



International Swaps and Derivatives Association, Inc.

ISDA 2021 SBS TOP-UP PROTOCOL

(ANNOTATED PROTOCOL AND RELATED ATTACHMENTS)

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International Swaps and Derivatives Association, Inc.

ISDA 2021 SBS TOP-UP PROTOCOL

published on February 25, 2021

by the International Swaps and Derivatives Association, Inc.

Annotated in Red as of December 14, 2021¹

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 TOP-UP 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.

The International Swaps and Derivatives Association, Inc. (**ISDA**) has published this ISDA 2021 SBS Top-Up Protocol (this **Protocol**) to enable parties to Protocol Covered Agreements (as defined below) to amend the terms of such Protocol Covered Agreements to address regulatory and documentation requirements applicable to security-based swap dealers and major-security based swap participants with respect to transactions in SBS (as defined below) by extending and supplementing agreements previously made in one or more DF Schedules (as defined below) for purposes of engaging in transactions in swaps.

Accordingly, a party that has entered into a Protocol Covered Agreement may adhere to this Protocol and be bound by its terms by completing and delivering a letter substantially in the form of Exhibit 1 to this Protocol (an **Adherence Letter**) to ISDA, as agent, as described below.

1. Use of Protocol

A person may adhere to this Protocol (an **Adhering Party**) either directly or through an Agent in the manner set forth in paragraph 2 to use the terms of this Protocol to amend one or more Protocol Covered Agreements.

2. Adherence to and Effectiveness of the Protocol

- (a) By adhering to this Protocol in the manner set forth in this paragraph 2, an Adhering Party that wishes to amend the terms of a Protocol Covered Agreement on the terms and subject to the conditions set forth in this Protocol and the relevant Adherence Letter agrees that the terms of each Protocol Covered Agreement, if any, between it and each other Adhering Party will be amended with effect from the Amendment Effective Date (as defined below) for such Protocol Covered Agreement in accordance with the terms of the Appendices hereto as follows:

¹ As this Protocol is designed to supplement existing written agreements governing the terms and conditions of one or more transactions in SBS where the parties previously adhered to the August 2012 Protocol or the March 2013 Protocol, parties may find it beneficial to read this annotated Protocol in conjunction with those prior protocol materials (see the August 2012 Protocol materials here: <https://www.isda.org/protocol/isda-august-2012-df-protocol/> and the March 2013 Protocol materials here: <https://www.isda.org/protocol/isda-march-2013-df-protocol/>).

- (i) A Protocol Covered Agreement will be amended pursuant to the terms of Appendix 1 if (and only if): (A) such Protocol Covered Agreement has been supplemented pursuant to the terms of the August 2012 Protocol; (B) each person who delivered an August 2012 Protocol Questionnaire for itself as principal or as an agent for a “PCA Principal” (as defined in the August 2012 Protocol) in order to supplement such Protocol Covered Agreement pursuant to the terms of the August 2012 Protocol has, acting in the same capacity, executed an Adherence Letter that includes its August 2012 Protocol ALID; and (C) at least one Adhering Party that is party to such Protocol Covered Agreement has been designated in its relevant Adherence Letter as a Covered SBS Entity for purposes of Appendix 1²; and
 - (ii) A Protocol Covered Agreement will be amended pursuant to the terms of Appendix 2 if (and only if): (A) such Protocol Covered Agreement has been created or supplemented pursuant to the terms of the March 2013 Protocol; (B) each person who delivered a March 2013 Protocol Questionnaire for itself as principal or as agent for a “PCA Principal” (as defined in the March 2013 Protocol) in order to create or supplement such Protocol Covered Agreement pursuant to the terms of the March 2013 Protocol has, acting in the same capacity, executed an Adherence Letter that includes its March 2013 Protocol ALID; and (C) at least one Adhering Party that is party to such Protocol Covered Agreement has been designated in its relevant Adherence Letter as a Covered SBS Entity for purposes of Appendix 2.
- (b) Adherence to this Protocol will be evidenced by the execution and online delivery, in accordance with this paragraph, by an Adhering Party or its Agent to ISDA, as agent, of a letter substantially in the form of Exhibit 1 (an **Adherence Letter**). A person wishing to participate in this Protocol, whether as principal or agent, or both, shall submit, using an online form, an Adherence Letter to ISDA pursuant to this paragraph 2. Such Adherence Letter must include at least one valid DF Protocol ALID. ISDA shall have the right, in its sole and absolute discretion, upon 30 calendar days’ notice on the “ISDA 2021 SBS Top-Up Protocol” section of its website at www.isda.org (or by other suitable means), to designate a closing date of this Protocol (such closing date, the **Adherence Cut-off Date**). After the Adherence Cut-off Date, ISDA will not accept any further Adherence Letters with respect to this Protocol.
- (i) Each Adhering Party will access the Protocol section of the ISDA website at www.isda.org to enter information online that is required to generate its form of Adherence Letter and to submit payment of any applicable fee. Either by directly downloading the populated Adherence Letter from the Protocol system or upon receipt via e-mail of the populated Adherence Letter, each Adhering Party will print, sign and upload the signed Adherence Letter as a PDF (portable document format) attachment into the Protocol system. Once the signed Adherence Letter has been approved and accepted by ISDA, the Adhering Party will receive an e-mail confirmation of the Adhering Party’s adherence to this Protocol. An Adherence Letter that does not specify at least one DF Protocol ALID shall not be valid as a binding adherence to this Protocol and will not be deemed approved and accepted by ISDA.
 - (ii) 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 by all Adhering Parties. Each Adhering Party agrees that, for evidentiary purposes, a conformed copy of an Adherence Letter certified by the General Counsel (or other appropriate officer) of ISDA will be deemed to be an original.
 - (iii) Each Adhering Party agrees that the determination of the date and time of acceptance of any Adherence Letter will be determined by ISDA in its absolute discretion.
- (c) As between any two Adhering Parties, the agreement to make the amendments contemplated by this Protocol on the terms and conditions set forth in this Protocol, will be effective on the date of online

² Note that the Protocol is not limited to ISDA Master Agreements, and may be used to amend all agreements between a pair of parties that govern the terms and conditions of one or more transactions in SBS.

delivery to ISDA, as agent, of an Adherence Letter (in accordance with paragraph 2(b) above) from the later of such two Adhering Parties to adhere (such date with respect to such Adhering Parties, the **Implementation Date**). Acceptance by ISDA of a subsequent or revised Adherence Letter from either such Adhering Party will not have the effect of changing such Implementation Date. The amendments contemplated by this Protocol as to any Protocol Covered agreement will be effective as of the following date or dates (each an “**Amendment Effective Date**”): (i) in respect of an agreement that is a Protocol Covered Agreement as of the Implementation Date for the relevant Adhering Parties, the Implementation Date, and (ii) in respect of an agreement that becomes a Protocol Covered Agreement after the Implementation Date for the relevant Adhering Parties, each date on which such agreement is amended pursuant to the terms of a DF Protocol.

- (d) This Protocol is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of a Protocol Covered Agreement that the parties may otherwise effect in accordance with the terms of that Protocol Covered Agreement. In adhering to this Protocol, an Adhering Party may not specify additional provisions, conditions or limitations in its Adherence Letter. Any purported adherence that ISDA, as agent, determines in good faith is not in compliance with this Protocol will be void, and ISDA will inform the relevant party of such fact as soon as reasonably possible after making such determination.
- (e) Each Adhering Party acknowledges and agrees that adherence to this Protocol is irrevocable, except that an Adhering Party may deliver to ISDA, as agent, a notice substantially in the form of Exhibit 2 to this Protocol (a **Revocation Notice**) that is effective (determined pursuant to paragraph 4(c) below) on any Protocol Business Day during the Annual Revocation Period to designate the next Annual Revocation Date as the last date on which an Amendment Effective Date can occur in respect of any Protocol Covered Agreement between the counterparty and such Adhering Party.
 - (i) Upon the effective designation of the next Annual Revocation Date by an Adhering Party, this Protocol will not amend any Protocol Covered Agreement for which the Amendment Effective Date would occur after the relevant Annual Revocation Date. The foregoing is without prejudice to any amendment effected pursuant to this Protocol to any Protocol Covered Agreement as to which the Amendment Effective date is on or before that Annual Revocation Date, regardless of the date on which such Protocol Covered Agreement is entered into, and any such amendment shall be effective notwithstanding such designation of that Annual Revocation Date.
 - (ii) Each Revocation Notice must be delivered by the means specified in paragraph 4(c) of this Protocol below.
 - (iii) Each Adhering Party agrees that, for evidentiary purposes, a conformed copy of a Revocation Notice certified by the General Counsel or an appropriate officer of ISDA will be deemed to be an original.
 - (iv) Any purported revocation that ISDA, as agent, determines in good faith is not in compliance with this paragraph 2(e) will be void.
 - (v) For the avoidance of doubt, if an Adhering Party has delivered an effective Revocation Notice, and such Adhering Party later adheres again to this Protocol after the Annual Revocation Date designated in such Revocation Notice (a **Re-adherence**), then with respect to each counterparty that adheres to this Protocol after such Annual Revocation Date, the Re-adherence (including any elections and specifications made in the Adherence Letter relating to such Re-adherence) shall be effective as if such Adhering Party were adhering to this Protocol for the first time, and with respect to each counterparty that adhered to this Protocol on or before such Annual Revocation Date, the effects of this Protocol with respect to any Protocol Covered Agreement between such Adhering Party and such counterparty shall continue to be governed by the Adherence Letter (including any elections and specifications made therein) in respect of such Adhering Party’s prior adherence.

3. Representations

- (a) *Representations by Adhering Parties.* As of the date on which an Adhering Party adheres to this Protocol in accordance with paragraph 2 above, and as of the relevant Amendment Effective Date (if different), such Adhering Party represents to each other Adhering Party with which it has entered into a Protocol Covered Agreement each of the following matters:
- (i) **Status.** It is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to the Protocol Covered Agreement, has such status.
 - (ii) **Powers.** It has the power to execute and deliver the Adherence Letter and to perform its obligations under the Adherence Letter and the Protocol Covered Agreement as amended by the Adherence Letter and this Protocol (including the Appendices hereto), and has taken all necessary action to authorize such execution, delivery and performance.
 - (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.
 - (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to the Adherence Letter and the Protocol Covered Agreement, as amended by the Adherence Letter and this Protocol (including the Appendices hereto), have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
 - (v) **Obligations Binding.** Its obligations under the Adherence Letter and the Protocol Covered Agreement, as amended by the Adherence Letter and this Protocol (including the Appendices hereto), constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).
 - (vi) **Credit Support.** Its adherence to this Protocol and any amendment contemplated by this Protocol will not, in and of itself, adversely affect the enforceability, effectiveness or validity of any obligations owed, whether by it or by any third party, under any Credit Support Document in respect of its obligations relating to the Protocol Covered Agreement as amended by the Adherence Letter and this Protocol (including the Appendices hereto).
- (b) *Representations by Agents.* An Agent acting for Client(s) to adhere to this Protocol on their behalf represents to each Adhering Party with which it has entered into a Protocol Covered Agreement on behalf of such Client(s) as to each of the following matters as of the date on which such Agent adheres to this Protocol in accordance with paragraph 2 above and as of the relevant Amendment Effective Date (if different):
- (i) **Status.** The Agent is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to the Protocol Covered Agreement, has such status.
 - (ii) **Powers.** The Agent has the power to execute and deliver the Adherence Letter and to perform its obligations under the Adherence Letter and the Protocol Covered Agreement as amended by this Adherence Letter and this Protocol (including the Appendices hereto) and has taken all necessary action to authorize such execution, delivery and performance. The Agent has all necessary

authority to enter into the Adherence Letter and this Protocol on behalf of the Client(s) and has in its files a written agreement or power of attorney authorizing it to act on behalf of the Client(s) in respect thereof.

- (iii) ***No Violation or Conflict.*** Such execution, delivery and performance by the Agent do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.
- (c) ***Undertakings in respect of Protocol Covered Agreements with Third Party Credit Support Documents.*** With respect to any Protocol Covered Agreements with Third Party Credit Support Documents that expressly require the consent, approval, agreement, authorization or other action of a Third Party to be obtained, each Adhering Party whose obligations under such arrangements are secured, guaranteed or otherwise supported by such Third Party undertakes to each other Adhering Party with which it has entered into such arrangements that it has obtained the consent (including by way of paragraph 3(d) below), approval, agreement authorization or other action of such Third Party and that it will, upon demand, deliver evidence of such consent, approval, agreement, authorization or other action to such other Adhering Party.
- (d) ***Deemed Third Party Consent.*** Each Adhering Party which is also a Third Party in relation to a Third Party Credit Support Document is hereby deemed to have consented to the amendments imposed by this Protocol on the Protocol Covered Agreement supported by such Third Party Credit Support Document.

4. Miscellaneous

- (a) ***Entire Agreement; Restatement; Survival.***
 - (i) This Protocol constitutes the entire agreement and understanding of the Adhering Parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each Adhering Party acknowledges that in adhering to this Protocol, it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to elsewhere in this Protocol or in the Appendices) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Protocol will limit or exclude any liability of an Adhering Party for fraud.
 - (ii) Except for any amendment deemed to be made pursuant to this Protocol in respect of any Protocol Covered Agreement, all terms and conditions of each Protocol Covered Agreement will continue in full force and effect in accordance with its provisions as in effect immediately prior to the Implementation Date. Except as explicitly stated in this Protocol, nothing herein shall constitute a waiver or release of any rights of any Adhering Party under any Protocol Covered Agreement to which such Adhering Party is a party. This Protocol will, with respect to its subject matter, survive, and any amendments deemed to be made pursuant to this Protocol will form a part of each Protocol Covered Agreement between the Adhering Parties, notwithstanding any statements in a Protocol Covered Agreement to the effect that such Protocol Covered Agreement constitutes the entire agreement and understanding between the parties to such Protocol Covered Agreement with respect to the subject of such Protocol Covered Agreement.
- (b) ***Amendments.*** An amendment, modification or waiver in respect of the matters contemplated by this Protocol will only be effective in respect of a Protocol Covered Agreement if made in accordance with the terms of such Protocol Covered Agreement and then only with effect between the parties to that Protocol Covered Agreement (and will only be effective to amend or override the provisions set forth in this Protocol and the Appendices to this Protocol if it expressly refers in writing to this paragraph 4(a) of this Protocol).

- (c) **Headings.** The headings used in this Protocol and any Adherence Letter are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Protocol or any Adherence Letter.
- (d) **Governing Law.** This Protocol and each Adherence Letter will, as between two Adhering Parties and in respect of each Protocol Covered Agreement between them, be governed by and construed in accordance with the laws of the State of New York, *provided* that the amendments to each Protocol Covered Agreement shall be governed by and construed in accordance with the law governing such Protocol Covered Agreement.
- (e) **Notices.** Any Revocation Notice must be in writing and delivered as a locked PDF (portable document format) attachment to an email to ISDA at isda@isda.org and will be deemed effectively delivered on the date it is delivered unless, on the date of that delivery, ISDA's New York office is closed, or that communication is delivered after 5:00 p.m., New York time, in which case that communication will be deemed effectively delivered on the next day ISDA's New York office is open.
- (f) **Ability of an Agent to Adhere to the Protocol on Behalf of a Client.**
 - (i) An Agent may adhere to this Protocol on behalf of all Clients represented by such Agent or on behalf of all Clients represented by such Agent excluding any Clients whose name or identity the Agent communicates to the other Adhering Party through an online platform available generally to the industry, including, for example, the ISDA Amend platform provided by IHS Market Platform (a **Platform**) or through the "notice procedures" set forth in the relevant Protocol Covered Agreement (the **Notice Procedures**) as a Client excluded from adherence on or before the date of acceptance by ISDA of an Adherence Letter in accordance with paragraph 2 from the later of the two Adhering Parties to adhere. An Agent need not identify each Client on behalf of whom it is adhering in its Adherence Letter or through a Platform. In respect of any Protocol Covered Agreement into which the Agent has entered on behalf of any Client whose name or identity has not been communicated to the other Adhering Party through a Platform or the Notice Procedures as a Client excluded from adherence, the Implementation Date shall be the date of acceptance by ISDA of an Adherence Letter in accordance with paragraph 2 from the later of the two Adhering Parties to adhere. If the Agent has not communicated the name or identity of any Clients excluded from adherence to the other Adhering Party on or before the date of acceptance by ISDA of an Adherence Letter in accordance with paragraph 2 from the later of the two Adhering Parties to adhere, then in respect of any Protocol Covered Agreement into which an Agent has entered on behalf of any Client, the Implementation Date shall be the date of acceptance by ISDA of an Adherence Letter in accordance with paragraph 2 from the later of the two adhering Parties to adhere, *provided*, in each case, that such adherence shall only be effective with respect to a Protocol Covered Agreement entered into by such Agent on behalf of such Clients.
 - (ii) Where an Agent adheres to this Protocol on behalf of a Client by executing and delivering an Adherence Letter on behalf of such Client in accordance with paragraph 2 and this paragraph 4(f), references to the Adhering Party for purposes of this Protocol (including the Appendices hereto) and the Adherence Letter shall be interpreted to refer to such Client.
- (g) **Clients Removed from Agent's List of Excluded Clients after the Date of Acceptance by ISDA of the Agent's Adherence Letter.** If an Agent adheres to this Protocol using the approach described in paragraph 4(f)(i) and therefore specifically names or identifies one or more Clients as excluded from adherence, the Agent may, after the date of acceptance by ISDA of its Adherence Letter, remove one or more Clients from its list of excluded Clients through a Platform or through the Notice Procedures, and, as between any other Adhering Party and that Client, the Implementation Date shall be the date shown on the Platform as the date on which the Agent communicates to the other Adhering Party that the Client is removed from the list of excluded Clients or the date on which the Agent has provided notice through the Notice Procedures (or, if later, the date of acceptance by ISDA of an Adherence Letter from that other Adhering Party), unless otherwise agreed between such Agent and such Adhering Party.

- (h) **Clients Added to an Agent Protocol Covered Agreement after the Implementation Date.** In respect of any Client added to an Agent Protocol Covered Agreement between an Agent and an Adhering Party after the Implementation Date (a **New Client**), the Agent and such Adhering Party agree that the terms of such Agent Protocol Covered Agreement as between such Adhering Party and any New Client will be subject to the amendments effected by this Protocol, unless otherwise agreed between such Agent and such Adhering Party.

5. Definitions

References in this Protocol and the Appendices to the following terms shall have the following meanings:

Adherence Cut-off Date has the meaning given to such term in paragraph 2(b).

Adherence Letter has the definition given to such term in the introductory paragraphs hereof.

Adhering Party has the definition given to such term in paragraph 2(a).

Agent means an entity that enters into a Protocol Covered Agreement and executes and delivers an Adherence Letter with respect to this Protocol on behalf of, and as agent for, one or more clients, investors, funds, accounts and/or other principals.

Agent Protocol Covered Agreement means a Protocol Covered Agreement that is signed by an Agent and an Adhering Party.

Amendment Effective Date means, with respect to a Protocol Covered Agreement, the date specified in paragraph 2(c).

Annual Revocation Date means, with respect to each calendar year, December 31 of such calendar year. If December 31 in any calendar year is not a day on which ISDA's New York office is open, the Annual Revocation Date with respect to such calendar year will be deemed to occur on the next day that ISDA's New York office is open.

Annual Revocation Period means the period between October 1 and October 31 of any calendar year.

August 2012 Protocol means the ISDA August 2012 DF Protocol Agreement, published on August 13, 2012, as amended or supplemented by ISDA from time to time.

August 2012 Protocol ALID means, in respect of an Adhering Party or Agent, the unique identification code assigned by ISDA to an adherence letter to the August 2012 Protocol executed by such Adhering Party or Agent.

August 2012 Protocol Questionnaire means the ISDA August 2012 DF Protocol Questionnaire published on August 13, 2012, as amended or supplemented by ISDA from time to time.

August 2012 Supplement means the ISDA August 2012 DF Supplement, published on August 13, 2012.

Client means, with respect to an Agent, a client, investor, fund, account and/or other principal on whose behalf the Agent acts.

Covered SBS Entity means an Adhering Party that has designated itself as a "Covered SBS Entity" in its Adherence Letter for purposes of this Protocol and either Appendix 1 or Appendix 2 hereto (or both).

Credit Support Document means, with respect to an Adhering Party and a Protocol Covered Agreement, any document in effect on the Implementation Date which by its terms secures, guarantees or otherwise supports such Adhering Party's obligations under the related Protocol Covered Agreement from time to time, whether or not such document is specified as a Credit Support Document in such Protocol Covered Agreement.

DF Protocol means each of the August 2012 Protocol and the March 2013 Protocol.

DF Protocol ALID means, with respect to an Adhering Party or Agent, an August 2012 Protocol ALID or a March 2013 Protocol ALID.

DF Schedule means a schedule to the August 2012 Supplement or the March 2013 Supplement.

Implementation Date means, subject to an Adhering Party's right to deliver a Revocation Notice pursuant to paragraph 2(e) above, with respect to any two Adhering Parties, the date determined pursuant to paragraph 2(c) of this Protocol.

March 2013 Protocol means the ISDA March 2013 DF Protocol Agreement, published on March 22, 2013, as amended or supplemented by ISDA from time to time.

March 2013 Protocol ALID means the unique identification code assigned by ISDA to an adherence letter to the March 2013 Protocol.

March 2013 Protocol Master Agreement means an ISDA March 2013 DF Protocol Master Agreement entered into pursuant to Section 4 of the March 2013 Protocol.

March 2013 Protocol Questionnaire means the ISDA March 2013 DF Protocol Questionnaire published on March 22, 2013, as amended or supplemented by ISDA from time to time.

March 2013 Supplement means the ISDA March 2013 DF Supplement, published on March 22, 2013.

Platform has the meaning given to such term in paragraph 4(f)(i).

Protocol has the definition given to such term in the introductory paragraphs hereof.

Protocol Business Day means a day on which commercial banks and foreign exchange markets are generally open to settle payments in New York.

Protocol Covered Agreement means any written agreement between two Adhering Parties into which any DF Schedules have been incorporated pursuant to the terms of the August 2012 Protocol and/or the March 2013 Protocol, that (i) governs the terms and conditions of one or more transactions in SBS that each such party has entered into or may enter into as principal or (ii) is a March 2013 Protocol Master Agreement.

Re-adherence has the meaning given in paragraph 2(e).

Revocation Notice has the meaning given to such term in paragraph 2(e).

SBS means a "security-based swap" as defined in Section 3(a)(68) of the Securities Exchange Act of 1934 and the regulations thereunder.

Third Party means, in relation to an agreement supported by a Third Party Credit Support Document, any party to such Third Party Credit Support Document other than either of the Adhering Parties which are parties to the agreement.

Third Party Credit Support Document means, with respect to an Adhering Party and a Protocol Covered Agreement, any Credit Support Document which is executed by one of more Third Parties (whether or not an Adhering Party is a party thereto), whether or not such document is specified as a Third Party Support Document or as a Credit Support Document therein or in the Protocol Covered Agreement.

EXHIBIT 1
to the ISDA 2021 SBS TOP-UP PROTOCOL

Form of Adherence Letter

[Letterhead of Adhering Party]

[Date]

International Swaps and Derivatives Association, Inc.

Ladies and Gentlemen,

ISDA 2021 SBS TOP-UP PROTOCOL – Adherence

The purpose of this letter is to confirm our adherence to the ISDA 2021 SBS Top-Up Protocol as published by the International Swaps and Derivatives Association, Inc. (**ISDA**) on February 25, 2021 (the **Protocol**). This letter constitutes, as between each other Adhering Party and us, an Adherence Letter as referred to in the Protocol. The definitions and provisions contained in the Protocol are incorporated into this Adherence Letter, which will supplement and form part of each Protocol Covered Agreement between us and each other Adhering Party.

1. Specified Terms

As between each other Adhering Party and us, the amendments in the Appendices to the Protocol shall apply to each Protocol Covered Agreement to which we are a party in accordance with the terms of the Protocol and this Adherence Letter.

2. Appointment as Agent and Release

We hereby appoint ISDA as our agent for the limited purposes of the Protocol, and, accordingly, we waive any rights and hereby release ISDA from any claims, actions or causes of action whatsoever (whether in contract, tort or otherwise) arising out of or in any way relating to this Adherence Letter or our adherence to the Protocol or any actions contemplated as being required by ISDA.

3. Payment

Each Adhering Party must submit a one-time fee of U.S. \$500 to ISDA at or before the submission of this Adherence Letter.

4. Contact Details

Our contact details for purposes of this Adherence Letter are:

Name:

Address:

Telephone:

Fax:

E-mail:

5. Covered SBS Entity Election

We understand that the Protocol is designed to amend only those Covered Agreements between two Adhering Parties, where at least one of such parties is or expects to be (a) registered as a security-based swap dealer subject to regulatory requirements addressed in Appendices 1 and 2 hereto or (b) registered as a major security-based swap

participant subject to regulatory requirements addressed in Appendix 2 hereto.³ We further understand that this status or expectation must be indicated separately by designation as a “Covered SBS Entity” for purposes of the relevant Appendices hereto.

☐ By checking this box, we acknowledge and agree that we are participating in this Protocol as principal and designating ourselves as a Covered SBS Entity for purposes of this Protocol and Appendices 1 and 2 hereto.

☐ By checking this box, we acknowledge and agree that we are participating in this Protocol as principal and designating ourselves as a Covered SBS Entity for purposes of this Protocol and Appendix 2 hereto, but not Appendix 1.

6. Adherence Letter ID

We understand that the Protocol is designed to amend only those Protocol Covered Agreements between two Adhering Parties that were previously amended pursuant to the terms of the August 2012 Protocol, the March 2013 Protocol or both. We further understand that ISDA assigned a unique identification code or “ALID” to each adherence letter that was accepted for the August 2012 Protocol or the March 2013 Protocol and that, in order to amend a Protocol Covered Agreement pursuant to: (i) Appendix 1 to this Protocol (which is intended to top up agreements made pursuant to the August 2012 Protocol), we must provide our August 2012 Protocol ALID below; or (ii) Appendix 2 to the Protocol (which is intended to top up agreements made pursuant to the March 2013 Protocol), we must provide our March 2013 Protocol ALID below:

August 2012 Protocol ALID: _____

March 2013 Protocol ALID: _____

We consent to the publication of a conformed copy of this letter by ISDA and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]⁴

³ A party who expects to become a registered security-based swap dealer or major security-based swap participant (on an ongoing basis or conditionally) may wish to adhere to the Protocol in advance of becoming registered so that its swap agreements with counterparties will incorporate provisions of SBS Appendix 1 and/or SBS Appendix 2, as applicable when its registration becomes effective.

⁴ Specify legal name of Adhering Party.

If you are an Agent and act on behalf of multiple Clients, you may sign the Adherence Letter using the following in the signature block “*[Investment/Asset Manager], acting on behalf of each fund, account and/or other principal on whose behalf we previously entered into a Protocol Covered Agreement or may act under a DF Protocol (except for those Clients which we identify through a Platform or the Notice Procedures as excluded from adherence).*” You will be responsible for identifying any excluded Clients and providing their legal entity identifiers (LEIs). If you cannot or do not wish to name those excluded Clients, then provided that you can identify them by way of LEIs, you may identify those Clients using LEIs and without including any names.

Please note that, if you would like to adhere on behalf of yourself, as principal, and also on behalf of your Clients, as Agent, you must submit one adherence letter for yourself, as principal, and a second adherence letter on behalf of your Clients, as Agent, in the latter case, in accordance with the wording set out above.

Signature: _____
Name: _____
Title: _____

EXHIBIT 2
to the ISDA 2021 SBS TOP-UP PROTOCOL

Form of Revocation Notice

[Letterhead of Adhering Party]

[Date]

International Swaps and Derivatives Association, Inc. Send to: isda@isda.org

Ladies and Gentlemen,

ISDA 2021 SBS TOP-UP PROTOCOL – Designation of Annual Revocation Date

The purpose of this letter is to notify you that we wish to designate this year's Annual Revocation Date as the last date on which an Amendment Effective Date can occur in respect of any Protocol Covered Agreement between us and another Adhering Party under the ISDA 2021 SBS Top-Up Protocol as published by the International Swaps and Derivatives Association, Inc. (**ISDA**) on February 25, 2021 (the **Protocol**).

This letter constitutes a Revocation Notice as referred to in the Protocol.

We consent to the publication of the conformed copy of this notice by ISDA on and after the Annual Revocation Date and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]⁵

⁵ Specify legal name of Adhering Party.

If you are an Agent and act on behalf of multiple Clients, you may sign the Revocation Notice using one of the options below. Please note that, if you would like to adhere on behalf of yourself, as principal, and also on behalf of your Clients, as Agent, you must submit one adherence letter for yourself, as principal, and a second adherence letter on behalf of your Clients, as Agent, in the latter case, in accordance with the options set out below.

First, if you have the authority to deliver a Revocation Notice as **Agent on behalf of all Clients**, you may indicate the following in the signature block: “[*Investment/Asset Manager*], acting on behalf of each fund, account and/or other principal on whose behalf we previously entered into a Protocol Covered Agreement or may act under a DF Protocol” or such other language that indicates the Clients to which this letter is applicable. If such a signature block is used, a separate Adherence Letter for each Client does not need to be submitted to ISDA, and no specific names of Clients need to be publicly disclosed on a Platform in connection with this Protocol.

Second, if you have the authority to deliver a Revocation Notice to this Protocol as **Agent on behalf of certain Clients only (or have authority from all your Clients and wish to identify them)**, you may indicate the following in the signature block: “[*Investment/Asset Manager*], acting on behalf of each fund, account and/or other principal (a) identified to each relevant Adhering Party or (b) listed in the appendix to this Revocation Notice in relation to each Protocol Covered Agreement (or other agreement which deems a Protocol Covered Agreement to have been created) entered into between it (as Agent) on behalf of such fund, account and/or other principal to or from another Adhering Party” and include with the Revocation Notice an appendix/attachment that names each Client. You will be responsible for identifying the relevant Clients on

Signature: _____
Name: _____
Title: _____

whose behalf you are delivering this Revocation Notice. If you cannot or do not wish to name such Clients, then provided that you can identify the Clients by way of LEIs, you may identify such Clients' LEIs and without including any names. In such case, the LEIs will be listed on the ISDA website with the Revocation Notice. If you are able to do so, you may, if you wish, identify Clients by using both names and LEIs, but this is optional and, provided you supply, at least, either names or LEIs, choosing not to provide both does not affect the legal validity and binding nature of this Protocol.

Appendix 1⁶ to the SBS Top-Up Protocol⁷ General Agreements and Notifications; Safe Harbors

Subject to the terms of this SBS Top-Up Protocol, with effect from the relevant Amendment Effective Date, each Protocol Covered Agreement as to which this Appendix 1 applies shall be modified as provided in this Appendix 1, *provided* that the consents and covenants provided herein are made subject to the condition precedent that at least one party is a Covered SBS Entity that has become registered (fully or provisionally) with the SEC as a security-based swap dealer as defined in Section 3(a)(71) of the SEA and SEC Rule 3a71-1. For purposes of identification, Sections added to a Protocol Covered Agreement under this Appendix 1 shall be deemed part of the “SBS Appendix 1” and shall be numbered sequentially.

I. General Agreements.

- A. **August 2012 Supplement Top-Up.** If the parties have previously incorporated Schedule 2 of the August 2012 Supplement, duplicates of the following Sections from such Schedule are added, as modified by replacing the terms (i) “Swap” with “SBS,” (ii) “SD” with “Covered SBS Entity,” (iii) “DF Schedules” with “SBS Appendix 1 Terms,” (iv) “DF Supplement” with “SBS Appendix 1,” (v) “DF Supplement Information” with “SBS Appendix 1 Information,” (vi) “DF Supplement Rules” with “SBS Appendix 1 Rules” and (vii) “CFTC Regulation 23.431(d)” with “SEC Rule 15Fh-3(c)(2)” each time they appear (including in defined terms): Sections 2.1⁸, 2.2, 2.3⁹, 2.4¹⁰, 2.12¹¹, 2.18¹², 2.20¹³ and 2.21^{14, 15}.

⁶ Parties may find it beneficial to read this annotated SBS Appendix 1 in conjunction with the annotated August 2012 Supplement available here: <https://www.isda.org/protocol/isda-august-2012-df-protocol>.

⁷ This SBS Appendix 1 is designed to be used by (i) Covered SBS Entity and (ii) CP who may also be a Covered SBS Entity. Where both parties are Covered SBS Entity, each is considered to be the Covered SBS Entity *and* the CP for purposes of this SBS Appendix 1.

⁸ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules).

⁹ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules).

¹⁰ See, e.g., SEC Rules 242.905 (duty to correct reported data); 242.901(c)-(e) (primary and secondary trade information to be reported, reporting of life cycle events).

¹¹ See SEC Rules 240.15Fh-3(b) (disclosure of material information about SBS); 15Fh-3(c)(2), (3) (disclosure of daily mark for uncleared SBS). Note that the last sentence of Section 2.12 of the August 2012 Supplement (beginning with “CP further agrees that...”) is not applicable in the context of the SEC rules insofar as Section 2.12 refers to the provision of oral disclosures “if...so specified in writing”. As it relates to disclosures provided to the counterparty pursuant to SEC Rule 240.15Fh-3(b) and (c) (*cf.* CFTC Regulation 23.431(a)(3)(i) and (ii)), SEC rules do not require a written agreement between the parties in order for the SBS Entity to provide non-written (*i.e.*, oral) disclosures (*cf.* CFTC Regulation 23.402(e) (indicating that required information may be provided “by any reliable means agreed to in writing by the counterparty”)). Pursuant to SEC rules, an SBS Entity must “make a written record of the non-written disclosures made” pursuant to SEC Rule 240.15Fh-3(b) (see SEC Rule 240.15Fh-3(b)(3)).

¹² See SEC Rule 240.15Fh-3(c) (disclosure of daily mark for cleared and uncleared SBS).

¹³ See Section 3(a)(65) of the SEA.

¹⁴ See Section 3(a)(65) of the SEA.

B. Additional Representations and Agreements. The following text is added:

SEC Statement. CP agrees and acknowledges that Covered SBS Entity may rely on representations and agreements previously provided by CP in connection with transacting in Swaps, in order to satisfy requirements to CP with respect to the SBS Appendix 1 Rules.¹⁶

Regulatory Disclosures.¹⁷ Notwithstanding anything to the contrary in this 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:

¹⁵ As noted, the top-up language does not replace, amend, or supersede the referenced Sections of the applicable Schedule as applied to Swaps. Rather, the relevant Section is duplicated with modifications to make the language appropriate to SBS. As an example, Section 2.18 of the August 2012 Supplement states:

“CP agrees that, unless otherwise agreed with SD in writing, with respect to each uncleared Swap between CP and SD, any daily marks required to be provided by SD to CP pursuant to CFTC Regulation 23.431(d) will be calculated by SD as of the close of business on the prior Business Day in the locality specified by SD in its notice of such daily mark to CP, such locality to be consistently specified with regard to a class or type of Swaps.”

Note the words underlined in the above. When adjusted per this Section I.A, the applicable provision would read as follows:

“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.”

Note that the modifications also apply to the related defined terms. In this example, the term “CP” would also be modified. The August 2012 Supplement includes the following definition:

“ ‘Counterparty’ or ‘CP’ means a party that is the counterparty to a Swap Dealer in respect of the Agreement. For the avoidance of doubt, if two Swap Dealers are parties to the Agreement, each Swap Dealer is a Counterparty or CP for purposes of this DF Supplement.”

Note the words underlined in the above. When adjusted per this Section I.A, the applicable definition would read as follows:

“ ‘Counterparty’ or ‘CP’ means a party that is the counterparty to a Covered SBS Entity in respect of the Agreement. For the avoidance of doubt, if two Covered SBS Entity are parties to the Agreement, each Covered SBS Entity is a Counterparty or CP for purposes of this SBS Appendix 1.”

In contrast, the defined term “Business Day” would not be modified, as none of the terms to be modified as set forth in this Section I.A. appear (“ ‘Business Day’ means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).”)

¹⁶ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules); see also SEC’s *Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 83 Fed. Reg. 55486 (Nov. 6, 2018).

¹⁷ This section reproduces language from Section 2.5 of the August 2012 Supplement with revisions to align with SBS rules, including by: (1) addressing permissibility of providing information in response to an SEC order, directive or other request for an SBS’s books and records; (2) preserving any separate agreements with

- (a) to the extent required by the SBS Appendix 1 Rules which mandate reporting of transaction and similar information; and
- (b) to the extent required by the SBS Appendix 1 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.

Each party acknowledges that disclosures made pursuant to this paragraph 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 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 Protocol Covered 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 Appendix 1 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.

Non-Reporting Counterparty. Each party agrees that if it is the Non-Reporting Counterparty with respect to an SBS under the Agreement, upon the occurrence of any "life cycle event" (as that term is defined in Regulation SBSR) relating to a corporate event in respect of such Non-Reporting Counterparty and such SBS, it will, as soon as practicable, but in no event later than 24 hours (or if longer, the time period for reporting permitted under the SBS Appendix 1 Rules) after the occurrence of the life cycle event, notify the Reporting Counterparty to the SBS of the occurrence of such life cycle event, with sufficient detail regarding such life cycle event to allow such other party to comply with any reporting requirements imposed by the SBS Appendix 1 Rules.

II. **Notifications.** The following text is added:

Daily Mark.¹⁸ 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:

respect to confidentiality and consents to disclosures between the Reporting Counterparty and its Counterparty; and (3) setting out the scope of permissible disclosure to affiliates and/or third-party service providers for purposes of complying with reporting obligations. This section is also incorporated by reference into SBS Appendix 2 so that it becomes part of the agreement when parties to this Protocol top up agreements that were amended under the ISDA March 2013 Protocol but not under the ISDA August 2012 Protocol. *See also* SEC Rules 242.905 (duty to correct reported data); 242.901(c)-(e) (primary and secondary trade information to be reported, reporting of life cycle events).

¹⁸ *See* SEC Rule 240.15Fh-3(c) (disclosure of daily mark for cleared and uncleared SBS). *Compare with* the August 2012 Supplement Section 2.23.

- (a) the daily mark may not necessarily be at a price at which either CP or Covered SBS Entity would agree to replace or terminate the SBS;
- (b) unless otherwise expressly agreed by the parties, calls for margin may be based on considerations other than the daily mark provided to CP; and
- (c) the daily mark may not necessarily be the value of the SBS that is marked on the books of Covered SBS Entity.

Clearing.¹⁹ Each party is hereby notified that, upon acceptance of an SBS by a clearing agency:

- (a) the original SBS between Covered SBS Entity and CP is extinguished;
- (b) the original SBS between Covered SBS Entity and CP is replaced by equal and opposite SBS with the clearing agency; and
- (c) all terms of the SBS shall conform to the product specifications of the cleared SBS established under the clearing agency's rules.

Clearing Agency.²⁰

- (a) If CP is **not** a Regulated Swap Entity¹⁹ with respect to any SBS entered into between CP and Covered SBS Entity under the Agreement that is subject to the mandatory clearing requirements under Section 3Ca-1 of the SEA, Covered SBS Entity hereby discloses that CP has the sole right to select which of the clearing agencies through which Covered SBS Entity is authorized or permitted (directly or through a designated clearing member) to clear the SBS shall be used to clear the SBS, if any. Pursuant to SEC Rule 15Fh-3(d)(1)(i), the names of the relevant clearing agencies authorized or permitted to clear the SBS will be disclosed in a manner consistent with the Notice Procedures.
- (b) If CP is **not** a Regulated Swap Entity¹⁹ 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.

Special Entities. Covered SBS Entity hereby notifies CP that if CP (i) is an employee benefit plan as defined in Section 3 of ERISA that is not subject to Title I of ERISA and (ii) has not previously elected to be treated as a special entity for purposes of transacting in Swaps or SBS, CP has the right to elect to be treated as a special entity for purposes of transacting in SBS pursuant to SEC Rule 15Fh-3(a).²¹

¹⁹ See SEC Rule 240.15Fi-5 (definitions relating to trading documentation, portfolio reconciliation and portfolio compression rules). Compare with the August 2012 Supplement Section 2.24.

²⁰ See SEC Rule 240.15Fh-3(d).

²¹ Compare with the August 2012 Supplement Section 2.25.

III. Safe Harbors.

- A. Eligibility.** Where (i) the parties previously agreed to incorporate any of Schedules 3 – 6 of the August 2012 Supplement and (ii) a CP that is not a Covered SBS Entity did not previously identify itself as a type of entity that qualifies as an Institutional Counterparty ECP, the following text is added:

Institutional Counterparty. CP represents to Covered SBS Entity (which representation is deemed repeated as of the occurrence of each SBS Communication Event) that, unless CP has notified Covered SBS Entity to the contrary in accordance with the Notice Procedures, it has total assets of at least \$50 million.²²

- B. Agents.** CP represents to Covered SBS Entity (which representation is deemed repeated as of the occurrence of each SBS Communication Event) that, unless CP has notified Covered SBS Entity to the contrary in accordance with the Notice Procedures, each person previously designated as CP's Designated Evaluation Agent, Designated QIR or Designated Fiduciary for purposes of transactions in Swaps under the Agreement is CP's Designated Evaluation Agent, Designated QIR or Designated Fiduciary for purposes of transactions in SBS under the Agreement.²³

IV. Safe Harbor for Non-Special Entities.

If the parties previously incorporated Schedule 3 of the August 2012 Supplement, the following applies.

- A. August 2012 Supplement Top-Up.** Duplicates of the following Sections of Schedule 3 are added, as modified by replacing the terms "Swap" with "SBS" and "SD" with "Covered SBS Entity" each time they appear (including in defined terms): (i) if CP previously designated one or more agents as Designated Evaluation Agents, Sections 3.1(a)²⁴ and 3.1(d)²⁵; (ii) if CP has **not** designated a Designated Evaluation Agent, Sections 3.2(a)²⁶ and 3.2(b)²⁷; and (iii) Section 3.3²⁸.

- B. Designated Evaluation Agent Representations.** If CP's Designated Evaluation Agent (i) previously made the representations and agreements in Sections 3.1(b)²⁹ and 3.1(c)³⁰ of Schedule 3 and (ii) has executed CP's Adherence Letter or a separate writing delivered to Covered SBS Entity to agree to the representations and agreements applicable to it under this SBS Appendix 1, duplicates of such Sections are added, as modified by replacing the terms "Swap" with "SBS" and "SD" with "Covered SBS Entity" each time they appear (including in defined terms).

²² See SEC Rule 240.15Fh-3(f) (suitability and related safe harbors).

²³ See SEC Rule 240.15Fh-3(f) (suitability and related safe harbors). See also August 2012 Protocol Questionnaire, Part II, Questions 6-8.

²⁴ See SEC Rule 240.15Fh-3(f)(3)(i) (suitability and related safe harbors).

²⁵ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

²⁶ See SEC Rule 240.15Fh-3(f)(3)(i) (suitability and related safe harbors).

²⁷ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

²⁸ See SEC Rule 240.15Fh-3(f)(2)(iii) (suitability and related safe harbors).

²⁹ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

³⁰ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules); see also SEC's *Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 83 Fed. Reg. 55486 (Nov. 6, 2018).

- V. Safe Harbors for Non-ERISA Special Entities.** If the parties previously incorporated Schedule 4 of the August 2012 Supplement, the following applies.
- A. August 2012 Supplement Top-Up.** Duplicates of Sections 4.1(b)³¹, 4.1(d)³² and 4.2³³ of such Schedule are added, as modified by replacing the terms “Swap” with “SBS” and “SD” with “Covered SBS Entity” each time they appear (including in defined terms).
- B. Additional Text.** The following text is added:
- Additional Representations and Agreements.
1. CP acknowledges (which acknowledgement is deemed repeated as of the occurrence of each SBS Communication Event) that Covered SBS Entity is not acting as an advisor to CP.³⁴
 2. CP represents to Covered SBS Entity (which representation is deemed repeated as of the occurrence of each SBS Communication Event) 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).³⁵
- C. Designated QIR Representations.** If CP’s Designated QIR has executed CP’s Adherence Letter or a separate writing delivered to Covered SBS Entity to agree to the representations and agreements applicable to it under the SBS Appendix 1, duplicates of the following Sections are added, as modified by replacing the terms (i) “Swap” with “SBS”, (ii) “SD” with “Covered SBS Entity”, (iii) “CFTC Regulation 23.450(b)(1)” with “SEC Rule 15Fh-5(a)(1)” and (iv) “Section 1a(4) of the Commodity Exchange Act” with “Section 3a(70) of the SEA” each time they appear (including in defined terms): Sections 4.3(a)³⁶, 4.3(b)³⁷, 4.3(c)(1)³⁸, 4.3(c)(3)³⁹, 4.3(c)(5)⁴⁰, 4.3(d)⁴¹ and 4.4.⁴²

³¹ See SEC Rule 240.15Fh-2(a)(2)(i)(B) (acting as advisor to special entity and related safe harbors).

³² See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors). See also footnote 45 below.

³³ See SEC Rules 240.15Fh-2(a)(2)(ii) (acting as advisor to special entity and related safe harbors); 15Fh-3(f)(2)(iii) (Suitability and related safe harbors).

³⁴ See SEC Rule 240.15Fh-2(a) (acting as advisor to special entity and related safe harbors).

³⁵ See SEC Rule 240.15Fh-5(b)(1) (safe harbors for satisfaction of QIR criteria).

³⁶ See SEC Rule 240.15Fh-5(b)(1)(ii)(A) (safe harbors for satisfaction of QIR criteria).

³⁷ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

³⁸ See SEC Rule 240.15Fh-5(a)(1)(vii)(B)(1) (independence standards for QIRs).

³⁹ See SEC Rule 240.15Fh-5(a)(1)(vii)(B)(2) (independence standards for QIRs).

⁴⁰ See SEC Rule 240.15Fh-5(a)(1)(vii)(B)(3) (independence standards for QIRs).

⁴¹ See SEC Rule 240.15Fh-5(b)(1)(ii)(C) (safe harbors for satisfaction of QIR criteria).

⁴² See SEC Rule 240.15Fh-1 (scope and application of business conduct rules).

VI. Safe Harbors for ERISA Special Entities (Option 1). If the parties previously incorporated Schedule 5 of the August 2012 Supplement, the following applies.

A. August 2012 Supplement Top-Up. Duplicates of Sections 5.1(a)⁴³, 5.1(b)⁴⁴, 5.1(c)⁴⁵ and 5.2⁴⁶ of such Schedule are added, as modified by replacing the terms “Swap” with “SBS” and “SD” with “Covered SBS Entity” each time they appear (including in defined terms).

B. Additional Text. The following text is added:

Additional Representations and Agreements. CP acknowledges (which acknowledgement is deemed repeated as of the occurrence of each SBS Communication Event) that Covered SBS Entity is not acting as an advisor to CP.

C. Designated Fiduciary Representations. If CP’s Designated Fiduciary has executed CP’s Adherence Letter or a separate writing delivered to Covered SBS Entity to agree to the representations and agreements applicable to it under the SBS Appendix 1, (i) duplicates of Sections 5.3(b)⁴⁷ and 5.4⁴⁸ of such Schedule are added, as modified by replacing the terms “Swap” with “SBS” and “SD” with “Covered SBS Entity” each time they appear (including in defined terms); and (ii) the following text is added:

The Designated Fiduciary acknowledges (which acknowledgement is deemed repeated as of the occurrence of each SBS Communication Event) that Covered SBS Entity is not acting as an advisor to CP.

VII. Safe Harbors for ERISA Special Entities (Option 2). If the parties previously incorporated Schedule 6 of the August 2012 Supplement, the following applies.

A. August 2012 Supplement Top-Up. Duplicates of Sections 6.1(a)⁴⁹, 6.1(c)⁵⁰, 6.1(d)⁵¹ and 6.2⁵² of such schedule are added, as modified by replacing the terms “Swap” with “SBS” and “SD” with “Covered SBS Entity” each time they appear (including in defined terms).

B. Additional Text. The following text is added:

⁴³ See SEC Rules 240.15Fh-2(a) (acting as advisor to special entity and related safe harbors); 15Fh-5(b)(1) (safe harbors for satisfaction of QIR criteria).

⁴⁴ See SEC Rule 240.15Fh-2(a)(1)(iii) (acting as advisor to special entity and related safe harbors).

⁴⁵ This representation is included to cover situations in which the SBS Entity may be communicating about potential trades directly with a special entity rather than its fiduciary.

⁴⁶ See SEC Rule 240.15Fh-2(a)(2)(ii) (acting as advisor to special entity and related safe harbors); 15Fh-3(f)(2)(iii) (Suitability and related safe harbors).

⁴⁷ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

⁴⁸ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules).

⁴⁹ See SEC Rule 240.15Fh-5(b)(1)(ii) (safe harbors for satisfaction of QIR criteria).

⁵⁰ See SEC Rule 240.15Fh-2(a)(2)(i)(B) (acting as advisor to special entity and related safe harbors).

⁵¹ See footnote 45 above.

⁵² See SEC Rules 240.15Fh-2(a)(2)(ii) (acting as advisor to special entity and related safe harbors); 15Fh-3(f)(2)(iii) (Suitability and related safe harbors).

Additional Representations and Agreements. CP acknowledges (which acknowledgement is deemed repeated by CP as of the occurrence of each SBS Communication Event) that Covered SBS Entity is not acting as an advisor to CP.

- C. **Designated Fiduciary Representations.** If CP's Designated Fiduciary has executed CP's Adherence Letter or a separate writing delivered to Covered SBS Entity to agree to the representations and agreements applicable to it under the SBS Appendix 1, Sections 6.3⁵³ and 6.4⁵⁴ of such Schedule are added, as modified by replacing the terms "Swap" with "SBS" and "SD" with "Covered SBS Entity" each time they appear (including in defined terms).

VIII. Definitions. The following text is added:

Definitions. Terms used in this SBS Appendix 1 shall have the following meanings when used herein. Defined terms used in SBS Appendix 1 and not otherwise defined herein shall have the meanings provided in the August 2012 Supplement, as modified by replacing the terms (i) "Swap" with "SBS", (ii) "CFTC Regulations" with "SEC Rules" and (iii) "CFTC Regulation 45.8" with "the "SBS Appendix 1 Rules" each time they occur.

"Adherence Letter" means a letter substantially in the form attached as Exhibit 1 to the SBS Top-Up Protocol that is executed and delivered by a party.

"Agreement" means this agreement (howsoever named or otherwise referred to herein), as amended or supplemented from time to time.

"Associated Person" means, with respect to Covered SBS Entity, an associated person as defined in Section 3(a)(70) of the SEA.

"August 2012 Questionnaire" means the ISDA August 2012 DF Protocol Questionnaire, published on August 13, 2012, as amended or supplemented by ISDA from time to time.

"August 2012 Supplement" means the ISDA August 2012 DF Supplement, published on August 23, 2012.

"Counterparty" or "CP" means a party to this 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 Appendix 1 Terms and SBS Appendix 2 Terms.

"Covered SBS Entity" means a party that (i) has been designated as a Covered SBS Entity for purposes of this SBS Appendix 1 in its Adherence Letter 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.

"Institutional Counterparty ECP" means a counterparty that is an eligible contract participant as defined in clause (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).

"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.

⁵³ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

⁵⁴ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules).

“SBS Appendix 1 Information” means (i) information previously provided to a counterparty that is DF Supplement Information (whether provided through delivery of an August 2012 Questionnaire or otherwise); and (ii) any other information provided pursuant to the SBS Appendix 1 Terms.

“SBS Appendix 1 Rules” means the SEC 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) *Security-Based Swap Data Repository Registration, Duties, and Core Principles*, 80 Fed. Reg. 14437 (Mar. 19, 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); (5) *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers*, 84 Fed. Reg. 68550 (Dec. 16, 2019); (6) *Cross-Border Application of Certain Security-Based Swap Requirements*, 85 Fed. Reg. 6270 (Feb. 4, 2020); (7) solely for the purposes of Section 2.4 of the August 2012 Supplement, as modified and incorporated by this SBS Top-Up Protocol, and Sections on “Regulatory Disclosures” and “Delivery of Notifications” of the “General Agreements” of this SBS Appendix 1, 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 (8) solely for purposes of the Regulatory Disclosures provision in Section I.B. of this Appendix 1, the rules of (i) a self-regulatory organization for SBSDs (including brokers or dealers that are SBSDs), (ii) a clearing agency for SBS that is registered or exempt from registration under the SEA or (iii) a facility for the trading or processing of SBS 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 SBS.

“SBS Appendix 1 Terms,” means the terms of this SBS Appendix 1, including those sections of the August 2012 Supplement that have been modified and incorporated by reference herein by the SBS Top-Up Protocol.

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

“SBS 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 that is governed or proposed to be governed by the Agreement.

“SBS Top-Up Protocol” means the ISDA 2021 SBS Top-Up Protocol, published on February 25, 2021 by ISDA, as amended or supplemented from time to time.

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

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

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

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

“SEC Statement” means the SEC’s *Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 83 Fed. Reg. 55486 (Nov. 6, 2018).

Appendix 2⁵⁵ to the SBS Top-Up Protocol⁵⁶
Calculation of Risk Valuations and Dispute Resolution; Portfolio Reconciliation

Subject to the terms of this SBS Top-Up Protocol, with effect from the relevant Amendment Effective Date, each Protocol Covered Agreement as to which this Appendix 2 applies shall be modified as provided in this Appendix 2, *provided* that the consents and covenants provided herein are made subject to the condition precedent that at least one party is a Covered SBS Entity that has become registered (fully or provisionally) with the SEC either as a security-based swap dealer as defined in Section 3(a)(71) of the SEA and SEC Rule 3a71-1 or as a major security-based swap participant as defined in Section 3(a)(67) of the SEA and SEC Rule 3a67-1. For purposes of identification, Sections added to a Protocol Covered Agreement under this Appendix 2 shall be deemed part of the “SBS Appendix 2” and shall be numbered sequentially.

I. March 2013 Supplement Top-Up.

- A. General Agreements.** If the parties have previously incorporated Schedule 2 of the March 2013 Supplement, duplicates of the following Sections from such Schedule, are added, as modified by replacing the terms (i) “Swap” with “SBS,” (ii) “Party” with “party,” (iii) “March 2013 DF Schedules” with “SBS Appendix 2 Terms,” (iv) “March 2013 DF Supplement” with “SBS Appendix 2,” (v) “March 2013 DF Supplement Information” with “SBS Appendix 2 Information” and (vi) “Transaction Event” with “SBS Transaction Event” each time they appear (including in defined terms): Sections 2.1⁵⁷, 2.2, 2.3⁵⁸, 2.4⁵⁹ and 2.13⁶⁰.
- B. Additional Text.** If the parties have not entered into SBS Appendix 1, the Regulatory Disclosures provision in Section I.B. of SBS Appendix 1 is added.
- C. Protocol Master Agreement.** If the Protocol Covered Agreement is a March 2013 Protocol Master Agreement, the following applies.

- I.** Part (a) of the Schedule (as such term is used in the March 2013 Protocol Master Agreement) is amended and restated as follows:

Scope. This Master Agreement will govern any Swap or SBS between the parties that is entered into on or after the date hereof that is (i) not governed by an Existing Swap or SBS Agreement, and (ii) in the case of Swaps, not intended by the parties to be cleared on a clearing organization. An “Existing Swap or SBS Agreement” means, in respect of a Swap or SBS, a written agreement that (i) exists at the time of execution of such Swap or SBS, (ii) provides for, among other things, terms governing the payment obligations of the parties, and (iii) the parties have established (by written agreement, oral agreement, course of conduct or

⁵⁵ Parties may find it beneficial to read this annotated SBS Appendix 2 in conjunction with the annotated March 2013 Supplement available here: <https://www.isda.org/protocol/isda-march-2013-df-protocol/>.

⁵⁶ This SBS Appendix 2 is designed to be used by (i) Covered SBS Entity and (ii) CP who may also be a Covered SBS Entity. Where both parties are Covered SBS Entity, each is considered to be the Covered SBS Entity and the CP for purposes of this SBS Appendix 2.

⁵⁷ See SEC Rules 240.15Fh-1 (scope and application of business conduct rules); 240.15Fi-5 (SBS trading relationship documentation requirements).

⁵⁸ See SEC Rules 240.15Fh-1 (scope and application of business conduct rules); 240.15Fi-5 (SBS trading relationship documentation requirements).

⁵⁹ See SEC Rule 240.15Fi-2 (acknowledgment and verification of security-based swap transactions).

⁶⁰ See SEC Rule 240.15Fi-5 (SBS trading relationship documentation requirements).

otherwise) will govern such Swap or SBS. This Master Agreement will not govern any Swap or SBS that is governed by an Existing Swap or SBS Agreement, or any Swap intended by the parties to be cleared on a clearing organization.

2. The following language is added in Part (b) of the Schedule after the word “thereunder”:

and the term “SBS” means a “security-based swap” as defined in Section 3(a)(68) of the Securities Exchange Act of 1934, as amended, and regulations thereunder

D. *SBS Risk Valuation Agreement.* If the parties have previously incorporated Schedule 3 of the March 2013 Supplement, a duplicate of such Schedule is added as modified by replacing the terms (i) “Swap” with “SBS”, (ii) “Party” with “party,” (iii) “SDR” with “SBSDR”, (iv) “CFTC Swap Entity” with “Covered SBS Entity”, (v) “March 2013 DF Supplement” with “SBS Appendix 2,” (vi) “March 2013 DF Schedule 3” with “SBS Risk Valuation Agreement”, (vii) “Section 4s(e) of the CEA” with “Section 15F(e) of the SEA”, (viii) “Section 4s(j) of the CEA” with “Section 15F(j) of the SEA” and (ix) “CFTC Regulation 23.504(b)” with “SEC Rule 15Fi-5(b)” each time they appear (including in defined terms) (the “**SBS Risk Valuation Agreement**”).⁶¹

E. *SBS Portfolio Reconciliation Agreement.* If the parties have previously incorporated Schedule 4 of the March 2013 Supplement, a duplicate of such Schedule is added, as modified by replacing the terms (i) “Swap” with “SBS”, (ii) “Party” with “party,” (iii) “SDR” with “SBSDR”, (iv) “CFTC Swap Entity” with “Covered SBS Entity”, (v) “March 2013 DF Supplement” with “SBS Appendix 2,” (vi) “March 2013 DF Schedule 4” with “SBS Portfolio Reconciliation Agreement”, (vii) “March 2013 DF Supplement Rules” with “SBS Appendix 2 Rules” and (viii) “CFTC Regulation 23.502” with “SEC Rule 15Fi-3” each time they appear (including in defined terms) (the “**SBS Portfolio Reconciliation Agreement**”).⁶²

I. *Additional Text.* The following text is added to the SBS Portfolio Reconciliation Agreement:

In order to minimize operational burdens, the parties will use reasonable commercial efforts to coordinate the timing of reconciliations with respect to swaps with reconciliations with respect to SBS hereunder to the extent permitted under applicable law.

F. *Elections.* Each party’s elections (if any) relating to the following items of the March 2013 Questionnaire will be applicable for purposes of terms added to SBS Appendix 2 including the SBS Risk Valuation Agreement and SBS Portfolio Reconciliation Agreement as relevant (whether provided through delivery of such questionnaire or otherwise): Part II, Questions 6, 7 and 8; and Part III, Questions 1, 3(b) and 3(c).

II. *Definitions.* The following text is added:

Definitions. Defined terms used in this SBS Appendix 2 and not otherwise defined herein shall have the meanings provided in SBS Appendix 1 or, if not defined in SBS Appendix 1, in Schedule 1 of the March 2013 Supplement, as modified by replacing references to (i) “CFTC Regulation 23.502” with “SEC Rule 15Fi-3”, (ii) “CFTC Regulation 23.504” with “SEC Rule 15Fi-5”, (iii) “CFTC Regulation 23.502” with “SEC Rule 15Fi-1” and (iv) “CFTC Regulation 23.500” with “SEC Rule 15Fi-1” each time they occur.

“**Covered SBS Entity**” means a party that (i) has been designated as a Covered SBS Entity for purposes of this SBS Appendix 2 in its adherence letter to the SBS Top-Up Protocol, or (ii) is or becomes registered (on an ongoing basis or conditionally) as a “security-based swap dealer” or “major security-based swap participant” with the SEC and has notified the other party of such registration in accordance with the Notice Procedures.

⁶¹ See SEC Rule 240.15Fi-5 (SBS trading relationship documentation requirements).

⁶² See SEC Rule 240.15Fi-3 (SBS portfolio reconciliation).

“March 2013 Protocol Master Agreement” means an ISDA March 2013 DF Protocol Master Agreement entered into by the parties pursuant to Section 4 of the ISDA March 2013 DF Protocol Agreement, published on March 22, 2013, as amended or supplemented by ISDA from time to time.

“March 2013 Questionnaire” means the ISDA March 2013 DF Protocol Questionnaire, published on March 22, 2013, as amended or supplemented by ISDA from time to time.

“March 2013 Supplement” means the ISDA March 2013 DF Supplement, published on March 22, 2013.

“SBS Appendix 2 Information” means (i) information previously provided to a counterparty that is required in the March 2013 Questionnaire pursuant to Part II, Questions 3, 4, 5, 6, 7 and 8, and Part III, Questions 1, 3(b) and 3(c) (whether provided through delivery of such questionnaire or otherwise); and (ii) any other information provided pursuant to the SBS Appendix 2 Terms.

“SBS Appendix 2 Rules” means the SEC Rules adopted in the following Federal Register citations, as amended and supplemented from time to time: (1) *Trade Acknowledgement and Verification of Security-Based Swap Transactions*, 81 Fed. Reg. 39807 (June 17, 2016); and (2) *Risk Mitigation Techniques for Uncleared Security-Based Swaps*, 85 Fed. Reg. 6359 (Feb. 4, 2020).

“SBS Appendix 2 Terms” means the terms of this SBS Appendix 2, including those sections of the March 2013 Supplement that have been modified and incorporated by reference herein by the SBS Top-Up Protocol.

ISDA 2021 SBS Top-Up Protocol Appendix 1

Annotated Attachment

ISDA 2021 SBS Top-Up Protocol Appendix 1 Annotated Attachment

THIS INFORMATION CONTAINED IN THIS ANNOTATED ATTACHMENT IS FOR INFORMATION PURPOSES ONLY AND IS NOT TO BE RELIED ON AS LEGAL ADVICE. ALTHOUGH CARE HAS BEEN TAKEN IN THE PREPARATION OF THIS ANNOTATED ATTACHMENT, IT DOES NOT PURPORT AND SHOULD NOT BE CONSIDERED TO BE A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA 2021 SBS TOP-UP PROTOCOL OR THE RELATED DOCUMENTS. PARTIES SHOULD THEREFORE CONDUCT THEIR OWN DUE DILIGENCE AND CONSULT WITH THEIR LEGAL AND OTHER ADVISERS AS THEY DEEM APPROPRIATE. ISDA DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION CONTAINED IN THIS COMPARISON AND ISDA DOES NOT ACCEPT ANY LIABILITY FOR THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

Note:

This document shows the text resulting from the ISDA 2021 SBS Protocol Appendix 1, as drafted in consideration of the August 2012 Supplement available here:

<https://www.isda.org/protocol/isda-august-2012-df-protocol>. Footnotes included in red herein are for informational purposes only, and are not included in the August 2012 Supplement or the ISDA 2021 SBS Top-Up Protocol. The use of “[Omitted]” in the document has been included as a placeholder for sections to assist the reader in comparing the resulting text with the August 2012 Supplement text.

Schedule 1 Defined Terms

Definitions. Terms used in this SBS Appendix 1 shall have the following meanings when used herein. Defined terms used in SBS Appendix 1 and not otherwise defined herein shall have the meanings provided in the August 2012 Supplement, as modified by replacing the terms (i) “Swap” with “SBS”, (ii) “CFTC Regulations” with “SEC Rules” and (iii) “CFTC Regulation 45.8” with “the “SBS Appendix 1 Rules” each time they occur.

“Adherence Letter” means a letter substantially in the form attached as Exhibit 1 to the SBS Top-Up Protocol that is executed and delivered by a party.

“Agreement” means this agreement (howsoever named or otherwise referred to herein), as amended or supplemented from time to time.

“Associated Person” means, with respect to Covered SBS Entity, an associated person as defined in Section 3(a)(70) of the SEA.

“August 2012 Questionnaire” means the ISDA August 2012 DF Protocol Questionnaire, published on August 13, 2012, as amended or supplemented by ISDA from time to time.

“August 2012 Supplement” means the ISDA August 2012 DF Supplement, published on August 23, 2012.

“Business Day” means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

“Commodity Exchange Act” means the Commodity Exchange Act, as amended.

“Counterparty” or **“CP”** means a party to this 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 Appendix 1 Terms and SBS Appendix 2 Terms.

“Covered SBS Entity” means a party that (i) has been designated as a Covered SBS Entity for purposes of this SBS Appendix 1 in its Adherence Letter or (ii) is or becomes registered (on an ongoing basis or conditionally) as a “security-based swap dealer” with the SEC and has notified the other party of such registration in accordance with the Notice Procedures.

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

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

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

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

“Hedging Entity ECP” means a party to the Agreement that (i) has represented in writing to its counterparty that it is a corporation, partnership, proprietorship, organization, trust, or other entity that has a net worth exceeding \$1,000,000 and enters into SBS in connection with the conduct of the party’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the party in the conduct of the party’s business, but (ii) has not represented that it qualifies as an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act other than as provided above.

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

“Institutional Counterparty ECP” means a counterparty that is an eligible contract participant as defined in clause (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).

“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 party to the Agreement that has represented in writing to its counterparty that it is registered with the SEC as a “major security-based swap participant” as defined in Section 3a(67) of the Securities Exchange Act and Rule 3a67-1 thereunder.

“Major Swap Participant” means a party to the Agreement that has represented in writing to its counterparty that it is registered (fully or provisionally) with the CFTC as a “major swap participant” as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Regulation 1.3(hhh) thereunder.

“Non-Reporting Counterparty” means, in respect of any SBS subject to the SEC Rules, the party to such SBS that is not the Reporting Counterparty.

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

“Notice Procedures” means (1) the procedure specified in the Agreement regarding delivery of notices or information to a party and (2) such other means as may be agreed in writing between the parties from time to time.

“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 the “reporting counterparty” in accordance with SBS Appendix 1 Rules; *provided that*, in the event that SBS Appendix 1 Rules requires the parties to agree which party shall be the reporting Counterparty, the Reporting Counterparty in respect of a SBS shall be the party agreed by the parties.

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

“SBS Appendix 1 Information” means (i) information previously provided to a counterparty that is DF Supplement Information (whether provided through delivery of an August 2012 Questionnaire or otherwise); and (ii) any other information provided pursuant to the SBS Appendix 1 Terms.

“SBS Appendix 1 Rules” means the SEC 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) Security-Based Swap Data Repository Registration, Duties, and Core Principles, 80 Fed. Reg. 14437 (Mar. 19, 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); (5) Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, 84 Fed. Reg. 68550 (Dec. 16, 2019); (6) Cross-Border Application of Certain Security-Based Swap Requirements, 85 Fed. Reg. 6270 (Feb. 4, 2020); (7) solely for the purposes of Section 2.4 of the August 2012 Supplement, as modified and incorporated by this SBS Top-Up Protocol, and Sections on “Regulatory Disclosures” and “Delivery of Notifications” of the “General Agreements” of this SBS Appendix 1, 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 (8) solely for purposes of the Regulatory Disclosures provision in Section I.B. of this Appendix 1, the rules of (i) a self-regulatory organization for SBSDs (including brokers or dealers that are SBSDs), (ii) a clearing agency for SBS that is registered or exempt from registration under the SEA or (iii) a facility for the trading or processing of SBS 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 SBS.

“SBS Appendix 1 Terms,” means the terms of this SBS Appendix 1, including those sections of the August 2012 Supplement that have been modified and incorporated by reference herein by the SBS Top-Up Protocol.

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

“SBS 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 that is governed or proposed to be governed by the Agreement.

“SBS Top-Up Protocol” means the ISDA 2021 SBS Top-Up Protocol, published on February 25, 2021 by ISDA, as amended or supplemented from time to time.

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

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

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

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

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

“SEC Statement” means the SEC’s Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 83 Fed. Reg. 55486 (Nov. 6, 2018).

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

“Security-Based Swap Dealer” means a party to the Agreement that has represented in writing to its counterparty that it is registered with the SEC as a “security-based swap dealer” as defined in Section 3(a)(71) of the Securities Exchange Act and Rule 3a71-1 thereunder.

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

“Swap Dealer” or **“SD”** means a party to the Agreement that has represented in writing to a counterparty that it is registered (fully or provisionally) with the CFTC as a “swap dealer” as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg) thereunder, *provided that* the term “Swap Dealer” also includes, as appropriate, any Associated Person of such Swap Dealer.

“SBS Transaction Event” means, with respect to any two parties, the execution of a new SBS between such parties under the Agreement or any material amendment, mutual unwind or novation of an existing SBS between such parties under the Agreement.¹

¹ See 77 Fed. Reg. 9734, 9741 (Feb. 17, 2012).

Schedule 2
Agreements Between a Swap Dealer and Any Other Party

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 Appendix 1 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 Appendix 1 Information or in this SBS Appendix 1 is incorrect or misleading in any material respect, and (iii) all SBS Appendix 1 Information that is financial information furnished by or on behalf of it to the other party has been prepared in accordance with applicable accounting standards, consistently applied.²
- 2.2. Each party acknowledges that the other party has agreed to incorporate one or more SBS Appendix 1 Terms into the Agreement, and if the parties enter into any SBSs on or after the date of such incorporation the other party will do so, in reliance upon the SBS Appendix 1 Information and the representations provided by such party or its agent in the SBS Appendix 1 Information and this SBS Appendix 1. 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 Appendix 1 Information or in this SBS Appendix 1 being incorrect or misleading in any material respect, or (ii) a breach of any covenant or agreement set forth solely in this SBS Appendix 1; *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 Appendix 1 Information or in this SBS Appendix 1, including any such breach relating to any event or condition that could also cause or constitute an event specified in (i) or (ii) above.
- 2.3. Each party agrees to promptly notify the other party in writing in accordance with the Notice Procedures (i) of any material change to SBS Appendix 1 Information (other than representations) previously provided by such party or on behalf of such party and (ii) if any representations made in SBS Appendix 1 Information or this SBS Appendix 1 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

² See SEC Rule 240.15Fh-1 (scope and application of business conduct rules).

which the representation was last repeated, the notifying party shall timely amend such representation by giving notice of such amendment to the other party in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 2.3 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.³

2.4. Each party agrees to promptly provide the other party, in accordance with the Notice Procedures, any information reasonably requested by such other party to enable such other party to comply with Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the SBS Appendix 1 Rules in connection with any SBS outstanding between the parties under the Agreement.⁴

2.5. [Omitted]

2.6. [Omitted]

2.7. [Omitted]

2.8. [Omitted]

Part II. Agreements of a Non-Reporting Counterparty.

2.9. [Omitted]

2.10. [Omitted]

Part III. Representations and Agreements of a Counterparty that is not a Swap Dealer.⁵

If CP is not a Swap Dealer⁶, it represents and agrees as follows:

2.11. [Omitted]

2.12. CP agrees that Covered SBS Entity may effect delivery to CP of any notifications and informational disclosures required by the SBS Appendix 1 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

³ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules).

⁴ See, e.g., SEC Rules 242.905 (duty to correct reported data); 242.901(c)-(e) (primary and secondary trade information to be reported, reporting of life cycle events).

⁵ As the relevant SEC rules do not apply where the counterparty is a Swap Dealer, it was not necessary to amend the term “Swap Dealer” here.

⁶ As the relevant SEC rules do not apply where the counterparty is a Swap Dealer, it was not necessary to amend the term “Swap Dealer” here.

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, *provided that* Covered SBS Entity need not provide written notice of posting on such web page with respect to the provision of daily marks pursuant to SEC Rule 15Fh-3(c)(2). CP further agrees that, if it has so specified in writing to Covered SBS Entity, Covered SBS Entity may provide oral disclosures of any (i) pre-trade mid-market marks required pursuant to CFTC Regulation 23.431(a)(3)(i) and (ii) basic material economic terms, including price, notional amount and termination date, pursuant to CFTC Regulation 23.431(a)(2), *provided* such disclosures are confirmed by Covered SBS Entity in a written notice (which confirmation may be provided post-trade) by a means specified in the preceding sentence.⁷

2.13. [Omitted]

2.14. [Omitted]

2.15. [Omitted]

2.16. [Omitted]

Part IV. 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:

2.17. [Omitted]

2.18. 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

⁷ See SEC Rules 240.15Fh-3(b) (disclosure of material information about SBS); 15Fh-3(c)(2), (3) (disclosure of daily mark for uncleared SBS). Note that the last sentence of Section 2.12 of the August 2012 Supplement (beginning with “CP further agrees that...”) is not applicable in the context of the SEC rules insofar as Section 2.12 refers to the provision of oral disclosures “if...so specified in writing”. As it relates to disclosures provided to the counterparty pursuant to SEC Rule 240.15Fh-3(b) and (c) (*cf.* CFTC Regulation 23.431(a)(3)(i) and (ii)), SEC rules do not require a written agreement between the parties in order for the SBS Entity to provide non-written (*i.e.*, oral) disclosures (*cf.* CFTC Regulation 23.402(e) (indicating that required information may be provided “by any reliable means agreed to in writing by the counterparty”)). Pursuant to SEC rules, an SBS Entity must “make a written record of the non-written disclosures made” pursuant to SEC Rule 240.15Fh-3(b) (see SEC Rule 240.15Fh-3(b)(3)). Since including this language in the ISDA 2021 SBS Top-Up Protocol document merely repeats what the counterparties have already agreed to, it was not necessary to remove it.

Entity in its notice of such daily mark to CP, such locality to be consistently specified with regard to a class or type of SBSs.⁸

2.19. [Omitted]

Part V. Representation of a Hedging Entity ECP.

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

Part VI. Representation of a Hedging Individual ECP.

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

Part VII. Notifications by a Swap Dealer.

If applicable, SD hereby notifies CP that:

2.22. [Omitted]

2.23. [Omitted]

2.24. [Omitted]

2.25. [Omitted]

SEC Statement. CP agrees and acknowledges that Covered SBS Entity may rely on representations and agreements previously provided by CP in connection with transacting in Swaps, in order to satisfy requirements to CP with respect to the SBS Appendix 1 Rules.¹¹

⁸ See SEC Rule 240.15Fh-3(c) (disclosure of daily mark for cleared and uncleared SBS).

⁹ See Section 3(a)(65) of the SEA.

¹⁰ See Section 3(a)(65) of the SEA.

¹¹ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules); see also SEC's Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 83 Fed. Reg. 55486 (Nov. 6, 2018).

Regulatory Disclosures.¹² Notwithstanding anything to the contrary in this 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:

- (a) to the extent required by the SBS Appendix 1 Rules which mandate reporting of transaction and similar information; and
- (b) to the extent required by the SBS Appendix 1 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.

Each party acknowledges that disclosures made pursuant to this paragraph 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 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 Protocol Covered 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 Appendix 1 Rules as set out herein; and (iii) nothing

¹² This section reproduces language from Section 2.5 of the August 2012 Supplement with revisions to align with SBS rules, including by: (1) addressing permissibility of providing information in response to an SEC order, directive or other request for an SBS's books and records; (2) preserving any separate agreements with respect to confidentiality and consents to disclosures between the Reporting Counterparty and its Counterparty; and (3) setting out the scope of permissible disclosure to affiliates and/or third-party service providers for purposes of complying with reporting obligations. This section is also incorporated by reference into SBS Appendix 2 so that it becomes part of the agreement when parties to this Protocol top up agreements that were amended under the ISDA March 2013 Protocol but not under the ISDA August 2012 Protocol. See also SEC Rules 242.905 (duty to correct reported data); 242.901(c)-(e) (primary and secondary trade information to be reported, reporting of life cycle events).

herein is intended to limit the scope of any other consent to disclosure separately given by each party to the other party.

Non-Reporting Counterparty. Each party agrees that if it is the Non-Reporting Counterparty with respect to an SBS under the Agreement, upon the occurrence of any “life cycle event” (as that term is defined in Regulation SBSR) relating to a corporate event in respect of such Non-Reporting Counterparty and such SBS, it will, as soon as practicable, but in no event later than 24 hours (or if longer, the time period for reporting permitted under the SBS Appendix 1 Rules) after the occurrence of the life cycle event, notify the Reporting Counterparty to the SBS of the occurrence of such life cycle event, with sufficient detail regarding such life cycle event to allow such other party to comply with any reporting requirements imposed by the SBS Appendix 1 Rules.

Daily Mark.¹³ 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:

- (a) the daily mark may not necessarily be at a price at which either CP or Covered SBS Entity would agree to replace or terminate the SBS;
- (b) unless otherwise expressly agreed by the parties, calls for margin may be based on considerations other than the daily mark provided to CP; and
- (c) the daily mark may not necessarily be the value of the SBS that is marked on the books of Covered SBS Entity.

Clearing.¹⁴ Each party is hereby notified that, upon acceptance of an SBS by a clearing agency:

- (a) the original SBS between Covered SBS Entity and CP is extinguished;
- (b) the original SBS between Covered SBS Entity and CP is replaced by equal and opposite SBS with the clearing agency; and
- (c) all terms of the SBS shall conform to the product specifications of the cleared SBS established under the clearing agency’s rules.

Clearing Agency.¹⁵

- (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

¹³ See SEC Rule 240.15Fh-3(c) (disclosure of daily mark for cleared and uncleared SBS). Compare with the August 2012 Supplement Section 2.23.

¹⁴ See SEC Rule 240.15Fi-5 (definitions relating to trading documentation, portfolio reconciliation and portfolio compression rules). Compare with the August 2012 Supplement Section 2.24.

¹⁵ See SEC Rule 240.15Fh-3(d).

mandatory clearing requirements under Section 3Ca-1 of the SEA, Covered SBS Entity hereby discloses that CP has the sole right to select which of the clearing agencies through which Covered SBS Entity is authorized or permitted (directly or through a designated clearing member) to clear the SBS shall be used to clear the SBS, if any. Pursuant to SEC Rule 15Fh-3(d)(1)(i), the names of the relevant clearing agencies authorized or permitted to clear the SBS will be disclosed in a manner consistent with the Notice Procedures.

(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.

Special Entities. Covered SBS Entity hereby notifies CP that if CP (i) is an employee benefit plan as defined in Section 3 of ERISA that is not subject to Title I of ERISA and (ii) has not previously elected to be treated as a special entity for purposes of transacting in Swaps or SBS, CP has the right to elect to be treated as a special entity for purposes of transacting in SBS pursuant to SEC Rule 15Fh-3(a).¹⁶

¹⁶ Compare with the August 2012 Supplement Section 2.25.

Schedule 3
Institutional Suitability Safe Harbors for Non-Special Entities

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

- 3.1. If (i) CP has designated one or more agents as Designated Evaluation Agents and (ii) each such Designated Evaluation Agent has agreed in writing to make the representations and agreements in Sections 3.1(b) and 3.1(c):
- a. CP represents to Covered SBS Entity (which representation is deemed repeated by CP as of the occurrence of each SBS Communication Event) that CP has complied in good faith with written policies and procedures that are reasonably designed to ensure that each of its Designated Evaluation Agents is capable of evaluating SBS Recommendations (if any) of Covered SBS Entity and making trading decisions on behalf of CP;¹⁷
 - 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;¹⁸ 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 DF Supplement¹⁹ 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 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

¹⁷ See SEC Rule 240.15Fh-3(f)(3)(i) (suitability and related safe harbors).

¹⁸ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

¹⁹ This reference term should be read as “this SBS Appendix I”.

Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.²⁰

- 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.²¹

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

- 3.2. If CP has not designated a Designated Evaluation Agent, CP represents to Covered SBS Entity (which representations are deemed repeated by CP as of the occurrence of each SBS Communication Event) that:
 - a. CP has complied in good faith with written policies and procedures that are reasonably designed to ensure that the persons responsible for evaluating all SBS Recommendations (if any) regarding a SBS and making trading decisions on behalf of CP are capable of doing so; and²²
 - b. CP is exercising independent judgment in evaluating all SBS Recommendations (if any).²³

Part III. Disclosures of a SBS Dealer.

- 3.3. Covered SBS Entity hereby discloses to CP (which disclosure is deemed repeated by Covered SBS Entity as of the occurrence of each SBS Communication Event) that Covered SBS Entity is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any SBS or trading strategy involving a SBS for CP.²⁴

²⁰ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules); *see also* SEC's Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 83 Fed. Reg. 55486 (Nov. 6, 2018).

²¹ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

²² See SEC Rule 240.15Fh-3(f)(3)(i) (suitability and related safe harbors).

²³ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

²⁴ See SEC Rule 240.15Fh-3(f)(2)(iii) (suitability and related safe harbors).

Schedule 4
Safe Harbors for Non-ERISA Special Entities

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. [Omitted]
 - b. CP will rely on advice from a Designated QIR;²⁵
 - c. [Omitted]
 - 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 SBSs to be executed by CP on its own behalf.²⁶

²⁵ See SEC Rule 240.15Fh-2(a)(2)(i)(B) (acting as advisor to special entity and related safe harbors).

²⁶ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

Part II. Disclosures of a SBS Dealer.

- 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; 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 a SBS for CP.²⁷

Additional Representations and Agreements.

CP acknowledges (which acknowledgement is deemed repeated as of the occurrence of each SBS Communication Event) that Covered SBS Entity is not acting as an advisor to CP.²⁸

CP represents to Covered SBS Entity (which representation is deemed repeated as of the occurrence of each SBS Communication Event) 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).²⁹

Part III. Representations and Agreements of a Designated QIR.

- 4.3. Each Designated QIR represents to Covered SBS Entity and CP (which representations are deemed repeated by such Designated QIR as of the occurrence of each SBS Communication Event involving such Designated QIR) that:
- a. Such Designated QIR has written policies and procedures reasonably designed to ensure that the Designated QIR satisfies the applicable requirements of SEC Rule 15Fh-5(a)(1);³⁰
 - b. Such Designated QIR is exercising independent judgment in evaluating all SBS Recommendations (if any) of Covered SBS Entity that are presented to it;³¹

²⁷ See SEC Rules 240.15Fh-2(a)(2)(ii) (acting as advisor to special entity and related safe harbors); 15Fh-3(f)(2)(iii) (Suitability and related safe harbors).

²⁸ See SEC Rule 240.15Fh-2(a) (acting as advisor to special entity and related safe harbors).

²⁹ See SEC Rule 240.15Fh-5(b)(1) (safe harbors for satisfaction of QIR criteria).

³⁰ See SEC Rule 240.15Fh-5(b)(1)(ii)(A) (safe harbors for satisfaction of QIR criteria).

- 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:
 - 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;³²
 - 2. [Omitted]
 - 3. Such Designated QIR (i) provides timely and effective 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;³³
 - 4. [Omitted]
 - 5. 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; and³⁴
 - 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.³⁵
- 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 DF Supplement³⁶ 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

³¹ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

³² See SEC Rule 240.15Fh-5(a)(1)(vii)(B)(1) (independence standards for QIRs).

³³ See SEC Rule 240.15Fh-5(a)(1)(vii)(B)(2) (independence standards for QIRs).

³⁴ See SEC Rule 240.15Fh-5(a)(1)(vii)(B)(3) (independence standards for QIRs).

³⁵ See SEC Rule 240.15Fh-5(b)(1)(ii)(C) (safe harbors for satisfaction of QIR criteria).

³⁶ This reference term should be read as “this SBS Appendix I”.

Agreement to the contrary, a notification pursuant to this Section 4.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.³⁷

³⁷ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules).

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

Part I. Representations of a Counterparty.

- 5.1. CP represents to Covered SBS Entity (which representations are deemed repeated by CP as of the occurrence of each SBS Communication Event) that:
- a. Each of its Designated Fiduciaries is a “fiduciary” as defined in Section 3 of ERISA and a Designated Fiduciary is responsible for representing CP in connection with each SBS or trading strategy involving a SBS;³⁸
 - b. Either:
 - 1. CP will comply in good faith with written policies and procedures reasonably designed to ensure that any recommendation CP receives from Covered SBS Entity materially affecting a SBS transaction is evaluated by a Designated Fiduciary before the transaction occurs; or
 - 2. Any recommendation CP receives from Covered SBS Entity materially affecting a SBS transaction will be evaluated by a Designated Fiduciary before the transaction occurs;³⁹ and
 - 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 SBSs to be executed by CP on its own behalf.

Part II. Disclosures of a SBS Dealer.

- 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; 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 a SBS for CP.⁴⁰

³⁸ See SEC Rules 240.15Fh-2(a) (acting as advisor to special entity and related safe harbors); 15Fh-5(b)(1) (safe harbors for satisfaction of QIR criteria).

³⁹ See SEC Rule 240.15Fh-2(a)(1)(iii) (acting as advisor to special entity and related safe harbors).

Additional Representations and Agreements. CP acknowledges (which acknowledgement is deemed repeated as of the occurrence of each SBS Communication Event) that Covered SBS Entity is not acting as an advisor to CP.

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. [Omitted]
 - b. Such Designated Fiduciary is exercising independent judgment in evaluating all SBS Recommendations (if any) of Covered SBS Entity that are presented to it.⁴¹
- 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 DF Supplement⁴² 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.⁴³

The Designated Fiduciary acknowledges (which acknowledgement is deemed repeated as of the occurrence of each SBS Communication Event) that Covered SBS Entity is not acting as an advisor to CP.

⁴⁰ See SEC Rule 240.15Fh-2(a)(2)(ii) (acting as advisor to special entity and related safe harbors); 15Fh-3(f)(2)(iii) (Suitability and related safe harbors).

⁴¹ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

⁴² This reference term should be read as “this SBS Appendix I”.

⁴³ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules).

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

Part I. Representations of a Counterparty.

- 6.1. CP represents to Covered SBS Entity (which representations are deemed repeated by CP as of the occurrence of each SBS Communication Event) that:
- a. Each of its Designated Fiduciaries is a “fiduciary” as defined in Section 3 of ERISA;⁴⁴
 - b. [Omitted]
 - c. CP will rely on advice from a Designated Fiduciary;⁴⁵ and
 - 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 SBSs to be executed by CP on its own behalf.

Part II. Disclosures of a SBS Dealer.

- 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; 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 a SBS for CP.⁴⁶

Additional Representations and Agreements. CP acknowledges (which acknowledgement is deemed repeated by CP as of the occurrence of each SBS Communication Event) that Covered SBS Entity is not acting as an advisor to CP.

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

⁴⁴ See SEC Rule 240.15Fh-5(b)(1)(ii) (safe harbors for satisfaction of QIR criteria).

⁴⁵ See SEC Rule 240.15Fh-2(a)(2)(i)(B) (acting as advisor to special entity and related safe harbors).

⁴⁶ See SEC Rules 240.15Fh-2(a)(2)(ii) (acting as advisor to special entity and related safe harbors); 15Fh-3(f)(2)(iii) (Suitability and related safe harbors).

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.⁴⁷

- 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 DF Supplement⁴⁸ have become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated Fiduciary shall timely amend such representation by giving notice of such amendment to Covered SBS Entity in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 6.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.⁴⁹

Institutional Counterparty. CP represents to Covered SBS Entity (which representation is deemed repeated as of the occurrence of each SBS Communication Event) that, unless CP has notified Covered SBS Entity to the contrary in accordance with the Notice Procedures, it has total assets of at least \$50 million.⁵⁰

Agents. CP represents to Covered SBS Entity (which representation is deemed repeated as of the occurrence of each SBS Communication Event) that, unless CP has notified Covered SBS Entity to the contrary in accordance with the Notice Procedures, each person previously designated as CP's Designated Evaluation Agent, Designated QIR or Designated Fiduciary for purposes of transactions in Swaps under the Agreement is CP's Designated Evaluation Agent, Designated QIR or Designated Fiduciary for purposes of transactions in SBS under the Agreement.⁵¹

⁴⁷ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

⁴⁸ This reference term should be read as "this SBS Appendix I".

⁴⁹ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules).

⁵⁰ See SEC Rule 240.15Fh-3(f) (suitability and related safe harbors).

⁵¹ See SEC Rule 240.15Fh-3(f) (suitability and related safe harbors). See also August 2012 Protocol Questionnaire, Part II, Questions 6-8.

ISDA 2021 SBS Top-Up Protocol Appendix 1
Annotated Attachment
COMPARISON TO ISDA August 2012 DF Supplement

THIS INFORMATION CONTAINED IN THIS COMPARISON IS FOR INFORMATION PURPOSES ONLY AND IS NOT TO BE RELIED ON AS LEGAL ADVICE. ALTHOUGH CARE HAS BEEN TAKEN IN THE PREPARATION OF THIS COMPARISON, IT DOES NOT PURPORT AND SHOULD NOT BE CONSIDERED TO BE A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA 2021 SBS TOP-UP PROTOCOL OR THE RELATED DOCUMENTS. PARTIES SHOULD THEREFORE CONDUCT THEIR OWN DUE DILIGENCE AND CONSULT WITH THEIR LEGAL AND OTHER ADVISERS AS THEY DEEM APPROPRIATE. ISDA DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION CONTAINED IN THIS COMPARISON AND ISDA DOES NOT ACCEPT ANY LIABILITY FOR THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

Note:

This document shows the text resulting from the ISDA 2021 SBS Protocol Appendix 1, as drafted in consideration of the August 2012 Supplement available here: <https://www.isda.org/protocol/isda-august-2012-df-protocol>, and compared to the August 2012 Supplement. Wording inserted by the ISDA 2021 SBS Protocol Appendix 1 is represented in blue underline (example); deletions of text from the August 2012 Supplement are represented red strikethrough (~~example~~). Wording moved to another location within the document as a result of the ISDA 2021 SBS Protocol Appendix 1 is represented in green underline (example); deletions are represented in green strikethrough (~~example~~). The use of “[Omitted]” in the document has been included as a placeholder for sections to assist the reader in comparing the resulting text with the August 2012 Supplement text.



~~International Swaps and Derivatives Association, Inc.~~
~~ISDA AUGUST 2012 DF SUPPLEMENT[†]~~

~~published on August 13, 2012,~~
~~by the International Swaps and Derivatives Association, Inc.~~

[†] This DF Supplement is intended to address requirements of the following final rules:

- ~~(1) CFTC, Final Rule, Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 77 Fed. Reg. 9734 (Feb. 17, 2012);~~
- ~~(2) CFTC, Final Rule, Large Trader Reporting for Physical Commodity Swaps, 76 Fed. Reg. 43851 (July 22, 2011);~~
- ~~(3) CFTC, Final Rule, Position Limits for Futures and Swaps, 76 Fed. Reg. 71626 (Nov. 18, 2011);~~
- ~~(4) CFTC, Final Rule, Real-Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012);~~
- ~~(5) CFTC, Final Rule, Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan. 13, 2012);~~
- ~~(6) CFTC, Final Rule, Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 Fed. Reg. 20128 (Apr. 3, 2012); and~~
- ~~(7) CFTC, Final Rule, Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 Fed. Reg. 35200 (June 12, 2012).~~

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International Swaps and Derivatives Association, Inc.

~~ISDA August 2012 DF Supplement~~

~~(published on August 13, 2012)~~

~~Any of the following schedules of this ISDA August 2012 DF Supplement (as published by the International Swaps and Derivatives Association, Inc. (“ISDA”)) (this “DF Supplement”) may be incorporated into an agreement (such agreement, a “Covered Agreement”) by written agreement of the relevant parties indicating which schedules of this DF Supplement (each such schedule, a “DF Schedule”) shall be incorporated into such Covered Agreement. All DF Schedules so incorporated in a Covered Agreement will be applicable to such Covered Agreement unless otherwise provided in such Covered Agreement, and any term defined in this DF Supplement and used in any DF Schedule that is incorporated by reference in a Covered Agreement will have the meaning set forth in this DF Supplement unless otherwise provided in such Covered Agreement. Any term used in a Covered Agreement will, when combined with the name of a party, have meaning with respect to the named party only. The headings and footnotes used in this DF Supplement 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 DF Supplement.~~

~~Schedule 1~~ Schedule 1
Defined Terms

~~The following terms shall have the following meanings when used in this DF Supplement:~~

Definitions. Terms used in this SBS Appendix 1 shall have the following meanings when used herein. Defined terms used in SBS Appendix 1 and not otherwise defined herein shall have the meanings provided in the August 2012 Supplement, as modified by replacing the terms (i) “Swap” with “SBS”, (ii) “CFTC Regulations” with “SEC Rules” and (iii) “CFTC Regulation 45.8” with “the “SBS Appendix 1 Rules” each time they occur.

“Adherence Letter” means a letter substantially in the form attached as Exhibit 1 to the SBS Top-Up Protocol that is executed and delivered by a party.

~~“Agreement,” as used in a provision of this DF Supplement that is incorporated into a Covered Agreement or any defined term used in such provision, means such Covered Agreement~~means this agreement (howsoever named or otherwise referred to herein), as amended or supplemented from time to time.

~~“Agricultural Commodity” means any “agricultural commodity,” as defined in CFTC Regulation 1.3(z).~~

~~“Associated Person” means, with respect to a Swap Dealer, any person acting for or on behalf of such Swap Dealer, including~~Covered SBS Entity, an associated person as defined in Section ~~13(a)(470)~~ of the ~~Commodity Exchange Act~~SEA.

~~“Applicable U.S. Law” means all applicable laws of the United States and rules, regulations, orders and written interpretations of U.S. federal authorities, self-regulatory organizations, markets, exchanges, and clearing facilities.~~

“August 2012 Questionnaire” means the ISDA August 2012 DF Protocol Questionnaire, published on August 13, 2012, as amended or supplemented by ISDA from time to time.

“August 2012 Supplement” means the ISDA August 2012 DF Supplement, published on August 23, 2012.

“Business Day” means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

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

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

“Commodity Exchange Act” means the Commodity Exchange Act, as amended.

~~“Commodity Trade Option” means a commodity option entered into pursuant to CFTC Regulation 32.3(a).~~

“Counterparty” or “CP” means a party to this Agreement that is ~~the~~ covered SBS Entity counterparty to a ~~Swap Dealer in respect of the Agreement~~ Covered SBS Entity. For the avoidance of doubt, if two ~~Swap Dealers~~ Covered SBS Entities are ~~parties~~ party to the Agreement, then each ~~Swap Dealer~~ Covered SBS Entity is also a Counterparty or CP for purposes of ~~this DF Supplement~~ the SBS Appendix 1 Terms and SBS Appendix 2 Terms.

“Covered SBS Entity” means a party that (i) has been designated as a Covered SBS Entity for purposes of this SBS Appendix 1 in its Adherence Letter 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.

~~“DCM” means a “designated contract market,” as such term is used in the CFTC Regulations.~~

~~“DCO” means a “derivatives clearing organization,” as such term is defined in Section 1a(15) of the Commodity Exchange Act and the CFTC Regulations.~~

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

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

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

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

~~“DF Supplement Rules” means the CFTC Regulations adopted in the following Federal Register citations, as amended and supplemented from time to time: (1) Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 77 Fed. Reg. 9734 (Feb. 17, 2012); (2) Large Trader Reporting for Physical Commodity Swaps, 76 Fed. Reg. 43851 (July 22, 2011); (3) Position Limits for Futures and Swaps, 76 Fed. Reg. 71626 (Nov. 18, 2011); (4) Real-Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012); (5) Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan. 13, 2012); (6) Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 Fed. Reg. 20138 (Apr. 3, 2012); (7) Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 Fed. Reg. 35200 (June 12, 2012); and (8) solely for purposes of Sections 2.4, 2.5, 2.12 and 2.19 of this DF Supplement, any comparable non-U.S. regulation with which SD is permitted by the CFTC to comply in lieu of any of the foregoing CFTC Regulations.~~

~~“DF Supplement Information” means (i) any information or representation agreed in writing by the parties to be DF Supplement Information; and (ii) any information provided pursuant to Section 2.4 of this DF Supplement, in each case, as amended or supplemented from time to time~~

~~in accordance with Section 2.3 of this DF Supplement or in another manner agreed by the parties.~~

“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.~~

~~“Exempt Commodity” means any “exempt commodity” under Section 1a(20) of the Commodity Exchange Act.~~

~~“FCM” means a futures commission merchant subject to regulation under the Commodity Exchange Act.~~

“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 ~~Swaps~~[SBS](#) in connection with the conduct of the party’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the party in the conduct of the party’s business, but (ii) has not represented that it qualifies as an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act other than as provided above.

“Hedging Individual ECP” means a party to the Agreement that (i) has represented in writing to its counterparty that it is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$5,000,000 and who enters into ~~Swaps~~[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 ECP” means a counterparty that is an eligible contract participant as defined in clause (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).

“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 party to the Agreement that has represented in writing to its counterparty that it is registered with the SEC as a “major security-based swap participant” as defined in Section 3a(67) of the Securities Exchange Act and Rule 3a67-1 thereunder.

“Major Swap Participant” means a party to the Agreement that has represented in writing to its counterparty that it is registered (fully or provisionally) with the CFTC as a “major swap

participant” as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Regulation 1.3(hhh) thereunder.

~~“Material Confidential Information” means “material confidential information” as such term is used in CFTC Regulation 23.410(c).~~

“Non-Reporting Counterparty” means, in respect of any ~~Swap~~SBS subject to the ~~CFTC Regulations~~SEC Rules, the party to such ~~Swap~~SBS that is not the Reporting Counterparty.

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

“Notice Procedures” means (1) the procedure specified in the Agreement regarding delivery of notices or information to a party and (2) such other means as may be agreed in writing between the parties from time to time.

~~“Notifications” means the notifications set forth in Part VII of DF 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 ~~Swap~~SBS subject to the ~~CFTC Regulations~~SEC Rules, the party to such ~~Swap~~SBS that is determined to be the “reporting counterparty” in accordance with ~~CFTC Regulation 45.8~~SBS Appendix 1 Rules; *provided that*, in the event that ~~CFTC Regulation 45.8~~SBS Appendix 1 Rules requires the parties to agree which party shall be the reporting Counterparty, the Reporting Counterparty in respect of a ~~Swap~~SBS shall be the party agreed by the parties.

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

“SBS Appendix 1 Information” means (i) information previously provided to a counterparty that is DF Supplement Information (whether provided through delivery of an August 2012 Questionnaire or otherwise); and (ii) any other information provided pursuant to the SBS Appendix 1 Terms.

“SBS Appendix 1 Rules” means the SEC 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) Security-Based Swap Data Repository Registration, Duties, and Core Principles, 80 Fed. Reg. 14437 (Mar. 19, 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); (5) Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, 84 Fed. Reg. 68550 (Dec. 16, 2019); (6) Cross-Border Application of Certain Security-Based Swap Requirements, 85 Fed. Reg. 6270 (Feb. 4, 2020); (7) solely for the purposes of Section 2.4 of the August 2012

Supplement, as modified and incorporated by this SBS Top-Up Protocol, and Sections on “Regulatory Disclosures” and “Delivery of Notifications” of the “General Agreements” of this SBS Appendix 1, 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 (8) solely for purposes of the Regulatory Disclosures provision in Section I.B. of this Appendix 1, the rules of (i) a self-regulatory organization for SBSDs (including brokers or dealers that are SBSDs), (ii) a clearing agency for SBS that is registered or exempt from registration under the SEA or (iii) a facility for the trading or processing of SBS 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 SBS.

“SBS Appendix 1 Terms,” means the terms of this SBS Appendix 1, including those sections of the August 2012 Supplement that have been modified and incorporated by reference herein by the SBS Top-Up Protocol.

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

“SBS 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 that is governed or proposed to be governed by the Agreement.

“SBS Top-Up Protocol” means the ISDA 2021 SBS Top-Up Protocol, published on February 25, 2021 by ISDA, as amended or supplemented from time to time.

“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.

“~~SDR~~SBSDR” means a “security-based swap data repository,” as defined in Section ~~43(a)~~(4875) of the ~~Commodity Exchange Act~~SEA and the ~~CFTC Regulations~~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.

“SEC Statement” means the SEC’s Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 83 Fed. Reg. 55486 (Nov. 6, 2018).

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

“Security-Based Swap Dealer” means a party to the Agreement that has represented in writing to its counterparty that it is registered with the SEC as a “security-based swap dealer” as defined in Section 3(a)(71) of the Securities Exchange Act and Rule 3a71-1 thereunder.

~~“SEF” means a “swap execution facility” as defined in Section 1a(50) of the Commodity Exchange Act and the CFTC Regulations.~~

~~“Special Entity” means a “special entity” as defined in Section 4s(h)(2)(C) of the Commodity Exchange Act and CFTC Regulation 23.401(e) thereunder.~~

~~“Swap” means a “swap” as defined in the Section 1a(47) of the Commodity Exchange Act and CFTC Regulation 1.3(xxx) that is governed by or proposed to be governed by the Agreement. The term “Swap” also includes any foreign exchange swaps and foreign exchange forwards that may be exempted from regulation as “swaps” by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the Commodity Exchange Act.~~

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

“Swap Dealer” or “SD” means a party to the Agreement that has represented in writing to a counterparty that it is registered (fully or provisionally) with the CFTC as a “swap dealer” as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg) thereunder, *provided that* the term “Swap Dealer” also includes, as appropriate, any Associated Person of such Swap Dealer.

~~“Swap Recommendation” means a “recommendation” (as such term is used in CFTC Regulations 23.434 and 23.440) with respect to a Swap or trading strategy involving a Swap that is governed by or proposed to be governed by the Agreement.~~

“SwapSBS Transaction Event” means, with respect to any two parties, the execution of a new ~~SwapSBS~~ between such parties under the Agreement or any material amendment, mutual unwind or novation of an existing ~~SwapSBS~~ between such parties under the Agreement.¹

¹ See 77 Fed. Reg. 9734, 9741 (Feb. 17, 2012).

Schedule 2

Agreements Between a Swap Dealer and Any Other Party

~~This DF Schedule 2 may be incorporated into an agreement between a Swap Dealer and any other party, including another Swap Dealer. For the avoidance of doubt, if this DF Schedule 2 is incorporated into an agreement between two Swap Dealers, each such Swap Dealer will be both “SD” and “CP” for purposes of this DF Schedule 2.~~

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

Part I. Representations and Agreements.

- 2.1. Each party represents to the other party (which representation is deemed repeated as of the time of each ~~Swap~~[SBS](#) Transaction Event) that, as of the date of each ~~Swap~~[SBS](#) Transaction Event, (i) all ~~DF Supplement~~[SBS Appendix 1](#) 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 ~~DF Supplement~~[SBS Appendix 1](#) Information or in this ~~DF Supplement~~[SBS Appendix 1](#) is incorrect or misleading in any material respect, and (iii) all ~~DF Supplement~~[SBS Appendix 1](#) Information that is financial information furnished by or on behalf of it to the other party has been prepared in accordance with applicable accounting standards, consistently applied.²
- 2.2. Each party acknowledges that the other party has agreed to incorporate one or more ~~DF Schedules~~[SBS Appendix 1 Terms](#) into the Agreement, and if the parties enter into any ~~Swaps~~[SBSs](#) on or after the date of such incorporation the other party will do so, in reliance upon the ~~DF Supplement~~[SBS Appendix 1](#) Information and the representations provided by such party or its agent in the ~~DF Supplement~~[SBS Appendix 1](#) Information and this ~~DF Supplement~~[SBS Appendix 1](#). 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 ~~DF Supplement~~[SBS Appendix 1](#) Information or in this ~~DF Supplement~~[SBS Appendix 1](#) being incorrect or misleading in any material respect, or (ii) a breach of any covenant or agreement set forth solely in this ~~DF Supplement~~[SBS Appendix 1](#); *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 ~~DF Supplement~~[SBS Appendix 1](#) Information or in this ~~DF~~

² ~~CFTC Regulation 23.402(d)~~[See SEC Rule 240.15Fh-1 \(scope and application of business conduct rules\)](#).

~~Supplement~~[SBS Appendix 1](#), including any such breach relating to any event or condition that could also cause or constitute an event specified in (i) or (ii) above.

2.3. Each party agrees to promptly notify the other party in writing in accordance with the Notice Procedures (i) of any material change to ~~DF Supplement~~[SBS Appendix 1](#) Information (other than representations) previously provided by such party or on behalf of such party and (ii) if any representations made in ~~DF Supplement~~[SBS Appendix 1](#) Information or this ~~DF Supplement~~[SBS Appendix 1](#) by or on behalf of such party become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the notifying party shall timely amend such representation by giving notice of such amendment to the other party in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 2.3 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.³

2.4. Each party agrees to promptly provide the other party, in accordance with the Notice Procedures, any information reasonably requested by such other party to enable such other party to comply with Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the ~~DF Supplement~~[SBS Appendix 1](#) Rules in connection with any ~~Swap~~[SBS](#) outstanding between the parties under the Agreement.⁴

[2.5. \[Omitted\]](#)

[2.6. \[Omitted\]](#)

[2.7. \[Omitted\]](#)

[2.8. \[Omitted\]](#)

~~2.5. Notwithstanding anything to the contrary in the Agreement or in any non-disclosure, confidentiality or similar agreement between the parties, each party hereby consents to the disclosure of information to the extent required by the DF Supplement Rules which mandate reporting of transaction and similar information.⁵ Each party acknowledges that disclosures made pursuant to this Section 2.5 may include, without limitation, the disclosure of trade information including a party's identity (by name, identifier or otherwise) to an SDR and relevant regulators and that such disclosures could result in certain anonymous Swap transaction~~

³ ~~CFTC Regulation 23.402(d)~~[See SEC Rule 240.15Fh-1 \(scope and application of business conduct rules\).](#)

⁴ ~~See, e.g., CFTC Regulations 20.5(a); 43.3-43.4; 45.2-45.4; 46.3~~[SEC Rules 242.905 \(duty to correct reported data\); 242.901\(c\)-\(e\) \(primary and secondary trade information to be reported, reporting of life cycle events\).](#)

⁵ ~~CFTC Regulations 20.4, 20.5, 23.204, 23.205, 43.3, 43.4, 45.3, 45.4, and 46.3. Please note that the consents and acknowledgements in this Section 2.5 may not be sufficient to meet all disclosure requirements for the disclosure of information as required under the laws of certain jurisdictions.~~

~~and pricing data becoming available to the public. Each party further acknowledges that, for purposes of complying with regulatory reporting obligations, an SDR may engage the services of a global trade repository regulated by one or more governmental regulators, provided that such regulated global trade repository is subject to comparable confidentiality provisions as is an SDR registered with the CFTC. For the avoidance of doubt, to the extent that applicable non-disclosure, confidentiality, bank secrecy or other law imposes non-disclosure requirements on transaction and similar information required to be disclosed pursuant to the DF Supplement Rules 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 other applicable law.~~

~~2.6. To the fullest extent permitted by applicable law, each party consents to the recording of conversations of its trading, marketing, operations and other relevant personnel by the other party and its affiliates, with or without the use of a warning tone or similar warning, in connection with any Swap or proposed Swap. Each party further agrees to obtain the individual consents of its personnel should such consent be required by applicable law.⁶~~

~~2.7. As of each Swap Transaction Event with respect to a Commodity Trade Option to which CP is the offeree, CP represents to its counterparty that it is: (i) a producer, processor, commercial user of, or a merchant handling, the commodity that is the subject of the Commodity Trade Option, or the products or byproducts thereof, and (ii) entering into the Commodity Trade Option solely for purposes related to its business as such.⁷~~

~~2.8. As of each Swap Transaction Event with respect to a Commodity Trade Option, each party represents to the other party that the Commodity Trade Option, if exercised, contains a binding obligation that results in the sale of an Exempt Commodity or an Agricultural Commodity for immediate or deferred shipment or delivery.⁸~~

Part II. Agreements of a Non-Reporting Counterparty.

2.9. [Omitted]

2.10. [Omitted]

~~2.9. Each party agrees that if it is the Non-Reporting Counterparty with respect to a Swap under the Agreement that is an “international swap” (as that term is defined in CFTC Regulation 45.1), it shall notify the Reporting Counterparty to such international swap, as soon as practicable and in accordance with the Notice Procedures, of the (i) identity of each non-U.S. trade repository not registered with the CFTC to which the Non-Reporting Counterparty or its agent has reported the Swap, and (ii) swap identifier used by such non-U.S. trade repository to identify the swap.⁹~~

⁶- ~~CFTC Regulation 23.202-~~

⁷- ~~CFTC Regulation 32.3(a)(2)-~~

⁸- ~~CFTC Regulation 32.3(a)(3)-~~

⁹- ~~CFTC Regulation 45.3(h)-~~

~~2.10. Each party agrees that if it is the Non-Reporting Counterparty with respect to a Swap under the Agreement, upon the occurrence of any “life cycle event” (as that term is defined in CFTC Regulation 45.1) relating to a corporate event in respect of such Non-Reporting Counterparty and such Swap, it will, as soon as practicable, but in no event later than 10 a.m. on the second “business day” (as that term is defined in CFTC Regulation 45.1) following the day on which such life cycle event occurs, notify the Reporting Counterparty to the Swap of the occurrence of such life cycle event, with sufficient detail regarding such life cycle event to allow such other party to comply with any reporting requirements imposed by the DF Supplement Rules.⁴⁰~~

Part III. Representations and Agreements of a Counterparty that is not a Swap Dealer.⁵

—

If CP is not a Swap Dealer⁶, it represents and agrees as follows:

2.11. [Omitted]

~~2.11. CP has received, reviewed, and understood the Notifications in Part VII of DF Schedule 2 that are applicable to CP.⁴⁴~~

- 2.12. CP agrees that ~~SD~~Covered SBS Entity may effect delivery to CP of any notifications and informational disclosures required by the ~~DF Supplement~~SBS Appendix 1 Rules, including standardized notifications and disclosures applicable to multiple ~~Swaps~~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, *provided that* ~~SD~~Covered SBS Entity need not provide written notice of posting on such web page with respect to the provision of daily marks pursuant to ~~CFTC Regulation 23.431~~SEC Rule 15Fh-3(d)(2). CP further agrees that, if it has so specified in writing to ~~SD, SD~~Covered SBS Entity, Covered SBS Entity may provide oral disclosures of any
- (i) pre-trade mid-market marks required pursuant to CFTC Regulation 23.431(a)(3)(i) and (ii) basic material economic terms, including price, notional amount and termination date, pursuant to CFTC Regulation 23.431(a)(2), *provided* such disclosures are confirmed by ~~SD~~Covered SBS Entity in a written

⁴⁰— ~~CFTC Regulation 45.4(e).~~

⁵ As the relevant SEC rules do not apply where the counterparty is a Swap Dealer, it was not necessary to amend the term “Swap Dealer” here.

⁶ As the relevant SEC rules do not apply where the counterparty is a Swap Dealer, it was not necessary to amend the term “Swap Dealer” here.

⁴⁴— ~~CFTC Regulations 23.402(f) and 23.431(d)(3)(ii).~~

notice (which confirmation may be provided post-trade) by a means specified in the preceding sentence.⁷

~~2.13. Subject to any conditions on the disclosure of Material Confidential Information to governmental authorities, regulatory authorities or self-regulatory organizations previously agreed by the parties, CP agrees that SD is authorized to disclose Material Confidential Information provided to SD by (or on behalf of) CP to comply with a request of any regulatory authority or self-regulatory organization with jurisdiction over SD or of which SD is a member or as otherwise required by applicable law (whether by statute, law, rule, regulation, court order, subpoena, deposition, civil investigative demand or otherwise).¹²~~

~~2.14. If, on or prior to the date on which this DF Schedule 2 is incorporated into the Agreement, CP and SD have entered into a written agreement relating to the non-disclosure of information regarding CP or its activities, CP and SD agree that all information that is subject to that agreement that constitutes Material Confidential Information and is provided by (or on behalf of) CP to SD may be used or disclosed by SD in any manner that is not prohibited by the terms of such agreement, irrespective of any limitations set forth in CFTC Regulation 23.410(c)(1).~~

~~2.15. If any Material Confidential Information provided by (or on behalf of) CP to SD is not subject to an agreement of the type described in Section 2.14 above, CP agrees that SD is authorized to use or disclose such Material Confidential Information to (i) any of its affiliates, third-party service providers (provided such affiliates and third-party service providers are subject to limitations on use or disclosure that are no less restrictive than the limitations applicable to SD under the DF Supplement Rules, as agreed by the parties in this DF Supplement) and (ii) Associated Persons, solely for purposes of complying with the internal legal risk, compliance, accounting, operational risk, market risk, liquidity risk or credit risk policies of SD or its affiliates (in each case, consistently applied) or as otherwise permitted by the DF Supplement Rules. Notwithstanding the foregoing, no such Material Confidential Information will be disclosed to any person acting in a structuring, sales or trading capacity for SD or any affiliate of SD except as permitted by CFTC Regulation 23.410(c)(2); provided that for purposes of the foregoing, CP and SD agree that:~~

2.13. [Omitted]

- ~~a. “the effective execution of any swap for or with counterparty,” as such language is used in CFTC Regulation 23.410(c)(2)(i), may require, without~~

⁷ See SEC Rules 240.15Fh-3(b) (disclosure of material information about SBS); 15Fh-3(c)(2), (3) (disclosure of daily mark for uncleared SBS). Note that the last sentence of Section 2.12 of the August 2012 Supplement (beginning with “CP further agrees that...”) is not applicable in the context of the SEC rules insofar as Section 2.12 refers to the provision of oral disclosures “if...so specified in writing”. As it relates to disclosures provided to the counterparty pursuant to SEC Rule 240.15Fh-3(b) and (c) (*cf.* CFTC Regulation 23.431(a)(3)(i) and (ii)), SEC rules do not require a written agreement between the parties in order for the SBS Entity to provide non-written (*i.e.*, oral) disclosures (*cf.* CFTC Regulation 23.402(e) (indicating that required information may be provided “by any reliable means agreed to in writing by the counterparty”)). Pursuant to SEC rules, an SBS Entity must “make a written record of the non-written disclosures made” pursuant to SEC Rule 240.15Fh-3(b) (see SEC Rule 240.15Fh-3(b)(3)). Since including this language in the ISDA 2021 SBS Top-Up Protocol document merely repeats what the counterparties have already agreed to, it was not necessary to remove it.

¹²– ~~CFTC Regulation 23.410(c)(2).~~

~~limitation, the delivery of Material Confidential Information to persons acting in a structuring, sales or trading capacity for SD or any affiliate of SD for the purpose of structuring a Swap or for the purpose of, but solely to the extent necessary for, establishing the price of a Swap or proposed Swap or adjusting the terms of an existing Swap; and~~

2.14. [Omitted]

2.15. [Omitted]

2.16. [Omitted]

~~b. the disclosure or use of Material Confidential Information to “hedge or mitigate any exposure,” as such language is used in CFTC Rule 23.410(c)(2)(ii), includes, without limitation, its disclosure or use, for the purpose of, but solely to the extent necessary for, establishing or adjusting one or more anticipatory hedges or other positions intended to hedge against the market risk, liquidity risk or counterparty credit exposure to CP that is generated by a Swap or proposed Swap.—~~

~~2.16. CP agrees that the following information is not Material Confidential Information: information that, at or prior to the time of its use or disclosure by SD, is generally available publicly other than as a result of (i) a breach by SD of its obligations to CP under Applicable U.S. Law or a written agreement relating to the non-disclosure of information regarding CP or its activities or (ii) a breach by (a) any of SD’s affiliates or third party service providers that receive such information from SD or (b) any of SD’s affiliates that receive such information in connection with the trading relationship between SD and CP, in either case, of corresponding restrictions on the use or disclosure of such information that are applicable to it.¹³~~

Part IV. 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:

2.17. [Omitted]

~~2.17. CP agrees that, with respect to each cleared Swap originally executed between CP and SD, CP will obtain any daily marks it wishes to receive for such cleared Swap from the FCM through which CP clears such cleared Swap or the relevant DCO or another third party.¹⁴~~

2.18. CP agrees that, unless otherwise agreed with SD Covered SBS Entity in writing, with respect to each uncleared Swap SBS between CP and SD Covered SBS Entity, any daily marks required to be provided by SD Covered SBS Entity to CP pursuant to ~~CFTC Regulation 23.431~~ SEC Rule 15Fh-3(d)(2) will be calculated by SD Covered SBS Entity as of the close of business on the prior Business Day in

¹³- ~~CFTC Regulation 23.410(e).~~

¹⁴- ~~CFTC Regulation 23.431(d).~~

the locality specified by ~~SD~~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 ~~Swaps~~SBSs.¹⁵⁸

2.19. [Omitted]

~~2.19. CP acknowledges that, with respect to each Swap between CP and SD that is not “available for trading” (as that phrase is used in the CFTC Regulations), unless CP makes a request of SD prior to a Swap Transaction Event for a specific scenario analysis to which it is entitled pursuant to DE Supplement Rules or other Applicable U.S. Law (which request, if made orally, will be confirmed in writing), CP shall not be entitled to any scenario analysis unless SD otherwise agrees.¹⁶~~

Part V. Representation of a Hedging Entity ECP.

2.20. If CP is a Hedging Entity ECP, CP represents to ~~SD~~Covered SBS Entity (which representation is deemed repeated as of the time of each ~~Swap~~SBS Transaction Event) that for so long as CP remains a Hedging Entity ECP, each ~~Swap~~SBS entered into by it under the Agreement will be entered into in connection with the conduct of CP’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by CP in the conduct of CP’s business.¹⁷⁹

Part VI. Representation of a Hedging Individual ECP.

2.21. If CP is a Hedging Individual ECP, CP represents to ~~SD~~Covered SBS Entity (which representation is deemed repeated as of the time of each ~~Swap~~SBS Transaction Event) that for so long as CP remains a Hedging Individual ECP, each ~~Swap~~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.¹⁸¹⁰

Part VII. Notifications by a Swap Dealer.

If applicable, SD hereby notifies CP that:

2.22. ~~Scenario Analysis~~¹⁹[Omitted]

~~a. If CP is not a Regulated Swap Entity, prior to any Swap Transaction Event with respect to any Swap that is not “available for trading” (as such term is defined in the CFTC Regulations) on a~~

¹⁵⁸ ~~CFTC Regulation 23.431(d)~~See SEC Rule 240.15Fh-3(c) (disclosure of daily mark for cleared and uncleared SBS).

¹⁶ ~~CFTC Regulation 23.431(b).~~

¹⁷⁹ ~~See Commodity Exchange Act Section 13(a)(18)(A)(v)(III) and related CFTC Regulations~~65) of the SEA.

¹⁸¹⁰ ~~See Commodity Exchange Act Section 13(a)(18)(A)(vi)(H) and related CFTC Regulations~~65) of the SEA.

¹⁹ ~~CFTC Regulation 23.431(b).~~

~~DCM or SEF, CP can request, and consult on the design of, a scenario analysis to allow CP to assess its potential exposure in connection with such Swap.~~

2.23. ~~Daily Mark~~[Omitted]

2.24. [Omitted]

2.25. [Omitted]

~~a. If CP is not a Regulated Swap Entity, CP has the right to receive the daily mark for cleared Swaps originally executed by CP with SD from the relevant DCO.²⁰~~

SEC Statement. CP agrees and acknowledges that Covered SBS Entity may rely on representations and agreements previously provided by CP in connection with transacting in Swaps, in order to satisfy requirements to CP with respect to the SBS Appendix 1 Rules.¹¹

Regulatory Disclosures.¹² Notwithstanding anything to the contrary in this 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:

(a) to the extent required by the SBS Appendix 1 Rules which mandate reporting of transaction and similar information; and

(b) to the extent required by the SBS Appendix 1 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.

Each party acknowledges that disclosures made pursuant to this paragraph 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

²⁰. ~~CFTC Regulation 23.431(d)(1).~~

¹¹ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules); see also SEC's Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 83 Fed. Reg. 55486 (Nov. 6, 2018).

¹² This section reproduces language from Section 2.5 of the August 2012 Supplement with revisions to align with SBS rules, including by: (1) addressing permissibility of providing information in response to an SEC order, directive or other request for an SBSD's books and records; (2) preserving any separate agreements with respect to confidentiality and consents to disclosures between the Reporting Counterparty and its Counterparty; and (3) setting out the scope of permissible disclosure to affiliates and/or third-party service providers for purposes of complying with reporting obligations. This section is also incorporated by reference into SBS Appendix 2 so that it becomes part of the agreement when parties to this Protocol top up agreements that were amended under the ISDA March 2013 Protocol but not under the ISDA August 2012 Protocol. See also SEC Rules 242.905 (duty to correct reported data); 242.901(c)-(e) (primary and secondary trade information to be reported, reporting of life cycle events).

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 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 Protocol Covered 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 Appendix 1 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.

Non-Reporting Counterparty. Each party agrees that if it is the Non-Reporting Counterparty with respect to an SBS under the Agreement, upon the occurrence of any "life cycle event" (as that term is defined in Regulation SBSR) relating to a corporate event in respect of such Non-Reporting Counterparty and such SBS, it will, as soon as practicable, but in no event later than 24 hours (or if longer, the time period for reporting permitted under the SBS Appendix 1 Rules) after the occurrence of the life cycle event, notify the Reporting Counterparty to the SBS of the occurrence of such life cycle event, with sufficient detail regarding such life cycle event to allow such other party to comply with any reporting requirements imposed by the SBS Appendix 1 Rules.

~~b.~~ Daily Mark.¹³ If CP is not a Regulated Swap Entity, ~~SD~~Covered SBS Entity hereby discloses to CP, in respect of a daily mark for any uncleared ~~Swap~~SBS provided to CP by ~~SD pursuant to CFTC Regulation 23.431(d)(3)(ii)~~Covered SBS Entity, that:

~~1.~~(a) the daily mark may not necessarily be at a price at which either CP or ~~SD~~Covered SBS Entity would agree to replace or terminate the ~~Swap~~SBS;

~~2.~~(b) unless otherwise expressly agreed by the parties, calls for margin may be based on considerations other than the daily mark provided to CP; and ²⁴

~~3.~~(c) the daily mark may not necessarily be the value of the ~~Swap~~SBS that is marked on the books of ~~SD.~~²²Covered SBS Entity.

¹³ See SEC Rule 240.15Fh-3(c) (disclosure of daily mark for cleared and uncleared SBS). Compare with the August 2012 Supplement Section 2.23.

²⁴ ~~CFTC Regulation 23.431(d)(3).~~

Clearing.¹⁴ Each party is hereby notified that, upon acceptance of an SBS by a clearing agency:

- (a) the original SBS between Covered SBS Entity and CP is extinguished;
- (b) the original SBS between Covered SBS Entity and CP is replaced by equal and opposite SBS with the clearing agency; and
- (c) all terms of the SBS shall conform to the product specifications of the cleared SBS established under the clearing agency's rules.

~~2.24.~~ Clearing Agency.¹⁵

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

~~a. If CP is a not a Regulated Swap Entity, with respect to any Swap entered into between CP and SD under the Agreement that is subject to the mandatory clearing requirements under Section 2(h) of the Commodity Exchange Act, CP has the sole right to select the DCO at which the Swap will be cleared.~~²³

~~b.~~ (b) If CP is not a Regulated Swap Entity, with respect to any SwapSBS entered into between CP and SDCovered SBS Entity under the Agreement that is not subject to the mandatory clearing requirements under Section 2(h) of the Commodity Exchange Act, 3Ca-1 of the SEA, Covered SBS Entity hereby discloses that CP may elect to clear such Swaprequire clearing of the SBS and has the sole right to select the DCO atclearing agencies through which the SwapSBS will be cleared.²⁴ , 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.

²² ~~CFTC Regulation 23.431(d)(3).~~

¹⁴ See SEC Rule 240.15Fi-5 (definitions relating to trading documentation, portfolio reconciliation and portfolio compression rules). Compare with the August 2012 Supplement Section 2.24.

¹⁵ See SEC Rule 240.15Fh-3(d).

²³ ~~CFTC Regulation 23.432(a).~~

²⁴ ~~CFTC Regulation 23.432(b).~~

2.25. Special Entities

Special Entities. Covered SBS Entity hereby notifies CP that if CP (i) is an employee benefit plan as defined in Section 3 of ERISA that is not subject to Title I of ERISA and (ii) has not previously elected to be treated as a special entity for purposes of transacting in Swaps or SBS, CP has the right to elect to be treated as a special entity for purposes of transacting in SBS pursuant to SEC Rule 15Fh-3(a).¹⁶

~~a. If CP is an employee benefit plan defined in Section 3 of ERISA that is not subject to Title I of ERISA, SD hereby notifies CP of its right to elect to be treated as a special entity pursuant to CFTC Regulation 23.430(e).~~²⁵

¹⁶ Compare with the August 2012 Supplement Section 2.25.

²⁵ ~~CFTC Regulation 23.430(e)~~

Schedule 3

Institutional Suitability Safe Harbors for Non-Special Entities

~~This DF Schedule 3 may be incorporated into an agreement between a Swap Dealer and any other party that is not a Regulated Swap Entity or a Special Entity.~~

~~If the parties to an agreement have specified that this DF Schedule 3 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 3 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 3 were restated therein in its entirety. If the party that is not a Regulated Swap Entity or Special Entity has one or more Designated Evaluation Agents, this DF 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 DF Schedule 3 that are applicable to it.~~

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

- 3.26. 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 SD Covered SBS Entity (which representation is deemed repeated by CP as of the occurrence of each SwapSBS 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 SwapSBS Recommendations (if any) of SD Covered SBS Entity and making trading decisions on behalf of CP;²⁶¹⁷
 - b. Each Designated Evaluation Agent represents to SD Covered SBS Entity (which representation is deemed repeated by such Designated Evaluation Agent as of the occurrence of each SwapSBS Communication Event involving such Designated Evaluation Agent) that such Designated Evaluation Agent is exercising independent judgment in evaluating all SwapSBS Recommendations (if any) of SD Covered SBS Entity that are presented to it;²⁷¹⁸ and
 - c. Each Designated Evaluation Agent agrees to promptly notify SD Covered SBS Entity in writing in accordance with the Notice Procedures if any representations made by such Designated Evaluation Agent in this DF Supplement¹⁹ become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material

²⁶¹⁷ CFTC Regulation 23.434(e)(1) See SEC Rule 240.15Fh-3(f)(3)(i) (suitability and related safe harbors).

²⁷¹⁸ CFTC Regulation 23.434(b)(2) See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

¹⁹ This reference term should be read as “this SBS Appendix I”.

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 ~~SD~~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.²⁸²⁰

- d. CP represents (which representations are deemed repeated by CP as of the occurrence of each ~~Swap~~SBS Communication Event) that it will exercise independent judgment in consultation with a Designated Evaluation Agent, in evaluating all ~~Swap~~SBS Recommendations (if any) of ~~SD~~Covered SBS Entity that are presented to CP with respect to ~~Swaps~~SBS to be executed by CP on its own behalf.²¹

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

- 3.27. If CP has not designated a Designated Evaluation Agent, CP represents to ~~SD~~Covered SBS Entity (which representations are deemed repeated by CP as of the occurrence of each ~~Swap~~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 ~~Swap~~SBS Recommendations (if any) regarding a ~~Swap~~SBS and making trading decisions on behalf of CP are capable of doing so; and²⁹²²
 - b. CP is exercising independent judgment in evaluating all ~~Swap~~SBS Recommendations (if any).³⁰²³

Part III. Disclosures of a ~~Swap~~SBS Dealer.

- 3.28. ~~SD~~Covered SBS Entity hereby discloses to CP (which disclosure is deemed repeated by ~~SD~~Covered SBS Entity as of the occurrence of each ~~Swap~~SBS Communication Event) that ~~SD~~Covered SBS Entity is acting in its capacity as a

²⁸ ~~CFTC Regulation 23.402(d)~~²⁰ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules); see also SEC's Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 83 Fed. Reg. 55486 (Nov. 6, 2018).

²¹ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

²⁹²² ~~CFTC Regulation 23.434(e)(1)~~ See SEC Rule 240.15Fh-3(f)(3)(i) (suitability and related safe harbors).

³⁰²³ ~~CFTC Regulation 23.434(b)(2)~~ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

counterparty and is not undertaking to assess the suitability of any ~~Swap~~SBS or trading strategy involving a ~~Swap~~SBS for CP.³⁺²⁴

³⁺²⁴ ~~CFTC Regulation 23.434(b)(3)~~See SEC Rule 240.15Fh-3(f)(2)(iii) (suitability and related safe harbors).

Schedule 4 Safe Harbors for Non-ERISA Special Entities

~~This DF Schedule 4 may be incorporated into an agreement between a Swap Dealer 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 DF Schedule 4 that are applicable to it.~~

~~If the parties to an agreement have specified that this DF Schedule 4 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 4 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 4 were restated therein in its entirety. This DF 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 DF Schedule 4 that are applicable to it.~~

Part I. Representations of a Counterparty.

- 4.29. CP represents to SD Covered SBS Entity (which representations are deemed repeated by CP as of the occurrence of each Swap SBS Communication Event) that:

a. [Omitted]

~~a. CP will not rely on Swap Recommendations (if any) provided by SD;³²~~

b. CP will rely on advice from a Designated QIR,^{33~~25~~}

c. [Omitted]

~~e. 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 CFTC Regulation 23.450(b)(1), and that such policies and procedures provide for ongoing monitoring of the performance of such representative consistent with the requirements of CFTC Regulation 23.450(b)(1);³⁴ and~~

d. CP will exercise independent judgment in consultation with a Designated QIR, in evaluating all Swap SBS Recommendations (if any) of SD Covered SBS Entity that are presented to CP with respect to Swaps SBSs to be executed by CP on its own behalf.²⁶

³² ~~CFTC Regulation 23.440(b)(2)(ii)(A).~~

^{33~~25~~} ~~CFTC Regulation 23.440~~See SEC Rule 240.15Fh-2(ba)(2)(ii)(B) (acting as advisor to special entity and related safe harbors).

³⁴ ~~CFTC Regulation 23.450(d)(1)(i); 23.434(e)(ii).~~

²⁶ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

Part II. Disclosures of a ~~Swap~~SBS Dealer.

- 4.30. ~~SD~~Covered SBS Entity discloses to CP (which disclosures are deemed repeated by ~~SD~~Covered SBS Entity as of the occurrence of each ~~Swap~~SBS Communication Event) that:
- a. ~~SD~~Covered SBS Entity is not undertaking to act in the best interests of CP;³⁵ and
 - b. ~~SD~~Covered SBS Entity is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any ~~Swap~~SBS or trading strategy involving a ~~Swap~~SBS for CP.³⁶²⁷

Additional Representations and Agreements.

CP acknowledges (which acknowledgement is deemed repeated as of the occurrence of each SBS Communication Event) that Covered SBS Entity is not acting as an advisor to CP.²⁸

CP represents to Covered SBS Entity (which representation is deemed repeated as of the occurrence of each SBS Communication Event) 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).²⁹

Part III. Representations and Agreements of a Designated QIR.

- 4.31. Each Designated QIR represents to ~~SD~~Covered SBS Entity and CP (which representations are deemed repeated by such Designated QIR as of the occurrence of each ~~Swap~~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 of ~~CFTC Regulation 23.450~~SEC Rule 15Fh-5(~~ba~~)(1),³⁷³⁰

³⁵ ~~CFTC Regulation 23.440(b)(2)(iii).~~

³⁶ ~~CFTC Regulation 23.434(b)(3)~~²⁷ See SEC Rules 240.15Fh-2(a)(2)(ii) (acting as advisor to special entity and related safe harbors); 15Fh-3(f)(2)(iii) (Suitability and related safe harbors).

²⁸ See SEC Rule 240.15Fh-2(a) (acting as advisor to special entity and related safe harbors).

²⁹ See SEC Rule 240.15Fh-5(b)(1) (safe harbors for satisfaction of QIR criteria).

³⁷³⁰ ~~CFTC Regulation 23.450~~See SEC Rule 240.15Fh-5(~~db~~)(1)(ii)(A) (safe harbors for satisfaction of QIR criteria).

- b. Such Designated QIR is exercising independent judgment in evaluating all ~~Swap~~SBS Recommendations (if any) of ~~SD~~Covered SBS Entity that are presented to it;³⁸³¹
 - c. Unless such Designated QIR otherwise notifies ~~SD~~Covered SBS Entity in writing in accordance with the Notice Procedures, which notification shall become effective on the Notice Effective Date:
 - 1. Such Designated QIR is not and, within one year of representing CP in connection with the ~~Swap~~SBS has not been, an “associated person,” as such term is defined in Section ~~43a~~(470) of the ~~Commodity Exchange Act, of SD;~~³⁹SEA, of Covered SBS Entity;³²
 - 2. [Omitted]
- ~~2. There is no “principal relationship” (as that term is defined in CFTC Regulation 23.450(a)(1)) between the Designated QIR and SD;~~⁴⁰
- 3. Such Designated QIR (i) provides timely and effective 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;⁴¹³³
 - 4. [Omitted]
- ~~4. Such Designated QIR is not directly or indirectly, through one or more persons, controlled by, in control of, or under common control with SD;~~⁴² and
- 5. To the best of such Designated QIR’s knowledge, ~~SD~~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 ~~Swap~~SBS; and⁴³³⁴
- d. Such Designated QIR is legally obligated to comply with the applicable requirements of ~~CFTC Regulation 23.450~~SEC Rule 15Fh-5(~~ba~~)(1) by

³⁸³¹ ~~CFTC Regulation 23.434(b)(2)~~See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

³⁹ ~~CFTC Regulation 23.450(e)(1).~~

³² See SEC Rule 240.15Fh-5(a)(1)(vii)(B)(1) (independence standards for QIRs).

⁴⁰ ~~CFTC Regulation 23.450(e)(2).~~

⁴¹³³ ~~CFTC Regulation 23.450(e)(3)~~See SEC Rule 240.15Fh-5(a)(1)(vii)(B)(2) (independence standards for QIRs).

⁴² ~~CFTC Regulation 23.450(e)(4).~~

⁴³³⁴ ~~CFTC Regulation 23.450(e)(5)~~See SEC Rule 240.15Fh-5(a)(1)(vii)(B)(3) (independence standards for QIRs).

agreement, condition of employment, law, rule, regulation, or other enforceable duty.⁴⁴³⁵

- 4.32. Each Designated QIR agrees to promptly notify ~~SD~~Covered SBS Entity in writing in accordance with the Notice Procedures if any representations made by such Designated QIR in this DF Supplement³⁶ 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 ~~SD~~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.⁴⁵³⁷

⁴⁴³⁵ ~~CFTC Regulation 23.450~~See SEC Rule 240.15Fh-5(d)(1)(ii)(C) (safe harbors for satisfaction of QIR criteria).

³⁶ This reference term should be read as “this SBS Appendix I”.

⁴⁵³⁷ ~~CFTC Regulation 23.402(d)~~See SEC Rule 240.15Fh-1 (scope and application of business conduct rules).

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

~~This DF Schedule 5 may be incorporated into an agreement between a Swap Dealer 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 DF Schedule 5 that are applicable to it. If the relevant Swap Dealer and ERISA Special Entity so agree, both DF Schedule 5 and DF Schedule 6 may be incorporated into an agreement.~~

~~If the parties to an agreement have specified that this DF Schedule 5 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 5 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 5 were restated therein in its entirety. This DF 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 DF Schedule 5 that are applicable to it.~~

Part I. Representations of a Counterparty.

- 5.33. CP represents to ~~SD~~Covered SBS Entity (which representations are deemed repeated by CP as of the occurrence of each ~~Swap~~SBS Communication Event) that:
- a. Each of its Designated Fiduciaries is a “fiduciary” as defined in Section 3 of ERISA and a Designated Fiduciary is responsible for representing CP in connection with each ~~Swap~~SBS or trading strategy involving a ~~Swap~~SBS,⁴⁶³⁸
 - b. Either:
 - 1. CP will comply in good faith with written policies and procedures reasonably designed to ensure that any recommendation CP receives from ~~SD~~Covered SBS Entity materially affecting a ~~Swap~~SBS transaction is evaluated by a Designated Fiduciary before the transaction occurs; or⁴⁷
 - 2. Any recommendation CP receives from ~~SD~~Covered SBS Entity materially affecting a ~~Swap~~SBS transaction will be evaluated by a Designated Fiduciary before the transaction occurs;⁴⁸³⁹ and

⁴⁶- ~~CFTC Regulations 23.440(b)(1)(i) and 23.450(d)(2)~~³⁸ See SEC Rules 240.15Fh-2(a) (acting as advisor to special entity and related safe harbors); 15Fh-5(b)(1) (safe harbors for satisfaction of QIR criteria).

⁴⁷- ~~CFTC Regulation 23.440(b)(1)(iii)(A).~~

⁴⁸³⁹ ~~CFTC Regulation 23.440~~See SEC Rule 240.15Fh-2(ba)(1)(iii) (B) acting as advisor to special entity and related safe harbors).

- c. CP will exercise independent judgment in consultation with a Designated Fiduciary, in evaluating all ~~Swap~~SBS Recommendations (if any) of ~~SD~~Covered SBS Entity that are presented to CP with respect to ~~Swaps~~SBSs to be executed by CP on its own behalf.

Part II. Disclosures of a ~~Swap~~SBS Dealer.

- 5.34. ~~SD~~Covered SBS Entity discloses to CP (which disclosures are deemed repeated by ~~SD~~Covered SBS Entity as of the occurrence of each ~~Swap~~SBS Communication Event) that:
 - a. ~~SD~~Covered SBS Entity is not undertaking to act in the best interests of CP; ⁴⁹-and
 - b. ~~SD~~Covered SBS Entity is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any ~~Swap~~SBS or trading strategy involving a ~~Swap~~SBS for CP. ⁵⁰40

Additional Representations and Agreements. CP acknowledges (which acknowledgement is deemed repeated as of the occurrence of each SBS Communication Event) that Covered SBS Entity is not acting as an advisor to CP.

Part III. Representations and Agreements of a Designated Fiduciary.

- 5.35. Each Designated Fiduciary represents to ~~SD~~Covered SBS Entity and CP (which representations are deemed repeated by such Designated Fiduciary as of the occurrence of each ~~Swap~~SBS Communication Event involving such Designated Fiduciary) that:

a. [Omitted]

~~a. Such Designated Fiduciary is not relying on Swap Recommendations (if any) provided by SD; and⁵¹~~

- b. Such Designated Fiduciary is exercising independent judgment in evaluating all ~~Swap~~SBS Recommendations (if any) of ~~SD~~Covered SBS Entity that are presented to it. ⁵²41

- 5.36. Each Designated Fiduciary agrees to promptly notify ~~SD~~Covered SBS Entity in writing in accordance with the Notice Procedures if any representations made by

⁴⁹- ~~CFTC Regulation 23.440(b)(2)(iii).~~

⁵⁰- ~~CFTC Regulation 23.434(b)(3)~~⁴⁰ See SEC Rule 240.15Fh-2(a)(2)(ii) (acting as advisor to special entity and related safe harbors); 15Fh-3(f)(2)(iii) (Suitability and related safe harbors).

⁵¹- ~~CFTC Regulation 23.440(b)(1)(ii).~~

⁵²41 ~~CFTC Regulation 23.434(b)(2)~~ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

such Designated Fiduciary in this DF Supplement⁴² 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 ~~SD~~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.⁵³⁴³

The Designated Fiduciary acknowledges (which acknowledgement is deemed repeated as of the occurrence of each SBS Communication Event) that Covered SBS Entity is not acting as an advisor to CP.

⁴² This reference term should be read as “this SBS Appendix I”.

⁵³⁴³ ~~CFTC Regulation 23.402(d)~~ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules).

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

~~This DF Schedule 6 may be incorporated into an agreement between a Swap Dealer 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 DF Schedule 6 that are applicable to it. If the relevant Swap Dealer and ERISA Special Entity so agree, both DF Schedule 5 and DF Schedule 6 may be incorporated into an agreement.~~

~~If the parties to an agreement have specified that this DF Schedule 6 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 6 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 6 were restated therein in its entirety. This DF 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 DF Schedule 6 that are applicable to it.~~

Part I. Representations of a Counterparty.

6.37. CP represents to ~~SD~~Covered SBS Entity (which representations are deemed repeated by CP as of the occurrence of each ~~Swap~~SBS Communication Event) that:

a. Each of its Designated Fiduciaries is a “fiduciary” as defined in Section 3 of ERISA;⁵⁴⁴

b. [Omitted]

~~b. CP will not rely on recommendations (if any) provided by SD;⁵⁵~~

c. CP will rely on advice from a Designated Fiduciary;⁵⁶⁴⁵ and

d. CP will exercise independent judgment in consultation with a Designated Fiduciary, in evaluating all ~~Swap~~SBS Recommendations (if any) of ~~SD~~Covered SBS Entity that are presented to CP with respect to ~~Swaps~~SBSs to be executed by CP on its own behalf.

Part II. Disclosures of a ~~Swap~~SBS Dealer.

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

⁵⁴⁴ CFTC Regulation 23.450(d)(2) See SEC Rule 240.15Fh-5(b)(1)(ii) (safe harbors for satisfaction of QIR criteria).

⁵⁵ ~~CFTC Regulation 23.440(b)(2)(ii)(A).~~

⁵⁶⁴⁵ CFTC Regulation 23.440 See SEC Rule 240.15Fh-2(ba)(2)(ii)(B) (acting as advisor to special entity and related safe harbors).

- a. ~~SD~~Covered SBS Entity is not undertaking to act in the best interests of CP; ⁵⁷-and
- b. ~~SD~~Covered SBS Entity is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any ~~Swap~~SBS or trading strategy involving a ~~Swap~~SBS for CP. ⁵⁸46

Additional Representations and Agreements. CP acknowledges (which acknowledgement is deemed repeated by CP as of the occurrence of each SBS Communication Event) that Covered SBS Entity is not acting as an advisor to CP.

Part III. Representations and Agreements of a Designated Fiduciary.

- 6.39. Each Designated Fiduciary represents to ~~SD~~Covered SBS Entity and CP (which representations are deemed repeated by such Designated Fiduciary as of the occurrence of each ~~Swap~~SBS Communication Event involving such Designated Fiduciary) that such Designated Fiduciary is exercising independent judgment in evaluating all ~~Swap~~SBS Recommendations (if any) of ~~SD~~Covered SBS Entity presented to it. ⁵⁹47
- 6.40. Each Designated Fiduciary agrees to promptly notify ~~SD~~Covered SBS Entity in writing in accordance with the Notice Procedures if any representations made by such Designated Fiduciary in this DF Supplement⁴⁸ have become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated Fiduciary shall timely amend such representation by giving notice of such amendment to ~~SD~~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. ⁶⁰49

Institutional Counterparty. CP represents to Covered SBS Entity (which representation is deemed repeated as of the occurrence of each SBS Communication Event) that, unless CP has notified Covered SBS Entity to the contrary in accordance with the Notice Procedures, it has total assets of at least \$50 million.⁵⁰

⁵⁷ ~~CFTC Regulation 23.440(b)(2)(iii).~~

⁵⁸ ~~CFTC Regulation 23.434(b)(3)~~⁴⁶ See SEC Rules 240.15Fh-2(a)(2)(ii) (acting as advisor to special entity and related safe harbors); 15Fh-3(f)(2)(iii) (Suitability and related safe harbors).

⁵⁹⁴⁷ ~~CFTC Regulation 23.434(b)(2)~~ See SEC Rule 240.15Fh-3(f)(2)(ii) (suitability and related safe harbors).

⁴⁸ This reference term should be read as “this SBS Appendix I”.

⁶⁰⁴⁹ ~~CFTC Regulation 23.402(d)~~ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules).

⁵⁰ See SEC Rule 240.15Fh-3(f) (suitability and related safe harbors).

Agents. CP represents to Covered SBS Entity (which representation is deemed repeated as of the occurrence of each SBS Communication Event) that, unless CP has notified Covered SBS Entity to the contrary *in accordance with the Notice Procedures*, each person previously designated as CP's Designated Evaluation Agent, Designated QIR or Designated Fiduciary for purposes of transactions in Swaps under the Agreement is CP's Designated Evaluation Agent, Designated QIR or Designated Fiduciary for purposes of transactions in SBS under the Agreement.⁵¹

⁵¹ See SEC Rule 240.15Fh-3(f) (suitability and related safe harbors). See also August 2012 Protocol Questionnaire, Part II, Questions 6-8.

ISDA 2021 SBS Top-Up Protocol Appendix 2 Annotated Attachment

ISDA 2021 SBS Top-Up Protocol Appendix 2 Annotated Attachment

THIS INFORMATION CONTAINED IN THIS ANNOTATED ATTACHMENT IS FOR INFORMATION PURPOSES ONLY AND IS NOT TO BE RELIED ON AS LEGAL ADVICE. ALTHOUGH CARE HAS BEEN TAKEN IN THE PREPARATION OF THIS ANNOTATED ATTACHMENT, IT DOES NOT PURPORT AND SHOULD NOT BE CONSIDERED TO BE A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA 2021 SBS TOP-UP PROTOCOL OR THE RELATED DOCUMENTS. PARTIES SHOULD THEREFORE CONDUCT THEIR OWN DUE DILIGENCE AND CONSULT WITH THEIR LEGAL AND OTHER ADVISERS AS THEY DEEM APPROPRIATE. ISDA DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION CONTAINED IN THIS COMPARISON AND ISDA DOES NOT ACCEPT ANY LIABILITY FOR THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

Note:

This document shows the text resulting from the ISDA 2021 SBS Protocol Appendix 2, as drafted in consideration of the March 2013 Supplement available here:

<https://www.isda.org/protocol/isda-march-2013-df-protocol/>. Footnotes included in red herein are for informational purposes only, and are not included in the March 2013 Supplement or the ISDA 2021 SBS Top-Up Protocol. The use of “[Omitted]” in the document has been included as a placeholder for sections to assist the reader in comparing the resulting text with the March 2013 Supplement text.

Schedule 1

Defined Terms

Definitions. Defined terms used in this SBS Appendix 2 and not otherwise defined herein shall have the meanings provided in SBS Appendix 1 or, if not defined in SBS Appendix 1, in Schedule 1 of the March 2013 Supplement, as modified by replacing references to (i) “CFTC Regulation 23.502” with “SEC Rule 15Fi-3”, (ii) “CFTC Regulation 23.504” with “SEC Rule 15Fi-5”, (iii) “CFTC Regulation 23.502” with “SEC Rule 15Fi-1” and (iv) “CFTC Regulation 23.500” with “SEC Rule 15Fi-1” each time they occur.

“**Annually**” means once each calendar year.

“**Applicable Portfolio Reconciliation Compliance Date**” means the date on which Covered SBS Entity compliance is required with respect to Counterparty under SEC Rule 15Fi-3 and applicable law regarding the scope of application of SEC Rule 15Fi-3, including applicable CFTC interpretations and other SEC Rules. For the avoidance of doubt, if both parties are Covered SBS Entity, the Applicable Portfolio Reconciliation Compliance Date shall occur on the first date on which compliance is required by either Covered SBS Entity with respect to the other party.

“**Applicable STRD Compliance Date**” means the date on which Covered SBS Entity compliance is required with respect to Counterparty under SEC Rule 15Fi-3 and applicable law regarding the scope of application of SEC Rule 15Fi-3, including applicable CFTC interpretations and other SEC Rules. For the avoidance of doubt, if both parties are Covered SBS Entities, the Applicable STRD Compliance Date shall occur on the first date on which compliance is required by either Covered SBS Entity in respect of the other party.

“**Close-Out Provision**” means (i) in respect of a SBS for which the parties have agreed in writing (whether as part of the Agreement or otherwise) to a process for determining the payments to be made upon early termination of such SBS, the provisions specifying such process, and (ii) in respect of a SBS for which the parties have not agreed in writing (whether as part of the Agreement or otherwise) to a process for determining the payments to be made upon early termination of such SBS, Section 6(e)(ii)(1) of the 2002 ISDA Master Agreement as if such Swap were governed thereby.

“**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, each Covered SBS Entity is also a Counterparty or CP for purposes of this SBS Appendix 2.

“**Covered Financial Company**” means a “covered financial company,” as defined in Section 201(a)(8) of the Dodd-Frank Act, 12 U.S.C. § 5381(a)(8).

“**Covered SBS Entity**” means a party that (i) has been designated as a Covered SBS Entity for purposes of this SBS Appendix 2 in its adherence letter to the SBS Top-Up Protocol, or (ii) is or becomes registered (on an ongoing basis or conditionally) as a “security-based swap dealer” or

“major security-based swap participant” with the SEC and has notified the other party of such registration in accordance with the Notice Procedures.

“**Credit Support Agreement**” means a written agreement, if any, between the parties (whether part of the Agreement or otherwise) that governs the posting or transferring of collateral or other credit support related to one or more SBS.

“**Credit Support Call**” means a request or demand for the posting or transferring of collateral or other credit support related to one or more SBS made pursuant to the terms of a Credit Support Agreement.

“**CSA Valuation**” means, in respect of a SBS and a Risk Valuation Date and subject to the terms of Part II of Schedule 3 of this SBS Appendix 2 in the case of a dispute, the value of such SBS determined in accordance with the CSA Valuation Process, if any, expressed as a positive number if such SBS has positive value for the Risk Valuation Agent, and as a negative number if such SBS has negative value for the Risk Valuation Agent.

“**CSA Valuation Process**” means the process, if any, agreed by the parties in writing (whether as part of the Agreement or otherwise) for determining the value of one or more transactions that may include a SBS or portfolio of SBS for the purpose of posting or transferring collateral or other credit support. For the avoidance of doubt, such writing may be in the form of an ISDA Credit Support Annex or any other written agreement.

“**Daily**” means once each Joint Business Day.

“**Data Delivery Date**” means a date determined pursuant to Section 4.2 or 4.3 of this SBS Appendix 2, as applicable, that is a Joint Business Day.

“**Data Reconciliation**” means a comparison of Portfolio Data and, to the extent applicable, SBSDR Data received or obtained by a party against such party’s own books and records of SBS between the parties and, in respect of any Discrepancy, a process for identifying and resolving such Discrepancy. A Data Reconciliation may include (but shall not be required to include or be limited to) a systematic, line-by-line, field-by-field matching process performed using technological means such as a third-party portfolio reconciliation service or a technology engine.

“**Discrepancy**” means, (i) in respect of the Portfolio Data received with respect to a SBS and any SBSDR Data obtained for such SBS, a difference between a Material Term in such Portfolio Data or SBSDR Data and a party’s own records of the corresponding Material Term and (ii) in respect of the Portfolio Data received with respect to a SBS, a difference between a Valuation reported in such Portfolio Data and such party’s own Valuation of such SBS (calculated as of the same Joint Business Day in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result) that is greater than the Discrepancy Threshold Amount.

“**Discrepancy Threshold Amount**” means, in respect of a SBS, an amount equal to ten percent (10%) of the higher of the two absolute values of the respective Valuations assigned to such SBS by the parties.

“Dodd-Frank Act” means the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended.

“FDIA” means the Federal Deposit Insurance Act of 1950, as amended.

“FDIC” means the Federal Deposit Insurance Corporation.

“Insured Depository Institution” means an “insured depository institution,” as defined in 12 U.S.C. § 1813.

“Joint Business Day” means a day that is a Local Business Day in respect of each party.

“Local Business Day” means, as used in a provision of this SBS Appendix 2, with respect to a party, a day on which commercial banks are open for general business (including for dealings in foreign exchange and foreign currency deposits) in the city or cities specified by such party in the SBS Appendix 2 Information. If a party does not specify a city in the SBS Appendix 2 Information, such party will be deemed to have specified the city specified by the other party in the SBS Appendix 2 Information. If neither party specifies a city in the SBS Appendix 2 Information, both parties will be deemed to have specified the City of New York.

“March 2013 Protocol Master Agreement” means an ISDA March 2013 DF Protocol Master Agreement entered into by the parties pursuant to Section 4 of the ISDA March 2013 DF Protocol Agreement, published on March 22, 2013, as amended or supplemented by ISDA from time to time.

“March 2013 Questionnaire” means the ISDA March 2013 DF Protocol Questionnaire, published on March 22, 2013, as amended or supplemented by ISDA from time to time.

“March 2013 Supplement” means the ISDA March 2013 DF Supplement, published on March 22, 2013.

“Material Terms” has the meaning ascribed by the CFTC¹ to such term for purposes of SEC Rule 15Fi-3.

“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.

“Party” means, in respect of a Covered Agreement, a party thereto.

“Portfolio Data” means, in respect of a party providing or required to provide such data, information (which, for the avoidance of doubt, is not required to include calculations or methodologies) relating to the terms of all outstanding Swaps between the Parties in a form and standard that is capable of being reconciled, with a scope and level of detail that is reasonably

¹ This is intended to be read as referring to the SEC, rather than the CFTC.

acceptable to each party and that describes and includes, without limitation, current Valuations attributed by that party to each such SBS. The information comprising the Portfolio Data to be provided by a party on a Data Delivery Date shall be prepared (i) as at the time or times that such party computes its end of day valuations for SBS (as specified by that party for this purpose in writing) on the immediately preceding Joint Business Day, as applicable, and (ii) in the case of Valuations, in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.

“Quarterly” means once each calendar quarter.

“Recalculation Date” means the Risk Valuation Date on which a Risk Valuation that gives rise to the relevant dispute is calculated; *provided, however*, that if one or more subsequent Risk Valuation Dates occurs prior to the resolution of such dispute, then the “Recalculation Date” in respect of such dispute means the last such Risk Valuation Date.

“Reference Market-makers” means four leading dealers in the relevant market selected by the Risk Valuation Agent in good faith (i) from among dealers of the highest credit standing which satisfy all the criteria that the Risk Valuation Agent applies generally at the time in deciding whether to offer or to make an extension of credit and (ii) to the extent practicable, from among such dealers having an office in the same city.

“Risk Exposure” means, in respect of a SBS and a Risk Valuation Date and subject to the terms of Part II of Schedule 3 of this SBS Appendix 2 in the case of a dispute, the amount, if any, that would be payable to the Risk Valuation Agent by CP (expressed as a positive number) or by the Risk Valuation Agent to CP (expressed as a negative number) pursuant to the Close-Out Provision as of the Risk Valuation Time as if such SBS (and not any other SBS) was being terminated as of such Risk Valuation Date; *provided that* (i) if the Agreement provides for different calculations depending on whether one of the parties is an affected or defaulting party, such calculation will be determined using estimates at mid-market of the amounts that would be paid for a replacement transaction; and (ii) such calculation will not include the amount of any legal fees and out-of-pocket expenses.

“Risk Valuation” means, in respect of a SBS and a Risk Valuation Date for which (i) there is a CSA Valuation determined by the Risk Valuation Agent or its agent, such CSA Valuation, and (ii) there is no CSA Valuation determined by the Risk Valuation Agent or its agent, the Risk Exposure determined by the Risk Valuation Agent or its agent for such SBS and Risk Valuation Date, unless, pursuant to Section 3.1 of this SBS Appendix 2, the Risk Valuation Agent has elected to use the CSA Valuation provided by CP for such SBS and Risk Valuation Date, in which case, such CSA Valuation provided by CP.

“Risk Valuation Agent” means, in respect of any Risk Valuation Date and any SBS: (i) if only one party is a Covered SBS Entity, such party, (ii) if both parties are CFTC SBS Entities and such parties **have not** entered into a Credit Support Agreement relating to such SBS, the party whom both parties have agreed in writing will be the Risk Valuation Agent for such date (unless such date is only a Local Business Day for one of the parties, in which case such party shall be the Risk Valuation Agent for such date), and (iii) if both parties are CFTC SBS Entities and such parties **have** entered into one or more Credit Support Agreements relating to such SBS, the party

entitled to make a Credit Support Call under such Credit Support Agreements on such date; *provided that*, (a) on any such date on which both CFTC SBS Entities are entitled to make such a Credit Support Call, the Risk Valuation Agent shall be the party entitled to make a Credit Support Call under such Credit Support Agreements on the most recent Risk Valuation Date on which only one Covered SBS Entity was entitled to make such a call, and (b) on any such date on which neither Covered SBS Entity is entitled to make such a Credit Support Call, if such date is only a Local Business Day for one of the parties, such party shall be the Risk Valuation Agent and otherwise the Risk Valuation Agent shall be the party entitled to make a Credit Support Call under such Credit Support Agreement on the most recent preceding Risk Valuation Date on which only one Covered SBS Entity was entitled to make such a call.

“Risk Valuation Date” means, with respect to a SBS, each Local Business Day for either party that is a Covered SBS Entity.

“Risk Valuation Time” means, with respect to a SBS and any day, the close of business on the prior Local Business Day in the locality specified by the Risk Valuation Agent in its notice of the Risk Valuation to CP.

“SBS Appendix 2 Information” means (i) information previously provided to a counterparty that is required in the March 2013 Questionnaire pursuant to Part II, Questions 3, 4, 5, 6, 7 and 8, and Part III, Questions 1, 3(b) and 3(c) (whether provided through delivery of such questionnaire or otherwise); and (ii) any other information provided pursuant to the SBS Appendix 2 Terms.

“SBS Appendix 2 Rules” means the SEC Rules adopted in the following Federal Register citations, as amended and supplemented from time to time: (1) Trade Acknowledgement and Verification of Security-Based Swap Transactions, 81 Fed. Reg. 39807 (June 17, 2016); and (2) Risk Mitigation Techniques for Uncleared Security-Based Swaps, 85 Fed. Reg. 6359 (Feb. 4, 2020).

“SBS Appendix 2 Terms” means the terms of this SBS Appendix 2, including those sections of the March 2013 Supplement that have been modified and incorporated by reference herein by the SBS Top-Up Protocol.

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

“Valuation” has the meaning ascribed to such term in SEC Rule 15Fi-3.

“Weekly” means once each calendar week.

March 2013 DF Schedule 2

General Terms

Part I. General 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 Appendix 2 Information (excluding representations) furnished by or on behalf of it to the other party is true, accurate and complete in every material respect, and (ii) no representation provided in the SBS Appendix 2 Information or in this SBS Appendix 2 is incorrect or misleading in any material respect. The SBS Appendix 2 Information is incorporated herein by reference.²
- 2.2. Each party acknowledges that the other party has agreed to incorporate one or more SBS Appendix 2 Terms into the Agreement, and, if the parties enter into any SBSs on or after the date of such incorporation, the other party will do so in reliance upon the SBS Appendix 2 Information and the representations provided by such party or its agent in the SBS Appendix 2 Information and this SBS Appendix 2. Notwithstanding the foregoing, each party agrees that an event of default, termination event, or other similar event that gives a party grounds to cancel or otherwise terminate a SBS shall not occur under the Agreement or any other contract between the parties solely on the basis of (i) a representation provided solely in the SBS Appendix 2 Information or in this SBS Appendix 2 being incorrect or misleading in any material respect, or (ii) a breach of any covenant or agreement set forth solely in this SBS Appendix 2; *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 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 Appendix 2 Information or in this SBS Appendix 2, including any such breach relating to any event or condition that could also cause or constitute an event specified in (i) or (ii) above.
- 2.3. Each party agrees to promptly notify the other party in writing in accordance with the Notice Procedures (i) of any material change to SBS Appendix 2 Information (other than representations) previously provided by such party or on behalf of such party and (ii) if any representations made in SBS Appendix 2 Information or this SBS Appendix 2 by or on behalf of such party become incorrect or misleading in any material respect. For any representation made in one or more of the SBS Appendix 2 Terms that would be incorrect or misleading in any material respect if repeated on any date following the date on which the

² See SEC Rules 240.15Fh-1 (scope and application of business conduct rules); 240.15Fi-5 (SBS trading relationship documentation requirements).

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.³

Part II. **Confirmations**

- 2.4. Unless the parties have agreed otherwise in writing, each party agrees that a confirmation of a SBS or another type of transaction under this Agreement may be created by delivery of written terms by each party; *provided that* (i) the terms delivered by each party match the terms delivered by the other party and (ii) the terms are either delivered by each party to the other party in a manner that permits each party to review such terms or delivered by each party to a third-party agent or service provider that confirms the matching of such terms to the parties (in each case by telex, electronic messaging system, email or otherwise). In each case, such a confirmation will be sufficient for all purposes to evidence a binding supplement to this Agreement. The foregoing shall not limit other agreed methods of creating binding confirmations and shall not be construed as an agreement to use a method provided in this paragraph to confirm any Transaction.⁴

³ See SEC Rules 240.15Fh-1 (scope and application of business conduct rules); 240.15Fi-5 (SBS trading relationship documentation requirements).

⁴ See SEC Rule 240.15Fi-2 (acknowledgment and verification of security-based swap transactions).

Part III. **Clearing**

2.5. [Omitted]

2.6. [Omitted]

2.7. [Omitted]

2.8. [Omitted]

Part IV. **End-User Exception**

2.9. [Omitted]

2.10. [Omitted]

2.11. [Omitted]

Part V. **Orderly Liquidation Authority**

2.12. [Omitted]

2.13. Each party is hereby notified that in the event that a party is (i) a Covered Financial Company or (ii) an Insured Depository Institution for which the FDIC has been appointed as a receiver (the “**covered party**”):

- a. certain limitations under Title II of the Dodd-Frank Act or the FDIA may apply to the rights of the non-covered party to terminate, liquidate, or net any SBS by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the parties; and
- b. the FDIC may have certain rights to transfer SBSs of the covered party under Section 210(c)(9)(A) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(9)(A), or 12 U.S.C. § 1821(e)(9)(A).⁵

⁶SEC Statement. CP agrees and acknowledges that Covered SBS Entity may rely on representations and agreements previously provided by CP in connection with transacting in Swaps, in order to satisfy requirements to CP with respect to the SBS Appendix 1 Rules.⁷

⁵ See SEC Rule 240.15Fi-5 (SBS trading relationship documentation requirements).

⁶ Pursuant to Appendix 2 Section I. B. of the ISDA 2021 SBS Top-Up Protocol, if the parties have not entered into SBS Appendix 1, the Regulatory Disclosures provision in Section I.B. of SBS Appendix 1 is added, as included here.

⁷ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules); see also SEC’s Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 83 Fed. Reg. 55486 (Nov. 6, 2018).

Regulatory Disclosures.⁸ Notwithstanding anything to the contrary in this 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:

- (a) to the extent required by the SBS Appendix 1 Rules which mandate reporting of transaction and similar information; and
- (b) to the extent required by the SBS Appendix 1 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.

Each party acknowledges that disclosures made pursuant to this paragraph 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 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 Protocol Covered 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 Appendix 1 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.

⁸ This section reproduces language from Section 2.5 of the August 2012 Supplement with revisions to align with SBS rules, including by: (1) addressing permissibility of providing information in response to an SEC order, directive or other request for an SBS's books and records; (2) preserving any separate agreements with respect to confidentiality and consents to disclosures between the Reporting Counterparty and its Counterparty; and (3) setting out the scope of permissible disclosure to affiliates and/or third-party service providers for purposes of complying with reporting obligations. This section is also incorporated by reference into SBS Appendix 2 so that it becomes part of the agreement when parties to this Protocol top up agreements that were amended under the ISDA March 2013 Protocol but not under the ISDA August 2012 Protocol. See also SEC Rules 242.905 (duty to correct reported data); 242.901(c)-(e) (primary and secondary trade information to be reported, reporting of life cycle events).

Non-Reporting Counterparty. Each party agrees that if it is the Non-Reporting Counterparty with respect to an SBS under the Agreement, upon the occurrence of any “life cycle event” (as that term is defined in Regulation SBSR) relating to a corporate event in respect of such Non-Reporting Counterparty and such SBS, it will, as soon as practicable, but in no event later than 24 hours (or if longer, the time period for reporting permitted under the SBS Appendix 1 Rules) after the occurrence of the life cycle event, notify the Reporting Counterparty to the SBS of the occurrence of such life cycle event, with sufficient detail regarding such life cycle event to allow such other party to comply with any reporting requirements imposed by the SBS Appendix 1 Rules.

March 2013 DF Schedule 3
Calculation of Risk Valuations and Dispute Resolution⁹

Part I. Calculation of Risk Valuations for Purposes of Section 15F(j) of the SEA

Each party agrees that:

- 3.1. On each Risk Valuation Date, the Risk Valuation Agent in respect of each SBS for which a Transaction Event has occurred after the Applicable STRD Compliance Date (or its agent) will calculate the Risk Valuation of such SBS, *provided that* if CP has provided the Risk Valuation Agent with a CSA Valuation for such SBS and such Risk Valuation Date pursuant to a CSA Valuation Process that the Risk Valuation Agent has determined in good faith will allow the Risk Valuation Agent to satisfy the requirements of SEC Rule 15Fi-5(b) as they relate to Section 15F(j) of the SEA, the Risk Valuation Agent may elect to treat such CSA Valuation as the Risk Valuation for such SBS.
- 3.2. Upon written request by CP delivered to the Risk Valuation Agent in accordance with the Notice Procedures on or prior to the Joint Business Day following a Risk Valuation Date, the Risk Valuation Agent (or its agent) will notify the CP of the Risk Valuations determined by it for such Risk Valuation Date pursuant to Section 3.1 of this SBS Risk Valuation Agreement. Unless otherwise agreed by the parties, the Risk Valuation Agent shall not be obligated to disclose to CP any confidential, proprietary information about any model the Risk Valuation Agent may use to value a SBS.
- 3.3. Notification of a Risk Valuation may be provided through any of the following means, each of which is agreed by the parties to be reliable: (i) written notice delivered by the Risk Valuation Agent to the CP in accordance with the Notice Procedures, (ii) any means agreed by the parties for the delivery of CSA Valuations or (iii) posting on a secure web page at, or accessible through, a URL designated in a written notice given to CP pursuant to the Notice Procedures.
- 3.4. Each Risk Valuation will be determined by the Risk Valuation Agent (or its agent) acting in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.

Part II. Dispute Resolution for Risk Valuations for Purposes of Section 15F(j) of the SEA

Each party agrees that:

- 3.5. If CP wishes to dispute the Risk Valuation Agent's calculation of a Risk Valuation, CP shall notify the Risk Valuation Agent in writing in accordance with the Notice Procedures on or prior to the close of business on the Joint Business

⁹ See SEC Rule 240.15Fi-5 (SBS trading relationship documentation requirements).

Day following the date on which CP was notified of such Risk Valuation. Such notice shall include CP's calculation of the Risk Valuations for all SBSs as of the relevant date for which the Risk Valuation Agent has provided Risk Valuations to CP, which must be calculated by CP acting in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.

- 3.6. If CP disputes the Risk Valuation Agent's calculation of a Risk Valuation and the parties **have** agreed in writing (whether as part of the Agreement or otherwise) to a valuation dispute resolution process by which CSA Valuations are to be determined, then such process will be applied to resolve the dispute of such Risk Valuation (as if such dispute of a Risk Valuation were a dispute of a CSA Valuation, each SBS that is the subject of the dispute were the only SBS for which a CSA Valuation was being disputed, and CP was the disputing party).
- 3.7. If CP disputes the Risk Valuation Agent's calculation of a Risk Valuation and the parties **have not** agreed in writing (whether as part of the Agreement or otherwise) to a valuation dispute resolution process by which CSA Valuations are to be determined, then the following process will apply in respect of the dispute of such Risk Valuation:
 - a. the parties will consult with each other in an attempt to resolve the dispute; and
 - b. if they fail to resolve the dispute in a timely fashion, then the Risk Valuation Agent will recalculate the Risk Valuation as of the Recalculation Date by seeking four actual quotations at mid-market from Reference Market-makers and taking the arithmetic average of those obtained; *provided that* if four quotations are not available, then fewer than four quotations may be used; and, if no quotations are available, then the Risk Valuation Agent's original Risk Valuation calculation will be used.
- 3.8. Following a recalculation pursuant to Section 3.7 of this SBS Risk Valuation Agreement, the Risk Valuation Agent will notify CP not later than the close of business on the Local Business Day of the Risk Valuation Agent following the date of such recalculation, and such recalculation shall be the Risk Valuation for the applicable Risk Valuation Date.

Part III. Relationship to Other Valuations

- 3.9. The parties agree and acknowledge that the process provided herein for the production and dispute of Risk Valuations is exclusively for determining the value of each relevant SBS for the purpose of compliance by Covered SBS Entity (or if each party is a Covered SBS Entity, compliance by each party) with risk management requirements under Section 15F(j) of the SEA. Failure by CP to dispute a Risk Valuation calculated by the Risk Valuation Agent does not

constitute acceptance by CP of the accuracy of the Risk Valuation for any other purpose.

- 3.10. Resolution of any disputed Risk Valuation using a procedure specified in Part II of this SBS Risk Valuation Agreement is not binding on either party for any purpose other than the Covered SBS Entity's compliance with risk management requirements under Section 15F(j) of the SEA. Each party agrees that nothing in this SBS Appendix 2 providing for the calculation of Risk Valuations or for any right to dispute valuations in connection with such Risk Valuations shall affect any agreement of the parties regarding the calculation of CSA Valuations or disputes regarding CSA Valuations or constitute a waiver of any right to dispute a CSA Valuation. Any resolutions of disputes regarding CSA Valuations may be different from the resolutions of disputes regarding Risk Valuations. The parties acknowledge that the adoption of margin regulations under Section 15F(e) of the SEA may require additional agreements between the parties regarding the calculation of SBS valuations for purposes of such regulations and Covered SBS Entity's compliance with risk management requirements under Section 15F(j) of the SEA, and the parties' agreement to incorporate this SBS Risk Valuation Agreement in no way constitutes agreement to adopt the procedures provided herein with respect to the calculation of, or resolution of disputes regarding, margin valuations.
- 3.11. Notwithstanding anything to the contrary in this SBS Appendix 2, the parties may in good faith agree to any other procedure for (i) the calculation of Risk Valuations and/or (ii) the resolution of any dispute between them, in either case, whether in addition to or in substitution of the procedures set out in this SBS Appendix 2.

March 2013 DF Schedule 4
Portfolio Reconciliation¹⁰

Part I. Required Reconciliation Dates

- 4.1. From time to time after the Applicable Portfolio Reconciliation Compliance Date, a Covered SBS Entity may give to CP a notice (a “**Required Reconciliation Date Notice**”) in which such Covered SBS Entity represents that it is (in such Covered SBS Entity’s good faith belief) necessary for the parties to perform a Data Reconciliation in order for such Covered SBS Entity to comply with the SBS Appendix 2 Rules regarding the frequency with which portfolio reconciliations are to be performed. A Required Reconciliation Date Notice will specify (i) the frequency with which such portfolio reconciliations are believed by the Covered SBS Entity to be required, which may be “Daily,” “Weekly,” “Quarterly,” “Annually” or another frequency required by the SBS Appendix 2 Rules and (ii) if Section 4.2 is applicable, one or more Data Delivery Dates.

Part II. One-way Delivery of Portfolio Data

- 4.2. Subject to Section 4.5, if (i) one of the parties is not a Covered SBS Entity and (ii) the parties have agreed in writing that on each Data Delivery Date Covered SBS Entity will deliver Portfolio Data to CP and CP will review such data, then the following shall apply:
- a. The Required Reconciliation Date Notice will specify one or more Data Delivery Dates, *provided* that the first such date will be a day no earlier than the second Joint Business Day following the date on which such notice is given to CP, and *provided further*, that if, prior to the first such date, CP requests one or more different Data Delivery Dates, the relevant Data Delivery Dates will be as agreed by the parties.
 - b. On each Data Delivery Date, Covered SBS Entity (or its agent) will provide Portfolio Data to CP (or its agent) for verification by CP. For purposes of this Section 4.2, Portfolio Data will be considered to have been provided to CP (and CP will be considered to have received such Portfolio Data) if it has been provided (i) in accordance with the Notice Procedures, or (ii) to a third-party service provider agreed to between the Covered SBS Entity and CP for this purpose.
 - c. On or as soon as reasonably practicable after each Data Delivery Date, and in any event not later than the close of business on the second Local Business Day of CP following the Data Delivery Date, CP will review the Portfolio Data delivered by Covered SBS Entity with respect to each relevant SBS against its own books and records and Valuation for such

¹⁰ See SEC Rule 240.15Fi-3 (SBS portfolio reconciliation).

SBS and notify Covered SBS Entity whether it affirms the relevant Portfolio Data or has identified any Discrepancy. CP shall notify Covered SBS Entity of all Discrepancies identified with respect to the Portfolio Data provided.

- d. If CP has notified Covered SBS Entity of any Discrepancies in Portfolio Data in respect of any Material Terms or Valuations, then each party agrees to consult with the other in an attempt to resolve all such Discrepancies in a timely fashion.

Part III. Exchange of Portfolio Data

4.3. Subject to Section 4.5, if (i) both parties are CFTC SBS Entities or (ii) the parties have agreed in writing that on each Data Delivery Date Covered SBS Entity and CP will deliver Portfolio Data to each other, then, in either case, the following shall apply:

- a. The parties will negotiate in good faith to agree on one or more Data Delivery Dates that will comply with the Portfolio Reconciliation frequency specified in the Required Reconciliation Date Notice, *provided* that if the Required Reconciliation Date Notice specified that reconciliations are required Daily, each Joint Business Day shall be a Data Delivery Date.
- b. On each Data Delivery Date, each party (or its agent) will provide Portfolio Data to the other party. For the purposes of this Section 4.3, Portfolio Data will be considered to have been provided to the other party (and the other party will be considered to have received such Portfolio Data) if it has been provided (i) in accordance with the Notice Procedures, or (ii) to a third-party service provider agreed to between Covered SBS Entity and CP for this purpose.
- c. On or as soon as reasonably practicable after each Data Delivery Date on which Portfolio Data is provided by each party, either party may perform a Data Reconciliation in respect of such Portfolio Data.
- d. If (i) one of the parties is not a Covered SBS Entity and (ii) either party notifies the other party of a Discrepancy in Portfolio Data in respect of either the Material Terms of a SBS or its Valuation, then each party agrees to consult with the other in an attempt to resolve the Discrepancy in a timely fashion.
- e. If (i) both parties are CFTC SBS Entities and (ii) either party notifies the other party of a Discrepancy in Portfolio Data in respect of the Material Terms of a SBS, then each party agrees to consult with the other in an attempt to resolve such Discrepancy immediately.

- f. If (i) both parties are CFTC SBS Entities and (ii) either party notifies the other party of a Discrepancy in Portfolio Data in respect of Valuations, then each party agrees to consult with the other in an attempt to resolve such Valuation Discrepancy as soon as possible, but in any event within five Joint Business Days.

Part IV. Valuation Differences Below the Discrepancy Threshold Amount

- 4.4. The parties hereby agree that a difference in Valuations in respect of a SBS that is less than the Discrepancy Threshold Amount shall not be deemed a “discrepancy” for purposes of SEC Rule 15Fi-3 and neither party shall be required under this SBS Portfolio Reconciliation Agreement to notify the other party of such a difference or consult with the other party in an attempt to resolve such a difference..

Part V. Reconciliation Against SBSDR Data

- 4.5. If the parties have agreed in writing to reconcile their books and records of SBSs between the parties against SBSDR Data in order to facilitate satisfaction of the requirements of SEC Rule 15Fi-3 then the following shall apply:
- a. On or as soon as practicable following a Data Delivery Date,¹¹ each party shall perform a Data Reconciliation against SBSDR Data to the extent that such SBSDR Data relates to Material Terms that would otherwise be delivered by the other party as Portfolio Data. To the extent that either party does not have access to such SBSDR Data or determines that it is not technologically or operationally practical for such party to obtain such data from the relevant SBSDR in a manner that permits the conduct of a timely Data Reconciliation in accordance with the applicable time periods specified in Section 4.2 or 4.3, such party shall notify the other party by or as soon as practicable after the relevant Data Delivery Date.¹²
- b. Notwithstanding Sections 4.2 and 4.3, neither party shall be obligated to deliver Portfolio Data to the other party on a Data Delivery Date to the extent that such Portfolio Data consists of Material Terms data reported to an SBSDR, *provided, however*, that if a party has notified the other party that it is not able to conduct a timely Data Reconciliation against corresponding SBSDR Data as provided in Section 4.5(a), the parties shall provide for the delivery of the relevant Portfolio Data as provided in Section 4.2(b) or 4.3(b), as applicable, as soon as reasonably practicable.

¹¹ Per footnote 81 of the Annotated March 2013 Supplement, the version of the Supplement published March 22, 2013 used the incorrect term “Data Exchange Date”—the term that should have been included is “Data Delivery Date.”

¹² Per footnote 81 of the Annotated March 2013 Supplement, the version of the Supplement published March 22, 2013 used the incorrect term “Data Exchange Date”—the term that should have been included is “Data Delivery Date.”

- c. If either party identifies a Discrepancy in SBSDR Data, such party shall immediately notify the other party of such Discrepancy. Each party agrees to consult with the other in an attempt to resolve any such Discrepancy immediately (if both parties are CFTC SBS Entities) or in a timely fashion (if one party is not a Covered SBS Entity).
- d. Each party agrees to notify the other party, upon reasonable request, of (i) the SBSDRs to which such party has reported Material Terms data with respect to SBSs between the parties and (ii) any changes as to the particular SBSDRs at which data may be accessed.
- e. A party may terminate this Section 4.5 with the effect that this Section 4.5 shall have no further force and effect and the parties will each be released and discharged from all further obligations under this Section 4.5 by delivering written notice in accordance with the Notice Procedures to the other party that it is terminating this Section 4.5 as of the effective date of such notice. The parties agree that the effective date of any such notice is the second Joint Business Day following the date on which such notice is delivered in accordance with the Notice Procedures.

Part VI. Other Portfolio Reconciliation Procedures

- 4.6. In the event that the parties have agreed to multiple Data Delivery Dates with a frequency specified in a Required Reconciliation Date Notice, the Covered SBS Entity that delivered such notice shall notify Counterparty if, at any time during the period that such Data Delivery Dates are in effect, it is no longer required by the SBS Appendix 2 Rules to conduct portfolio reconciliations with the specified frequency. Such notice shall specify (i) the new frequency with which portfolio reconciliations are believed by the Covered SBS Entity to be required, which may be “Daily,” “Weekly,” “Quarterly,” “Annually” or another frequency required by the SBS Appendix 2 Rules and (ii) if Section 4.2 is applicable, one or more new Data Delivery Dates. Upon delivery of such a notice, the parties’ obligations to deliver Portfolio Data on the previously agreed Data Delivery Dates shall terminate, and such notice shall be a new Required Reconciliation Date Notice for purposes of Sections 4.2 and 4.3.
- 4.7. Notwithstanding anything to the contrary in this SBS Appendix 2, the parties may in good faith agree to any other procedure for (i) the exchange, delivery and/or reconciliation of Portfolio Data, and/or (ii) the resolution of any discrepancy between them, in either case, whether in addition to or in substitution of the procedures set out in this SBS Appendix 2. Nothing in this SBS Portfolio Reconciliation Agreement shall prejudice any right of dispute or right to require reconciliation that either party may have under Applicable Law, any term of the Agreement other than in this SBS Portfolio Reconciliation Agreement, or any other agreement.

In order to minimize operational burdens, the parties will use reasonable commercial efforts to coordinate the timing of reconciliations with respect to swaps with reconciliations with respect to SBS hereunder to the extent permitted under applicable law.

Elections. Each party's elections (if any) relating to the following items of the March 2013 Questionnaire will be applicable for purposes of terms added to SBS Appendix 2 including the SBS Risk Valuation Agreement and SBS Portfolio Reconciliation Agreement as relevant (whether provided through delivery of such questionnaire or otherwise): Part II, Questions 6, 7 and 8; and Part III, Questions 1, 3(b) and 3(c).

(a) **Scope.** This Master Agreement will govern any Swap or SBS between the parties that is entered into on or after the date hereof that is (i) not governed by an Existing Swap or SBS Agreement, and (ii) in the case of Swaps, not intended by the parties to be cleared on a clearing organization. An "Existing Swap or SBS Agreement" means, in respect of a Swap or SBS, a written agreement that (i) exists at the time of execution of such Swap or SBS, (ii) provides for, among other things, terms governing the payment obligations of the parties, and (iii) the parties have established (by written agreement, oral agreement, course of conduct or otherwise) will govern such Swap or SBS. This Master Agreement will not govern any Swap or SBS that is governed by an Existing Swap or SBS Agreement, or any Swap intended by the parties to be cleared on a clearing organization.

(b) **Swaps.** For purposes of this Master Agreement, the term "Swap" means a "swap" as defined in Section 1a(47) of the Commodity Exchange Act, as amended ("CEA"), and regulations thereunder and the term "SBS" means a "security-based swap" as defined in Section 3(a)(68) of the Securities Exchange Act of 1934, as amended, and regulations thereunder; provided that a commodity option entered into pursuant to Commodity Futures Trading Commission Regulation 32.3(a) is not a Swap for purposes hereof. The term "Swap" also includes any foreign exchange swaps and foreign exchange forwards that are exempted from regulation as "swaps" by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the CEA. For the avoidance of doubt, the term "Swap" does not include a swap that has been cleared by a derivatives clearing organization.

ISDA 2021 SBS Top-Up Protocol Appendix 2
Annotated Attachment
COMPARISON TO ISDA March 2013 DF Supplement

THIS INFORMATION CONTAINED IN THIS COMPARISON IS FOR INFORMATION PURPOSES ONLY AND IS NOT TO BE RELIED ON AS LEGAL ADVICE. ALTHOUGH CARE HAS BEEN TAKEN IN THE PREPARATION OF THIS COMPARISON, IT DOES NOT PURPORT AND SHOULD NOT BE CONSIDERED TO BE A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA 2021 SBS TOP-UP PROTOCOL OR THE RELATED DOCUMENTS. PARTIES SHOULD THEREFORE CONDUCT THEIR OWN DUE DILIGENCE AND CONSULT WITH THEIR LEGAL AND OTHER ADVISERS AS THEY DEEM APPROPRIATE. ISDA DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION CONTAINED IN THIS COMPARISON AND ISDA DOES NOT ACCEPT ANY LIABILITY FOR THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

Note:

This document shows the text resulting from the ISDA 2021 SBS Protocol Appendix 2, as drafted in consideration of the March 2013 Supplement available here: <https://www.isda.org/protocol/isda-march-2013-df-protocol/>, and compared to the August 2012 Supplement. Wording inserted by the ISDA 2021 SBS Protocol Appendix 2 is represented in blue underline (example); deletions of text from the March 2013 2 Supplement are represented red strikethrough (~~example~~). Wording moved to another location within the document as a result of the ISDA 2021 SBS Protocol Appendix 2 is represented in green underline (example); deletions are represented in green strikethrough (~~example~~). The use of “[Omitted]” in the document has been included as a placeholder for sections to assist the reader in comparing the resulting text with the March 2013 Supplement text.



International Swaps and Derivatives Association, Inc.

~~ISDA MARCH 2013 DF SUPPLEMENT~~⁺

~~published on March 22, 2013,~~
~~by the International Swaps and Derivatives Association, Inc.~~

⁺ This March 2013 DF Supplement is intended to address requirements of the following final rules:

- (1) ~~CFTC, Final Rule, Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 Fed. Reg. 55904 (Sept. 11, 2012);~~
- (2) ~~CFTC, Final Rule, End User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42559 (July 19, 2012); and~~
- (3) ~~CFTC, Final Rule, Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74284 (Dec. 13, 2012).~~

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International Swaps and Derivatives Association, Inc.

ISDA March 2013 DF Supplement **(published on March 22, 2013)**

Any of the following schedules of this ISDA March 2013 DF Supplement (as published by the International Swaps and Derivatives Association, Inc. (“ISDA”)) (this “**March 2013 DF Supplement**”) may be incorporated into an agreement (such agreement, a “**Covered Agreement**”) by written agreement of the relevant parties indicating which schedules of this March 2013 DF Supplement (each such schedule, a “**March 2013 DF Schedule**”) shall be incorporated into such Covered Agreement. Each March 2013 DF Schedule so incorporated in a Covered Agreement will be applicable to such Covered Agreement unless otherwise provided in such Covered Agreement. The headings and footnotes used in this March 2013 DF Supplement 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 March 2013 DF Supplement.

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March 2013 DF Schedule 1

Defined Terms The following terms shall have the following meanings when used in this March 2013 DF Supplement. In the event of any inconsistency between a definition provided in this March 2013 DF Supplement and a definition provided in a Covered Agreement, the definitions provided in this March 2013 DF Supplement shall govern for purposes of interpreting terms provided in any March 2013 DF Schedule that is incorporated by reference 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.

“**Active Fund**” means a “private fund,” as defined in Section 202(a) of the Investment Advisers Act of 1940, that (i) is not a Third-Party Subaccount and (ii) has executed 200 or more swaps per month on average over the 12 months preceding November 1, 2012. For purposes of clause (ii) of this definition, “swaps” shall mean swaps as defined by the CFTC for purposes of implementation schedules under parts 23 and 50 of CFTC regulations and shall exclude, without limitation, foreign exchange swaps and forward exchange forwards exempted from regulation as “swaps” by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the CEA.

~~“Agreement,” as used in a provision of this March 2013 DF Supplement 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.~~

Definitions. Defined terms used in this SBS Appendix 2 and not otherwise defined herein shall have the meanings provided in SBS Appendix 1 or, if not defined in SBS Appendix 1, in Schedule 1 of the March 2013 Supplement, as modified by replacing references to (i) “CFTC Regulation 23.502” with “SEC Rule 15Fi-3”, (ii) “CFTC Regulation 23.504” with “SEC Rule 15Fi-5”, (iii) “CFTC Regulation 23.502” with “SEC Rule 15Fi-1” and (iv) “CFTC Regulation 23.500” with “SEC Rule 15Fi-1” each time they occur.

“Annually” means once each calendar year.

“**Applicable Portfolio Reconciliation Compliance Date**” means the date on which ~~CFTC Swap~~Covered SBS Entity compliance is required with respect to Counterparty under ~~CFTC Regulation 23.502~~SEC Rule 15Fi-3 and applicable law regarding the scope of application of ~~CFTC Regulation 23.502~~SEC Rule 15Fi-3, including applicable CFTC interpretations and other ~~CFTC Regulations~~SEC Rules. For the avoidance of doubt, if both ~~Parties~~parties are ~~CFTC Swap Entities~~Covered SBS Entity, the Applicable Portfolio Reconciliation Compliance Date shall occur on the first date on which compliance is required by either ~~CFTC Swap~~Covered SBS Entity with respect to the other ~~Party~~party.

“**Applicable STRD Compliance Date**” means the date on which ~~CFTC Swap~~Covered SBS Entity compliance is required with respect to Counterparty under ~~CFTC Regulation 23.504~~SEC Rule 15Fi-3 and applicable law regarding the scope of application of ~~CFTC Regulation 23.504~~SEC Rule 15Fi-3, including applicable CFTC interpretations and other ~~CFTC Regulations~~SEC Rules. For the avoidance of doubt, if both ~~Parties~~parties are ~~CFTC Swap~~Covered SBS Entities, the Applicable STRD Compliance Date shall occur on the first date on which compliance is required by either ~~CFTC Swap~~Covered SBS Entity in respect of the other ~~Party~~party.

~~“Category 1 Entity” means (i) a Swap Dealer, (ii) a Major Swap Participant, (iii) a Security-Based Swap Dealer, (iv) a Major Security-Based Swap Participant, or (v) an Active Fund.²~~

~~“Category 2 Entity” means (i) a commodity pool as defined in Section 1a(10) of the CEA and CFTC Regulations thereunder, (ii) a “private fund,” as defined in Section 202(a) of the Investment Advisers Act of 1940, other than an Active Fund, or (iii) a person predominantly engaged in activities that are in the business of banking, or in activities that are “financial in nature,” as defined in Section 4(k) of the Bank Holding Company Act of 1956, provided that, in each case, the entity is not a Third-Party Subaccount.³~~

~~“CEA” means the Commodity Exchange Act, as amended.~~

². ~~CFTC Regulation 50.25.~~

³. ~~CFTC Regulation 50.25.~~

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

~~“CFTC Regulations” means the rules, regulations, orders and interpretations published or issued by the CFTC, as amended.~~

~~“CFTC Swap Entity” means a Party that (i) the Parties have agreed in writing will be a “CFTC Swap Entity” for purposes of the March 2013 DF Supplement, regardless of whether that Party is registered (fully or provisionally) as a “swap dealer” or “major swap participant” with the CFTC at the time of such agreement, or (ii) is or becomes registered (fully or provisionally) as a “swap dealer” or “major swap participant” with the CFTC and has notified the other Party of such registration in accordance with the Notice Procedures.~~

“Close-Out Provision” means (i) in respect of a ~~Swap~~SBS for which the ~~Parties~~parties **have** agreed in writing (whether as part of the Agreement or otherwise) to a process for determining the payments to be made upon early termination of such ~~Swap~~SBS, the provisions specifying such process, and (ii) in respect of a ~~Swap~~SBS for which the ~~Parties~~parties **have not** agreed in writing (whether as part of the Agreement or otherwise) to a process for determining the payments to be made upon early termination of such ~~Swap~~SBS, Section 6(e)(ii)(1) of the 2002 ISDA Master Agreement as if such Swap were governed thereby.

~~“Commodity Trade Option” means a commodity option entered into pursuant to CFTC Regulation 32.3(a).~~

“Counterparty” or “CP” means a Party to the Agreement that is a counterparty to a ~~CFTC Swap~~Covered SBS Entity. For the avoidance of doubt, if two ~~CFTC Swap~~Covered SBS Entities are party to the Agreement, each ~~CFTC Swap~~Covered SBS Entity is also a Counterparty or CP for purposes of this ~~March 2013 DF Supplement~~SBS Appendix 2.

“Covered Financial Company” means a “covered financial company,” as defined in Section 201(a)(8) of the Dodd-Frank Act, 12 U.S.C. § 5381(a)(8).

“Covered SBS Entity” means a party that (i) has been designated as a Covered SBS Entity for purposes of this SBS Appendix 2 in its adherence letter to the SBS Top-Up Protocol, or (ii) is or becomes registered (on an ongoing basis or conditionally) as a “security-based swap dealer” or “major security-based swap participant” with the SEC and has notified the other party of such registration in accordance with the Notice Procedures.

“Credit Support Agreement” means a written agreement, if any, between the ~~Parties~~parties (whether part of the Agreement or otherwise) that governs the posting or transferring of collateral or other credit support related to one or more ~~Swaps~~SBS.

“Credit Support Call” means a request or demand for the posting or transferring of collateral or other credit support related to one or more ~~Swaps~~SBS made pursuant to the terms of a Credit Support Agreement.

“CSA Valuation” means, in respect of a ~~Swap~~SBS and a Risk Valuation Date and subject to the terms of Part II of Schedule 3 of this ~~March 2013 DF Supplement~~SBS Appendix 2 in the case of

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a dispute, the value of such ~~Swap~~SBS determined in accordance with the CSA Valuation Process, if any, expressed as a positive number if such ~~Swap~~SBS has positive value for the Risk Valuation Agent, and as a negative number if such ~~Swap~~SBS has negative value for the Risk Valuation Agent.

“**CSA Valuation Process**” means the process, if any, agreed by the ~~Parties~~parties in writing (whether as part of the Agreement or otherwise) for determining the value of one or more transactions that may include a ~~Swap~~SBS or portfolio of ~~Swaps~~SBS for the purpose of posting or transferring collateral or other credit support. For the avoidance of doubt, such writing may be in the form of an ISDA Credit Support Annex or any other written agreement.

“**Daily**” means once each Joint Business Day.

“**Data Delivery Date**” means a date determined pursuant to Section 4.2 or 4.3 of this ~~March 2013 DF Supplement~~SBS Appendix 2, as applicable, that is a Joint Business Day.

“**Data Reconciliation**” means a comparison of Portfolio Data and, to the extent applicable, ~~SDR~~SBS~~SDR~~ Data received or obtained by a ~~Party~~party against such ~~Party’s~~party’s own books and records of ~~Swaps~~SBS between the ~~Parties~~parties and, in respect of any Discrepancy, a process for identifying and resolving such Discrepancy. A Data Reconciliation may include (but shall not be required to include or be limited to) a systematic, line-by-line, field-by-field matching process performed using technological means such as a third-party portfolio reconciliation service or a technology engine.

~~“DCO” means a “derivatives clearing organization,” as such term is defined in Section 1a(15) of the CEA and CFTC Regulations.~~

“**Discrepancy**” means, (i) in respect of the Portfolio Data received with respect to a ~~Swap~~SBS and any ~~SDR~~SBS~~SDR~~ Data obtained for such ~~Swap~~SBS, a difference between a Material Term in such Portfolio Data or ~~SDR~~SBS~~SDR~~ Data and a party’s own records of the corresponding Material Term and (ii) in respect of the Portfolio Data received with respect to a ~~Swap~~SBS, a difference between a Valuation reported in such Portfolio Data and such party’s own Valuation of such ~~Swap~~SBS (calculated as of the same Joint Business Day in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result) that is greater than the Discrepancy Threshold Amount.

“**Discrepancy Threshold Amount**” means, in respect of a ~~Swap~~SBS, an amount equal to ten percent (10%) of the higher of the two absolute values of the respective Valuations assigned to such ~~Swap~~SBS by the ~~Parties~~parties.

“**Dodd-Frank Act**” means the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended.

“**FDIA**” means the Federal Deposit Insurance Act of 1950, as amended.

“**FDIC**” means the Federal Deposit Insurance Corporation.

~~“Financial Company” means a “financial company,” as defined in Section 201(a)(11) of the Dodd Frank Act, 12 U.S.C. § 5381(a)(11).~~

~~“Initial Mandatory Clearing Determination” means the CFTC determination initially published in the Federal Register on December 12, 2012, pursuant to rulemaking under Section 2(h) of the CEA providing that certain classes of interest rate swaps and credit default swaps shall be subject to mandatory submission for clearing to a DCO eligible to clear such swaps under CFTC Regulation 39.5, as amended.⁴~~

“Insured Depository Institution” means an “insured depository institution,” as defined in 12 U.S.C. § 1813.

“Joint Business Day” means a day that is a Local Business Day in respect of each Party party.

“Local Business Day” means, as used in a provision of this ~~March 2013 DF Supplement~~SBS Appendix 2, with respect to a Party party, a day on which commercial banks are open for general business (including for dealings in foreign exchange and foreign currency deposits) in the city or cities specified by such ~~Party in the March 2013 DF Supplement~~party in the SBS Appendix 2 Information. If a Party party does not specify a city in the ~~March 2013 DF Supplement~~SBS Appendix 2 Information, such Party party will be deemed to have specified the city specified by the other ~~Party in the March 2013 DF Supplement~~party in the SBS Appendix 2 Information. If neither Party party specifies a city in the ~~March 2013 DF Supplement~~SBS Appendix 2 Information, both Parties parties will be deemed to have specified the City of New York.

~~“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 CEA and CFTC Regulation 1.3(hhh) thereunder.~~

~~“March 2013 DF Schedule” shall have the meaning given to such term in the introductory paragraph of this March 2013 DF Supplement.~~

“March 2013 Protocol Master Agreement” means an ISDA March 2013 DF Protocol Master Agreement entered into by the parties pursuant to Section 4 of the ISDA March 2013 DF Protocol Agreement, published on March 22, 2013, as amended or supplemented by ISDA from time to time.

~~“March 2013 DF Supplement Information” means any information or representation agreed in writing by the Parties to be March 2013 DF Supplement Information~~**“Questionnaire”** means the ISDA March 2013 DF Protocol Questionnaire, published on March 22, 2013, as amended or supplemented by ISDA from time to time in accordance with Section 2.3 of this March 2013 DF Supplement or in another manner agreed by the Parties.

~~“March 2013 DF Supplement Rules” means CFTC Regulations 23.500 through 23.505, CFTC Regulation 50.50, and CFTC Regulation 50.4 adopted in the following Federal Register publications, as amended and supplemented from time to time: (i) CFTC, Final Rule,~~

⁴ 77 Fed. Reg. 74284 (Dec. 13, 2012).

~~Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 Fed. Reg. 55904 (Sept. 11, 2012); (ii) CFTC, Final Rule, End User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42559 (July 19, 2012) and (iii) CFTC, Final Rule, Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74284 (Dec. 13, 2012).~~

“March 2013 Supplement” means the ISDA March 2013 DF Supplement, published on March 22, 2013.

“**Material Terms**” has the meaning ascribed by the CFTC¹ to such term for purposes of ~~CFTC Regulation 23.502~~SEC Rule 15Fi-3.

~~“Monthly” means once each calendar month.~~

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

“**Party**” means, in respect of a Covered Agreement, a party thereto.

“**Portfolio Data**” means, in respect of a ~~Party~~party providing or required to provide such data, information (which, for the avoidance of doubt, is not required to include calculations or methodologies) relating to the terms of all outstanding Swaps between the Parties in a form and standard that is capable of being reconciled, with a scope and level of detail that is reasonably acceptable to each ~~Party~~party and that describes and includes, without limitation, current Valuations attributed by that ~~Party~~party to each such ~~Swap~~SBS. The information comprising the Portfolio Data to be provided by a ~~Party~~party on a Data Delivery Date shall be prepared (i) as at the time or times that such ~~Party~~party computes its end of day valuations for ~~Swaps~~SBS (as specified by that ~~Party~~party for this purpose in writing) on the immediately preceding Joint Business Day, as applicable, and (ii) in the case of Valuations, in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.

“**Quarterly**” means once each calendar quarter.

“**Recalculation Date**” means the Risk Valuation Date on which a Risk Valuation that gives rise to the relevant dispute is calculated; *provided, however*, that if one or more subsequent Risk Valuation Dates occurs prior to the resolution of such dispute, then the “Recalculation Date” in respect of such dispute means the last such Risk Valuation Date.

“**Reference Market-makers**” means four leading dealers in the relevant market selected by the Risk Valuation Agent in good faith (i) from among dealers of the highest credit standing which satisfy all the criteria that the Risk Valuation Agent applies generally at the time in deciding whether to offer or to make an extension of credit and (ii) to the extent practicable, from among such dealers having an office in the same city.

¹ This is intended to be read as referring to the SEC, rather than the CFTC.

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“**Risk Exposure**” means, in respect of a ~~Swap~~SBS and a Risk Valuation Date and subject to the terms of Part II of Schedule 3 of this ~~March 2013 DF Supplement~~SBS Appendix 2 in the case of a dispute, the amount, if any, that would be payable to the Risk Valuation Agent by CP (expressed as a positive number) or by the Risk Valuation Agent to CP (expressed as a negative number) pursuant to the Close-Out Provision as of the Risk Valuation Time as if such ~~Swap~~SBS (and not any other ~~Swap~~SBS) was being terminated as of such Risk Valuation Date; *provided that* (i) if the Agreement provides for different calculations depending on whether one of the ~~Parties~~parties is an affected or defaulting ~~Party~~party, such calculation will be determined using estimates at mid-market of the amounts that would be paid for a replacement transaction; and (ii) such calculation will not include the amount of any legal fees and out-of-pocket expenses.

“**Risk Valuation**” means, in respect of a ~~Swap~~SBS and a Risk Valuation Date for which (i) there is a CSA Valuation determined by the Risk Valuation Agent or its agent, such CSA Valuation, and (ii) there is no CSA Valuation determined by the Risk Valuation Agent or its agent, the Risk Exposure determined by the Risk Valuation Agent or its agent for such ~~Swap~~SBS and Risk Valuation Date, unless, pursuant to Section 3.1 of this ~~March 2013 DF Supplement~~SBS Appendix 2, the Risk Valuation Agent has elected to use the CSA Valuation provided by CP for such ~~Swap~~SBS and Risk Valuation Date, in which case, such CSA Valuation provided by CP.

“**Risk Valuation Agent**” means, in respect of any Risk Valuation Date and any ~~Swap~~SBS: (i) if only one ~~Party~~party is a ~~CFTC-SwapCovered SBS~~ Entity, such ~~Party~~party, (ii) if both ~~Parties~~parties are CFTC ~~Swap~~SBS Entities and such ~~Parties~~parties **have not** entered into a Credit Support Agreement relating to such ~~Swap~~SBS, the ~~Party~~party whom both ~~Parties~~parties have agreed in writing will be the Risk Valuation Agent for such date (unless such date is only a Local Business Day for one of the ~~Parties~~parties, in which case such ~~Party~~party shall be the Risk Valuation Agent for such date), and (iii) if both ~~Parties~~parties are CFTC ~~Swap~~SBS Entities and such ~~Parties~~parties **have** entered into one or more Credit Support Agreements relating to such ~~Swap~~SBS, the ~~Party~~party entitled to make a Credit Support Call under such Credit Support Agreements on such date; *provided that*, (a) on any such date on which both CFTC ~~Swap~~SBS Entities are entitled to make such a Credit Support Call, the Risk Valuation Agent shall be the ~~Party~~party entitled to make a Credit Support Call under such Credit Support Agreements on the most recent Risk Valuation Date on which only one ~~CFTC-SwapCovered SBS~~ Entity was entitled to make such a call, and (b) on any such date on which neither ~~CFTC-SwapCovered SBS~~ Entity is entitled to make such a Credit Support Call, if such date is only a Local Business Day for one of the ~~Parties~~parties, such ~~Party~~party shall be the Risk Valuation Agent and otherwise the Risk Valuation Agent shall be the ~~Party~~party entitled to make a Credit Support Call under such Credit Support Agreement on the most recent preceding Risk Valuation Date on which only one ~~CFTC-SwapCovered SBS~~ Entity was entitled to make such a call.

“**Risk Valuation Date**” means, with respect to a ~~Swap~~SBS, each Local Business Day for either ~~Party~~party that is a ~~CFTC-SwapCovered SBS~~ Entity.

“**Risk Valuation Time**” means, with respect to a ~~Swap~~SBS and any day, the close of business on the prior Local Business Day in the locality specified by the Risk Valuation Agent in its notice of the Risk Valuation to CP.

~~“SDR” means a “swap data repository,” as defined in Section 1a(48) of the CEA and the CFTC Regulations.~~

~~“SDR Data” means Material Terms data that is available from an SDR.~~

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

“SBS Appendix 2 Information” means (i) information previously provided to a counterparty that is required in the March 2013 Questionnaire pursuant to Part II, Questions 3, 4, 5, 6, 7 and 8, and Part III, Questions 1, 3(b) and 3(c) (whether provided through delivery of such questionnaire or otherwise); and (ii) any other information provided pursuant to the SBS Appendix 2 Terms.

“SBS Appendix 2 Rules” means the SEC Rules adopted in the following Federal Register citations, as amended and supplemented from time to time: (1) Trade Acknowledgement and Verification of Security-Based Swap Transactions, 81 Fed. Reg. 39807 (June 17, 2016); and (2) Risk Mitigation Techniques for Uncleared Security-Based Swaps, 85 Fed. Reg. 6359 (Feb. 4, 2020).

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

“SBS Appendix 2 Terms” means the terms of this SBS Appendix 2, including those sections of the March 2013 Supplement that have been modified and incorporated by reference herein by the SBS Top-Up Protocol.

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

~~“Swap” means a “swap” as defined in Section 1a(47) of the CEA and regulations thereunder that is, or is to be, governed by the Agreement; provided that a Commodity Trade Option is not a Swap for purposes of this March 2013 DF Supplement. The term “Swap” also includes any foreign exchange swaps and foreign exchange forwards that are, or are to be, governed by the Agreement and that are exempted from regulation as “swaps” by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the CEA. For the avoidance of doubt, the term “Swap” does not include a swap that has been cleared by a DCO.~~

~~“Swap Dealer” means a “swap dealer,” as defined in Section 1a(49) of the CEA and CFTC Regulation 1.3(ggg) thereunder.~~

~~“Third-Party Subaccount” means an account that is managed by an investment manager who is (1) independent of and unaffiliated with the account’s beneficial owner or sponsor and (2) responsible for the documentation necessary for the account’s beneficial owner to clear swaps.~~

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

“Valuation” has the meaning ascribed to such term in ~~CFTC Regulation 23.500~~SEC Rule 15Fi-3.

“Weekly” means once each calendar week.

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March 2013 DF Schedule 2

General Terms~~This March 2013 DF Schedule 2 may be incorporated into an agreement between a CFTC Swap Entity and any other Party, including another CFTC Swap Entity.~~

~~If the Parties to an agreement have specified that this March 2013 DF Schedule 2 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this March 2013 DF Schedule 2 shall be deemed to be a part of such agreement to the same extent as if this March 2013 DF Schedule 2 were restated therein in its entirety.~~

Part I. **General Representations and Agreements**

- 2.1. ~~Party~~Each party represents to the ~~other Party~~ther 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) ~~March 2013 DF Supplement~~ all SBS Appendix 2 Information (excluding representations) furnished by or on behalf of it to the ~~other Party~~her party is true, accurate and complete in every material respect, and (ii) no representation provided in ~~March 2013 DF Supplement~~ the SBS Appendix 2 Information or in ~~March 2013 DF Supplement~~ this SBS Appendix 2 is incorrect or misleading in any material respect. ~~March 2013 DF Supplement~~ The SBS Appendix 2 Information is incorporated herein by reference.⁵
- 2.2. Each ~~Party~~party acknowledges that the other ~~Party~~party has agreed to incorporate one or more ~~March 2013 DF Schedules~~ SBS Appendix 2 Terms into the Agreement, and, if the ~~Parties~~parties enter into any ~~Swaps~~SBSs on or after the date of such incorporation, the other ~~Party~~party will do so in reliance upon the ~~March 2013 DF Supplement~~ SBS Appendix 2 Information and the representations provided by such ~~Party~~party or its agent in the ~~March 2013 DF Supplement~~ SBS Appendix 2 Information and this ~~March 2013 DF Supplement~~ SBS Appendix 2. Notwithstanding the foregoing, each ~~Party~~party agrees that an event of default, termination event, or other similar event that gives a ~~Party~~party grounds to cancel or otherwise terminate a ~~Swap~~SBS shall not occur under the Agreement or any other contract between the ~~Parties~~parties solely on the basis of (i) a representation provided solely in the ~~March 2013 DF Supplement~~ SBS Appendix 2 Information or in this ~~March 2013 DF Supplement~~ SBS Appendix 2 being incorrect or misleading in any material respect, or (ii) a breach of any covenant or agreement set forth solely in this ~~March 2013 DF Supplement~~ SBS Appendix 2; *provided, however*, that nothing in this Section 2.2 shall prejudice any other right or remedy of a ~~Party~~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~~party's 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 ~~March 2013 DF Supplement~~ SBS Appendix 2 Information or in this ~~March 2013 DF Supplement~~ SBS Appendix 2, including any such breach relating to any event or condition that could also cause or constitute an event specified in (i) or (ii) above.
- 2.3. Each ~~Party~~party agrees to promptly notify the other ~~Party~~party in writing in accordance with the Notice Procedures (i) of any material change to ~~March 2013 DF Supplement~~ SBS Appendix 2 Information (other than representations) previously provided by such ~~Party~~party or on behalf of such ~~Party~~party and (ii) if

⁵- ~~CFTC Regulations 23.402(d) and 23.504(b)(5)~~² See SEC Rules 240.15Fh-1 (scope and application of business conduct rules); 240.15Fi-5 (SBS trading relationship documentation requirements).

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any representations made in ~~March 2013 DF Supplement~~[SBS Appendix 2](#) Information or this ~~March 2013 DF Supplement~~[SBS Appendix 2](#) by or on behalf of such ~~Party~~[party](#) become incorrect or misleading in any material respect. For any representation made in one or more of the ~~March 2013 DF Schedules~~[SBS Appendix 2 Terms](#) 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~~[party](#) shall timely amend such representation by giving notice of such amendment to the other ~~Party~~[party](#) in accordance with the Notice Procedures.⁶³

Part II. Confirmations

- 2.4. Unless the ~~Parties~~[parties](#) have agreed otherwise in writing, each ~~Party~~[party](#) agrees that a confirmation of a ~~Swap~~[SBS](#) or another type of transaction under this Agreement may be created by delivery of written terms by each party; *provided that* (i) the terms delivered by each party match the terms delivered by the other party and (ii) the terms are either delivered by each party to the other party in a manner that permits each ~~Party~~[party](#) to review such terms or delivered by each party to a third-party agent or service provider that confirms the matching of such terms to the ~~Parties~~[parties](#) (in each case by telex, electronic messaging system, email or otherwise). In each case, such a confirmation will be sufficient for all purposes to evidence a binding supplement to this Agreement. The foregoing shall not limit other agreed methods of creating binding confirmations and shall not be construed as an agreement to use a method provided in this paragraph to confirm any Transaction.⁷⁴

Part III. Clearing

2.5. [\[Omitted\]](#)

2.6. [\[Omitted\]](#)

2.7. [\[Omitted\]](#)

2.8. [\[Omitted\]](#)

~~2.5. Each Party is hereby notified that, upon acceptance of a Swap by a DCO:~~

~~a. the original Swap between CFTC Swap Entity and CP is extinguished;~~

~~b. the original Swap between CFTC Swap Entity and CP is replaced by equal and opposite Swaps with the DCO; and~~

⁶³ ~~See~~ [SEC Rules 240.15Fh-1 \(scope and application of business conduct rules\); 240.15Fi-5 \(SBS trading relationship documentation requirements\).](#)

⁷⁴ ~~CFTC Regulation 23.501~~ [See SEC Rule 240.15Fi-2 \(acknowledgment and verification of security-based swap transactions\).](#)

~~e. all terms of the Swap shall conform to the product specifications of the cleared Swap established under the DCO's rules.⁸~~

~~2.6. Subject to Section 2.8, in the event that (i) the Parties have entered into a Swap that is of a type that the CFTC has included within the Initial Mandatory Clearing Determination and (ii) the execution of such Swap has occurred during the period where clearing is mandatory for such type of Swap between two Category 1 Entities, but not for such type of Swap between a Category 1 Entity and a counterparty that is not a Category 1 Entity, then, upon execution of such Swap, CP shall be deemed to have represented that CP is not a Category 1 Entity.~~

~~2.7. Subject to Section 2.8, in the event that (i) the Parties have entered into a Swap that is of a type that the CFTC has included within the Initial Mandatory Clearing Determination and (ii) the execution of such Swap has occurred during a period where clearing is mandatory for such type of Swap between two Category 1 Entities, or between a Category 1 Entity and a Category 2 Entity, but not between a Category 1 Entity and a counterparty that is neither a Category 1 Entity nor a Category 2 Entity, then, upon execution of such Swap, CP shall be deemed to have represented that CP is not a Category 1 Entity or a Category 2 Entity.~~

~~2.8. CP will not be deemed to have made a representation pursuant to Sections 2.6 or 2.7 hereof as to its status as a Category 1 Entity or a Category 2 Entity, in connection with the execution of a Swap, if (i) it is a CFTC Swap Entity, (ii) prior to execution of such Swap (a) CP has notified CFTC Swap Entity in writing in accordance with the Notice Procedures that it is a Category 1 Entity or (in the case of Section 2.7 only) a Category 2 Entity or (b) CP has instructed CFTC Swap Entity to clear such Swap with a DCO, or (iii) at the time of such execution, the Swap would not be subject to mandatory clearing pursuant to an exemption provided under Section 2(h)(7) of the CEA and CFTC Regulation 50.50 or in accordance with written CFTC guidance (by rulemaking or otherwise) that applies notwithstanding that CP may be a Category 1 Entity or (in the case of Section 2.7 only) a Category 2 Entity.~~

Part IV. **End-User Exception**

2.9. [Omitted]

2.10. [Omitted]

2.11. [Omitted]

Part V. **Orderly Liquidation Authority**

2.12. [Omitted]

2.13. Each party is hereby notified that in the event that a party is (i) a Covered Financial Company or (ii) an Insured Depository Institution for which the FDIC has been appointed as a receiver (the “covered party”):

⁸. ~~CFTC Regulation 23.504(b)(6).~~

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- a. certain limitations under Title II of the Dodd-Frank Act or the FDIA may apply to the rights of the non-covered party to terminate, liquidate, or net any SBS by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the parties; and
 - b. the FDIC may have certain rights to transfer SBSs of the covered party under Section 210(c)(9)(A) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(9)(A), or 12 U.S.C. § 1821(e)(9)(A).⁵

~~2.9. If CP elects not to clear any Swap that is subject to a mandatory clearing determination under Section 2(h) of the CEA pursuant to an exception from mandatory clearing provided under Section 2(h)(7) of the CEA and CFTC Regulation 50.50, CP shall notify CFTC Swap Entity of such election in writing prior to execution of such Swap, which notice may be provided as a standing notice for multiple swaps (in March 2013 DF Supplement Information or otherwise) or on a trade-by-trade basis.⁹ By providing such notice and executing any such Swap, CP shall be deemed to represent that (i) it is eligible for an exception from mandatory clearing with respect to such Swap under Section 2(h)(7) of the CEA and CFTC Regulation 50.50 and (ii) either:—~~

~~a. it has reported the information listed in CFTC Regulation 50.50(b)(1)(iii) in an annual filing made pursuant to CFTC Regulation 50.50(b)(2) no more than 365 days prior to entering into such Swap, such information has been amended as necessary to reflect any material changes thereto; such annual filing covers the particular Swap for which such exception is being claimed; and such information in such filing is true, accurate, and complete in all material respects; or~~

~~b. it:—~~

~~(1) has notified CFTC Swap Entity in writing in accordance with the Notice Procedures prior to entering into such Swap that it has not reported the information listed in CFTC Regulation 50.50(b)(1)(iii) in an annual filing described in clause 2.9(a) above;—~~

~~(2) has provided to CFTC Swap Entity all information listed in CFTC Regulation 50.50(b)(1)(iii) and such information is true, accurate and complete in every material respect and covers the particular Swap for which such exception is being claimed;~~

~~(3) (A) is not a “financial entity,” as defined in Section 2(h)(7)(C)(i) of the CEA, without regard to any exemptions or exclusions provided under Sections 2(h)(7)(C)(ii), 2(h)(7)(C)(iii), or 2(h)(7)(D) or related CFTC regulations, (B) qualifies for the small bank exclusion from the definition of “financial entity” in Section 2(h)(7)(C)(ii) of the CEA and CFTC Regulation 50.50(d), (C) is excluded from the definition of “financial entity” in accordance with Section 2(h)(7)(C)(iii) of the CEA, or (D) qualifies for an exception from mandatory clearing in accordance with Section 2(h)(7)(D) of the CEA;—~~

~~(4) is using such Swap to hedge or mitigate commercial risk as provided in CFTC Regulation 50.50(e); and~~

⁵ [See SEC Rule 240.15Fi-5 \(SBS trading relationship documentation requirements\).](#)

⁹ ~~CFTC Regulation 23.505(a)(2).~~

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(5) generally meets its financial obligations associated with entering into non-cleared Swaps.⁴⁰

~~2.10. If (i) CFTC Swap Entity and CP enter into a Swap subject to a mandatory clearing determination under Section 2(h) of the CEA that CP has elected not to clear pursuant to an exception from mandatory clearing provided under Section 2(h)(7) of the CEA and CFTC Regulation 50.50 and (ii) CP has satisfied the conditions specified in Sections 2.9(b)(1) and (2) above, then, if the Swap is subject to mandatory reporting to the CFTC or an SDR and CFTC Swap Entity is the “reporting counterparty,” as defined in CFTC Regulation 45.8, CFTC Swap Entity shall report the information listed in CFTC Regulation 50.50(b)(1)(iii) to the relevant SDR.⁴¹~~

⁶SEC Statement. CP agrees and acknowledges that Covered SBS Entity may rely on representations and agreements previously provided by CP in connection with transacting in Swaps, in order to satisfy requirements to CP with respect to the SBS Appendix 1 Rules.⁷

Regulatory Disclosures.⁸ Notwithstanding anything to the contrary in ~~the~~this Agreement or in any ~~non-disclosure~~nondisclosure, confidentiality or similar agreement between the Parties, if CP elects the exception from the Swap clearing requirement under Section (2)(h)(7)(A) of the CEA and CFTC Regulation 50.50 with respect to a particular Swap, each Partyparties, each party hereby consents to the disclosure of information ~~related to such election to the extent required by the March 2013 DF Supplement Rules~~about such party or its activities:

(a) to the extent required by the SBS Appendix 1 Rules which mandate reporting of transaction and similar information; and

(b) to the extent required by the SBS Appendix 1 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.

⁴⁰ ~~CFTC Regulation 50.50 and 23.505(a).~~

⁴¹ ~~CFTC Regulation 50.50.~~

⁶ Pursuant to Appendix 2 Section I. B. of the ISDA 2021 SBS Top-Up Protocol, if the parties have not entered into SBS Appendix 1, the Regulatory Disclosures provision in Section I.B. of SBS Appendix 1 is added, as included here.

⁷ See SEC Rule 240.15Fh-1 (scope and application of business conduct rules); see also SEC’s Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 83 Fed. Reg. 55486 (Nov. 6, 2018).

⁸ This section reproduces language from Section 2.5 of the August 2012 Supplement with revisions to align with SBS rules, including by: (1) addressing permissibility of providing information in response to an SEC order, directive or other request for an SBS’s books and records; (2) preserving any separate agreements with respect to confidentiality and consents to disclosures between the Reporting Counterparty and its Counterparty; and (3) setting out the scope of permissible disclosure to affiliates and/or third-party service providers for purposes of complying with reporting obligations. This section is also incorporated by reference into SBS Appendix 2 so that it becomes part of the agreement when parties to this Protocol top up agreements that were amended under the ISDA March 2013 Protocol but not under the ISDA August 2012 Protocol. See also SEC Rules 242.905 (duty to correct reported data); 242.901(c)-(e) (primary and secondary trade information to be reported, reporting of life cycle events).

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2.11.—Each ~~Party~~party acknowledges that disclosures made pursuant to this ~~Section 2.11~~paragraph may include, without limitation, the disclosure of trade information, including a ~~Party's~~party's identity (by name, identifier or otherwise), to ~~an SDR and~~SBSDRs, security-based swap execution facilities, relevant regulators. ~~Each Party 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~~party further acknowledges that, solely for the purposes of complying with the regulatory reporting obligations, ~~an SDR discussed above, a Reporting Counterparty and/or SBSDR~~ may engage the services of ~~a global trade repository regulated by one or more governmental regulators, provided that such regulated global trade repository is subject to comparable confidentiality provisions as is an SDR registered with the CFTC~~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 ~~the Swap~~transaction and similar information required or permitted to be disclosed ~~pursuant to the March 2013 DF Supplement Rules~~as contemplated herein, but permits a ~~Party~~party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each ~~Party~~party for purposes of such ~~other applicable law.~~law; (ii) any agreement between the parties to maintain confidentiality of information contained in the Protocol Covered 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 Appendix 1 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.

Non-Reporting Counterparty. Each party agrees that if it is the Non-Reporting Counterparty with respect to an SBS under the Agreement, upon the occurrence of any “life cycle event” (as that term is defined in Regulation SBSR) relating to a corporate event in respect of such Non-Reporting Counterparty and such SBS, it will, as soon as practicable, but in no event later than 24 hours (or if longer, the time period for reporting permitted under the SBS Appendix 1 Rules) after the occurrence of the life cycle event, notify the Reporting Counterparty to the SBS of the occurrence of such life cycle event, with sufficient detail regarding such life cycle event to allow such other party to comply with any reporting requirements imposed by the SBS Appendix 1 Rules.

~~Part V. Orderly Liquidation Authority~~

~~2.12. Effective on and after the Applicable STRD Compliance Date, each Party agrees to provide notice to the other Party, in accordance with the Notice Procedures, if it becomes, or ceases to be, an Insured Depository Institution or a Financial Company.¹²~~

~~2.13. Each Party is hereby notified that in the event that a Party is (i) a Covered Financial Company or (ii) an Insured Depository Institution for which the FDIC has been appointed as a receiver (the “covered party”):~~

~~a. certain limitations under Title II of the Dodd-Frank Act or the FDIA may apply to the rights of the non-covered party to terminate, liquidate, or net any Swap by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the Parties; and~~

~~b. the FDIC may have certain rights to transfer Swaps of the covered party under Section 210(e)(9)(A) of the Dodd-Frank Act, 12 U.S.C. § 5390(e)(9)(A), or 12 U.S.C. § 1821(e)(9)(A).¹³~~

¹²- ~~CFTC Regulation 23.504(b)(5)(iv).~~

¹³- ~~CFTC Regulation 23.504(b)(5)(iii).~~

March 2013 DF Schedule 3
Calculation of Risk Valuations and Dispute Resolution⁹

~~This March 2013 DF Schedule 3 may be incorporated into an agreement between a CFTC Swap Entity and any other Party, including another CFTC Swap Entity.~~

~~If the Parties to an agreement have specified that this March 2013 DF Schedule 3 will be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this March 2013 DF Schedule 3 will be deemed to be a part of such agreement to the same extent as if this March 2013 DF Schedule 3 were restated therein in its entirety.~~

Part I. Calculation of Risk Valuations for Purposes of Section ~~4s~~15F(j) of the CEA¹⁴SEA

Each ~~Party~~party agrees that:

- 3.14. On each Risk Valuation Date, the Risk Valuation Agent in respect of each ~~Swap~~SBS for which a Transaction Event has occurred after the Applicable STRD Compliance Date (or its agent) will calculate the Risk Valuation of such ~~Swap~~SBS, provided that if CP has provided the Risk Valuation Agent with a CSA Valuation for such ~~Swap~~SBS and such Risk Valuation Date pursuant to a CSA Valuation Process that the Risk Valuation Agent has determined in good faith will allow the Risk Valuation Agent to satisfy the requirements of ~~CFTC Regulation 23.504~~SEC Rule 15Fi-5(b) as they relate to Section ~~4s~~15F(j) of the ~~CEA~~SEA, the Risk Valuation Agent may elect to treat such CSA Valuation as the Risk Valuation for such ~~Swap~~SBS.
- 3.15. Upon written request by CP delivered to the Risk Valuation Agent in accordance with the Notice Procedures on or prior to the Joint Business Day following a Risk Valuation Date, the Risk Valuation Agent (or its agent) will notify the CP of the Risk Valuations determined by it for such Risk Valuation Date pursuant to Section 3.1 of this ~~March 2013 DF Schedule 3~~SBS Risk Valuation Agreement. Unless otherwise agreed by the ~~Parties~~parties, the Risk Valuation Agent shall not be obligated to disclose to CP any confidential, proprietary information about any model the Risk Valuation Agent may use to value a ~~Swap~~SBS.
- 3.16. Notification of a Risk Valuation may be provided through any of the following means, each of which is agreed by the parties to be reliable: (i) written notice delivered by the Risk Valuation Agent to the CP in accordance with the Notice Procedures, (ii) any means agreed by the ~~Parties~~parties for the delivery of CSA Valuations or (iii) posting on a secure web page at, or accessible through, a URL designated in a written notice given to CP pursuant to the Notice Procedures.

⁹ See SEC Rule 240.15Fi-5 (SBS trading relationship documentation requirements).

¹⁴ ~~CFTC Regulations 23.504(b)(4)(i) and (ii).~~

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- 3.17. Each Risk Valuation will be determined by the Risk Valuation Agent (or its agent) acting in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.

Part II. **Dispute Resolution for Risk Valuations for Purposes of Section ~~4s~~¹⁵15F(j) of the CEA¹⁵ SEA**

Each ~~Party~~^{party} agrees that:

- 3.18. If CP wishes to dispute the Risk Valuation Agent's calculation of a Risk Valuation, CP shall notify the Risk Valuation Agent in writing in accordance with the Notice Procedures on or prior to the close of business on the Joint Business Day following the date on which CP was notified of such Risk Valuation. Such notice shall include CP's calculation of the Risk Valuations for all ~~Swaps~~^{SBSs} as of the relevant date for which the Risk Valuation Agent has provided Risk Valuations to CP, which must be calculated by CP acting in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.
- 3.19. If CP disputes the Risk Valuation Agent's calculation of a Risk Valuation and the ~~Parties~~^{parties} **have** agreed in writing (whether as part of the Agreement or otherwise) to a valuation dispute resolution process by which CSA Valuations are to be determined, then such process will be applied to resolve the dispute of such Risk Valuation (as if such dispute of a Risk Valuation were a dispute of a CSA Valuation, each ~~Swap~~^{SBS} that is the subject of the dispute were the only ~~Swap~~^{SBS} for which a CSA Valuation was being disputed, and CP was the disputing party).
- 3.20. If CP disputes the Risk Valuation Agent's calculation of a Risk Valuation and the ~~Parties~~^{parties} **have not** agreed in writing (whether as part of the Agreement or otherwise) to a valuation dispute resolution process by which CSA Valuations are to be determined, then the following process will apply in respect of the dispute of such Risk Valuation:
- a. the ~~Parties~~^{parties} will consult with each other in an attempt to resolve the dispute; and
 - b. if they fail to resolve the dispute in a timely fashion, then the Risk Valuation Agent will recalculate the Risk Valuation as of the Recalculation Date by seeking four actual quotations at mid-market from Reference Market-makers and taking the arithmetic average of those obtained; *provided that* if four quotations are not available, then fewer than four quotations may be used; and, if no quotations are available, then the Risk Valuation Agent's original Risk Valuation calculation will be used.

¹⁵- ~~CFTC Regulation 23.504(b)(4)(ii).~~

- 3.21. Following a recalculation pursuant to Section 3.7 of this ~~March 2013 DF Schedule 3~~SBS Risk Valuation Agreement, the Risk Valuation Agent will notify CP not later than the close of business on the Local Business Day of the Risk Valuation Agent following the date of such recalculation, and such recalculation shall be the Risk Valuation for the applicable Risk Valuation Date.

Part III. Relationship to Other Valuations

- 3.22. The ~~Parties~~parties agree and acknowledge that the process provided herein for the production and dispute of Risk Valuations is exclusively for determining the value of each relevant ~~Swap~~SBS for the purpose of compliance by ~~CFTC Swap Covered~~SBS Entity (or if each ~~Party~~party is a ~~CFTC Swap Covered~~SBS Entity, compliance by each ~~Party~~party) with risk management requirements under Section ~~4s15F~~(j) of the ~~CEA~~SEA. Failure by CP to dispute a Risk Valuation calculated by the Risk Valuation Agent does not constitute acceptance by CP of the accuracy of the Risk Valuation for any other purpose.
- 3.23. Resolution of any disputed Risk Valuation using a procedure specified in Part II of this ~~March 2013 DF Schedule 3~~SBS Risk Valuation Agreement is not binding on either ~~Party~~party for any purpose other than the ~~CFTC Swap Covered~~SBS Entity's compliance with risk management requirements under Section ~~4s15F~~(j) of the ~~CEA~~SEA. Each ~~Party~~party agrees that nothing in this ~~March 2013 DF Supplement~~SBS Appendix 2 providing for the calculation of Risk Valuations or for any right to dispute valuations in connection with such Risk Valuations shall affect any agreement of the ~~Parties~~parties regarding the calculation of CSA Valuations or disputes regarding CSA Valuations or constitute a waiver of any right to dispute a CSA Valuation. Any resolutions of disputes regarding CSA Valuations may be different from the resolutions of disputes regarding Risk Valuations. The ~~Parties~~parties acknowledge that the adoption of margin regulations under Section ~~4s15F~~(e) of the ~~CEA~~SEA may require additional agreements between the ~~Parties~~parties regarding the calculation of ~~Swap~~SBS valuations for purposes of such regulations and ~~CFTC Swap Covered~~SBS Entity's compliance with risk management requirements under Section ~~4s15F~~(j) of the ~~CEA~~SEA, and the ~~Parties~~parties' agreement to incorporate this ~~March 2013 DF Schedule 3~~SBS Risk Valuation Agreement in no way constitutes agreement to adopt the procedures provided herein with respect to the calculation of, or resolution of disputes regarding, margin valuations.
- 3.24. Notwithstanding anything to the contrary in this ~~March 2013 DF Supplement~~SBS Appendix 2, the ~~Parties~~parties may in good faith agree to any other procedure for (i) the calculation of Risk Valuations and/or (ii) the resolution of any dispute between them, in either case, whether in addition to or in substitution of the procedures set out in this ~~March 2013 DF Supplement~~SBS Appendix 2.

March 2013 DF Schedule 4
Portfolio Reconciliation⁺⁶¹⁰

~~This March 2013 DF Schedule 4 may be incorporated into an agreement between a CFTC Swap Entity and any other Party, including another CFTC Swap Entity.~~

~~If the Parties to an agreement have specified that this March 2013 DF Schedule 4 will be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this March 2013 DF Schedule 4 will be deemed to be a part of such agreement to the same extent as if this March 2013 DF Schedule 4 were restated therein in its entirety.~~

Part I. Required Reconciliation Dates

- 4.25. From time to time after the Applicable Portfolio Reconciliation Compliance Date, a ~~CFTC-Swap~~Covered SBS Entity may give to CP a notice (a “**Required Reconciliation Date Notice**”) in which such ~~CFTC-Swap~~Covered SBS Entity represents that it is (in such ~~CFTC-Swap~~Covered SBS Entity’s good faith belief) necessary for the ~~Parties~~parties to perform a Data Reconciliation in order for such ~~CFTC-Swap~~Covered SBS Entity to comply with the ~~March 2013 DF Supplement~~SBS Appendix 2 Rules regarding the frequency with which portfolio reconciliations are to be performed. A Required Reconciliation Date Notice will specify (i) the frequency with which such portfolio reconciliations are believed by the ~~CFTC-Swap~~Covered SBS Entity to be required, which may be “Daily,” “Weekly,” “Quarterly,” “Annually” or another frequency required by the ~~March 2013 DF Supplement~~SBS Appendix 2 Rules and (ii) if Section 4.2 is applicable, one or more Data Delivery Dates.

Part II. One-way Delivery of Portfolio Data

- 4.26. Subject to Section 4.5, if (i) one of the ~~Parties~~parties is not a ~~CFTC-Swap~~Covered SBS Entity and (ii) the ~~Parties~~parties have agreed in writing that on each Data Delivery Date ~~CFTC-Swap~~Covered SBS Entity will deliver Portfolio Data to CP and CP will review such data, then the following shall apply:
- a. The Required Reconciliation Date Notice will specify one or more Data Delivery Dates, *provided* that the first such date will be a day no earlier than the second Joint Business Day following the date on which such notice is given to CP, and *provided further*, that if, prior to the first such date, CP requests one or more different Data Delivery Dates, the relevant Data Delivery Dates will be as agreed by the ~~Parties~~parties.
 - b. On each Data Delivery Date, ~~CFTC-Swap~~Covered SBS Entity (or its agent) will provide Portfolio Data to CP (or its agent) for verification by

⁺⁶¹⁰ ~~CFTC Regulation 23.502(b)~~ See SEC Rule 240.15Fi-3 (SBS portfolio reconciliation).

CP. For purposes of this Section 4.2, Portfolio Data will be considered to have been provided to CP (and CP will be considered to have received such Portfolio Data) if it has been provided (i) in accordance with the Notice Procedures, or (ii) to a third-party service provider agreed to between the ~~CFTC-Swap~~Covered SBS Entity and CP for this purpose.

- c. On or as soon as reasonably practicable after each Data Delivery Date, and in any event not later than the close of business on the second Local Business Day of CP following the Data Delivery Date, CP will review the Portfolio Data delivered by ~~CFTC-Swap~~Covered SBS Entity with respect to each relevant ~~Swap~~SBS against its own books and records and Valuation for such ~~Swap~~SBS and notify ~~CFTC-Swap~~Covered SBS Entity whether it affirms the relevant Portfolio Data or has identified any Discrepancy. CP shall notify ~~CFTC-Swap~~Covered SBS Entity of all Discrepancies identified with respect to the Portfolio Data provided.
- d. If CP has notified ~~CFTC-Swap~~Covered SBS Entity of any Discrepancies in Portfolio Data in respect of any Material Terms or Valuations, then each ~~Party~~party agrees to consult with the other in an attempt to resolve all such Discrepancies in a timely fashion.

Part III. Exchange of Portfolio Data

4.27. Subject to Section 4.5, if (i) both ~~Parties~~parties are CFTC ~~Swap~~SBS Entities or (ii) the ~~Parties~~parties have agreed in writing that on each Data Delivery Date ~~CFTC-Swap~~Covered SBS Entity and CP will deliver Portfolio Data to each other, then, in either case, the following shall apply:

- a. The ~~Parties~~parties will negotiate in good faith to agree on one or more Data Delivery Dates that will comply with the Portfolio Reconciliation frequency specified in the Required Reconciliation Date Notice, *provided* that if the Required Reconciliation Date Notice specified that reconciliations are required Daily, each Joint Business Day shall be a Data Delivery Date.
- b. On each Data Delivery Date, each ~~Party~~party (or its agent) will provide Portfolio Data to the other ~~Party~~party. For the purposes of this Section 4.3, Portfolio Data will be considered to have been provided to the other ~~Party~~party (and the other ~~Party~~party will be considered to have received such Portfolio Data) if it has been provided (i) in accordance with the Notice Procedures, or (ii) to a third-party service provider agreed to between ~~CFTC-Swap~~Covered SBS Entity and CP for this purpose.
- c. On or as soon as reasonably practicable after each Data Delivery Date on which Portfolio Data is provided by each ~~Party~~party, either ~~Party~~party may perform a Data Reconciliation in respect of such Portfolio Data.

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- d. If (i) one of the ~~Parties~~parties is not a ~~CFTC-Swap~~Covered SBS Entity and (ii) either ~~Party~~party notifies the other ~~Party~~party of a Discrepancy in Portfolio Data in respect of either the Material Terms of a ~~Swap~~SBS or its Valuation, then each ~~Party~~party agrees to consult with the other in an attempt to resolve the Discrepancy in a timely fashion.
 - e. If (i) both ~~Parties~~parties are CFTC ~~Swap~~SBS Entities and (ii) either ~~Party~~party notifies the other ~~Party~~party of a Discrepancy in Portfolio Data in respect of the Material Terms of a ~~Swap~~SBS, then each ~~Party~~party agrees to consult with the other in an attempt to resolve such Discrepancy immediately.
 - f. If (i) both ~~Parties~~parties are CFTC ~~Swap~~SBS Entities and (ii) either ~~Party~~party notifies the other ~~Party~~party of a Discrepancy in Portfolio Data in respect of Valuations, then each ~~Party~~party agrees to consult with the other in an attempt to resolve such Valuation Discrepancy as soon as possible, but in any event within five Joint Business Days.

Part IV. Valuation Differences Below the Discrepancy Threshold Amount

- 4.28. The ~~Parties~~parties hereby agree that a difference in Valuations in respect of a ~~Swap~~SBS that is less than the Discrepancy Threshold Amount shall not be deemed a “discrepancy” for purposes of ~~CFTC Regulation 23.502~~SEC Rule 15Fi-3 and neither ~~Party~~party shall be required under this ~~March 2013 DF Schedule 4~~SBS Portfolio Reconciliation Agreement to notify the other ~~Party~~party of such a difference or consult with the other ~~Party~~party in an attempt to resolve such a difference..

Part V. Reconciliation Against ~~SDR~~SBS~~DR~~ Data

- 4.29. If the ~~Parties~~parties have agreed in writing to reconcile their books and records of ~~Swaps~~SBSs between the ~~Parties~~parties against ~~SDR~~SBS~~DR~~ Data in order to facilitate satisfaction of the requirements of ~~CFTC Regulation 23.502~~SEC Rule 15Fi-3 then the following shall apply:
- a. On or as soon as practicable following a Data ~~Exchange~~Delivery Date,¹¹ each ~~Party~~party shall perform a Data Reconciliation against ~~SDR~~SBS~~DR~~ Data to the extent that such ~~SDR~~SBS~~DR~~ Data relates to Material Terms that would otherwise be delivered by the other ~~Party~~party as Portfolio Data. To the extent that either party does not have access to such ~~SDR~~SBS~~DR~~ Data or determines that it is not technologically or operationally practical for such ~~Party~~party to obtain such data from the relevant ~~SDR~~SBS~~DR~~ in a manner that permits the conduct of a timely

¹¹ Per footnote 81 of the Annotated March 2013 Supplement, the version of the Supplement published March 22, 2013 used the incorrect term “Data Exchange Date”—the term that should have been included is “Data Delivery Date.”

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Data Reconciliation in accordance with the applicable time periods specified in Section 4.2 or 4.3, such ~~Party~~party shall notify the other ~~Party~~party by or as soon as practicable after the relevant Data ~~Exchange~~Delivery Date.¹²

- b. Notwithstanding Sections 4.2 and 4.3, neither ~~Party~~party shall be obligated to deliver Portfolio Data to the other ~~Party~~party on a Data Delivery Date to the extent that such Portfolio Data consists of Material Terms data reported to an ~~SDR~~SBS~~DR~~, *provided, however*, that if a ~~Party~~party has notified the other ~~Party~~party that it is not able to conduct a timely Data Reconciliation against corresponding ~~SDR~~SBS~~DR~~ Data as provided in Section 4.5(a), the ~~Parties~~parties shall provide for the delivery of the relevant Portfolio Data as provided in Section 4.2(b) or 4.3(b), as applicable, as soon as reasonably practicable.
- c. If either ~~Party~~party identifies a Discrepancy in ~~SDR~~SBS~~DR~~ Data, such ~~Party~~party shall immediately notify the other ~~Party~~party of such Discrepancy. Each ~~Party~~party agrees to consult with the other in an attempt to resolve any such Discrepancy immediately (if both ~~Parties~~parties are CFTC ~~Swap~~SBS Entities) or in a timely fashion (if one ~~Party~~party is not a ~~CFTC Swap~~Covered SBS Entity).
- d. Each ~~Party~~party agrees to notify the other ~~Party~~party, upon reasonable request, of (i) the ~~SDRs~~SBS~~DRs~~ to which such ~~Party~~party has reported Material Terms data with respect to ~~Swaps~~SBSs between the ~~Parties~~parties and (ii) any changes as to the particular ~~SDRs~~SBS~~DRs~~ at which data may be accessed.
- e. A ~~Party~~party may terminate this Section 4.5 with the effect that this Section 4.5 shall have no further force and effect and the ~~Parties~~parties will each be released and discharged from all further obligations under this Section 4.5 by delivering written notice in accordance with the Notice Procedures to the other ~~Party~~party that it is terminating this Section 4.5 as of the effective date of such notice. The ~~Parties~~parties agree that the effective date of any such notice is the second Joint Business Day following the date on which such notice is delivered in accordance with the Notice Procedures.

Part VI. Other Portfolio Reconciliation Procedures

- 4.30. In the event that the ~~Parties~~parties have agreed to multiple Data Delivery Dates with a frequency specified in a Required Reconciliation Date Notice, the ~~CFTC Swap~~Covered SBS Entity that delivered such notice shall notify Counterparty if,

¹² Per footnote 81 of the Annotated March 2013 Supplement, the version of the Supplement published March 22, 2013 used the incorrect term “Data Exchange Date”—the term that should have been included is “Data Delivery Date.”

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at any time during the period that such Data Delivery Dates are in effect, it is no longer required by the ~~March 2013 DF Supplement~~SBS Appendix 2 Rules to conduct portfolio reconciliations with the specified frequency. Such notice shall specify (i) the new frequency with which portfolio reconciliations are believed by the ~~CFTC Swap Covered~~ SBS Entity to be required, which may be “Daily,” “Weekly,” “Quarterly,” “Annually” or another frequency required by the ~~March 2013 DF Supplement~~SBS Appendix 2 Rules and (ii) if Section 4.2 is applicable, one or more new Data Delivery Dates. Upon delivery of such a notice, the ~~Parties~~parties’ obligations to deliver Portfolio Data on the previously agreed Data Delivery Dates shall terminate, and such notice shall be a new Required Reconciliation Date Notice for purposes of Sections 4.2 and 4.3.

- 4.31. Notwithstanding anything to the contrary in this ~~March 2013 DF Supplement~~SBS Appendix 2, the ~~Parties~~parties may in good faith agree to any other procedure for (i) the exchange, delivery and/or reconciliation of Portfolio Data, and/or (ii) the resolution of any discrepancy between them, in either case, whether in addition to or in substitution of the procedures set out in this ~~March 2013 DF Supplement~~SBS Appendix 2. Nothing in this ~~March 2013 DF Schedule 4~~SBS Portfolio Reconciliation Agreement shall prejudice any right of dispute or right to require reconciliation that either ~~Party~~party may have under Applicable Law, any term of the Agreement other than in this ~~March 2013 DF Schedule 4~~SBS Portfolio Reconciliation Agreement, or any other agreement.

In order to minimize operational burdens, the parties will use reasonable commercial efforts to coordinate the timing of reconciliations with respect to swaps with reconciliations with respect to SBS hereunder to the extent permitted under applicable law.

Elections. Each party’s elections (if any) relating to the following items of the March 2013 Questionnaire will be applicable for purposes of terms added to SBS Appendix 2 including the SBS Risk Valuation Agreement and SBS Portfolio Reconciliation Agreement as relevant (whether provided through delivery of such questionnaire or otherwise): Part II, Questions 6, 7 and 8; and Part III, Questions 1, 3(b) and 3(c).

(a) **Scope.** This Master Agreement will govern any Swap or SBS between the parties that is entered into on or after the date hereof that is (i) not governed by an Existing Swap or SBS Agreement, and (ii) in the case of Swaps, not intended by the parties to be cleared on a clearing organization. An “Existing Swap or SBS Agreement” means, in respect of a Swap or SBS, a written agreement that (i) exists at the time of execution of such Swap or SBS, (ii) provides for, among other things, terms governing the payment obligations of the parties, and (iii) the parties have established (by written agreement, oral agreement, course of conduct or otherwise) will govern such Swap or SBS. This Master Agreement will not govern any Swap or SBS that is governed by an Existing Swap or SBS Agreement, or any Swap intended by the parties to be cleared on a clearing organization.

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(b) ***Swaps.*** For purposes of this Master Agreement, the term “Swap” means a “swap” as defined in Section 1a(47) of the Commodity Exchange Act, as amended (“CEA”), and regulations thereunder and the term “SBS” means a “security-based swap” as defined in Section 3(a)(68) of the Securities Exchange Act of 1934, as amended, and regulations thereunder; provided that a commodity option entered into pursuant to Commodity Futures Trading Commission Regulation 32.3(a) is not a Swap for purposes hereof. The term “Swap” also includes any foreign exchange swaps and foreign exchange forwards that are exempted from regulation as “swaps” by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the CEA. For the avoidance of doubt, the term “Swap” does not include a swap that has been cleared by a derivatives clearing organization.