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New DOE Loan Guarantee Program Offers Opportunity for Lenders

The U.S. Department of Energy's ("DOE") alternative energy loan guarantee program (the "Program") was established by the Energy Policy Act of 2005 (the "Act"). Originally, the Program was aimed at providing loan guarantees for innovative energy technologies not in general commercial use in the United States. Unfortunately, since the Act's passage DOE has issued only one commitment for a loan guarantee under the Program. However, as a result of the passage of the American Recovery and Reinvestment Act of 2009 (the "Stimulus Bill"), that is about to change. The Stimulus Bill amended the Act to provide for a new, temporary loan guarantee program (the "New Program") facilitating the rapid deployment of renewable energy and electric power transmission projects.

The New Program loosens many of the original Program's restrictions and applies to technologies that are already in general commercial use in the United States. The New Program permits guarantees for project loans relating to (1) renewable energy systems that generate electricity or thermal energy, and facilities that manufacture related components, (2) electric power transmission systems (including upgrading and reconductoring projects), and (3) leading edge bio-fuel projects, using technologies performing at the pilot or demonstration scale, that DOE determines are likely to become commercial technologies which will produce transportation fuels that substantially reduce greenhouse gas emissions. Because the Act requires these projects to commence construction no later than September 30, 2011, it will be important for DOE to process applications for loan guarantees expeditiously.

The Stimulus Bill appropriated $6 billion for the New Program, which will enable DOE to provide approximately $60 billion in loan guarantees. The New Program probably will not be up and running until DOE issues its New Program regulations this summer. We have discussed the program extensively with DOE staff who have indicated that despite the mandate to issue guarantees quickly, the agency lacks the manpower to conduct due diligence on the anticipated large number of applications. Therefore, DOE will probably not carefully scrutinize each application. Instead, it will expect that applicants will approach the agency with lenders who have already reviewed the projects. Such lenders would indicate their willingness to provide loans subject to their receipt of DOE guarantees. DOE staff also have indicated that the DOE guarantee will likely cover only between 90 and 97.5 percent of the principal amount of the loan. The actual percentage will be announced in the regulations. The lenders will, therefore, have some "skin in the game," thus giving them an incentive to thoroughly scrutinize each project.

This is a great opportunity for those lenders seeking to make secure loans to worthwhile alternative energy projects. When the New Program becomes operational, we expect that many banks and other financial institutions will be approached by potential applicants seeking guaranteed loans. DOE will likely review the applications on a "first come, first served basis." Therefore, lenders need to be well versed in the intricacies of the New Program so that they may complete their review quickly. For more information or for assistance with the due diligence or documentation phase of an application for a DOE loan guarantee, please contact:

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