

Regulating Climate Change & Trading Carbon

Max Zygmunt

**Alston & Bird's
Energy & Sustainability Practice**

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GHG: The Stakes

“The value at stake over the next two decades and beyond is going to be enormous. Some companies will be clear winners, others clear losers

The outcome may be as unambiguous as it was when the industrial revolution shifted business from manual labor to energy-intensive factories.”

--*The McKinsey Quarterly*, Business Strategies for Climate Change, 2008



Knowing is Half the Battle

- Be prepared, educated, and involved
 - Be an intelligent, opportunistic early actor
- Getting you there
 - Changes on the federal level
 - Relevance of the Voluntary Market
 - Who will the regulators be and what are they likely to do



Legislative Developments

- Legislative:
 - Waxman-Markey Passes House
 - Bailout Legislation Extends Renewable Tax Credits
 - Stimulus Provisions Relating to Energy



Regulatory Developments

- Proposed Endangerment Determination under CAA (April 2009)
 - Draft vehicle GHG standards are now at OMB
- Proposed GHG Reporting Rule (March 2009)
- Proposed UIC Rules for Carbon Capture and Sequestration (2008)
- Proposed GHG lifecycle assessment rules relating to Renewable Fuels Standards (2009)
- Grant of California waiver on GHG standards in emission
- Endangered Species Act: Polar Bear listed as threatened. Reqs. relating to GHGs under review.



ARRA (Stimulus)

- \$4.5 billion to DOE for electricity delivery and energy reliability activities to modernize electric grid. DOE may use in grants and demonstration initiatives.
- \$6 billion to underwrite \$60 billion in DOE loan guarantees.
- \$3.1 billion to existing State Energy Programs. Georgia – \$82.5 million to GEFA to make grants for renewable energy and energy efficiency projects.
- \$3.2 billion to fund grants for energy efficiency and renewable energy, primarily at local government level.
- Renewable tax credits extended for wind, solar, biomass, geothermal, landfill gas, solid waste, hydro, and marine energy sources.



Waxman Markey Highlights

- Cap and Trade
 - Cap = 17% reduction by 2020 and 83% by 2050 (2005 baseline)
 - Covered entities with compliance obligations
 - Petroleum and natural gas, generally, upstream
 - Other emitters, downstream and over 25,000 MT CO₂e
 - Offsets markets and rulemakings
 - Complex allowance allocations



Other Waxman Markey Highlights

- National Renewable Electricity Standard
 - 20% by 2020
 - 25-40% can be satisfied by efficiency projects
 - Contemplates market in RECs and efficiency units



Other Waxman Markey Highlights

- CCS incentives and GHG standards on new coal burning units.
- National building code relating to efficiency standards.
- National appliance efficiency standards.



Regulatory Developments: GHG Reporting Rule

- Covered Entities.
 - In general, 25,000 MT CO₂e threshold.
 - Facility level reporting unless upstream source.
- EPA verification
- Preamble: 818 pages
- Compliance costs



Voluntary Market Overview

- Offset market
- Customers: companies, individuals, non-profits
- Project types
 - Many options
 - Depends on the chosen registry or certifier
- What's it gonna cost me?
 - \$1 - \$20 per ton



Voluntary Credit Price Drivers

- Integrity of the offset
- Cache of the registry/exchange
 - CCX
 - VCS
 - Gold Standard
 - Over-the-counter
- Additional social/environmental benefits
- Grandfathering potential



How Does the Voluntary Market Work?

- Developers choose a registry/exchange with a favorable methodology.
- Developers develop the project
 - Pre-initiation notification
- Developers certify reductions
 - Independent, third party verification



Near-Term Outlook

- Less positive than a year ago
 - Economic impact
 - Uncertainty regarding impact of government actions



No Cheating

- Voluntary market
 - Buyer beware
 - Ground is shifting
- Federal legislation
 - Regulators needed for offsets, allowance tracking, trading, and derivatives
 - Why not divide the regulatory authority amongst 4 agencies



Emerging Regulation of Voluntary Market

- Commodity Futures Trading Commission
 - Notice of Intent for CCX
- Authority to impose minimum trading requirements
 - Where a commodity is not otherwise regulated
 - And serves a price discovery function
- Potential regulations
 - Position limits and large trader reporting requirements



Under W-M: Divide to Conquer?

- Allowance issuance and tracking
 - EPA & Offsets Integrity Advisory Board
- Offset issuance and tracking
 - EPA &/v. USDA
- Regulating trading
 - Federal Energy Regulatory Commission
- Derivative regulation
 - CFTC



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 - GC to Asian Development Bank carbon fund

