

## LEGAL RISK IN ENERGY TRADING: DOCUMENTATION AND NEGOTIATION

This course covers documentation and negotiation of physical energy and OTC derivatives contracts. Workshop participants will gain a practical knowledge of the most common contracts used. We will explore the ISDA Master Agreement and standard agreements used for trading physical gas and power. Case studies will illustrate real-life situations based on market experience. We will review recent development in U.S. energy markets such as recent legislative initiatives, enforcement actions by the CFTC and the FERC. We will review key counterparty risk mitigation tools and explain and apply the concept of netting (payment and close-out).

### Topics to be covered

- ISDA Master Agreement (1992 and 2002 versions)
- Credit Support Agreements and Support Documentation
- Agreements for trading physical energy products: EEI, NAESB, and ISDA Annexes
- Bankruptcy Abuse Prevention & Consumer Protection Act of 2005 on energy trading and energy trading contracts
- Energy Policy Act of 2005 on energy trading

### Overview of documentation for energy trading

- The importance of documentation
- Legal and documentation risk for derivatives
- Physical contracts – EEI, NAESB, ISDA Gas and Power Annex
- OTC Derivatives – Overview of ISDA® Master Agreement
- Collateral and Credit Support
- The importance of knowing your counterparty
- Review of ISDA® Master Agreement Negotiation Survey (November 2006)

### ISDA® Master Agreement

- 1992 and 2002 ISDA® Master Schedule Review
- Importance of Single Master Agreement for financial trading
- Highlight of major changes from 1992 ISDA® to 2002 ISDA®
- Events of Default and Early Termination
- Terms of Termination Settlement Payment

## Credit Support Documentation: ISDA Credit Support Annex (CSA)

- Eligible Credit Support
- Valuation Agent
- Valuation Date
- Notification Time
- Thresholds for each party: Cross Default and Credit
- Minimum Transfer Amount – Rounding
- Conditions precedent to transferring credit support
- Eligibility to hold/use posted collateral
- Dispute resolution issues
- Letter of Credit provisions

## **Physical Contracts:**

### Electric Power Contracts

- ISDA® Power Annex vs. EEI Overview
- Transaction Terms
- Transmission and Scheduling Provisions
- Force Majeure
- Remedies for Default and Delivery/Receipt Failures
- Payment and Netting
- Credit and Collateral Terms

### Natural Gas Contracts

- ISDA® Gas Annex vs. NAESB Overview
- Physical gas transactions covered
- Performance Obligations
- Transportation, nominations, and imbalances
- Shipper and title
- Billing and payment
- Force Majeure

### Negotiation Strategies

- The process of negotiation
- Key clauses in negotiations
- Examples of additional clauses used
- Practical negotiation tips
- Case studies

### Calculating Current and Potential Future Exposure to a Counterparty

- Conceptual overview
- Mark to market
- Netting and collateral
- Calculation of collateral payments under various provisions
- Introduction to the concept of potential future exposure
- Exercise: Calculating exposure after netting and collateral.
- Exercise: Calculating PFE for a natural gas swap.

### Enforcement of third party credit support in bankruptcy proceedings

- Overview
- R: Letters of credit; Guarantees; Surety Bonds