

Renewable, Alternative, and Distributed Energy Resources Committee Newsletter

Vol. 3, No. 2

March 2015

WELCOME FROM THE RADER CO-CHAIRS
Kimberly E. Diamond and Roger D. Stark

Dear Colleagues:

Welcome to the second half of our 2014–2015 ABA year. We are pleased to continue to provide you with informative programs on innovative topics through our free, in-committee webinars and through our signature monthly Renewable Energy Webinar & Teleconference Series held the third Wednesday of each month, which our RADER Committee co-sponsors with the American Council on Renewable Energy (ACORE) and Bloomberg New Energy Finance (BNEF). Please visit our RADER Committee webpage at <http://apps.americanbar.org/dch/committee.cfm?com=NR252300> to hear a recording of our most recent in-committee program, “Crowdfunding: An Alternative Approach to Financing Wind and Solar Projects,” as well as to view information about upcoming events and to access other helpful sites of interest on renewable energy. Please also visit our RADER Committee webpage for a jump link, registration details, and other information about the upcoming programs in the RADER/ACORE/BNEF Renewable Energy Webinar & Teleconference Series.

To facilitate dialogue among our RADER Committee members, the RADER Committee has its own LinkedIn page. If you’d like to join this group, please visit the following site: https://www.linkedin.com/groups?mostRecent=&gid=4663871&trk=my_groups-tile-flipgrp.

If you are interested in writing an article for our RADER Committee Newsletter, please contact our Vice Chair—Newsletters (Internal), Tom Goslin, at thomas.goslin@weil.com for further details. If you would like to write for a broader audience than our RADER Committee, please consider writing an article for the Section’s publication, *Natural Resources & Environment*. For more information about this publication, please visit the following website: http://www.americanbar.org/publications/natural_resources_environment_home.html.

We also invite you to consider attending the Section’s upcoming 44th Spring Conference in San Francisco, California, March 26–28, 2015, entitled “The ABA Super Conference on Environmental Law.” For more information about the Spring Conference, please visit the following website: www.shopaba.org/environspring.

Please feel free to reach out to us at any time. We look forward to your continued participation in our RADER Committee and to having a productive and rewarding remainder of the ABA year.

Regards,

Kimberly E. Diamond, kdiamond@lowenstein.com
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**2015 Energy Law Student
Writing Competition**
Deadline: May 18, 2015
www.ambar.org/EnvironLawStudents

Renewable, Alternative, and Distributed Energy Resources
Committee Newsletter
Vol. 3, No. 2, March 2015
T. Goslin, Editor

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AMERICAN BAR ASSOCIATION
**SECTION OF ENVIRONMENT,
ENERGY, AND RESOURCES**

CALENDAR OF SECTION EVENTS

- March 31, 2015
Meet the ABA SEER
Networking Event
Washington University School of Law
St. Louis, MO
- April 8, 2015
Water Law 101
CLE Webinar
- April 16-17, 2015
ABA Petroleum Marketing Attorneys' Meeting
The Loews Madison Hotel
Washington, DC
- April 24-25, 2015
Spring Council Meeting
The Cranwell Mansion
Lenox, MA
- May 6, 2015
Desalination and Water Supply
CLE Webinar
- June 4-5, 2015
33rd Annual Water Law Conference
The Four Seasons Hotel
Denver, CO
- October 28-31, 2015
23rd Fall Conference
Swissotel
Chicago, IL

**For full details, please visit
www.ambar.org/EnvironCalendar**

CYBER INSURANCE CONSIDERATIONS FOR THE ENERGY SECTOR

Andrew M. Reidy and Courtney E. Alvarez

In a recent *Fortune* article, Lloyd's CEO estimates that cyber attacks cost businesses as much as \$400 billion a year. Ponemon Institute suggests the average cost of cyber attack to a company is \$3.5 million. As technology evolves and our reliance on that technology increases, so does the risk that attacks will have debilitating effects for companies that produce and rely on technology. In its Energy Market Review 2014, reinsurance broker Willis warned that "a major energy catastrophe—on the same scale as Piper Alpha, Phillips Pasadena, Exxon Valdez, or Deepwater Horizon—could indeed be caused by a cyber-attack." *Willis Energy Market Review 2014*, http://willis.com/Documents/Publications/Industries/Energy/20140404_Willis_Energy_Market_Review_2014.pdf. Willis cautioned that the energy sector is ill prepared to respond to and absorb the costs from such an attack.

Specific concerns for the energy sector include data breaches that expose customer data and cyber attacks on energy grids or distribution networks. The energy sector has already been the target of several attacks, from the Stuxnet virus that was used to compromise Iran's uranium centrifuge capability in 2010 to the Night Dragon attacks against international oil, gas, and petrochemical companies that garnered headlines in 2011. A July 2014 *Washington Post* article revealed that a hacking group known as Dragonfly, which "bear[s] the 'hallmarks of a state-sponsored operation . . .'" continues to target U.S. and European energy companies. Gail Sullivan, *Reports Reveal Ongoing Cyberattacks on U.S. and European energy sector*, WASH. POST (July 1, 2014), <http://www.washingtonpost.com/news/morning-mix/wp/2014/07/01/reports-reveal-ongoing-cyberattacks-on-u-s-and-european-energy-sector/>.

The energy sector faces both external and internal threats of attack. External threats may come

from politically or financially motivated groups and individuals. Internal threats may come from either disgruntled or careless employees. Cyber attacks have the potential to cause costly business interruptions, not just to one's own business, but also to supply chain operations. Data breaches that compromise customer data will leave companies in the energy sector open to the risk of civil suits. Similar to the fines that are currently imposed on merchants that fail to comply with Payment Card Industry Data Security Standards after falling victim to cyber attacks, the energy sector may soon face harsh penalties and fines for their cyber security failures.

Home Depot's experience after its recent data breach serves as a cautionary tale. The company was the target of numerous lawsuits and multiple government investigations at the state and federal level. In addition to incurring costs defending against lawsuits and responding to regulatory agencies, Home Depot may face costs related to providing credit monitoring, public relations consultants, forensic investigation, regulatory compliance, the pursuit of indemnity rights, business interruption, and costs of restoring, recreating, or recollecting data. In light of these exposures, insurance should be part of planning and part of the response to mitigate the costs of a data breach.

Protecting Your Business—Four-Step Plan

Today, there are more than 40 different cyber policy forms on the market, and the scope of coverage provided varies dramatically from form to form. AIG, Beasley, and Zurich are all emerging players in the cyber insurance policy arena. However, purchasing one of the many cyber insurance policy forms from a reputable insurance carrier should not be the only step you take to mitigate the risks of a cyber attack. Consider implementing the following steps as you develop your cyber insurance program:

First, one should evaluate what your current policies provide and compare that coverage to

what is available. Your current insurance program, which may consist of commercial general liability insurance, commercial property insurance, fidelity insurance, professional liability insurance, and/or directors' and officers' liability insurance may contain coverage provisions that will respond to the types of liabilities that could arise in the event of a data breach or cyber attack. Commercial general liability policies provide coverage for bodily injury, property damage, and personal injury. Commercial property insurance policies provide coverage for your property, business interruption, and extra expenses. Fidelity policies provide coverage for the theft of money, securities, and tangible property. Errors and omissions or professional liability insurance provides malpractice coverage for "professional services" rendered. Directors' and officers' liability insurance provides coverage for the alleged wrongful acts of the company or the directors and officers. Each of these policies should be reviewed with cyber exposures in mind.

Second, to the extent that you rely on subcontractors or other entities in your business, make sure you are protected with additional insured protections or indemnification agreements. For example, it may be wise to become an additional insured in your subcontractor's insurance coverage. Further, indemnification agreements should explicitly address liability arising as a result of data breach or cyber attacks.

Third, in order to successfully access insurance coverage under the policies that you have purchased, you must quickly notify your insurance carrier after an event. Insurers usually will not pay until they have notice. To that end, you should develop a notice mechanism to alert your insurance carriers of these liabilities as soon as you become aware of a breach or attack.

Fourth, insureds should be prepared to maximize coverage. All insurance law is state specific. Insureds need to understand what states' laws potentially apply and what law maximizes coverage. Familiarity with case law on applicable policy provisions also will maximize your recovery.

Now is the best time to take stock of your existing cyber insurance policies. Experienced coverage counsel can help you develop your cyber insurance program by auditing your existing and available policies and by helping you to maximize coverage in the event of a cyber loss.

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NOMINATE

Call for Nominations

The Award for Distinguished Achievement in Environmental Law and Policy recognizes individuals or organizations who have distinguished themselves in environmental law and policy, contributing significant leadership in improving the substance, process or understanding of environmental protection and sustainable development.

Nominees are likely to be individuals or organizations who have distinguished themselves in environmental law and policy, contributing significant leadership in improving the substance, process or understanding of environmental protection and sustainable development. Eligible individuals must be lawyers and may include academics, policymakers, legislators, and practitioners, members of the judiciary or journalists. Nominated practitioners must be duly licensed members of a bar association in good standing. Eligible organizations may include non-profits, bar associations, law school clinical programs, legal services programs, tribal nations, and law firms

Nominations are due May 8, 2015.

For full details, please visit

www.ambar.org/EnvironAwards

WHY LATIN AMERICAN RENEWABLE ENERGY WILL (LIKELY) SURVIVE CHEAP OIL

Justin S. Miller

It is tempting to assert that cheap oil foretells a bleak future for renewable energy in general. This assertion would certainly be true in a perfect market where energy consumers and investors made choices exclusively based on the price of a barrel of oil relative to the price of renewable alternatives on any given day, while excluding all other exogenous factors. We, of course, do not live in such perfect market; the relative price of a barrel of oil is but one of many factors that influence energy consumers' and investors' choices, and these numerous other factors continue to point toward a promising future for renewable energy in Latin America and the Caribbean despite the current cheap oil environment.

There are several reasons for which it would be unwise to think that, looking ahead, cheap oil today will adversely affect renewable energy rollout in Latin America and the Caribbean (LAC) countries across the board tomorrow. Chief among them is the likelihood that oil prices will again increase in the next few years.

The shale oil revolution in the United States has helped oil prices plummet, and OPEC swing producers' desire to retain market share has helped keep these prices low; however, such market conditions have adversely affected the attractiveness of investing in U.S. shale oil, and have caused a consolidation among exploration and production players in this industry. Less investment and fewer players in the U.S. shale oil industry in the short run likely will result in reduced production and/or higher prices of U.S. shale oil in the medium-to-long run.

Higher oil prices are relevant to the viability of renewable energy in LAC countries because of the long-term commitment investors make to renewable energy projects, not unlike the long-term commitment oil investors make to exploration and

production projects. The key thing to understand in this respect is that, while oil economists are looking at a two- to three-year slump in oil prices, renewable energy investors are weighing the financial viability of solar and wind parks with a useful life of 20 to 30 years, likely with 15- or 20-year power purchase agreements. With a very well-managed solar or wind project taking approximately two to three years to come online, from the pre-feasibility stage through turnkey, renewable energy investors are considering the long-term profitability of such projects against a likely backdrop of higher oil prices.

Another reason why cheap oil does not doom the prospects for renewable energy in Latin America is the very heterogeneous nature of the LAC countries' power sources. Such countries as the Bahamas, Barbados, Dominican Republic, Guyana, Haiti, Honduras, Jamaica, and Nicaragua derive the majority of their power from mostly imported, expensive diesel/bunker fuels. However, several LAC countries, among them such key regional growth markets as Mexico, Brazil, Colombia, Peru, Chile, and Costa Rica, derive less than a quarter of their power from diesel/bunker-fueled generation, thus limiting the impact cheap oil can have on the economics of renewable energy rollout in these countries.

The fact that many Caribbean countries currently produce the majority of their power from diesel/bunker-fueled thermal generation presents a sizeable opportunity to supplant this thermal generation with renewable generation when fuel prices rise. Additionally, it remains unclear whether Venezuela's generous credit terms for petroleum (i.e., under PetroCaribe) will still exist two, three, or five years from now. In fact, the eagerness displayed by government representatives at the late-January Caribbean Energy Security Summit in Washington suggests that Caribbean countries are keenly interested in diversifying not only the source of their fossil fuels, but also in diversifying toward renewable power generation.

Thus, while the price of oil does have a varying degree of influence on clean energy rollout in different LAC countries, there are other equally important factors, which can further enhance opportunities for clean renewable energy in LAC countries:

- **Policy Environment.** Even countries with fantastic wind, solar, or geothermal resources can miss a great opportunity to lead the way on renewable energy if they do not put policies in place to foster such projects. Fortunately, several LAC countries have implemented such policies in very proactive ways. For example, certain renewable projects in Guatemala are eligible for generous tax incentives relating to import duties, value-added tax, and income taxes. Similarly, Panama has held a couple of reverse auctions specifically for renewable generating capacity. Honduras has implemented a feed-in tariff (FIT) regime to encourage investment particularly in solar energy development. Tax breaks, reverse auctions, and FITs are but three among many policy tools LAC governments have at their disposal and which have been used to encourage renewable energy rollout. Other common policy tools employed in LAC countries include renewable portfolio standards, net metering regulations, and biofuel blending mandates. What is important to note here is that these policy tools are not mere afterthoughts for investors and financiers; rather, they are key elements built into their project finance models that have had positive impacts on project internal rates of return and debt service coverage ratios.
- **Debt Markets.** Access to debt capital has historically been difficult for renewable energy projects in emerging markets, given that local banks are often risk averse and have a preference for asset-backed loans in traditional sectors such as agriculture and food products. Nonetheless, unorthodox financing mechanisms have afforded renewable energy projects access

to debt capital. In Mexico, for example, lenders have pooled funds in order to limit the exposure any one lender has to any given large-scale project. In regard to smaller-scale projects, Nicaragua and El Salvador have shown promising results with green microfinance, and the hundreds of completed transactions speak well of the viability of this type of lending for renewable energy in LAC countries.

- **Local Know-How and/or Original Equipment Manufacturers (OEMs).** The feasibility, construction, and operation and maintenance stages of any renewable energy project require highly specialized knowledge. Sourcing, if possible, the renewable energy equipment locally can represent not only significant monetary savings but also more straightforward project logistics. For example, that the list of successful renewable energy projects in Chile grows by the day has created myriad local and affordable renewable energy professionals with on-the-ground experience and an ability to mobilize in short order. Mexico has the added advantage of having domestic renewable energy OEMs, such that Mexico has a growing body of professionals with technical know-how, from the equipment manufacturing stage through project turnkey. In many key LAC growth markets for renewable energy, there is a growing consensus among government, educational institutions, and the private sector that increasing access to training in technical fields applicable to renewable energy should be a priority, and such consensus will undoubtedly bear fruit in years to come.
- **Carbon Incentives.** Although carbon incentives are really a policy tool that belongs above in the section on the policy landscape, it is something that deserves separate recognition due to its potential importance in the coming years in such countries as Mexico. Mexico, in the

context of its recent energy reform has released initial guidelines for the issuance of Clean Energy Certificates (CELs), and Mexico will further define how the Clean Energy Certificate regime will work when it releases the Initial Wholesale Power Market Rules later this year. These market rules will allow developers and investors to determine to what degree the sale of CELs on the part of renewable energy projects could positively impact the economics of such projects and boost renewable energy rollout in Mexico in general. Such emissions trading, while still occurring in a very imperfect market, is an element that renewable energy investors and financiers already build into their renewable energy project finance models in Mexico, and, in combination with taxes on carbon in Mexico, emissions trading sets favorable conditions for renewable energy rollout in this key renewable energy growth market.

The key takeaway on renewable energy in LAC countries in a cheap oil context is this: cheap oil does not automatically spell trouble for renewable energy, much less in the LAC region. Forecasts from reputable sources point to oil prices rising over the next two to three years; not all LAC power markets have perceived the same windfall from cheap oil; and the price of oil is but one among many factors that will influence renewable energy rollout in Latin America and the Caribbean moving forward. Clean energy investors and financiers generally take the long view, and their assessment of possible renewable energy ventures involves great nuance, such that cheap oil today has not caused and will not likely cause a mass exodus from the renewable energy space in Latin America and the Caribbean.

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THOUGHTS ON CROWDFUNDING RENEWABLE ENERGY PROJECTS

Paul Blumenstein

On February 11, 2015, the RADER Committee as the lead sponsoring SEER Committee, along with the Government and Private Sector Innovations (GPSI) Committee and the Energy and Environmental Markets and Finance (EEMF) Committee as co-sponsoring SEER Committees, produced a program entitled “Crowdfunding: An Alternative Approach to Financing Wind and Solar Projects.” Participating in the event as a speaker was Paul Blumenstein, an attorney based in Mountain View, California, and former legal counsel to Solar Mosaic, the first peer-to-peer online lending platform for solar power projects. Below, Paul shares his thoughts and experiences on some of the key emerging legal issues facing developers and investors seeking to finance renewable energy projects through the use of crowdfunding.

Q: What is crowdfunding?

Paul: Crowdfunding refers to various means of raising capital from large numbers of small investors, usually via the Internet. Crowdfunding today can consist of securities offerings effected within the existing regulatory structure, or fund-raising activities that do not involve the issuance of securities, such as that conducted by Kickstarter. In recent years, through laws such as the Jumpstart Our Business Startups (JOBS) Act, federal and state legislators have sought to relax the securities laws to facilitate crowdfunding and provide entrepreneurs with easier and cheaper access to capital. Pub. L. No. 112-406 (2012). The JOBS Act, however, is not self-executing but requires implementation by the SEC.

Q: What methods of crowdfunding are currently permitted under federal securities regulations?

P: The SEC has yet to finalize most of its regulations implementing the JOBS Act. However,

there are other federal exemptions available to issuers seeking to engage in crowdfunding. Crowdfunding structures currently available include (1) offerings to accredited investors under Regulation D Rule 506, (2) small public offerings under Regulation D Rule 504 or Regulation A, and (3) intrastate offerings under Section 3(a)(11) of the Securities Act and the related Rule 147, safe harbor. The two leading peer-to-peer lending platforms, LendingClub and Prosper, issue securities primarily through registered public offerings.

Q: What types of crowdfunding methods are covered by the JOBS Act?

P: The JOBS Act facilitates three types of crowdfunding. Title II mandates revisions to Rule 506 to permit general solicitation under certain circumstances. Title III creates a new type of crowdfunding structure through which issuers may sell securities in limited amounts to non-accredited investors, without registration through online intermediaries such as a “funding portal” or a broker-dealer. Title IV provides for revisions to Regulation A to increase the offering limit from \$5 million to \$50 million, among other things. As of this time, the SEC has implemented Title II through the creation of Rule 506(c), but has not adopted final rules implementing Titles III and IV. Whereas Titles II and IV represent an evolution of existing regulations, Title III contemplates an entirely new type of offering regulation; it remains to be seen, however, whether the advantages it offers issuers are sufficient to overcome its limitations, as discussed below.

Q: What are the key advantages and disadvantages of Rule 506(c)?

P: Rule 506(c) is similar to the old Rule 506 in that it permits an issuer to offer securities to accredited investors without any limit in the aggregate offering amount or the amounts purchased by any single investor. An issuer relying on Rule 506(c) may engage in general solicitation, provided that the issuer must take reasonable steps to verify

that each purchaser of securities is an accredited investor. As with other offerings under Rule 506, securities issued in reliance on Rule 506(c) are “covered securities” under the National Securities Markets Improvement Act of 1996 (NSMIA), such that sales of such securities are exempt from registration under state blue sky laws.

By permitting general solicitation, Rule 506(c) enables a crowdfunding issuer to cast a much wider net in search of investors than the issuer in a traditional private placement. However, sales under Rule 506(c) are restricted to accredited investors, which significantly limits the population of eligible investors. Moreover, whereas an issuer relying on Rule 506(b) need only have a reasonable belief that each purchaser is accredited (which often involves nothing more than obtaining appropriate representations from each purchaser), under Rule 506(c) the issuer must take affirmative steps to verify that each purchaser is accredited.

Q: In an offering under Rule 506(c), what steps must an issuer take to verify that each investor is accredited?

P: Rule 506(c) requires that the issuer take “reasonable” steps to verify accreditation. The rule includes a list of nonexclusive steps that are deemed to constitute reasonable steps so long as the issuer does not have knowledge that an investor is not in fact accredited. These steps include a review of tax returns, W-2s, or similar IRS forms that report income for the last two years and receipt of a written representation from the investor that he or she has a reasonable expectation of reaching the necessary income level during the current year; verification of net worth through review of bank statements, brokerage statements and the like to determine assets, and review of a credit report from a nationwide consumer reporting agency to determine liabilities, provided that such documents are dated within the last three months and the investor provides a written representation that all liabilities necessary to determine net worth have been disclosed; and receipt of written confirmation from a registered broker-dealer, registered

investment adviser, licensed attorney or CPA that such person has taken reasonable steps within the past three months to determine that the investor is accredited and has determined that the investor is in fact accredited.

Except where the investor can provide tax returns that clearly demonstrate income in excess of the required thresholds, applying these verification methods can be time-consuming and may not be cost-effective in offerings in which investors are permitted to invest small amounts, as is often the case with crowdfunding. Eventually, the verification process is likely to become streamlined through the services of third-party verification services and offering platforms such as AngelList.

Q: What are the key advantages and disadvantages of Rule 504?

P: Rule 504 permits issuers to offer up to \$1 million in securities to investors regardless of income or net worth, so long as the issuer (1) registers the offering in at least one state that requires public filing and delivery of a disclosure document and (2) delivers such disclosure document to all investors prior to sale, regardless of which state they reside in. General solicitation is permitted under Rule 504. Thus, Rule 504 allows issuers to target a much wider investor audience than Rule 506. Because securities offered under Rule 504 are subject to registration under state blue sky laws, however, an offering under Rule 504 can involve significant regulatory burdens. Moreover, given the \$1 million annual cap on offerings, Rule 504 may be of little use for commercial-scale project financing.

Q: What are the key advantages and disadvantages of intrastate offerings under Section 3(a)(11)?

P: Section 3(a)(11) provides an exemption for securities offered exclusively to residents of a single state, so long as the issuer is incorporated in that state and doing business in the state. Issuers seeking to effect intrastate offerings may rely on a safe harbor set forth in SEC Rule 147. Intrastate

offerings are not subject to restrictions regarding the size of the offering and are not restricted to accredited investors, although they may be subject to registration at the state level, through which the offering may be subject to investor qualifications based on income or net worth. General solicitation is permitted so long as it's targeted at investors within the state. The territorial restriction, however, can impose a significant burden on the issuer's fundraising efforts. Moreover, the issuer needs to take special caution to ensure that each purchaser is in fact a resident of the state. That said, Section 3(a)(11) may be a good fit for many renewable energy projects, particularly those located in large states such as California, in light of the local nature of the enterprise and the interest it is likely to generate among investors in the area who appreciate the social benefits of renewable energy.

Q: What are the key advantages and disadvantages of Regulation A?

P: Regulation A is often viewed as "registration-lite." The process is similar to registration on Form S-1, but the issuer is not required to file audited financial statements (unless it has prepared them for other purposes) and does not become subject to the 1934 Act reporting requirements. To many issuers, however, Regulation A may seem like the worst of all worlds: offerings are capped at \$5 million for any 12-month period, the securities are subject to state law registration requirements, and the SEC review process can be just as burdensome as when a company is registering securities. In addition, securities sold under Regulation A are not exempt from state blue sky registration. However, for an issuer that wishes to raise more than \$1 million from nonaccredited investors in multiple jurisdictions, Regulation A may offer the only viable alternative.

That said, in Title IV of the JOBS Act, Congress adopted a new Regulation A structure, commonly referred to as "Regulation A+," under which the annual offering limit would be increased to \$50 million and securities issued under the rule would be "covered securities" under NSMIA and thus exempt from state law registration. In return, issuers would be required to file audited

financial statements and would become subject to ongoing periodic reporting obligations. For issuers seeking to raise large sums of money through crowdfunding, Regulation A+ offers the most promise of all of the available regulatory pathways. Although the SEC approval process is similar to federal registration, the ability to avoid the state law registration removes an enormous potential hurdle, particularly for any issuer seeking to launch a broad-based crowdfunding campaign that reaches beyond a small number of states. The issuer's periodic reporting obligation may be terminated after the end of the next fiscal year if the securities it has sold in the offering are held by fewer than 300 holders of record.

Q: Will the crowdfunding landscape change significantly when Title III of the JOBS Act is implemented?

P: Through Title III of the JOBS Act, Congress set out to create an entirely novel registration exemption specifically aimed at crowdfunding. However, in light of some of the limitations and

conditions set forth in Title III and the related regulations proposed by the SEC, it remains to be seen whether this new regulatory scheme will represent the sea change that was originally intended. Although Title III and the accompanying SEC rule proposal that accompany it represent an effort to loosen the restrictions on capital formation by small businesses, the long-term practical utility of the new exemption remains uncertain. In light of the \$1 million annual cap on securities sold pursuant to the crowdfunding exemption, this exemption may be better-suited to seed financings by early-stage start-ups than to project financing for energy projects. Moreover, the requirements imposed on intermediaries, particularly those relating to verifying that investors understand the investment risks, are likely to introduce significant friction and cost into the offering process.

Paul Blumenstein is an attorney based in Mountain View, California, and former legal counsel to Solar Mosaic, the first peer-to-peer online lending platform for solar power projects.

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