DC Bar/ELI Brownbag
A Primer for Lawyers: Carbon Finance and Trading

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- What is Carbon Trading?
- Its Basic Drivers
- How it Works
- The Lawyer's Role

What is Carbon Trading?

- Emissions trading in the greenhouse gas context
  - Trading of allowances
  - Trading of project-based offset credits
- Usually under a cap-and-trade scheme, but also voluntary
- Main precedent: SO_2 and NO_x trading under 1990 Clean Air Act Amendments

Major Drivers of Carbon Trading Today

- Kyoto Protocol (1997, 2005)
  - US signed it in 1998, but was never submitted to Senate for ratification
  - Entered into force February 16, 2005
  - Legally binding on 177 parties
  - Frequently misunderstood features:
    - Developing nations
    - First commitment period from 2008-2012
  - Flexible mechanisms (IET, CDM, JI)

Major Drivers of Carbon Trading Today (2)

- EU Emissions Trading Scheme (2003, 2005)
  - Design points:
    - No end date
    - Regular reviews
    - Learning-by-doing first phase (pre-Kyoto)
  - Phase I vs. Phase II vs. Phase III
  - Trades EUAs, CERs, ERUs

Voluntary Market Drivers

- Experience
- Pre-compliance “hedging”
- Public relations
- Corporate social responsibility
- Retail opportunities

The Mechanics

- Who trades?
- Registry system
- Primary markets vs. secondary markets
- Forward and spot trades
- Bilateral OTC trading vs. exchanges like the ECX, NordPool, CCX and the Green Exchange (NYMEX)

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The Lawyer's Role

- Project finance
- Structuring and Documentation
  - ERPAs, VERPAs
  - ISDAs, IETAs, EFETs – Master Agreements
  - Carbon "funds"
- Regulatory compliance
- Other aspects of "climate change law"

Hot Issues

- U.S. carbon market oversight
- RECs vs. VERs
- Linking, both internationally, and within the U.S.
- Integration of VERs into a U.S. compliance market

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