

## FOR IMMEDIATE RELEASE

# Credit Market Leaders Discuss What's Next in Market Forces, Litigation, Regulation, Accounting & Tax

**New York, N.Y. - December 8, 2008:** The volatile credit default swaps (CDS) market is expected to prompt significant litigation as investors seek to recoup their losses, as well as attention from regulators who are likely to seek control over the market.

That is the forecast of attorneys at Crowell & Moring LLP which is hosting a free continuing legal education program on the CDS market on December 11, 2008, from 1:30-5:00 pm EST. The seminar, "Credit Default Swaps: Exploring the Controversy - Market Forces, Litigation, Regulation, Accounting & Tax," will take place at the Grand Hyatt Hotel, New York. A cocktail reception will follow.

Panelists will explain credit derivatives, discuss how the controversy arose over them, and where they are headed in the future. Members of the press and public are invited.

One partner at Crowell & Moring said that while the CDS market has been blamed for much of the current financial crisis, it may have been more of a scapegoat. "We need to look more closely at the product," said attorney William J. McSherry, Jr., part of the firm's white collar and securities litigation group. "CDS is a derivative product that to date has had no regulation or transparency. As we attempt to steer our way through the panic of the financial crisis, we must be careful that the regulations we put into place are the right ones, not merely placeholders. They have to buttress the strength of the industry, not regulation for its own sake."

Crowell & Moring partner Viva Hammer, a former associate tax legislative counsel at the U.S. Department of Treasury, said, "Everyone is wondering if there is a next Lehman Brothers that hasn't been identified yet. This is an opaque market. No one even knows who their counterparty's counterparties are."

"There are untested and novel tax issues running around the CDS market," Hammer added, "and there will be a variety of controversies unfolding after the planned clearinghouse is operational. On the regulation side, there will most certainly be legislation. Companies are concerned about disclosure obligation, requirements over registration, and transparency. They're also concerned about mechanisms for enforcement, such as mandatory arbitration and access to a forum different than a court."

Crowell & Moring is currently advising a number of global investment banks who are dealers in the CDS markets on the proposed formation of a CDS clearinghouse, which is to be created together with the IntercontinentalExchange, Inc.

Speakers and topics at this fully accredited event include:

### 2:05 - 3:00 pm: How Did We Get Here?

Panelists will discuss topics including the development of the market and the current environment; fair valuation issues in the current market environment; value hierarchy under FAS 157; and counterparty risk considerations for derivatives.

- (Keynote address) Robert Pickel, Executive Director and Chief Executive Officer of International Swaps and Derivatives Association (ISDA)
- Anthony Saunders, Ph.D., John M. Schiff Professor of Finance and Chairman, Department of Finance, Stern School of Business, New York University

- Justin Burchett, Ph.D., Economic Advisory Services, Grant Thornton LLP and former managing director at Structured Credit Holdings, responsible for asset origination of credit derivatives and structured finance securities

### **3:00 - 3:45 pm: Where Are We Now?**

Panelists will discuss topics including the limited scope of the current accounting and reporting rules; real examples of how CDS and TRS are used to create synthetic assets, liability and equity, as well as conversion of liability into equity; financial innovation; and the new Chapter 11.

- Douglas G. Baird, Harry A. Bigelow Distinguished Service Professor of Law; former Dean of Law School, University of Chicago
- Bala Dharan, Ph.D., CPA, Visiting Professor of Accounting, Harvard Law School and Vice President in the financial accounting and valuation practice, CRA International, Inc
- The Honorable Robert E. Grossman, Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of New York;
- Stephan Kuppenheimer, Founder and Chief Executive Officer, FSI Capital
- John Ray, Managing Director, Avidity Partners, LLC, and Chairman, Enron Creditors Recovery Corporation

### **4:00 - 5:00 pm: Where Are We Going?**

Panelists will address topics including the benefits of CDS; the costs and benefits of CDS policy proposals; CDS systematic risk characteristics; the use of accounting for derivatives; and what to anticipate in terms of financial statement and litigation issues in the future.

- Steven Halterman, National Office Director, PricewaterhouseCoopers and former Director of Derivatives and Financial Instruments, Metropolitan Life Insurance Company
- Chester S. Spatt, Ph.D., Kenneth B. and Pamela R. Dunn Professor of Finance and Director, Center for Financial Markets, Tepper School of Business, Carnegie Mellon University and former Chief Economist and Director, Office of Economic Analysis, U.S. Securities and Exchange Commission
- René M. Stulz, Ph.D., Everett D. Reese Chair of Banking and Monetary Economics, Ohio State University, former president of the American Finance Association, and author of "Risk Management and Derivatives"

In addition to McSherry and Hammer, Crowell & Moring panelists include: Clifton S. Elgarten, litigation partner; Thomas A. Hanusik, white collar and securities litigation partner; William M. O'Connor, financial services partner; William C. O'Neill, insurance/reinsurance partner; Nilam R. Sharma, insurance/reinsurance partner.

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