



Discussion Materials on:

“Doing Business with Indian Tribes”

A Capital Markets Perspective

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Introduction

“Doing Business with Indian Tribes”

Personal Disclaimers

- **Non-Native perspective - for improvement of the day-to-day lives of Native people**
- **Economic self-sufficiency focus - greater participation in the national economy**
- **Self-determination - as key milestone for pride & accomplishments**
- **Federal policies toward Indian tribes - have been subject to contradictory swings which can be debilitating**
- **“Relative Value” market supports evolution but can come “unglued”**
- **Views expressed today are my own and do not necessarily reflect the position of Bank of America Corporation**

Native self-determination and tribal self-governance should be cornerstones of any relationship between tribal governments and those with whom they do business



Introduction

You Need to Understand Sovereignty

Indian Tribes as Sovereign Governments

The U.S. Constitution identifies three, and only three, sovereigns other than the federal government – the several states, foreign nations, and Indian tribes

GEORGE BUSH: Tribal sovereignty means that, it's sovereign. You're a – you're a – you have been given sovereignty and you're viewed as a sovereign entity.

And therefore, the relationship between the federal government and tribes is one between sovereign entities. Now, the federal government has got a responsibility on matters like education and security to help. And health care. And it's a solemn duty. From this perspective, we must continue to uphold that duty...

JESSE JACKSON: The President explained. You just didn't understand. Sovereignty is sovereignty. You understand? It's like in sovereignty. If you are on a reservation, you have been soverized. Your Ph.D. is in soverbication. You understand? I don't think you understand.

Well, needless to say – needless to say that the sovereignty of American – Native American tribes are federally protected rights. As long as Native Americans were perishing on those reservations it didn't matter to states. But now that you have gaming on the reservations and economic development on the reservations, and indeed in some states voting on the reservations, the state now wants to impose itself on the federally protected sovereignty of the states. It has nothing to do with education, per se. It has to do with a legal relationship between federally constructed contracts or treaties, and states would not have the right to interfere with those federal territories. That is the real answer to that.

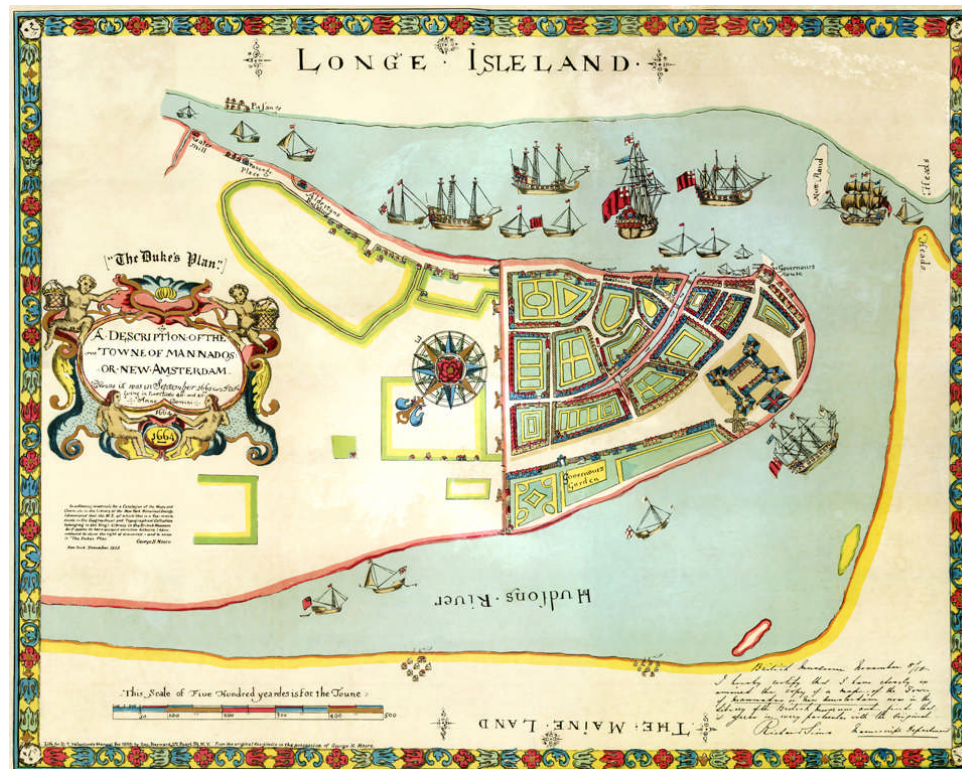


Introduction

Native Governments & “Wall Street”

Wall Street & Indians in 1664

- Map of New York City in 1664, showing wall on Wall Street
- Wall was to keep the Indians out





Native Nations & Wall Street

Progress, But Still Unique Entities

Wall Street and Native Nations in 2011

- Over \$20 billion in Wall Street deals
- Some Nations remain SEC registered issuers; all use SEC-type investor reporting
- 31 Nations have raised capital in the bond or note markets: registered, Rule 144a & private placements
- 6 Nations – 2 with energy resources, 4 with gaming operations – have retained higher, investment grade ratings at the government level by national rating agencies
- Over 100 Nations have bank credit facilities
- Many Nations have issued tax-exempt bonds for governmental purposes
- There is a tribal “premium” paid in the markets due, in part, to sovereignty and jurisdictional issues

The tremendous progress made by tribes and their enterprises is constantly challenged by the need for outsiders to understand their unique history, individual governmental structure and objectives



Introduction

Native Nations and Wall Street

What Contributed to Capital Markets/Profile?

- **Gaming and Diversification:** the growth in Native American financing transactions accommodated the continued expansion of Native American gaming and other tribal government enterprises
- **Economic self-sufficiency:** Tribes are building economic foundations to reduce dependence on federal programs
- **Increased sophistication:** Tribes are partnered with development and market experts to tap the traditional bank loan market and the tax-exempt, private placement (insurance companies), high yield and investment grade bond and note markets
- **Governmental Maturity:** Tribal governments have used re-recognition and self-determination to control their own destiny and exercise sovereignty in business and credit decision-making



Introduction

Key Considerations

Tribal Government Objectives

Goal of economic self-sufficiency and success guides decision-making

- Ensure long-term financial security
- Provide revenue streams to government programs for benefit of citizens
- Provide employment, training & career development opportunities for citizens
- Protect government assets
- Preserve sovereignty

Lacking a broad tax base, Native governments are more focused on business enterprise growth and diversification and wealth retention to create and protect economic self-sufficiency



Overview

Tribal Governments

Distinguishing Characteristics

Nation-building with emphasis placed on governance, investments, savings and wealth creation for community development

- Definition of "Success"
- Predominance of rural/semi-rural economies
- Dependence on limited asset class versus broad tax base
- Importance of consensus building in decision-making
- Collateral limitations inherent in federal trust status
- Conservative investment risk appetite
- Legal & regulatory framework
- Continued paternalistic federal policies
- Mixed relations with surrounding states



Overview

Tribal Governments

Economic and Market Challenges

- Credit quality & availability of funding
- Surrounding State Budgetary Deficit Pressures
- Market Volatility
- Erosion of IGRA 'exclusivity'
- Macro economic environment
- State and federal litigation & court decisions
- Governance and accountability
- Defaults / restructuring environment



Native American Law Context

Focus on the Fundamentals

Tribes as Governments

Since tribes are not covered by the Constitution's commerce clause, tribal governments usually mirror "state-like" structures essential for outsiders to do business with them

- Tribal court systems
- Tribal law enforcement bodies
- Tribal arbitration codes
- Tribal tax codes
- Tribal land use & environmental laws
- Tribal Uniform Commercial Codes



Native American Law Context

Contractory Policies toward “Dependent Nations”

Complications of Federal control over Indian Affairs

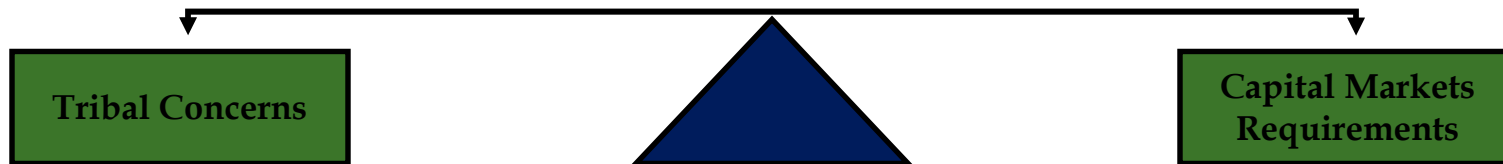
- **Overlapping Control of trust resources**
- **Relatively limited track-record from self-determination**
- **Continued role of federal approvals and regulations**
- **U.S. as legal titleholder of tribal trust resources**
- **Mismanagement of trust resources**
- ***Carcieri* - land-into-trust**
- **Federal court decisions, in general, over the last 10 - 15 years**



Native American Law Context

Market Fundamentals

Balancing Issues to Participate in the Capital Markets



- Sovereign immunity preservation
- Tribal court jurisdiction
- No pledge of Tribal assets
- Unconditional management control of enterprise
- Freedom to take Tribal dividends

- Legally effective waiver of sovereign immunity
- Arbitration or state/federal jurisdiction
- Security interest in revenue assets to extent permitted by law
- Participation in management decisions if operating performance deteriorates
- Dividends permitted only if operating performance meets specified requirements



Native American Law Context

Restructurings Impact on Markets

Dealing with Tribal Defaults

- **Cases are highly tailored with few but growing precedents**
- **Tools normally used by corporate & municipal entities are unavailable (e.g., Chapters 11 & 9; taking equity)**
- **Limited collateral on federal trust lands**
- **Creditors generally have less leverage in remedies**
- **Availability of bankruptcy doubtful & still untested**
- **Most tribal credits have flat lien structures**
- **Limited recourse to tribal assets**
- **Governance and accountability are key**



Tribal Economies

Tribal Policies

Responding to the Effects of the Recession & Slow Recovery

Solutions, just like conditions, vary significantly among tribal governments, despite common pressures from the downturn and the need to manage through economic turbulence

- **Diversification: Investing and Reinvesting**
- **Back to basics: Government Infrastructure & Services**
- **Proactive Tribal Government Tax/Revenue Systems & Structural Adjustments**
- **Partnership with Non-Tribal Governments to Achieve Common Goals**
- **Re-Aggregating Tribal Lands**
- **Creating/Augmenting Dedicated-Purpose & Reserve Funds**
- **Use of Enterprise 'Dividends'**
- **Sustained, Well-Planned Program for Economic Development**



Tribal Economies

Native American Gaming Enterprises

Macro Issues

- Gaming proliferation
- Consumer spending on gaming
- State budget constraints
- Technological innovation
- Perception of gaming
- Exogenous economic factors



Tribal Economies

Native American Gaming Enterprises

Financial Issues

- **Availability of funding**
- **Risk appetite of tribe**
- **Market volatility**
- **Dependence on single asset**
- **Tribal default environment**
- **Macro gaming environment**
- **Legal framework/ financial distress**
- **Governance and accountability**



Tribal Economies

Native American Gaming Enterprises

Tribal Issues

- Sources of development capital
- Availability of land
- Waiver of sovereign immunity
- Financial disclosure requirements
- Uses of funds
- Social welfare issues
- Governance and accountability
- Community relations