

ISDA 2023 Equity Swap – 2021 Definitions Protocol

Frequently Asked Questions

ISDA has prepared this list of frequently asked questions to assist in your consideration of the ISDA 2023 Equity Swap – 2021 Definitions Protocol (the “**Protocol**”). Unless otherwise defined herein, capitalized terms used in these FAQs have the meanings given to them in the Protocol.

THESE FREQUENTLY ASKED QUESTIONS DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH THE ISDA 2023 EQUITY SWAP – 2021 DEFINITIONS PROTOCOL. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISER THEY DEEM APPROPRIATE PRIOR TO USING OR ADHERING TO THE ISDA 2023 EQUITY SWAP – 2021 DEFINITIONS PROTOCOL. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION MAY BE PUT.

These FAQs sets out questions and answers that are designed to explain the general operation and application of the Protocol.

A. Purpose and Scope

1. What is the purpose of the Protocol?

The ISDA 2023 Equity Swap – 2021 Definitions Protocol has been created to allow parties to certain Protocol Covered Equity Swap Master Confirmation Agreements (each, a “**Protocol Covered Document**”) to amend the terms of each such agreement so as to, among others:

- incorporate the 2021 ISDA Interest Rate Derivatives Definitions (the “**2021 Definitions**”, in place of the 2006 ISDA Definitions (the “**2006 Definitions**”); and
- make related amendments to the floating leg provisions in transactions documented under each such Protocol Covered Document.

2. What agreements does the Protocol cover?

The Protocol covers master confirmation agreements or general terms confirmation agreements, that:

- (i) incorporate the 2002 ISDA Equity Derivatives Definitions (the “**2002 Equity Definitions**”) and the 2006 Definitions;
- (ii) include provisions relating to a “Floating Amount” or floating interest amount, howsoever described; and

- (iii) set out certain terms for one or more Equity Swap Transactions and which, taken together with the terms of the related Transaction Supplement, confirms the terms of certain Equity Swap Transactions,

(“**Equity Swap Master Confirmation Agreements**”).

3. What agreements and transactions does the Protocol amend?

An Equity Swap Master Confirmation Agreement will only be a Protocol Covered Document that is amended under the terms of the Protocol if:

- (1) it is an Equity Swap Master Confirmation Agreement which is entered into between two Adhering Parties and has a *Protocol Covered Document Date prior to the Protocol Effective Date* (or, if later, the Adherence Date for the later of the two Adhering Parties to adhere); and
- (2) is governed by an ISDA Master Agreement or an Additional Master Agreement (the latter being certain FBF Master Agreements).

Even if an Equity Swap Master Confirmation Agreement is a Protocol Covered Document, it does not mean the amendments in the Protocol will apply to all of the Transactions under that Protocol Covered Equity Swap Master Confirmation Agreement:

- (i) the Protocol will only amend the Equity Swap Master Confirmation Agreement for the purposes of any Equity Swap Transaction entered into between the parties pursuant to that Equity Swap Master Confirmation Agreement *with a Trade Date on or after the Protocol Effective Date* (or, if later, the Implementation Date); and
- (ii) the Protocol will not amend any transaction that is documented pursuant to an Equity Swap Master Confirmation Agreement and which provides for ‘Optional Early Termination’ in accordance with Section 16.1 of the 2006 Definitions, ‘Mandatory Early Termination’ in accordance with Section 17.1 of the 2006 Definitions or cash settlement in accordance with the cash settlement provisions in Section 18 of the 2006 Definitions.

4. What amendments will be made to Protocol Covered Documents?

With effect from the later of the Implementation Date and the Protocol Effective Date, among others:

- (i) each Protocol Covered Document shall be amended to incorporate the 2021 Definitions;
- (ii) any reference to a 2006 Floating Rate Option in a Protocol Covered Document which is listed within the column entitled “2006 Definitions FRO name” in Annex 1

(Floating Rate Option Mapping) of the Attachment to the Protocol shall be deemed instead to be a reference to the 2021 Floating Rate Option in the corresponding row which is listed within the column entitled “2021 Definitions FRO name”;

- (iii) certain references to terms in the Protocol Covered Document that are used in the 2006 Definitions shall be amended to the corresponding term as is used in the 2021 Definitions; and
- (iv) certain supplementary fields will be inserted into each Template Equity Swap Transaction Supplement (included in a Protocol Covered Document) and the general terms section of the Protocol Covered Equity Swap Master Confirmation Agreement, as applicable, to reflect new or updated fields in the 2021 Definitions such as those relating to a Floating Rate Option, compounding, averaging and other features of a Floating Rate Option.

5. What version of the 2021 Definitions will be incorporated?

The 2021 Definitions are incorporated into the Equity Swap Master Confirmation Agreement as amended from time to time. However, in respect of any Equity Swap Transaction entered into under that Equity Swap Master Confirmation Agreement after it has been amended pursuant to the Protocol, the version of the 2021 Definitions (including each matrix forming part of the 2021 Definitions) that will apply is the version in effect as at the Trade Date of that Equity Swap Transaction (as set out in the related Transaction Supplement).

6. Will legacy Equity Swap Transactions be amended?

No. The Protocol will not amend any Equity Swap Transaction documented pursuant to a Protocol Covered Document where that Equity Swap Transaction has a Trade Date prior to the later to occur of the Protocol Effective Date and the Implementation Date with respect to that Protocol Covered Document.

7. Will hard-wired elections, bespoke provisions and bespoke amendments be preserved?

Yes. Nothing in the Protocol is intended to override hard-wired elections, bespoke provisions or bespoke amendments within a Protocol Covered Document and any hard-wired elections or bespoke amendments shall continue to apply *mutatis mutandis* to the equivalent provisions in the 2021 Definitions, provided that the Calculation Agent shall adjust any such hard-wired elections as necessary in good faith and in a commercially reasonable manner, in order for those hard-wired elections to operate under the terms of the 2021 Definitions.

Examples of hard-wired elections that will be preserved include (but are not limited to) elections as to which party will act as the Calculation Agent for the purpose of the Equity Swap Transaction or the specification of the “Business Day Convention”.

Examples of bespoke provisions include (but are not limited to) bespoke terms or operative provisions providing for the calculation of a floating amount under the Equity Swap Transaction and which do not apply any of the terms of the 2006 Definitions for such purpose, or bespoke terms or operative provisions relating to determinations made by the Calculation Agent that do not apply any part of Section 4.14 (Calculation Agent) of the 2006 Definitions.

Examples of bespoke amendments include (but are not limited to) amendments to Section 6.1 (Calculation of a Floating Amount) of the 2006 Definitions in respect of how the floating amount is calculated, amendments to the determination of the fixing day pursuant to a Rate Option in the 2006 Definitions (being the day on which the rate is observed), or amendments to Section 4.14 (Calculation Agent) of the 2006 Definitions.

8. Which calculations will be affected by the incorporation of Section 1.2 (Determinations by the Calculation Agent) of the 2021 Definitions into a Protocol Covered Document?

The provisions of Section 1.2 (Determinations by the Calculation Agent) of the 2021 Definitions, as incorporated into a Protocol Covered Document by the Protocol, shall only apply to the calculation of amounts that apply defined terms or provisions in the 2021 Definitions, in other words, amounts that prior to amendment by the Protocol, applied defined terms or provisions in the 2006 Definitions. Consequently, provisions that are governed by the 2002 Equity Definitions will not be subject to the Calculation Agent standard in the 2021 Definitions but continue to be governed by the Calculation Agent standard in the 2002 Equity Definitions.

9. What is the interaction between the 2021 Definitions and the 2002 Equity Definitions pursuant to a Protocol Covered Document?

Post-amendment by the Protocol, the 2021 Definitions will apply to the Protocol Covered Document to the same extent that the 2006 Definitions applied pre-amendment. Any hierarchy provision in the Protocol Covered Document governing the interaction or scope of application of the 2006 Definitions and the 2002 Equity Definitions will continue to apply to the interaction/hierarchy of provisions in the 2021 Definitions and 2002 Equity Definitions.

10. Is it possible to exclude application of the Protocol in respect of an Equity Master Confirmation Agreement?

Adhering Parties may by bilateral agreement agree to exclude application of the Protocol either by way of separate agreement or by inclusion of an express provision in an Equity Swap Master Confirmation Agreement excluding application of the Protocol. It is not possible to exclude application of the Protocol in respect of an Equity Swap Master Confirmation Agreement via the Adherence Letter.

B. Timing and effect of the Protocol

11. When does the Protocol become effective?

A. *When is the Protocol Effective Date?*

The Protocol Effective Date is March 18, 2024.

See *Question 11.B (When is the agreement to make the amendments contemplated by the Protocol made?)* and *Question 11.C (When are the amendments contemplated by the Protocol actually made?)* below for more information on when the Protocol becomes effective.

B. *When is the agreement to make the amendments contemplated by the Protocol made?*

The agreement between two parties who have sent Adherence Letters to ISDA to make the amendments contemplated by the Protocol will be effective on the Implementation Date (see the paragraph below regarding when the Implementation Date is) and that agreement to make the amendments will form part of each Protocol Covered Document from the Implementation Date (or, if later, the Protocol Covered Document Date) (see also *Question 12 (Will the Protocol apply to novated transactions?)*). This means that, after the Implementation Date, if a party revokes its adherence to the Protocol, it will not affect Protocol Covered Documents between it and another party who has already adhered to the Protocol (even if those Protocol Covered Documents have not yet been amended because the Implementation Date has occurred before the Protocol Effective Date). See *Question 26 (Can I revoke my adherence to the Protocol?)* for further information on revocation and *Question 11.C (When are the amendments contemplated by the Protocol actually made?)* for further information on when amendments are actually made to Protocol Covered Documents.

If neither Adhering Party is an Agent, the Implementation Date is the Adherence Date for the later of such two Adhering Parties. If, however, one of the parties is an Agent, see *Question 17 (Can an investment/asset manager or other Agent adhere to the Protocol on behalf of its Clients?)* and *Question 21 (Will a Protocol Covered*

Document into which an Agent did not enter on behalf of its Clients but that the Agent otherwise has the authority to amend be amended under the Protocol by virtue of the Agent adhering on behalf of its Clients?) for further information regarding when the Implementation Date falls.

The Implementation Date under the Protocol may, in the case of agency adherence, be specific to a particular Protocol Covered Document and there may be various Implementation Dates as between two Adhering Parties where an Agent is adhering on behalf of a Client. For more information please see *Question 17.A (Can an Agent adhere on behalf of all of its Clients?)*, *Question 17.B (Can an Agent adhere on behalf of some, but not all, of its Clients?)*, *Question 21 (Will a Protocol Covered Document into which an Agent did not enter on behalf of its Client but that the Agent otherwise has the authority to amend be amended under the Protocol by virtue of the Agent adhering on behalf of its Client?)*.

C. *When are the amendments contemplated by the Protocol actually made?*

The amendments to Protocol Covered Documents contemplated by the Protocol will be made on the later of (i) the Implementation Date and (ii) the Protocol Effective Date. Given that the agreement to make the amendments is made on the Implementation Date (see *Question 11.B (When is the agreement to make the amendments contemplated by the Protocol made?)* above for information regarding when the Implementation Date is), this means that the agreement to make the amendments may occur before the documents are actually amended.

The amendments under the Protocol shall only be made to Protocol Covered Documents with a Protocol Covered Document Date before the Protocol Effective Date (or, if later, the Adherence Date for the later of the two Adhering Parties to adhere). Therefore, if two parties adhere to the Protocol before the Protocol Effective Date, the amendments contemplated by the Protocol in relation to their Protocol Covered Documents entered into before the Protocol Effective Date will be effective on the Protocol Effective Date, irrespective of the fact that the Adherence Date for the later of the two Adhering Parties to adhere is earlier than the Protocol Effective Date.

If two parties adhere to the Protocol after the Protocol Effective Date, however, the amendments contemplated by the Protocol in relation to their Protocol Covered Documents entered into before the Adherence Date for the later of the two Adhering Parties to adhere, will be effective on the Implementation Date.

If one party adheres to the Protocol before the Protocol Effective Date and the other party adheres to the Protocol after the Protocol Effective Date, the amendments contemplated by the Protocol in relation to Protocol Covered Documents between those parties entered into before the Adherence Date for the later of the two Adhering Parties to adhere, will be effective on the Implementation Date.

12. Will the Protocol apply to novated transactions?

If a transaction, which is documented under a Protocol Covered Document that has been amended by the Protocol because the parties to it have adhered to the Protocol, is novated, the transaction will continue to include the amendments as contemplated by the Protocol, even if the party or parties to which it is novated are not Adhering Parties. This is because the amendments contemplated by the Protocol will form part of the terms of the transaction which has been novated.

By contrast, if a transaction is entered into by an Adhering Party and a non-adhering party pursuant to an Equity Swap Master Confirmation Agreement, such that the transaction does not include the amendments contemplated by the Protocol and is later novated such that the non-adhering party is replaced by an Adhering Party, the amendments contemplated by the Protocol will not apply to the novated transaction. The parties would need to include the amendments contemplated by the Protocol as part of the novation process if desired.

The Protocol also provides that the agreement to make the amendments contemplated by the Protocol will form part of each Protocol Covered Document from the Implementation Date. This means that, if two parties have adhered to the Protocol before the Protocol Effective Date, then the agreement to make the amendments contemplated by the Protocol will form part of a Protocol Covered Document between those parties from the date on which the second party adheres. The amendments to actually include the relevant provisions will not, however, be effective until the Protocol Effective Date. If those Adhering Parties novate a transaction which is documented under a Protocol Covered Document after the Implementation Date but before the Protocol Effective Date, then the transaction will include the amendments as contemplated by the Protocol from the Protocol Effective Date, even if the party or parties to which it is novated are not Adhering Parties. This is because the agreement to make the amendments contemplated by the Protocol will form part of the terms of the transaction which has been novated.

For clarity, parties may nevertheless wish to explicitly address the application of the Protocol within the relevant novation agreement.

C. Adherence - General

13. How do I submit an adherence letter?

Each entity that intends to adhere to the Protocol should access the “[Protocols](#)” section of the ISDA website at www.isda.org to enter the information online that is required to generate its form of Adherence Letter.

Either by directly downloading the populated Adherence Letter from the protocol system or upon receipt via e-mail of the populated Adherence Letter, each entity should print and sign

the populated Adherence Letter (a “wet-ink” signature is not required) and upload it as a PDF (portable document format) attachment into the protocol system.

Once the signed Adherence Letter has been approved and accepted by ISDA, such entity will receive an e-mail confirmation of adherence to the Protocol. Each entity submitting a letter and paying the adherence fee (on which, see *Question 31 (Are there any costs to adhere to the Protocol?)*) is an Adhering Party.

14. What kind of entities can adhere to the Protocol?

The Protocol is open to any entity to voluntarily adhere. Entities may adhere on behalf of themselves or as agents on behalf of one or more clients.

15. Can entities that are not ISDA members adhere to the Protocol?

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

16. Can natural persons adhere to the Protocol?

Yes. Natural persons may adhere to the Protocol by submitting an Adherence Letter in the same way as an entity and choosing “Single Entity Adherence” under Adherence Type. If you have any issues, please contact protocolmanagement@isda.org.

D. Adherence - Agents

17. Can an investment manager/asset manager or other Agent adhere to the Protocol on behalf of its Clients?

Yes. An Agent may adhere to the Protocol on behalf of all or some of its Clients.

18. How will an investment manager/asset manager or other Agent adhere to the Protocol on behalf of its Clients?

An Agent will adhere on behalf of clients in the usual way by submitting an Adherence Letter (see *Question 13 (How do I submit an Adherence Letter?)*).

The various options for agency adherence are described below. They do not differ in substance from previous ISDA Protocols, for example the ISDA 2020 IBOR Fallbacks Protocol.

However, the ISDA 2023 Equity Swap – 2021 Definitions Protocol will be the first ISDA Protocol to be added to the Agency Adherence Module within ISDA Amend.

The Agency Adherence Module will constitute a Platform as defined in the Protocol. It will allow parties adhering as an Agent on behalf of clients to make the various client disclosures as described below, for example disclosing those clients on whose behalf the Agent entered into Protocol Covered Documents that are included or excluded from the adherence, identifying Option 2 client lists, identifying subsequently added Option 2 clients, identifying subsequently added clients on whose behalf the Agent entered into the Protocol Covered Document that are included or excluded from the adherence or identifying new clients added to an umbrella agreement that is a Protocol Covered Document that are included or excluded from the adherence. An Agent will be able to permission different client lists to different counterparties and will be able to save preferred entity and counterparty lists. Note that these client disclosures are substantively the same as disclosures made via ISDA Amend for other ISDA Protocols, for example the ISDA 2020 IBOR Fallbacks Protocol.

The Agency Adherence Module is expected to be available in the weeks preceding the Protocol Effective Date and subsequently for all future standard ISDA protocols i.e. protocols without bespoke features such as the requirement to exchange matching questionnaires or adhere on an entity-by-entity basis. The Agency Adherence Module will operate as a dropdown menu, allowing parties to select a Protocol and make the desired disclosures through the ISDA Amend Counterparty Manager platform. This is expected to significantly streamline the implementation timeline for adding an ISDA Protocol to ISDA Amend for the sole purpose of an Agent disclosing client lists to its counterparties.

A. Can an Agent adhere on behalf of all of its Clients?

Yes. If an Agent adheres to the Protocol in its capacity as Agent and elects not to identify any Clients (other than Clients in respect of which it wishes to amend Non-Agent Executed Protocol Covered Documents, as applicable) then it will have adhered on behalf of all the Clients it represents for the purposes of amending Protocol Covered Documents which the Agent entered into on behalf of such Clients and no further action is necessary for such ‘all clients’ adherence.

An Agent that adheres on behalf of all clients is not required to, **and indeed will not be permitted to**, disclose the identity of such clients through the Agency Adherence Module.

An Agent that adheres on behalf of all clients will be able to use the Agency Adherence Module to disclose to its counterparties the identity of any clients on whose behalf such Agent wishes to amend Non-Agent Executed Protocol Covered Documents.

A separate Adherence Letter for each client does not need to be submitted to ISDA and no specific names of clients will be publicly disclosed on the ISDA website in connection with such Protocol.

The Implementation Date for such Protocol Covered Documents is the Adherence Date for the later of the two Adhering Parties to adhere.

B. Can an Agent adhere on behalf of some, but not all, of its clients?

Yes, an Agent can do this in two different ways.

(I) Adhering on behalf of identified Clients

If an Agent wants to adhere on behalf of certain named or otherwise identified Clients only for the purposes of amending Protocol Covered Documents which the Agent entered into on behalf of such Clients, it should specifically name or identify those Clients through an online platform available generally to the industry (a “**Platform**”). The Implementation Date for such Protocol Covered Documents is the date shown on the Platform as the date on which the Agent communicated the name or identity of the relevant Client to the other Adhering Party (or, if later, the date of acceptance by ISDA, as Agent, of an Adherence Letter from the other Adhering Party).

If an Agent specifically names or identifies certain Clients on whose behalf it is adhering (through a Platform) for the purposes of amending Protocol Covered Documents which the Agent entered into on behalf of such Clients and it then wishes to add further Clients to this list after its Adherence Date, then the Agent may do so by naming or identifying additional Clients (through a Platform). As between any other Adhering Party and that additional Client, the Implementation Date shall be the date on which the Agent communicates the name or identity of the additional Client to the other Adhering Party (or, if later, the Adherence Date for that other Adhering Party), unless otherwise agreed between the Agent and that Adhering Party.

An Agent will also be able to send different lists of named or identified Clients to different counterparties through a Platform (and will not be required to send the same list of Clients to every counterparty).

(II) Adhering on behalf of all Clients except for identified excluded Clients

Alternatively, if an Agent wants to adhere on behalf of all Clients it represents except for certain excluded Clients for the purposes of amending Protocol Covered Documents which the Agent entered into on behalf of such Clients, it should specifically name or identify those excluded Clients through a Platform on or before the Adherence Date for the later of the two Adhering Parties to adhere (except for any new Clients added to an Agent Protocol Covered Document after that date which can be excluded at the same time that the new Client is added to the Agent Protocol Covered Document).

The Implementation Date for all Clients which have not been named or identified as excluded Clients and in respect of a Protocol Covered Document into which the Agent has entered on behalf of such Clients will be the Adherence Date for the later of the two Adhering Parties to adhere. If no Clients are named or identified as excluded Clients on or before the Adherence Date for the later of the two Adhering Parties to adhere, then this will be the Implementation Date for all Clients in respect of which the Agent has entered into a Protocol Covered Document and for the purposes of those Protocol Covered Documents (except for any new Clients added to an Agent Protocol Covered Document after that date, on which see *Question 0 (What happens if an Agent adds a Client to an umbrella agreement that is an Agent Protocol Covered Document after adhering to the Protocol?)* below).

If an Agent specifically names or identifies a Client as excluded from adherence, then it may, after its Adherence Date, remove that Client from its list of excluded Clients (through a Platform). 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 communicated to the other Adhering Party that the Client is removed from the list of excluded Clients (or, if later, the Adherence Date for that other Adhering Party), unless otherwise agreed between the Agent and that other Adhering Party.

An Agent will also be able to send different lists of excluded Clients to different counterparties through a Platform (and will not be required to send the same list of excluded Clients to every counterparty).

See *Question 21 (Will a Protocol Covered Document into which an Agent did not enter on behalf of its Clients but that the Agent otherwise has the authority to amend be amended under the Protocol by virtue of the Agent adhering on behalf of its Clients?)* in respect of amending Non-Agent Executed Protocol Covered Documents.

19. Can I adhere to the Protocol as an Agent if I do not want to use a Platform or the Agency Adherence Module?

Yes, however an Agent adhering in this way will only be able to adhere on behalf of all clients it represents and will not be able to adhere to amend Protocol Covered Documents into which the Agent did not enter on behalf of its clients i.e. Non-Agent Executed Protocol Covered Documents.

20. How does an Agent adhere as a principal and on behalf of its clients?

If an Agent is adhering as both an investment or asset manager acting on behalf of one or more clients and as a principal for its proprietary trades, it should submit two separate Adherence Letters.

21. Will a Protocol Covered Document into which an Agent did not enter on behalf of its Clients but that the Agent otherwise has the authority to amend be amended under the Protocol by virtue of the Agent adhering on behalf of its Clients?

A. Agent Executed Protocol Covered Documents and Non-Agent Executed Protocol Covered Documents

The Agent can elect in its Adherence Letter for the amendments in the Protocol to apply to either:

- (i) in respect of all those Clients on whose behalf the Agent adheres, each Protocol Covered Document into which the Agent has entered on behalf of a Client (such documents, “**Agent Executed Protocol Covered Documents**”) (**Option 1**) (in which case the Agent will adhere as described in *Question 17.A (Can an Agent adhere on behalf of all of its Clients?)* or *Question 17.B (Can an Agent adhere on behalf of some, but not all, of its Clients?)*, as applicable); or
- (ii)
 - (A) in respect of all those Clients on whose behalf the Agent adheres, each Protocol Covered Document into which the Agent has entered on behalf of a Client (using one of the approaches described in *Question 17.A (Can an Agent adhere on behalf of all of its Clients?)* or *Question 17.B (Can an Agent adhere on behalf of some, but not all, of its Clients?)*); and
 - (B) in respect of those Clients whose name or identity the Agent communicates to the other Adhering Party through a Platform as being a Client in respect of which ‘Non-Agent Executed Protocol Covered Documents’ applies, each Protocol Covered Document into which the Agent did not enter on behalf of a Client but which the Agent nevertheless has the authority from the Client to amend (such documents, “**Non-Agent Executed Protocol Covered Documents**”)

(Option 2).

If the Agent elects for Option 2 in its Adherence Letter, then the Agent will be required to communicate to the other Adhering Party, through a Platform (such date shown on the Platform or any other communication from the Agent, the

“**Identification Date**”), those Clients on whose behalf it wants to amend Non-Agent Executed Protocol Covered Documents.

This means that if the Agent chooses to adhere on behalf of certain of its Clients only (see *Question 17.B (Can an Agent adhere on behalf of some, but not all, of its Clients?)*) and elects for Option 2 in its Adherence Letter, then it will be required to send two lists of Clients through a Platform (one list of excluded or included Clients, as set out *Question 17.B (Can an Agent adhere on behalf of some, but not all, of its Clients?)* and one list of Clients in respect of which it wishes to amend Protocol Covered Documents into which the Agent did not enter but which it has the authority from the Client to amend).

If an Agent adheres to the Protocol and elects to apply Option 2 in its Adherence Letter, then for any Client on whose behalf the Agent adheres (pursuant to one of the approaches described in *Question 17.A (Can an Agent adhere on behalf of all of its Clients?)* or *Question 17.B (Can an Agent adhere on behalf of some, but not all, of its Clients?)*, as applicable) which the Agent also identifies (through a Platform) as being a Client in respect of which it is amending Non-Agent Executed Protocol Covered Documents:

- (i) each Protocol Covered Document into which the Agent has entered on behalf of the Client (which Protocol Covered Documents could alternatively have been amended via Option 1); and
- (ii) each Non-Agent Executed Protocol Covered Document, will be amended in accordance with the terms of the Protocol.

B. Requirement to identify Clients and provide evidence of authority:

If an Agent elects to apply Option 2 in its Adherence Letter, then, the Agent must (with respect to Non-Agent Executed Protocol Covered Documents only):

- (i) identify the Clients for which it wishes to amend Non-Agent Executed Protocol Covered Documents through a Platform. This identification of Clients will be separate to any identification of Clients on whose behalf the Agent is adhering for the purposes of amending Protocol Covered Documents into which the Agent entered on behalf of Clients; and
- (ii) in respect of any Non-Agent Executed Protocol Covered Document only, as soon as reasonably practicable following a written request from the counterparty, and in any event by no later than the end of the fifteenth calendar day following such request, provide reasonable evidence of its authority to amend those Non-Agent Executed Protocol Covered Documents to the counterparty which is satisfactory to that counterparty in its sole discretion.

If, prior to the acceptance of an Adherence Letter by ISDA from the later of the Agent and adhering counterparty, the Agent has provided the counterparty with a copy or relevant extracts of the agreement appointing the Agent and authorizing the Agent to make the amendments contemplated by the Protocol to the Non-Agent Executed Protocol Covered Documents, reasonable evidence may be deemed to have been provided, subject to counterparty's right to request copies/extracts of the agreement within the 15 calendar day timeframe specified in the Protocol. Please refer to sub-paragraph 3(g)(iv) of the Protocol for further details.

The Agent Executed Protocol Covered Documents between the Agent's Client and the relevant counterparty shall not be amended by the Protocol if:

- (A) the Agent does not provide the counterparty with evidence (or is not deemed to have provided such evidence) by the end of the fifteenth calendar day following the counterparty's written request; or
- (B) the counterparty determines that the evidence provided is not satisfactory and notifies the Agent accordingly by the end of the fifteenth calendar day following the day on which the evidence is delivered.

This is without prejudice to the counterparty's right to submit a request for further evidence and the Agent's right to provide such evidence.

Failure to provide any other Adhering Party with such evidence shall not give rise to a Potential Event of Default or an Event of Default (each as defined in the ISDA Master Agreement) or any similar event under the relevant Additional Master Agreement or under that Non-Agent Executed Protocol Covered Document or other contractual right of action.

C. *Adding Clients to the list of Clients on whose behalf the Agent is amending Non-Agent Executed Protocol Covered Documents:*

If an Agent adheres to the Protocol, elects for Option 2 – Non-Agent Executed Protocol Covered Documents in its Adherence Letter and therefore specifically names or identifies one or more Clients in respect of which it wishes to amend Non-Agent Executed Protocol Covered Documents, then it may name or identify additional Clients in respect of which it wishes to amend Non-Agent Executed Protocol Covered Documents (through a Platform) after its Adherence Date.

In respect of any Non-Agent Executed Protocol Covered Document which the Agent has the authority from any such Client to amend, the Agent will be required to provide evidence of its authority in accordance with the process set out above.

D. *Implementation Date for Non-Agent Executed Protocol Covered Documents:*

If an Agent adheres to this Protocol and elects for Option 2 in its Adherence Letter, then the Implementation Date for each Non-Agent Executed Protocol Covered Document shall be the day on which the Agent is deemed to have provided reasonable evidence satisfactory to the other Adhering Party in its sole discretion supporting the Agent's authority to amend such Non-Agent Executed Protocol Covered Document and, with respect to such Non-Agent Executed Protocol Covered Documents only, the Agent's adherence will be deemed effective on that day. Such date will depend on whether evidence was requested, when evidence is provided, and the circumstances of the Adhering Parties (see sub-paragraph 3(g)(iv) of the Protocol).

Generally:

- (i) if the other Adhering Party does not request such evidence by the end of the fifteenth calendar day following the later of the Identification Date and the Adherence Date for that other Adhering Party, then the Agent shall be deemed to have provided reasonable evidence satisfactory to the other Adhering Party at the end of that 15th calendar day; and
- (ii) following the delivery of any such evidence by the Agent to the other Adhering Party, unless the other Adhering Party notifies the Agent to the contrary by the end of the 15th calendar day following the day on which such evidence is delivered, the Agent shall be deemed to have provided reasonable evidence satisfactory to the other Adhering Party at the end of that 15th calendar day.

22. What happens if an Agent enters into an umbrella agreement that is a Protocol Covered Document with a counterparty after both the Agent and the counterparty have adhered to the Protocol but before the Protocol Effective Date?

The umbrella agreement would be amended to include the amendments as contemplated by the Protocol on the Protocol Effective Date (provided that the umbrella agreement is a Protocol Covered Document (see *Question 3.C (What agreements and transactions does the Protocol amend?)*)). If both an Agent and a counterparty adhere to the Protocol before the Protocol Effective Date, they should consider setting out their intentions with regard to the incorporation of the Protocol amendments within a Protocol Covered Document that is entered into between the Implementation Date and the Protocol Effective Date.

23. What happens if an Agent adds a Client to an umbrella agreement that is an Agent Protocol Covered Document after adhering to the Protocol?

If an Agent that has adhered to the Protocol on behalf of all of its Clients (or on behalf of all of its Clients except for certain identified excluded Clients) adds a Client to an umbrella agreement that is an Agent Protocol Covered Document after the Adherence Date for the later of the Agent and the counterparty to adhere, unless otherwise agreed the terms of the agreement between the other Adhering Party (i.e. the counterparty) and the new Client will be subject to the amendments contemplated by the Protocol, because the agreement that comes into existence when the new Client is added would have incorporated the amendments. The Implementation Date as between that new Client and the counterparty will be the date on which the new Client is added to the umbrella agreement.

However, if the Agent has adhered to the Protocol on behalf of certain named or otherwise identified Clients only (and has therefore specifically named or identified those Clients through a Platform), it will need to communicate the identity of any new Client which is added to an umbrella agreement that is an Agent Protocol Covered Document after the Adherence Date for the later of the Agent and the counterparty (including that Client's legal entity identifier) in order for that agreement, as between the new Client and the other Adhering Party (i.e. the counterparty), to be amended. The Implementation Date as between that new Client and the counterparty will be the date shown on the Platform or communication, as the date on which the Agent communicates the identity of that new Client to the other Adhering Party (i.e. the counterparty) through the Platform or other communication.

24. If a Client adheres to the Protocol itself and an Agent which represents that Client also adheres to the Protocol on behalf of that Client, what will the Implementation Date be for any Protocol Covered Document?

If an Agent adheres to the Protocol on behalf of a Client and that Client also adheres to the Protocol in its own right then, in respect of any Protocol Covered Document into which the Agent entered on behalf of the Client, the Implementation Date shall be the earlier of:

- (i) the Adherence Date for the later of the counterparty and the Client to adhere; and
- (ii) the Adherence Date for the later of the counterparty and the Agent to adhere (or, if the Agent adheres to the Protocol on behalf of specified Clients only, the date shown on the Platform or communication, as the date on which that Client is named or identified).

For example, if the counterparty adheres first, then the Client adheres directly and then the Agent adheres on behalf of that Client, the Implementation Date will be the date on which the Client adheres. If this is before the Protocol Effective Date, the relevant Protocol Covered Document will be amended on the Protocol Effective Date. If this is after the Protocol

Effective Date, then the relevant Protocol Covered Document will be amended on the date on which ISDA accepts an Adherence Letter from the Client.

25. If an Agent that has entered into a Protocol Covered Document on behalf of a Client adheres to the Protocol on behalf of that Client and another Agent who did not enter into that Protocol Covered Document but which otherwise has the authority to amend that Protocol Covered Document also adheres to the Protocol and identifies that Client as a Client in respect of which ‘Non-Agent Executed Protocol Covered Documents’ applies, what will be the Implementation Date for that Protocol Covered Document?

If one Agent (Agent 1) adheres to the Protocol on behalf of a Client and identifies that Client as a Client in respect of which it wants to amend Non-Agent Executed Protocol Covered Documents and, in addition to this, another Agent (Agent 2) adheres to the Protocol on behalf of the same Client then, in respect of a Protocol Covered Document into which Agent 2 entered on behalf of the Client but which Agent 1 also has the authority from the Client to amend, the Implementation Date shall be the earlier of:

- (i) the date on which Agent 1 is deemed to have provided sufficient evidence of its authority to amend the Non-Agent Executed Protocol Covered Document (as set out in paragraph 3(g)(iv) of the Protocol and as described in *Question 21 (Will a Protocol Covered Document into which an Agent did not enter on behalf of its Clients but that the Agent otherwise has the authority to amend be amended under the Protocol by virtue of the Agent adhering on behalf of its Client?)*); and
- (ii) the Adherence Date for the later of the counterparty and Agent 2 to adhere (or, if Agent 2 adheres to the Protocol on behalf of specified Clients only, the date shown on the Platform or the relevant communication, as the date on which that Client is named or identified).

For example, if the counterparty adheres to the Protocol first, then Agent 1 adheres and is deemed to have provided sufficient evidence of its authority to amend the Non-Agent Executed Protocol Covered Document and then Agent 2 adheres on behalf of all of the Clients on whose behalf it has entered into Protocol Covered Documents (including that particular Client), then the Implementation Date for that Non-Agent Executed Protocol Covered Document will be the date on which Agent 1 is deemed to have provided sufficient evidence supporting its authority to amend the Non-Agent Executed Protocol Covered Document (see *Question 21 (Will a Protocol Covered Document into which an Agent did not enter on behalf of its Clients but that the Agent otherwise has the authority to amend be amended under the Protocol by virtue of the Agent adhering on behalf of its Clients?)*). If this Implementation Date is before the Protocol Effective Date, the relevant Protocol Covered Document will be amended on the Protocol Effective Date. Alternatively, if this Implementation Date is after the Protocol Effective Date, then the relevant Protocol Covered Document will be amended on that Implementation Date (i.e. on the date on which Agent 1

is deemed to have provided sufficient evidence supporting its authority to amend the Non-Agent Executed Protocol Covered Document).

E. Revocation

26. Can I revoke my participation in the Protocol?

No. Once an Adherence Letter has been accepted by ISDA, an Adhering Party is bound by all amendments with other parties that have already adhered to the Protocol or, subject to the discussion below, that adhere before a designation of the Annual Revocation Date.

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

You can, however, bilaterally agree to amend your Protocol Covered Document with your counterparty (the other Adhering Party) and any such subsequent amendments will supersede those made by the Protocol to the extent that they are inconsistent.

F. General

27. What is a conformed copy?

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

28. Who is an authorized signatory?

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

29. Is there a closing date for the Protocol?

There is currently no cut-off date for adherence, but ISDA reserves the right to designate a closing date of the Protocol by giving 30 days' notice on the "ISDA 2023 Equity Swap – 2021 Definitions Protocol" section of its website.

30. Can I change the text of the Adherence Letter?

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

31. Are there any costs to adhere to the Protocol?

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

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

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

32. Will ISDA confirm whether non-ISDA documents are effectively amended by the Protocol?

No. ISDA provides no assurance as to the effect of the Protocol in respect of any non-ISDA documents. Adherents to the Protocol should satisfy themselves as to whether non-ISDA master agreements are effectively amended by the Protocol.

While ISDA has contacted the relevant trade association responsible for each non-ISDA document listed as an "Additional Master Agreement" in the Protocol, these non-ISDA documents have not been subject to legal diligence conducted by ISDA and any questions in respect of such non-ISDA documents should be directed to the relevant trade association for that non-ISDA document. As explained above, with respect to any non-ISDA document, ISDA provides no assurance as to the effect of the Protocol on such documents and adherents should satisfy themselves as to whether non-ISDA documents are effectively amended by the Protocol.