

Message from Partner in Charge

In this issue, guest author D'Arcy Doherty joins Pepper attorney Jaime Laskis in examining how U.S. broker-dealers will face more restrictions on selling securities in Canada, and we report on financial incentives available to companies worldwide for renewable energy development in the United States.

We also report how Pepper helped a client complete an offering of senior notes through its Canadian subsidiary, which will enable the client to support long-term growth and future strategy.

We also note an upcoming Wireless Health Care Seminar and Showcase, a collaboration of several Canadian and U.S. companies, and the Canadian Consulate in Philadelphia.

Further, we invite you to join us on April 29 for a Canada-U.S. Trade Update luncheon presentation and webinar, for which panelists will discuss the latest topics and issues regarding trade between the United States and Canada.

Finally, as part of Pepper's Canadian Webinar Series, Jaime Laskis and Joshua Slavitt have discussed new risks and opportunities in patent law for Canadian (and U.S.) companies. Experience the webinar at http://www.pepperlaw.com/webinars_update.aspx?ArticleKey=1688.

As always, we welcome comments, questions and suggestions.

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U.S. Broker-Dealers Will Face More Restrictions on Selling Securities in The Exempt Market in Canada

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In provinces and territories outside of Ontario and Newfoundland and Labrador, Canadian securities laws have not required U.S. broker-dealers to be registered as a dealer in circumstances where they engage exclusively in the business of trading in securities in the "exempt market." Trading in the "exempt market" commonly refers to trading securities in reliance upon exemptions from the prospectus and dealer registration requirements under applicable Canadian securities laws, such as trades to "accredited investors" (*i.e.* certain institutions and high-net-worth individuals) and trades with a "minimum investment amount" of 150,000 (Canadian). Historically, U.S. broker-dealers have been unable to rely on such dealer registration exemptions to trade securities in Ontario and Newfoundland and Labrador.

As a result of the recent effort to harmonize dealer registration requirements across Canada pursuant to National Instrument 31-103 – *Registration Requirements and Exemptions* (NI 31-103), U.S. broker-dealers that seek to act as agents or underwriters for issuers in the private placement of securities to Canadians in the exempt market in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Yukon, Nunavut and the Northwest Territories will be subject to more restrictions effective March 27, 2010. On that date, the accredited investor, minimum investment amount and other commonly used exemptions from the dealer registration requirement that were

This publication may contain attorney advertising.

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previously available to U.S. broker-dealers in these jurisdictions will be eliminated.

A U.S. broker-dealer that engages in the business of trading, or holds itself out as in the business of trading, in securities in a Canadian jurisdiction will be required to register as a dealer in that jurisdiction. However, a U.S. broker-dealer that acted as a dealer in the exempt market in a Canadian jurisdiction (other than Ontario and Newfoundland and Labrador) on September 28, 2009 will have until September 27, 2010 to file an application to register as an exempt market dealer in such jurisdiction and may continue to act as a dealer in the exempt market in that jurisdiction until September 27, 2010 (or until its registration application is approved, provided that it is filed by September 27, 2010). Alternatively, a U.S. broker-dealer can seek to satisfy one of the few remaining exemptions from the dealer registration requirement in NI 31-103.

One important remaining dealer registration exemption for U.S. broker-dealers is the International Dealer Exemption. Under this new exemption, a U.S. broker-dealer may trade free from any registration requirements in Canada under certain limited circumstances, including when trading in “foreign securities” (other than during the security’s distribution made under a prospectus filed in Canada) with “permitted clients” as defined in

NI 31-103. “Permitted clients” are a subset of accredited investors and includes institutional investors, pension funds and ultra-high-net-worth individuals. “Foreign securities” are securities of an issuer formed under the laws of a non-Canadian jurisdiction or a security issued by a non-Canadian government.

In order to qualify under the International Dealer Exemption, a U.S. broker-dealer must be registered under the securities legislation of its home jurisdiction and only engage in those activities in Canada that it would be permitted to carry on in its home jurisdiction. Further, prior to trading under the International Dealer Exemption, a U.S. broker-dealer must deliver to the securities regulator in the Canadian jurisdictions in which its potential clients are located a prescribed form appointing an agent for service those jurisdictions. A U.S. broker-dealer will also be required to satisfy certain advance notice requirements to Canadian investors and will need to advise the applicable regulator(s) if it continues to rely on the exemption every 12 months.

For more information on how these new requirements affect U.S. broker-dealers and issuers, please contact the authors, D’Arcy Doherty, partner at Gowling Lafleur Henderson LLP in Toronto, at darcy.doherty@gowlings.com or 416.369.6185; or Jaime L. Laskis, attorney at Pepper Hamilton LLP in New York, at laskisj@pepperlaw.com or 212.808.2744.

Pepper Hamilton Is a Proud Supporter of Mobile Monday Mid-Atlantic

March 15, 2010 | 5:30 PM – 8:30 PM Eastern
The Hub at Cira Centre | Philadelphia

In collaboration with the Philadelphia branch of Mobile Monday, the National Research Council of Canada (NRC-CNRC), the Wireless Innovation Network of British Columbia (WINBC), and DFAIT Regional Office in Vancouver, the Canadian Consulate in Philadelphia is organizing a Wireless Health Care Seminar and Showcase (Mhealth) to take place in Philadelphia on March 15.

KEY OBJECTIVES

- to create opportunities for Canadian wireless device manufacturers and software developers to demonstrate

their products and services, and to network with potential U.S. customers and partners

- to present innovative Canadian visions, trends, and products in mobile health care to a local audience
- to facilitate and create partnerships between Canadian and U.S. organizations on mobile health care projects
- to gain valuable contacts and market intelligence on local and national trends in the mobile health care marketplace.

For more information and to register for this event, please contact Vincent Finn at 267.207.2887 or vincent.finn@international.gc.ca.

Pepper Helps Dollar Financial Expand into New Locations, Offer New Products

Our client, Dollar Financial Corp., a NASDAQ-traded international financial services company primarily serving consumers who otherwise are not able to access the services of traditional banks, last month completed a complicated series of transactions that had been led by teams of Pepper corporate and securities, financing and tax attorneys over the preceding five months.

Specifically, Pepper helped Dollar Financial complete a \$600 million offering of senior notes through its Canadian subsidiary, the amendment and extension of its global secured credit facility, the exchange and refinancing of \$120 million of its outstanding convertible notes and the \$120 million acquisition of a financial services company based in the United States. A portion of the proceeds from the note offering were used to prepay part of the global credit facility and to complete the acquisition. The concurrent consummation of these transactions took an enormous amount of effort and coordination of the Pepper teams, working with Dollar Financial and its professional advisors, in the United States, Canada, the United Kingdom and continental Europe.

The completion of these transactions marks the culmination of the Company's effort to realign its debt structure to better support its long-term growth initiatives and to execute its multi-country, multi-product and multi-channel business strategy for many years to come.

It took Pepper six months of structuring deals, negotiating and documenting multiple transaction alternatives, and dodging volatile markets and other obstacles to enable Dollar Financial to achieve this transformational step in its business strategy. Instrumental in the effort were the corporate and securities team of Barry Abelson, Brian Katz, Jim Epstein, Bob Friedel, Bryan MacIntyre, Robert Smith, Zach Rentz, Rachael Bushey and Tara Pellicori, the financing team of Brad Boericke, Kelly Braun and Kim Petrolo, the tax team of Joan Arnold and Michelle Parten, and others including Jonathan Clark and Barbara Sicalides.

Great work by a cross-disciplinary, cross-office team.

Canada-U.S. Trade Update Luncheon Presentation and Webinar

Thursday, April 29, 2010 | 12:15 – 1:15 P.M. Eastern

Join David Marshall, consul and senior trade commissioner of the Consulate of Canada in Philadelphia and representatives from Pepper Hamilton LLP and Gowling Lafleur Henderson LLP, as they discuss the latest hot topics and issues regarding trade between the United States and Canada, including:

- the commercial relationship between Canada and the United States in 2010
- export control conflicts: Cuba and ITAR/controlled goods
- update on trade agreements and negotiations: Canada/EU, NAFTA
- intellectual property update: counterfeit goods, data protection, pharmaceuticals, Internet pharmacies
- cross-border R&D funding programs.

Introductions

Susan J. Krembs, partner, Pepper Hamilton LLP

Speakers

David Marshall, consul and senior trade commissioner, Consulate of Canada, Philadelphia

Gregory C. Dorris, partner, Pepper Hamilton LLP

Wendy J. Wagner, partner, Gowling Lafleur Henderson LLP

Register for this webinar at

<https://www.regonline.com/tradewebinar>.

Alternatively, to attend a hosted luncheon of this webinar, register to view it at a local Pepper Hamilton office by contacting Brian Dolan at dolanb@pepperlaw.com or 215.981.4568.

Green for Green: Financial Incentives Available for Renewable Energy Development

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On January 8, 2010, President Obama announced the award of \$2.3 billion in tax credits for clean energy manufacturing operations in 43 states, from funds allocated under the 2009 stimulus package.¹ The previous month, the U.S. House of Representatives included a provision in the Jobs Bill it passed on December 16, 2009 that provides \$2 billion in funding to restore money to the Department of Energy’s loan guarantee program for renewable energy that was diverted to pay for the “cash for clunkers” initiative last summer.² The Senate will take up the bill early in 2010, and some clean-energy advocates in Congress and elsewhere are urging that more funds be appropriated for renewable energy incentives.³

Make no mistake: the U.S. government is working hard to promote renewable energy development and doing so in the most meaningful way possible: with loan guarantee programs, grants, and tax breaks. Many states have adopted additional economic measures that incentivize in-state renewable energy projects. But the hodgepodge nature of these programs – authorized by different pieces of legislation, administered under an array of regulatory regimes, subject to varying requirements and deadlines – presents a serious challenge to interested parties seeking financial assistance for renewables projects.

Of particular interest to non-U.S. commercial interests, the programs do not discriminate against foreign-owned companies, so long as the facility is in the United States and the goods produced are sold as U.S. products, including as exports. While “Buy America” provisions apply under some programs to construction materials, waivers may be available. Of course, tax credits only make sense in the context of offsetting U.S. taxable income.

This article summarizes the main categories of economic incentives available for renewable energy development, along with key information about eligibility and availability.⁴ The four types of programs are: (1) U.S. Department of Energy (DOE) loan guarantees, (2) federal tax incentives, (3) other federal government economic incentive programs, and (4) state programs.

DOE LOAN GUARANTEES

DOE administers two large-scale loan guarantee programs for clean energy generation and manufacture, which fall under Sections 1703 and 1705 of the Energy Policy Act of 2005 (EPAAct), as amended by the American Recovery and Reinvestment Act of 2009 (ARRA).⁵ Major aspects of these programs are presented in the following table:⁶

Program	Key Elements	Eligibility	Other
<p>1703</p> <p>Loan guarantees for early commercial use of innovative clean energy technologies.</p> <p>Aggregate funding for 1703 and 1705 of \$100 billion.</p>	<p>Permanent program under Energy Policy Act of 2005</p>	<p>Biomass, geothermal, hydropower, solar, wave/tidal, wind (also carbon capture and sequestration, coal gasification, nuclear, fuel, vehicles, and energy transmission systems).</p> <p>Projects must avoid, reduce, or sequester air pollutants or greenhouse gases, using significantly improved technologies compared to commercially available methods.</p>	<p>Funding depends on annual congressional appropriations.</p> <p>Priority given to loans of \$25 million or more.</p> <p>Borrower must pay cost of loan guarantee.</p>

<p>1705</p> <p>Loan guarantees for renewable energy systems and facilities that manufacture components for renewable energy.</p> <p>Aggregate funding for 1703 and 1705 of \$100 billion; target for 1705 program is \$4 billion to cover credit subsidy costs (\$6 billion if cash-for-clunkers funding is restored).</p>	<p>Temporary program added to EPAct by ARRA.</p> <p>Application must conform to Financial Institution Partnership Program (FIPP).</p>	<p>Biomass, geothermal, hydropower, solar, wave/tidal, wind (also energy transmission systems). Focus is on commercially available technologies.</p> <p>Applicants must be commercial, non-profit, or public financial institutions, partnering with project developers.</p> <p>First solicitation released Oct. 2009 for energy generation projects; manufacturing solicitation expected in early 2010.</p> <p>Applications considered on rolling basis, with a cutoff for Part I application of Aug. 24, 2010.</p> <p>Projects must comply with Davis-Bacon and NEPA. NEPA considerations disfavor more complex sites that would require an Environmental Impact Statement (EIS) as opposed to a simpler Environmental Assessment (EA), given the September 30, 2011 deadline for start of construction.</p>	<p>Authority for program expires Sept. 30, 2011. All approved projects must begin construction by Sept. 30, 2011.</p> <p>Minimum 20 percent equity requirement (may include funds from grants and tax credits, but caution is advised in relying on these in an application). Up to 80 percent of senior loan amount (64 percent of total project costs) may be guaranteed by DOE.</p> <p>Bank must retain 20 percent of the loan amount ("skin in the game").</p> <p>Application fees are \$50,000 (\$12,500 for Part I) and nonrefundable.</p>
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FEDERAL TAX INCENTIVES

As with the DOE loan guarantee programs, the 2009 stimulus package expanded existing renewable energy tax incentives and added new ones. The three principal programs are Sections 45 and 48 of the Internal Revenue Code of 1986⁷ and Section 1603 of ARRA.

Section 45 provides a production tax credit (PTC) for the production and sale of renewable energy to an unrelated taxpayer. With changes made under ARRA, the credit extends over a ten-year period and currently ranges from 1 cent to 2.1 cents per kilowatt (KW), depending on the type of power (these rates are adjusted annually for inflation). Facilities must be qualified (as defined in the statute). The modifications added under ARRA have expanded the range of structuring and tax allocation arrangements that are permissible.⁸ For example, taxpayers with qualifying facilities under Section 45 may temporarily receive an investment tax credit under Section 48 in lieu of the Section 45 credit. In certain circumstances the immediacy of the investment tax credit may be more beneficial than receiving the variable credit over ten years under the Section 45 provisions.

Section 48 makes available an investment tax credit (ITC) for equipment that uses certain renewable energy sources to gener-

ate electricity or heating or cooling. Eligible sources include solar, small wind (less than 100 KW), fuel cells, geothermal, microturbines, and heat pumps, with tax credits ranging from 10 to 30 percent. The tax credit is designed with some flexibility permitted; for example, it may be allocated within sale-leaseback arrangements, but there are limitations and considerations that require careful planning to maximize tax savings. Most applications of the Section 48 credit expire at the end of 2016.

In addition to the regular provisions of Section 48, ARRA added a new section 48C, allowing an ITC of 30 percent for qualified tangible personal property placed in service at manufacturing facilities for "qualified advanced energy projects." Qualifying projects are those that re-equip, expand, or establish a manufacturing facility for the production of renewable energy; fuel cells and related capabilities for electric or hybrid-electric vehicles; renewable energy electrical grids; carbon capture and sequestration; energy conservation, including renewable fuels and lighting technologies; and "other advanced energy property designed to reduce greenhouse gas as designated by the Secretary of Treasury." In August, the Treasury Department released guidance for this program, including useful definitions, in Notice 2009-72.⁹ Importantly, to qualify for the initial round of this tax credit, taxpayers must have submitted an application to DOE

and the Internal Revenue Service by Oct. 16, 2009. As noted at the beginning of this article, awards were announced on Jan. 8, 2010, totaling the entire \$2.3 billion originally allocated under the program. Future award rounds may be established if Congress appropriates additional funds.

Section 1603 of ARRA authorizes the Treasury Department to pay grants in lieu of tax credits for specified renewable energy property. The payments are available for solar, wind, geothermal, and other renewable energy investments placed in service in 2009 or 2010 that would qualify for a tax credit under Sections 45 or 48, discussed above. On July 9, 2009, Treasury and DOE announced guidance for the program, which sets forth application procedures and clarifies eligibility requirements.¹⁰ To date, the Treasury has disbursed almost \$2 billion under this program.

OTHER FEDERAL GOVERNMENT PROGRAMS

Additional federal programs tend to be specialized, and often are focused on assistance to scientific researchers at universities and elsewhere. For example, DOE has a grant program administered by its Advanced Research and Projects Agency (ARPA) that has been active in the technologies of biofuels, wind and solar power, hybrid vehicles and the vehicles' power sources. One of these initiatives targeted transformational energy technologies ready for commercialization. Other ARRA-funded grants totaling \$32.7 billion have been awarded for state and private-sector projects across a spectrum of technologies and applications.¹¹ However, these programs are not currently in a position to accept applications unless new funding is made available or the application process is reopened, because money remains undistributed after the first round of announced grants.¹²

Other federal programs include the U.S. Department of Agriculture's Rural Energy for America Program (REAP), which provides grants to agricultural producers and rural small businesses for renewable energy systems and energy efficiency improvements. Eligible projects include those that produce energy from wind, solar, biomass, geothermal, hydropower, and hydrogen-based sources. Funding is available through 2012.¹³

STATE PROGRAMS

State incentives for renewable energy vary considerably. New Jersey and California have been in the vanguard of efforts to promote renewable energy, using grants, tax breaks, and credible measures that encourage utilities to buy renewable energy generated by others. Typically states motivate the utilities by specifying a percentage of their energy output that must come from renewable sources, either produced by the utility or purchased from others (a renewable energy portfolio standard).¹⁴ Currently 29 states have mandatory programs, which can generate marketable credits. Up to 30 percent of the funding for some renewables projects, particularly in the area of solar cells, comes from the sale of these credits to utilities. As the number of states with renewables portfolio programs continues to change, this area warrants careful attention.¹⁵

While many states offer incentives for residences, schools, and public hospitals, and in the area of hybrid vehicles and alternative fuel, the table below gives a quick sample of the status of programs available to industry and commercial operations in a representative collection of states.¹⁶ The richness of the programs available and the renewable technologies to which they apply differ significantly across states, making it important to look closely at individual state incentives programs.

State ¹⁷	Tax Credit	Grant/Rebate	Loan	Utilities Portfolio Standard <i>(amounts and criteria vary widely)</i>
CA	Yes (solar only)	Yes	No	Yes, 20 percent by 2010, 33 percent by 2020, no credit trading (under discussion)
IL	Yes	Yes	No	Yes, 25 percent by 2025, credit trading allowed
MI	Yes	Some grants available, plus rebates	No	Yes, 10 percent by 2015, credit trading allowed
NV	Yes	Yes	No	Yes, 25 percent by 2025, credit trading allowed

NJ	Yes	Yes, including rebates in the form of tradeable solar renewable energy certificates	Yes	Yes, 22.5 percent by 2021, credit trading allowed
NY	Yes (green buildings only)	Yes	No, closed	Yes, 29 percent by 2015, no credit trading
PA	Yes (wind only)	Yes	Yes	Yes, 18 percent by 2021, credit trading allowed

FINANCING STRATEGIES

As a practical matter, given the continued lethargy in capital markets, project developers may need to combine public and private financing, in increasingly creative ways. Thus, project designers should consider the following approaches.

First, interested parties should systematically evaluate available funding opportunities and how they may fit into project planning. Programs differ significantly in criteria, scope, and timing. If the project has site flexibility, there may be clear advantages in selecting one state over another, particularly in light of varying renewable energy portfolio requirements and differing incentives for particular types of renewable energy.

Second, applications for funding need to meld a clear, technically solid description of the technology with an explanation of how it satisfies the policy preferences embedded in the incentive program, as well as the requirements that apply to the specific grant or loan solicitation. For example, U.S. ownership is not a prerequisite, as long as the operation is in the United States. Funding opportunities under ARRA give priority to proposals that maximize job creation, and benefits to local communities should always be stressed.

Third, funding applicants need to identify key obstacles to acceptance of the proposal. For instance, DOE's 1705 loan guarantee program requires projects to be "shovel-ready" by September 30, 2011. As a practical matter, this may eliminate proposals that would require a full Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA), which normally takes at least a year to complete, in favor of those that can proceed more quickly with a simpler NEPA Environmental Assessment (EA), such as reusing a previously contaminated brownfield, mining site, or industrial facility rather than a pristine "greenfield" location. Funding for numerous federal grant

programs was provided by ARRA and has now been allocated. Parties interested in additional funding may want to consider the advisability of a legislative strategy.

Fourth, the support of local and federal political leaders can be critical. DOE has been in touch with states and communities to educate them about the bank-backed funding requirements in its loan guarantee program, with the thought that local assistance in facilitating partnerships between financial institutions and project developers can enhance the success of the application.

Fifth, close coordination among the developer, design and environmental engineers, private-sector financing sources, and lawyers is essential to avoid costly missteps and delays. Most deals involve a combination of private and public funding sources, and good planning results in cost-effective structuring of the project.

Sixth, continuing communications with the agency administering the grant, rebate, or loan guarantee, or approving the tax credit, are valuable, to make sure all submissions are complete and to address any issues that arise.

CONCLUSION

There is no question that navigating the complex web of economic incentive programs for renewable energy development presents daunting challenges. The process may not be intuitively obvious, particularly to private-sector business interests that are more accustomed to direct deal making and decisions driven by economics. However, the government incentive regime has its rules, rhymes, and reasons, even if they are not immediately apparent. These sources of funding can mean the difference in whether a deal happens or not. With a clear understanding of how the programs work and a creative strategy that weaves together technical aspects, policy savvy, and practicality, obtaining some degree of government funding is a realistic goal and can help make the project a reality.

ENDNOTES

- 1 American Recovery and Reinvestment Act of 2009, Pub.L. 111-5. See A. Bull, “Obama Awards \$2.3 Billion Clean Energy Tax Credits,” Reuters, Jan. 8, 2010, available at http://news.yahoo.com/s/nm/20100108/ts_nm/us_obama_tax-credit.
- 2 H.R. 2847.
- 3 For example, President Obama’s proposed fiscal year 2011 budget, released in early February 2010, made it clear that the administration’s strong support for these programs will continue. In just one indication, wind programs at the Department of Energy (DOE) would receive a 53 percent increase, and solar would see a 22 percent hike in funding. An additional \$5 billion would go towards tax credits for manufacturing facilities that create products used to produce renewable energy, fuel cells, electric grids, or other green technology.

To be sure, the budget must make its way through a long review process in Congress, and political sentiments are running high to cut costs. However, even stronger pressures are mounting for job creation efforts, and the President has repeatedly tied renewable energy development to jobs, a sure sign he will push hard for funding for these programs.
- 4 Should Congress enact federal climate change legislation with cap and trade provisions, the funding picture for renewable energy projects would change radically. Such a program’s requirements for the purchase of greenhouse gas emission allowances and the sale of carbon offsets attributable to renewable energy would create major new funding sources. This issue is not within the scope of this article, but for more information, see Jane C. Luxton and William J. Walsh, “Climate Change Legislation: It’s Time for Businesses to Take It Seriously,” Pepper Hamilton *Sustainability, Clean Tech, and Climate Change Alert*, July 20, 2009, available at www.pepperlaw.com/publications_update.aspx?ArticleKey=1549.
- 5 Energy Policy Act of 2005, Pub.L. 109-58.
- 6 These programs have numerous other conditions and fine print. Additional information is available at DOE’s Web site, see <http://www.energy.gov/recovery/renewablefunding.htm>.
- 7 Unless otherwise stated, all tax-related references to “Section” are to the Internal Revenue Code of 1986, as amended.
- 8 For more information, see Todd B. Reinstein, “American Recovery and Reinvestment Act of 2009 Enhances Renewable Energy Tax Provisions,” Pepper Hamilton *Energy Tax Alert*, Feb. 18, 2009, available at www.pepperlaw.com/publications_update.aspx?ArticleKey=1397.
- 9 See Todd B. Reinstein, “Treasury Notice 2009-72 with Application Rules for Section 48C,” Pepper Hamilton *Energy Tax Alert*, Aug. 14, 2009, available at http://www.pepperlaw.com/publications_update.aspx?ArticleKey=1575.
- 10 See <http://www.treas.gov/recovery/1603.shtml>.
- 11 See <http://www.energy.gov/recovery/breakdown.htm>.
- 12 See <http://www07.grants.gov/search/search.do;jsessionid=CIRGLTjMtgG9ymhPy7mKftHTTD7Kpy2GZRTbhZwQrNC52RTKlhJQ!-1179711943?mode=VIEWREVISIONS&revNum=8>.
- 13 More information is available at the U.S. Department of Agriculture’s Web site: <http://www.rurdev.usda.gov/ga/ten-ergy.htm>.
- 14 See <http://www.dsireusa.org/incentives/index.cfm?EE=1&RE=1&SPV=0&ST=0&searchtype=RPS&sh=1>. Passage of a comprehensive energy bill, either as part of climate change legislation or independently, may result in such standards becoming mandatory nationwide.
- 15 States that have not traditionally had robust programs are looking to adopt major incentive programs, such as Maryland. See “O’Malley Proposed New Energy Policies,” *Washington Business Journal* (Jan. 15, 2010) <http://washington.bizjournals.com/washington/stories/2010/01/11/daily84.html>.
- 16 See generally <http://www.dsireusa.org/>.
- 17 Many counties and municipalities offer additional programs.