

**ISDA 2018 U.S. Resolution Stay Protocol (ISDA U.S. Stay Protocol)**

ISDA has prepared this list of frequently asked questions to assist in your consideration of the ISDA U.S. STAY PROTOCOL.

THESE FREQUENTLY ASKED QUESTIONS DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH THE ISDA U.S. STAY PROTOCOL. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISER THEY DEEM APPROPRIATE PRIOR TO USING OR ADHERING TO THE ISDA U.S. STAY PROTOCOL. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

The same working group that helped develop, in consultation with regulators, the operative provisions of the ISDA 2014 Resolution Stay Protocol (ISDA 2014 Stay Protocol), the ISDA 2015 Universal Resolution Stay Protocol (ISDA 2015 Universal Stay Protocol) and the ISDA Resolution Stay Jurisdictional Modular Protocol (ISDA Jurisdictional Modular Protocol) also developed the ISDA U.S. Stay Protocol. All of these protocols aim to achieve the same policy goals with respect to the orderly resolution of systemically important financial institutions.

The ISDA U.S. Stay Protocol was created to allow market participants to comply with regulations issued by the Board of Governors of the Federal Reserve System (FRB) (12 C.F.R. §§ 252.81-88), the Federal Deposit Insurance Corporation (FDIC) (12 C.F.R. §§ 382.1-7) and the Office of the Comptroller of the Currency (OCC) (12 C.F.R. §§ 47.1-8) (collectively, the U.S. Stay Regulations). The U.S. Stay Regulations impose requirements on the terms of swaps, repos and other qualified financial contracts (QFCs) of global systemically important banking organizations (G-SIBs).

The ISDA U.S. Stay Protocol enables Entities Subject to U.S. Regulations (as defined below) and their counterparties to amend the terms of the covered agreements between them (unless they are excluded or exempted) to:

- Expressly recognize existing limits on the exercise of default rights by counterparties under the Orderly Liquidation Authority provisions of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (OLA) and the Federal Deposit Insurance Act (FDI Act) as well as the powers of the FDIC under OLA and the FDI Act to transfer contracts; and
- Limit the ability of counterparties to exercise default rights related, directly or indirectly, to affiliates of Entities Subject to U.S. Regulations (as defined below) entering into insolvency proceedings (including under the U.S. Bankruptcy Code) and permit the transfer of related credit support provided by a covered affiliate in such a resolution scenario.

The U.S. Stay Regulations provide a safe harbor for compliance by way of the ISDA 2015 Universal Stay Protocol or a “U.S. protocol” as described in the U.S. Stay Regulations. ISDA

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developed the ISDA U.S. Stay Protocol based on the requirements for a safe harbored “U.S. protocol” under the U.S. Stay Regulations.

The ISDA U.S. Stay Protocol is a standalone protocol with its own operative provisions, separate from those of the ISDA 2014 Stay Protocol, the ISDA 2015 Universal Stay Protocol and the ISDA Jurisdictional Modular Protocol, each of which were developed in advance of the adoption of the U.S. Stay Regulations. In addition, while the ISDA U.S. Stay Protocol is based on the terms of the ISDA 2015 Universal Stay Protocol, certain provisions of the ISDA 2015 Universal Stay Protocol (and the ISDA 2014 Stay Protocol on which it was based) differ from the provisions of the ISDA U.S. Stay Protocol. It is expected that most market participants will utilize the ISDA U.S. Stay Protocol, rather than the ISDA 2015 Universal Stay Protocol, to comply with the U.S. Stay Regulations; although, the ISDA 2015 Universal Stay Protocol, together with the Other Agreements Annex, is identified in the U.S. Stay Regulations as a safe harbored means of complying with the U.S. Stay Regulations.

Below are questions and answers that are designed to explain the basic operation and application of the ISDA U.S. Stay Protocol. The questions and answers cover:

1. Who can adhere to the ISDA U.S. Stay Protocol?
  - A. What kinds of entities can adhere to the ISDA U.S. Stay Protocol?
  - B. Can entities that are not ISDA members sign up to the ISDA U.S. Stay Protocol?
  - C. Can entities established outside the United States adhere to the ISDA U.S. Stay Protocol?
  - D. Can natural persons adhere to the ISDA U.S. Stay Protocol?
  - E. Can entities or natural persons that have not entered into an ISDA Master Agreement but have entered into other QFCs adhere to the ISDA U.S. Stay Protocol to amend such other QFCs?
  
2. What does the ISDA U.S. Stay Protocol do?
  - A. What resolution regimes does the ISDA U.S. Stay Protocol Cover?
  - B. What entities are Regulated Entities under the ISDA U.S. Stay Protocol?
  - C. What agreements are Protocol Covered Agreements under the ISDA U.S. Stay Protocol?
    - i. Does the ISDA U.S. Stay Protocol only cover new QFCs?
    - ii. Will the ISDA U.S. Stay Protocol apply to all of my Protocol Covered Agreements if I adhere or just certain of them? Can I specify certain agreements for application of the ISDA U.S. Stay Protocol?
  - D. Does a Regulated Entity have to amend its Protocol Covered Agreements with all Adhering Parties?
  - E. Does an Adhering Party have to amend its Protocol Covered Agreements with all Regulated Entities?
  - F. What does it mean for Protocol Covered Agreements to be “provided by” or “received by” an Adhering Party?
  
3. How does the ISDA U.S. Stay Protocol relate to the ISDA 2015 Universal Stay Protocol?

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- A. If I have adhered to the ISDA 2015 Universal Stay Protocol, do I still need to adhere to the ISDA U.S. Stay Protocol?
  - B. Are the substantive terms of the ISDA U.S. Stay Protocol different from the ISDA 2015 Universal Stay Protocol?
4. When does the ISDA U.S. Stay Protocol become effective?
5. How do I adhere to the ISDA U.S. Stay Protocol?
- A. Is there a closing date for adherence to the ISDA U.S. Stay Protocol?
  - B. How do I submit an Adherence Letter?
  - C. Is adherence public?
  - D. What is a conformed copy?
  - E. Who is an authorized signatory?
  - F. Can I change the text of the Adherence Letter?
  - G. Are there any costs to adhere to the ISDA U.S. Stay Protocol?
  - H. Can I revoke my adherence to the ISDA U.S. Stay Protocol?
6. How do investment/asset managers or other agents adhere on behalf of clients?
- A. How do I adhere as principal and on behalf of my clients?
  - B. How do I adhere on behalf of all clients I represent?
  - C. How do I adhere on behalf of some, but not all, clients I represent?
  - D. How do I adhere on behalf of all the clients that I represent except for clients identified as excluded?
  - E. How do I adhere on behalf of no current clients?
  - F. What if I want to adhere on behalf of only one client?
  - G. What happens if I add a client to an umbrella master agreement after adhering to the ISDA U.S. Stay Protocol?
  - H. What is the Agent Representation?
  - I. If an investment/asset manager or other agent has adhered on my behalf, which of my Protocol Covered Agreements are amended?
  - J. If I wish to adhere to the ISDA U.S. Stay Protocol as principal, can my agent execute a single-entity adherence letter in my name on my behalf?
  - K. If a general partner signs an agreement as the authorized signatory of a limited partnership, what entity must adhere to the ISDA U.S. Stay Protocol to amend such Protocol Covered Agreements?
  - L. What happens if I enter into a new umbrella master agreement with a new client after adhering to the ISDA U.S. Stay Protocol?
  - M. If I adhere to the ISDA U.S. Stay Protocol as principal, will this remediate all of my In-Scope QFCs, even those that were entered into by an agent on my behalf?
7. How does the ISDA U.S. Stay Protocol relate to the U.S. Stay Regulations?
- A. Are there other ways to comply with the U.S. Stay Regulations?
  - B. Do the U.S. Stay Regulations apply retrospectively?

Specific Questions on the Amendment Language

*Section 1: Resolution Regime Provisions*  
*Section 2: Insolvency Proceeding Provisions*

**1. Who can adhere to the ISDA U.S. Stay Protocol?**

**A. What kinds of entities can adhere to the ISDA U.S. Stay Protocol?**

The ISDA U.S. Stay Protocol is open to adherence by any entity. Entities may adhere individually in their own capacity or as agents on behalf of clients. See Question 6 for more information on adherence options for agents.

**B. Can entities that are not ISDA members sign up to the ISDA U.S. Stay Protocol?**

Yes. ISDA members and non-ISDA members alike may adhere to the ISDA U.S. Stay Protocol in the same way.

**C. Can entities established outside the United States adhere to the ISDA U.S. Stay Protocol?**

Yes. Entities established in the United States and outside the United States may adhere to the ISDA U.S. Stay Protocol in the same way.

**D. Can natural persons adhere to the ISDA U.S. Stay Protocol?**

Yes. Natural persons may adhere to the ISDA U.S. Stay Protocol by submitting an Adherence Letter in the same way as an entity, by accessing <https://www.isda.org/protocol/isda-2018-us-resolution-stay-protocol/submit/> on the ISDA website.

While the Adherence Letter is geared toward entity adherence, it can be used by individuals. When doing so:

- You should choose to adhere to the ISDA U.S. Stay Protocol as a “Single Entity Adherence” and indicate that you are **NOT** a “Regulated Entity.”
- For the “Organization Name” field, you should put your full legal name.
- You should leave the “Identify Ultimate Parent” field blank.
- For the LEI field, you should choose “Adherent does not have an LEI,” then choose “Other” and consult with your Regulated Entity counterparty as to what identifier would be most helpful for you to put in that field. Examples could include a unique identifier used by your Regulated Entity counterparty or government-issued unique identifiers.

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- Do **NOT** provide confidential or sensitive identifiers, such as U.S. Social Security numbers, as the contents of this field will be published on ISDA’s website as part of your Adherence Letter.
- Under “Title” in the “Authorized Signatory” field, you may enter “Individual.”

**E. Can entities or natural persons that have not entered into an ISDA Master Agreement but have entered into other QFCs adhere to the ISDA U.S. Stay Protocol to amend such other QFCs?**

Yes. Entities and natural persons do not need to have entered into an ISDA Master Agreement to utilize the ISDA U.S. Stay Protocol.

**2. What does the ISDA U.S. Stay Protocol do?**

The ISDA U.S. Stay Protocol enables parties to amend the terms of certain of their ISDA Master Agreements and other QFCs and related credit enhancements (collectively, Protocol Covered Agreements) (see Question 2.C. below for more information about Protocol Covered Agreements) to comply with the U.S. Stay Regulations. The U.S. Stay Regulations require that such contracts include contractual consents or “opt-ins” to certain identified resolution regimes (see Question 2.A. below for more information about these resolution regimes) that stay and, in certain cases, override certain affiliate cross-default and direct default rights arising upon the entry of a bank, or certain of its affiliated entities, into such resolution regimes. These provisions are contained in Section 1 of the U.S. Stay Protocol.

In addition, Section 2 of the ISDA U.S. Stay Protocol provides, as a matter of contract, for similar stays and overrides of default rights under Protocol Covered Agreements based on an affiliate of a Regulated Entity counterparty entering into proceedings under certain insolvency regimes where no such stays or overrides exist by statute. In short, under the ISDA U.S. Stay Protocol, if an affiliate of a Regulated Entity (see Question 2.B. below for a description of Regulated Entities) enters into proceedings under certain insolvency regimes, including the U.S. Bankruptcy Code, an Adhering Party that is a counterparty to a Protocol Covered Agreement with a Regulated Entity would only be able to exercise its contractual rights to terminate its Protocol Covered Agreements and exercise certain other default rights based directly or indirectly on entry of the affiliate of the Regulated Entity into such insolvency proceedings in limited circumstances. However, the U.S. Stay Protocol does not limit in any way an Adhering Party’s rights to terminate Protocol Covered Agreements and exercise other default rights if its direct Regulated Entity counterparty enters into insolvency proceedings or fails to pay or perform under the Protocol Covered Agreement (subject to any limitations under Section 1 of the ISDA U.S. Stay Protocol).

**A. What resolution regimes does the ISDA U.S. Stay Protocol Cover?**

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*Section 1:* Under Section 1 of the ISDA U.S. Stay Protocol, an Adhering Party agrees to “opt in” to provisions relating to the exercise of default rights under, and transfers of, Protocol Covered Agreements (see Question 2.C. below for more information about Protocol Covered Agreements) under certain identified resolution regimes applicable to a Regulated Entity counterparty, and to each “related entity” of its Regulated Entity counterparty, if the Regulated Entity counterparty or related entity becomes subject to proceedings under such identified resolution regimes.

Section 1 of the ISDA U.S. Stay Protocol applies with respect to OLA and the FDI Act, as well as to the special resolution regimes in France, Germany, Japan, Switzerland and the United Kingdom.

As a result, the Adhering Party’s ability to exercise default rights is subject to the provisions of the identified resolution regime applicable to the entity in resolution, including any stays and overrides on the exercise of direct defaults or affiliate cross defaults. Related entities include affiliates of a Regulated Entity that are Credit Support Providers (or their equivalent under non-ISDA Master Agreement QFCs) or Specified Entities (or their equivalent under non-ISDA Master Agreement QFCs) and certain parent entities. Section 1 of the ISDA U.S. Stay Protocol therefore results in a parity of treatment between adherents to the ISDA U.S. Stay Protocol and parties that are transacting under agreements governed by the laws of the jurisdiction of the applicable resolution regime.

*Section 2:* Section 2 of the ISDA U.S. Stay Protocol provides for contractual stays on the exercise of default rights triggered by affiliates of Regulated Entity counterparties entering into proceedings under certain insolvency regimes such as the U.S. Bankruptcy Code or receivership under the FDI Act. These regimes do not provide for statutory stays on affiliate cross-default rights (although the FDI Act does provide for statutory stays on direct default rights). Broadly speaking, the provisions of Section 2 parallel the overrides under OLA of affiliate cross-default rights. Section 2 of the U.S. Stay Protocol entirely overrides Specified Entity defaults (or their equivalent under non-ISDA Master Agreement QFCs) and other affiliate cross-defaults with respect to affiliates that do not provide credit support. However, certain conditions must be satisfied in order to override Credit Support Provider defaults (or their equivalent under non-ISDA Master Agreement QFCs).

See “Specific Questions on the Amendment Language” below for more detailed information about the amendments made by the ISDA U.S. Stay Protocol under Section 1 and Section 2.

**B. What entities are Regulated Entities under the ISDA U.S. Stay Protocol?**

Regulated Entities under the ISDA U.S. Stay Protocol are those entities that either are subject to the U.S. Stay Regulations or, in the case of foreign banking

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organizations, have a U.S. branch or agency that is subject to the U.S. Stay Regulations and, in both cases, identify themselves as a Regulated Entity in their Adherence Letter. Entities that are subject to the U.S. Stay Regulations are “Covered Entities” as defined in the regulations issued by the FRB (12 C.F.R. §§ 252.2, 252.81-88), “Covered FSIs” as defined in the regulations issued by the FDIC (12 C.F.R. §§ 382.1-7) and “Covered Banks” as defined in the regulations issued by the OCC (12 C.F.R. §§ 47.1-8) (collectively, Entities Subject to U.S. Regulations).

Regulated Entities generally include members of banking groups that have been designated as G-SIBs under the FRB’s Regulation YY; although, each of the FRB’s, the FDIC’s and the OCC’s regulations apply to a different set of entities within these banking groups. The FRB’s regulation generally covers U.S. bank holding companies of G-SIBs and their subsidiaries other than those covered under the OCC’s regulation or the FDIC’s regulation. The FDIC’s regulation covers state savings associations and state non-member banks that are subsidiaries of G-SIBs, as well as subsidiaries of the same. The OCC’s regulation covers national banks, federal savings associations, federal branches and federal agencies in each case that are subsidiaries of G-SIBs, as well as subsidiaries of the same, and large non-G-SIB national banks and federal savings associations. Taken as a whole, Regulated Entities under the U.S. Stay Regulations generally include:

- i.** With respect to U.S. G-SIBs, all U.S. and non-U.S. subsidiaries (subject to minor exceptions described below); and
- ii.** With respect to non-U.S. G-SIBs, all U.S. subsidiaries, U.S. branches and U.S. agencies (subject to minor exceptions described below).

In each case, the term “subsidiary” is based on the definition of “affiliate” in the U.S. Bank Holding Company Act and therefore incorporates the standard of “control” in the U.S. Bank Holding Company Act.

Under exclusions in the U.S. Stay Regulations, Regulated Entities do not include:

- Companies owned by a depository institution in satisfaction of debt previously contracted in good faith;
- Merchant banking portfolio companies;
- Portfolio companies held under 4(k)(4)(I) of the U.S. Bank Holding Company Act (investment authority for insurance companies);
- Portfolio companies held under the U.S. Small Business Investment Act of 1958;
- Certain companies engaged in the business of making public welfare investments; and

- For non-U.S. G-SIBs only:
  - Section 2(h)(2) subsidiaries; and
  - Subsidiaries of a U.S. branch or agency acquired, or formed to hold assets acquired, in the ordinary course of business and for the sole purpose of securing or collecting debt previously contracted in good faith by that branch or agency.

**C. What agreements are Protocol Covered Agreements under the ISDA U.S. Stay Protocol?**

The scope of Protocol Covered Agreements is intended to match the scope of agreements required to comply with the U.S. Stay Regulations. Protocol Covered Agreements include all QFCs, as defined in the U.S. Stay Regulations that Regulated Entities have entered into, executed or otherwise become a party to, unless the QFC is subject to one of the exclusions or exemptions in the U.S. Stay Regulations. The term QFC is defined by reference to the definition of “qualified financial contract” under OLA and includes swap agreements, repurchase agreements, securities contracts (including all contracts for the “purchase, sale or loan” of securities and certain other assets, including debt securities and mortgage loans), forward contracts and commodities contracts, together with related master agreements and credit support agreements or other credit enhancements.

With respect to multi-branch master agreements of U.S. branches or agencies of non-U.S. G-SIBs, the U.S. Stay Regulations apply only to the transactions that are booked at the U.S. branches or agencies. However, applying the amendments made by the ISDA U.S. Stay Protocol only to these transactions would require breaking apart netting sets within such master agreements, which could raise concerns about the effectiveness of netting provisions, including for purposes of calculating exposures upon closeout and determining applicable margin requirements. Therefore, the ISDA U.S. Stay Protocol applies to the entirety of any multi-branch master agreement that is a QFC and allows transactions to be booked to a U.S. branch or agency of a non-U.S. G-SIB.

Excluded QFCs include:

- QFCs that do not expressly contain any default rights (as defined under the U.S. Stay Regulations) or transfer restrictions against an Entity Subject to U.S. Regulations;
- Certain retail investment advisory contracts;
- Warrants in respect of shares of Entities Subject to U.S. Regulations issued shortly after publication of the U.S. Stay Regulations;

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- Transactions to which a central counterparty is a party (which do not include the client-facing legs of transactions cleared under the principal-to-principal clearing model – these client-facing legs are covered by the U.S. Stay Regulations);
- Transactions to which each party other than the Entity Subject to U.S. Regulations is a “financial market utility” (as defined in Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act); and
- Other QFCs excluded by the FRB, the FDIC and the OCC pursuant to a process set forth in the U.S. Stay Regulations.

Additionally, the provisions of the U.S. Stay Regulations addressing “opt-ins” to OLA and the FDI Act and, therefore, Section 1 of the ISDA U.S. Stay Protocol, do not apply to any QFC that (1) explicitly provides that it is governed by U.S. law and (2) is entered into with a counterparty that is organized, domiciled or has a principal place of business in the United States.

Separately, the provisions of the U.S. Stay Regulations addressing defaults arising because of the U.S. Bankruptcy Code or other proceedings in respect of an affiliate of an Entity Subject to U.S. Regulations and, therefore, Section 2 of the ISDA U.S. Stay Protocol, do not apply to any QFC that (1) does not explicitly provide any default right related “directly or indirectly” to an affiliate of the Entity Subject to U.S. Regulations becoming subject to insolvency or resolution proceedings and (2) does not explicitly prohibit the transfer of a credit enhancement provided by an affiliate of the Entity Subject to U.S. Regulations upon or following the affiliate of the Entity Subject to U.S. Regulations becoming subject to insolvency or resolution proceedings (unless the transfer would result in the supported party being the beneficiary of the credit enhancement in violation of the law applicable to the supported party).

**i. Does the ISDA U.S. Stay Protocol only cover new QFCs?**

No. Amendments to Protocol Covered Agreements that are made by the ISDA U.S. Stay Protocol will apply to all existing QFCs between Regulated Entities and other parties that adhere to the ISDA U.S. Stay Protocol, including all outstanding transactions under such agreements, in addition to new transactions entered into under such agreements after adherence to the ISDA U.S. Stay Protocol.

However, like all ISDA protocols, except as described below with respect to “deemed” ISDA Master Agreements, the ISDA U.S. Stay Protocol only amends Protocol Covered Agreements entered into as of the time that parties adhere to the ISDA U.S. Stay Protocol (specifically, as of the date of acceptance by ISDA, as agent, of an Adherence Letter from the later of the parties to such an agreement to adhere, the so-called Implementation

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Date). The ISDA U.S. Stay Protocol does not apply to Protocol Covered Agreements entered into by parties after the Implementation Date for those parties.

The U.S. Stay Regulations do require that all QFCs (other than excluded QFCs) entered into by Regulated Entities after January 1<sup>st</sup>, 2019 comply with the requirements of the U.S. Stay Regulations. The safe harbor provisions in the U.S. Stay Regulations permit parties to such agreements entered into after the Implementation Date to comply with the requirements of the U.S. Stay Regulations by incorporating the ISDA U.S. Stay Protocol by reference into such agreements if all parties to the agreement have adhered to the ISDA U.S. Stay Protocol. Parties could use the following language to incorporate by reference the amendments made by the ISDA U.S. Stay Protocol into such agreements:

“The terms of the ISDA 2018 U.S. Resolution Stay Protocol (“ISDA U.S. Stay Protocol”) are incorporated into and form a part of this Agreement, and this Agreement shall be deemed a Protocol Covered Agreement for purposes thereof. For purposes of incorporating the ISDA U.S. Stay Protocol, [•] shall be deemed to be a Regulated Entity and [•] shall be deemed to be an Adhering Party. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.”

The ISDA U.S. Stay Protocol does include within the definition of Protocol Covered Agreement “deemed” ISDA Master Agreements between an Adhering Party and a Regulated Entity that are entered into pursuant to long-form confirmations executed after the relevant Implementation Date (subject to satisfaction of certain conditions). However, upon the parties’ subsequent execution of a new ISDA Master Agreement in respect of such long-form confirmation, neither the ISDA Master Agreement nor any of the confirmations thereunder will be amended by the ISDA U.S. Stay Protocol. To apply the terms of the ISDA U.S. Stay Protocol to the newly executed ISDA Master Agreement, the terms of the ISDA U.S. Stay Protocol could be incorporated by reference as described above.

**ii. Will the ISDA U.S. Stay Protocol apply to all of my Protocol Covered Agreements if I adhere or just certain of them? Can I specify certain agreements for application of the ISDA U.S. Stay Protocol?**

The ISDA U.S. Stay Protocol will apply to all of your Protocol Covered Agreements with all Regulated Entities that also adhere to the ISDA U.S.

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Stay Protocol. It will not apply to a Protocol Covered Agreement unless all parties to such agreement adhere. It will also not apply to any agreements to which no Regulated Entity is a party. Both bilateral agreements and multi-party agreements with one or more Regulated Entities can be Protocol Covered Agreements, if all parties have adhered to the ISDA U.S. Stay Protocol.

Like all ISDA protocols, the ISDA U.S. Stay Protocol also will not apply to any agreement in which the parties expressly state that the terms of the ISDA U.S. Stay Protocol do not apply.

**D. Does a Regulated Entity have to amend its Protocol Covered Agreements with all Adhering Parties?**

Yes. A Regulated Entity that adheres to the ISDA U.S. Stay Protocol agrees to amend all of its Protocol Covered Agreements with all Adhering Parties.

**E. Does an Adhering Party have to amend its Protocol Covered Agreements with all Regulated Entities?**

Yes. One of the required elements of a safe harbored “U.S. protocol” under the U.S. Stay Regulations is that it operate on a “universal basis,” meaning that parties amend their covered QFCs with all Regulated Entities that adhered. Accordingly, under the ISDA U.S. Stay Protocol, an Adhering Party agrees to amend all Protocol Covered Agreements that it has entered with all Regulated Entities that adhere to the ISDA U.S. Stay Protocol. When adhering to the ISDA U.S. Stay Protocol, an Adhering Party may not select among Regulated Entities. Note, however, that the ISDA U.S. Stay Protocol does not amend agreements among Adhering Parties if none of the parties to an agreement are Regulated Entities (and no such amendment is required under the U.S. Stay Regulations).

As with other ISDA protocols, an agreement cannot be amended pursuant to the ISDA U.S. Stay Protocol unless all parties to such agreement adhere to the ISDA U.S. Stay Protocol. Therefore, all Regulated Entities that are parties to Protocol Covered Agreements (including credit enhancements) (see Question 2.C. above for more information about Protocol Covered Agreements) must adhere as Regulated Entities and their counterparties to such agreements must also adhere (directly or through an agent) in order to conform the agreements to the requirements of the U.S. Stay Regulations by way of the ISDA U.S. Stay Protocol.

**F. What does it mean for Protocol Covered Agreements to be “provided by” or “received by” an Adhering Party?**

This language was intended to describe agreements that are signed by only one Adhering Party for the benefit of another Adhering Party, rather than “entered into” between two Adhering Parties, with each signing the agreement. Examples

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of Protocol Covered Agreements that may be “provided by” or “received by” an Adhering Party are guarantees, letters of credit or other one-way agreements signed by only one Adhering Party (or its Agent) or under which an Adhering Party (or its Agent) is the beneficiary.

**3. How does the ISDA U.S. Stay Protocol relate to the ISDA 2015 Universal Stay Protocol?**

**A. If I have adhered to the ISDA 2015 Universal Stay Protocol, do I still need to adhere to the ISDA U.S. Stay Protocol?**

The ISDA 2015 Universal Stay Protocol applies only to agreements entered into by parties that have adhered to that protocol. While any entity may adhere to the ISDA 2015 Universal Stay Protocol, it is expected that market participants other than the original adherents to the ISDA 2015 Universal Stay Protocol will only adhere to the ISDA U.S. Stay Protocol.

In order to amend agreements with entities that have not adhered to the ISDA 2015 Universal Stay Protocol, Entities Subject to U.S. Regulations must adhere to the ISDA U.S. Stay Protocol (or comply with the U.S. Stay Regulations in another way). It is therefore expected that parties that have adhered to the ISDA 2015 Universal Stay Protocol will also adhere to the ISDA U.S. Stay Protocol in order to comply with the U.S. Stay Regulations.

The safe harbor provisions of the U.S. Stay Regulations apply to the ISDA 2015 Universal Stay Protocol (including the Other Agreements Annex), so to the extent that all parties to an agreement have adhered to that protocol and the Other Agreements Annex, an Entity Subject to U.S. Regulations that is a party to such agreement would be in compliance with the U.S. Stay Regulations for that agreement so long as the ISDA 2015 Universal Stay Protocol amended such agreement or was incorporated by reference into such agreement.

**B. Are the substantive terms of the ISDA U.S. Stay Protocol different from the ISDA 2015 Universal Stay Protocol?**

The ISDA U.S. Stay Protocol is substantively the same as the ISDA 2015 Universal Stay Protocol, except for certain differences as expressly required or permitted by the safe harbor provisions in the U.S. Stay Regulations. These differences include:

- Under Section 1, the ISDA U.S. Stay Protocol provides for an opt-in only to “Identified Regimes” (i.e., special resolution regimes in France, Germany, Japan, Switzerland, the United Kingdom and the United States of America), but the ISDA U.S. Stay Protocol does not provide for an opt-in to additional “Protocol Eligible Regimes” (as defined in the ISDA 2015 Universal Stay Protocol).

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- Section 1 of the ISDA U.S. Stay Protocol is limited so that the provisions apply only upon the resolution of a Regulated Entity, as opposed to the resolution of an Adhering Party that is not a Regulated Entity (the Section 2 provisions are so limited in both the ISDA 2015 Universal Stay Protocol and the ISDA U.S. Stay Protocol).
- The client-facing leg of a transaction cleared under the principal-to-principal clearing model is not excluded from the ISDA U.S. Stay Protocol and does not receive the special treatment it receives under the ISDA 2015 Universal Stay Protocol.
- Certain opt-out provisions in the ISDA 2015 Universal Stay Protocol are eliminated or limited in scope or application in the ISDA U.S. Stay Protocol.
- The scope of Protocol Covered Agreements in the ISDA U.S. Stay Protocol is tailored to match the scope of QFCs required to comply with the U.S. Stay Regulations.
- The ISDA U.S. Stay Protocol preserves the universal nature of the ISDA 2015 Universal Stay Protocol (in that through adherence to the ISDA U.S. Stay Protocol, an Adhering Party agrees to amend all Protocol Covered Agreements with all Regulated Entities) but contains certain mechanical provisions that make it easier for agents to adhere on behalf of only certain clients.

#### **4. When does the ISDA U.S. Stay Protocol become effective?**

As between an Adhering Party and a Regulated Entity (including, for the avoidance of doubt, any two Regulated Entities), the agreement to make the amendments contemplated by the ISDA U.S. Stay Protocol will be effective on the date of acceptance by ISDA, as agent, of an Adherence Letter from the later party to adhere (the Implementation Date). The amendments themselves will be effective on the later of (1) the Implementation Date and (2) the relevant Compliance Date. The “Compliance Date” with respect to a Protocol Covered Agreement is:

- January 1<sup>st</sup>, 2019, if each party to such Protocol Covered Agreement is an Entity Subject to U.S. Regulations.
- July 1<sup>st</sup>, 2019, if each party to such Protocol Covered Agreement (other than the Entity Subject to U.S. Regulations) is a “Financial Counterparty” but is not a “Small Financial Institution” (as both terms are defined in the regulations issued by the FRB (12 C.F.R. §§ 252.2, 252.81-88)). “Small Financial Institutions” generally include banking entities with \$10 billion or less in assets.

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- January 1<sup>st</sup>, 2020, if a party to such Protocol Covered Agreement is not described above.

**5. How do I adhere to the ISDA U.S. Stay Protocol?**

**A. Is there a closing date for adherence to the ISDA U.S. Stay Protocol?**

There is currently no cut-off date for adherence, but ISDA reserves the right to designate a closing date of the ISDA U.S. Stay Protocol by giving 30 days' notice on this site.

**B. How do I submit an Adherence Letter?**

Each entity executing an Adherence Letter will access the [Protocol](#) section of the ISDA website at [www.isda.org](http://www.isda.org) to enter information online that is required to generate its form of Adherence Letter. Either by directly downloading the populated Adherence Letter from the protocol management system or upon receipt via e-mail of the populated Adherence Letter, the entity must print, sign and upload the signed Adherence Letter as a PDF (portable document format) attachment into the protocol management system. Once the signed Adherence Letter has been approved and accepted by ISDA, the ISDA U.S. Stay Protocol adherent will receive an e-mail confirmation of adherence to the ISDA U.S. Stay Protocol. A step-by-step guide to adherence is available [here](#).

**C. Is adherence public?**

Yes. A list of Adhering Parties will be published on ISDA's website. Note that this list will contain the names of agents adhering on behalf of clients but will not contain the names of the clients themselves. See Question 6 below for additional information about adherence by agents.

**D. What is a conformed copy?**

A conformed copy of the Adherence Letter means that the name of the authorized signatory (for example, Patricia Smith) is typed rather than having Patricia Smith's actual signature on the letter. ISDA only posts on its website the conformed copy of all Adherence Letters. A conformed copy of each Adherence Letter containing, in place of each signature, the printed or typewritten name of each signatory will be published by ISDA so that it may be viewed on ISDA's website.

**E. Who is an authorized signatory?**

An authorized signatory to the Adherence Letter is an individual who has the legal authority to bind the adhering institution.

**F. Can I change the text of the Adherence Letter?**

No. The Adherence Letter must be in the same format as the form of letter published in the ISDA U.S. Stay Protocol and generated by the protocol management webpage.

**G. Are there any costs to adhere to the ISDA U.S. Stay Protocol?**

Yes. Each party adhering to the ISDA U.S. Stay Protocol must submit a one-time fee of US \$500 to ISDA at or before the submission of its Adherence Letter.

Each individual legal entity is considered a separate Adhering Party for this purpose, and must pay the adherence fee, except that an investment/asset manager/agent that adheres on behalf of one or more underlying funds or principals for whom it has entered into a Protocol Covered Agreement, using a single Adherence Letter, would only pay a single adherence fee for that Adherence Letter.

Note that ISDA offers pricing for multiple entity corporate or fund groups. If a corporate or fund group has 25-100 entities that adhere to the ISDA U.S. Stay Protocol, they can adhere for a flat fee of \$12,500 total. If a corporate or fund group has more than 100 entities that adhere to the ISDA U.S. Stay Protocol, they can adhere for a flat fee of \$25,000. If your corporate or fund group qualifies for this pricing, please contact [protocolmanagement@isda.org](mailto:protocolmanagement@isda.org) for further details on how to make the payment and submit your Adherence Letters.

**H. Can I revoke my adherence to the ISDA U.S. Stay Protocol?**

Once ISDA has accepted an Adherence Letter, an Adhering Party is bound by all amendments with other parties that have already adhered to the ISDA U.S. Stay Protocol or, subject to the discussion below, that adhere before a designation of the “Annual Revocation Date”.

An Adhering Party may, at any time during the period from October 1 to October 31 of a calendar year, deliver to ISDA a notice specifying the Annual Revocation Date as its cut-off date in respect of amendments with future Adhering Parties. The effect of such a letter will be to withdraw adherence with respect to future Adhering Parties as of December 31 of that calendar year. Although amendments already made will not be revoked, any subsequent adherence by new Adhering Parties after the designated Annual Revocation Date will not bind the party that has submitted a Revocation Notice.

As a contractual matter, Adhering Parties may, subsequent to adherence to the ISDA U.S. Stay Protocol, bilaterally agree to amend their Protocol Covered Agreements, and any such subsequent amendments will supersede those made by the ISDA U.S. Stay Protocol with respect to such Adhering Parties and Protocol Covered Agreements to the extent that they are inconsistent. Note that any such

amendments may conflict with the safe harbor provisions in the U.S. Stay Regulations.

**6. How do investment/asset managers or other agents adhere on behalf of clients?**

If you are an investment or asset manager and act on behalf of one or more principals or funds (each referred to in these FAQs as a “client”), you may sign the Adherence Letter to adhere as an Adhering Party on behalf of clients using one of the options below. You may not use an Adherence Letter to adhere as a Regulated Entity on behalf of clients or on behalf of clients that are adhering as Regulated Entities. You may adhere on behalf of clients that are Entities Subject to U.S. Regulations so long as you adhere on behalf of such clients in their capacity as a counterparty and Adhering Party and do not elect that such clients are Regulated Entities in your Adherence Letter. Entities Subject to U.S. Regulations must separately submit an Adherence Letter as a principal to adhere as a Regulated Entity.

In your Adherence Letter, you can elect to adhere (1) as a principal, (2) as an agent on behalf of all of the clients that you represent, (3) as an agent on behalf of some, but not all, of the clients that you represent, (4) as an agent on behalf of all of the clients that you represent except for clients identified as excluded or (5) as an agent on behalf of no current clients.

**A. How do I adhere as principal and on behalf of my clients?**

If you are adhering as both an investment or asset manager acting on behalf of one or more clients and as a principal for your trades, you should submit two separate Adherence Letters. You should sign one Adherence Letter to adhere as an Adhering Party on behalf of clients and sign a separate Adherence Letter to adhere as an Adhering Party as a principal.

**B. How do I adhere on behalf of all clients I represent?**

If you have the authority to adhere to the ISDA U.S. Stay Protocol as agent on behalf of all clients, you should choose the following adherence type in your Adherence Letter: “Investment/Asset Manager or Other Agent on Behalf of All Funds, Accounts or other Principals that it Represents”. You do not need to submit a separate Adherence Letter for each client. You may, at your option, choose to provide a list of clients to Regulated Entities bilaterally. However, all clients on whose behalf you have authority will be bound irrespective of whether a list of clients is provided or not and irrespective of the names of the clients on the list.

**C. How do I adhere on behalf of some, but not all, clients I represent?**

If you have the authority to adhere to the ISDA U.S. Stay Protocol as agent on behalf of one or more, but not all clients that you represent, you may choose the following adherence type in your Adherence Letter: “Investment/Asset Manager

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or Other Agent on Behalf of Certain Identified Funds, Accounts or other Principals that it Represents”. You will be responsible for identifying the relevant clients on whose behalf you are adhering through an online platform available generally to the industry, including, for example, the ISDA Amend platform provided by IHS Markit. Such identification can be provided in the form of specific entity names of your clients or in the form of specific identifiers known and recognized by all Regulated Entities. You may identify clients by using both names and specific identifiers, but you must supply one or the other for each client. Choosing not to provide both does not affect the legal validity and binding nature of the ISDA U.S. Stay Protocol, provided that one or the other is provided.

**D. How do I adhere on behalf of all the clients that I represent except for clients identified as excluded?**

If you have the authority to adhere to the ISDA U.S. Stay Protocol as agent on behalf all clients that you represent except certain clients, you may choose the following adherence type in your Adherence Letter: “Investment/Asset Manager or Other Agent on Behalf of All Funds, Accounts or other Principals Except Certain Funds, Accounts or other Principals Identified as Excluded”. You will be responsible for identifying the excluded clients through an online platform available generally to the industry, including, for example, the ISDA Amend platform provided by IHS Markit. Such identification can be provided in the form of specific entity names of your clients or in the form of specific identifiers known and recognized by all Regulated Entities. You may identify clients by using both names and specific identifiers, but you must supply one or the other for each excluded client. Choosing not to provide both does not affect the legal validity and binding nature of the ISDA U.S. Stay Protocol, provided that one or the other is provided for each excluded client.

**E. How do I adhere on behalf of no current clients?**

If you wish to adhere to the ISDA U.S. Stay Protocol as agent on behalf of no current clients, you should choose one of the following adherence type in your Adherence Letter: “Investment/Asset Manager or Other Agent on Behalf of All Funds, Accounts or other Principals that it Represents” or “Investment/Asset Manager or Other Agent on Behalf of Certain Identified Funds, Accounts or other Principals that it Represents”. You will be responsible for following the relevant instructions above if and when you add clients on whose behalf you are adhering.

**F. What if I want to adhere on behalf of only one client?**

If you adhere as an agent on behalf of a single client and the client is the only principal that you represent, you can adhere pursuant to the option described above for “How do I adhere on behalf of all clients I represent?”

If, however, you adhere as an agent on behalf of a single client, but that is not the only client you represent, you can adhere pursuant to the option described above

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in “How do I adhere on behalf of some, but not all, clients I represent?” You should choose the following adherence type in your Adherence Letter: “Investment/Asset Manager or Other Agent on Behalf of Certain Identified Funds, Accounts or other Principals that it Represents,” and identify your client through an online platform available generally to the industry, including, for example, the ISDA Amend platform provided by IHS Markit.

**G. What happens if I add a client to an umbrella master agreement after adhering to the ISDA U.S. Stay Protocol?**

If you add a client to an umbrella master agreement after the date you adhere to the ISDA U.S. Stay Protocol as agent either on behalf of all of your clients or on behalf of all of your clients except for clients identified as excluded (whether that added client was an existing client as of the date of your adherence or a new client acquired after such date), that client will be added to that umbrella master agreement as amended by the ISDA U.S. Stay Protocol, unless otherwise agreed (or unless you identified that client as excluded pursuant to the process described above).

If you add a client to an umbrella master agreement after the date you adhere to the ISDA U.S. Stay Protocol as agent on behalf of some, but not all, of your clients (whether that added client was an existing client as of the date of your adherence or a new client acquired after such date), you must identify the client that has been added to the umbrella master agreement through an online platform available generally to the industry, including, for example, the ISDA Amend platform provided by IHS Markit. Upon such identification, the client will be added to the umbrella master agreement as amended by the ISDA U.S. Stay Protocol.

**H. What is the Agent Representation?**

If you adhere to the ISDA U.S. Stay Protocol on behalf of one or more clients or add new clients after the date you adhere to the ISDA U.S. Stay Protocol, you must communicate the identity of each such client to each Regulated Entity with, to or from which you have entered into, provided or received one or more Protocol Covered Agreements on behalf of such client. When you communicate the identity of a client to a Regulated Entity you are deemed to represent to such Regulated Entity that you have communicated the identity of the client to each other Regulated Entity with, to or from which you have entered into, provided or received one or more Protocol Covered Agreements on behalf of such client.

**I. If an investment/asset manager or other agent has adhered on my behalf, which of my Protocol Covered Agreements are amended?**

If an investment/asset manager or other agent adheres to the ISDA U.S. Stay Protocol on your behalf through one of the agent adherence methods described in Section 3(g) of the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will

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amend all of your Agent Protocol Covered Agreements with adhering Regulated Entities that this particular agent entered into, provided or received on your behalf *and* that the agent has the authority to amend on your behalf. It will not apply to a Protocol Covered Agreement that either you or a different investment/asset manager or other agent entered into.

If an investment/asset manager or other agent adheres to the ISDA U.S. Stay Protocol in its name as agent on your behalf through one of the methods described in Section 3(g) of the ISDA U.S. Stay Protocol, then *only* those QFCs that fall within the definition of Agent Covered Agreement or Agent Covered Credit Enhancement will be remediated. The definition of Agent Covered Agreement is limited to an In-Scope QFC (other than an Excluded Agreement) that is signed by the agent on your behalf, and the definition of an Agent Covered Credit Enhancement is limited to a credit enhancement that is an In-Scope QFC (other than an Excluded Agreement) that is entered into by or provided by or to the agent on your behalf.

An agreement that was signed by you directly is not an Agent Covered Agreement or an Agent Covered Credit Enhancement and therefore cannot be remediated by an agent's adherence to the ISDA U.S. Stay Protocol utilizing the agent adherence methods described in Section 3(g) of the ISDA U.S. Stay Protocol. This is true notwithstanding any express authority that you may have granted to your agent to execute an adherence letter on your behalf.

However, as noted in the response to Question 6.J below, it is possible for an agent to execute a separate "Single Entity Adherence Letter" in your name as principal, assuming the agent has the appropriate agency authority to do so.

In addition, if an investment/asset manager or other agent has adhered on your behalf utilizing the agent adherence methods described in Section 3(g) of the ISDA U.S. Stay Protocol, this adherence will not amend a Protocol Covered Agreement that a different investment/asset manager or other agent entered into on your behalf. This means that if you trade through multiple investment/asset managers or other agents pursuant to different Protocol Covered Agreements, either each investment/asset manager or other agent must adhere to the ISDA U.S. Stay Protocol on your behalf utilizing the agent adherence methods described in Section 3(g) of the ISDA U.S. Stay Protocol or you must adhere to the ISDA U.S. Stay Protocol as principal using the "Single Entity Adherence" option.

For example, if you enter into Protocol Covered Agreement X through asset manager A and Protocol Covered Agreement Y through asset manager B, there are two ways to amend Protocol Covered Agreements X and Y through adherence to the ISDA U.S. Protocol. First, you can adhere to the ISDA U.S. Protocol using the "Single Entity Adherence" option. Second, both asset manager A and asset manager B can adhere to the ISDA U.S. Protocol on your behalf utilizing the agent adherence methods described in Section 3(g) of the ISDA U.S. Stay

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Protocol. Note that both asset manager A and asset manager B must adhere in order for the second option to work. It is not enough for only one of the asset managers to adhere to the ISDA U.S. Protocol, and your ability to continue trading with Regulated Entity counterparties may be limited until both asset managers have adhered on your behalf.

In addition, if more than one investment/asset manager has entered into a given Protocol Covered Agreement on your behalf, then either you must adhere to the ISDA U.S. Protocol using the “Single Entity Adherence” option, or both investment/asset managers must adhere to the ISDA U.S. Protocol on your behalf in order to amend the agreement, unless one of the investment/asset managers has the authority to amend the Protocol Covered Agreement on your behalf without the signature of the other investment/asset manager.

Note that adherence by an investment/asset manager as agent through the methods described in Section 3(g) of the ISDA U.S. Stay Protocol will not amend Protocol Covered Agreements entered into by the investment/asset manager in its own name as principal. To amend such agreements the investment/assets manager must adhere in its own name using the “Single Entity Adherence” option.

**J. If I wish to adhere to the ISDA U.S. Stay Protocol as principal, can my agent execute a single-entity adherence letter in my name on my behalf?**

Yes. If you wish to adhere to the ISDA U.S. Stay Protocol directly as principal, including to remediate In-Scope QFCs that have been signed by you directly, it is possible for the a Single Entity Adherence Letter to be executed in your name by your agent, assuming the agent has the appropriate agency authority to do so. In this case, the adherence letter would list your name as the adherent, and the signature block would indicate the capacity of the agent submitting the adherence letter on your behalf (e.g., XYZ Fund, by ABC as investment manager).

**K. If a general partner signs an agreement as the authorized signatory of a limited partnership, what entity must adhere to the ISDA U.S. Stay Protocol to amend such Protocol Covered Agreements?**

If a general partner signs a Protocol Covered Agreement as the authorized signatory of a limited partnership, but the limited partnership is the party to the Protocol Covered Agreement, the limited partnership must adhere to the ISDA U.S. Stay Protocol to amend such Protocol Covered Agreement. The general partner may sign the Adherence Letter on behalf of the limited partnership, but the Adherence Letter should be a “Single Entity Adherence” in the limited partnership’s name.

**L. What happens if I enter into a new umbrella master agreement with a new client after adhering to the ISDA U.S. Stay Protocol?**

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If you enter into a new umbrella master agreement with a new client after the date you adhere to the ISDA U.S. Stay Protocol as agent on behalf of all of your clients or on behalf of all of your clients except for clients identified as excluded, that new client can be viewed as being covered by your adherence, unless otherwise agreed (or unless you identified that client as excluded pursuant to the process described above).

If you enter into a new umbrella master agreement with a new client after the date you adhere to the ISDA U.S. Stay Protocol as agent on behalf of some, but not all, of your clients, you must identify the new client through an online platform available generally to the industry, including, for example, the ISDA Amend platform by IHS Markit. Upon such identification, the client can be viewed as being covered by your adherence.

The QFC stay regulations permit incorporation by reference of the ISDA U.S. Protocol with respect to QFCs between adherents to the ISDA U.S. Protocol.

**M. If I adhere to the ISDA U.S. Stay Protocol as principal, will this remediate all of my In-Scope QFCs, even those that were entered into by an agent on my behalf?**

Yes. If you adhere to the ISDA U.S. Stay Protocol directly as principal, whether by submitting your own Single Entity Adherence Letter or by having an agent submit a Single Entity Adherence Letter on your behalf, this will remediate all Protocol Covered Agreements between you and any Regulated Entity that is an adhering party, regardless of whether any of those agreements were signed by an agent on your behalf.

**7. How does the ISDA U.S. Stay Protocol relate to the U.S. Stay Regulations?**

**A. Are there other ways to comply with the U.S. Stay Regulations?**

The U.S. Stay Regulations permit compliance in a number of ways, including adherence to the ISDA 2015 Universal Stay Protocol (including the Other Agreements Annex), adherence to a “U.S. protocol” or bilateral amendments in accordance with the requirements in the U.S. Stay Regulations.

*Safe Harbored Protocols.* The ISDA U.S. Stay Protocol was drafted based on the requirements for a safe harbored “U.S. protocol”. Any covered QFC that is amended by the ISDA 2015 Universal Stay Protocol (including the Other Agreements Annex) or a “U.S. protocol” is deemed to comply with the requirements of the U.S. Stay Regulations.

*Bilateral Amendments.* The U.S. Stay Regulations contain requirements for bilateral amendments. Importantly, the requirements relating to affiliate cross defaults offer fewer protections for creditors than the safe harbored protocols (covered by Section 2 of the ISDA 2015 Universal Stay Protocol and the ISDA

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U.S. Stay Protocol. ISDA has published a [comparison](#) of the creditor protections in the ISDA U.S. Stay Protocol and the creditor protections permitted for bilateral agreements pursuant to the requirements of the U.S. Stay Regulations.

It is important to note that it is not possible to comply with the U.S. Stay Regulations by bilaterally incorporating the terms of the ISDA U.S. Stay Protocol (unless all parties to an agreement have adhered to the ISDA U.S. Stay Protocol or the ISDA 2015 Universal Stay Protocol and Other Agreements Annex). Counterparties who elect to comply bilaterally must agree to different terms than those who adhere to the ISDA U.S. Stay Protocol or the ISDA 2015 Universal Stay Protocol and the Other Agreements Annex. This is unlike other recent regulations that allow for amendments on the same terms either bilaterally or pursuant to a protocol (*e.g.*, uncleared margin, stay regulations outside the United States).

However, bilateral amendments would allow parties to opt in only to OLA and the FDI Act without opting into the special resolution regimes in France, Germany, Japan, Switzerland and the United Kingdom. Bilateral amendments would also allow counterparties to be more selective regarding G-SIB groups because they would not have to agree to make amendments on a “universal basis” with respect to all G-SIB groups adhering to the ISDA U.S. Protocol (however, all entities within a counterparty group would have to cease trading with an Entity Subject to U.S. Regulations and all of its affiliates that are Entities Subject to U.S. Regulations to avoid making the amendments required by the U.S. Stay Regulations).

ISDA has produced [model language](#) that counterparties could use to comply with the “U.S. special resolution regime” provisions of the U.S. Stay Regulations via bilateral amendments if they do not have to comply with the “insolvency proceeding” provisions of the U.S. Stay Regulations (because their agreements do not have default rights related “directly or indirectly” to affiliate insolvency proceedings or transfer restrictions on credit enhancements in the event of an affiliate insolvency proceeding).

*Approval of U.S. Prudential Regulators.* The FRB, the FDIC and the OCC may approve an alternative means of compliance pursuant to a process set forth in the U.S. Stay Regulations. However, the process is relatively involved and, among other things, requires a detailed written analysis of how the proposed means of compliance satisfies a series of specific policy considerations and an opinion with respect to “applicable law of the relevant jurisdictions”.

## **B. Do the U.S. Stay Regulations apply retrospectively?**

The requirements under the U.S. Stay Regulations to conform covered QFCs are triggered any time that an Entity Subject to U.S. Regulations or one of its covered affiliates that is an Entity Subject to U.S. Regulations enters into any QFC with a

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counterparty group (*i.e.*, a counterparty or its consolidated affiliates) on or after January 1<sup>st</sup>, 2019. Once such a QFC is entered into, the U.S. Stay Regulations require the Entity Subject to U.S. Regulations and its covered affiliates that are Entities Subject to U.S. Regulations to conform all existing covered QFCs that they have entered into, executed or otherwise become a party to prior to January 1<sup>st</sup>, 2019 with any member of the counterparty group. The definition of covered affiliate with respect to Entities Subject to U.S. Regulations is based on the definition in the U.S. Bank Holding Company Act. Counterparty groups are defined based on U.S. GAAP principles of financial consolidation.

Note that while only covered QFCs must be conformed to the requirements of the U.S. Stay Regulations, entry into any QFC (including a QFC that is excluded from application of the U.S. Stay Regulations because, for example, it does not contain any default rights or transfer restrictions), triggers the retrospective effect of the U.S. Stay Regulations and therefore triggers the requirement to conform all existing covered QFCs between the Entity Subject to U.S. Regulations and its affiliates that are Entities Subject to U.S. Regulations, on the one hand, and all members of the counterparty group, on the other hand.

## **Specific Questions on the Amendment Language**

### ***Section 1: Resolution Regime Provisions***

#### **I. Why does Section 1 cover stays against direct counterparties and not just affiliate cross-defaults to failing parent entities?**

Section 1 satisfies requirements under the U.S. Stay Regulations aimed at achieving a parity of treatment between parties that opt in to the relevant provisions of a resolution regime and parties that are subject to the laws of the jurisdiction of the resolution regime because it is the governing law of their Protocol Covered Agreement or it is otherwise applicable. Resolution regimes generally include stays on termination by direct counterparties, as well as by the counterparties of affiliates of the entity in resolution. The ISDA U.S. Stay Protocol extends to direct-default rights, as well as affiliate cross-default rights, where such rights are stayed or overridden under the applicable resolution regime.

#### **II. What happens if the resolution action taken under a resolution regime with respect to a Regulated Entity is successful?**

If a resolution action with respect to a Regulated Entity is successful, as determined by the provisions of the applicable resolution regime, within the prescribed timeframe (typically by the end of the next business day or the business day after that), counterparties of such Regulated Entity would presumably face a creditworthy entity (either a

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new bridge or transferee entity or the recapitalized original Regulated Entity). By opting into the relevant resolution regime, an Adhering Party would receive the same benefits as a counterparty already subject to such resolution regime and would be subject to a similar stay on its ability to exercise default rights.

**III. What happens if the resolution action taken under a resolution regime with respect to a Regulated Entity is not successful?**

If a resolution action against a Regulated Entity is not successful, or certain actions are not taken within a set timeframe (typically by the end of the next business day or the business day after that), as determined by the provisions of the applicable resolution regime, an Adhering Party can exercise default rights that it has to the same extent as a counterparty already subject to such resolution regime with the same default rights.

**IV. Doesn't the Federal Deposit Insurance Act (FDI Act), OLA and the European Union Bank Recovery and Resolution Directive (BRRD) do this already? Why do we need the ISDA U.S. Stay Protocol?**

Yes. The FDI Act imposes stays on the exercise of direct default rights against the failed institution and provides the FDIC with the discretion to transfer such QFCs to a bridge institution or other third-party. OLA has similar provisions, but it also stays the exercise of certain cross-default rights. The BRRD contains similar provisions to OLA. However, the U.S. Stay Regulations require a contractual opt-in to eliminate any uncertainty regarding the enforcement of such stays by courts, particularly non-U.S. courts.

**V. What does it mean to “opt in” to a regime?**

“Opting in” means agreeing to be bound by the relevant provisions of the regime to the same extent as if the agreement were governed by the law of such regime.

**VI. To what regimes am I opting in?**

Under Section 1 of the ISDA U.S. Stay Protocol, you will opt in to the resolution regimes that are applicable to your direct counterparties that are Regulated Entities and each of their respective related entities, which includes affiliates that are Credit Support Providers or Specified Entities (or their equivalent under non-ISDA Master Agreement QFCs) and the ultimate parent entity organized under the relevant resolution regime. In addition to OLA and the FDI Act, you will opt

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in to the resolution regimes in the identified jurisdictions (i.e., France, Germany, Japan, Switzerland and the United Kingdom).

**VII. Am I opting in to the BRRD?**

The BRRD provides a framework for bank recovery and resolution that has been implemented by each individual European Union member state through its own resolution regime. So, you are not opting in to BRRD; rather, you are opting in to the implementation of BRRD in France, Germany and the United Kingdom, through their respective resolution regimes.

**VIII. What if a resolution regime is amended to make it worse for creditors – am I still bound by it?**

Section 1 includes several opt-out provisions, including a provision that permits an Adhering Party to choose to opt out of future resolutions under that resolution regime if that resolution regime is amended in a way that negatively affects the enforceability of certain creditors' default rights. However, such opt-outs are only effective to the extent that Protocol Covered Agreements continue to meet the requirements of the U.S. Stay Regulations.

**IX. Are cleared transactions subject to Section 1?**

If cleared transactions are QFCs that are not excluded from compliance with the U.S. Stay Regulations, and are, therefore, Protocol Covered Agreements, such cleared transactions are subject to Section 1 and are not treated any differently than any other transaction that is within the scope of Section 1.

**X. By adhering to the ISDA U.S. Stay Protocol, what is the maximum length of stay to which I can be subject under a resolution regime?**

It depends. Under Section 1, Adhering Parties essentially opt in to the Identified Regimes applicable to their Regulated Entity counterparties and related entities of those Regulated Entity counterparties. OLA and the FDI Act impose a stay that lasts until the end of the following business day; the stays under other Identified Regimes could last for up to two business days. Where the resolution action taken under a resolution regime with respect to a Regulated Entity is successful, as determined by the provisions of such resolution regime, the stay on the exercise of default rights related to the Regulated Entity's entry into resolution proceedings may become permanent.

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**XI. If my Regulated Entity counterparty or its related entity enters resolution, can I suspend performance?**

When a party opts in to a special resolution regime, its rights to take actions with respect to a particular Protocol Covered Agreement, including to suspend performance as a result of an event of default or a potential event of default, are governed by that special resolution regime. For example, in the United States, a counterparty to an institution subject to proceedings under OLA can suspend performance during the one-business-day stay period; however, a counterparty to a subsidiary or affiliate of the party in resolution would be required to continue to perform. Parties opting in to OLA via the ISDA U.S. Stay Protocol would be contractually subject to the same provisions on suspension of performance.

**XII. What if I have specified that Automatic Early Termination (AET) applies to my Regulated Entity counterparty to an ISDA Master Agreement or that a similar provision applies to my Regulated Entity counterparty under another Protocol Covered Agreement?**

Under the ISDA U.S. Stay Protocol, the automatic termination of transactions under a Protocol Covered Agreement falls within the definition of a default right. Therefore, the opt-in under Section 1 would apply to the operation of AET and similar provisions. In other words, if a party opts in to a regime as a result of the ISDA U.S. Stay Protocol, the operation of AET and similar provisions would be stayed or exercisable to the extent so provided under such regime.

**XIII. What happens under Section 1 if a Regulated Entity enters resolution proceedings under a particular resolution regime and is required to transfer its Protocol Covered Agreement to a successor, but such Protocol Covered Agreement contains restrictions on such transfers?**

Under Section 1, if a Regulated Entity enters resolution under an Identified Regime, a Regulated Entity's ability to transfer a Protocol Covered Agreement is governed by such regime. By opting in to such regime, Adhering Parties agree that a transfer thereunder will be effective to the same extent that it would be if the Protocol Covered Agreement were governed by the laws of the jurisdiction of the resolution regime.

*Section 2: Insolvency Proceeding Provisions*

**XIV. Why is Section 2 included? Why isn't the U.S. Bankruptcy Code covered by Section 1?**

**Updated June 10<sup>th</sup>, 2019**

The U.S. Bankruptcy Code, unlike OLA, does not provide for statutory stays on the exercise of default rights under QFCs related to the insolvency of an affiliate, which means that there are no statutory provisions for a counterparty to opt in to, as there would be under a resolution regime covered by Section 1. Similarly, the FDI Act does not provide for a statutory stay on the exercise of affiliate cross-default rights. The U.S. Stay Regulations are intended to address this obstacle by requiring that certain QFCs of Entities Subject to U.S. Regulations include contractual limitations on the exercise of certain rights that would otherwise be triggered if an affiliate of the counterparty were to enter insolvency or resolution proceedings.

As required to qualify as a safe harbored “U.S. protocol” under the U.S. Stay Regulations, Section 2 of the ISDA U.S. Stay Protocol establishes a contractual limitation on the exercise of certain rights that would otherwise be triggered if an affiliate of the Regulated Entity counterparty were to enter proceedings under certain U.S. insolvency regimes, including Chapter 7 and Chapter 11 of the U.S. Bankruptcy Code and the FDI Act. In addition, if the counterparty benefits from a credit enhancement provided by a covered affiliate and the covered affiliate enters proceedings under Chapter 11 of the U.S. Bankruptcy Code, Section 2 of the ISDA U.S. Stay Protocol would require either that the counterparty’s claim under the credit enhancement be elevated to administrative priority status or be transferred to a newly formed bridge entity or to a third-party transferee that meets any contractually agreed financial conditions within 48 hours or one business-day, whichever is longer. Section 2 of the ISDA U.S. Stay Protocol also requires that the direct counterparty continue to meet all of its payment and delivery obligations under the relevant Protocol Covered Agreement and not enter insolvency proceedings itself.

**XV. Why does Section 2 cover only cross defaults to a failing affiliate and certain direct defaults related to such failure?**

The relevant provisions of the U.S. Stay Regulations are intended to facilitate a “single point of entry”-style resolution. Under such a resolution strategy, only the top-tier holding company enters into insolvency proceedings, and its operating subsidiaries remain as going concerns that continue to perform on their obligations. As a result, the U.S. Stay Regulations only require limitations on the exercise of default rights triggered by the resolution or insolvency of an affiliate of a direct Regulated Entity counterparty and not by the resolution or insolvency of the direct counterparty itself. Consistent with the requirements of the U.S. Stay Regulations, Section 2 generally only limits the exercise of default rights related to the entry of an affiliate of a direct counterparty into U.S. insolvency proceedings. Direct default rights based on the insolvency or failure to pay or perform of a direct Regulated Entity counterparty are always exercisable, unless overridden by a resolution regime.

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**XVI. Isn't this extending the reach of U.S. bankruptcy laws?**

No. Section 2 does not affect a counterparty's right to exercise default rights under a Protocol Covered Agreement based on the other party's entry into bankruptcy proceedings. The U.S. Bankruptcy Code does not impose any limitations on the exercise of affiliate cross-default rights.

**XVII. Does Section 2 override the U.S. Bankruptcy Code safe harbors relating to close-out rights or a right to terminate based on a counterparty's insolvency or failure to pay or perform?**

No. Section 2 does not affect a party's close-out rights under a Protocol Covered Agreement based on the other party's failure to pay, failure to deliver margin or entry into insolvency proceedings (other than proceedings under a resolution regime that stays or overrides such rights).

**XVIII. If an affiliate of a Regulated Entity counterparty or a Credit Support Provider to its Protocol Covered Agreement enters into U.S. insolvency proceedings, can I suspend performance?**

If an affiliate of your Regulated Entity counterparty enters U.S. insolvency proceedings or a Credit Support Provider (or their equivalent under non-ISDA Master Agreement QFCs) enters into proceedings under Chapter 11 of the U.S. Bankruptcy Code, both parties to the relevant Covered Agreement must continue to perform so long as the conditions set forth in Section 2 are satisfied.

**XIX. Under Section 2, can a Credit Support Provider that has entered insolvency proceedings in the United States opt to transfer the credit support to a successor, even if the credit support agreement contains restrictions on such transfers?**

Section 2 allows a Regulated Entity in insolvency proceedings to transfer credit support with respect to a Protocol Covered Agreement to a transferee. Section 2 overrides any restrictions on such transfer, assuming certain creditor protections are satisfied.

**XX. What happens if a Credit Support Provider enters proceedings under a regime other than Chapter 11 of the U.S. Bankruptcy Code or the FDI Act (e.g., under the Securities Investor Protection Act (SIPA) or Chapter 7 of the U.S. Bankruptcy Code)?**

Section 2 overrides default rights that arise in respect of a Credit Support Provider (or equivalent entity under non-ISDA Master Agreement QFCs) if the Credit Support Provider enters into proceedings under Chapter 11 of the U.S. Bankruptcy Code or the FDI Act and certain conditions are satisfied. As

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a result, Section 2 does not override any default rights arising as a result of a Credit Support Provider's entry into proceedings under other legal frameworks, including Chapter 7 of the U.S. Bankruptcy Code and SIPA. However, Section 2 overrides Specified Entity and similar cross defaults (or their equivalent under non-ISDA Master Agreement QFCs) triggered by an affiliate that is not a Credit Support Provider entering into proceedings under Chapter 7 of the U.S. Bankruptcy Code, Chapter 11 of the U.S. Bankruptcy Code, the FDI Act or SIPA.

**XXI. Are cleared transactions subject to Section 2?**

If cleared transactions are QFCs that are not excluded from compliance with the U.S. Stay Regulations, and are, therefore, Protocol Covered Agreements, such cleared transactions are subject to Section 2 and are not treated any differently than any other transaction that is within the scope of Section 2.

**XXII. By adhering to the ISDA U.S. Stay Protocol, what is the maximum length of stay to which I can be subject?**

Under Section 2 of the ISDA U.S. Stay Protocol, the temporary stay that is applicable when a counterparty benefits from a credit enhancement provided by a covered affiliate lasts the longer of one business day or 48 hours following the commencement of proceedings. Such stay may become permanent upon satisfaction of certain criteria.