ASSEMBLY TRANSPORTATION COMMITTEE

In re: E-ZPass

TRANSCRIPT OF PROCEEDINGS

MAY 13, 2002

BEFORE:

Chairman John S. Wisniewski
Vice-Chairman Reed Gusciora
Assemblyman Francis L. Bodine
Assemblyman Alex DeCroce
Assemblyman Anthony Impeveduto
Assemblywoman Linda Stender
Assemblyman John J. Burzichelli
Assemblyman Gordon M. Johnson

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TRANSCRIPT of testimony as taken by and before CORINNE J. BLAIR, a Certified Shorthand Reporter, Registered Professional Reporters, and Notary Public of the State of New Jersey, at the State House Annex, State Street, Committee Room 16, Trenton, New Jersey, on Monday, May 13, 2002, commencing at 10:05 in the forenoon.
CHAIRMAN WISNIEWSKI: Good morning, ladies and gentlemen. Welcome to another meeting of the Assembly Transportation Committee.

I'm John Wisniewski, the Chairman. Nancy, would you please take a roll?

MS. LIPPER: Assemblyman Bodine.

ASSEMBLYMAN BODINE: Here.

MS. LIPPER: Assemblyman DeCroce.

ASSEMBLYMAN DeCROCE: Here.

MS. LIPPER: Assemblyman Johnson.

ASSEMBLYMAN JOHNSON: Here.

MS. LIPPER: Assemblyman Burzichelli.

ASSEMBLYMAN BURZICHELLI: Here.

MS. LIPPER: Assemblywoman Stender.

ASSEMBLYWOMAN STENDER: Here.

MS. LIPPER: Assemblyman Impreveduto.

Vice-Chairman Gusciora.

VICE-CHAIRMAN GUSCIORA: Here.

MS. LIPPER: Chairman Wisniewski.

CHAIRMAN WISNIEWSKI: Here. Thank you.

As usual, our proceedings today are broadcast on the Internet. Not only are they
able to be listened to as the meeting takes place but they're also archived. If you want
to go back and listen to them tomorrow, you can. And the proceedings for the portion in
which we take testimony from the Economic Development Authority will be transcribed by
our reporter here, and I would just ask that during that portion we try to take pains to
speak one at a time so that our reporter can accurately transcribe the proceedings. With
that, I would like to ask Caren Franzini and Larry Ciero from the New Jersey EDA to come
forward. And I believe there's an opening statement that they will read first.

Good morning, Caren.

MS. FRANZINI: Good morning, Chairman.

Thank you.

CHAIRMAN WISNIEWSKI: Just make sure your red light's on.

MS. FRANZINI: It's on now. Thank you.

Good morning, Chairman, and members of the committee. I'm Caren Franzini, Executive
Director of the New Jersey Economic Development Authority.

The EDA is a self-supporting, independent
state financing and development agency that, since 1974, has arranged for more than 15 billion dollars in financing assistance to promote economic development and create jobs in New Jersey. Much of this assistance has been in the form of conduit bond financing.

My purpose here this morning is to briefly explain to you the EDA's role in the issuance of 300 million dollars of conduit taxable bonds to finance services associated with the design, construction, operation and the maintenance of the E-ZPass Electronic Toll Collection System. This is a role the EDA was asked to assume by the Department of the Treasury in January of 1998, more than two-and-a-half years after plans for the statewide electronic toll collection system were first announced.

EDA does not pledge its own or state resources as security for these issuances. Rather it serves as a bridge to public or private markets arranging bond issues to be sold. This means that investors rely on the ability for business or not-for-profit borrower to repay the bonds.

It is a role that the EDA typically plays
and is a principal reason why the Authority was
called upon by Treasury to assist in the
financing of the project.

The conduit bond project consisted of 150
million dollar Fixed Interest Rate Series and a
150 million dollar Variable Rate Series, both
having a term not to exceed ten years, with
interest only payments until maturity.

As per the agreement, amounts borrowed
were to be paid exclusively from proceeds
derived from leases with third parties for
fiber-optic system capacity and administrative
fees payable under the applicable Toll
Violations Enforcement Statutes of the
participating toll roads.

If these revenues were insufficient to
fully repay the financing during the 10-year
term following the closing of the financing,
the obligations of the participating members to
pay the amount of the deficiency were specified
in a True-Up Agreement between the EDA and the
members, which consisted of the New Jersey
Turnpike Authority, New Jersey Highway
Authority, the South Jersey Transportation
Authority, the Delaware Department of
Transportation, and the Port Authority of New York and New Jersey.

Prior to approving the project, we did our usual due diligence as to the public purpose of the bonds, and were assured of the project's benefits by those groups we considered to be the transportation experts, the participating major toll roads themselves. Our other concern was to be sure that the purchasers of the bonds were sophisticated investors who understood the risk factors involved in a complicated bond issue. With both these considerations satisfied, the EDA Board approved financing on March 10, 1998.

In summary, our involvement was requested by Treasury late in the process and was limited to serving as conduit bond issuer on behalf of the various state transportation authorities.

Thank you. I'll be happy to answer any questions.

CHAIRMAN WISNIEWSKI: Thank you, Ms. Franzini, for coming and providing an opening statement.

A lot of the questions that many of the members of the committee have about the E-ZPass
situation focus on the financing, the natural implication being that but for the issuance of these bonds, we would not be in the situation where we are today where a proposed self-financing system is clearly not self-financing and now that the -- that's not happening, the True-Up Agreement is essentially the document that's going to control how this is paid.

So, to really go to the heart of this, your statement said that the EDA was asked to assume the financing of this in 1988 -- '98, by the Treasurer's office. I'd like to start at that point in time and, if you could, inform the committee what were the circumstances that surrounded the EDA getting involved because, for my recollection, the EDA is not an entity that traditionally finances government projects. It's a school of economic development for private projects. So this seems to be a departure from its own course. And I want to understand exactly how that came to pass.

MS. FRANZINI: Let me address that question, Chairman.
There were two issues at hand. One is there was a consortium of several toll roads that wanted to utilize the E-ZPass system. And they needed to have someone issue the bonds on behalf of several entities. No one entity by themselves could issue bonds on behalf of other entities due to their own bond indentures. So they needed to find a single purpose entity to issue on behalf of the team. It wasn't till late in the process that they realized this and EDA was asked to do it.

The question was then sent to the Attorney General's Office whether or not the EDA under our enabling legislation could provide this type of financing. And it was determined by the Attorney General's Office that we could. So we were the only state entity that had the ability to issue conduit bonds on behalf of several toll routes.

CHAIRMAN WISNIEWSKI: Who was the Attorney General at that time?

MS. FRANZINI: It was in the fall of 1997. And I apologize, Chairman, I --

CHAIRMAN WISNIEWSKI: Well, let me ask this question: There was apparently an opinion
rendered authorizing the EDA's financing on behalf of the consortium, correct?

MS. FRANZINI: I know there was a written opinion, but we could not go to our Board unless the Attorney General's Office signed off on us issuing the bond. So probably the bond document, if there is such an opinion, from the Attorney General's Office. We'll be sure to get a copy of that to you.

CHAIRMAN WISNIEWSKI: Okay. Thank you.

You said that there had to be a single purpose entity for the financing. Now, I understand that you were not involved in the discussions behind closed doors for the consortium, but doesn't it seem to you rather unusual that the EDA, an entity that at -- in my mind, associates with helping promote business in private interests, is promoting a state infrastructure improvement?

MS. FRANZINI: We -- we have, Chairman, had to issue bonds for the State and other avenues.

Let me just explain. We have, for instance, built state office buildings, in Trenton and Asbury Park and other cities. So
we both build the state office buildings and
issue bonds. So we have been utilized by the
State in the past to issue bonds on behalf of a
State entity.

CHAIRMAN WISNIEWSKI: Those were for
buildings that the State owned?

MS. FRANZINI: Those were for buildings
that we owned, and then we turn them over to
the State of New Jersey at the end of the bond
term.

We also, in the past, had issued the
market transition facilities bonds, which is a
bond issue. We again were asked by Treasury to
issue bonds and that was the bad insurance
driver pool bonds. So this is not something
that EDA went out and asked for. We were asked
to do the financing.

CHAIRMAN WISNIEWSKI: Who did the asking?

MS. FRANZINI: Um, again, I believe the
Treasurer's office was asked by the Department
of Transportation to help finalize the
financing at the end. We were asked by the
Treasurer's office to do the financing.

CHAIRMAN WISNIEWSKI: Do you recall who at
the treasurer's office was the person who came
to EDA who said, "You're being asked to finance this"?

MS. FRANZINI: The treasurer at the time, I believe in the fall, they started looking at the issue of -- I believe it was Brian Timiner (ph) and then Jimmy D'Tilitario (ph) was the state treasurer when we actually issued bonds.

CHAIRMAN WISNIEWSKI: Okay. One of the statements made -- one of the remarks made in your opening statement was that you -- your concern was to be sure that the purchasers of the bonds were sophisticated investors who understood the risks. I'm not an expert in public financing. Maybe you can help us through this. My understanding is that very often times bonds that are issued by the EDA or other entities are sold at auction, where the interest rate has been down by competing investors; is that correct?

MS. FRANZINI: Actually, the majority of our bond issues are for small businesses, so often times our bonds are privately placed with the financial institution, often the bank, to cut down the cost of borrowing.

For large financing, however, that often
can be sold in the public marketplace. We would then issue a public bond in the public marketplace and it's sold as if it's in private placement. This was sold as a private placement.

CHAIRMAN WISNIEWSKI: But this is such a large issue, this is one that would, perhaps, under normal circumstances, be sold in the public market?

MS. FRANZINI: Based on its size you would think that it should be sold in the public marketplace. Based on its complexity, it was privately placed.

CHAIRMAN WISNIEWSKI: I'd like you to explain that to the committee, what exactly is meant by, "Based on its complexity, it was privately placed." Because my own suspicion is, is that based on the fact that the projections of toll revenue were less than stellar and that it was privately placed because the public market wouldn't buy into it.

MS. FRANZINI: When we -- when I go back to the example we issue bonds on behalf of the state office -- the state office building, and those are publicly traded, because everyone can
understand the State of New Jersey is going to pay back the lease payment for a state office building. And so those are publicly traded and you get a very good rate on those bonds. Because the security, the different revenue sources to pay back the bonds were different. They come from three sources and the third source being the True-Up Agreement, is coming from four different toll roads --

MR. CIER: I believe five.

MS. FRANZINI: Five toll roads. So when you go to the public marketplace -- it is not something you can easily describe. You have to have one-on-one conversations with the bond purchasers. So it's a more complicated structure. And that the repayment, although it's not from one source. It's from several sources.

CHAIRMAN WISNIEWSKI: So your testimony is that it was privately placed because of the True-Up Agreement between five toll roads and not because there was a doubt as to whether it would be sufficient toll violation revenue?

MS. FRANZINI: My testimony from -- one, the structure came to us, Mr. Chairman. We did
not develop the structure for the financing.

CHAIRMAN WISNIEWSKI: No. I --

MS. FRANZINI: Just so we're clear again. The structure came to us. It was already in place, and it is my opinion that because -- because the revenue sources were from several different sources of revenue, the True-Up Agreement being one of three, that it may be more complicated financing, yes, and it had to be privately placed.

CHAIRMAN WISNIEWSKI: And this is my last question. I'll let the other members of the committee have an opportunity to ask questions.

What would be the difference, generally, in the interest cost of a publicly-auctioned bond issue versus a privately placed; talking about one percent difference, two percent difference?

MR. CIER: Mr. Chairman, that's difficult to answer, because many times the actual pricing on a debt, a bond, is determined by not only the credit of the borrower of the transaction, but the timing, when you go out to the market, the general market conditions, whether the transaction is rated versus
non-rated. So there typically is a difference
or spread between the different types of debt.
It's hard, I think, to give you an exact
number.

CHAIRMAN WISNIEWSKI: It's higher, though?

MR. CIER: Yes. It typically would be
higher going in on an unrated basis versus
apropos the market.

CHAIRMAN WISNIEWSKI: So this is an
unrated issue?

MR. CIER: Yes. It is unrated and
privately placed.

CHAIRMAN WISNIEWSKI: Thank you. Any
other members of the committee?

Assemblyman DeCroce.

ASSEMBLYMAN DeCROCE: Thank you very much,
Chairman.

Director, are the investors presently
being paid now on the bond investments?

MS. FRANZINI: Yes, they are.

ASSEMBLYMAN DeCROCE: Is there any reason
to worry that they won't be paid?

MS. FRANZINI: I can't make -- I believe
the True-Up Agreement is very clear that they
have to be paid. So I don't -- I don't think
there is a problem right now.

ASSEMBLYMAN DeCROCE: So the bonds have not in any way been recalled by anyone?

MR. CIER: No. We're not aware of bonds being in default or any interest payments not being made to bondholders.

ASSEMBLYMAN DeCROCE: My understanding is that bonds have been sold even to off-shore island holders. It can't be too bad if that's happening.

MS. FRANZINI: No. I mean, bonds are placed with private investors, which are sophisticated investors. They'll hold the bond. And you're correct, Assemblyman. They are being paid, the interest that's due, but I'm not aware of any default situation --

ASSEMBLYMAN DeCROCE: Thank you.

CHAIRMAN WISNIEWSKI: Assemblywoman Stender.

ASSEMBLYWOMAN STENDER: Thank you, Mr. Chairman.

You said that you didn't create the structure. Who did?

MS. FRANZINI: The structure was created, a combination as part of the organization that
bid on the bonds and that as they came in with each structure, and then it was finalized with the Department of Transportation and the Department of Treasury and the consortium.

ASSEMBLYWOMAN STENDER: So that means that each of those groups -- and we're really talking about the administration at that point. So the administration through the Treasurer's office and the Department of Transportation, and the contractor that's got the project, they created a structure that would make sure this would all be paid no matter what?

MS. FRANZINI: That's correct.

ASSEMBLYWOMAN STENDER: What would actually trigger a default? I mean, if these, -- these are revenue bonds, correct?

MS. FRANZINI: Correct.

ASSEMBLYWOMAN STENDER: Which are a higher risk then a general obligation bond?

MS. FRANZINI: Correct.

ASSEMBLYWOMAN STENDER: So what would ever trigger -- it's my -- and I have limited knowledge on this, but the revenue bond is considered a riskier bond, per se, because it is based on a revenue stream, except in this
case the True-Up stepped up in front and said,
"We don't really care whether the revenue
stream works or not, because in the end,
through this consortium, you get paid."

MS. FRANZINI: The difference is, the only
way you can default is if you don't pay the
debt service on the bonds, and the difference
is under a general obligation. For instance,
the Turnpike's obligation, they have to raise
tolls. This does not directly relate to a
general obligation of the Turnpike to directly
enforce them to raise tolls. It's an indirect
revenue obligation for them to make the
payments on the bonds.

ASSEMBLYWOMAN STENDER: But where else
would they get their revenue from if it's not
from tolls?

MS. FRANZINI: They could actually trigger
a default. They're not mandated by the bond
documents to say you have to raise rates. They
could go into default; versus a general
obligation of the toll road, says you have to
raise your tolls no matter what.

ASSEMBLYWOMAN STENDER: So somebody must
have sat and figured out that one way to make
sure this could be sold would be to say, "We'll never have to raise our tolls to pay for this."

MS. FRANZINI: I was not part of that -- someone that could answer that.

The True-Up Agreement does require -- each of the five entities requires then to differently make their payment on the bonds under different resources. Each five toll roads set forth their own obligation towards the repayment of the bonds.

ASSEMBLYWOMAN STENDER: Okay. And so at this point in time, if we have a system that doesn't work, that isn't completed, that's got all kind of problems --

ASSEMBLYMAN DeCROCE: Who says it doesn't work? It does work.

CHAIRMAN WISNIEWSKI: Assemblyman, let Assemblywoman Stender ask her question.

ASSEMBLYWOMAN STENDER: Thank you, Chairman.

ASSEMBLYWOMAN STENDER: And that there's no way that these people are not going to get their money back out of it because of how it was set up. I'm sorry. I lost my train of where I was going with this.
The -- I'm sorry. Go ahead, Mr. Chairman.
I'll defer to you.

CHAIRMAN WISNIEWSKI: Thank you.

What I don't understand, Mrs Franzini, is that these -- these are termed, "revenue bonds," correct?

MS. FRANZINI: Correct.

CHAIRMAN WISNIEWSKI: But the ultimate back stop is an obligation of each of the constituent members of the consortium to pay should the revenues not be sufficient?

MS. FRANZINI: Correct, which is the revenue bonds side of it. I was just trying to make the distinction -- and again, I'm not the bond attorney for any -- for any of these toll roads, but there's a distinction made between them being general obligation bonds of the toll road, and the general obligation where they had to increase the toll, versus a revenue bond where they could go in, in theory -- in theory, they could go in default, Chairman, and not raise the revenue.

CHAIRMAN WISNIEWSKI: Right. And I understand that.

MS. FRANZINI: And I'm just making a
legal -- I'm not a lawyer but -- I'm just trying
to make that fine-tune distinction between the
different types of bonds.

CHAIRMAN WISNIEWSKI: These bonds are
different because should the toll roads decide
not to raise tolls, they could choose to go
into default on them.

MS. FRANZINI: Correct.

CHAIRMAN WISNIEWSKI: And you and I both
know that that is not likely to happen.

MS. FRANZINI: I wouldn't think it's --
but that's their decision to make, not --

CHAIRMAN WISNIEWSKI: Obviously. It's
just troubling that it seems that in certain
financings we allowed to be created a picture
that, well, since they don't have an obligation
to raise tolls and they could choose to
default, that these are not general obligations
of the toll road because everybody understands
that the toll road is not going to default and
the State of New Jersey is not going to allow
the toll road to default. And I'm just
troubled by what clearly is a legalistic
distinction that you did not create but
obviously is utilized, and the body of law in

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the State of New Jersey clearly allows it to be utilized, but maybe that's something that needs to be changed, because no one is going to allow these to be defaulted, but the fiction that's created for the purpose of the sale of the bonds -- call them revenue bonds -- is that well theoretically they could be defaulted on, and that's very troubling to me.

Assemblyman Burzichelli, did you have any questions?

ASSEMBLYMAN BURZICHELLI: No. The question I had was asked and answered.

CHAIRMAN WISNIEWSKI: Assemblyman Johnson?

ASSEMBLYMAN JOHNSON: I have nothing further. Thank you.

CHAIRMAN WISNIEWSKI: Assemblyman DeCroce?

ASSEMBLYMAN DeCROCE: It just seemed to me that the assemblywoman is on a witch hunt here.

First of all, there is some question with regard to the way in which the bonds were bridged. But they were bridged. People are paying their bonds, are receiving their monies. We're not in default. You're going to scare the hell out of the public. And there's no reason to do that. Right now, everything is
working well. And frankly, if there's a need for any additional revenues, I'm not sure if he said there wouldn't, but I believe there might be -- it may happen that the Turnpike Authority -- the Turnpike Authority or maybe even the Highway Authority might have to raise revenue should that be necessary at some later date. That could happen. We don't know that. That's going to happen years down the line. So we can't forecast as to what may happen. We're not here looking for an accident that may happen. We're trying to find out what's going to happen now.

CHAIRMAN WISNIEWSKI: Thank you, Assemblyman.

The problem here is that the accident's already happened.

ASSEMBLYMAN DeCROCE: It hasn't happened.

CHAIRMAN WISNIEWSKI: With all due respect, Assemblyman. We have a situation where the revenue projected for this particular bond indebtedness from the two to three revenue sources clearly not coming up to what was projected, which makes it very clear that the third revenue source, which is the True-Up
Agreement, is going to be relied upon to a greater degree than had been anticipated.

ASSEMBLYMAN DeCROCE: But there is --

CHAIRMAN WISNIEWSKI: Well -- but the troubling aspect is, is that money has to come from somewhere, and if it's not from a toll increase, it's going to come from a reallocation of resources within that toll road agency.

They've got a fixed pot of money based on toll revenues today and tomorrow and five years from now and the desire is, is, well, we don't want to raise tolls. That's a laudable goal. But that means that if we're going to not default and abide by the True-Up Agreement, then they've got to decide, well, the dollars that we were going to use to fix this road or put up this guardrail or do whatever are going to be now reallocated to the True-Up Agreement. And I think that's the troubling aspect of this financing scheme, is that it -- it is really putting off to a very late date the responsibility for financing the system which, quite frankly, should have been paid on an ongoing basis as opposed to a balloon payment
ten years down the road. And obviously the EDA was not the designer of the financing scheme, but it was the implementor of the financing scheme. And I'm, quite frankly, troubled that there's an Attorney General opinion, either verbal or written, that says this is permissible for the EDA because, in my mind, this is not what the EDA should be doing, because this is not what it was designed for. But let me just ask questions about the private purchasers. You have a list of the purchasers of the bonds.

MR. CIER: Yes, we do.

CHAIRMAN WISNIEWSKI: Now, was there any investigation or inquiry or due diligence done as to who's buying the bonds?

MS. FRANZINI: There's a two step -- there were the initial purchasers of the bonds. And I'm going to ask Larry Ciero to tell you who the current holders of the bonds are. They're in the bond documents. It's clear that the trustee must approve who the current holders of the bonds are and they must be -- the terminology are, "sophisticated purchasers"; meaning, that they're not my grandmother or my
great Aunt Tillie's bonds, but they're sophisticated purchasers that could understand the financing transactions. So I'm going to ask Mr. Ciero, if you're interested now or we can speak to you separately.

CHAIRMAN WISNIEWSKI: Yes.

MR. CIER: Mr. Chairman, originally, the time of the issuance of the bonds, the lender or the agent for the syndicate of investors who purchased the bonds was Newcourt Capital, which originally was in the documents the lender.

CHAIRMAN WISNIEWSKI: And what was Newcourt Capital's specific role?

MR. CIER: Newcourt Capital's role, as I understand it, was to negotiate and put together a financing package of investors who would purchase the bonds issued by the authority.

CHAIRMAN WISNIEWSKI: And who did Newcourt work for, the EDA or for the contractor or --

MR. CIER: Newcourt was the lender that MFS Technologies had identified and brought into the transaction, is my understanding.

CHAIRMAN WISNIEWSKI: So this Newcourt was an entity that was identified and brought into
it by MFS, whoever was the contractor on the
system?

MR. CIER: Correct.

CHAIRMAN WISNIEWSKI: And are they still
in business today?

MR. CIER: MFS?

CHAIRMAN WISNIEWSKI: No, no. Newcourt.

MR. CIER: Newcourt Capital. I am not
aware of their current status. I do not know
whether they exist today or not.

CHAIRMAN WISNIEWSKI: Do we have an
address for them, or location for them?

MR. CIER: I have the location.

MS. FRANZINI: We can provide that to you,
as well.

CHAIRMAN WISNIEWSKI: Anyway, you started
explaining the process by which sophisticated
investors were identified.

MR. CIER: Sure. So, Newcourt Capital had
put together, through negotiation with MFS and
the consortium, a term sheet which outlined the
purchase of the bonds and the terms under which
they would purchase the bonds, which included
as was discussed earlier and the three sources
of revenue. And that was a term sheet that was
agreed upon by MFS and the consortium and
became the basis for the Authority's bond
documents. The current -- the current owners
of the bonds -- the holders of the bonds are
generally institution investors, based on the
information I have from the trustee. They
include -- um, would you like me to go through
the list?

CHAIRMAN WISNIEWSKI: No. I don't want to
go through the current owners. My curiosity --
who purchased them, and was there any
relationship to MFS, WorldCom or the
contractor?

MS. FRANZINI: We were not notified of any
relationship other than MFS brought them as
part of the financing structure. So we can't
comment on if there was any kind of
relationship between them and Newcourt Capital.

CHAIRMAN WISNIEWSKI: They brought
Newcourt in --

MS. FRANZINI: And Newcourt.

CHAIRMAN WISNIEWSKI: -- and Newcourt
brought in the investors who would buy all the
bonds --

MR. CIER: Correct.
CHAIRMAN WISNIEWSKI: -- and raise the amount of money necessary for the installation?

MS. FRANZINI: Correct.

CHAIRMAN WISNIEWSKI: So Newcourt essentially made sure they were the, quote, unquote, sophisticated investors?

MR. CIER: Correct. Newcourt identified the investors and acted as their agent.

MS. FRANZINI: Newcourt served as a placement agent for the bonds.

CHAIRMAN WISNIEWSKI: Is there any degree of diligence or inquiry done by the EDA in terms of making sure what Newcourt's doing is correct, since they are sophisticated investors; that they're not interested parties, and that there's -- there's no improper dealings?

MR. CIER: Typically, the documents require that they meet the definition of a private placement under the Securities Exchange Commission Laws, the SEC Rules and Regulations.

MS. FRANZINI: And the SEC monitors in that part of their role and responsibilities is to make sure that the people that are licensed under them are, in fact, following the rules.
And it's very clear in the bond documents that what were the private placements responsibility to find a soph -- only to sell to sophisticated investors.

CHAIRMAN WISNIEWSKI: But I guess the question is there's no oversight by the EDA in terms of what Newcourt did?

MR. CIER: There's not any continuing oversight, no.

CHAIRMAN WISNIEWSKI: I'm sorry. I missed the answer.

MR. CIER: I just said, there's no continuing oversight by the EDA.

CHAIRMAN WISNIEWSKI: What are the restrictions or the requirements of the EDA in accepting somebody like a Newcourt? Would you have MFS come to the EDA because the administration wants this financed through the EDA, and Newcourt -- and MFS says, "We've got this company, Newcourt, that could put together purchasers. Here you go." What is the EDA's responsibility to make sure that they're honest brokers; that they're not in violation of any SEC orders or anything like that?

MS. FRANZINI: We were provided as part of
the application information about -- about
Newcourt Capital that they were a real entity,
that had assets under management and they were
in the business of placing bonds.

MR. CIER: Again, as Caren testified
earlier, this transtransaction, this placement
agency was brought to the Authority by the five
members of the consortium as --

CHAIRMAN WISNIEWSKI: I just want to stop
you there, because you now said they were
brought by the five members of the consortium.
That's different than MFS.

MR. CIER: Well, perhaps I'm mixing the
two, Chairman. I misspoke. MFS was the
applicant to the Authority. They negotiate the
transaction.

MS. FRANZINI: They brought --

MR. CIER: Newcourt Capital.

CHAIRMAN WISNIEWSKI: What's troubling
me -- the reason I ask where they're at today,
because we heard testimony from Mr. Gross last
week. In his opening statement he mentioned
Newcourt Financial and he mentioned Coopers
Lybrand as being two entities that were
involved in the financing, and my staff has
made an attempt to try to find where Newcourt Capital is and we can't find that. So, again, was this an entity that was created by MFS simply to get the financing done? Because clearly it was in their interest since they were the bid winner, and they won the award of the contract. They needed to find people to buy their bonds so they could get the work done and, quite frankly, they've done a terrible job getting work done. And they went out to find people to buy these bonds. I'm troubled by who bought them. Were these people who were interested in this contract and now, long story made short, bonds that were supposed to be self-financing, but had this little clause that nobody paid attention to; that the State, through the toll roads, were going to pay these bonds should the financing not work out?

The job's done horribly. It's mis-installed. We've looked at the Mark Four analysis of the -- all the tolls lanes, and just about every toll lane in the State has the problem.

These people are still going to get paid. And I'm troubled as if these were people who
were affiliated with MFS to begin with, and
what level of inquiry does the EDA do to make
sure there's not some type of self-dilly here?

MS. FRANZINI: Again, Chairman, this was a
structure that was put together and we were
asked to issue the bonds. Our due diligence
was in two primary areas; rely on information
from the transportation toll roads that this
was a good thing. They are the experts, not
EDA. And secondly, that the bonds would only
be sold to sophisticated investors. We wanted
to make sure that these were not being sold in
the general public marketplace to anyone off
the street buying the bonds. Those
requirements were met. The current bond
holders -- and we can provide the committee
with a list of them again -- are institutional
investors -- again, it's not really --

CHAIRMAN WISNIEWSKI: I'm not interested
in the current ones. I'm interested in who
initially bought them.

MR. CIER: Yeah. I cannot tell you if
there's any relationship between Newcourt and
MFS.

CHAIRMAN WISNIEWSKI: But you also are
saying that there was no inquiry done as to
whether there was or was not. Newcourt was
presented to the EDA --

MS. FRANZINI: The whole structure,
Chairman, again was presented to the EDA. We
were asked by the Treasury Department to be the
conduit issue for these bonds and that's
exactly what we did.

CHAIRMAN WISNIEWSKI: And, I don't want
you to get the wrong impression from my
questioning. I'm not trying to imply anything
by -- other than, what is the current structure
of the law that allows these type of financing
mechanisms? And it could be very well that EDA
acted entirely within the law, and from what
you're telling me, it seems that way. I want
to understand what it is that we, perhaps, may
need to change in those laws. And what you're
telling me is that the way this operates is the
borrower comes to the EDA and says, "We've got
Newcourt Financial, who's going to find
investors for these bonds and make sure they're
sophisticated investors, and that the law
allows the EDA to rely on that because these
are companies that are registered with the SEC,
and the assumption is that if they maintain
that registration and behave themselves,
they're good and you would know otherwise, and
that they go ahead and find investors; is that
correct?

MS. FRANZINI: For this particular
transaction. But, again, I just want to state
that this was an unusual transaction. This was
not a normal transaction for EDA.

EDA, our primary existence is financing
business and not-for-profits in New Jersey.
And we finance them usually in the range of,
you know, five, ten million dollars in
financing. And sometimes we do large
financings for a major company or a utility
company. But again, this was a different kind
of transaction.

A team was brought together and we were
asked to issue the bonds. So it's -- I
wouldn't want to overstate that EDA didn't --
we have a whole internal process for our
day-to-day transactions in helping businesses
and not-for-profits grow in New Jersey and
issue taxes and bonds, and I think it's a good
structure.
CHAIRMAN WISNIEWSKI: But this particular transaction operated outside of this?

MS. FRANZINI: Yes, it did.

CHAIRMAN WISNIEWSKI: And that operated outside of that because of direction from the State Treasurer.

MS. FRANZINI: The package was already put together. We were the conduit issue to sell the bonds.

CHAIRMAN WISNIEWSKI: The package was put together by MFS and the State Treasurer, by the State Treasurer, by --

MS. FRANZINI: Well, MFS was the contractor to the consortium, and when the consortium -- when they were trying to finalize the bond issue, it's my understanding the Department of Transportation asked the Treasury to get involved and help with the financing structure. And once they worked on it, we were asked late in the game, in January, to -- after almost two years, I believe, to issue bonds.

CHAIRMAN WISNIEWSKI: So everything was presented to you and you just executed what was presented.

MS. FRANZINI: That's correct.
CHAIRMAN WISNIEWSKI: It seems to me that much of it was outside what you normally do in terms of these type -- any type of bond issue?

MR. CIER: Yes. I would say so, Chairman, yes.

CHAIRMAN WISNIEWSKI: Does that mean that you were outside -- operating outside the EDA's normal scope of authority?

MS. FRANZINI: No. It's -- we still did -- our basic due diligence was to ensure and then our public policy of, you know, creating of jobs was the creating of construction jobs on building it. And the issue to ensure, again, that sophisticated buyers were buying it.

What we were most concerned about and -- was that the purchaser of the bonds knew the type of bonds they were buying.

CHAIRMAN WISNIEWSKI: We seem to be going around a little bit on this.

Your job is to make sure sophisticated investors are buying the bonds. And in response to my question about what you did to make sure they were sophisticated investors, you said, "Well, Newcourt brought us the
MS. FRANZINI: And also in the bond documents themselves, we ensure that the language was placed in the bond documents; that only could sophisticated buyers buy them and that the trustee, who has a responsibility, ongoing responsibility once the bonds are sold, the trustee has to ensure at all times that the bonds, once they're resold, as they often are, can only be resold to sophisticated buyers.

So we ensure in our process when we did get into it that certain key things did happen in terms of the structure of the bonds.

CHAIRMAN WISNIEWSKI: But in terms of actually looking at a list of potential investors to make sure that we had a list of ten investors; we didn't go down it and say, "Well, these first six are sophisticated, and these last four aren't." Nothing like that happened?

MS. FRANZINI: No, it did not. Because, again, that is the role and the responsibility of the placement agent of --

CHAIRMAN WISNIEWSKI: Which was Newcourt.

MS. FRANZINI: Correct.
CHAIRMAN WISNIEWSKI: So the EDA had to place a lot of trust and confidence in Newcourt?

MS. FRANZINI: I guess we did.

CHAIRMAN WISNIEWSKI: And upon what basis was that trust founded? Was there a list of their prior experience provided to the EDA? Was there some resume that they had? Was there some documentation that allowed you to place that trust in Newcourt?

MS. FRANZINI: Again, Newcourt was -- they had responsibilities under the SEC to ensure as a private placement agent that they follow the rules of the SEC to only sell to sophisticated investors. If not, they are in violation and they could be fined and be in a lot of trouble. So our role is to put that on the private placement agent.

MS. FRANZINI: And you're right, Chairman. We did not do a second tier of due diligence because the team and the financing structure again was all brought to us as a fait accompli.

CHAIRMAN WISNIEWSKI: So you relied upon SEC regulations and the whole regulatory scheme that exist in the public finance market that if
Newcourt was an entity that apparently was licensed and authorized to do this type of stuff, that that was sufficient in the EDA's eyes; that they would be able to find sophisticated investors and comply to the terms of the bond agreements, because if they didn't they would suffer penalties and consequences?

MS. FRANZINI: That's correct. That's half of it. And the other half is that there was the Treasury, the Department of Transportation, and the consortium of the toll roads, which are bond issuers themselves, have the responsibilities. It was their project. They asked us to issue on their behalf. And they had a degree of due diligence to ensure that they were bringing to us a package that were asking us to amend on their behalf.

CHAIRMAN WISNIEWSKI: Do you know whether or not any of these constituent toll roads did any due diligence on the sophistication level of the investors?

MS. FRANZINI: I cannot answer that.

CHAIRMAN WISNIEWSKI: Assemblyman Gusciora, do you have any questions?

VICE-CHAIRMAN GUSCIORA: I was just
wondering if you did any due diligence to find
out the financial soundness of the plans before
issuing the bonds?

MS. FRANZINI: First, we wanted to make
sure that EDA wasn't on the hook, to be quite
honest, because we were doing this as -- on
behalf of other State Authorities. And
EDA's -- small businesses. So the first due
diligence was to ensure that they were, in
fact, conduit bonds and not backed by EDA or
the State of New Jersey.

And, in terms of the financing structure,
we were told it had these three elements for
payment of the bonds, and they seem like good
for repayment sources to us, in terms of a
financing structure. And again, the financing
structure was placed to us. When you have the
Treasury Department and the Department of
Transportation and it's their structure saying
that this makes sense; it's the structure we
want, we rely on that to an extent, as well.

VICE-CHAIRMAN GUSCIORA: But my question
is, do you ever look into the soundness of the
object that the bond neediness (sic) is being
issued? Did you ever look at the E-ZPass
system itself and say, "This is a crazy scheme," or you don't -- that's not your concern or EDA's concern to actually look at the project itself and say, "You know, Governor, this is a crazy financing scheme. It will never --" Do you ever use your financial expertise to look at the project itself?

MS. FRANZINI: From a pure financing perspective, look at the numbers, the financing structure, I can't comment on whether or not the toll road will -- install that element.

From a pure financing structure, this makes perfect sense to us. You had three sources of revenues that were going to pay the bond holders. So from pure financing, not implementation, it did make sense.

VICE-CHAIRMAN GUSCIORA: What expertise did you use to do the aspect that toll violators would pay off much of the bond indebtedness?

MS. FRANZINI: It was not -- we were going on, in fact, on a percentage. It was looking at the whole -- the three elements.

VICE-CHAIRMAN GUSCIORA: I'm just talking about the aspect of toll violators would pay
for this system. The system would pay for
itself. What expertise did you use to
determine that that was sound?

MS. FRANZINI: I did not -- we did not
have -- look specifically at expertise. Again,
we're going back to, we were -- we were given
the structure. The structure, as a big
picture, makes sense to us because there were
three revenue sources to pay back the bonds.
We were doing this on behalf of the toll roads.
It's their obligation to pay back the bonds.
We were the conduit for it. It's their
obligation to determine if it makes sense for
them to pay back these bonds. And -- but from
a bond holder perspective, again, which is what
our concern was overall, were there -- in
total, were there revenues to pay back the bond
holders and were they known that they really
had to analyze the bond documents to make sure
they have revenues to pay them back. That was
our job.

Again, this was a structure put together
for us, and we were asked to implement it. It
wasn't -- we weren't asked to think about it.
We were asked to issue the bonds.
VICE-CHAIRMAN GUSCIORA: Thank you. I think for -- we should look at this, because for safeguards in the future, from what you're telling me, EDA just -- someone comes up with a scheme or a project and you just say, "Well, we'll just get the bonds." You don't really delve into whether the state should be involved in this project or not?

MS. FRANZINI: Again, this is a rare -- EDA issues bonds everyday. We issue around 70 transactions a year. We look at each of those bond transactions from a business point of view and do they make sense.

Again, this was a transaction that the EDA was given by -- and the Department of Transportation and Treasury, um, as a structure that they worked on for two years before it came to us, Assemblyman. We were asked in January to issue the bonds. So it was something that was -- a lot of people worked for a long time on, um, and putting and analyzing the various financial aspects of it.

VICE-CHAIRMAN GUSCIORA: Well, I hope in the future we look a little closer, because in the end, the taxpayers are on the hook for
paying this thing off and that there were no red flags. It just seemed to be given the green light all throughout its implementation, and now we're stuck with this big debacle and we have to figure out what safeguards to put in in the future to prevent this from happening again.

CHAIRMAN WISNIEWSKI: Thank you, Assemblyman.

I'm going to call Assemblywoman Stender in a second.

Just to follow-up, just so I'm clear, in a normal EDA financing, somebody wants to build a -- a retail facility and they come to the EDA, EDA does analyze the business plan?

MS. FRANZINI: Yes, we do.

CHAIRMAN WISNIEWSKI: Where the revenue is going to come from, timing of that revenue in terms of the bond payment and so on and so forth. So that's a normal precept of EDA financing?

MS. FRANZINI: That's correct, Chairman.

CHAIRMAN WISNIEWSKI: You're saying in this case, that business plan, in your opinion, was analyzed and created by Treasury and
Transportation and other agencies, and the EDA accepted that plan on face value because others have worked on it?

MS. FRANZINI: That's correct, Chairman.

CHAIRMAN WISNIEWSKI: And that's a departure from what you normally do?

MS. FRANZINI: That's correct.

CHAIRMAN WISNIEWSKI: Assemblywoman Stender.

ASSEMBLYWOMAN STENDER: Thank you, Mr. Chairman.

You mention -- you keep referring to the fact that the bonds had to be purchased by sophisticated buyers, that that was the determination. Why was it so important to have sophisticated buyers when in the end they were getting paid? Why would you care that Aunt Tillie couldn't buy that if, in fact, they're getting paid anyway?

MS. FRANZINI: It goes back to the legalistics between a general obligation bond and a pure revenue bond; whereas, Aunt Tillie can buy them if they're general obligation bonds because you have to raise taxes or raise tolls by the nature of the bond indenture. But
this was a revenue bond, and there was several revenue sources for the repayment of the bonds.

ASSEMBLYWOMAN STENDER: Okay. But they still -- I mean, we've all agreed that essentially they're assured of being repaid; that there's a very small likelihood of them ever defaulting. And my next question on that is: By making it a sophisticated buyer requirement, did that allow them to proceed with less scrutiny?

MS. FRANZINI: No. That was just -- in terms of just selling the bond to ensure that it was to a distinct group.

ASSEMBLYWOMAN STENDER: But a distinct group -- I mean, I understand what you're saying; that there's -- there's a difference there between the two forums, but is there less public oversight when they're sold privately?

MS. FRANZINI: There's -- it's not in the public marketplace, so you have less public oversight, and that it's privately placed. So you're not issuing bonds in a public marketplace with like a public issuing statement. That's the difference. You're doing it privately to investors who are only
going to buy those bonds.

ASSEMBLYWOMAN STENDER: So it does sound
like there is a difference. I mean, if you had
public oversight, then you would have had other
rating agencies looking at this scheme that was
put together and how to repay that, correct?

MS. FRANZINI: It never went to the rating
agencies for a bond rating, so people who were
buying it knew that the rating agencies had not
reviewed it, had not given it a bond rating and
then really had to look at the pure revenues of
the transaction.

ASSEMBLYWOMAN STENDER: Because if the
rating agencies had ever looked at this, would
they have questioned, as we are now, how this
was being done?

MS. FRANZINI: I'm sure they would have
analyzed each of the revenue sources.

MR. CIER: Yes. I would say, definitely
they would have done a further analysis,
because they -- transaction to police their
credit while applying to bond holders.

ASSEMBLYWOMAN STENDER: Well, I guess I
would conclude that that was probably a very
good way to escape scrutiny is to place them
privately as opposed to have created them as a
general obligation.

Mr. Chairman, I just want to respond.
Earlier, my colleague here on the Board accused
me of being on a witch hunt, and I just want to
say that, historically, you know, that women
were burned at the stake for a lot of crimes
that they didn't necessarily commit. But in
this case, I think that E-ZPass was, in fact,
a crime that was perpetrated on the State and
the more that we listen to, the less we know
about who did that. And I think we still have
more questions to ask of other groups, and I
would put Newcourt Capital at the top of that
list.

CHAIRMAN WISNIEWSKI: If we can find them.
ASSEMBLYWOMAN STENDER: Thank you.
CHAIRMAN WISNIEWSKI: Thank you,
Assemblywoman.

I know Assemblyman Bodine has a question.
I just wanted to do a follow-up on two issues.
One, which was, this was a departure from the
normal way EDA scrutinizes transactions, which
you had responded to my question just before
Assemblywoman Stender started her questioning.
How many times or how rare is that for EDA to make that kind of departure where somebody comes with a package from the Administration or from the State agency and says, "Here, we've done the analysis. Take it and run with it."

MS. FRANZINI: When the issue is for a business or not-for-profit company coming to us, then it's our responsibility to do the due diligence to ensure that that project makes sense.

When the State of New Jersey is involved in the transaction and the State Treasurer's Office is involved, we're often relying on their understanding of -- their review of it, their structuring of it, and they take the lead in any transaction that we issue on behalf of Treasury because that -- we're an agency on their behalf doing this, and we really rely on if it's Treasury at the time to take the lead on that transaction and we're the implementor.

CHAIRMAN WISNIEWSKI: If they say it's so, it's so.

MS. FRANZINI: We'll discuss it, but if they say it's so --

CHAIRMAN WISNIEWSKI: But the question
was: You have a hundred percent of finances
done by the EDA. What percentage of those
financings fall into this category where the
administration says, "It's so," so you say,
"Okay, it's so"?

MS. FRANZINI: Very small.

CHAIRMAN WISNIEWSKI: Less than
one percent?

MS. FRANZINI: Around one percent.

CHAIRMAN WISNIEWSKI: And just one last
question then we'll go to Assemblyman Bodine.

These bonds have been passed around from
the original purchasers, correct?

MS. FRANZINI: That's correct.

CHAIRMAN WISNIEWSKI: Have they been
passed around in a greater degree or frequency
than other bonds? Has it been a musical chairs
type of deal, or are they pretty stayed?

MR. CIER: I can't answer your question in
terms of the frequency of the trades with bonds
in the secondary market.

CHAIRMAN WISNIEWSKI: Is there a way to
find that out?

MR. CIER: We could -- yes, we could ask
the trustee if there is a record of trades.
CHAIRMAN WISNIEWSKI: Who is the trustee?

MR. CIER: The trustee is the Bank of New York.

CHAIRMAN WISNIEWSKI: Has that been consistent since the bonds have been issued?

MR. CIER: Yes.

CHAIRMAN WISNIEWSKI: If we could find that out that would be helpful.

ASSEMBLYMAN BODINE: Thank you, Mr. Chairman.

Director, you made a statement earlier in your due diligence you wanted to make certain that the EDA, State of New Jersey, had no responsibility if this thing collapsed, fell apart; is that true? The State of New Jersey does not have any responsibility; the bridges and the toll roads do, but the State's good faith is not placed behind it?

MS. FRANZINI: That's correct, Assemblyman.

ASSEMBLYMAN BODINE: Okay. If -- if there would be a problem, and there was a default and these bridges and toll roads had to increase their tolls, then that would fall to the toll users; is that correct, and not the taxpayers
of the State of New Jersey? I want to clarify
that.

MS. FRANZINI: You're right, Assemblyman.
The tolls would increase and be paid by the
people utilizing the tolls.

ASSEMBLYMAN BODINE: By the toll users,
whether they be from New Jersey or California,
it would not -- it would not exactly fall on
the taxpayers of the State of New Jersey?

MS. FRANZINI: By the toll users.

ASSEMBLYMAN BODINE: Thank you. That's
all I wanted to make a point. Thank you.

MS. FRANZINI: Thank you.

VICE-CHAIRMAN GUSCIORA: Assemblyman, I
believe that the person who pays tolls are also
taxpayers themselves and if it does go into
debt, somebody's going to have to bail it out
to pay off the rest of the system; isn't that
correct?

MS. FRANZINI: The -- each of the toll
roads has an obligation under the True-Up
Agreement that, again, each separately, but it
is strictly a revenue-based repayment. It does
not fall back to the general agents, State of
New Jersey nor to EDA. Each toll road has its
own obligation.

VICE-CHAIRMAN GUSCIORA: But the E-ZPass kiddies were running out of money; is that correct? There's only about 30 million dollars left?

ASSEMBLYMAN DeCROCE: I don't know how much is left now, but I can tell you when the last administration left there was 161 million dollars in that pocket.

VICE-CHAIRMAN GUSCIORA: Mr. Chairman.

CHAIRMAN WISNIEWSKI: Yes, Mr. Vice-Chairman.

VICE-CHAIRMAN GUSCIORA: We had testimony from Diane Suketti (ph), who is the Deputy Executive Director, but at the time was the Acting Executive Director of the Turnpike Authority, who had said that in the pot of money raised from the bond issue to implement E-ZPass, it was approximately $30 million left for the final installation of what's not done, and -- for construction, and that the estimate is about 40 to $50 million to do that work. So the question is, is where that difference gets made up. And I guess that's a dispute, not with EDA, but between the State and whoever the
ultimate contractor is.

CHAIRMAN WISNIEWSKI: Any other questions from the committee?

No. I think that you've articulated that very well, Mr. Vice-Chairman.

Well, Mrs Franzini, we thank you for coming. We appreciate your testimony.

There was some documents that we had asked to be supplied. If you could supply those to us.

I just want to make clear on behalf of the committee that we're trying to understand E-ZPass. And in so going, we're trying to understand how it happened that this level of debt could be incurred ultimately by agencies of the State of New Jersey with a financing underpinning that a lot of people today say, "How could you ever could collect that much money from toll violators?" And I think what's troubling to many is that the premise on how this was sold.

We saw a press release from the Turnpike Authority saying that this was not going to cost the people of New Jersey a penny, and all along subrosa in that was, well, unless it
doesn't work out, then it will cost us money.

And that's the troubling part, is that
that part wasn't brought out, and now
ultimately it looks like the money will have to
come from the toll roads. The toll roads
certainly won't default, but the concern is --
and we heard again from Ed Rose last week, who
said the reason this was done is the Parkway
didn't have money to do it. Well, if they
didn't have money to do it then, they certainly
don't have money to do it now. And what is
that going to mean, ultimately? How does it
get paid? Well, tolls may go up. Projects may
not get done. And that's not what anybody
bargained for when this was installed.

When the administration said we're going
to put in E-ZPass and we're going to defer
maintenance. I mean, that wasn't the
statement. We were going to put it in. It's
not going to cost anything.

So what this committee is looking at is
how do we prevent future E-ZPasses from
happening? And maybe some of that is based on
how the financing happened. Because clearly,
if there were perhaps different checks and
balances in place that required different
levels of review, maybe it may not have been so
easy to finance, or maybe it would have been
brought to light that this was ultimately an
obligation of the toll roads and then there
would not have been this great letdown now
that, "Oh, wait a minute. We now have to pay
for it when we thought we did."

That's why we have you here today, and
that's why we're looking at this. We can't put
the toothpaste back in the tube, but we can
prevent these types of things from happening
again. So I want to thank you for your
testimony.

MS. FRANZINI: Thank you, Chairman. If
there's anything more the EDA can do to be of
assistance to the committee and to yourself,
please let us know.

CHAIRMAN WISNIEWSKI: Thank you.

MS. FRANZINI: Thank you.

(Witness excused.)

(The deposition is concluded at 11:05 a.m.)
CERTIFICATION

I, Corinne J. Citron-Blair, a Certified Shorthand Reporter and Certified Professional Reporter and Notary Public, do hereby certify that the aforesaid is a true and accurate transcript of the proceedings before me on the date and place hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this proceeding was taken, and further that I am not a relative or employee of any attorney or counsel employed in this action, nor am I financially interested in this case.

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