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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, 4<sup>th</sup> floor, Roosevelt Road Sec 1, Taipei**  
**Taiwan, R.O.C.**

Dear Mr. Yang,

### **Proposed Master Agreements for Structured Securities**

On behalf of the International Swaps and Derivatives Association, Inc. (“ISDA”), we are writing to express our concern in the drafting of a Master Agreements for Structured Securities between financial institutions by the Trust Association of Republic of China (“TAROC”).

As you may be aware, ISDA is the leading global trade association in the privately negotiated or over-the-counter derivatives industry with over 800 members from more than 55 countries worldwide. China Trust, E. Sun and Taishin International are all Taiwanese bank members of ISDA. ISDA’s membership also includes many of the off shore banks who provide structured securities that fall within the scope of the TAROC drafted Master Agreement. ISDA’s primary purpose is to encourage and assist in the establishment of sound financial risk management systems and to ensure the prudent and efficient development of the derivative markets and more recently in the development of embedded derivatives products. Please find attached an overview of ISDA’s mission for your information and reference.

Together with four other associations, collectively known as the Joint Associations Committee<sup>1</sup> (“JAC”), ISDA jointly published a document called “Retail Structured Products: Principles for Managing the Provider-Distributor Relationship” on 10<sup>th</sup> July 2007. These principles are non-binding and they are guiding principles for providers and distributors of structured securities globally. Please find attached a copy of the document. ISDA is currently working with the same four associations in developing guiding principles for management of the distributor and investor relationship. ISDA and the JAC welcome input from associations and Asia-based members who are active in the area of retail structured products.

As TAROC is currently embarking on a project of developing a Master Agreement for Structured Securities governing the provider-distributor relationship, ISDA thought it would be an opportune time for the two associations to initiate discussions on these issues with a view to ensuring co-ordination with the work of the JAC. In particular, ISDA would like to bring to your attention that most regulators that

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<sup>1</sup> The European Securitisation Forum(ESF), International Capital Market Association (ICMA), ISDA, London Investment Banking Association (LIBA) and Securities Industry Financial Markets Association (SIFMA)

have already developed guidance in this area would like to see responsibilities strictly delineated to reflect legal and regulatory roles in the structured securities market to prevent misselling from happening. The provider is responsible to the distributor for providing accurate disclosure of its products; and the distributor is responsible to the end investors for understanding the products it distributes and making accurate disclosure to the end investor. These principles are almost universally accepted around the world and we hope that a sophisticated market such as Taiwan would adopt these principles as well as become part of the global group that is writing and refining these principles.

We would also suggest that since only the distributor knows the end investor, the onus is on the distributor to assess client suitability for each product. The provider, who is not privy to the identity of the end client, is unable to help and thus should not be held liable for any misrepresentation of the products made to the end investor. Many of our members believe the draft TAROC agreement to be too one sided in this regard and that end investors would benefit from the greater clarity with regard to roles and responsibilities that could be achieved through adoption of the 2007 JAC principles.

ISDA would be pleased to discuss with TAROC any issues relating to the development of the Master Agreements. We are also most willing to share JAC materials and information related to the guiding principles of structured securities transactions with your organization. ISDA hopes that the resulting document developed by TAROC will be harmonious to the global principles and provide legal certainty to both parties to a structured securities transaction.

ISDA looks forward to following up with TAROC either over the phone or through meeting the officials of TAROC in your Taipei office. Our members have also requested that we bring their concerns to the attention of the Banking Bureau during our next trip to Taiwan. 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](mailto:knoyes@isda.org)) in Hong Kong at telephone number +852 2801 7630 or Mr. Way Yee, Bay ([wyybay@isda.org](mailto:wyybay@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**  
**Asia Pacific**



**Way Yee, Bay 馮偉宜**  
**Policy Director**

Enc.

CC: Timothy Hailes, Chairman of JAC