



International Swaps and Derivatives Association, Inc.

ISDA SBS SUPPLEMENT I¹

**Published on May 3, 2021,
by the International Swaps and Derivatives Association, Inc.**

¹ This ISDA SBS Supplement I is intended to address requirements of the final rules adopted in the following Federal Register citations, as amended and supplemented from time to time:

- (1) Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 80 Fed. Reg. 14563 (Feb. 11, 2015);
- (2) Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, 80 Fed. Reg. 14437 (Aug. 14, 2015);
- (3) Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 81 Fed. Reg. 29959 (May 13, 2016);
- (4) Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 81 Fed. Reg. 53545 (Aug. 12, 2016); and
- (5) Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, 84 Fed. Reg. 68550 (Dec. 16, 2019).

Table of Contents

SBS I SCHEDULE 1 DEFINED TERMS	4
SBS I SCHEDULE 2 AGREEMENTS BETWEEN A COVERED SBS ENTITY AND ANY OTHER PARTY	8
Part I. Representations and Agreements.....	8
Part II. Representations and Agreements of a Counterparty that is <u>not</u> Regulated Swap Entity.....	10
Part III. Agreements and Acknowledgements of a Counterparty that is <u>not</u> a Regulated Swap Entity.....	11
Part IV. Representation of a Hedging Entity ECP.....	11
Part V. Representation of a Hedging Individual ECP.....	11
Part VI. Notifications by a Covered SBS Entity.	12
SBS I SCHEDULE 3 INSTITUTIONAL SUITABILITY SAFE HARBORS FOR INSTITUTIONAL COUNTERPARTIES	14
Part I. Representations and Agreements Applicable if Counterparty Has One or More Designated Evaluation Agents.....	14
Part II. Representations Applicable if Counterparty Does <u>Not</u> Have a Designated Evaluation Agent.	15
Part III. Disclosures of a Covered SBS Entity.	15
SBS I SCHEDULE 4 SAFE HARBORS FOR NON-ERISA SPECIAL ENTITIES	16
Part I. Representations of a Counterparty.....	16
Part II. Disclosures of a Covered SBS Entity.	16
Part III. Representations and Agreements of a Designated QIR.....	17
SBS I SCHEDULE 5 SAFE HARBORS FOR ERISA SPECIAL ENTITIES (OPTION 1)	19
Part I. Representations of a Counterparty.....	19
Part II. Disclosures of a Covered SBS Entity.	20
Part III. Representations and Agreements of a Designated Fiduciary.	20
SBS I SCHEDULE 6 SAFE HARBORS FOR ERISA SPECIAL ENTITIES (OPTION 2)	21
Part I. Representations of a Counterparty.....	21
Part II. Disclosures of a Covered SBS Entity.	21
Part III. Representations and Agreements of a Designated Fiduciary.	22



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Any of the following schedules of this **ISDA SBS Supplement I** (as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”)) (this “**SBS Supplement I**”) may be incorporated into an agreement (such agreement, a “**Covered Agreement**”) by written agreement of the relevant parties indicating which schedules of this SBS Supplement I (each such schedule, a “**SBS I Schedule**”) shall be incorporated into such Covered Agreement. Each SBS I Schedule so incorporated into a Covered Agreement will be applicable to such Covered Agreement unless otherwise provided in such Covered Agreement. The headings and footnotes used in this SBS Supplement I are for informational purposes and convenience of reference only, and are not to affect the construction of or to be taken into consideration in interpreting this SBS Supplement I.

SBS I Schedule 1 Defined Terms

The following terms shall have the following meanings when used in this SBS Supplement I. In the event of any inconsistency between a definition provided in this SBS Supplement I and a definition provided in a Covered Agreement, the definitions provided in this SBS Supplement I shall govern for purposes of interpreting terms provided in any SBS I Schedule that is incorporated into such Covered Agreement and the definitions provided in the Covered Agreement shall govern for purposes of interpreting other terms in the Covered Agreement unless such Covered Agreement specifically provides otherwise.

“Agreement,” as used in a provision of this SBS Supplement I that is incorporated into a Covered Agreement or any defined term used in such provision, means such Covered Agreement, as amended or supplemented from time to time.

“Business Day” means a day other than a Saturday, Sunday or legal holiday.

“CFTC” means the U.S. Commodity Futures Trading Commission.

“CFTC Rules” means the rules, regulations, orders and interpretations published or issued by the CFTC.

“Counterparty” or **“CP”** means a party to the Agreement that is a counterparty to a Covered SBS Entity. For the avoidance of doubt, if two Covered SBS Entities are party to the Agreement, then each Covered SBS Entity is also a Counterparty or CP for purposes of the SBS Supplement I.

“Covered SBS Entity” means a party that (i) has been designated as a Covered SBS Entity for purposes of this SBS Supplement I or (ii) is or becomes registered (on an ongoing basis or conditionally) as a “security-based swap dealer” with the SEC and has notified the other party of such registration in accordance with the Notice Procedures.

“Designated Evaluation Agent” means, with respect to a party to the Agreement, a person (if any), other than an employee of such party, that such party has represented in writing to its counterparty is its “Designated Evaluation Agent.”

“Designated Fiduciary” means, with respect to a party to the Agreement, a person (if any) that such party has represented in writing to its counterparty is its “Designated Fiduciary.”

“Designated QIR” means, with respect to a party to the Agreement, a person (if any) that such party has represented in writing to its counterparty is its “Designated QIR.”

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Special Entity” means a party to the Agreement that has represented in writing to its counterparty that it is an employee benefit plan subject to Title I of ERISA.

“Hedging Entity ECP” means a party to the Agreement that (i) has represented in writing to its counterparty that it is a corporation, partnership, proprietorship, organization, trust, or other

entity that has a net worth exceeding \$1,000,000 and enters into SBS in connection with the conduct of the party's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the party in the conduct of the party's business, but (ii) has not represented that it qualifies as an "eligible contract participant" as defined in Section 1a(18) of the Commodity Exchange Act other than as provided above.

"Hedging Individual ECP" means a party to the Agreement that (i) has represented in writing to its counterparty that it is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$5,000,000 and who enters into SBS in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the party, but (ii) has not represented that it qualifies as an "eligible contract participant" as defined in Section 1a(18) of the Commodity Exchange Act other than as provided above.

"Institutional Counterparty" means a counterparty that (i) is an eligible contract participant as defined in clauses (A)(i), (ii), (iii), (iv), (viii), (ix) or (x), or clause (B)(ii) (other than a person described in clause (A)(v)) of Section 1a(18) of the Commodity Exchange Act and the rules and regulations thereunder or (ii) has total assets of at least \$50 million.

"Local Business Day" shall have the meaning specified in the Agreement; *provided, however*, in the event the Agreement does not specify the meaning of "Local Business Day," the term shall mean, with respect to a party, a day on which commercial banks are open for business (including for dealings in foreign exchange and foreign currency deposits) in the city that is specified in the Agreement for receipt of notices by such party.

"Major Security-Based Swap Participant" means a "major security-based swap participant" as defined in Section 3(a)(67) of the SEA and Rule 3a67-1 thereunder.

"Major Swap Participant" means a "major swap participant" as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Rule 1.3 thereunder.

"Notice Effective Date" means the Local Business Day following the date on which a notice would be effective pursuant to the Notice Procedures or such other date as the parties may specify in writing.

"Notice Procedures" means (i) the procedures specified in the Agreement regarding delivery of notices or information to a party, (ii) such other procedures as may be agreed in writing between the parties from time to time and (iii) with respect to a party and a particular category of information or notice, if the other party has specified other permissible procedures in writing, such procedures.

"Notifications" means the notifications set forth in Part VI of SBS I Schedule 2.

"Regulated Swap Entity" means a Swap Dealer, Security-Based Swap Dealer, Major Swap Participant or Major Security-Based Swap Participant.

“Reporting Counterparty” means, in respect of any SBS subject to the SEC Rules, the party to such SBS that is determined to be on the “reporting side” in accordance with the SBS Supplement I Rules, *provided* that, in the event that SBS Supplement I Rules require the parties to agree which party shall be the Reporting Counterparty, the Reporting Counterparty in respect of an SBS shall be the party agreed by the parties.

“SBS” means a “security-based swap” as defined in Section 3(a)(68) of the SEA and the SEC Rules thereunder that is governed by or proposed to be governed by the Agreement.

“SBS Communication Event” means each (1) SBS Transaction Event, (2) offer to enter into an SBS under the Agreement or an SBS Transaction Event and (3) SBS Recommendation.

“SBS I Schedule” shall have the meaning given to such term in the introductory paragraph of this SBS Supplement I.

“SBS Recommendation” means a “recommendation” (as such term is used in SEC Rules 15Fh-2 and 15Fh-3(f)) with respect to an SBS or trading strategy involving an SBS.

“SBS Supplement I Information” means any information or representation agreed in writing by the parties to be SBS Supplement I Information, as amended or supplemented from time to time in accordance with Section 2.3 of this SBS Supplement I or in another manner agreed by the parties.

“SBS Supplement I Rules” means the SEC Rules adopted in the following Federal Register citations, as amended and supplemented from time to time: (1) *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 80 FR 14437 (Aug. 14, 2015); (2) *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 80 Fed. Reg. 14563 (Feb. 11, 2015); (3) *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 81 Fed. Reg. 53545 (Aug. 12, 2016); (4) *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 Fed. Reg. 29959 (May 13, 2016); (5) *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers*, 84 Fed. Reg. 68550 (Dec. 16, 2019); (6) solely for the purposes of Sections 2.4, 2.5 and 2.7, any comparable non-U.S. regulation with which Covered SBS Entity is permitted by the SEC to comply in lieu of any of the foregoing SEC Rules; and (7) solely for purposes of Section 2.5, the rules of (i) a self-regulatory organization for SBSs (including brokers or dealers that are SBSs), (ii) a clearing agency for SBSs that is registered or exempt from registration under the SEA or (iii) a facility for the trading or processing of SBSs that is registered as a security-based swap execution facility or a national securities exchange under the SEA, in each case where Covered SBS Entity is a member or clears, trades or otherwise processes SBSs.

“SBS Transaction Event” means any event that results in a new SBS between parties or in a material change to the terms of an SBS between parties, including execution, termination, assignment, novation, exchange, transfer, amendment, conveyance or extinguishing of rights or obligations of an SBS.

“**SBSDR**” means a “security-based swap data repository” as defined in Section 3(a)(75) of the SEA and the SEC Rules.

“**SEA**” means the Securities Exchange Act of 1934, as amended.

“**SEC**” means the U.S. Securities and Exchange Commission.

“**SEC Rules**” means the rules, regulations, orders, statements and interpretations published or issued by the SEC, as amended.

“**Security-Based Swap Dealer**” means a “security-based swap dealer” as defined in Section 3(a)(71) of the SEA and SEC rule 3a71-1 thereunder.

“**Special Entity**” means a “special entity” as defined in Section 15F(h)(2)(C) of the SEA and SEC Rule 15Fh-2(d).

“**Statutory Disqualification**” means a statutory disqualification, as described in section 3(a)(39)(A)-(F) of the SEA.

“**Swap Dealer**” means a “swap dealer” as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Rule 1.3 thereunder.

SBS I Schedule 2
Agreements Between a Covered SBS Entity and Any Other Party

This SBS I Schedule 2 may be incorporated into an agreement between a Covered SBS Entity and any other party, including another Covered SBS Entity. For the avoidance of doubt, if this SBS I Schedule 2 is incorporated into an agreement between two Covered SBS Entities, each such Covered SBS Entity will be both “Covered SBS Entity” and “CP” for purposes of this SBS I Schedule 2.

If the parties to an agreement have specified that this SBS I Schedule 2 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this SBS I Schedule 2 shall be deemed to be a part of such agreement to the same extent as if this SBS I Schedule 2 were restated therein in its entirety.

Part I. Representations and Agreements.

- 2.1. Each party represents to the other party (which representation is deemed repeated as of the time of each SBS Transaction Event) that, as of the date of each SBS Transaction Event, (i) all SBS Supplement I Information (excluding financial information and representations) furnished by or on behalf of it to the other party is true, accurate and complete in every material respect, (ii) no representation provided in the SBS Supplement I Information or in this SBS Supplement I is incorrect or misleading in any material respect, and (iii) all SBS Supplement I Information that is financial information furnished by or on behalf of it to the other party has been prepared in accordance with applicable accounting standards, consistently applied.²

- 2.2. Each party acknowledges that the other party has agreed to incorporate one or more SBS I Schedules into the Agreement, and if the parties enter into any SBS on or after the date of such incorporation the other party will do so, in reliance upon the SBS Supplement I Information and the representations provided by such party or its agent in the SBS Supplement I Information and this SBS Supplement I. Notwithstanding the foregoing, each party agrees that an event of default, termination event, or other similar event shall not occur under the Agreement or any other contract between the parties solely on the basis of (i) a representation provided solely in SBS Supplement I Information or in this SBS Supplement I being incorrect or misleading in any material respect, or (ii) a breach of any covenant or agreement set forth solely in this SBS Supplement I; *provided, however,* that nothing in this Section 2.2 shall prejudice any other right or remedy of a party at law or under the Agreement or any other contract in respect of any misrepresentation or breach hereunder or thereunder. For the avoidance of doubt, this Section 2.2 shall not alter a party’s termination rights or remedies, if any, applicable to a breach of any representation, warranty, covenant, or agreement that is not provided or set forth solely in SBS Supplement I Information or in this

² SEC Rule 15Fh-1(b).

SBS Supplement I, including any such breach relating to any event or condition that could also cause or constitute an event specified in (i) or (ii) above.

- 2.3. Each party agrees to promptly notify the other party in writing in accordance with the Notice Procedures (i) of any material change to SBS Supplement I Information (other than representations) previously provided by such party or on behalf of such party and (ii) if any representations made in SBS Supplement I Information or this SBS Supplement I by or on behalf of such party become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the notifying party shall timely amend such representation by giving notice of such amendment to the other party in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 2.3 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.³
- 2.4. Each party agrees to promptly provide the other party, in accordance with the Notice Procedures, any information reasonably requested by such other party to enable such other party to comply with Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the SBS Supplement I Rules in connection with any SBS outstanding between the parties under the Agreement.⁴
- 2.5. Notwithstanding anything to the contrary in the Agreement or in any nondisclosure, confidentiality or similar agreement between the parties, each party hereby consents to the disclosure of information about such party or its activities to the extent required by the SBS Supplement I Rules to comply with any order, directive or other request or inspection of the SEC, a self-regulatory organization or a security-based swap execution facility regarding Covered SBS Entity's books and records.⁵

Each party acknowledges that disclosures made pursuant to this Section 2.5 may include, without limitation, the disclosure of trade information including a party's identity (by name, identifier or otherwise) to SBSDRs, security-based swap execution facilities, relevant regulators and any self-regulatory organizations of which a party is a member and that such disclosures could result in certain anonymous SBS transaction and pricing data becoming available to the public. Each party further acknowledges that, solely for the purposes of complying with the regulatory reporting obligations discussed above, a Reporting Counterparty and/or SBSDR may engage the services of affiliates and/or third-party service providers provided that the Reporting Counterparty shall be responsible for ensuring that any information about the other party or its activities that the

³ SEC Rule 15Fh-1(b).

⁴ *See, e.g.*, SEC Rule 15Fh-3(e).

⁵ *See, e.g.*, SEC Rule 15Fb2-4(c).

Reporting Counterparty provides to an affiliate hereunder that is not otherwise available to such affiliate will be used by the affiliate solely to facilitate compliance with the relevant reporting obligations. Each party also acknowledges that disclosures made pursuant to this paragraph may be made to recipients in a jurisdiction other than that of either party or a jurisdiction that may not necessarily provide an equivalent level of protection for personal data as either party's home jurisdiction. For the avoidance of doubt, (i) to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each party for purposes of such law; (ii) any agreement between the parties to maintain confidentiality of information contained in the Agreement or in any non-disclosure, confidentiality or other agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the SBS Supplement I Rules as set out herein; and (iii) nothing herein is intended to limit the scope of any other consent to disclosure separately given by each party to the other party.

Part II. Representations and Agreements of a Counterparty That Is Not a Regulated Swap Entity.

If CP is not a Regulated Swap Entity, it represents and agrees as follows:

- 2.6. CP has received, reviewed, and understood the Notifications in Part VI of SBS I Schedule 2 that are applicable to CP.⁶
- 2.7. CP agrees that Covered SBS Entity may effect delivery to CP of any notifications and informational disclosures required by the SBS Supplement I Rules, including standardized notifications and disclosures applicable to multiple SBSs, through any of the following means, each of which CP agrees is reliable: (i) means specified for the delivery of notices in the Notice Procedures; or (ii) by posting on a web page at, or accessible through, a URL designated in a written notice given to CP pursuant to the Notice Procedures and notifying CP of such posting in a written notice given pursuant to the Notice Procedures. For the avoidance of doubt, CP agrees that in the case of delivery of daily marks for SBS by Covered SBS Entity, Covered SBS Entity may provide a one-time notice that such marks are available on a web page as provided above and, thereafter, CP will be on notice of such deliveries and will access such web page to view the daily marks.

⁶ SEC Rules 15Fh-3(b) and 15Fh-3(c).

Part III. Agreements and Acknowledgements of a Counterparty That Is Not a Regulated Swap Entity.

If CP is not a Regulated Swap Entity, it agrees and acknowledges as follows:

- 2.8. CP agrees that, with respect to each cleared SBS originally executed between CP and Covered SBS Entity, CP will obtain any daily marks it wishes to receive for such cleared SBS from the relevant clearing agency through which CP clears such cleared SBS or another third party.⁷
- 2.9. CP agrees that, unless otherwise agreed with Covered SBS Entity in writing, with respect to each uncleared SBS between CP and Covered SBS Entity, any daily marks required to be provided by Covered SBS Entity to CP pursuant to SEC Rule 15Fh-3(c)(2) will be calculated by Covered SBS Entity as of the close of business on the prior Business Day in the locality specified by Covered SBS Entity in its notice of such daily mark to CP, such locality to be consistently specified with regard to a class or type of SBS.⁸

Part IV. Representation of a Hedging Entity ECP.

- 2.10. If CP is a Hedging Entity ECP, CP represents to Covered SBS Entity (which representation is deemed repeated as of the time of each SBS Transaction Event) that for so long as CP remains a Hedging Entity ECP, each SBS entered into by it under the Agreement will be entered into in connection with the conduct of CP's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by CP in the conduct of CP's business.⁹

Part V. Representation of a Hedging Individual ECP.

- 2.11. If CP is a Hedging Individual ECP, CP represents to Covered SBS Entity (which representation is deemed repeated as of the time of each SBS Transaction Event) that for so long as CP remains a Hedging Individual ECP, each SBS entered into by it under the Agreement, will be entered into in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by CP.¹⁰

⁷ SEC Rule 15Fh-3(c)(1).

⁸ SEC Rule 15Fh-3(c)(2).

⁹ See Commodity Exchange Act Section 1a(18)(A)(v)(III).

¹⁰ See Commodity Exchange Act Section 1a(18)(A)(xi)(II).

Part VI. Notifications by a Covered SBS Entity.

2.12. Daily Mark

- a. If CP is not a Regulated Swap Entity, Covered SBS Entity hereby discloses to CP, in respect of a daily mark for any uncleared SBS provided to CP by Covered SBS Entity, that:
 1. the daily mark may not necessarily be a price at which either CP or Covered SBS Entity would agree to replace or terminate the SBS;
 2. unless otherwise expressly agreed by the parties, calls for margin may be based on considerations other than the daily mark provided to CP; and
 3. the daily mark may not necessarily be the value of the SBS that is marked on the books of Covered SBS Entity.¹¹

2.13. Clearing

- a. If CP is not a Regulated Swap Entity, with respect to any SBS entered into between CP and Covered SBS Entity under the Agreement that is subject to the mandatory clearing requirements under Section 3Ca-1 of the SEA, Covered SBS Entity hereby discloses that CP has the sole right to select which of the clearing agencies through which Covered SBS Entity is authorized or permitted (directly or through a designated clearing member) to clear the SBS shall be used to clear the SBS, if any. Pursuant to SEC Rule 15Fh-3(d)(1)(i), the names of the relevant clearing agencies authorized or permitted to clear the SBS will be disclosed in a manner consistent with the Notice Procedures.¹²
- b. If CP is not a Regulated Swap Entity, with respect to any SBS entered into between CP and Covered SBS Entity under the Agreement that is not subject to the mandatory clearing requirements under Section 3Ca-1 of the SEA, Covered SBS Entity hereby discloses that CP may elect to require clearing of the SBS and has the sole right to select the clearing agencies through which the SBS will be cleared, provided it is a clearing agency at which Covered SBS Entity is authorized or permitted (directly or through a designated clearing member) to clear the SBS. Pursuant to SEC Rule 15Fh-3(d)(1)(i), the names of the relevant clearing agencies authorized or

¹¹ See SEC Rules 15Fh-3(c)(2) and (3). These rules do not prescriptively require the disclosures in this section. In its adopting release, however, the SEC noted that a Covered SBS Entity may wish to provide these disclosures to meet the requirement in SEC Rule 15Fh-3(g) that Covered SBS Entity communicate with its CP in a fair and balanced manner. See 81 FR 29959, 29990 (May 13, 2016).

¹² SEC Rule 15Fh-3(d)(1).

permitted to clear the SBS will be disclosed in a manner consistent with the Notice Procedures.¹³

2.14. Special Entities

- a. If CP is an employee benefit plan defined in Section 3 of ERISA that is not subject to Title I of ERISA, Covered SBS Entity hereby notifies CP, pursuant to SEC Rule 15Fh-3(a), that CP has the right to elect not to be treated as a special entity for purposes of transacting in SBS pursuant to SEC Rule 15Fh-2(d)(4).¹⁴

¹³ SEC Rule 15Fh-3(d)(2).

¹⁴ SEC Rule 15Fh-3(a)(3), SEC Rule 15Fh-2(d)(4).

SBS I Schedule 3
Institutional Suitability Safe Harbors for Institutional Counterparties

This SBS I Schedule 3 may be incorporated into an agreement between a Covered SBS Entity and a CP that is an Institutional Counterparty.

If the parties to an agreement have specified that this SBS I Schedule 3 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this SBS I Schedule 3 shall be deemed to be a part of such agreement to the same extent as if this SBS I Schedule 3 were restated therein in its entirety. If the Institutional Counterparty has one or more Designated Evaluation Agents, this SBS I Schedule 3 will only be incorporated into an agreement if such party and each such Designated Evaluation Agent have agreed to make the representations and agreements in this SBS I Schedule 3 that are applicable to it.

Part I. Representations and Agreements Applicable If Counterparty Has One or More Designated Evaluation Agents.

- 3.1. If (i) CP has designated one or more agents as Designated Evaluation Agents and (ii) each such Designated Evaluation Agent has agreed in writing to make the representations and agreements in Sections 3.1(b) and 3.1(c):
- a. CP represents to Covered SBS Entity (which representation is deemed repeated by CP as of the occurrence of each SBS Communication Event) that CP has complied in good faith with written policies and procedures that are reasonably designed to ensure that each of its Designated Evaluation Agents is capable of evaluating SBS Recommendations (if any) of Covered SBS Entity and making trading decisions on behalf of CP;¹⁵
 - b. Each Designated Evaluation Agent represents to Covered SBS Entity (which representation is deemed repeated by such Designated Evaluation Agent as of the occurrence of each SBS Communication Event involving such Designated Evaluation Agent) that such Designated Evaluation Agent is exercising independent judgment in evaluating all SBS Recommendations (if any) of Covered SBS Entity that are presented to it;¹⁶ and
 - c. Each Designated Evaluation Agent agrees to promptly notify Covered SBS Entity in writing in accordance with the Notice Procedures if any representations made by such Designated Evaluation Agent in this SBS Supplement I become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the

¹⁵ SEC Rule 15Fh-3(f)(3)(i).

¹⁶ SEC Rule 15Fh-3(f)(2)(ii).

representation was last repeated, the Designated Evaluation Agent shall timely amend such representation by giving notice of such amendment to Covered SBS Entity in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 3.1(c) shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.¹⁷

- d. CP represents (which representations are deemed repeated by CP as of the occurrence of each SBS Communication Event) that it will exercise independent judgment in consultation with a Designated Evaluation Agent, in evaluating all SBS Recommendations (if any) of Covered SBS Entity that are presented to CP with respect to SBS to be executed by CP on its own behalf.

Part II. Representations Applicable If Counterparty Does Not Have a Designated Evaluation Agent.

- 3.2. If CP has not designated a Designated Evaluation Agent, CP represents to Covered SBS Entity (which representations are deemed repeated by CP as of the occurrence of each SBS Communication Event) that:
 - a. CP has complied in good faith with written policies and procedures that are reasonably designed to ensure that the persons responsible for evaluating all SBS Recommendations (if any) regarding an SBS and making trading decisions on behalf of CP are capable of doing so; and¹⁸
 - b. CP is exercising independent judgment in evaluating all SBS Recommendations (if any).¹⁹

Part III. Disclosures of a Covered SBS Entity.

- 3.3. Covered SBS Entity hereby discloses to CP (which disclosure is deemed repeated by Covered SBS Entity as of the occurrence of each SBS Communication Event) that Covered SBS Entity is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any SBS or trading strategy involving an SBS for CP.²⁰

¹⁷ SEC Rule 15Fh-1(b).

¹⁸ SEC Rule 15Fh-3(f)(3)(i).

¹⁹ SEC Rule 15Fh-3(f)(2)(ii).

²⁰ SEC Rule 15Fh-3(f)(2)(iii).

SBS I Schedule 4
Safe Harbors for Non-ERISA Special Entities

This SBS I Schedule 4 may be incorporated into an agreement between a Covered SBS Entity and any Special Entity that is not an ERISA Special Entity; provided that the Special Entity has one or more Designated QIRs, each of whom agrees to the provisions of Part III of this SBS I Schedule 4 that are applicable to it.

If the parties to an agreement have specified that this SBS I Schedule 4 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this SBS I Schedule 4 shall be deemed to be a part of such agreement to the same extent as if this SBS I Schedule 4 were restated therein in its entirety. This SBS I Schedule 4 will only be incorporated into an agreement if the Special Entity and each Designated QIR have agreed to make the representations and agreements in this SBS I Schedule 4 that are applicable to it.

Part I. Representations of a Counterparty.

- 4.1. CP represents to Covered SBS Entity (which representations are deemed repeated by CP as of the occurrence of each SBS Communication Event) that:
- a. CP acknowledges that Covered SBS Entity is not acting as an advisor to CP;²¹
 - b. CP will rely on advice from a Designated QIR;²²
 - c. CP represents to Covered SBS Entity that CP has complied in good faith with written policies and procedures reasonably designed to ensure that each Designated QIR selected by CP satisfies the applicable requirements of SEC Rule 15Fh-5(a)(1), and that such policies and procedures provide for ongoing monitoring of the performance of such representative consistent with the requirements of SEC Rule 15Fh-5(a)(1);²³ and
 - d. CP will exercise independent judgment in consultation with a Designated QIR, in evaluating all SBS Recommendations (if any) of Covered SBS Entity that are presented to CP with respect to SBS to be executed by CP on its own behalf.

Part II. Disclosures of a Covered SBS Entity.

- 4.2. Covered SBS Entity discloses to CP (which disclosures are deemed repeated by Covered SBS Entity as of the occurrence of each SBS Communication Event) that:

²¹ SEC Rule 15Fh-2(a)(2)(i)(A).

²² SEC Rule 15Fh-2(a)(2)(i)(B).

²³ SEC Rule 15Fh-5(b)(1)(i); SEC Rule 15Fh-3(f)(3)(ii).

- a. Covered SBS Entity is not undertaking to act in the best interests of CP;²⁴ and
- b. Covered SBS Entity is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any SBS or trading strategy involving an SBS for CP.²⁵

Part III. Representations and Agreements of a Designated QIR.

4.3. Each Designated QIR represents to Covered SBS Entity and CP (which representations are deemed repeated by such Designated QIR as of the occurrence of each SBS Communication Event involving such Designated QIR) that:

- a. Such Designated QIR has written policies and procedures reasonably designed to ensure that the Designated QIR satisfies the applicable requirements SEC Rule 15Fh-5(a)(1);²⁶
- b. Such Designated QIR is exercising independent judgment in evaluating all SBS Recommendations (if any) of Covered SBS Entity that are presented to it;²⁷
- c. Unless such Designated QIR otherwise notifies Covered SBS Entity in writing in accordance with the Notice Procedures, which notification shall become effective on the Notice Effective Date:²⁸
 - 1. Such Designated QIR is not and, within one year of representing CP in connection with the SBS has not been, an “associated person,” as such term is defined in Section 3a(70) of the SEA, of Covered SBS Entity;²⁹
 - 2. Such Designated QIR (i) provides timely disclosures to CP of all material conflicts of interest that could reasonably affect the judgment or decision making of such Designated QIR with respect to its obligations to CP and (ii) complies with policies and procedures reasonably designed to manage and mitigate such material conflicts of interest;³⁰

²⁴ SEC Rule 15Fh-2(a)(2)(ii).

²⁵ SEC Rule 15Fh-3(f)(2)(iii).

²⁶ SEC Rule 15Fh-5(b)(1)(ii)(A).

²⁷ SEC Rule 15Fh-3(f)(2)(ii).

²⁸ SEC Rule 15Fh-5(a)(1)(vii).

²⁹ SEC Rule 15Fh-5(a)(1)(vii)(B)(1).

³⁰ SEC Rule 15Fh-5(a)(1)(vii)(B)(2).

3. To the best of such Designated QIR's knowledge, Covered SBS Entity did not refer, recommend, or introduce such Designated QIR to CP within one year of such Designated QIR's representation of CP in connection with the SBS;³¹ and
 4. Such Designated QIR has sufficient knowledge to evaluate the SBS transaction and risks;³²
 5. Such Designated QIR is not subject to a Statutory Disqualification;³³
 6. Such Designated QIR undertakes a duty to act in the best interests of CP;³⁴
 7. If CP is a Special Entity as defined in SEC Rule 15Fh-2(d)(2) or (d)(5) and such Designated QIR is not an employee of CP, such Designated QIR is subject to the requirements regarding political contributions, as applicable, under SEC Rule 15Fh-5(a)(1)(vi);³⁵ and
- d. Such Designated QIR is legally obligated to comply with the applicable requirements of SEC Rule 15Fh-5(a)(1) by agreement, condition of employment, law, rule, regulation, or other enforceable duty.³⁶
- 4.4. Each Designated QIR agrees to promptly notify Covered SBS Entity in writing in accordance with the Notice Procedures if any representations made by such Designated QIR in this SBS Supplement I become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated QIR shall timely amend such representation by giving notice of such amendment to Covered SBS Entity in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 4.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.³⁷

³¹ SEC Rule 15Fh-5(a)(1)(vii)(B)(3).

³² SEC Rule 15Fh-5(b)(1)(ii)(B); SEC Rule 15Fh-5(a)(1)(i).

³³ SEC Rule 15Fh-5(b)(1)(ii)(B); SEC Rule 15Fh-5(a)(1)(ii)

³⁴ SEC Rule 15Fh-5(b)(1)(ii)(B); SEC Rule 15Fh-5(a)(1)(iii).

³⁵ SEC Rule 15Fh-5(b)(1)(ii)(B); SEC Rule 15Fh-5(a)(1)(vi).

³⁶ SEC Rule 15Fh-5(b)(1)(ii)(C).

³⁷ SEC Rule 15Fh-1(b).

SBS I Schedule 5
Safe Harbors for ERISA Special Entities (Option 1)

This SBS I Schedule 5 may be incorporated into an agreement between a Covered SBS Entity and an ERISA Special Entity; provided that the ERISA Special Entity has one or more Designated Fiduciaries, each of whom agrees to the provisions of Part III of this SBS I Schedule 5 that are applicable to it. If the relevant Covered SBS Entity and ERISA Special Entity so agree, both SBS I Schedule 5 and SBS I Schedule 6 may be incorporated into an agreement.

If the parties to an agreement have specified that this SBS I Schedule 5 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this SBS I Schedule 5 shall be deemed to be a part of such agreement to the same extent as if this SBS I Schedule 5 were restated therein in its entirety. This SBS I Schedule 5 will only be incorporated into an agreement if the ERISA Special Entity and each Designated Fiduciary have agreed to make the representations and agreements in this SBS I Schedule 5 that are applicable to it.

Part I. Representations of a Counterparty.

- 5.1. CP represents to Covered SBS Entity (which representations are deemed repeated by CP as of the occurrence of each SBS Communication Event) that:
- a. Each of its Designated Fiduciaries is a “fiduciary” as defined in Section 3 of ERISA and a Designated Fiduciary is responsible for representing CP in connection with each SBS or trading strategy involving a SBS;³⁸
 - b. Either:
 1. CP will comply in good faith with written policies and procedures reasonably designed to ensure that any recommendation CP receives from Covered SBS Entity involving an SBS transaction is evaluated by a Designated Fiduciary before the transaction is entered into; or³⁹
 2. Any recommendation CP receives from Covered SBS Entity involving an SBS transaction will be evaluated by a Designated Fiduciary before the transaction is entered into; and⁴⁰
 - c. CP will exercise independent judgment in consultation with a Designated Fiduciary, in evaluating all SBS Recommendations (if any) of Covered SBS Entity that are presented to CP with respect to SBS to be executed by CP on its own behalf.

³⁸ SEC Rule 15Fh-2(a)(1)(i) and 15Fh-5(b)(2).

³⁹ SEC Rule 15Fh-2(a)(1)(iii)(A).

⁴⁰ SEC Rule 15Fh-2(a)(1)(iii)(B).

Part II. Disclosures of a Covered SBS Entity.

- 5.2. Covered SBS Entity discloses to CP (which disclosures are deemed repeated by Covered SBS Entity as of the occurrence of each SBS Communication Event) that:
- a. Covered SBS Entity is not undertaking to act in the best interests of CP;⁴¹ and
 - b. Covered SBS Entity is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any SBS or trading strategy involving an SBS for CP.⁴²

Part III. Representations and Agreements of a Designated Fiduciary.

- 5.3. Each Designated Fiduciary represents to Covered SBS Entity and CP (which representations are deemed repeated by such Designated Fiduciary as of the occurrence of each SBS Communication Event involving such Designated Fiduciary) that:
- a. Such Designated Fiduciary acknowledges that Covered SBS Entity is not acting as an advisor to CP; and⁴³
 - b. Such Designated Fiduciary is exercising independent judgment in evaluating all SBS Recommendations (if any) of Covered SBS Entity that are presented to it.⁴⁴
- 5.4. Each Designated Fiduciary agrees to promptly notify Covered SBS Entity in writing in accordance with the Notice Procedures if any representations made by such Designated Fiduciary in this SBS Supplement I become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated Fiduciary shall timely amend such representation by giving notice of such amendment to Covered SBS Entity in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 5.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.⁴⁵

⁴¹ SEC Rule 15Fh-2(a)(2)(ii).

⁴² SEC Rule 15Fh-3(f)(2)(iii).

⁴³ SEC Rule 15Fh-2(a)(1)(ii).

⁴⁴ SEC Rule 15Fh-3(f)(2)(ii).

⁴⁵ SEC Rule 15Fh-1(b).

SBS I Schedule 6
Safe Harbors for ERISA Special Entities (Option 2)

This SBS I Schedule 6 may be incorporated into an agreement between a Covered SBS Entity and an ERISA Special Entity; provided that the ERISA Special Entity has one or more Designated Fiduciaries, each of whom agrees to the provisions of Part III of this SBS I Schedule 6 that are applicable to it. If the relevant Covered SBS Entity and ERISA Special Entity so agree, both SBS I Schedule 5 and SBS I Schedule 6 may be incorporated into an agreement.

If the parties to an agreement have specified that this SBS I Schedule 6 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this SBS I Schedule 6 shall be deemed to be a part of such agreement to the same extent as if this SBS I Schedule 6 were restated therein in its entirety. This SBS I Schedule 6 will only be incorporated into an agreement if the ERISA Special Entity and each Designated Fiduciary have agreed to make the representations and agreements in this SBS I Schedule 6 that are applicable to it.

Part I. Representations of a Counterparty.

- 6.1. CP represents to Covered SBS Entity (which representations are deemed repeated by CP as of the occurrence of each SBS Communication Event) that:
- a. Each of its Designated Fiduciaries is a “fiduciary” as defined in Section 3 of ERISA;⁴⁶
 - b. CP acknowledges that Covered SBS Entity is not acting as an advisor to CP;⁴⁷
 - c. CP will rely on advice from a Designated Fiduciary; and⁴⁸
 - d. CP will exercise independent judgment in consultation with a Designated Fiduciary, in evaluating all SBS Recommendations (if any) of Covered SBS Entity that are presented to CP with respect to SBS to be executed by CP on its own behalf.

Part II. Disclosures of a Covered SBS Entity.

- 6.2. Covered SBS Entity discloses to CP (which disclosures are deemed repeated by Covered SBS Entity as of the occurrence of each SBS Communication Event) that:
- a. Covered SBS Entity is not undertaking to act in the best interests of CP; and⁴⁹

⁴⁶ SEC Rule 15Fh-5(b)(2).

⁴⁷ SEC Rule 15Fh-2(a)(2)(i)(A).

⁴⁸ SEC Rule 15Fh-2(a)(2)(i)(B).

- b. Covered SBS Entity is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any SBS or trading strategy involving an SBS for CP.⁵⁰

Part III. Representations and Agreements of a Designated Fiduciary.

- 6.3. Each Designated Fiduciary represents to Covered SBS Entity and CP (which representations are deemed repeated by such Designated Fiduciary as of the occurrence of each SBS Communication Event involving such Designated Fiduciary) that such Designated Fiduciary is exercising independent judgment in evaluating all SBS Recommendations (if any) of Covered SBS Entity presented to it.⁵¹
- 6.4. Each Designated Fiduciary agrees to promptly notify Covered SBS Entity in writing in accordance with the Notice Procedures if any representations made by such Designated Fiduciary in this SBS Supplement I have become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated Fiduciary shall timely amend such representation by giving notice of such amendment to Covered SBS Entity in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 6.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.⁵²

⁴⁹ SEC Rule 15Fh-2(a)(2)(ii).

⁵⁰ SEC Rule 15Fh-3(f)(2)(iii).

⁵¹ SEC Rule 15Fh-3(f)(2)(ii).

⁵² SEC Rule 15Fh-1(b).