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BY FAX (Fax: + 886-2-2351-5643)

Mr. Yang Zhao 楊照先生
Chairman, Business Development Committee
Trust Association of Republic of China (Taiwan)
No 7, 4th floor, Roosevelt Road Sec 1, Taipei
Taiwan, R.O.C.

Dear Mr. Yang,

Proposed Master Agreements for Structured Securities (the "Agreement")

First and foremost, the International Swaps and Derivatives Association, Inc. ("ISDA") would like to convey its most sincere gratitude to the Trust Association of Republic of China ("TAROC") for inviting ISDA to comment on the Agreement. ISDA is very pleased to have the opportunity to offer comments on the draft Agreement.

ISDA understands that TAROC has been discussing the draft Agreement with the foreign bank group in the past several months. ISDA notes that TAROC disagrees with the foreign bank group on a number of issues and the conversation with the foreign bank group has reached an impasse. We think that it would be informative to all parties for ISDA to highlight some of the areas of significant difference between the JAC principles¹ and the proposed Agreement. We provide this information in the hope that it would spur further dialogue between TAROC and the foreign bank group to resolve areas of contention within the proposed Agreement.

While ISDA appreciates TAROC's concerns and agrees with TAROC that the Agreement should delineate responsibility clearly so as to prevent mis-selling from happening, ISDA would like to point out that the latest draft of the Agreement dated 18 July 2008 has allocated the responsibilities in a way which differs significantly from the principles widely accepted in other jurisdictions. It is in this regard that we would like to bring to your attention the two publications issued by the Joint Associations Committee ("JAC")² which address a wide of range of issues affecting distribution of retail products to individual

¹ These principles are documented under two papers published by JAC: "Retail Structured Products: Principles for Managing the Provider-Distributor Relationship" dated 10 July 2007 and "Structured Products: Principles for Managing Distributor - Individual Investor Relationship" dated 9 July 2008.

² The JAC comprises the following trade associations: European Securitisation Forum (ESF), International Capital Market Association (ICMA), ISDA, London Investment Banking Association (LIBA) and Securities Industry Financial Markets Association (SIFMA)

investors, particularly the division of responsibilities as between providers and distributors and the importance of contractual freedom to reflect the roles actually played by various entities.

The JAC principles are the result of thorough discussions among JAC's global, regional and local member firms and distribution associations and articulate the values that market participants share as they promote the continued development of a healthy market in retail structured products. Although these principles are non-binding, they are guiding principles for providers and distributors of structured securities globally and firms involved in the distribution of structured products to individual investors are encouraged to reflect these principles in their policies and procedures.

The JAC principles are also illuminating to the discussion we have here regarding the proposed Agreement. The JAC principles acknowledge that often only the distributors have direct interface with the retail investors while the providers do not. The JAC principles therefore particularly focus on how to address this issue given that all parties within this distribution "chain" have a common interest in ensuring that investors obtain satisfaction with regards to their legitimate expectations of the investment (in other words, how to prevent mis-selling from happening). The JAC principles are un-biased in that these principles do not favor product providers over distributors or vice versa. These principles underline the importance of allocating responsibilities reasonably, according to the different roles played by different parties in the product delivery and lifecycle chain.

1. Investor suitability is exclusively an issue for distributors

How to prevent mis-selling from happening has always been a difficult issue to tackle in the structured products field. Notwithstanding that the regulatory reaction to this issue may differ from one jurisdiction to another, a principle which has been acknowledged by regulators globally is that client suitability must be considered in the context of confidential information provided by the specific individual. Whether a particular individual is suitable for investing in a certain product will depend upon that person's investment knowledge, experiences, liquid net worth, degree of sophistication, risk tolerance and other relevant variables and there is no uniform answer for all retail customers in the market. Given that it is the distributors who interface with individual investors and whose clients the investors are, the responsibility for conducting suitability checks on individual investors should rest with the distributors rather than the product providers.

To assess investor suitability, a distributor must understand the product it distributes so that it can correctly and accurately explain the product to its customers. To this end, the distributor should have a product assessment process to determine which particular types of clients the product could properly be sold to ("appropriateness"). This process should take into account the nature of the structured product, the target investors, and an assessment as to whether the product is appropriate for its intended target market. It is not sufficient for a distributor to accept a product provider's assessment regarding appropriateness of structured products for individual investors. An obvious example of why this is so is that two different product providers may provide contradictory opinions of the suitability of essentially the same product. Only the distributor can evaluate the products on a consistent basis and judge suitability for its client base. Therefore, it is very important for a distributor to conduct an independent assessment of the products it is going to market to end investors. In this respect, we understand that the regulations in Taiwan are in line with the JAC principles in that the regulations require the distributors to conduct evaluation on reasonableness of the relevant structured products and assess the suitability of the investors before they may offer such products to the investors.

2. No party takes on the regulatory obligations of another

We understand that how to prevent mis-selling is currently the primary concern of the regulators in Taiwan and many clauses in the draft Agreement aim to satisfy regulatory requirements in this respect. However, the draft Agreement uses a very different means to achieve this purpose than the JAC Principles.

The Agreement addresses the regulators' concern by allocating the responsibilities regarding product assessment and client suitability to the product providers. This is reflected in a number of clauses of the Agreement. For example, the Agreement provides that the product provider should cause the manager of the relevant securities to issue a confirmation confirming client suitability. Another example is that the Agreement provides that the product provider shall be responsible for reviewing the distributor drafted product statement required under Taiwan regulations and confirming to the distributor that the product statement contains complete and accurate information on the product. The Agreement also requests the product provider, on a best-effort basis, to assist the distributor in fulfilling its regulatory duties under Taiwan law. We note that the JAC Principles take a fundamentally different approach on each of these issues: Distributors should take responsibility for the accuracy and completeness of the marketing materials they provide even if they incorporate materials provided by product providers; in these circumstances, distributors must be satisfied with and take responsibility for such materials and their compliance with Taiwan regulations.

The current draft of the Agreement essentially enables a distributor, the only party who knows and interacts with individual investors, to sell a product to the investors without the need to learn and understand the product. These proposed clauses will act as a disincentive for distributors to understand the products they distribute and make accurate disclosure to end investors. Accordingly, it is more likely for mis-selling/misrepresentations to occur when distributors are marketing structured products to the investors (bearing in mind that a lot of the sales process take the form of an oral conversation between a distributor's financial advisor and an individual investors). As a result, the consequence of the proposed clauses is likely to be detrimental to Taiwan retail customers in the long run and may give rise to more mis-selling cases. We believe that this is not the intention of the Taiwan regulations which are designed to improve the distributors' product assessment capability and procedures so as to prevent mis-selling from happening.

Further, shifting the onus of complying with the relevant Taiwan regulations to offshore product providers (who are not subject to those regulations) will significantly increase transactional cost for these product providers. The increased costs are likely to be passed on to the end investors in Taiwan. In this respect, ISDA would like to point out that although in the commercial world parties are always free to negotiate whatever arrangement they would like to have, the starting point of a negotiation has always been that each party does, in any case, retain its own regulatory obligations and no party takes on the regulatory obligations of another or the oversight of that other party's compliance with those obligations.

3. An agreement inconsistent with the market practice will not be well received

ISDA has drafted and issued a vast amount of globalized standard documentation (e.g., the ISDA Master Agreement and various ISDA Definitions and confirmation) used by the derivatives industry. What ISDA has learned from its own experiences is that an industry standard document has to reflect the principles widely accepted by market participants in order to be successful.

Because the draft Agreement does not have the consensus backing of the involved market participants, we are fearful of various scenarios under which utilization of the Agreement could be sporadic or result in substantial revisions by individual counterparties. For example, relatively small Taiwanese distributors

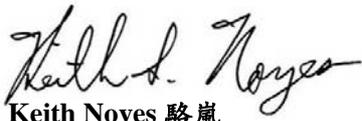
who insist on using this Agreement will likely lose business and the distributors who have weaker bargaining power and are eager to get business will face pressure to ignore this Agreement or negotiate a new one which gives more reasonable terms to the product providers. Conversely, the biggest of the Taiwanese distributors may have the market power to demand more favorable terms from the product provider. The end result could easily be many different versions of the Agreement in use between different counterparties or, even worse, some counterparties choosing not to utilize the Agreement at all.

ISDA supports the JAC Principles and is neutral observer in the Agreement negotiations. ISDA is, however, a promoter of standardization of documentation, best practices and the healthy development of derivatives markets. To this end, it is our great hope that TAROC and the foreign product providers will continue to negotiate and discuss the wording of the Agreement until a mutually acceptable consensus is reached as we believe that this is in the best interests of all stakeholders in these issues, including the regulators, the end clients, the distributors and the product providers.

ISDA would be pleased to discuss with TAROC any issues relating to the proposed Agreement and areas of commonality and diversion from the JAC Principles if that would be of use to TAROC. In the meantime, should you or your colleagues have any questions regarding the guiding principles of structured securities transactions or this discussion, please do not hesitate to contact Mr. Keith Noyes (knoyes@isda.org) in Hong Kong at telephone number +852 2200 5909 or Ms. Jing Gu (jgu@isda.org) at +852 2200 5908, or Mr. Way Yee Bay (wybay@isda.org) in Singapore at telephone number +65 6538 3879.

Yours sincerely,

For The International Swaps and Derivatives Association, Inc.



Keith Noyes 駱嵐
Regional Director
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CC: Mr Hou Li Yang, Head of Section 2, Division 4

第四組第二科侯立洋科長

Banking Bureau, the Financial Supervisory Commission, Executive Yuan, Republic of China

CC: Timothy Hailes, Chairman of JAC