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International Swaps
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360 Madison Avenue, 16th Floor
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U.S.A.

January 18, 2024

**Re: Enforceability upon a Customer's Insolvency or
Other Default of the Position Liquidation, Margin
Liquidation and Determination of Account
Provisions of a Customer Agreement Pursuant to
Which a US Futures Commission Merchant Clears
Futures and/or Cleared Swaps for the
Customer**

Gentlemen:

We have been requested by the International Swaps and Derivatives Association, Inc. ("ISDA") in its letter of November 5, 2021 ("ISDA Instruction Letter") to render this advice in connection with (i) a customer account agreement ("Base Account Agreement") pursuant to which a futures commission merchant (the "FCM") registered with the Commodity Futures Trading Commission ("CFTC") in the United States ("U.S.") clears futures and/or cleared swaps for a customer located in the Republic of China (Taiwan) ("Taiwan") ("Taiwan Customer") with respect to transactions done outside Taiwan and (ii) a Cleared Derivatives Addendum substantially in the forms attached to the ISDA Instruction Letter (each form, a "CDA"). All capitalized terms used herein and not otherwise expressly defined are used as defined in the summary annex attached to the ISDA Instruction Letter ("Summary Annex") and the ISDA Instruction Letter.

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Specifically, our advice has been requested regarding the enforceability of the provisions of a Base Account Agreement which provides that, upon an Event of Default with respect to the Taiwan Customer, the FCM would have the right to engage in Position Liquidation, Margin Liquidation and a Determination of Account to determine a single balance of account as between the FCM and the relevant Taiwan Customer as those terms and actions are defined in the Summary Annex and the memo prepared by Sullivan & Cromwell LLP for ISDA dated November 17, 2021 ("S&C Memo") (collectively, the "Liquidation & Determination Provisions").

This advice is rendered with respect to the laws of Taiwan, and we do not opine on any matters governed by the laws of any other jurisdiction. This advice is rendered subject to the assumptions set out herein and to the qualification that, (i) we have not reviewed the language in any specific Base Account Agreement and (ii) to our knowledge, the provisions of a futures customer agreement and the CDA have not yet been fully tested in Taiwan courts.

Subject to the assumptions below, this advice is rendered with respect to the following types of transactions:

- (i) futures contracts or options on futures contracts (collectively, "US Futures") cleared by the FCM for a customer through a derivatives clearing organization ("DCO") located outside Taiwan and registered as such with the CFTC under the United States Commodities Exchange Act ("CEA");
- (ii) swap contracts cleared by the FCM for a customer through a DCO located outside Taiwan ("Cleared Swaps"); and/or
- (iii) futures contracts or options on futures contracts made on or subject to the rules of a non-United States ("U.S.")/non-Taiwan board of trade and cleared by the FCM for a customer through a person that is a member of such board of trade ("Non-US/Non-Taiwan Futures")^{1/}

(the US Futures, Cleared Swaps and Non-U.S./Non-Taiwan Futures are collectively referred to herein as the "Covered Contracts").

The types of Taiwan Customers to which this advice applies are as described in **Appendix A** hereto.

We have assumed for purposes of this advice:

^{1/} However, such should not be read to mean that all Taiwan Customers would necessarily be legally permitted to enter into all such Covered Contracts.

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- (a) that, with respect to any Base Account Agreement and CDA, any schedule related thereto executed by the parties will not materially alter the terms of the relevant Liquidation and Determination Provisions and the CDA and neither the Liquidation and Determination Provisions nor the CDA will have been altered in any material aspect;
- (b) that, with respect to any Covered Contract, (i) the FCM will receive a written instruction from the Taiwan Customer containing such selections as are necessary to create a properly documented Covered Contract with the intended terms, and (ii) such written instruction will not materially affect the terms of the relevant Base Account Agreement or CDA;
- (c) that the laws of any jurisdiction other than Taiwan, the laws of which may be applicable in relation to the execution, delivery, performance or enforcement of the relevant Base Account Agreement and CDA and/or to the validity and enforceability thereof under such laws, will be complied with;
- (d) that the relevant Base Account Agreement and/or CDA will be valid, binding and enforceable under the laws of the State of New York;
- (e) that each of the FCM and Taiwan Customer will be duly incorporated and will be validly existing under the laws of the jurisdiction in which such party is organized, and that such party will have full corporate powers to enter into and perform its obligations under the relevant Base Account Agreement and CDA;
- (f) that all appropriate corporate actions required to be taken by each of the FCM and Taiwan Customer for the execution, delivery and performance thereof will be duly taken;
- (g) that the relevant Base Account Agreement and CDA will be executed by persons duly authorized to do so;
- (h) that each of the FCM and Taiwan Customer will enter into and perform their obligations and exercise their rights under such Base Account Agreement and CDA in good faith and on an arms-length basis;
- (i) that, notwithstanding assumption (s), below, any Determination of Account will be cash settled in a single currency, and that any liquidation process

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itself will not include physical delivery of any security or commodity^{2/};

- (j) that all factual matters reflected in the ISDA Instruction Letter, the Summary Annex, the S&C Memo, the relevant Base Account Agreement and CDA will be accurate and complete at the time of execution thereof;
- (k) that all Covered Contracts will be Covered Contracts legally permitted to be entered into by the FCM and the Taiwan Customer under applicable laws and regulations and under any internal guidelines or self regulatory rules applicable to the FCM or the Taiwan Customer, as applicable;
- (l) that none of the Covered Contracts will be traded on the Taiwan Futures Exchange or any other derivatives trading system in Taiwan; and
- (m) that all services of the FCM will be performed outside Taiwan and that the FCM will not engage in any activities related to the Base Account Agreement and CDA within Taiwan which would violate restrictions on engaging in onshore financial service activities of offshore financial institutions.

I. POSITION LIQUIDATION, MARGIN LIQUIDATION AND DETERMINATION OF ACCOUNT.

We have additionally assumed, for purposes of **Part I** of this advice:

- (n) that the FCM and the Taiwan Customer will enter into a customer agreement consisting of a Base Account Agreement and, where the Taiwan Customer trades only Cleared Swaps or both Cleared Swaps and futures, a CDA ("Covered Agreement") pursuant to which the FCM would establish on its books and records in the Taiwan Customer's name, and the Taiwan Customer authorizes the FCM to execute, clear and carry, US Futures, Cleared Swaps and/or Non-U.S./Non-Taiwan Futures on behalf of the Taiwan Customer in a US Futures Account, a Cleared Swaps Account and a Non-U.S./Non-Taiwan Futures Account, respectively (individually or collectively, the "Customer Account" or the

^{2/} Because the concept of netting is a calculation which results in a single monetary obligation to be paid, physical delivery of securities or commodities would not appear to be appropriate in the context of netting.

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"Account").

- (o) that each of the Base Account Agreement and the CDA will be governed by New York law;
- (p) that, on the basis of the terms and conditions of the relevant Base Account Agreement and CDA and other relevant factors, and acting in a manner consistent with the intentions stated in the Covered Agreement, over time, the Taiwan Customer will trade a number of Covered Contracts that are cleared and carried in or credited to the Customer Account of the Taiwan Customer;
- (q) that any securities and cash Collateral delivered to an FCM will be held in an account in the name of the FCM for the benefit of the relevant Taiwan Customer;
- (r) that (i) the relevant Base Account Agreement will contain a section identifying one or more events of default (whether or not described in the agreement as "events of default"), the effect of which is to give the FCM the right to exercise remedies in respect of the Covered Contracts and customer funds credited to the Customer Account and such defaults will include, inter alia, defaults predicated on (i) the Taiwan Customer's filing under applicable bankruptcy or similar insolvency laws, (ii) the filing of a petition for the commencement of involuntary proceedings in respect of the Taiwan Customer under applicable bankruptcy or similar insolvency laws, which filing results in a judgment of insolvency or bankruptcy or an order for relief and (iii) the appointment of an administrator, conservator, receiver or similar official in respect of the Taiwan Customer or all or substantially all of its assets (an "Event of Default") and (iii) the relevant CDA will contain provisions providing that a default, Event of Default or other similar condition or event under the terms of the Base Account Agreement gives the FCM the right to exercise remedies in respect of the Cleared Swaps and Cleared Swaps Customer Funds credited to the Customer Account;
- (s) that some of the Covered Contracts will provide for an exchange of cash by both parties and others provide for the physical delivery of shares, bonds or commodities in exchange for cash;
- (t) that after commencing trading and while the Taiwan Customer has open positions in Covered Contracts, the

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Taiwan Customer, which is organized in Taiwan, will become the subject of a formal bankruptcy, insolvency, liquidation, reorganization, administration or comparable proceeding (collectively, the "Insolvency") under the insolvency laws of Taiwan and an Event of Default has accordingly occurred under each of the Base Account Agreement and CDA; and

- (u) that subsequent to the commencement of the Insolvency, either the Taiwan Customer or an insolvency official will seek to challenge or otherwise prevent Position Liquidation, Margin Liquidation or operation of the Determination of Account (by, for example, assuming the profitable Covered Contracts for the Taiwan Customer and rejecting its unprofitable Covered Contracts).

Based on and subject to the above, we set out below and respond to the questions posed in **Part I** of the ISDA Instruction Letter.

RECOGNITION AND ENFORCEMENT OF FOREIGN LAW DOCUMENTS IN TAIWAN COURTS

Taiwan is not a member of the Hague Convention. Thus, the Taiwan conflict of laws rules are governed by the Law Governing the application of Laws to Civil Matters Involving Foreign Elements of Taiwan ("Foreign Elements Law"). Under the Foreign Elements Law, except as discussed in Part II., below, in relation to the creation of security interest and so long as there is no fraud or mental incompetence involved in the choice of law, a contractually agreed choice of law other than Taiwan law to govern a contract would be recognized and enforced in Taiwan as a matter of contract between the parties. Thus, if a claim with respect to a contract governed by foreign law comes under the jurisdiction of Taiwan courts, such foreign law would be applied. In this regard, the Foreign Elements Law does not specifically address the governing law applicable to a "trust" relationship. However, based on the description set out in Section 1.10 through 1.24 of the Summary Annex, the role of the FCM as an "agent-trustee" in the context of Customer Contracts would, in our view, be considered by a Taiwan court as a "commission agency" contractual relationship under the Taiwan Civil Code whereby the FCM would be acting on behalf of the customer in the FCM's own name and acting as principal vis-à-vis counterparties. Thus, the Taiwan court would apply the rule for determining the governing law of a contract and recognize a contractually agreed choice of law to govern such agent-trustee, technical trust and specific statutory trust relationship.

In this regard, under Taiwan law, the burden of proving

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foreign law is on the party that wishes to have foreign law applied. How a specific court would apply the concept would vary depending on the judge involved. However, if the governing law is the law of a recognized jurisdiction, such as New York, in our view, proof will not be unduly cumbersome.

Thus, in the context of an agreement governed by the laws of a jurisdiction other than Taiwan, enforceability thereof would be determined by reference to the law of that jurisdiction and our responses in Part I. herein in relation to enforceability should be read to refer to whether or not a Taiwan court would recognize and uphold the relevant non-Taiwan law governed contractual provision as discussed in the immediately preceding paragraph.

RECOGNITION OF FOREIGN JUDGMENTS

If a judgment of a court located in a country other than Taiwan (and other than the People's Republic of China) were obtained against a counterparty and enforcement of such judgment were sought in Taiwan, such judgment would be recognized and enforced by the courts of Taiwan without retrial or re-examination of the merits if Taiwan courts were satisfied that: (i) the court rendering the judgment had subject matter jurisdiction under the laws of Taiwan; (ii) the proceedings and the judgment were not contrary to public order or good morals of Taiwan; (iii) the judgment was a final judgment for which the period for appeal had expired or from which no appeal could be taken; (iv) if the counterparty did not appear in the proceedings in such court and a judgment by default was entered, process was duly and timely served on the counterparty in the jurisdiction of litigation or with the assistance of the judicial authorities of Taiwan and (v) judgments of the courts of Taiwan would be enforceable in the jurisdiction of the court rendering such judgment on a reciprocal basis.

The general view is that final New York or English court judgments would likely be enforceable in Taiwan.

We set out below our responses to the specific questions in **Part I** of the ISDA Instruction Letter.

1. *Would the parties' agreement on governing law and submission to jurisdiction set out in each of the Base Account Agreement and CDA be given effect by a court in your jurisdiction, and what would be the consequences if they were not?*

Under the Foreign Elements Law, except as discussed in Part II. below, regarding creation of security interest, so long as there is no fraud or mental incompetence involved in the choice of law, the choice of New York law to govern

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the Base Account Agreement and CDA and submission to jurisdiction of New York courts would be recognized and enforced in Taiwan. If any claim with respect to the Base Account Agreement and CDA comes under the jurisdiction of Taiwan courts, New York law is to be applied.

If the choice of law is not upheld, the Taiwan court would apply the Foreign Elements Law, and under such law, where the parties do not agree on the governing law, a contract is governed by the law of the place with the closest relationship.

2. *Would the Position Liquidation provisions of each of the Base Account Agreement and the CDA be enforceable under the laws of your jurisdiction and each of the Position Liquidation methods described in Section XI of the S&C Memo and paragraph 2.4 of the Summary Annex be recognized and upheld by a court in your jurisdiction? If a particular method would either not be upheld or may be challenged, please provide further detail and explain the reason for this.*

To the extent the issue is brought before a Taiwan court, assuming that New York law is the governing law of the issue and that under New York law such provisions and methods would be enforced, a Taiwan court would generally recognize and uphold the provisions contemplating Position Liquidation in a Base Account Agreement and CDA, and Position Liquidation method as described in Paragraph 2.4 of the Summary Annex and Section XI of the S&C Memo.

3. *Would the FCM's holding of the Covered Contracts as an "agent-trustee" be recognized by a court in your jurisdiction as creating a valid trust over the Covered Contracts or would the court otherwise recognize the FCM's legal title to, and the Taiwan Customer's beneficial interest in, the Covered Contracts?*

To the extent the issue is brought before a Taiwan court, assuming that New York law is the governing law of the issue and that under New York law, such holding of Covered contracts would be recognized as an "agent-trustee", a Taiwan court would generally recognize the FCM's holding of the Covered Contracts as an "agent-trustee" and the FCM's legal title to, and the Taiwan Customer's beneficial interest in, the Covered contracts.

(a) If so, would the court characterize Position Liquidation as the FCM's exercising its contractual rights as principal vis-à-vis the DCO under the relevant DCO rules (or vis-à-vis the Non-U.S./Non-Taiwan Futures Broker under the clearing agreement between the FCM and Non-U.S./Non-Taiwan Futures Broker) and not as the FCM's acting as the Taiwan Customer's agent or as the FCM's enforcing its security interest in the Covered Contracts?

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To the extent the issue is brought before a Taiwan court, assuming that New York law is the governing law of the issue and that under New York law, Position Liquidation would be recognized as the FCM's exercising its rights as principal, a Taiwan court would generally recognize Position Liquidation as the FCM's exercising of its contractual rights as principal vis-à-vis a DCO and not as the Taiwan Customer's agent or the FCM's enforcing its security interest in the Covered Contracts.

(b) Could the FCM's holding of the Taiwan Customer's Contracts be characterized as some alternative arrangement, such as a commission agency or as a collateral security arrangement? If so, how would the FCM's Position Liquidation be characterized under the laws of your jurisdiction?

As discussed above, assuming that New York law is the governing law of this issue and that under New York law, such holding is recognized as agent-trustee, a Taiwan court would generally recognize the characterization of FCM's holding of the Taiwan Customer's Covered Contracts as agent-trustee and in our view, a Taiwan court would not re-characterize agent-trustee relationship as commission agency or as collateral security arrangement.

4. *Would a court in your jurisdiction recognize the statutory trust with respect to the Segregated Funds or Separate Account Funds of each Account Class as creating a valid trust over such Segregated Funds or Separate Account Funds, and that under the terms of that trust, the FCM holds the legal title to, and the Taiwan Customer holds a beneficial interest in, the statutory trust as a whole (as opposed to maintaining an interest in any specific assets under the trust)? Could the statutory trust with respect to the Segregated Funds or Separate Account Funds of any Account Class be characterized as some alternative arrangement (e.g., as a collateral security arrangement)?*

To the extent the issue is brought before a Taiwan court, assuming that New York law is the governing law of the issue and that under New York law, a statutory trust with respect to the Segregated Funds or Separate Account Funds of each Account Class is recognized, a Taiwan court would generally recognize the statutory trust with respect to the Segregated Funds or Separate Account Funds of each Account Class whereby the FCM holds legal title to, and the Taiwan Customer holds a beneficial interest in, such statutory trust. In our view, a Taiwan court would not re-characterize such statutory trust as collateral security arrangement or other alternative arrangement.

(a) Would the Margin Liquidation provisions of each of the Base Account Agreement and CDA be enforceable under the laws of your jurisdiction and the

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FCM's Margin Liquidation in respect of each Account Class be recognized and upheld by a court in your jurisdiction? Could such Margin Liquidation be capable of exercise based on the FCM's exercise of its right under the applicable Customer Property Rules to withdraw and apply Segregated Funds or Separate Account Funds, as the case may be, for Permitted Uses (the FCM's "Permitted Uses Rights") rather than by the enforcement of its security interest in the Taiwan Customer's Collateral consisting of securities?

To the extent the issue is brought before a Taiwan court, assuming that New York law is the governing law of the issue and that under New York law, the Margin Liquidation provisions would be enforced and exercise of Margin Liquidation would be recognized as the FCM's exercise of Permitted Uses Rights, a Taiwan court would generally recognize and uphold provisions contemplating Margin Liquidation and the exercise of Margin Liquidation by an FCM based on the FCM's Permitted Uses Rights rather than re-characterize Margin Liquidation as enforcement of security interest.

(b) Would the Determination of Account provisions of each of the Base Account Agreement and CDA be enforceable under the laws of your jurisdiction and the FCM's Determination of Account in respect of (i) each Account Class and (ii) all Account Classes on a combined basis be recognized and upheld by a court in your jurisdiction and if so, how could each Determination of Account be characterized (e.g., contractual accounting, netting or set-off, enforcement of the security interest in cash Collateral or some combination of the foregoing)?

To the extent the issue is brought before a Taiwan court, assuming that New York law is the governing law of the issue and that under New York law, the Determination of Account provisions would be recognized and enforced, a Taiwan court would generally recognize and uphold contractual provisions contemplating Determination of Account whereby a single amount would be payable by the FCM or the Taiwan Customer to the other party in a Base Account Agreement and CDA. The FCM's exercise of Determination of Account in respect of (i) each Account Class and (ii) all Account Classes on a combined basis, would be recognized by a Taiwan court. In this regard, the concept of Determination of Account is different from statutory set-off.

To put this response in context, we note the following:

- (a) Under Taiwan law, where each of the two parties has a matured claim against the other, either party may set off one such claim against the other ("Set Off").
- (b) In our view, the exercise of Determination of Account

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does not constitute Set Off because at the time that of Determination of Account, two matured claims do not exist. Rather, only one matured claim, being the net amount due from one party to the other arising from the Determination of Account ("Netted Claim"), comes into being.

- (c) The two primary bodies of legislation^{3/} in Taiwan governing insolvency are the Taiwan Bankruptcy Law, which governs liquidation bankruptcies with respect to all corporate entities and individuals ("Bankruptcy"), and the corporate reorganization chapter of the Taiwan Company Law (which applies to so-called publicly issued companies) ("Reorganization").^{4/}
- (d) Neither Determination of Account nor Set Off would be stayed or barred by Bankruptcy or Reorganization. However, Set Off in a Reorganization context may be temporarily delayed as more particularly described below.

Specifically, upon filing of a Reorganization petition, the court will issue interim orders (valid for up to 180 days) that typically suspend the disposal of assets, exercise of creditor rights, performance of obligations, exercise of set-off and transfer of shares. Such orders are valid for ninety (90) days and may be extended once for not more than ninety (90) days. In such interim orders, a court would have the power to suspend Set Off (but not Determination of Account).

In practice, Taiwan courts have used such interim orders to suspend Set Off. However, even if a court were to suspend Set Off in an interim order, once the interim order expired, the right of Set Off would be reinstated.

Article 113 of the Taiwan Bankruptcy Law and Article 296 of the Taiwan Company Law provide that creditors of an insolvent party may set off the claims that arise prior to the insolvency without regard to the

^{3/} Also, to the extent that the insolvent Taiwan Customer is a bank, insurance company or government instrument, please see our discussion in Part II, below.

^{4/} Publicly issued companies are companies that may or may not be exchange listed, but which, because of their size, diversity of ownership, or other factors have elected to submit to regulation by the Financial Supervisory Commission.

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bankruptcy/reorganization procedures. Thus, in an insolvency proceeding, the FCM may (i) exercise Determination of Account without regard to the Bankruptcy/Reorganization procedures and without relying on the above cited articles (i.e. because Determination of Account is not Set Off) and (ii) subject to the interim order discussed above, then set off the related Netted Claim based on such articles.

5. *Are there any other circumstances in your jurisdiction, including any moratorium, stay, freeze or other consequence of the commencement of an insolvency proceeding, you can foresee that might affect the FCM's ability to exercise Position Liquidation, Margin Liquidation or a Determination of Account in respect of an Account Class or the overall Customer Account (comprising the three Account Classes)?*

In our view, there are no circumstances including any moratorium, stay, freeze or other consequences of the commencement of an insolvency proceeding of a Taiwan Customer which could affect the FCM's ability to exercise Position Liquidation, Margin Liquidation or a Determination of Account in respect of an Account Class or the overall Customer Account.

6. *Under the laws of your jurisdiction, are any rights or processes available to a creditor of a Taiwan Customer by which such creditor could make a claim against the Segregated Funds or Separate Account Funds held subject to the statutory trust (or otherwise in accordance with the Customer Property Rules) in respect of each Account Class or against the Covered Contracts (and any rights in respect thereof) held by the FCM as agent-trustee for the benefit of the Taiwan Customer and the FCM's other customers in such Account Class as opposed to only having recourse to the final cash balance or single net termination amount that constitutes the Determination of Account for such Account Class or the overall Customer Account (comprising the three Account Classes)?*

To the extent the issue is brought before a Taiwan court, assuming that New York law is the governing law of the issue and that under New York law, Segregated Funds or Separate Account Funds are held in the name of the relevant FCM, there are no Taiwan specific provisions which provide for rights or processes available to a creditor of a Taiwan Customer to make a claim against the Segregated Funds or Separate Account Funds held by such FCM as agent-trustee for the benefit of the Taiwan Customer and the FCM's other customers, as opposed to having recourse to the final cash balance or single net termination amount payable to the Taiwan Customer after Determination of Account.

7. *Assuming the parties have entered into the Covered Agreement, the Taiwan Customer is insolvent and the FCM has determined a lump-sum cash balance or*

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net termination amount in a currency other than the currency of the jurisdiction in which the insolvent customer is organized:

(a) Would a court in your jurisdiction enforce a claim for the cash balance or net termination amount in the currency in which it was determined?

Under Taiwan law, an obligation to make payment of the net termination amount in a currency other than New Taiwan Dollars ("NT Dollars") would be enforceable as a matter of contract between the parties. However, it should be noted that Taiwan law regulates conversion of NT Dollars into/from foreign currency and, under the current foreign exchange control regulations, each Taiwan resident corporate entity is permitted to convert foreign currencies into NT Dollars up to Fifty Million US Dollars (US\$50,000,000) per year, for "non-trade" purposes, without obtaining Central Bank of the Republic of China (Taiwan) ("CBC") approval ("Conversion Allowance") and to freely utilize any foreign currency holding they may have. In this regard, if such permitted conversions and foreign currency holdings are insufficient to meet the contractual obligations, there is no assurance that CBC approvals required for additional conversions would be available; nor is there any assurance that the FCM, having recovered sums due to it in NT Dollars, could obtain CBC approval to convert the recovered NT Dollars into foreign currency.

Non residents may, subject to certain requirements but without approval of the CBC, convert foreign currency into NT Dollars up to US\$100,000 (or its equivalent) for each transaction and vice versa.

The above conversion amount limits are subject to adjustment by the CBC from time to time based on general market, economical and financial conditions for the purpose of maintaining stability of the foreign exchange market.

(b) Can a claim for the cash balance or net termination amount be proved in insolvency proceedings in your jurisdiction without conversion into the local currency?

Although claims (e.g. the net termination amount) in bankruptcy or reorganization may be filed in a currency other than NT Dollars, the relevant insolvency administrator may (and, likely will) convert such claim amounts into NT Dollars at a rate to be determined by such insolvency administrator for purpose of calculating allocation of available assets, and there is no assurance that the insolvency administrator will have foreign

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currency available to settle claims.

8. *Are there any other local law considerations that you would recommend the FCM to consider in connection with the exercise of Position Liquidation, Margin Liquidation or a Determination of Account?*

Other than as discussed above, no.

II. CREATION, PERFECTION AND ENFORCEMENT OF FCM'S SECURITY INTEREST IN COVERED COLLATERAL

A. FACT PATTERNS REGARDING LOCATION OF THE COVERED CUSTOMER AND COVERED COLLATERAL

You have asked us, when responding to the below questions, to distinguish between the following three fact patterns:

- (1) The Location of the Taiwan Customer is in Taiwan and the Location of the Covered Collateral is outside Taiwan.
- (2) The Location of the Taiwan Customer is in your jurisdiction and the Location of the Covered Collateral is in Taiwan.
- (3) The Location of the Taiwan Customer is outside Taiwan and the Location of the Covered Collateral is in Taiwan^{5/}.

For the foregoing purposes:

- (a) the "Location" of the Taiwan Customer is in Taiwan if it resides, is incorporated or otherwise organized in Taiwan and/or if it has a branch or other place of business in Taiwan; and
- (b) the "Location" of Covered Collateral is the place where an asset of that type is located under the private international law rules of Taiwan,

and "Located" when used below in relation to a Taiwan Customer or any Covered Collateral should be construed accordingly.

B. ADDITIONAL ASSUMPTIONS

For purposes of the responses set out herein, (i) "Covered Collateral" means the Taiwan Customer's Collateral consisting of (1) the Customer Account, (2) the Taiwan Customer's Covered

^{5/} The scope of "Covered Customer" as defined in the ISDA Instruction Letter already excludes customers incorporated outside Taiwan and, thus, fact pattern (3) would not be relevant to this advice.

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Contracts, (3) cash credited to an account (as opposed to physical notes and coins) and (4) the types of securities that are identified below and (ii) that the Covered Collateral described in items (1) and (2) above, are Located or deemed Located outside Taiwan and Covered Collateral described in (3) and (4) above, are Located or deemed Located either (A) in Taiwan or (B) outside Taiwan.

In addition to the assumptions set forth in **Part I** above (as applicable), we have also assumed:

- (a) that Covered Collateral in the form of cash will be denominated in a freely convertible currency and is credited to an account located outside Taiwan under the "control" of the FCM for purposes of the New York Uniform Commercial Code (the "UCC"), as described in paragraph 1.40 of the Summary Annex;
- (b) that the Covered Collateral in the form of securities will be duly issued by the relevant issuer that has the authority to do so;
- (c) that the Taiwan Customer will be the legal owner of the Covered Collateral in the form of securities immediately prior to the provision of such Covered Collateral;
- (d) that the FCM will normally hold debt securities in the form of intermediated debt securities rather than directly in one of the three forms mentioned in assumption (e) (i), (ii) and (iii) below, and as described in Section 1.41 of the Summary Annex, the FCM, acting as the Taiwan Customer's "securities intermediary," will credit "security entitlements" to those securities to the Account, which will constitute a "securities account" (as each of those terms is defined under Article 8 of the UCC);
- (e) that the following types of securities considered to be Covered Collateral will be denominated in either the currency of Taiwan or any freely convertible currency and consist of (i) corporate debt securities whether or not the issuer is organized or located in Taiwan; (ii) debt securities issued by the government of Taiwan; and (iii) debt securities issued by the government of a member of the "G-10" group of countries, in one of the following forms:
 - (i) directly held bearer debt securities: by this we mean debt securities issued in certificated form, in bearer form (meaning that ownership is transferable by delivery of possession of the certificate) and, when held by the FCM as Collateral under the Covered Agreement,

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held directly in this form by the FCM (that is, not held by the FCM indirectly through an Intermediary (as defined below));

(ii) directly held registered debt securities: by this we mean debt securities issued in registered form and, when held by the FCM as Collateral under the Covered Agreement, held directly in this form by the FCM so that the FCM is shown as the relevant holder in the register for such securities (that is, not held by the FCM indirectly with an Intermediary);

(iii) directly held dematerialized debt securities: by this we mean debt securities issued in dematerialized form and, when held by the FCM as Collateral under the Covered Agreement, held directly in this form by the FCM so that the FCM is shown as the relevant holder in the electronic register for such securities (that is, not held by the FCM indirectly with an Intermediary);

(iv) intermediated debt securities: by this we mean a form of interest in debt securities recorded in fungible book-entry form in an account maintained by a financial intermediary (which could be a central securities depository ("CSD") or a custodian, nominee or other form of financial intermediary, in each case an "Intermediary") in the name of the FCM where such interest has been credited to the account of the FCM in connection with a deposit of Collateral by the Taiwan Customer with the FCM under the Covered Agreement.

- (f) that for purposes of questions 10 to 12 and 16 in **Part II. C.** below, if relevant, after the Taiwan Customer commences clearing under the Covered Agreement and while it has open positions in Covered Contracts, an Event of Default will have occurred with respect to the Taiwan Customer, and/or, if applicable, the FCM will have designated a date to begin closing out or otherwise liquidating the Covered Contracts as a result thereof (however, an insolvency proceeding will have not been instituted, which is addressed separately in assumption (g) and questions 13 to 15 below);
- (g) that for purposes of questions 13 to 15 in **Part II. C** below, if relevant, the Taiwan Customer will have become subject to insolvency proceedings in Taiwan; and
- (h) that the Base Account Agreement will contain a written authorization to liquidate securities Covered Collateral at the FCM's discretion.

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C. QUESTIONS TO BE ADDRESSED

GENERAL INTRODUCTION

Under the Taiwan Law Governing the Application of Laws to Civil Matters Involving Foreign Elements (i.e. the Taiwan conflict of laws rule), the creation, perfection and enforcement of rights over collateral (whether created by title transfer or creation of a security interest) would be governed by the laws of the jurisdiction where the Collateral is located ("Location of the Collateral"). In the case of cash, the Location of the Collateral is the jurisdiction where the account holding the cash is maintained; in the case of securities, the Location of the Collateral is (i) the jurisdiction of the law governing the issuance of such securities (e.g. where the issuer of the securities is incorporated) where the securities are not held in a CSD and (ii) the place of the governing law of the relevant securities depository agreement (or, absent an express governing law provision in such depository agreement, the place with the closest relationship to the creation of the security interest (which would likely to be the jurisdiction in which the CSD is located)) where the securities are held in a CSD; in the case of contract rights (e.g. rights of the Taiwan Customer with respect to the Customer Account or under the Covered Contracts), the location of the collateral would be the place of the law governing such contract rights. Thus, the laws of Taiwan regarding creation and perfection of a security interest will be applicable only if the Collateral is (i) cash held in the account maintained in Taiwan, (ii) securities issued by an entity incorporated in Taiwan or held in the Taiwan Depository & Clearing Corporation ("TDCC") (which currently is the only centralized depository in Taiwan) or (iii) contracts governed by Taiwan law^{6/}. The form of the securities and the Location of the Taiwan Customer would not affect the determination of the Location of the Collateral. The courts of Taiwan will determine whether a security interest is validly created and perfected by applying laws of the jurisdiction of the Location of the Collateral.

In this regard, we understand that that cash or securities Covered Collateral will be held in an account in the name of (and legal title would be transferred to) the FCM for the benefit of the relevant Taiwan Customer. To the extent

^{6/} Thus, under the Taiwan conflict of laws rules, where the Covered Collateral is the Customer Account or Covered Contracts, given that the governing law of the relevant contractual relationship would be laws other than Taiwan law, such Customer Account and/or Covered Contracts would be considered located "outside" Taiwan and, thus, Taiwan law would not be relevant.

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that the Covered Collateral is Located in Taiwan, the statutory laws of Taiwan do not provide for the legal effect of transfer of collateral for purposes of securing obligations of the transferor. However, there are several precedents that characterize transfer of ownership of assets for purposes of securing the obligation of the original owner of the assets as effecting a transfer of ownership in the assets transferred. Under such precedents, the transfer of Covered Collateral to the FCM for purposes of providing credit support for the Taiwan Customer's obligations arising from the Base Account Agreement would be characterized by the court as a transfer of legal title to the FCM, and the FCM has a contractual obligation to transfer the Covered Collateral or the equivalent back to the Taiwan Customer after the claims of the FCM are satisfied.

Where the Location of the Collateral is in Taiwan, after title to the collateral is validly transferred or a security interest is validly created over the collateral, the collateral taker (e.g. the relevant FCM) does not need to take further action to maintain its status as a collateral taker, and may enforce its rights by following the procedures prescribed by the laws of Taiwan. However, if an insolvency proceeding has commenced with respect to such Taiwan Customer in Taiwan, the FCM's exercise of its rights over the relevant Covered Collateral located in Taiwan might be affected depending on the type of insolvency proceeding the Taiwan Customer is subject to. We elaborate below.

As discussed in **Part I**, above, the two primary bodies of legislation in Taiwan governing insolvency of Taiwan entities are the Taiwan Bankruptcy Law and the corporate reorganization chapters of the Taiwan Company Law^{7/}:

(1) Bankruptcy:

A petition for Bankruptcy may be filed by the debtor

^{7/} We also note that Taiwan insolvency laws do not address the insolvency of securities investment trust funds. However, (i) upon the insolvency of a trustee, by law and regulation, the assets of the trust are insulated from the creditors of the trustee and, thus, exercise of rights of secured creditors of the securities investment trust fund against the relevant trust assets would not be subject to the Reorganization proceeding of the trustee (if applicable) and (ii) in the event of insolvency of the trust itself, the FSC would have broad discretionary powers over control of the insolvency process under the Rules Governing Administration of Securities Investment Trust Funds. Please also see footnote 28 below regarding regulatory restrictions on posting of collateral by Taiwan securities investment trust funds.

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or by any one or more creditors, and is filed with the court. The court must either accept or reject the petition within seven (7) days. After a debtor is adjudicated bankrupt, the court will approve a Bankruptcy administrator to manage the assets and obligations of the debtor. The creditors of the debtor would be subject to Bankruptcy proceedings to exercise their claims. However, under Article 108 of the Taiwan Bankruptcy Law, holders of the collateral provided by creation of security may remove the relevant Covered Collateral from the Bankruptcy proceedings and independently foreclose the relevant assets under the applicable non insolvency realization procedures discussed elsewhere in this opinion. Also, holders of collateral by way of transfer would not be prohibited from exercising the applicable liquidation procedure discussed elsewhere in this opinion.

(2) Reorganization:

Under the Taiwan Company Law, the enforcement of rights over collateral taken by way of creation of a security interest would be limited by Reorganization proceedings arising from the insolvency of the Taiwan Customer.

Specifically, upon filing a petition for Reorganization, the court is required to decide whether to approve Reorganization within one hundred twenty (120) days (which period can be extended twice, each for a period of thirty (30) days). Prior to approving Reorganization, the court has the power, at the request of the insolvent debtor, another interested party or at the court's discretion, to issue interim orders that typically bar disposal of assets, performance of obligations, exercise of creditor rights (including secured creditor rights), exercise of set-off and transfer of shares^{8/}. Such orders are valid for ninety (90) days and may be extended once, for a period of ninety (90) days. In the interim order referred to above, a court has broad power to impose limits on the exercise of parties' rights during the period of the interim order, which would include the enforcement of a security interest.

^{8/} In our experience, the decision to issue, or reject a petition for, an interim order would generally be made within one to two weeks.

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Prior to issuing an interim order, the court is required to consult the relevant interested party(ies) (i.e. a person whose legal rights would be impacted by such order)^{9/}.

Similarly, in deciding whether to approve Reorganization, the court is also required to consult the relevant interested party(ies) and obtain comments from the relevant authorities having jurisdiction over the insolvent debtor (e.g. in the case of a bank or insurance company, the Financial Supervisory Commission ("FSC")) and such authorities are required to provide comments within thirty (30) days.

If the court approves Reorganization, it will appoint Reorganization manager(s) who have powers similar to a receiver/trustee in other jurisdictions, and a Reorganization supervisor(s) who have certain oversight powers/responsibilities with respect to the activities of the manager. The Reorganization manager is mandated to manage the business of the debtor, register debts, formulate a reorganization plan, and obtain approval thereof. Creditors, including creditors holding security interests, are subject to the Reorganization proceedings conducted by the Reorganization manager.

More specifically, under Articles 287 and 296 of the Taiwan Company Law, if the Taiwan Customer becomes subject to a Reorganization proceeding, an FCM's exercise of rights (including enforcement of security interest) may be suspended by the interim order and will be subject to the Reorganization proceeding, if commenced. Thus, the FCM must follow the Reorganization procedures to exercise its rights. Where Reorganization applies and the Location of the Covered Collateral is in Taiwan, the FCM's enforcement of its right would be subject to the Reorganization proceeding and the FCM's would be required to exercise such rights in accordance with the Reorganization plan and to submit its claim as a secured creditor to the Reorganization manager(s) and to exercise its

^{9/} The Taiwan courts generally interpret the scope of interested parties to include creditors, shareholders and/or guarantors, etc. Also, there is no express regulatory requirement as to the notice period or response deadline with respect to consultation with interested parties in the context of deciding on issuance of an interim order.

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rights permitted by the Reorganization plan as approved by a one half (1/2) majority vote of each of the (i) preferred creditors, (ii) secured creditors and (iii) unsecured creditors and, if the Taiwan Customer has positive net worth, the shareholders. As regards Covered Collateral Located outside the Taiwan, Taiwan Company Law does not expressly provide that Reorganization proceeding applies only to assets located in Taiwan. Thus, where the Taiwan court has ordered the commencement of Reorganization proceeding, the Reorganization manager would have authority under the Taiwan Company Law to extend Reorganization proceedings to assets located outside Taiwan. To do so, the Reorganization manager would need to (i) obtain the necessary approval and budget from the creditors of the Taiwan Customer and (ii) take enforcement proceeding in the place where the assets are located and would be subject to legal requirements in the place in which the offshore assets are located.

To the extent that the Taiwan Customer is a Taiwan incorporated bank or a Taiwan branch of a foreign bank, a Taiwan insurance company, or agency or instrumentality of the Taiwan government, we note the following:

- (3) Measures taken by the authorities under the Taiwan Banking Law and Deposit Insurance Law vis-à-vis a distressed bank:

Under the Taiwan Banking Law and Deposit Insurance Law, the FSC and Central Deposit Insurance Corporation have comparatively broad powers to take over, and implement measures, regarding a distressed bank by, inter alia, suspending shareholder rights and the functions of shareholders' meetings and/or the board of directors, and/or by prohibiting the transfer, delivery or creation of other rights over the properties owned by the bank.^{10/} Specifically, under the Taiwan Banking Law, where the business or financial condition of a bank has significantly deteriorated, resulting in an inability of the bank to pay its debts or a likelihood of jeopardizing the interests of depositors of the bank, depending on the specific circumstances, the FSC is required to (i) take over the bank (i.e. place the bank under receivership) for a period of up to two hundred seventy (270) days (which period is permitted to be

^{10/} Such powers are described in Article 62-1 of the Taiwan Banking Law.

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extended once for an additional period of one hundred eighty (180) days¹¹ /, (ii) suspend the bank's business and order winding-up of the bank (i.e., place the bank under a winding-up proceeding)¹² /, or (iii) take other necessary measures¹³ /. Where the FSC exercises the power to take over a bank, the Taiwan Banking Law specifically provides that the Taiwan Bankruptcy Law and the corporate reorganization provisions under the Taiwan Company Law do not apply and, thus, during the takeover, corporate reorganization or bankruptcy proceeding

¹¹/ To the extent that a bank's capital is categorized as severely inadequate, the FSC is required to take over the bank (i) within ninety (90) days after such categorization or (ii) where the bank fails to comply with the FSC's order to complete capital restoration of merger within a prescribed deadline, within ninety (90) days after such deadlines.

¹²/ Under the Taiwan Banking Law, where a bank is ordered to enter into winding-up proceeding, a debt clearance administrator would be appointed to, inter alia, pay outstanding obligations and collect payments and such winding-up would be considered as liquidation of the bank. In this regard, Article 62-7 of the Taiwan Banking Law provides that (i) creditors of the bank would be subject to the winding-up proceeding to exercise their claims, (ii) all bankruptcy, corporate reorganization or enforcement proceeding would be suspended, (iii) the administrator is permitted to terminate or rescind a contract which was entered into by the relevant bank prior to the winding-up but has not been performed in whole or in part, and the relevant counterparty would be permitted to claim damages arising from such termination/rescission through the debt clearance proceeding and (iv) secured creditors would be permitted to independently foreclose on the relevant collateral under applicable non-insolvency realization procedures and recover the amount that remains unpaid after the enforcement of the security interest in accordance with the debt clearance proceeding.

¹³/ Separately, the FSC has published the "Key Points for Handling of Business Crisis of Financial Institutions" which, inter alia, provide that the FSC has the power to establish a task force to address the financial condition of a bank which has suffered abnormal withdrawals from depositors, significant funding losses or severely insufficient liquidity, presenting a likelihood of jeopardizing such bank's ability to repay debt. The crisis management task force would, in collaboration with the FSC and the CBC to either (i) provide funding to facilitate the bank's maintenance of business operation or (ii) in accordance with the Banking Law, exercise the FSC's power to take over the bank, suspend the bank's business and order debt clearance, etc. There is no express regulatory guidance as to the scope of "other necessary measures" as provided under the Taiwan Banking Law. To date, we are not aware of any case where the FSC used other necessary measures to prevent a secured creditor from exercising its secured creditor rights.

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would not apply.

In the context of a takeover, under Article 62-3 of the Taiwan Banking Law, the bank is required, inter alia, to pay expenses and obligations necessary to maintain its business operations. The "necessary expenses and obligations"^{14/} are defined under the "Regulations Governing Receivership of Banking Institutions" to include, inter alia, (i) payment of expenses and obligations necessary to maintain the bank's normal business operations and (ii) performance of non-deposit obligations fully secured by pledges, mortgages or liens. There is no express provision permitting a receiver to suspend performance of the distressed bank's obligations under a Covered Contract or restricting an FCM's right to terminate the Covered Contracts upon occurrence of an Event of Default, exercise Position Liquidation and Margin Liquidation and calculate the termination amount according to the Determination of Account provisions.

As of the date of this opinion, there is no direct precedent as to whether continuous performance of obligations owed to an FCM would be considered necessary for maintaining a bank's normal business operations and, thus, required to be paid.

The stated threshold for initiating a Reorganization under the Taiwan Company Law (i.e. financial difficulty, suspension of business or possibility of cessation of business of a public company and there is a possibility of rehabilitation) is different from that stated in the Banking Law and, thus, there is a theoretical risk that a publicly issued bank or its creditors, shareholders or employees would seek to file for Reorganization prior to a regulator ordered takeover or debt clearance with a view that the threshold under the Taiwan Company Law has been triggered. In this regard, we note that (i) prior to adjudicating Reorganization, the court is required to consult FSC for comment, (ii) to date, we are not aware of any case where a distressed Taiwan bank, its creditors, shareholders or employees have sought to cause the bank to enter into Reorganization proceeding and all Taiwan banks previously encountering deteriorated

^{14/} The detailed scope of such necessary expenses is described in Article 13, Paragraph 1, Item 4 of the "Regulations Governing Receivership of Banking Institutions".

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financial condition were taken over by the Taiwan authorities and (iii) in practice it is likely that an event triggering eligibility for Reorganization would also constitute an event permitting/requiring FSC takeover. Thus, in our view, the likelihood that a Taiwan bank, its creditors, shareholders or employees would or could commence Reorganization proceeding prior to FSC's exercise of takeover power is quite low.

(4) Measures taken by the authorities under the Insurance law vis-à-vis a distressed insurance company:

Under the Taiwan Insurance Law:

(i) in the event that the capital adequacy ratio of an insurance company is categorized as severely inadequate and the insurance company fails to complete a capital increase, improvement of business or financial condition, or a merger, in each case, within the deadline prescribed by the FSC, depending on the specific circumstances, the FSC is required to (A) take over the insurance company (i.e. place the insurance company under receivership), (B) suspend the insurance company's business and order winding-up of the insurance company (i.e., place the insurance company under a winding-up proceeding)^{15/} or (C) order dissolution of the insurance company^{16/}; and

(ii) in the event that the financial or business

^{15/} Where an insurance company is ordered to enter into debt clearance proceedings, all bankruptcy, corporate reorganization or enforcement proceeding would be suspended and a debt clearance administrator would be appointed to, inter alia, pay outstanding obligations and collect payments. In this regard, Article 149-10 of the Taiwan Insurance Law provides that (i) creditors of the insurance company would be subject to the debt clearance proceeding to exercise their claims and (ii) secured creditors would be permitted to independently foreclose on the relevant collateral under the applicable non-insolvency realization procedures and recover the amount that remains unpaid after the enforcement of the security interest in accordance with the debt clearance proceeding.

^{16/} Under Article 149-4 of the Insurance Law, where the FSC has ordered dissolution of the insurance company, provisions related to liquidation under the Taiwan Company Law would apply and the insurance company would be required, inter alia, to pay outstanding obligations and collect payments.

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condition of an insurance company has significantly deteriorated (other than as described in (i), above), resulting in an inability of the insurance company to pay its debts or to perform its contractual obligations or where there is a likelihood that the rights of insurance customers would be jeopardized, the FSC is required to first order such insurance company to submit an improvement plan to the FSC for approval and, if such deterioration continues or there appears to be no improvement after FSC's assistance, then to (A) take over the insurance company, (B) place the insurance company under conservatorship¹⁷ /, (C) suspend the insurance company's business and order winding-up of the insurance company or (D) order dissolution of the insurance company¹⁸/.

Where the distressed insurance company is taken over, the Taiwan Insurance Law provides that shareholder rights and the functions of shareholders' meetings and/or the board of directors, as well as other bankruptcy, reorganization (e.g. the corporate reorganization provisions under the Taiwan Company Law) or enforcement proceeding, would be suspended. There is no express provision restricting an FCM's right to terminate the Covered Contracts upon occurrence of an Event of Default, exercise Position Liquidation and Margin Liquidation and calculate the termination amount according to the Determination of Account provisions.

However, the Taiwan Insurance Law also provides that, subject to obtaining approval from the FSC, the receiver has the power to apply for Reorganization of the relevant insurance company and the court has

¹⁷/ Where the insurance company is placed under conservatorship, a conservator would be appointed, *inter alia*, to monitor the insurance company's improvement of financial condition and audit the insurance company's books and records. Also, under Article 149 of the Taiwan Insurance law, the insurance company is required to obtain approval from the conservator to (i) make payments or dispose of property in excess of a limit prescribed by the FSC, (ii) enter into any contract or undertake material obligations and/or (iii) engage in any other activities which would significantly impact the financial condition of the insurance company. In such a scenario, the conservator would not take over management of the insurance company.

¹⁸/ In conjunction with the takeover, debt clearance, conservatorship or dissolution proceeding, the FSC also has the power to prohibit the transfer, delivery or creation of other rights over the properties owned by the insurance company.

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the power to approve the petition within thirty (30) days based on comments provided by the FSC, in which case the rights of creditors would be impacted by such reorganization proceeding and the above discussion regarding reorganization would apply.

(5) Government entities:

To the extent the debtor is an agency or instrumentality of the government (which would not include a state owned corporation), Taiwan Bankruptcy Law, Company Law, Banking Law or Insurance Law would not apply to such government agency or instrumentality and, thus, the advice given herein would not apply.

We respond to your specific issues as follows.

Creation and perfection of the security interest

1. *Under the laws of your jurisdiction, what law governs the contractual aspects of the security interest in the various forms of Covered Collateral?*

Under Taiwan conflict of laws rules, the contractually agreed governing law of a collateral document governs the contractual aspects of provision of collateral (whether by title transfer or creation of a security interest). However, the provision of collateral (whether by title transfer or creation of a security interest) is governed by laws of the jurisdiction of the Location of the collateral. Thus, the effect of the stated governing law is confined to general contractual provisions such as defining Events of Default, and in addition to determining that the contract is valid under the governing law of a security document, the courts of Taiwan will also determine whether the creation of security interest or title transfer is valid by applying laws of the jurisdiction of the Location of the Collateral.

Thus, if and only if the "governing law of the collateral document" is the law of the jurisdiction of the Location of the Collateral, would the courts of Taiwan recognize the validity of such security interest or title transfer if under such law, the security interest is validly created or title is validly transferred^{19/}.

^{19/} For example, if a Taiwan Customer posted Singapore government bonds as collateral (held through a Singapore domiciled custodian) or had positions on a Singapore exchange under a futures commission merchant clearing relationship, the Taiwan courts would apply the laws of Singapore in relation to determining the validity of the security

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2. *Under the laws of your jurisdiction, what law governs the proprietary aspects of the security interest in the different types of Covered Collateral (that is, the formalities required to protect the security interest against competing claims) granted by the Taiwan Customer (for example, the law of the jurisdiction of incorporation or organization of the Taiwan Customer, the jurisdiction where the Covered Collateral is Located or the jurisdiction of location of the FCM as the Taiwan Customer's Intermediary, in relation to Covered Collateral in the form of indirectly held securities)? What factors would be relevant to this question? If the Location (or deemed Location) of the Covered Collateral is the determining factor, please briefly describe the principles governing such determination under the law of your jurisdiction with respect to the different types of Covered Collateral. If relevant, please describe how the laws of your jurisdiction apply to each form in which securities Covered Collateral may be held as described in assumption (b) above.*

Under the Taiwan Foreign Elements Law, the proprietary aspect (i.e. creation and perfection) of a security interest or transfer of title granted by the collateral provider would be governed by the laws of the jurisdiction of the Location of the Collateral. Thus, the Location of the Collateral is the determining factor.

Specifically:

- (1) In the case of cash, the Location of the Collateral is the jurisdiction where the account holding the cash is maintained;
- (2) In the case of securities, the Location of the Collateral is (i) the jurisdiction of the law governing issuance of such securities (e.g. where the issuer of the securities is incorporated) where the securities are not held in a CSD and (ii) the jurisdiction of the governing law of the relevant central securities depository agreement for such securities Covered Collateral (or, absent an express governing law provision in such depository agreement, the jurisdiction with the closest relationship to such creation of the security interest) where such securities are held in a CSD; and
- (3) in the case of contract rights (e.g. rights of the Taiwan Customer with respect to the Account or under the Covered Contracts), the location of the

interest granted over such collateral and if, under Singapore law, New York law applies to the grant and perfection of security interest as a result of the governing law of the agreement and a valid security interest has been created, then Taiwan court would recognize the validity of such security interest under Singapore law.

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collateral would be the place of the law governing such contract rights.

Whether the securities Covered Collateral are bearer or registered, certificated or dematerialized, will not affect the determination of the Location of Collateral. However, as discussed above, because the Location of securities Covered Collateral held by a CSD would be the place of the governing law of the relevant CSD custody agreement, whether the securities Covered Collateral are directly held or indirectly held by a CSD would affect the determination of the Location of Collateral.

3. *Would the courts of your jurisdiction recognize the validity of a security interest in the different types of Covered Collateral, assuming it is valid under New York law? In answering this question, please bear in mind the different forms in which securities Covered Collateral may be held, as described in the assumptions above. Please indicate, in relation to cash Covered Collateral, if your answer depends on the location of the account in which the relevant deposit obligations are recorded and/or upon the currency of those obligations.*

To the extent that the Location of the Collateral is New York, the courts of Taiwan would recognize validity of a security interest in each type of Covered Collateral assuming that such security is valid under New York law. Where the Location of the Collateral is Taiwan, the requirements described in our response to Question 5, below, would need to be met for a Taiwan court to recognize that a transfer of title for purposes of securing the Taiwan Customer's obligations under a Base Account Agreement is valid.

In relation to cash Covered Collateral, the court will determine whether the security interest is validly created and perfected by applying the laws of the Location of the account in which relevant deposit obligations are recorded. The currency of the deposit obligations is irrelevant.

4. *What is the effect, if any, under the laws of your jurisdiction of the fact that the amount secured or the amount of any cash or securities Covered Collateral subject to the security interest will fluctuate under the Covered Agreement (including as a result of entering into additional Covered Transactions from time to time)? In particular:*

(a) *Would the security interest be valid in relation to future obligations of the Taiwan Customer?*

To the extent that the Covered Collateral is Located in Taiwan, under the laws of Taiwan, the security interest created over, or transfer of, the relevant Covered

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Collateral would be valid in relation to future obligations of the Taiwan Customer so long as there is a master agreement (e.g. the Base Account Agreement) between the parties under which the future obligations will occur. Thus, to the extent Taiwan law is relevant, the fact that the amount secured will fluctuate under the Base Account Agreement would not affect the validity of the security interest or transfer of title.

However, in the context of collateral delivered by creation of a security interest, we would note that once the collateral has been attached by any third party creditor, obligations incurred after the date of such attachment may not be secured. Also, any creation of new obligations after the commencement of Reorganization or Bankruptcy would be subject to the relevant Reorganization proceedings or Bankruptcy proceedings, as applicable.

(b) Would the security interest be valid in relation to future Covered Collateral (that is, Covered Collateral not yet delivered to the FCM at the time of entry into the Covered Agreement)?

To the extent the Covered Collateral is Located in Taiwan, under the laws of Taiwan, creation of a security interest over "future Covered Collateral" (i.e. Covered Collateral not yet specifically identified and delivered/registered) in favor of the FCM would not be valid. However, a contractual agreement undertaking generally to transfer future cash or securities Covered Collateral not yet delivered to the FCM would be valid as a matter of contract between the parties.

(c) Is there any difficulty with the concept of creating the security interest over a fluctuating pool of assets, for example, by reason of the impossibility of identifying in the Covered Agreement the specific assets deposited by the Taiwan Customer with the FCM?

To the extent the Covered Collateral is Located in Taiwan, under the laws of Taiwan, the concept of creating a security interest over a fluctuating pool of assets is not recognized. Under Taiwan law, a (i) security interest may only be validly created over specific assets which must exist and be identified and (ii) transfer of specific assets may only be validly made when such specific assets exist and are identified.

However, this does not mean that the assets in a pool of Covered Collateral transferred under the relevant Base Account Agreement are unchangeable. Rather, addition and substitution of Covered Collateral

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contemplated in a Base Account Agreement would be allowed so long as the requirements described in Question 5 below are met. Thus, after a pool of specific assets is transferred to the FCM, the Taiwan Customer may, in accordance with the Base Account Agreement, add or substitute new Covered Collateral by meeting the requirements described in Question 5 below, and remove certain Covered Collateral from the pool of Covered Collateral by return or de-registration of such Covered Collateral.

(d) Is it necessary under the laws of your jurisdiction for the amount secured by the security interest to be a fixed amount or subject to a fixed maximum amount?

To the extent that the Covered Collateral is Located in Taiwan, it is not necessary under the laws of Taiwan for the amount secured to be a fixed amount or subject to a fixed maximum amount so long as the security interest is created or collateral is transferred to secure a specific, existing obligation. However, if the amount secured would fluctuate as obligations may arise from time to time under a master agreement, (i) in the context of collateral provided by creation of security interest, the amount secured needs to be subject to a fixed maximum amount and such fixed maximum amount is required to be stated in the relevant security document; and (ii) in the context of Covered Collateral provided by transfer, although there is no express statutory requirement that the amount secured needs to be subject to a fixed maximum amount, there are legal commentators' opinions that a fixed maximum amount is required to be stated and included in the security documentation. If no such maximum amount is stated by the parties, the risk is that the Covered Collateral would be found to only cover the specific existing obligations at the time of transfer. Thus, it is recommended that a maximum amount (which may substantially exceed the expected exposure) be stated.

(e) Is it permissible under the laws of your jurisdiction for the FCM to hold Customer Collateral in excess of its actual exposure to the Taiwan Customer under the Covered Agreement?

To the extent that the Covered Collateral is Located in Taiwan, it is permissible under the laws of Taiwan for the FCM to hold title to Customer Collateral in excess of its actual exposure to the Taiwan Customer under the relevant Base Account Agreement. However, after liquidating the relevant Collateral and applying the proceeds to the secured amount owed to the FCM, the FCM is obligated to return the balance to the Taiwan

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Customer.

Where the Covered Collateral is Located outside Taiwan, such would be determined by the law of the Location of such Covered Collateral and Taiwan law would not be relevant in this regard.

5. *Assuming that the courts of your jurisdiction would recognize the security interest in each type of Covered Collateral, is any action (filing, registration, notification, stamping, notarization or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval) required in your jurisdiction to perfect the security interest? If so, please indicate what actions must be taken and how such actions may differ, if at all, depending upon the type of Covered Collateral which is subject to the security interest.*

As stated above, under Taiwan law, the provision of collateral (whether by creation of a security interest or by transfer) would be governed by the law of the jurisdiction of the Location of the Collateral. Thus, in terms of creation and perfection of security interest over the Covered Collateral, the laws of Taiwan would be relevant only if the Covered Collateral is Located in Taiwan. Given that the Customer Account, the Covered Contracts and Covered Collateral in the form of cash would be Located outside Taiwan, Taiwan law would not apply with respect to the creation of a security interest over the Covered Contracts, the Customer Account and Covered Collateral in the form of cash.

To the extent the Covered Collateral is in the form of securities Located in Taiwan (i.e. securities issued by a Taiwan issuer and not held in a non-Taiwan CSD, or securities held in the TDCC), on the understanding that securities Covered Collateral would be transferred to an account in the name of the FCM and controlled by the FCM, under the laws of Taiwan, the requirements to ensure validity of the transfer of the securities Covered Collateral are as follows:

(1) Certificated Debt Securities in Bearer or Registered Form:

- (a) In bearer form: direct delivery by the Taiwan Customer to the FCM.
- (b) In registered form: endorsement and delivery of the securities by the Taiwan Customer to the FCM, and issuance of a notice of such transfer to the issuer of the securities.

(2) Dematerialized Government Bonds:

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Respective submission of an application by the Taiwan Customer and the FCM and recording the transfer in both parties' passbooks by the settlement bank. However, please note that, free transfer of dematerialized Taiwan government bonds is only feasible where the FCM is able to open an account with a settlement bank which accounts would not be available to non residents.

(3) Dematerialized Corporate Bonds:

Submission of an application by the Taiwan Customer and the FCM, respectively, and transfer of the securities into the client account of the securities broker of the FCM by the TDCC.

6. *If there are any other requirements to ensure the validity or perfection of the security interest in each type of Covered Collateral, please indicate the nature of such requirements. Are there any other documentary formalities that must be observed in order for the security interest in any type of Covered Collateral to be recognized as valid and perfected in your jurisdiction?*

Where the Covered Collateral is Located in Taiwan, assuming that such Covered Collateral has been validly transferred into the account in the name of the FCM, except for the requirements for transfer of title to Covered Collateral in Taiwan as stated in Question 5 above, there are no other documentary formalities that must be observed in order for a transfer of securities Covered Collateral to be recognized as valid in Taiwan.

Where the Covered Collateral is Located outside Taiwan (e.g. the Customer Account, Covered Contract or cash in the Account, Segregated Account or Separate Account), assuming that the relevant FCM has obtained a valid and perfected security interest of the relevant Covered Collateral under the laws of the Location of the Collateral, there are no other documentary formalities that must be observed.

7. *Assuming that the FCM has obtained a valid and perfected security interest under the laws of your jurisdiction, to the extent such laws apply, by complying with the requirements set forth in your responses to questions C.1 to C.6 above, as applicable, will the FCM or the Taiwan Customer need to take any action thereafter to ensure that the security interest continues to be and/or remains perfected, particularly with respect to additional cash or securities Covered Collateral transferred from time to time when required pursuant to the Covered Agreement?*

Assuming that, to the extent permitted by Taiwan law, the Covered Collateral Located in Taiwan has been transferred

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to the FCM's account, the FCM would not need to take any action thereafter to ensure that its title thereto continues to exist. There are no filing requirements necessary or advisable except that a notice of transfer needs to be issued to the issuer of the relevant securities (or, if applicable, its transfer agent) for recordation of the transfer²⁰/. However, to the extent additional securities Covered Collateral Located in Taiwan is transferred, the requirements described in Question 5, above would need to be complied with.

Where the Covered Collateral is Located outside Taiwan (e.g. the Customer Account, Covered Contracts or cash held in the Account, Segregated Account or Separate Account), assuming that the FCM has obtained a valid and perfected security interest of the relevant Covered Collateral under the laws of the Location of the Collateral, the FCM would not need to take any action thereafter to ensure that the security interest continues to be and/or remains perfected.

8. *Are there any particular duties, obligations or limitations imposed on the FCM in relation to the care of the Covered Collateral held by it pursuant to the security interest?*

To the extent that the securities Covered Collateral is Located in Taiwan, the FCM is required to exercise the care of a good administrator to maintain the collateral possessed by the FCM.

The "care of a good administrator" requires the degree of care of a like professional (i.e., a like service provider providing the same services as a business for fee) engaged in a like transaction. The word "maintained" in this context means preventing the Covered Collateral from being lost or destroyed. If the secured party has the right to receive the "yield" of the Covered Collateral in Taiwan (e.g. dividends and interest), it should collect and calculate the yields with the same degree of care that it would exercise with respect to its own property.

Where the Covered Collateral is Located outside Taiwan (e.g. the Account, Covered Contracts or cash held in the

²⁰/ With respect to securities held by the TDCC, based on the transfer application, TDCC will itself give notice to the relevant issuer (or its transfer agent). With respect to dematerialized government bonds, all transfers will be done through a system maintained by CBC, which is the issuer of such government bonds. Thus, no particular notice to CBC is required.

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Account, Segregated Account or Separate Account), Taiwan law would not be relevant.

9. *Do the laws of your jurisdiction recognize the right of the FCM to use cash or securities Covered Collateral (as described in additional assumption II.B.(f) above) pursuant to an agreement with the Taiwan Customer? In particular, how does such use of the Covered Collateral affect, if at all, the validity, continuity, perfection or priority of the security interest otherwise validly created and perfected prior to such use? Are there any other obligations, duties or limitations imposed on the FCM with respect to its use of such Covered Collateral under the laws of your jurisdiction?*

To the extent the Covered Collateral is Located in Taiwan and in the context where legal title to the securities Covered Collateral has been transferred to an account in the name of the FCM, a Taiwan court would recognize the right of the FCM to use cash or securities Covered Collateral as described in additional assumption II.B.(f), above, and such use of the Covered Collateral would not affect the validity of the transfer. There are no other stated Taiwan legal obligations, duties or limitations imposed on the FCM with respect to the FCM's use of such Covered Collateral.

Where the Covered Collateral is Located outside Taiwan (e.g. the Account, Covered Contracts or cash held in the Account, Segregated Account or Separate Account), Taiwan law would not be relevant in this regard.

Enforcement of the security interest in Covered Collateral in the absence of an insolvency proceeding

Note the additional assumption in II.B. (f) above which applies to questions 10 through 12 below.

10. *Assuming that the FCM has obtained a valid and perfected security interest under the laws of your jurisdiction, to the extent such laws apply, by complying with the requirements set forth in your responses to questions 1 to 6 above, as applicable, what are the formalities (including the necessity to obtain a court order or conduct an auction), notification requirements (to the Taiwan Customer or any other person) or other procedures, if any, that the FCM must observe or undertake in enforcing its security interest as an FCM under the Covered Agreement? For example, is it free to sell the Covered Collateral (including to itself) and apply the proceeds to satisfy the Taiwan Customer's outstanding obligations under the Covered Agreement? Do such formalities or procedures differ depending on the type of Covered Collateral involved?*

On the understanding that the securities Covered Collateral would be transferred to the FCM, to the extent Taiwan law is relevant, there are no additional formalities, notification requirements or other

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procedures that the FCM would be required to observe or undertake to exercise the FCM's rights under the Covered Agreement. As a matter of contract between the parties, the FCM would be permitted to sell the relevant securities Covered Collateral and apply the proceeds to satisfy the Taiwan Customer's outstanding obligations under the relevant Covered Agreement.

11. *Are there any laws or regulations in your jurisdiction that would limit or distinguish a creditor's enforcement rights with respect to the security interest in any type of Covered Collateral depending on (a) the type of transaction underlying the creditor's exposure, (b) the type of Collateral or (c) the nature of the creditor or the debtor? For example, are there any types of "statutory liens" that would be deemed to take precedence over a security interest?*

To the extent Taiwan law is relevant, where the securities Covered Collateral is held by a third party depository bank, custodian or central depository in Taiwan, such depository bank, custodian or central depository, as applicable, would have a statutory lien over the held assets for payment of fees and expenses owed to such depository bank, custodian or central depository in connection with such custody and/or deposit service. Other than as discussed above, there are no laws or regulations in Taiwan that would limit or distinguish a creditor's enforcement rights with respect to Covered Collateral due to (a) the type of transaction underlying the creditor's exposure, (b) the type of Covered Collateral, or (c) the nature of the creditor or the debtor.

Where the Covered Collateral is Located outside Taiwan, Taiwan law would not be relevant. In this regard as stated above, Covered Collateral in the form of the Account, the Covered Contracts, or cash held in the Account, Segregated Account or Separate Account would be considered Located outside Taiwan.

12. *How would your response to questions 10 and 11 change, if at all, assuming that an insolvency proceeding above has occurred with respect to the FCM (notwithstanding that the Covered Agreement may not provide for any events of default in respect of the FCM) rather than or in addition to the Taiwan Customer (for example, would this affect this ability of the FCM to enforce its security interest in Covered Collateral)?*

To the extent Taiwan law is relevant, so long as the relevant Covered Agreement does not provide that an Event of Default would prohibit the FCM from exercising its rights with respect to the relevant Covered Collateral, the FCM may enforce against the Collateral. Our responses to questions 10 to 11 would not change in this regard.

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Where the Covered Collateral is Located outside Taiwan, Taiwan law would not be relevant. In this regard, Covered Collateral in the form of the Account, the Covered Contracts, or cash held in the Account, Segregated Account or Separate Account (and, thus, located outside Taiwan) would be considered Located outside Taiwan.

Enforcement of the security in Covered Collateral after the commencement of an insolvency proceeding

Note the additional assumption in **II.B. (g)** above which applies to questions 13 through 15 below.

13. *How are competing priorities between creditors determined in your jurisdiction? What conditions must be satisfied if the FCM's security interest in each type of Covered Collateral is to have priority over all other claims (secured or unsecured) of an interest in the Covered Collateral?*

Subject to specific exceptions for preferred rights or relevant liens (e.g. employee severance rights or a statutory lien over assets held by a custodian discussed in Question 11, above), priority is determined based on whether or not the relevant creditor holds title, holds a security interest, or is a general creditor.

For an FCM to have priority over other creditors, the FCM would need to establish that it is the legal owner or is the holder of a valid security interest (i.e. pledge) over the securities Covered Collateral²¹/. In this regard, where the Covered Collateral is Located in Taiwan, (i) transfer is established by meeting the requirements described in Question 5, above and (ii) to create a valid pledge would require (A) execution of a written pledge agreement, (B) taking custody of the pledged asset (either by physical possession or by an earmarking notation through a book-entry system), and (C) recording of the pledge with the securities issuer/settlement/depository bank. No government filing is required in this context.

In the context where collateral is taken by creation of a security interest, the secured creditor would have priority over unsecured general creditors.

14. *Would the FCM's enforcement of its security interest in any type of Covered Collateral be subject to any stay, moratorium or freeze or otherwise be affected*

²¹/ This applies generically (i.e. not only where the security interest is governed by Taiwan law).

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by commencement of the insolvency (that is, how does the institution of an insolvency proceeding change your response to question 10 above, if at all)?

As discussed above, (i) where the Taiwan Customer is subject to a Bankruptcy proceeding, under the Taiwan Bankruptcy Law, the FCM's exercise of rights in relation to the Covered Collateral would not be subject to any stay or freeze or otherwise be affected by commencement of Bankruptcy; (ii) if the Taiwan Customer is subject to a Reorganization proceeding, the FCM's right in relation to the Covered Collateral may be suspended by the interim order and will be subject to the Reorganization proceeding; and (iii) where the Taiwan customer is a bank or insurance company subject to government takeover, conservatorship, winding-up or dissolution, as applicable, there is no provision in the Taiwan Banking Law or Insurance Law, as applicable, which would stay or freeze or otherwise restrict the FCM's rights in relation to the Covered Collateral.

15. *Will the Taiwan Customer (or its administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official) be able to recover any transfers of Covered Collateral consisting of cash or securities made to the FCM during a certain "suspect period" preceding the date of the insolvency as a result of such a transfer constituting a "preference," fraudulent transfer or transaction at an undervalue (however called and whether or not fraudulent) in favor of the FCM or on any other basis? If so, how long before the insolvency does this suspect period begin? Would the posting of additional margin (which could be required when an Account's net liquidating equity has fallen below the required margin level for the Account due to trading losses in respect of one or more Covered Transactions) during the suspect period be subject to avoidance, either because the Covered Collateral was considered to relate to an antecedent or pre-existing obligation or for some other reason?*

Under Articles 78 and 79 of the Taiwan Bankruptcy Law, in a Bankruptcy proceeding, (i) "gratuitous or onerous" acts done by the debtor at any time prior to the adjudication of Bankruptcy may be set aside by the court upon the petition of the Bankruptcy administrator under the Taiwan Civil Code if such acts are prejudicial to creditors' rights; and (ii) any security for pre-existing debt created within six (6) months prior to the adjudication of Bankruptcy may be invalidated by the Bankruptcy administrator, unless there was a pre-existing contractual obligation to provide such security. With respect to item (i), the Taiwan Civil Code provides (a) that if a debtor engages in a gratuitous act (e.g. issues a guarantee or provides collateral for a third party's debt without compensation) and such act jeopardizes a prior creditor, the prior creditor may petition a court to invalidate the act (e.g. invalidate the guarantee/provision of security); and (b) that an

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onerous act²² / jeopardizing creditor rights may be invalidated by the court upon the petition of a prior creditor if and only if the debtor acted in bad faith and the counterparty is aware thereof. We assume the parties to the Base Account Agreement and CDA act in good faith and thus, the Taiwan Customer's creation of security interest to secure its obligations under the Base Account Agreement would not be invalidated as being "onerous".

With respect to item (ii), if the Taiwan Customer provides the Covered Collateral (whether by title transfer or by creation of a security interest) for an existing obligation within six (6) months prior to the adjudication of the Bankruptcy, the Bankruptcy administrator may be able to rescind the transfer of Covered Collateral unless the relevant security document is entered into before the six (6) month period prior to the adjudication of Bankruptcy (i.e. the contractual obligation to provide Covered Collateral was created prior to the suspect period.)

For item (i), above, the concept of suspect period is irrelevant because the court may, upon the petition of the Bankruptcy administrator, invalidate the gratuitous or onerous act done by the Taiwan Customer at any time prior to the adjudication of Bankruptcy. For item (ii), the suspect period is six (6) months from the date when the adjudication of Bankruptcy is issued.

The substitution of Covered Collateral by a Taiwan Customer during the suspect period could not invalidate an otherwise valid transfer if the substitute Covered Collateral is of no greater value than the assets it is replacing. The posting of additional Covered Collateral pursuant to the margin provisions of the relevant Base Account Agreement during the suspect period would not be subject to avoidance, so long as the document requiring such posting was entered into before the six (6) month period prior to the adjudication of Bankruptcy²³.

Note the additional assumption in **II.B. (f)** above which applies

²²/ In our view, providing collateral to secure one's own debt is an onerous act.

²³/ If an FCM requests margin well in excess of exchange requirements for credit or market reasons (e.g. if a client is considered a credit risk or in periods of increased market volatility) and the only "compensation" provided by the FCM to the Taiwan Customer in such instance is the FCM continuing the clearing relationship, the fact that the FCM requests additional collateral would not, in and of itself, cause the provision of collateral to be subject to avoidance so long as such is not done within the six(6) month period.

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to question 16 below.

16. *Assuming that (a) pursuant to the laws of your jurisdiction, the laws of another jurisdiction govern the creation and/or perfection of the security interest (for example, because such Covered Collateral is Located or deemed Located outside your jurisdiction) and (b) the FCM has obtained a valid and perfected security interest under the laws of such other jurisdiction, are there any formalities, notification requirements or other procedures, if any, that the FCM must observe or undertake in your jurisdiction in enforcing its security interest in Covered Collateral?*

Assuming that the FCM has obtained a valid and perfected security interest in the Covered Collateral under the laws of another jurisdiction which laws, pursuant to the laws of Taiwan, govern the creation and/or perfection of such security interest, under the laws of Taiwan, there are no formalities, notifications requirements or other procedures that the FCM must observe or undertake in Taiwan in enforcing its security interest in Covered Collateral.

Additional considerations

17. *Are there any other local law considerations that you would recommend the FCM to consider in connection with enforcing its security interest in Covered Collateral?*

As discussed in Part I. 7, above, Taiwan regulates conversions between NT Dollars and foreign currency. Thus, upon sale of NT Dollar denominated Covered Collateral in Taiwan, the proceeds will be in NT Dollars and conversion of such proceeds in excess of the Conversion Allowance would also be subject to case-by-case approval of the CBC, which approval may nor may not be available depending on the circumstances.

Under current practice, there is no assurance that required CBC approvals would be available.

18. *Are there any other circumstances you can foresee that might affect the FCM's ability to enforce its security interest in the Covered Collateral in your jurisdiction?*

To the extent the secured debt becomes unenforceable, the security interest (whether by way of title transfer or creation of encumbrance) would be unenforceable. Thus, if the secured debt is barred by statute of limitations, a security interest would become unenforceable simultaneously when the underlying debt becoming unenforceable.

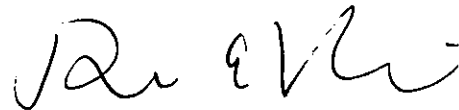
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This opinion is addressed to ISDA solely for the benefit of its members in relation to their use of the CDA. No other person may rely on this memorandum for any purpose without our prior written consent. This memorandum may, however, be shown by an ISDA member or ISDA to a competent regulatory or supervisory authority or professional advisors for such ISDA member or ISDA for the purposes of information only, on the basis that we assume no responsibility to such authority or any other person as a result, or otherwise.

This opinion constitutes generic advice provided with respect to the matters stated herein in the context of the ISDA Instruction Letter subject to the qualifications and assumptions set out herein, and is not to be read as extending by implication to any other matter. Similarly, this opinion should not be read as an opinion with respect to any specific Covered Contract which may be entered into under any Base Account Agreement and CDA.

Sincerely yours,



RUSSIN & VECCHI

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CUSTOMER TYPES^{24/}

Description	Covered by opinion	Legal form(s)
<p><u>Bank/Credit Institution.</u> A legal entity, which may be organized as a corporation, partnership or in some other form, that conducts commercial banking activities, that is, whose core business typically involves (a) taking deposits from private individuals and/or corporate entities and (b) making loans to private individual and/or corporate borrowers. This type of entity is sometimes referred to as a “commercial bank” or, if its business also includes investment banking and trading activities, a “universal bank”. (If the entity <u>only</u> conducts investment banking and trading activities, then it falls within the “Investment Firm/Broker Dealer” category below.) This type of entity is referred to as a “credit institution” in European Community (EC) legislation. This category may include specialised types of bank, such as a mortgage savings bank (provided that the relevant entity accepts deposits and makes loans), or such an entity may be considered in the local jurisdiction to constitute a separate category of legal entity (as in the case of a building society in the United Kingdom (UK)).</p>	<p>Yes</p>	<p>Under Article 52 of the Taiwan Banking Law, unless otherwise permitted by law, banks established in Taiwan must take the form of a company limited by shares. Thus, our advice covers only banks incorporated in Taiwan established in the form of a company limited by shares and Taiwan branches of foreign banks.</p> <p>With respect to naming convention, banks in Taiwan currently consist of commercial banks and banks for special business. Except for banks established by the Taiwan government, the type and special business purpose of a bank must be indicated in the bank’s name and any non-bank entity is prohibited from having the term “bank” in its name;</p>
<p><u>Central Bank.</u> A legal entity that performs the function of a central bank for a Sovereign or for an area of monetary union (as in the case of the European Central Bank in respect of the euro zone).</p>	<p>Yes</p>	<p>The Central Bank of the Republic of China (Taiwan) (“<u>Central Bank</u>”) is a governmental agency established pursuant to the Taiwan Central Bank Law. The Central Bank is not a judicial person but a government unit under the Executive Yuan. The full name of the Central Bank is the “Central Bank of the Republic of China (Taiwan).” However, the ability of the Central Bank to enter into Covered Contracts and provide assets of the Taiwan government as collateral may be restricted by any internal rules adopted by the Central Bank.</p> <p>In this regard, given that the Central</p>

^{24/} In these definitions, the term “legal entity” means an entity with legal personality other than a private individual.

Description	Covered by opinion	Legal form(s)
		Bank is a governmental agency, bankruptcy/corporate reorganization laws would not apply. However, the general legal principles under Taiwan law would still apply and under those general legal principles, the provisions regarding position liquidation and determination of account should be enforceable against the Central Bank.
<u>Corporation.</u> A legal entity that is organized as a corporation or company rather than a partnership, is engaged in industrial and/or commercial activities and does not fall within one of the other categories in this Appendix B.	<u>Yes</u>	
<u>Hedge Fund/Proprietary Trader.</u> A legal entity, which may be organized as a corporation, partnership or in some other legal form, the principal business of which is to deal in and/or manage securities and/or other financial instruments and/or otherwise to carry on an investment business predominantly or exclusively as principal for its own account.	<u>No</u>	
<u>Insurance Company.</u> A legal entity, which may be organised as a corporation, partnership or in some other legal form (for example, a friendly society or industrial & provident society in the UK), that is licensed to carry on insurance business, and is typically subject to a special regulatory regime and a special insolvency regime in order to protect the interests of policyholders.	<u>Yes</u>	Under Article 135 of the Taiwan Insurance Law, unless otherwise permitted by law, an insurance enterprise established in Taiwan must take the form of a company limited by shares or a cooperative. We are not aware of any insurance enterprise taking the form of a cooperative. Thus, our advice covers only insurance companies incorporated in Taiwan established in the form of a company limited by shares and Taiwan branch of a foreign insurance company. With respect to naming conventions, except for certain stated owned entities which hold insurance licences, a Taiwan insurance company would normally have the word "insurance" in its name ^{25/} .

^{25/} There is no statutory requirement that the term "insurance" must be stated in an insurance company's name. However, in company registration practice, the Ministry of Economic Affairs has, in fact,

Description	Covered by opinion	Legal form(s)
<p><u>International Organization.</u> An organization of Sovereigns established by treaty entered into between the Sovereigns, including the International Bank for Reconstruction and Development (the World Bank), regional development banks and similar organizations established by treaty.</p>	<p><u>No</u></p>	
<p><u>Investment Firm/Broker Dealer.</u> A legal entity, which may be organized as a corporation, partnership or in some other form, that does not conduct commercial banking activities but deals in and/or manages securities and/or other financial instruments as an agent for third parties. It may also conduct such activities as principal (but if it does so exclusively as principal, then it most likely falls within the "Hedge Fund/Proprietary Trader" category above.) Its business normally includes holding securities and/or other financial instruments for third parties and operating related cash accounts. This type of entity is referred to as a "broker-dealer" in US legislation and as an "investment firm" in EC legislation.</p>	<p><u>Yes</u></p>	<p>Under Article 47 of the Securities and Exchange Law and Article 3 of the "Establishment Criteria for Securities Firms", a securities firm established in Taiwan must be a company limited by shares or a Taiwan branch of a foreign securities firm (which includes Taiwan banks or Taiwan branches of foreign banks concurrently licensed to engage in securities business). Thus, our advice covers only securities firms (including Taiwan banks or Taiwan branches of foreign banks concurrently licensed to engage in securities business) established in the form of companies limited by shares.</p> <p>With respect to naming convention, Article 50 of the Securities and Exchange Law requires that, except for banks licensed to concurrently engage in securities business, a securities firm must have the term "securities" in its name; conversely, any other entity is prohibited from using the term (or words similar to) "securities firm" in its name.</p>
<p><u>Investment Fund.</u> A legal entity or an</p>	<p><u>Yes</u>^{26/}</p>	<p>Our advice only covers securities</p>

required that an insurance company include the word "insurance" in its name when applying for company registration.

^{26/} The Taiwan Securities Investment Trust and Consulting Law ("SITCL") and relevant regulations governing the management of Taiwan domiciled SITE Funds prohibit a manager of a publicly offered SITE Fund (i.e. a securities investment trust enterprise) ("Manager") from creating security interests/encumbrances (including provision of fund assets as collateral by way of title transfer) over fund assets except that, pursuant to two interpretations issued by the Financial Supervisory Commission:

Description	Covered by opinion	Legal form(s)
<p>arrangement without legal personality (for example, a common law trust) established to provide investors with a share in profits or income arising from property acquired, held, managed or disposed of by the manager(s) of the legal entity or arrangement or a right to payment determined by reference to such profits or income. This type of entity or arrangement is referred to as a "collective investment scheme" in EC legislation. It may be regulated or unregulated. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by general law and/or, typically in the case of regulated Investment Funds, financial services legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Investment Fund (for example, a trustee of a unit trust) contract on behalf of the Investment Fund, are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.</p>		<p>investment trust funds ("<u>SITE Fund</u>") established under the Securities Investment Trust and Consulting Law.</p> <p>Neither publicly offered futures trust funds established under the Regulations Governing Futures Trust Funds nor collective trust funds established under the Regulations Governing the Management of Collective Trust Funds are permitted to create security interest over fund assets and, thus, are not covered by this opinion.</p>
<p><u>Local Authority.</u> A legal entity established to administer the functions of local government in a particular region within a Sovereign or State of a Federal Sovereign, for example, a city, county, borough or similar area.</p>	<p><u>No</u></p>	
<p><u>Partnership.</u> A legal entity or form of</p>	<p><u>No</u></p>	

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- (1) posting of cash margin for exchange traded futures and options and over-the-counter securities related derivatives transactions (which are the only types of derivatives transactions a Taiwan SITE Fund is currently permitted to enter into) ("Permitted Derivatives Transactions") is not treated as creating a security interest/encumbrance over fund assets; and
 - (2) subject, *inter alia*, to the condition that the Manager must agree with the relevant futures commission merchant or counterparty that such securities are only permitted to be used as margin required for non-offset positions and new positions of the SITE Fund and are not permitted to be used for any other purpose (e.g. rehypothecation), posting of margin in the form of securities for Permitted Derivatives Transactions is exempted from such prohibition.

Description	Covered by opinion	Legal form(s)
<p>arrangement without legal personality that is (a) organised as a general, limited or some other form of partnership and (b) does not fall within one of the other categories in this Appendix B. If it does not have legal personality, it may nonetheless be treated as though it were a legal person for certain purposes (for example, for insolvency purposes) and not for other purposes (for example, tax or personal liability).</p>		
<p><u>Pension Fund.</u> A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide pension benefits to a specific class of beneficiaries, normally sponsored by an employer or group of employers. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by pensions legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Pension Fund (for example, a trustee of a pension scheme in the form of a common law trust) contract on behalf of the Pension Fund and are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.</p>	<p><u>Yes</u></p>	<p>The major government funds are (i) Public Service Pension Fund, (ii) Labor Retirement Fund (Old Scheme), (iii) Labor Pension Fund (New Scheme), (iv) Labor Insurance Fund, (v) National Pension Insurance Fund and (vi) Postal Savings Fund ²⁷ / (collectively, "Government Pension Funds"). Each Government Pension Fund is a collective pool of assets and transactions will be entered into by CHP or the relevant management agency, or mandated third party manager acting for and on behalf of CHP or the relevant Government Pension Fund. Also, the ability of the relevant Government Pension Fund to enter into Covered Contracts and provide the fund assets as collateral may be restricted by CHP or the relevant investment plan set by the management agency or the terms of the mandate agreement entered into between CHP or the management agency of the relevant Government Pension Fund and the third party manager.</p>
<p><u>Sovereign.</u> A sovereign nation state recognized internationally as such, typically acting through a direct agency or instrumentality of the central government without separate legal personality, for example, the ministry of finance, treasury or national debt office. This category does not</p>	<p><u>No</u></p>	

^{27/} The assets of the Postal Savings Fund are treated as being assets of Chunghwa Post Co., Ltd. ("CHP"), an entity established in the form of a company limited by shares pursuant to the Taiwan Postal Savings Act and the Chunghwa Post Co. Ltd. Establishment Act. CHP is wholly owned by the Ministry of Transportation (i.e. is a sovereign owned entity).

Description	Covered by opinion	Legal form(s)
<p>include a State of a Federal Sovereign or other political sub-division of a sovereign nation state if the sub-division has separate legal personality (for example, a Local Authority) and it does not include any legal entity owned by a sovereign nation state (see "<u>Sovereign-owned Entity</u>").</p>		
<p><u>Sovereign Wealth Fund</u>. A legal entity, often created by a special statute and normally wholly owned by a Sovereign, established to manage assets of or on behalf of the Sovereign, which may or may not hold those assets in its own name. Such an entity is often referred to as an "investment authority". For certain Sovereigns, this function is performed by the Central Bank, however for purposes of this Appendix B the term "Sovereign Wealth Fund" excludes a Central Bank.</p>	<p><u>No</u></p>	
<p><u>Sovereign-Owned Entity</u>. A legal entity wholly or majority-owned by a Sovereign, other than a Central Bank, or by a State of a Federal Sovereign, which may or may not benefit from any immunity enjoyed by the Sovereign or State of a Federal Sovereign from legal proceedings or execution against its assets. This category may include entities active entirely in the private sector without any specific public duties or public sector mission as well as statutory bodies with public duties (for example, a statutory body charged with regulatory responsibility over a sector of the domestic economy). This category does not include local governmental authorities (see "<u>Local Authority</u>").</p>	<p><u>Yes</u></p>	<p>Only sovereign owned entities in the form of a corporation are covered.</p>
<p><u>State of a Federal Sovereign</u>. The principal political sub-division of a federal Sovereign, such as Australia (for example, Queensland), Canada (for example, Ontario), Germany (for example, Nordrhein-Westfalen) or the United States of America (for example, Pennsylvania). This category does not include a Local Authority.</p>	<p><u>No</u></p>	