SEYFARTH SHAW ATTORNEYS LLP

ENERGY FINANCE- UNLOCKING INNOVATION

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ONE DOOR CLOSES

INDUSTRIAL DEVELOPMENT REVENUE BONDS (IDBs)

- NEED BANKS TO BUY BONDS OR PROVIDE LETTER OF CREDIT (LOC)
- BANKS ARE EXITING THAT MARKET
- FINANCING OF ECONOMIC DEVELOPMENT PROJECTS SUFFERS

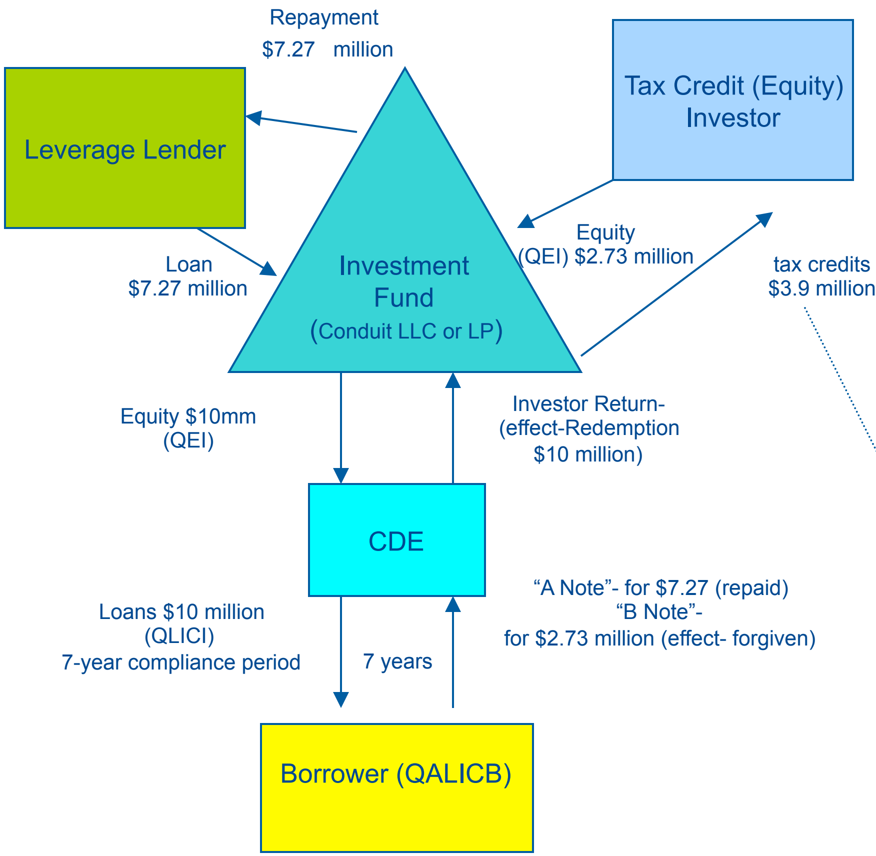
NEW DOORS OPEN

COMPARE IDBs TO NEW CAPITAL FOR RENEWABLE ENERGY PROJECTS			
TYPE	CAPITAL SOURCE	CONDUIT	LIMIT
IDBs	Banks	Development Authority	Volume Cap (if tax-exempt)
EB-5	Immigrant Investors	Regional Center	Jobs created
NMTC	Domestic Taxpayers	Community Development Entity	allocation
PROJECT FINANCE BONDS	Domestic Institutional Investors	None (Development Authority if tax-exempt)	None (if sold into taxable market

THEN- DEBT AND EQUITY
NOW- CAPITAL STACK

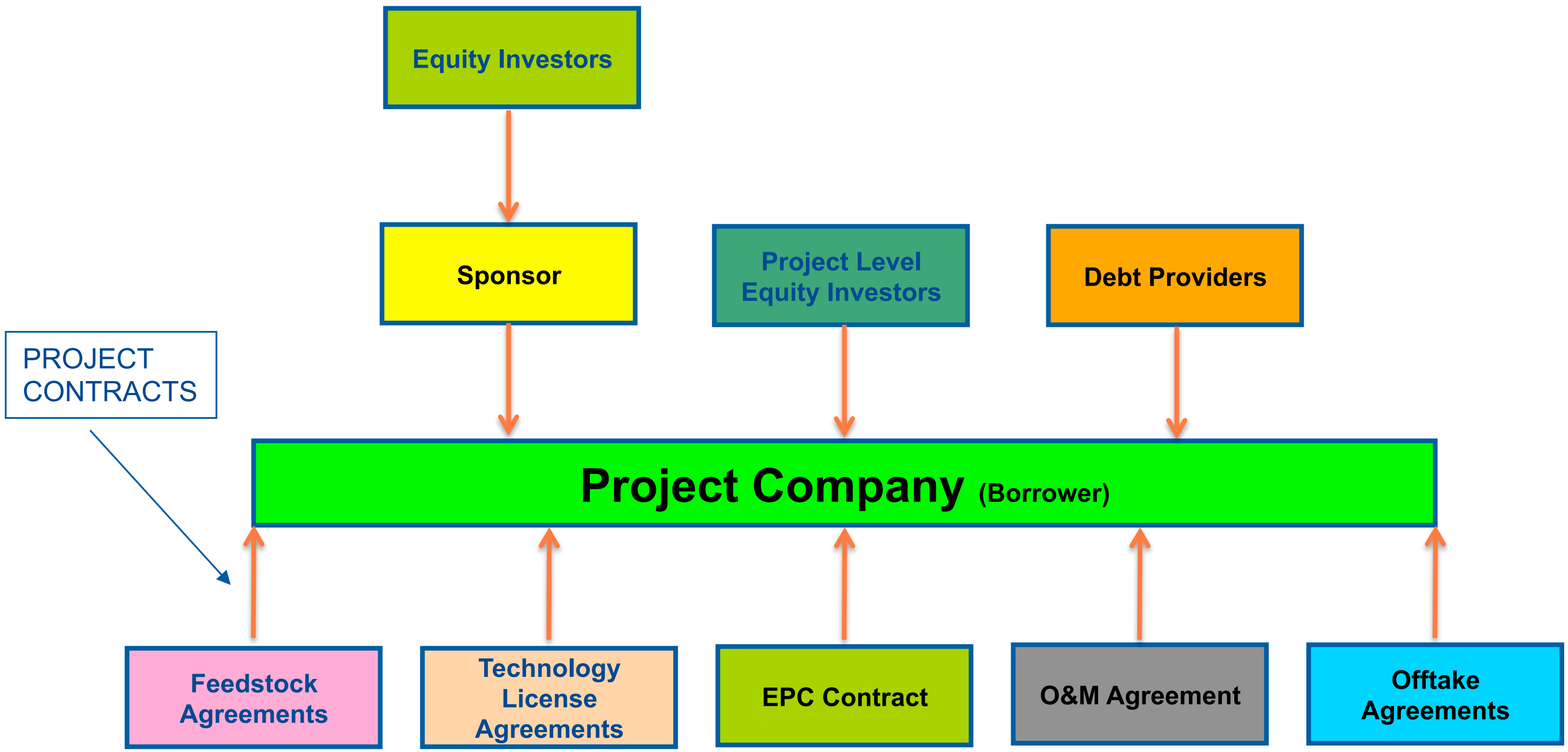
$100 MILLION PROJECT MULTI-LAYER CAPITAL STACK			
LAYER	AMOUNT (millions)	Per Cent	TYPE
Equity	$11.8	11.8%	Common Equity
Sub Debt	$8.2	8.2%	NMTC
Second Lien Senior Debt Series B	$50.0	50.0%	EB-5
First Lien Senior Debt Series A	$30.0	30.0%	Project Finance Bonds
Total	$100	100%	----------------------

HOW NMTC SUB DEBT BECOMES TAX CREDIT EQUITY



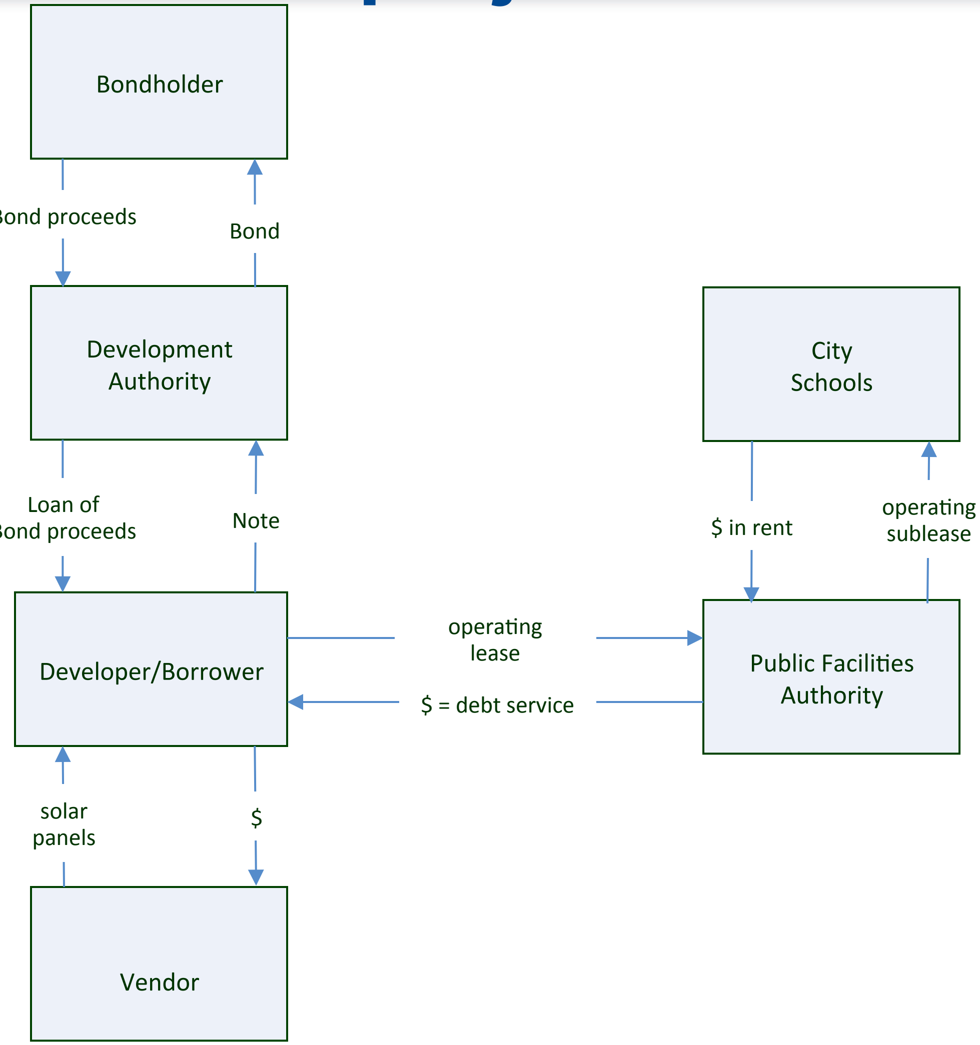
Tax Credit Schedule for NMTC Investors		
Year 1	$500,000	5%
Year 2	$500,000	5%
Year 3	$500,000	5%
Year 4	$600,000	6%
Year 5	$600,000	6%
Year 6	$600,000	6%
Year 7	$600,000	6%
	$3,900,000	39%

PROJECT STRUCTURE, COUNTERPARTIES, AND PROJECT CONTRACTS



SOURCE: STERN BROTHERS

COMMUNITY P3 PROJECT: Social Asset Example: solar project



CAPITAL SOURCES

THERE ARE VARIATIONS, BUT MANY RENEWABLE ENERGY PROJECTS ARE FUNDED FROM ONE OF THESE SOURCES:

- MOSTLY EQUITY
  - PRIVATE EQUITY FUNDS
  - HEDGE FUNDS
  - SOVEREIGN FUNDS
  - “FAMILY OFFICES”
  - OTHERS
- BALANCE SHEET FINANCINGS
  - UTILITY-OWNED PROJECTS
  - GOVERNMENT-OWNED PROJECTS
  - INDUSTRY PARTICIPANTS

CAPITAL SOURCES

THERE ARE VARIATIONS, BUT MANY RENEWABLE ENERGY PROJECTS ARE FUNDED FROM ONE OF THESE SOURCES:

- NON-BANK CAPITAL
  - ▶ Project Finance Bonds
  - ▶ EB-5 immigrant investor funding
  - ▶ Tax Credit Equity
    - PTC
    - ITC
    - NMTC
  - ▶ P3 Structures
    - Public/Private Partnerships

INDUSTRIAL DEVELOPMENT REVENUE BONDS

- TERM “INDUSTRIAL DEVELOPMENT REVENUE BONDS” (IDBs) PRESUPPOSES BONDS ARE ISSUED THROUGH A PUBLIC BODY LIKE A DEVELOPMENT AUTHORITY
  - FEDERAL TAX LAW REQUIREMENT FOR THE IDBs TO BE TAX-EXEMPT
- MARKETING IDBs USUALLY REQUIRES INVOLVEMENT OF A BANK
  - PRIVATE PLACEMENT WITH BANK
  - LOC PROVIDED BY BANK
- NEED TO SATISFY TAX LAW REQUIREMENTS, AND PAUCITY OF WILLING BANKS, MEANS TRADITIONAL TAX-EXEMPT IDBs LESS IMPORTANT IN RENEWABLE ENERGY SPACE

TAX-EXEMPT BONDS

- But tax-exempt bonds offer some advantages
  - Lower interest rate
  - Longer term
  - Greater marketability
  - More availability of interest-only/capitalized interest
  - Smaller deals more do-able
- Often tax-exempt bonds are accompanied by a tranche of taxable bonds ("taxable tail")

SOLID WASTE DISPOSAL BONDS

Examples of tax-exempt bonds

- Solid waste disposal bonds, such as -
    - MSW projects
    - Biomass-to-electricity projects
- ►Facilitated by new IRS definition of solid waste disposal facilities
    - "No Value Rule" repealed
    - Feedstock focus -
        - used material?
        - residual material?
    - Exclusions (not solid waste):virgin material, solids within liquid waste, precious metals, hazardous waste and radioactive material
- ►Other tax rules apply

“SMALL ISSUE” MANUFACTURING BONDS

Examples of tax-exempt bonds

- “Small issue” manufacturing bonds, such as-
  - Wood pellet plants
  - Biodiesel plants
- Usefulness limited by IRS limit on capital expenditures attributed to project
  - $20 million capex limit during test period (3 years before bond issue through 3 years after bond issue)
  - Bond proceeds and other capex counted
  - Within limit, only $10 million may be financed with tax-exempt “small issue” manufacturing bonds
- Other tax rules apply

GREEN BONDS

- “tax credit bonds”
  - not tax-exempt
  - but economics are equivalent
- return to bond investor is via a federal income tax credit
- credit results in discounted interest rate
- option- direct payment instead of tax credit
- two types-
  - Qualified Energy Conservation Bonds (“QECBs”)
  - Clean Renewable Energy Bonds (“CREBs”)

GREEN BONDS

- Qualified Energy Conservation Bonds ("QECBs")
  - qualified projects include developing rural capacity, specifically involving the production of electricity from renewable energy resources
  - up to 30% can be issued as private activity bonds
- Clean Renewable Energy Bonds ("CREBS")
  - finance energy facilities for governments, public power providers, electrical co-ops and nonprofit REA utilities
- QECBs and CREBs both generally can finance facilities that qualify for the federal production tax credit (PTC)
  - in some cases this could be another source of tax credit equity

BOND MARKETS

- BIG CHANGE IN THE BOND MARKETS
- IT’S POSSIBLE FOR BONDS FOR A PROJECT ALL TO BE “TAXABLE”
- THESE ARE PROJECT FINANCE BONDS
  - SOME SMALLER PROJECTS INVOLVE TAX-EXEMPT BONDS
    - UNDERWRITING CRITERIA LOOSER FOR TRADITIONAL UNRATED IDBs THAN FOR IDBs ISSUED AS PROJECT FINANCE BONDS

WHAT IS PROJECT FINANCE?

- Finance Revenue-Generating Project on a Stand-Alone Basis
- Projects are “bankable” (financeable) without banks
- Sponsors are not personally liable
  - ▶Non-Recourse
  - ▶Off-Balance Sheet
- Some equity is needed
  - ▶Typically 80% LTV/LTC
  - ▶Leverage increases yield to equity, increases attractiveness to equity investors
  - ▶But cash equity, not just tax credit investor equity, is needed
    - Liquidity
    - Developer “skin in the game”

"DE-RISK" THE PROJECT

HOW PROJECT FINANCE WORKS

The project entity is a single-asset entity

- no earnings history
- no assets other than the project

- It naturally carries with it the operational risk of the project
- So- other risks must be extracted; i.e., "de-risk" the project
- In other words, the more certain the revenues and benefits, the more financeable the project

EB-5 IMMIGRANT INVESTOR FUNDING

REGIONAL CENTER (RC)

- EB-5 investment can be made by an investor on a stand-alone basis, or through a USCIS-designated Regional Center (RC)
- RCs are the norm
  - ▶ If the investment is stand-alone, indirect jobs are not counted, and practically speaking, the immigrant investor is typically required to reside where the business is located.
  - ▶ RCs use an economic model to calculate and substantiate job creation
    - Models that are used are subject to USCIS approval

REGIONAL CENTER (RC)

- RC's are geography-based
  - ► Each RC has a territory approved by the USCIS
  - ► The territory is not exclusive
- RC's serve specific sectors of the economy
  - ► sectors are what USCIS approved based on the RC's designation application
- USCIS approvals can be amended to expand/change geographic area and economic sectors

EB-5 IMMIGRANT INVESTOR FUNDING

HOW IT WORKS

- Regional Center will have a business model
  - loan model
  - equity model
  - hybrid model
  - “lease” model
  - proprietary model
- Loan model
  - Yield on EB-5 investment is below domestic market if structured as senior debt or sub debt
- Equity model
  - Return on EB-5 investment follows private equity model if structured as equity
- Horizon for EB-5 investment is generally 5 years
  - need to plan for liquidity event
- EB-5 funding can be used to leverage NMTC funding

EB-5 IMMIGRANT INVESTOR FUNDING

QUALIFY THE PROJECT

- Per investor requirement is $1 million, unless project is located in a Targeted Employment Area (“TEA”)
  - Within TEA, allows minimum of $500,000 per investor
  - EB-5 market consistent – investors only willing to invest $500,000 each
  - So EB-5 funding really available just within TEAs
- TRENDS-
  - larger minimum investment
  - longer investment horizon
  - attractive projects more financeable even if outside TEA

TARGETED EMPLOYMENT AREA (TEA)

TEA

- A Rural Area
  - outside an MSA, and
  - city or town with population under 20,000, or
  - unincorporated county

  OR
- An area of high unemployment (areas with unemployment rates at least 150% of the national rate)
  - The state may designate a particular geographic or political subdivision located within a metropolitan statistical area or within a city or town having a population of 20,000 or more within such state as an area of high unemployment (at least 150 percent of the national average rate)
- Does your project qualify? See “Questions” at end

EB-5 IMMIGRANT INVESTOR FUNDING

HOW TO GET IT

- 10 or more new full time jobs, per investor, must be created for the investor to obtain a temporary "green card" (permanent resident visa)
- If the jobs are created within a two year period and other requirements are satisfied, the green card can become permanent and clear the way for citizenship.

TAX CREDITS

- Production Tax Credits ("PTCs")
  - ▶ qualified facilities that produce electricity from renewable sources
    - wind, closed-loop or open-loop biomass, geothermal, landfill gas, municipal solid waste, hydroelectric, or marine or hydrokinetic facilities
  - ▶ Must "begin construction" not later than Dec. 31, 2013
- Investment Energy Tax Credits ("ITCs")
  - ▶ "energy property"
  - ▶ PTC-eligible projects can elect to claim the ITC in lieu of the PTC
    - exception- not wind in excess of 100 kw, small irrigation power and refined/Indian coal production facilities
    - exception- on October 3, 2008, the Energy Improvement and Extension Act extended the energy ITC for solar projects through December 31, 2016.

GOOD THINGS

- ITC IS NOT SUBJECT TO THE REDUCTION OF UP TO 50% LIKE PTC IF COMBINED WITH SUBSIDIZED ENERGY FINANCING OR TAX-EXEMPT BONDS
- GRANTS
  - IRC SEC. 118 PROVIDES EXEMPTION FROM TAXABILITY IN CASE OF GRANTS TO CORPORATION
    - ASIDE FROM THIS EXEMPTION (AS CONSTRUED), GRANTS ARE GENERALLY TAXABLE

MONETIZING TAX CREDITS

- Value of tax credits: they reduce federal income tax liability on a dollar-for-dollar basis
- Can be “monetized” in a proper structure, to raise capital for a project

DEPRECIATION DEDUCTIONS

- Accelerated depreciation is another tax benefit for the investor
  - generally increases the tax credit's purchase price
- General Rule- When an expenditure gives rise to a tax credit and a deduction (such as depreciation), then the credit and the depreciation deduction must be allocated in the same manner.
- For facilities placed in service after 2007 and before 2014, 50% of the facility can be depreciated in the year it is placed in service

CONCLUSION

- RENEWABLE ENERGY PROJECTS ARE NOT LIKE OTHER ECONOMIC DEVELOPMENT PROJECTS
- THEY HAVE THEIR OWN HURDLES AND REWARDS
- WHAT TO EXPECT? ISSUES
- BUT FOR EVERY ISSUE THERE IS AN ANSWER!

REFERENCES

THIS PRESENTATION AND OTHER REFERENCES CAN BE DOWNLOADED AS FOLLOWS:

- May 2013 – P3 – Public/Private Partnerships Done Right
- May 2012- Renewable Energy- Start to Finish: Site Location, Development, Finance, Construction, and Commercial Operations
- May 2012- Opportunities in Bond Financing (Stern Brothers)
- May 2012- Energy (Georgia Center of Innovation)
- March 2012- "In-Sourcing Capital: EB-5 Loans and Equity; NMTC Tax Credit Equity; and Non-Recourse Project Finance Bonds"
- October 2011 - “Project Finance - No Banks, No Recourse, No Problem!”
- August 2011 - "Green Energy/Green Dollars"
- August 2011 - "Definition of Solid Waste Disposal Facilities for Tax-Exempt Bond Purposes"
- January 2011 - “Bonds 101”
- January 2011 - “Introduction to Tax-Exempt Bonds”
- January 2011 - “Introduction to 'Taxable Floaters' ”

at http://danmcrae.info/whitepapers

- May 2013 – Quick Takes: “Financing Updates and Save the Dates”
- September 2011 - Quick Takes: "Section 1603 Grants" for Renewable Energy Projects: Take the Money and Run!”
- August 2011 - Quick Takes: “New Regs, New Rush- Finance Your Renewable Energy and Solid Waste Disposal Projects Now!”
- June 2011 - Quick Takes: “Easy Equity- the NMTC and EB-5 programs”
- January 2011 - Quick Takes: “After ARRA - What Bonds Can We Use Now to Finance Projects?”

at http://danmcrae.info/quicktakes

QUESTIONS?

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MORE INFORMATION

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