Message

From: Peter Hamilton [PHamilton@stikeman.com]
Sent: 2017-04-26 10:38:22 AM
To: Michael Boll [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4811917e15054407b665fe16d12ff415-Michael Bol]; Glenn Zacher [GZacher@stikeman.com]
Subject: FW: OFHPA

FYI.

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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Wednesday, April 26, 2017 10:06 AM
To: Peter Hamilton
Subject: FW: OFHPA

Peter, I have been exchanging with Carolyn regarding how we should define "transfer". We want to make sure this all aligns with your theory and thoughts around the IESO role and transfer. Here (below) is my exchange with Carolyn – would you have a few minutes at 11 to discuss? Carolyn's initial thoughts are in black, and my responses are in red. Thanks, Steve

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From: ASHBOURNE, STEPHEN
Sent: Wednesday, April 26, 2017 9:46 AM
To: 'Calwell, Carolyn (ENERGY/MEDEI/MRI)'; JACKSON, ADAM

Cc: WILSON, JUDY; STOKES, BRYSON
Subject: RE: OFHPA

Hi Carolyn. My thoughts are below, in red.

"Transfer"

Blakes definition

"transfer" means (i) in relation to a portion [We only talk about a portion. We cannot transfer the entire "regulatory asset" (i.e., the variance account) under our scheme.] of the regulatory asset, the creation and [absolute vesting][This word properly distinguishes our case from a security interest] in the transferee of an investment interest [corresponding to a specified amount of the IESO funding shortfall] [This is the essential link to the funding shortfall amount. It can refer to the "right to recover amounts in the variance account" if that makes more sense. However, given the nebulous link between the regulatory asset and the investment asset, making the connection as to what (right of recovery) is "transferred", directly in the definition, makes sense to me] and [entitling the investment interest owner to recover clean energy adjustments attributable to the financing of such specified amount] [This is the other part of the link. Equating the specified amount of the "right to recover amounts in the variance account" to the financing of that specified amount draws the connection that I think is needed to make sense of the Stikemans language] and [to receive any related funding rebates] [FYI, the IESO payment obligation becomes a receivable to a FE, so we added the entitlement to receive here in order to tie it in wherever the term "transfer" is used], and (ii) in relation to an investment interest, an absolute assignment, conveyance, disposition or sale;

Parsed – notes in brackets

"transfer" means (i) in relation to a portion of the regulatory asset, (*see s. 21 – IESO changes go to recovery of the balance in the variance account*)

the creation and absolute vesting in the transferee *(included below)*

of an investment interest (*defined term relies on definition of investment asset which invokes the rights set out in s. 25xx*) [Agreed, but included to make the "corresponding" concept work]

corresponding to a specified amount of the IESO funding shortfall (*addressed in s. 22 with your changes that link the IESO variance[you refer to funding shortfall] to the investment interest and clean energy adjustment*) [I wanted to make the connection explicit in the definition of "transfer" so the connection would follow each use of the word. If it is bothersome, we can infer from s.22]

and entitling the investment interest owner to recover clean energy adjustments (*addressed in definition of investment asset*) [Agreed, but included to make the "attributable" concept work]

attributable to the financing of such specified amount (*see again s. 22*) [Again, this makes the connection much less nebulous and ties in the linkage directly into the use of the word "transfer"]

and to receive any related funding rebates, (*included below*)

and (ii) in relation to an investment interest, an absolute assignment, conveyance, disposition or sale; (*included below*)

Proposed alternative

transfer" means

(i) in relation to ~~the regulatory asset or~~ a portion of the regulatory asset, the creation and vesting in the transferee of an investment interest ~~in the investment asset~~ and any related funding rebates, ~~[including any act of IESO which IESO states is a "transfer" of all or a portion of the regulatory asset]~~ [In my view this clause has no meaning. It is saying "whenever we use the word "transfer" it means any act that IESO states to be a transfer". The word "transfer" is used as a verb and a noun, and for derivative purpose (e.g., transfer agreement; transferee). As a verb, the clause is saying that the word "transfer" imports the action (e.g., if IESO says that "transfer" means "forego or forbear", then I think this would in a convoluted way be saying "A foregoes and forebears to B" if the sentence is "A transfers to B". In fact the idea Peter Hamilton expresses is that "A foregoes and forebears to everyone". I think the forego/forebearance notion is best expressed in the text of the Act (as currently) on the basis of the intended "concurrent effect" of a "transfer", and not to muddle up the definition itself. As a noun, I have similar concerns (e.g., "The transfer by A to B" = "The forebearance by A to B").].

(ii) in relation to an investment asset, an assignment, conveyance, disposition or sale.

Regards, Steve

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