



## **SolMarket Presents:**

Key Issues in Power Purchase Agreements (PPAs)  
with  
Yuri Horwitz, Sol Systems &  
Rusty Brewer, Cooley LLP

# Agenda

Part 1: Introductions

Part 2: Sol Systems & SolMarket Overview

Part 3: Bankable PPAs

Part 4: Q&A

# Introductions

# Speakers



**Yuri Horwitz**  
CEO, Sol Systems  
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# **Sol Systems & Sol Market Overview**

# Sol Systems

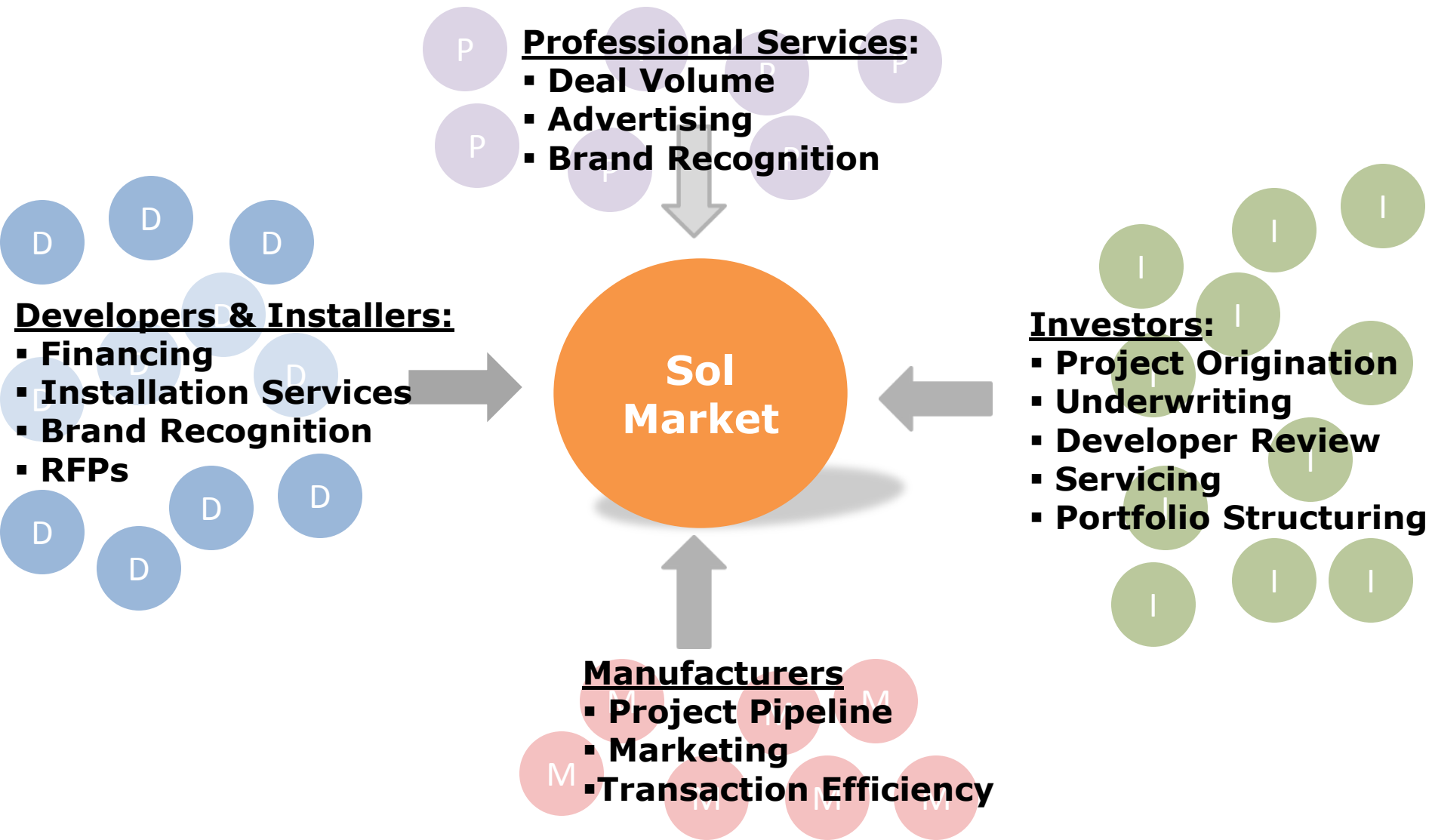
- Founded in 2008 with a mission to make solar energy more affordable and accessible
- Oldest and largest SREC aggregator in the U.S.
- 2,500+ customers in 13 states
- 250+ partnerships with solar installers and developers, 170 of which are exclusive
- Manage 30 MW+ of solar capacity
- Facilitated over \$100 million in project financing through SREC business

# SolMarket

## For the Solar industry to scale we must...

- **Build an Ecosystem:** Provide an ecosystem in which multiple new developers and players can thrive and innovate. Competition is healthy.
- **Reduce overall transaction costs:** Bring down costs of developing, investing and architecting portfolios. Uniformity in the origination and vetting process, standardization in documentation.
- **Create a standardized asset class:** We must provide a level of standardization across the industry to create secondary markets, reducing initial investment risk and creating an opportunity for more advanced investment vehicles.

# SolMarket Explained



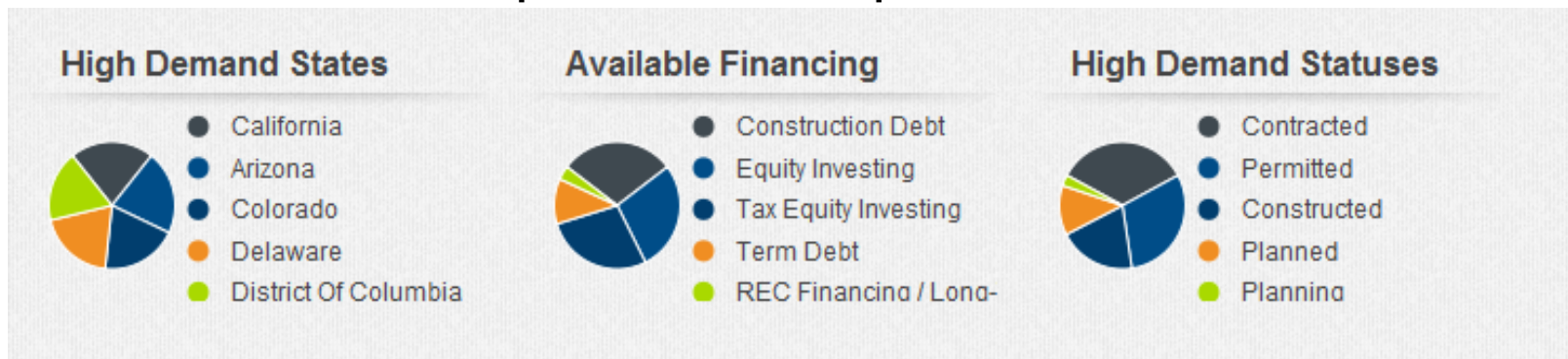


# SolMarket Vision

- Transaction driven community for solar
- Project origination platform for investors
- Financing conduit for developers
- Transaction resources for solar development
- Collaborative development knowledge center
- Group purchase opportunities
- Development services

# SolMarket Current Snapshot

- 400+ users
- 261 MW of project pipeline
- \$1.9 Billion in available investment dollars for qualified solar projects
- Current investor preferences posted on dashboard



# Contact Info

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# Key Issues in PPAs

Cooley  
LLP

# Purpose

- Address key issues in Power Purchase Agreements for solar facilities.
- Issues discussed from a developer's perspective.
- Issues often vary depending on the project. Please consult the Resources page if you would like to discuss any particular issues with your contract, project, or this presentation with a recommended attorney.

# Key Issues

- Production Guarantees
- Transmission / Distribution
- Commercial Operation Timing
- Tax Issues & Purchase Options
- Environmental Attributes
- Financing Accommodations

# Production Guarantees

- Market levels for production guarantees range from 75%-90% but should be no higher than the panel guarantee
- Carve-outs should be included for guaranteed output (such as Buyer's default and force majeure)
- Measurement periods over more than one year are preferable
  - Example: production guarantee can be for 75% over a two year measurement period or 50% annually with a 70% guarantee over every two year period
  - This structure allows the developer to not be punished for outlier production years

# Production Guarantees

- Remedies for failure to meet production guarantee should be limited to cover damages

- Example Language:

Deficiency Amount LDs =  $[(EO_n \times 0.70) - DO_n] \times (MP - CP)$

Where:

EO Expected output for the relevant year (in MWh);

DO Output actually delivered to the deliver point for the relevant year (in MWh);

MP Average retail price charged by the utility for the relevant year;

CD The contract price for the relevant year; and

n applicable year.

- Cover damages should be the sole remedy for failure to meet the guaranteed levels and any operational covenants



# Transmission / Distribution

- For large projects, downstream transmission risk must be managed for curtailment and imbalance penalties
- Distributed or net-metered projects have less risk, but other issues must be addressed
  - Ability to continue generating and sell energy (and RECs) elsewhere if the offtaker fails to take
  - Maintaining the availability of Buyer's system that will take the energy
  - This can be most effectively dealt with by imposing liquidated damages on the offtaker or having events of default for continued failure to take

# Commercial Operation Timing

- Any guaranteed completion dates should be reasonable given EPC timing and other relevant factors
- Examples:
  - The guaranteed completion date in the EPC is June 1, 2012 and the guaranteed start date in the PPA is May 15, 2012
  - Panel delivery is guaranteed for September 1, construction will take one month after delivery of panels, and the guaranteed start date is October 15

# Commercial Operation Timing

- Delay damages should be reasonable and capped at an agreed level to limit risk
  - Example: damages are \$400/MW/day
  - Liquidated damages should “buy” you 3 to 6 months of delay
  - The liquidated damages cap should be the amount of delay you are “buying”

# Commercial Operation Timing

- Interim construction milestones are not preferable, but if required, should be flexible to allow the developer to make up timing
  - Example Milestones: start of construction, receipt of all permits, receipt of all panels, commercial operation
  - Even if several construction milestones are included, developer should only pay liquidated damages with respect to commercial operation
- Tax incentive milestones (e.g., “start of construction” for ITC grant purposes at the end of 2011) should be taken into account

# Tax Issues & Purchase Options

- Termination during the ITC/depreciation recovery period should be sufficiently restrictive to limit risk of ITC clawback or depreciation ineligibility
- The PPA must not run afoul of certain ITC considerations around “ownership”
- Purchase options may be included for the offtaker post-ITC/depreciation recovery period
- Purchase options are limited by certain tax rules
  - Price must be a minimum of fair market value
  - Only a limited number of options may be offered during the term

# Environmental Attributes

- The PPA must clearly set forth whether Buyer or Seller will own the SRECs
- Future environmental attributes
  - Regulatory programs created after the execution date of the PPA may create replacement or new environmental attributes
  - Ownership and cost associated with such environmental attributes should be allocated in the draft
- The PPA should include a disclaimer stating that Seller does not guarantee the existence or value of SRECs after the execution date

# Financing Accommodations

- The PPA should be freely assignable to a financing party
- Financing parties should be provided notice of defaults and given the right to cure such defaults
- PPA offtakers should agree to enter into additional consents or other reasonable documentation requested by financing parties

# Disclaimer

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# Upcoming Webinars with Cooley

- **Part 3: Securing Site Control**
  - Wednesday, March 14, 2012 at 12:30 EDT
- **Part 4: Developing a Solar Lease**
  - Wednesday, March 28, 12:30 at 12:30 EDT

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