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NCOIL APPROVES CDI LEGISLATION, ELIMINATES “NAKED” SWAPS

Washington, DC, November 23, 2009 — The National Conference of Insurance Legislators (NCOIL) acted boldly yesterday to fill a regulatory void created by a decade of federal deregulation. The organization unanimously adopted *Credit Default Insurance Model Legislation* that would prohibit so-called “naked” credit default swaps (CDS) and establish a regulatory framework for “covered swaps”—now to be overseen in the states as credit default insurance (CDI).

Presiding NCOIL President Sen. James Seward (NY) said:

Though CDS may not have been the sole cause of our nation’s economic crisis, few could deny the key role that they played. In a market lacking in transparency and adequate safeguards, CDS were permitted to grow to unimaginable levels. When the underlying assets began to lose value, the downward spiral was immediate as market participants could not cover their own obligations. Our model would bring fundamental change to the marketplace and would prevent a repeat of such an economic catastrophe.

The legislation—which was sponsored by Financial Services & Investment Products Committee Chair Assem. Joseph Morelle (NY) and modeled after New York State financial guaranty insurance law—would include a first-of-its-kind definition of CDI and would establish a state regulatory regime to oversee the CDI market. The model would contain requirements regarding company licensing; contingency, loss, and unearned premium reserves; policy forms and rates; and reinsurance, among other things. It would define authorized CDI and prohibit and penalize parties that engage in unauthorized CDI. In doing so, the model would ban so-called “naked” CDS.

Assem. Morelle—whose Committee had adopted the model on November 20—said:

NCOIL legislators felt strongly in March that we should not sit idly by and watch as the federal government attempted to develop a regulatory regime for derivatives. We understood from the beginning that there was a chance that Congress could develop a derivatives strategy that would preempt our efforts, but we knew that it would be in the consumers’ best interest if we proceeded to develop rules for the industry. We agreed that certain CDS were a form of

insurance and, thus, products to be regulated by the states. We set out to develop model legislation and we succeeded.

The model legislation was developed largely by an NCOIL Task Force on CDS Regulation, which was appointed at the NCOIL Spring Meeting in March. The Task Force convened six interim meeting conference calls—two additional full Committee calls were held following the Summer Meeting—and received input from various interested parties.

Organizations that participated in NCOIL policy discussions included the New York State Insurance Department, the International Swaps & Derivatives Association and the Securities Industry & Financial Markets Association, as well as the American Academy of Actuaries, the American Council of Life Insurers, the Association of Financial Guaranty Insurers, Marketcore, and the National Association of Mutual Insurance Companies.

The NCOIL Annual Meeting took place November 18 through 22 in New Orleans, Louisiana.

NCOIL is an organization of state legislators whose main area of public policy interest is insurance legislation and regulation. Most legislators active in NCOIL either chair or are members of the committees responsible for insurance legislation in their respective state houses across the country. More information is available at www.ncoil.org.

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