

ISDA SBS SUPPLEMENT II¹

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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.

¹ This ISDA SBS Supplement II 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 SBSDs and Major Security-Based Swap Participants, 80 Fed. Reg. 14437 (Aug. 14, 2015);
- (3) Trade Acknowledgement and Verification of Security-Based Swap Transactions, 81 Fed. Reg. 39807 (June 17, 2016);
- (4) Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 81 Fed. Reg. 53545 (Aug. 12, 2016);
- (5) Cross-Border Application of Certain Security-Based Swap Requirements, 85 Fed. Reg. 6270 (Feb. 4, 2020); and
- (6) Risk Mitigation Techniques for Uncleared Security-Based Swaps, 85 Fed. Reg. 6359 (Feb. 4, 2020).

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ISDA SBS Supplement II²
(published on May 3, 2021)

Any of the following schedules of this **ISDA SBS Supplement II** (as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”)) (this “**SBS Supplement II**”) may be incorporated into an agreement (such agreement, a “**Covered Agreement**”) by written agreement of the relevant parties indicating which schedules of this SBS Supplement II (each such schedule, a “**SBS II Schedule**”) shall be incorporated into such Covered Agreement.³ Each SBS II Schedule so incorporated into a Covered Agreement will be applicable to such Covered Agreement unless otherwise provided in such Covered Agreement. The headings and footnotes used in this SBS Supplement II are for informational purposes and convenience of reference only, and are not to affect the construction of or to be taken into consideration in interpreting this SBS Supplement II.

² This SBS Supplement II is designed to be used by (i) an SBS D or MSBSP that has designated itself as a “Covered SBS Entity” and (ii) any counterparty (referred to herein as the “Counterparty” or “CP”) who may also be a SBS D or MSBSP. Where both parties are SBS Ds or MSBSPs that have designated themselves as “Covered SBS Entities,” each is considered to be the “Covered SBS Entity” and the “Counterparty” or “CP” for purposes of this SBS Supplement II.

³ The “written agreement of the relevant parties” may include any written agreement by which the parties agree to incorporate the provisions of this SBS Supplement II. Such an agreement will be established if both parties have adhered to the SBS Protocol and exchanged SBS Questionnaire II in accordance with the terms of thereof. Parties may also incorporate such provisions through any other bilateral agreement. In either case, the relevant provisions of this SBS Supplement II would be incorporated into “Covered Agreements.”

Under the Protocol Agreement, a “Protocol Covered Agreement” refers to an agreement between the parties that (1) governs the terms and conditions of one or more transactions in SBS that each such party may enter into as principal and (2) is in existence at the time the parties have matched relevant SBS Questionnaires or has otherwise been designated by the parties in writing as a Protocol Covered Agreement (*e.g.*, after matching relevant SBS Questionnaires). A Covered Agreement under this SBS Protocol Supplement II is any such Protocol Covered Agreement which has been amended by matching SBS Questionnaire II and any other agreement designated by the parties as amended by this SBS Supplement II. For these purposes, an ISDA SBS Protocol Master Agreement created by exchanging SBS Questionnaire II and making the relevant elections is also a Covered Agreement notwithstanding that it is created by the same matching of SBS Questionnaire II as these amendments. *See* Section 4(e) of the SBS Protocol Agreement.

SBS II Schedule 1 Defined Terms

The following terms shall have the following meanings when used in this SBS Supplement II. In the event of any inconsistency between a definition provided in this SBS Supplement II and a definition provided in a Covered Agreement, the definitions provided in this SBS Supplement II shall govern for purposes of interpreting terms provided in any SBS II Schedule that is incorporated into such Covered Agreement and the definitions provided in the Covered Agreement shall govern for purposes of interpreting other terms in the Covered Agreement unless such Covered Agreement specifically provides otherwise.

“**Agreement**,” as used in a provision of this SBS Supplement II that is incorporated into a Covered Agreement or any defined term used in such provision, means such Covered Agreement, as amended or supplemented from time to time.⁴

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

“**Applicable Portfolio Reconciliation Compliance Date**” means the date on which Covered SBS Entity compliance is required with respect to CP under SEC Rule 15Fi-3 and applicable law regarding the scope of application of SEC Rule 15Fi-3, including applicable SEC interpretations and other SEC Rules. For the avoidance of doubt, if both parties are Covered SBS Entities, the Applicable Portfolio Compliance Date shall occur on the first date on which compliance is required by either Covered SBS Entity with respect to the other party.⁵

“**Applicable STRD Compliance Date**” means the date on which Covered SBS Entity compliance is required with respect to CP under SEC Rule 15Fi-5 and applicable law regarding the scope of application of SEC Rule 15Fi-5, including applicable SEC interpretations and other SEC Regulations. For the avoidance of doubt, if both parties are Covered SBS Entities, the Applicable STRD Compliance Date shall occur on the first date on which compliance is required by either Covered SBS Entity in respect of the other party.⁶

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

⁴ Because “Covered Agreement” means any agreement that the parties may amend or supplement with the terms provided in this SBS Supplement II, the term “Agreement” is used to identify the specific agreement that is supplemented when these terms are incorporated into that agreement. An “Agreement” can be a master agreement governing the terms and conditions of swaps or any other agreement between the relevant parties.

⁵ See Section 4.1. Note that this date is defined in respect of the date on which compliance is required under applicable law with respect to SBS between the two specific parties, rather than the general compliance date for SEC Rule 15Fi-3. This is to carve-out situations where the general compliance date for the regulation has occurred but it does not apply to the parties, e.g. for jurisdictional reasons.

⁶ See Sections 2.10 and 3.1. Note that this date is defined in respect of the date on which compliance is required under applicable law with respect to SBS between the two specific parties, rather than the general compliance date for SEC Rule 15Fi-5. This is to carve-out situations where the general compliance date for the regulation has occurred but it does not apply to the parties, e.g. for jurisdictional reasons.

“**Clearing Agency**” means a “clearing agency,” as defined in Section 3(a)(23)(A) of the SEA and SEC Rules thereunder.

“**Close-Out Provision**” means, (i) in respect of an SBS for which the parties **have** agreed in writing (whether as part of the Agreement or otherwise) to a process for determining the payments to be made upon early termination of such SBS, the provisions specifying such process, and (ii) in respect of an SBS for which the parties **have not** agreed in writing (whether as part of the Agreement or otherwise) to a process for determining the payments to be made upon early termination of such SBS, Section 6(e)(ii)(1) of the 2002 ISDA Master Agreement as if such SBS were governed thereby.⁷

“**Counterparty**” or “**CP**” means a party to the Agreement that is a counterparty to a Covered SBS Entity. For the avoidance of doubt, if two Covered SBS Entities are party to the Agreement, then each Covered SBS Entity is also a Counterparty or CP for purposes of the SBS Supplement II.

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

“**Covered SBS Entity**” means a party that (i) has been designated as a Covered SBS Entity for purposes of this SBS Supplement II, or (ii) is or becomes registered (on an ongoing basis or conditionally) as a “security-based swap dealer” or “major security-based swap participant” with the SEC and has notified the other party of such registration in accordance with the Notice Procedures.⁹

“**Credit Support Agreement**” means a written agreement, if any, between the parties (whether party of the Agreement or otherwise) that governs the posting or transferring of collateral or other credit support to cover open credit exposures due to changes in value related to one or more transactions in SBS.¹⁰

⁷ See the definitions of “Risk Exposure” and “Risk Valuation.”

⁸ See Section 2.11.

⁹ The function of this term is to identify the party or parties who will receive and provide representations, warranties and covenants appropriate to an SBS or MSBSP. This SBS Supplement II provides parties with flexibility in incorporating its provisions into their agreements by allowing them to choose whether one or both parties will be a “Covered SBS Entity” without such party having to represent that it is a SBS or a MSBSP. Thus, a party that anticipates becoming an SBS or MSBSP can enter into this agreement as a Covered SBS Entity in anticipation of registration. Additionally, a party can participate as a non-Covered SBS Entity and then become a Covered SBS Entity at a later time by registering as an SBS or MSBSP and notifying its counterparty of its registration as such. The relevant provisions of this SBS Supplement II do not take effect until two conditions have been satisfied: (1) the relevant compliance date has occurred under applicable law and (2) at least one party has become registered as an SBS or MSBSP. See Sections 5(d) and 7(c) of the SBS Protocol Agreement.

¹⁰ See definition of “Risk Valuation Agent” and the annotations thereto. While “Credit Support Agreement” includes an ISDA Credit Support Annex (“CSA”), the definition is not limited to CSAs and would include other agreements that address collateral or other credit support.

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

“**CSA Valuation**” means, in respect of an SBS and a Risk Valuation Date and subject to the terms of Section 3.2 of SBS II Schedule 3 in the case of a dispute, the value of such SBS determined in accordance with the CSA Valuation Process, if any, expressed as a positive number if such SBS has positive value for the Risk Valuation Agent, and as a negative number if such SBS has negative value for the Risk Valuation Agent.¹¹

“**CSA Valuation Process**” means the process, if any, agreed by the parties in writing (whether as part of the Agreement or otherwise) for determining the value of one or more transactions that may include an SBS or portfolio of SBS for the purpose of posting or transferring collateral or other credit support. For the avoidance of doubt, such writing may be in the form of an ISDA Credit Support Annex or any other written agreement.¹²

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

“**Data Delivery Date**” means a date determined pursuant to Section 4.2 or 4.3 of SBS II Schedule 4, as applicable, that is a Joint Business Day.

“**Data Reconciliation**” means a comparison of Portfolio Data and, to the extent applicable, SBSDR Data received or obtained by a party against such party’s own books and records of SBS between the parties and, in respect of any Discrepancy, a process for identifying and resolving such Discrepancy. A Data Reconciliation may include, but shall not be required to include or be limited to, a systematic, line-by-line, field-by-field matching process performed using technological means such as a third-party portfolio reconciliation service or a technology engine.¹³

“**Discrepancy**” means, (i) in respect of the Portfolio Data received with respect to an SBS and any SBSDR Data obtained for such SBS, a difference between a Material Term in such Portfolio Data or SBSDR Data and a party’s own records of the corresponding Material Term, and (ii) in respect of the Portfolio Data received with respect to an SBS, a difference between a Valuation reported in such Portfolio Data and such party’s own Valuation of such SBS (calculated as of the same Joint Business Day in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result) that is equal to or greater than the Discrepancy Threshold Amount.¹⁴

¹¹ See definition of “Risk Valuation” and SBS II Schedule 3.

¹² See definitions of “CSA Valuation” and “Risk Valuation” and the annotations thereto.

¹³ See SBS II Schedule 4.

¹⁴ See SBS II Schedule 4. This term, along with “Discrepancy Threshold Amount” and “Material Terms,” establishes the scope of the requirement under SBS II Schedule 4 to consult in order to reconcile differences in portfolio data.

“**Discrepancy Threshold Amount**” means, in respect of an SBS, an amount equal to ten percent (10%) of the higher of the two absolute values of the respective Valuations assigned to such SBS by the parties.¹⁵

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

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

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

“**Financial Company**” means a “financial company,” as defined in Section 201(a)(11) of the Dodd-Frank Act, 12 U.S.C. § 5381(a)(11).¹⁶

“**Insured Depository Institution**” means an “insured depository institution,” as defined in 12 U.S.C. § 1813.¹⁷

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

“**Local Business Day**” means, with respect to a party, a day other than a Saturday, Sunday or nationally recognized legal holiday in the city or cities specified by such party in the SBS Supplement II Information. If a party does not specify a city in the SBS Supplement II Information, such party will be deemed to have specified the city specified by the other party in the SBS Supplement II Information.¹⁸ If neither party specifies a city in the SBS Supplement II Information, the parties may agree to specify a city pursuant to the Notice Procedures or, if the parties do not specify a city prior to the Applicable STRD Compliance Date or Applicable Portfolio Reconciliation Compliance Date, as applicable, the parties will be deemed to have specified the City of New York.

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

¹⁵ See SEC Rule 15Fi-3(a)(5) and (b)(4). Under Rule 15Fi-3, a difference in the parties’ valuations of an SBS that is less than 10% need not be deemed a discrepancy that must be reconciled as part of a portfolio reconciliation. This term is used to establish that such valuation differences are not treated as “Discrepancies” that must be reconciled under SBS II Schedule 4.

¹⁶ See SBS Questionnaire II Part II, Q 5, which requires a party to specify whether it is a Financial Company, and the annotations thereto. Section 2.1 of the SBS II Schedule 2 contains a representation, which is deemed repeated as of each SBS Transaction Event, that such specification is true accurate and complete in every material respect.

¹⁷ See SBS Questionnaire II Part II, Q 6, which requires a party to specify whether it is an Insured Depository Institution, and the annotations thereto. Section 2.1 of the SBS II Schedule 2 contains a representation, which is deemed repeated as of each SBS Transaction Event, that such specification is true, accurate and complete in every material respect.

¹⁸ See SBS Questionnaire II Part III, Q 1 and Protocol Agreement Section 7(c)(v).

“**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.

“**Material Term**” has the meaning ascribed by the SEC to such term in SEC Rule 15Fi-1.¹⁹

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

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

“**Notice Procedures**” means (i) the procedures specified in the Agreement regarding delivery of notices or information to a party, (ii) such other procedures as may be agreed in writing between the parties from time to time and (iii) with respect to a party and a particular category of information or notice, if the other party has specified other permissible procedures in writing, such procedures.²⁰

“**Portfolio Data**” means, in respect of a party providing or required to provide such data, information (which, for the avoidance of doubt, is not required to include calculations or methodologies) relating to the terms of all outstanding SBS between the parties in a form and standard that is capable of being reconciled, with a scope and level of detail that is reasonably acceptable to each party and that describes and includes, without limitation, current Valuations attributed by that party to each such SBS. The information comprising the Portfolio Data to be provided by a party on a Data Delivery Date shall be prepared (i) as at the time or times that such party computes its end-of-day valuations for SBS (as specified by that party for this purpose in writing) on the immediately preceding Joint Business Day, as applicable, and (ii) in the case of Valuations, in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.²¹

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

“**Recalculation Date**” means the Risk Valuation Date on which a Risk Valuation that gives rise to the relevant dispute is calculated; *provided, however*, that if one or more subsequent Risk

¹⁹ Under SEC Rule 15Fi-3, portfolio reconciliations are intended to resolve discrepancies in “material terms” as well as valuations. SEC Rule 15Fi-1 defines “material terms” as terms required to be reported to an SBSDR under Regulation SBSR. However, the term has been defined here more flexibly to have the meaning provided by the SEC for purposes of Rule 15Fi-1 in order to accommodate the possibility of further guidance from the SEC in light of evolving practice.

²⁰ Parties agree to additional Notice Procedures in the SBS Protocol Agreement. *See* SBS Protocol Agreement Section 7(c)(vii)-(ix), which provides, among other things, that parties may specify email addresses for various notices in their SBS Questionnaire II.

²¹ Portfolio Data is defined to include Valuations, so that valuations for each SBS (including those entered into prior to entering into this SBS Supplement II) are always delivered under SBS II Schedule 4. However, the definition does not specify particular SBS terms data that must be included in a reconciliation, and the scope and details of terms data to be reconciled is left to the further agreement of the parties.

Valuation Dates occurs prior to the resolution of such dispute, then the “Recalculation Date” in respect of such dispute means the last such Risk Valuation Date.²²

“**Reference Market-makers**” means four leading dealers in the relevant market selected by the Risk Valuation Agent in good faith (i) from among dealers of the highest credit standing which satisfy all the criteria that the Risk Valuation Agent applies generally at the time in deciding whether to offer or to make an extension of credit and (ii) to the extent practicable, from among such dealers having an office in the same city.²³

“**Regulated Swap Entity**” means a Swap Dealer, Security-Based Swap Dealer, Major Swap Participant or Major Security-Based Swap Participant.

“**Reporting Counterparty**” means, in respect of any SBS subject to the SEC Rules, the party to such SBS that is determined to be on the “reporting side” in accordance with the SBS Supplement II Rules, *provided* that, in the event that SBS Supplement II Rules require the parties to agree which party shall be the Reporting Counterparty, the Reporting Counterparty in respect of an SBS shall be the party agreed by the parties.

“**Risk Exposure**” means, in respect of an SBS and a Risk Valuation Date and subject to the terms of Section 3.2 of the SBS II Schedule 3 in the case of a dispute, the amount, if any, that would be payable to the Risk Valuation Agent by CP (expressed as a positive number) or by the Risk Valuation Agent to CP (expressed as a negative number) pursuant to the Close-Out Provision as of the Risk Valuation Time as if such SBS (and not any other SBS) was being terminated as of such Risk Valuation Date; *provided* that (i) if the Agreement provides for different calculations depending on whether one of the parties is an affected or defaulting party, such calculation will be determined using estimates at mid-market of the amounts that would be paid for a replacement transaction; and (ii) such calculation will not include the amount of any legal fees and out-of-pocket expenses.²⁴

“**Risk Valuation**” means, in respect of an SBS and a Risk Valuation Date for which (i) there is a CSA Valuation determined by the Risk Valuation Agent or its agent, such CSA Valuation, and (ii) there is no CSA Valuation determined by the Risk Valuation Agent or its agent, the Risk Exposure determined by the Risk Valuation Agent or its agent for such SBS and Risk Valuation Date, unless, pursuant to Section 3.1 of the SBS II Schedule 3, the Risk Valuation Agent has elected to use the CSA Valuation provided by CP for such SBS and Risk Valuation Date, in which case, such CSA Valuation provided by CP.²⁵

²² See SBS II Schedule 3 Section 3.7(b).

²³ See SBS II Schedule 3 Section 3.7(b).

²⁴ See the definition of “Risk Valuation” and the annotations thereto.

²⁵ Risk Valuation is the core definition for SBS II Schedule 3, which provides agreements for the daily production of such valuations. Schedule 3 is intended to address the provisions of SEC Rule 15Fi-5(b)(4), which require SBSs and MSBSPs to have written documentation with certain categories of counterparties on a process for determining the value of each SBS for purposes of complying with daily internal risk management requirements of SBSs and MSBSPs under Section 15F(j)(2) and SEC regulations thereunder.

“*Risk Valuation Agent*” means, in respect of any Risk Valuation Date and any SBS: (i) if only one party is a Covered SBS Entity, such party, (ii) if both parties are Covered SBS Entities and such parties **have not** entered into a Credit Support Agreement relating to such SBS, the party whom both parties have agreed in writing will be the Risk Valuation Agent for such date (unless such date is only a Local Business Day for one of the parties, in which case such party shall be the Risk Valuation Agent for such date), and (iii) if both parties are Covered SBS Entities and such parties **have** entered into one or more Credit Support Agreements relating to such SBS, the party entitled to make a Credit Support Call under such Credit Support Agreements on such date; *provided that*, (a) on any such date on which both Covered SBS Entities are entitled to make such a Credit Support Call, the Risk Valuation Agent shall be the party entitled to make a Credit Support Call under such Credit Support Agreements on the most recent Risk Valuation Date on which only one Covered SBS Entity was entitled to make such a call, and (b) on any such date on which neither Covered SBS Entity is entitled to make such a Credit Support Call, if such date is only a Local Business Day for one of the parties, such party shall be the Risk Valuation Agent and otherwise the Risk Valuation Agent shall be the party entitled to make a Credit Support Call under such Credit Support Agreement on the most recent preceding Risk Valuation Date on which only one Covered SBS Entity was entitled to make such a call.²⁶

The SEC rules also require that the valuations produced through this agreed process be used for purposes of regulatory margin requirements under Section 15F(e) and regulations thereunder. Section 3.10 includes language intended to make clear that Risk Valuations produced under SBS II Schedule 3 do not affect any other agreement of the parties regarding the calculation of valuations or any dispute regarding valuations for any other purpose.

In order to avoid unnecessary production of additional valuations, Risk Valuation is defined to conform to existing valuations whenever possible in light of regulatory requirements. Where the parties have previously agreed upon a process for a Covered SBS Entity to determine the value of an SBS for purposes of transferring collateral (referred to in this SBS Supplement II as the “CSA Valuation”). This definition provides that the “Risk Valuation” is the CSA Valuation on any day on which such a CSA Valuation is produced. Where the parties have not agreed to such a process, the Risk Valuation is generally the Covered SBS Entity’s good faith estimate of the amount that would be produced according to the close-out valuation provisions to which the parties have agreed (referred to in this SBS Supplement II as “Risk Exposure”) or if they have not agreed to such close-out valuation provisions, according to Section 6(e)(ii)(1) of the 2002 ISDA Master Agreement (see the definition of “Close-Out Provision”). Schedule 3 provides a further agreement for efficiency: on any day on which the counterparty produces a CSA Valuation, the Covered SBS Entity may accept such CSA Valuation as the Risk Valuation if it determines in good faith that it may do so in compliance with SEC Rule 15Fi-5(b).

²⁶ “Risk Valuation Agent” is defined to provide that (i) when only one party is a Covered SBS Entity, that party is always the Risk Valuation Agent (since “Risk Valuations” are produced exclusively for purposes of meeting the internal risk management requirements of a SBS or MSBSP), and (ii) when both parties are Covered SBS Entities, the party that is entitled to make a Credit Support Call on any given day is the Risk Valuation Agent on such day (to avoid unnecessary duplication). In this latter situation, this definition also provides rules to determine who will be the Risk Valuation Agent on any day when neither Covered SBS Entity is entitled to make such a Credit Support Call or both Covered SBS Entities are entitled to make a Credit Support Call.

“**Risk Valuation Date**” means, with respect to an SBS, each Local Business Day for either party that is a Covered SBS Entity.²⁷

“**Risk Valuation Time**” means, with respect to an SBS and any day, the close of business on the prior Local Business Day in the locality specified by the Risk Valuation Agent in its notice of the Risk Valuation to CP.²⁸

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

“**SBS II Schedule**” shall have the meaning given to such term in the introductory paragraph of this SBS Supplement II.

“**SBS Supplement II Information**” means any information or representation agreed in writing by the parties to be SBS Supplement II Information, as amended or supplemented from time to time in accordance with Section 2.3 of this SBS Supplement II or in another manner agreed by the parties.²⁹

“**SBS Supplement II 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) *Trade Acknowledgement and Verification of Security-Based Swap Transactions*, 81 Fed. Reg. 39807 (June 17, 2016); (5) *Risk Mitigation Techniques for Uncleared Security-Based Swaps*, 85 Fed. Reg. 6359 (Feb. 4, 2020); (6) solely for the purposes of Sections 2.4, 2.5 and 2.6, 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) solely for purposes of Section 2.5, 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.

²⁷ Parties specify Local Business Days in their respective SBS Questionnaire IIs. This definition is used to provide that a Risk Valuation is produced on any day that is a Local Business Day for a Covered SBS Entity.

²⁸ See the definition of “Risk Exposure.”

²⁹ “SBS Supplement II Information” includes information and representations provided in a counterparty’s SBS Questionnaire II or equivalent bilateral documentation, as well as updates of that information and other information provided to the Covered SBS Entity so that it can satisfy regulatory requirements under the SBS Supplement II Rules. See SBS Protocol Agreement Section 7(c)(v). Section 2.1 of the SBS II Schedule 2 contains a representation, which is deemed repeated as of each SBS Transaction Event, that SBS Supplement II Information is true, accurate and complete in every material respect.

“**SBS Transaction Event**” means any event that results in a new SBS between parties or in a material change to the terms of an SBS between parties, including execution, termination, assignment, novation, exchange, transfer, amendment, conveyance or extinguishing of rights or obligations of an SBS.³⁰

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

“**SBSDR Data**” means Material Terms data that is available from an SBSDR.³¹

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

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

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

“**Security-Based Swap Dealer**” means a “security-based swap dealer” as defined in Section 3(a)(67) of the SEA and SEC rule 3a67-1 thereunder.

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

“**Valuation**” has the meaning ascribed to such term in SEC Rule 15Fi-1.

“**Weekly**” means once each calendar week.

³⁰ This term is used to establish the timing of certain representations. It is also used to establish the scope of SBS Supplement II Schedule 3, which applies to new SBS or other SBS for which an SBS Transaction Event occurs after the compliance date for SEC Rule 15Fi-5. See Sections 2.1 and 3.1.

³¹ See SBS II Schedule 4, Part V.

SBS II Schedule 2 General Terms

*This SBS II Schedule 2 may be incorporated into an agreement between a Covered SBS Entity and any other party, including another Covered SBS Entity.*³²

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

Part I. General Representations and Agreements

- 2.1. Each party represents to the other party (which representation is deemed repeated as of the time of each SBS Transaction Event) that, as of the date of each SBS Transaction Event, (i) all SBS Supplement II Information (excluding financial information and representations) furnished by or on behalf of it to the other party is true, accurate and complete in every material respect, (ii) no representation provided in the SBS Supplement II Information or in this SBS Supplement II is incorrect or misleading in any material respect, and (iii) all SBS Supplement II Information that is financial information furnished by or on behalf of it to the other party has been prepared in accordance with applicable accounting standards, consistently applied. The SBS Supplement II Information is incorporated herein by reference.³³

- 2.2. Each party acknowledges that the other party has agreed to incorporate one or more SBS II Schedules into the Agreement, and, if the parties enter into any SBS on or after the date of such incorporation, the other party will do so in reliance upon the SBS Supplement II Information and the representations provided by such party or its agent in the SBS Supplement II Information and this SBS Supplement II. Notwithstanding the foregoing, each party agrees that an event of default, termination event, or other similar event that gives a party grounds to cancel or otherwise terminate a SBS shall not occur under the Agreement or any other contract between the parties solely on the basis of (i) a representation provided solely in the SBS Supplement II Information or in this SBS Supplement II being incorrect or misleading in any material respect, or (ii) a breach of any

³² If the parties have adhered to the SBS Protocol and exchanged SBS Questionnaire II in accordance with the terms of the SBS Protocol, this Schedule 2 will be automatically incorporated into the agreements between the parties that are covered by the SBS Protocol. The use of the word “may” here recognizes the fact that parties can also bilaterally agree to incorporate this Schedule 2 into an agreement outside of the SBS Protocol.

³³ SEC Rules 15Fh-1(b) and 15Fi-5(b)(5). This provision is identical to Section 2.1 of the SBS Supplement I except that the cross reference is to information provided through SBS Questionnaire II. The purpose of this Section 2.1 is to provide representations from the counterparty in support of the information and representations it has provided. See also Section 2.3 below regarding the updating of such representations and information.

covenant or agreement set forth solely in this SBS Supplement II; *provided, however*, that nothing in this Section 2.2 shall prejudice any other right or remedy of a party at law or under the Agreement or any other contract in respect of any misrepresentation or breach hereunder or thereunder. For the avoidance of doubt, this Section 2.2 shall not alter a party's rights or remedies, if any, applicable to a breach of any representation, warranty, covenant, or agreement that is not provided or set forth solely in SBS Supplement II Information or in this SBS Supplement II, including any such breach relating to any event or condition that could also cause or constitute an event specified in (i) or (ii) above.³⁴

- 2.3. Each party agrees to promptly notify the other party in writing in accordance with the Notice Procedures (i) of any material change to SBS Supplement II Information (other than representations) previously provided by such party or on behalf of such party and (ii) if any representations made in SBS Supplement II Information or this SBS Supplement II by or on behalf of such party become incorrect or misleading in any material respect. For any representation made in one or more of the SBS II Schedules that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the notifying party shall timely amend such representation by giving notice of such amendment to the other party in accordance with the Notice Procedures.³⁵
- 2.4. Each party agrees to promptly provide the other party, in accordance with the Notice Procedures, any information reasonably requested by such other party to enable such other party to comply with Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the SBS Supplement II Rules in connection with any SBS outstanding between the parties under the Agreement.³⁶

³⁴ This provision is, subject to conforming changes, the same as Section 2.2 of SBS I Schedule II. Parties may use the SBS Protocol as an efficient means of incorporating the SBS Supplement II into existing agreements. Because the SBS Protocol does not afford parties the opportunity to modify the terms of the SBS Supplement II, Section 2.2 provides that an event of default or similar event will not occur due to a misrepresentation or breach arising solely from the provisions of the SBS Supplement II incorporated into their agreement and will not be a cross-default under other agreements between the parties. On the other hand, if (for example) a CP provides a representation in both the SBS Questionnaire II and in an underlying ISDA agreement, Section 2.2 does not alter any remedies the dealer counterparty may have under that ISDA agreement as a result of the inaccuracy of the representation in the ISDA Agreement, even though a breach of that representation would also likely be a breach of a representation made in the SBS Questionnaire II and incorporated into that same ISDA agreement.

³⁵ SEC Rules 15Fh-1(b) and 15Fi-5(b)(5). This provision is substantially similar to Section 2.3 of the SBS I Schedule II. This Section works in conjunction with Section 2.1 (which updates CP representations as of each trade date).

³⁶ *See, e.g.*, SEC Rule 901(d). Various provisions of Title VII and the SBS Supplement II Rules require SBSs and MSBSPs to obtain information from CPs. This information includes, but is not limited to, the requirements of the SBS Supplement II Rules to satisfy SBS reporting requirements (which require reporting of certain counterparty information as well as information about the terms of a SBS). Certain requirements under the SBS Supplement II Rules may be further defined over time. Other requirements may require a SBS to obtain

2.5. Notwithstanding anything to the contrary in the Agreement or in any nondisclosure, confidentiality or similar agreement between the parties, each party hereby consents to the disclosure of information about such party or its activities:

- (a) to the extent required by the SBS Supplement II Rules which mandate reporting of transaction and similar information;³⁷ and
- (b) to the extent required by the SBS Supplement II Rules to comply with any order, directive or other request or inspection of the SEC, a self-regulatory organization or a security-based swap execution facility regarding Covered SBS Entity's books and records.³⁸

Each party acknowledges that disclosures made pursuant to this paragraph may include, without limitation, the disclosure of trade information including a party's identity (by name, identifier or otherwise) to SBSDRs, security-based swap execution facilities, relevant regulators and any self-regulatory organizations of which a party is a member and that such disclosures could result in certain anonymous SBS transaction and pricing data becoming available to the public. Each party further acknowledges that, solely for the purposes of complying with the regulatory reporting obligations discussed above, a Reporting Counterparty and/or SBSDR may engage the services of affiliates and/or third-party service providers provided that the Reporting Counterparty shall be responsible for ensuring that any information about the other party or its activities that the Reporting Counterparty provides to an affiliate hereunder that is not otherwise available to such affiliate will be used by the affiliate solely to facilitate compliance with the relevant reporting obligations. Each party also acknowledges that disclosures made pursuant to this paragraph may be made to recipients in a jurisdiction other than that of either party or a jurisdiction that may not necessarily provide an equivalent level of protection for personal data as either party's home jurisdiction. For the avoidance of doubt, (i) to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each party for purposes of such law; (ii) any agreement between the parties to maintain confidentiality of information

additional information at a later date. Recognizing the broad scope of information a SBSDR may be required to obtain from a counterparty depending on the particular circumstances, this provision was designed to be limited to outstanding SBS and information required to comply with Title VII and the SBS Supplement II Rules. Note that information provided under this Section 2.4 is covered by the representations made in Section 2.1.

³⁷ See, e.g., SEC Rules 901 and 902.

³⁸ See, e.g., SEC Rules 3a71-3(d)(1)(iii) and 15Fb2-4(c).

contained in the Agreement or in any non-disclosure, confidentiality or other agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the SBS Supplement II Rules as set out herein; and (iii) nothing herein is intended to limit the scope of any other consent to disclosure separately given by each party to the other party.³⁹

Part II. Representations and Agreements of a Counterparty that is not a Regulated Swap Entity

- 2.6. If CP is not a Regulated Swap Entity, CP agrees that Covered SBS Entity may effect delivery to CP of any notifications and informational disclosures required by the SBS Supplement II Rules, including standardized notifications and disclosures applicable to multiple SBS, through any of the following means, each of which CP agrees is reliable: (i) means specified for the delivery of notices in the Notice Procedures or (ii) by posting on a web page at, or accessible through, a URL designated in a written notice given to CP pursuant to the Notice Procedures and notifying CP of such posting in a written notice given pursuant to the Notice Procedures.

Part III. Agreements of a Non-Reporting Counterparty

- 2.7. Each party agrees that if it is the Non-Reporting Counterparty with respect to an SBS under the Agreement, upon the occurrence of any “life cycle event” (as that term is defined in Regulation SBSR) relating to a corporate event in respect of such Non-Reporting Counterparty and such SBS, it will, as soon as practicable, but in no event later than 24 hours (or if longer, the time period for reporting permitted under the SBS Supplement II Rules) after the occurrence of the life cycle event, notify the Reporting Counterparty to the SBS of the occurrence of such life cycle event, with sufficient detail regarding such life cycle event to allow such other party to comply with any reporting requirements imposed by the SBS Supplement II Rules.⁴⁰

³⁹ SBSDs and MSBSPs are required to make their books and records available to the SEC, including written communications relating to their business. Non-U.S. SBSDs and MSBSPs are required to provide opinions and certifications to the SEC that they can and will do so when they register. In addition, SBSDs and MSBSPs are required to report data regarding counterparties and SBS entered into with those counterparties to trade reporting facilities or “SBSDRs” regulated by the SEC. Because a CP may previously have negotiated a confidentiality or nondisclosure agreement with a SBSD or MSBSP counterparty that would not otherwise permit such reporting, Section 2.5 provides a consent intended to override any such agreement. While this agreement overrides previous agreements, its scope is limited to information that the Covered SBS Entity counterparty is obligated to disclose or report under the SBS Supplement II Rules. The last sentence of this Section is merely to clarify that the consent given is a consent for purposes of all applicable law. The Section also contains an acknowledgment that a Covered SBS Entity or SBSDR may use the services of an affiliate or third-party service provider such as DTCC to facilitate reporting.

⁴⁰ SEC Rules 901(e) and (j). In certain limited circumstances (e.g., a self-referencing SBS), the parties may enter into an SBS under which a corporate event with respect to the counterparty triggers a change to the SBS that

Part IV. Confirmations

- 2.8. Unless the parties have agreed otherwise in writing, each party agrees that a confirmation of an SBS under this Agreement may be created by electronic delivery of written terms by each party; *provided* that (i) the terms delivered by each party match the terms delivered by the other party and (ii) the terms are either delivered by each party to the other party in a manner that permits each party to review such terms or delivered by each party to a third-party agent or service provider that confirms the matching of such terms to the parties. In each case, such a confirmation will be sufficient for all purposes to evidence a binding supplement to this Agreement. The foregoing shall not limit other agreed methods of creating binding confirmations and shall not be construed as an agreement to use a method provided in this paragraph to confirm any transaction.⁴¹

Part V. Clearing

- 2.9. Each party is hereby notified that, upon acceptance of a Swap by a Clearing Agency:
- (a) the original SBS between Covered SBS Entity and CP is extinguished;
 - (b) the original SBS between Covered SBS Entity and CP is replaced by an equal and opposite SBS with the Clearing Agency; and
 - (c) all terms of the SBS shall conform to the product specifications of the cleared SBS established under the Clearing Agency's rules.⁴²

Part VI. Orderly Liquidation Authority⁴³

- 2.10. Effective on and after the Applicable STRD Compliance Date, each party agrees to provide notice to the other party, in accordance with the Notice Procedures, if it

would be considered a reportable life-cycle event under Regulation SBSR. In such cases, the Covered SBS Entity may be obligated to report the event to an SBSDR. In order to satisfy the requirement in circumstances where the relevant event is not public or otherwise known to the Covered SBS Entity, this Section requires CP to report the event to the Covered SBS Entity within 24 hours.

⁴¹ SEC Rule 15Fi-2. This provision is intended to clarify that the exchange of matching terms through an electronic messaging platform or otherwise may serve as one means for effecting confirmations required under SEC Rule 15Fi-2. The requirements of Rule 15Fi-2 are not otherwise addressed in this SBS Supplement II.

⁴² SEC Rule 15Fi-5(b)(6). This is a notice required by Rule 15Fi-5(b)(6).

⁴³ This Part provides standardized statements about Orderly Liquidation Authority required under SEC Rule 15Fi-5(b)(5). In addition, the rule requires a statement as to whether either party is a "financial company" or an "insured depository institution." See SBS Questionnaire II Part II, Q 5 and Q 6 (requiring a party to specify whether it is a Financial Company or an Insured Depository Institution).

becomes, or ceases to be, an Insured Depository Institution or a Financial Company.⁴⁴

- 2.11. Each party is hereby notified that in the event that a party is (i) a Covered Financial Company or (ii) an Insured Depository Institution for which the FDIC has been appointed as a receiver (the “**covered party**”):
- (a) certain limitations under Title II of the Dodd-Frank Act or the FDIA may apply to the rights of the non-covered party to terminate, liquidate, or net any SBS by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the parties; and
 - (b) the FDIC may have certain rights to transfer SBS of the covered party under Section 210(c)(9)(A) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(9)(A), or 12 U.S.C. § 1821(e)(9)(A).⁴⁵

⁴⁴ SEC Rule 15Fi-5(b)(5)(iv).

⁴⁵ SEC Rule 15Fi-5(b)(5)(iii).

SBS II Schedule 3 SBS Risk Valuation Agreement

*This SBS II Schedule 3 may be incorporated into an agreement between a Covered SBS Entity and any other party, including another Covered SBS Entity.*⁴⁶

If the parties to an agreement have specified that this SBS II Schedule 3 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this SBS II Schedule 3 shall be deemed to be a part of such agreement to the same extent as if this SBS II Schedule 3 were restated therein in its entirety.

Part I. Calculation of Risk Valuations for Purposes of Section 15F(j) of the SEA⁴⁷

Each party agrees that:

- 3.1. On each Risk Valuation Date, the Risk Valuation Agent (or its agent) in respect of each SBS for which an SBS Transaction Event has occurred after the Applicable STRD Compliance Date will calculate the Risk Valuation of such SBS, *provided* that if CP has provided the Risk Valuation Agent with a CSA Valuation for such SBS and such Risk Valuation Date pursuant to a CSA Valuation Process that the Risk Valuation Agent has determined in good faith will allow the Risk Valuation Agent to satisfy the requirements of SEC Rule 15Fi-5(b) as they relate to Section 15F(j) of the SEA, the Risk Valuation Agent may elect to treat such CSA Valuation as the Risk Valuation for such SBS.⁴⁸
- 3.2. Upon written request by CP delivered to the Risk Valuation Agent in accordance with the Notice Procedures on or prior to the Joint Business Day following a Risk Valuation Date, the Risk Valuation Agent (or its agent) will notify the CP of the Risk Valuations determined by it for such Risk Valuation Date pursuant to Section 3.1 of this SBS II Schedule 3. Unless otherwise agreed by the parties, the

⁴⁶ If (i) the parties have adhered to the 2021 SBS Protocol and exchanged SBS Questionnaire II in accordance with the terms of the SBS Protocol and (ii) each of the parties is either a Covered SBS Entity or has indicated in its SBS Questionnaire II that it is Financial Counterparty (or both), this Schedule 3 will be automatically incorporated into their Protocol Covered Agreements. If one of the parties is not a Covered SBS Entity or a Financial Counterparty, this Schedule 3 will only be incorporated into their Protocol Covered Agreements if the non-Covered SBS Entity/Financial Counterparty elects to incorporate this Schedule 3 in Part III, Q 2 of its SBS Questionnaire II. *See* SBS Protocol Agreement Section 5(b)(i). The use of the term “may” here also recognizes the fact that parties can also bilaterally agree to incorporate this Schedule 3 into an agreement outside of the Protocol.

⁴⁷ SEC Rules 15Fi-5(b)(4)(i) and (ii). *See* the definition of “Risk Valuation” and related annotations.

⁴⁸ As noted in the annotation to the definition of “Risk Valuation,” this Schedule provides for the daily production of Risk Valuations for purposes of SEC Rule 15Fi-5(b)(4). This paragraph specifies that such valuations are produced for all SBS for which an “SBS Transaction Event” has occurred after the compliance date for the rule. This paragraph allows the Risk Valuation Agent to use a valuation that was provided by the counterparty for purposes of the parties’ collateral obligations as the Risk Valuation if the Risk Valuation Agent determines that it may do so in compliance with the rule.

Risk Valuation Agent shall not be obligated to disclose to CP any confidential, proprietary information about any model the Risk Valuation Agent may use to value an SBS.⁴⁹

- 3.3. Notification of a Risk Valuation may be provided through any of the following means, each of which is agreed by the parties to be reliable: (i) written notice delivered by the Risk Valuation Agent to the CP in accordance with the Notice Procedures, (ii) any means agreed by the parties for the delivery of CSA Valuations or (iii) posting on a secure web page at, or accessible through, a URL designated in a written notice given to CP pursuant to the Notice Procedures.⁵⁰
- 3.4. Each Risk Valuation will be determined by the Risk Valuation Agent (or its agent) acting in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.

Part II. Dispute Resolution for Risk Valuations for Purposes of Section 15F(j) of the SEA⁵¹

Each party agrees that:

- 3.5. If CP wishes to dispute the Risk Valuation Agent's calculation of a Risk Valuation, CP shall notify the Risk Valuation Agent in writing in accordance with the Notice Procedures on or prior to the close of business on the Joint Business Day following the date on which CP was notified of such Risk Valuation. Such notice shall include CP's calculation of the Risk Valuations for all SBS as of the relevant date for which the Risk Valuation Agent has provided Risk Valuations to CP, which must be calculated by CP acting in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.
- 3.6. If CP disputes the Risk Valuation Agent's calculation of a Risk Valuation and the parties **have** agreed in writing (whether as part of the Agreement or otherwise) to a valuation dispute resolution process by which CSA Valuations are to be determined, then such process will be applied to resolve the dispute of such Risk

⁴⁹ This paragraph provides for disclosure of individualized SBS valuations on request, and is responsive to the requirement in SEC Rule 15Fi-5(b)(4) for an agreed process for determining the value of "each security-based swap" between the parties.

⁵⁰ Section 3.3 provides that the Covered SBS Entity may provide notification of Risk Valuations by placing the relevant information on the Covered SBS Entity's website but must notify the counterparty by another means (such as email) that it has done so. The SBS Questionnaire II provides an opportunity for the counterparty to provide an email address to which Risk Valuations may be delivered. See SBS Questionnaire II Part III, Q 3 and Protocol Agreement Section 7(c)(viii).

⁵¹ SEC Rule 15Fi-5(b)(4)(ii). SEC Rule 15Fi-5(b)(4)(ii) requires security-based swap trading relationship documentation relating to an agreed valuation process to include either (i) "alternative methods for determining the value of the security-based swap for the purposes of complying with this paragraph in the event of the unavailability or failure of any input required to value the security-based swap for such purposes" or (ii) a valuation dispute resolution process. SBS Supplement II takes the second approach.

Valuation (as if such dispute of a Risk Valuation were a dispute of a CSA Valuation, each SBS that is the subject of the dispute were the only SBS for which a CSA Valuation was being disputed, and CP was the disputing party).

- 3.7. If CP disputes the Risk Valuation Agent's calculation of a Risk Valuation and the parties **have not** agreed in writing (whether as part of the Agreement or otherwise) to a valuation dispute resolution process by which CSA Valuations are to be determined, then the following process will apply in respect of the dispute of such Risk Valuation:
- (a) the parties will consult with each other in an attempt to resolve the dispute; and
 - (b) if they fail to resolve the dispute in a timely fashion, then the Risk Valuation Agent will recalculate the Risk Valuation as of the Recalculation Date by seeking four actual quotations at mid-market from Reference Market-makers and taking the arithmetic average of those obtained; *provided* that if four quotations are not available, then fewer than four quotations may be used; and, if no quotations are available, then the Risk Valuation Agent's original Risk Valuation calculation will be used.
- 3.8. Following a recalculation pursuant to Section 3.7(b) of this SBS II Schedule 3, the Risk Valuation Agent will notify CP not later than the close of business on the Local Business Day of the Risk Valuation Agent following the date of such recalculation, and such recalculation shall be the Risk Valuation for the applicable Risk Valuation Date.

Part III. Relationship to Other Valuations⁵²

- 3.9. The parties agree and acknowledge that the process provided herein for the production and dispute of Risk Valuations is exclusively for determining the value of each relevant SBS for the purpose of compliance by Covered SBS Entity (or if each party is a Covered SBS Entity, compliance by each party) with risk management requirements under Section 15F(j) of the SEA. Failure by CP to dispute a Risk Valuation calculated by the Risk Valuation Agent does not constitute acceptance by CP of the accuracy of the Risk Valuation for any other purpose.
- 3.10. Resolution of any disputed Risk Valuation using a procedure specified in Part II of this SBS II Schedule 3 is not binding on either party for any purpose other than the Covered SBS Entity's compliance with risk management requirements under Section 15F(j) of the SEA. Each party agrees that nothing in this SBS II Schedule 3 providing for the calculation of Risk Valuations or for any right to dispute

⁵² See annotation to the definition of "Risk Valuation."

valuations in connection with such Risk Valuations shall affect any agreement of the parties regarding the calculation of CSA Valuations or disputes regarding CSA Valuations or constitute a waiver of any right to dispute a CSA Valuation. Any resolutions of disputes regarding CSA Valuations may be different from the resolutions of disputes regarding Risk Valuations. The parties acknowledge that margin regulations under Section 15F(e) of the SEA may require additional agreements between the parties regarding the calculation of SBS valuations for purposes of such regulations and Covered SBS Entity's compliance with risk management requirements under Section 15F(j) of the SEA, and the parties' agreement to incorporate this SBS II Schedule 3 in no way constitutes agreement to adopt the procedures provided herein with respect to the calculation of, or resolution of disputes regarding, margin valuations.

- 3.11. Notwithstanding anything to the contrary in this SBS II Schedule 3, the parties may in good faith agree to any other procedure for (i) the calculation of Risk Valuations and/or (ii) the resolution of any dispute between them, in either case, whether in addition to or in substitution for the procedures set out in this SBS II Schedule 3.⁵³

⁵³ Section 3.11 makes explicit that the parties may further agree to terms governing the production of Risk Valuations.

SBS II Schedule 4 Portfolio Reconciliation⁵⁴

*This SBS II Schedule 4 may be incorporated into an agreement between a Covered SBS Entity and any other party, including another Covered SBS Entity.*⁵⁵

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

Part I. Required Reconciliation Dates

- 4.1. From time to time after the Applicable Portfolio Reconciliation Compliance Date, a Covered SBS Entity may give to CP a notice (a “**Required Reconciliation Date Notice**”) in which such Covered SBS Entity represents that it is (in such Covered SBS Entity’s good faith belief) necessary for the parties to perform a Data Reconciliation in order for such Covered SBS Entity to comply with the SBS Supplement II Rules regarding the frequency with which portfolio reconciliations are to be performed. A Required Reconciliation Date Notice will specify (i) the frequency with which such portfolio reconciliations are believed by the Covered SBS Entity to be required, which may be “Daily,” “Weekly,” “Quarterly,” “Annually” or another frequency required by the SBS Supplement II Rules and (ii) if Section 4.2 is applicable, one or more Data Delivery Dates.⁵⁶

⁵⁴ SEC Rule 15Fi-3(b).

⁵⁵ If the Parties have adhered to the SBS Protocol and exchanged SBS Questionnaire II in accordance with the terms of the Protocol and both parties have been designated as Covered SBS Entities, this Schedule 4 will be automatically incorporated into their Protocol Covered Agreements. If one of the parties has not been designated as a Covered SBS Entity, this Schedule 4 will be incorporated into the agreements between the parties that are covered by the SBS Protocol Agreement unless the non-Covered SBS Entity elects not to incorporate this Schedule 4 in Part III, Q 4 of its SBS Questionnaire II. See Protocol Agreement Section 5(b)(ii). The use of the term “may” here also recognizes the fact that parties can also bilaterally agree to incorporate this Schedule 4 into an agreement outside of the Protocol.

⁵⁶ SEC Rule 15Fi-3 provides rules with respect to the required frequency of portfolio reconciliations based on the total number of swaps that are outstanding between the parties at any time. For trading relationships between a SBS or MSBS and a counterparty that is not a SBS or MSBS, the required frequencies are quarterly for portfolios in excess of 100 SBS and otherwise annually. More frequent reconciliations are required between SBSs and MSBSs. Section 4.1 allows a Covered SBS Entity to specify the frequency for portfolio reconciliations based on the SEC requirements, but leaves flexibility for the parties to specify the precise dates on which data will be delivered in order to perform reconciliations. Where a Covered SBS Entity delivers data to be reviewed by the CP (without reciprocal delivery by the CP) pursuant to Part II of this Schedule, Sections 4.1 and 4.2 provide that the Covered SBS Entity will propose one or more dates (*i.e.*, a single date for the first reconciliation or a schedule of dates for reconciliations during successive reconciliation periods). The CP can accept these dates or request alternative dates. Where both parties will deliver data pursuant to Part III, the delivery dates must be further agreed. See Section 4.3(a).

Part II. One-Way Delivery of Portfolio Data⁵⁷

- 4.2. Subject to Section 4.5, if (i) one of the parties is not a Covered SBS Entity and (ii) the parties have agreed in writing that on each Data Delivery Date Covered SBS Entity will deliver Portfolio Data to CP and CP will review such data, then the following shall apply:
- (a) The Required Reconciliation Date Notice will specify one or more Data Delivery Dates, *provided* that the first such date will be a day no earlier than the second Joint Business Day following the date on which such notice is given to CP, and *provided further*, that if, prior to the first such date, CP requests one or more different Data Delivery Dates, the relevant Data Delivery Dates will be as agreed by the parties.⁵⁸
 - (b) On each Data Delivery Date, Covered SBS Entity (or its agent) will provide Portfolio Data to CP (or its agent) for verification by CP. For purposes of this Section 4.2, Portfolio Data will be considered to have been provided to CP (and CP will be considered to have received such Portfolio Data) if it has been provided (i) in accordance with the Notice Procedures or (ii) to a third-party service provider agreed to between the Covered SBS Entity and CP for this purpose.⁵⁹

⁵⁷ Parts II and III of Schedule 4 provide alternative methods for conducting portfolio reconciliations. When parties “match” SBS Questionnaire II through the SBS Protocol and agree to Schedule 4, they agree to the terms of either Part II or Part III (but not both). Part II applies when (i) one of the parties has not been designated as a Covered SBS Entity in its SBS Questionnaire II and (ii) the non-Covered SBS Entity has elected to “Review” Portfolio Data in Part III, Q 4(b) of its SBS Questionnaire II.

Under Part II, the Covered SBS Entity is obligated to deliver Portfolio Data on each Data Delivery Date and the non-Covered SBS Entity is required to review the data. This option may be preferable for parties that are not SBSDs or MSBSPs and that wish to avoid the burden of transmitting portfolio data to their counterparties or a third-party service provider. Note, however, that a non-Covered SBS Entity that enters into Part II agrees to review the Portfolio Data that it receives from a Covered SBS Entity, and to notify the sender in all cases as to whether it affirms the data or has identified a Discrepancy in all cases. If the non-Covered SBS Entity intends to employ a third-party service provider to perform reconciliations, Part III may be more appropriate.

⁵⁸ See annotation to Section 4.1.

⁵⁹ In many cases, the parties may wish to employ a third-party service provider that provides tools for management and reconciliation of Portfolio Data. While bilateral delivery of data under Part III may be more appropriate for such situations, Section 4.2(b) also accommodates the agreement of the parties that the Covered SBS Entity will deliver data to a third-party service provider assisting the non-Covered SBS Entity. Note that in the event that the parties do not agree to have data delivered in this fashion, the non-Covered SBS Entity may still use a third-party service provider to assist the non-Covered SBS Entity in performing its obligations under Part II.

Since Covered Agreements are unlikely to include agreements related to the delivery of this type of data, the parties may wish to further agree to the terms for delivery of Portfolio Data. Parties are afforded the opportunity to provide an email address to which Portfolio Data may be delivered in their SBS Questionnaire II. See SBS Questionnaire II Part III, Q 5 and Protocol Agreement Section 7(c)(ix). In the absence of alternative agreements, Section 4.2(b) provides that Portfolio Data can be delivered to a notice address provided by the

- (c) On or as soon as reasonably practicable after each Data Delivery Date, and in any event not later than the close of business on the second Local Business Day of CP following the Data Delivery Date, CP will review the Portfolio Data delivered by Covered SBS Entity with respect to each relevant SBS against its own books and records and Valuation for such SBS and notify Covered SBS Entity whether it affirms the relevant Portfolio Data or has identified any Discrepancy. CP shall notify Covered SBS Entity of all Discrepancies identified with respect to the Portfolio Data provided.⁶⁰
- (d) If CP has notified Covered SBS Entity of any Discrepancies in Portfolio Data in respect of any Material Terms or Valuations, then each party agrees to consult with the other in an attempt to resolve all such Discrepancies in a timely fashion.⁶¹

Part III. Exchange of Portfolio Data⁶²

- 4.3. Subject to Section 4.5, if (i) both parties are Covered SBS Entities or (ii) the parties have agreed in writing that on each Data Delivery Date Covered SBS Entity and CP will deliver Portfolio Data to each other, then, in either case, the following shall apply:
 - (a) The parties will negotiate in good faith to agree on one or more Data Delivery Dates that will comply with the portfolio reconciliation frequency specified in the Required Reconciliation Date Notice, *provided* that if the Required Reconciliation Date Notice specified that

non-Covered SBS Entity in the relevant agreement. Further, as defined in the SBS Supplement II, “Notice Procedures” include any procedures for the delivery of a specified category of information or notices that a receiving party has authorized in writing to the sending party.

⁶⁰ The timing of Section 4.2(c) is designed to comply with SEC Rule 15Fi-3(b)(4), which requires that SBSs and MSBSPs have policies and procedures for the resolution of any discrepancies “in a timely fashion.” It is also intended to provide adequate time for consultation before reporting of valuation disputes to the SEC is required under SEC Rule 15Fi-3(c). Note that all valuation “Discrepancies” (*i.e.*, SBS valuation differences above or equal to 10%) must be identified to the Covered SBS Entity, but differences below 10% are not required to be reported or resolved under Schedule 4. At the same time, Schedule 4 does not limit other contractual rights that the parties may have with regard to discrepancies below the Discrepancy Threshold. *See* also Part IV of Schedule 4.

⁶¹ Good faith consultation is the sole process required under Schedule 4 with respect to Discrepancies. Schedule 4 does not provide for mandatory use of a third-party poll or a similar mechanism to resolve differences. It is left to the discretion of the Parties whether to employ such a mechanism.

⁶² Part III applies to parties that have agreed to Schedule 4 when (i) both parties have been designated as Covered SBS Entities or (ii) the party that has not been designated as a Covered SBS Entity elects to “Exchange” Portfolio Data in Part III, Q 4(b) of its SBS Questionnaire II. Under Part III, each party is obligated to deliver Portfolio Data to the other party or to an agreed third-party service provider. Either party (or a third-party service provider mutually agreed between the parties) may then conduct a reconciliation and provide notice of any Discrepancies that it discovers.

reconciliations are required Daily, each Joint Business Day shall be a Data Delivery Date.

- (b) On each Data Delivery Date, each party (or its agent) will provide Portfolio Data to the other party. For the purposes of this Section 4.3, Portfolio Data will be considered to have been provided to the other party (and the other party will be considered to have received such Portfolio Data) if it has been provided (i) in accordance with the Notice Procedures or (ii) to a third-party service provider (a “**Service Provider**”) agreed to between Covered SBS Entity and CP for this purpose.⁶³
- (c) On or as soon as reasonably practicable after each Data Delivery Date on which Portfolio Data is provided by each party, either party or the Service Provider may perform a Data Reconciliation in respect of such Portfolio Data.⁶⁴
- (d) If (i) one of the parties is not a Covered SBS Entity and (ii) either party notifies the other party of a Discrepancy in Portfolio Data in respect of either the Material Terms of an SBS or its Valuation, then each party agrees to consult with the other in an attempt to resolve the Discrepancy in a timely fashion.⁶⁵
- (e) If (i) both parties are Covered SBS Entities and (ii) either party notifies the other party of a Discrepancy in Portfolio Data in respect of the Material Terms of an SBS, then each party agrees to consult with the other in an attempt to resolve such Discrepancy immediately.⁶⁶

⁶³ In many cases, where the parties have agreed that each will deliver Portfolio Data, one or both of the parties may wish to use a third-party service provider to assist it in performing reconciliations, or the parties may agree to reconciliations performed by such a service provider. Section 4.3(b) accommodates the agreement of the parties to use such a third-party service provider.

Since Covered Agreements are unlikely to include agreements related to the delivery of this type of data, the parties may wish to further agree to the terms for delivery of Portfolio Data. Parties are afforded the opportunity to provide an email address to which Portfolio Data may be delivered in their SBS Questionnaire II. See SBS Questionnaire II Part III, Q 5 and Protocol Agreement Section 7(c)(ix). In the absence of alternative agreements, Section 4.3(b) provides that Portfolio Data can be delivered to a notice address provided by the non-Covered SBS Entity in the relevant agreement. Further, as defined in the SBS Supplement II, “Notice Procedures” include any procedures for the delivery of a specified category of information or notices that a receiving party has authorized in writing to the sending party.

⁶⁴ Because both parties receive Portfolio Data under Part III and have the opportunity to reconcile that data against their own data in order to comply with regulatory requirements, neither party is required to perform a reconciliation.

⁶⁵ The timing of this Section is designed to comply with SEC Rule 15Fi-3(b)(4). See annotation to Section 4.2(c).

⁶⁶ The timing standard in Section 4.3(e) conforms to the requirements in SEC Rule 15Fi-3(a)(4).

- (f) If (i) both parties are Covered SBS Entities and (ii) either party notifies the other party of a Discrepancy in Portfolio Data in respect of Valuations, then each party agrees to consult with the other in an attempt to resolve such Valuation Discrepancy as soon as possible, but in any event within five Joint Business Days.⁶⁷

Part IV. Valuation Differences Below the Discrepancy Threshold Amount⁶⁸

- 4.4. The parties hereby agree that a difference in Valuations in respect of an SBS that is less than the Discrepancy Threshold Amount shall not be deemed a “discrepancy” for purposes of SEC Rule 15Fi-3 and neither party shall be required under this SBS II Schedule 4 to notify the other party of such a difference or consult with the other party in an attempt to resolve such a difference.

Part V. Reconciliation Against SBSDR Data⁶⁹

- 4.5. If the parties have agreed in writing to reconcile their books and records of SBS between the parties against SBSDR Data in order to facilitate satisfaction of the requirements of SEC Rule 15Fi-3, then the following shall apply:
- (a) On or as soon as practicable following a Data Delivery Date, each party shall perform a Data Reconciliation against SBSDR Data to the extent that such SBSDR Data relates to Material Terms that would otherwise be delivered by the other party as Portfolio Data. To the extent that either party does not have access to such SBSDR Data or determines that it is not technologically or operationally practical for such party to obtain such data from the relevant SBSDR in a manner that permits the conduct of a timely Data Reconciliation in accordance with the applicable time periods

⁶⁷ The timing standard in Section 4.3(f) conforms to the requirements of SEC Rule 15Fi-3(a)(5).

⁶⁸ Part IV applies to all reconciliations and follows the standard for valuation reconciliations provided SEC Rule 15Fi-3(a)(5) and (b)(4). Section 4.4 provides that valuation discrepancies below the Discrepancy Threshold are not required to be reconciled under the terms of this Schedule 4. Section 4.4 is not intended to override other contractual dispute rights that the parties may have with respect to such discrepancies.

⁶⁹ Part V includes agreements by each party to perform reconciliations against SBSDR data in lieu of reconciliations of data provided directly by a counterparty (to the extent an SBSDR can provide “Material Terms” data with respect to SBS between the parties that are within scope of SEC Rule 15Fi-3 portfolio reconciliation requirements and the relevant party can access such data). Part V applies to parties who have agreed to Schedule 4 only if both parties have agreed to reconcile against SBSDR data. See SBS Protocol Agreement Section 5(c)(iv), SBS Questionnaire II Part III, Q4(c). SBSDR Data does not include Valuations included within Portfolio Data for purposes of Schedule 4. Therefore, direct reconciliation of Valuations data would still be required.

specified in Section 4.2 or 4.3, such party shall notify the other party by or as soon as practicable after the relevant Data Delivery Date.⁷⁰

- (b) Notwithstanding Section 4.2 or 4.3, neither party shall be obligated to deliver Portfolio Data to the other party on a Data Delivery Date to the extent that such Portfolio Data consists of Material Terms data reported to an SBSDR, *provided, however*, that if a party has notified the other party that it is not able to conduct a timely Data Reconciliation against corresponding SBSDR Data as provided in Section 4.5(a) the parties shall provide for the delivery of the relevant Portfolio Data as provided in Section 4.2(b) or 4.3(b), as applicable, as soon as reasonably practicable.
- (c) If either party identifies a Discrepancy in SBSDR Data, such party shall immediately notify the other party of such Discrepancy. Each party agrees to consult with the other in an attempt to resolve any such Discrepancy immediately (if both parties are Covered SBS Entities) or in a timely fashion (if one party is not a Covered SBS Entity).⁷¹
- (d) Each party agrees to notify the other party, upon reasonable request, of (i) the SBSDRs to which such party has reported Material Terms data with respect to SBS between the parties and (ii) any changes as to the particular SBSDRs at which data may be accessed.⁷²
- (e) A party may terminate this Section 4.5 with the effect that this Section 4.5 shall have no further force and effect and the parties will each be released and discharged from all further obligations under this Section 4.5 by delivering written notice in accordance with the Notice Procedures to the other party that it is terminating this Section 4.5 as of the effective date of such notice. The parties agree that the effective date of any such notice is the second Joint Business Day following the date on which such notice is delivered in accordance with the Notice Procedures.⁷³

⁷⁰ Part V has been drafted flexibly to provide an undertaking to reconcile against SBSDR data to the extent technologically or operationally practical. If such reconciliation is not practical for either party, such party must notify the counterparty of such fact, in which case the agreement falls back to reconciliation procedures provided in Part II or III as relevant.

⁷¹ The timing standard in Section 4.5(c) conforms to the requirements in SEC Rule 15Fi-3(a)(4) and (b)(4).

⁷² While the parties should generally know which SBSDRs have received data reports when SBS are initially executed, this agreement has been included to facilitate reconciliation against SBSDR data when there is uncertainty on the part of the non-reporting party.

⁷³ Optional termination of Part V was included given uncertainty regarding the availability of reconciliation against SBSDR data at the time of publication. If a party terminates Part V, reconciliation procedures would fall back to Part II or III, as relevant.

Part VI. Other Portfolio Reconciliation Procedures

- 4.6. In order to minimize operational burdens, the parties will use reasonable commercial efforts to coordinate the timing of reconciliations with respect to swaps with reconciliations with respect to SBS hereunder to the extent permitted under applicable law.⁷⁴
- 4.7. In the event that the parties have agreed to multiple Data Delivery Dates with a frequency specified in a Required Reconciliation Date Notice, the Covered SBS Entity that delivered such notice shall notify CP if, at any time during the period that such Data Delivery Dates are in effect, it is no longer required by the SBS Supplement II Rules to conduct portfolio reconciliations with the specified frequency. Such notice shall specify (i) the new frequency with which portfolio reconciliations are believed by the Covered SBS Entity to be required, which may be “Daily,” “Weekly,” “Quarterly,” “Annually” or another frequency required by the SBS Supplement II Rules and (ii) if Section 4.2 is applicable, one or more new Data Delivery Dates. Upon delivery of such a notice, the parties’ obligations to deliver Portfolio Data on the previously agreed Data Delivery Dates shall terminate, and such notice shall be a new Required Reconciliation Date Notice for purposes of Sections 4.2 and 4.3.⁷⁵
- 4.8. Notwithstanding anything to the contrary in this SBS II Schedule 4, the parties may in good faith agree to any other procedure for (i) the exchange, delivery and/or reconciliation of Portfolio Data, and/or (ii) the resolution of any discrepancy between them, in either case, whether in addition to or in substitution for the procedures set out in this SBS II Schedule 4. Nothing in this SBS II Schedule 4 shall prejudice any right of dispute or right to require reconciliation that either party may have under applicable law, any term of the Agreement other than in this SBS II Schedule 4 or any other agreement.⁷⁶

⁷⁴ Because the CFTC requirements for timing and frequency of reconciliations of swaps depend on the size of the swap portfolio between the parties while the SEC requirements for timing and frequency of SBS reconciliations depend on the size of the SBS portfolio between the parties, the timing and frequency of swap and SBS portfolio reconciliations may differ. This provision requires the parties to use reasonable commercial efforts to coordinate timing of reconciliations to reduce operational burdens.

⁷⁵ Section 4.6 provides for the amendment of an agreed schedule of recurring reconciliations when the required frequency for such reconciliations changes under SEC Rule 15Fi-3 due to a change in the number of SBS outstanding between the parties.

⁷⁶ Section 4.7 simply makes explicit that the parties may further agree to terms governing portfolio reconciliations.