

Stolzman, Rob

From: Thomas J Zaccagnino [tz@38studios.com]
Sent: Wednesday, May 05, 2010 1:19 PM
To: Michael; Stolzman, Rob; Saul, Michael; Keith W. Stokes
Subject: Re: Call

Rob, thanks for the additional information. Please see a few thoughts below...thanks and looking forward to 4PM.

Best,

TZ

*TJC
w/ly
Saul*

*Ⓐ Tomorrow morning
Ⓑ w/ week two ~~the~~
1st*

On 5/5/10 10:21 AM, "Stolzman, Rob" <RStolzman@apslaw.com> wrote:

(Answer note)

- > Hello all. Having spoken with Mike Saul this morning and Keith earlier
- > this week on this, I'll flesh out Mike Saul's email below just a little
- > more as follows to help prepare for the 4:00 conf call today:
- >
- > Three things need to happen before this is voted on by the RIEDC Board:
- >
- > First, the RIEDC Board needs to have a briefing on the RIEDC
- > financial programs so that this is understood to be a piece of the
- > overall RIEDC capital continuum function. Al Verrechia specifically
- > recommended that this occur prior to the Board voting on any specific
- > credit facility (in fact, this process will be used for all RIEDC
- > programs). That briefing will occur on May 24 at the regularly
- > scheduled RIEDC Board meeting.

Understood from our meeting last week. Although, there was an action item from last week's meeting to review with Keith (and key Board members) the prospects of pulling forward this date to provide more flexibility for the timing of the special meeting...not sure where this stands.

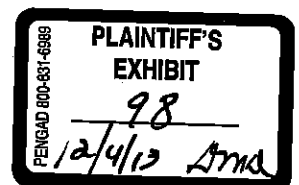
- >
- > Second, the RIEDC staff and the de facto ad hoc acting committee
- > on the 38 Studios transaction (Al and Steve) need to feel comfortable
- > that the due diligence leads to a vigorous staff and committee
- > recommendation for approval.

Understood.

That appears to be a 3 to 4 week process

- > with SA and Wells, and perhaps that time has commenced. Of course, the
- > sooner SA and Wells are "unleashed" the sooner we can wrap up that part.

As mentioned on Friday, Wells has concluded their diligence and without exception, was extremely impressed by the outcome of their industry/market assessment and 38 and its market opportunity.



On Friday, we provided a draft of Wells' RIEDC presentation for review. We scheduled a call during Friday's meeting for yesterday at 10AM to review the presentation...that call did not happen. The press conference was discussed and it was stated that Fred would not be joining the call but that the rest of the team would. I understand that something changed, but we still need to reschedule that call for a later date. We had scheduled a call with Wells for 1200PM yesterday (immediately following our joint review call) to discuss the presentation and we did pass along 38's comments. Our general feeling was that the presentation hit the mark by way of content. Obviously prior to the Board meeting, we will need to have a working session with RIEDC/38/Wells/SA to nail down presentation content/flow as we have multiple presenters and want to ensure a seamless, effective presentation.

Also, RIEDC was to get Wells approved for the Bond offering...has that happened? To shift horses now would be unfortunate and cause significant delay.

RIEDC was also to clarify whether or not a minority underwriter would be required. The goal is to not, as it will drive up the cost of the Bond offering and likely add time to the process. Do we have an answer on this yet...Wells/38 is looking for clarification as it effects the engagement agreement that we are trying to complete?

Regarding SA, 38 approved the reimbursement agreement and I will be forwarding over an executed version shortly. The SA agreements contemplates a 5/3 start date and a 5/15 completion date. We are obviously a 2 days behind that schedule but having SA's work complete prior to even the regularly scheduled meeting is more than feasible...assuming they perform.

- > The RIEDC staff would like for Al, Steve and Keith to visit 38 Studios
- > before the Board meeting not only for a tour, but also for a due
- > diligence session in which they can ask questions that may arise from
- > the SA and Wells preliminary work. It appears as if the week of May 17
- > or May 24 would work for that.

We need to have these dates nailed down. We have resources on our side that need advance notice as I am sure you do as well. My suggestion is that we get these Studio tours scheduled ASAP...otherwise they will no doubt cause delay. We also might want to separate the Studio visit and general discussion with the due diligence session. The later can be accomplished anywhere and will not require all of the resources that the Studio visit will. Just a thought.

- >
- > Third, the Kushner needs to have been approved by the General
- > Assembly (either as part of the FY 10 Supplemental or separately).

Understood. I think it is fair to say that we are all monitoring progress and will make a determination on pulling it out of the supplemental if needed based on GA progress.

- >
- > Using the three "gates" above, we can lay out a schedule as follows:
- >
- > a. Brief board on May 24 on RIEDC capital programs including Job
- > Creation Guaranty Program (our Kushner program) (and perhaps in
- > executive session on that date pre brief specifically on 38 Studios
- > deal).
- >
- > b. Get Kushner passed asap.
- >
- > c. Assume due diligence and Kushner will be done by on or around May 24
- > - 31.

- >
- > d. Set a date today for the first or second week of June for a special meeting of RIEDC Board to consider the 38 Studios transaction and work toward that date for RIEDC Board approval.

I am confused by this. We have always been told that this would be a single "approval" meeting...am I reading this incorrectly and it is now a two-step best case? Also we need to set the special meeting date now. We would like to target June 1st as the date for the special meeting to get on everyone's schedule. We are already running into issues with Wells, key management and our board members on scheduling in late May/early June. Can we define this date now and select June 1?

The date does not have to be

- > a Monday, nor does the meeting need to occur at 4:00 p.m. We need to
- > have a quorum of the RIEDC Board there (7 of 12 voting, the Governor
- > also counts toward a quorum and votes only in the event of a tie).
- >
- > e. Work to close with Wells asap, with a goal of closing on or before
- > July 31.

We are refining this timeline but I am being advised that given an RIEDC approval by the first week in June, a July 31 closing is aggressive. Furthermore, we will incur significant cost once this process begins and for this reason, we do have reservations about kicking off the working group prior to RIEDC formal approval.

In addition, we are rapidly approaching several material triggers on our side (equity raise, technology decisions re: a publishing v. distribution model, publishing offers, etc.) which are putting pressure on the timeline....we can discuss on the 4PM call.

In addition, we need to finalize the term sheet and define the "gross up" amount. We probably need a live discussion re: this....not sure who is running point on your side but we should finish the business terms to make sure we are all set on both sides. Jen will also need to bring this to the Board for approval...we would like to do this as soon as possible. Please advise.

- >
- > I think this reflects the timing that works best for all parties. Of
- > course, let me know if I'm missing anything.

>

> Rob

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> -----Original Message-----
> From: Saul, Michael [<mailto:msaul@riedc.com>]
> Sent: Wednesday, May 05, 2010 8:33 AM
> To: Thomas J Zaccagnino; Michael; Stokes, Keith; Stolzman, Rob
> Subject: RE: Call
>
> I am not available, but I have just spoken to Rob & Keith to clarify
> timelines on our end.
>
> On the AI, Steve and Keith visit we want to do that when we have
> sufficient due diligence done so they understand the deal. They should
> be able to ask probing questions during their visit. We do not feel a
> just an introductory-like visit is the way to utilize Steve and AI. The
> better we prep them the more likely they will be a stronger advocate.
>
> On board approval, we do not want to take the approval to the board
> until the Article 7 passes or a resolution taking Article 7 out of the
> supplemental passes. Keith and Michael need to get clarity from Gordon
> on this. We are looking at the week of 6/1 as the earliest possible
> special meeting of the EDC board assuming the Article 7 passes
> beforehand and due diligence is satisfactorily complete.
>
> Finally, we need to get SA/Perimeter engaged and started. Modifications
> have been made to the Reimbursement Agreement so presumably we are good
> to go here.
>
> Rob is available and will handle the call at 4:00 for EDC.
>
> Mike
>
> -----Original Message-----
> From: Thomas J Zaccagnino [<mailto:tz@38studios.com>]
> Sent: Wednesday, May 05, 2010 7:40 AM
> To: Michael; Saul, Michael; Stokes, Keith
> Subject: Re: Call
>
> 4PM and beyond works for me. tnx
>
>
> On 5/5/10 12:07 AM, "Michael" <mcorso@kingstoncap.com> wrote:
>

>> Gentlemen:

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>> Keith and I spoke and thought we could all get on the phone to get
> some

>> clarity on dates and do a quick update. Can we do either 4 or 5pm
> tomorrow?

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>> Please let me know.

>>

>> Michael

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>

> Best,

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> TZ

>

Best,

TZ