



November 7, 2008

Financial Accounting Standards Board  
401 Merritt 7  
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Norwalk, CT 06856-5116



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LETTER OF COMMENT NO.

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To: Technical Director

Re: Proposed Amendments to FASB Interpretation No. 46(R)  
File Reference No. 1620-100

I am Vice President and Chief Financial Officer of Enterprise Community Investment, Inc. ("ECI"), a wholly-owned for-profit subsidiary of the not-for-profit corporation, Enterprise Community Partners, Inc. I am writing in response to the proposed amendments to FASB Interpretation No. 46(R) (hereafter referred to as "FIN46R").

ECI's mission is similar to that of its parent's, which is to create opportunity for those most in need through fit and affordable housing and strong, diverse and sustainable communities. ECI primarily carries out its mission by providing consulting and limited partnership syndication services to encourage the development of multi-family, low-income residential rental properties through the use of Federal income tax credits.

In providing the limited partnership syndication services, ECI retains a general partnership interest of 0.01% in the limited partnerships created. Under the terms of these partnership agreements, ECI provides management services to the partnerships on a fee basis. The remaining interests in these partnerships are owned by limited partners. Such limited partners are generally financial institutions that are seeking the use of tax credits as well as investments that satisfy their requirements under the Community Reinvestment Act. The limited partnerships provide all capital to fund the investment in real estate properties and to establish a working capital reserve that is believed to be adequate to cover the fees to be paid to ECI in providing asset management services over the life of the investment. ECI does not provide any capital to the partnerships with the exception of a \$100 initial contribution.

The use of the limited partnership structure facilitates the flow through of tax credits and tax losses (primarily attributed to the partnerships share of depreciation expense from the real estate properties) to corporate investors while enabling ECI to manage investments on behalf of the limited partners. There are little-to-no economic benefits from the investments other than the tax credits and tax losses expected to be generated. As a result, neither ECI nor limited partner investors expect any cash distributions from the underlying investments.

I provide the above as information to describe the operating structure of most syndicators that operate in the low income housing tax credit (“LIHTC”) industry. ECI’s competitors include: not-for-profit entities, privately held companies, and publicly traded entities. Prior to the issuance of FIN46R, ECI and its competitors consistently accounted for their general partnership interest in the limited partnerships using the equity method of accounting. The issuance of FIN46R and other accounting pronouncements has created a divergence in accounting practice that has resulted in inconsistencies in financial statement presentation within the industry. This divergence in practice is the source of my comments on the exposure draft.

#### Relevance and Usefulness of Financial Reporting

Prior to the release of FIN46R, the generally accepted practice in the industry was to not consolidate the limited partnerships into the financial statements of the syndicators. The practice was believed to be consistent with applicable GAAP and resulted in financial statements that were consistent with Concept Statements 1 and 2:

- Concept Statement 1 – financial reporting should provide information that is useful in making business and economic decisions. Management of ECI and investors in partnerships do not view either the assets or liabilities of the funds as assets or liabilities of ECI.
- Concept Statement 2 – completeness is an essential element of representational faithfulness and relevance. The assets of the partnerships are not controlled probable economic benefits (i.e. assets) of ECI. Further, liabilities of the partnerships do not faithfully represent obligations of ECI.

To illustrate, several investors in the partnerships provide separate credit facilities to ECI to operate their corporate business. These investors do not consider the assets and liabilities of the partnerships in deciding the size and pricing of the credit facilities. In fact, if the partnerships were to be consolidated under GAAP, the facilities contain provisions that would require a second set of financial statements be prepared for ECI to eliminate the effect of the consolidation. Compliance with debt covenants within the facilities would then be measured on this “non-GAAP” set of financial statements.

#### Divergence Begins

With the release of FIN46R, companies in the LIHTC industry reevaluated their consolidation policies. Some publicly traded companies began to consolidate the partnerships as a result of their interpretation of the requirements of the pronouncement. This consolidation was often extremely difficult for the companies. In fact, one large publicly traded company has had such difficulty in applying FIN46R to its LIHTC practice that it has been unable to file financial statements since 2006 (other restatement matters have also contributed to their inability to file). The company has incurred significant costs to determine the proper restated financial statements for years 2004 and 2005 and, as a result of not filing financial statements, has been delisted from the stock exchange. After incurring in excess of \$54 million (nearly 8% of its net worth) on restatement efforts, this company has had to consider the sale of significant assets to continue as a going concern.

Soon after, nonpublic companies began to reevaluate their consolidation policies. Many not-for-profit organizations believed that the partnerships were VIE’s and concluded that they were not the primary beneficiaries. As such, they determined that consolidation of the

partnerships was not required under the pronouncement. However, these not-for-profits also concluded that FIN46R did not apply to them due to the scope exception in paragraph 4a. As a result, these not-for-profit syndicators concluded that they were subject to EITF 04-5 ("Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights") and, as such, began to consolidate the partnerships as the sole general partner of the partnerships.

Finally, nonpublic syndicators that are organized as for-profit entities evaluated their partnership interests and likewise concluded that the partnerships were VIE's and that they were not the primary beneficiaries. As such, they determined that consolidation of the partnerships was not required under the pronouncement. Unlike their not-for-profit counterparts, these entities believed that they were subject to the consolidation rules of FIN46R and, as a result, continue to account for their interests in the partnerships using the equity method of accounting, thus creating the divergence in the industry's financial statements. ECI is classified in this category.

As noted above, some public companies and most not-for-profit entities consolidate the partnerships in which they hold a sole general partnership interest. This is done to comply with GAAP. However, the organizations also complete a second set of financial statements that eliminate the effect of consolidation in order to meet the needs of their management and investors. This second set of financial statements is relied upon to measure the financial health of the syndicators more so than the GAAP financial statements. This is evident in a quote from the management of the public syndicator referenced above: "Management believes that a presentation that does not (*ea.*) include the consolidation of entities where we have little-to-no legal or economic ownership interest will provide (*ea.*) additional useful information to investors because it shows the financial results of those elements of the Company where we have a meaningful legal or economic ownership interest." Further, management states that a deconsolidated measure of shareholders equity is meaningful "to users of our financial statements because it provides a view of net assets that we legally own, the obligations that we legally owe, and the results of operations of the entities in which we own at least majority interests."

In summary, the divergence of the consolidation policies is now pervasive in an industry that previously had consistency. This divergence was not caused by a difference in business practices as most syndicators structure transactions similarly. Rather, the accounting standards led to the current state of rendering the comparability between financial statements extremely difficult and sometimes meaningless.

#### Suggested Alternative

Generally, I applaud the efforts of the FASB to improve financial reporting by entities involved with variable interest entities and find many of the suggested changes to FIN46R to be improvements. However, new accounting standards have resulted in incomparable GAAP financial statements within the LIHTC industry. That being said, I believe that this incomparability is partially the result of the industry's application of FIN46R; specifically the scope exception that is identified in paragraph 4a.

The scope exception indicates that not-for-profit organizations are not subject to FIN46R, except that they may be considered related parties. An exception to this policy is if a not-for-

profit is used in an effort to circumvent the provisions of FIN46. As the pronouncement relates to evaluating whether or not an entity (potential consolidator) should consolidate another entity (potential consolidatee) that is a VIE, my understanding of the scope exception is that it relates to the consolidatee. The organizational structure of the consolidator should not be a factor in determining whether or not the scope exception of the pronouncement is met. In the case of the LIHTC industry, a not-for-profit syndicator should be subject to FIN46R as it evaluates whether or not to consolidate the investments partnerships in which they act as general partner. As such, my recommendation is as follows:

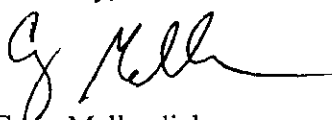
- Consider clarifying the scope exception to indicate that it relates to the entity being evaluated for consolidation and not the entity that is doing the evaluation.
- Alternatively, if my understanding is not consistent with the intent of the Board, the Board should consider amending the scope exception to allow for not-for-profit entities to follow the requirements within FIN46R if it would result in more relevant and reliable information for the users of their financial statements.

This suggestion should improve the consistency and comparability of financial statements within the industry and would more faithfully represent the operating activities of the syndicator.

This clarification, however, would not solve all of the divergence noted above as public companies would likely continue to consolidate. However, a divergence in practice for these entities may be appropriate as, generally, the limited partnership agreements and related motives and profit structures of these entities are different than those of not-for-profit and nonpublic syndicators. Unfortunately, short of issuing specific consolidation guidance relating to the LIHTC industry, it is likely that the public companies would have to continue to prepare two sets of financial statements – one to comply with GAAP, and the second that is used by management and investors to measure the performance of the company.

I would be willing to discuss the above thoughts with you further at your convenience. If you have any questions or would like additional information, please do not hesitate to contact me at 410-772-2667. Thank you in advance for considering my comments.

Sincerely,



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