com>

Subject: RE: Project Scampi: IPO Catch Up

**** EXTERNAL EMAIL MESSAGE ****

All,

Please see the below agenda for today's call at 3:30pm:

- Testing the waters meetings

- Assuming we can get comfortable with Gun Jumping, and elected to pursue testing the waters meetings well in advance of the IPO itself – what are the legal considerations?
- Structuring considerations
- How will the City of Jacksonville own the publicly-listed shares of JEA (trust or will the City have direct ownership?)
- If a trust, how would the trust be managed?
- JEA structure (HoldCo owning 1 electric subsidiary and 1 water subsidiary or HoldCo owning 1 electric subsidiary which owns 1 water subsidiary)
- Post-IPO (assuming pro forma equity ownership is 25% public, 75% City of Jacksonville) – would the Company be subject to Florida Sunshine Laws?
- Other business?

Please reach out if you have any questions in advance of the call.

Thanks,
Bill

William Pedersen, Vice President

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-----Original Appointment-----

From: Kebudi, Izzet (IBD)

Sent: Friday, November 15, 2019 11:22 AM

To: Kebudi, Izzet (IBD); dykemh@jea.com; Orfano, Joe (orfaje@jea.com); Petersen, Allyssa B.; Tremain, Shannon E. - Financial Associate; stephen.amdur@pillsburylaw.com; augusto.lima@pillsburylaw.com; david.lillevand@pillsburylaw.com; justin.platt@pillsburylaw.com; khyde@foley.com; RHosay@foley.com; BJGrossman@foley.com; mlong@foley.com; jsteverson@foley.com; tspear@foley.com; gdavis@foley.com; scampi_ms; Gredell, Jason; Giardinelli, Todd (IBD); Manheimer, Edward (IBD); Marth, Stuart (IBD); Spitzley, Ray (IBD); Molloy, Edward (GCM); Watts, James (GCM); Pedersen, William (IBD); Zahn, Aaron F. - Managing Director/CEO; Weissman, Andrew D.; Cochrane, John

Subject: Project Scampi: IPO Catch Up

When: Tuesday, November 19, 2019 3:30 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).

Where: +1 877 777-8895,,,7409380

Hello all,

Please find this invite for our next discussion on IPO considerations ahead of the meeting on November 21st. Below, you can find the dial-in information.

Best,

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Morgan Stanley iConf

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