



International Swaps and Derivatives Association, Inc.

## ISDA 2021 SBS PROTOCOL AGREEMENT

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by the International Swaps and Derivatives Association, Inc.  
**Annotated in Red as of December 14, 2021**

**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 PROTOCOL AGREEMENT 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 Protocol Agreement (this “**Protocol Agreement**”) to enable parties to enter into ISDA SBS Protocol Master Agreements (as defined below) and/or supplement the terms of Protocol Covered Agreements (as defined below) by incorporating therein selected portions of the ISDA SBS Protocol Supplement I (the “**SBS Supplement I**”) and/or the ISDA SBS Protocol Supplement II (the “**SBS Supplement II**” and, together with SBS Supplement I, the “**SBS Supplements**”), each published on the date hereof.

### 1. Use of Protocol

- (a) A person who adheres to this Protocol Agreement (a “**Protocol Participant**”) in the manner set forth in Paragraph 2 may use the terms of this Protocol Agreement to supplement one or more Protocol Covered Agreements by exchanging the ISDA SBS Protocol Questionnaire I (“**SBS Questionnaire I**”), substantially in the form of Exhibit 2 hereto, and/or the ISDA SBS Protocol Questionnaire II (“**SBS Questionnaire II**” and, together with SBS Questionnaire I, the “**SBS Questionnaires**”), substantially in the form of Exhibit 3 hereto, or, for either SBS Questionnaire, the form provided on ISDA Amend, in respect of such Protocol Covered Agreements in the manner set forth in Paragraph 3.<sup>1</sup> This Protocol

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<sup>1</sup> Note that this Protocol packages two separate Questionnaire/Supplement pairs together under this protocol agreement—effectively allowing for two separate sets of amendments to be made to relationship documentation. In rough terms, the first Questionnaire/Supplement pair parallels the subject matter covered in the ISDA August 2012 DF Protocol and the second Questionnaire/Supplement pair parallels the subject matter

Agreement may also be used by a Protocol Participant to enter into new Protocol Covered Agreements in the form of a 2002 ISDA Master Agreement with a Schedule as specified below (an “**ISDA SBS Protocol Master Agreement**”) by exchanging SBS Questionnaire II with another Protocol Participant in the manner specified in Paragraph 3. As described below, a Protocol Participant may be either a principal or an agent in respect of a Protocol Covered Agreement.

- (b) “**Protocol Covered Agreement**” means, with respect to two parties, (i) an ISDA SBS Protocol Master Agreement or (ii) any other written agreement between such parties that governs the terms and conditions of one or more SBS that each such party has or may enter into as principal and (A) has been entered into on or prior to the applicable SBS Implementation Date or (B) otherwise has been designated in writing by such parties to be a Protocol Covered Agreement for purposes of this Protocol Agreement.<sup>2</sup> “**PCA Principal**” means a party who is or may become a principal to one or more SBS under a Protocol Covered Agreement. “**PCA Agent**” means a party who has executed a Protocol Covered Agreement as agent on behalf of one or more PCA Principals.
- (c) A Protocol Covered Agreement may have been executed directly by a PCA Principal or by a PCA Agent. In the case of a Protocol Covered Agreement executed by a PCA Principal, only such PCA Principal may supplement such Protocol Covered Agreement pursuant to this Protocol Agreement. In the case of a Protocol Covered Agreement executed by a PCA Agent on behalf of one or more PCA Principals, only such PCA Agent may supplement such Protocol Covered Agreement on behalf of the relevant PCA Principal(s) pursuant to this Protocol Agreement (even if any such PCA Principal is also a Protocol Participant in respect of one or more other Protocol Covered Agreements).<sup>3</sup>
- (d) An ISDA SBS Protocol Master Agreement may be entered into pursuant to this Protocol Agreement by a PCA Principal or a PCA Agent. The capacity in which a Protocol Participant enters into an ISDA SBS Protocol Master Agreement

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covered in the ISDA March 2013 DF Protocol, though certain provisions have been relocated to Supplement II or duplicated so that they appear in both Supplements in order to group together provisions that are deemed to be “entity-level” requirements by the SEC within Supplement II.

<sup>2</sup> Note that coverage of the Protocol is not limited to ISDA Master Agreements, and the Protocol 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. In addition, this provision is intended to allow parties who have previously “matched” SBS Questionnaires to designate agreements entered into after such matching as Protocol Covered Agreements amended by this Protocol.

<sup>3</sup> An SBS counterparty who has entered into an agreement governing SBS (such as an ISDA Master Agreement) directly with a counterparty is referred to in the Protocol as the “PCA Principal.” If that same party enters into SBS through an agent (such as an investment manager) under an agreement entered into by that agent, the agent is referred to as the “PCA Agent.” Often, a PCA Agent will enter into an “umbrella agreement” with an SBS under which the PCA Agent may enter into SBS on behalf of one or more PCA Principals that it represents. The Protocol differentiates between PCA Principals and PCA Agents to enable an SBS to identify the agreements that are modified via the Protocol (e.g., only a PCA Agent may use the Protocol to modify an “umbrella agreement” previously entered into by such agent).

pursuant to this Protocol Agreement is the same as the capacity in which it completes a Matched Questionnaire (as defined below).

## 2. Adherence Letters

- (a) Adherence to this Protocol Agreement will be evidenced by the execution and online delivery, in accordance with this Paragraph 2, by a Protocol Participant 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 Agreement, whether as PCA Principal or PCA Agent, or both, shall submit, using an online form, a single Adherence Letter to ISDA pursuant to this Paragraph 2. ISDA will have the right, in its sole and absolute discretion, upon 30 calendar days’ notice on the “ISDA 2021 SBS Protocol” section of its website at [www.isda.org](http://www.isda.org) (or by other suitable means), to designate a closing date of the adherence period for 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 Agreement.
- (b) Each Protocol Participant executing an Adherence Letter will access the “Protocol Management” section of the ISDA website at [www.isda.org](http://www.isda.org) to enter information online that is required to generate its form of Adherence Letter and will submit payment of any applicable fee. Either by directly downloading the populated Adherence Letter from the Protocol Management system or upon receipt via e-mail of the populated Adherence Letter, each Protocol Participant will print, sign and upload the signed Adherence Letter as a PDF (portable document format) attachment into the Protocol Management system. Once the signed Adherence Letter has been approved and accepted by ISDA, the Protocol Participant will receive an e-mail confirmation of the Protocol Participant’s adherence to this Protocol Agreement.
- (c) ISDA will publish, so that it may be viewed by all Protocol Participants, a conformed copy of each Adherence Letter containing, in place of each signature, the printed or typewritten name of each signatory.
- (d) Each Protocol Participant executing and submitting an Adherence Letter 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.
- (e) Each Protocol Participant agrees that the date and time of acceptance of any Adherence Letter will be determined by ISDA in its absolute discretion.

### 3. Questionnaires<sup>4</sup>

- (a) An SBS Questionnaire will only be deemed to be executed and submitted by a Protocol Participant who has executed and submitted an Adherence Letter. A Protocol Participant who wishes to enter into or supplement Protocol Covered Agreements with multiple counterparties may (but is not required to) execute multiple SBS Questionnaires in order to deliver different SBS Questionnaires to different counterparties pursuant to this Paragraph 3; *provided* that a Protocol Participant who is a PCA Principal may not deliver more than one of each of SBS Questionnaire I and SBS Questionnaire II to the same Protocol Participant, and a Protocol Participant who is a PCA Agent may not deliver more than one of each of SBS Questionnaire I and SBS Questionnaire II to the same Protocol Participant on behalf of a single PCA Principal.
- (b) A Protocol Participant may extend an offer to enter into and/or supplement Protocol Covered Agreements by executing either or both SBS Questionnaires and delivering such SBS Questionnaire(s) to another Protocol Participant in the manner set forth in this Paragraph 3. If and when (i) a Protocol Participant receiving an executed SBS Questionnaire I also delivers an executed SBS Questionnaire I to the offering Protocol Participant, the two relevant Protocol Participants will be deemed to have offered and accepted the offer to supplement Protocol Covered Agreements, or (ii) a Protocol Participant receiving an executed SBS Questionnaire II also delivers an executed SBS Questionnaire II to the offering Protocol Participant, the two relevant Protocol Participants will be deemed to have offered and accepted the offer to enter into an ISDA SBS Protocol Master Agreement and supplement such agreement and their Protocol Covered Agreements, in each case if and to the extent set forth in Paragraphs 4 and 5, as applicable.
- (c) For purposes of this Protocol Agreement, each such Protocol Covered Agreement is referred to as a “**Matched PCA**,” the PCA Principals thereto are referred to together as “**Matched PCA Parties**,” the executed SBS Questionnaire I forms delivered by or on behalf of the Matched PCA Parties in respect of the relevant Matched PCA are referred to together as “**Matched SBS I Questionnaires**,” and the executed SBS Questionnaire II forms delivered by or on behalf of the Matched PCA Parties in respect of the relevant Matched PCA are referred to together as “**Matched SBS II Questionnaires**” (together with Matched SBS I Questionnaires, “**Matched Questionnaires**”). For the avoidance of doubt, if a PCA Agent has not delivered an SBS Questionnaire on behalf of a particular PCA Principal, such PCA Agent will not have entered into or supplemented any

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<sup>4</sup> In order to incorporate provisions of the Supplements into agreements between an SBS D and a counterparty, the Protocol requires the exchange of Questionnaires as described below. Information made public on ISDA’s website allows a Protocol Participant to identify other parties with whom it may wish to exchange Questionnaires as well as the method by which such other parties will accept delivery of Questionnaires. The exchange may be effected via ISDA Amend as well as by email or using other methods.

Protocol Covered Agreement on behalf of such PCA Principal pursuant to this Protocol Agreement even if the PCA Agent has delivered an SBS Questionnaire in respect of other PCA Principals.<sup>5</sup>

- (d) For purposes of this Protocol Agreement, when a Protocol Participant delivers an SBS Questionnaire to another Protocol Participant, each PCA Principal on whose behalf such SBS Questionnaire is delivered is referred to as a “**Delivering PCA Principal**.” Delivery of an SBS Questionnaire by a PCA Agent in the manner set forth in this Paragraph 3 will be deemed to be delivery by each Delivering PCA Principal identified by the PCA Agent in such SBS Questionnaire. Delivery of a Questionnaire to a PCA Agent in the manner set forth in this Paragraph 3 will be deemed to be delivery by a relevant Delivering PCA Principal (i) to each PCA Principal on whose behalf the PCA Agent has entered into a Protocol Covered Agreement with such Delivering PCA Principal or (ii) if there is no existing Protocol Covered Agreement with respect to a Delivering PCA Principal, to each PCA Principal identified in the reciprocal SBS Questionnaire delivered by the PCA Agent to such Delivering PCA Principal.
- (e) Delivery of an SBS Questionnaire must be made in the manner described in this Paragraph 3 not later than the 30th calendar day following the Adherence Cut-off Date (the “**Matching Cut-off Date**”). Delivery of an SBS Questionnaire to a Protocol Participant shall be effective if delivered in a manner specified by such Protocol Participant in its Adherence Letter. In addition, without regard to the election that a Protocol Participant has made in its Adherence Letter, if such Protocol Participant has taken all steps necessary to establish the ability to receive an SBS Questionnaire via ISDA Amend, delivery of a Questionnaire to such Protocol Participant via ISDA Amend shall be effective.
- (f) In using this Protocol Agreement to enter into and/or supplement Matched PCAs, a Protocol Participant may not specify additional provisions, conditions or limitations in its Questionnaire, except as expressly provided therein.

#### 4. ISDA SBS Protocol Master Agreement<sup>6</sup>

Every pair of Matched PCA Parties that have elected in their Matched SBS II Questionnaires to enter into an ISDA SBS Protocol Master Agreement<sup>7</sup> will be deemed to have entered into such

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<sup>5</sup> See *supra* note 3

<sup>6</sup> The ISDA SBS Protocol Master Agreement is an ISDA Master Agreement that will govern uncleared SBS that are not otherwise governed by a written agreement. Its purpose is to provide SBS trading relationship documentation intended to be compliant with SEC Rule 15Fi-5 in situations in which the parties have not otherwise provided for such documentation, such as where the parties have historically relied on the use of post-execution “long-form” confirmations or have not required pre-execution “relationship” documentation for relatively simple or short-dated trades. The Schedule for this agreement which is provided herein is intentionally minimalistic in order to provide terms that would be suitable for a wide variety of transaction types. Parties may supplement the Schedule on a bilateral basis to suit their particular business needs if so desired.

<sup>7</sup> A party may make such an election in Part III, Question 6(a) of the SBS II Questionnaire.

agreement as of the date on which at least one Matched PCA Party is registered (on an ongoing basis or conditionally) with the U.S. Securities and Exchange Commission (“SEC”) as a (1) “securities-based swap dealer,” as defined in Section 3(a)(71) of the Securities Exchange Act of 1934, as amended (the “SEA”), and SEC Rule 3a71-1 thereunder, or (2) “major security-based swap participant” as defined in Section 3(a)(67) of the SEA and SEC Rule 3a67-1 thereunder, as applicable. Matched PCA Parties will also be deemed to have agreed that the following constitutes the Schedule (as such term is used in the ISDA SBS Protocol Master Agreement) to such agreement:

- (a) **Scope.** This Master Agreement will govern any SBS between the parties that is entered into on or after the date hereof that is (i) not governed by an Existing SBS Agreement and (ii) not executed anonymously on a national securities exchange or security-based swap execution facility and intended by the parties to be cleared by a clearing agency. An “**Existing SBS Agreement**” means, in respect of an SBS, a written agreement that (i) exists at the time of execution of such 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 SBS. This Master Agreement will not govern any SBS that is governed by an Existing SBS Agreement.<sup>8</sup>
- (b) **SBS.** For purposes of this Master Agreement, the term “**SBS**” means a “security-based swap” as defined in Section 3(a)(68) of the SEA and the SEC Rules thereunder. For the avoidance of doubt, the term “SBS” does not include an SBS that has been cleared by a clearing agency.
- (c) **Governing Law.** This Master Agreement will be governed by and construed in accordance with the laws of the State of New York (without reference to choice of law doctrine), unless otherwise agreed by the parties.
- (d) **Netting of Payments.** Except as otherwise agreed by the parties in writing, “Multiple Transaction Payment Netting” will not apply for the purposes of Section 2(c) of this Master Agreement.
- (e) **SBS Questionnaire I.** If both parties hereto previously delivered “Matched SBS I Questionnaires” (as defined in the ISDA 2021 SBS Protocol Agreement, as published on May 3, 2021, by ISDA (the “**SBS Protocol Agreement**”)), then this

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<sup>8</sup> The purpose of this provision is to ensure that the SBS Protocol Master Agreement applies to trades only when it is needed to fill a gap because other SBS trading relationship documentation is not available. When such other documentation is available, virtually any means of establishing that such other documentation governs a transaction is sufficient to establish that the SBS Protocol Master Agreement will not apply. In addition, this provision establishes that the SBS Protocol Master Agreement does not govern transactions that are executed anonymously on an exchange or SBSEF that the parties intend to clear, as an ISDA Master Agreement may not be necessary or desired by the parties in such circumstances. See SEC Rule 15Fi-5(a)(1)(i).



Master Agreement shall be supplemented to the same extent as if it were a “Matched PCA” under the SBS Protocol Agreement.<sup>9</sup>

## 5. Incorporation of SBS Supplements into Matched PCAs

- (a) Incorporation of SBS I Schedules. Subject to Paragraph 5(d) hereof, every pair of Matched PCA Parties that has delivered Matched SBS I Questionnaires will be deemed to have supplemented each Matched PCA as of the SBS I Implementation Date by incorporating therein SBS I Schedules 1 and 2 and any other applicable SBS I Schedules, as follows:
- (i) with respect to SBS I Schedule 3, if (i) both of such Matched PCA Parties have agreed in the Matched SBS I Questionnaires to incorporate such SBS I Schedule into such Matched PCA, and (ii) with respect to any Matched PCA Party who has represented that it has a Designated Evaluation Agent, each such Designated Evaluation Agent has countersigned such SBS Questionnaire I to make the representations and agreements applicable to it; and<sup>10</sup>
  - (ii) with respect to any of SBS I Schedules 4, 5, and 6, if (i) both of such Matched PCA Parties have agreed in the Matched SBS I Questionnaires to incorporate such SBS I Schedule into such Matched PCA and (ii) with respect to any Matched PCA Party who is a Special Entity, each Designated QIR (in the case of SBS I Schedule 4) or Designated Fiduciary (in the case of SBS I Schedules 5 and 6) of such Special Entity has countersigned such SBS Questionnaire I to make the representations and agreements applicable to it.<sup>11</sup>
- (b) Incorporation of SBS II Schedules. Subject to Paragraph 5(d) hereof, every pair of Matched PCA Parties that has delivered Matched SBS II Questionnaires will be deemed to have supplemented each Matched PCA as of the SBS II Implementation Date by incorporating therein SBS II Schedules 1 and 2 and any other applicable SBS II Schedules, as follows:

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<sup>9</sup> Because the ISDA SBS Protocol Master Agreement is produced through the use of SBS Questionnaire II (which may be used after SBS Questionnaire I), this provision is included to ensure that the order in which parties match on SBS Questionnaires doesn't inadvertently cause lack of coverage.

<sup>10</sup> As described in the annotations to SBS Supplement I, a counterparty who designates a “Designated Evaluation Agent” for purposes of SBS I Schedule 3 must arrange for each Designated Evaluation Agent to make the representations and agreements set forth in that Schedule. Please note that CP is not required to designate a “Designated Evaluation Agent” to enter into SBS I Schedule 3, provided that CP can make the representations about itself in Part II of SBS I Schedule 3. In addition, please note that the term “Designated Evaluation Agent” is defined to exclude an employee of the CP.

<sup>11</sup> As described in the annotations to SBS Supplement I, a Special Entity who wishes to incorporate the safe harbor provisions of SBS I Schedule 4, 5 or 6 must arrange for each Designated Fiduciary or Designated QIR to make the representations and agreements set forth in the applicable Schedule.

- (i) such Matched PCA Parties will be deemed to have supplemented their Matched PCAs by incorporating SBS II Schedule 3 if (A) each Matched PCA Party is a Covered SBS Entity<sup>12</sup> or has indicated in its Matched SBS II Questionnaire that it is, to the best of its knowledge, a Financial Counterparty (or both),<sup>13</sup> or (B) the Matched PCA Party that is not a Covered SBS Entity has elected in its Matched SBS II Questionnaire to supplement its Matched PCAs by incorporating SBS II Schedule 3 or has failed to respond to the question, “Does PCA Principal agree to SBS II Schedule 3”,<sup>14</sup> and
  - (ii) such Matched PCA Parties will be deemed to have supplemented their Matched PCAs by incorporating SBS II Schedule 4 unless one Matched PCA Party is a Non-Covered SBS Entity who has elected in its Matched SBS II Questionnaire not to supplement its Matched PCAs by incorporating SBS II Schedule 4.<sup>15</sup>
- (c) Terms of Data Reconciliation. With respect to a pair of Matched PCA Parties that have elected to supplement Matched PCAs by incorporating SBS II Schedule 4, data reconciliation shall be conducted as follows:
- (i) *Two Covered SBS Entities.* If both Matched PCA Parties are Covered SBS Entities, then the Matched PCA Parties will be deemed to have agreed that Data Reconciliations will be conducted by the delivery of Portfolio Data by each Matched PCA Party pursuant to Part III of SBS II Schedule 4;
  - (ii) *Review.* If one Matched PCA Party is a Non-Covered SBS Entity who has elected in its Matched Questionnaire<sup>16</sup> to engage in portfolio reconciliation in accordance with Part II of SBS II Schedule 4, then the Matched PCA Parties will be deemed to have agreed that Data Reconciliations will be conducted by the delivery of Portfolio Data by the Covered SBS Entity and the review of such data by the Non-Covered SBS Entity pursuant to Part II of SBS II Schedule 4;
  - (iii) *Exchange.* If one Matched PCA Party is a Non-Covered SBS Entity who has elected in its Matched SBS II Questionnaire<sup>17</sup> to engage in portfolio reconciliation in accordance with Part III of SBS II Schedule 4, then the Matched PCA Parties will be deemed to have agreed that Data Reconciliations will be conducted by the delivery of Portfolio Data by each Matched PCA Party pursuant to Part III of SBS II Schedule 4; and

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<sup>12</sup> A party may make such an election in Part II, Question 2 of SBS Questionnaire II.

<sup>13</sup> A party may make such an election in Part II, Question 4 of SBS Questionnaire II.

<sup>14</sup> See Part III, Question 2 of SBS Questionnaire II.

<sup>15</sup> A party may make such an election in Part III, Question 4(a) of SBS Questionnaire II.

<sup>16</sup> A party may make such an election in Part III, Question 4(b) of SBS Questionnaire II.

<sup>17</sup> A party may make such an election in Part III, Question 4(b) of SBS Questionnaire II.



- (iv) *SBSDR Data*. If one Matched PCA Party is a Non-Covered SBS Entity and both Matched PCA Parties have elected in their Matched SBS II Questionnaires<sup>18</sup> to reconcile relevant terms of SBS in accordance with Part V of SBS II Schedule 4, then Part V of SBS II Schedule 4 shall apply, provided if either party has terminated Part V of SBS II Schedule 4 pursuant to Section 4.5(e) of such Schedule, thereafter Data Reconciliations will be conducted by the delivery of Portfolio Data by the Covered SBS Entity and the review of such data by the Non-Covered SBS Entity pursuant to Part II of SBS II Schedule 4.
- (d) Conditions on Obligations.<sup>19</sup> Each pair of Matched PCA Parties agrees that performance of the obligations of the Matched PCA Parties under any provision of the SBS Supplements that has been incorporated into their Matched PCAs shall be subject to the following conditions precedent:
  - (i) with respect to SBS Supplement I, at least one Matched PCA Party is registered (on an ongoing basis or conditionally) with the SEC as a (1) “securities-based swap dealer,” as defined in Section 3(a)(71) of the SEA and SEC Rule 3a71-1 thereunder; and
  - (ii) with respect to SBS Supplement II, at least one Matched PCA Party is registered (on an ongoing basis or conditionally) with the SEC as a (1) “securities-based swap dealer,” as defined in Section 3(a)(71) of the SEA and SEC Rule 3a71-1 thereunder, or (2) “major security-based swap participant” as defined in Section 3(a)(67) of the SEA and SEC Rule 3a67-1 thereunder, as applicable.

## 6. Effectiveness

- (a) The agreement to enter into and/or supplement a Matched PCA on the terms and conditions set forth in this Protocol Agreement, Matched SBS I Questionnaires and SBS Supplement I, will, as between any two Matched PCA Parties, be effective as of the date on which the later of the two Matched PCA Parties delivered its executed SBS Questionnaire I in accordance with Paragraph 3 (such date, the “**SBS I Implementation Date**”).
- (b) The agreement to enter into and/or supplement a Matched PCA on the terms and conditions set forth in this Protocol Agreement, Matched SBS II Questionnaires and SBS Supplement II, will, as between any two Matched PCA Parties, be effective as of the date on which the later of the two Matched PCA Parties delivered its executed SBS Questionnaire II in accordance with Paragraph 3 (such date, the “**SBS II Implementation Date**”).

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<sup>18</sup> A party may make such an election in Part III, Question 4(c) of SBS Questionnaire II.

<sup>19</sup> This paragraph was included to facilitate entry into the Protocol and the matching of SBS Questionnaires prior to the registration deadline for SBSDs so that they can have compliant documentation in place immediately upon registration.

- (c) This Protocol Agreement 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 or as otherwise provided by applicable law.
  - (i) In adhering to this Protocol Agreement, a party may not specify additional provisions, conditions or limitations in its Adherence Letter; and
  - (ii) Any purported adherence that ISDA, as agent, determines in good faith is not in compliance with this Protocol Agreement will be void and ISDA will inform the relevant parties of such fact as soon as reasonably possible after making such determination and will remove the party's Adherence Letter from the ISDA website.

## 7. Representations and Agreements

- (a) Representations by a PCA Principal. In the case of a Protocol Participant who is a PCA Principal in respect of a Matched Questionnaire and Matched PCA, the PCA Principal represents to the other PCA Principal that is party to such Matched PCA that, as of the SBS I Implementation Date, where such parties have delivered Matched SBS I Questionnaires, and as of the SBS II Implementation Date, where such parties have delivered Matched SBS II Questionnaires:
  - (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 a Matched PCA, has such status;
  - (ii) **Powers**. It has the power to execute and deliver the Adherence Letter and the relevant Matched Questionnaire and to perform its obligations under the Adherence Letter, this Protocol Agreement, the relevant Matched Questionnaire and each Matched PCA with respect to such Matched Questionnaire (as supplemented by this Protocol Agreement) 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) **Credit Support**. Such execution, delivery and performance 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 Matched PCA;

- (v) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to the Adherence Letter, this Protocol Agreement, the relevant Matched Questionnaire and each Matched PCA in respect of such Matched Questionnaire (as supplemented by this Protocol Agreement) have been obtained and are in full force and effect, and all conditions of any such consents have been complied with; and
  - (vi) **Obligations Binding.** Its obligations under the Adherence Letter, this Protocol Agreement, the relevant Matched Questionnaire and each Matched PCA in respect of such Matched Questionnaire (as supplemented by this Protocol Agreement) 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)).
- (b) Representations by a PCA Agent. In the case of a Protocol Participant who is a PCA Agent acting on behalf of a Delivering PCA Principal in respect of a Matched Questionnaire and Matched PCA, the PCA Agent represents to the other PCA Principal that is party to such Matched PCA that, as of the SBS I Implementation Date, where such parties have delivered Matched SBS I Questionnaires, and as of the SBS II Implementation Date, where such parties have delivered Matched SBS II Questionnaires:
- (i) **Status.** Each of the Delivering PCA Principal and the PCA 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 a Matched PCA, has such status;
  - (ii) **Powers.** The Delivering PCA Principal has the power to execute and deliver each Matched PCA (as supplemented by this Protocol Agreement) and to perform its obligations thereunder and has taken all necessary action to authorize such execution, delivery and performance. The PCA Agent has the power to execute and deliver the Adherence Letter and the relevant Matched Questionnaire and to perform its obligations under the Adherence Letter, this Protocol Agreement, the relevant Matched Questionnaire and each Matched PCA in respect of such Matched Questionnaire (as supplemented by this Protocol Agreement) and has taken all necessary action to authorize such execution, delivery and performance. The PCA Agent has all necessary authority to enter into the Adherence Letter, this Protocol Agreement and the relevant Matched Questionnaire on behalf of the Delivering PCA Principal and has in its files a written agreement or power of attorney authorizing it to act on the Delivering PCA Principal's behalf in respect thereof;

- (iii) ***No Violation or Conflict.*** Such execution, delivery and performance by the Delivering PCA Principal and the PCA Agent, respectively, 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) ***Credit Support.*** Such execution, delivery and performance will not, in and of itself, adversely affect the enforceability, effectiveness or validity of any obligations owed, whether by the Delivering PCA Principal or by any Third Party, under any Credit Support Document in respect of its obligations relating to any Matched PCA;
  - (v) ***Consents.*** All governmental and other consents that are required to have been obtained by the Delivering PCA Principal or the PCA Agent with respect to the Adherence Letter, this Protocol Agreement, the relevant Matched Questionnaire, and each Matched PCA in respect of such Matched Questionnaire (as supplemented by this Protocol Agreement) have been obtained and are in full force and effect, and all conditions of any such consents have been complied with; and
  - (vi) ***Obligations Binding.*** The respective obligations of the Delivering PCA Principal and the PCA Agent under the Adherence Letter, this Protocol Agreement, the relevant Matched Questionnaire and each Matched PCA in respect of such Matched Questionnaire (as supplemented by this Protocol Agreement) 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)).
- (c) Agreements by Matched PCA Parties. Each Matched PCA Party agrees with the other Matched PCA Party that:
- (i) such other Matched PCA Party shall be a "Covered SBS Entity" for purposes of SBS Supplement I if such other Matched PCA Party has elected to be a "Covered SBS Entity" in its Matched SBS I Questionnaire;
  - (ii) such other Matched PCA Party shall be a "Covered SBS Entity" for purposes of SBS Supplement II if such other Matched PCA Party has elected to be a "Covered SBS Entity" in its Matched SBS II Questionnaire;
  - (iii) any Credit Support Document between Matched PCA Parties that relates to a Matched PCA will be deemed to be supplemented to the extent necessary such that the operation thereof is not affected by the adherence

by such Matched PCA Parties or any supplements contemplated by this Protocol Agreement and the relevant Matched Questionnaires;

- (iv) all information and representations provided by it or by its PCA Agent on its behalf in the Matched SBS I Questionnaire shall be “**SBS Supplement I Information**”;<sup>20</sup>
- (v) all information and representations provided by it or by its PCA Agent on its behalf in the Matched SBS II Questionnaire and all Substitute Part II Information with respect to it shall be “**SBS Supplement II Information**” for purposes of SBS Supplement II;<sup>21</sup>
- (vi) solely for purposes of delivering notices of the type specified in Section 2.3 of each SBS Supplement in respect of information or representations set forth in the relevant Matched Questionnaire(s) of the other Matched PCA Party, the other Matched PCA Party may provide such notices in any manner by which delivery of an SBS Questionnaire to such Matched PCA Party would be effective under Paragraph 3(e) hereof or to any substitute address provided by such Matched PCA Party under Section 2.3 of each SBS Supplement;<sup>22</sup>
- (vii) solely for purposes of delivering notices in connection with the SBS Supplements (except in respect of information described in paragraphs (viii) or (ix) below), the “Notice Procedures” applicable to a Matched PCA Party include written notice by e-mail delivered to an address specified in such Matched PCA Party’s applicable SBS Questionnaire(s) for delivery of such notices or to any substitute e-mail address provided under Section 2.3 of each SBS Supplement. Such written notice shall be deemed delivered when sent to the specified address;<sup>23</sup>
- (viii) solely for purposes of delivering Risk Valuations (as such term is defined in SBS Supplement II) pursuant to SBS II Schedule 3, the “Notice Procedures” applicable to a Matched PCA Party include written notice by e-mail delivered to an address specified in such Matched PCA Party’s Questionnaire<sup>24</sup> for delivery of Risk Valuations or to any substitute e-mail

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<sup>20</sup> Under each of the SBS Supplements, a party makes various representations about its SBS Supplement Information, and agrees to update such information and the related representations.

<sup>21</sup> See supra note 20.

<sup>22</sup> Under Section 2.3 of each SBS Supplement, a counterparty agrees to provide written notice of any updated information and representations.

<sup>23</sup> The SBS Supplements provide that an SBS D may provide various notifications and informational disclosures required by SEC rules. This provision indicates that the e-mail address provided by a party in its SBS Questionnaire may be used for such purposes.

<sup>24</sup> A party may provide its e-mail address for delivery of such notices in Part III, Question 3 of SBS Questionnaire II.

address provided under Section 2.3 of SBS Supplement II. Such written notice shall be deemed delivered when sent to the specified address; and

- (ix) solely for purposes of delivering Portfolio Data (as such term is defined in SBS Supplement II) pursuant to SBS II Schedule 4, the “Notice Procedures” applicable to a Matched PCA Party include written notice by e-mail delivered to an address specified in such Matched PCA Party’s Questionnaire<sup>25</sup> for delivery of Portfolio Data or to any substitute e-mail address provided under Section 2.3 of SBS Supplement II. Such written notice shall be deemed delivered when sent to the specified address.
- (d) Undertakings in respect of Matched PCAs with Third-Party Credit Support Documents. With respect to any Matched PCAs 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 PCA Principal whose obligations under such arrangements are secured, guaranteed or otherwise supported by such Third Party undertakes to each other PCA Principal with which it has entered into such arrangements that it has obtained the consent (including by way of Paragraph 7(e) 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 PCA Principal.
- (e) Deemed Third-Party Consent. Each PCA Principal which is also a Third Party in relation to a Third-Party Credit Support Document is hereby deemed to have consented to the amendments effected through this Protocol Agreement on the Matched PCA supported by such Third-Party Credit Support Document.

## 8. Miscellaneous

- (a) Entire Agreement; Survival.
  - (i) This Protocol Agreement constitutes the entire agreement and understanding of the Protocol Participants with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each Protocol Participant acknowledges that, in adhering to this Protocol Agreement, 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 Agreement, an Adherence Letter, or in an SBS Questionnaire) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Protocol Agreement will limit or exclude any liability of a Protocol Participant for fraud.

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<sup>25</sup> A party may provide its e-mail address for delivery of such notices in Part III, Question 5 of SBS Questionnaire II.



- (ii) Except for any supplement deemed to be made pursuant to this Protocol Agreement 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 Agreement, nothing herein will constitute a waiver or release of any rights of any party under any Protocol Covered Agreement.
- (b) Amendments. An amendment, modification or waiver in respect of the matters contemplated by this Protocol Agreement will only be effective in respect of a Matched PCA if made in accordance with the terms of such Matched PCA.
- (c) Headings and Footnotes. The headings and footnotes used in this Protocol Agreement, any SBS Questionnaire, and any Adherence Letter 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 Protocol Agreement, any Questionnaire, or any Adherence Letter.
- (d) Governing Law. This Protocol Agreement and each Adherence Letter will, as between Matched PCA Parties, be governed by and construed in accordance with the laws of the State of New York, without reference to choice-of-law doctrine, *provided* that supplements to each Matched PCA effected by this Protocol Agreement shall be governed by and construed in accordance with the law governing such Matched PCA.

## 9. Definitions

As used in this Protocol Agreement, the following terms will have the following meanings:

“**Covered SBS Entity**” means a party that (i) elects in SBS Questionnaire I to be a “Covered SBS Entity” for purposes of SBS Supplement I and/or (ii) elects in SBS Questionnaire II to be a “Covered SBS Entity” for purposes of SBS Supplement II.

“**Credit Support Document**” means, with respect to a Matched PCA Party, a document, which, by its terms, secures, guarantees or otherwise supports the obligations of one or both of the Matched PCA Parties under a Matched PCA, whether or not such document is specified as a “Credit Support Document” in such Matched PCA.

“**Designated Evaluation Agent**” shall have the meaning provided in the SBS Questionnaire I.

“**Designated Fiduciary**” shall have the meaning provided in the SBS Questionnaire I.

“**Designated QIR**” shall have the meaning provided in the SBS Questionnaire I.

“**Data Reconciliation**” shall have the meaning provided in SBS Supplement II.

“**ISDA Amend**” means the web-based platform that has been developed by ISDA and Markit Group Limited and is available at <http://www.markit.com/en/products/distribution/document->

[exchange/registration.page](#) or such other web address specified by ISDA and Markit Group Limited.

“**Non-Covered SBS Entity**” means a party that **has not** elected in its SBS Questionnaire II to be a Covered SBS Entity.

“**Portfolio Data**” shall have the meaning provided in SBS Supplement II.

“**Protocol**” means the process for amending Protocol Covered Agreements under this SBS Protocol Agreement and related documents.

“**SBS**” means a “security-based swap” as defined in Section 3(a)(68) of the SEA and the SEC Rules thereunder.

“**SBS I Schedule**” means a schedule to SBS Supplement I.

“**SBS II Schedule**” means a schedule to SBS Supplement II.

“**SBS Implementation Date**” means either the SBS I Implementation Date or the SBS II Implementation Date.

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

“**Special Entity**” shall have the meaning provided in SBS Supplement I.

“**Substitute Part II Information**” means the information requested to be provided by a party in Part II, Section 3 of the SBS Questionnaire II that (a) such party represents it has previously provided in writing to the Matched PCA Party receiving such SBS Questionnaire in lieu of providing such information in the SBS Questionnaire or (b) appears in the publicly available portion of the LEI database with respect to such Matched PCA Party.<sup>26</sup>

**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 PCA Principals which are parties to the agreement.

**Third-Party Credit Support Document** means, with respect to a PCA Principal and a Matched PCA, any Credit Support Document which is executed by one of more Third Parties (whether or not a PCA Principal 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 Matched PCA.

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<sup>26</sup> See Section 7(c)(v) of this agreement. As a matter of convenience, certain information that is required by SBS Questionnaire II and that a party has previously provided to a dealer or submitted in the publicly-available portion of the LEI/CICI database may be omitted from that SBS Questionnaire, although such information will be subject to the same representations and obligations to update as information contained in the SBS Questionnaire. However, for operational and systems reasons, parties may prefer that all such information be set forth in a complete SBS Questionnaire II.

**EXHIBIT 1**  
**to the ISDA 2021 SBS PROTOCOL AGREEMENT**  
**Form of Adherence Letter**

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**[Letterhead of Protocol Participant]**

**[Date]**

**International Swaps and Derivatives Association, Inc.**

Ladies and Gentlemen,

**ISDA 2021 SBS PROTOCOL – Adherence**

The purpose of this letter is to confirm our adherence as a “**Protocol Participant**” to the ISDA 2021 SBS Protocol Agreement as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”) on May 3, 2021 (the “**Protocol Agreement**”). This letter constitutes, as between each other Protocol Participant and us, an Adherence Letter as referred to in the Protocol Agreement. The definitions and provisions contained in the Protocol Agreement are incorporated into this Adherence Letter, which will supplement and form part of each Protocol Covered Agreement between us and each other Protocol Participant.

**1. Specific Terms**

We hereby represent that this is the only Adherence Letter submitted by us to ISDA in respect of the Protocol Agreement.

**2. Appointment as Agent and Release**

We hereby appoint ISDA as our agent for the limited purposes of the Protocol Agreement and accordingly we waive, and hereby release ISDA from, any rights, 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 Agreement or any actions contemplated as being required by ISDA.

**3. Payment**

We agree to pay a one-time fee of U.S. \$500 to ISDA at or before the submission of this Adherence Letter.

**4. Contact Details**

Our contact information, solely for purposes of this Adherence Letter (and unrelated to the SBS Questionnaire delivery options in the subsequent section) is:

Name:

Address:

Telephone:

Fax:

E-mail:

## 5. Delivery of SBS Questionnaires

Delivery of either of the SBS Questionnaires by another Protocol Participant may be made to us pursuant to Paragraph 3 of the Protocol Agreement as follows, where the relevant box has been checked.

if submitted via ISDA Amend in accordance with the terms thereof.

if in writing and delivered in person or by courier, or by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested) to:

[Address]  
[Address]  
[Address]  
[Attention]

if sent by facsimile transmission, to:

[Fax Number]  
[Attention]

if sent by e-mail or other electronic messaging system, to:

[Address]

## 6. Covered SBS Entity Election<sup>27</sup>

We understand that the Protocol is designed to allow “matching” of SBS Questionnaires between a Covered SBS Entity and other counterparties (including other Covered SBS Entities). We further understand that this status must be indicated separately by designation as a “Covered SBS Entity” for purposes of the relevant SBS Supplement hereto.

By checking this box, we acknowledge and agree that we are participating in this Protocol as principal and intend to designate ourselves as a Covered SBS Entity for purposes of SBS Supplement I hereto.

By checking this box, we acknowledge and agree that we are participating in this Protocol as principal and intend to designate ourselves as a Covered SBS Entity for purposes of SBS Supplement II hereto.

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<sup>27</sup> A party who expects to become a registered SBSB may wish to adhere to the Protocol in advance of becoming registered so that its SBS agreements with counterparties will incorporate provisions of the Supplements when its registration becomes effective. Separate elections are provided for SBS Supplement I and II because an MSBSP can be a Covered SBS Entity for purposes of SBS Supplement II, but not for SBS Supplement I.

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,

[PROTOCOL PARTICIPANT]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 2**  
**to the ISDA 2021 SBS PROTOCOL AGREEMENT**  
**Form of SBS Questionnaire I (non-ISDA Amend)**



**EXHIBIT 3**  
**to the ISDA 2021 SBS PROTOCOL AGREEMENT**  
**Form of SBS Questionnaire II (non-ISDA Amend)**