36th BOND ATTORNEYS' WORKSHOP
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of Bond Lawyers

Welcome

to the

36th Bond Attorneys' Workshop

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Nuts and Bolts of New Markets Tax Credits and Historic Tax Credits – Should Bond Lawyers Care?

Chair:	Mary Nash Rusher	Hunton & Williams LLP, Raleigh, NC
Panelists:	Peter Duffley	Womble Carlyle Sandridge & Rice, LLP, Raleigh, NC
	Dick Helde	Dorsey & Whitney LLP, Minneapolis, MN
	Marshall Phillips	Reznick Group, Charlotte, NC
	Bruce Serchuk	Nixon Peabody LLP, Washington, DC
	Jim Snyder	Ice Miller LLP, Chicago, Illinois

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Overview of New Markets Tax Credits - How they work

- CDFI Fund - What is it? What role does it have?
- NMTC allocations - 2010 and 2011
- Target communities: Low Income Communities
- Vocabulary: CDE, QEI, QLICI, QALICB

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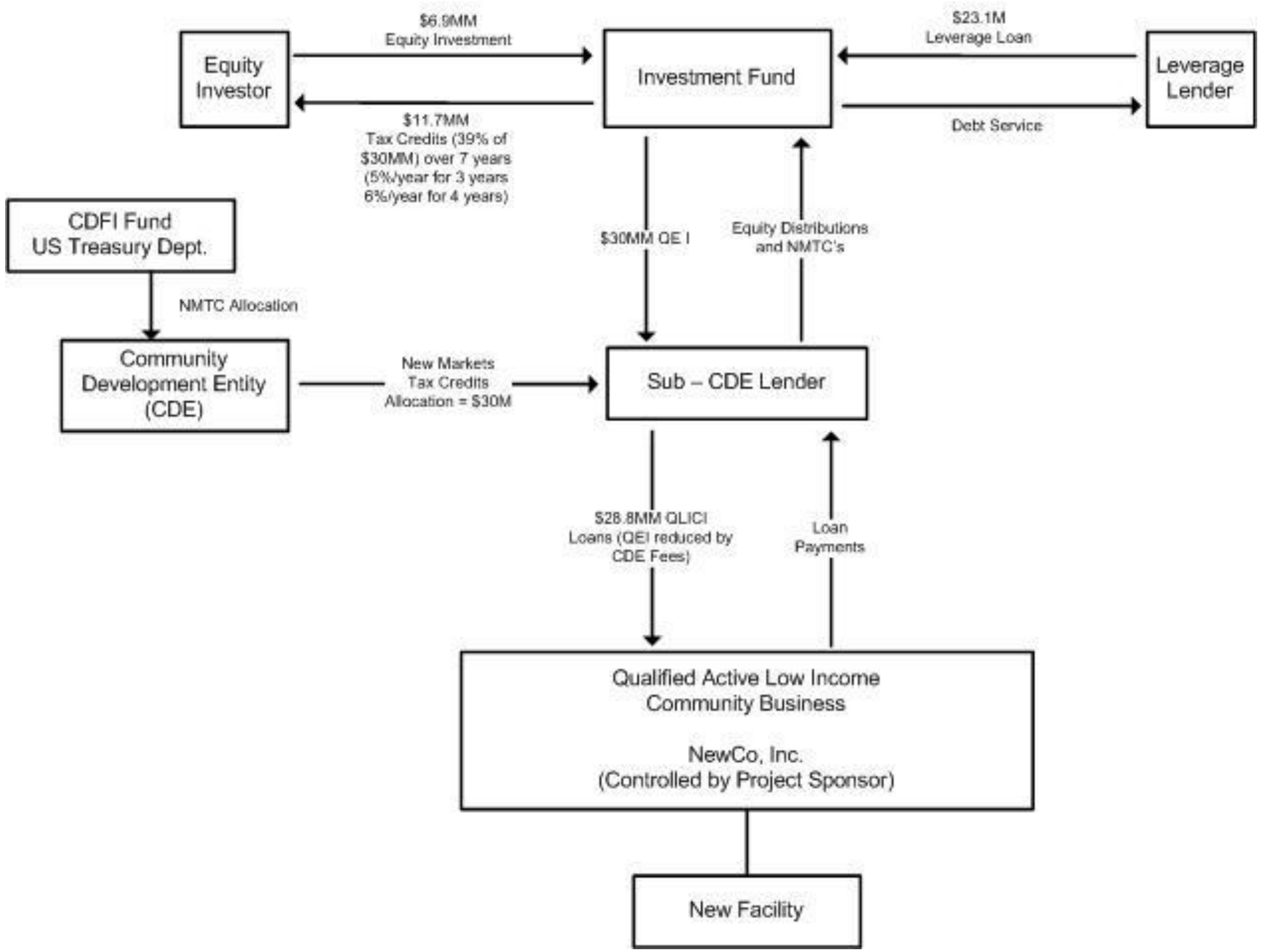
$30,000,000 Investment through New Market Tax Credit Structure



Economics of a NMTC transaction

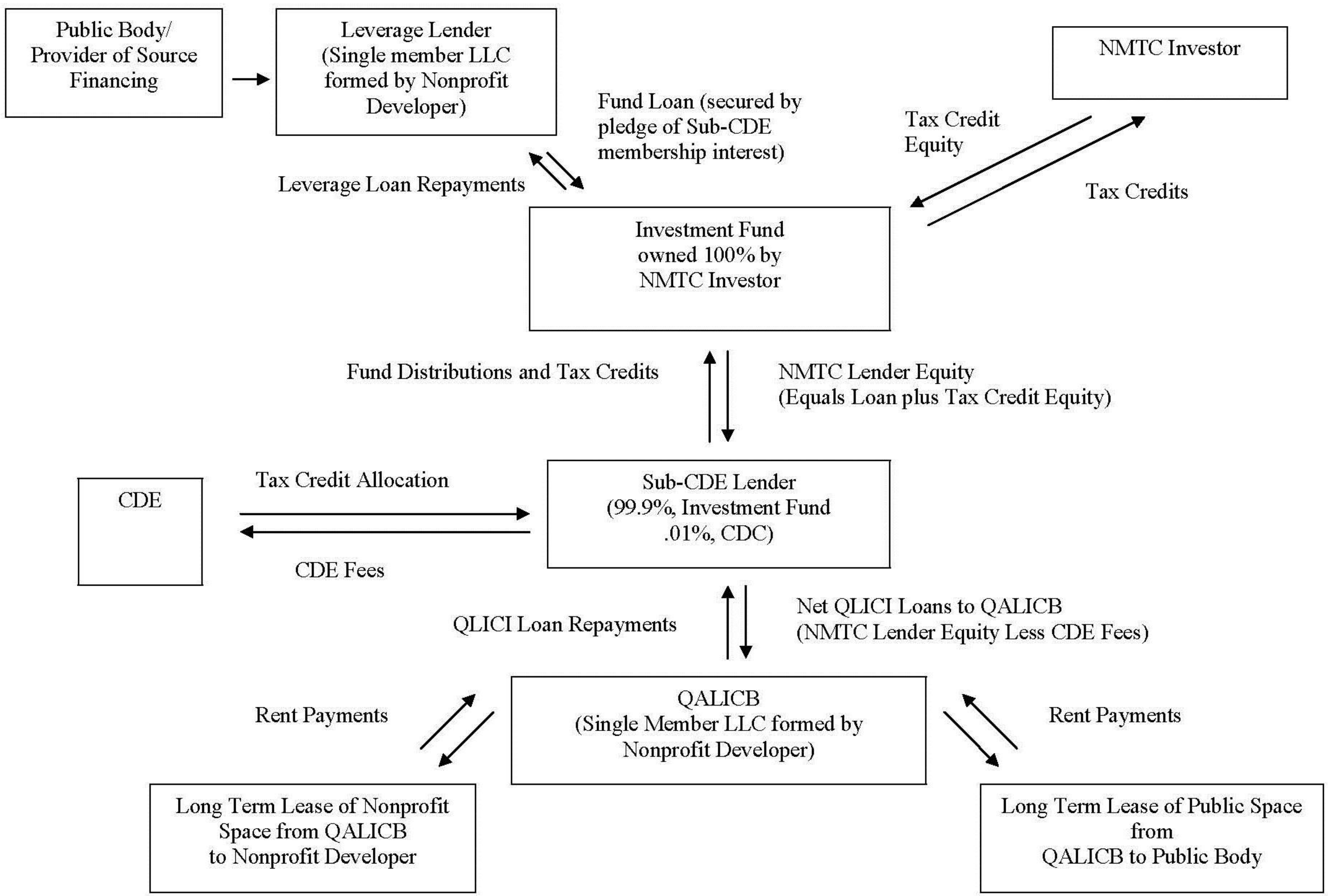
- Value of the credit
  - Efficiency of the credit
  - Appeal of the leverage structure
- Yield on the credits
- Costs of the Transaction
  - High up-front costs
  - Time, complexity, competing interests in security
  - Valuable net subsidy

Case Study: Collaborative Social Services Project

- Project consists of an addition to an existing adult education facility to be used as a family services center that offers a broad array of social and educational services to area families
- County partnered with a nonprofit social services provider (under specific legislative authority), which acted as the Nonprofit Developer of the project
  - QALICB is an affiliate of the Nonprofit Developer
  - QALICB will lease a portion of the space in the facility to the County and a portion to the Nonprofit Developer
  - Leverage Lender is a single member LLC formed by Nonprofit Developer; Leverage Lender made leverage loan into the Investment Fund
  - County Redevelopment Authority loaned funds to Leverage Lender to make the leverage loan
  - Funding for the County Redevelopment Authority loan came from cash on hand, not debt proceeds
- Project is located in a designated redevelopment area

Social Services Center

NMTC Financing Structure, Collaborative Social Services Center



Public Finance Issues in NMTC Transactions

Relationship between Public Body and QALICB

- Which parties will use the financed facilities
- Landlord/ Tenant relationships
- Sale or ground lease of site
- Control of QALICB
- Statutory authority to create or be a member

Leasing Powers

- Sale/ Ground lease?
  - public bidding
  - terms
- True lease requirement
- Restrictions on length of lease term(s)
- Annual appropriation
- Use of rent to support loan repayments on QLICI loans
- Attornment, nondisturbance, subordination

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Public Finance Issues in NMTC Transactions (cont'd)

Using Public Funds for Leverage/ Source Financing

- Statutory Authority
- Leverage Lender/ Source Lender
- Amortization/ Balloon Requirement
- Lender/ Creditor Rights and Remedies
  - Impact of Fund, Sub-CDE Operating Agreements
  - Relationship of Remedies to Put & Call

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Case Study – Kone Center, Moline, Illinois

- $40 Million Kone Center – Eight Story Mixed Use office building.
- Kone Corp., a Finland based Company that makes elevators and escalators will consolidate its current Moline, Illinois administrative and call center operations. Kone is anchor tenant, occupying second to sixth floors.
- $20.2 Million Illinois Finance Authority Midwestern Disaster Area Bonds (first Midwestern Disaster Area Bonds issued in Illinois)
- Bonds provided funding for the leveraged loan to the Investment Fund
- Tax Credit Investor contributed $8.3 million in equity

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Case Study – Kone Center, Moline, Illinois (cont'd)

NMTC combined with other development tools

- City of Moline borrowed $7.5 Million and re-loaned to Developer to purchase property at favorable interest rates.
- $7 Million grant from Illinois – EDGE (Economic Development for a Growing Economy) program; eligible became a net one of five criteria related to the creation or retention of jobs in Illinois – for example, that it had "multi-state location options and could reasonably and efficiently locate outside of the state."
- City created a new 23 year Tax Increment Financing (TIF) district (to replace a portion of an existing district) that will use up to $10.1 million of increased property-tax revenue to cover project costs outside of construction, including land acquisition, interest, and architectural and engineering work. Through the TIF, Developer will get back substantial portion of the property taxes Developer pays for the new development.
- $471,000 grant from Illinois Department of Commerce and Economic Opportunity for installation of 316 kilo watt solar photo voltaic system to help earn Leed Certification.

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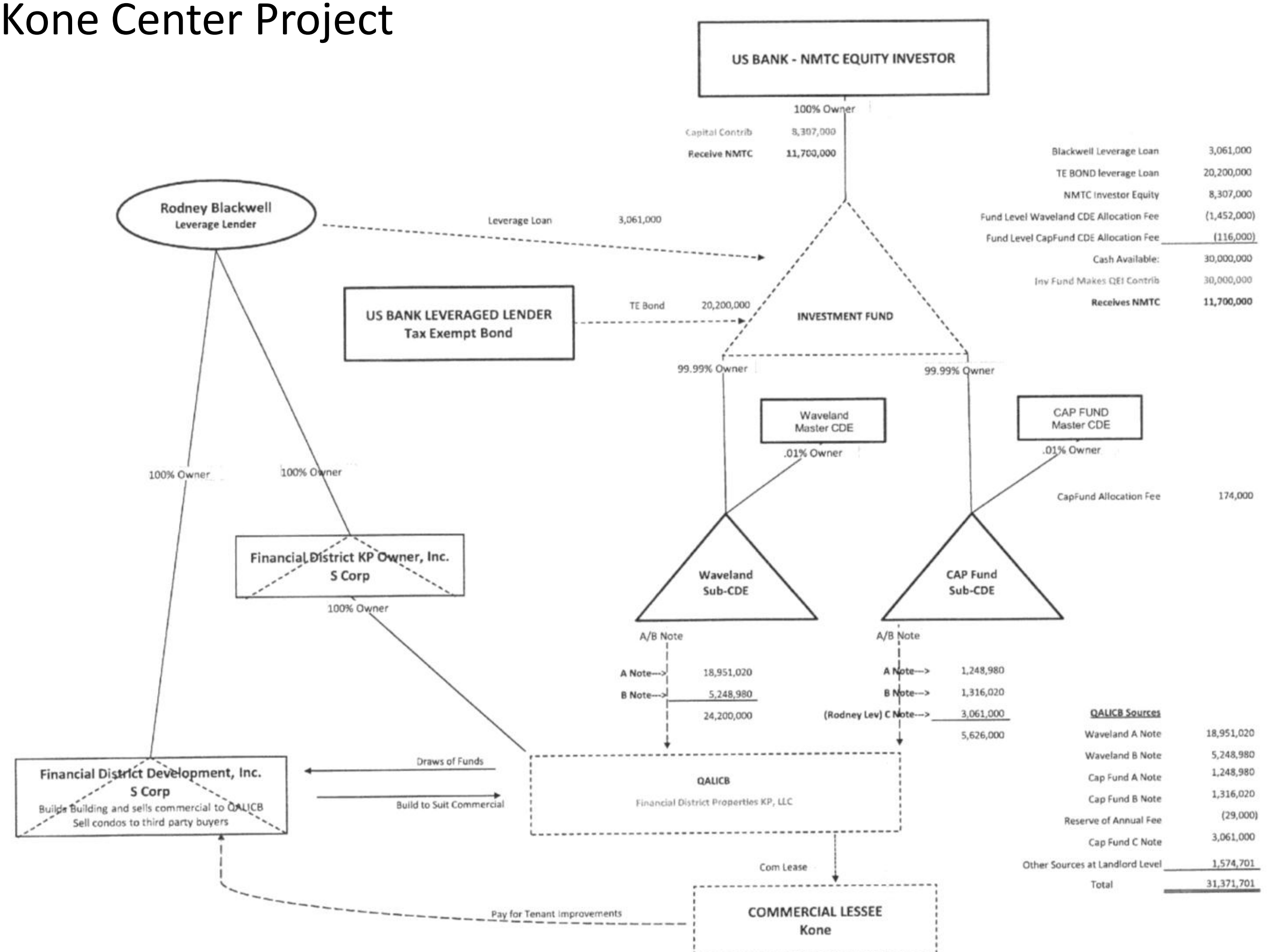
Kone Center Project



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Tax Issues Relating to Use of Tax Exempt Bonds as Leverage Loan

Governmental and 501(c)(3) Bonds

- Private Business Tests
  - Apply ultimate use of proceeds to look through Investment Fund and CDE?
- Private Loan Test
  - Can the loan to the investment fund be disregarded?
    - If governmental body is leverage lender (using bond proceeds) and is end user (i.e., lessee of the project), is it really a loan?
    - Can bond counsel rely on "ultimate use of proceeds" and ignore intermediate steps?
  - Loans to lenders and *California Health Facilities Authority vs. IRS* case

Tax Issues Relating to Use of Tax Exempt Bonds as Leverage Loan (cont'd)

Private Activity Bonds (other than 501(c)(3) Bonds) and Tax Credit Bonds

- Use of Proceeds: Are proceeds used to "provide" the facility?
- Tracing proceeds when there are multiple loans, and when there are payments between related parties (Investment Fund and CDE)

All Bonds

- Allocation of Proceeds to Expenditures
- Acquired Purpose Obligation Yield
  - Analyze loan between Issuer and Investment Fund, or look at all levels from Issuer to QALICB?
  - Tax credits as investment yield?

Private Activity Bonds as Leverage Loan

- Types of private activity bonds that might be used in a NMTC deal
  - Enterprise Zone Bonds
  - GO Zone Bonds
  - Liberty Bonds
  - Midwest Disaster Bonds
  - Solid waste disposal bonds
  - QECBs, QSCBs, private activity QECBs
  - Cannot use multifamily housing bonds under § 142 because of mutually exclusive rules re: residential rental housing
- Security for the bonds a significant issue because of the NMTC seven year standstill requirement; NMTC investor requires a priority security interest

Case Study - Private 501(c)(3) College

- Project consists of renovation of existing dormitories and construction of a mixed-use building for use as a student center and hub for several key community outreach programs administered by students and faculty of the College
- Total development budget of $17.3 million,
  - $15 million in NMTC Loans provided by the CDE lender
  - $2.3 million from a capital campaign
- NMTC Loans derived from two sources
  - $3.34 million of equity from the NMTC investor
  - $11.55 million leverage loan in the form of a tax exempt loan purchased directly by a bank, which was also the ultimate parent of the CDE lender

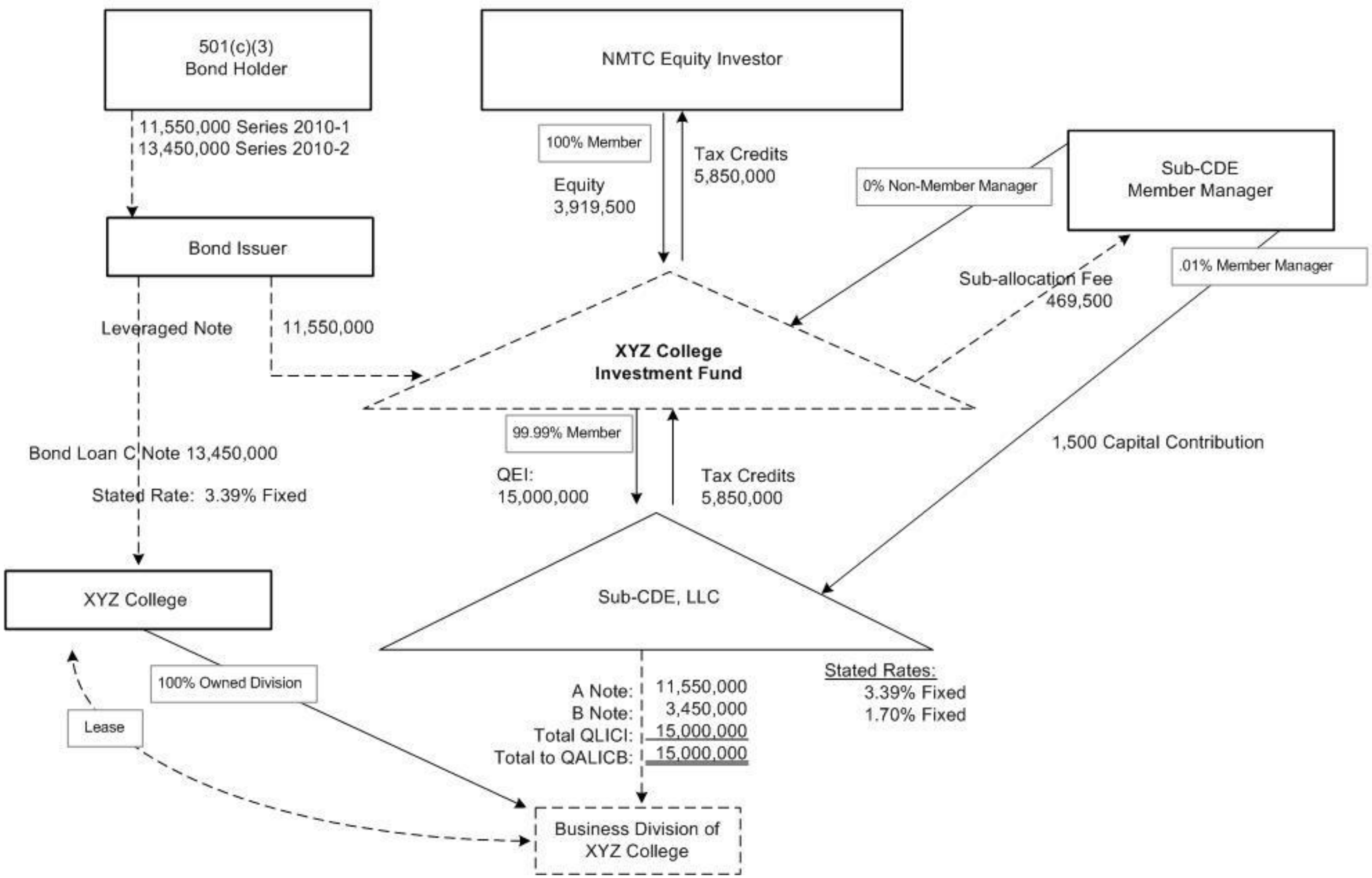
Case Study - Private 501(c)(3) College (cont'd)

Issues:

- College itself could not satisfy the NMTC requirements to be a QALICB
  - To solve the issue, a portion of the College's business was underwritten as the "QALICB" using the "portion of a business" rule under Code Section 45D
- NMTC funds may not be used to finance businesses that are engaged in the rental of residential rental property
  - Dormitory space had to be carefully analyzed in order not to violate this rule

XYZ College Project

NEW MARKETS STRUCTURE DIAGRAM



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Historic Tax Credits

- Brief Overview
- Value of the credit and how it is paid into the deal
- Combination with other tax credits/tax exempt bonds
  - low income housing tax credits (Section 42)
  - NMTCs
  - multifamily housing bonds (Section 142)
- Current "hot topic" affecting historic tax credits: 4th Circuit decision in *Virginia Historic Tax Credit Fund 2001 LP v. Commissioner* re: allocation of state tax credits

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QUESTIONS?

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