

November 12, 2019

Remarks for Resolution No. 19-213

“Supporting an Amendment to a Security Agreement with Delaware Board of Trade Holdings, Inc.”, and “Amendment No. 1 to Security Agreement”

By Karen Hartley-Nagle, President of New Castle County Council

Background.

It's concerning New Castle County Council was not notified of the recent acquisition of DBOT by Ideanomics. This change in ownership was discovered after I reached out to DBOT to review their financial documents. A meeting was set for June 20th, 2019 and attended by DBOT's attorney, three DBOT representatives, an Ideanomics representative, our County Auditor, and me.

At the meeting, we discussed setting up a meeting with Dr. Bruno Wu, the Chairman of Ideanomics, a possible early full or partial payback by Dr. Wu/ Ideanomics of the three-million-dollar loan to New Castle County, and potential goodwill investments in startups located in New Castle County to create jobs. The County investment in DBOT was always about good-paying job creation in New Castle County.

Following up with a mid-October call by me to DBOT's attorney, I was informed a deal was in the works with similar terms like we're considering now. With this latest information, I placed a call to our County Attorney and requested Council be briefed on changes concerning DBOT, the Ideanomics acquisition of DBOT, and the stock swap deal currently being considered without Council's input – we needed information and transparency. Apparently, this call led to the drafting of Resolution No. 19-213 and Amendment No. 1 of the Security Agreement.

In summary, what we discussed in June changed into an Amendment heavily favoring Ideanomics at the expense and risk of the County. This was a major turnaround from what was previously discussed.

I was asked, “What do I think of this proposal”?

In this deal as defined in “Resolution No. 19-213, Supporting an Amendment to a Security Agreement with Delaware Board of Trade Holdings, Inc.”, and “Amendment No. 1 to Security Agreement”, we get all the bad and none of the good. The “Amendment” includes changes loaded in Ideanomics favor, including, giving up the rights to inspect and copy records and financial documents. There is no quantitative disclosure about the swap of collateral. And the original collateral in the November 25, 2015 “Agreement” represented by DBOT as valuable has been suggested as nearly worthless from the start. Why were we not notified of the adverse change in collateral as specified in the Securities Agreement? And what is the worth of the current collateral stated as license to access and use Neutron Software?

Looking over the terms of the “Amendment” and some basic research, there are problems.

Ideanomics stock price has dropped approximately 87% from its 2016 high of \$8.25 a share. The stock's yearly high is \$3.56, and the stock closed on Friday, November 8, 2019 at \$1.09 per share, over a 65% drop this year. Of great concern here is a Securities Fraud Class Action Lawsuit pending against Ideanomics that was filed on July 19, 2019 in the U.S. District Court Southern District of New York (Case 1:19-cv-06741, Document 1, 23 pages) alleging Violations of the Federal Securities Laws for making false and misleading statements to its shareholders and the investing public.

And separately, according to Newton (2019), Fintech Village, a “\$400-plus million dollar global center for technology and innovation that [Ideanomics] plans to build on the site of the former UConn West Hartford campus” in Connecticut has been problem-ridden, “including a disagreement with the state regarding a \$10 million incentive for job creation promised by the Malloy administration, and a requirement for bonding for the remediation, which is costing multiple times more than anticipated”. Our taxpayer money is at risk and I am very concerned about supporting this deal for the above and following reasons.

As I understand it, the stock issued to the County will be Common Stock in Ideanomics – which could water down the price per share. If the new stock issued drops below the value owed at the end of the loan period in November 2020 – more stock (True-Up Stock) will be issued to make up for the decline in the price – and we have to hold onto it for six months before it can be sold – this locked-up stock cannot be sold and will not be earning interest on taxpayers money. If the price of the stock goes up – the County does not receive any of the gain (p. 2, no. 1). The county takes all the risk and does not benefit for sharing that risk.

If Ideanomics fails and defaults, we have no collateral or recourse under this Amendment other than the company’s stock. Some of the rights the County is giving up from the Agreement once the Amendment is signed is getting access to the books and records of the company and getting the County’s attorney’s fees and other costs reimbursed if it had to sue. We give up our appointment of attorney-of-fact to enforce our rights, rights we have now at debtor’s expense in case of default.

We find under “Representations and Warranties of Secured Parties” (p. 6, no. 8) the cautionary buyer information and “Receipt of Information” (p. 7, no. 8(f)). This is a very risky proposition, and this indemnifies Ideanomics against any claims. If they go bankrupt, we get nothing. Once a company files for bankruptcy, generally, the creditors are paid in the following order: 1) Secured creditors 2) Unsecured creditors and then, 3) Shareholders. Usually, little to nothing is leftover for shareholders after paying the more senior creditors. We go from being paid first – to last – or not at all.

Then we have the “Sophisticated Investor” clause (page 6, number 8(b)) that states, “Secured Party is an experienced and sophisticated investor and has such knowledge and experience in financial and business matters as are necessary to evaluate the merits and risk of the transactions contemplated under this Amendment. Secured Party acknowledges and understands the investment in the Ideanomics Common Stock and the True-Up Stock, if applicable, involves substantial risks...”. The purpose of this clause identifies this deal as a risky venture and we’re going in with eyes wide open as so-called experienced and sophisticated investors.

In the Promissory Note (p.2, no. 7(c)) “Line of Business” says, until the Note is paid in full, DBOT cannot “enter into any other business directly or indirectly, except for operating a private stock exchange in Wilmington, Delaware, or that are reasonably related thereto”. Is this reasonably related and the intent of the loan?

After reviewing the original DBOT Security Agreement, the DBOT Promissory Note, the DBOT Neutron Services Agreement, the Schedule A to UCC-I Financing Statement, Resolution No. 19-213 and Amendment No. 1 to Security Agreement, I easily see the County is giving up too many rights it has in the case of a default. Why would we give up those rights? They are not minor. And we see under the Amendment, the County’s rights are limited to keeping the stock, which could become worthless.

What would I like to see happen?

As we discussed in the June meeting, I would still like to see Dr. Bruno Wu personally guarantee the three-million-dollar loan if Ideanomics is unable to repay the loan when due. Or, see Ideanomics obtain a surety bond to protect the County and our citizens. Our constituents deserve no less.

In good faith, we lent hard-earned taxpayer money with a promise of jobs – not stock in a risky company – with no jobs for New Castle Countians. Therefore, **I ask for Resolution No. 19-213 to be tabled to seek more information, time to hire and consult with outside financial counsel, and explore a less risky option that retains our rights.**

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