

**PREPARED STATEMENT OF RICHARD E. GROVE  
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BEFORE THE COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY  
UNITED STATES SENATE  
FEBRUARY 10, 2000**

Chairman Lugar and Members of the Committee. I am Rick Grove, CEO of ISDA, the International Swaps and Derivatives Association. Before joining ISDA, I was actively engaged for many years in sales and trading of OTC derivatives and other financial products. ISDA has had the privilege of appearing before, and working with, this Committee for more than a decade, and we are pleased to be here again today.

ISDA's more than 450 members include the world's leading dealers in off-exchange principal-to-principal derivatives transactions. These transactions are typically referred to as "swaps" and their status under the Commodity Exchange Act is the focal point of the Report of the President's Working Group.

Swaps are powerful tools that enable American businesses and other end users in each of the 50 States to manage the interest rate, currency, commodity, credit and other related risks that are inherent in their activities. In this way, businesses and other users of swaps are able to lower their cost of capital, manage their credit exposures, and increase their competitiveness both here and abroad by focusing on their core areas of expertise. The United States has been a leader in the development of swaps and American businesses were among the earliest to benefit from these risk management tools.

The dramatic growth in the volume and diversity of swaps is probably the best evidence of their importance to, and acceptance by, end users. And it is no coincidence that the U.S. economy and the volume of swaps both grew dramatically during the last decade. Let me add at this point that ISDA's membership includes many of the businesses, financial institutions, government entities and other "end users" that rely on swaps to manage their financial and commodity market risks with a degree of efficiency and effectiveness that would not otherwise be possible.

The Working Group Report is the product of a great deal of effort by each of the members of the Group and their colleagues. It reflects a solid understanding of, and sensitivity to, the factors that enable the U.S. financial markets to so efficiently allocate capital and so effectively sustain economic growth. The Report embodies an unprecedented consensus among four key financial regulators that legislation should be enacted to provide legal certainty for swaps.

As you know, "legal certainty" simply means that parties (both dealers and end users) must be certain that the provisions of the swaps agreements they enter into are enforceable. Any uncertainty with respect to the enforceability of swaps creates risks not only for the parties involved, but for the financial system as a whole. For example, when unilateral actions by the CFTC in 1998 suggested that the CFTC might treat some swaps as "futures" contracts, Congressional action was required to preserve legal certainty for swaps and thus ensure continued market stability. The underlying policy considerations were

not addressed by Congress in 1998, but they have now been carefully considered by the Working Group.

The Working Group concluded that financial swaps do not present public policy concerns of the sort that the CEA is intended to address and that legal certainty can therefore best be provided by an exclusion from the CEA. In one respect, ISDA believes that Congress should go further than the Working Group Report by excluding from the CEA swaps involving commodities with deep and liquid markets, such as various energy products. Indeed, the failure to do so may stifle the continued development of innovative energy risk management tools in the United States to the detriment of American businesses and other end users.

That having been said, ISDA agrees with the thrust of the Working Group's recommendations. There is a broad consensus on the merits of the issue and I cannot emphasize too strongly ISDA's belief that the time for Congressional action to provide legal certainty is now.

I would also stress that legal certainty should be provided in a manner that does not restrict financial innovation. As you know Mr. Chairman, U.S. financial institutions and U.S. technology companies are world leaders in their respective fields. From the broad perspective of our national interest, we should not compromise these leadership positions by creating or maintaining regulatory structures that discourage financial institutions from using, and benefiting from, the most efficient and innovative electronic technology available.

To summarize, ISDA hopes that the Working Group's Report will serve as the catalyst for the enactment of bipartisan legislation this year to provide legal certainty for swaps. As described more fully in our written statement, ISDA believes that this legislation should also provide appropriate regulatory relief for the futures exchanges.

Let me conclude with the promise that ISDA will remain committed to working with this Committee on a cooperative and constructive basis to ensure that the key objective of legal certainty for swaps is translated into legislative reality this year. Thank you, Mr. Chairman.