

**BETTER PLC  
SERIES A PREFERRED UNITS**

**Business Issues List**

Following are the open issues in connection with the three principal investment agreements that require input from the principals:

**General**

1. In several places in the agreements, it is contemplated that a super-majority of either Preferred Units or Preferred Directors will be required for votes of the Members or the Directors, respectively. Israel Corp. and the Company have suggested that for any such Members votes, the appropriate requirement should be a majority of the Preferred Units, including at least two Investors. Morgan Stanley, however, has requested that such Preferred Members votes should require at least 75% of the Preferred Units. Depending on the number of Preferred Units outstanding, this can change the requirement from two Investors to three Investors. With respect to supermajority Board votes, the Investors have suggested a unanimous approval of the Preferred Designees, while the Company has proposed an approval by a majority of the Preferred Designees, which is a difference between four or three Preferred Directors.

**Series A Preferred Unit Purchase Agreement**

2. Are the parties prepared to close on less than \$150 million in commitments (assuming VantagePoint is not able to close in time for the first closing)? The term sheet contemplates a minimum of \$150 million and identifies \$170 million of investor commitments. Note that in either instance, Israel Corp. would own a majority of the Series A Units outstanding at the first closing, which is why some supermajority requirement for certain Preferred Member votes may be required.

3. Israel Corp. has requested that within 90 days following the first closing the Company deliver a "Master Budget" showing how it intends to spend the full \$200 million (at a fairly high level). The first subsequent capital call would then be conditioned upon approval of this Master Budget by a supermajority of the Preferred Units. Thereafter, any amendment to the Master Budget would require the approval of a supermajority of the Preferred Units. Israel Corp. has requested that this budget be accompanied by a representation by the Company that the financial projections were prepared with diligence and care, and include good faith estimates and that the officers have no knowledge of material facts that may make the projections materially misleading. Israel Corp has also requested that this Master Budget includes milestones and satisfaction of those milestones will be a condition to the obligation to fund future capital calls.

4. The parties agree that future capital calls will be based upon a quarterly delivery of a budget covering the subsequent two quarters. As per the term sheet, this budget only requires the approval of a majority of the Board, so long as it is consistent with the Master Budget. Logically the quarterly budget would be delivered together with the financial statements for the prior quarter, which is due 45 days after the end of each quarter. (E.g., the financial statements for the quarter ended December 31 are due by February 14. These could be accompanied by a budget for the quarters ending June 30 and September 30. The related capital call could then be approved and funded by March 31.) The lawyers have all approved this process, subject to approval of the principals.

5. Morgan Stanley requests that all funding be in US dollars into a US bank account, unless the Board approves a capital contribution from an Investor in a different currency. Israel Corp. will need to verify that this arrangement is acceptable.

6. The reps and warranties need to be correct as of the first closing. The Investors have requested that a condition to future capital calls be added that requires that at such time there has been no breach of a representation that would result in a Material Adverse Effect (“MAE”) for the Company. In such an event, the Investors would not be obligated to make future capital contributions unless the breach is resolved in a manner that does not in fact create an MAE for the Company. The Company needs to verify that this is acceptable.

7. Israel Corp. has requested that the Company conduct a patent search within 90 days following the first closing and that as a condition to the first subsequent capital call the Company should be able to represent that, based on that review, it has no reason to believe that the business of the Company as planned to be conducted will material violate the IP rights of third parties. The Company’s IP counsel has recommended against such a process.

8. Israel Corp. has requested that Shai personally represent that: (i) he has the power and authority to enter into the agreements and that the consummation of this transaction will not violate any agreement to which he is a party; and (ii) the he is not in violation of any employment or other agreement with a third party by being employed by the Company or by contributing the IP to the Company and conducting its business plan.

9. The Investors have requested a statement that the use of a Delaware LLC is a temporary arrangement and the parties all agree to use their best efforts to reincorporate to a jurisdiction outside the US. The parties need to consider: (i) the time frame for completing this restructuring (90 days); (ii) the requirement for approval of the new structure (all Investors and Shai); and (iii) the consequences of a failure to reach an agreement on the restructuring (continue funding the LLC or obligations to continue funding cease).

10. Israel Corp. has requested an indemnification section whereby the Company and Shai personally would be obligated to indemnify the Investors for any losses they may

suffer due to any breach of any representation, covenant or agreement of either the Company or Shai, with Shai's dollar obligation being subject to a limit on his liability.

### **Investor Rights Agreement**

11. Israel Corp. has informed us that it is obligated by its public reporting obligations to have the Company deliver quarterly financials reviewed by an independent public accountant within 45 days after each quarter and audited annual financials within 60 days following year-end, including an MD&A prepared by the Company each quarter. The Company needs to confirm that this is acceptable.

12. Israel Corp. has also informed us that the Company must deliver financial statements prepared in accordance with International Financial Reporting Standards (IFRS). The US Investors will need to receive financial statements prepared in accordance with US GAAP. The Company needs to confirm that this is acceptable.

### **Operating Agreement**

13. Currently the agreement contemplates that the Company will distribute the proceeds of a sale of the Company that exceeds the preference amount payable to the Preferred Members to all Members based on their pro rata interests. Israel Corp. has suggested that if such a sale occurs before the full \$200 million is invested, the proceeds should be distributed 2/3 to the Investors and 1/3 to the Common Members to reflect the ultimate intended allocation of economic interests. (E.g., if the Investors have invested \$100 million and the Company is sold for \$600 million, the current draft agreement would divide the proceeds between the Preferred and Common 50-50 (\$300 million each), while the Investors proposal is that the Preferred would receive 2/3 (\$400 million) and the Common would receive 1/3 (\$200 million)). Currently the Investors have a put right to require the Company to accept the full \$200 million investment as a possible means of readjusting this result..

14. We need to put a value on Shai's contribution of IP for purposes of a capital account. The amount of this capital account will not have an economic effect on the parties if either: (i) the ultimate liquidity event is a positive return for Shai and the Investors, or (ii) the ultimate liquidity event is at or below the amount of the Preferred Return. In a small number of scenarios in between, the amount of Shai's capital account could make a difference. One possible method of valuing his investment is to use a 10-to-1 ratio on the value of Preferred v. Common Units (a fairly normal start-up differential), which would value Shai's 60,000,000 Common Units at \$6 million. The parties need to verify that this is acceptable.

15. The Preferred Units have a preferred return of 8% per annum. The Investors have suggested that this return should be compounded semi-annually, while the Company has suggested that no compounding is more standard and appropriate.

16. The term sheet calls for the Preferred Units to be redeemable under certain circumstances, without specifying a time frame for the redemption payments. The Investors suggest that the full amount be redeemable at once, while the Company suggests redemption over three years. If all Units are not redeemed immediately, then the Investors suggest that all voting rights for the Preferred Units remain in place until the redemption is completed. In addition the current draft anticipates a possible promissory note for the redemption amount.

17. We need to determine the minimum number of Units that need to be outstanding for the Preferred and Founder protective provisions that apply in Section 4.4 to continue in effect. It is suggested that 60 million Preferred Units (30%) be used in Section 4.4(a). For the Founder protective provisions, the Investors have suggested 30 million Units must remain outstanding, which represents 30% of the votes that Shai will have. The Company needs to confirm that this is acceptable.

18. Morgan Stanley has suggested that the protective provisions should include an IPO. The Company believes that the Qualified IPO definition avoids the need for this addition.

19. The Company has suggested that the Founder's protective provisions should include a dissolution, liquidation or winding-up of the Company because these protective provisions only last until 60 million Preferred Units have been issued, and a dissolution prior to that time without Shai's approval would be inappropriate.

20. There are several quorum provisions (Sections 4.17, 7.6, 7.8 and 13.2). The Investors have suggested that each of these provisions include a requirement that a majority of the Preferred Units or Preferred Designees be in attendance to constitute a quorum.

22. Section 8.10 contemplates a put and call arrangement with respect to Shai's Units in the event of his death or disability. Israel Corp. is unwilling to have the Units put to the Company but wants to retain the call option. The Company suggests that both the put and call be eliminated.

23. In Section 8.11 it is contemplated that Shai's unvested Units will vest upon a change of control of the Company. This provision is not in the term sheet.

24. Morgan Stanley has suggested that upon a conversion of Preferred Units into Common Units, the Preferred Holders would receive Common Units reflecting the value of the Preferred Return. The Company has proposed the standard arrangement whereby the conversion ratio is one-to-one (subject to anti-dilution protection).

25. Israel Corp. has suggested including a proxy to enforce the drag-along provision. Morgan Stanley has stated that as a matter of policy they are not willing to provide a proxy.

26. Maniv has requested that they receive an observer right for all Board meetings and all Board Committee meetings at which any Preferred Investor has a right be included on the Committee. They have also suggested that no Board Committees should be created without the unanimous approval of the Board. The Company needs to confirm if this is acceptable.