

From: Connie Collingsworth [REDACTED]

To: jeffrey E. <jeevacation@gmail.com>

CC: Connie Collingsworth <[REDACTED]> "Larry Cohen"

Subject: RE: Update

Date: Mon, 21 Jul 2014 21:59:35 +0000

Attachments: PLR_200108012__IRC_Sec_s__170__2_23_2001.htm

Inline-Images: image003.png

Jeffrey,

As we discussed last week, the outstanding issues primarily relate to the grey areas of the continuing level of influence a donor is allowed to have over property (particularly stock) after it has been donated. As I mentioned, we are analyzing this both from the legal and practical perspective.

We have learned there may be more latitude under the CA version of UPMIFA for a donor as it relates to disposition of donated stock (versus NY). For example, the Silicon Valley Community Foundation (SVCF) has allowed a donor to include rights to retain an investment as long as the donor agrees to relieve SVCF from any fiduciary liability if the donor decides to retain the stock. CA law allows a donor to require a charity to retain some control over the investment, although conversations with CA tax exempt counsel this morning indicated that this could have a substantial adverse effect on the value of the donation. From a practical perspective, SVCF has not allowed this to be done. SVCF often works with donors, in advance of a donation, to develop a liquidation strategy over time and will entertain donor advice regarding sale of stock, but will not allow donors to have control over the sale of stock.

As to continuing voting rights, NPT says they will not allow this. SVCF has accepted a few donations of stock, but only in situations where the donor had previously put their voting interest in a voting trust well in advance of the donation, for a separate valid business purpose. (See attached Private Letter Ruling for an example of how this might work.) Again, although a donor can offer advice, SVCF has not allowed a donor to retain voting rights as part of a structure donation. We are continuing to consider other forms of Shareholder Agreements, as you suggested. The ultimate question may be a practical one of how comfortable a donor will be that the Community Foundation will follow the donor's advice as it relates disposition and voting when all the legal documentation will reflect that there is no obligation to accept the advice. **Your impressions on this question would be very helpful.**

SVCF said that their experience is that risk tolerance for potential insider trading issues (including optics) when founders and senior executives give stock and retain advisory or (in the case of Supporting Organizations) board representation often depends on the issuer of the donated stock. Some companies have expressed strong concerns to the community foundation about allowing donors be involved in any way about decisions of whether and when to sell stock. In these cases, the donors choose to give their stock to a DAF, which then makes the decision about liquidation (with donor advice but no participation). This is viewed as less risky than having the donor's representatives sit on the board of the SO. SVCF also noted that some companies will allow donors to be on the board of the SO, but not on the investment committee, so as to avoid creating any risk that the donor exercised any control (even as a minority board member).

We are finding these conversations to be useful and have calls scheduled with NYCT, Scwab and Fidelity. All of the information collected will be summarized, along with a advice regarding the applicable securities and tax advice, and our recommendations. The goal is to have these materials ready by next week.

At this stage, the plan is to complete the research before updating the diagram, as the recommendation regarding the structure will depend on the research results.

Let me know if you have any questions.



Connie R. Collingsworth

General Counsel
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From: jeffrey E. [mailto:jeevacation@gmail.com]
Sent: Monday, July 21, 2014 8:27 AM
To: Connie Collingsworth; Larry Cohen
Subject:

connie can you send me an updated org and structure chart. . foot note the relevant issues still outstanding?

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please note

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