

Security-Based Swaps Regulatory Regime

Frequently Asked Questions (FAQs) for UBS Clients



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SBS Regulatory Regime – FAQs

Introduction

This document seeks to answer frequently asked questions from UBS clients relating to the U.S. Securities and Exchange Commission's regulatory regime applicable to security-based swaps adopted under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). If you have questions regarding how this regulatory regime (the SBS Regulatory Regime) applies specifically to your relationship with UBS, in addition to seeking guidance from your external advisors and your institution's Legal and Compliance team, please contact your UBS Sales Representative.

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Section A: SBS Regulatory Regime Overview

1 What is the SBS Regulatory Regime and what does it seek to do?

In 2010, the Dodd-Frank Act amended the Commodities Exchange Act and the Securities Exchange Act of 1934 to, among other things, establish a new regulatory framework for swaps and security-based swaps (SBS). Adopted in the wake of the 2008 financial crisis, the Dodd-Frank Act was enacted to reduce systemic risk, increase transparency, and promote market integrity within the financial system, in line with the G20 commitments to reform and improve OTC derivatives market structure. The Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) are jointly responsible for implementing Title VII of the Dodd-Frank Act, with jurisdiction delineated by products. While the CFTC has jurisdiction over swaps, the SEC has jurisdiction over SBS. The SBS Regulatory Regime establishes the regulation of margin, capital, segregation, recordkeeping and reporting and business conduct for security-based swaps.

While the SEC's SBS Regulatory Regime became applicable from 1st November 2021, the CFTC's corresponding regulatory regime has been applicable since 2013.

2 What products are in scope of the SBS Regulatory Regime?

SBS are defined as all swaps based on (i) a single security or loan, (ii) a narrow-based (9 or less underliers) security index or (iii) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer. The majority of groups of securities qualifying as narrow-based security indices are either (a) indices composed of nine or fewer securities or (b) baskets. In scope product types include, without limitation:

- Total return swaps referencing a single underlying security or loan
- Total return swaps referencing a narrow-based index of securities
- Equity variance or dividend swaps referencing a single security or narrow-based index of securities
- Single name credit default swaps (CDS)
- CDS referencing a narrow-based index of securities

All Swaps subject to the CFTC's jurisdiction (e.g. swaps based exclusively on currencies, interest rates or broad-based security indices) are not be subject to the SBS Regulatory Regime but are subject to the corresponding CFTC regulatory regime.

Transactions that are both swaps and SBS are "Mixed Swaps" and are subject to the SEC's SBS Regulatory Regime as well as the corresponding CFTC regulatory regime for Swaps.

3 Does the SBS Regulatory Regime apply to me?

The SBS Regulatory Regime applies to SBS transactions between UBS and its counterparties.

The action(s) required by you as a UBS client will depend on whether:

- the legal entity you represent is classified as a U.S. Person per the 2020 U.S. Person definition (see *FAQ section B*); and
- UBS personnel based in the U.S will be involved in arranging, negotiating or executing your SBS transactions

All counterparties, at a minimum, are required to have an LEI (see *FAQ 4*) and complete the U.S. Self-Disclosure Letter (see *FAQ section B*).

4 Will I require a Legal Entity Identifier (LEI)? How can I obtain this?

All counterparties trading SBS with a registered SBSD post 8th November 2021 are required to hold an LEI regardless of their U.S. Person status. **This is a requirement for agents, underlying funds and counterparties trading as principals.**

The LEI is an alpha-numeric code that uniquely identifies entities engaging in financial transactions.

An LEI is required:

- to enable a counterparty to use ISDA Amend for U.S. Self-Disclosure Letter completion (see *Section B*) and ISDA protocol adherence (see *Section C*). The LEI is used as the counterparty's unique identifier for tracking purposes; and
- for reporting SBS transactions under the SBS Regulatory Regime – UBS AG is required to report all SBS transactions and both counterparty and agent LEIs are mandatory reportable fields

UBS AG's LEI Code is: **BFM8T61CT2L1QCCEMIK50.**

If your organisation does not currently have an LEI, please click [here](#) for instructions on how to obtain one.

5 What were the key dates for the SBS Regulatory Regime?

The key dates for registration of security-based swap dealers and major security-based swap participants were as follows:

- **August 6th 2021:** The "Counting Date" was the date from which market participants had to assess whether they trade SBS in excess of the relevant *de-minimis* thresholds and consequently have to register as SBSDs
- **November 1st 2021:** Registration applications were due from SBSDs that incur a registration obligation from the Counting Date or shortly thereafter. Such market participants were required to register with the SEC as SBSDs no later than this date
- **November 8th 2021:** Date from which SBSDs were required to report transactions in SBSs under the SBS Regulatory Regime

6 Which UBS entities are registered with the SEC under the SBS Regulatory Regime?

UBS AG, and by association all of its branches (e.g. UBS AG London Branch), is registered as an SBSD effective 1st November 2021.

7 What does this mean for clients facing non-registering UBS entities?

As of 6th August 2021, UBS entities other than UBS AG ("non-AG UBS entity") are no longer able to trade SBS with counterparties that are U.S. Persons. This is to ensure that UBS entities other than UBS AG will not become subject to a registration obligation.

For clarity, SBS transactions between a client and a non-AG UBS entity can continue to be entered into, as long as the client is not a U.S. Person and has represented this accordingly to UBS by providing a U.S. Self-Disclosure Letter (see Section B below).

8 What is Substituted Compliance?

Substituted compliance provides a method by which non-U.S. SBS Entities may fulfil certain requirements of the SBS Regulatory Regime by complying with corresponding non-U.S. rules applicable to SBS, which the non-U.S. SBS Entity is subject to in its home jurisdiction. In order for a non-U.S. SBS Entity to be able to comply with regulatory requirements under the SBS Regulatory Regime by complying with its home country rules, the latter need to be determined to be comparable with the respective requirements under the SBS Regulatory Regime by the SEC. UBS AG was granted substituted compliance with the SEC with respect to certain Swiss law requirements.

Section B: U.S. Self Disclosure Letter

9 What is the U.S. Self Disclosure Letter?

The “ISDA U.S. Self Disclosure Letter” (SDL) is required to facilitate compliance with certain U.S. Swap and Security-Based Swap rules. The industry-developed SDL was published by the International Swaps and Derivatives Association, Inc. (ISDA) on 15th January 2021 and is intended to assist market participants with the exchange of the information necessary to determine whether compliance with CFTC and/or Prudential Regulator swap regulations and/or SEC security-based swap regulations is required as well as if, and when, their trading relationship will become subject to CFTC, Prudential Regulator or SEC regulatory margin requirements for uncleared swaps and/or security-based swaps (as applicable).

Inter alia, the SDL contains a series of questions designed to accurately determine an entity's U.S. Person status under the different U.S. person definitions.

Some of the information required to be disclosed under the SDL may not be public. For example, the Affiliate Conduit category asks whether the client is engaging in swap transactions for purposes of hedging the risks of a U.S. affiliate. Accordingly, it is a legal requirement for all counterparties to SBS transactions to complete this letter to determine their Dodd-Frank status.

The SDL is available at www.isda.org/book/isda-us-self-disclosure-letter. This document can be completed using the industry platform ISDA Amend. Please note that there is no charge for using this service. If you are unable to use ISDA Amend, please contact ubs-ib-sec_sbsd@ubs.com.

10 What is a U.S. Person under the SBS Regulatory Regime?

The SBS Regulatory Regime defines U.S. person as any person (except certain international organisations and their agencies and pension plans) that is (each a “U.S. Person”):

- A natural person resident in the United States;
- 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;
- An account (whether discretionary or non-discretionary) of a U.S. Person; or
- An estate of a decedent who was a resident of the United States at the time of death.

For purposes of this definition, **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.

11 Why does it matter if I am a U.S. Person?

A counterparty's U.S. Person status determines whether or not a UBS entity other than UBS AG may trade SBS with the counterparty (see *FAQ 7*). UBS AG needs to know its SBS counterparty's U.S. Person status in order to determine which obligations under the SBS Regulatory Regime UBS will need to comply with, when trading SBS products.

12 What action do I need to take if I am a U.S. Person?

U.S. Person counterparties are required to complete the SDL and adhere to the relevant ISDA protocol (ISDA 2021 SBS Top-Up or SBS Full Protocol).

13 Why do I need to provide my U.S. Person status again?

A counterparty's U.S Person status under the combined CFTC/SEC 2020 definition may be different from that counterparty's status under the CFTC 2013 definition.

The key difference between the two definitions is that the CFTC/SEC 2020 definition additionally considers the office from which the manager of an investment vehicle **primarily** directs, controls, and coordinates the investment activities of the vehicle when determining the investment vehicle's U.S. Person status.

For example, an investment vehicle incorporated in the EU, and with a principal place of business in the EU would be considered a U.S. Person under the new definition if the manager primarily directing, controlling and coordinating it's activities operates from the United States.

Section C: Protocol Adherence

14 What are the ISDA 2021 SBS Protocols and who needs to adhere?

Adherence to ISDA protocols is required to facilitate industry compliance with the SBS Regulatory Regime.

All U.S. Person counterparties of UBS AG are required to adhere to one of the following:

- **ISDA 2021 SBS Top-Up Protocol:** any entity that has already adhered to the ISDA August 2012 Dodd-Frank Protocol (ISDA August 2012 DF Protocol) as well as to the ISDA March 2013 Dodd-Frank Protocol (ISDA March 2013 DF Protocol), collectively the ISDA DF Protocols, for CFTC compliance purposes via www.isda.org, can adhere to the ISDA 2021 SBS Top-Up Protocol to become compliant with the SBS Regulatory Regime
- **ISDA 2021 SBS Full Protocol:** all entities that have not adhered to the ISDA DF Protocols, via www.isda.org, must adhere to the ISDA 2021 SBS Full Protocol (the ISDA 2021 SBS Top-Up Protocol and the ISDA 2021 SBS Full Protocol collectively, the ISDA 2021 SBS Protocols)

Protocol adherence can be completed using the industry platform ISDA Amend (see *FAQ 24 for information regarding associated fees*).

15 What is the ISDA 2021 SBS Top-Up Protocol and what does it do?

The ISDA 2021 SBS Top-Up Protocol is part of ISDA's Dodd-Frank Documentation Initiative aimed at assisting the industry in implementing and complying with the SBS Regulatory Regime.

The ISDA 2021 SBS Top-Up Protocol is designed to supplement existing written agreements governing the terms and conditions of one or more transactions in SBS where the parties previously adhered to the ISDA August 2012 DF Protocol or the ISDA March 2013 DF Protocol. Further information on the ISDA 2021 SBS Top-Up Protocol is available at www.isda.org/protocol/isda-2021-sbs-top-up-protocol/. The document can be completed using the industry platform ISDA Amend.

For an ISDA 2021 SBS Top-Up Protocol to work, a counterparty must have validly adhered to the ISDA Dodd-Frank Protocols, as well as have exchanged the respective questionnaires with UBS. A questionnaire is required for each principal sitting under an agent. The date on which the questionnaire exchange / matching occurs is the implementation date for the relevant ISDA DF Protocol. Trading agreements entered into after this implementation date only get amended by the ISDA DF Protocols, to the extent the ISDA DF Protocols are incorporated by reference into the relevant trading agreement.

16 What is the structure of the ISDA 2021 SBS Top-Up Protocol?

The Protocol consists of three parts:

- The Protocol terms, including forms of Adherence Letter and Revocation Notice;
- Appendix 1 to the Protocol (General Agreements and Notifications; Safe Harbors), which tops up the ISDA August 2012 DF Protocol for purposes of applicability to SBS; and
- Appendix 2 to the Protocol (Calculation of Risk Valuations and Dispute Resolution; Portfolio Reconciliation) which tops up the ISDA March 2013 DF Protocol for purposes of applicability to SBS

Please note that there is no requirement to exchange additional questionnaires for purposes of adhering to the ISDA 2021 SBS Top-Up Protocol. The elections made and information exchanged in the questionnaires for purposes of adhering to the ISDA DF Protocols also apply to the ISDA 2021 SBS Top-Up Protocol. The three parts of the Protocol form a single document.

17 What is the Adherence Letter ID?

An Adherence Letter ID (or “ALID”) is an identification code that is unique to an Adherence Letter for a particular protocol. ISDA assigns an ALID to each adherence letter for its protocols. For the ISDA 2021 SBS Top-Up Protocol, the ALID has special significance as this protocol tops up adherence to the ISDA DF Protocols. Each adhering party must enter the relevant ALIDs for their prior adherence(s), and adhere in the same capacity (principal or agent) as they have adhered to the ISDA DF Protocols and signed their Protocol Covered Agreements.

Please note that if you adhered to both the ISDA August 2012 DF Protocol and the ISDA March 2013 DF Protocol and are now adhering to the ISDA 2021 SBS Top-Up Protocol, you should include **both** ALIDs for the two previous ISDA DF Protocols, to avoid having to adhere to the ISDA 2021 Top-Up Protocol a second time.

18 Where do I find the ALID(s) for the ISDA DF Protocol(s)?

An ALID is a number that is generated that is specific to your adherence to the ISDA DF Protocols. Your ALID is available on the ISDA website.

19 What agreements does the ISDA 2021 SBS Top-Up Protocol cover?

The ISDA 2021 SBS Top-Up Protocol is designed to supplement existing written agreements governing the terms and conditions of one or more transactions in SBS. The ISDA 2021 Top-Up Protocol adds notices, representations and covenants responsive to Dodd-Frank Title VII requirements that must be satisfied at or prior to the time that SBS transactions are offered and executed.

The ISDA 2021 SBS Top-Up Protocol is not limited to ISDA Master Agreements, and may be used to amend all protocol covered agreements between a pair of counterparties, provided the two parties have previously adhered to the ISDA DF Protocols and the relevant agreements were bindingly amended pursuant to the terms of the ISDA DF Protocols.

20 What is the ISDA 2021 SBS Full Protocol?

The final version of the ISDA 2021 SBS Full Protocol is available for adherence via <https://www.isda.org/protocol/isda-2021-sbs-protocol/>.

The ISDA 2021 SBS Full Protocol addresses the rules covered by the ISDA 2021 SBS Top-Up Protocol in standalone format and counterparties wishing to adhere to the ISDA 2021 SBS Full Protocol additionally need to complete separate questionnaires.

All counterparties that have not fully adhered to the ISDA DF Protocols must adhere to the ISDA 2021 SBS Full Protocol.

Further reference to ISDA FAQs explain which protocols should be used, available via: <https://www.isda.org/protocol/isda-2021-sbs-protocol/>

21 How do I submit my Adherence Letter?

Each entity executing an Adherence Letter should access the Protocol Management section of the ISDA website at www.isda.org to enter the information required online.

Either by directly downloading the populated Adherence Letter from the Protocol Management system or upon receipt via e-mail of the populated Adherence Letter, the entity must sign and upload the Adherence Letter as a PDF (portable document format) attachment into the Protocol Management system. Once the signed Adherence Letter has been approved and accepted by ISDA, the protocol adhering party will receive an e-mail confirmation of their adherence to the respective ISDA protocol.

Please note that protocol adherence needs to be completed in the same capacity as both the DF protocols (where applicable) and the master agreement that the protocol is being applied to.

22 Can entities that are not ISDA members sign up to the ISDA 2021 SBS Protocols?

Yes. The ISDA 2021 SBS Protocols are open to any entity. ISDA members and non-ISDA members alike adhere to the ISDA 2021 SBS Protocols in the same way.

23 Can I change the text of an Adherence Letter?

No. The Adherence Letter must be in the same format as the form letter published by ISDA.

24 Are there any costs to adhere to an ISDA Protocol?

Each Adhering Party must submit a one-time fee of U.S. \$500 to ISDA at or before the submission of the Adherence Letter.

Each counterparty / combination of counterparties (e.g. fund manager and fund) is considered a separate Adhering Party for the purpose of Protocol Adherence and would need to pay the adherence fee. **For multi-managed funds, each of the fund managers would need to adhere on behalf of the fund.**

However, an Investment/Asset Manager/Agent that adheres on behalf of one or more underlying funds or principals for whom it has entered into an ISDA Master Agreement or Other Agreement using a single Adherence Letter, would only pay a single adherence fee for that Adherence Letter.

25 What are ANE Transactions?

Under the SBS Regulatory Regime, ANE Transactions are SBS transactions that are arranged, negotiated or executed (ANE) by U.S. based personnel of a counterparty (or its agent) engaging in SBS dealing activity. Examples of ANE Transactions include:

- A U.S. based Sales person speaking with a non-U.S. client outside of their regular trading hours
- Execution of a trade containing U.S. underliers which is subsequently executed by a U.S. based trader
- A transaction that is executed using a U.S. trading algorithm

26 What is a Relying Entity?

As of 6th August 2021, non-U.S. person entities engaging in SBS dealing activity are required to count certain SBS Transactions towards their de minimis thresholds, a breach of which would result in an obligation to register with the SEC as an SBSB. Amongst others, non-U.S. person entities must count ANE transactions with non-U.S. persons towards these thresholds. However, the SEC Rules provide for an exception, under which these ANE transactions do not need to be counted towards the thresholds, if certain conditions are met. In order to make use of this exception, the entity relying on the exception (the Relying Entity, i.e. UBS Europe SE) must be able to rely on an SEC-registered affiliate (the Registered Entity, i.e. UBS AG) to comply with specific regulatory requirements in the context of an ANE transaction. In addition, both the Relying Entity and the Registered Entity have further obligations under this exception (see SEC Rule 3a71-3(d)).

As of 1st November 2021, UBS Europe SE is a relying entity of UBS AG in its capacity as a registered non-U.S. SBSB.

27 What are the implications for non-U.S. clients of UBS AG and clients of UBS Europe SE?

Counterparties of UBS AG who have adhered to both Dodd-Frank Protocols 1.0 and 2.0 need to adhere to the Top-Up protocol in order to allow UBS AG to comply with the SEC's external business conduct standards applying to ANE transactions with non-U.S. person counterparties.

Counterparties of UBS Europe SE (UBS ESE) conducting SBS activity have been sent a notification informing them that UBS ESE is a Relying Entity. This notification also provides mandatory disclosures and notifications related to UBS ESE's reliance on UBS AG, together with the acknowledgement that the client and any counterparties it may represent are institutional counterparties as defined under 17 C.F.R. § 240.15Fh-3(f)(4) .

Section D: Client Readiness Checklist

What action do I need to take as a result of the SEC SBSB rules?

- Ensure you have a valid Legal Entity Identifier (LEI) for each of your in-scope legal entities (see *FAQ 4*)
- Complete and sign the U.S. Self Disclosure Letter via ISDA Amend (see *FAQ Section B*)
- Adhere to the relevant ISDA 2021 SBS Protocol via ISDA Amend where appropriate (see *FAQ Section C*)

If you have any further questions, please email us at ubs-ib-sec_sbsd@ubs.com or contact your usual sales representative.

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