17B

From:	Guyer, Richard E. [/o=foleylaw/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Guyer, Richard E.78f]
on behalf of	Guyer, Richard E.
Sent:	7/10/2019 4:05:16 PM
To:	Hyde, Kevin E. [KHyde@foley.com]
CC:	Lever Jr, Chauncey W. [CLever@foley.com]
Subject:	RE: Any update on the bond question?

Kevin,

You have asked whether the proposed JEA Employee Benefit Bond (the "Instrument") outlined in the two page term sheet is debt or equity as a matter of Florida law.

The Instrument is a contractual employee benefit in the nature of a contingent future bonus providing for a future payment to participating employees contingent upon the satisfaction of specified conditions, and would not be considered debt or equity.

An illustration of the potential economics of the Instrument is helpful to analyze whether it should be considered debt or employee compensation. I understand the City Council auditor estimated the net proceeds from a sale of JEA between $1.7 billion and $5.2 billion. Assuming the mid-point price of $3.4 billion, the return to the City would be an 12% premium over net position. Under the terms of the Instrument, the employees' $1 investment per bond would result in a $120 payment per bond, or a 12,000% return on investment.

Companies preparing for a sale routinely implement employee retention arrangements and change of control bonus arrangements to provide employees with incentives to remain through the closing of a transaction and to reward long-time employees for past performance in situations where they may face loss of their job. The proposed Instrument addresses these employee-related objectives. Gregg Dooge, an employee benefits partner, advised that the payment at maturity would likely be treated under Section 83 of the Internal Revenue Code as ordinary compensation income.

"Equity" in the corporate law context refers to the residual ownership interest in the enterprise, which we traditionally associate with common stock. The Instrument is not "equity". An analogy in the corporate context would be a Stock Appreciation Right (SAR) granted to an employee. A SAR is not equity but rather a contract providing the employee with the right to receive payment subject to certain conditions, generally an increase in stock price.

The term "debt" is sometimes applied to all types of liabilities involving the duty to pay money, but "indebtedness" in the corporate context is usually limited to an obligation to repay borrowed money. The Instrument would constitute a legally enforceable, contingent contractual obligation to pay money. However, a 12,000% return is not in the nature of indebtedness. The return appears to have no practical relationship to the $1 purportedly being loaned.

Let me know if you would like to discuss.

Best,
Richard

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Δπ EXHIBIT 17B
Deponent Hyde
Date 8/21/20 Rptr. TL
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From: Hyde, Kevin E. <KHyde@foley.com>
Sent: Wednesday, July 10, 2019 11:47 AM