



International Swaps and Derivatives Association, Inc.

ISDA SBS SUPPLEMENT I¹

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THE ANNOTATIONS AND INSTRUCTIONS IN THIS DOCUMENT DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA 2021 SBS PROTOCOL OR THE RELATED DOCUMENTS. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISERS THEY DEEM APPROPRIATE AS PART OF THEIR CONSIDERATION OF THE PROTOCOL PRIOR TO ADHERING TO THE PROTOCOL. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

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).

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ISDA SBS Supplement I²
(published on May 3, 2021)

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.³ 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.

² This SBS Supplement I is designed to be used by (i) a SBS D that has designated itself as a “Covered SBS Entity” and (ii) any counterparty (referred to herein as the “Counterparty” or “CP”) who may also be a SBS D. Where both parties are SBS Ds that have designated themselves as “Covered SBS Entities,” each is considered to be the “Covered SBS Entity” and the “Counterparty” or “CP” for purposes of this SBS Supplement I.

³ The “written agreement of the relevant parties” may include any written agreement by which the parties agree to incorporate the provisions of this SBS Supplement I. Such an agreement will be established if both parties have adhered to the SBS Protocol and exchanged SBS Questionnaire I in accordance with the terms thereof. Parties may also incorporate such provisions through any other bilateral agreement. In either case, the relevant provisions of this SBS Supplement I would be incorporated into “Covered Agreements.”

Under the Protocol Agreement, a “Protocol Covered Agreement” refers to an agreement between the parties that (1) governs the terms and conditions of one or more transactions in SBS that each such party may enter into as principal and (2) is in existence at the time the parties have matched relevant SBS Questionnaires or has otherwise been designated by the parties in writing as a Protocol Covered Agreement (e.g., after matching relevant SBS Questionnaires). A Covered Agreement under this SBS Protocol Supplement I is any such Protocol Covered Agreement which has been amended by matching SBS Questionnaire I and any other agreement designated by the parties as amended by this SBS Supplement I. For these purposes, an ISDA SBS Protocol Master Agreement created by exchanging SBS Questionnaire II and making the relevant elections is also a Covered Agreement regardless of whether its is created under the Protocol before or after matching SBS Questionnaire I. See Section 4(e) of the SBS Protocol Agreement.

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.⁴

“**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.⁵

⁴ Because “Covered Agreement” means any agreement that the parties may amend or supplement with the terms provided in this SBS Supplement I, the term “Agreement” is used to identify the specific agreement that is supplemented when these terms are incorporated into that agreement. An “Agreement” can be a master agreement governing the terms and conditions of SBS or general terms of business.

⁵ The function of this term is to identify the party or parties who will receive and provide representations, warranties and covenants appropriate to an SBS. This SBS Supplement I provides parties with flexibility in incorporating its provisions into their agreements by allowing them to choose whether one or both parties will be a “Covered SBS Entity” without such party having to represent that it is a SBS. Thus, a party that anticipates becoming an SBS can enter into this agreement as a Covered SBS Entity in anticipation of registration. Additionally, a party can participate in this protocol as a non-Covered SBS Entity and then become a Covered SBS Entity at a later time by registering as an SBS and notifying its counterparty of its registration as such. The relevant provisions of this SBS Supplement I do not take effect until two conditions have been satisfied: (1) the relevant compliance date has occurred under applicable law and (2) at least one party has become registered as an SBS. *See* Sections 5(d) and 7(c) of the SBS Protocol Agreement.

“**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.”⁶

“**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.”⁷

“**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.”⁸

“**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.⁹

“**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.

⁶ This definition is used exclusively SBS I Schedule 3.

⁷ This definition is used exclusively in SBS I Schedules 5 and 6. It is therefore only applicable to a counterparty who is an ERISA Special Entity that is eligible for, and elects to enter into, either or both of those SBS I Schedules.

⁸ This definition is used exclusively in SBS I Schedule 4. It is therefore only applicable to a CP who is a non-ERISA Special Entity that is eligible for, and elects to enter into, that SBS I Schedule.

⁹ This term is used in Section 2.10. It describes a type of counterparty that can only lawfully enter into SBS in connection with the conduct of its business. See Commodity Exchange Act § 1a(18)(A)(v)(III) and CFTC Regulation 1.3(m)(7).

“**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.¹⁰

“**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.¹¹

“**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

¹⁰ Certain types of notices from a CP may require the SBS D counterparty to change its procedures with respect to the CP to remain in compliance with SBS Supplement I Rules (*e.g.*, an eligible counterparty notifies its SBS D that it will cease making a representation needed to satisfy a safe harbor that it has previously elected). This term provides that such notices are deemed effective one Local Business Day after notices are generally effective to give the SBS D counterparty time to update its internal systems and procedures with the new information in order to be in compliance. Note that this delayed effective date only applies to the specific types of notices that a counterparty may give under Sections 2.3, 3.1(c), 4.3(c), 4.4, 5.4, and 6.4 of SBS Supplement I. It does not change the effective date of counterparty notices in other situations.

¹¹ This definition provides that notices hereunder may be delivered in the manner agreed upon in the original agreement, unless otherwise agreed. Note that in addition to a general notice address that would likely have been provided in the underlying agreement, a counterparty is asked in Part II, Section 6 of SBS Questionnaire I to provide an email address to which certain types of trading information and risk disclosure can be delivered. Pursuant to Section 7(c)(vii) of the SBS Protocol Agreement, “Notice Procedures” includes written notice by email to the address specified in the SBS Questionnaire I or to any substitute e-mail address provided pursuant to Section 2.3 of the SBS Supplement I.

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.¹²

“**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.¹³

“**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.¹⁴

“**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.¹⁵

“**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.

¹² SBS Supplement I is drafted on the basis that at least one CP will be an SBSD. If the other CP is not an SBSD and does not have an SBSD guarantor, then the SBSD will always be the “Reporting Counterparty” under SEC rules regarding the reporting of SBS data with respect to SBS between the parties. If both CPs are SBSDs or have SBSD guarantors, they must enter into additional agreements to establish which party will be the Reporting Counterparty, which may include industry standards for determining which SBSD is the Reporting Counterparty.

¹³ Under the business conduct rules for SBSDs, certain so-called “suitability” obligations are triggered when a SBSD makes a “recommendation” regarding a SBS or a trading strategy or an offer to enter into a SBS. Such obligations may be satisfied through safe harbors available under the business conduct rules, which depend upon representations being made at the appropriate times. The term “SBS Communication Event” defines these times and is used in SBS I Schedules 3, 4, 5, and 6. Representations in SBS I Schedule 2, on the other hand, are tied to SBS Transaction Events.

¹⁴ This term is defined by reference to its use in the relevant SEC rule due to the facts-and-circumstances nature of the determination.

¹⁵ See Sections 2.1-2-3, “SBS Supplement I Information” includes information and representations provided in a counterparty’s “SBS Questionnaire I” or equivalent bilateral documentation, as well as updates of that information and other information provided to the SBSD counterparty so that it can satisfy regulatory requirements under the SBS Supplement I Rules.

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.¹⁶

“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.

¹⁶ The business conduct rules treat the events identified in this definition as new SBS for purposes of a SBS’s duties under those rules. The term “SBS Transaction Event” defines these events and is used in SBS I Schedule 2 to establish when certain representations are repeated. It is also embedded in the definition of “SBS Communication Event,” discussed above.

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.¹⁷

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.¹⁸
- 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

¹⁷ If the parties have adhered to the SBS Protocol and exchanged SBS Questionnaire I in accordance with the terms of the SBS Protocol, this Schedule 2 will be automatically incorporated into the agreements between the parties that are covered by the SBS Protocol, including, if relevant, an ISDA SBS Protocol Master Agreement created by matching SBS Questionnaire II.

¹⁸ SEC Rule 15Fh-1(b). Under the business conduct rules, a SBS D is required to obtain certain information and representations from its counterparties. Such information and representations are provided via the SBS Protocol in SBS Questionnaire I. The purpose of this Section is to provide representations from the counterparty in support of the information and representations it has provided. See also Section 2.3 below regarding the update of such representations and information.

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 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.¹⁹

- 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.²⁰
- 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

¹⁹ As described above, parties are allowed to incorporate the representations and agreements of this SBS Supplement I into their agreements, including existing agreements. Parties may use the SBS Protocol as an efficient means of incorporating SBS Supplement I into existing agreements. Because the Protocol does not afford parties the opportunity to modify the terms of SBS Supplement I, Section 2.2 provides that an event of default or similar event will not occur due to a misrepresentation or breach arising solely from the provisions of SBS Supplement I incorporated into their agreement and will not be a cross-default under other agreements between the parties. On the other hand, if (for example) a CP provides a representation in both SBS Questionnaire I and in an underlying ISDA agreement (such as an ECP representation), Section 2.2 does not alter any remedies the SBS counterparty may have under that ISDA agreement as a result of the inaccuracy of the representation in the ISDA agreement, even though a breach of that representation would also likely be a breach of a representation made in SBS Questionnaire I and incorporated into that same ISDA agreement.

²⁰ SEC Rule 15Fh-1(b). Under the SEC business conduct rules, a SBS is permitted to rely on CP representations that are made in relationship documentation (rather than in connection with specific trades) in order to satisfy certain obligations, unless the SBS has information that would cause a reasonable person to question the accuracy of the representation. This Section requires prompt notification of changes in order to satisfy that standard and is consistent with the parallel provision in the DF Protocols. This Section works in conjunction with Section 2.1 (which updates CP representations as of each trade date). The last sentence delays the effectiveness of such updates to avoid compliance problems that could arise if a counterparty were to provide a last minute notice immediately prior to trading.

Reform and Consumer Protection Act and the SBS Supplement I Rules in connection with any SBS outstanding between the parties under the Agreement.²¹

- 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.²²

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 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

²¹ See, e.g., SEC Rule 15Fh-3(e). Various provisions of Title VII and the SBS Supplement I Rules require SBSs to obtain information from CPs. This information includes, but is not limited to, the requirements of the SBS Supplement I Rules (i) to satisfy SBS reporting requirements (which require reporting of certain counterparty information as well as information about the terms of a SBS) and (ii) to satisfy "Know Your Counterparty" provisions requiring a SBS to have policies reasonably designed to ascertain facts needed to (a) comply with applicable laws, (b) implement the SBS's credit and operational risk management policies, and (c) establish the authority of persons acting for the counterparty. Certain requirements under the SBS Supplement I Rules may be further defined over time. Other requirements may require a SBS to obtain additional information at a later date. Recognizing the broad scope of information a SBS may be required to obtain from a counterparty depending on the particular circumstances, this provision was designed to be limited to outstanding SBS and information required to comply with Title VII and the SBS Supplement I Rules. Note that information provided under this Section 2.4 is covered by the representations made in Section 2.1.

²² See, e.g., SEC Rule 15Fb2-4(c).

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.²³

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.²⁴
- 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 marks²⁵

²³ SBSDs are required to make their books and records available to the SEC, including written communications relating to their business. Non-U.S. SBSDs are required to provide opinions and certifications to the SEC that they can and will do so when they register. In addition, SBSDs are required to report data regarding counterparties and SBS entered into with those counterparties to trade reporting facilities or “SBSDRs” regulated by the SEC. Because a CP may previously have negotiated a confidentiality or nondisclosure agreement with a SBSD counterparty that would not otherwise permit such reporting, Section 2.5 provides a consent intended to override any such agreement. While this agreement overrides previous agreements, its scope is limited to information that the SBSD counterparty is obligated to disclose or report under the SBS Supplement I Rules. The last sentence of this Section is merely to clarify that the consent given is a consent for purposes of all applicable law. The Section also contains an acknowledgment that an SBSD or SBSDR may use the services of an affiliate or third-party service provider such as DTCC to facilitate reporting.

²⁴ SEC Rules 15Fh-3(b) and 15Fh-3(c). This Section merely acknowledges that the CP has read and understood the daily mark, clearing, and special entity notices provided in Part VI. It does not require the CP to agree to the adequacy of those notices or waive any rights to receive further notices.

²⁵ The SEC business conduct rules do not impose specific manner requirements on the delivery of notices and disclosures, though disclosures of material SBS risks and characteristics and incentives or conflicts of interest

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.²⁶
- 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.²⁷

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

must be provided in a manner reasonably designed to allow the counterparty to assess these elements. At the same time, historical general SEC guidance on the delivery of electronic notices may apply. This section is designed to establish agreement about notice practices and also to satisfy electronic delivery standards. Disclosures and notices applicable to multiples SBSs can be provided in counterparty relationship documentation provided they meet this standard. *See also* Section 7(c)(vii) of the SBS Protocol Agreement regarding the use of e-mail for delivery.

Note that this Section provides that the SBSDD may provide notices and disclosures by placing the relevant information on the SBSDD's website but must notify the CP by another means (such as email) that it has done so. SBS Questionnaire I provides an opportunity for the CP to provide an email address for such purposes. *See* SBS Questionnaire I Part II, Section 6 and annotations thereto. Daily post-trade regulatory marks to market required under SEC Rule 15Fh-3(c) may be posted on a website without daily emails.

²⁶ SEC Rule 15Fh-3(c)(1). The SEC business conduct rules provide that CPs can request cleared SBS daily marks provided to the SBSDD by the relevant clearing agency. However, the SBSDD that executes an SBS may not be the CP's clearing intermediary. Because the SBSDD would not have contractual privity or obligations to the CP once the CP clears the transactions at a different intermediary, and because market practice is for clearing agencies to provide access to end of day marks to the relevant parties, the CP agrees in Section 2.8 that it will get marks from the clearing agency or another third party and not from the SBSDD in such circumstances.

²⁷ SEC Rule 15Fh-3(c)(2). The SEC business conduct rules provide that daily marks must be mid-market and provided as of the close of business or such other time as the parties agree. Section 2.18 provides a clear baseline rule by establishing that "close of business" means close of business on the previous business day in the SBSDD's jurisdiction (as notified to the CP). The provision allows the parties to agree otherwise in writing.

incurred or reasonably likely to be owned or incurred by CP in the conduct of CP's business.²⁸

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.²⁹

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.³⁰

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

²⁸ See Commodity Exchange Act Section 1a(18)(A)(v)(III). For a CP that qualifies as an ECP solely as a Hedging Entity ECP, this representation establishes that each SBS it enters into with the SBSB satisfies the conditions of its limited ECP status. See further explanation in the definition of "Hedging Entity ECP."

²⁹ See Commodity Exchange Act Section 1a(18)(A)(xi)(II). For a natural person who qualifies as an ECP solely as a Hedging Individual ECP, this representation establishes that each SBS he/she enters into with the SBSB satisfies the conditions of his/her limited ECP status. See further explanation in the definition of "Hedging Individual ECP."

³⁰ 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).

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.³¹

- 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 permitted to clear the SBS will be disclosed in a manner consistent with the Notice Procedures.³²

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).³³

³¹ SEC Rule 15Fh-3(d)(1). The first sentence includes a required notification. Since each SBS using this SBS Supplement I may have different clearing agency memberships, the second sentence provides a mechanism to provide tailored disclosures.

³² SEC Rule 15Fh-3(d)(2). The first sentence includes a required notification. Since each SBS using this SBS Supplement I may have different clearing agency memberships, the second sentence provides a mechanism to provide tailored disclosures.

³³ SEC Rule 15Fh-3(a)(3), SEC Rule 15Fh-2(d)(4). This is a required notification for counterparties eligible to make the election under SEC Rule 15Fh-2(d)(4).

SBS I Schedule 3 **Institutional Suitability Safe Harbors for Institutional Counterparties³⁴**

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.³⁵

³⁴ Under the SEC business conduct rules, certain so-called “suitability” obligations are triggered when an SBS D makes a “recommendation” regarding an SBS or a trading strategy involving an SBS. Such obligations may be satisfied through obtaining safe harbor representations, provided the counterparty is an “institutional counterparty.” Note that the availability of this safe harbor is narrower than the equivalent safe harbor provided by the CFTC.

SBS I Schedule 3 provides the representations and agreements necessary to satisfy the safe harbor available for institutional counterparties who are not “special entities.” SBS I Schedule 3 is not relevant to an agreement between an SBS D and another SBS D, an MSBSP, a swap dealer or a major swap participant, because SBS Ds are not subject to suitability requirements when transacting with such counterparties.

In the absence of a safe harbor, an SBS D would generally need to conduct extensive due diligence in order to meet its regulatory obligations to understand the CP’s investment profile, trading objectives, ability to absorb potential losses, etc. These enhanced diligence and compliance obligations for the SBS D could cause the parties to incur increased time and costs prior to trading.

³⁵ For a pair of counterparties who have adhered to the SBS Protocol and exchanged SBS Questionnaire I, this SBS I Schedule 3 will be incorporated into the agreements that are covered by the Protocol *if* both parties have elected to do so and are eligible to do so (*i.e.*, this SBS I Schedule is optional under the Protocol).

Part I. Representations and Agreements Applicable If Counterparty Has One or More Designated Evaluation Agents.³⁶

- 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;³⁷
 - 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;³⁸ 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 representation was last repeated, the Designated Evaluation Agent shall timely amend such representation by giving notice of such amendment to

³⁶ A CP that has one or more investment managers that have discretion to trade for the CP's account may satisfy the safe harbor by (i) representing that the CP has complied with policies and procedures designed to ensure that each investment manager is capable of evaluating SBS Recommendations and making trading decisions on behalf of CP, and (ii) having the investment manager represent that it will exercise independent judgment in evaluation any SBSs recommended by the SBS D. These representations are provided in Part I of this SBS I Schedule 3. A CP accomplishes this by simply representing to the SBS D that each investment manager is a "Designated Evaluation Agent" (which may be accomplished in SBS Questionnaire I). To satisfy the safe harbor, this SBS I Schedule then provides that each Designated Evaluation Agent must make the representations and agreements set forth in this Part I.

Please note that CP is not required to designate a "Designated Evaluation Agent" to enter into Schedule 3, provided that CP can make the representations about itself in Part II of SBS I Schedule 3. In addition, please note that the term "Designated Evaluation Agent" is defined to exclude an employee of the CP.

³⁷ SEC Rule 15Fh-3(f)(3)(i).

³⁸ SEC Rule 15Fh-3(f)(2)(ii). Note that Designated Evaluation Agents are only asked to represent that they evaluate SBS recommendations presented to them and not to other persons or the underlying account. This is to accommodate counterparties who may have multiple Designated Evaluation Agents who would not want to make representations relating to SBSs for which they are not responsible.

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.³⁹

- 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.⁴⁰

Part II. Representations Applicable If Counterparty Does Not Have a Designated Evaluation Agent.⁴¹

- 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; and⁴²
 - b. CP is exercising independent judgment in evaluating all SBS Recommendations (if any).⁴³

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

³⁹ SEC Rule 15Fh-1(b). This provision matches the language in Section 2.3 and is provided to establish that the SBSBD may continue to “reasonably” rely upon the representations of the Designated Evaluation Agent for each new trade.

⁴⁰ SEC Rule 15F-3(f)(2)(ii). This provision is belts and suspenders to the equivalent representation made by the DEA as the SEC Rule provides that the safe harbor can be satisfied by a representation from the CP or its agent (*i.e.*, its DEA) and it is possible that the SBSBD might communicate with either or both.

⁴¹ This Part II is primarily for use by CPs who will be making trading decisions in-house or who do not wish to designate their investment managers as “Designated Evaluation Agents.” This option has the benefit of permitting the SBSBD to discuss SBSs directly with the CP.

⁴² SEC Rule 15Fh-3(f)(3)(i).

⁴³ SEC Rule 15Fh-3(f)(2)(ii).

undertaking to assess the suitability of any SBS or trading strategy involving an SBS for CP.⁴⁴

⁴⁴ SEC Rule 15Fh-3(f)(2)(iii).

SBS I Schedule 4
Safe Harbors for Non-ERISA Special Entities⁴⁵

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.⁴⁶

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;⁴⁷

⁴⁵ Under the SEC business conduct rules, certain so-called “suitability” obligations are triggered when an SBS D makes a “recommendation” regarding a SBS or a trading strategy involving an SBS. Such obligations may be satisfied through safe harbors available under the business conduct rules, provided that the counterparty is an “institutional counterparty.” In addition, when an SBS D makes a recommendation to a special entity, it is deemed to “act as an advisor” to the special entity and required to make determinations that recommended SBS are in the special entity’s best interests. Additional safe harbor representations are available to establish that the SBS D does not act as an advisor to the special entity for purposes of the rules. SBS I Schedule 4 provides the representations and agreements necessary to satisfy the safe harbors available for CPs who are “Non-ERISA special entities” (*i.e.*, special entities that are not subject to ERISA, such as federal agencies; states; municipalities; agencies, instrumentalities and corporations of a state or municipality; government benefit plans, endowments and other employment benefit plans that are not subject to ERISA).

In the absence of these safe harbors, an SBS D would generally need to conduct extensive due diligence in order to meet its regulatory obligations to understand the CP’s investment profile, trading objectives, ability to absorb potential losses, etc. These enhanced diligence and compliance obligations for the SBS D could cause the parties to incur increased time and costs prior to trading. Under SEC Rule 15Fh-5, an SBS D is also obligated to make a reasonable determination that a non-ERISA special entity has a “qualified independent representative” or “QIR” meeting specified standards before trading with that counterparty. This SBS I Schedule provides representations and agreements on which the SBS D may rely to satisfy that obligation as well as the suitability requirements.

⁴⁶ For a pair of counterparties who have adhered to the 2021 SBS Protocol and exchanged SBS Questionnaire I, this SBS I Schedule 4 will be incorporated into the agreements that are covered by the Protocol *if* both parties have elected to do so and are eligible to do so (*i.e.*, this SBS I Schedule is optional under the Protocol), and each Designated QIR has agreed to make the representations and agreements applicable to it.

⁴⁷ SEC Rule 15Fh-2(a)(2)(i)(A).

- b. CP will rely on advice from a Designated QIR;⁴⁸
- 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);⁴⁹ 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:
 - a. Covered SBS Entity is not undertaking to act in the best interests of CP;⁵⁰ 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.⁵¹

Part III. Representations and Agreements of a Designated QIR.⁵²

- 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);⁵³
 - b. Such Designated QIR is exercising independent judgment in evaluating all SBS Recommendations (if any) of Covered SBS Entity that are presented to it;⁵⁴

⁴⁸ SEC Rule 15Fh-2(a)(2)(i)(B).

⁴⁹ SEC Rule 15Fh-5(b)(1)(i); SEC Rule 15Fh-3(f)(3)(ii).

⁵⁰ SEC Rule 15Fh-2(a)(2)(ii).

⁵¹ SEC Rule 15Fh-3(f)(2)(iii).

⁵² Note that this Schedule permits the special entity to designate multiple QIRs.

⁵³ SEC Rule 15Fh-5(b)(1)(ii)(A).

- 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:⁵⁵
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;⁵⁶
 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;⁵⁷
 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;⁵⁸ and
 4. Such Designated QIR has sufficient knowledge to evaluate the SBS transaction and risks;⁵⁹
 5. Such Designated QIR is not subject to a Statutory Disqualification;⁶⁰
 6. Such Designated QIR undertakes a duty to act in the best interests of CP;⁶¹
 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

⁵⁴ SEC Rule 15Fh-3(f)(2)(ii).

⁵⁵ SEC Rule 15Fh-5(a)(1)(vii).

⁵⁶ SEC Rule 15Fh-5(a)(1)(vii)(B)(1).

⁵⁷ SEC Rule 15Fh-5(a)(1)(vii)(B)(2).

⁵⁸ SEC Rule 15Fh-5(a)(1)(vii)(B)(3). This representation and the preceding representations are intended to establish that the special entity’s representative satisfies independence standards necessary to qualify as a QIR. Note that, to facilitate a QIR making these representations, this representation has been qualified by a “knowledge” standard, even though the regulatory standard is not so qualified.

⁵⁹ SEC Rule 15Fh-5(b)(1)(ii)(B); SEC Rule 15Fh-5(a)(1)(i).

⁶⁰ SEC Rule 15Fh-5(b)(1)(ii)(B); SEC Rule 15Fh-5(a)(1)(ii)

⁶¹ SEC Rule 15Fh-5(b)(1)(ii)(B); SEC Rule 15Fh-5(a)(1)(iii).

contributions, as applicable, under SEC Rule 15Fh-5(a)(1)(vi);⁶²
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.⁶³
- 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.⁶⁴

⁶² SEC Rule 15Fh-5(b)(1)(ii)(B); SEC Rule 15Fh-5(a)(1)(vi).

⁶³ SEC Rule 15Fh-5(b)(1)(ii)(C). This representation and the preceding representations, are designed to establish that the QIR satisfies the standards for being a QIR generally.

⁶⁴ SEC Rule 15Fh-1(b). This provision matches the language in Section 2.3 and is provided to establish that the SBSBD may continue to “reasonably” rely upon the representations of the Designated QIR for each new trade.

SBS I Schedule 5
Safe Harbors for ERISA Special Entities (Option 1)⁶⁵

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.⁶⁶

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:

⁶⁵ Under the SEC business conduct rules, certain so-called “suitability” obligations are triggered when an SBSD makes a “recommendation” regarding a SBS or a trading strategy involving an SBS. Such obligations may be satisfied through safe harbors available under the business conduct rules, provided that the counterparty is an “institutional counterparty.” In addition, when an SBSD makes a recommendation to a special entity, it is deemed to “act as an advisor” to the special entity and required to make determinations that recommended SBS are in the special entity’s best interests. Additional safe harbor representations are available to establish that the SBSD does not act as an advisor to the special entity for purposes of the rules. The SEC business conduct rules provide two alternative forms of such safe harbor for special entities subject to ERISA.

SBS I Schedule 5 provides one version of the representations and agreements necessary to satisfy the safe harbors available for CPs who are “ERISA special entities” (*i.e.*, special entities that are subject to ERISA).

In the absence of a safe harbor, a dealer would need to conduct extensive due diligence in order to meet its regulatory obligations to understand the CP’s investment profile, trading objectives, ability to absorb potential losses, etc. The obligations on the SBSD are further heightened in the case of recommendations to special entities. These enhanced diligence and compliance obligations for the SBSD could cause the parties to incur increased time and costs prior to trading.

Under SEC Rule 15Fh-5 an SBSD is obligated to make a reasonable determination that an ERISA special entity has an ERISA fiduciary before trading with that counterparty. This SBS I Schedule provides representations and agreements on which the SBSD may rely to satisfy that obligation.

⁶⁶ For a pair of counterparties who have adhered to the 2021 SBS Protocol and exchanged SBS Questionnaire I, this SBS I Schedule 5 will be incorporated into the agreements that are covered by the Protocol *if* both parties have elected to do so and are eligible to do so (*i.e.*, this SBS I Schedule is optional under the Protocol), and each Designated Fiduciary has agreed to make the representations and agreements applicable to it.

- 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;⁶⁷
- b. Either:⁶⁸
 - 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; or⁶⁹
 - 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; and⁷⁰
- 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.⁷¹

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;⁷² 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.⁷³

⁶⁷ SEC Rule 15Fh-2(a)(1)(i) and 15Fh-5(b)(2). Note that this Schedule permits the special entity to designate multiple fiduciaries.

⁶⁸ This provision, which comes directly from SEC Rule 15Fh-2(a)(1)(iii), gives ERISA special entities the option to satisfy the safe harbor requirements without having written policies and procedures.

⁶⁹ SEC Rule 15Fh-2(a)(1)(iii)(A).

⁷⁰ SEC Rule 15Fh-2(a)(1)(iii)(B).

⁷¹ This representation is not explicitly required in the safe harbor, but is included to cover situations in which the SBS may be communicating about potential trades directly with a special entity rather than its fiduciary.

⁷² SEC Rule 15Fh-2(a)(2)(ii).

⁷³ SEC Rule 15Fh-3(f)(2)(iii).

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; and⁷⁴
 - b. Such Designated Fiduciary is exercising independent judgment in evaluating all SBS Recommendations (if any) of Covered SBS Entity that are presented to it.⁷⁵
- 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.⁷⁶

⁷⁴ SEC Rule 15Fh-2(a)(1)(ii). Note that the safe harbor for ERISA special entities expressly requires that this representation must come from the fiduciary rather than the special entity.

⁷⁵ SEC Rule 15Fh-3(f)(2)(ii).

⁷⁶ SEC Rule 15Fh-1(b). This provision matches the language in Section 2.3 and is necessary to ensure that the dealer counterparty may continue to “reasonably” rely upon the representations of the Designated Fiduciary for each new trade.

SBS I Schedule 6 Safe Harbors for ERISA Special Entities (Option 2)⁷⁷

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.⁷⁸

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:

⁷⁷ Under the SEC business conduct rules, certain so-called “suitability” obligations are triggered when an SBSD makes a “recommendation” regarding a SBS or a trading strategy involving an SBS. Such obligations may be satisfied through safe harbors available under the business conduct rules, provided that the counterparty is an “institutional counterparty.” In addition, when an SBSD makes a recommendation to a special entity, it is deemed to “act as an advisor” to the special entity and required to make determinations that recommended SBS are in the special entity’s best interests. Additional safe harbor representations are available to establish that the SBSD does not act as an advisor to the special entity for purposes of the rules. The SEC business conduct rules provide two alternative forms of such safe harbor for special entities subject to ERISA.

SBS I Schedule 6 provides an alternative version of the representations and agreements necessary to satisfy the safe harbors available for CPs who are “ERISA special entities” (*i.e.*, special entities that are subject to ERISA)

In the absence of a safe harbor, a dealer would need to conduct extensive due diligence in order to meet its regulatory obligations to understand the CP’s investment profile, trading objectives, ability to absorb potential losses, etc. The obligations on the SBSD are further heightened in the case of recommendations to special entities. These enhanced diligence and compliance obligations for the SBSD could cause the parties to incur increased time and costs prior to trading.

Under SEC Rule 15Fh-5 an SBSD is obligated to make a reasonable determination that an ERISA special entity has an ERISA fiduciary before trading with that counterparty. This SBS I Schedule provides representations and agreements on which the SBSD may rely to satisfy that obligation.

⁷⁸ For a pair of counterparties who have adhered to the SBS Protocol and exchanged Questionnaire I, this SBS I Schedule 6 will be incorporated into the agreements that are covered by the Protocol *if* both parties have elected to do so and are eligible to do so (*i.e.*, this SBS I Schedule is optional under the Protocol), and each Designated Fiduciary has agreed to make the representations and agreements applicable to it.

- a. Each of its Designated Fiduciaries is a “fiduciary” as defined in Section 3 of ERISA;⁷⁹
- b. CP acknowledges that Covered SBS Entity is not acting as an advisor to CP;⁸⁰
- c. CP will rely on advice from a Designated Fiduciary; and⁸¹
- 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; and⁸²
 - 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.⁸³

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.⁸⁴
- 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

⁷⁹ SEC Rule 15Fh-5(b)(2). **Note that this Schedule permits the special entity to designate multiple fiduciaries.**

⁸⁰ SEC Rule 15Fh-2(a)(2)(i)(A).

⁸¹ SEC Rule 15Fh-2(a)(2)(i)(B).

⁸² SEC Rule 15Fh-2(a)(2)(ii).

⁸³ SEC Rule 15Fh-3(f)(2)(iii).

⁸⁴ SEC Rule 15Fh-3(f)(2)(ii).

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.⁸⁵

⁸⁵ SEC Rule 15Fh-1(b). This provision matches the language in Section 2.3 and is necessary to ensure that the SBSB may continue to “reasonably” rely upon the representations of the Designated Fiduciary for each new trade.