



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JASON ALDRIDGE, derivatively on
behalf of TERRAFORM GLOBAL,
INC.,

Plaintiff,

v.

PETER BLACKMORE,
CHRISTOPHER COMPTON, HANIF
DAHYA, and JACK JENKINS-
STARK,

Defendants,

-and-

TERRAFORM GLOBAL, INC.,

Nominal Defendant.

C.A. No. 12196-VCL

**PUBLIC VERSION
FILED ON APRIL 15,
2016**

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff Jason Aldridge (“Plaintiff”), derivatively on behalf of nominal defendant TerraForm Global, Inc. (“Global” or the “Company”), brings the following Verified Stockholder Derivative Complaint (the “Complaint”) against Peter Blackmore (“Blackmore”), Christopher Compton (“Compton”), Hanif Dahya (“Dahya”), and Jack Jenkins-Stark (“Jenkins-Stark” and together with Blackmore, Compton and Dahya, the “Authorizing Director Defendants”). The allegations of the Complaint are based on the knowledge of Plaintiff as to himself, and on information and belief, including the investigation of counsel and review of publicly available information and internal Company documents produced in

response to Plaintiff's demand for the inspection of books and records pursuant to Section 220 of the Delaware General Corporation Law (the "Section 220 Demand"), as to all other matters.

INTRODUCTION

1. This case arises from the bad faith actions of, and breaches of fiduciary duty by, the Authorizing Director Defendants in facilitating a \$231 million cash prepayment from Global to the Company's financially distressed controlling stockholder, SunEdison, Inc. ("SunEdison"), for certain yet-to-be-completed solar projects located in India (the "India Projects"). With the India Projects delayed and potentially never coming to fruition, and SunEdison planning bankruptcy, Global faces the real prospect of having nothing to show for the \$231 million lifeline that it improperly gave its controller.

2. Global is a renewable energy company that owns and operates clean energy power plants in high-growth emerging markets. SunEdison concededly controls Global through its ownership of all of Global's outstanding super-voting Class B common stock, which provides it with approximately 98% of the total votes. SunEdison also dominates and controls Global's boardroom and executive offices, and manages most of Global's operations. SunEdison's equity stake in Global, however, is just 34%.

3. In the fall of 2015, SunEdison was facing a well-publicized liquidity crisis. SunEdison was party to a margin loan agreement with certain lenders (the “Margin Loan”), which was secured by a lien on shares of stock in another publicly traded company controlled by SunEdison – TerraForm Power, Inc. (“TERP”).¹ As TERP’s (and SunEdison’s) stock price plummeted in the third quarter of 2015, SunEdison was required to post hundreds of millions of dollars in additional cash collateral for the Margin Loan.

4. SunEdison faced a looming November 20, 2015 deadline to repay \$100 million under the Margin Loan. A default on the Margin Loan would make the entire Margin Loan balance immediately due and payable, and also trigger the cross-default of various other of SunEdison’s nearly \$8 billion in outstanding indebtedness.

5. On November 18, 2015, SunEdison approached the then-serving Global Corporate Governance and Conflicts Committee (the “Old Conflicts Committee”)² and its legal and financial advisors with a variety of potential alternatives for making \$100 million available to SunEdison, such as stock

¹ TERP is controlled by SunEdison by virtue of, among other things, SunEdison’s ownership of high-vote TERP stock.

² The “Old Conflicts Committee” consisted of Mark Lerdal (“Lerdal”) and Defendant Dahya.

buybacks, an unsecured loan from Global to SunEdison, or Global's acquisition of certain assets from SunEdison.³

6. Recognizing that it did not have time for the Old Conflicts Committee to conduct a deliberate and independent process, SunEdison took matters into its own hands. Early in the afternoon on November 20, 2015, SunEdison unilaterally added three new directors to the Global board of directors (the "Global Board" or "Board") – Defendants Blackmore, Compton, and Jenkins-Stark. Fifteen minutes later during a telephonic special meeting of the Global Board, SunEdison's CEO (and Global's then-Chairman) informed the Board that the Old Conflicts Committee would be immediately reconstituted in its entirety, with Defendants Blackmore, Compton, and Jenkins-Stark now forming the new Conflicts Committee (the "New Conflicts Committee" or the "Committee"). On that same call, SunEdison removed Global's Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO") and replaced them with SunEdison executives. Outraged by this affront to corporate governance, Francisco Perez Gundin ("Gundin"), Mark Florian ("Florian"), and Lerdal resigned from the Global Board that same day.

³ Global's related-party transaction policy requires that any material transaction between Global and SunEdison be subject to the approval of Global's Conflicts Committee.

7. As soon as the November 20 special meeting of the Global Board ended, a telephonic meeting of the New Conflicts Committee began. Brian Wuebbels (“Wuebbels”), Global’s new CEO and SunEdison’s CFO, started pressuring the New Conflicts Committee to agree *that day* to a deal in which Global would prepay \$231 million for the India Projects (the “India Transaction”).

8. At this point, several bright red flags should have alerted the New Conflicts Committee that something was seriously amiss. Among other things:

- a. The immediate resignations of Gundin, Florian and Lerdal in response to (i) the appointment of Blackmore, Compton and Jenkins-Stark to the Board and New Conflicts Committee, and (ii) the replacement of the Old Conflicts Committee;
- b. Florian and Lerdal sent resignation letters that same day, stating that the Board shake-up convinced them that their efforts to act in the best interests of Global’s stockholders would be unsuccessful;
- c. Within 30 minutes of being appointed to the Global Board, the New Conflicts Committee was being pressured by SunEdison through its employees at Global to approve a massive related-party transaction;
- d. SunEdison was in a well-publicized state of financial distress, yet SunEdison was demanding substantial *prepayment* for the incomplete India Projects;
- e. Defendant Blackmore had resigned from the SunEdison board, having served there for nine years, on the same day he was appointed to the Global Board and was being pressured to approve the India Transaction. He therefore

knew very well that SunEdison was facing a crisis and that it had strong motives to overreach in the India Transaction;

- f. The only individuals making presentations at the November 20 New Conflicts Committee meeting worked for SunEdison, Global's counterparty in the India Transaction; and
- g. SunEdison was demanding that the New Conflicts Committee provide an immediate answer to the proposal, before the New Conflicts Committee could retain independent financial or legal advisors, or deliberate in any meaningful way.

9. Less than an hour after being appointed to the Global Board, and at the conclusion of a 25-minute meeting wherein the only advice provided came from SunEdison employees, the members of the New Conflicts Committee agreed to immediately prepay \$150 million to SunEdison for the India Projects with a second, \$81 million prepayment to be made ten days later.

10. Though SunEdison agreed to provide the New Conflicts Committee with a ten-day "lookback" period to retroactively review the purchase and sale agreement ("PSA") and cancel the India Transaction if the Committee deemed appropriate, that mechanism was rendered meaningless by the New Conflicts Committee's loyalty to SunEdison. The New Conflicts Committee did not engage a financial advisor, instead choosing to continue relying exclusively on the financial advice of SunEdison executives and Global executives who owed their

livelihood to SunEdison and therefore had every incentive to favor SunEdison's interests over Global's interests. While the New Conflicts Committee did engage a legal advisor (Proctor Heyman Enerio LLP ("Proctor Heyman")) during the "lookback" period, [REDACTED]

11. On December 1, 2015, the New Conflicts Committee and the full Global Board approved a substantially similar PSA, and Global prepaid an additional \$81 million to SunEdison for the India Transaction.

12. The New Conflicts Committee's bad faith process for and approval of the India Transaction and associated prepayments is not surprising, given Blackmore's role. This Court expressed "serious doubts concerning the independence" of Blackmore from SunEdison in connection with a challenge to a similar board shake-up and transactions similarly favorable to SunEdison at TERP. The Court stated in its February 25, 2016 oral ruling on the stockholder plaintiff's motion for a preliminary injunction in that matter:

Blackmore left SunEdison's board the same day he joined TERP's board and the new committee. Although he was an independent director of SunEdison, he spent nearly a decade as a steward for that company and its stockholders, and the record appears to suggest that the SunEdison board hatched the plan to replace the conflicts committee. It is quite reasonable to think that a nine-year director would have difficulty becoming an adversary to SunEdison and its stockholders over the course of a single day.

13. Since the approval of the India Transaction, SunEdison's financial problems have not only continued, but worsened. For example, SunEdison was unable to consummate a planned acquisition of Vivint Solar, Inc. ("Vivint"), and has been sued by Vivint as a result. Further, as of the date of this Complaint, there are widespread media reports that SunEdison is preparing to file for bankruptcy protection.

14. On March 29, 2016, Global publicly filed a Form 8-K with the United States Securities and Exchange Commission ("SEC") revealing extensive delays and problems with the India Projects, including (a) SunEdison's failure to pay certain material project costs, (b) SunEdison's failure to obtain required lender consents, and (c) the cessation of construction on one of the India Projects.

15. On January 22, 2016, Plaintiff served the Section 220 Demand on the Company for the primary purpose of investigating the New Conflicts Committee's and the Board's conduct in connection with the India Transaction. Over the ensuing weeks, Plaintiff endeavored to secure the production of documents in response to the Section 220 Demand through multiple meet-and-confers with counsel for the Company. The Company finally produced documents on April 4, 2016.

16. The same day that the Company made its Section 220 production to Plaintiff, the New Conflicts Committee caused the Company to file a lawsuit in the Court of Chancery against SunEdison and the SunEdison-affiliated Global directors, alleging that SunEdison duped the New Conflicts Committee and misappropriated \$231 million from the Company (the “Global-SunEdison Lawsuit”). The Global-SunEdison Lawsuit, however, does not – and should not – insulate the Authorizing Director Defendants from liability for their bad faith conduct and breaches of fiduciary duty in connection with the India Transaction.

17. Through this action, Plaintiff seeks to hold the Authorizing Director Defendants accountable for their misconduct and the resulting damage caused to Global.

THE PARTIES

18. Plaintiff is a stockholder of Global and has been a stockholder of Global at all material times alleged in this Complaint.

19. Nominal defendant Global is a renewable energy company that owns and operates clean energy power plants in high-growth emerging markets. Global is incorporated in the State of Delaware with its corporate headquarters located at 7550 Wisconsin Avenue, 9th Floor, Bethesda, Maryland 20814. Global’s common stock trades on the NASDAQ under the ticker symbol “GLBL”.

20. Defendant Blackmore has served as a Global director since November 20, 2015. Blackmore serves as the Company's Chairman and as a member of the New Conflicts Committee. Blackmore served as a member of SunEdison's board of directors for nine years, resigning that position on the same day that SunEdison appointed him to the Global Board and the New Conflicts Committee.

21. Defendant Compton has served as a Global director since November 20, 2015. Compton serves on the New Conflicts Committee.

22. Defendant Dahya has served as a Global director since the Company's initial public offering.

23. Defendant Jenkins-Stark has served as a Global director since November 20, 2015. Jenkins-Stark serves on the New Conflicts Committee.

24. As noted above, the defendants listed in paragraphs 20 through 23 above are collectively referred to herein as the "Authorizing Director Defendants."

SUBSTANTIVE ALLEGATIONS

A. SunEdison Controls Global

25. Global has two classes of common stock – Class A common stock and Class B common stock. Each share of Global's Class A common stock entitles its holder to one vote on all matters presented to Global stockholders for a vote. Each

share of Global's Class B common stock entitles its holder to 100 votes on all matters presented to Global stockholders for a vote.

26. According to the Company's 10-Q filed with the SEC on November 13, 2015, SunEdison beneficially owns all of Global's outstanding Class B common stock and less than 2% of Global's outstanding Class A common stock. Thus, SunEdison controls approximately 98% of Global's combined voting power. Because holders of Global's Class A common stock and Class B common stock vote together as a single class on all matters presented to stockholders for their vote or approval, SunEdison controls the outcome of every Global stockholder vote.

27. SunEdison further controls Global by way of a Management Services Agreement ("MSA"), through which SunEdison provides the Company with operational, management, and administrative services. The MSA also allows SunEdison to appoint Global's executive officers and other key officers. The MSA requires Global to pay SunEdison a base management fee as follows: (i) 2.5% of Global LLC's cash available for distribution ("CAFD") in each of 2016, 2017, and 2018; and (ii) an amount equal to SunEdison's actual cost for providing services to Global under the MSA in 2019 and thereafter.

28. The Global Board currently consists of seven directors, three of whom – Ahmad Chatila (“Chatila”), Martin Truong (“Truong”), and Ilan Daskal (“Daskal”) – also serve as SunEdison senior executives. Chatila serves as SunEdison’s President and CEO, and is a member of the SunEdison board of directors; Truong serves as SunEdison’s Senior Vice President and General Counsel; and Daskal serves as SunEdison’s CFO.

29. Global concedes in its public filings that SunEdison is its “controlling shareholder.” For example, in its Form 10-Q filed with the SEC on November 13, 2015, Global identified SunEdison as “our controlling shareholder” and stated as follows:

We have significant relationships with, and in certain areas depend significantly on, SunEdison. In particular, we depend on SunEdison for all management and operational services and other support. Our growth strategy depends on our ability to identify and acquire additional renewable facilities from SunEdison (including Call Right Projects) and unaffiliated third parties. We interact with or depend on SunEdison for many third party acquisition opportunities, including through the joint purchase of certain companies, and for operations and maintenance support on various pending and completed transactions. As a result, our financial and operating performance and prospects may be affected by the performance, prospects, and priorities of SunEdison, and material adverse developments at SunEdison or changes in its strategic priorities may materially affect our business, financial condition and results of operations.

30. Global also concedes in its public filings that it is a “controlled company” within the meaning of the corporate governance standards of the NASDAQ Global Select Market. The Company further concedes that Global’s relationship with SunEdison is “a source of potential conflicts.” Because Global’s business model was designed to have Global purchasing energy projects owned and developed by SunEdison, Global’s Board established a Corporate Governance and Conflicts Committee (“Conflicts Committee”), made up of directors independent of SunEdison, to review and approve the related-party transactions between Global and SunEdison. No material transaction between SunEdison and Global could occur unless the Conflicts Committee approved it.

B. SunEdison’s Margin Loan Pushes It To The Brink Of Disaster

31. On January 29, 2015, a wholly owned subsidiary of SunEdison (the “SunEdison Borrowing Subsidiary”) entered into the Margin Loan with the lenders thereto (the “Lenders”), Deutsche Bank AG, as the administrative agent for the Lenders, and SunEdison, as guarantor. That day, the SunEdison Borrowing Subsidiary drew \$410 million in term loans under the Margin Loan.

32. The SunEdison Borrowing Subsidiary’s obligations under the Margin Loan were secured by a first priority lien on shares of Class B common stock in another publicly traded company controlled by SunEdison – TERP. The Margin

Loan required the SunEdison Borrowing Subsidiary to maintain a loan-to-value (“LTV”) ratio not to exceed 40% (based on the value of the TERP Class A common stock). If the requisite LTV ratio was not maintained, the SunEdison Borrowing Subsidiary needed to post additional cash collateral under the Margin Loan and/or elect to repay a portion of the term loans thereunder.

33. Thus, a marked decrease in the price of TERP’s Class A common stock would require SunEdison to quickly provide additional cash collateral, which is exactly what happened in the second half of 2015.

34. On July 20, 2015, SunEdison announced that it had entered into an agreement to merge with Vivint, a provider of residential solar systems (the “Proposed SunEdison-Vivint Merger”). SunEdison agreed to pay approximately \$2.2 billion for Vivint in cash, stock, and convertible debt. Simultaneously, SunEdison entered into an agreement with TERP pursuant to which TERP would acquire certain of Vivint’s rooftop solar assets from SunEdison for approximately \$920 million. SunEdison and TERP also agreed that TERP would acquire completed future residential projects from SunEdison over the next five years.

35. The market reacted poorly to the Proposed SunEdison-Vivint Merger. The stock prices of both SunEdison and TERP plummeted as a result. By August 20, 2015, one month after the announcement of the Proposed SunEdison-Vivint

Merger, SunEdison stock was down approximately 61% to roughly \$12 per share and TERP Class A common stock was down roughly 31% to just over \$24 per share.

36. These and further stock price declines made it harder for SunEdison to access credit markets,⁴ and forced SunEdison to post hundreds of millions of dollars in additional collateral on the Margin Loan. During the third quarter of 2015 and October 2015, SunEdison was required under the terms of the Margin Loan to deposit \$152 million and \$91 million, respectively, into an escrow account as additional collateral.

37. SunEdison's severe struggles, the problematic Margin Loan, and SunEdison's associated liquidity crisis were widely reported within, for example:

- a. An August 6, 2015 *Motley Fool* article entitled "SunEdison's Losses Become a Red Flag for Investors";
- b. An August 20, 2015 article by Jim Cramer on CNBC entitled "Kramer: Mea Culpa! Why I Was Wrong on SunEdison";
- c. An August 31, 2015 article in *The New York Times* entitled "Greenlight Capital down 14% For the Year," noting the hedge fund's huge losses on SunEdison and stating "in August, [SunEdison] stock took a sharp dive and is now trading at \$10.40 a share";

⁴ In the first twenty days of November 2016, TERP's Class A common stock lost more than half its value.

- d. An October 2, 2015 *ValueWalk* article entitled “SunEdison May Have Experienced Margin Call Says CreditSights”;
- e. An October 7, 2015 article in *The Wall Street Journal* entitled “SunEdison, Shares Fizzling, Promises a New Strategy,” which stated that “[SunEdison] has failed to turn a profit for the last 2½ years, but financial performance in recent quarters has gotten worse. This year’s second-quarter loss was \$263 million, or 89 cents a share.” The article ominously warned “SunEdison’s woes illustrate how fortunes can quickly change for a money-losing company when investors grow skeptical”;
- f. A November 10, 2015 *Bloomberg* article entitled “SunEdison Posts Wider Loss as CEO Slows Growth, Seeks Cash,” which discussed SunEdison’s continued financial woes, and stated that “...SunEdison’s loss of 92 cents a share was bigger than the 65-cent average of 13 analyst’s [sic] estimates compiled by Bloomberg.” The article concluded “SunEdison slumped 22 percent to \$5.77 at the close in New York, the lowest since May 2013”;
- g. A November 11, 2015 *Business Insider* article entitled “SunEdison is Getting Crushed,” which set forth the company’s various upcoming cash commitments and noted “[T]he stock price started falling this summer. The stock is down 75% year-to-date”;
- h. A November 16, 2015 *Bloomberg Markets* article entitled “SunEdison – Now with \$739 Million in Extra Recourse Debt?.” which noted that “CreditSights analysts Andy Devries and Greg Jones argued that the precipitous fall in one of its yieldcos’s share price means that SunEdison now faces a collateral call of a \$410 million loan secured by TerraForm stock”; and
- i. A November 17, 2015 *YahooFinance* article entitled “SunEdison is getting butchered,” which noted that “SunEdison has had to pay \$152 million towards a margin loan for one of its yieldcos, TerraForm.”

38. On November 17, 2015, SunEdison was forced to amend the Margin Loan a second time (the “Second Amendment”).⁵ The Second Amendment (i) reduced the market value trigger price of the TERP Class A common stock serving as collateral, and (ii) temporarily waived certain of SunEdison’s mandatory prepayment provisions. The Second Amendment, however, failed to alleviate the intense financial pressure imposed upon SunEdison by the Margin Loan. Even after making \$307 million in prepayments in connection with the Second Amendment, SunEdison remained liable for approximately \$100 million in outstanding payments due under the Margin Loan.

39. A default on the Margin Loan would make its entire balance immediately due and payable, and also trigger the cross-default of various other of SunEdison’s nearly \$8 billion in outstanding indebtedness.

C. SunEdison Replaces The Old Conflicts Committee

40. On November 18, 2015, the Old Conflicts Committee – which existed for the express purpose of reviewing related-party transactions between Global and its controller, SunEdison⁶ – reviewed with their legal and financial advisors a

⁵ The Margin Loan had previously been amended in September 2015. On November 23, 2015, SunEdison publicly announced the Second Amendment in a Form 8-K filed with the SEC.

⁶ According to Amendment No. 6 to the S-1 filed by Global on July 31, 2015,

variety of potential alternatives for making \$100 million available to SunEdison, such as stock buybacks, an unsecured loan (coupled with governance changes that would reduce SunEdison's control over Global), or Global's acquisition of assets from SunEdison. The Old Conflicts Committee concluded that it could not execute any of these transactions in the time period requested by SunEdison, partially because SunEdison refused to agree to governance changes as part of any deal.

41. At this point, SunEdison was desperate for the cash needed to stave off an imminent default on the Margin Loan. On November 19, 2015, SunEdison called a special meeting of the Global Board for the very next day – November 20, 2015 – to replace the entire Old Conflicts Committee with new directors who were more pliable to SunEdison's demands.⁷

“[a]ny material transaction between us [*i.e.*, Global] and our Sponsor [*i.e.*, SunEdison] ... will be subject to our related party transaction policy, which will require prior approval of such transactions by our Corporate Governance and Conflicts Committee.”

⁷ Also on November 19, 2015, SunEdison and its borrowing subsidiary were forced to enter into a third amendment of the Margin Loan Agreement pursuant to which, among other things, the mandatory prepayment provisions of the Margin Loan Agreement were revised to provide that if the stock price of the Class A common stock of TERP became equal to or less than the “market value trigger” set forth therein, SunEdison would be subject to mandatory prepayment provisions under the Margin Loan Agreement and/or would be required to post additional cash collateral by the time specified therein and in an aggregate amount sufficient to establish a loan to value percentage equal to or less than 0.00%.

42. At 1:45 p.m. on November 20, 2015, Truong – SunEdison’s Senior Vice President, General Counsel, and Secretary, and also a Global director – sent notice via email to Global’s corporate secretary that SunEdison had unilaterally appointed three new directors to the Global Board: Defendants Blackmore, Compton, and Jenkins-Stark.

43. At or around that time, Steven Tesoriere (“Tesoriere”) immediately resigned from the Global Board.

44. At 2:06 p.m. on November 20, 2015, Chatila – Global’s then-Board Chairman and SunEdison’s President and CEO – called the Global Board meeting to order.

45. First, Chatila resigned as the Global Board Chairman, and Blackmore was selected as Chatila’s replacement.

46. [REDACTED]

[REDACTED] To that end, he removed Lerdal and Dahya from the Conflicts Committee and created the New Conflicts Committee by replacing Lerdal and Dahya with Defendants Blackmore, Compton, and Jenkins-Stark, each of whom had been appointed to the Global Board mere minutes earlier.

47. The dramatic shake-up was not finished. That same day, Carlos Domenech Zornoza (“Domenech Zornoza”) was removed as President and CEO of Global and Wuebbels, SunEdison’s CFO, was appointed to serve as the Company’s new President and CEO. Domenech Zornoza was also removed as a member of the Global Board.

48. Also that same day, Alejandro Hernandez (“Hernandez”) was removed as Global’s Executive Vice President and CFO, and Rebecca Cranna (“Cranna”), formerly SunEdison’s Senior Vice President and CFO of Global Asset Management, was appointed to replace Hernandez as Global’s CFO.

49. By no later than 2:15 p.m., the Global Board meeting had ended.

50. Certain of Global’s then-serving directors were appropriately outraged by the shocking events that had transpired in a span of approximately ten minutes. Indeed, Gundin, Florian, and Lerdal resigned from the Global Board effective immediately.

51. That same day, Florian and Lerdal sent letters to newly appointed Chairman Defendant Blackmore explaining their abrupt resignations. Florian stated that:

I am resigning from the Board of Directors of both TerraForm Power and TerraForm Global effective immediately. As an independent director, I have been working hard and in good faith to protect the interests of the stockholders. *As a result of*

the Board's actions today, I do not believe I will be able to do so going forward and therefore resign. (Emphasis added)

52. Similarly, Lerdal's letter to Blackmore stated:

I am resigning from the Board of Directors of both [TerraForm Power and TerraForm Global] effectively immediately. The respective Conflicts Committees, as constituted before today, together with independent advisors, had been working hard and in good faith to protect the interests of the stockholders of the two companies. **As a result of today's actions of each of the Boards, I don't believe I will be able to do so going forward and therefore resign.** (Emphasis added)

53. Standing alone, the highly unusual circumstances surrounding the addition of Defendants Blackmore, Compton, and Jenkins-Stark to the Global Board would have put them on notice that SunEdison was potentially engaging in nefarious activity. The letters from Florian and Lerdal would have eliminated any doubt in the mind of the New Conflicts Committee members that they needed to proceed with utmost caution with respect to a potential deal with SunEdison. Instead, as detailed below, the New Conflicts Committee either knowingly facilitated SunEdison's unlawful plan or decided to bury their heads in the sand and consciously ignore the known and grave risks facing Global with respect to the India Transaction.

**D. The New Conflicts Committee Approves
The India Transaction Prepayment In Bad Faith**

54. Immediately after the November 20, 2015 Global Board meeting concluded, the New Conflicts Committee convened for a telephonic meeting to discuss Global's potential purchase of certain yet-to-be-completed solar projects in India (previously defined as the "India Projects") from SunEdison.

55. SunEdison CFO – and Global's then-President and CEO – Wuebbels began pressuring the New Conflicts Committee, threatening that the India Transaction needed to be funded that day; otherwise SunEdison could lose the India Projects, and Global would not have an opportunity to acquire them.

56. Wuebbels, Truong, and Sujay Parikh ("Parikh"), SunEdison's Vice President and Head of Global Structured & Project Finance Legal, provided the New Conflicts Committee with a summary of the draft PSA for the India Transaction that Parikh had prepared. The draft PSA contemplated that the \$231 million *prepayment* for the India Projects would be split into two parts: a first installment of \$150 million; and a second installment of \$81 million to be paid within three business days after execution of the PSA.

57. At this point, there were numerous circumstances that should have caused the New Conflicts Committee to question why they were really being pressured into approving the India Transaction. Among other things:

- a. The resignations of three – or four, if former director Tesoriere is included – members of the Global Board in

response to (i) the appointment of Blackmore, Compton, and Jenkins-Stark to the Board and New Conflicts Committee, and (ii) the replacement of the Old Conflicts Committee, and the noisy resignation letters from two of the resigning directors sent that same day invoking corporate governance failings;

- b. Within 30 minutes of being appointed to the Global Board, SunEdison was pressuring the New Conflicts Committee to approve a massive related-party transaction on the spot;
- c. SunEdison was in a well-publicized state of financial distress – a fact which was surely not lost on Blackmore, who had been a long-serving SunEdison director right up until the day he was asked to approve this transaction on behalf of Global;
- d. The only individuals presenting at the November 20 New Conflicts Committee meeting and providing advice to the New Conflicts Committee worked for SunEdison, which was Global’s counterparty in the India Transaction; and
- e. SunEdison was demanding that the New Conflicts Committee provide an immediate answer to the proposal, before the New Conflicts Committee could retain independent financial or legal advisors, or deliberate in any meaningful way.

58. Indeed, the minutes of the meeting indicate that [REDACTED]

[REDACTED] SunEdison was looking for a lifeline from Global and had disguised it as a related-party transaction. Specifically, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

59. Incredibly, the New Conflicts Committee decided to rely on Truong – SunEdison’s General Counsel – [REDACTED]

[REDACTED] Truong, together with Wuebbels and Parikh, told the New Conflicts Committee that [REDACTED]

[REDACTED] The New Conflicts Committee asked Truong [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

60. In order to paper the record with a “get” from the New Conflicts Committee, SunEdison agreed to give Global an expanded “lookback” period – from three business days to ten business days – to ostensibly allow the New Conflicts Committee and its yet-to-be-retained counsel to retroactively review the PSA and cancel the transaction if they deemed appropriate. The New Conflicts Committee also requested, and SunEdison agreed, that assuming the New Conflicts

Committee did not determine to cancel the transaction, the second pre-payment installment would be made within ten business days, as opposed to three days.

61. At the end of the 25-minute meeting, after hearing only from SunEdison executives and lacking the benefit of any independent legal or financial advisors, the New Conflicts Committee unanimously approved the India Transaction and member Blackmore signed the PSA on behalf of Global. Truong – the New Conflicts Committee’s primary advisor on the India Transaction – signed the contract on behalf of SunEdison. If Truong’s conflict was not already apparent by that time, his act in signing the PSA on behalf of SunEdison should have alerted the New Conflicts Committee to the conflict and that his advice to the Committee was an unacceptable substitute for independent legal counsel.

62. Minutes after the New Conflicts Committee approved the India Transaction, Wuebbels e-mailed SunEdison personnel, including Chatila and Truong, to inform them that the deal was approved. Shortly thereafter, Wuebbels caused \$150 million to be wired from Global’s bank account to SunEdison.

63. SunEdison used the funds from Global to further pay down the Margin Loan before the payment deadline the same day.⁸

⁸ According to SunEdison’s November 24, 2015 press release, “[f]ollowing the payment, approximately \$5 million remain[ed] outstanding under the Margin Loan

E. The New Conflicts Committee Fails To Seek To Terminate The India Transaction

64. The New Conflicts Committee should not have taken any comfort from the ten-day “lookback” period it had to terminate the India Transaction, because it was questionable whether SunEdison actually had the necessary liquidity to refund the initial \$150 million prepayment in the event of such a termination. But the record demonstrates that the New Conflicts Committee had no intention of terminating the agreement and was content to create a hollow paper record that it made all necessary post-signing deliberations – in form only.

65. The New Conflicts Committee convened for a telephonic meeting on November 23, 2015. At the meeting, the New Conflicts Committee interviewed the law firm of Proctor Heyman to serve as the Committee’s special Delaware counsel in connection with the India Transaction. The attorneys from Proctor Heyman informed the New Conflicts Committee [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

66. Despite learning that Proctor Heyman [REDACTED]

[REDACTED]

Agreement.”

[REDACTED]

[REDACTED]

67. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] However, because the New Conflicts Committee did not

retain a financial advisor or consultant in connection with the India Transaction,

the provision of a data room was of virtually no utility to the Committee's newly

appointed members.

68. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] calls into question what, if any,

understanding the Committee had on November 20 as to why the massive and

immediate prepayment to SunEdison was purportedly necessary.

69. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

70. [REDACTED]

[REDACTED]

[REDACTED] Despite failing to obtain that basic and much-needed information from SunEdison, the New Conflicts Committee nonetheless pushed forward with the India Transaction.

71. Shortly after the December 1, 2015 New Conflicts Committee meeting ended, the full Global Board convened for a meeting at which the Committee provided an update on the status of its review of the PSA.

72. Defendant Blackmore noted certain “improvements” to the PSA that the Committee had negotiated, including liquidated damages, interest on the purchase price, a termination fee, and restricted geography of the replacement projects. Blackmore then noted that the Committee had been unable to secure

SunEdison's commitment to post collateral in connection with the India Transaction. The failure to secure any collateral was unconscionable in light of SunEdison's liquidity crisis and Global's massive prepayment.

73. On the day of that Board meeting, SunEdison's stock price had fallen to \$3.49, a shocking 88% collapse since July 20, 2015. A SunEdison bankruptcy was starting to seem inevitable. If that eventuality came to fruition, Global would likely see its \$231 million prepayment disappear absent collateral from which to secure repayment.

74. Wuebbels then requested that the Global Board resolve to approve the amended and restated PSA, subject to the final approval by the Committee. The Board passed the resolution unanimously.

75. Later in the afternoon on December 1, 2015, the New Conflicts Committee approved the revised PSA on the basis that it was purportedly fair and reasonable to the Company.⁹

F. SunEdison's Financial Woes Continue

⁹

The New Conflicts Committee, however, shrugged off these serious issues in favor of approving the Transaction foisted upon the Company by SunEdison.

76. On February 29, 2016, SunEdison announced that it would delay filing its annual report on Form 10-K, which caused banks to withdraw financing related to the Proposed SunEdison-Vivint Merger.

77. Without adequate financing, the Proposed SunEdison-Vivint Merger soon collapsed. On March 7, 2016, Vivint sent SunEdison a letter (the “Termination Notice”) stating that, effective immediately, Vivint had terminated their merger agreement. The Termination Notice specifically invoked provisions in the merger agreement that allowed for its termination because (a) SunEdison did not cause the timely closing of the merger, and (b) SunEdison was unable to obtain sufficient financing.

78. On March 8, 2015, Vivint filed a lawsuit against SunEdison seeking money damages for SunEdison’s willful breach of their merger agreement. That case, captioned *Vivint Solar v. SunEdison, Inc.*, C.A. No. 12088-VCL, exposes the already financially impaired SunEdison to hundreds of millions – if not billions – of dollars in potential damages.

79. On March 16, 2015, SunEdison announced a further delay in filing its Form 10-K due to additional work required as a result of SunEdison management’s identification of material weaknesses in SunEdison’s internal controls over financial reporting.

80. On March 29, 2015, Global filed a Form 8-K with the SEC announcing that the Company anticipated that the filing of its Form 10-K for 2015 would be delayed. That Form 8-K publicly revealed a litany of problems associated with the still yet-to-be-completed India Projects. Specifically, the Form 8-K stated that:

There are currently material amounts of project costs and equity contributions that remain to be contributed by SunEdison to the India Projects. If SunEdison is unable to fund these amounts, some or all of the India Projects may not be completed or transferred to Global LLC on time or at all, and as a result, Global LLC would have to seek to recover the applicable portion of the prepaid purchase price amount from SunEdison.

In addition, transfer of the India Projects requires project lender consents, which SunEdison has not yet obtained and may be delayed or not obtained at all, in which case SunEdison Holdings Corporation has the right to substitute the applicable projects with other projects with equivalent or greater CAFD.

Several of the India Projects have experienced delays, and are at risk of missing the long-stop dates under their respective PPAs or not being completed at all. For two of the projects, if the long-stop dated of March 31, 2016 is missed by SunEdison, the offtaker is entitled to reprice the relevant Power Purchase Agreement at a lower price based on a new tariff order. Construction of one of the projects has ceased and SunEdison is not advancing the project and has not yet identified a project to replace it.

81. Further, in a Form 8-K filed with the SEC on March 31, 2016, SunEdison disclosed that on March 28, 2016, it received a subpoena from the U.S.

Department of Justice (the “DOJ”). The DOJ subpoena sought information and documentation relating to: (i) certain financing activities in connection with the Company’s acquisition of Vivint; (ii) the conduct of a former non-executive employee who allegedly committed wrongdoing in connection with the negotiations to terminate the Vivint buyout; (iii) certain investigations by SunEdison’s audit committee; (iv) intercompany transactions involving SunEdison and each of TERP and Global; and (v) the financing of SunEdison’s Uruguay projects in connection with project costs and equity contributions that remain to be contributed by SunEdison. SunEdison also disclosed that the DOJ may have additional requests, and that SunEdison had also received a nonpublic, informal inquiry from SEC covering similar topics.

82. According to a report from *The Wall Street Journal* dated April 4, 2016, the SEC investigation focuses on how SunEdison presented its cash balances to investors, a critical piece of financial information given SunEdison’s massive debt load.

83. Currently, SunEdison’s market capitalization is roughly \$140 million, down nearly 99.2% from its all-time high of \$17.5 billion in 2007, when interest in renewable energy was fueled by high oil prices.

84. SunEdison now stands on the precipice of bankruptcy. If – or more

likely, when – SunEdison files for bankruptcy, the India Projects will likely never be completed and dropped down to Global and SunEdison will have insufficient available funds to repay the \$231 million cash prepayment from Global.

G. Faced With Potential Liability for its Own Bad Faith Conduct, The New Conflicts Committee Causes Global To File Lawsuit Against SunEdison

85. On January 22, 2016, Plaintiff served the Section 220 Demand on the Company for the primary purpose of investigating the Board’s conduct in connection with the India Transaction. Over the ensuing weeks, Plaintiff endeavored to secure the production of documents in response to the Section 220 Demand. The Company finally produced documents on April 4, 2016.¹⁰

86. That same day, on April 4, 2016, the New Conflicts Committee caused the Company to sue SunEdison, Wuebbels, Chatila, Truong, and SunEdison Holdings Corporation in the Delaware Court of Chancery (previously defined herein as the “Global-SunEdison Lawsuit”). This action is captioned *TerraForm Global, Inc. v. SunEdison, Inc., et al.*, C.A. No. 12159-VCL.

¹⁰ In addition to revealing the significant misconduct alleged herein, the Section 220 document production also revealed [REDACTED]

87. The Global-SunEdison Lawsuit alleges, among other things, that SunEdison misappropriated \$231 million in cash from Global, and that SunEdison's executives falsely represented that the India Projects sold to Global for that amount were substantially completed. The Global-SunEdison Lawsuit also alleges that SunEdison misrepresented to Global that the \$231 million would be used to finish the India Projects and deliver them to Global on time, when in fact the India Projects were underfunded and behind schedule, and SunEdison instead diverted the funds to prop up its flagging liquidity position.

88. The Global-SunEdison Lawsuit, however, ignores entirely the wrongdoing of the Authorizing Director Defendants, instead casting all of the blame on SunEdison and the inside Global directors.

89. The Global-SunEdison Lawsuit is a transparent attempt to deflect blame from the Authorizing Director Defendants, who acted in bad faith by ignoring myriad glaring red flags surrounding the India Transaction and instead approving – within about 30 minutes of their appointment to the New Conflicts Committee and without meaningful deliberation or any independent legal or financial advice – the blatantly unfair India Transaction with Global's controller, SunEdison. Because the India Transaction was subject to the New Conflicts Committee's approval under Global's publicly touted related-party transaction

policy, the Committee had the unique ability to protect the Company by simply refusing to bless the hasty and unfair deal. Had the members of the New Conflicts Committee complied with their fiduciary duties by acting in good faith to protect the Company, Global would never have prepaid \$231 million in cash to its reeling controlling stockholder.

DERIVATIVE ALLEGATIONS

90. Plaintiff brings this action derivatively to redress injuries suffered by the Company as a direct result of breaches of fiduciary duties by the Authorizing Director Defendants.

91. Plaintiff currently owns Global stock and has owned Global stock continuously during the relevant period.

92. Plaintiff will adequately and fairly represent the interests of Global and its stockholders in enforcing and prosecuting their rights, and has retained counsel competent and experienced in stockholder derivative litigation.

DEMAND ON THE DEMAND BOARD¹¹ IS EXCUSED AS FUTILE

93. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

¹¹ The “Demand Board” consists of Defendants Blackmore, Compton, Dahya, and Jenkins-Stark and non-party directors Chatila, Truong, and Daskal.

94. Plaintiff has not made any demand on the Demand Board to institute this action against the Defendants. Such demand would be a futile and useless act because the India Transaction was not the product of a valid exercise of business judgment by the Global Board, including the Authorizing Director Defendants.

95. Despite the myriad and glaring red flags surrounding the India Transaction detailed above, the New Conflicts Committee approved the initial \$150 million prepayment to SunEdison within about 30 minutes of their appointment to the Committee and without meaningful deliberation or independent legal or financial advice.

96. Then, during the ten-day “lookback” period, the New Conflicts Committee failed to retain an independent financial advisor and chose to continue relying exclusively on conflicted management as its sole source of financial advice. The New Conflicts Committee did retain a legal advisor, but [REDACTED]

[REDACTED]

[REDACTED]

97. At the end of the “lookback” period, the New Conflicts Committee decided – and the full Global Board agreed – to prepay another \$81 million to the Company’s heavily distressed controlling stockholder.

98. The disturbing actions by the Authorizing Director Defendants (as well as the insider directors) were not valid exercises of business judgment and thus demand is excused as futile.¹²

99. Further, the Authorizing Director Defendants have demonstrated with the Global-SunEdison Lawsuit that they do not consider themselves accountable or deserving to be sued by the Company despite their bad faith conduct relating to the India Transaction.

100. Blackmore, Jenkins-Stark, Compton, Chatila, and Truong are incapable of impartially considering a demand because, among other things, they are defendants in related lawsuits. Chatila and Truong are defendants in the Global-SunEdison Lawsuit, which is based upon the India Transaction.¹³ Blackmore, Jenkins-Stark, Compton, Chatila, and Truong are defendants in the litigation brought by Appaloosa Investment Limited Partnership I to address a very similar board shake-up and the TERP transactions connected to the failed SunEdison-Vivint merger.

¹² Although Dahya was not a member of the New Conflicts Committee, he was a member of the Old Conflicts Committee and had a front row seat to the disturbing circumstances and abysmal process culminating in the India Transaction, yet he nevertheless approved the deal. Thus, Dahya is also culpable for the harm to the Company from the India Transaction.

¹³ Chatila, Daskal, and Truong are also interested in the India Transaction as senior executives of SunEdison.

101. Daskal cannot impartially consider a demand because as an executive officer of SunEdison, he owes his livelihood to the SunEdison board. In order to consider a demand here, he would have to consider taking a position in opposition to that of his employer, SunEdison, which contends that the India Transaction was appropriate for Global.

COUNT I

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE AUTHORIZING DIRECTOR DEFENDANTS

102. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

103. The Authorizing Director Defendants, as Global directors, owe the Company the fiduciary duties of due care, loyalty, and good faith.

104. The Authorizing Director Defendants either knowingly facilitated SunEdison's unlawful plan to address its liquidity crisis or decided to bury their heads in the sand and consciously ignore the known and grave risks facing Global with respect to the India Transaction. The Authorizing Director Defendants breached their fiduciary duties by approving the India Transaction on November 20, 2015, and by failing to terminate the Transaction within the 10-day lookback period.

105. As a consequence of the Authorizing Director Defendants' bad-faith conduct and breaches of their fiduciary duties, the Company has been harmed.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

- A. Finding that demand on the Demand Board is excused as futile;
- B. Finding the Authorizing Director Defendants liable for breaching their fiduciary duties;
- C. Awarding the Company compensatory damages, together with pre- and post-judgment interest;
- D. Awarding Plaintiff the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and

E. Awarding such other and further relief as is just and equitable.

Dated: April 12, 2016

GRANT & EISENHOFER P.A.

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