

Looking Forward: Private Placements in the Post Credit Crisis World

Chuck Maguire – Bank of America Public Capital Corp

Courtney Rogers – Davenport & Company LLC

Bruce Serchuk – Nixon Peabody LLP



What is a Private Placement?

- Obligation to a single lender
- Types of Private Placements
 - General Obligation
 - Revenue Bonds
 - Lease Revenue Bonds
 - Tax-exempt and Taxable
 - Master note/lease arrangements
 - Operating leases

Private placement advantages

- Complements public bond sale but at a fraction of the issuance cost
- Flexibility in process
- Prepayment flexibility
- Rate lock flexibility

Private placement advantages

- Ease of documentation
- At the current time there is no public disclosure
- Start to Finish – Shorter process
- Debt service reserve fund could be waived

From the Issuer's Perspective

- Respects and maintains the financial advisory and legal team
- Provides interest rate certainty ahead of a public market issuance
- Can lock in present value savings on refinancing opportunities and take known outcome to governing body for approval
- Direct access to the investor

Factors to consider:

- Cost – Benefit Analysis
- Staff Time
- Prepayment flexibility
- Ratings
- Size
- Amortization Length
- Length of Fixed Interest Rate

Factors to consider:

- Appetite of the Private Placement Marketplace
- Swaps / Derivatives
- Don't Assume your local branch or local bank understands the Virginia municipal bond market
- Terms of the Transaction

Legal Issues

- Follows IRS tax-exempt code
- Follows Virginia Constitution and Public Finance Act
- Continuing Disclosure
 - At Time of Issuance: Loans vs. Bonds and Tender Option Bonds
 - Ongoing Obligations
 - MSRB requesting EMMA Disclosure of Private Placements
 - Especially Parity issues

Documentation

- Form of Sale Document:
 - Bond Purchase Agreement vs. Continuing Covenants Agreement
- Form of Bond and DTC
- “Big Boy” Letter

Terms and Conditions

- Representations and Warranties
- Covenants
- Determination of Taxability
- Interest Following Event of Default
- “Clawback” or Interest Rate Recapture
- Increased Costs and Taxes

More Terms and Conditions

- Events of Default
- Remedies
- Payment at Maturity
- Indemnification
- Similarity to Standby Bond Purchase Agreement/Reimbursement Agreement

Application of Tax Law

- Same General Analysis
 - Arbitrage & Private Activity
- Increased Costs Provisions
- Bank Qualified Bonds
 - Current Law: Qualified Small Issuer and \$10 million Limit
 - \$30 million: ARRA and Other Recent Efforts
 - Impact on Financing
- Interest Rate Swaps



Chuck Maguire
SVP, Equipment Finance Specialist
Bank of America Public Capital Corp
Government Finance

Tel: 804.788.3345 • Fax: 804.262.8344
charles.maguire@baml.com

Bank of America Public Capital Corp
1111 East Main Street, Richmond, VA 23219

Questions?



Courtney E. Rogers
Senior Vice President
Davenport & Company LLC
Public Finance

Tel: 804.347.9692 • Fax: 804.549.4902
crogers@investdavenport.com

901 East Cary Street, 11th Floor, Richmond, VA 23219



Bruce M. Serchuk
Partner
Nixon Peabody

Tel: 202.585.8267 • Fax: 866.741.5625
bserchuk@nixonpeabody.com

Market Square, 401 Ninth Street, Suite 900, Washington, DC 20004

Notice to Recipient

Confidential

- "Bank of America Merrill Lynch" is the marketing name for the global banking and global markets businesses of Bank of America Corporation. Lending, derivatives, leasing, equipment finance, and other commercial banking activities are performed globally by banking affiliates of Bank of America Corporation, including Bank of America, N.A., member FDIC. Securities, strategic advisory, and other investment banking activities are performed globally by investment banking affiliates of Bank of America Corporation ("Investment Banking Affiliates"), including, in the United States, Banc of America Securities LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated, which are both registered broker-dealers and members of FINRA and SIPC, and, in other jurisdictions, locally registered entities.
- **Investment products offered by Investment Banking Affiliates: Are Not FDIC Insured * May Lose Value * Are Not Bank Guaranteed.**
- These materials have been prepared by one or more subsidiaries of Bank of America Corporation for the client or potential client to whom such materials are directly addressed and delivered (the "Company") in connection with an actual or potential mandate or engagement and may not be used or relied upon for any purpose other than as specifically contemplated by a written agreement with us. These materials are based on information provided by or on behalf of the Company and/or other potential transaction participants, from public sources or otherwise reviewed by us. We assume no responsibility for independent investigation or verification of such information (including, without limitation, data from third party suppliers) and have relied on such information being complete and accurate in all material respects. To the extent such information includes estimates and forecasts of future financial performance prepared by or reviewed with the managements of the Company and/or other potential transaction participants or obtained from public sources, we have assumed that such estimates and forecasts have been reasonably prepared on bases reflecting the best currently available estimates and judgments of such managements (or, with respect to estimates and forecasts obtained from public sources, represent reasonable estimates). No representation or warranty, express or implied, is made as to the accuracy or completeness of such information and nothing contained herein is, or shall be relied upon as, a representation, whether as to the past, the present or the future. These materials were designed for use by specific persons familiar with the business and affairs of the Company and are being furnished and should be considered only in connection with other information, oral or written, being provided by us in connection herewith. These materials are not intended to provide the sole basis for evaluating, and should not be considered a recommendation with respect to, any transaction or other matter. These materials do not constitute an offer or solicitation to sell or purchase any securities and are not a commitment by Bank of America Corporation or any of its affiliates to provide or arrange any financing for any transaction or to purchase any security in connection therewith. These materials are for discussion purposes only and are subject to our review and assessment from a legal, compliance, accounting policy and risk perspective, as appropriate, following our discussion with the Company. We assume no obligation to update or otherwise revise these materials. These materials have not been prepared with a view toward public disclosure under applicable securities laws or otherwise, are intended for the benefit and use of the Company, and may not be reproduced, disseminated, quoted or referred to, in whole or in part, without our prior written consent. These materials may not reflect information known to other professionals in other business areas of Bank of America Corporation and its affiliates.
- Bank of America Corporation and its affiliates (collectively, the "BAC Group") comprise a full service securities firm and commercial bank engaged in securities, commodities and derivatives trading, foreign exchange and other brokerage activities, and principal investing as well as providing investment, corporate and private banking, asset and investment management, financing and strategic advisory services and other commercial services and products to a wide range of corporations, governments and individuals, domestically and offshore, from which conflicting interests or duties, or a perception thereof, may arise. In the ordinary course of these activities, parts of the BAC Group at any time may invest on a principal basis or manage funds that invest, make or hold long or short positions, finance positions or trade or otherwise effect transactions, for their own accounts or the accounts of customers, in debt, equity or other securities or financial instruments (including derivatives, bank loans or other obligations) of the Company, potential counterparties or any other company that may be involved in a transaction. Products and services that may be referenced in the accompanying materials may be provided through one or more affiliates of Bank of America Corporation. We have adopted policies and guidelines designed to preserve the independence of our research analysts. These policies prohibit employees from offering research coverage, a favorable research rating or a specific price target or offering to change a research rating or price target as consideration for or an inducement to obtain business or other compensation. We are required to obtain, verify and record certain information that identifies the Company, which information includes the name and address of the Company and other information that will allow us to identify the Company in accordance, as applicable, with the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) and such other laws, rules and regulations as applicable within and outside the United States.
- **We do not provide legal, compliance, tax or accounting advice. Accordingly, any statements contained herein as to tax matters were neither written nor intended by us to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on such taxpayer. If any person uses or refers to any such tax statement in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any taxpayer, then the statement expressed herein is being delivered to support the promotion or marketing of the transaction or matter addressed and the recipient should seek advice based on its particular circumstances from an independent tax advisor. Notwithstanding anything that may appear herein or in other materials to the contrary, the Company shall be permitted to disclose the tax treatment and tax structure of a transaction (including any materials, opinions or analyses relating to such tax treatment or tax structure, but without disclosure of identifying information or, except to the extent relating to such tax structure or tax treatment, any nonpublic commercial or financial information) on and after the earliest to occur of the date of (i) public announcement of discussions relating to such transaction, (ii) public announcement of such transaction or (iii) execution of a definitive agreement (with or without conditions) to enter into such transaction; provided, however, that if such transaction is not consummated for any reason, the provisions of this sentence shall cease to apply.** Copyright 2010 Bank of America Corporation.

Disclaimer

Unless the enclosed material specifically addresses the provision of financial advisory services or investment advisory services by Davenport & Company LLC (“Davenport”), or Davenport has an agreement with the recipient to provide such services, the recipient should assume that Davenport is acting in the capacity of an underwriter or placement agent. Unlike a financial advisor, the primary role of an underwriter is to purchase, or arrange for the placement of, securities in an arm’s length commercial transaction between the issuer and the underwriter, and the underwriter has financial and other interests that differ from those of the issuer. Davenport may also perform or seek to perform financial advisory, underwriting or placement agent services for the issuers of the securities and instruments mentioned herein.

This material was prepared by investment banking or other non-research personnel of Davenport. This material was not produced by a research analyst, although it may refer to a Davenport research analyst or research report. Unless otherwise indicated, these views (if any) are the author’s and may differ from those of the Davenport fixed income or research department or others in the firm.

This material has been prepared for information purposes only and is not a solicitation of any offer to buy or sell any security or instrument or to participate in any trading strategy. Any such offer would be made only after a prospective participant had completed its own independent investigation of the securities, instruments or transactions and received all information it required to make its own investment decision, including, where applicable, a review of any offering circular or memorandum describing such security or instrument. That information would contain material information not contained herein and to which prospective participants are referred. This material is based on public information as of the specified date, and may be stale thereafter. We have no obligation to tell you when information herein may change. We make no representation or warranty with respect to the accuracy or completeness of this material. Davenport has no obligation to continue to publish information on the securities and instruments mentioned herein.

Any securities referred to in this material may not have been registered under the U.S. Securities Act of 1933, as amended, and, if not, may not be offered or sold absent an exemption therefrom. Recipients are required to comply with any legal or contractual restrictions on their purchase, holding, sale, exercise of rights or performance of obligations under any securities/instruments transaction.

The securities/instruments discussed in this material may not be suitable for all investors. This material has been prepared and issued by Davenport for distribution to market professionals and institutional investor clients and other recipients should seek independent financial advice prior to making any investment decision based on this material. This material does not provide individually tailored investment advice or offer tax, regulatory, accounting or legal advice. Prior to entering into any proposed transaction, recipients should determine, in consultation with their own investment, legal, tax, regulatory and accounting advisors, the economic risks and merits, as well as the legal, tax, regulatory and accounting characteristics and consequences, of the transaction. You should consider this material as only a single factor in making an investment decision.

The value of and income from investments may vary because of changes in interest rates, foreign exchange rates, default rates, prepayment rates, securities and instruments prices, market indexes, operational or financial conditions of companies or other factors. There may be time limitations on the exercise of options or other rights in securities/instruments transactions. Past performance is not necessarily a guide to future performance. Estimates of future performance are based on assumptions that may not be realized. Actual events may differ from those assumed and changes to any assumptions may have a material impact on any projections or estimates. Other events not taken into account may occur and may significantly affect the projections or estimates. Certain assumptions may have been made for modeling purposes only to simplify the presentation and/or calculation of any projections or estimates, and Davenport does not represent that any such assumptions will reflect actual future events. Accordingly, there can be no assurance that estimated returns or projections will be realized or that actual returns or performance results will not materially differ from those estimated herein. Some of the information contained in this document may be aggregated data of transactions in securities or other financial instruments executed by Davenport that has been compiled so as not to identify the underlying transactions of any particular customer.

This material may not be sold or redistributed without the prior written consent of Davenport.