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Issues Paper

ACCOUNTING FOR PROJECT FINANCING ARRANGEMENTS

Prepared by

Off-Balance Sheet Financing Arrangements

Accounting Standards Division

American Institute of Certified Public Accountants

February 6, 1979

J.T. Ball, CPA
Financial Accounting
Standards Board
Screening Committee
High Ridge Park
Stamford, CT 06905

Dear J.T.:

Enclosed is an issues paper on Accounting for Project Financing Arrangements. The accounting standards division has identified this subject as a practice problem that affects a number of major industries and recommends that the Financial Accounting Standards Board consider the problem.

Project financing arrangements may be broadly described as the joining together of two or more venturers for the purpose of developing or using an asset. Typically, the size of the asset is large and the project is highly leveraged, with debt representing a significant portion of the total cost. This paper describes the organization of project financing arrangements and the division's understanding of how they are generally reported and disclosed in the financial statements of participants. The paper also contains an appendix with examples of project financing arrangements, derived from situations that have come to the division's attention.

The division has noted that participants in a project financing arrangement generally record their equity in the project as prescribed by APB Opinion 18, The Equity Method of Accounting for Investments in Common Stock. The participants' obligation to fund the project's debt, which generally exceeds equity in the project, may be disclosed; however, the obligation is rarely recorded in the financial statements. The division believes that in some project financing arrangements the participants have in substance acquired an ownership interest in the project's assets and a related share of the project's liabilities, which should be reported in the participants' financial statements. The division recognizes, however, that before specific accounting principles may be implemented, certain issues must be addressed. This paper lists the issues that have been identified by the division and offers factors to be considered in addressing those issues.

The division believes that the resolution of the issues developed in this paper may require both amendment of existing literature and the development of new accounting principles. The staff of the Securities and Exchange Commission has recently addressed a narrow segment of project financing arrangements and has issued Staff Accounting Bulletin No. 28 dealing

with construction trusts used in the financing of utility power plants. The division understands that SAB No. 28. is intended by the SEC staff to apply to construction trust financing in other industries as well. Therefore, we urge the Board to add the topic of project financing to its agenda.

Members of the division would be pleased to meet with the Board to discuss these issues.

Sincerely,

Arthur R. Wyatt (m)

Arthur R. Wyatt
Chairman
Accounting Standards Executive Committee

ARW:lw
Enclosure

Introduction

1. Industrial expansion over the past several years has been characterized by a significant increase in the cost of facilities due to factors such as their increased size, inflation, technological advances, and energy and environmental factors. As development costs have increased, a variety of financing techniques have emerged as companies attempt to share or limit their risks and not impair their financial condition while at the same time ensuring control over the product or service provided by a project. One of the financing techniques is referred to as project financing.

Features of Arrangements

2. Project financing arrangements may be entered into to acquire or to develop long-lived assets such as a plant or a group of plants, office buildings, pipelines, tankers, container ships, and other vessels, which may be designed for the particular needs of the participants and which may be an integral part of their operations.

3. In a project financing arrangement, two or more participants, one of which may be a trust (as described in paragraphs 11(e) and 12), a passive investor, a credit grantor, or a nonbusiness entity, agree to finance jointly the acquisition or development of assets or the right to use assets for the purpose of obtaining a product or service.

4. The participants may form an incorporated or an unincorporated entity (see paragraph 11 for a description of the entity types) for the financing, acquisition, or development of the project. The entity is frequently referred to as a joint venture. However, in some project financing arrangements, a new entity is not established. The appendix presents examples of project financing arrangements including situations in which an entity is formed and those in which an entity is not formed.

5. A project financing arrangement is financed by a combination of debt and equity. Although all participants usually contribute equity to the project, some participants may not. The debt of the project is usually directly or indirectly guaranteed by at least one of the participants.

6. In many project financing arrangements, no single participant contributes more than 50% of the project's financing in the form of equity contributions plus guarantee of the project's debt. In some arrangements, however, one participant is the sole guarantor of the project's debt.

7. The project may be highly leveraged, with debt representing virtually all of the project's financing; however, some projects have lower debt to equity ratios.

8. The participants are often suppliers, customers, or joint users of the project's product or service. However, one or more

of the participants may be a passive investor or credit grantor, for example, a bank or a group of financial institutions, a nonprofit institution, a pension fund, or a governmental body, whose primary role is to provide financing for the project. The latter group of participants usually does not have an obligation to fund the project's debt, since its role is merely that of passive investors or credit grantors and not users of the project's product or service.

9. As indicated in paragraph 5, one or more of the participants usually has a commitment to fund the project that assures the payment of the project's debt. The commitments may take the form of take-or-pay or through-put contracts (described in paragraph 13), working capital maintenance agreements, price support arrangements, or other contractual arrangements, which require a specified level of revenues or funds be provided regardless of whether product or service is made available.

10. In many project financing arrangements, the above mentioned commitments are designed to allow the project to operate at a cash breakeven point since profitability of the venture itself is not a primary goal of the participants.

Legal Forms of Organization

11. The legal form of a project financing arrangement may be a corporate joint venture, a general partnership, a limited partnership, an undivided interest, a trust, or a combination of those forms. The legal forms of organization are as follows:

(a) <u>A corporate joint venture</u> is a corporation owned and operated by a small group of investors to accomplish a mutually beneficial venture or project, as defined in APB Opinion 18, paragraph 3.

(b) <u>A general partnership</u> is an association in which each partner has unlimited liability.

(c) <u>A limited partnership</u> is an association in which one or more general partners have unlimited liability and one or more limited partners have liability limited to the amount of their investment. A limited partnership is usually managed by the general partner or partners, subject to limitations, if any, imposed by the partnership agreement.

(d) <u>An undivided interest</u> is an ownership interest in an arrangement in which two or more parties own property jointly and each party holds title to the extent of his interest.

(e) <u>A trust</u> is an arrangement in which property is acquired, developed, or transferred with the intention that it is to be administered for a period of time by a trustee for the benefit of another who is commonly referred to as the beneficiary.

12. The participants in a trust type arrangement establish a trust to own and finance a project (during the construction period) and guarantee the financing provided to the trust by a lender during the construction period. When construction is completed, the trust normally either sells, leases, or otherwise grants to the participants the right to use the facility or its output or services by means of an agreement, such as a lease or take-or-pay or through-put contract.

Supporting Commitments

13. Take-or-pay and through-put contracts are types of commitments by which some or all of the participants, in substance, are obligated to fund the project.

(a) A take-or-pay contract is an agreement among participants and between participants and a project entity that provides that the participants pay specified amounts periodically in return for products or services. The minimum payments are generally sufficient to cover the project's operating expenses and its debt servicing requirements. The obligation to pay minimum amounts may be unconditional as to each participant; it must be met regardless of whether services are

furnished or products are received. Under some arrangements, a participant may be relieved of the obligation if the project generates sufficient funds from sales or services to third parties or other participants. The contracts may include provisions that limit their effectiveness, as described in paragraph 14.

(b) A through-put contract is an agreement under which participants are required to provide periodically specified quantities of a product for transport by a project's transportation facilities such as oil and natural gas pipelines and LNG container ships. The participants may be obliged to provide minimum quantities of products for transport so that the project's total transportation revenues are sufficient to cover its operating expenses and debt servicing requirements. If the participants do not provide the minimum quantities, they nevertheless must pay for the minimum usage unless other participants or outside parties use the capacity. The contracts may include provisions that limit their effectiveness, as described in paragraph 14.

14. In some instances, take-or-pay and through-put contracts are not effective until the project is capable of providing products or services, at which time their provisions become binding on the

parties. Contracts sometimes contain a "force majeure" clause under which the obligation to perform is waived if a catastrophe such as a fire, storm, riot, or war occurs.

15. Examples of project financing arrangements are included in the Appendix.

Present Practice

16. A participant's obligation to fund a project is usually not reported in its financial statements since the contract creating the obligation is usually considered to be an executory contract or a contingent liability. The participants sometimes disclose the existence of the contract and outline its terms in their financial statements, including any guaranteed minimum payments.

17. Participants that have a 50% or less equity interest in a project financing entity generally record their equity investment using the equity method as described in APB Opinion 18. If the investment is material to a participant's financial position or results of operations, summarized financial statements of the project financing entity may be presented.

18. If the project entity is unincorporated, a participant may include in its financial statements its pro rata share of the project entity's assets, liabilities, revenues, and expenses if that is the predominant industry practice. AICPA staff Interpretation no. 2 of APB Opinion 18 supports that treatment for investments in joint ventures in the form of undivided interests

on the grounds that the "investor-venturer owns an undivided interest in each asset and is proportionately liable for its share of each liability" of the unincorporated venture.

An Alternative View

19. Some believe that participants in many project financing arrangements that have obligations to fund the projects, as described in paragraphs 5, 6, 9, 10, and 13, or through similar arrangements, have, in substance, acquired ownership interests in the project's assets and obligations to pay their debts. In their view, more meaningful financial statements would result by inclusion of those property rights (assets) and related obligations in the financial statements of the participants.

20. The Financial Accounting Standards Board appears to support that view by concluding that "...a lease that transfers substantially all of the benefits and risks incident to the ownership of property should be accounted for as the acquisition of an asset and the incurrence of an obligation...."[1]

21. In addition, in its exposure draft, Objectives of Financial Reporting and Elements of Financial Statements of Business Enterprises, the Board has tentatively defined a liability as a financial representation of an obligation of an enterprise to transfer economic resources to other entities in the future as a result of a past transaction or event affecting the enterprise. The

[1] Statement of Financial Accounting Standards No. 13, Accounting for Leases, paragraph 60.

exposure draft further states that, "An obligation must have three characteristics to be represented as a liability in the financial statements of an enterprise: (a) the obligation must involve future sacrifice of resources - a future transfer (or a foregoing of a future receipt) of cash, goods, or services, (b) it must be an obligation of the enterprise, and (c) the transaction or event giving rise to the enterprise's obligation must already have occurred. The amounts of obligations are determined by agreement or by the characteristics of the transaction or event in which they arise."[2] Also, the Board states that, "Although many obligations rest generally on a foundation of legal rights, legal enforceability of a claim is not prerequisite to recommending it as a liability in financial statements if the future transfer is probable - discharging an obligation based on custom or moral responsibility has the same effect on an enterprise's resources as discharging an enforceable claim."[3]

22. In the Board's exposure draft, the concept that economic substance as opposed to mere legal form should govern the accounting for a transaction is put forth. The concept of substance over form is essential to the resolution of the accounting principles relating to project financing arrangements. In a project financing arrangement in which one or more participants have an obligation to fund the project, those participants, in substance, may have

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2 Proposed Statement of Financial Accounting Concepts, Objectives of Financial Reporting and Elements of Financial Statements of Business Enterprises, paragraph 49.

3 Objectives of Financial Reporting and Elements of Financial Statements of Business Enterprises, paragraph 50.

acquired rights and risks incident to the ownership of the project's property, including the right to use the property or obtain a product or service from the project and the obligation to fund the project's debt. The participants' obligations to fund the project serve to support the project's debt. Their agreement to fund the project provides the collaterial for the debt. In effect, the financial position and business activities of the participants provide the project with the ability to obtain debt financing.

Issues to be Resolved

23. The first issue to be resolved is whether a project financing arrangement ever results in the participants acquiring ownership interest in the project's assets and incurring obligations to pay its debts and, if so, whether those ownership interests and obligations should be reported in the financial statements of the participants.

24. If the answer to the first issue is yes, the division believes that the next issue is the identification of specific characteristics of a contractual commitment or an obligation that give rise to the acquisition of assets and the incurrence of liabilities that should be recognized in the financial statements of the participants. Those characteristics should be distinguished from characteristics present in an executory contract that does not give rise to the acquisition of assets and the incurrence of liabilities. In identifying those characteristics, substance over form should be considered.

25. The factors in paragraph 26 and 27, while not presented as criteria for accounting for project financing arrangements, should be considered in determing the above characteristics.

26. The following factors may lead to the conclusion that in substance the participants have incurred liabilities and acquired related assets:

(a) Some participants may have a direct business relationship with the project. The project's product or service may be an integral part of a participant's business activities. For example, the project may supply a raw material that the participant uses in its production process.

(b) Some projects have only two participants while others have several. In some instances, one participant is a financial institution and the other participant is an entity that uses the project's output or service.

(c) The participants' commitments may last for the economic life of the project. The commitments may be for either the entire capacity of the project or may be sufficient to insure that the project has a positive or breakeven cash flow for the term of the project's debt.

(d) The arrangement may stipulate that participants may not withdraw from the project without incurring a substantial economic penalty.

(e) The participant's commitment may be unconditional or the conditions by which the commitment becomes unenforceable may be unlikely to occur. For example, the commitment may be unenforcable unless a certain level of production is obtained. This level of production may be sufficiently low to make the contract, in substance, unconditional.

27. The following factors may lead to the conclusion that the participants have not incurred liabilities or acquired related assets:

(a) A participant may not have a business relationship with the project. Such a participant will not use the project's product or service and would not rely on the project in conducting its business.

(b) A project may have many participants so that the project does not rely on only one of them for its financial substance and no participant has effective control over the project's activities.

(c) The participants' commitment to the project may be small compared to either the life, capacity, or breakeven point of the project.

(d) Participants may be able to withdraw from the project and extinguish their commitment without incurring an economic penalty.

(e) The participants' commitment may be conditioned on events that probably will occur, thereby, making the commitment unenforceable in substance. For example, a participant's commitment may only be enforceable if other participants do not fulfill their commitments.

Basis of Measurement

28. If it is determined that a participant has acquired assets and incurred liabilities, a measurement technique for recording the assets and liabilites must be selected. Techniques that should be considered include the following:

(a) A present value approach -- the discounted amount of the future payments is recorded as both a liability and an asset in the financial statements. This approach raises other issues such as the choice of an interest rate, the amounts of future payments, and the period to be used for discounting. An additional problem of discounting the amounts of future payments in a project financing arrangement is that the required payments may produce a profit in the venture. Therefore, if a

combination of discounting future payments and some form of consolidation is used to account for a project financing arrangement, consideration must be given to elimination of the intercompany profit.

(b) Full consolidation with the project entity.

(c) Pro rata consolidation with the project entity, whereby a pro rata amount of cash, receivables, inventory, and so forth are combined with the venturer's financial statements.

(d) A form of equity method, under which a pro rata amount of total assets and total liabilities are included separately in the venturer's financial statements.

(e) The expanded equity method, under which a pro rata amount of current assets, noncurrent assets, and so forth are included separately in the venturer's financial statements.

(f) A combination of discounting and some type of consolidation or equity method.

29. The selection of a measurement technique may be influenced by the following factors:

(a) The legal form of the project financing entity.

(b) The amount of a participant's commitment compared to the total of all commitments.

(c) The nature of a participant's commitment. For example, a participant may only guarantee the project's debt or may only agree to pay if others have defaulted.

(d) The term of the commitment compared to the economic life of the project.

(e) The amount of the participant's total commitment in relation to the total amount of the debt.

30. Disclosure requirements associated with the measurement technique selected should be addressed.

31. It may be necessary to reopen the issue of accounting for joint ventures as now prescribed by APB Opinion 18, The Equity Method of Accounting for Investments in Common Stock.[4]

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[4] Reconsideration of Opinion 18 may not be limited to project financing arrangement. In this regard, the division has formed a separate task force to develop the issues of joint venture accounting.

Appendix

The following cases represent project financing arrangements that have come to the division's attention. The cases are intended to further illustrate the variations that occur in practice.

Case One

Companies A and B plan to construct a plant on Company B's property. The plant's output will be used by both companies as a raw material for their existing plants.

The arrangement is as follows:

1. Company A will build the plant, using existing funds. There will be no debt directly associated with the plant.
2. Company B will operate the plant under a management contract. All plant expenses, however, will be paid by Company A.
3. Both companies have an option to purchase up to one-half of production.
4. Company B must periodically pay to Company A one-half of the plant's fixed costs. These fixed costs include fixed overhead, lease payments for Company B's property, depreciation, a "cost of funds" charge, and all other fixed costs. This payment must be made regardless of the amount of product purchased by Company B. Payments begin after plant completion.

5. The purchase price for the product will be based on the plant's variable operating costs and must be paid as product is acquired or purchased by either company. If no product is taken, no payment is due except for the amounts to cover fixed costs.
6. The above described arrangement will continue for fifteen years. At the end of the fifteen year period, Company A will sell the plant to Company B for one dollar and Company A will no longer have any rights or responsibilities in connection with the plant.
7. Both companies are unable to estimate a value for the plant at the end of the fifteen year period or the need for the plant's output.

Basic questions

1. Should Company B record a portion of the plant as an asset together with the related obligation?
2. If so, what measurement technique should Company B use for recording the asset and the related obligation?
3. If an asset and a liability are recorded by Company B, how should Company B subsequently account for them during the fifteen year term?

4. How should Company A account for the arrangement?

Case Two

Company A needs a certain raw material at one of its plants and Company B agrees to provide Company A with the needed raw material. The contract with Company B is as follows:

1. Company B agrees to produce the needed raw material and will construct a plant adjacent to Company A's facilities for this purpose. Company B will own and operate the plant and will sell the plant's entire output to Company A.
2. Company A agrees to purchase all its requirements for the raw material from Company B's plant.
3. The agreement to purchase the product may be cancelled by Company A after five years or as a result of a casualty. However, since Company A must have the product to operate its plant and the product may not be economically transported, the above limitation is of uncertain effect. In other words, Company B is the only source of the raw material and Company A is the only customer.
4. Company B has received a commitment from a group of banks to finance 85% of the plant's cost.

5. Company A has agreed to donate 5% of the plant's cost to Company B as "seed money."
6. The selling price of the raw material is based on its production costs and includes a credit for the "seed money."
7. Companies A and B are both operating companies. Neither could be considered a "special purpose" or "shell" company.

Basic questions

1. Should Company A record the plant as an asset together with the related obligation?
2. If not, should company A record an asset relating to the future commitment?
3. How should Company B account for the arrangement?

Case Three

Three corportaions wish to build a plant to supply them with product for their use. They form a corporation to construct and operate the plant. The projected balance sheet of the joint venture corporation immediately after completion of the plant is as follows:

Assets		Liabilities and Equity	
Current assets	$ 10	Current liabilities	$ 4
Plant	200	Long-term debt	185
		Equity	21
	$210		$210

The participants each supply one-third of the initial equity and agree to purchase one-third of the project's production.

The commitment to purchase one-third of the project's production is in the form of a take-or-pay contract as described in paragraph 13(a). The price to be paid for product will be sufficient to cover the project's operating expenses and debt service requirements and will be unconditional as to either the quantity of product offered for sale or the participants' need for the product.

The project entity will use the commitment to purchase as collateral for the long-term debt. This commitment, together with the assets of the project, will be the sole collateral for the debt. The participants will not be direct guarantors of the project's debt.

Basic question

1. How should the three participants account for the arrangement?

Case Four

This case is the same as case three except that:

1. One of the equity participants is a bank, which also provides the debt financing.
2. The bank does not have a commitment to purchase product.

3. The other two equity participants each agree to purchase one-half of the production of the plant.

Basic question

1. How should this change in facts affect the accounting for the arrangement?

Case Five

This case is the same as case four except that the two equity participants with commitments to purchase product have agreed to purchase two-thirds and one-third respectively.

Basic question

1. Would this change affect the accounting for this arrangement?

Case Six

This case is perhaps unusual but is presented to illustrate the variations that can occur in project financing arrangements.

Two companies with excellent credit ratings form a joint venture to develop a property. The venture borrows from a bank a significant portion of the project's cost. The debt is not guaranteed by the venturers nor do they have an obligation to purchase any of the venturer's

product or to provide the venture with additional funds.

However, the venturers also directly borrow a smaller amount from the same bank and agree to maintain that borrowing as long as the venture's debt remains outstanding. One of the provisions of the direct debt of the venturers is that it automatically goes into default if the venture's debts are in default. This would cause the venturer's debt to become immediately due and payable and, perhaps more important, would damage their credit rating.

Basic question

1. Does this type of arrangement create a commitment sufficient to require the recording of an asset and a related liability?

<u>Case Seven</u>

Company A enters into an arrangement with Company B as follows:

1. Company B will build a plant to produce a product to be sold to Company A.
2. Prices and quantities of products to be purchased will be negotiated annually; however, additional payments will be made by Company A if purchases fall below a certain level. The purpose of this provision is to ensure that Company B does not operate at a loss.

3. Company A may terminate the agreement at any time. However, on termination, Company A must pay Company B the book value of plant and equipment acquired to manufacture the product.

Basic question

1. Does this type of arrangement create a commitment sufficient to require the recording of an asset and a related liability by Company A and if so, how should Company B account for this arrangement?

Case Eight

This case illustrates a trust financing arrangement. Company A creates a "grantor trust" and assigns to the trust all construction contract rights in connection with a construction project (a generating facility). The trust then borrows funds from one or more banks, under revolving credit agreements. The borrowings are expected to cover the costs of construction and acquisition related to the generating facility. The borrowings are evidenced by promissory notes from the trust to the lending banks, with such notes scheduled to mature at the date of expanded commercial operation of the facility or some later date (to protect the lender against undue delay in commencement of commercial operation). As collateral, the banks receive a security interest in the contract rights and property to be constructed. When the notes mature Company A is obligated

to purchase the notes from the lending banks for the unpaid principal plus accrued interest. Upon such purchase the ownership of the generating facility is transferred from the trust to Company A.

Basic question

1. Does this type of arrangement create a commitment sufficient to require the recording of an asset and a liability by Company A during the period of the trust?

The following are additional examples of conditions that may be present in commitment arrangements.

1. The agreement is binding until a specified level of production together with a specified gross profit is obtained.
2. The agreement requires a payment regardless of production for a two year period following the beginning of full production. Thereafter, payment is only required to the extent of production.
3. The agreement does not specify a minimum quantity to be purchased but it requires that all the needs of a particular plant or plants will be purchased from the supplier entity to the extent product is available. The effect of this type of commitment varies with the relative sizes of the facilities. For example, the

buyer's plant may use a minimum of 1,000 tons a day while the supplier's plant may only have a capacity of 100 tons a day.

4. The commitment may not extend over the life of the debt or the life of the project.

Presented below are examples of note disclosures relating to through-put agreements that have appeared in published financial statements.

- Note 12. Contingent Liabilities

  The Company and its subsidiary companies were contingently liable in the amount of $41,000,000 as guarantors on loans outstanding, principally of certain associated companies. Also, under long-term agreements with certain pipeline companies in which capital stock interests are held, the Company and certain of its subsidiary companies guarantee specified revenue from product shipments through the pipelines and, in the event such companies are unable to meet debt obligations, funds may be advanced against future transportation charges. Furthermore, a subsidiary company has an agreement with a refining company, in which it has a capital stock interest, to process crude oil or in lieu thereof to advance funds sufficient to enable the refining company to meet its debt obligations. Another subsidiary company has agreed to advance to a partnership, in which it has a partnership interest, funds, if required, to

complete a fluid catalytic cracking unit and upon completion to process petroleum products through the unit or in lieu thereof to advance funds sufficient to enable the partnership to meet its debt obligations. No loss is anticipated by reason of such obligations.

Contingent liabilities under guaranty and pipeline through-put agreements were $4,427,000 at December 31, 1977. Borrowings of $16,014,000 by jointly owned companies have been guaranteed by a subsidiary.

- Note 6. Guarantees and Contingent Liabilities

The company has guaranteed approximately $38 million of the debt obligations of others, primarily companies in which a substantial stock interest is held. In addition, the company has agreed to provide specified revenues by the shipment of products or crude oil through pipelines of companies in which stock interests are held. If such companies are unable to meet their debt obligations, Union may be required to advance funds against future transportation charges. No loss is anticipated as a result of these agreements.

- Note 15. Other contingencies

  The corporation and certain of the consolidated subsidiaries were contingently liable at December 31, 1977, for $480 million for guarantees of notes, loans and performance under contracts. The corporation is also obligated to certain companies, principally pipelines, in which it has equity interests, to provide specified minimum revenues from crude or product shipments or by other means. It is anticipated that shipments or other operating factors will be at levels sufficient to provide substantially all revenues required.