



**Special Board of Education Meeting
May 18, 2023
Idaho State Board of Education
OSBE Conference Room
650 West State Street, Boise, ID 83720**

A special meeting of the Idaho State Board of Education was held via Zoom teleconference May 18, 2023, with the call originating from the Office of the State Board of Education in Boise. Board President Dr. Linda Clark called the meeting to order at 1:00 p.m. (MT).

Present

Board President Dr. Linda Clark
William G. Gilbert, Jr.
Superintendent Critchfield
Kurt Liebich

Dr. David Hill
Shawn Keough
Cindy Siddoway
Cally Roach

Absent

None

Thursday, May 18, 2023 - 1:00 p.m. (MT)

Business Affairs and Human Resources

1. Formation of Affiliated Entity to Acquire Private Higher Education Institution and Authorization for Execution of Asset Purchase Agreement - Action Item

Board President Dr. Clark turned the time over to Scott Green, President of the University of Idaho, to give the Board information pertaining to UI's request to form a 501(c)(3) which will be used to purchase the University of Phoenix.

Background

The University of Idaho (University) seeks approval from the Regents of the University of Idaho (Regents) for the formation of NewU, Inc., an Idaho non-profit corporation (NewU, Inc.) to qualify under Internal Revenue Code section 501(c)(3) for the purpose of acquiring substantially all of the operating assets and assuming certain of the operating liabilities of the University of Phoenix, Inc, and to thereafter operate an accredited institution of higher education in substantially the same manner as is currently operated by UPh.



The Regents will serve as the sole member of NewU, Inc., with authority to appoint and remove the directors of NewU, Inc. and to have all of the powers and authorities of a sole member under Chapter 30, Title 30, Idaho Code (the Idaho Nonprofit Corporation Act), and pursuant to the organic documents of NewU, Inc.

The Higher Education Task Force delivered recommendations on “how to best address Idaho’s K-through-Career education and job training needs beyond high school” in October 2017. The final report included the following recommendations:

- Establish a state-wide digital delivery system
- Remove barriers to access for place bound or time bound students
- Expand online college delivery to non-completers or adult learners

The University of Idaho believes this acquisition will help in meeting these objectives.

Kent Nelson, General Counsel, University of Idaho, gave the legal structure data to the Board.

Legal Structure

- Formation of a new non-profit corporation (“NewU”)
- The governance structure for the University of Idaho through the Board of Regents remains unchanged
- The governance structure for NewU starts with the Board of Regents as the Sole Member of the non-profit corporate entity
- The permanent NewU Board will be elected by the Board of Regents where the majority will be independent of the Sole Member
- The NewU will acquire operating assets and assumes certain liabilities of University of Phoenix upon completion of closing conditions
- Closing conditions include, but not limited to:
 - Higher Learning Commission (“HLC”) and Northwest Commission on Colleges and Universities (“NWCCU”) accreditation
 - 501(c)(3) nonprofit approval
 - Ability to successfully finance the transaction

Mrs. Keough asked for clarification whether the Board of Regents is the sole member of NewU, Inc. because the references in the various attachments does not seem to be clear. Mr. Nelson said that was correct, the Board of Regents is the sole member of NewU, Inc.

Board President Dr. Clark asked when the election of the members to the NewU, Inc. Board will take place. Mr. Nelson said that election runs through the Board of Regents. The elections will happen after the closing of the deal has been completed.



Mr. Liebich asked what statutory authority exists for the Board of Education to create a 501(c)(3). Jenifer Marcus, Deputy Attorney General, Idaho State Board of Education, said that authority comes from the Idaho Non-Profit Corporation Act. The broader authority for governance of the University comes from the Idaho Constitution.

Mrs. Siddoway asked about the liabilities that the Board of Education would assume. Mr. Nelson said the liabilities will lie within the 501(c)(3) corporation which is a separate legal entity from the Board of Regents, or the University of Idaho.

There were no further comments or questions from the Board.

Brian Foisy, Chief Financial Officer, University of Idaho, gave the financial information to the Board.

Financial Structure

NewU Inc. anticipates financing acquisition of the UPh assets with a capital raise estimated to be \$685,000,000. The capital raise will provide funds for the following estimated uses: \$550,000,000 purchase price; \$26,000,000 working capital / liquidity; \$68,225,000 required reserves and \$40,000,000 costs of issuance. Under the Asset Purchase Agreement, the Seller has agreed to leave \$200,000,000 of unrestricted cash on the balance sheet of NewU, Inc., in addition to normal working capital, at financial close.

The financing is intended to be executed through a public market bond transaction structured as level debt service with an estimated 21-year final maturity. Current estimates include 80% of tax-exempt financing and 20% taxable. Lenders are expected to require the following financial covenants of NewU, Inc.: (1) debt service coverage ratio of 1.25 – 1.50x and; (2) liquidity covenant of 60 days cash on hand. The primary security available for lenders will be a lien on NewU Inc. revenues and mortgages on any physical and potential intangible assets. Actual terms of this financing will be subject to financial conditions at the time of closing.

The University anticipates receiving financial benefits from NewU, Inc. initially in the amount of \$10,000,000 annually. Additional supplemental benefits of up to approximately 25-30% of surplus cash flow may also be available subject to the financial performance of NewU, Inc.

In addition:



- Based on valuation of University of Phoenix, the transaction will be value accretive on day 1
- Estimated capital raise of \$685MM - \$550MM purchase price plus required reserves, working capital and costs of issuance
 - NewU cash at closing: \$225MM (10% funded from offering)
 - Primary lender security is NewU revenue
 - Level debt service amortization with 20-year final maturity; projected debt coverage ratio of 1.78x –1.86x between FY24 and FY30
 - Estimated 80% tax-exempt / 20% taxable split
- Supplemental Educational Funding to University from NewU: \$10MM annual fixed amount plus a percentage of net cash flow subject to operating performance
 - Anticipated cash flow to the University of Idaho of \$153MM -\$170MM by FY30, cash flow to NewU of \$320MM -\$337mm by FY30
- Potential University financial support of NewU: up to \$9.9MM annually in contingent liability and up to \$25MM line of credit from the University's Strategic Initiatives Fund ("SIF")
 - Estimated one-notch downgrade to University credit rating 2

Mr. Gilbert asked about the working capital adjustment. Mr. Foisy said the \$200 million being left by U of P and the other \$26 million funded through the debt issue will be used for the working capital adjustment. Mr. Gilbert further asked what kind of working capital adjustment could there be in addition to the \$200M. Mr. Foisy said that number could be in the neighborhood of \$100M.

Mr. Liebich said the cash flow to NewU through FY30 is estimated at \$320-\$337M and questioned whether that was after the amortized debt payment is made. Mr. Foisy said that was correct, those figures are after they make debt service payment and after the \$10M payment to the University, which assumes a 25% share.

Mr. Gilbert asked if there would be a chance for the NewU Board to increase the monies to the University if financial performance remains the same. Mr. Foisy says that may be a possibility since there are no other commitments to that cash flow. The Board of Regents can change the distributions of monies after the debt service is paid.

Mrs. Roach asked if the new Board could pay down debt early. Mr. Foisy said that opportunity does exist.

There were no further comments or questions from the Board.



President Green began the discussion on the risks and mitigations being deployed concerning this transaction. There are risks associated with the acquisition, but based on what is known at this time, those risks have been mitigated in the transaction price and other contingencies. Maximum financial exposure to UI is \$10M annually, but cash flow modeling of NewU shows it generates unrestricted cash flow well in excess of that amount annually. The total purchase price is \$550M. The total bond issuance is estimated at \$685M. The \$135M difference is related to capital market requirements and costs. These estimated terms are very conservative for a bond closing that may not occur for another six months.

Risks and Mitigations

	Risk	Mitigation
Financial Markets	University financial consideration and potential financial support is subject to future market conditions	Successful best efforts financing is a condition to close in the legal agreement. Potential hedging strategies under consideration to mitigate interest rate risk
Title IV Liabilities	University is prepared to co-sign University of Phoenix's Program Participation Agreement ("PPA") and be financially responsible for their Title IV liability related to pre- and post-closing matters	Contractual and other protective measures to mitigate title IV liability exposure
Cash Flow Seasonality, Liabilities	Given the nature of higher education business model, there are seasonality of cash flows and significant working capital required to operate	Significant and adequate cash on hand for NewU was negotiated as part of purchase price
Transactional	Various inherent risks in complex acquisition of operating entities	Reps and Warranties insurance and operating covenants



Dr. Hill asked for more information on the Title IV liabilities and how will UI manage those risks. President Green said UI has negotiated insurance that would be more than sufficient to cover any issue that bled over to the UI. A careful review of the policies and processes at U of P has also been vetted concerning student loans. The evaluation of risk at U of P is lower than UI's.

Mr. Gilbert asked what the coverage limit was and what is the deductible. President Green said the insurance policy was for over \$250M in coverage with a deductible of \$40M.

Mr. Liebich asked if securing the insurance was a condition to close. President Green said that was correct and UI was very close to buying the policy.

There were no further comments or questions from the Board.

John Duke, Merger and Acquisition Counsel, reviewed the closing conditions that will be required before this deal is complete.

Closing Conditions

Closing of the acquisition and associated financing will likely not occur before late 2023 or early 2024 because approvals from The Higher Learning Commission (HLC), the accrediting body for UPh (which will also be the accrediting body for NewU, Inc.) as well as from Northwest Commission on Colleges and Universities (NWCCU), the accrediting body for the University of Idaho, are a condition of closing.

Closing is also contingent upon receipt of the official letter from the Internal Revenue Service acknowledging that NewU, Inc qualifies as a public charity under section 501(c)(3) of the Internal Revenue Code.

Lastly, closing does not occur until sufficient funds from the anticipated financing are in hand to fully fund the purchase.

In addition, the following conditions must be met.

For a complete list of Condition to Closing requirements, please go to <https://boardofed.idaho.gov/meetings/board/archive/2023/051823/01%20Agenda-Material%20Complete.pdf> (page 19-20 = Term Sheet: Asset Purchase Agreement, pg. 2 - 3).



To review the Representations and Warranties please go to <https://boardofed.idaho.gov/meetings/board/archive/2023/051823/01%20Agenda-Material%20Complete.pdf> (page 20-23 = Term Sheet: Asset Purchase Agreement, page 3-6).

Mr. Liebich asked what was the gating item that will drive the timeline to signing the asset purchase agreement, and closing the transaction. Mr. Duke said the longest item will be the HLC accreditor approval which they expect to have by the November / December timeframe.

Mr. Gilbert asked about the U of P management team retention and the agreement being made with them. President Green said if this motion is approved UI will have key people review the compensation package for the employees of U of P. The hope is that many of the employees will transition to the new entity.

Mr. Liebich asked about the U of P leadership team and what their thoughts were in switching to a not-for-profit model. President Green said he believed the new management team and many of the employees were excited about this opportunity.

There were no further comments or questions from the Board.

Covenants

Covenants affect the operation of the business between signing and closing. The covenant states that the business needs to be in the same condition at closing as it is today.

A full list of the covenants can be found at; <https://boardofed.idaho.gov/meetings/board/archive/2023/051823/01%20Agenda-Material%20Complete.pdf> (page 23-24, Term Sheet: Asset Purchase Agreement pg. 7-9).

There were no comments or questions from the Board.

Summary

Based on due diligence completed, U of I believes that the proposed deal aligns with the strategic objectives of the University and the State of Idaho by offering the following.

- Access to Education: Opportunities to enhance affordable online education to the entire state including place bound rural students and augment goals identified by Higher Education Working Group



- Mature Platform: Expedited ability to create an online education platform without extensive learning curve and inherent risks associated with building new
- World Class Systems: Best in class operations, compliance, recruitment and persistence systems available to the University of Idaho and Idaho's education system
- The transaction generates significant cash flow on an annual basis to support strategic initiatives

BOARD ACTION

M/S (Gilbert / Hill) I move to approve the Resolution proposed by the University of Idaho, the title of which is as follows: A RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF IDAHO: (A) AUTHORIZING CREATION OF NEWU, INC., AND (B) AUTHORIZING THE ACQUISITION BY NEWU, INC. OF SUBSTANTIALLY ALL OF THE ASSETS AND ASSUMPTION OF CERTAIN LIABILITIES OF THE UNIVERSITY OF PHOENIX, INC. AND RELATED TRANSACTIONS. A roll call vote was taken, and the motion carried 8-0.

Mrs. Roach asked if U of P has shared any information on student success. UI did not have that information available but will share that data with the Board.

Mr. Gilbert asked President Green to address how this purchase will benefit students across Idaho. President Green said the value proposition to the State of Idaho is the opportunity to advance affordable online education in the entire state. In addition, U of P already has a mature platform for delivering courses. Mr. Gilbert asked how many Idaho citizens were already students at the U of P. President Green said the number he has heard was over 600. Mr. Gilbert asked if Idaho students will get in-state tuition pricing if they became students of U of P. President Green said tuition assistance / scholarships would be made available but a price break for Idaho students was not in the present formula.

Board President Clark asked about adult learners. She wanted to know if expanding the dual credit program to rural Idaho students to access GEM courses was possible. President Green said yes, because with this acquisition there will be many more courses available for students to access remotely with qualified faculty.

Mr. Liebich mentioned the number of emails the Board office has received around this issue since the topic was made public, and he asked President Green to address some of the concerns expressed. They were; Is Idaho taking on reputational risk due to U of P's previous missteps; some faculty have expressed a concern that they were not brought into the process sooner and finally, the public expressed frustration that they were not allowed time to respond or give their input before this matter came up for a vote. President Green said he was aware of the reputational risk but with the new



management team at U of P who are committed to student success, along with UI's due diligence they believe that issue is in the past. The faculty situation was a difficult one due to the non-disclosure agreement (NDA) that was signed between the buyer and the seller. UI's Faculty Leadership was brought into the discussion in the early stages and while they also wanted to share this information with the entire faculty they were bound by the NDA's. As for the public input, President Green asked the members of the public to read the FAQ's that are available online and to please send in your feedback and thoughts. That page can be found at:

<https://www.uidaho.edu/president/communications/resources-information/university-of-phoenix-affiliation>

Superintendent Critchfield asked for clarification. The U of P can no longer use the name U of P. President Green said that was correct. Further the U of P will not become the UI and the UI will not become the U of P.

Mr. Gilbert asked about some of the other acquisitions (Purdue / Kaplan and others) made between institutions and online platforms and wondered how this would be different. President Green said there will be a clean break between the buyer and seller in this situation so they will not have any direct involvement in the day-to-day running of the school. The other acquisitions mentioned did not have a clean break included in the agreement and that led to some confusion.

There were no further comments or questions from the Board.

There being no further business a motion to adjourn was entertained.

M/S (Gilbert / Critchfield) I move to adjourn the meeting at 2:31 p.m. (Mountain Time). A roll call vote was taken, and the motion carried 8-0.