Urie, Matthew

From: Ben Schwartz [redacted]
Sent: Thursday, November 04, 2010 12:00 PM
To: [redacted]
Cc:
Subject: Memo to Files
Attachments: Memo to Files.DOC

[redacted]

Attached is the final memo regarding the letter that was sent to us on March 25, 2010. Let me know if you have any further questions.

Thanks.

Ben

Ben Schwartz
[redacted]

SOLYNDRA

To: John Gaffney, General Counsel

From: Ben Schwartz, Deputy General Counsel

Date: November 4, 2010

Re: Investigation into Allegations of Fraudulent Conduct Relating to the DOE Loan

On March 25, 2010, Ben Schwartz, Deputy General Counsel of Solyndra, Inc. (the "Company") received an e-mail attaching a letter from [redacted] (the "[redacted] Letter") alleging that fraudulent activity was occurring at the Company with respect to that certain $535,000,000 loan guaranteed by the U.S. Department of Energy (the "DOE Loan"). The [redacted] Letter stated the Company had asked vendors to "postpone cash payment by more than 60 days beyond the contractually required payment terms for the sole purpose of demonstrating a higher than actual cash position to the U.S. government. The reason given by Solyndra that this would allow them to meet the DoE cash requirement and access their loan."

Upon receipt of this letter, John Gaffney, General Counsel, Bill Stover, CFO, Shig Hamamatsu, VP of Finance, and Sanat Dave, VP of Supply Chain were all notified of the allegations contained in the letter.

As an initial matter, the Company investigated the legal implications of the allegations. Mr. Schwartz reviewed the representations, warranties and covenants in Common Agreement, dated as of September 2, 2009 (the "Common Agreement"), by and among (i) Solyndra Fab 2 LLC, as Borrower, (ii) the U.S. Department of Energy, as loan guarantor and the Loan Servicer, and (iii) U.S. Bank National Association, as Collateral Agent. All capitalized terms used herein and not otherwise defined shall have their respective meanings set forth in the Common Agreement. Mr. Schwartz concluded that even assuming that any or all of the allegations contained in the [redacted] Letter were true, such actions would not constitute fraudulent activity for the following reasons:

1) The Project is fully funded through disbursements from the FFB and funds that have already been contributed by the Company and are under the control of the Collateral Agent for the Project. Upon completion of work by any vendor for the Project, Fab 2 issues an advance request for funds sufficient to cover the work. The funds are then disbursed by the FFB and the Collateral Agent out of the previously committed funding directly to each vendor, so there is no reason or opportunity for the Company to delay payment of any Project funding. Moreover, Section 7.1 of the Common Agreement expressly contemplates that there may be delays in paying trade creditors and states that the Indebtedness created by such delay would not be a breach of the Common Agreement provided that the Indebtedness did not remain unpaid for more than 90 days past the due date.

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2) To the extent the allegations relate to activity occurring at the Company rather than at Fab 2, there is no condition precedent to Project funding, nor is there any representation, warranty or covenant relating to the Company's cash balance. Therefore, even if the Sponsor did routinely delay payment terms to Company vendors, any such delays in payment to such vendors would not have any impact on the Project unless the delay caused a Material Adverse Effect on the Project.

Notwithstanding the fact that, even if true, the allegations would not constitute fraudulent activity, Mr. Hamamatsu conducted an internal investigation of the Finance department and Mr. Dave conducted an internal investigation of the Purchasing group. Neither Mr. Hamamatsu nor Mr. Dave found any evidence that members of those organizations made such statements to outside vendors. In fact, the Accounts Payable department and the Purchasing department have no knowledge of any funding requirements for the DOE Loan.

Mr. Hamamatsu did confirm that, like most finance departments, the Accounts Payable department actively manages vendor invoices, including asking vendors to extend payment terms to manage the Company's cash position. He also confirmed that, in accordance with Section 7.1 of the Common Agreement, Fab 2 has no Indebtedness to trade creditors more than 90 days overdue and that there were no other delays in vendor payment that could be deemed to have a Material Adverse Effect on the Project.

Based on the foregoing, the Company concludes that there is no evidence that any statements described in the [redacted] Letter were made by Company representatives to vendors. Moreover, the Company concludes as a legal matter, that requesting vendors to extend payment terms is not a breach of any obligation under the DOE Loan. However, Mr. Hamamatsu and Mr. Dave have cautioned their organizations that it is inappropriate to refer to the requirements of the DOE Loan in any discussions with vendors about extending payment terms.

The Company does not plan to take any further actions based on the [redacted] Letter and concludes that this matter has been satisfactorily investigated and no corrective action is necessary.

Cc: Files