



# ISDA U.S. SELF-DISCLOSURE LETTER INFORMATION REQUEST

published on January 15, 2021  
by the International Swaps and Derivatives Association, Inc.

[Date]

## IMPORTANT: ACTION REQUIRED

### Request for Dodd-Frank Status Information to Facilitate Compliance with Certain U.S. Swap and Security-Based Swap Rules

Dear Sir or Madam:

Intesa Sanpaolo S.p.A.<sup>1</sup> (“*Information Recipient*” or “*Recipient*”) request(s) information from you for purposes of determining Recipient’s requirements for transacting in swaps and/or security-based swaps with you or persons you represent. These activities may be subject to U.S. regulatory requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The applicability of these requirements depends on the status of Information Recipient’s counterparties under various U.S. regulations as well as Information Recipient’s own status.

Accordingly, Information Recipient requires information for each person you represent (each a “*Named Entity*”) who may transact with Information Recipient to ascertain its requirements. The information required is solicited in the following Parts of the U.S. Self-Disclosure Letter (attached):

- Part I (Registration Status)
- Part II.A (Connection to the United States—General Questions)
- Part II.B (Connection to the United States—CFTC 2020 Rules)
- Part II.C (Connection to the United States—CFTC 2013 Interpretive Guidance)
- Part II.D (Connection to the United States—CFTC Margin Rules)
- Part II.E (Connection to the United States—PR Margin Rules)
- Part II.F (Connection to the United States—Multi-Branch Entities)
- Part III.A (Exemptions from Margin Rules—CFTC and PR Margin Rules)
- Part III.B (Exemptions from Margin Rules—SEC Margin Rules)
- Part IV (Financial Entity Status)

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<sup>1</sup> If sending to a Named Entity on behalf of multiple members of a dealer group, include each Information Recipient’s name here, and insert “each an” in the parenthetical that follows.

**Please review the Parts of the attached U.S. Self-Disclosure Letter indicated above and provide responses in the relevant items as instructed.**

The following information about Information Recipient's status is provided to assist you in filling out the U.S. Self-Disclosure Letter.

Information Recipient is or expects to be each of the following:

- Swap Dealer (SD)
- Major Swap Participant (MSP)
- Security-Based Swap Dealer (SBSD)
- Major Security-Based Swap Participant (MSBSP)
- Swap Dealer De Minimis Counting Entity
- SBS Dealer De Minimis Counting Entity
- MSP Threshold Monitoring Entity
- MSBSP Threshold Monitoring Entity

Information is requested for purposes of transacting in:

- Swaps
- Security-Based Swaps

For purposes of transacting in Swaps and/or Security-Based Swaps, Information Recipient is or expects to be subject to margin regulations of each of the following regulators:

- CFTC
- SEC
- Prudential Regulators<sup>2</sup>
- None of the above

Additional Information:

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<sup>2</sup> The U.S. Prudential Regulators include the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency.

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**[Special instructions for responding to multiple Information Recipients:** If a single Information Recipient has been named above, each checked box above indicates that such Information Recipient falls within the specified category. If multiple Information Recipients have been named, each checked box indicates that at least one of the named Recipients falls into the relevant category. In the case of multiple named Recipients, where an instruction in the attached U.S. Self-Disclosure Letter makes reference to transactions conducted with the Information Recipient, or the status of the Information Recipient, such references should be interpreted to apply to **any** Information Recipient, or apply if **any** Information Recipient has such status. If Named Entity cannot make one of the related check-box statements consistently for all of the persons named above as Information Recipients,<sup>3</sup> Named Entity should deliver separate U.S. Self-Disclosure Letters to the different Information Recipients.]<sup>4</sup>

**PLEASE NOTE:** The attached U.S. Self-Disclosure Letter is organized in a hierarchical format to minimize the amount of information you are required to provide. For each Part of the U.S. Self-Disclosure Letter indicated in the first set of check boxes above, please read the instructions and provide responses as needed. In most cases, it will not be necessary to provide responses to all of the items. Depending on Named Entity’s responses to Parts I and II.A, it may not be necessary to provide responses in later Parts generally. Certain instructions, noted in **blue**, indicate where Named Entity may skip certain Parts depending on the information that has been provided.

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<sup>3</sup> For example, if Named Entity’s Swaps with one entity named as a Recipient are guaranteed by a U.S. person while Swaps with another entity named as a Recipient are not guaranteed by a U.S. person.

<sup>4</sup> Include these instructions in the outgoing letter to the Named Entity if sending on behalf of multiple dealers.



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*Market participants should complete each Part of this Letter that they have been informed, or have reason to believe, is required by Recipient. Market participants should consider seeking clarification from Recipient ahead of time if it is not clear which Parts are required by Recipient.*

*If Named Entity wishes to make additional statements, or revise existing statements already made in any existing response, or wishes to add a response, it should re-execute the Letter and address each relevant item. In the absence of any statement to the contrary, if Named Entity redelivers the Letter to Recipient but does not address an item previously addressed, the information for that item will be deemed to have been redelivered as part of this Letter in the form it was most recently delivered to Recipient.*

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TO<sup>5</sup>: Intesa Sanpaolo S.p.A. (“**Information Recipient**” or “**Recipient**”)

**A. General.** The entity named below (“**Named Entity**”) hereby makes the statements in each of the applicable Parts to this ISDA U.S. Self-Disclosure Letter (this “**Letter**” consisting of the main body of this letter together with all applicable Parts delivered from time to time, including electronically through ISDA Amend and/or such other relevant electronic platform identified by ISDA) with effect from the date specified in such Letter as the effective date. Each such statement is intended to provide Recipient with status information needed by Recipient to determine the application of certain U.S. regulatory requirements. The statements in this Letter are solely for the purposes of such determinations.

**B. Reliance.** Subject to any statement to the contrary in any applicable Part:

- (i) Named Entity will notify Recipient in writing before or as soon as reasonably practicable following any of the statements made by it in any Part ceasing to be true;

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<sup>5</sup> Insert the name(s) of the entity or entities designated as Recipient(s) in the request letter or otherwise intended as Recipient(s) for purposes of the information below. If addressed to multiple Recipients, each statement in the Letter will apply separately as to each such named Recipient.

- (ii) Recipient may rely on the statements given by Named Entity in each applicable Part unless and until Named Entity notifies Recipient in writing to the contrary; and
- (iii) to the extent any statement made in this Letter is inconsistent with any prior statement given by Named Entity to Recipient in any previous version of this Letter, the ISDA Cross-Border Swaps Representation Letter (published Aug. 19, 2013), or the ISDA Regulatory Margin Self-Disclosure Letter (published June 30, 2016), the statements made herein shall prevail.

**C. Definitions.** Capitalized terms used in this letter have the meanings specified in the Appendix.

Where this Letter is completed and delivered by an agent on behalf of one or more Named Entities, this Letter should be treated as if it were a separate Letter with respect to each Named Entity listed by the agent.<sup>6</sup>

Executed and delivered with effect from:

Date:

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Full legal name of Named Entity: <sup>7</sup>

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LEI of Named Entity:

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<sup>6</sup> As this is standard form language only, the parties may wish to make further amendments to suit their needs such as, where possible, to address a situation where an agent/manager is signing on behalf of a client/fund but only in respect of the portion of that client's business transacted by that agent/manager.

<sup>7</sup> If this Letter is being completed by the Named Entity, the Named Entity should insert its full legal name here. If this Letter is being completed by an agent on behalf of one or more Named Entities, the agent must clearly identify the full legal name and LEI of each Named Entity either on this page or on an attached sheet. An agent may only list multiple Named Entities where the applicable Parts (including the individual items in each Part) or elections made in each applicable Part (including the individual items in each Part) by all such Named Entities are identical. Where an agent wishes to complete this Letter on behalf of two or more Named Entities that do not have identical applicable Parts or elections in each applicable Part, the agent should complete separate letters for each group of Named Entities that have identical elections or for each Named Entity. Similarly, if this Letter is being delivered by a trustee on behalf of one or more trusts or trust funds, the trustee should amend the signature block to make clear each Named Entity and its identifier and only list multiple Named Entities where the elections made by each Named Entity are identical.

[Alternative Identifier of Named Entity:

\_\_\_\_\_ ]<sup>8</sup>

If applicable, full legal name of the agent, acting on behalf of Named Entity:<sup>9</sup>

\_\_\_\_\_

Signature:

\_\_\_\_\_

Name of signatory: \_\_\_\_\_

Title of signatory: \_\_\_\_\_

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<sup>8</sup> If you would like to include an alternative identifier, please describe the type of identifier provided.

<sup>9</sup> Only insert the name of the agent if this Letter is being completed by an agent on behalf of one or more Named Entities. If this Letter is being completed by the Named Entity, this line can be left blank, struck through, marked as not applicable or similar.

**PART I: REGISTRATION STATUS**

*Answer the question in item 1 and then follow the subsequent instructions.*

1. Is Named Entity any of the following? (Check each box that applies.)

- Swap Dealer (SD)
- Major Swap Participant (MSP)
- Security-Based Swap Dealer (SBSD)
- Major Security-Based Swap Participant (MSBSP)
- None of the above

*-If Named Entity checked any box other than "None of the above," go to item 2.*

*-If Named Entity checked "None of the above," skip to item 3.*

2. Does Named Entity have a Prudential Regulator?

- Yes
- No

*Go to the next item.*

3. Is Named Entity a Multi-Branch Entity?

- Yes
- No

*Go to Part II.*

## **PART II: CONNECTION TO THE UNITED STATES**

### **A. General Questions**

***Explanatory Note:*** These items are designed to elicit information necessary for an Information Recipient that is not a U.S. person to determine whether it must count transactions with Named Entity toward aggregation thresholds for registration as an SD, SBSB, MSP or MSBSP, as well as for an Information Recipient that is a registered SD or SBSB to determine whether certain CFTC, SEC and/or Prudential Regulator rules may apply to the relationship with Named Entity based on its nexus to the United States.

*Answer the question in item 1 and then follow the subsequent instructions.*

#### 1. U.S. Resident or Entity

Is Named Entity a natural person resident in the United States or an entity organized under the laws of the United States?<sup>10</sup>

- Yes  
 No

*-If Named Entity checked “Yes,” skip the rest of this Part as well as Parts II.B, II.C, II.D, and II.E (go to the next Part that Information Recipient has requested, if any).*

*-If Named Entity checked “No,” go to the next item.*

#### 2. U.S. Person (CFTC 2020 Rules/SEC Rules)

Is Named Entity a U.S. Person (CFTC 2020 Rules/SEC Rules)?

- Yes  
 No

*-If Named Entity checked “Yes,” skip Parts II.B, II.C, II.D and II.E (go to the next Part that Information Recipient has requested, if any).*

*-If Named Entity checked “No,” go to Part II.B.*

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<sup>10</sup> **Important Note for Multi-Branch Entities:** For purposes of this item, an entity organized under the laws of the United States does not include a U.S. branch or agency of a non-U.S. entity. For example, if Named Entity is a banking organization that is not organized in the United States, Named Entity should check “No” for this item, even if it has a branch or agency in the United States, and should use Part II.F to address informational needs regarding U.S. branch transactions.

**B. CFTC 2020 Rules**

**Explanatory Note:** *These items are designed to elicit information necessary to allow an Information Recipient that is not a U.S. person to determine whether it must count transactions with Named Entity toward CFTC aggregation thresholds for registration as an SD or MSP as well as for an Information Recipient that is a registered SD to determine whether certain CFTC rules may apply to the relationship with Named Entity based on its nexus to the United States.*

*Answer the question in item 1 and then follow the subsequent instructions.*

1. U.S. Person Guarantees

Does Named Entity have any U.S. Person Guarantees (CFTC 2020 Rules)?

*Checking the box next to “U.S. Person Guarantees (CFTC 2020 Rules)” indicates that one or more of Named Entity’s obligations in Swaps with Recipient are subject to a U.S. Person Guarantee (CFTC 2020 Rules).*

*Checking the box next to “No U.S. Person Guarantees (CFTC 2020 Rules)” indicates that, to Named Entity’s knowledge, none of Named Entity’s obligations in Swaps with Recipient (other than Swaps notified to Recipient in writing prior to execution) are subject to a U.S. Person Guarantee (CFTC 2020 Rules).*

U.S. Person Guarantees (CFTC 2020 Rules)

No U.S. Person Guarantees (CFTC 2020 Rules)

*-If Named Entity checked “U.S. Person Guarantees (CFTC 2020 Rules),” then:*

*If Named Entity is not an SD and Information Recipient is a Swap Dealer De Minimis Counting Entity, go to the next item. Otherwise, skip the rest of this Part II.B (go to the next Part that Information Recipient has requested, if any).*

*-If Named Entity checked “No U.S. Person Guarantees (CFTC 2020 Rules),” then:*

*If Named Entity is an SD or MSP, and Information Recipient is an SD or MSP, skip to item 4. Otherwise, skip the rest of this Part II.B (go to the next Part that Information Recipient has requested, if any).*

2. Financial Entity Guarantees

Does Named Entity have Financial Entity Guarantees (CFTC 2020 Rules)?

*Checking the box next to “Financial Entity Guarantees (CFTC 2020 Rules)” indicates that one or more of Named Entity’s obligations in Swaps with Recipient*

are subject to a U.S. Person Guarantee (CFTC 2020 Rules) by a Financial Entity.

Checking the box next to “No Financial Entity Guarantees (CFTC 2020 Rules)” indicates that, to Named Entity’s knowledge, none of Named Entity’s obligations in Swaps with Recipient (other than Swaps notified to Recipient in writing prior to execution) are subject to a U.S. Person Guarantee (CFTC 2020 Rules) by a Financial Entity.

- Financial Entity Guarantees (CFTC 2020 Rules)
- No Financial Entity Guarantees (CFTC 2020 Rules)

*-If Named Entity checked “Financial Entity Guarantees (CFTC 2020 Rules),” go to the next item.*

*-If Named Entity checked “No Financial Entity Guarantees (CFTC 2020 Rules),” skip the rest of this Part II.B (go to the next Part that Information Recipient has requested, if any).*

3. **SD Affiliate**

Does Named Entity have an SD Affiliate and itself operate below the SD De Minimis Threshold?

- Yes
- No

*Skip the rest of this Part II.B (go to the next Part that Information Recipient has requested, if any).*

4. **Swap Entity Significant Risk Subsidiary**

Is Named Entity a Swap Entity Significant Risk Subsidiary?

- Yes
- No

*Go to the next Part that Information Recipient has requested, if any.*

**C. CFTC 2013 Interpretive Guidance**

**Explanatory Note:** *These questions are designed to elicit information necessary to allow an Information Recipient that is not a U.S. person (including a non-SD) or that is a U.S. SD that transacts from a foreign branch to determine if certain CFTC rules may apply to the relationship with Named Entity based on its nexus to the United States.*

*Answer the question in item 1 and then follow the subsequent instructions.*

1. U.S. Person

Is Named Entity a U.S. Person (CFTC 2013 Interpretive Guidance)?

*Checking the box next to “Yes” indicates that Named Entity reasonably believes that it falls within one or more of the U.S. Person Categories or would otherwise be deemed to be a “U.S. person” under the CFTC’s 2013 Interpretive Guidance.*

*Checking the box next to “No” indicates that Named Entity reasonably believes that it does not fall within one or more of the U.S. Person Categories and believes in good faith that it would not otherwise be deemed to be a “U.S. person” under the CFTC’s 2013 Interpretive Guidance.*

- Yes  
 No

*-If Named Entity checked “Yes,” skip the rest of this Part II.C (go to the next Part that Information Recipient has requested, if any).*

*-If Named Entity checked “No,” go to the next item.*

2. Affiliate Conduit

Is Named Entity an Affiliate Conduit?

*Checking the box next to “Yes” indicates that Named Entity reasonably believes, based upon the relevant guidance in the CFTC’s 2013 Interpretive Guidance, including the Affiliate Conduit Factors, that Named Entity would be classified as an Affiliate Conduit.*

*Checking the box next to “No” indicates that Named Entity reasonably believes, based upon the relevant guidance in the CFTC’s 2013 Interpretive Guidance, including the Affiliate Conduit Factors, that Named Entity would not be classified as an Affiliate Conduit.*

- Yes  
 No

*-If Named Entity checked “Yes,” skip the rest of this Part II.C (go to the next Part that Information Recipient has requested, if any).*

*-If Named Entity checked “No,” go to the next item.*

3. U.S. Person Guarantees

Does Named Entity have U.S. Person Guarantees (CFTC 2013 Interpretive Guidance)?

*Checking the box next to “U.S. Person Guarantees (CFTC 2013 Interpretive Guidance)” indicates that Named Entity reasonably believes that one or more of Named Entity’s obligations in Swaps with Recipient are supported by a Guarantee (CFTC 2013 Interpretive Guidance) that is provided by a person that Named Entity reasonably believes falls within one or more of the U.S. Person Categories (CFTC 2013 Interpretive Guidance) or would otherwise be deemed to be a “U.S. person” under the CFTC’s 2013 Interpretive Guidance.*

*Checking the box next to “No U.S. Person Guarantees (CFTC 2013 Interpretive Guidance)” indicates that Named Entity reasonably believes that none of Named Entity’s obligations in Swaps with Recipient (other than swaps notified to Recipient in writing prior to execution) are supported by a Guarantee (CFTC 2013 Interpretive Guidance) that is provided by a person that Named Entity reasonably believes falls within one or more of the U.S. Person Categories (CFTC 2013 Interpretive Guidance) or would otherwise be deemed to be a “U.S. person” under the CFTC’s 2013 Interpretive Guidance.*

- U.S. Person Guarantees (CFTC 2013 Interpretive Guidance)  
 No U.S. Person Guarantees (CFTC 2013 Interpretive Guidance)

*Go to the next Part that Information Recipient has requested, if any.*

#### **D. CFTC Margin Rules**

**Explanatory Note:** *These questions are designed to elicit information necessary to allow a non-U.S. SD/MSP that is subject to the CFTC’s margin rules to determine whether those margin rules apply to a relationship with a non-U.S. counterparty and, if each party is an SD or MSP subject to the CFTC’s margin rules, to determine whether substituted compliance may be available for the collection or posting of initial margin.*

*Read the instructions for item 1, answer if applicable, and then follow the subsequent instructions.*

1. U.S. Person

*Answer unless Named Entity checked “No” to item 1 in Part II.C, in which case skip to the next item.*

Is Named Entity a U.S. Person (CFTC Margin Rules)?

- Yes  
 No

*-If Named Entity checked “Yes,” skip the rest of this Part II.D (go to the next Part that Information Recipient has requested, if any).*

*-If Named Entity checked “No,” go to the next item.*

2. Foreign Consolidated Subsidiary

*Answer if Named Entity is an SD, MSP, SBSB, or MSBSP as indicated in item 1 of Part I and either checked “No” or did not provide a response for item 1 immediately above. Otherwise, skip to the next item.*

Is Named Entity a Foreign Consolidated Subsidiary (CFTC Margin Rules)?

- Yes  
 No

*-If Named Entity checked “Yes,” skip the rest of this Part II.D and go to the next Part that Information Recipient has requested, if any.*

*-If Named Entity checked “No,” go to the next item.*

3. U.S. Person Guarantees

*Answer unless Named Entity checked “No” for Part II.C item 3, in which case go to the next Part that Information Recipient has requested, if any.*

Does Named Entity have U.S. Person Guarantees (CFTC Margin Rules)?

*Checking the box next to “U.S. Person Guarantees (CFTC Margin Rules)” indicates that one or more of Named Entity’s obligations in Uncleared Swaps with Recipient receive a U.S. Person Guarantee (CFTC Margin Rules).*

*Checking the box next to “No U.S. Person Guarantees (CFTC Margin Rules)” indicates that, to Named Entity’s knowledge, none of Named Entity’s obligations in Uncleared Swaps with Recipient (other than Uncleared Swaps notified to Recipient in writing prior to execution) receive a U.S. Person Guarantee (CFTC Margin Rules).*

- U.S. Person Guarantees (CFTC Margin Rules)  
 No U.S. Person Guarantees (CFTC Margin Rules)

*Go to the next Part that Information Recipient has requested, if any.*

**E. PR Margin Rules**

**Explanatory Note:** *These questions are designed to elicit information necessary to allow a non-U.S. SD or MSP that is subject to the Prudential Regulators’ margin rules to determine whether those margin rules apply to a relationship with a non-U.S. counterparty, and, if the respondent is a SD or MSP registered with the CFTC, for any SD or MSP that is subject to the*

*Prudential Regulators' margin rules to determine whether substituted compliance may be available for the collection or posting of initial margin.*

*Read the instructions for item 1, answer if applicable, and follow any subsequent instructions.*

1. PR Foreign Consolidated Subsidiary

*Answer if Named Entity is an SD, MSP, SBS, or MSBSP as indicated in item 1 of Part I. If Named Entity has not identified itself as any of these entity types, skip to the next item.*

Is Named Entity a PR Foreign Consolidated Subsidiary?

- Yes  
 No

*-If Named Entity checked "Yes," skip the rest of this Part II.E. (go to the next Part that Information Recipient has requested, if any).*

*-If Named Entity checked "No," or did not provide a response for this item, go to the next item.*

2. PR U.S. Guarantees

Does Named Entity have PR U.S. Guarantees?

*Checking the box next to "U.S. Person Guarantees" indicates that one or more of Named Entity's obligations under Uncleared Swaps or Uncleared SBS with Recipient may have a Guarantee (PR Margin Rules) from a PR U.S. Person, PR U.S. Branch or PR Foreign Consolidated Subsidiary.*

*Checking the box next to "No U.S. Person Guarantees" indicates that, to Named Entity's knowledge, none of Named Entity's obligations under Uncleared Swaps and Uncleared SBS with Recipient (other than Uncleared Swaps and Uncleared SBS notified to Recipient in writing prior to execution) have a Guarantee (PR Margin Rules) from a PR U.S. Person, PR U.S. Branch or PR Foreign Consolidated Subsidiary.*

- PR U.S. Guarantees  
 No PR U.S. Person Guarantees

*Go to the next Part that Information Recipient has requested, if any.*

## F. Multi-Branch Entities

**Explanatory Note:** *These questions are designed to elicit information necessary to allow an Information Recipient that is (i) a non-U.S. person that is dealing in de minimis amounts of swaps and/or SBS to determine if transactions with a multi-branch U.S. counterparty are subject to aggregation towards de minimis thresholds, (ii) a registered SD or SBSD to determine if various CFTC or SEC (non-margin) requirements apply to the relationship under applicable CFTC and SEC rules and interpretations, and/or (iii) a registered SD to determine the applicability of the CFTC and Prudential Regulators margin rules.*

*If Named Entity identified itself as a Multi-Branch Entity in Part I, read the instructions for item 1, answer if applicable, and follow any subsequent instructions. Otherwise, skip this Part and go to the next Part that Information Recipient has requested, if any.*

### 1. SBS through Foreign Branch (SEC Rules)

*Named Entity may answer the following question if (i) Named Entity will transact SBS with Information Recipient, (ii) Named Entity is a U.S. bank that checked “Yes” to any item in Part II.A, and (iii) either of the following conditions is met:*

*-Information Recipient has identified itself as an SBSD; or*

*-Named Entity has identified itself as an SBSD.*

Will Named Entity transact SBS with Recipient through a Foreign Branch (SEC Rules)?

*Checking the box next to “Foreign Branch Transactions Qualify (SEC Rules)” indicates that (other than SBS transactions notified to Recipient in writing prior to execution) each of Named Entity’s SBS transactions with Recipient where a non-U.S. branch of Named Entity is named in the relevant transaction documentation as the counterparty to the SBS qualifies as a Transaction Conducted Through a Foreign Branch of Named Entity that is arranged, negotiated and executed on behalf of a Foreign Branch (SEC Rules) of Named Entity by persons located outside the United States.*

*Checking the box next to “Foreign Branch Transactions May Not Qualify (SEC Rules)” indicates that one or more SBS transactions with Recipient where a non-U.S. branch of Named Entity is the counterparty may not qualify as a Transaction Conducted Through a Foreign Branch of Named Entity that is arranged, negotiated and executed on behalf of a Foreign Branch (SEC Rule) of Named Entity by persons located outside the United States.*

- Foreign Branch Transactions Qualify (SEC Rules)  
 Foreign Branch Transactions May Not Qualify (SEC Rules)

*Go to the next item.*

2. Swaps booked through U.S. Branch (CFTC 2020 Rules)

*Answer if (i) Named Entity will transact Swaps with Information Recipient, (ii) Named Entity checked “No” to both items in Part II.A, and (iii) Information Recipient has identified itself as an SD.*

Will Named Entity book Swaps with Recipient through a U.S. Branch (CFTC 2020 Rules)?

*Checking the box next to “Some or All U.S. Branch Transactions (CFTC 2020 Rules)” indicates that one or more of Named Entity’s Swaps with Recipient may be a Swap Booked in a U.S. Branch (CFTC 2020 Rules) of Named Entity.*

*Checking the box next to “No U.S. Branch Transactions (CFTC 2020 Rules)” indicates that none of Named Entity’s Swaps with Recipient will be a Swap Booked in a U.S. Branch (CFTC 2020 Rules) of Named Entity.*

Some or all U.S. Branch Transactions (CFTC 2020 Rules)

No U.S. Branch Transactions (CFTC 2020 Rules)

*Go to the next item.*

3. Swaps conducted through Foreign Branch (CFTC 2020 Rules)

*Named Entity may answer if (i) Named Entity will transact Swaps with Information Recipient, (ii) Named Entity is a U.S. bank that checked “Yes” to any item in Part II.A, and (iii) Information Recipient has identified itself as an SD.*

Will Named Entity conduct Swaps with Recipient through a Foreign Branch (CFTC 2020 Rules)?

*Checking the box next to “ Foreign Branch Transactions Qualify (CFTC 2020 Rules)” indicates that (other than Swap transactions notified to Recipient in writing prior to execution) each of Named Entity’s Swap transactions with Recipient where a non-U.S. branch of Named Entity is named in the relevant transaction documentation as the office for Named Entity qualifies as a Swap Conducted Through a Foreign Branch (CFTC 2020 Rules) of Named Entity.*

*Checking the box next to “ Foreign Branch Transactions May Not Qualify (CFTC 2020 Rules)” indicates that one or more Swap transactions with Recipient where a non-U.S. branch of Named Entity is named as the office for Named Entity may not qualify as a Swap Conducted Through a Foreign Branch (CFTC 2020 Rules) of Named Entity.*

Foreign Branch Transactions Qualify (CFTC 2020 Rules)

Foreign Branch Transactions May Not Qualify (CFTC 2020 Rules)

*Go to the next item.*

4. Swaps through U.S. Branch (CFTC Margin Rules)

*Answer the following question if (i) Named Entity will transact Swaps with Information Recipient, (ii) Named Entity checked “No” to both items in Part II.A and either item 1 in Part II.C or item 1 in Part II.D, and (iii) Information Recipient has identified itself as an SD subject to margin regulations of the CFTC.*

Will Named Entity transact Swaps with Recipient through a U.S. Branch (CFTC Margin Rules)?

*Checking the box next to “Some or All U.S. Branch Transactions (CFTC Margin Rules)” indicates that Named Entity may conduct Uncleared Swap transactions with Recipient by or through a U.S. Branch (CFTC Margin Rules).*

*Checking the box next to “No U.S. Branch Transactions (CFTC Margin Rules)” indicates that Named Entity will not conduct Uncleared Swap transactions with Recipient by or through a U.S. Branch (CFTC Margin Rules).*

- Some or all U.S. Branch Transactions (CFTC Margin Rules)  
 No U.S. Branch Transactions (CFTC Margin Rules)

*Go to the next item.*

5. Swaps or SBS through U.S. Branch (PR Margin Rules)

*Answer the following question if (i) Named Entity will transact Swaps or SBS with Information Recipient, (ii) Named Entity checked “No” to both items in Part II.A and item 1 in Part II.E (if applicable) and item 2 in Part II.E, and (iii) Information Recipient has identified itself as an SD subject to margin regulations of the Prudential Regulators.*

Will Named Entity book Swaps or SBS with Recipient through a PR U.S. Branch?<sup>11</sup>

*Checking the box next to “Some or All U.S. Branch Transactions” indicates that Named Entity may book some or all of its Uncleared Swaps or Uncleared SBS contracts with Recipient to one or more PR U.S. Branches or otherwise establish a PR U.S. Branch as counterparty to such transactions.*

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<sup>11</sup> The U.S. Prudential Regulators indicated that they would “generally consider the entity to which the swap is booked as the counterparty” for purposes of section .9 of the PR Margin Requirements. *See* 80 Fed. Reg. at 74883 & n. 183.

*Checking the box next to “No U.S. Branch Transactions” indicates that Named Entity will not book its Uncleared Swaps or Uncleared SBS contracts with Recipient to one or more PR U.S. Branches or otherwise establish a PR U.S. Branch as counterparty to such transactions.*

- Some or all PR U.S. Branch Transactions  
 No PR U.S. Branch Transactions

*Go to the next Part Information Recipient has requested, if any.*

### **PART III: EXEMPTION FROM MARGIN RULES**

#### **A. CFTC and PR Margin Rules**

**Explanatory Note:** *These questions are designed to elicit information necessary to allow an Information Recipient that is (i) an SD without a Prudential Regulator to ascertain whether Named Entity is eligible for an exemption from the CFTC Margin Rules with respect to Uncleared Swaps and (ii) an SD or SBS with a Prudential Regulator to ascertain whether Named Entity is eligible for an exemption from the PR Margin Rules with respect to Uncleared Swaps and (as applicable) Uncleared SBS, and, in each case, whether Named Entity intends to use the relevant exemption.*

*If Named Entity is eligible for, and may want to take advantage of, an exemption from CFTC Margin Rules for Uncleared Swaps or PR Margin Rules for Uncleared Swaps and (as applicable) Uncleared SBS, please complete the following Part. If Named Entity is not eligible for, or does not intend to use such an exemption, then Named Entity may skip this Part.*

##### 1. Non-Financial End User Status

Please indicate whether Named Entity is a Non-Financial End User for purposes of CFTC and/or PR Margin Requirements by checking the appropriate box, if applicable.

*Checking the box next to “Not a Financial End User (CFTC Margin Rules)” indicates that Named Entity is not a Financial End User for purposes of the CFTC Margin Rules.*

*Checking the box next to “Not a Financial End User (PR Margin Rules)” indicates that Named Entity is not a Financial End User for purposes of the PR Margin Rules.*

- Not a Financial End User (CFTC Margin Rules)  
 Not a Financial End User (PR Margin Rules)

*-If Named Entity checked one or both boxes above, skip the rest of this Part III.A (go to Part III.B if Information Recipient has requested).*

*-If Named Entity did not check a box above, go to the next item.*

##### 2. Hedging Exemption Status

Check each box that applies:

*Checking a box indicates that Named Entity is eligible, subject to satisfying any applicable transaction-specific requirements, to rely on the specified hedging exemption from the CFTC and/or PR Margin Rules for Uncleared Swaps. A Named Entity checking these boxes should note that: (i) checking a box does not*

*constitute an election by Named Entity to use such exemption in connection with any particular Uncleared Swap and (ii) Recipient may require additional information in order to rely upon the exemption for any particular Uncleared Swap. Skipping this section does not preclude a Named Entity that is eligible for an exemption from electing such exemption at a later date in respect of any Swap.*

- CFTC Non-Financial Entity Exemption
- CFTC Small Bank Exemption
- CFTC Captive Finance Company Exemption
- CFTC Exempt Cooperative Exemption
- CFTC Treasury Affiliate Exemption
- CFTC No-Action Relief

If Named Entity checked “Exempt under CFTC No-Action Relief,” provide the number of the CFTC no-action letter that applies here:<sup>12</sup>

\_\_\_\_\_.

*If Named Entity checked an exemption, go to the next item. Otherwise, you may skip the rest of this Part III.A (go to Part III.B if Information Recipient has requested).*

### 3. Exemption Elections

Please check the appropriate box below.

*Checking the box next to “All Transactions” indicates that, unless it otherwise notifies Recipient in writing prior to the execution of the relevant Swaps that will not be entered into in reliance on an exemption indicated in the immediately preceding section, Named Entity will enter into all of its Uncleared Swaps with Recipient in reliance on an exemption indicated above and that it will comply with the terms of the relevant exemption, including, but not limited to, any applicable requirement that such transaction is entered into in order to “hedge or mitigate commercial risk.”*

*Checking the box next to “Not All Transactions” indicates that Named Entity may not enter into all Uncleared Swaps with Recipient in reliance on an exemption from margin requirements and that, if it does rely on an exemption for a particular transaction, it will comply with the terms of the relevant exemption, including, but not limited to, any requirement that such transaction is entered into in order to “hedge or mitigate commercial risk.”*

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<sup>12</sup> When providing a response, please use the CFTC’s number system to identify the relevant no-action letter.

- All Transactions
- Not All Transactions

*Go to the next item.*

4. Exemption Reporting

Please check the appropriate box below.

*Checking the box next to “Annual Filing by Named Entity” indicates that: (i) unless Named Entity otherwise notifies Recipient in writing prior to the execution of the relevant Uncleared Swap, as applicable, Named Entity will satisfy the Swaps Hedging Exemption Reporting Requirement by making an annual filing and (ii) all information reported in connection with Named Entity’s satisfaction of the Swaps Hedging Exemption Reporting Requirement is true, accurate and complete in every material respect.*

*Checking the box next to “Trade Filing by Recipient” indicates that Named Entity intends to cause Recipient to satisfy the Swaps Hedging Exemption Reporting Requirement.*

- Annual Filing by Named Entity
- Trade Filing by Recipient

*-If Named Entity checked “Trade Filing by Recipient,” go to the next item.*

*-If Named Entity checked “Annual Filing by Named Entity,” skip the rest of this Part III.A (go to Part III.B if Information Recipient has requested).*

5. Financial Obligations

Please indicate how Named Entity generally meets its financial obligations associated with entering into Uncleared Swaps by checking one or more boxes below, as appropriate.

- A written credit support agreement
- Pledged or secured assets (including posting or receiving margin pursuant to a credit support arrangement or otherwise)
- A written third-party guarantee
- Named Entity’s available financial resources
- Means other than those described in any of the foregoing options

*Go to the next item.*

6. SEC Issuer/Filer

Please check one of the boxes below.

*Checking the box next to “SEC Issuer/Filer” indicates that Named Entity is an issuer of securities<sup>13</sup> registered under Section 12 of the Exchange Act or is required to file reports under Section 15(d) of the Exchange Act.*

*Checking the box next to “Not an SEC Issuer/Filer” indicates that Named Entity is not an issuer of securities registered under Section 12 of the Exchange Act and is not required to file reports under Section 15(d) of the Exchange Act.*

- SEC Issuer/Filer  
 Not an SEC Issuer/Filer

*-If Named Entity checked “SEC Issuer/Filer,” go to the next item.*

*-If Named Entity checked “Not an SEC Issuer/Filer,” skip the rest of this Part III.A (go to Part III.B if Information Recipient has requested).*

7. SEC Central Index Key Number

Please provide Named Entity’s SEC Central Index Key number here:

\_\_\_\_\_.

*Go to the next item.*

8. Board Approval

Please check the appropriate box to indicate whether an appropriate committee of Named Entity’s board of directors (or equivalent body) reviewed and approved the decision to enter into Uncleared Swaps that are exempt from the Clearing Requirements.

*Checking the box next to “Board Approved” confirms that an appropriate committee of Named Entity’s board of directors (or equivalent body) has reviewed and approved the decision to enter into Uncleared Swaps that are*

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<sup>13</sup> See CFTC Reg. 50.50(b)(iii)(D). The CFTC has interpreted the meaning of “issuer of securities” in this context in the same manner as the SEC did in its proposal for implementing the end-user exception to mandatory clearing of security-based swaps, and so the phrase has been interpreted to cover entities that are “controlled” by issuers of securities. See 77 Fed. Reg. 42560, 42570 (July 19, 2012) (citing 75 Fed. Reg. 79992, 79996 & n. 34 (Dec. 21, 2010)) (“[A] counterparty invoking the end-user clearing exception is considered by the [SEC] to be an issuer of securities registered under Exchange Act Section 12 or required to file reports pursuant to Exchange Act Section 15(d) if it is controlled by a person that is an issuer of securities registered under Exchange Act Section 12 or required to file reports pursuant to Exchange Act Section 15(d).”).

*exempt from the Clearing Requirements.*

*Checking the box next to “No Board Approval Confirmation” indicates that Named Entity does not confirm at this time that an appropriate committee of Named Entity’s board of directors (or equivalent body) has reviewed and approved the decision to enter into Uncleared Swaps that are exempt from the Clearing Requirements.*

- Board Approved
- No Board Approval Confirmation

*Go to the next Part Information Recipient has requested, if any.*

## **B. SEC Margin Rules**

**Explanatory Note:** *These questions are designed to elicit information necessary to allow an Information Recipient that is an SBSB that does not have a Prudential Regulator to ascertain whether Named Entity is eligible for an exemption from the SEC margin rules with respect to Uncleared SBS, and whether Named Entity intends to use the relevant exemption.*

*If Named Entity is eligible for, and may want to take advantage of, an exemption from margin requirements for Uncleared SBS, please complete the following Part. If Named Entity is not eligible for, or does not intend to use, an exemption from margin requirements for Uncleared SBS, then Named Entity may skip this Part.*

### **1. Exemption Status**

Please check the appropriate box.

*Checking a box indicates that Named Entity is eligible, subject to satisfying any applicable transaction-specific requirements, to rely on the specified exemption from the applicable SEC margin requirements. A Named Entity checking these boxes should note that: (i) checking a box does not constitute an election by Named Entity to use such exemption in connection with any particular Uncleared SBS and (ii) Recipient may require additional information in order to rely upon the exemption for any particular Uncleared SBS. Skipping this section does not preclude a Named Entity that is eligible for an exemption from electing such exemption at a later date in respect of any SBS.*

- Commercial End User
- Financial Market Intermediary
- Multilateral Development Bank
- Sovereign Entity

*If Named Entity checked “Commercial End User,” and no other box above, go to the next item. Otherwise, skip the rest of this Part III.B and go to the next Part Information Recipient has requested, if any.*

2. Exemption Election

Please check the appropriate box below.

*Checking the box next to “All Transactions” indicates that, unless it otherwise notifies Recipient in writing prior to the execution of the relevant SBS that will not be entered into in reliance on an exemption indicated in the immediately preceding section, Named Entity will enter into all of its Uncleared SBS with Recipient in reliance on an exemption indicated above and that it will comply with the terms of the relevant exemption, including, but not limited to, any applicable requirement that such transaction is entered into in order to “hedge or mitigate commercial risk.”*

*Checking the box next to “Not All Transactions” indicates that Named Entity may not enter into all Uncleared SBS with Recipient in reliance on an exemption from margin requirements and that, if it does rely on an exemption for a particular transaction, it will comply with the terms of the relevant exemption, including, but not limited to, any requirement that such transaction is entered into in order to “hedge or mitigate commercial risk.”*

- All Transactions
- Not All Transactions

*Go to the next item.*

3. Commercial End User Reporting

Please explain how Named Entity will satisfy the SBS Commercial End User Reporting Requirement here:

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*Go to the next Part if Information Recipient has requested.*

**PART IV: FINANCIAL ENTITY STATUS**

***Explanatory Note:*** This question regarding Financial Entity status is relevant to Information Recipient’s Swap (and potentially SBS) trade reporting requirements and may be applicable to other regulatory requirements.

*Answer the question in item 1, unless Named Entity checked “CFTC Non-Financial Entity Exemption” in item 2 of Part III.A, in which case no further questions required.*

1. Is Named Entity a Financial Entity?

- Yes
- No

\* \* \*

## Appendix

### Definitions

“**Affiliate Conduit**” means an “affiliate conduit,” under the CFTC 2013 Interpretive Guidance.

“**Affiliate Conduit Factors**” means the four factors identified in the CFTC 2013 Interpretive Guidance as relevant to considering whether a non-U.S. person is an “affiliate conduit.”<sup>14</sup> For informational purposes only, the text of the categories (but not the related interpretive materials) is reproduced below:

- (i) the non-U.S. person is a majority-owned affiliate of a U.S. person;<sup>15</sup>
- (ii) the non-U.S. person is controlling, controlled by or under common control with the U.S. person;<sup>16</sup>
- (iii) the financial results of the non-U.S. person are included in the consolidated financial statements of the U.S. person; and
- (iv) the non-U.S. person, in the regular course of business, engages in swaps with a non-U.S. third party(ies) for the purpose of hedging or mitigating risks faced by, or to take positions on behalf of, its U.S. affiliate(s), and enters into offsetting swaps or other arrangements with its U.S. affiliate(s) in order to transfer the risks and benefits of such swaps with a third party(ies) to its U.S. affiliates.

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

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

“**CFTC Captive Finance Company Exemption**” means the exemption from margin requirements for an entity that qualifies for an exclusion from the definition of “financial entity” in CEA § 2(h)(7)(C)(iii).

“**CFTC Exempt Cooperative Exemption**” means the exemption from margin requirements for an entity that qualifies for an exception from clearing under a rule, regulation, or order that the

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<sup>14</sup> For the full discussion of how the CFTC interprets the term “affiliate conduit” (or alternately “conduit affiliate”), see the CFTC 2013 Interpretive Guidance at pp. 45358-59. Note that the discussion indicates that the term “affiliate conduit” is not intended to include affiliates of swap dealers.

<sup>15</sup> The concept of a majority-owned affiliate for these purposes is discussed in fn. 591 of the CFTC 2013 Interpretive Guidance.

<sup>16</sup> The concept of “control” for these purposes is discussed in fn. 592 of the CFTC 2013 Interpretive Guidance.

CFTC issued pursuant to its authority under § 4(c)(1) of the CEA concerning cooperative entities that would otherwise be subject to the requirements of CEA § 2(h)(1)(A).

“**CFTC Margin Rules**” means the margin requirements adopted by the CFTC pursuant to CEA § 4s(e).

“**CFTC Non-Financial Entity Exemption**” means the exemption from margin requirements for an entity that does not meet the general definition of “financial entity” in CEA § 2(h)(7)(C)(i).

“**CFTC Small Bank Exemption**” means the exemption from margin requirements for an entity that qualifies for an exclusion from the definition of “financial entity” in CEA § 2(h)(7)(C)(ii) and CFTC Regulation 50.50(d).

“**CFTC Treasury Affiliate Exemption**”<sup>17</sup> means the exemption from margin requirements for an entity that satisfies the criteria in CEA § 2(h)(7)(D) and implementing regulations.

“**CFTC 2013 Interpretive Guidance**” means the CFTC’s *Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations*, 78 Fed. Reg. 45292 (Jul. 26, 2013).

“**CFTC 2020 Rules**” means the CFTC rule adopted in the following Federal Register citations, as amended and supplemented from time to time: *Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants*, 85 Fed. Reg. 56924 (Sept. 14, 2020).

“**Commercial End User**” means a counterparty that qualifies for an exception from clearing under § 3C(g)(1) of the SEA (15 U.S.C. 78c-3(g)(1)) and implementing regulations or satisfies the criteria in § 3C(g)(4) of the SEA (15 U.S.C. 78c-3(g)(4)) and implementing regulations. SEC Rule 18a-3(b)(2).

“**Financial End User (CFTC Margin Rules)**” means a “financial end user” as defined in CFTC Reg. 23.151.

“**Financial End User (PR Margin Rules)**” means a “financial end user” as defined in PR Reg. \_\_.2.

“**Financial Entity**” means a “financial entity,” as defined in Section 2(h)(7)(C) of the CEA.

“**Financial Market Intermediary**” means a counterparty that is a Security-Based Swap Dealer, Swap Dealer, broker or dealer, futures commission merchant, bank, foreign bank, or foreign broker or dealer. SEC Rule 18a-3(c)(1)(iii)(B).

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<sup>17</sup> Note that Section 705 of the Consolidated Appropriations Act, 2016, Pub. L. 114-113, made amendments to CEA § 2(h)(7)(D) and SEA § 3C(g)(4).

**“Foreign Branch (SEC Rules)”** means any branch of a U.S. bank if: (i) the branch is located outside the United States; (ii) the branch operates for valid business reasons; and (iii) the branch is engaged in the business of banking and is subject to substantive banking regulation in the jurisdiction where located. SEC Rule 3a71-3(a)(2).

**“Foreign Branch (CFTC 2020 Rules)”** means any office of a U.S. bank that: (i) is located outside the United States; (ii) operates for valid business reasons; (iii) maintains accounts independently of the home office and of the accounts of other foreign branches, with the profit or loss accrued at each branch determined as a separate item for each foreign branch; and (iv) is engaged in the business of banking and is subject to substantive regulation in banking or financing in the jurisdiction where it is located. CFTC Reg. 23.23(a)(3).

**“Foreign Consolidated Subsidiary (CFTC Margin Rules)”** means a “foreign consolidated subsidiary,” as defined in CFTC Reg. 23.160(a)(1).

**“Guarantee (CFTC Margin Rules)”** means an arrangement pursuant to which one party to a Uncleared Swap (CFTC Margin Rules) has rights of recourse against a guarantor, with respect to its counterparty’s obligations under the Uncleared Swap (CFTC Margin Rules). For these purposes, a party to a Swap has rights of recourse against a guarantor if the party has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from the guarantor with respect to its counterparty’s obligations under the Uncleared Swap (CFTC Margin Rules). In addition, in the case of any arrangement pursuant to which the guarantor has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other guarantor with respect to the counterparty’s obligations under the Uncleared Swap (CFTC Margin Rules), such arrangement will be deemed a guarantee of the counterparty’s obligations under the Uncleared Swap (CFTC Margin Rules) by the other guarantor. CFTC Reg. 23.160(a)(2).

**“Guarantee (CFTC 2013 Interpretive Guidance)”** means an agreement or arrangement under which a person commits to provide a financial backstop or funding against potential losses that may be incurred by another person in connection with a Swap.<sup>18</sup>

**“Guarantee (CFTC 2020 Rules)”** means an arrangement pursuant to which one party to a Swap has rights of recourse against a guarantor, with respect to its counterparty’s obligations under the Swap. For these purposes, a party to a Swap has rights of recourse against a guarantor if the party has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from the guarantor with respect to its counterparty’s obligations under the Swap. In addition, in the case of any arrangement pursuant to which the guarantor has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other guarantor with respect to the counterparty’s obligations under the Swap, such arrangement will be deemed a guarantee of the counterparty’s obligations under the Swap by the other guarantor. CFTC Reg. 23.23(a)(9).

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<sup>18</sup> For a full discussion of how the CFTC interpreted the term “guarantee,” see the CFTC 2013 Interpretive Guidance at p. 45320 & fn. 267 and also at p. 45355.

**“Guarantee (PR Margin Rules)”** means an arrangement pursuant to which one party to a Uncleared Swap (PR Margin Rules) or Uncleared SBS (PR Margin Rules) has rights of recourse against a third-party guarantor, with respect to its counterparty’s obligations under the Uncleared Swap (PR Margin Rules) or Uncleared SBS (PR Margin Rules). For these purposes, a party to a Uncleared Swap (PR Margin Rules) or Uncleared SBS (PR Margin Rules) has rights of recourse against a guarantor if the party has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from the guarantor with respect to its counterparty’s obligations under Uncleared Swap (PR Margin Rules) or Uncleared SBS (PR Margin Rules). In addition, any arrangement pursuant to which the guarantor has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other third-party guarantor with respect to the counterparty’s obligations under the Uncleared Swap (PR Margin Rules) or Uncleared SBS (PR Margin Rules), such arrangement will be deemed a guarantee of the counterparty’s obligations under the Uncleared Swap (PR Margin Rules) or Uncleared SBS (PR Margin Rules) by the other guarantor. PR Reg. 9(g).

**“Major Security-Based Swap Participant” or “MSBSP”** means a “major security-based swap participant,” as defined in SEA § 3(a)(67) and the rules adopted thereunder.

**“Major Swap Participant” or “MSP”** means a “major swap participant,” as defined in CEA § 1a(33) and the rules adopted thereunder.

**“MSBSP Threshold Monitoring Entity”** means an entity that requests information from Named Entity for purposes of determining the necessity of counting SBS with Named Entity against “substantial position” and/or other applicable thresholds for registration as an MSBSP.

**“MSP Threshold Monitoring Entity”** means an entity that requests information from Named Entity for purposes of determining the necessity of counting Swaps with Named Entity against “substantial position” and/or other applicable thresholds for registration with the CFTC as an MSP.

**“Multi-Branch Entity”** means a banking organization or other entity that has local branches, offices or agencies located both inside and outside the United States.

**“Multilateral Development Bank”** means the Bank for International Settlements or the European Stability Mechanism, or is the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, or any other multilateral development bank that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member. SEC Rule 18a-3(c)(1)(iii)(E) and (c)(2)(iii)(C).

**“Parent Entity”** means any entity in a consolidated group that has one or more Subsidiaries in which the entity has a controlling interest, as determined in accordance with U.S. GAAP. CFTC Reg. 23.23(a)(12).

**“PR Foreign Consolidated Subsidiary”** means a Swap Entity (PR Margin Rules) that is a Subsidiary (PR Margin Rules) of an entity that is organized under the laws of the United States or any U.S. state.

**“PR Margin Rules”** means the margin requirements adopted by a Prudential Regulator pursuant to CEA § 4s(e) and SEA § 15F(e).

**“Prudential Regulator”** means a “prudential regulator,” as defined in CEA § 1a(39).

**“PR U.S. Branch”** means a branch or agency organized or licensed under the laws of the United States or any U.S. state.

**“PR U.S. Guarantee”** means a Guarantee (PR Margin Rules) received from a PR U.S. Person, PR U.S. Branch, or PR Foreign Consolidated Subsidiary.

**“PR U.S. Person”** means (i) an entity organized under the laws of the United States or any state other than a U.S. branch, office or agency of a non-US bank or (ii) a natural person who is a resident of the United States. *See* PR Reg. 9(b)(1).

**“SBS Clearing Requirement”** means the requirements under SEA § 3C(a)(1).

**“SBS Dealer De Minimis Counting Entity”** means an entity that may engage in SBS dealing activity and that requests information from Named Entity for purposes of determining the necessity of counting SBS with Named Entity against the de minimis counting threshold for registration as an SBSD.

**“SD De Minimis Threshold”** means the aggregate gross notional amount of Swaps conducted in connection with Swap dealing activity below which a person not currently registered as a Swap Dealer with the CFTC will not be considered a Swap Dealer in accordance with CFTC rules.

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

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

**“SEC Margin Requirements”** means the margin requirements adopted by the SEC pursuant to SEA § 15F(e).

**“Security-Based Swap” or “SBS”** means a “security-based swap,” as defined in SEA § 3(a)(68) and the rules adopted thereunder.

**“Security-Based Swap Commercial End User Reporting Requirement”** means the requirement under 15 U.S.C. 78c-3(g)(1)(C) to notify the SEC, in the manner set forth by the SEC, of how it

generally meets its financial obligations associated with entering into Uncleared SBS (SEC Rules).

**“Security-Based Swap Dealer” or “SBSD”** means a “security-based swap dealer,” as defined in SEA § 3(a)(71) and the rules adopted thereunder.

**“Significant Subsidiary”** means a Subsidiary (CFTC 2020 Rules), including its Subsidiary (CFTC 2020 Rules), which meets any of the following conditions:

- (i) The three-year rolling average of the Subsidiary's (CFTC 2020 Rules) equity capital is equal to or greater than five percent of the three-year rolling average of the Ultimate U.S. Parent Entity's consolidated equity capital, as determined in accordance with U.S. GAAP as of the end of the most recently completed fiscal year;
- (ii) The three-year rolling average of the Subsidiary's (CFTC 2020 Rules) total revenue is equal to or greater than ten percent of the three-year rolling average of the Ultimate U.S. Parent Entity's total consolidated revenue, as determined in accordance with U.S. GAAP as of the end of the most recently completed fiscal year; or
- (iii) The three-year rolling average of the Subsidiary's (CFTC 2020 Rules) total assets is equal to or greater than ten percent of the three-year rolling average of the Ultimate U.S. Parent Entity's total consolidated assets, as determined in accordance with U.S. GAAP as of the end of the most recently completed fiscal year.

CFTC Reg. 23.23(a)(14).

**“Sovereign Entity”** means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government if the SBSB has determined that the counterparty has only a minimal amount of credit risk pursuant to policies and procedures or credit risk models established pursuant to SEC Rule 15c3-1 or 18a-1 (as applicable). SEC Rule 18a-3(c)(1)(iii)(F).

**“Subsidiary (PR Margin Rules)”** means a “subsidiary,” as defined in PR Reg. \_\_.2.

**“Subsidiary (CFTC 2020 Rules)”** means an affiliate of a person controlled by such person directly, or indirectly through one or more intermediaries. CFTC Reg. 23.23(a)(15).

**“Swap”** means a “swap,” as defined in CEA § 1a(47) and the rules adopted thereunder.

**“Swap Booked in a U.S. Branch (CFTC 2020 Rules)”** means a Swap entered into by a U.S. Branch (CFTC 2020 Rules) where the Swap is reflected in the local accounts of the U.S. Branch (CFTC 2020 Rules). CFTC Reg. 23.23(a)(16).

**“Swap Clearing Requirement”** means the requirements under CEA § 2(h)(1).

**“Swap Conducted Through a Foreign Branch (CFTC 2020 Rules)”** means a Swap entered into by a Foreign Branch where: (i) the Foreign Branch or another Foreign Branch is the office through which the U.S. person makes and receives payments and deliveries under the Swap pursuant to a master netting or similar trading agreement, and the documentation of the Swap specifies that the office for the U.S. person is such Foreign Branch; (ii) the Swap is entered into by such Foreign Branch in its normal course of business; and (iii) The swap is reflected in the local accounts of the Foreign Branch. CFTC Reg. 23.23(a)(17).

**“Swap Dealer” or “SD”** means a “swap dealer,” as defined in CEA § 1a(49) and the rules adopted thereunder.

**“Swap Dealer Affiliate” or “SD Affiliate”** means a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with a Swap Dealer. CFTC Reg. 23.23(a)(1).

**“Swap Dealer De Minimis Counting Entity”** means an entity that may engage in Swap dealing activity and is requesting information from Named Entity for purposes of determining the necessity of counting Swaps with Named Entity against the de minimis counting threshold for registration as an SD.

**“Swap Entity (PR Margin Rules)”** means a Swap Dealer, a Security-Based Swap Dealer, a Major Swap Participant or a Major Security-Based Swap Participant. PR Reg. \_\_.2.

**“Swap Entity Significant Risk Subsidiary”** means any non-U.S. Significant Subsidiary of an Ultimate U.S. Parent Entity, that is a Swap Dealer or Major Swap Participant, where the Ultimate U.S. Parent Entity has more than \$50 billion in global consolidated assets, as determined in accordance with U.S. GAAP at the end of the most recently completed fiscal year, but excluding non-U.S. Subsidiaries (CFTC 2020 Rules) that are:

- (i) Subject to consolidated supervision and regulation by the Board of Governors of the Federal Reserve System as a Subsidiary (CFTC 2020 Rules) of a U.S. bank holding company or an intermediate holding company; or
- (ii) Subject to capital standards and oversight by the Subsidiary's (CFTC 2020 Rules) home country supervisor that are consistent with the Basel Committee on Banking Supervision's “International Regulatory Framework for Banks” and subject to margin requirements for Uncleared Swap (CFTC Margin Rules) in a jurisdiction that the Commission has found comparable pursuant to a published comparability determination with respect to Uncleared Swap (CFTC Margin Rules) margin requirements.

CFTC Reg. 23.23(a)(13).

**“Swaps Hedging Exemption Reporting Requirement”** means the reporting requirements of CFTC Reg. 50.50(b).

**“Transaction Conducted through a Foreign Branch”** means a Security-Based Swap transaction that is arranged, negotiated, and executed by a U.S. Person (CFTC 2020 Rules/SEC Rules) through a Foreign Branch (SEC Rules) of such person if: (A) the Foreign Branch is the counterparty to such Security-Based Swap transaction; and (B) the Security-Based Swap transaction is arranged, negotiated, and executed on behalf of the Foreign Branch (SEC Rules) solely by persons located outside the United States. SEC Rule 3a71-3(a)(3).

**“Ultimate U.S. Parent Entity”** means the U.S. Parent Entity<sup>19</sup> that is not a Subsidiary (CFTC 2020 Rules) of any other U.S. Parent Entity. CFTC Reg. 23.23(a)(19).

**“Uncleared SBS (PR Margin Rules)”** means a “non-cleared security-based swap,” as defined in PR Reg. \_\_.2.

**“Uncleared SBS (SEC Rules)”** a “non-cleared security-based swap,” as defined in SEC Rule 18a-3(b)(5).

**“Uncleared Swap (CFTC Margin Rules)”** means an “uncleared swap,” as defined in CFTC Reg. 23.151.

**“Uncleared Swap (PR Margin Rules)”** means a “non-cleared swap,” as defined in PR Reg. \_\_.2.

**“United States”** means the United States of America, its territories and possessions, any state of the United States, and the District of Columbia. *See* 240.3a71-3(a)(5) and 23.160(a)(7).

**“U.S. Branch (CFTC Margin Rules)”** means a “U.S. branch” as used in the CFTC Margin Rules.

**“U.S. Branch (CFTC 2020 Rules)”** means a branch or agency of a non-U.S. banking organization where such branch or agency: (i) is located in the United States; (ii) maintains accounts independently of the home office and other U.S. branches, with the profit or loss accrued at each branch determined as a separate item for each U.S. branch; and (iii) engages in the business of banking and is subject to substantive banking regulation in the state or district where located. CFTC Reg. 23.23(a)(21).

**“U.S. GAAP”** means U.S. generally accepted accounting principles.

**“U.S. Person Categories (CFTC 2013 Interpretive Guidance)”** means the enumerated categories of “U.S., persons” that are provided in the CFTC 2013 Interpretive Guidance.<sup>20</sup> For

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<sup>19</sup> The discussion in the preamble to the CFTC 2020 Rules indicates that a “U.S. Parent Entity” is a Parent Entity that is also a U.S. Person (CFTC 2020 Rules/SEC Rules). *See e.g.*, 85 Fed. Reg. 56924, 56943.

<sup>20</sup> CFTC 2013 Interpretive Guidance at pp. 45316-17.

informational purposes only, the text of the categories (but not the related interpretive materials) is reproduced below:

- (i) any natural person who is a resident of the United States;
- (ii) any estate of a decedent who was a resident of the United States at the time of death;
- (iii) any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing (other than an entity described in prongs (iv) or (v), below) (a “**legal entity**”),<sup>21</sup> in each case that is organized or incorporated under the laws of a state or other jurisdiction in the United States or having its principal place of business in the United States;<sup>22</sup>
- (iv) any pension plan for the employees, officers or principals of a legal entity described in prong (iii), unless the pension plan is primarily for foreign employees of such entity;
- (v) any trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States is able to exercise primary supervision over the administration of the trust;
- (vi) any commodity pool, pooled account, investment fund, or other collective investment vehicle that is not described in prong (iii) and that is majority-owned by one or more persons described in prong (i), (ii), (iii), (iv), or (v),<sup>23</sup> except any commodity pool, pooled account, investment fund, or other collective investment

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<sup>21</sup> See the CFTC 2013 Interpretive Guidance at p. 45309 regarding the inclusion of legal entities that engage in non-profit activities, U.S. state, county and local governments and their agencies and instrumentalities. The treatment of international financial institutions such as the World Bank is discussed at p. 45353 & fn. 531.

<sup>22</sup> The CFTC indicates that the concept of “principal place of business” as applied to collective investment vehicles requires special consideration due to the nature of such vehicles. In particular, the location of senior personnel responsible for implementing the vehicle’s investment strategy and for forming and/or promoting the vehicle is discussed. For discussion of the relevant considerations, see the CFTC 2013 Interpretive Guidance at pp. 45309-12.

<sup>23</sup> For purposes of making this determination, the CFTC indicates that collective investment vehicles should “look through” direct investors in certain circumstances. See the Interpretive Guidance at pp. 45313-14 for discussion of when a look-through is required. In addition, the CFTC 2013 Interpretive Guidance indicates that majority ownership for this purpose is “the beneficial ownership of more than 50 percent of the equity or voting interests.”

vehicle that is publicly offered only to non-U.S. persons and not offered to U.S. persons;<sup>24</sup>

- (vii) any legal entity (other than a limited liability company, limited liability partnership or similar entity where all of the owners of the entity have limited liability) that is directly or indirectly majority-owned by one or more persons described in prong (i), (ii), (iii), (iv), or (v) and in which such person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity;<sup>25</sup> and
- (viii) any individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in prong (i), (ii), (iii), (iv), (v), (vi), or (vii).

**“U.S. Person (CFTC Margin Rules)”** means:

- (i) a natural person who is a resident of the United States;
- (ii) an estate of a decedent who was a resident of the United States at the time of death;
- (iii) a corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of entity similar to any of the foregoing (other than an entity described in paragraph (iv) or (v) below) (a “legal entity”), in each case that is organized or incorporated under the laws of the United States or that has its principal place of business in the United States, including any branch of such legal entity;
- (iv) a pension plan for the employees, officers or principals of a legal entity described in (iii) above, unless the pension plan is primarily for foreign employees of such entity;
- (v) a trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States is able to exercise primary supervision over the administration of the trust;
- (vi) a legal entity (other than a limited liability company, limited liability partnership or similar entity where all of the owners of the entity have limited liability) that is owned by one or more persons described in paragraphs (i) through (v) above and

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<sup>24</sup> See the CFTC 2013 Interpretive Guidance at p. 45314 regarding exclusion of collective investment vehicles that are publicly offered only to non-U.S. persons and not offered to U.S. persons from the U.S. Person Categories.

<sup>25</sup> Regarding the circumstances in which a majority of the owners of an entity are considered to be U.S. persons with unlimited responsibility for the obligations and liabilities of the legal entity, see the CFTC 2013 Interpretive Guidance at pp. 45312-13.

for which such person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity, including any branch of the legal entity; or

- (vii) an individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in (i) through (vi) above.

CFTC Reg. 23.160(a)(10).

**“U.S. Person (CFTC 2013 Interpretive Guidance)”** means a “U.S. person,” under the CFTC 2013 Interpretive Guidance.

**“U.S. Person (CFTC 2020 Rules/SEC Rules)”** means any person, that is:

- (A) a natural person resident in the United States;
- (B) a partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business in the United States;
- (C) an account (whether discretionary or non-discretionary) of a U.S. person; or
- (D) an estate of a decedent who was a resident of the United States at the time of death.

For these purposes, principal place of business means the location from which the officers, partners, or managers of the legal person primarily direct, control, and coordinate the activities of the legal person. With respect to an externally managed investment vehicle, this location is the office from which the manager of the vehicle primarily directs, controls, and coordinates the investment activities of the vehicle.

The term “U.S. person” does not include the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies and pension plans, and any other similar international organizations, their agencies and pension plans.

CFTC Reg. 23.23(a)(23) and SEC Rule 240.3a71-3(a)(4).

**“U.S. Person Guarantee (CFTC Margin Rules)”** means a Guarantee (CFTC Margin Rules) received from a U.S. Person (CFTC Margin Rules).

**“U.S. Person Guarantee (CFTC 2013 Interpretive Guidance)”** means a Guarantee (CFTC 2013 Interpretive Guidance) received from any person that falls within one or more of the U.S. Person Categories (CFTC 2013 Interpretive Guidance) or would otherwise be deemed to be a “U.S. person” under the CFTC 2013 Interpretive Guidance.

***“U.S. Person Guarantee (CFTC 2020 Rules)”*** means a Guarantee (CFTC 2020 Rules) by a U.S. Person (CFTC 2020 Rules/SEC Rules).