

# Environmental Alert

If you have questions or would like additional information on the material covered in this Alert, please contact the author:

**Jennifer A. Smokelin**  
Counsel, Pittsburgh  
+1 412 288 3016  
jsmokelin@reedsmith.com

...or the Reed Smith lawyer with whom you regularly work.

*This text has been previously published the the January 7, 2009 Environmental Litigation Reporter*

## A CAP-ital Idea: Business Opportunities for Covered Sources in a Cap-and-Trade System

Big business is actively encouraging U.S. government involvement in the realm of climate change. Why? Two reasons.

One, CEOs recognize that global warming is a real problem that will affect their bottom lines. In May 2008, the U.S. Climate Change Science Program released its assessment of the effects of climate change on this country.<sup>1</sup> This assessment paints a fairly grim picture of the impacts from anthropogenic climate change on industry—this from the Bush administration, which had long been reluctant to admit that human activities cause global warming.

Two, they see the way the wind is blowing on a regional level with regard to greenhouse gas regulation. Regional initiatives, such as the Regional Greenhouse Gas Initiative, a 10-state consortium that will regulate carbon dioxide emissions from certain electricity-generating sources, and state initiatives, like California's Assembly Bill 32, known as the Global Warming Solutions Act of 2006, are in various stages of development across the United States. Many have target effective-dates between 2009 (RGGI) and 2012 (most of AB 32)—a blink of an eye from a corporate planning perspective. These CEOs realize that being subject to multiple state or regional schemes could be expensive for a national or multinational business, not to mention cumbersome to administer, and perhaps not the best for regulation of greenhouse gases.

Thus, on a national level, the interests of big business are shaping the form of national legislation to address climate change. Chief executives seek to push preemptively for a business-friendly national policy framework. Regulation, after all, does not affect all equally; there are choices to be made, and some sectors will be hit harder than others. Big business knows this and is involved. As Charles Territo of the Alliance of Automobile Manufacturers said, "If you're not at the table, you're on the menu."

The most striking example of big business's influence on greenhouse gas regulation is the fact that the business community overwhelmingly favors a cap-and-trade system over other alternatives, such as a carbon tax. Therefore, it is inevitable that some sectors of the GHG-emitting business community will be subject to a cap-and-trade system. Of course, the who (which businesses), what (which greenhouse gases), when (timing) and how much parts of the "inevitable" are still subject to much speculation and debate. Why does the business community favor a national cap-and-trade system for GHGs? There are many reasons (some more cynical than others), but this article will focus on the opportunities the business community perceives in a cap-and-trade system for greenhouse gas regulation.

Speaking of debate, the only greenhouse gas cap-and-trade bill that has ever been voted out of a congressional committee is the Lieberman-Warner Climate Security Act of 2007, proposed by Sens. Joe Lieberman (I-Conn.) and John Warner (R-Va). The Senate bill failed to muster the required 60 votes to close off debate in June 2008 and was withdrawn, but it is sure to return in 2009 after a new administration and Congress take office.

Many think the bill will not pass the Senate without significant amendment. In fact, Barbara Boxer (D-Cal.) released a substitute global warming bill in the eleventh hour before debate on Lieberman-Warner, with changes from the version of the bill that was approved in December 2007 by the Environmental and Public Works Committee.<sup>2</sup> Regardless of how Lieberman-Warner may be amended, it is important to analyze the business opportunities proposed in this bill, as some are likely to be included in whatever national legislation inevitably is passed.<sup>3</sup>

The business opportunities under Lieberman-Warner vary depending on a number of factors; not all opportunities are available to every business. The opportunities can be broken down into those available to regulated sources and those for non-regulated sources; this paper will discuss the former.

## Regulated Sources Under Lieberman-Warner

Business opportunities are based on whether an emission source is regulated under Lieberman-Warner. Probably the most ambitious aspect of the bill is the breadth of the cap it proposes, that is, the breadth of the proposed “regulated sources.” Of course, given the likelihood that Lieberman-Warner will pass the Senate, if at all, with significant amendment, the hardest part of this exercise might be trying to determine whether a given source will be regulated.

For some sources, it is not difficult. The European Union Emission Trading Scheme already is regulating old, large electricity-generating units putting out more than 25 megawatts, and large industrial facilities, such as cement manufacturers and pulp or paper mills. These are the types of industries likely to be regulated under the proposed Canadian domestic cap-and-trade system, the Regional Greenhouse Gas Initiative and California’s program, and they are likely going to be regulated sources in the federal system. For other sources, it takes more (guess) work.

By way of background, sources of anthropogenic greenhouse gases generally can be divided into four sectors: electrical power generation, industry, transportation and agriculture.<sup>4</sup> Furthermore, six GHGs potentially are subject to regulation: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride. It is important to note that science tells us that to head off the worst of the effects of climate change and to not unfairly burden any one sector, we need to significantly curtail all anthropogenic sources of greenhouse gas emissions.<sup>5</sup> So to the extent a certain sector or gas is not covered by cap-and-trade, it is likely that sector or gas will need to be addressed via other reduction methods, such as a carbon tax.

Various GHG cap-and-trade systems propose covering different sectors and gases. For example, the largest U.S. regional cap-and-trade system, RGGI, will cover carbon dioxide emissions only from certain large sources in the electricity-generation sector, starting in 2009. Estimates vary, but this will cover less than 20 percent of the GHGs from the region. In contrast, the up-and-running European Union Emission Trading System covers only carbon dioxide, but widens the scope of covered sources to certain large sources in the electricity-generating and industry sectors to cover roughly 45 percent of the anthropogenic sources of greenhouse gas produced by the EU.

The EU ETS is by far the largest operating cap-and-trade system to date, covering roughly 12,000 sources. Canada’s proposed plan is an important system to watch for economic reasons, as the country is the United States’ largest trading partner. This plan covers all six greenhouse gases from about 5,000 facilities in the electric generation, oil and gas, forest products (including pulp and paper), smelting and refining, iron and steel production, and mineral sectors. The Canadian system will cover 50 percent of anthropogenic Canadian GHGs.

Lieberman-Warner proposes covering all six greenhouse gases<sup>6</sup> and is the only cap-and-trade system to date that proposes covering three of the four anthropogenic GHG sectors under its cap: electricity, industry and transportation. With this reach, the bill ambitiously proposes to cover upward of 80 percent of U.S. anthropogenic sources of GHGs under its cap. The breadth of the cap is certainly a nod to U.S. business interests, which encourage a large cap because of the perceived business opportunities in a cap-and-trade system, as opposed to other forms of regulation.

There certainly is a question of whether such a broad cap would be effective. It is interesting to note that Lieberman-Warner proposes downstream regulation of sources in the electricity and industrial sectors, with an upstream regulation of the transportation sector.<sup>7</sup> This means that in the transportation sector, the direct emission sources—tailpipes—will not be covered under the cap. This is good, because a system where each tailpipe is covered by a cap is largely thought to be an administrative and enforcement nightmare, not to mention a real hassle for car-owning citizens.<sup>8</sup>

Under Lieberman-Warner, the regulated transportation-sector sources are the upstream sources that provide resources for the tailpipes: petroleum producers and refineries. While theoretically attractive as a cost-effective (because of the trading) and administratively manageable (because not every tailpipe and thus fewer sources are subject to a cap) approach, pure upstream regulation of the transportation sector under cap-and-trade is largely untried.

Most traditional thinking is that regulation of the transportation sector is better suited to a carbon-tax- based approach, because of concerns about administration and enforcement (discussed above) and transparency. In the end, a cap-and-trade system on the upstream petroleum refineries will end up looking an awful lot like a carbon tax to the downstream tailpipe owners in the form of higher gas prices. The refineries likely will pass on any costs of compliance with the cap in the form of increased fuel prices, but with no controls over the amount of such increases. A tax, unpopular as it is, is a known, transparent amount, so why not just go with the transparent and administratively far simpler

tax downstream in the first place? The fact that transportation is included in the cap via upstream regulation under Lieberman-Warner is a concession to the interests of big business, which would like to see as many sectors covered under the cap as possible, and is likely not in the best interest of commuters.

Specifically, the following facilities are covered under Lieberman-Warner:

- Any entity using more than 5,000 metric tons of coal in a year
- Natural-gas processing plants (except in Alaska)
- Natural-gas producers in Alaska and federal waters within the state's outer continental shelf
- Natural-gas importers, including liquefied natural gas
- Petroleum or coal-based manufacturers of fuels (*i.e.*, refineries) that cause GHG emissions
- Importers of oil, coke, coal or petroleum-based liquids or fuels that cause GHG emissions
- Any entity manufacturing more than 10,000 carbon dioxide equivalents of non-hydrofluorocarbon GHGs
- Importers of more than 10,000 carbon dioxide equivalents of non-HFC GHG
- Manufacturers of hydrofluorocarbons

### **Opportunities for (Likely) Regulated Sources**

If your business is likely to be a regulated source, there are in general five main business opportunities under Lieberman-Warner.

### ***Complying With GHG Limits in the Most Cost-Efficient Manner***

This is "cap-and-trade 101." Compliance under a cap-and-trade system can be achieved at a lower cost than under a "command and control" or tax scheme because the sources that can control at the cheapest cost will do so and will sell their credits to the sources with high compliance costs. This is good business. The primary attraction of emissions trading is that a properly designed program provides a framework to meet emissions-reduction goals at the lowest possible cost. It does so by giving emissions sources the flexibility to find and apply the lowest-cost methods for reducing pollution.

Emission sources with low-cost compliance options have an incentive to reduce emissions more than they would under command-and-control regulation. By trading emission credits and allowances to high-cost compliance sources, which can then reduce emissions, cost-effective emission reductions are achieved by both parties. When trading is allowed prior to the enactment of legislation, sources also can reduce emissions early, accumulating credits or allowances that can be used for compliance in future periods if this reduces cumulative compliance costs. Accordingly, cap-and-trade programs achieve the greatest cost savings when the costs of controlling emissions vary widely across sources or over time.

Lieberman-Warner proposes covering about 2,100 facilities nationwide across three anthropogenic GHG sectors. By attempting to maximize the covered sources, the bill attempts to vary the costs of controlling emissions widely across sources, thus achieving the greatest cost savings. This is similar to the approach taken in the EU Emission Trading System, which covers 12,000 sources and thereby tries to maximize cost savings. But note that the EU ETS has little true empirical evidence to support its claim of maximized savings. Although compliance costs were nil in the first year of the ETS, from 2006 to 2007, this was likely because the caps were set too high and not because the cap-and-trade theory was unsound.<sup>9</sup>

### **'Grandfathering' of Allowances**

Because emissions allowances in cap-and-trade programs are valuable, their allocation has been perhaps the single most contentious issue in establishing the existing cap-and-trade programs. However, the ability to allocate this valuable commodity, and thereby account for the economic impacts of new regulatory requirements, has been an important means of attaining political support for more stringent emissions caps. The two choices when it comes to allocating allowances are:

- "Grandfathering": distributing initial allowances without charge to sources based upon historical emissions information, which generally does not affect companies' choices regarding cost-effective emission reductions, and thus maximizes the overall cost savings from emissions trading; or

- “Auctioning”: selling allowances to the highest bidder, where a source must pay what the market will bear for its initial allowances.

The allocation of allowances is a crucial aspect of the success of the cap-and-trade system and not just from a political acceptance standpoint. For example, many experts blame the collapse of the EU ETS carbon market during its initial year on the improper allocation of allowances. One of the “fixes” proposed by the EU (likely not effective until post-Kyoto 2013-2017) is to allow for more widespread auctioning of allowances.

Even in this country, the trend is to have a greater percentage of auctioned allowances. The Regional Greenhouse Gas Initiative held its first auction of carbon dioxide emissions allowances Sept. 25, and the second was held Dec. 17. Sens. Hillary Clinton (D-N.Y.) and President-elect Barack Obama have both advocated for auctioning 100 percent of credits under national climate change legislation, a position widely supported by environmental non-governmental organizations.

Lieberman-Warner is not immune to this political jockeying for allowance allotments. Under the bill, 21.5 percent of the allowances would be allocated for auctioning in 2012, with the balance to be distributed via grandfathering.<sup>10</sup> This auction percentage rises steadily each year until it plateaus in 2031, when 69.5 percent of allowances are allocated for auctioning.<sup>11</sup> This “middle of the road” position, which allows for some auctioning, but in the main relies on a grandfathered distribution, surely is a political compromise. While industries want to see grandfathered distribution, environmental NGOs press hard for auctioning, with the thought that the Environmental Protection Agency could use the proceeds from the auctions to fund research into alternative energy or for environmental justice efforts.<sup>12</sup>

So contentious is this issue that already several amendments to Lieberman-Warner have been proposed. Sens. Bernard Sanders (I-Vt.) and Clinton introduced an amendment that would have eliminated all free allowance allocations in the bill, shifting 100 percent of the allowance distribution to an auction. Sanders spoke of the “windfall profits” that grandfathering allowances (which is basically giving away a “right to pollute”) would create, and stated his belief that the auctions would reduce the costs of the cap-and-trade program to the economy. Lieberman called the proposed amendment “substantively wrong” and a “poison pill” that “would not only kill the bill, but kill a lot of companies as well.” The amendment was defeated 6–13 in committee.<sup>13</sup> But expect this issue to raise its head again during debate on the Senate floor when, or if, the bill is reintroduced this year.

The business opportunity here for U.S. industry is to get as many allowances for free as it possibly can. Emission allowances basically are a “right to pollute” and, like most rights, are worth something. If they are “grandfathered,” they have been given away for free, so U.S. businesses should grab (and lobby for) as many as they can.

### **‘Early Action’ Credits**

Many cap-and-trade systems going into effect (Kyoto Protocol, RGGI, AB 32) provide U.S. companies with credits for GHG reductions achieved prior to the effective dates (before the first budget period under the proposed cap-and-trade schemes) that the companies could use for compliance with any future domestic GHG regulatory program. These “early action” credits are like “money in the bank” when it comes to compliance and should be fully exploited. If properly documented and banked, early credits can be used for source compliance and/or sold at market to help other sources comply.

Lieberman-Warner is no exception. It would have allowed credits for certain GHG reductions between 1994 and 2012 (the law’s proposed effective date). However, such credits would be limited to 5 percent of allowances in 2012 and would be reduced annually until they are phased out entirely by 2017.<sup>14</sup> These “early action” credits would require verification and certification, and must have been registered before the enactment of Lieberman-Warner under any of the following:

- The Climate Leaders Program or any other voluntary greenhouse gas program of the EPA or Department of Energy
- The Voluntary Reporting of Greenhouse Gas program of the Energy Information Administration
- State or regional GHG reduction programs that include systems for tracking and verifying reductions
- Voluntary entity programs that resulted in entity-wide reduction in GHG emissions<sup>15</sup>

If a U.S. business has taken steps to document its GHG footprint and then reduced it in the past several years, through a program like the EPA’s Climate Leaders or the Energy Department’s

voluntary program, it may have significant “credit” generation capacity from these reductions. But note that if the business has credits it wants to preserve, it should have those reductions registered under one of the programs listed above before Lieberman-Warner is enacted,<sup>16</sup> and it should undertake careful consideration of quantification and verification protocols to ensure credit for these early actions.

### **‘Trade Leakage’**

Leakage is a potential nightmare for regulators and politicians (and economies) under a GHG control scheme. But, as it turns out, the nightmare for some can possibly be a business opportunity for other U.S. industries. How, you ask? First, we need to define the problem. “Leakage” (or “trade leakage”) is the term used to describe the price advantage a good produced in a domestic cap-and-trade system has over an import of that same good, where the foreign competitors are more heavily regulated than are U.S. sources. Conversely, foreign products that compete with U.S. goods can be at a price advantage vis-a-vis U.S. sources if the foreign source is less heavily regulated. The price differential creates a market advantage and a business opportunity.

If the federal system put into place regulates any sector less stringently than a foreign competitor sector is regulated, the goods produced in that U.S. sector presumably have a price advantage over the foreign goods in the market (all other things being equal). American companies should be aware of this potential trade advantage and do what they can during this formative time to move such trade advantages to their benefit.

Lieberman-Warner attempts to maximize U.S. companies’ advantages by minimizing the stringency of the cap. The bill proposes a cap on U.S. greenhouse gas emissions at 15 percent below 2005 levels in 2020.<sup>17</sup> This is less stringent than the Kyoto targets. Kyoto requires 15 percent below current levels (6 percent below 1990 levels) by 2012—a level the United States would not have to meet until eight years later under Lieberman-Warner. This means that U.S. companies will enjoy a “trade leakage” advantage over all Kyoto-compliant Annex I countries<sup>18</sup> until at least 2020.

However, note that the stringency of this cap likely will be an issue for debate if the bill comes up for a vote this year. In fact, it was subject to proposed amendment even during markup before it left the Environmental and Public Works Committee. Sen. Sanders sponsored an amendment that would have increased the cap to an 80 percent reduction from 1990 levels by 2050. Although the amendment was defeated 7–12, before voting, Boxer told Sanders that she appreciated his efforts but had to protect the “delicate balance” needed to get the bill out of committee and voiced her willingness to revisit the cap targets on the Senate floor.<sup>19</sup>

The forces that drive consideration of trade leakage are directly contradictory to the overall success of a cap-and-trade system, from both a market standpoint and an environmental benefits perspective. On the environmental side, a cap-and-trade system is only effective at reducing emissions if the cap is stringent enough to do so. From a market standpoint, the market will only function if there is demand for credits and offsets. Demand is created by a cap that is hard to meet, so sources need to purchase credits; the more demand, the higher the prices for credits, and the more robust (presumably) the market. This lesson was rather painfully illustrated in late 2007 in the EU ETS, where verified emission data showed that member states over-allocated credits for between 75 million and 150 million tons of carbon. Lithuania, for example, over-allocated its allowances by nearly 200 percent. That not only served to effect no net reductions on carbon dioxide, but also caused the price of a ton of carbon to plummet by 99 percent from April 2006 to September 2007, a market collapse.

### **Opportunities in States That Already Have Imposed Emissions Standards**

Another contentious issue under Lieberman-Warner is whether states will be allowed to have stronger emissions standards than the federal government. A number of states, most notably California, already have moved to restrict greenhouse gas emissions. California’s AB 32, which like Lieberman-Warner addresses all six Kyoto GHGs, has emission targets more stringent than proposed under Lieberman-Warner: at 1990 levels by 2020 (a 25 percent reduction from current emissions) and 80 percent below 1990 levels by 2050.<sup>20</sup>

Lieberman-Warner would allow states to retain their own standards as long as such programs are at least as stringent as the federal program, but there are substantial incentives for states that agree to abandon their own climate change laws in favor of the proposed federal system. For example, the bill would provide additional allowance allocations to states that agree to transition to the federal cap-and-trade program, and proposes incentive programs for utilities and state and local governments. U.S. industry groups are concerned that a patchwork of differing state regulations

would make reducing emissions more difficult for companies that operate across state lines, but many environmental NGOs would like to see ambitious states allowed to continue their efforts.

In sum, there are many potential business opportunities for regulated sources under Lieberman-Warner. It's a CAP-ital idea.

\* \* \* \* \*

If you have questions involving legislation, policy development, rulemaking, compliance or enforcement, please contact the author, or the Reed Smith attorney with whom you regularly work.

- 
- <sup>1</sup> Nat'l Sci. & Tech. Council, Comm. on Env't & Natural Res., Scientific Assessment of the Effects of Global Change on the United States (May 29, 2008), available at <http://www.climate-science.gov/Library/scientific-assessment/Scientific-AssessmentFINAL.pdf>.
  - <sup>2</sup> The latest version of the Lieberman-Warner bill, unveiled May 21, 2008, has some new components, but it is substantially the same legislation that was passed out of committee. The biggest change in the new version of the bill is a cost-containment mechanism, or "emergency off-ramp," which would automatically release additional emission credits onto the market if the price of credits hits \$22 to \$30 by 2012, adjusted for inflation after that. The additional credits would be borrowed from future allowances and auctioned off, with the proceeds used for direct emissions reductions. This falls short of a strict "safety valve" provision like in RGGI (where carbon at \$10 a ton triggers extension of compliance period and modification on use of offsets, which has garnered much criticism) but not short enough for comfort for some critics.
  - <sup>3</sup> If a bill had passed both branches of Congress in 2008, it would have faced the veto power of President Bush. However, President-elect Barack Obama has embraced cap-and-trade as a viable system for reducing GHG emissions.
  - <sup>4</sup> Note that only anthropogenic sources of GHGs are at issue, since only human activity can be regulated. Naturally occurring GHGs exist but cannot be regulated.
  - <sup>5</sup> The exact figure is subject to debate, but most scientists agree on something like an 80 percent reduction of anthropogenic GHGs by 2050. See, e.g., Intergovernmental Panel on Climate Change, Climate Change 2007 Synthesis Report (Nov. 17, 2007), available at <http://www.ipcc.ch/ipccreports/ar4-syr.htm>.
  - <sup>6</sup> Hydrofluorocarbons are regulated as "Group II," slightly differently from the rest under Title X of the proposed legislation, but they are covered.
  - <sup>7</sup> Regulation of direct emitters is called "downstream" regulation, and moving up the chain of production to regulate those that provide the resources needed to create the emissions is called "upstream" regulation.
  - <sup>8</sup> Although, it is interesting to note that a committee of the British Parliament has recommended that the country go ahead with a carbon-credit trading system for individuals. MPs back personal carbon credits, BBC (May 26, 2008), available at [http://news.bbc.co.uk/2/hi/uk\\_news/politics/7419724.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/7419724.stm).
  - <sup>9</sup> The widely cited empirical evidence of cost-effective compliance under cap-and-trade is the acid rain program under the Clean Air Act. In 1989 the EPA estimated the annual cost of the program at \$2.7 billion to \$4 billion. Yet an EPA analysis a decade later determined that the actual cost of cutting sulfur emissions by 40 percent was substantially lower: \$1 billion to \$2 billion per year. Further, the estimated annual benefits of the program are touted at \$12 billion to \$78 billion, making it a model for GHG trading initiatives, including Lieberman-Warner. But note that the cap-and-trade system under Lieberman-Warner has many substantive differences from the acid rain program, an analysis of which is beyond the scope of this article.
  - <sup>10</sup> Lieberman-Warner Climate Security Act of 2007, S. 3036, 110th Cong., §§ 3101-3908 (May 20, 2008).
  - <sup>11</sup> *Id.* at § 3102.
  - <sup>12</sup> The Boxer amendment to Lieberman-Warner included an \$800 billion consumer tax relief package and a \$911 billion allowance to local electricity and gas utilities to help them cushion consumers from price swings, invest in renewables and promote efficiency. This would all be paid for by the revenue from auctioning emissions credits, expected to total \$3.3 trillion over the life of the bill. Funds from the auction also would go to worker transition programs, block grants to local governments for energy-efficiency programs, international adaptation programs and deficit reduction.
  - <sup>13</sup> Press Release, Pew Center on Global Climate Change, Status of Senate Bill 2191, the Lieberman-Warner Climate Security Act, available at [http://www.pewclimate.org/docUploads/l-w\\_markup\\_final.pdf](http://www.pewclimate.org/docUploads/l-w_markup_final.pdf).
  - <sup>14</sup> Lieberman-Warner at § 3201-2.
  - <sup>15</sup> *Id.* at § 3202.
  - <sup>16</sup> *Id.* at § 3202(b).
  - <sup>17</sup> *Id.* at § 1201.
  - <sup>18</sup> At least those that have systems in place designed to comply with Kyoto targets, like the EU. But note that Canada, although a Kyoto signatory, does not attempt to meet Kyoto targets.
  - <sup>19</sup> Pew Center press release, *supra* note 13.
  - <sup>20</sup> Other domestic programs, like RGGI, are not as restrictive as proposed under Lieberman-Warner, and these programs would be superseded by federal regulation. RGGI limits GHGs to 2005 levels by 2015. and a mere 10 percent reduction from 2005 levels by 2020.

*The author would like to acknowledge Luke Sizemore for his invaluable help in preparing this article.*

### **About Reed Smith**

Reed Smith is one of the 15 largest law firms in the world, with more than 1,700 lawyers in 23 offices throughout the United States, Europe, Asia and the Middle East.

Founded in 1877, the firm represents leading international businesses from Fortune 100 corporations to mid-market and emerging enterprises. Its attorneys provide litigation services in multi-jurisdictional matters and other high stake disputes, deliver regulatory counsel, and execute the full range of strategic domestic and cross-border transactions.

Reed Smith is a preeminent advisor to industries including financial services, life sciences, health care, advertising and media, shipping, energy, trade and commodities, real estate, manufacturing, and education. For more information, visit [reedsmith.com](http://reedsmith.com)

This *Alert* is presented for informational purposes only and is not intended to constitute legal advice.

© Reed Smith LLP 2009. All rights reserved.

"Reed Smith" refers to Reed Smith LLP, a limited liability partnership formed in the state of Delaware.

Client Alert 09-013  
January 2009

[reedsmith.com](http://reedsmith.com)

**ReedSmith**

The business of relationships.<sup>SM</sup>

NEW YORK  
LONDON  
HONG KONG  
CHICAGO  
WASHINGTON, D.C.  
BEIJING  
PARIS  
LOS ANGELES  
SAN FRANCISCO  
PHILADELPHIA  
PITTSBURGH  
OAKLAND  
MUNICH  
ABU DHABI  
PRINCETON  
N. VIRGINIA  
WILMINGTON  
SILICON VALLEY  
DUBAI  
CENTURY CITY  
RICHMOND  
GREECE