

Board Meeting
July 19, 2018

DELEGATE AUTHORITY TO THE VICE PRESIDENT/CHIEF FINANCIAL OFFICER AND COMPTROLLER TO NEGOTIATE AND EXECUTE ASSET TRANSFER AGREEMENT WITH THE JOHN MARSHALL LAW SCHOOL, CHICAGO

Action: Delegate to the Vice President/Chief Financial Officer and Comptroller the Authority to Negotiate and Execute Asset Transfer Agreement with The John Marshall Law School

Funding: No New Funding Required

The Chancellor, University of Illinois at Chicago, and Vice President, University of Illinois, with the concurrence of the Provost and Vice Chancellor for Academic Affairs and other appropriate administrative officers, recommends the delegation of authority to the Vice President/Chief Financial Officer and Comptroller to negotiate and execute an Asset Transfer Agreement (ATA), together with an Interim Implementation Agreement (IIA), and other necessary documents, incidental to the University's acquisition of The John Marshall Law School (JMLS), a tax-exempt Illinois not-for-profit corporation. Concurrently with this item, the Board will approve a separate item authorizing the establishment of a new school of law at UIC, through the JMLS acquisition, to be known as the UIC John Marshall Law School.

UIC and JMLS leadership have engaged in extensive discussions to explore the benefits of JMLS's becoming a part of UIC and have negotiated in good faith to establish the material terms of the ATA. Staff and faculty from UIC, University System offices, and JMLS, and their respective legal counsel and other outside consultants, have performed due diligence on a range of issues, including finances, real estate, accreditation,

employment transitions, alumni and development, and IT and systems transitions. In addition, issues of educational policy, academic collaborations, and student interests have been considered. The conclusion of these working groups, the UIC Senate, the University of Illinois Senates Conference, and University leadership, is that the acquisition of JMLS is, in the near-term as well as the long-term, both beneficial and feasible for UIC, the University of Illinois System, and JMLS. Faculty, staff and students who attended a series of town hall meetings held at both UIC and JMLS in 2017 and 2018 were supportive of the proposed establishment of the UIC John Marshall Law School.

The broad structure of the transaction, to be carried out under the terms of the ATA, will provide for all of the operating assets of JMLS to be transferred to the University upon closing, and for the faculty, administrators and staff of JMLS to become University employees. Subject to receiving necessary approvals from the University of Illinois Foundation (UIF), the ATA will further provide for the transfer to UIF for the benefit of the UIC John Marshall Law School the following assets: the four properties that comprise the JMLS campus in the south loop area of downtown Chicago (excluding three floors of office space at 321 South Plymouth Court); JMLS's endowed, restricted and unrestricted funds; and, such funds held by The John Marshall Law School Foundation, (a separate tax exempt Illinois not-for-profit corporation). The JMLS and JMLS Foundation assets will be transferred to the University and to UIF in consideration for the University's promise to fully integrate the law school, and its current students, faculty and staff, into UIC, and to continue operating the school at its current location in downtown Chicago for a period of at least five years in accordance with University policies and the terms of the ATA. The University will not be required to make any cash payment for the assets

of JMLS and its Foundation, but, as part of the ATA, the University will assume certain defined liabilities of JMLS.

The ATA will include the following key provisions:

- The UIC John Marshall Law School will be a unit of the University of Illinois at Chicago, (separately accredited from the University of Illinois College of Law, Urbana), and subject to all University policies.
- Unrestricted, and restricted funds, and endowments (as permitted by applicable law) will be gifted to UIF to be used for the benefit of the UIC John Marshall Law School; provided, that JMLS and the JMLS Foundation will retain unrestricted funds for a period of approximately five years in amounts appropriate to meet each entity's ongoing obligations and anticipated expenses, and existing known, and unknown future liabilities, during their wind-down periods, as determined on the date the transaction closes. At the end of the wind-down periods, all remaining unrestricted cash will be transferred to the UIF subject to the terms of gift agreements acceptable in form and substance to all parties.
- JMLS will grant to UIF, pursuant to an agreed form of gift agreement, for the benefit of the UIC John Marshall Law School, a five-year, triple-net leasehold, with all expenses, including capital expenditures, flowing to the tenant.

The University will be the sub-tenant of the premises under an agreement with UIF pursuant to which the University will be responsible for all lease expenses and any capital expenditures. Subject to the ongoing satisfaction of the premises covenants by the University, which have a five-year duration and which include a requirement that the University continue to occupy substantially the same amount of space on the premises as of the date of closing, JMLS will transfer title to the premises to UIF five years after closing in accordance with the terms of a gift agreement acceptable in form and substance to all parties. The deeds to the JMLS properties will be executed and placed in escrow at closing to allow for an expeditious transfer at the conclusion of the five-year lease period.

- Liabilities and obligations arising out of the operation of JMLS before closing will remain the responsibility of JMLS. Post-closing and other assumed liabilities will be the responsibility of the University. The University will assume the liabilities of JMLS except:
 - Any liability of JMLS under employee benefit plans, including for paid time off, accrued but unused vacation and sick leave.
 - Obligations of JMLS under any employment, severance, retention, or

termination agreement.

- Taxes for periods that end before the closing.
- Transaction related fees and expenses as agreed in the final ATA or IIA.
- Liabilities of JMLS arising under the ATA.
- Litigation and other proceedings existing as of closing.
- Any liability arising under any tax, employment, or bulk sales law accrued on or before closing.
- Any liability associated with an excluded asset.
- Liabilities and obligations arising out of the operation of JMLS at or before closing.
- Due diligence will be substantially completed before signing the ATA subject to any scheduled exceptions as mutually agreed by the parties.
- JMLS and the University will make standard representations and warranties in the ATA, subject to scheduled exceptions. The representations and warranties to be made by JMLS will include, without limitation:
 - Corporate organization and authority.
 - Audited financial statements.
 - Tax matter compliance.
 - Personal and real property identification and ownership.
 - Compliance with laws applicable to the operations of JMLS.
 - Compliance with educational laws.
 - Business permits.
 - Contract validity and compliance.
- Pending or known legal proceedings.
- Intellectual property rights.

- Employment matters.
- Environmental compliance.

- During the period between adoption of this Board item and the closing, the University and JMLS will diligently and in good faith seek accreditation from the Higher Learning Commission and American Bar Association, and approvals from the Illinois Board of Higher Education and U.S Department of Education. These regulatory approvals will be conditions precedent to closing.

- Before the closing, the University will offer employment to all then current salaried and non-salaried full and part-time employees of JMLS, with the exception of agreed exclusions, such as adjunct faculty. All transferring employees will be treated in accordance with University and UIC employment policies and rules. Tenured faculty will remain tenured at UIC after the closing subject to UIC's tenure faculty policy. JMLS faculty with emeritus status will be recognized as such at UIC subject to UIC and University policies. All transferring employees will be afforded immediate participation in University and SURS employee benefit plans and programs in accordance with their respective terms.

- UIC will retain the current JMLS law students (without any re-application requirements) after the closing and will provide those students with similar financial aid assistance and credit for completed and in-process course work on the same terms that were provided by JMLS before the closing (including honoring each student's grades and grade point average). Additionally, JMLS law students will be entitled to the same privileges, including access to housing and athletic facilities, and have the same responsibilities as other UIC professional and masters students.

- JMLS alumni will be able to obtain a UIC John Marshall Law School diploma for a nominal fee.

- For a period of five years after closing, JMLS will license to the University its trademarks, logos, and other intellectual property not otherwise transferred to the University at closing. Ownership of the JMLS intellectual property will transfer to the University at the end of five years unless there is breach of the real estate premises covenants by the University that has not been timely cured.

- JMLS will agree that, to the extent any insurance policy held by JMLS is not a "claims occurred" policy, JMLS will obtain tail coverage that is reasonably estimated to be sufficient to cover claims related to any

liability that arises out of the pre-closing activities of JMLS. The University and JMLS will indemnify each other for agreed items, subject to applicable Illinois law. The ATA will contain negotiated limitations to the indemnification, including scope, duration, deductibles, and caps on damages.

- JMLS will agree from the time of signing the ATA through the closing date to continue to operate the law school in the ordinary course of business consistent with past practice, except as set forth in the ATA and as otherwise mutually agreed by the parties. By mutual written agreement, the ATA will contain standard provisions concerning termination for material breaches that are not cured within agreed time frames. Additionally, if the closing has not occurred by October 31, 2020, either party may terminate the ATA, provided that the terminating party is not responsible for the failure to close.

The parties will also enter into the IIA that will, among other things, establish transition committees and procedures to address systems transition and integration work and to provide a mechanism for determining major operating decisions between the time of signing the ATA and closing. UIC has hired a project manager to oversee all aspects of the transition and integration. Subject to receiving approvals from all relevant state and federal educational agencies and accrediting bodies, the transaction is expected to close in July 2019, in anticipation of the first class matriculating at the UIC John Marshall Law School in the fall 2019 semester.

The Vice President/Chief Financial Officer and Comptroller is hereby authorized to negotiate and execute the Asset Transfer Agreement, the Interim Integration Agreement, and such other documents as may be necessary to consummate the transaction, all on terms consistent with the above-described provisions.

The Board action recommended in this item complies in all material respects with applicable state and federal laws, University of Illinois Statutes, The General Rules Concerning University Organization and Procedure, and Board of Trustees policies and directives.

The President of the University concurs with this recommendation.