



SEC Auditing Concerns

On Thursday, September 6, 2007, we hand-delivered to Chairman of the House Committee on Financial Services, Barney Frank, a letter from the Housing Advisory Group, the Affordable Housing Tax Credit Coalition, and the National Association of Home Builders, describing the Securities and Exchange Commission (SEC) auditing issues with which the affordable housing industry has been struggling, and from which we expressly asked for a permanent exception.

Specifically, we explained that the SEC has taken the position that operating partnership level audits must meet the independence requirements of the Public Company Accounting Oversight Board (PCAOB) standards, and that meeting the independence requirements of the American Institute of Certified Public Accountants (AICPA) is not sufficient. Operating partnerships have traditionally met the independence requirements of the AICPA and many do not have the resources to comply with the more stringent standards of the PCAOB. We explained that, while the PCAOB and the AICPA standards do not differ in any material respects, the standards differ slightly in two aspects that are causing significant difficulties for many operating partnerships. First, the SEC and PCAOB regulatory definition of “independence” specifically prohibits anyone who maintained or prepared accounting records, financial statements, or originating source data underlying financial statements from serving as an independent auditor of those statements, while the AICPA interpretation of independence is much less specific and explicitly allows an accountant to prepare the financial statements and perform other bookkeeping functions, yet still serve as the independent auditor. Second, if an accounting firm was a member of the SEC Practice Section as of April 16, 2003, an auditor’s work must be reviewed by a second principal in the firm to comply with PCAOB standards, and SEC staff has indicated that such “April 16, 2003” grandfather may be revoked in the future.

We have discussed these issues with Chairman Frank during meetings with the Chairman, and have also been in touch with Lawranne Stewart, Senior Counsel for the House Committee on Financial Services, regarding these issues. We will provide updates on any headway that we make on these issues as soon as they become available.

Affordable Housing Modernization

We continue to work with Hill staff on the affordable housing modernization efforts that are underway and, on Tuesday, September 11, 2007, we met with House Ways and Means Committee staff to discuss the direction that these efforts have taken. The meeting was very positive.

Ways and Means staff (“staff”) discussed with us Chairman Rangel’s intentions to pass a tax bill that would, among other things, repeal the alternative minimum tax (AMT), which would be paid for in the “pay as you go” environment by increasing taxes on upper-income households and raising taxes on executives of hedge funds and private-equity partnerships. Staff stated that their hope was to include a housing bill within this tax bill.

It is promising that the housing modernization bill will receive attention over the next couple of months, but on the downside it will only be a “car on the train” of the larger tax bill, and it will be difficult to get such a large tax bill passed before the end of 2007. Staff stated that Chairman Rangel may have to settle for a one-year patch for AMT in this session. Staff also mentioned that they do not yet know the cost of the housing bill because they have not yet received the revenue scores for the bill and, therefore, they have not begun working on which proposals may need to be “dialed up or down.” Staff said that they have about twenty items that they hope to include in the housing bill.

Staff has received some comments from those in the surety bond industry about the proposal to eliminate surety bonds for recapture upon sale. Understandably, staff has received push-back from those in the surety bond industry, but staff stated that they have yet to see any need to continue the requirement. We also discussed the pros and cons of allowing tenants who earn up to 80% of area median income in projects (80/20 projects) in certain communities with severe shortages of housing for this income group (e.g. New York City). Staff stated that they understand the need for affordable housing for tenants who fall within 80% of area median income. However, staff stated that the Chairman has expressed some concern about building projects for which both tenants who earn 80% of area median income and tenants who earn 20% of area median income would be living. Staff stated that the better way to address the concern is to issue more Section 8 Rental Vouchers to such households and to allow Section 8 vouchers to be used concurrently with LIHTC properties, but that the current administration does not support issuing more Section 8 vouchers.

We expressed that an important issue to the housing industry, and one that can be addressed relatively painlessly, is setting the discount rates at 9 percent and 4 percent. We explained that doing so would add more certainty, would allow more equity into each property, and would place less pressure on debt sizing as operating costs increase. Ways and Means staff agreed that this was a relatively painless fix and agreed that if cost became an issue in enacting the bill they could set the 9 percent rate and continue to let the 4 percent rate float.

Bob Moss, Senior Vice President of Boston Capital, shared that he had the opportunity to discuss these issues with thirteen state agencies who invited Bob to speak with them. Bob communicated that the state agencies expressed that they must be extremely careful about the sizing of the debt. He also noted that some states are not sure that they want to take on “difficult development areas” and “qualified census tracts.” Staff explained that under the current proposal, states would have flexibility in doing what they want to do as long as it is included in the allocation and that states understand that it will “come out of the pot” – i.e., states only have so many credits that can be allocated.

Overall, it was a very positive meeting and it looks like efforts for a strong housing modernization bill are well on their way.

HAG Contact Information:

David Gasson, Executive Director
(617) 624-8896
dgasson@bostoncapital.com

Allison E. Marino, Communications Associate
(617) 624-8678
amarino@bostoncapital.com