28B

Kirwan, Michael B.

From:	Kirwan, Michael B.
Sent:	Thursday, August 15, 2019 3:45 PM
To:	Hyde, Kevin E.
Subject:	RE: Draft Letter to Ashley Moody from Herschel

Kevin,
The letter is much better than the initial draft. Although I have not reviewed the exhibits that are referenced to be attached to the letter, a few thoughts from my earlier email are still germane.
1. The letter still refers to vesting and forfeiture of unvested units. If there is a purchase occurring upfront, what is the purpose of vesting? Is the purchase intended to accomplish an 83(b) election to minimize tax upon the final payout? Letter does not suggest that is the point of the upfront purchase.
2. The calculation of the redemption price appears to focus only on the final year. If it is a 3 year unit, then typically the whole 3 years are considered. — Now understand
3. The argument that the units are not compensation rings a bit hollow. It would seem that the argument can be strengthened by actually making the units look like securities. Have the proceeds actually be used for funding a specific purpose. I am sure there are lots of potential purposes. Have the program set up to be an annual program – not a one-time event. If the sale does not occur, then the participants still earn what the plan provides and the program can continue into the future.
4. My earlier comment about a cap on unit payouts is hopefully in the plan document that is an exhibit.

Happy to discuss,
Michael

Michael B. Kirwan

Foley & Lardner LLP
One Independent Drive | Suite 1300
Jacksonville, FL 32202-5017
P 904.633.8913

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From: Hyde, Kevin E. <KHyde@foley.com>
Sent: Thursday, August 15, 2019 2:48 PM
To: Kirwan, Michael B. <MKirwan@foley.com>
Subject: FW: Draft Letter to Ashley Moody from Herschel

This is the final draft of the letter. It will be issued by the Office of General Counsel.

-Kevin E. Hyde

Foley & Lardner LLP
One Independent Drive | Suite 1300

Δ π EXHIBIT 28B
Deponent Hyde
Date 8/21/20 Rptr. TL
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FLI-RP-JEAGC-0000002386