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October 14, 2022

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

File Reference No. 2022-004

Dear Ms. Salo:

RSM US LLP is pleased to provide feedback on the Financial Accounting Standards Board's (FASB or Board) proposed Accounting Standards Update (ASU, proposed Update or proposal), *Investments–Equity Method and Joint Ventures (Topic 323): Accounting for Investments in Tax Credit Structures Using the Proportional Amortization Method.*

Overall, we support the Board's proposal that would allow reporting entities (under certain conditions) to account for equity investments made primarily for the purpose of receiving income tax credits using the proportional amortization method regardless of the program through which the investment earns income tax credit. However, we recommend that certain elements of the proposed guidance be clarified (or reconsidered) to improve its understandability and operability, which in turn should result in more consistent application in practice.

Our responses to each of the questions posed in the proposed Update are included in the remainder of this letter.

Responses to Questions for Respondents

Question 1: Do you agree that a reporting entity's tax equity investment that meets the conditions in paragraph 323-740-25-1 as amended by this proposed Update should be able to elect to use the proportional amortization method? That is, do you agree that the conditions are appropriate? If not, please explain why.

We agree that a reporting entity's tax equity investment that meets the proposed conditions in paragraph 323-740-25-1 should be able to elect to use the proportional amortization method. The proposed conditions are consistent with those that already exist for investments in low-income housing tax credit (LIHTC) structures, with amendments that reflect the broader applicability.

Question 2: Should the condition in paragraph 323-740-25-1(aa) be retained? Should only an investor that does not have the ability to exercise significant influence over the operating and financial policies of the underlying project be able to elect to apply the proportional amortization method to its tax equity investment? Please explain why or why not. What would be the impact of removing that condition?

We agree that the condition in paragraph 323-740-25-1(aa) should be retained and that only an investor (i.e., the reporting entity) that does not have the ability to exercise significant influence over the operating and financial policies of the underlying project should be able to apply the proportional amortization method to its tax equity investment. If the investor exercises significant influence over the operating and financial policies of the underlying project, other accounting principles in the FASB's Accounting Standards Codification would need to be considered, including the equity method of accounting, which prescribe significantly different accounting and presentation treatments.

Paragraph BC13 of the Basis for Conclusions indicates that the Task Force recommended amending extant paragraph 323-740-25-1(aa) to clarify application of the significant influence criterion to a multitiered investment structure. We understand that a tax equity investment structure (i.e., the investee entity) would generally invest in a single underlying project (even when the investment in the underlying project is held through a multitiered structure). However, it is unclear whether application of the significant influence criterion would be operable if a single investee entity held tax equity investments in multiple projects under different tax credit programs. That's because the guidance in paragraphs 323-10-15-6 and 15-7 (which is referenced in the proposed Update to determine whether an investor has the ability to exercise significant influence over operating and financial policies of an underlying project) was developed to be applied at an investee-entity level. Investee is defined in the ASC Master Glossary as "an entity that issued an equity instrument that is held by an investor."

Before finalizing the proposed Update, we encourage the Board to consider whether application of the significant influence criterion at an underlying project level would result in unintended consequences if applied to an investor's interest in an investee entity holding multiple tax equity investments. For example, in these instances, should the entire tax equity investment be treated as an equity method investment when the investor has significant influence over only a portion of the underlying projects, or would the investor be expected to potentially account for a portion of its investment by applying the proportional amortization method and the cost method (or Topic 321) to the remainder of its investment.

Question 3: Are the conditions in paragraph 323-740-25-1 as amended by this proposed Update operable and auditable? Please describe the nature and magnitude of costs and any operability or auditing concerns, differentiating between one-time costs and recurring costs.

We believe that the conditions in points a., aa., b. and c. of paragraph 323-740-25-1 of the proposed Update are generally operable and auditable. Also, because these conditions are substantially the same as those that currently exist for investments in LIHTC structures, we do not anticipate any significant incremental costs to audit these criteria.

With respect to the criterion in paragraph 323-740-25-1(aaa) (the "substantially all" test or criterion), we understand that the Task Force added this criterion because tax credit structures that are not LIHTC often have non-income-tax related benefits, which are accounted for outside the scope of Topic 740. Additionally, paragraph BC14 of the Basis of Conclusions states in part that "[t]he Task Force also determined that the substantially all test should be calculated using discounted amounts because generally when making an investment, the tax equity investor is not considering the cash to be received upon exiting the structure as a significant factor for entering into the investment and the approach is also consistent with other areas of GAAP in which future cash flows are considered. Therefore, Task Force members viewed cash flows that occur later in the project's life as not weighing as heavily on the investment decision and, therefore, determined that discounting the amounts was appropriate." While we appreciate that discounting the cash flows may result in more projects qualifying for the proportional amortization method, it is unclear whether the benefit of the proposed approach outweighs the costs. We believe allowing the option of either a gross- or discounted-cash-flows approach could be acceptable, provided the method used is disclosed by the reporting entity and consistently applied.

We recommend that any final ASU include implementation guidance and (or) examples illustrating the intended application of the 'substantially all' and the 'positive yield' criteria in paragraphs 323-740-25-1(aaa) and 25-1(b), respectively. For example, to further clarify the proposed requirements, the Board could illustrate what would be included in the numerator and denominator of the 'substantially all' criterion. In addition, the Board could clarify how certain credits under these programs should be treated for purposes of these tests when treatment as refundable tax credits is at the election of the investee entity and made each year over the term of the program. We understand that the Inflation Reduction Act of 2022, which enacted a new type of renewable energy tax credit, is an example of such a program.

We also recommend that the Board define and clarify the relationship between key terms used in the proposed Update such as 'tax equity investment,' 'tax credit program,' and 'investments in tax credit projects within that tax credit program.' These terms should also be used consistently throughout the proposed guidance to avoid confusion. For example, we believe that the term "tax credit project" used in paragraph 323-740-50-1 is the same as the term "underlying project" referred to in paragraph 323-740-25-1(aa). Clarifying the use of these terms in a multitiered tax credit structure, perhaps through an illustrative organization chart, would be particularly helpful.

Finally, we suggest that the criterion in paragraph 323-740-25-1(a) include "other income tax benefits" similar to the proposed amendment to the criterion in sub-paragraph (aaa) of paragraph 323-740-25-1.

Question 4: Does the proportional amortization method fairly represent the economics and provide financial statement users with an appropriate understanding of the returns from tax equity investments that meet the conditions in paragraph 323-740-25-1 as amended by this proposed Update to apply the proportional amortization method? If not, please explain why.

We believe that the proportional amortization method would produce accounting results that fairly represent the economics of investments in structures where substantially all of the benefits (returns) are expected to be income tax related. That's because amortizing the investment in proportion to the tax credit and other tax benefits that accrue to the entity and reflecting the impact as a component of income tax expense (benefit) rather than on separate line items in the income statement better aligns the cost of the investment with the primary benefits of the investment. The proposed accounting model coupled with the proposed disclosures will likely provide financial statement users with decision-useful information.

Question 5: Do you agree that applying the proportional amortization method to investments that meet the conditions in paragraph 323-740-25-1 as amended by this proposed Update should be an accounting policy election, or should those investments be required to be accounted for using the proportional amortization method? Please explain why or why not.

We agree that application of the proportional amortization method to investments that meet the conditions in paragraph 323-740-25-1 as amended by this proposed Update should be an accounting policy election. We do not have enough experience with these programs, nor are we aware of user feedback, to make it clear that the benefits of requiring this accounting treatment for all qualified programs would outweigh the costs. Therefore, we agree with the Task Force that the proposed accounting should be an election and not a requirement.

Question 6: Do you agree that the accounting policy election should be made on a tax-credit-program-by-tax-credit-program basis? That is, should an entity be able to elect to apply the proportional amortization method to investments in certain tax credit programs and not to apply it to investments in certain other tax credit programs? If not, at which level should the accounting policy election be applied (for example, for all investments in tax credit programs that meet the conditions in paragraph 323-740-25-1 as amended by this proposed Update or at the individual investment level)?

As long as the Board makes application of the proportional amortization method an accounting policy election, rather than a requirement when certain conditions are met, we are indifferent as to whether the election is made on a tax-credit-program-by-tax-credit-program basis or at the individual investment level. Requiring entities to evaluate all their tax equity investments in a particular program to determine whether they qualify for the proportional amortization method (and to document their basis for conclusions for internal control and their auditor's purposes) may not justify, for some entities, the cost to make the election on a tax-credit-program-by-tax-credit-program basis. We believe supplemental disclosures, similar to those suggested in our response to Question 10, would help provide users of financial statements information about the primary differences in an entity's accounting for its various investments in tax credit structures.

Question 7: Is a tax-credit-program-by-tax-credit-program accounting policy election understandable, operable, and auditable? Please explain why or why not.

We believe the term "tax-credit-program" should be defined to make the proposed accounting policy election able to be more consistently applied and provide a more robust and clearer basis for auditors. Assuming the term is meant to be narrowly applied, we recommend clarifying that these are programs as defined by the applicable tax authority.

Question 8: Under existing GAAP, LIHTC investments that do not qualify for the proportional amortization method or equity method are accounted for using the cost method. The proposed amendments would expand the use of the cost method in Subtopic 323-740 to other tax equity investment programs. Should tax equity investments that are not accounted for under the proportional amortization method or the equity method be permitted to apply the cost method, or should they be required to apply Topic 321?

We believe the cost method guidance in Subtopic 325-740 should be applied to tax equity investment structures that do not meet either the proposed conditions to apply the proportional amortization method or the conditions for equity method accounting.

The accounting model under Topic 321 is designed for investments where the investor would expect to recover its investment through its future sale of the investment, which we understand is not how entities that invest in these programs primarily realize the benefits of their investments. Also, requiring application of Topic 321 would add additional complexity and cost that may outweigh the benefits.

Investments in tax credit structures generally do not have readily determinable fair values. Under paragraph 321-10-35-2, an entity may elect to measure an equity security without a readily determinable fair value that does not qualify for the practical expedient to estimate fair value in accordance with paragraph 820-10-35-59 at its cost minus impairment, if any. However, if an entity identifies observable price changes in orderly transactions for the identical or a similar investment of the same issuer, the entity is required to measure the equity security at fair value as of the date that the observable transaction occurred. We are concerned that the costs of complying with this accounting model (including the increased volatility it potentially introduces to the reporting entity's income statement) may outweigh the benefits, particularly when the benefits of these investments are realized through holding the investment, not selling it.

Question 9: Do you agree that the proposed disclosures would provide decision-useful information for financial statement users? Are there any other disclosures about tax equity investments that should be required?

We defer to the views of investors and other users of financial statements, provided the costs and challenges (if any) preparers may face if required to present the proposed disclosures do not outweigh the incremental benefits to users.

Question 10: Do you agree that the proposed disclosures should apply to tax equity investments that generate credits through a tax credit program for which the entity has elected to apply the proportional amortization method, including investments that do not meet the conditions in paragraph 323-740-25-1 as amended in this proposed Update? If not, please explain why.

We generally defer to the views of investors and other users of financial statements as to whether the proposed disclosures would provide decision-useful information. However, we believe that limiting the proposed disclosures to only those qualifying investments in tax credit structures that are accounted for under the proportional amortization method may also be acceptable if entities that make this election would also be required to explain the primary differences in the accounting under the proportional amortization method compared to the entity's accounting for other tax equity investments. Some of the key differences may include the presentation of the amortization of the cost of the investment on the statement of income and application of the flow-through versus deferral method under Topic 740. Compared to the disclosures recommended by the Task Force, we have the view that this approach would provide a broader explanation of the differences in accounting for the entity's investments in tax credit structures and may be less costly to apply.

Question 11: Are the proposed disclosures operable to produce and auditable? Please describe the nature and magnitude of costs and any operability or auditing concerns, differentiating between one-time costs and recurring costs.

We believe the proposed disclosures are auditable.

Question 12: Do you agree with the proposed transition provisions? Please explain why or why not.

We agree with the proposed transition provisions, which would allow reporting entities to apply the proposed guidance using either a modified prospective approach or a retrospective approach, as defined in the proposed Update.

Question 13: What is the earliest period that an entity would be able to adopt the proposed amendments? Should early adoption be permitted? If not, please explain why.

We recommend that the period of adoption for public business entities (PBE) be no less than one year after the final standard is issued, with an additional year allowed for non-PBE. We also believe that early adoption should be permitted.

Question 14: Are there any specific private company considerations that should be brought to the Board's attention?

We are not aware of any specific private company considerations that should be brought to the Board's attention.

We would be pleased to respond to any questions the Board or its staff may have concerning our comments and ask that questions be directed to Jack Rominger at 949.255.6555 or Joseph Cascio at 212.372.1139.

Sincerely,

RSM US LLP

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