

To: Wieseneck, Larry [lwiesene@lehman.com]; Kelly, Martin [martin.kelly@lehman.com]; Russo, Thomas A [trusso1@lehman.com]; Lowitt, Ian T [ilowitt@lehman.com]; william.schlich@ey.com [william.schlich@ey.com]; BostelmanJ@sullcrom.com [BostelmanJ@sullcrom.com]; Wright, Andrew (Finance) [andrew.wright@lehman.com]
From: Goldfarb, David [dgoldfar@lehman.com]
Sent: Wed 8/27/2008 10:16:53 PM
Subject: Re: SEC Call Update

Agreed, I think going back thru E+Y would be the best next step to avoid going over the heads of these guys. E+Y's National office has good relationship with Wayne. Martin is calling Bill now, let's wait to get his view.
Dave

----- Original Message -----

From: Wieseneck, Larry
To: Goldfarb, David; Kelly, Martin; Russo, Thomas A; Lowitt, Ian T; 'william.schlich@ey.com' <william.schlich@ey.com>; 'BostelmanJ@sullcrom.com' <BostelmanJ@sullcrom.com>; Wright, Andrew (Finance)
Sent: Wed Aug 27 18:14:18 2008
Subject: RE: SEC Call Update

If this is a negotiation I would prefer to first try one more time to get this on the merits. However, if we can not prevail on the merits I would ask Finance and Controls to determine what of the other items they are willing to give us should we offer as a sacrificial lamb to get to the correct form of on-going accounting. I think this is truly a binary issue for the story to hold together that the assets will be managed differently at Spinco than they can be at LEH.

Larry

-----Original Message-----

From: Goldfarb, David
Sent: Wednesday, August 27, 2008 6:08 PM
To: Kelly, Martin; Russo, Thomas A; Lowitt, Ian T; 'william.schlich@ey.com'; 'BostelmanJ@sullcrom.com'; Wright, Andrew (Finance); Wieseneck, Larry
Subject: Re: SEC Call Update

I think we need to continue to push on this. To your point, there is no basis for fair value accounting for this type of entity. This is critical to what we are trying to accomplish and it is the way that this sector accounts for their assets. I don't think the ask is that big, given that it is the standard accounting for this type of entity.

This should not be about horse trading, this should be about getting the the right answer.

We should convene first thing in AM, or set up call for later tonite to come up with next steps. Maybe it is E+Y national office calling on our behalf to argue case? Bill, your thoughts on that?

Regards,
Dave

----- Original Message -----

From: Kelly, Martin
To: Russo, Thomas A; Lowitt, Ian T; Goldfarb, David; 'william.schlich@ey.com' <william.schlich@ey.com>; 'BostelmanJ@sullcrom.com' <BostelmanJ@sullcrom.com>; Wright, Andrew (Finance); Wieseneck, Larry
Sent: Wed Aug 27 18:00:50 2008
Subject: SEC Call Update

This is a purposely limited distribution email given contents - I am just off the phone with Wayne Carnall

and his team. The result of their reviews of our various submissions is that they are negotiating and are offering all the waivers we need in exchange for a requirement that Spinco apply fair value accounting (specifically on the non-consolidated real estate positions since there is no basis under any GAAP to mark the hard real estate assets).

Take aways from our conversation:

* They understand our situation and are willing to waive certain requirements to accommodate our needs for a timely spin and registration. Specifically they are willing to waive 3 yr historicals, auditor-reviewed projected financial information, updates of projected financial information and the Rule 3-14 financial statements for the operating real estate assets (this last point a conditional waiver subject to a "gentleman's agreement" that the amount of consolidated operating real estate assets does not exceed the amounts we outlined in the letter.

* They have not seen a spin off which is not a business (therefore requiring 3 yrs of audited historical financial statements) but are willing to give on this

* Although he acknowledged that there is not a technical requirement for Spinco to apply fair value accounting (he said "he appreciates that we don't need to do it"), they continue to believe that fair value accounting is most relevant to investors. When I pushed him on the same fair value information being available via footnotes under FAS 107, he said that in their view there is less discipline and scrutiny from both registrants and their auditors around fair value disclosures and therefore they do not believe that there is sufficient rigor and reliability to footnote information versus information which is the primary basis of accounting

* He does not want to force the fair value accounting issue through the liquidation basis of accounting (I read into this that they accept our arguments that Spinco is not a liquidating entity) however they want Spinco to get to the same result by electing to apply FV accounting under FAS 159 - Note FAS 159 is a voluntary standard in that registrants may elect to apply FV accounting or not to portions of their balance sheet.

* I explained the basis for our argument that non FV is critical - basically Larry's points incorporated into the letter - he seemed to appreciate some of these points more fully and for the first time but is clearly stuck on the investor protection issue.

* He ended the call by stating that we need to give up something to get something, this was a negotiation and this is their offer. I told him I would call him in the morning.

I don't think there is much room for negotiating at this level. Lets talk about how to proceed. Interested in Bill's and Jack's views around this.