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Agenda

- IRS Notice 2013-29
  - Starting of physical work
  - 5% safe harbor
  - Definition of facility
- Current state of the tax equity market
  - Players
  - Understanding their prospective
  - Best practices when approaching an investor
- Master Limited Partnership Parity Act
- EITF 13-b

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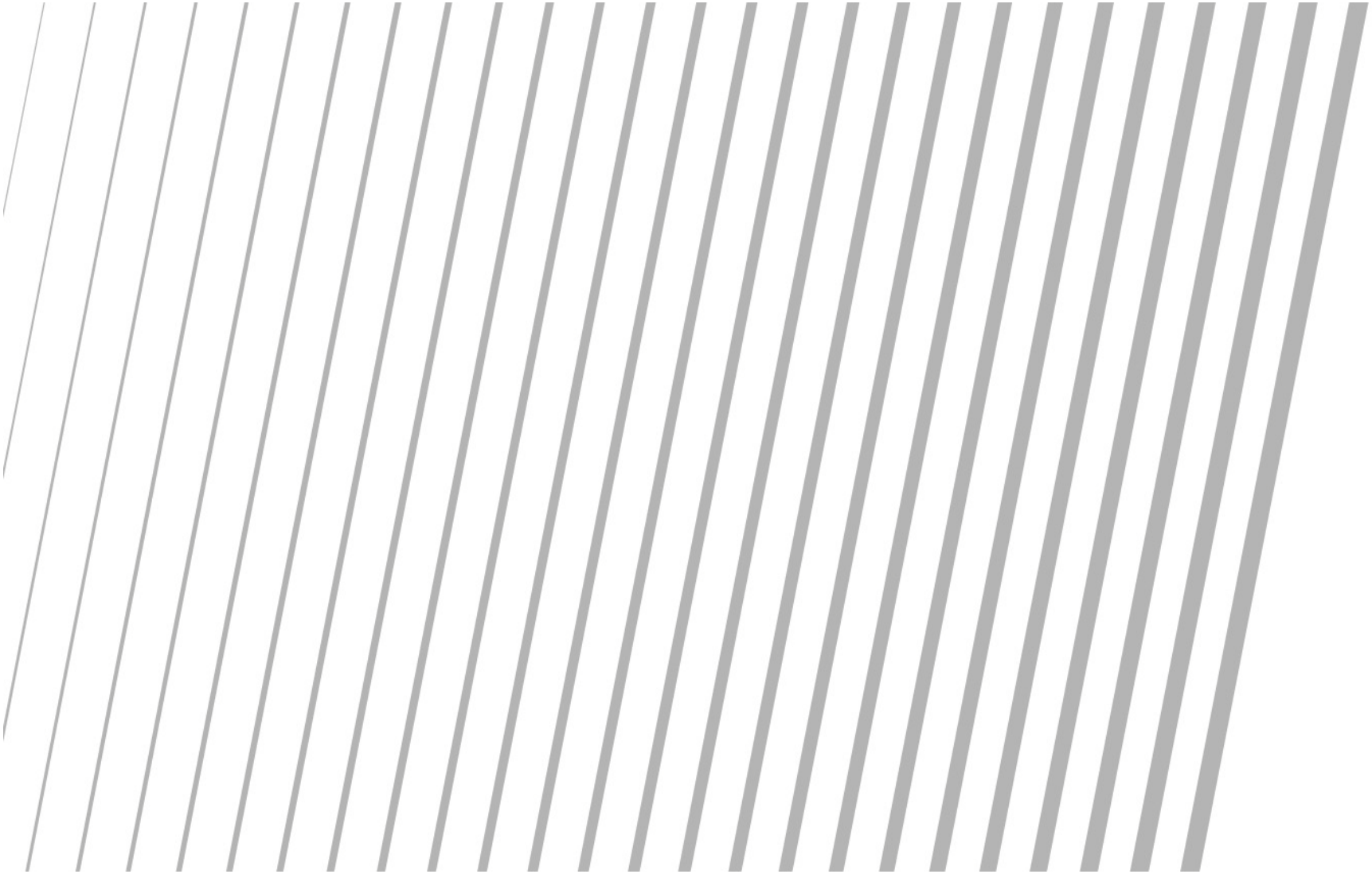
IRS Notice 2013-29



Notice 2013-29

- ATRA - Begin construction before 1 January 2014
  - Starting physical work of a significant nature, or
  - 5% safe harbor

- Starting “physical work of a significant nature”
  - Includes both on-site and off-site work performed by the taxpayer or a 3rd party under binding written contract
  - Preliminary activities does not constitute beginning of construction
    - Planning, researching or acquiring financing
    - Clearing a site, test drilling or excavation to change the contour of the land
  - Wind turbine example:
    - Begins with the start of the excavation of the foundation, the setting of anchor bolts into the ground or the pouring of the concrete pads of the foundation

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Notice 2013-29 (cont.)

- Modular units
  - Construction begins when significant physical work begins at the off-site location
- Contracts
  - Only binding if it is enforceable under local law against the taxpayer or a predecessor and does not limit damages to a specified amount
  - Contract must be in place before the work takes place
- 5% Safe Harbor
  - 5% of the total cost of the property (excluding cost of land and preliminary activities) has been paid or incurred, and
  - Continuous efforts to advance toward completion of the facility
  - Total costs include all property included in the depreciable basis of the facility, but not land or any property not integral to the facility

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Notice 2013-29 (cont.)

- Facilities
  - Generally includes all components of property that are functionally interdependent
  - "Functionally interdependent"
    - Placing of one component in service depends on the placing in service of another component
  - Only work performed on property that is considered an integral part of the activity performed by the facility may be considered in determining "beginning construction"
    - Roads that are integral to the facility are considered integral to the activity performed
    - Fencing and buildings are not considered integral
      - Exception: structure that is essentially an item of machinery or equipment or that houses integral property and is so closely tied to that property that if the property were to be replaced, the structure would as well

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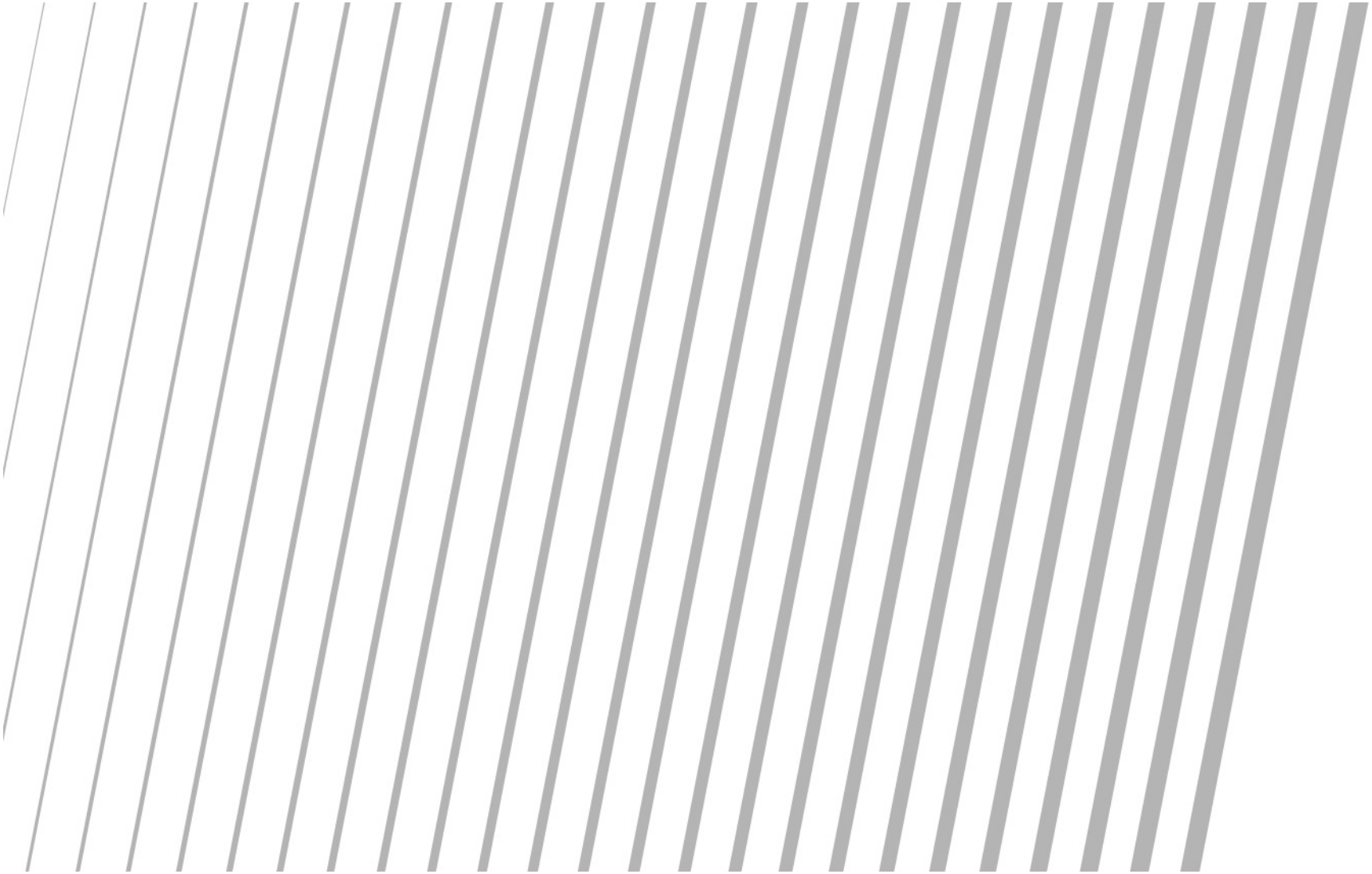
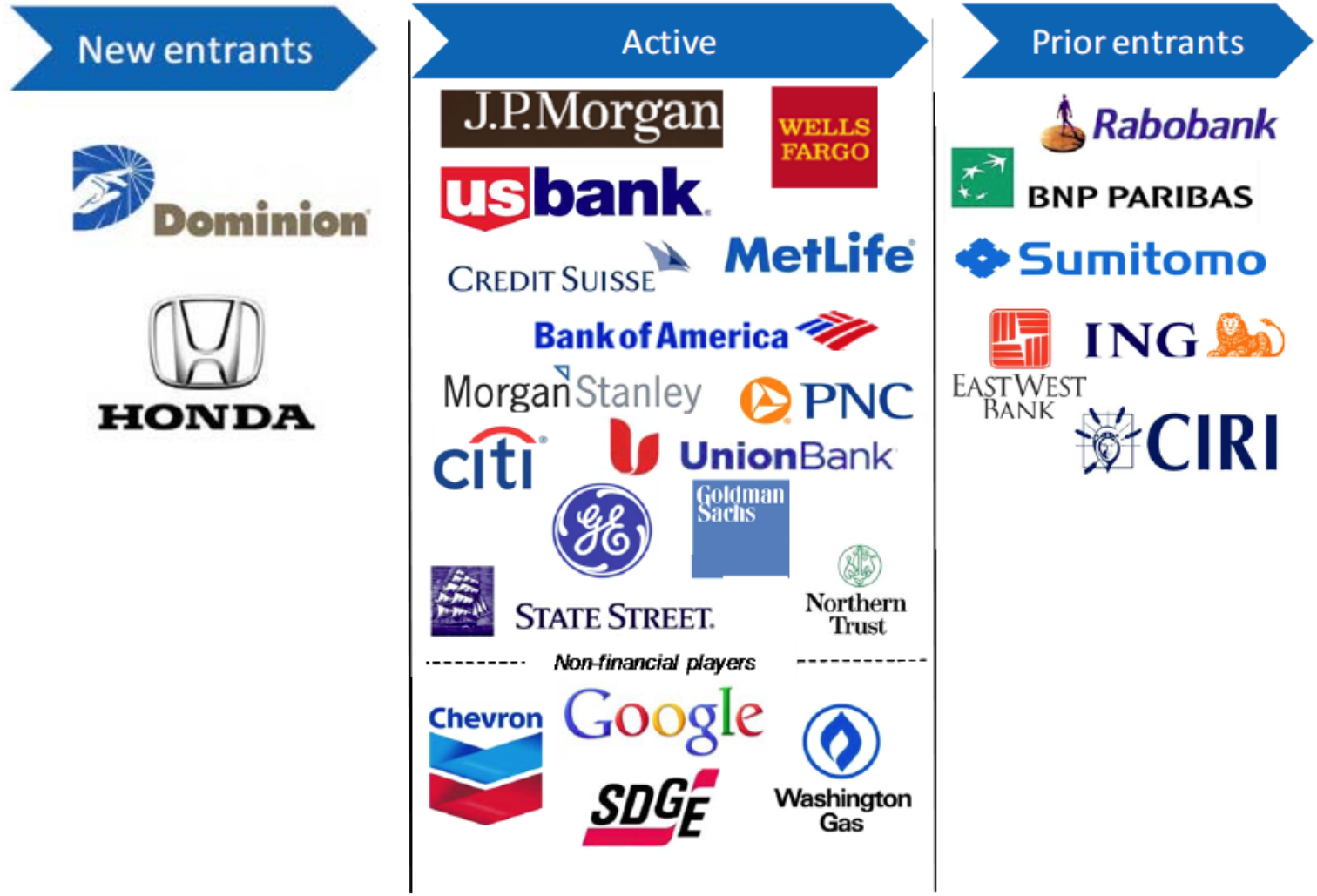
Current state of the tax equity market



Players



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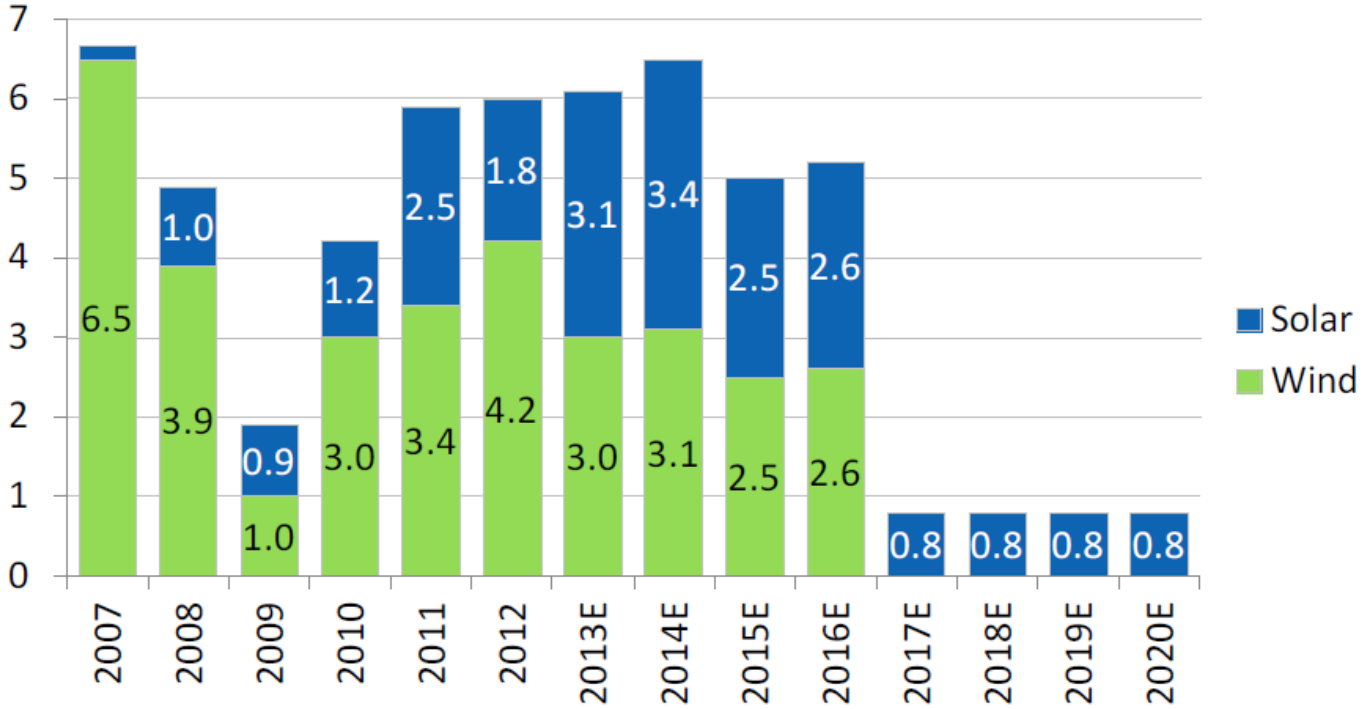
Tax equity shortages are coming

- Beyond 2016, Tax Equity Partners are expected to need to seek investments through alternative technologies, as Tax Equity available through solar and wind development decreases dramatically.



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Understanding their prospective

- For most investors a tax credit is a tax credit
- Two different types of tax credit investors
  - They are looking for the investments that will give them the best risk adjusted return (investment bank)
  - They are looking for the investments that will give them the safest investment that meets their threshold (looking for ETR management)
- They have lots of different investments to consider
  - LIHTC, HRTC, NMTC, 48C, 48A, State tax credits
- For someone that hasn't done a hydropower transaction or has only done a couple it can be very complicated
  - Can't use the same cookie cutter you use for other tax credits

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Best practices

1. Be prepared before you talk to them
2. Have a strong team
3. Understand their goals and concerns
4. Work to find a solution that makes both people happy; do not try to convince them that they are investing wrong and you know better
5. Have key information ready to provide them as soon as they ask if not sooner
6. Do not hold back anything that may be a concern to them, lay all your cards on the table on day 1
7. Stay calm bumps happen, a vast majority of deals close

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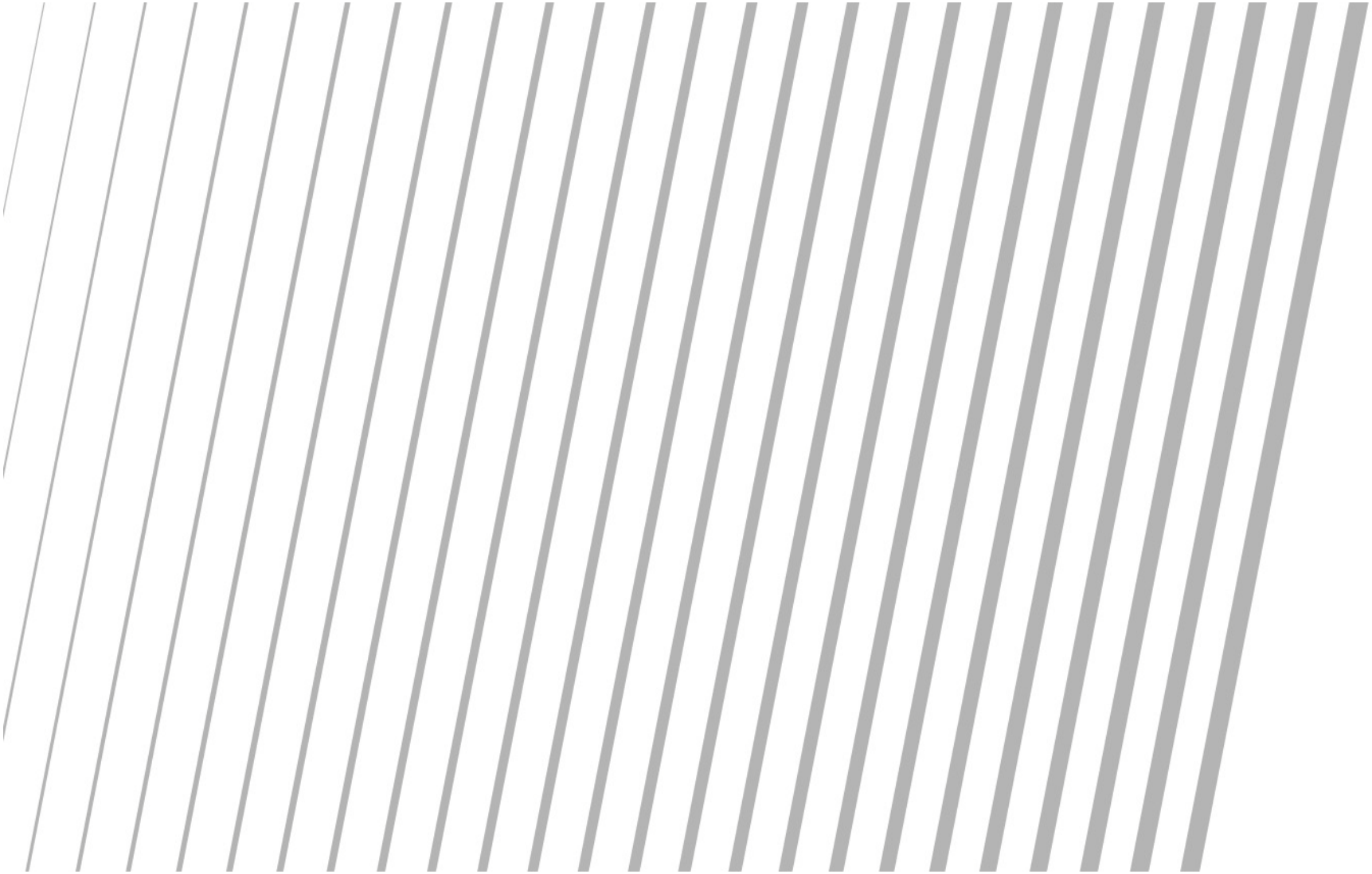
Master Limited Partnership Parity Act



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Master Limited Partnership Parity Act

- Proposed legislation that would extend MLPs to renewable energy projects
- What is a MLP?
  - Public/Private company where partnership interests are traded like stocks
- MLPs have pros and cons

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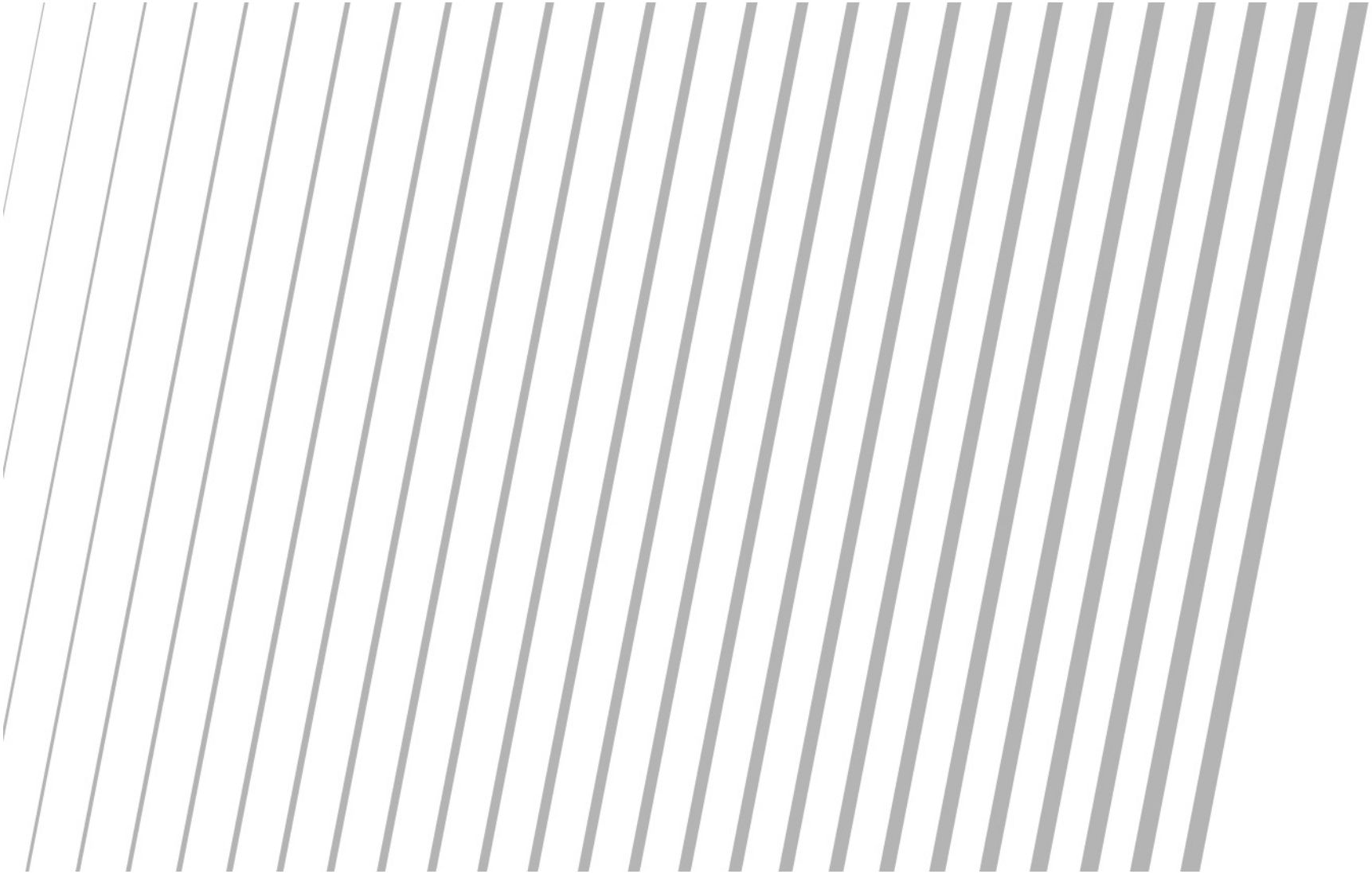
EITF 13-b



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EITF 13-b

- The Emerging Issues Task Force division of FASB is currently looking at a proposal that would change the way low-income housing tax credits are accounted for
  - Allows for tax credit investments to be entirely treated in the tax provision
- Many people are eagerly awaiting to see if this will be expanded to other tax credit investments
  - If so, it might bring new investors to the market
  - If not, it will likely cause renewable tax equity investors to increase their LIHTC investments

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Questions

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The presenters would like to thank you for your participation and feedback!

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Thank you

For your participation and feedback!

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