

June 17, 2013

Ms. Susan M. Cospers
Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

File Reference No. EITF-13B

Re: Proposed Accounting Standards Update—Investments—Equity Method and Joint Ventures (Topic 323): Accounting for Investments in Qualified Affordable Housing Projects – a consensus of the FASB Emerging Issues Task Force

Dear Ms. Cospers:

CohnReznick appreciates the opportunity to comment on the Proposed Accounting Standards Update—Investments—Equity Method and Joint Ventures (Topic 323): Accounting for Investments in Qualified Affordable Housing Projects – a consensus of the FASB Emerging Issues Task Force, issued by the FASB.

We support the overall objective of the Board in improving accounting for investments in qualified affordable housing projects. We believe the amendments provide needed changes to the conditions which must be met in order to apply the effective yield method of accounting to investments in qualified affordable housing projects. However, we also believe the Board should extend the accounting under the proposed Update to other tax credit investments that meet the conditions. Under a principles-based approach, we believe similar investments made primarily for the purpose of obtaining tax credits and other tax benefits should be accounted for similarly regardless of which program the tax credits are received under.

Our responses to specific questions on which the Board is seeking comment are included in the attachment to this letter.

If you have any questions concerning our comments or would like to discuss any of our responses or recommendations in more detail, please feel free to contact Michael Beck at (404) 847-7728.

Yours truly,



CohnReznick Responses to Proposed ASU, Investments – Equity Method and Joint Ventures, Topic 323
June 17, 2013
Page 2

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 believe modification of some of the conditions and clarification of others is needed. Specifically, we have concerns with conditions a, b and d, which are discussed further below.

Condition a - It is probable that the tax credits allocable to the investor will be available.

Clarification of when determination of availability of tax credits should be determined.

While we do not believe any modification of Condition a is needed, we believe that additional clarification is needed regarding when the effective yield method should be first applied to an investment. It is possible that tax credits may not begin to be received for a year or two after an investment is initially made. The delay is caused by the necessary construction of the property. As a practical matter, we believe application of the effective yield method should not begin until the annual period in which tax credits actually begin to be claimed. Otherwise, benefits could be accrued in a period prior to receipt of any tax credits (or, “payments”).

Condition b – The investor retains no operational influence over the investment other than protective rights, and substantially all of the projected benefits are from tax credits and other tax benefits (for example, tax benefits generated from the operating losses of the investment).

Requirement that investor retains “no operational influence”.

We are concerned that the requirement that the investor retains “no operational influence” is inconsistent with some of the fundamental concepts of equity investments and that such inconsistency may make it difficult for many investments to practically achieve the threshold described in the condition. To retain “no” operational influence is tantamount to not being a partner. In our opinion this is too high of a threshold to be practical. Additionally, we believe the level of operational influence, as long as it does not rise to the level of control or joint control, is not a key attribute of determining whether an investment is a tax credit investment. A more significant attribute is the nature of the benefits received.

We recommend that this portion of condition b be modified in a manner that precludes the investor from having the ability to direct the entity's activities or from having any significant variable interests in the entity other than its right to receive projected tax credits and other tax benefits.

CohnReznick Responses to Proposed ASU, Investments – Equity Method and Joint Ventures, Topic 323
June 17, 2013
Page 3

Clarification needed of what is meant by "substantially all" in connection with projected benefits.

We recommend that the Board consider clarifying what is meant by "substantially all" of the projected benefits are from tax credits and other tax benefits. In order to be considered a partner for federal income tax purposes, owners of equity interests generally are required to have some participation in the risks and rewards of the entity. In investments in affordable housing projects, that participation is projected to be insignificant. However, without clarification we are concerned that it will be difficult to interpret what is meant by the term "substantially all" which will result in inconsistency and potential confusion. Some have interpreted "substantially all" to mean 90% or more, while others have interpreted it to be a higher percentage. Without clarification the interpretation of this terminology could become a source of confusion and inconsistency. Alternatively, the Board may want to consider modifying this condition to allow the investor to receive insignificant projected cash distributions. See also our comments on this issue in connection with **Question 4**.

Condition d – The investor is a limited liability investor in the affordable housing project for both legal and tax purposes, and the investor's liability is limited to its capital investment.

Clarification needed in connection with investments in intermediary entities (funds).

We recommend that this condition be modified to make it clear that an investment in an intermediary entity, such as a fund, that primarily invests in affordable housing projects meets this condition. Many investors invest in tax credit funds which in turn invest in affordable housing projects. Such funds should be considered in-substance investments in affordable housing projects for purposes of meeting the conditions. Additional guidance is also needed regarding whether the conditions would need to be met at the fund level or met in connection with each property in which the fund invests.

Some guidance is also needed at the fund level regarding how the fund should account for their investments. Funds are flow through entities and do not pay any income taxes. Accordingly they would not be able to apply the effective yield method since the tax credits and other tax benefits are never recorded by the fund. We recommend that funds continue to use the equity method to account for their investments in affordable housing properties and that such accounting have no impact on how the investor accounts for its investment in the fund.

Other

To the extent that the Board wishes to expand the application of the effective yield method, or such other method as the Board decides to approve, to other types of tax credit investments, we recommend that the language used in the conditions be modified such that they are not so specific to affordable housing projects. Rather, alternative language such as the "entity entitled to receive the tax credits" could be used.

CohnReznick Responses to Proposed ASU, Investments – Equity Method and Joint Ventures, Topic 323
June 17, 2013
Page 4

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.

While we agree that the effective yield method is an appropriate method to account for investments in qualified affordable housing projects, we believe other methods are equally appropriate and may be more practical to implement. The effective yield method implies that the investment has certain debt-like characteristics. Since these investments are equity investments and not loans, we believe the effective yield method has the potential of mischaracterizing the nature of the investment. Further, applying a constant yield rate results in more benefits being reported in the early years when the unamortized investment balance is highest. In fact, the tax credits received in connection with an investment in an affordable housing project are received more or less on a straight line basis. We recommend amortizing the investment on a proportional basis as the tax credits are received. The attractiveness of the proportional amortization method is that it accurately reflects the net benefits of the investment in comparison to the receipt of the tax credits, provides a less complex alternative to the effective yield method, and is also subject to fewer errors in its calculation.

Comments on the example of effective yield provided in the Update

We have analyzed the example provided in the Update regarding how the effective yield method would be applied and we believe certain matters should be modified, as described below:

- a) The example has built-in impairment starting in year 11, which results from using a 15-year amortization period. We believe the design of the example should not result in an impairment charge when no adverse event has occurred. Effectively the example has over-recognized benefits in the early years of the investment, which necessitates impairment in the later years. See also b) below.
- b) Amortization of the investment should occur over the period in which tax credits are received and should not extend beyond that period. Any amortization of the investment beyond the tax credit period will always result in a negative yield in the post-tax credit years.
- c) We do not understand why the example uses the tax depreciation amounts for purposes of determining other tax benefits. We recommend that the other tax benefits be determined based on book amortization, which we believe should be calculated ratably in proportion to the receipt of the tax credits. Tax-based depreciation likely will not amortize the investment over the period of the tax credits. It also would not be appropriate for other types of tax credits should the accounting be expanded to analogous situations.

CohnReznick Responses to Proposed ASU, Investments – Equity Method and Joint Ventures, Topic 323
June 17, 2013
Page 5

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?

Yes. As described in our response to **Question 2** above, we believe investments in affordable housing projects should be amortized in proportion to the tax credits and other tax benefits received. We believe that the effective yield method is more appropriate in situations which are similar to financings. The requirement to obtain a guarantee of the tax credits is a significant component of meeting the conditions necessary to qualify for the effective yield method under existing standards. Removal of the guarantee requirement is a significant change which clearly places more emphasis on the availability of the tax credits and less on the existence of a guarantee. Accordingly, we believe that removal of the requirement of a guarantee of the tax credits should result in a change in the accounting method.

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. We believe that the proposed accounting treatment should be available for any investment that meets the conditions in the proposed Update. In other words, the accounting treatment should be based on the attributes of the investment rather than the specific tax credit program involved. Otherwise, investments with similar attributes made primarily for the purpose of obtaining tax credits and other tax benefits could end up with different accounting solely because tax credits are received under different tax credit programs. We strongly urge the Board to modify the proposed Update to expand the use of the effective yield method (or such other method as the Board may approve) to analogous situations involving other types of tax credit investments that meet the conditions in the proposed Update. We believe the conditions set forth in the proposed Update, with modifications, are appropriate to prevent any misapplication.

Impact of insignificant projected cash flow distributions to investors in some tax credit investments

Currently, equity investments are being made by investors in order to obtain tax credits under several different IRS programs. While the nuances of these various tax credit programs and the related equity investments vary, they share many common attributes with investments in affordable housing properties.

What separate these investments are differences in the underlying assets, the period of time over which the tax credits are received and certain tax-related requirements regarding the investment. Most of the tax-related differences are focused on whether or

CohnReznick Responses to Proposed ASU, Investments – Equity Method and Joint Ventures, Topic 323
June 17, 2013
Page 6

not the investment is required to have a profit motive. The requirement to have a profit motive exists for all equity investments with the exception of investments in affordable housing tax credit investments, which is specifically exempted.

Based on the condition in the proposed Update that “substantially all” of the project benefits come from tax credits and other tax benefits, we believe tax credit investments which include some cash flow distributions, even if the amounts are insignificant, will not be able to meet the “substantially all” condition. Consequently, we recommend that this condition be modified to allow for insignificant amounts of projected cash flow benefits. We believe that such a modification is a workable solution when combined with the condition that the investor’s projected yield based solely on the tax credits and other tax benefits (and excluding the projected cash flow distributions) is positive.

Our specific comments related to the various tax credit programs are detailed in the various sections below.

New Market Tax Credit (NMTTC) investments

NMTTC are tax credits awarded by the IRS in connection with qualified equity investments (QEI) made by investors into community development entities (CDEs). The total amount of the tax credits is based on a fixed rate of 39% of the QEI. The tax credits are received over a seven-year period. A portion (approximately 30%) of the QEI is funded with investor equity and a portion (approximately 70%) is funded with debt (a leveraged loan). In order for the QEI to qualify for the tax credits, the CDE entity is required to use the QEI proceeds to make a qualified low income community investment (QLICI) to a qualified affordable low income community business (QALICB). Once the NMTTC begin to be allocated to the investment entity they will continue to be allocated regardless of the performance of the underlying QLICI in the QALICB.

We believe investors who are unrelated to the leveraged lender will be able to meet the conditions in the proposed Update at the investment level. However, this is subject to how the cash flows due to the leveraged lender are treated with respect to the evaluation of the investment. In some situations the investor and the leveraged lender are related parties. In such situations we believe that the conditions in the proposed Update would not be met and that the investment would not qualify for the effective yield method.

Historic tax credit investments

Similar to investments in affordable housing properties, the amount of tax credits received in connection with a historic tax credit investment is based on a percentage (generally 20%) of the qualifying rehabilitation expenditures. The historic tax credit is received at the time the qualified rehabilitation expenditures have been completed and the building has been placed in service, subject to a five-year recapture period. Owners of historic tax credit properties can structure their ownership entities in a manner to allow a third-party investor to receive the historic tax credits. This can be accomplished

CohnReznick Responses to Proposed ASU, Investments – Equity Method and Joint Ventures, Topic 323
June 17, 2013
Page 7

through direct investments in the ownership entity or through use of pass-through lease structures. What is different about a historic tax credit investment and an investment in an affordable housing property is the tax credit is received in its entirety when the building is placed in service and the investment in a historic tax credit property entity is required to be profit motivated while an investment in an affordable housing property has no such requirement. As a result, many investments in historic tax credit properties provide the investor with small participations in the cash flows of the investment entity.

Investments in many historic tax credit entities would be able to meet all of the conditions in the proposed Update except for the condition which requires “substantially all” of the projected benefits to be from tax credits and other tax benefits. Without some modification of the “substantially all” proposed condition, an investment in a historic tax credit entity which provided the investor with projected cash flows in addition to the historic tax credits and the other tax benefits might not qualify for the effective yield method.

While it is possible that the terms of many historic tax credit investments might be modified to better conform to the conditions in the proposed Update, we believe it is unlikely, for tax reasons, that historic tax credit investments would ever be able to eliminate cash flows from the projected benefits. As noted in our response to **Question 1**, we believe that the condition that "substantially all" projected benefits come from tax credits and other tax benefits may be too limiting and that some amount of projected cash flow benefits should be allowed to exist without causing the investment not to qualify for the effective yield method.

Renewable energy tax credit investments

Currently there are two types of renewable energy tax credits: the investment credit (which is primarily related to solar equipment); and the production credit (which is primarily related to wind equipment).

Renewable energy Investment credit tax credit (ITC) investments

Renewable energy ITC investments, which are based on a percentage of the investment cost of the renewable energy equipment, are very similar to historic tax credit investments. Similar to the historic tax credit, the renewable energy ITC is based on a percentage (usually 30%) of the cost of the renewable energy equipment. However, also like historic tax credit investments, renewable energy ITC credit investments usually require the investor to establish that it has a profit motive, which results in a portion of the investor's projected benefits consisting of cash flows. Accordingly, renewable energy ITC investments likely would be able to meet all of the conditions in the proposed Update except for the condition that "substantially all" of the projected benefits consist of tax credits and other tax benefits.

CohnReznick Responses to Proposed ASU, Investments – Equity Method and Joint Ventures, Topic 323
June 17, 2013
Page 8

For the same reasons enumerated above under Historic tax credit investments, we recommend that the Board consider some modification of the conditions to allow for projected benefits to include insignificant amounts of cash flows in addition to the tax credits and other tax benefits.

Renewable energy production tax credits

Renewable energy production tax credits are different than renewable energy ITC investments primarily because the amount of the tax credits is based on actual energy production and not on the investment cost of the renewable energy equipment. Generally, the amount of the investment is based on the estimated amount of tax credits expected to be received, which is calculated using a percentage of the potential energy production capacity of the equipment. What is unique to renewable energy production tax credits is that they are only received when energy is produced.

As noted above, the calculation of the projected amount of renewable energy production tax credits is based on an estimate of the amount of energy production capacity of the renewable energy equipment. The production estimate is usually supported by engineering studies and other tests which provide for a high probability level of achievement of the projected amount of energy production. Based on the guidance in the proposed Update, it appears that renewable energy production tax credits would be able to meet the condition that the tax credits were “probable” of being “available.” However, the amount of production tax credits is variable from year to year. With the other types of tax credits currently available and described herein, the amount of tax credits is fixed.

To the extent that expected energy production does not occur as projected and, as a result, the related renewable energy production tax credits are not allocated to the investor, many investment structures provide for cash compensation to be provided to the investor. However, such cash compensation is designed to be a remedy and not a projected benefit.

Like historic tax credit investments, renewable energy production tax credit investments usually require the investor to establish that it has a profit motive, which results in a portion of the investor's projected benefits consisting of cash flows. Accordingly, renewable energy production tax credit investments likely will be able to meet all of the conditions in the proposed Update except for the condition that “substantially all” of the projected benefits consist of tax credits and other tax benefits.

For the same reasons enumerated above under Historic tax credit investments, we recommend that the Board consider some modification of the conditions to allow for projected benefits to include insignificant amounts of cash flows in addition to the tax credits and other tax benefits.

CohnReznick Responses to Proposed ASU, Investments – Equity Method and Joint Ventures, Topic 323
June 17, 2013
Page 9

Investments receiving more than one type of tax credit

Some entities may qualify for more than one type of tax credit. As an example, an entity may own a project which qualifies for both affordable housing tax credits and historic tax credits or an entity may own a commercial structure which qualifies for historic tax credits and new market tax credits or some other combination of tax credits. It is not clear whether the proposed Update will apply to investments involving combinations of tax credits, unless the effective yield method is extended to analogous situations. We strongly recommend that the Board address investments involving combinations of different tax credits if the proposed Update is not extended to analogous situations.

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. However, regardless of whether or not the guidance in the proposed Update extends the effective yield to other types of tax credit investments, we believe the proposed amendments are critical to improving the accounting for investments in affordable housing projects. See also our response to **Question 4**.

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?

Yes, with one exception. We do not agree with the requirement to disclose whether the qualified affordable housing project is currently subject to any regulatory reviews and the status of such reviews. Affordable housing projects are subject to recurring annual reviews as a requirement of the affordable housing tax credit program. Substantially all of these reviews deal with tenant and other related compliance requirements which can be addressed in the normal course of business and seldom result in any loss or recapture of tax credits. The cost of obtaining the information necessary to make the disclosure would far exceed the benefit of such information. In fact, we believe much of the disclosed information would only serve to confuse investors regarding whether or not such reviews are routine in nature or more severe and likely to result in any adverse consequences to the investment. We recommend that the Board either eliminate this proposed disclosure requirement or modify it significantly to include only significant matters. We favor elimination of this disclosure requirement since any significant adverse events related to the investment would either result in impairment or would be otherwise disclosed in connection with uncertain tax matters.

CohnReznick Responses to Proposed ASU, Investments – Equity Method and Joint Ventures, Topic 323
June 17, 2013
Page 10

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 requirement in the proposed Update that the amendment should be applied using a retrospective approach. We would also support a cumulative effect approach applied as of the beginning of year of adoption.

We also recommend that the Board allow investments that are already accounted for using the effective yield method to continue to apply the effective yield method without any adjustment for other tax benefits. We believe the benefit of any adjustment to existing effective yield investments for other tax benefits would be insignificant and the cost would outweigh the benefits.

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

We agree that early adoption of the proposed amendments should be permitted.

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 believe that the proposed Update should apply equally to public and nonpublic entities.

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

We believe that the amount of effort needed to implement the proposed amendments would be more significant if the Board decides to adopt the effective yield method. We believe the amount of effort to implement the proposed amendments would be significantly less if the proportional amortization method was allowed. We also believe the amount of information needed to apply the proportional amortization method would be substantially less than what is currently needed under the equity method.