BANKING ON A SUSTAINABLE FUTURE

OPPORTUNITIES FOR COMMUNITY BANKS TO FINANCE RENEWABLE ENERGY PROJECTS

JUNE 2024

SPEAKER PROFILE

JOSHUA C. MILLER
CEO
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Josh Miller joined KeyState in 1998 and has served as the CEO since 2011. During his tenure, KeyState has remained focused on helping community banks manage complex planning structures that large US banks have utilized for many decades. KeyState provides community banks with the expertise and scale to implement investment and risk management structures that enhance their annual earnings. Under Josh’s leadership, KeyState’s registered investment advisor business has grown assets under management to over $18 billion, and KeyState has built the only bank captive insurance program in the country which is endorsed by 30 state banking associations. In 2019, he launched KeyState Renewables, which deploys solar tax equity investments for community bank and corporate investors. Since inception, KeyState’s SOLCAP solar tax equity fund platform has raised and deployed over $265 million in solar tax equity financing 53 solar projects in 7 states. Josh received his bachelor’s degree in economics and foreign affairs from the University of Virginia and holds board and leadership roles with various industry groups and non-profits organizations.

SPEAKER PROFILE

SETH WINTER

Partner

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troutman pepper

Seth represents publicly traded companies and financial institutions, including banks and bank holding companies, nonbank lenders, and other fintech and financial services companies, on regulatory, compliance, strategic, corporate law, securities law, and disclosure matters.

Seth regularly represents financial institutions in mergers and acquisitions, including bank mergers and acquisitions of nonbank institutions. Seth also represents financial institutions in connection with applications to federal and state regulatory agencies, including applications related to organic and M&A growth, new lines of business, and strategic equity investments.

SOLVING AN UNMET NEED FOR COMMUNITY BANKS

- ✓ Tax equity investments convert a bank's tax liability into earnings and capital
- ✓ Meaningful and measurable ESG impact
- ✓ Potential to finance renewable energy projects in your region and possibly purchase renewable energy for your branch network
- ✓ Potential CRA credit (if projects sell discounted green power to LMI households)

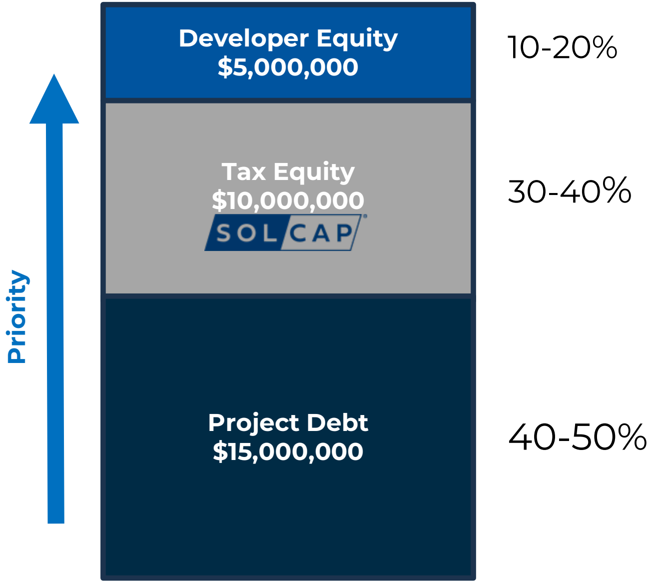
AN OPPORTUNITY FOR COMMUNITY BANKS

- Solar Tax Equity Overview
- Types of Solar Projects
- Why Now?
- Benefits of Solar Tax Equity
  - Compelling Return & GAAP Profile
  - ESG Benefits
  - Potential for local investment and to procure renewable energy for your bank
  - Potential for CRA benefit

WHAT IS SOLAR TAX EQUITY?

Solar Project Capital Stack

$30mm Cost to Construct / $33.3mm FMV



Solar Tax Equity: an ownership interest in a solar project where the investor receives 3 sources of return in an **accelerated timeframe.**

Tax Credits	Year 1
+ **Depreciation Deductions**	Year 1
+ **Cash Proceeds**	Year 1-6
Tax Equity Returns	

COMMUNITY BANKS ARE IDEAL INVESTORS FOR SMALL SOLAR PROJECTS

4 General Types of Solar Projects

- Rooftop Residential
- C&I
- Utility Scale
- Community Solar

Other Renewable Energy Property Eligible for the Investment Tax Credit (ITC)

- Solar + Storage
- Stand alone energy storage
- Wind
- Geothermal
- Fuel Cells
- Waste Energy Recovery

Community Banks Well Positioned to Finance Small and Mid-Size Solar, Solar+ Storage, and Stand-Alone Storage

- C&I – commercial, municipal, school districts or higher ed off-takers (some CRA opportunities)
- Utility Scale – small or mid-size, rural
- Community Solar
  - Residential and LMI residential
  - Small and mid-size commercial

WHO INVESTS IN SOLAR TAX EQUITY?

PARTICIPANT	ATTRIBUTES	TAX EQUITY INVESTMENTS
us bank	Large provider of tax equity. Early participant in solar tax equity investments and syndications. High cost, low flexibility	$15B+[1]
WELLS FARGO	Early provider for tax equity. Focus on large-scale projects	$10B+[2]
STARBUCKS	Large corporate investor who has actively participated	$97M (2021-2022)[3]
J.P.Morgan + Bank of America	Two national banks made combined investments in 2020 which represented approximately 50% of total solar tax equity market	$9B (2020)[4]
Google, Microsoft, amazon, Apple	Massive corporate investors focused on large-scale projects	*Undisclosed*

90% of energy CFOs plan to take advantage of credits and incentives over the next 10 years[5] – BDO

1 US Bank Expands Leadership in Environmental Financing
2 Wells Fargo Surpasses $10B in Renewable Energy Tax-Equity Investment
3 Starbucks Deploys $97M in NY Community Solar Projects
4 Clean Energy Finance Forum – Current Challenges to Tax Equity
5 2023 BDO Energy CFO Outlook Survey

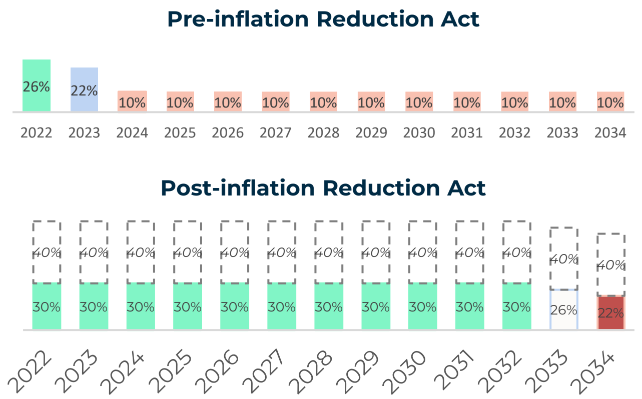
INFLATION REDUCTION ACT
PRESENTS A TREMENDOUS OPPORTUNITY

"Dollar for dollar, the federal solar tax credit is the **greatest economic incentive for businesses** to invest in solar panels and/or battery storage. You can **effectively recover 30% of the total cost** of building a solar system, with no maximum limit."

- solar.com

- In 2022, the signing of the IRA lifted tax credit back to 30% (up from 26%) with additional upside through adders to get up to 70%, where it will remain through 2032
- IRA expands accepted projects to include battery storage which are more easily accessible investments than others
- Through the IRA, ITCs can now be carried back as far as 3 years and can be carried forward 22 years
- Solar ITCs can be combined with state or local RECs, meaning impact can be magnified across organization

RENEWABLE ENERGY TAX CREDIT RATE



The IRA enables attractive tax credit investment opportunities for the next 10+ years

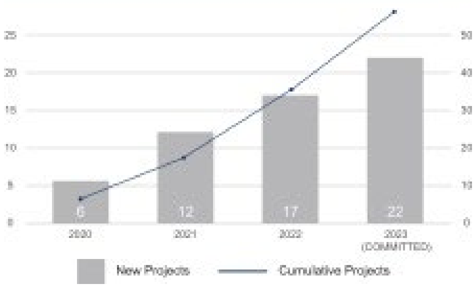
GROWTH OF COMMUNITY BANK INVESTMENT IN SOLAR TAX EQUITY

2019 | KeyState Renewables launched its SOLCAP solar tax equity platform in 2019

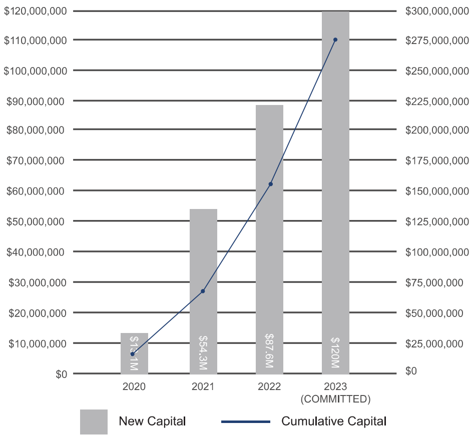
50+ | SOLCAP has financed 53 projects (both completed and committed) since inception

$275M+ | Raised and deployed over $275M in tax equity financing since inception

PROJECTS FINANCED



CAPITAL RAISED & DEPLOYED



SOLAR TAX EQUITY RETURN PROFILE

3 Sources of Return

Investment Tax Credit
Direct Tax Payment Reduction

Dollar-for-Dollar:
Offsets federal income tax liability, dollar-for-dollar

Year 1 Recognition

Accelerated Depreciation
Taxable Income Reduction

80% Bonus or MACRS
Year 1 bonus depreciation at 80% rate or accelerated depreciation

Cash
Preferred Return & Put/Call Proceeds

Cumulative Preferred Return:
Approx. 2% annually

Call/Put Proceeds:
Approx. 6-8% upon exit

SOLCAP TYPICAL RETURN PROFILE

Assumes $10 Million Investment:

Year	Capital Contributions	Tax Credits	Total Tax Savings (Costs) from Income (Losses)	Cash Distributions & Proceeds	Net Benefit
Year 1	($10,000,000)	$8,425,564	$1,060,063	$100,000	$(414,373)
Year 2-6 *(Consolidated)*			($255,029)	$1,900,000	$1,644,971
Total	**($10,000,000)**	**$8,425,564**	**$805,034**	**$2,000,000**	**$1,230,598**

>100%
Annual After-tax IRR

>1.12x
ROI (MoIC)

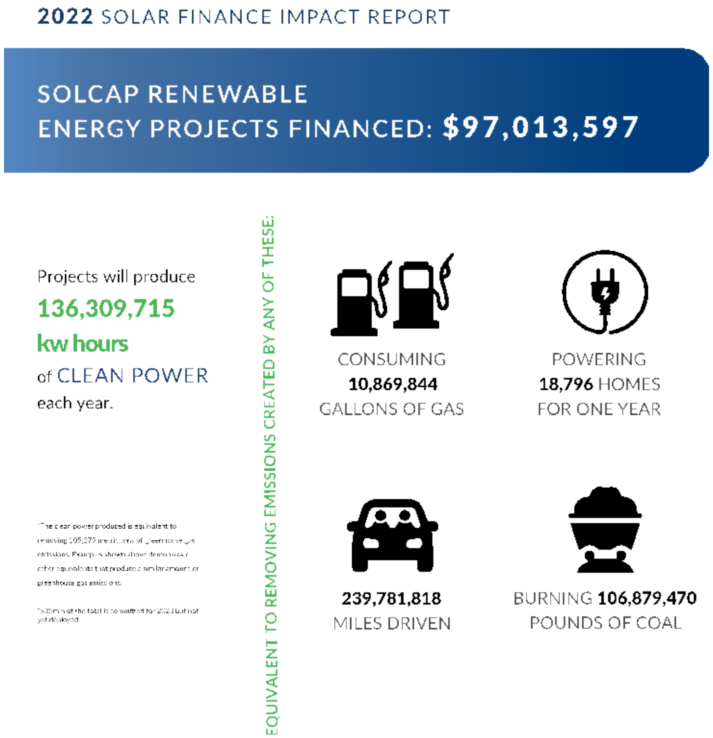
CONVERTING YOUR FEDERAL TAX LIABILITY INTO EARNINGS AND CAPITAL

GAAP Profile (Proportional Amortization Method)

Illustrative Financial Statements

	Assets			Liabilities & Equity			Income Statement			
Year	Cash	Investment	DTA/DTL	Taxes Payable	Suspended Amortization	Retained Earnings	Investment Income	Current Tax Benefit	Deferred Tax Benefit	Net Income
1	(9,957,879)	564,339	45,089	(10,200,328)	-	851,877	42,121	764,667	45,089	851,877
2	(9,873,935)	427,088	(91,824)	(10,348,702)	-	810,032	83,945	11,123	(136,913)	(41,845)
3	(9,790,974)	443,587	(95,371)	(10,330,866)	-	888,108	82,961	(1,337)	(3,547)	78,077
4	(9,707,617)	460,166	(98,936)	(10,312,944)	-	966,557	83,357	(1,344)	(3,565)	78,448
5	(9,624,577)	476,681	(102,486)	(10,295,091)	-	1,044,708	83,039	(1,338)	(3,550)	78,151
6	(8,919,038)	0	-	(10,143,400)	-	1,224,361	88,539	(11,372)	102,486	179,654
						Total	**463,962**	**760,400**	**-**	**1,224,361**

MEASURABLE ESG IMPACT



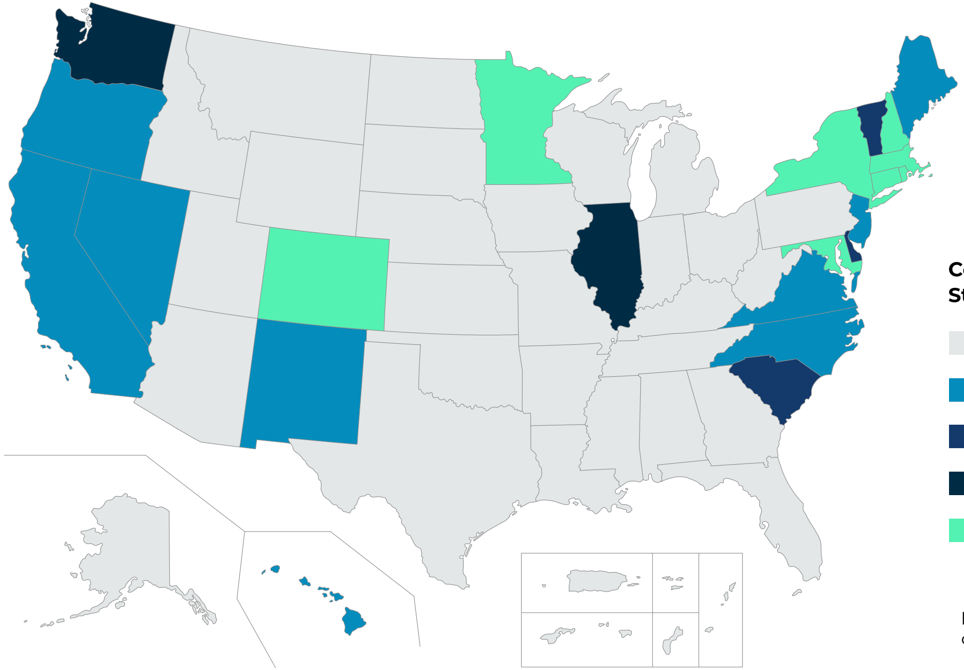
Solar Finance Impact Report

- Investors receive an annual, cumulative Solar Finance Impact Report
- Measures the amount of renewable energy produced by solar projects the bank has financed
- Provides greenhouse gas emission equivalents for the amount of power generated

Annual Corporate Responsibility Report

- Investors update their bank's annual Corporate Sustainability Report to reflect the cumulative impact of their renewable energy project finance
- Investors may highlight a local or regional solar project that is supplying discounted power to underserved communities

POTENTIAL TO INVEST LOCALLY AND PROCURE RENEWABLE ENERGY FOR YOUR BANK



Community Solar State Policy Types

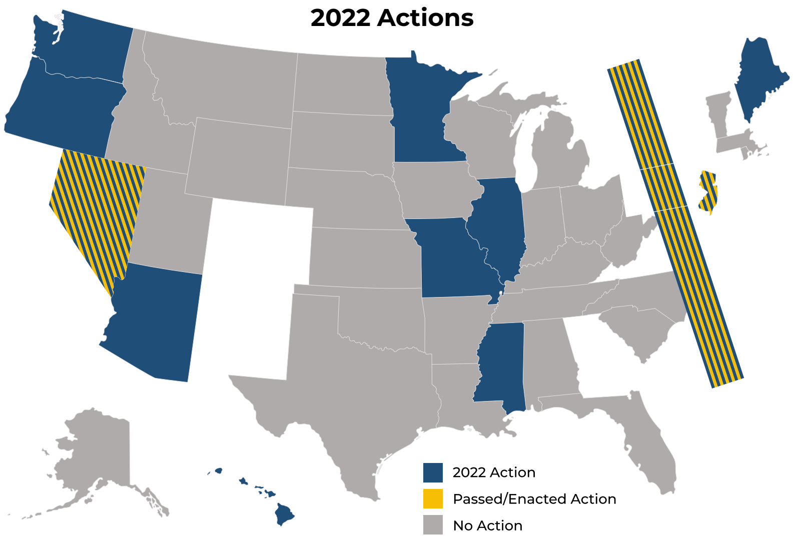
- None
- Mandate
- Enabled
- Incentive
- Mandate and Incentive

https://www.energy.gov/communitysolar/states-collaborative

POTENTIAL FOR CRA CREDIT?

Incentives to build solar projects benefiting LMI households

State Programs & Incentives



Rebekah de la Mora, Policy Analyst, DSIRE Insight, https://www.dsireinsight.com/blog/2023/1/27/lmi-roundup-a-selection-of-new-lmi-energy-policies-and-programs-adopted-in-2022

Federal Incentive
The Inflation Reduction Act

The Low-Income Communities
Bonus Energy Investment Credit Program
10% to 20% in Additional ITC ("Adder")

Max Project Size 5MW AC

Category	Description	Annual Cap
1	Located in a low-income community as defined by the "New Markets Tax Credits" section of the tax code	700MW
2	Located on Indian Land	200MW
3	Part of a "qualified low-income residential building project"	200MW
4	Part of a "qualified low-income economic benefit project"	700MW

WHY IS SOLAR TAX EQUITY COMPELLING FOR COMMUNITY BANKS?

1 Demonstrable & repeatable path to returns

2 Convert federal tax liability into earnings

3 Limited up-front cash deployment

4 Recurring annual investment opportunities

5 Positively impact green footprint & ESG requirements

0 Principal Risk	**>100%** Annual After-tax IRR
75% Up to Offset of Federal Tax Liability	**9-12%** Of Investment recognized Yr 1 GAAP earnings
20% Capital Deployed Upfront	**3-6** months Payback Period
$1B+ Annual Pipeline Opportunities	**10+** Years of Projects in Pipeline

UNDERWRITING SOLAR TAX EQUITY INVESTMENTS

Initial Diligence – 3 Stages

1. **GAAP & Tax Review of Model (internal and with tax and audit partners)**

2. **Consider Regulatory Path**
    - Lending Authority (OCC Rule 12 CFR §7.1025)
    - Public Welfare Investment
    - Holding Company
        - 4(c)6 investment for holdcos < $10B
        - Merchant banking authority for holdcos > $10B

3. **Underwriting Packages**
    - Developer
    - Project Level

UNDERWRITING SOLAR TAX EQUITY INVESTMENTS

Diligence Prior To And After Closing

1. Engage Experienced Solar Tax Equity Tax Counsel or Invest in Fund with Tax Counsel (or both)
   - Document Review and Negotiation
   - Tax Opinion
   - Detailed legal diligence checklist at each closing/funding (initial, mechanical completion, and substantial completion)

2. Prepare & Circulate Internal Investment Committee Memo and Select Appropriate Committee (Investment, ALCO, Credit, or full Board approval)

3. Develop process for initial, formal review of project underwriting packages (loan equivalent) and annual review thereafter

4. Document accounting methodology election and socialize with auditor

5. Closely monitor project(s) timeline to understand when ITCs will be recognized (delays are common and can push ITC recognition into next tax year)

6. Consider visiting facilities on a rotating basis

REASONS TO CONSIDER A FUND VS. A DIRECT INVESTMENT

At the Time of Initial Investment

Full Underwriting Package

Certified Financial Model & GAAP Proforma

Tax Opinion Prepared by Tax Counsel

Recurring Ongoing Reporting

Quarterly Proforma Journal Entries

Quarterly Asset Management Reports

Annual Audited Financials and Tax Docs

TAX EQUITY INVESTMENTS
RISKS & MITIGANTS

RISK	MITIGANT
Project Performance Risk	• Diversify risk across numerous, varied separate projects • Require sufficient coverage ratios for debt service and preferred returns • Ensure the solar developer takes the first loss
Power Purchaser Risk	• Complete a full credit review • Lender for the project will also perform credit review of the power purchaser
Recapture Risk *first 5 years only (100/80/60/40/20)*	• Only work with experienced team of solar developers and solar finance professionals • The bankruptcy or financial difficulties of an off-taker does NOT trigger recapture • All projects are fully insured – property and business interruption insurance • Investors can purchase ITC recapture insurance • Require lender enter into a forbearance agreement/SNDA for initial 5 years
Accounting Treatment	• All Big 4* and national Tax and Accounting firms have experience with GAAP treatment • Investors select deferral method or proportional amortization method • With new FASB rule (Jan 2023), investors can typically use the proportional amortization method

**Big 4 Accounting Firms includes Deloitte, PWC, E&Y and KPMG*

Bank Regulatory Experts combined with…

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Financial Services

May 2023

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- Full service practices
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- Geographic coverage

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BTI Client Service A-Team 2023

Best Innovation: Enterprise, 2022 Winner
Relativity

Named on the Most Recommended Law Firms List for 15 Consecutive Years
2022 BTI Consulting Group

Fintech Outstanding Deal of the Year, 2022 Counsel to GreenSky, Inc. in its Sale to Goldman Sachs for $2.24B
The Deal

Our National Financial Services Team

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- Mortgage lenders and servicers
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- Financial technology companies

Recognition

National Tier 1: Banking and Finance Law; Litigation - Banking & Finance

National Tier 2: Finance and Financial Services Regulation

– 2023 *U.S. News – Best Lawyers®* "Best Law Firms"

Nationwide M&A/Corporate and Commercial: M&A:Middle-Market (sub-$500M)

Finance: Project Finance: Advice to Borrowers and Lenders

– 2022 *Legal 500*

Nationally Ranked - Financial Services Regulation: Consumer Finance (Enforcement & Investigations)

Band 3 in Financial Services Regulation – Consumer Finance: Compliance and Litigation

Band 3 in Banking & Finance – Georgia

Band 2 in Banking & Finance – Pennsylvania: Philadelphia & Surrounds

– 2022 *Chambers USA*

Individual Attorney Rankings: FinTech Legal in USA: FinTech, Payments & Lending, Data Protection & Cyber Security

– 2023 *Chambers USA*

By the Numbers

950+ financial services industry clients

88% of our 1,200 attorneys have handled matters for financial services industry clients

We represent 13 of the 15 largest banks in the U.S.

By assets as of December 31, 2022

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- Employee benefit plans and deferred compensation
- Executive and equity-based compensation
- Workouts, restructuring and distressed debt
- Intellectual property, including trademarks, patents and copyrights
- Cybersecurity, information governance and privacy
- Dispute resolution, including arbitration and class litigation

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MENU

Firm Events

INSIGHTS > RENEWABLE ENERGY AND ENERGY STORAGE SITING IN VIRGINIA

04.21.21

REGISTER HERE

Renewable Energy and Energy Storage Siting in Virginia

Wednesday, April 21 • 1:00 – 2:00 p.m. ET

The Virginia Clean Economy Act (VCEA), enacted in 2020, initiated sweeping changes to the Commonwealth's energy sector. Among many other things, the VCEA requires the gradual retirement of carbon-emitting electric generating units, creates a mandatory renewable portfolio standard, and requires the construction of thousands of megawatts of solar, wind and energy storage assets. Like most states, Virginia extensively regulates the siting of utility-scale energy infrastructure. This webinar will discuss the following topics to help developers navigate the pertinent regulatory requirements:

- Relevant Provisions of the VCEA
- Virginia Department of Environmental Quality Permits-by-Rule
- Virginia State Corporation Commission Certificates of Public Convenience and Necessity

SPEAKERS

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Related Practices and Industries

Environmental + Natural Resources

Renewable Energy

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MENU

Speaking Engagements

INSIGHTS > REFF WALL STREET

New York City, NY

09.20.23

REGISTER HERE

REFF Wall Street

Wednesday, September 20 • 2:15 – 3:00 p.m. ET

John Leonti will be moderating the panel, "Analyzing the Current State of the Tax Equity Market and Introducing Tax Credit Transferability" at the 2023 REFF Wall Street Renewable Energy Finance Forum on September 20 at 2:15 p.m. – 3:00 p.m.

The panel will focus on the following topics:

- As the need for tax equity exceeds capacity, will the cost of tax equity go up? Where is the cost of capital currently?
- Evaluating lender's interest in monetizing credits following the new guidelines
- Analysing the portability options: is tax credit portability enough to satisfy demand in the market?
- How can smaller players get involved in the market? Is there a need for aggregators and intermediaries?

SPEAKERS

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Partner
Email
213.928.9873

Related Practices and Industries

Energy

Renewable Energy

Utility Tax

Inflation Reduction Act of 2022 – Energy Industry Implications

Why does Green Energy need Tax Equity?

- **Key Subsidy** – Federal tax benefits are an essential subsidy and can cover 40% to 50% of capital cost.
- **Sponsors Need Equity Investors** – Sponsors want to maintain operational control and long-term ownership, but often do not have tax liability to use available tax credits.
- **Tax Equity is Significantly Cheaper than Sponsor Equity** – In virtually all cases, the Sponsor's cost of equity funds is significantly higher than that of tax equity investors.

OCC Regs, Other Factors Drive Bank Interest in Green Energy Tax Equity

- OCC's 2021 regulations codify and expand prior OCC interpretations regarding national bank lending powers and tax equity finance transactions.
  - Previously, OCC determined permissibility on a case-by-case basis. Some decision letters were inconsistent or could only be applied by very large national banks.
  - These regs help "level the playing field" between community and regional banks, and the largest national banks.
  - Large banks can still use other powers (e.g., merchant banking) to invest in tax equity transactions.

- Then, US Inflation Reduction Act of 2022 provided significant incentives – including via tax credits – to incentivize clean energy and carbon-reduction projects. Projected impact of this Act on ***tax equity*** market alone has been estimated to be ~$30 billion.

- Increased attention to ESG matters is driving interest in green energy projects at financial institutions.

- ***ITEM TO WATCH:*** The 2023 Basel III "End Game" proposal would apply a 400% risk rating to non-publicly traded equity investments. This proposal is being revisited, and broad support for retaining current 100% risk weighting.

Unique Considerations for Investing at BHC Level

- Bank holding companies (BHCs) can invest in up to 5% of a class of a company's voting equity under Section 4(c)(6) authority.
  - Complex transactions may require consultation with Federal Reserve Board legal staff, including if various classes of equity are issued. *See 12 CFR 225.137*.

- Large BHCs can invest using Merchant Banking authority, if it controls a broker-dealer or BOTH an insurance underwriter and an investment advisor.
  - Merchant Banking investments require a financial holding company election *(likely satisfied in connection with broker-dealer or insurance underwriter investments).*
  - Merchant Banking investments are subject to divestiture if BHC or bank experiences regulatory issues, and are subject to detailed holding period rules.

- Investing at BHC-level can be a less efficient use of regulatory capital.

How can Banks Invest in Green Energy Projects?

Public Welfare Investment (PWI)

- Investments that are primarily designed to promote the public welfare, including to finance community development activities, or provide capital for affordable housing, small business development or other community needs
- OCC, Federal Reserve and FDIC have each adopted implementing regulations
- Virginia Code specifically authorizes investments that meet OCC requirements

Tax Equity Investments (OCC framework)

- Derivative of a bank's lending authority; ***not*** a separate category of authorized equity investments
- OCC adopted regs in 2021 that set requirements for tax equity investments.
- FDIC applies OCC standards, via Federal Deposit Insurance Act, § 24 *(national bank parity provision)*.
- Federal Reserve grants verbal nonobjection to specific proposed transactions, via Federal Reserve Act, § 9(13) *(national bank parity provision)*
- Virginia Code specifically authorizes investments that meet OCC requirements

Challenges, Benefits of Investing in Green Energy via PWI

- **Key Challenge → Regulators apply a high bar for demonstrating that an investment will <u>always</u> benefit LMI communities or qualify for CRA credit, as a condition to investing**
  - Issues related to timing, availability and quality of data about how power generated by green energy projects is used, and how benefits end users
  - Reliability of controls and reporting processes

- **PWI Investment <u>*could*</u> present significant benefits to an investing bank, as compared to OCC regulations for tax equity investments**
  - Separate capital limits applied to PWI investments
  - Fewer transactional / structural requirements
  - Potential greater flexibility in how to make the investment – as examples, in tax credits generated by, or operating co. or holding co. of energy project

- **Currently, a <u>*minority*</u> of Green Energy investments available to regional and community banks are structured as PWI investments.** Proceed with caution; consult with regulators (with counsel) in advance, and expect a healthy dose of regulatory skepticism.

Basics of OCC Regulations on Tax Equity Transactions

- A **tax equity financing (or “TEF”) transaction** is a transaction in which a national bank provides equity financing to fund a project that generates tax credits and other tax benefits, and the use of an equity-based structure allows the transfer of those tax credits and other tax benefits to the bank
  - Solar tax equity investments are a type of tax equity financing transaction

- A national bank’s **lending authority** is the legal basis for engaging in TEF transactions.

- **TEF transactions are subject to substantive legal requirements of a loan**, including applicable legal lending limits and affiliate transaction restrictions.

Office of the Comptroller of the Currency – Requirements for TEF

A bank may engage in a TEF transaction if the transaction is the functional equivalent of a loan and meets 5 additional requirements. Sponsors can help meet these standards.

Functional Equivalent of a Loan

- Structure of the transaction is necessary for making the tax credits or other tax benefits available to the bank
- Transaction is of limited tenure and is not indefinite
- Tax benefits and other payments received by the bank from the transaction repay the investment and provide the expected rate of return at the time of underwriting
- Bank does not rely on appreciation of value in the project or property rights underlying the project for repayment
- Bank uses underwriting and credit approval criteria and standards that are substantially equivalent to the underwriting and credit approval criteria and standards used for a traditional commercial loan
- Bank is a passive investor in the transaction and is unable to direct the affairs of the project company
- Bank appropriately accounts for the transaction initially and on an ongoing basis and has documented contemporaneously its accounting assessment and conclusion

Additional Requirements

- Bank cannot control the sale of energy, if any, from the project
- Bank limits the total dollar amount of tax equity finance transactions undertaken to no more than 5% of its capital and surplus
- Bank has provided written notification to the appropriate OCC supervisory office prior to engaging in the transaction
- Bank can identify, measure, monitor and control the associated risks of its tax equity finance transaction activities individually and as a whole on an ongoing basis to ensure that such activities are conducted in a safe and sound manner
- Bank obtains a legal opinion or has other good faith, reasoned bases for making a determination that tax credits or other tax benefits are available before engaging in the transaction

OCC – Approval Process for TEF Transactions

- Before engaging in the transaction, provide written notification to the appropriate OCC supervisory office that includes:
  - Detailed transaction description, including bank's evaluation of risks posed by transaction
  - Copies of bank's underwriting and approval memorandums
  - Detailed description of how transaction is the functional equivalent of a loan and satisfies the OCC's additional requirements
  - Certification that transaction meets all applicable legal requirements

- OCC will acknowledge receipt of bank's request within 5 calendar days.

- OCC will consider requests for a national bank to exceed the 5 percent limit on tax equity finance transactions, but banks should consult with OCC **before** submitting such a request.

FDIC – Approval Process for TEF Transactions

- **No Prior Notice, Nonobjection or Approval Requirement (as of September 2023)**
  - No legal requirement for prior notice or receipt of a nonobjection if the transaction meets OCC requirements
  - ***Strongly recommend*** giving ~30 days' advance notice to case manager, including summary of how the transaction meets OCC requirements and risk management framework

- **Ongoing Requirements**
  - Bank must document the legal authority for engaging in TEF transactions and compliance with OCC regs (see FIL 54-2014)
  - TEF transaction likely subject to more detailed review during next exam, particularly for first transaction:
    - Expect detailed FDIC review of risk management processes
    - Organize all documents for TEF transaction in easy-to-follow format – including underwriting package and analysis of OCC requirements

Federal Reserve – Approval Process for TEF transactions

- The Federal Reserve has no codified approval process for tax equity financing transactions
- Instead, the Federal Reserve reviews state member banks' request to invest on a **case-by-case basis**
- Before engaging in the transaction, provide written notification to the appropriate Federal Reserve supervisory office that includes:
  - Description of the transaction
  - Description of the authority being relied on by the bank for the transaction; *recommend describing how the transaction complies with the OCC's regs*
  - Detailed description of the bank's evaluation of risks related to the investment and the bank's proposed management of these risks ; *expect significant focus during Federal Reserve review process*
- Federal Reserve will issue non-objection **orally**; *banks will not receive a written approval*
- If the Federal Reserve issues its own rules regarding approval for tax equity financing transactions in the future, it expects previously approved transactions to comply with those new rules

Regulatory Hurdle – How to Apply Underwriting Standards

- **Regulators expect the bank to apply underwriting and credit approval criteria that are substantially equivalent to those used for a traditional commercial loan.**

- This can prove rather challenging based on the bank and the project:
  - Does the bank have experience evaluating, or skills needed to evaluate, the credit and risk characteristics of a green energy project?
  - Many TEF funds contain capital call provisions to fund projects, but give bank LPs limited rights to approve/reject funding a specific transaction. Are regulators comfortable with individual fund structure and rights?
  - How are the TEF transactions monitored, and how are issues identified and communicated within the bank's management team?

Regulatory Hurdle – CRA Credit, and Sponsor Risk

- **In most TEF transactions, banks will be dependent on the fund's sponsor to ensure that the investment will qualify for CRA credit.**

- To ensure participating banks receive CRA credit, the fund's sponsor will need to:
  - Select projects that demonstrably benefit LMI households and communities.
  - Select a service provider (and, as needed, replacement service providers) to manage power subscription and regulatory reporting processes.
  - Allocate CRA credit among participating banks based on the relevant CRA assessment areas.
  - Communicate with banking regulators and participating banks to ensure that data collection and reporting is sufficiently reliable for the regulators.

- When preparing CRA credit applications, participating banks should have outside counsel review all undertakings, commitments and similar statements, even if consistent with fund documents.

Thank you!

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