SIFMA®
Securities Industry and
Financial Markets Association

ISDA®
International Swaps and Derivatives Association, Inc.

June 26, 2009

The Honorable Joseph Morelle
Chairman
Task Force on Credit Default Swaps Regulation
National Conference of Insurance Legislators
601 Pennsylvania Ave. N.W.
Suite 900, South Building
Washington, D.C. 20004

Re: NCOIL Model Legislation

Dear Chairman Morelle:

The Securities Industry and Financial Markets Association ("SIFMA") and the International Swaps and Derivatives Association ("ISDA") appreciate the opportunity to comment further on NCOIL's proposed model legislation to regulate credit default swaps ("CDS") under provisions patterned on New York's current regulation of financial guaranty insurance, set forth in Article 69 of the New York Insurance Law.

While we understand the Task Force's desire for detailed comments on the existing language of the proposed model legislation, our belief that the premise of regulating CDS under a financial guaranty insurance framework is flawed makes it difficult for us to provide useful comments in that form. As stated in our comment letter dated May 22, we believe NCOIL's proposal would adversely affect market participants who use CDS for legitimate risk management purposes and, as a result, might cause financial institutions to either incur greater credit risk in their operations or move business offshore. While SIFMA and ISDA agree it is important to address the challenges facing the CDS market, we believe that, because of fundamental differences between the uses and mechanics of CDS and financial guaranty insurance contracts, the model legislation would have unintended consequences that would threaten to bring to a halt the CDS market or encourage regulatory arbitrage. For example, we believe that applying the capital regimes, concentration limits and other specific requirements borrowed from the New York financial guaranty insurance law would create regulatory ambiguity and inconsistency with respect to other state and federal regulatory regimes, such as banking regulation, already applicable to many CDS providers.

Furthermore, as expanded upon in our May 22 comment letter, we believe that the promulgation of the model legislation threatens to undermine the approach to the regulation of over-the-counter derivatives articulated in the recent proposals by the Obama Administration. We believe these regulatory proposals better reflect how CDS markets function and would support the important role that these markets play in the US and global economies. The Administration's proposals address the concerns raised by NCOIL while providing a framework for the continued effective use of CDS.

Thank you again for soliciting the comments of interested parties. We remain interested in discussing with the Task Force constructive ways to be engaged in the CDS regulatory debate. If you have any questions or would like additional information, please do not hesitate to contact us.

Respectfully submitted,

Cory N. Strupp, Managing Director
SIFMA

Katherine Darras, General Counsel, Americas
ISDA