

From: Lamarre, Mark[mark.lamarre@wellsfargo.com]
Sent: Thursday, April 15, 2010 11:02:14 AM
To: Tz[tz@38studios.com]; Rick Wester[wester@38studios.com]
Subject: Possible WF Engagement Terms

Attachments: 38 Studios RIEDC Bond Issuance Proposed Expenses 4-15-10.ppt

Gents -

Per our discussion earlier this week, please find below a DRAFT of suggested engagement terms for Wells Fargo's proposed work with 38 Studios.

Once you have reviewed these, we can discuss further, and then would work to formalize these in a written Engagement Letter.

Conceptually, I have endeavored to:

- recognize the fact that 38 Studios is not cash-rich at the current time
- align our interests with yours; meaning strive to close financing at the most expeditious pace and at the lowest cost

Our proposal:

Milestone-based Advisory and Progress Fees:

Upfront retainer/engagement fee: none

RIEDC Board Meeting presentation, if Wells Fargo participation is requested by the Company: \$25,000 (anticipated late April)

Commencement of broader working group efforts on RI-backed Bonds: \$25,000 (anticipated by early May)

Commencement of distribution of Equity Private Placement CIM into the market: \$50,000 (anticipated by mid-May)

Ratings Agency presentation milestone for RI-backed Bonds: \$50,000 (anticipated by late May)

Special Structuring Fee upon completion of Preliminary Official Statement for RI-back Bonds: \$300,000 (anticipated by early June) (this would be in addition to the Underwriters' normal and customary structuring fee (see attached file), and would be payable solely to Wells Fargo)

Success-based Fees:

Bond underwriting Economics - normal and customary (anticipated range of 0.7 and 0.9 % spread; final spread TBD); with Wells Fargo to receive not less than 80% of all economics, if the company elects to bring in co-managers. Wells Fargo shall serve as Sole Book-Running and Lead Manager on the Bonds.

Equity Private Placement agency fees - 7.0% of capital raised with Wells Fargo's assistance; carve-out (no fee) or lesser fee % for Board members, existing investors and others, at Company's request.

All fees would be payable in cash, in US dollars.

Further, 38 Studios would be responsible for reimbursement of Wells Fargo's out-of-pocket expenses (we can set a cap if you like).

Wells Fargo shall have the right to advertise its role, post-closing, at its own expense.

Customary indemnification provisions satisfactory to Wells Fargo shall be laid out in the Engagement Letter.

All milestone and progress fees will be billed approximately 15-30 days after they are earned by Wells Fargo.

I have also attached, per your request, a file that shows what the normal and customary expenses 38 Studios should expect on the RI-backed Bond deal, EX-cluding the additional fees due to Wells Fargo per the above.

Thank you and regards -

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Anticipated Cost of Issuance and Underwriter Fees for 38 Studios/RIEDC Bond Issuance

Estimated Costs		Underwriter Fees	
Item	Amount	Item	Amount
▪ Bond Counsel	\$ 75,000-100,000	▪ Underwriter's Takedown	\$ 400,000 \$ 5.00/bond ¹
▪ Rating Agency	\$ 70,000	▪ Management/ Structuring Fee	\$ 200,000+ \$ 2.50 /bond
▪ Printer Fees	\$ 5,000 - 10,000	▪ Underwriter's Counsel	\$ 75,080 \$ 0.938/bond
▪ Trustee and Trustee's Counsel	\$ 10,000 +	▪ Miscellaneous Expenses (Travel, etc.)	\$ 10,000 +
▪ RIEDC/Guaranty	TBD ²		
Totals	\$ 160,000-190,000 +³		\$685,000 +

Estimated Total Anticipated Cost of Issuance and Underwriting Fees: \$685,000 - \$1,000,000³

¹Based on per amount of \$50 million
²Amounts listed are approximate, does not include RIEDC/Guaranty Fee expenses.
³The Rhode Island Economic Development Corporation has an Application Fee of \$1,000, Commitment Fee of 1% and an Administrative Fee of 1% of 1% percent valued option.
⁴Based on ratings of AA/AAA/AAA-. Fees for lower-rated bonds would be higher.

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