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**www.futureunlimitedlaw.com**

**LEGAL PROCESSING DIVISION  
PUBLICATION & REGULATIONS  
BRANCH**

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Please Reply to Ruth Sparrow  
rsparrow@futureunlimitedlaw.com

Internal Revenue Service  
Attn: CC:PA:LPD:PR (REG-149404-07)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

Re: New Markets Tax Credit – Section 45D Proposed Regulations - Comments

Dear Ladies and Gentlemen:

The undersigned requests that the Department of Treasury and Internal Revenue Service (the "IRS") consider the following clarification regarding the treatment of hedges as nonqualified financial property.

The Treasury Regulations define nonqualified financial property as debt, stock, partnership interests, options, future contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property except that such term does not include reasonable working capital or accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property. Treas. Reg. §1.45D-1(d)(4)(i)(E).

The NMTC program is designed to stimulate capital investment in low-income communities. The GAO Report to Congressional Committees regarding the New Markets Tax Credit Program dated January 30, 2004 stated that "[a]ccess to credit and investment capital is essential for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, and promoting the development of small businesses."


Based on the purpose of the NMTC program to incentivize economic development in low-income communities, hedges entered into in the ordinary course of the QALICB's trade or business to manage risks of operations, for example in manufacturing or energy production, should not constitute nonqualified financial property. For example, an ethanol plant routinely enters into options, futures contracts and forward contracts in connection with the purchase of corn and natural gas required for the production of ethanol and in connection with the sale of ethanol. Another example is a food manufacturing facility which may use hedges to minimize the impact of price fluctuations of the core ingredients.

In order to address this concern, Treasury Regulation Section 1.45D-1(d)(4)(i)(E)(1) should be clarified by adding the following exclusion to the definition of nonqualified financial property: (iii) option contracts, futures contracts, forward contracts and similar property that a taxpayer acquires in the normal course of the taxpayer's trade or business primarily to manage risk of price

changes with respect to ordinary property that is held or to be held by the taxpayer as the applicable terms are defined pursuant to Treasury Regulation Sections 1.1221-2(c) and (d).

Treasury Regulation Sections 1.122-2(c) and (d) provide definitions for “normal course”, “ordinary property” and “managing risk” in connection with defining hedging transactions that do not result in capital assets.

This clarification will enhance the efficiency and the impact of the NMTC Program by

By   
Ruth Sparrow

RSS:csf

cc: Paul Handleman  
Eric Solomon  
Matt Josephs