

**A Resolution on
Providing Certainty of the Enforceability of Netting Arrangements
for Over-the-Counter Derivatives Transactions**

**Passed by the Presidents' Committee
September 1996**

CONSIDERING that many OTC derivative contracts often are entered into under master agreements which include close-out netting provisions which generally provide that upon an event of default the maturity date of all contracts are accelerated, the obligations of both parties are offset, and the net value of the obligations between the two parties are due and payable; and

CONSIDERING that by reducing settlement risk as well as credit exposure, netting agreements contribute to the reduction of risk and enhancement of liquidity and efficiency in the OTC derivatives market by decreasing the number and value of daily settlement obligations and by permitting participants to execute more transactions before reaching their credit limits; and

CONSIDERING that it is well accepted that netting arrangements are effective in the event of default only if they are legally enforceable and reduce risk only if the underlying obligations are offset; and

CONSIDERING that while there is a general view that netting arrangements are enforceable in most jurisdictions, a significant level of uncertainty persists; and

CONSIDERING that in jurisdictions where netting agreements are not enforceable, uncertainty regarding the validity and enforceability of netting agreements creates disincentives from entering into transactions and thereby may adversely affect market liquidity, particularly in times of market stress; and

CONSIDERING that multilateral cross-border netting cannot be achieved until the enforceability of bilateral close-out netting is determined in all countries relevant to the particular agreement and until a coherent international scheme for liquidating entities is developed;

ACCORDINGLY, members of IOSCO should endeavor to assure that all jurisdictions provide certainty of the enforceability of netting arrangements for over-the-counter derivative transactions.