

From: Thomas J Zaccagnino <tz@38studios.com>
Sent: Tuesday, June 15, 2010 10:52 PM
To: J. Michael Saul <msaul@riedc.com>
Cc: Stolzman, Rob <rstoelzman@apslaw.com>; Fred S. Hashway, Jr <fhashway@riedc.com>; Michael <mcorso@kingstoncap.com>
Subject: Re: update

Mike - I would suggest that you and I speak first thing in the AM prior to your discussion with the Board/EDC team, as I fear that the path you may be heading down is going to be problematic. While very excited about the opportunity, the unanimous feeling last night from the 38 Board was that unless the initial amount is substantial enough to compensate for the relocation and distribution risks and the balance was tied to very basic milestones that are essentially non-discretionary, meaning via a trustee/escrow agreement, that the risk to 38 is likely too high.

The Board tempered the excitement last night by pointing out that the deal only received conditional approval and that the new request for a draw schedule and potential inability to reach a resolution in a day or so, could very easily kill the opportunity. The Board was clear that they are not likely to approve relocating what will be approx 180 families by year-end or commit to making the technical decisions necessary for the distribution model, if there was a risk of being underfunded. The feeling is that there simply is too much at stake for the Company, our employees, and their families.

We have been open book about our risks and requirements from the beginning. Specifically, we were upfront about the requirement to be fully capitalized with the 75MM at closing. Here is the digression of this discussion:

1. Up to last week - Term Sheet providing full funding of the 75MM at closing (an clearly articulated and understood requirement from day one)
2. Last Wednesday - Concept of having 10% of equity to reduce the amount of the loan, in an effort to mirror IRBA.
3. Last Friday - Concept of providing a letter of credit or the like ~10MM
4. Yesterday Pre-Meeting - In good faith, me communicating to you prior to the session, that while it went against our known requirement we would support the pricing and would agree to put 10MM in an escrow to be released upon an agreed upon milestone, if and only if it facilitated reaching the necessary approval at last night's meeting.
5. Yesterday Post-Meeting - Concept of escrowing the full 75MM to be released on a milestone basis.
6. Tonight - Concept that seems to be centered around replicating the funding schedule and milestones for the RPG etc.

We are headed in the complete opposite direction. Again, in a good faith open-book effort to not to waste anyone's time and to get this deal done, I put an offer on the table in advance of being asked to (prior to session) that basically accepted the previous "offer" of mid-teens pricing and risk mitigation of 10MM via a holdback. Again with the same spirit of efficiency and "lets get the deal done" in mind, I asked Michael communicate today the rough structure that we could work with (above and beyond the 10MM that I offered last night) and still mitigate our risk....I assumed the specifics of the two milestones could be discussed and agreed to in person tomorrow.

I know that you need to respond to your Board and present something that is acceptable but this path is heading towards the complete other end of the spectrum of what had been discussed as a requirement from day one.

I am not trying to be difficult but rather honest and open about the situation we find ourselves in. We would like to proceed with this transaction but our Board will simply not put the Company, employees, and their families at risk. I believe we can structure something that is workable from a business standpoint.

We will continue to work in good faith to resolve this matter and I hope that we can quickly reach agreement tomorrow, but there must be an appreciation of the significant risks on our side. The Wells team is already nervous about hitting our August 1 outside deadline for a closing so as we all know time is of the essence...not to mention the press is going to force the issue in a matter of a few days...they are already starting on the West coast at E3.



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Please call me in the AM and we can determine how best to move forward. If you would like to discuss this tonight, please call me on the cell.

Thanks.

Best,

TZ

On 6/15/10 8:28 PM, "J. Michael Saul" <msaul@riedc.com> wrote:

Tom,

We received Michael's email and will review.

I am trying to convene a second meeting with EDC team tomorrow to discuss some risk mitigation ideas. We had a preliminary one today and came up with ideas we will run by you soon.

Can you have Rick send ASAP (if they are available):

- A monthly cash forecast through the Copernicus launch.
- Budgets for Copernicus and Mercury.

A couple of questions:

- Can you also explain to me (or have Jen) why if you take RI's capital and move down the road to distribute/self publish a fallback would not be a publishing agreement?
- Can you identify what are the remaining "milestones" (material) that EA, FCN and IFC have to sign off on for Mercury?
- Can you map the monthly cash forecast to game development/production and indicate % of development/production complete?
- Your forecast reflects a \$20.0 million equity offering...is that necessary to finish Copernicus?
- How is "cushion" built into game development?

Our objective is to get resolution on the risk mitigation ASAP. I will call you tomorrow.

Mike

J. Michael Saul

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Best,

TZ