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Email from Lawrence Makow Regarding AIG Equity Issues

Lawrence Makow

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From: Makow, Lawrence S. </o=wachtell, lipton, rosen & katz/ou=wlrk/cn=recipients/cn=lsmakow>
Sent: Wednesday, September 17, 2008 9:23 AM
To: Kim, Richard K. <rkim@wlrk.com>; Rosenblum, Steven A. <sarosenblum@wlrk.com>
Cc: Holmes, Joshua M. <jmholmes@wlrk.com>; Seligman, Stephanie J. <sjseligman@wlrk.com>
Subject: Re: AIG equity issues

I agree we should shoot for this. Treasury is thinking about relying on its gift authority

And issue w warrants is that treasury can't use money to exercise them unless there is a congressional appropriation. Think would be same issue w a convert that requires a payment to exercise. So should avoid that or provide that exercise or convert is in kind (eg by giving up 5 dollars worth of indebtedness, netting shares etc)

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

From: Kim, Richard K.
To: Rosenblum, Steven A.; Makow, Lawrence S.
Cc: Holmes, Joshua M.; Seligman, Stephanie J.
Sent: Wed Sep 17 00:06:53 2008
Subject: RE: AIG equity issues

I'm still going thru AIG's regulated entities but think at this point it would be best for Treasury to acquire the voting shares upfront and, where possible, get waivers from the relevant regulators or, if absolutely required, go through the application process for permission to retain the voting rights. A number of insurance regulators have the unilateral power to waive the application process and I think that they will. Also, acquisitions of shares by a US gov't agency are exempt from HSR. We are also looking at foreign antitrust approvals. As for Treasury's ownership of the shares, my understanding is that Treasury isn't concerned so much with its authority to hold the equity interest as the implications of doing so.

From: Rosenblum, Steven A.
Sent: Tuesday, September 16, 2008 11:55 PM
To: Makow, Lawrence S.
Cc: Kim, Richard K.; Holmes, Joshua M.; Seligman, Stephanie J.
Subject: FW: AIG equity issues

Larry, do you want to reply, or do you want me to? I agree that we need to address the regulatory change of control issues and that a springing voting rights structure where the vote is contingent on regulatory approval might be the right way to go (note that we still get the economics up front, even pending the regulatory approvals). Richard, I understand you were doing a separate memo on regulatory issues, yes? What is your view? Is there a way to expedite approvals?

Also agree that once we have the voting rights, we can approve the necessary charter amendment.

On Treasury's ability to hold the preferred - Richard, any view on that? Ultimately I think it's up to them to decide if they can or not (though if they can't, don't they have the same problem with the warrant and underlying common?)
IRC 382 - Josh, any further view?

From: James, Ethan T. [mailto:ethan.james@dpw.com]
Sent: Tuesday, September 16, 2008 11:38 PM
To: Makow, Lawrence S.; Rosenblum, Steven A.
Cc: Simkowitz, Daniel (Morgan Stanley); Ryan, Kevin (Morgan Stanley); aco.dpw
Subject: AIG equity issues

Steve & Lawrence:

To keep the conversation moving forward on the equity component of the AIG financing package, here are our thoughts on a few outstanding issues:

Voting: the need to control could run up against insurance regulatory issues, where control is (generally) presumed with 10% of the vote. Given the circumstances and Dinallo's offer to be helpful we should be able to expedite matters, but, for example, some regulators (esp those in public hearing states) may feel that they don't have the discretion to abbreviate the timeline for approval beyond some limit. If this is an issue we could fix it with a security with 'springing' voting rights that arise only once the last approval has been obtained. We will also need to make sure that this approach works for regulators abroad.

Once those voting rights arise, they should be sufficient to control any SH vote, as your term sheet suggests. At that point we could amend the par value of the common stock, which would address consideration issues related to the conversion of the preferred shares (if that is what we will use), and the number of authorized shares.

Treasury's implied powers: We understand that someone at Treasury has been thinking about its authority to own the company. We have the right folks lined up here to help with those issues.

IRC 382: Our current plan is to come to ground on the structure of the equity securities and then to address 382 issues.

Happy to discuss at your convenience.

Ethan James

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