

RE: Additional questions

From: "Armstrong, Jonathan E [IBD]" <jonathan.armstrong@ny.ibd.email.gs.com>
 To: "Ludwig, David [IBD]" <david.ludwig@ny.ibd.email.gs.com>, "Dong, Brian [IBD]" <brian.dong@ny.ibd.email.gs.com>, "Dees, Dan [IBD]" <dan.dees@ny.ibd.email.gs.com>, "Todd, Joe [IBD]" <joe.todd@ny.ibd.email.gs.com>, "Britton, Sam [IBD]" <sam.britton@ny.ibd.email.gs.com>, "Buddin, Chris [IBD]" <chris.buddin@ny.ibd.email.gs.com>, "Bell-Allen, Jess S [IBD]" <jess.bell-allen@ny.ibd.email.gs.com>, "Cohn, Michael [IBD]" <michael.cohn@ny.ibd.email.gs.com>
 Cc: "Zhou, Hao [IBD]" <hao.x.zhou@ny.ibd.email.gs.com>, "Yang, Betty [IBD]" <betty.yang@ny.ibd.email.gs.com>, "Watson, Simon R. [IBD]" <simon.watson@ny.ibd.email.gs.com>
 Date: Fri, 10 Aug 2018 10:11:49 -0700

Regarding use of an SPV, the basic rule is that the vehicle would count as a single holder for purposes of the 2000 holder threshold, unless the primary purpose of the SPV is to circumvent the 2000 holder threshold, in which case you look through to beneficial owners (see below). I think including other investments, such as SpaceX or Boring Company, in the vehicle would give us an argument that the SPV isn't just a tool for circumventing the 2000 holder threshold. There's apparently no authority from the SEC interpreting the evasion rule in the context of SPVs.

(3) If the issuer knows or has reason to know that the form of holding securities of record is used primarily to circumvent the provisions of section 12(g) or 15(d) of the Act, the beneficial owners of such securities shall be deemed to be the record owners thereof.

<https://www.law.cornell.edu/cfr/text/17/240.12g5-1>

From: Ludwig, David [IBD]
Sent: Friday, August 10, 2018 7:26 AM
To: Dong, Brian [IBD]; Dees, Dan [IBD]; Todd, Joe [IBD]; Britton, Sam [IBD]; Buddin, Chris [IBD]; Bell-Allen, Jess S [IBD]; Cohn, Michael [IBD]
Cc: Zhou, Hao [IBD]; Yang, Betty [IBD]; Watson, Simon R. [IBD]; Armstrong, Jonathan E [IBD]
Subject: RE: Additional questions

Simon and I caught up last night on some of these. I will let Jonathan opine on his view around structure, but don't see why we can't impose some of the restrictions that other private companies have on transferability (doesn't mean others won't try and use SPVs to trade shares).

Sam, hard to say what combination of cash and stock works until we know what investors are getting asked to invest in. I think having a right to force IPO in 4 to 5 years is better than expected. If other governance provisions are generally ok and he really will offer some liquidity periodically, then a good amount of the shareholders who have ability to roll may take a shot. I do think some of the bigger shareholders will likely get capped out on how much they can roll.

Reading the articles, unclear price is the issue...but maybe more focus on that once funding becomes clearer.

From: Dong, Brian [IBD]
Sent: Friday, August 10, 2018 2:24:45 AM
To: Dees, Dan [IBD]; Todd, Joe [IBD]; Britton, Sam [IBD]; Ludwig, David [IBD]; Buddin, Chris [IBD]; Bell-Allen, Jess S [IBD]; Cohn, Michael [IBD]
Cc: Zhou, Hao [IBD]; Yang, Betty [IBD]; Watson, Simon R. [IBD]; Armstrong, Jonathan E [IBD]
Subject: RE: Additional questions
 Happy to connect now if helpful. We can show you where things stand. Can reach me or Michael.

From: Dees, Dan [IBD]
Sent: Thursday, August 09, 2018 11:22 PM
To: Dong, Brian [IBD]; Todd, Joe [IBD]; Britton, Sam [IBD]; Ludwig, David [IBD]; Buddin, Chris [IBD]; Bell-Allen, Jess S [IBD]; Cohn, Michael [IBD]
Cc: Zhou, Hao [IBD]; Yang, Betty [IBD]; Watson, Simon R. [IBD]; Armstrong, Jonathan E [IBD]
Subject: RE: Additional questions
 I just landed. Does it make sense to have a quick catch up to see where things stand?

I don't want to slow things down if you are mid scramble (which I'm sure u r)

But if it makes sense to re group right now, I'm standing by

From: Dong, Brian [IBD]
Sent: Thursday, August 9, 2018 8:39:41 PM
To: Todd, Joe [IBD]; Britton, Sam [IBD]; Ludwig, David [IBD]; Dees, Dan [IBD]; Buddin, Chris [IBD]; Bell-Allen, Jess S [IBD]; Cohn, Michael [IBD]
Cc: Zhou, Hao [IBD]; Yang, Betty [IBD]; Watson, Simon R. [IBD]; Armstrong, Jonathan E [IBD]
Subject: RE: Additional questions
 Dan Young would be the best person to ask but he is out of office.
 We asked another person in IBD legal who said they aren't aware of a legal basis that would prevent an issuer from imposing a term like preventing share lending on a new issuance.

From: Todd, Joe [IBD]
Sent: Thursday, August 09, 2018 8:28 PM
To: Britton, Sam [IBD]; Ludwig, David [IBD]; Dees, Dan [IBD]; Dong, Brian [IBD]; Buddin, Chris [IBD]; Bell-Allen, Jess S [IBD]; Cohn, Michael [IBD]
Subject: RE: Additional questions

All good questions Sam. I have a question to add and the answer will inform your questions. If T is delisted, will it necessarily trade OTC? And, if it does then how much liquidity will there be given the size of T? Alternatively, as part of the shareholder vote, can shareholders vote on making shares nontransferable except as permitted by T in a controlled process like SpaceX? If the former is true (liquidity on the OTC) then institutions may think differently about consideration to stay in than the later (no transferability).

I don't know the otc market and how it operates. I suspect shareholders can vote to make shares nontransferable but that is a tough vote to get.

From: Britton, Sam [IBD]

UNITED STATES DISTRICT COURT	
NORTHERN DISTRICT OF CALIFORNIA	
Case Number:	3:18-cv-04865-EMC
PLTF / DEFT	252
Exhibit No.	
Date Admitted:	
By:	
Angella Meuleman, Deputy Clerk	

Sent: Thursday, August 9, 2018 11:15:01 PM

To: Ludwig, David [IBD]; Dees, Dan [IBD]; Todd, Joe [IBD]; Dong, Brian [IBD]; Buddin, Chris [IBD]; Bell-Allen, Jess S [IBD]; Cohn, Michael [IBD]

Subject: Additional questions

David / Joe / all

Reflecting further on Dan's debrief, a few things come to mind.

While it sounds like there is ample potential financing, there may be a consideration of scenarios that allow the pro forma ownership to include extant shareholders in a material way

Side note – the alternative (#3) that we discussed with Kevin today feels less relevant / less likely to solve objectives

Base case "appears" predicated on 1) material 'roll' by the top 20 mutual funds to illiquid and 2) potentially, meaningful participation by retail suggesting something like an SPV despite reporting requirements associate with some structures

If so, through some of the topics Dan mentioned, one underlying question seems to be how to provide enough incentive to drive rollover participation from the mutual funds and any SPV participant (if any)

Mutual fund roll participant

By definition part of their consideration will be shares in the newly private company (Joe can opine whether they would retain their extant shares or exchange for new shares in NewCo)

And to get enough premium to incent participation, will need either shares or cash (from the new equity source and/or new debt)

Question 1: if one takes the tweeted price at face value / leaving price aside, one core question is how much cash would those mutual funds need to find it attractive to forego liquidity and traditional governance?

How to avoid a scenario where the 'defectors' are perceived as rewarded with full liquidity? Can you create an incentive without creating differential consideration issues for example?

Question 2: is there any analog that provides insight into what governance arrangement they would require (votes / Board seats as a group for example)

Different scope than Clear Channel where the remainder was a stub

Any other precedents that provide direction / private rounds in large private cos etc? Knowing the top 20 mutual funds, any sense of what the basics would likely be

Question 3: per his question re demand rights (IPO), do the large private deals (or SpaceX itself) serve as useful precedent

And is it possible to form a view as to whether there would need to be a contractually obligated semi-annual redemption sale similar to SpaceX?

Know that many of these are subjective and we know only a tiny fraction of the facts, any perspectives would be very useful