

FW:

From: "Dees, Dan [IBD]" <dan.dees@ny.ibd.email.gs.com>
 To: "Lemkau, Gregg [IBD]" <gregg.lemkau@ny.ibd.email.gs.com>, "Britton, Sam [IBD]" <sam.britton@ny.ibd.email.gs.com>, "Dong, Brian [IBD]" <brian.dong@ny.ibd.email.gs.com>, "Cohn, Michael [IBD]" <michael.cohn@ny.ibd.email.gs.com>, "Buddin, Chris [IBD]" <chris.buddin@ny.ibd.email.gs.com>
 Cc: "Libstag, Gwen [EO]" <gwen.libstag@ny.ibd.email.gs.com>, "Ghodsí, Tamilla [EO]" <tamilla.ghodsi@ny.ibd.email.gs.com>, "Waldron, John [IBD]" <john.waldron@ny.ibd.email.gs.com>
 Date: Tue, 14 Aug 2018 12:10:42 -0700

From: Elon Musk
 Sent: Tuesday, August 14, 2018 1:03:58 PM
 To: Dees, Dan [IBD]
 Cc: Extranet Contact - Sam Teller (Tesla); Britton, Sam [IBD]
 Subject: Re: Agreed

On Aug 14, 2018, at 11:02 AM, Dees, Dan <Dan.Dees@gs.com> wrote:

To ensure there is no misunderstanding, we wanted to follow up on our conversation this morning with this email. We are pleased to accept the mandate to work with you on the basis of the following mutual understanding.

We want to remind you that GS, alongside other banks, is a counterparty to the Company and its subsidiaries on multiple equity derivative transactions, including multiple call spread transactions and a capped call transaction. A change of control of the Company would trigger a termination/unwind of the call spreads that could result in a payment to or from GS and others and could result in varying p+H consequences to GS depending on our hedging strategy. You should also know that your recent announcements may trigger potential adjustments under those transactions. We will review with you and your team potential implications of a take-private on the equity derivatives. As is typical under these transactions, you understand that GS will continue to act as an arms-length counterparty to you and the Company and as such would not be in a position to advise you on the equity derivative transactions.

In addition, you know that GS has an ABL outstanding with the company which has a change of control provision. We will need to discuss with you plans for the ABL in connection with the new financing to be put in place in connection with the take private.

We would expect to sign an engagement letter with you as soon as practical, which would include agreement on fees, our standard indemnification, reimbursement of legal expenses and a waiver of conflicts relating to the equity derivatives and would expect that you require any buy side consortium members to also sign on the obligations under the engagement letter. In addition, we would look to be indemnified and have our legal expenses paid to the extent GS becomes involved in connection with investigations into the Company and its CEO or associated shareholder lawsuits.

We understand you have received the necessary permission and will keep your financial advisors and deal counsel fully informed on the status of all litigation and governmental investigations involving the recent tweets and production issues as well as any shareholder or other material litigation.

As we have previously discussed, you understand that we will neither advise nor participate in any capital raises, rollovers or restructuring, debt or equity, unless we believe appropriate disclosure and timely disclosure has been made.

We agree to a working arrangement whereby,

- You will keep the special committee fully apprised of your work and to abide by their requests
- All future tweets and public communications will be pre-cleared with your legal and financial advisors.
- Our name will not be used without our consent.

You understand that our ongoing involvement with the you and the consortium is based on this understanding.

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Case Number:	3:18-cv-04865-EMC
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