

Headline News:

8/26/12: Stanley Crooks, chairman of Shakopee tribe, dies (www.nativetimes.com)

8/20/12: Fitch affirms Agua Caliente Revenue Bonds at 'BB'; Outlook Revised to Positive (www.marketwatch.com)

8/16/12: \$850 million secured for Rohnert Park casino (www.pressdemocrat.com)

8/8/12: Mohegan gaming authority extends reach with deal to manage Resorts in Atlantic City (www.articles.philly.com)

8/8/12: Economic Impact Study: Tribal Gaming a Powerful Economic Engine for California, Generating \$7.5 Billion for State's Economy (www.cniga.com)

8/2/12: \$10M Casino Pauma Renovation Now Under Way (www.nctimes.com)

Is "No" the Final Answer?

by Kristi Jackson

What do you do when your bank tells you no – that they won't meet your request? If you are lucky, you are at the beginning of a process of looking for financing or services, and you look elsewhere. A more challenging (and all too frequent) situation, however, is when you are in the 11th hour of a negotiation and your hands are tied to closing a particular deal or contract... what do you do then?

We have heard many stories of Tribal Councils not being involved in a financing until literally the time when the investors come to seek a signature on the documents. One Tribe we know was first shown documents *after* a bond issue was marketed and priced – any delay in closing would have derailed their deal and severely impacted their reputation in the debt markets. How challenging is it to ask for a change then? A Tribal leader asking for an explanation and a last-

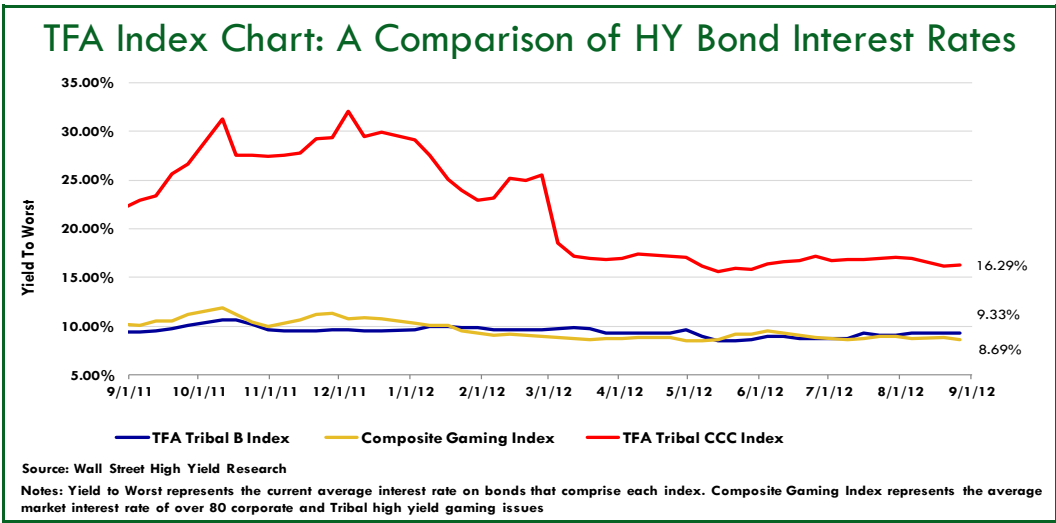
minute change with a room full of bankers and attorneys would most likely get an answer that it is too late. In this day and age, being fully aware of all major terms of a deal and understanding how these terms affect the Tribe is critical. Keeping apprised of terms as they evolve throughout a financing is critical to avoid ending up with a less-than-satisfactory deal.

Often times, Tribes seek financing or services via their existing go-to bank. If there is no other relationship bank in the mix, then how do you know that "no" is really the final answer?

A few important methods to consider to check on your deal, and to understand your options:

1. Foster competition – Get three quotes... It is a simple rule of thumb in business, but it usually gets vendors

(Continued on Page 2)



(Continued from Page 1)

(banks included) to put their best foot forward, particularly when they are aware of the competitive process.

2. Rely on the circle of banking relationships you have built up. Ask any of your banks a question. “Do you offer (fill in the blank)? Is it reasonable to expect that I be asked to (fill in the blank)? If you were handling the Tribe’s (fill in the blank) business, what would you charge?” Even if you aren’t ready to make a switch, you will gain valuable insight into who is helpful and who offers certain products.

3. Understand the potential hurdles and issues that exist and research them to present mitigants to those concerns up front. The more you anticipate a lender’s aversion and concerns and are prepared with a statement to get them to understand, the more likely they are to say yes to your request.

4. Consider your resources and hire a professional to guide your process. For example, an in-house attorney may be on the payroll and on the surface may seem to be saving you the cost of hiring outside counsel. However, your in-house attorney may only handle financing documents once a year (or less). The Tribe may be better protected using an outside legal firm that specializes in financing transactions, as they will point out best practices and issues much more readily and be more in tune with what provisions are “market”. Your

investment in a professional advisor will nearly always result in a better outcome and certainly provides better piece of mind.

Oftentimes, we work with Tribes that have one banking relationship. While this builds trust within that institution, it can also lead to complacency. By involving others in a discussion, you will have a better context to understand what “no” really means, if you are pushing too far, and, if there is an opportunity to change the situation to get the result better suited for your Tribe’s needs.

TFA will be at

San Diego
September 10th-11th
Give us a call if you would like to meet with us.

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