

ALAN J. MOGOL, ESQUIRE
BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC
amogol@bakerdonelson.com; 410-862-1132

STRUCTURE AND ADVANTAGES OF A TITLING TRUST PROGRAM

An equipment finance company (the “Company”) creates a trust (the “Trust”) pursuant to a trust agreement (the “Trust Agreement”), for the purpose of acquiring equipment (the “Equipment”), including certificate of title motor vehicles (the “Motor Vehicles”). The purpose of the use of the titling trust is to avoid the significant administrative burden and expense typically associated with a syndication of the lease financing of Motor Vehicles. The structure is intentionally not limited just to Motor Vehicles, but includes general equipment as well, to maximize the flexibility available to the Company.

TRUST STRUCTURE

A number of states have adopted statutory trust provisions, but Delaware is on the leading edge and has the longest history of successfully using the statutory trust model. One of the principal advantages of the Delaware statutory trust is that one or more sub-trusts may be created within the umbrella of the master trust and assets may be allocated into those sub-trusts. Under the Delaware statute, assets allocated to a sub-trust are insulated from exposure to liability of creditors of other sub-trusts or of the general trust.

The Equipment will be subject to equipment schedules executed pursuant to lease agreements structured as true or tax-motivated leases (the equipment schedules, incorporating the lease agreement, are referred to as the “Leases”) with third-party lessees (the “Lessees”).

The Trust would be the lessor under the Lease, holding all rights and obligations of the lessor under the Leases; and all Equipment would be acquired and owned by the Trust (and all Motor Vehicles would be titled in the name of the Trust and the Trust would be designated as the registered owner on the certificate of title with respect to that portion of the Equipment comprised of Motor Vehicles). The Trust or a separate entity (in its role as custodian; the “Custodian”) would maintain possession of the original certificates of title with respect to all Motor Vehicles, together with the chattel paper original Leases (all of which would be held by the Custodian as part of the Equipment File).

(a) The Trust is structured as a grantor trust for purposes of the Internal Revenue Code and should be a pass-through entity for purposes of Federal income tax, so that for tax purposes all benefits and burdens of ownership of the Equipment would be held by the beneficiaries, including all income tax ramifications.

BAKER DONELSON

(b) Since the Trust would be both owner and lessor of the Equipment, the Trust may issue a resale exemption certificate (if available under applicable state tax laws) upon its acquisition of the Equipment.

(c) The Trust is a separate legal entity which must qualify to transact business in each jurisdiction to the same extent that any other finance company would be required to qualify by reason of the laws of the individual state and the scope and extent of the finance company's activities in that state. Qualification to transact business will subject the Trust to record-keeping and reporting requirements with respect to the individual states, including preparation and filing of annual tax reports and returns for each state in which the Trust is qualified. The Trust would enter into a servicing agreement (the "Servicing Agreement") with the Company as servicer (the "Servicer"), and the Servicer would actually prepare and file such annual tax reports and returns.

(d) In some states, the owner and lessor of Equipment is required to be separately licensed. In those states in which such separate licensure is required, the Trust would be required to obtain such a license. The Servicer would actually prepare and file the application, and any annual reports, required for such license.

(e) The Trust, as lessor, would cause to be prepared and filed sales/use/rental/personal property tax reports and returns, and cause those taxes to be collected and paid. The Servicer (or the beneficiary of the applicable sub-trust (if it prefers to do so in lieu of having the Servicer do so)), would actually prepare, file and remit the tax returns and taxes on behalf of the Trust.

MECHANICS OF USE OF THE TRUST PROGRAM

Acquisition of Beneficial Ownership Interest. The Company will fund the Trust in exchange for the beneficial ownership interest in the general trust assets of the Trust. Fundings will be made to the extent of the acquisition cost of the Equipment to be acquired directly by the Trust (including the purchase price and all Federal, state and local taxes which are payable (or which the parties elect to pay) up front). The Company will deposit the required amount into an account maintained by the Servicer on behalf of the Trust to be applied to pay the acquisition cost and taxes (if applicable) directly to the vendors and/or taxing authorities on behalf of the Trust.

General Trust Assets. When Equipment is acquired by the Trust, it will be held, initially, as general trust assets. The Company will be the owner of the beneficial interest in the general trust assets.

Allocation to Sub-trusts. From time to time, the Company will direct the trustee to allocate certain Equipment from the general trust assets to one or more sub-trusts. This allocation is done when the Company issues an allocation notice to the trustee, and the trustee then allocates the specified assets to a sub-trust on the books and records of the Trust. A separate

BAKER DONELSON

series of sub-trusts will be created for use with respect to each warehouse lender (the “Warehouse Lender”) (if applicable) making an advance under a warehouse line of credit for the Company, each financial institution purchasing certain Equipment and the related Leases (an “Investor”), and each permanent lender (a “Permanent Lender”) (if applicable) making a loan to be secured by the beneficial ownership interest in the Equipment and related Leases.

Sub-trusts for Warehouse Lender. If the Company arranges for the acquisition by the Trust of certain Equipment using warehouse loans, the Company will direct the trustee to allocate that Equipment and related Leases from the general trust assets to the sub-trust created with respect to the applicable Warehouse Lender. The Company will be the owner of the beneficial interest in the sub-trust (the “Holder”) and will grant a security interest to the Warehouse Lender with respect to its beneficial ownership interest in the applicable sub-trust, which security interest will be perfected by the filing of a Uniform Commercial Code financing statement (“UCC-1”). As additional Equipment and related Leases are allocated to that particular sub-trust, the Company’s beneficial ownership interest in that Equipment and related Leases automatically is subjected to the existing security interest in favor of the applicable Warehouse Lender. No Uniform Commercial Code financing statement amendments are required to be filed. Similarly, as Equipment and related Leases are reallocated out of that sub-trust, the Company’s beneficial ownership interest in that Equipment and related Leases no longer is subject to the security interest held by that Warehouse Lender. No Uniform Commercial Code statements of partial release or partial termination are required to be filed. The Trust Agreement will require the Company to allocate Equipment and related Leases to the sub-trust created with respect to the applicable Warehouse Lender; and will restrict the ability of the Company to instruct the trustee to reallocate Equipment and related Leases from the sub-trust created for the Warehouse Lender without the confirmation of that Warehouse Lender. When the warehouse loan is paid with respect to certain Equipment and related Leases, the Warehouse Lender will confirm (a) payment of the warehouse loan to that extent, and (b) authorization for the trustee to reallocate that Equipment and related Leases.

Sub-trusts for Investors. When the Company arranges for the conveyance to an Investor of certain Equipment and related Leases, the Company will direct the trustee to allocate that Equipment and related Leases from (a) the general trust assets, or (b) if a warehouse loan is applicable, when the warehouse loan is paid with respect to that Equipment and related Leases, the sub-trust created for the applicable Warehouse Lender, to the sub-trust created for the applicable Investor. At the time of the initial funding of the sub-trust created for the applicable Investor, the beneficial ownership interest in that sub-trust will be conveyed by the Company to the applicable Investor. After the transfer of beneficial ownership interest has occurred, the Investor is entitled to the tax benefits accruing with respect to all Equipment allocated to its sub-trust. An Investor may encumber its beneficial ownership interest in its sub-trust by granting to a third party creditor a security interest in its beneficial ownership interest in its sub-trust. Such a security interest would be perfected by the filing of a UCC-1 with respect to the

BAKER DONELSON

Investor's beneficial ownership interest in that sub-trust and would automatically affect all Equipment and related Leases then held in that sub-trust or thereafter allocated to that sub-trust. No Uniform Commercial Code financing statement amendments are required to be filed.

Sub-trusts for Permanent Lenders. The Company may arrange for permanent financing with respect to certain Equipment and related Leases. The Company may instruct the Trustee to: (a) allocate the Equipment and related Leases from the general trust assets, or (b) if a warehouse loan is applicable, when the warehouse loan is paid with respect to that Equipment and related Leases, reallocate that Equipment and related Leases from the sub-trust created for the Warehouse Lender, to a sub-trust created with respect to the applicable Permanent Lender. The Company will grant a security interest to the Permanent Lender with respect to its beneficial ownership interest in the applicable sub-trust, which security interest will be perfected by the filing of a UCC-1. As additional Equipment and related Leases are allocated to that particular sub-trust, the Company's beneficial ownership interest in that Equipment and related Leases automatically is subjected to the existing security interest in favor of the applicable Permanent Lender. No Uniform Commercial Code financing statement amendments are required to be filed. Similarly, as Equipment and related Leases are reallocated out of that sub-trust, the Company's beneficial ownership interest in that Equipment and related Leases no longer is subject to the security interest held by that Permanent Lender. No Uniform Commercial Code statements of partial release or partial termination are required to be filed. The Trust Agreement will restrict the ability of the Company to instruct the trustee to reallocate Equipment and related Leases from the sub-trust created for the Permanent Lender without the confirmation of that Permanent Lender. When the permanent loan is paid with respect to certain Equipment and related Leases, the Permanent Lender will confirm (a) payment of the permanent loan to that extent, and (b) authorize the trustee to reallocate that Equipment and related Leases. The beneficial ownership interest in the sub-trust created with respect to the Permanent Lender shall be retained by the Company.

The same mechanism with respect to permanent financing is available to the Investors.

Assignment of Related Lease. The Trust will be the lessor under the Leases and the right, title, interest and obligations of the Trust, as lessor, under the Leases will be part of the Trust Estate and allocated to the sub-trusts together with the related Equipment. When the beneficial ownership interest in a sub-trust is conveyed, that conveyance will include the beneficial ownership interest not only of the Equipment but also the related Leases.

Servicing Agreement. The Trust would enter into the Servicing Agreement with the Company, as servicer, under which the Servicer would make all payments to the vendor of the Equipment on behalf of the Trust from the account maintained on behalf of the Trust; and would do all billing and collecting (to the extent required) and would perform all administrative responsibility with respect to the Equipment and related Leases. Billing and collecting of rents

BAKER DONELSON

and sales/use/rental/personal property tax obligations, together with highway and other over-the-road use taxes imposed on the legal title owner of the Motor Vehicles, would be handled by the Servicer on behalf of the Trust. The Company would have the right to remove and replace the servicer under the Servicing Agreement with respect to the Trust, subject to the approval of each Investor and Lender (if applicable). The Investor would have the right to remove and replace the servicer under the Servicing Agreement solely with respect to the sub-trust then held by that Investor, subject to the approval of the Lender (if applicable).

SECURITIES LAWS COMPLIANCE

It is unclear whether the conveyance of the beneficial ownership interest in a sub-trust would be construed as the sale of a security for purposes of the Securities Act of 1933, as amended, and applicable state securities laws. The analysis should be the same as that which is undertaken with respect to the syndication of a lease financing by the assignment of all or an interest in a master lease agreement or an equipment schedule or the transfer of a participation interest. Accordingly, it would be appropriate for the Company to include in the conveyance instruments appropriate statements, disclaimers and representations by the parties confirming that: (a) the conveyance of the beneficial interest in the sub-trust may involve the sale of a security and may be subject to restrictions on transferability and resale, except as permitted under applicable Federal and state securities laws; (b) the beneficial interest in the sub-trust is being offered and sold without registration under Federal and state securities laws, in reliance on an exemption from the registration requirements of those laws; and (c) the recipient: (1) is acquiring the beneficial interest in the sub-trust solely for its own account, for investment and not with a view to resale, (2) has such knowledge and experience in business and financial matters as is necessary to evaluate the merits and risks of an investment in the beneficial interest, (3) has had access to all financial and other information that it deems necessary to evaluate the merits and risks of an investment in the beneficial interest, and (4) is experienced in making investments in transactions similar to the beneficial interest and is financially able to undertake the risks involved in such an investment.

BENEFITS OF THE TITLING TRUST STRUCTURE

Minimize Administrative Burden and Expense. The purpose of the use of the titling trust is to avoid the significant administrative burden and expense typically associated with a syndication of the financing of certificate of title motor vehicles. By using the titling trust structure, the Trust is designated as the registered owner on the certificate of title. The initial beneficial owner of the trust assets is the Company. The Company may transfer the beneficial ownership interest of the individual sub-trusts without having to re-title the Motor Vehicles, since the conveyance is only with respect to the beneficial ownership interest in certain trust assets, and not the legal title ownership of the assets themselves. This should avoid the imposition of any sales or excise tax which would otherwise be incurred in connection with the

BAKER DONELSON

conveyance of title to tangible personal property, since the conveyance is with respect to intangible property only; i.e., the beneficial ownership interest in certain sub-trusts.

Dealing with Investors. The Company would continue to deal with its Investors as it has in the past, using the same sale/assignment documents with only slight modification to reflect the involvement of the titling trust. Each Investor will have the right to terminate its sub-trust and cause the Equipment and related Leases comprising a portion of the assets of its sub-trust to be transferred and/or re-titled, at its own expense.

Fiduciary Duty of Trustee. The trustee and custodian typically are independent financial institutions which owe a fiduciary obligation to the beneficiaries of the master trust and the various sub-trusts. The rights, and limitations on the ability of the trustee and custodian to take actions, with respect to the trust assets will be clearly delineated in the Trust Agreement.