



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

## **ISDA SBS PROTOCOL QUESTIONNAIRE I<sup>1</sup>**

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

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<sup>111</sup> This ISDA SBS Protocol Questionnaire I is intended to address requirements of the final rules adopted in the following Federal Register citations, as amended and supplemented from time to time:

- (1) Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 80 Fed. Reg. 14563 (Feb. 11, 2015);
- (2) Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, 80 Fed. Reg. 14437 (Aug. 14, 2015);
- (3) Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 81 Fed. Reg. 29959 (May 13, 2016);
- (4) Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 81 Fed. Reg. 53545 (Aug. 12, 2016); and
- (5) Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, 84 Fed. Reg. 68550 (Dec. 16, 2019).

**Note that because consents that may be required to permit trade reporting and provision of books and records to the SEC are provided in both SBS Protocol Supplement I and SBS Protocol Supplement II, these rules are also cited in each of the related SBS Protocol Questionnaires.**





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

**ISDA SBS Protocol Questionnaire I**  
dated as of May 3, 2021

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***Instructions:*** *A PCA Principal or PCA Agent that has adhered to the Protocol Agreement in the manner specified therein may complete and execute this ISDA SBS Protocol Questionnaire I (this “SBS Questionnaire I” or “Questionnaire”) and deliver it by a means specified in the Protocol Agreement in order to supplement existing SBS I Covered Agreements.*

*This Questionnaire may be executed and delivered by a PCA Principal on its own behalf or by a PCA Agent on behalf of one or more PCA Principals. By delivering this Questionnaire to another PCA Principal or PCA Agent in a manner specified in the Protocol Agreement, the deliverer may agree to supplement SBS I Covered Agreements with such other PCA Principal or PCA Agent. Where an existing SBS I Covered Agreement was originally executed by a PCA Agent on behalf of one or more PCA Principals, only the relevant PCA Agent (and not a PCA Principal) may use this Questionnaire and the Protocol Agreement to supplement such SBS I Covered Agreement.*

*In the case of a PCA Principal executing and delivering this Questionnaire on its own behalf, (i) such party must identify itself as the PCA Principal in column 1 of the PCA Principal Answer Sheet, and (ii) this Questionnaire will only be effective to supplement existing SBS I Covered Agreements executed by such party on its own behalf. In the case of a PCA Agent executing and delivering this Questionnaire on behalf of one or more PCA Principals, (i) the PCA Agent must list the names of each such PCA Principal in column 1 of the PCA Principal Answer Sheet, and (ii) this Questionnaire will only be effective to supplement SBS I Covered Agreements executed by the PCA Agent on behalf of the listed PCA Principals. For the avoidance of doubt, if this Questionnaire is being completed by a PCA Agent on behalf of multiple PCA Principals, this Questionnaire shall be treated as if it were a separate Questionnaire with respect to each separate PCA Principal listed in column 1 of the PCA Principal Answer Sheet.*

*In addition, if one or more Designated Evaluation Agents, Designated QIRs or Designated Fiduciaries is identified in this Questionnaire, each such Designated Evaluation Agent, Designated QIR or Designated Fiduciary, as the case may be, must countersign this Questionnaire where indicated.*

*The responses to Part II, Sections 3(b), 4, 5, and 6 and Part III, Section 1(b)(xxii) of this Questionnaire may be set forth directly on this Questionnaire, or if there is insufficient space, on*

*a separate schedule. The responses to the other sections of Part II and Part III of this Questionnaire must be set forth on the PCA Principal Answer Sheet.*

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## **Part I: Definitions**

References in this Questionnaire to the following terms shall have the following meanings:

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

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

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

“**Commodity Pool**” means a “commodity pool” as defined in Section 1(a)(10) of the Commodity Exchange Act and applicable regulations thereunder.

“**Commodity Pool Operator**” means a “commodity pool operator” as defined in Section 1a(11) of the Commodity Exchange Act.

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

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

“**ERISA Special Entity**” means an employee benefit plan subject to Title I of ERISA.

“**LEI**” means a unique legal entity identifier satisfying the requirements of SEC Rule 242.903 for a “UIC.”

“**Major Security-Based Swap Participant**” means a “major security-based swap participant” as defined in Section 3(a)(67) of the SEA and Rule 3a67-1 thereunder.

“**Major Swap Participant**” means a “major swap participant” as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Rule 1.3 thereunder.

“**Matched PCA**” means an SBS I Covered Agreement deemed to be supplemented by SBS Supplement I upon the delivery and receipt of this SBS Questionnaire I.

“**PCA Agent**” means a party who has executed a SBS I Covered Agreement on behalf of one or more PCA Principals.

“**PCA Principal**” means a person who is or may become a principal to one or more SBS under a SBS I Covered Agreement and who is identified as such in column 1 of the PCA Principal Answer Sheet.

“**PCA Principal Answer Sheet**” means a spreadsheet substantially in the form of Annex A to this Questionnaire.

“**Protocol Agreement**” means the ISDA 2021 SBS Protocol Agreement published on May 3, 2021 by the International Swaps and Derivatives Association, Inc.

“**Regulated Swap Entity**” means a person that is a Covered SBS Entity, Major Security-Based Swap Participant, Swap Dealer or Major Swap Participant.

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

“**SBS I Covered Agreement**” means any written agreement between two parties, at least one of which is a Covered SBS Entity, that (A) has been entered into on or prior to the Implementation Date applicable to such parties and (B) governs the terms and conditions of one or more SBS that each such party has or may enter into as principal.

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

“**SBS Supplement I**” means the ISDA SBS Supplement I published on May 3, 2021 by the International Swaps and Derivatives Association, Inc.

“**SBS Supplement I Rules**” means the SEC Rules adopted in the following Federal Register citations, as amended and supplemented from time to time: (1) *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 80 Fed. Reg. 14437 (Aug. 14, 2015); (2) *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 80 Fed. Reg. 14563 (Feb. 11, 2015); (3) *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 81 Fed. Reg. 53545 (Aug. 12, 2016); (4) *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 81 Fed. Reg. 29959 (May 13, 2016); (5) *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers*, 84 Fed. Reg. 68550 (Dec. 16, 2019); (6) any comparable non-U.S. regulation with which Covered SBS Entity is permitted by the SEC to comply in lieu of any of the foregoing SEC Rules; and (7) the rules of (i) a self-regulatory organization for SBSDs (including brokers or dealers that are SBSDs), (ii) a clearing agency for SBS that is registered or exempt from registration under the SEA or (iii) a facility for the trading or processing of SBS that is registered as a security-based swap execution facility or a national securities exchange under the SEA, in each case where Covered SBS Entity is a member or clears, trades or otherwise processes SBS.

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

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

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

“**Special Entity**” means a “special entity” as defined in Section 15F(h)(2)(C) of the SEA and SEC Rule 15Fh-2(d) thereunder.

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

“**Swap Dealer**” means a “swap dealer” as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Rule 1.3 thereunder.

***Capitalized terms used but not otherwise defined in this Questionnaire shall have the meanings assigned to such terms in the Protocol Agreement.***

## **Part II: PCA Principal Information**

*Part II of this Questionnaire specifies information regarding a PCA Principal that may be provided by or on behalf of such PCA Principal.*

*If you require additional space to answer any of the questions below (e.g., to provide information for multiple PCA Principals), you may attach a separate schedule to provide the PCA Principal information specified in this Part II.*

### **1. LEI<sup>2</sup>**

*To answer this question, complete column 2 of the relevant row of the PCA Principal Answer Sheet by inserting the PCA Principal’s LEI:*

What is PCA Principal’s LEI?

### **2. Covered SBS Entity**

*For purposes of SBS Supplement I terms incorporated in SBS I Covered Agreements, the term “Covered SBS Entity” is used to signify PCA Principals that are, or expect shortly to be, registered as a security-based swap dealer with the SEC. In SBS Supplement I, the agreements that apply to a “Covered SBS Entity” are only appropriate for a registered security-based swap dealer and the agreements applicable to “Counterparty” or “CP” are only appropriate for parties who are counterparties to a registered security-based swap dealer. The Protocol Agreement provides that the obligations of matched PCA Principals under SBS Supplement I are conditioned upon at least one of the matched PCA Principals actually being registered with the SEC as a security-based swap dealer, so that PCA Principals may be designated as Covered SBS Entities prior to registration and have relevant obligations take effect once registration is complete.*

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<sup>2</sup> SEC Rule 903.

*Each party executing this Questionnaire I must indicate whether the relevant PCA Principal will be a Covered SBS Entity for purposes of SBS Supplement I terms incorporated in SBS I Covered Agreements. Designation as a Covered SBS Entity in this Questionnaire I is not a representation by the PCA Principal that it is a “security-based swap dealer,” as such term is defined in the SEA and applicable SEC regulations, or that it is registered as such. **However, parties who do not in good faith believe they will register as a security-based swap dealer should not be designated as a Covered SBS Entity for purposes of SBS Supplement I terms incorporated in SBS I Covered Agreements.** Under SBS Supplement I, a matched party that is not initially a Covered SBS Entity may subsequently change its status to Covered SBS Entity by providing written notice to its counterparty that it has become registered with the SEC as a security-based swap dealer.*

*To answer this question, complete column 3 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate. A “Yes” response to this question will be an election for PCA Principal to be a Covered SBS Entity for purposes of SBS Supplement I terms incorporated in SBS I Covered Agreements.*

Is PCA Principal a Covered SBS Entity?

### 3. **Designated Evaluation Agent Information**

*The following information must be provided for PCA Principals that are not Regulated Swap Entities or Special Entities and that wish to incorporate SBS I Schedule 3 (Institutional Suitability Safe Harbor for Non-Special Entities) into Matched PCAs.*

- (a) *To answer this question, complete column 4 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

*Does PCA Principal have one or more agents (other than an employee of PCA Principal) that it wishes to designate as “**Designated Evaluation Agents**”<sup>3</sup> for purposes of making the relevant representations in SBS I Schedule 3 and to which it has delegated decision-making authority with respect to transacting SBS on behalf of PCA Principal? (Please note that it is permissible for a PCA Principal to enter into SBS I Schedule 3 without designating an agent as its Designated Evaluation Agent provided that the PCA Principal can make the representations provided in Part II of SBS I Schedule 3.)*

- (b) Please provide the name and address of each agent that PCA Principal wishes to designate as a “Designated Evaluation Agent” for purposes of SBS I Schedule 3:

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<sup>3</sup> See the annotations to Schedule 3 of SBS Supplement I. Note that the term “Designated Evaluation Agent is defined to exclude an employee of the CP.

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

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**4. Designated QIR Information**

*The following information must be provided for PCA Principals that are Special Entities other than ERISA Special Entities, and that wish to incorporate SBS I Schedule 4 (Safe Harbors for Non-ERISA Special Entities) into Matched PCAs.*

Please provide the name and address of each of PCA Principal’s representatives selected as a “**Designated QIR**”<sup>4</sup> for purposes of SBS Supplement I:

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

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**5. Designated Fiduciary Information**

*The following information must be provided for PCA Principals that are ERISA Special Entities, and that wish to incorporate SBS I Schedule 5 (Safe Harbors for ERISA Special Entities (Option 1)) and/or SBS I Schedule 6 (Safe Harbors for ERISA Special Entities (Option 2)) into Matched PCAs.*

Please provide the name and address of each of PCA Principal’s “fiduciaries,” as that term is defined in Section 3 of ERISA, selected as a “**Designated Fiduciary**”<sup>5</sup> for purposes of SBS Supplement I:

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<sup>4</sup> A Special Entity CP that enters into Schedule 4 must have a Designated QIR and such Designated QIR may (but need not) be an employee of the CP. Such Designated QIR must make the representations applicable to it in SBS Supplement I Schedule 4. See the annotations to Schedule 4 of SBS Supplement I.



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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**6. E-mail Address for Delivery of Required Notifications and Disclosures**

*The following information may be provided by, or on behalf of, PCA Principals that are not Covered SBS Entities.*

PCA Principal may provide an e-mail address that may be used for the delivery of notifications and any informational disclosures given pursuant to the SBS Supplement I Rules:

E-mail: \_\_\_\_\_ <sup>6</sup>

**Part III: PCA Principal: Status Representations**

*Part III of this Questionnaire consists of questions that must be answered by, or on behalf of, each PCA Principal except as otherwise indicated. Answers to the questions should be provided in the PCA Principal Answer Sheet except as otherwise indicated.*

**1. Eligible Contract Participant<sup>7</sup>**

- (a) *To answer this question, complete column 5 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

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<sup>5</sup> A CP that enters into Schedules 5 or 6 must have a Designated Fiduciary and such Designated Fiduciary may (but need not) be an employee of the CP. Such Designated Fiduciary must make the representation applicable to it in SBS Supplement I Schedule 5 and/or 6. See the annotations to Schedules 5 and 6 of SBS Supplement I.

<sup>6</sup> The SEC external business conduct rules require SBSDs to deliver certain notifications and informational disclosures to their counterparties (other than Covered SBS Entities). These notifications and informational disclosures may be voluminous. This question provides counterparties with the opportunity to provide an email address to be used by an SBSD for the delivery of such notifications and informational disclosures. The address to which general notices are sent may not be readily available and/or appropriate for that type of communication. Each counterparty must determine for itself whether it wishes to provide an email address.

<sup>7</sup> SEC Rule 15Fh-3(a)(1). This section has been substantially restructured from the equivalent questions in the Questionnaire for the August 2012 DF Protocol to reflect rules under the Commodity Exchange further defining the term “eligible contract participant” that were adopted after that earlier protocol was published.

Other than for purposes of any agreement, contract, or transaction described in Section 2(c)(2)(B)(vi) or 2(c)(2)(C)(vii) of the Commodity Exchange Act, is PCA Principal an “eligible contract participant,” as that term is defined in Section 3(a)(65) of the SEA and applicable regulations thereunder (an “**Eligible Contract Participant**”)?<sup>8</sup>

- (b) *To respond to this instruction, complete column 6 of the relevant row of the PCA Principal Answer Sheet by inserting at least one of the subsection numbers below in column 6.*

If PCA Principal has identified itself as an Eligible Contract Participant, please indicate at least one of the following subsections that is applicable to PCA Principal (respondents may, but are not required to, indicate more than one subsection if applicable):<sup>9</sup>

- (i) PCA Principal is a “swap dealer,” as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Rule 1.3.<sup>10</sup>
- (ii) PCA Principal is a “security-based swap dealer,” as defined in Section 3(a)(71) of the SEA and SEC Rule 3a71-1 thereunder.<sup>11</sup>
- (iii) PCA Principal is a “major swap participant,” as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Rule 1.3.<sup>12</sup>
- (iv) PCA Principal is a “major security-based swap participant,” as defined in Section 3(a)(67) of the SEA and SEC Rule 3a67-1 thereunder.<sup>13</sup>
- (v) PCA Principal is a “financial institution” as defined in Section 1a(21) of the Commodity Exchange Act (a “**Financial Institution**”).<sup>14</sup>
- (vi) PCA Principal is an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the CFTC, including a

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<sup>8</sup> The exclusions are for foreign currency transactions that are not relevant to SBS or the SEC’s rules. Additional requirements to qualify as an ECP apply to such contracts.

<sup>9</sup> *Id.* See 81 Fed. Reg. 29959, 29979-80 (May 13, 2016).

<sup>10</sup> CFTC Rule 1.3.

<sup>11</sup> CFTC Rule 1.3.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Commodity Exchange Act § 1a(18)(A)(i).

regulated subsidiary or affiliate of such an insurance company (an “**Eligible Insurance Company**”).<sup>15</sup>

- (vii) PCA Principal is an investment company subject to regulation under the Investment Company Act of 1940, as amended, or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an Eligible Contract Participant) (an “**Eligible Investment Company**”).<sup>16</sup>
- (viii) PCA Principal is a Commodity Pool that has total assets exceeding \$5,000,000 and is operated by (and, if PCA Principal was formed on or after December 31, 2012 or such later date as the CFTC may specify under applicable regulations, was formed by) (1) a person registered as a Commodity Pool Operator with the CFTC, (2) a person excluded from the Commodity Pool Operator definition pursuant to CFTC Rule 4.5 or otherwise, (3) a person properly exempt from registration as a Commodity Pool Operator under CFTC Rule 4.13(a)(3) or otherwise, or (4) a foreign person performing a similar role or function, subject as such to foreign regulation (an “**Eligible Commodity Pool**”).<sup>17</sup>
- (ix) PCA Principal is not a Commodity Pool and is a corporation, partnership, proprietorship, organization, trust, or other entity (1) that has total assets exceeding \$10,000,000 or (2) the obligations of which under each SBS I Covered Agreement to which it is a party are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by a corporation, partnership, proprietorship, organization, trust, or other entity that has total assets exceeding \$10,000,000, a Financial Institution, an Eligible Insurance Company, an Eligible Investment Company, an Eligible Commodity Pool, an Eligible Government Entity, or an Other Eligible Person (as defined in paragraph (xxii) below) (a “**Large Entity**”).<sup>18</sup>
- (x) PCA Principal is not a Commodity Pool and is a corporation, partnership, proprietorship, organization, trust, or other entity that has a net worth exceeding \$1,000,000 and enters into SBS in connection with the conduct of the entity’s business or to manage the

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<sup>15</sup> Commodity Exchange Act § 1a(18)(A)(ii).

<sup>16</sup> Commodity Exchange Act § 1a(18)(A)(iii).

<sup>17</sup> Commodity Exchange Act § 1a(18)(A)(iv); CFTC Rule 1.3.

<sup>18</sup> Commodity Exchange Act § 1a(18)(A)(v)(I)-(II); CFTC Rule 1.3. **Under rules established by the CFTC, a PCA Principal that is a Commodity Pool is not eligible to qualify as an eligible contract participant based on this subsection and/or subsection x (Hedging Entity ECP). In order to establish eligibility to transact in SBS, such a PCA Principal should select another subsection that is applicable to it.**

risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business (a "**Hedging Entity ECP**").<sup>19</sup>

- (xi) PCA Principal is an employee benefit plan subject to ERISA, a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation (1) that has total assets exceeding \$5,000,000; or (2) the investment decisions of which are made by (A) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940, as amended, or the Commodity Exchange Act; (B) a foreign person performing a similar role or function subject as such to foreign regulation; (C) a Financial Institution; or (D) an Eligible Insurance Company, or a regulated subsidiary or affiliate of such Eligible Insurance Company.<sup>20</sup>
- (xii) PCA Principal is (1) a governmental entity (including the United States, a State, or a foreign government), or political subdivision of a governmental entity, (2) a multinational or supranational government entity, or (3) an instrumentality, agency, or department of an entity described in clause (1) or (2), and if PCA Principal is an entity described in clause (1) or (3), PCA Principal owns and invests on a discretionary basis \$50,000,000 or more in investments, or otherwise satisfies the requirements of Section 1a(18)(A)(vii)(III)(aa) or (cc) of the Commodity Exchange Act (an "**Eligible Government Entity**").<sup>21</sup>
- (xiii) PCA Principal is a broker or dealer (other than a natural person or proprietorship) subject to regulation under the SEA, or a foreign person (other than a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation (an "**Institutional Broker-Dealer**").<sup>22</sup>
- (xiv) PCA Principal is (1) a broker or dealer (and is a natural person or proprietorship) subject to regulation under the SEA or a foreign person (that is a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation and

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<sup>19</sup> Commodity Exchange Act § 1a(18)(A)(v)(III); CFTC Rule 1.3. A PCA Principal that is a Commodity Pool may not rely solely on this subsection and/or subsection ix (Large Entity) to establish that it is an "eligible contract participant" under Section 1a(18) of the Commodity Exchange Act. In order to establish eligibility to transact in SBS, such a PCA Principal should select another subsection that is applicable to it.

<sup>20</sup> Commodity Exchange Act § 1a(18)(A)(vi).

<sup>21</sup> Commodity Exchange Act § 1a(18)(A)(vii).

<sup>22</sup> Commodity Exchange Act § 1a(18)(A)(viii).

(2) qualifies as a Large Entity or Eligible Individual (a “**Individual Broker-Dealer**”).<sup>23</sup>

- (xv) PCA Principal is an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered broker or dealer makes and keeps records under Section 15C(b) or 17(h) of the SEA (a “**BD Associated Person**”).<sup>24</sup>
- (xvi) PCA Principal is an investment bank holding company (as defined in Section 17(i) of the SEA) (an “**Investment Bank Holding Company**”).<sup>25</sup>
- (xvii) PCA Principal is a futures commission merchant subject to regulation under the Commodity Exchange Act (other than a natural person or proprietorship) or a foreign person (other than a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation (an “**Institutional FCM**”).<sup>26</sup>
- (xviii) PCA Principal (1) is a futures commission merchant subject to regulation under the Commodity Exchange Act (and is a natural person or proprietorship) or a foreign person (that is a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation and (2) qualifies as a Large Entity or Eligible Individual (an “**Individual FCM**”).<sup>27</sup>
- (xix) PCA Principal is a floor broker or floor trader subject to regulation under the Commodity Exchange Act in connection with any transaction that takes place on or through the facilities of a registered entity (other than an electronic trading facility with respect to a significant price discovery contract) or an exempt board of trade, or any affiliate thereof, on which such person regularly trades (a “**Floor Broker**”).<sup>28</sup>
- (xx) PCA Principal is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$10,000,000 (an “**Eligible Individual**”).<sup>29</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> Commodity Exchange Act § 1a(18)(A)(viii)(II).

<sup>25</sup> Commodity Exchange Act § 1a(18)(A)(viii)(III).

<sup>26</sup> Commodity Exchange Act § 1a(18)(A)(ix).

<sup>27</sup> Commodity Exchange Act § 1a(18)(A)(ix).

<sup>28</sup> Commodity Exchange Act § 1a(18)(A)(x).

<sup>29</sup> Commodity Exchange Act § 1a(18)(A)(xi)(I).

- (xxi) PCA Principal is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$5,000,000 and who enters into Swaps in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual (a “**Hedging Individual ECP**”).<sup>30</sup>
- (xxii) PCA Principal is a person that the CFTC has determined to be eligible in light of the financial or other qualifications of the person (an “**Other Eligible Person**”).<sup>31</sup> *If PCA Principal inserts subsection (xxii) in column 6 of the PCA Principal Answer Sheet, PCA Principal must provide an explanation in the space below and include additional pages as necessary:*

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**2. Regulated Swap Entity**

*To answer this question, complete column 7 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

Is PCA Principal a Swap Dealer, Security-Based Swap Dealer, Major Swap Participant or Major Security-Based Swap Participant?

**3. Institutional Counterparty**

*This Part III, Section 3 must be completed by, or on behalf of, PCA Principals other than Regulated Swap Entities, Financial Institutions, Eligible Insurance Companies, Eligible Investment Companies, Eligible Commodity Pools, Institutional Broker-Dealers, Individual Broker-Dealers, BD Associated Persons, Investment Bank Holding Companies, Institutional FCMs, Individual FCMs and Floor Brokers. This question is provided to establish eligibility for the safe harbors provided in SBS I Schedules 3, 4, 5 and 6.*<sup>32</sup>

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<sup>30</sup> Commodity Exchange Act § 1a(18)(A)(xi)(II).

<sup>31</sup> Commodity Exchange Act § 1a(18)(C). **Please note that this clause (xxii) corresponds to statutory authority granted to the CFTC to determine that other persons not specifically covered by statute are to be ECPs. Commodity Exchange Act § 1a(18)(C). Parties should select this clause (xxii) only if they can provide evidence that the CFTC has made such a determination with respect to them or a class to which they belong.**

<sup>32</sup> Pursuant to SEC Rule 15Fh-3(f)(2)(i), and SBS D that recommends an SBS or trading strategy involving an SBS may satisfy its suitability duties with respect to an institutional counterparty if it reasonably determines the institutional counterparty is capable of independently evaluating investment risks and certain additional

*To answer this question, complete column 8 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes,” “No,” or “Not Applicable,” as appropriate:*

Does PCA Principal have total assets of at least \$50 million?

**4. Special Entity**

- (a) *This Part III, Section 4(a) must be completed by, or on behalf of, PCA Principals other than Swap Dealers and Security-Based Swap Dealers except as otherwise provided below.*

*To answer this question, complete column 9 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate. If PCA Principal fails to answer this question, it will be deemed to represent that it is not a Special Entity for the purposes of relevant statutory and regulatory requirements, until PCA Principal affirmatively represents to the contrary in writing.*

Is PCA Principal a Special Entity?

- (b) *This Part III, Section 4(b) must be completed by, or on behalf of, Special Entities.*

*To answer this question, complete column 10 of the relevant row of the PCA Principal Answer Sheet by inserting the applicable subsection number below:*

Which one of the following subsections is applicable to PCA Principal?<sup>33</sup>

- (i) PCA Principal is a Federal agency.<sup>34</sup>
- (ii) PCA Principal is a State, State agency, city, county, municipality, other political subdivision of a State, or any instrumentality, department, or corporation of or established by a State or political subdivision of a State.<sup>35</sup>
- (iii) PCA Principal is an ERISA Special Entity.<sup>36</sup>

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representations and disclosures are exchanged. This safe harbor is only available to institutional counterparties. While certain types of entities are deemed Institutional Counterparties per se under SEC rules, for others the asset test must be satisfied.

<sup>33</sup> SEC Rules 15Fh-2(d) and 15Fh-3(a)(2)

<sup>34</sup> SEC Rule 15Fh-2(d)(1).

<sup>35</sup> SEC Rule 15Fh-2(d)(2).

<sup>36</sup> SEC Rule 15Fh-2(d)(3).

- (iv) PCA Principal is an employee benefit plan defined in Section 3 of ERISA, not otherwise defined as a Special Entity (an “**Exempt Plan**”).<sup>37</sup>
- (v) PCA Principal is a governmental plan, as defined in Section 3 of ERISA.<sup>38</sup>
- (vi) PCA Principal is an endowment. (For purposes of this question, an “endowment” includes an endowment that is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 501(c)(3).)<sup>39</sup>

(c) *This Part III, Section 4(c) must be completed by, or on behalf of, Exempt Plans.*

*To answer this question, complete column 11 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No.” If PCA Principal answers this question “No,” then the SEC Rules applicable to Special Entities will apply to PCA Principal except to the extent that PCA Principal agrees to provide safe harbor representations as provided in SBS I Schedule 4.<sup>40</sup>*

Does PCA Principal elect to opt out of treatment as a Special Entity?

#### **Part IV: Safe Harbor Elections for Covered SBS Entities**

*This Part IV must be completed by, or on behalf of, PCA Principals that are Covered SBS Entities.*

##### **1. Institutional Suitability Safe Harbor**

*To answer this question, complete column 12 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal’s counterparty to such Matched PCA is a party other than a Regulated Swap Entity or a Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein SBS I Schedule 3 (Institutional Suitability Safe Harbor for Institutional Counterparties)?

##### **2. Non-ERISA Special Entity Safe Harbor**

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<sup>37</sup> SEC Rule 15Fh-2(d)(4).

<sup>38</sup> SEC Rule 15Fh-2(d)(5).

<sup>39</sup> SEC Rule 15Fh-2(d)(6).

<sup>40</sup> SEC Rules 15Fh-2(d)(4) and 15Fh-3(a)(3).



*To answer this question, complete column 13 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal’s counterparty to such Matched PCA is a Special Entity that is not an ERISA Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein SBS I Schedule 4 (Safe Harbors for Non-ERISA Special Entities)?

**3. ERISA Special Entity Safe Harbors**

- (a) *To answer this question, complete column 14 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal’s counterparty to such Matched PCA is an ERISA Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein SBS I Schedule 5 (Safe Harbors for ERISA Special Entities (Option 1))?

- (b) *To answer this question, complete column 15 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal’s counterparty to such Matched PCA is an ERISA Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein SBS I Schedule 6 (Safe Harbors for ERISA Special Entities (Option 2))?

## **Part V: Safe Harbor Elections for Other Entities**<sup>41</sup>

### **1. Institutional Suitability Safe Harbor**<sup>42</sup>

*This Part V, Section 1 must be completed by, or on behalf of, PCA Principals other than Regulated Swap Entities and Special Entities.*

*To answer this question, complete column 16 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate. If PCA Principal answers this question “Yes,” then each of its Designated Evaluation Agents (if any) must countersign this Questionnaire in the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in SBS I Schedule 3.*

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein SBS I Schedule 3 (Institutional Suitability Safe Harbor for Institutional Counterparties)?

### **2. Non-ERISA Special Entity Safe Harbor**<sup>43</sup>

*This Part V, Section 2 must be completed by, or on behalf of, all Special Entities other than ERISA Special Entities and Exempt Plans that have elected to opt out of treatment as a Special Entity by answering “Yes” to Part III, Section 4(c) above.*

*To answer this question, complete column 17 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate. If PCA Principal answers this question “Yes,” then each of its Designated QIRs must countersign this Questionnaire in the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in SBS I Schedule 4.*

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<sup>41</sup> *Note to all entities other than Regulated Swap Entities and Special Entities:* The SEC external business conduct rules impose upon SBSDs a duty to reasonably determine the suitability of any SBS “recommended” to a counterparty. The rules also impose heightened suitability or “best interest” duties when an SBSD recommends a tailored SBS to a “special entity.” In order to comply with such rules, an SBSD will likely be required to perform comprehensive due diligence on its counterparties prior to trading unless the applicable safe harbors to such rules are satisfied. The elections in this Part V are where adherents may elect to enter into the safe harbor provisions (found in SBS Supplement I Schedules 3-6) that are available to them. For further detail on the relevant safe harbor provisions, see SBS Supplement I Schedules 3-6 and the annotations thereto.

<sup>42</sup> An SBSD and counterparty can satisfy the applicable safe harbor by electing to incorporate the applicable SBS Supplement I Schedule. The SBS Supplement I Schedule 3 safe harbor is the general safe harbor for use by SBSDs and counterparties that are “institutional counterparties” other than special entities. See SBS Supplement I Schedule 3 and the annotations thereto.

<sup>43</sup> An SBSD and counterparty can satisfy the applicable safe harbor by electing to incorporate the applicable SBS Supplement I Schedule. The SBS Supplement I Schedule 4 safe harbor is for use by SBSDs and counterparties that are “special entities” other than certain employee benefit plans. See SBS Supplement I Schedule 4 and the annotations thereto.

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein SBS I Schedule 4 (Safe Harbors for Non-ERISA Special Entities)?<sup>44</sup>

**3. ERISA Special Entity Safe Harbors<sup>45</sup>**

*This Part V, Section 3 must be completed by, or on behalf of, all ERISA Special Entities.*

- (a) *To answer this question, complete column 18 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate. If PCA Principal answers this question “Yes,” then each of its Designated Fiduciaries must countersign this Questionnaire in the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in SBS I Schedule 5.*

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein SBS I Schedule 5 (Safe Harbors for ERISA Special Entities (Option 1))?<sup>46</sup>

- (b) *To answer this question, complete column 19 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate. If PCA Principal answers this question “Yes,” then each of its Designated Fiduciaries must countersign this Questionnaire on the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in SBS I Schedule 6.*

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein SBS I Schedule 6 (Safe Harbors for ERISA Special Entities (Option 2))?<sup>47</sup>

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<sup>44</sup> SEC Rule 15Fh-3(a)(2). See 81 Fed. Reg. at 29880.

<sup>45</sup> An SBSI and counterparty can satisfy the applicable safe harbor by electing to incorporate the applicable SBSI Supplement I Schedule. In the case of special entities that are employee benefit plans subject to Title I of ERISA, two alternative safe harbors (Schedules 5 and 6) are available. ERISA special entities may elect one or both safe harbors. See SBSI Supplement I Schedules 5 and 6, and the annotations thereto.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

By executing this Questionnaire, the signatory represents as PCA Principal or PCA Agent for specified PCA Principals that (a) all information provided by it in this Questionnaire is true, accurate and complete in every material respect as of the date hereof, and may be relied upon by each counterparty to whom this Questionnaire is delivered and all such previously provided information is true, accurate and complete in every material respect as of the date hereof, and may be relied upon by each counterparty to whom this Questionnaire is delivered, (b) if Part III, Section 4(a) has not been filled out with respect to a specified PCA Principal, such PCA Principal is not a Special Entity, and (c) it has agreed to enter into the SBS I Schedules indicated in the Questionnaire.

[INSERT FULL LEGAL NAME OF PCA PRINCIPAL OR PCA AGENT]<sup>48</sup>

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By executing this Questionnaire on the relevant signature block below, the signatory agrees to make the representations and agreements applicable to it in the relevant SBS I Schedule of SBS Supplement I.

[INSERT FULL LEGAL NAME OF DESIGNATED EVALUATION AGENT],<sup>49</sup> solely as PCA Principal's Designated Evaluation Agent and solely to make the representations and agreements applicable to it as Designated Evaluation Agent in SBS I Schedule 3.

By: \_\_\_\_\_  
Name:  
Title:  
Date:

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<sup>48</sup> If you are a PCA Agent acting on behalf of one or more PCA Principals insert the following in the signature block: “, acting on behalf of the clients, investors, funds, accounts and/or other principals listed in the column 1 of the PCA Principal Answer Sheet.”

<sup>49</sup> Append additional signature blocks or add signature pages as necessary if PCA Principal has multiple Designated Evaluation Agents.

[INSERT FULL LEGAL NAME OF DESIGNATED QIR],<sup>50</sup>

solely as PCA Principal's Designated QIR and solely to make the representations and agreements applicable to it as Designated QIR in SBS I Schedule 4.

By: \_\_\_\_\_

Name:

Title:

Date:

[INSERT FULL LEGAL NAME OF DESIGNATED FIDUCIARY/FIDUCIARIES],<sup>51</sup> solely as  
PCA Principal's Designated Fiduciary and solely to make the representations and agreements applicable to it in  
SBS I Schedule 5 and/or 6, as applicable.

By: \_\_\_\_\_

Name:

Title:

Date:

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<sup>50</sup> Append additional signature blocks or add signature pages as necessary if PCA Principal has multiple Designated QIRs.

<sup>51</sup> Append additional signature blocks or add signature pages as necessary if PCA Principal has multiple Designated Fiduciaries.