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Financial Accounting Standards Board
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Via Electronic Submission

RE: File Reference No. 2025-ITC100, the FASB Agenda Consultation, Invitation to Comment

Dear Mr. Day,

The American Council on Renewable Energy (“ACORE”) respectfully submits these comments in response to the Financial Accounting Standards Board (“FASB”) invitation to comment released on January 3, 2025, regarding its future standard-setting agenda. ACORE is a 501(c)(3) national nonprofit organization that unites finance, policy, and technology to accelerate the transition to a clean energy economy. ACORE’s membership spans the entire energy value chain, including clean energy developers, institutional investors, corporate buyers of clean energy, manufacturers, electric power generators, retail energy providers, and other stakeholders.¹

ACORE commends the FASB’s past work to expand the use of the proportional amortization method (“PAM”) of accounting to clean energy tax credit structures. We believe the PAM eliminates complexity in the accounting for these structures. However, ACORE has observed that the guidance is not well understood and has witnessed inconsistency in its application.

As part of future agenda setting, ACORE encourages the FASB to clarify in a principles-based manner its intent for expanding the use of PAM and to consider whether there may be particular fact patterns for which the eligibility assessment should take into account both quantitative and qualitative factors. ACORE also believes preparers would benefit from additional examples that may include new or evolving fact patterns.

1. Overview of the Role of Tax Equity in the Clean Energy Market

¹ The views expressed here are those of ACORE and do not necessarily reflect the views of any individual ACORE member company.

Tax equity, largely provided by domestic banks, has been a critical financing source for clean energy projects. Like many other infrastructure assets, clean energy projects often involve substantial upfront capital costs. Clean energy projects typically have a high level of contracted revenue, limited variable operating costs, and relatively predictable cash flows. Projects are often held in a limited liability company (“LLC”) that is characterized as a partnership for U.S. tax purposes.

In most cases, the project sponsors do not have sufficient tax liabilities to efficiently use the tax benefits that may be available for these projects. Thus, the sponsor sells non-controlling passive interests in the LLC to a tax equity investor in a structured tax equity transaction. This structure is designed to allow the tax equity investor to fund a large portion of the capital cost of the project and to receive an appropriate rate of return, which consists primarily of the value of tax credits and other tax benefits. Additional details related to tax equity finance for clean energy projects are available on ACORE’s website at: <https://acore.org/resources/the-risk-profile-of-renewable-energy-tax-equity-investments/>.

With the establishment of transferability under the Inflation Reduction Act of 2022, the tax credit monetization market for clean energy has undergone substantial shifts. Many tax equity investors have entered into hybrid tax equity deals, wherein they form a tax equity partnership with the project LLC but transfer all or a portion of the generated tax credits to a third party. Traditional tax equity investors facilitate transferability investments from other buyers, performing due diligence and syndication services that make a greater number of investors comfortable participating in the market. Incorporating hybrid projects into their portfolios allows traditional tax equity investors to deploy their capital more effectively across a wider range of projects while also increasing the volume of financing available for each individual project. With these additional monetization options, the market size for clean energy tax credits has grown from a roughly \$20 billion annual market to a roughly \$39 billion market in 2024.² This figure encompasses a range of deal structures, including traditional tax equity, hybrid tax equity, and direct tax credit transfers.

2. Recommendations

ACORE welcomes the opportunity to submit comments to inform the FASB’s agenda setting. The publication of the Accounting Standards Update (“ASU”) 2023-02 enabled tax equity investors to employ the PAM for their renewable energy partnerships, provided they

² Keith Martin, “Cost of Capital: 2025 Outlook,” Norton Rose Fulbright, January 9, 2025, <https://www.nortonrosefulbright.com/en-us/knowledge/webinars-and-events/5a1a9610/cost-of-capital-2025-outlook>.

meet five separate criteria.³ We appreciate the intent of the FASB to allow the PAM accounting for entities that are investing in projects where “substantially all” their benefits will be tax benefits and commend the FASB for its work in publishing guidance for the use of the PAM in renewable energy investments in ASU 2023-02.

Proportional amortization eases hurdles for both existing and new renewable energy market entrants and can help to attract nontraditional investors. This is because, in certain situations, the application of alternative accounting methods, such as the use of the hypothetical liquidated book value (“HLBV”) model under the equity method, results in financial reporting that inaccurately reflects the appearance of a non-economic equity investment in renewable energy projects, limiting the number of potential participants to invest in the sector.

However, under the current criteria for the PAM, there lacks consensus among industry experts on which projects will qualify on a project-by-project basis. To address this concern and enable greater use of the PAM in renewable energy partnerships, ACORE recommends that the FASB explore revising specific criteria to ensure that significantly more tax equity partnerships are eligible for the PAM, as well as provide additional examples that ease implementation concerns, particularly with the introduction of transferability to the market:

- (A) ACORE recommends the consideration of revisions to the criterion in paragraph 323-740-25-1(aaa) to lower the threshold of ‘substantially all’ regarding the proportion of projected benefits that come from income tax credits and other income tax benefits. ‘Substantially all’ is widely interpreted as 90%, which presents a high threshold that excludes many clean energy tax credit investments from qualifying for the PAM. Clarifying a lower threshold, such as 70 to 75%, would enable a greater number of investments to qualify, while still

³ ASC 323-740-25-1, as clarified in ASU 2023-02:

- a) “It is probable that the income tax credits allocable to the tax equity investor will be available.
- aa) The tax equity investor does not have the ability to exercise significant influence over the operating and financial policies of the underlying project.
- aaa) Substantially all of the projected benefits are from income tax credits and other income tax benefits. Projected benefits include income tax credits, other income tax benefits, and other non-income-tax-related benefits. The projected benefits are determined on a discounted basis, using a discount rate that is consistent with the cash flow assumptions used by the tax equity investor in making its decision to invest in the project.
- b) The tax equity investor’s projected yield based solely on the cash flows from the income tax credits and other income tax benefits is positive.
- c) The tax equity investor is a limited liability investor in the limited liability entity for both legal and tax purposes, and the tax equity investor’s liability is limited to its capital investment.”

maintaining the requirement that a significant majority of the benefits are tax-related.⁴

- (B) ACORE recommends the removal of the criterion listed in paragraph, 323-740-25-1(b), which states that “the investor’s projected yield based solely on the cash flows from the income tax credits and other income tax benefits is positive.” This has had the effect of excluding a significant number of partnerships where the underlying project generates investment tax credits. Although clean energy projects are now able to elect whether they generate an investment or a production tax credit, many projects opt for the investment tax credit due to project-specific factors, such as the size of the upfront costs.⁵
- (C) ACORE recommends that the FASB provide additional examples that reflect real-world market conditions to help accountants and investors understand the types of factors (e.g., management intent) that will enable or preclude projects from qualifying for the PAM. For example, even in traditional tax equity partnerships where the tax equity investor intends to retain all the generated tax credits, the investor will evaluate scenarios in which they may be forced to sell tax credits or their tax equity investment in future years. For example, a tax equity investor may consider a scenario in which it does not have sufficient tax capacity to utilize tax credits. ACORE believes a tax equity investor’s intent may change over the life of its investment, but the nature of the investment and the related economics remain the same. Consequently, ACORE believes management intent should not necessarily be a determinative factor when evaluating whether to apply the PAM.
- (D) ACORE recommends that the FASB clarify the impact that the ‘significant influence’ criterion may have on the evaluation of whether an entity may apply the PAM to an investment. The term ‘significant influence’ is closely associated with the equity method of accounting, and ACORE has observed disagreements about the applicability of the PAM to investments otherwise accounted for using HLBV. Under ASC 323-10-15-6, six examples are provided that may constitute

⁴ In its implementation, the FASB could further consider additional measures to ensure accurate accounting of the income tax expense line, such as recording only the amortization of the income tax benefits in the income tax expense line.

⁵ In 2024, ITCs and PTCs made up 47% and 19% of the market respectively, although many of these credits were generated under the legacy technology-specific §45 and §48. Crux, *2024 Transferable Tax Credit Market Intelligence Report*, February 10, 2025, 20, <https://www.cruxclimate.com/reports/2024-market-report>.

‘significant influence’.⁶ In every federal tax equity investment, the tax equity investor has a significant ownership interest in the underlying project (98% or more), but only for a limited period of time, and it then typically flips to a modest 5% ownership interest after the tax attributes have been allocated to the tax equity investor. If the tax equity investor does not exhibit ‘significant influence’ for the other five examples provided by the FASB, it should not be precluded from using the PAM. Furthermore, most tax equity investors negotiate consent rights to significant events (e.g., refinancing, budget changes, or management changes), particularly those that were not projected prior to the tax equity investor making the investment. In these arrangements, the investor does not have the right to proactively initiate such changes.

Some accounting firms have expressed concerns that these consent rights represent ‘significant influence’ over the underlying investment. However, consent rights are simply intended to ensure that a non-managing investor is not taken advantage of by the managing member(s), and they are common in real estate investments and other limited partnership arrangements. Thus, ACORE recommends that the FASB consider providing a safe harbor specifying that the mere presence of consent rights, regardless of their number, does not cause an investor to be deemed to have ‘significant influence’ over the operating and financial policies of an investee, even if the investor has significant ownership for a limited period of time.

- (E) ACORE recommends that the FASB consider an option for prospective application of the guidance. The current guidance provides for a retrospective or modified retrospective implementation, which could potentially create a conflict where partnership agreements include requirements to apply HLBV accounting, based on the historical practice of applying HLBV to such partnerships.

3. Conclusion

⁶ ASC 323-10-15-6: “Ability to exercise significant influence over operating and financial policies of an investee may be indicated in several ways, including the following:

- a. Representation on the board of directors
- b. Participation in policy-making processes
- c. Material intra-entity transactions
- d. Interchange of managerial personnel
- e. Technological dependency
- f. Extent of ownership by an investor in relation to the concentration of other shareholdings (but substantial or majority ownership of the voting stock of an investee by another investor does not necessarily preclude the ability to exercise significant influence by the investor).”

The use of the PAM for tax equity investments in clean energy tax credit structures better reflects the economics of these transactions while opening the door to more investors with tax base. Therefore, ACORE strongly supports further work by the FASB to enable the use of the PAM to a greater number of clean energy projects and additional clarifying examples that will enhance certainty among accountants and investors.

ACORE appreciates the opportunity to provide comments to inform the FASB's agenda setting. If you have any additional questions about these comments, please contact: Lesley Hunter at hunter@acore.org.

Respectfully submitted,

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