AKIN GUMP
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Credit Derivatives: Mastering Key Legal and Documentation Issues

Exercising Rights under Credit Derivatives

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Date: April 10, 2008

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Settlement

- Cash Settlement
- Physical Settlement
- What is Being Bought and Sold
- Comparison to Natural Gas at Henry Hub

Default and Close Out Provisions

- Credit Events
  - Bankruptcy
  - Failure to Pay
  - Obligation Acceleration
  - Obligation Default
  - Restructuring

Default and Closeout Provisions

- Credit Event Key Terms
  - Default Requirement
  - Payment Requirement
  - Repudiation/Moratorium
  - Restructuring

Default and Closeout Provisions

- Credit Event – Fundamentals of the Deal
  - Who Gives the Notice and When
  - Notice of Publicly Available Information
  - Notice of Physical Settlement

Proper and Timely Credit Event Notices

- 11:59 Greenwich Mean Time
  - Scheduled Termination Date
  - Grace Period Extension Date
  - Repudiation/Moratorium Evaluation Date

Proper and Timely Credit Event Notices

- Description in Reasonable Detail
- Credit Event need not be continuing
- 4:00 pm Calculation Agent BD cutoff

ISDA CDS Protocols

- Facilitate Determination of Final Price
- Facilitate Settlement
- Eight to Date
  - 2005: CKC, Delta & Northwest, Delphi
  - 2006: Calpine, Dana, Dura
  - 2007: Movie Gallery
  - 2008: Quebecor

ISDA CDS Protocols

- Voluntary Participation
- Adherence
- Effect of Non-Adherence or Ineligibility

Counterparty Credit Risk

- CDSs Hedge Reference Obligor Risk
- CDSs come with Counterparty Credit Risk
- Know and monitor your Counterparty
- Netting and Setoff
- Restrict Assignment by Counterparty

Recap

- Know what you are buying or selling
  - Form of settlement matters
  - What constitutes a Credit Event matters
  - Who declares a Credit Event matters
  - When a Credit Event may be declared matters
- Know, monitor and restrict transfers by your counterparty