2011 AAPA
Port Administration & Legal Issues Seminar

Project Financing Structures

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Sources of Project Financing

- Direct debt obligations
- Special facilities obligations
- Public-private partnerships (P3s)
- New Markets Tax Credits (NMTCs)
- Pay as you go
- On behalf of governmental entity financing
Direct Debt Obligations

Pledge of port’s general revenues

Port issues debt / Sells bonds either by competitive bid or a negotiated sale to underwriter;

Underwriter sells bonds to investor; Underwriter obtains underwriter’s discount

Bond proceeds fund construction

Port (Issuer / Debtor)

Indenture Trustee / Paying Agent

Debt Service satisfied out of general revenues of port

Investor (Creditor)

Principal and interest repayments
Direct Debt Obligations (cont.)

- Port construction financed from revenue bond proceeds
- Bonds secured by the general revenues of the port (senior/subordinate pledge)
- Rate covenant
- Issuance of additional parity bonds and coverage requirement
- Other financial covenants
Special Facilities Obligations

Tenant

Pledge of lease payments from tenant

Port

(Issuer / Debtor)

Debt service satisfied to extent of lease payments made by tenant

Indenture Trustee / Paying Agent

Principal and interest repayments

Investor

(Creditor)

Obligation not secured by pledge of port’s general revenues

Port issues debt / Sells bonds either by competitive bid or a negotiated sale to underwriter;

Underwriter sells bonds to investor; Underwriter obtains underwriter’s discount

Bond proceeds fund construction

Tenant makes lease payments to Port
Special Facilities Obligations (cont.)

- Enabling legislation and bond indentures/resolutions must permit carve-out of special facility revenue
- Bonds are payable solely from the lease payments paid by the tenant under the lease
- Limited obligations of the port
- Financial statement treatment
- Impact on additional bonds test and rate covenant for general revenue bonds
On Behalf Of Governmental Entity Financing

Non-profit corporation issues debt / sells bonds by negotiated sale to underwriter

Underwriter sells bonds to investor; underwriter obtains underwriter’s discount

Obligation not secured by pledge of port’s general revenues
On Behalf Of Governmental Entity Financing (cont.)

- Circumvents limitations on issuance of special facility obligations
- Bonds are payable from the tenant sublease payments
- Leasehold mortgage on facilities
- Not an obligation of the port
- Financial statement treatment
- No impact on additional bonds test and rate covenant for general revenue bonds
Public-Private Partnerships (P3s)

Concession and Lease Agreement

Port (Lessor)

- Initial upfront payment
- Annual basic rent
- Other Rent
  * Profit sharing
  * Additional basic rent
  * Guaranteed minimum cargo volumes
  * Penalties in event of cargo (TEU) throughput shortfall

Concessionaire (Lessee)
Public-Private Partnerships (P3s) (cont.)

- Port privatization
  - Longer term lease to encourage private party capital investment
  - Raises capital which enable ports to reinvest in supporting infrastructure
  - Portion of upfront payment used for other port development projects
  - Concession agreement encourages optimal development and usage of terminal areas
Public-Private Partnerships (P3s) (cont.)

- Additional considerations
  - Shifting of responsibilities to private sector—Maintenance & repair responsibilities transferred from port (Lessor) to concessionaire (Lessee)
  - Concessionaire subject to environmental regulations
  - Retirement of previously issued debt obligations
  - Competitive bid/proposal process (unsolicited proposals)
  - Port continues to have an active relationship with Lessee and the financed facility
New Markets Tax Credits (NMTCs)

Lender

NMTC Investment Fund

NMTC Investor

Port

Sub-Community Development Entity (Sub-CDE)

Qualified Low Income Community Business (QALICB)

Terminal Operator (Equity Partner)

Parent CDE

CDOI Fund

$7.0M Repayment

True Loan/Debt $7.0M

Interest and Loan Repayments on Loan A

Subordinate $3.0M Loan B

Qualified Equity Investment (QEI)

$3.0M Equity

$3.9M Tax Credits

Ground Lease

Port could share in unpaid Loan B Principal

Below market interest only payments on subordinated Loan during life of loan

Loan proceeds finance project

Cold Ironing Facility

Parent CDE

NMTC Allocation

Senior $7.0M Loan A Repayment

$7.0M

$3.0M

$3.9M
New Markets Tax Credits (NMTCs) (cont.)

- Provides the investor with a federal tax credit of 39% of the Qualified Equity Investment (QEI) (i.e. $10,000,000) taken over seven years for investment in a community development project in a low-income community
  - 5% tax credit in each of the first three years
  - 6% tax credit for each of the subsequent four years
- The Community Development Entity (CDE) provides the connection between the investor seeking to take advantage of the NMTC and a project in a low-income community that benefits from below market financing