



June 10, 2013

Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

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To the Technical Director:

RubinBrown LLP appreciates the opportunity to comment on the FASB's Proposed Accounting Standards Update (ASU), *Investments – Equity Method and Joint Ventures (Topic 323)*, "Accounting for Investments in Qualified Affordable Housing Projects". Overall we support the Board's efforts to provide guidance on accounting for investments in affordable housing projects that qualify for the low income housing tax credit.

Our responses to the questions for respondents are included below for your consideration.

Question 1: Do you agree that an entity should meet the conditions in this proposed Update in order to elect to account for the investment in a qualified affordable housing project using the effective yield method? If not, please explain why.

We agree with the conditions included in the proposed Update as they represent key distinctions between an investment made primarily for the purpose of obtaining tax credits and an investment made for the purpose of investing in real estate.

Question 2: Do you agree that the effective yield method is an appropriate method to account for investments in qualified affordable housing projects? If not, what method of accounting should be used? Please explain.

We agree with the proposed guidance. Under the current standards, use of the equity method to account for these investments is distorting investment performance. The primary purpose and benefit of the investment, the tax credits, are included "below the line" within the income tax provision, while any operating results (typically losses) are included "above the line" in investment performance. Most current investments do not provide the tax credit investor with any significant participation in the operations, cash flows, or residual values of the underlying real estate, therefore, presenting such an investment as an equity investment in a real estate entity is not an accurate depiction of the substance of the transaction. As a result, use of the equity method is not providing useful information to current and potential investors, creditors, and other users of the financial statements to make rational decisions based on the information presented.

The presentation under the effective yield method is a better representation of a qualifying investment as it presents the net benefits of the investment in a single, understandable amount.

We also acknowledge that in addition to the effective yield method, an alternative method could also be used to amortize the investment. A ratable amortization method may be equally suitable. Therefore, we believe that when the investor entity is making its accounting policy decision as to measurement of the investment, a ratable amortization method should be allowable so long as the method elected is appropriately disclosed.

Question 3: Do you believe that removal of the requirement for guaranteed tax credits should change the method used to account for such investments from an effective yield method to an approach where the cost of investment is amortized in proportion to tax credits and other tax benefits received and recognized as a component of income taxes attributable to continuing operations?

We do not believe that removal of the requirement for guaranteed tax credits should change the method used to account for such investments from an effective yield method. Removal of the guarantee requirement alone would not change the substance and economics of the investment. We believe that if an investor meets all of the conditions proposed in this update, then the tax credit benefits are probable and the effective yield method would be an appropriate method for amortizing the investment.

Question 4: Do other types of investments made primarily for the purpose of receiving tax credits meet the conditions in this proposed Update for an entity to elect to account for the investments using the effective yield method? If so, please describe them.

Yes, there are other types of investments made primarily for the purpose of receiving tax credits that could meet the conditions in this proposed Update. We believe that investments made in entities with underlying historic tax credits (HTC), new markets tax credits (NMTC), and renewable energy tax credits (RETC), could meet the conditions specified in the proposed update, allowing for the use of the effective yield method. These are the most common types of tax credit investments aside from investments in qualified affordable housing projects made for the low income housing tax credit (LIHTC) benefits. It should be noted that there are other types of investments made for tax credits that may also meet the conditions in the proposed update. Therefore, we believe the Update should be drafted more broadly, so as to include tax credit investments that meet the scope requirements of the Update. Descriptions of other investments that may qualify are listed below:

Under Section 47 of the Internal Revenue Code, HTC's are provided as an incentive for rehabilitation of certified historic structures. Investors can obtain HTC's based on a percentage (generally 20%) of qualified rehabilitation expenditures in an historic structure. The tax credit is claimed in the year the entire building is placed in service or an identified portion of a building is placed in service. This federal credit is administered by the following agencies: the National Park Service, the State Historic Preservation Office, and the Internal Revenue Service. The recapture period is five years. In general, to avoid recapture the building must remain in productive use and the entity owning the building must not change ownership during this five years to avoid recapture of all or a portion of the credits. Some states also offer HTC's, which are similar to the federal HTC's. The typical components of financial return of a HTC investment are:

- Allocation of federal HTC at placement in service
- Pro rata share of taxable income (loss) from operations
 - Generally break-even or small losses, depends on lease-up
- Cash distributions equal to priority return
 - Priority return is generally 1-3% of gross equity contribution invested
 - Could potentially be small annual residual depending on tax structure
- Cumulative net benefit at the end of the 5-year compliance period is the federal HTC plus annual priority return

Under Section 45D of the Internal Revenue Code, NMTC's are provided as an incentive for community development lenders and the capital markets to invest in those low income communities that historically have had poor access to capital. Investors can obtain the federal credit amounting to 39% of its qualified investment in a qualifying active low-income community business. The tax credit is claimed over a period of seven years (5% of the investment in years 1 through 3 and 6% in years 4 through seven). The program is administered by the Community Development Financial Institutions (CDFI) Fund, a division of the U.S. Department of Treasury. The CDFI Fund issues guidance on applications, certifies entities, and monitors compliance. Certain compliance requirements must be met for each of the seven years to avoid recapture of all of the credits. In general, recapture can occur if the entities involved cease to remain qualified by the CDFI, if the original investor's equity has been redeemed during the seven year compliance period, or if substantially all of the proceeds fail to remain invested in the community. Some states also offer NMTC's, which are similar to the federal NMTC's. The typical components of financial return of a NMTC investment are:

- Allocation of federal NMTC's over seven years
- The tax credit investor that is allocated the NMTC's is required to reduce its tax credit basis by the like amount. As a result, the tax credit investor will recognize capital gain upon disposition of its interest.
- Pro rata share of taxable income (loss)
 - Generally break-even taxable income/loss
- Cash distributions
 - Typically minimal, structured this way
 - Cumulative net benefit at the end of 7-year compliance period primarily driven from tax savings from federal credits and capital gain due to basis reduction
- Sale of the property is not necessary for investor to exit its investment

Under Section 48 of the Internal Revenue Code, RETC's are provided as an incentive for investments in renewable energy equipment. RETC's are available as federal credits, with some states also allocating RETC's. The main credits under this section are the solar tax credits (STC) and production tax credits (PTC). The STC's are earned when the solar equipment is placed in service (same as HTC). Investors can obtain the 30% federal investment tax credit on qualifying energy property. The recapture period, like the HTC program, is five years from placement in service. The PTC's are based on the amount of electricity produced by the facility, calculated as an amount per kilowatt hour over a ten-year period. There is no recapture provision for PTC's.

Investments under each of these programs are made in a manner similar to an investment made in a qualified affordable housing project. Generally they are structured as equity investments in entities that are formed specifically to qualify for tax credits under the respective federal and state (as applicable) tax credit programs. The tax credit investment under each program is generally structured in a manner in which the investor does not have a controlling financial interest, does not have the right to receive significant benefits from the investment other than the tax credits, and often does not bear a significant risk of loss from the investment via various guarantees and/or indemnity agreements made by the other partners or members for the benefit of the tax credit investor. Careful consideration of each investment would be necessary to ensure that the tax credit investor retains no operational influence over the investment other than protective rights, and that substantially all of the projected benefits are from tax credits and other tax benefits. Should the investor retain significant operational influence and have significant rights to receive benefits other than the tax credits, the investment would in substance be one of a more traditional equity investment and not a tax credit investment, thereby it would fail to meet the conditions in the proposed update.

Question 5: Should the guidance in this proposed Update extend the effective yield method of accounting to other types of investments for which the economic benefits are realized primarily as a result of tax credits and other tax benefits? Please explain.

Yes, we generally feel that the guidance in this proposed Update should extend the effective yield method of accounting to other types of investments for which the economic benefits are realized primarily as a result of tax credits and other tax benefits. As noted in our response to question #4, there are investments other than those made in qualified affordable housing projects that are made primarily for the purpose of receiving tax credits. These investments are structured in a manner similar to investments in qualified affordable housing projects, therefore, to the extent the substance of the investment is one made primarily for tax benefits, the investor should be able to use the effective yield method of accounting. Additionally, as noted in our response to question #2, we suggest also allowing an alternative method which could be used to amortize the investment.

Question 6: Do you agree that the amendments in this proposed Update should prescribe recurring disclosure objectives that would enable users of financial statements to understand the nature of investments in qualified affordable housing projects and the effect of the measurement of that investment and the related tax credits on the financial position and results of operations of the reporting entity? Alternatively, should the proposed amendments include minimum required disclosures?

We agree with the proposed guidance. We note that most of these investments are variable interest entities, and several disclosures are already required. We believe that additional prescriptive disclosures would not be cost beneficial.

Question 7: Do you agree that the amendments in this proposed Update should be applied using a retrospective approach? If not, please explain why.

We agree with the proposed guidance.

Question 8: Do you agree that early adoption of the proposed amendments should be permitted? If not, please explain why.

We agree with the proposed guidance.

Question 9: The amendments in this proposed Update would apply to public and nonpublic entities. Should the proposed amendments be different for nonpublic entities? If so, please describe how and why you think they should be different.

We do not believe that the proposed amendments should be different for nonpublic entities.

Question 10: For preparers, how much effort would be needed to implement the proposed amendments?

We feel that those entities affected by the proposed amendment would need one year to implement. Since the proposed amendments are essentially modifying the conditions that an entity must meet to elect to use the effective yield method rather than imposing a new method of accounting, we feel that those entities making the election would already have a strong understanding of the effective yield method and would be able to implement within this time frame.

We appreciate the opportunity to provide these comments on the proposed amendments.

If you have any questions regarding this letter, please contact Eric Janson at 314-290-3295.

Sincerely,

RubinBrown LLP

A handwritten signature in cursive script that reads "RubinBrown LLP".