

COGNIZANT TECHNOLOGY SOLUTIONS CORP  
 Form 4  
 June 03, 2015

**FORM 4**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
 Washington, D.C. 20549

OMB APPROVAL

OMB Number: 3235-0287  
 Expires: January 31, 2015  
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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person \*  
 Frank Malcolm

2. Issuer Name and Ticker or Trading Symbol  
 COGNIZANT TECHNOLOGY SOLUTIONS CORP [CTSH]

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

(Last) (First) (Middle)

3. Date of Earliest Transaction (Month/Day/Year)  
 06/01/2015

\_\_\_\_ Director \_\_\_\_\_ 10% Owner  
 Officer (give title below) \_\_\_\_\_ Other (specify below)  
 Exec. VP, Strategy & Marketing

COGNIZANT TECHNOLOGY SOLUTIONS CORP., 500 FRANK W. BURR BLVD.

(Street)

4. If Amendment, Date Original Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check Applicable Line)  
 Form filed by One Reporting Person  
 Form filed by More than One Reporting Person

TEANECK, NJ 07666

(City) (State) (Zip)

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Ownership (Instr. 4)
				(A) or (D)	Amount	Price	
Class A Common Stock	06/01/2015		M		1,376 <sup>(1)</sup>	\$ 0	1,376 D
Class A Common Stock	06/01/2015		F		509 <sup>(2)</sup>	\$ 65.4	867 D

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

**Persons who respond to the collection of information contained in this form are not required to respond unless the form**

SEC 1474 (9-02)

displays a currently valid OMB control number.

**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned**  
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Security (Instr. 3 and 4)
Restricted Stock Units	\$ 0 <sup>(3)</sup>	06/01/2015		M	1,376	06/01/2015 <sup>(4)</sup> 06/01/2015 <sup>(4)</sup>	Class A Common Stock

## Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
Frank Malcolm COGNIZANT TECHNOLOGY SOLUTIONS CORP. 500 FRANK W. BURR BLVD. TEANECK, NJ 07666			Exec. VP, Strategy & Marketing	

## Signatures

/s/ Dana L. Gilbert, on behalf of Malcolm Frank, by Power of Attorney

06/03/2015

\_\_Signature of Reporting Person

Date

## Explanation of Responses:

- \* If the form is filed by more than one reporting person, see Instruction 4(b)(v).
- \*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) Shares of the Company's Class A Common Stock received from the vesting of 1/12 of the restricted stock unit award granted on December 1, 2014.
- (2) Represents the portion of shares of Class A Common Stock that the Company determined to settle in cash to pay applicable tax withholding.
- (3) Each restricted stock unit represents a contingent right to receive one share of the Company's Class A Common Stock.
- (4) The restricted stock units were granted on December 1, 2014 under the Cognizant Technology Solutions Corporation 2009 Incentive Compensation Plan and vest in quarterly installments over three years, with 1/12th of the stock units vesting on each quarterly vesting date so that the stock units will be fully vested on the twelfth quarterly vesting date. The stock units will be fully vested on December 1,

2017.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.  $CR_0$  = the conversion rate in effect at the close of business on the expiration date  $CR^1$  = the conversion rate in effect immediately after the expiration date  $FMV$  = the fair market value (as determined by our board of directors), on the expiration date, of the aggregate value of all cash and any other consideration paid or payable for shares validly tendered or exchanged and not withdrawn as of the expiration date  $OS^1$  = the number of shares of our common stock outstanding as of the last time tenders or exchanges may be made pursuant to such tender or exchange offer (expiration time) less any purchased shares  $OS_0$  = the number of shares of our common stock outstanding at the expiration time, including any purchased shares  $SP^1$  = the average of the volume-weighted average price of common stock over each of the ten consecutive volume-weighted average price trading days commencing with the volume-weighted average price trading day immediately after the expiration date

Record date means, for purpose of a conversion rate adjustment, with respect to any dividend, distribution or other transaction or event in which the holders of our common stock have the right to receive any cash, securities or other property or in which our common stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of our common stock entitled to receive such cash, securities or other property (whether such date is fixed by our board of directors or by statute, contract or otherwise).

Current market price of our common stock on any day, means the average of the volume-weighted average price of our common stock over each of the ten consecutive volume-weighted average price trading days ending on the earlier of the day in question and the day before the ex-date or other specified date with respect to the issuance or distribution requiring such computation, appropriately adjusted to take into account the occurrence during such period of any event described in clauses (1) through (5) above. For purposes of the foregoing, ex-date means the first date on which the shares of our common stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive an issuance or distribution.

In the event of our voluntary or involuntary dissolution, winding up and liquidation, the holders of the Series L preferred stock are entitled to receive a liquidating distribution in the amount of the liquidation preference of \$1,000 per share, plus any authorized, declared and unpaid dividends for the then-current dividend

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period to the date of liquidation, out of our assets legally available for distribution to our stockholders, before any distribution is made to holders of our common stock or any securities ranking junior to the Series L preferred stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with the Series L preferred stock upon liquidation and the rights of our creditors. If the amounts available for distribution upon our dissolution, winding up and liquidation are not sufficient to satisfy the full liquidation rights of all the outstanding Series L preferred stock and all stock ranking equal to the Series L preferred stock, then the holders of each series of our Series L preferred stock will share ratably in any distribution of assets in proportion to the full respective preferential amount to which they are entitled. After the full amount of the liquidation preference is paid, the holders of our Series L preferred stock will not be entitled to any further participation in any distribution of our assets.

Holders of our Series L preferred stock do not have any voting rights and are not entitled to elect any directors, except as required by law and except for the special voting rights provided for below.

If we fail to pay, or declare and set aside for payment, full dividends on the Series L preferred stock or any other class or series of voting parity stock for six dividend periods or their equivalent (whether or not consecutive), the authorized number of directors serving on our board of directors will be increased by two. Subject to satisfaction of certain qualifications for persons serving as directors pursuant to regulations of any securities exchange on which our securities are then listed or traded, the holders of our Series L preferred stock, voting together as a single and separate class with the holders of all outstanding voting parity stock on which dividends likewise have not been paid, will have the right to elect two directors in addition to the directors then in office at our next annual meeting of shareholders. When dividends have been paid in full on the Series L preferred stock and any and all voting parity stock for at least four consecutive dividend periods or their equivalent, then the right of the holders of our Series L preferred stock to elect directors shall cease (but subject always to revesting of such voting rights in the case of any future nonpayment of dividends), and, if and when all rights of holders of our Series L preferred stock and voting parity stock to elect directors shall have ceased, the terms of office of all the directors elected by preferred stock holders under this provision shall forthwith terminate and the number of directors constituting the board of directors shall automatically be reduced accordingly.

So long as any shares of our Series L preferred stock are outstanding, the vote or consent of the holders of at least  $66\frac{2}{3}\%$  of the shares of our Series L preferred stock at the time outstanding, voting as a class with all other series of preferred stock ranking equally with the Series L preferred stock and entitled to vote thereon, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, will be necessary for effecting or validating any of the following actions, whether or not such approval is required by Delaware law:

any amendment, alteration or repeal of any provision of our restated certificate of incorporation, as amended (including the certificates of designations creating the Series L preferred stock) or our by-laws that would alter or change the voting powers, preferences or special rights of the holders of the Series L preferred stock so as to affect them adversely;

any amendment or alteration of our restated certificate of incorporation, as amended, to authorize or create, or increase the authorized amount of, or any issuance of any shares of, or any securities convertible into shares of, any class or series of our capital stock ranking prior to the Series L preferred stock in the payment of dividends or in the distribution of assets on our liquidation, dissolution or winding up; or

the consummation of a binding share exchange or reclassification involving the Series L preferred stock or a merger or consolidation with another entity, except holders of our Series L preferred stock will have no right to vote under this provision or otherwise under Delaware law if, in each case, (i) the Series L preferred stock remains outstanding or, in the case of any such

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merger or consolidation with respect to which we are not the surviving or resulting entity, is converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (ii) such Series L preferred stock remaining outstanding or such preference securities, as the case may be, has such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series L preferred stock, taken as a whole;

except that any authorization, creation or increase in the authorized amount of or issuance of our Series L preferred stock or any class or series of parity stock or junior stock or any securities convertible into any class or series of parity stock (whether dividends payable in respect of such parity stock are cumulative or non-cumulative) or junior stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the holders of the Series L preferred stock, and, notwithstanding any provision of Delaware law, holders of the Series L preferred stock shall have no right to vote thereon.

***Series N Preferred Stock.*** Our Non-Cumulative Perpetual Class A Preferred Stock, Series N, which refer to as our Series N preferred stock, with no par value, ranks senior to our common stock and to any other securities that we may issue in the future that are expressly made junior to our Series N preferred stock, as to payment of dividends and/or distribution of assets upon our liquidation, dissolution or winding up. The Series N preferred stock ranks equally with our Parity Stock (as such term is defined in the certificate of designation for the Series N preferred stock) as to payment of dividends and distribution of assets upon our liquidation, dissolution or winding up.

Dividends on shares of our Series N preferred stock are not mandatory. Holders of our Series N preferred stock are entitled to receive, when, as and if declared by our board of directors or any duly authorized committee of our board of directors out of legally available assets, non-cumulative cash dividends on the liquidation preference amount, which is \$25,000 per share of Series N preferred stock. These dividends accrue at a rate per annum equal to 5.20%, payable quarterly in arrears on each March 15, June 15, September 15 and December 15. The right of holders of our Series N preferred stock to receive dividends is non-cumulative. The Series N preferred stock was issued on August 16, 2012, and the first dividend payment date was December 15, 2012.

To the extent we declare dividends on the Series N preferred stock and on any other Parity Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a proportional basis among the holders of shares of Series N preferred stock and the holders of any Parity Stock then outstanding where the terms of such Parity Stock provide similar dividend rights. No interest will be payable in respect of any dividend payment that may be in arrears.

We cannot pay dividends on our common stock or other securities ranking junior to the Series N preferred stock or repurchase, redeem or otherwise acquire for consideration shares of our common stock, other securities ranking junior to the Series N preferred stock or Parity Stock, subject to certain exceptions, unless the full dividends for the then-current period on all outstanding shares of Series N preferred stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside.

We, at the option of our board of directors or any duly authorized committee of our board of directors, may redeem, subject to the prior approval of the FRB, the Series N preferred stock, in whole or in part, on any dividend payment date on or after September 15, 2017. In addition, within 90 days of our good faith determination that a Regulatory Capital Treatment Event (as such term is defined in the certificate of designation for the Series N preferred stock), we, at the option of our board of directors or any duly authorized committee of the board of directors, may, subject to approval of the appropriate federal banking agency, redeem in whole, but not in part, the shares of Series N preferred stock at the time outstanding prior to September 15, 2017. Any redemption shall be at the redemption price of \$25,000 per share plus an amount equal to any dividends that have been declared but not paid to the redemption date without

accumulation of any undeclared dividends.

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In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series N preferred stock are entitled to receive a liquidating distribution in the amount of \$25,000 per share, plus an amount equal to any dividends that have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation, out of our assets legally available for distribution to our stockholders, before any distribution is made to holders of our common stock or any securities ranking junior to the Series N preferred stock and subject to the rights of the holders of Parity Stock or any of our stock ranking senior to the Series N preferred stock as to such distribution and the rights of our depositors and other creditors.

Holders of our Series N preferred stock do not have any voting rights and are not entitled to elect any directors, except as required by law and except for the voting rights provided for below.

Whenever dividends payable on any shares of Series N preferred stock or any class or series of Voting Parity Stock (as such term is defined in the certificate of designation for the Series N preferred stock) have not been declared and paid in an aggregate amount equal to, as to any class or series, at least six quarterly dividend periods or their equivalent, whether or not for consecutive dividend periods, the holders of our Series N preferred stock, voting together as a class with holders of Voting Parity Stock whose voting rights are exercisable, will be entitled to vote for the election of two additional directors of our board of directors at our next annual meeting of stockholders and at each subsequent meeting of stockholders, by a plurality of votes cast; *provided* that our board of directors shall at no time include more than two such directors and including, for purposes of this limitation, all directors that the holders of any series of Voting Parity Stock are entitled to elect pursuant to like voting rights. Upon the vesting of such right of such holders, the maximum authorized number of members of our board of directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series N preferred stock (together with the holders of shares of any one or more other series of Voting Parity Stock). At elections for such directors, each holder of Series N preferred stock shall be entitled to 25 votes for each share held (the holders of shares of any other series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock as may be granted to them). The right of the holders of the Series N preferred stock (voting together as a class with the holders of shares of any one or more other series of Voting Parity Stock) to elect such directors shall continue until such time as we have paid in full dividends for the equivalent of at least four quarterly dividend periods or their equivalent, at which time such right with respect to the Series N preferred stock shall terminate, except as provided by law, and subject to revesting in the event of each and every subsequent nonpayment of dividends. Upon any termination of the right of the holders of all shares of Series N preferred stock and Voting Parity Stock to vote for directors, the term of office of all such directors then in office elected by only those holders voting as a class shall terminate immediately. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting powers vested in such holders shall have expired, the number of directors shall be such number as may be provided for in our by-laws.

In addition to any other vote required by law or our restated certificate of incorporation, as amended, so long as any shares of our Series N preferred stock are outstanding, the vote or consent of the holders of the outstanding shares of our Series N preferred stock and outstanding shares of all other series of Voting Parity Stock entitled to vote on the matter, by a vote of at least  $66\frac{2}{3}\%$  in voting power of all such outstanding Series N preferred stock and such Voting Parity stock, voting together as a class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, will be necessary to permit, effect or validate any one or more of the following actions, whether or not such approval is required by Delaware law:

the issuance of any series of preferred stock or preference stock ranking senior to the Series N preferred stock with respect to either the payment of dividends or the distribution of assets in the



event of any voluntary or involuntary liquidation, dissolution or winding up;

any amendment, alteration or repeal of any provision of our restated certificate of incorporation, as amended (including the certificate of designation relating to the Series N preferred stock) or our by-laws that would adversely affect the rights, preferences, privileges or voting powers of the Series N preferred stock;

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any amendment or alteration of our restated certificate of incorporation, as amended, or by-laws to authorize, create or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of our capital stock ranking senior to the Series N preferred stock with respect to either payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up; or

the consummation of a reclassification involving the Series N preferred stock or a merger or consolidation with another corporation or other entity, except holders of the Series N preferred stock will have no right to vote under this provision if in each case (i) the shares of Series N preferred stock remain outstanding or, in the case of any such merger or consolidation with respect to which we are not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (ii) such shares of Series N preferred stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series N preferred stock, taken as a whole;

*provided, however,* that any authorization, creation or increase in the authorized amount of or issuance of our Series N preferred stock or any class or series of Parity Stock or securities ranking junior to the Series N preferred stock or any securities convertible into any class or series of Parity Stock (whether dividends payable in respect of such Parity Stock are cumulative or non-cumulative) or securities ranking junior to the Series N preferred stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the Series N preferred stock, and holders of the Series N preferred stock shall have no right to vote thereon.

If an amendment, alteration, repeal, reclassification, merger or consolidation described above would adversely affect one or more but not all series of voting preferred stock (including the Series N preferred stock for this purpose), then only those series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

Each holder of the Series N preferred stock will have 25 votes per share on any matter on which holders of the Series N preferred stock are entitled to vote, whether separately or together with any other series of our stock (the holders of any shares of any other series of stock being entitled to such number of votes, if any, for each share of stock as may be granted to them), pursuant to Delaware law or otherwise, including by written consent.

***Series N Depositary Shares.*** Each Series N depositary share issued by us represents a 1/1,000th interest in one share of our Series N preferred stock. The shares of our Series N preferred stock are deposited with Wells Fargo Bank, N.A., as depositary. Pursuant to the deposit agreement, the depositary issued Series N depositary shares, which are evidenced by depositary receipts.

Wells Fargo Bank, N.A. acts as transfer agent and registrar and paying agent with respect to the Series N depositary shares.

The depositary's office at which the depositary receipts are administered is located at Wells Fargo Bank, N.A., 1110 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120.

The Series N depositary shares were issued in book-entry form through DTC. This means that actual depositary receipts will not be issued, except in limited circumstances. This means that the Series N depositary shares will be in the form of a single global depositary receipt deposited with a DTC nominee. Each beneficial holder must rely on the procedures of DTC and if the Series N depositary shares are held through a broker or financial institution nominee, the

beneficial holder must rely on the procedures of such broker or financial institution to assert the rights of a depositary receipt holder described in this section.

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The depositary will distribute all cash dividends or other cash distributions received on the Series N preferred stock to the holders of record of Series N depositary shares in proportion to the numbers of such depositary shares owned by each holder. In the event of a distribution other than in cash, the depositary will distribute property received by it to the holders of record of the Series N depositary shares in proportion to the number of Series N depositary shares held by each holder, unless the depositary determines that it is not feasible to make such distribution, in which case the depositary may, with our approval, adopt a method of distribution that it deems practicable, including the sale of such property and distribution of the net proceeds from such sale to such holders.

Record dates for the payment of dividends and other matters relating to the Series N depositary shares are the same as the corresponding record dates for the Series N preferred stock.

The amounts distributed to holders of the Series N depositary shares will be reduced by any amounts required to be withheld by the depositary or by us on account of taxes or other governmental charges.

If the Series N preferred stock underlying the Series N depositary shares is redeemed (i) after September 15, 2017, in whole or in part, or (ii) prior to September 15, 2017 in whole, but not in part, due to the occurrence of a Regulatory Capital Treatment Event, Series N depositary shares will be redeemed with the proceeds received by the depositary from the redemption of the Series N preferred stock held by the depositary. The redemption price per Series N depositary share will be equal to 1/1,000th of the applicable redemption price per share payable with respect of such Series N preferred stock (or \$25 per Series N depositary share), plus an amount equal to any declared and unpaid dividends, without accumulation of any undeclared dividends. If less than all the Series N preferred stock is redeemed after September 15, 2017, the Series N depositary shares to be redeemed will be selected pro rata, or in any other manner determined by the depositary to be fair and equitable.

When the depositary receives notice of any meeting at which the holders of the Series N preferred stock are entitled to vote, the depositary will mail, or otherwise transmit by an authorized method, the information contained in the notice and any accompanying proxy material to the record holders of the Series N depositary shares relating to the Series N preferred stock. Each record holder of the Series N depositary shares on the record date, which will be the same date as the record date for the Series N preferred stock, may instruct the depositary to vote the amount of the Series N preferred stock represented by the holder's Series N depositary shares. To the extent possible, the depositary will vote the amount of the Series N preferred stock represented by the Series N depositary shares in accordance with the instructions it receives. We will agree to take all reasonable actions that the depositary determines are necessary to enable the depositary to vote as instructed. If the depositary does not receive specific instructions from the holders of any Series N depositary shares representing the Series N preferred stock, it will not vote the amount of Series N preferred stock represented by such Series N depositary shares.

***Series O Preferred Stock.*** Our Non-Cumulative Perpetual Class A Preferred Stock, Series O, which refer to as our Series O preferred stock, with no par value, ranks senior to our common stock and to any other securities that we may issue in the future that are expressly made junior to our Series O preferred stock, as to payment of dividends and/or distribution of assets upon our liquidation, dissolution or winding up. The Series O preferred stock ranks equally with our Parity Stock (as such term is defined in the certificate of designation for the Series O preferred stock) as to payment of dividends and distribution of assets upon our liquidation, dissolution or winding up.

Dividends on shares of our Series O preferred stock are not mandatory. Holders of our Series O preferred stock are entitled to receive, when, as and if declared by our board of directors or any duly authorized committee of our board of directors out of legally available assets, non-cumulative cash dividends on the liquidation preference amount, which is \$25,000 per share of Series O preferred stock. These dividends accrue at a rate per annum equal to 5.125%, payable quarterly in arrears on each March 15, June 15, September 15 and December 15. The right of holders of our Series O

preferred stock to receive dividends is non-cumulative. The Series O preferred stock was issued on November 20, 2012, and the first dividend payment date was March 15, 2013.

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To the extent we declare dividends on the Series O preferred stock and on any other Parity Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a proportional basis among the holders of shares of Series O preferred stock and the holders of any Parity Stock then outstanding where the terms of such Parity Stock provide similar dividend rights. No interest will be payable in respect of any dividend payment that may be in arrears.

We cannot pay dividends on our common stock or other securities ranking junior to the Series O preferred stock or repurchase, redeem or otherwise acquire for consideration shares of our common stock, other securities ranking junior to the Series O preferred stock or Parity Stock, subject to certain exceptions, unless the full dividends for the then-current period on all outstanding shares of Series O preferred stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside.

We, at the option of our board of directors or any duly authorized committee of our board of directors, may redeem, subject to the prior approval of the FRB, the Series O preferred stock, in whole or in part, on any dividend payment date on or after December 15, 2017. In addition, within 90 days of our good faith determination that a Regulatory Capital Treatment Event (as such term is defined in the certificate of designation for the Series O preferred stock), we, at the option of our board of directors or any duly authorized committee of the board of directors, may, subject to approval of the appropriate federal banking agency, redeem in whole, but not in part, the shares of Series O preferred stock at the time outstanding prior to December 15, 2017. Any redemption shall be at the redemption price of \$25,000 per share plus an amount equal to any dividends that have been declared but not paid to the redemption date without accumulation of any undeclared dividends.

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series O preferred stock are entitled to receive a liquidating distribution in the amount of \$25,000 per share, plus an amount equal to any dividends that have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation, out of our assets legally available for distribution to our stockholders, before any distribution is made to holders of our common stock or any securities ranking junior to the Series O preferred stock and subject to the rights of the holders of Parity Stock or any of our stock ranking senior to the Series O preferred stock as to such distribution and the rights of our depositors and other creditors.

Holders of our Series O preferred stock do not have any voting rights and are not entitled to elect any directors, except as required by law and except for the voting rights provided for below.

Whenever dividends payable on any shares of Series O preferred stock or any class or series of Voting Parity Stock (as such term is defined in the certificate of designation for the Series O preferred stock) have not been declared and paid in an aggregate amount equal to, as to any class or series, at least six quarterly dividend periods or their equivalent, whether or not for consecutive dividend periods, the holders of our Series O preferred stock, voting together as a class with holders of Voting Parity Stock whose voting rights are exercisable, will be entitled to vote for the election of two additional directors of our board of directors at our next annual meeting of stockholders and at each subsequent meeting of stockholders, by a plurality of votes cast; *provided* that our board of directors shall at no time include more than two such directors and including, for purposes of this limitation, all directors that the holders of any series of Voting Parity Stock are entitled to elect pursuant to like voting rights. Upon the vesting of such right of such holders, the maximum authorized number of members of our board of directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series O preferred stock (together with the holders of shares of any one or more other series of Voting Parity Stock). At elections for such directors, each holder of Series O preferred stock shall be entitled to 25 votes for each share held (the holders of shares of any other series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock as may be granted to them). The right of the holders of the Series O preferred stock (voting

together as a class with the holders of shares of any one or more other series of Voting Parity Stock) to elect such directors shall continue until such time as we have paid in full dividends for the equivalent of at least four quarterly dividend periods or their equivalent, at which time such right with respect to the Series O preferred stock shall terminate, except as provided by law, and subject to

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revesting in the event of each and every subsequent nonpayment of dividends. Upon any termination of the right of the holders of all shares of Series O preferred stock and Voting Parity Stock to vote for directors, the term of office of all such directors then in office elected by only those holders voting as a class shall terminate immediately. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting powers vested in such holders shall have expired, the number of directors shall be such number as may be provided for in our by-laws.

In addition to any other vote required by law or our restated certificate of incorporation, as amended, so long as any shares of our Series O preferred stock are outstanding, the vote or consent of the holders of the outstanding shares of our Series O preferred stock and outstanding shares of all other series of Voting Parity Stock entitled to vote on the matter, by a vote of at least 66 $\frac{2}{3}$ % in voting power of all such outstanding Series O preferred stock and such Voting Parity stock, voting together as a class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, will be necessary to permit, effect or validate any one or more of the following actions, whether or not such approval is required by Delaware law:

the issuance of any series of preferred stock or preference stock ranking senior to the Series O preferred stock with respect to either the payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up;

any amendment, alteration or repeal of any provision of our restated certificate of incorporation, as amended (including the certificate of designation relating to the Series O preferred stock) or our by-laws that would adversely affect the rights, preferences, privileges or voting powers of the Series O preferred stock;

any amendment or alteration of our restated certificate of incorporation, as amended, or by-laws to authorize, create or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of our capital stock ranking senior to the Series O preferred stock with respect to either payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up; or

the consummation of a reclassification involving the Series O preferred stock or a merger or consolidation with another corporation or other entity, except holders of the Series O preferred stock will have no right to vote under this provision if in each case (i) the shares of Series O preferred stock remain outstanding or, in the case of any such merger or consolidation with respect to which we are not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (ii) such shares of Series O preferred stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series O preferred stock, taken as a whole;

*provided, however,* that any authorization, creation or increase in the authorized amount of or issuance of our Series O preferred stock or any class or series of Parity Stock or securities ranking junior to the Series O preferred stock or any securities convertible into any class or series of Parity Stock (whether dividends payable in respect of such Parity



Stock are cumulative or non-cumulative) or securities ranking junior to the Series O preferred stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the Series O preferred stock, and holders of the Series O preferred stock shall have no right to vote thereon.

If an amendment, alteration, repeal, reclassification, merger or consolidation described above would adversely affect one or more but not all series of voting preferred stock (including the Series O preferred stock for this purpose), then only those series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

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Each holder of the Series O preferred stock will have 25 votes per share on any matter on which holders of the Series O preferred stock are entitled to vote, whether separately or together with any other series of our stock (the holders of any shares of any other series of stock being entitled to such number of votes, if any, for each share of stock as may be granted to them), pursuant to Delaware law or otherwise, including by written consent.

**Series O Depositary Shares.** Each Series O depositary share issued by us represents a 1/1,000th interest in one share of our Series O preferred stock. The shares of our Series O preferred stock are deposited with Wells Fargo Bank, N.A., as depositary. Pursuant to the deposit agreement, the depositary issued Series O depositary shares, which are evidenced by depositary receipts.

Wells Fargo Bank, N.A. acts as transfer agent and registrar and paying agent with respect to the Series O depositary shares.

The depositary's office at which the depositary receipts are administered is located at Wells Fargo Bank, N.A., 1110 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120.

The Series O depositary shares were issued in book-entry form through DTC. This means that actual depositary receipts will not be issued, except in limited circumstances. This means that the Series O depositary shares will be in the form of a single global depositary receipt deposited with a DTC nominee. Each beneficial holder must rely on the procedures of DTC and if the Series O depositary shares are held through a broker or financial institution nominee, the beneficial holder must rely on the procedures of such broker or financial institution to assert the rights of a depositary receipt holder described in this section.

The depositary will distribute all cash dividends or other cash distributions received on the Series O preferred stock to the holders of record of Series O depositary shares in proportion to the numbers of such depositary shares owned by each holder. In the event of a distribution other than in cash, the depositary will distribute property received by it to the holders of record of the Series O depositary shares in proportion to the number of Series O depositary shares held by each holder, unless the depositary determines that it is not feasible to make such distribution, in which case the depositary may, with our approval, adopt a method of distribution that it deems practicable, including the sale of such property and distribution of the net proceeds from such sale to such holders.

Record dates for the payment of dividends and other matters relating to the Series O depositary shares are the same as the corresponding record dates for the Series O preferred stock.

The amounts distributed to holders of the Series O depositary shares will be reduced by any amounts required to be withheld by the depositary or by us on account of taxes or other governmental charges.

If the Series O preferred stock underlying the Series O depositary shares is redeemed (i) after December 15, 2017, in whole or in part, or (ii) prior to December 15, 2017 in whole, but not in part, due to the occurrence of a Regulatory Capital Treatment Event, Series O depositary shares will be redeemed with the proceeds received by the depositary from the redemption of the Series O preferred stock held by the depositary. The redemption price per Series O depositary share will be equal to 1/1,000th of the applicable redemption price per share payable with respect of such Series O preferred stock (or \$25 per Series O depositary share), plus an amount equal to any declared and unpaid dividends, without accumulation of any undeclared dividends. If less than all the Series O preferred stock is redeemed after December 15, 2017, the Series O depositary shares to be redeemed will be selected pro rata, or in any other manner determined by the depositary to be fair and equitable.

When the depositary receives notice of any meeting at which the holders of the Series O preferred stock are entitled to vote, the depositary will mail, or otherwise transmit by an authorized method, the information contained in the notice and any accompanying proxy material to the record holders of the Series O depositary

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shares relating to the Series O preferred stock. Each record holder of the Series O depositary shares on the record date, which will be the same date as the record date for the Series O preferred stock, may instruct the depositary to vote the amount of the Series O preferred stock represented by the holder's Series O depositary shares. To the extent possible, the depositary will vote the amount of the Series O preferred stock represented by the Series O depositary shares in accordance with the instructions it receives. We will agree to take all reasonable actions that the depositary determines are necessary to enable the depositary to vote as instructed. If the depositary does not receive specific instructions from the holders of any Series O depositary shares representing the Series O preferred stock, it will not vote the amount of Series O preferred stock represented by such Series O depositary shares.

***Series P Preferred Stock.*** Our Non-Cumulative Perpetual Class A Preferred Stock, Series P, which refer to as our Series P preferred stock, with no par value, ranks senior to our common stock and to any other securities that we may issue in the future that are expressly made junior to our Series P preferred stock, as to payment of dividends and/or distribution of assets upon our liquidation, dissolution or winding up. The Series P preferred stock ranks equally with our Parity Stock (as such term is defined in the certificate of designation for the Series P preferred stock) as to payment of dividends and distribution of assets upon our liquidation, dissolution or winding up.

Dividends on shares of our Series P preferred stock are not mandatory. Holders of our Series P preferred stock are entitled to receive, when, as and if declared by our board of directors or any duly authorized committee of our board of directors out of legally available assets, non-cumulative cash dividends on the liquidation preference amount, which is \$25,000 per share of Series P preferred stock. These dividends accrue at a rate per annum equal to 5.25%, payable quarterly in arrears on each March 15, June 15, September 15 and December 15. The right of holders of our Series P preferred stock to receive dividends is non-cumulative. The Series P preferred stock was issued on March 22, 2013, and the first dividend payment date was June 15, 2013.

To the extent we declare dividends on the Series P preferred stock and on any other Parity Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a proportional basis among the holders of shares of Series P preferred stock and the holders of any Parity Stock then outstanding where the terms of such Parity Stock provide similar dividend rights. No interest will be payable in respect of any dividend payment that may be in arrears.

We cannot pay dividends on our common stock or other securities ranking junior to the Series P preferred stock or repurchase, redeem or otherwise acquire for consideration shares of our common stock, other securities ranking junior to the Series P preferred stock or Parity Stock, subject to certain exceptions, unless the full dividends for the then-current period on all outstanding shares of Series P preferred stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside.

We, at the option of our board of directors or any duly authorized committee of our board of directors, may redeem, subject to the prior approval of the FRB, the Series P preferred stock, in whole or in part, on any dividend payment date on or after June 15, 2018. In addition, within 90 days of our good faith determination that a Regulatory Capital Treatment Event (as such term is defined in the certificate of designation for the Series P preferred stock), we, at the option of our board of directors or any duly authorized committee of the board of directors, may, subject to approval of the appropriate federal banking agency, redeem in whole, but not in part, the shares of Series P preferred stock at the time outstanding prior to June 15, 2018. Any redemption shall be at the redemption price of \$25,000 per share plus an amount equal to any dividends that have been declared but not paid to the redemption date without accumulation of any undeclared dividends.

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series P preferred stock are entitled to receive a liquidating distribution in the amount of \$25,000 per share, plus an amount

equal to any dividends that have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation, out of our assets legally available for distribution to our

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stockholders, before any distribution is made to holders of our common stock or any securities ranking junior to the Series P preferred stock and subject to the rights of the holders of Parity Stock or any of our stock ranking senior to the Series P preferred stock as to such distribution and the rights of our depositors and other creditors.

Holders of our Series P preferred stock do not have any voting rights and are not entitled to elect any directors, except as required by law and except for the voting rights provided for below.

Whenever dividends payable on any shares of Series P preferred stock or any class or series of Voting Parity Stock (as such term is defined in the certificate of designation for the Series P preferred stock) have not been declared and paid in an aggregate amount equal to, as to any class or series, at least six quarterly dividend periods or their equivalent, whether or not for consecutive dividend periods, the holders of our Series P preferred stock, voting together as a class with holders of Voting Parity Stock whose voting rights are exercisable, will be entitled to vote for the election of two additional directors of our board of directors at our next annual meeting of stockholders and at each subsequent meeting of stockholders, by a plurality of votes cast; *provided* that our board of directors shall at no time include more than two such directors and including, for purposes of this limitation, all directors that the holders of any series of Voting Parity Stock are entitled to elect pursuant to like voting rights. Upon the vesting of such right of such holders, the maximum authorized number of members of our board of directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series P preferred stock (together with the holders of shares of any one or more other series of Voting Parity Stock). At elections for such directors, each holder of Series P preferred stock shall be entitled to 25 votes for each share held (the holders of shares of any other series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock as may be granted to them). The right of the holders of the Series P preferred stock (voting together as a class with the holders of shares of any one or more other series of Voting Parity Stock) to elect such directors shall continue until such time as we have paid in full dividends for the equivalent of at least four quarterly dividend periods or their equivalent, at which time such right with respect to the Series P preferred stock shall terminate, except as provided by law, and subject to revesting in the event of each and every subsequent nonpayment of dividends. Upon any termination of the right of the holders of all shares of Series P preferred stock and Voting Parity Stock to vote for directors, the term of office of all such directors then in office elected by only those holders voting as a class shall terminate immediately. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting powers vested in such holders shall have expired, the number of directors shall be such number as may be provided for in our by-laws.

In addition to any other vote required by law or our restated certificate of incorporation, as amended, so long as any shares of our Series P preferred stock are outstanding, the vote or consent of the holders of the outstanding shares of our Series P preferred stock and outstanding shares of all other series of Voting Parity Stock entitled to vote on the matter, by a vote of at least 66 $\frac{2}{3}$ % in voting power of all such outstanding Series P preferred stock and such Voting Parity stock, voting together as a class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, will be necessary to permit, effect or validate any one or more of the following actions, whether or not such approval is required by Delaware law:

the issuance of any series of preferred stock or preference stock ranking senior to the Series P preferred stock with respect to either the payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up;

any amendment, alteration or repeal of any provision of our restated certificate of incorporation, as amended (including the certificate of designation relating to the Series P preferred stock) or our by-laws that would adversely affect the rights, preferences, privileges or voting powers of the Series P preferred stock;

any amendment or alteration of our restated certificate of incorporation, as amended, or by-laws to authorize, create or increase the authorized amount of, any shares of, or any

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securities convertible into shares of, any class or series of our capital stock ranking senior to the Series P preferred stock with respect to either payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up; or

the consummation of a reclassification involving the Series P preferred stock or a merger or consolidation with another corporation or other entity, except holders of the Series P preferred stock will have no right to vote under this provision if in each case (i) the shares of Series P preferred stock remain outstanding or, in the case of any such merger or consolidation with respect to which we are not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (ii) such shares of Series P preferred stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series P preferred stock, taken as a whole;

*provided, however,* that any authorization, creation or increase in the authorized amount of or issuance of our Series P preferred stock or any class or series of Parity Stock or securities ranking junior to the Series P preferred stock or any securities convertible into any class or series of Parity Stock (whether dividends payable in respect of such Parity Stock are cumulative or non-cumulative) or securities ranking junior to the Series P preferred stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the Series P preferred stock, and holders of the Series P preferred stock shall have no right to vote thereon.

If an amendment, alteration, repeal, reclassification, merger or consolidation described above would adversely affect one or more but not all series of voting preferred stock (including the Series P preferred stock for this purpose), then only those series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

Each holder of the Series P preferred stock will have 25 votes per share on any matter on which holders of the Series P preferred stock are entitled to vote, whether separately or together with any other series of our stock (the holders of any shares of any other series of stock being entitled to such number of votes, if any, for each share of stock as may be granted to them), pursuant to Delaware law or otherwise, including by written consent.

***Series P Depositary Shares.*** Each Series P depositary share issued by us represents a 1/1,000th interest in one share of our Series P preferred stock. The shares of our Series P preferred stock are deposited with Wells Fargo Bank, N.A., as depositary. Pursuant to the deposit agreement, the depositary issued Series P depositary shares, which are evidenced by depositary receipts.

Wells Fargo Bank, N.A. acts as transfer agent and registrar and paying agent with respect to the Series P depositary shares.

The depositary's office at which the depositary receipts are administered is located at Wells Fargo Bank, N.A., 1110 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120.

The Series P depositary shares were issued in book-entry form through DTC. This means that actual depositary receipts will not be issued, except in limited circumstances. This means that the Series P depositary shares will be in the form of a single global depositary receipt deposited with a DTC nominee. Each beneficial holder must rely on the procedures of DTC and if the Series P depositary shares are held through a broker or financial institution nominee, the beneficial holder must rely on the procedures of such broker or financial institution to assert the rights of a depositary receipt holder described in this section.



The depositary will distribute all cash dividends or other cash distributions received on the Series P preferred stock to the holders of record of Series P depositary shares in proportion to the numbers of such

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depository shares owned by each holder. In the event of a distribution other than in cash, the depository will distribute property received by it to the holders of record of the Series P depository shares in proportion to the number of Series P depository shares held by each holder, unless the depository determines that it is not feasible to make such distribution, in which case the depository may, with our approval, adopt a method of distribution that it deems practicable, including the sale of such property and distribution of the net proceeds from such sale to such holders.

Record dates for the payment of dividends and other matters relating to the Series P depository shares are the same as the corresponding record dates for the Series P preferred stock.

The amounts distributed to holders of the Series P depository shares will be reduced by any amounts required to be withheld by the depository or by us on account of taxes or other governmental charges.

If the Series P preferred stock underlying the Series P depository shares is redeemed (i) after June 15, 2018, in whole or in part, or (ii) prior to June 15, 2018 in whole, but not in part, due to the occurrence of a Regulatory Capital Treatment Event, Series P depository shares will be redeemed with the proceeds received by the depository from the redemption of the Series P preferred stock held by the depository. The redemption price per Series P depository share will be equal to 1/1,000th of the applicable redemption price per share payable with respect of such Series P preferred stock (or \$25 per Series P depository share), plus an amount equal to any declared and unpaid dividends, without accumulation of any undeclared dividends. If less than all the Series P preferred stock is redeemed after June 15, 2018, the Series P depository shares to be redeemed will be selected pro rata, or in any other manner determined by the depository to be fair and equitable.

When the depository receives notice of any meeting at which the holders of the Series P preferred stock are entitled to vote, the depository will mail, or otherwise transmit by an authorized method, the information contained in the notice and any accompanying proxy material to the record holders of the Series P depository shares relating to the Series P preferred stock. Each record holder of the Series P depository shares on the record date, which will be the same date as the record date for the Series P preferred stock, may instruct the depository to vote the amount of the Series P preferred stock represented by the holder's Series P depository shares. To the extent possible, the depository will vote the amount of the Series P preferred stock represented by the Series P depository shares in accordance with the instructions it receives. We will agree to take all reasonable actions that the depository determines are necessary to enable the depository to vote as instructed. If the depository does not receive specific instructions from the holders of any Series P depository shares representing the Series P preferred stock, it will not vote the amount of Series P preferred stock represented by such Series P depository shares.

***Series Q Preferred Stock.*** Our 5.85% Fixed-to-Floating Rate Non-Cumulative Perpetual Class A Preferred Stock, Series Q, which refer to as our Series Q preferred stock, with no par value, ranks senior to our common stock and to any other securities that we may issue in the future that are expressly made junior to our Series Q preferred stock, as to payment of dividends and/or distribution of assets upon our liquidation, dissolution or winding up. The Series Q preferred stock ranks equally with our Parity Stock (as such term is defined in the certificate of designation for the Series Q preferred stock) as to payment of dividends and distribution of assets upon our liquidation, dissolution or winding up.

Dividends on shares of our Series Q preferred stock are not mandatory. Holders of our Series Q preferred stock are entitled to receive, when, as and if declared by our board of directors or any duly authorized committee of our board of directors out of legally available assets, non-cumulative cash dividends on the liquidation preference amount, which is \$25,000 per share of Series Q preferred stock. From July 22, 2013 to, but excluding, September 15, 2023 (the Fixed Rate Period), these dividends will accrue at a fixed rate per annum equal to 5.85%, and from, and including, September 15, 2023 (the Floating Rate Period), dividends will accrue at a rate per annum equal to three-month LIBOR

plus 3.09%. These dividends are payable quarterly in arrears on each March 15, June 15, September 15 and December 15. The right of holders of our Series Q preferred stock to

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receive dividends is non-cumulative. The Series Q preferred stock was issued on July 22, 2013, and the first dividend payment date was September 15, 2013. Wells Fargo Bank, N.A. is the calculation agent for purposes of determining three-month LIBOR for dividends payable for the Floating Rate Period.

To the extent we declare dividends on the Series Q preferred stock and on any other Parity Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a proportional basis among the holders of shares of Series Q preferred stock and the holders of any Parity Stock then outstanding where the terms of such Parity Stock provide similar dividend rights. No interest will be payable in respect of any dividend payment that may be in arrears.

We cannot pay dividends on our common stock or other securities ranking junior to the Series Q preferred stock or repurchase, redeem or otherwise acquire for consideration shares of our common stock, other securities ranking junior to the Series Q preferred stock or Parity Stock, subject to certain exceptions, unless the full dividends for the then-current period on all outstanding shares of Series Q preferred stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside.

We, at the option of our board of directors or any duly authorized committee of our board of directors, may redeem, subject to the prior approval of the FRB, the Series Q preferred stock, in whole or in part, on any dividend payment date on or after September 15, 2023. In addition, within 90 days of our good faith determination that a Regulatory Capital Treatment Event (as such term is defined in the certificate of designation for the Series Q preferred stock), we, at the option of our board of directors or any duly authorized committee of the board of directors, may, subject to approval of the appropriate federal banking agency, redeem in whole, but not in part, the shares of Series Q preferred stock at the time outstanding prior to September 15, 2023. Any redemption shall be at the redemption price of \$25,000 per share plus an amount equal to any dividends that have been declared but not paid to the redemption date without accumulation of any undeclared dividends.

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series Q preferred stock are entitled to receive a liquidating distribution in the amount of \$25,000 per share, plus an amount equal to any dividends that have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation, out of our assets legally available for distribution to our stockholders, before any distribution is made to holders of our common stock or any securities ranking junior to the Series Q preferred stock and subject to the rights of the holders of Parity Stock or any of our stock ranking senior to the Series Q preferred stock as to such distribution and the rights of our depositors and other creditors.

Holders of our Series Q preferred stock do not have any voting rights and are not entitled to elect any directors, except as required by law and except for the voting rights provided for below.

Whenever dividends payable on any shares of Series Q preferred stock or any class or series of Voting Parity Stock (as such term is defined in the certificate of designation for the Series Q preferred stock) have not been declared and paid in an aggregate amount equal to, as to any class or series, at least six quarterly dividend periods or their equivalent, whether or not for consecutive dividend periods, the holders of our Series Q preferred stock, voting together as a class with holders of Voting Parity Stock whose voting rights are exercisable, will be entitled to vote for the election of two additional directors of our board of directors at our next annual meeting of stockholders and at each subsequent meeting of stockholders, by a plurality of votes cast; *provided* that our board of directors shall at no time include more than two such directors and including, for purposes of this limitation, all directors that the holders of any series of Voting Parity Stock are entitled to elect pursuant to like voting rights. Upon the vesting of such right of such holders, the maximum authorized number of members of our board of directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series Q

preferred stock (together with the holders of shares of any one or more other series of Voting Parity Stock). At elections for such directors, each holder of Series Q preferred stock shall be entitled to 25 votes for each share held (the holders of shares of any other series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock as may be granted to them). The right of the

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holders of the Series Q preferred stock (voting together as a class with the holders of shares of any one or more other series of Voting Parity Stock) to elect such directors shall continue until such time as we have paid in full dividends for the equivalent of at least four quarterly dividend periods or their equivalent, at which time such right with respect to the Series Q preferred stock shall terminate, except as provided by law, and subject to revesting in the event of each and every subsequent nonpayment of dividends. Upon any termination of the right of the holders of all shares of Series Q preferred stock and Voting Parity Stock to vote for directors, the term of office of all such directors then in office elected by only those holders voting as a class shall terminate immediately. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting powers vested in such holders shall have expired, the number of directors shall be such number as may be provided for in our by-laws.

In addition to any other vote required by law or our restated certificate of incorporation, as amended, so long as any shares of our Series Q preferred stock are outstanding, the vote or consent of the holders of the outstanding shares of our Series Q preferred stock and outstanding shares of all other series of Voting Parity Stock entitled to vote on the matter, by a vote of at least 66 $\frac{2}{3}$ % in voting power of all such outstanding Series Q preferred stock and such Voting Parity stock, voting together as a class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, will be necessary to permit, effect or validate any one or more of the following actions, whether or not such approval is required by Delaware law:

the issuance of any series of preferred stock or preference stock ranking senior to the Series Q preferred stock with respect to either the payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up;

any amendment, alteration or repeal of any provision of our restated certificate of incorporation, as amended (including the certificate of designation relating to the Series Q preferred stock) or our by-laws that would adversely affect the rights, preferences, privileges or voting powers of the Series Q preferred stock;

any amendment or alteration of our restated certificate of incorporation, as amended, or by-laws to authorize, create or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of our capital stock ranking senior to the Series Q preferred stock with respect to either payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up; or

the consummation of a reclassification involving the Series Q preferred stock or a merger or consolidation with another corporation or other entity, except holders of the Series Q preferred stock will have no right to vote under this provision if in each case (i) the shares of Series Q preferred stock remain outstanding or, in the case of any such merger or consolidation with respect to which we are not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (ii) such shares of Series Q preferred stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series Q preferred stock, taken as a whole;

*provided, however*, that any authorization, creation or increase in the authorized amount of or issuance of our Series Q preferred stock or any class or series of Parity Stock or securities ranking junior to the Series Q preferred stock or any securities convertible into any class or series of Parity Stock (whether dividends payable in respect of such Parity Stock are cumulative or non-cumulative) or securities ranking junior to the Series Q preferred stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the Series Q preferred stock, and holders of the Series Q preferred stock shall have no right to vote thereon.

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If an amendment, alteration, repeal, reclassification, merger or consolidation described above would adversely affect one or more but not all series of voting preferred stock (including the Series Q preferred stock for this purpose), then only those series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

Each holder of the Series Q preferred stock will have 25 votes per share on any matter on which holders of the Series Q preferred stock are entitled to vote, whether separately or together with any other series of our stock (the holders of any shares of any other series of stock being entitled to such number of votes, if any, for each share of stock as may be granted to them), pursuant to Delaware law or otherwise, including by written consent.

**Series Q Depositary Shares.** Each Series Q depositary share issued by us represents a 1/1,000th interest in one share of our Series Q preferred stock. The shares of our Series Q preferred stock are deposited with Wells Fargo Bank, N.A., as depositary. Pursuant to the deposit agreement, the depositary issued Series Q depositary shares, which are evidenced by depositary receipts.

Wells Fargo Bank, N.A. acts as transfer agent and registrar and paying agent with respect to the Series Q depositary shares.

The depositary's office at which the depositary receipts are administered is located at Wells Fargo Bank, N.A., 1110 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120.

The Series Q depositary shares were issued in book-entry form through DTC. This means that actual depositary receipts will not be issued, except in limited circumstances. This means that the Series Q depositary shares will be in the form of a single global depositary receipt deposited with a DTC nominee. Each beneficial holder must rely on the procedures of DTC and if the Series Q depositary shares are held through a broker or financial institution nominee, the beneficial holder must rely on the procedures of such broker or financial institution to assert the rights of a depositary receipt holder described in this section.

The depositary will distribute all cash dividends or other cash distributions received on the Series Q preferred stock to the holders of record of Series Q depositary shares in proportion to the numbers of such depositary shares owned by each holder. In the event of a distribution other than in cash, the depositary will distribute property received by it to the holders of record of the Series Q depositary shares in proportion to the number of Series Q depositary shares held by each holder, unless the depositary determines that it is not feasible to make such distribution, in which case the depositary may, with our approval, adopt a method of distribution that it deems practicable, including the sale of such property and distribution of the net proceeds from such sale to such holders.

Record dates for the payment of dividends and other matters relating to the Series Q depositary shares are the same as the corresponding record dates for the Series Q preferred stock.

The amounts distributed to holders of the Series Q depositary shares will be reduced by any amounts required to be withheld by the depositary or by us on account of taxes or other governmental charges.

If the Series Q preferred stock underlying the Series Q depositary shares is redeemed (i) after September 15, 2023, in whole or in part, or (ii) prior to September 15, 2023 in whole, but not in part, due to the occurrence of a Regulatory Capital Treatment Event, Series Q depositary shares will be redeemed with the proceeds received by the depositary from the redemption of the Series Q preferred stock held by the depositary. The redemption price per Series Q depositary share will be equal to 1/1,000th of the applicable redemption price per share payable with respect of such Series Q preferred stock (or \$25 per Series Q depositary share), plus an amount equal to any declared and unpaid dividends, without accumulation of any undeclared dividends. If less than all the Series Q preferred stock is redeemed



after September 15, 2023, the Series Q depositary shares to be redeemed will be selected pro rata, or in any other manner determined by the depositary to be fair and equitable.

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When the depositary receives notice of any meeting at which the holders of the Series Q preferred stock are entitled to vote, the depositary will mail, or otherwise transmit by an authorized method, the information contained in the notice and any accompanying proxy material to the record holders of the Series Q depositary shares relating to the Series Q preferred stock. Each record holder of the Series Q depositary shares on the record date, which will be the same date as the record date for the Series Q preferred stock, may instruct the depositary to vote the amount of the Series Q preferred stock represented by the holder's Series Q depositary shares. To the extent possible, the depositary will vote the amount of the Series Q preferred stock represented by the Series Q depositary shares in accordance with the instructions it receives. We will agree to take all reasonable actions that the depositary determines are necessary to enable the depositary to vote as instructed. If the depositary does not receive specific instructions from the holders of any Series Q depositary shares representing the Series Q preferred stock, it will not vote the amount of Series Q preferred stock represented by such Series Q depositary shares.

***Series R Preferred Stock.*** Our 6.625% Fixed-to-Floating Rate Non-Cumulative Perpetual Class A Preferred Stock, Series R, which refer to as our Series R preferred stock, with no par value, ranks senior to our common stock and to any other securities that we may issue in the future that are expressly made junior to our Series R preferred stock, as to payment of dividends and/or distribution of assets upon our liquidation, dissolution or winding up. The Series R preferred stock ranks equally with our Parity Stock (as such term is defined in the certificate of designation for the Series R preferred stock) as to payment of dividends and distribution of assets upon our liquidation, dissolution or winding up.

Dividends on shares of our Series R preferred stock are not mandatory. Holders of our Series R preferred stock are entitled to receive, when, as and if declared by our board of directors or any duly authorized committee of our board of directors out of legally available assets, non-cumulative cash dividends on the liquidation preference amount, which is \$25,000 per share of Series R preferred stock. From December 18, 2013 to, but excluding, March 15, 2024 (the Fixed Rate Period), these dividends will accrue at a fixed rate per annum equal to 6.625%, and from, and including, March 15, 2024 (the Floating Rate Period), dividends will accrue at a rate per annum equal to three-month LIBOR plus 3.69%. These dividends are payable quarterly in arrears on each March 15, June 15, September 15 and December 15. The right of holders of our Series R preferred stock to receive dividends is non-cumulative. The Series R preferred stock was issued on December 18, 2013, and the first dividend payment date was March 15, 2014. Wells Fargo Bank, N.A. is the calculation agent for purposes of determining three-month LIBOR for dividends payable for the Floating Rate Period.

To the extent we declare dividends on the Series R preferred stock and on any other Parity Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a proportional basis among the holders of shares of Series R preferred stock and the holders of any Parity Stock then outstanding where the terms of such Parity Stock provide similar dividend rights. No interest will be payable in respect of any dividend payment that may be in arrears.

We cannot pay dividends on our common stock or other securities ranking junior to the Series R preferred stock or repurchase, redeem or otherwise acquire for consideration shares of our common stock, other securities ranking junior to the Series R preferred stock or Parity Stock, subject to certain exceptions, unless the full dividends for the then-current period on all outstanding shares of Series R preferred stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside.

We, at the option of our board of directors or any duly authorized committee of our board of directors, may redeem, subject to the prior approval of the FRB, the Series R preferred stock, in whole or in part, on any dividend payment date on or after March 15, 2024. In addition, within 90 days of our good faith determination that a Regulatory Capital Treatment Event (as such term is defined in the certificate of designation for the Series R preferred stock), we, at the

option of our board of directors or any duly authorized committee of the board of directors, may, subject to approval of the appropriate federal banking agency, redeem in whole, but not in part, the shares of Series R preferred stock at the time outstanding prior to March 15, 2024. Any redemption

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shall be at the redemption price of \$25,000 per share plus an amount equal to any dividends that have been declared but not paid to the redemption date without accumulation of any undeclared dividends.

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series R preferred stock are entitled to receive a liquidating distribution in the amount of \$25,000 per share, plus an amount equal to any dividends that have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation, out of our assets legally available for distribution to our stockholders, before any distribution is made to holders of our common stock or any securities ranking junior to the Series R preferred stock and subject to the rights of the holders of Parity Stock or any of our stock ranking senior to the Series R preferred stock as to such distribution and the rights of our depositors and other creditors.

Holders of our Series R preferred stock do not have any voting rights and are not entitled to elect any directors, except as required by law and except for the voting rights provided for below.

Whenever dividends payable on any shares of Series R preferred stock or any class or series of Voting Parity Stock (as such term is defined in the certificate of designation for the Series R preferred stock) have not been declared and paid in an aggregate amount equal to, as to any class or series, at least six quarterly dividend periods or their equivalent, whether or not for consecutive dividend periods, the holders of our Series R preferred stock, voting together as a class with holders of Voting Parity Stock whose voting rights are exercisable, will be entitled to vote for the election of two additional directors of our board of directors at our next annual meeting of stockholders and at each subsequent meeting of stockholders, by a plurality of votes cast; *provided* that our board of directors shall at no time include more than two such directors and including, for purposes of this limitation, all directors that the holders of any series of Voting Parity Stock are entitled to elect pursuant to like voting rights. Upon the vesting of such right of such holders, the maximum authorized number of members of our board of directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series R preferred stock (together with the holders of shares of any one or more other series of Voting Parity Stock). At elections for such directors, each holder of Series R preferred stock shall be entitled to 25 votes for each share held (the holders of shares of any other series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock as may be granted to them). The right of the holders of the Series R preferred stock (voting together as a class with the holders of shares of any one or more other series of Voting Parity Stock) to elect such directors shall continue until such time as we have paid in full dividends for the equivalent of at least four quarterly dividend periods or their equivalent, at which time such right with respect to the Series R preferred stock shall terminate, except as provided by law, and subject to re-vesting in the event of each and every subsequent nonpayment of dividends. Upon any termination of the right of the holders of all shares of Series R preferred stock and Voting Parity Stock to vote for directors, the term of office of all such directors then in office elected by only those holders voting as a class shall terminate immediately. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting powers vested in such holders shall have expired, the number of directors shall be such number as may be provided for in our by-laws.

In addition to any other vote required by law or our restated certificate of incorporation, as amended, so long as any shares of our Series R preferred stock are outstanding, the vote or consent of the holders of the outstanding shares of our Series R preferred stock and outstanding shares of all other series of Voting Parity Stock entitled to vote on the matter, by a vote of at least 66 $\frac{2}{3}$ % in voting power of all such outstanding Series R preferred stock and such Voting Parity stock, voting together as a class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, will be necessary to permit, effect or validate any one or more of the following actions, whether or not such approval is required by Delaware law:

the issuance of any series of preferred stock or preference stock ranking senior to the Series R preferred stock with respect to either the payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up;

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any amendment, alteration or repeal of any provision of our restated certificate of incorporation, as amended (including the certificate of designation relating to the Series R preferred stock) or our by-laws that would adversely affect the rights, preferences, privileges or voting powers of the Series R preferred stock;

any amendment or alteration of our restated certificate of incorporation, as amended, or by-laws to authorize, create or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of our capital stock ranking senior to the Series R preferred stock with respect to either payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up; or

the consummation of a reclassification involving the Series R preferred stock or a merger or consolidation with another corporation or other entity, except holders of the Series R preferred stock will have no right to vote under this provision if in each case (i) the shares of Series R preferred stock remain outstanding or, in the case of any such merger or consolidation with respect to which we are not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (ii) such shares of Series R preferred stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series R preferred stock, taken as a whole;

*provided, however,* that any authorization, creation or increase in the authorized amount of or issuance of our Series R preferred stock or any class or series of Parity Stock or securities ranking junior to the Series R preferred stock or any securities convertible into any class or series of Parity Stock (whether dividends payable in respect of such Parity Stock are cumulative or non-cumulative) or securities ranking junior to the Series R preferred stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the Series R preferred stock, and holders of the Series R preferred stock shall have no right to vote thereon.

If an amendment, alteration, repeal, reclassification, merger or consolidation described above would adversely affect one or more but not all series of voting preferred stock (including the Series R preferred stock for this purpose), then only those series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

Each holder of the Series R preferred stock will have 25 votes per share on any matter on which holders of the Series R preferred stock are entitled to vote, whether separately or together with any other series of our stock (the holders of any shares of any other series of stock being entitled to such number of votes, if any, for each share of stock as may be granted to them), pursuant to Delaware law or otherwise, including by written consent.

***Series R Depositary Shares.*** Each Series R depositary share issued by us represents a 1/1,000th interest in one share of our Series R preferred stock. The shares of our Series R preferred stock are deposited with Wells Fargo Bank, N.A., as depositary. Pursuant to the deposit agreement, the depositary issued Series R depositary shares, which are evidenced by depositary receipts.

Wells Fargo Bank, N.A. acts as transfer agent and registrar and paying agent with respect to the Series R depositary shares.

The depositary's office at which the depositary receipts are administered is located at Wells Fargo Bank, N.A., 1110 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120.

The Series R depositary shares were issued in book-entry form through DTC. This means that actual depositary receipts will not be issued, except in limited circumstances. This means that the Series R depositary

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shares will be in the form of a single global depositary receipt deposited with a DTC nominee. Each beneficial holder must rely on the procedures of DTC and if the Series R depositary shares are held through a broker or financial institution nominee, the beneficial holder must rely on the procedures of such broker or financial institution to assert the rights of a depositary receipt holder described in this section.

The depositary will distribute all cash dividends or other cash distributions received on the Series R preferred stock to the holders of record of Series R depositary shares in proportion to the numbers of such depositary shares owned by each holder. In the event of a distribution other than in cash, the depositary will distribute property received by it to the holders of record of the Series R depositary shares in proportion to the number of Series R depositary shares held by each holder, unless the depositary determines that it is not feasible to make such distribution, in which case the depositary may, with our approval, adopt a method of distribution that it deems practicable, including the sale of such property and distribution of the net proceeds from such sale to such holders.

Record dates for the payment of dividends and other matters relating to the Series R depositary shares are the same as the corresponding record dates for the Series R preferred stock.

The amounts distributed to holders of the Series R depositary shares will be reduced by any amounts required to be withheld by the depositary or by us on account of taxes or other governmental charges.

If the Series R preferred stock underlying the Series R depositary shares is redeemed (i) after March 15, 2024, in whole or in part, or (ii) prior to March 15, 2024 in whole, but not in part, due to the occurrence of a Regulatory Capital Treatment Event, Series R depositary shares will be redeemed with the proceeds received by the depositary from the redemption of the Series R preferred stock held by the depositary. The redemption price per Series R depositary share will be equal to 1/1,000th of the applicable redemption price per share payable with respect of such Series R preferred stock (or \$25 per Series R depositary share), plus an amount equal to any declared and unpaid dividends, without accumulation of any undeclared dividends. If less than all the Series R preferred stock is redeemed after March 15, 2024, the Series R depositary shares to be redeemed will be selected pro rata, or in any other manner determined by the depositary to be fair and equitable.

When the depositary receives notice of any meeting at which the holders of the Series R preferred stock are entitled to vote, the depositary will mail, or otherwise transmit by an authorized method, the information contained in the notice and any accompanying proxy material to the record holders of the Series R depositary shares relating to the Series R preferred stock. Each record holder of the Series R depositary shares on the record date, which will be the same date as the record date for the Series R preferred stock, may instruct the depositary to vote the amount of the Series R preferred stock represented by the holder's Series R depositary shares. To the extent possible, the depositary will vote the amount of the Series R preferred stock represented by the Series R depositary shares in accordance with the instructions it receives. We will agree to take all reasonable actions that the depositary determines are necessary to enable the depositary to vote as instructed. If the depositary does not receive specific instructions from the holders of any Series R depositary shares representing the Series R preferred stock, it will not vote the amount of Series R preferred stock represented by such Series R depositary shares.

**Series S Preferred Stock.** Our 5.90% Fixed-to-Floating Rate Non-Cumulative Perpetual Class A Preferred Stock, Series S, which refer to as our Series S preferred stock, with no par value, ranks senior to our common stock and to any other securities that we may issue in the future that are expressly made junior to our Series S preferred stock, as to payment of dividends and/or distribution of assets upon our liquidation, dissolution or winding up. The Series S preferred stock ranks equally with our Parity Stock (as such term is defined in the certificate of designation for the Series S preferred stock) as to payment of dividends and distribution of assets upon our liquidation, dissolution or winding up.



Dividends on shares of our Series S preferred stock are not mandatory. Holders of our Series S preferred stock are entitled to receive, when, as and if declared by our board of directors or any duly authorized committee

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of our board of directors out of legally available assets, non-cumulative cash dividends on the liquidation preference amount, which is \$25,000 per share of Series S preferred stock. From April 22, 2014 to, but excluding, June 15, 2024 (the Fixed Rate Period ), these dividends will accrue at a fixed rate per annum equal to 5.90%, and from, and including, June 15, 2024 (the Floating Rate Period ), dividends will accrue at a rate per annum equal to three-month LIBOR plus 3.11%. Dividends are payable semi-annually in arrears on each June 15 and December 15, commencing December 15, 2014 and ending June 15, 2024, and quarterly in arrears on each March 15, June 15, September 15 and December 15, commencing September 15, 2024. The right of holders of our Series S preferred stock to receive dividends is non-cumulative. The Series S preferred stock was issued on April 22, 2014, and the first dividend payment date was December 15, 2014. Wells Fargo Securities, LLC is the calculation agent for purposes of determining three-month LIBOR for dividends payable for the Floating Rate Period.

To the extent we declare dividends on the Series S preferred stock and on any other Parity Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a proportional basis among the holders of shares of Series S preferred stock and the holders of any Parity Stock then outstanding where the terms of such Parity Stock provide similar dividend rights. No interest will be payable in respect of any dividend payment that may be in arrears.

We cannot pay dividends on our common stock or other securities ranking junior to the Series S preferred stock or repurchase, redeem or otherwise acquire for consideration shares of our common stock, other securities ranking junior to the Series S preferred stock or Parity Stock, subject to certain exceptions, unless the full dividends for the then-current period on all outstanding shares of Series S preferred stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside.

We, at the option of our board of directors or any duly authorized committee of our board of directors, may redeem, subject to the prior approval of the FRB, the Series S preferred stock, in whole or in part, on any dividend payment date on or after June 15, 2024. In addition, within 90 days of our good faith determination that a Regulatory Capital Treatment Event (as such term is defined in the certificate of designation for the Series S preferred stock), we, at the option of our board of directors or any duly authorized committee of the board of directors, may, subject to approval of the appropriate federal banking agency, redeem in whole, but not in part, the shares of Series S preferred stock at the time outstanding prior to June 15, 2024. Any redemption shall be at the redemption price of \$25,000 per share plus an amount equal to any dividends that have been declared but not paid to the redemption date without accumulation of any undeclared dividends.

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series S preferred stock are entitled to receive a liquidating distribution in the amount of \$25,000 per share, plus an amount equal to any dividends that have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation, out of our assets legally available for distribution to our stockholders, before any distribution is made to holders of our common stock or any securities ranking junior to the Series S preferred stock and subject to the rights of the holders of Parity Stock or any of our stock ranking senior to the Series S preferred stock as to such distribution and the rights of our depositors and other creditors.

Holders of our Series S preferred stock do not have any voting rights and are not entitled to elect any directors, except as required by law and except for the voting rights provided for below.

Whenever dividends payable on any shares of Series S preferred stock or any class or series of Voting Parity Stock (as such term is defined in the certificate of designation for the Series S preferred stock) have not been declared and paid in an aggregate amount equal to, as to any class or series, at least three semi-annual dividend periods or their equivalent, whether or not for consecutive dividend periods, the holders of our Series S preferred stock, voting

together as a class with holders of Voting Parity Stock whose voting rights are exercisable, will be entitled to vote for the election of two additional directors of our board of directors at our next annual meeting of stockholders and at each subsequent meeting of stockholders, by a plurality of votes cast;

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*provided* that our board of directors shall at no time include more than two such directors and including, for purposes of this limitation, all directors that the holders of any series of Voting Parity Stock are entitled to elect pursuant to like voting rights. Upon the vesting of such right of such holders, the maximum authorized number of members of our board of directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series S preferred stock (together with the holders of shares of any one or more other series of Voting Parity Stock). At elections for such directors, each holder of Series S preferred stock shall be entitled to 25 votes for each share held (the holders of shares of any other series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock as may be granted to them). The right of the holders of the Series S preferred stock (voting together as a class with the holders of shares of any one or more other series of Voting Parity Stock) to elect such directors shall continue until such time as we have paid in full dividends for the equivalent of at least two semi-annual dividend periods or their equivalent, at which time such right with respect to the Series S preferred stock shall terminate, except as provided by law, and subject to re-vesting in the event of each and every subsequent nonpayment of dividends. Upon any termination of the right of the holders of all shares of Series S preferred stock and Voting Parity Stock to vote for directors, the term of office of all such directors then in office elected by only those holders voting as a class shall terminate immediately. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting powers vested in such holders shall have expired, the number of directors shall be such number as may be provided for in our by-laws.

In addition to any other vote required by law or our restated certificate of incorporation, as amended, so long as any shares of our Series S preferred stock are outstanding, the vote or consent of the holders of the outstanding shares of our Series S preferred stock and outstanding shares of all other series of Voting Parity Stock entitled to vote on the matter, by a vote of at least 66 $\frac{2}{3}$ % in voting power of all such outstanding Series S preferred stock and such Voting Parity stock, voting together as a class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, will be necessary to permit, effect or validate any one or more of the following actions, whether or not such approval is required by Delaware law:

the issuance of any series of preferred stock or preference stock ranking senior to the Series S preferred stock with respect to either the payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up;

any amendment, alteration or repeal of any provision of our restated certificate of incorporation, as amended (including the certificate of designation relating to the Series S preferred stock) or our by-laws that would adversely affect the rights, preferences, privileges or voting powers of the Series S preferred stock;

any amendment or alteration of our restated certificate of incorporation, as amended, or by-laws to authorize, create or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of our capital stock ranking senior to the Series S preferred stock with respect to either payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up; or

the consummation of a reclassification involving the Series S preferred stock or a merger or consolidation with another corporation or other entity, except holders of the Series S preferred

stock will have no right to vote under this provision if in each case (i) the shares of Series S preferred stock remain outstanding or, in the case of any such merger or consolidation with respect to which we are not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (ii) such shares of Series S preferred stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series S preferred stock, taken as a whole;

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*provided, however,* that any authorization, creation or increase in the authorized amount of or issuance of our Series S preferred stock or any class or series of Parity Stock or securities ranking junior to the Series S preferred stock or any securities convertible into any class or series of Parity Stock (whether dividends payable in respect of such Parity Stock are cumulative or non-cumulative) or securities ranking junior to the Series S preferred stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the Series S preferred stock, and holders of the Series S preferred stock shall have no right to vote thereon.

If an amendment, alteration, repeal, reclassification, merger or consolidation described above would adversely affect one or more but not all series of voting preferred stock (including the Series S preferred stock for this purpose), then only those series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

Each holder of the Series S preferred stock will have 25 votes per share on any matter on which holders of the Series S preferred stock are entitled to vote, whether separately or together with any other series of our stock (the holders of any shares of any other series of stock being entitled to such number of votes, if any, for each share of stock as may be granted to them), pursuant to Delaware law or otherwise, including by written consent.

**Series S Depositary Shares.** Each Series S depositary share issued by us represents a 1/25th interest in one share of our Series S preferred stock. The shares of our Series S preferred stock are deposited with Wells Fargo Bank, N.A., as depositary. Pursuant to the deposit agreement, the depositary issued Series S depositary shares, which are evidenced by depositary receipts.

Wells Fargo Bank, N.A. acts as transfer agent and registrar and paying agent with respect to the Series S depositary shares.

The depositary's office at which the depositary receipts are administered is located at Wells Fargo Bank, N.A., 1110 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120.

The Series S depositary shares were issued in book-entry form through DTC. This means that actual depositary receipts will not be issued, except in limited circumstances. This means that the Series S depositary shares will be in the form of a single global depositary receipt deposited with a DTC nominee. Each beneficial holder must rely on the procedures of DTC and if the Series S depositary shares are held through a broker or financial institution nominee, the beneficial holder must rely on the procedures of such broker or financial institution to assert the rights of a depositary receipt holder described in this section.

The depositary will distribute all cash dividends or other cash distributions received on the Series S preferred stock to the holders of record of Series S depositary shares in proportion to the numbers of such depositary shares owned by each holder. In the event of a distribution other than in cash, the depositary will distribute property received by it to the holders of record of the Series S depositary shares in proportion to the number of Series S depositary shares held by each holder, unless the depositary determines that it is not feasible to make such distribution, in which case the depositary may, with our approval, adopt a method of distribution that it deems practicable, including the sale of such property and distribution of the net proceeds from such sale to such holders.

Record dates for the payment of dividends and other matters relating to the Series S depositary shares are the same as the corresponding record dates for the Series S preferred stock.

The amounts distributed to holders of the Series S depositary shares will be reduced by any amounts required to be withheld by the depositary or by us on account of taxes or other governmental charges.

If the Series S preferred stock underlying the Series S depository shares is redeemed (i) after June 15, 2024, in whole or in part, or (ii) prior to June 15, 2024 in whole, but not in part, due to the occurrence of a

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Regulatory Capital Treatment Event, Series S depositary shares will be redeemed with the proceeds received by the depositary from the redemption of the Series S preferred stock held by the depositary. The redemption price per Series S depositary share will be equal to 1/25th of the applicable redemption price per share payable with respect of such Series S preferred stock (or \$1,000 per Series S depositary share), plus an amount equal to any declared and unpaid dividends, without accumulation of any undeclared dividends. If less than all the Series S preferred stock is redeemed after June 15, 2024, the Series S depositary shares to be redeemed will be selected pro rata, or in any other manner determined by the depositary to be fair and equitable.

When the depositary receives notice of any meeting at which the holders of the Series S preferred stock are entitled to vote, the depositary will mail, or otherwise transmit by an authorized method, the information contained in the notice and any accompanying proxy material to the record holders of the Series S depositary shares relating to the Series S preferred stock. Each record holder of the Series S depositary shares on the record date, which will be the same date as the record date for the Series S preferred stock, may instruct the depositary to vote the amount of the Series S preferred stock represented by the holder's Series S depositary shares. To the extent possible, the depositary will vote the amount of the Series S preferred stock represented by the Series S depositary shares in accordance with the instructions it receives. We will agree to take all reasonable actions that the depositary determines are necessary to enable the depositary to vote as instructed. If the depositary does not receive specific instructions from the holders of any Series S depositary shares representing the Series S preferred stock, it will not vote the amount of Series S preferred stock represented by such Series S depositary shares.

***Series T Preferred Stock.*** Our Non-Cumulative Perpetual Class A Preferred Stock, Series T, which refer to as our Series T preferred stock, with no par value, ranks senior to our common stock and to any other securities that we may issue in the future that are expressly made junior to our Series T preferred stock, as to payment of dividends and/or distribution of assets upon our liquidation, dissolution or winding up. The Series T preferred stock ranks equally with our Parity Stock (as such term is defined in the certificate of designation for the Series T preferred stock) as to payment of dividends and distribution of assets upon our liquidation, dissolution or winding up.

Dividends on shares of our Series T preferred stock are not mandatory. Holders of our Series T preferred stock are entitled to receive, when, as and if declared by our board of directors or any duly authorized committee of our board of directors out of legally available assets, non-cumulative cash dividends on the liquidation preference amount, which is \$25,000 per share of Series T preferred stock. These dividends accrue at a rate per annum equal to 6.00%, payable quarterly in arrears on each March 15, June 15, September 15 and December 15. The right of holders of our Series T preferred stock to receive dividends is non-cumulative. The Series T preferred stock was issued on July 21, 2014, and the first dividend payment date was September 15, 2014.

To the extent we declare dividends on the Series T preferred stock and on any other Parity Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a proportional basis among the holders of shares of Series T preferred stock and the holders of any Parity Stock then outstanding where the terms of such Parity Stock provide similar dividend rights. No interest will be payable in respect of any dividend payment that may be in arrears.

We cannot pay dividends on our common stock or other securities ranking junior to the Series T preferred stock or repurchase, redeem or otherwise acquire for consideration shares of our common stock, other securities ranking junior to the Series T preferred stock or Parity Stock, subject to certain exceptions, unless the full dividends for the then-current period on all outstanding shares of Series T preferred stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside.



We, at the option of our board of directors or any duly authorized committee of our board of directors, may redeem, subject to the prior approval of the FRB, the Series T preferred stock, in whole or in part, on any

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dividend payment date on or after September 15, 2019. In addition, within 90 days of our good faith determination that a Regulatory Capital Treatment Event (as such term is defined in the certificate of designation for the Series T preferred stock), we, at the option of our board of directors or any duly authorized committee of the board of directors, may, subject to approval of the appropriate federal banking agency, redeem in whole, but not in part, the shares of Series T preferred stock at the time outstanding prior to September 15, 2019. Any redemption shall be at the redemption price of \$25,000 per share plus an amount equal to any dividends that have been declared but not paid to the redemption date without accumulation of any undeclared dividends.

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series T preferred stock are entitled to receive a liquidating distribution in the amount of \$25,000 per share, plus an amount equal to any dividends that have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation, out of our assets legally available for distribution to our stockholders, before any distribution is made to holders of our common stock or any securities ranking junior to the Series T preferred stock and subject to the rights of the holders of Parity Stock or any of our stock ranking senior to the Series T preferred stock as to such distribution and the rights of our depositors and other creditors.

Holders of our Series T preferred stock do not have any voting rights and are not entitled to elect any directors, except as required by law and except for the voting rights provided for below.

Whenever dividends payable on any shares of Series T preferred stock or any class or series of Voting Parity Stock (as such term is defined in the certificate of designation for the Series T preferred stock) have not been declared and paid in an aggregate amount equal to, as to any class or series, at least six quarterly dividend periods or their equivalent, whether or not for consecutive dividend periods, the holders of our Series T preferred stock, voting together as a class with holders of Voting Parity Stock whose voting rights are exercisable, will be entitled to vote for the election of two additional directors of our board of directors at our next annual meeting of stockholders and at each subsequent meeting of stockholders, by a plurality of votes cast; *provided* that our board of directors shall at no time include more than two such directors and including, for purposes of this limitation, all directors that the holders of any series of Voting Parity Stock are entitled to elect pursuant to like voting rights. Upon the vesting of such right of such holders, the maximum authorized number of members of our board of directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series T preferred stock (together with the holders of shares of any one or more other series of Voting Parity Stock). At elections for such directors, each holder of Series T preferred stock shall be entitled to 25 votes for each share held (the holders of shares of any other series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock as may be granted to them). The right of the holders of the Series T preferred stock (voting together as a class with the holders of shares of any one or more other series of Voting Parity Stock) to elect such directors shall continue until such time as we have paid in full dividends for the equivalent of at least four quarterly dividend periods or their equivalent, at which time such right with respect to the Series T preferred stock shall terminate, except as provided by law, and subject to re-vesting in the event of each and every subsequent nonpayment of dividends. Upon any termination of the right of the holders of all shares of Series T preferred stock and Voting Parity Stock to vote for directors, the term of office of all such directors then in office elected by only those holders voting as a class shall terminate immediately. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting powers vested in such holders shall have expired, the number of directors shall be such number as may be provided for in our by-laws.

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In addition to any other vote required by law or our restated certificate of incorporation, as amended, so long as any shares of our Series T preferred stock are outstanding, the vote or consent of the holders of the outstanding shares of our Series T preferred stock and outstanding shares of all other series of Voting Parity Stock entitled to vote on the matter, by a vote of at least  $66\frac{2}{3}\%$  in voting power of all such outstanding Series T preferred stock and such Voting Parity stock, voting together as a class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, will be necessary to permit, effect or validate any one or more of the following actions, whether or not such approval is required by Delaware law:

the issuance of any series of preferred stock or preference stock ranking senior to the Series T preferred stock with respect to either the payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up;

any amendment, alteration or repeal of any provision of our restated certificate of incorporation, as amended (including the certificate of designation relating to the Series T preferred stock) or our by-laws that would adversely affect the rights, preferences, privileges or voting powers of the Series T preferred stock;

any amendment or alteration of our restated certificate of incorporation, as amended, or by-laws to authorize, create or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of our capital stock ranking senior to the Series T preferred stock with respect to either payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up; or

the consummation of a reclassification involving the Series T preferred stock or a merger or consolidation with another corporation or other entity, except holders of the Series T preferred stock will have no right to vote under this provision if in each case (i) the shares of Series T preferred stock remain outstanding or, in the case of any such merger or consolidation with respect to which we are not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (ii) such shares of Series T preferred stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series T preferred stock, taken as a whole;

*provided, however,* that any authorization, creation or increase in the authorized amount of or issuance of our Series T preferred stock or any class or series of Parity Stock or securities ranking junior to the Series T preferred stock or any securities convertible into any class or series of Parity Stock (whether dividends payable in respect of such Parity Stock are cumulative or non-cumulative) or securities ranking junior to the Series T preferred stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the Series T preferred stock, and holders of the Series T preferred stock shall have no right to vote thereon.

If an amendment, alteration, repeal, reclassification, merger or consolidation described above would adversely affect one or more but not all series of voting preferred stock (including the Series T preferred stock for this purpose), then only those series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

Each holder of the Series T preferred stock will have 25 votes per share on any matter on which holders of the Series T preferred stock are entitled to vote, whether separately or together with any other series of our stock (the holders of any shares of any other series of stock being entitled to such number of votes, if any, for each share of stock as may be granted to them), pursuant to Delaware law or otherwise, including by written consent.

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**Series T Depositary Shares.** Each Series T depositary share issued by us represents a 1/1,000th interest in one share of our Series T preferred stock. The shares of our Series T preferred stock are deposited with Wells Fargo Bank, N.A., as depositary. Pursuant to the deposit agreement, the depositary issued Series T depositary shares, which are evidenced by depositary receipts.

Wells Fargo Bank, N.A. acts as transfer agent and registrar and paying agent with respect to the Series T depositary shares.

The depositary's office at which the depositary receipts are administered is located at Wells Fargo Bank, N.A., 1110 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120.

The Series T depositary shares were issued in book-entry form through DTC. This means that actual depositary receipts will not be issued, except in limited circumstances. This means that the Series T depositary shares will be in the form of a single global depositary receipt deposited with a DTC nominee. Each beneficial holder must rely on the procedures of DTC and if the Series T depositary shares are held through a broker or financial institution nominee, the beneficial holder must rely on the procedures of such broker or financial institution to assert the rights of a depositary receipt holder described in this section.

The depositary will distribute all cash dividends or other cash distributions received on the Series T preferred stock to the holders of record of Series T depositary shares in proportion to the numbers of such depositary shares owned by each holder. In the event of a distribution other than in cash, the depositary will distribute property received by it to the holders of record of the Series T depositary shares in proportion to the number of Series T depositary shares held by each holder, unless the depositary determines that it is not feasible to make such distribution, in which case the depositary may, with our approval, adopt a method of distribution that it deems practicable, including the sale of such property and distribution of the net proceeds from such sale to such holders.

Record dates for the payment of dividends and other matters relating to the Series T depositary shares are the same as the corresponding record dates for the Series T preferred stock.

The amounts distributed to holders of the Series T depositary shares will be reduced by any amounts required to be withheld by the depositary or by us on account of taxes or other governmental charges.

If the Series T preferred stock underlying the Series T depositary shares is redeemed (i) after September 15, 2019, in whole or in part, or (ii) prior to September 15, 2019 in whole, but not in part, due to the occurrence of a Regulatory Capital Treatment Event, Series T depositary shares will be redeemed with the proceeds received by the depositary from the redemption of the Series T preferred stock held by the depositary. The redemption price per Series T depositary share will be equal to 1/1,000th of the applicable redemption price per share payable with respect of such Series T preferred stock (or \$25 per Series T depositary share), plus an amount equal to any declared and unpaid dividends, without accumulation of any undeclared dividends. If less than all the Series T preferred stock is redeemed after September 15, 2019, the Series T depositary shares to be redeemed will be selected pro rata, or in any other manner consistent with the rules and policies of the NYSE as the depositary may determine to be fair and equitable.

When the depositary receives notice of any meeting at which the holders of the Series T preferred stock are entitled to vote, the depositary will mail, or otherwise transmit by an authorized method, the information contained in the notice and any accompanying proxy material to the record holders of the Series T depositary shares relating to the Series T preferred stock. Each record holder of the Series T depositary shares on the record date, which will be the same date as the record date for the Series T preferred stock, may instruct the depositary to vote the amount of the Series T preferred stock represented by the holder's Series T depositary shares. To the extent possible, the depositary will vote

the amount of the Series T preferred stock represented by the Series T depositary shares in accordance with the instructions it receives. We will agree to take all reasonable actions that

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the depositary determines are necessary to enable the depositary to vote as instructed. If the depositary does not receive specific instructions from the holders of any Series T depositary shares representing the Series T preferred stock, it will not vote the amount of Series T preferred stock represented by such Series T depositary shares.

***Series U Preferred Stock.*** Our 5.875% Fixed-to-Floating Rate Non-Cumulative Perpetual Class A Preferred Stock, Series U, which refer to as our Series U preferred stock, with no par value, ranks senior to our common stock and to any other securities that we may issue in the future that are expressly made junior to our Series U preferred stock, as to payment of dividends and/or distribution of assets upon our liquidation, dissolution or winding up. The Series U preferred stock ranks equally with our Parity Stock (as such term is defined in the certificate of designation for the Series U preferred stock) as to payment of dividends and distribution of assets upon our liquidation, dissolution or winding up.

Dividends on shares of our Series U preferred stock are not mandatory. Holders of our Series U preferred stock are entitled to receive, when, as and if declared by our board of directors or any duly authorized committee of our board of directors out of legally available assets, non-cumulative cash dividends on the liquidation preference amount, which is \$25,000 per share of Series U preferred stock. From January 23, 2015 to, but excluding, June 15, 2025 (the Fixed Rate Period), these dividends will accrue at a fixed rate per annum equal to 5.875%, and from, and including, June 15, 2025 (the Floating Rate Period), dividends will accrue at a rate per annum equal to three-month LIBOR plus 3.99%. Dividends are payable semi-annually in arrears on each June 15 and December 15, commencing June 15, 2015 and ending June 15, 2025, and quarterly in arrears on each March 15, June 15, September 15 and December 15, commencing September 15, 2025. The right of holders of our Series U preferred stock to receive dividends is non-cumulative. The Series U preferred stock was issued on January 23, 2015, and the first dividend payment date was June 15, 2015. Wells Fargo Securities, LLC is the calculation agent for purposes of determining three-month LIBOR for dividends payable for the Floating Rate Period.

To the extent we declare dividends on the Series U preferred stock and on any other Parity Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a proportional basis among the holders of shares of Series U preferred stock and the holders of any Parity Stock then outstanding where the terms of such Parity Stock provide similar dividend rights. No interest will be payable in respect of any dividend payment that may be in arrears.

We cannot pay dividends on our common stock or other securities ranking junior to the Series U preferred stock or repurchase, redeem or otherwise acquire for consideration shares of our common stock, other securities ranking junior to the Series U preferred stock or Parity Stock, subject to certain exceptions, unless the full dividends for the then-current period on all outstanding shares of Series U preferred stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside.

We, at the option of our board of directors or any duly authorized committee of our board of directors, may redeem, subject to the prior approval of the FRB, the Series U preferred stock, in whole or in part, on any dividend payment date on or after June 15, 2025. In addition, within 90 days of our good faith determination that a Regulatory Capital Treatment Event (as such term is defined in the certificate of designation for the Series U preferred stock), we, at the option of our board of directors or any duly authorized committee of the board of directors, may, subject to approval of the appropriate federal banking agency, redeem in whole, but not in part, the shares of Series U preferred stock at the time outstanding prior to June 15, 2025. Any redemption shall be at the redemption price of \$25,000 per share plus an amount equal to any dividends that have been declared but not paid to the redemption date without accumulation of any undeclared dividends.

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series U preferred stock are entitled to receive a liquidating distribution in the amount of \$25,000 per share, plus an amount equal to any dividends that have been declared but not yet paid, without accumulation of any



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undeclared dividends, to the date of liquidation, out of our assets legally available for distribution to our stockholders, before any distribution is made to holders of our common stock or any securities ranking junior to the Series U preferred stock and subject to the rights of the holders of Parity Stock or any of our stock ranking senior to the Series U preferred stock as to such distribution and the rights of our depositors and other creditors.

Holders of our Series U preferred stock do not have any voting rights and are not entitled to elect any directors, except as required by law and except for the voting rights provided for below.

Whenever dividends payable on any shares of Series U preferred stock or any class or series of Voting Parity Stock (as such term is defined in the certificate of designation for the Series U preferred stock) have not been declared and paid in an aggregate amount equal to, as to any class or series, at least three semi-annual dividend periods or their equivalent, whether or not for consecutive dividend periods, the holders of our Series U preferred stock, voting together as a class with holders of Voting Parity Stock whose voting rights are exercisable, will be entitled to vote for the election of two additional directors of our board of directors at our next annual meeting of stockholders and at each subsequent meeting of stockholders, by a plurality of votes cast; *provided* that our board of directors shall at no time include more than two such directors and including, for purposes of this limitation, all directors that the holders of any series of Voting Parity Stock are entitled to elect pursuant to like voting rights. Upon the vesting of such right of such holders, the maximum authorized number of members of our board of directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series U preferred stock (together with the holders of shares of any one or more other series of Voting Parity Stock). At elections for such directors, each holder of Series U preferred stock shall be entitled to 25 votes for each share held (the holders of shares of any other series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock as may be granted to them). The right of the holders of the Series U preferred stock (voting together as a class with the holders of shares of any one or more other series of Voting Parity Stock) to elect such directors shall continue until such time as we have paid in full dividends for the equivalent of at least two semi-annual dividend periods or their equivalent, at which time such right with respect to the Series U preferred stock shall terminate, except as provided by law, and subject to re-vesting in the event of each and every subsequent nonpayment of dividends. Upon any termination of the right of the holders of all shares of Series U preferred stock and Voting Parity Stock to vote for directors, the term of office of all such directors then in office elected by only those holders voting as a class shall terminate immediately. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting powers vested in such holders shall have expired, the number of directors shall be such number as may be provided for in our by-laws.

In addition to any other vote required by law or our restated certificate of incorporation, as amended, so long as any shares of our Series U preferred stock are outstanding, the vote or consent of the holders of the outstanding shares of our Series U preferred stock and outstanding shares of all other series of Voting Parity Stock entitled to vote on the matter, by a vote of at least  $66\frac{2}{3}\%$  in voting power of all such outstanding Series U preferred stock and such Voting Parity stock, voting together as a class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, will be necessary to permit, effect or validate any one or more of the following actions, whether or not such approval is required by Delaware law:

the issuance of any series of preferred stock or preference stock ranking senior to the Series U preferred stock with respect to either the payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up;

any amendment, alteration or repeal of any provision of our restated certificate of incorporation, as amended (including the certificate of designation relating to the Series U preferred stock) or our by-laws that would adversely affect the rights, preferences, privileges or voting powers of the Series U preferred stock;

any amendment or alteration of our restated certificate of incorporation, as amended, or by-laws to authorize, create or increase the authorized amount of, any shares of, or any

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securities convertible into shares of, any class or series of our capital stock ranking senior to the Series U preferred stock with respect to either payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up; or

the consummation of a reclassification involving the Series U preferred stock or a merger or consolidation with another corporation or other entity, except holders of the Series U preferred stock will have no right to vote under this provision if in each case (i) the shares of Series U preferred stock remain outstanding or, in the case of any such merger or consolidation with respect to which we are not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (ii) such shares of Series U preferred stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series U preferred stock, taken as a whole;

*provided, however,* that any authorization, creation or increase in the authorized amount of or issuance of our Series U preferred stock or any class or series of Parity Stock or securities ranking junior to the Series U preferred stock or any securities convertible into any class or series of Parity Stock (whether dividends payable in respect of such Parity Stock are cumulative or non-cumulative) or securities ranking junior to the Series U preferred stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the Series U preferred stock, and holders of the Series U preferred stock shall have no right to vote thereon.

If an amendment, alteration, repeal, reclassification, merger or consolidation described above would adversely affect one or more but not all series of voting preferred stock (including the Series U preferred stock for this purpose), then only those series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

Each holder of the Series U preferred stock will have 25 votes per share on any matter on which holders of the Series U preferred stock are entitled to vote, whether separately or together with any other series of our stock (the holders of any shares of any other series of stock being entitled to such number of votes, if any, for each share of stock as may be granted to them), pursuant to Delaware law or otherwise, including by written consent.

***Series U Depositary Shares.*** Each Series U depositary share issued by us represents a 1/25th interest in one share of our Series U preferred stock. The shares of our Series U preferred stock are deposited with Wells Fargo Bank, N.A., as depositary. Pursuant to the deposit agreement, the depositary issued Series U depositary shares, which are evidenced by depositary receipts.

Wells Fargo Bank, N.A. acts as transfer agent and registrar and paying agent with respect to the Series U depositary shares.

The depositary's office at which the depositary receipts are administered is located at Wells Fargo Bank, N.A., 1110 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120.

The Series U depositary shares were issued in book-entry form through DTC. This means that actual depositary receipts will not be issued, except in limited circumstances. This means that the Series U depositary shares will be in the form of a single global depositary receipt deposited with a DTC nominee. Each beneficial holder must rely on the procedures of DTC and if the Series U depositary shares are held through a broker or financial institution nominee, the beneficial holder must rely on the procedures of such broker or financial institution to assert the rights of a depositary receipt holder described in this section.

The depositary will distribute all cash dividends or other cash distributions received on the Series U preferred stock to the holders of record of Series U depositary shares in proportion to the numbers of such

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depository shares owned by each holder. In the event of a distribution other than in cash, the depository will distribute property received by it to the holders of record of the Series U depository shares in proportion to the number of Series U depository shares held by each holder, unless the depository determines that it is not feasible to make such distribution, in which case the depository may, with our approval, adopt a method of distribution that it deems practicable, including the sale of such property and distribution of the net proceeds from such sale to such holders.

Record dates for the payment of dividends and other matters relating to the Series U depository shares are the same as the corresponding record dates for the Series U preferred stock.

The amounts distributed to holders of the Series U depository shares will be reduced by any amounts required to be withheld by the depository or by us on account of taxes or other governmental charges.

If the Series U preferred stock underlying the Series U depository shares is redeemed (i) after June 15, 2025, in whole or in part, or (ii) prior to June 15, 2025 in whole, but not in part, due to the occurrence of a Regulatory Capital Treatment Event, Series U depository shares will be redeemed with the proceeds received by the depository from the redemption of the Series U preferred stock held by the depository. The redemption price per Series U depository share will be equal to 1/25th of the applicable redemption price per share payable with respect of such Series U preferred stock (or \$1,000 per Series U depository share), plus an amount equal to any declared and unpaid dividends, without accumulation of any undeclared dividends. If less than all the Series U preferred stock is redeemed after June 15, 2025, the Series U depository shares to be redeemed will be selected pro rata, or in any other manner determined by the depository to be fair and equitable.

When the depository receives notice of any meeting at which the holders of the Series U preferred stock are entitled to vote, the depository will mail, or otherwise transmit by an authorized method, the information contained in the notice and any accompanying proxy material to the record holders of the Series U depository shares relating to the Series U preferred stock. Each record holder of the Series U depository shares on the record date, which will be the same date as the record date for the Series U preferred stock, may instruct the depository to vote the amount of the Series U preferred stock represented by the holder's Series U depository shares. To the extent possible, the depository will vote the amount of the Series U preferred stock represented by the Series U depository shares in accordance with the instructions it receives. We will agree to take all reasonable actions that the depository determines are necessary to enable the depository to vote as instructed. If the depository does not receive specific instructions from the holders of any Series U depository shares representing the Series U preferred stock, it will not vote the amount of Series U preferred stock represented by such Series U depository shares.

***Series V Preferred Stock.*** Our Non-Cumulative Perpetual Class A Preferred Stock, Series V, which refer to as our Series V preferred stock, with no par value, ranks senior to our common stock and to any other securities that we may issue in the future that are expressly made junior to our Series V preferred stock, as to payment of dividends and/or distribution of assets upon our liquidation, dissolution or winding up. The Series V preferred stock ranks equally with our Parity Stock (as such term is defined in the certificate of designation for the Series V preferred stock) as to payment of dividends and distribution of assets upon our liquidation, dissolution or winding up.

Dividends on shares of our Series V preferred stock are not mandatory. Holders of our Series V preferred stock are entitled to receive, when, as and if declared by our board of directors or any duly authorized committee of our board of directors out of legally available assets, non-cumulative cash dividends on the liquidation preference amount, which is \$25,000 per share of Series V preferred stock. These dividends accrue at a rate per annum equal to 6.00%, payable quarterly in arrears on each March 15, June 15, September 15 and December 15. The right of holders of our Series V preferred stock to receive dividends is non-cumulative. The Series V preferred stock was issued on September 15, 2015, and the first dividend payment date was December 15, 2015.



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To the extent we declare dividends on the Series V preferred stock and on any other Parity Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a proportional basis among the holders of shares of Series V preferred stock and the holders of any Parity Stock then outstanding where the terms of such Parity Stock provide similar dividend rights. No interest will be payable in respect of any dividend payment that may be in arrears.

We cannot pay dividends on our common stock or other securities ranking junior to the Series V preferred stock or repurchase, redeem or otherwise acquire for consideration shares of our common stock, other securities ranking junior to the Series V preferred stock or Parity Stock, subject to certain exceptions, unless the full dividends for the then-current period on all outstanding shares of Series V preferred stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside.

We, at the option of our board of directors or any duly authorized committee of our board of directors, may redeem, subject to the prior approval of the FRB, the Series V preferred stock, in whole or in part, on any dividend payment date on or after December 15, 2020. In addition, within 90 days of our good faith determination that a Regulatory Capital Treatment Event (as such term is defined in the certificate of designation for the Series V preferred stock), we, at the option of our board of directors or any duly authorized committee of the board of directors, may, subject to approval of the appropriate federal banking agency, redeem in whole, but not in part, the shares of Series V preferred stock at the time outstanding prior to December 15, 2020. Any redemption shall be at the redemption price of \$25,000 per share plus an amount equal to any dividends that have been declared but not paid to the redemption date without accumulation of any undeclared dividends.

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series V preferred stock are entitled to receive a liquidating distribution in the amount of \$25,000 per share, plus an amount equal to any dividends that have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation, out of our assets legally available for distribution to our stockholders, before any distribution is made to holders of our common stock or any securities ranking junior to the Series V preferred stock and subject to the rights of the holders of Parity Stock or any of our stock ranking senior to the Series V preferred stock as to such distribution and the rights of our depositors and other creditors.

Holders of our Series V preferred stock do not have any voting rights and are not entitled to elect any directors, except as required by law and except for the voting rights provided for below.

Whenever dividends payable on any shares of Series V preferred stock or any class or series of Voting Parity Stock (as such term is defined in the certificate of designation for the Series V preferred stock) have not been declared and paid in an aggregate amount equal to, as to any class or series, at least six quarterly dividend periods or their equivalent, whether or not for consecutive dividend periods, the holders of our Series V preferred stock, voting together as a class with holders of Voting Parity Stock whose voting rights are exercisable, will be entitled to vote for the election of two additional directors of our board of directors at our next annual meeting of stockholders and at each subsequent meeting of stockholders, by a plurality of votes cast; *provided* that our board of directors shall at no time include more than two such directors and including, for purposes of this limitation, all directors that the holders of any series of Voting Parity Stock are entitled to elect pursuant to like voting rights. Upon the vesting of such right of such holders, the maximum authorized number of members of our board of directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series V preferred stock (together with the holders of shares of any one or more other series of Voting Parity Stock). At elections for such directors, each holder of Series V preferred stock shall be entitled to 25 votes for each share held (the holders of shares of any other series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock as may be granted to them). The right of the holders of the Series V preferred stock (voting

together as a class with the holders of shares of any one or more other series of Voting Parity Stock) to elect such directors shall continue until such time as we have paid in full dividends for the equivalent of at least four quarterly dividend periods or their equivalent, at which time such right with respect to the Series V preferred stock shall terminate, except as provided by law, and subject to



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revesting in the event of each and every subsequent nonpayment of dividends. Upon any termination of the right of the holders of all shares of Series V preferred stock and Voting Parity Stock to vote for directors, the term of office of all such directors then in office elected by only those holders voting as a class shall terminate immediately. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting powers vested in such holders shall have expired, the number of directors shall be such number as may be provided for in our by-laws.

In addition to any other vote required by law or our restated certificate of incorporation, as amended, so long as any shares of our Series V preferred stock are outstanding, the vote or consent of the holders of the outstanding shares of our Series V preferred stock and outstanding shares of all other series of Voting Parity Stock entitled to vote on the matter, by a vote of at least 66 $\frac{2}{3}$ % in voting power of all such outstanding Series V preferred stock and such Voting Parity stock, voting together as a class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, will be necessary to permit, effect or validate any one or more of the following actions, whether or not such approval is required by Delaware law:

the issuance of any series of preferred stock or preference stock ranking senior to the Series V preferred stock with respect to either the payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up;

any amendment, alteration or repeal of any provision of our restated certificate of incorporation, as amended (including the certificate of designation relating to the Series V preferred stock) or our by-laws that would adversely affect the rights, preferences, privileges or voting powers of the Series V preferred stock;

any amendment or alteration of our restated certificate of incorporation, as amended, or by-laws to authorize, create or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of our capital stock ranking senior to the Series V preferred stock with respect to either payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up; or

the consummation of a reclassification involving the Series V preferred stock or a merger or consolidation with another corporation or other entity, except holders of the Series V preferred stock will have no right to vote under this provision if in each case (i) the shares of Series V preferred stock remain outstanding or, in the case of any such merger or consolidation with respect to which we are not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (ii) such shares of Series V preferred stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series V preferred stock, taken as a whole;

*provided, however,* that any authorization, creation or increase in the authorized amount of or issuance of our Series V preferred stock or any class or series of Parity Stock or securities ranking junior to the Series V preferred stock or any securities convertible into any class or series of Parity Stock (whether dividends payable in respect of such Parity

Stock are cumulative or non-cumulative) or securities ranking junior to the Series V preferred stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the Series V preferred stock, and holders of the Series V preferred stock shall have no right to vote thereon.

If an amendment, alteration, repeal, reclassification, merger or consolidation described above would adversely affect one or more but not all series of voting preferred stock (including the Series V preferred stock for this purpose), then only those series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

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Each holder of the Series V preferred stock will have 25 votes per share on any matter on which holders of the Series V preferred stock are entitled to vote, whether separately or together with any other series of our stock (the holders of any shares of any other series of stock being entitled to such number of votes, if any, for each share of stock as may be granted to them), pursuant to Delaware law or otherwise, including by written consent.

**Series V Depositary Shares.** Each Series V depositary share issued by us represents a 1/1,000th interest in one share of our Series V preferred stock. The shares of our Series V preferred stock are deposited with Wells Fargo Bank, N.A., as depositary. Pursuant to the deposit agreement, the depositary issued Series V depositary shares, which are evidenced by depositary receipts.

Wells Fargo Bank, N.A. acts as transfer agent and registrar and paying agent with respect to the Series V depositary shares.

The depositary's office at which the depositary receipts are administered is located at Wells Fargo Bank, N.A., 1110 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120.

The Series V depositary shares were issued in book-entry form through DTC. This means that actual depositary receipts will not be issued, except in limited circumstances. This means that the Series V depositary shares will be in the form of a single global depositary receipt deposited with a DTC nominee. Each beneficial holder must rely on the procedures of DTC and if the Series V depositary shares are held through a broker or financial institution nominee, the beneficial holder must rely on the procedures of such broker or financial institution to assert the rights of a depositary receipt holder described in this section.

The depositary will distribute all cash dividends or other cash distributions received on the Series V preferred stock to the holders of record of Series V depositary shares in proportion to the numbers of such depositary shares owned by each holder. In the event of a distribution other than in cash, the depositary will distribute property received by it to the holders of record of the Series V depositary shares in proportion to the number of Series V depositary shares held by each holder, unless the depositary determines that it is not feasible to make such distribution, in which case the depositary may, with our approval, adopt a method of distribution that it deems practicable, including the sale of such property and distribution of the net proceeds from such sale to such holders.

Record dates for the payment of dividends and other matters relating to the Series V depositary shares are the same as the corresponding record dates for the Series V preferred stock.

The amounts distributed to holders of the Series V depositary shares will be reduced by any amounts required to be withheld by the depositary or by us on account of taxes or other governmental charges.

If the Series V preferred stock underlying the Series V depositary shares is redeemed (i) after December 15, 2020, in whole or in part, or (ii) prior to December 15, 2020 in whole, but not in part, due to the occurrence of a Regulatory Capital Treatment Event, Series V depositary shares will be redeemed with the proceeds received by the depositary from the redemption of the Series V preferred stock held by the depositary. The redemption price per Series V depositary share will be equal to 1/1,000th of the applicable redemption price per share payable with respect of such Series V preferred stock (or \$25 per Series V depositary share), plus an amount equal to any declared and unpaid dividends, without accumulation of any undeclared dividends. If less than all the Series V preferred stock is redeemed after December 15, 2020, the Series V depositary shares to be redeemed will be selected pro rata, or in such other manner consistent with the rules and policies of the NYSE as the depositary may determine to be fair and equitable.

When the depositary receives notice of any meeting at which the holders of the Series V preferred stock are entitled to vote, the depositary will mail, or otherwise transmit by an authorized method, the information

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contained in the notice and any accompanying proxy material to the record holders of the Series V depositary shares relating to the Series V preferred stock. Each record holder of the Series V depositary shares on the record date, which will be the same date as the record date for the Series V preferred stock, may instruct the depositary to vote the amount of the Series V preferred stock represented by the holder's Series V depositary shares. To the extent possible, the depositary will vote the amount of the Series V preferred stock represented by the Series V depositary shares in accordance with the instructions it receives. We will agree to take all reasonable actions that the depositary determines are necessary to enable the depositary to vote as instructed. If the depositary does not receive specific instructions from the holders of any Series V depositary shares representing the Series V preferred stock, it will not vote the amount of Series V preferred stock represented by such Series V depositary shares.

***Series W Preferred Stock.*** Our Non-Cumulative Perpetual Class A Preferred Stock, Series W, which refer to as our Series W preferred stock, with no par value, ranks senior to our common stock and to any other securities that we may issue in the future that are expressly made junior to our Series W preferred stock, as to payment of dividends and/or distribution of assets upon our liquidation, dissolution or winding up. The Series W preferred stock ranks equally with our Parity Stock (as such term is defined in the certificate of designation for the Series W preferred stock) as to payment of dividends and distribution of assets upon our liquidation, dissolution or winding up.

Dividends on shares of our Series W preferred stock are not mandatory. Holders of our Series W preferred stock are entitled to receive, when, as and if declared by our board of directors or any duly authorized committee of our board of directors out of legally available assets, non-cumulative cash dividends on the liquidation preference amount, which is \$25,000 per share of Series W preferred stock. These dividends accrue at a rate per annum equal to 5.70%, payable quarterly in arrears on each March 15, June 15, September 15 and December 15. The right of holders of our Series W preferred stock to receive dividends is non-cumulative. The Series W preferred stock was issued on January 29, 2016, and the first dividend payment date was March 15, 2016.

To the extent we declare dividends on the Series W preferred stock and on any other Parity Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a proportional basis among the holders of shares of Series W preferred stock and the holders of any Parity Stock then outstanding where the terms of such Parity Stock provide similar dividend rights. No interest will be payable in respect of any dividend payment that may be in arrears.

We cannot pay dividends on our common stock or other securities ranking junior to the Series W preferred stock or repurchase, redeem or otherwise acquire for consideration shares of our common stock, other securities ranking junior to the Series W preferred stock or Parity Stock, subject to certain exceptions, unless the full dividends for the then-current period on all outstanding shares of Series W preferred stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside.

We, at the option of our board of directors or any duly authorized committee of our board of directors, may redeem, subject to the prior approval of the FRB, the Series W preferred stock, in whole or in part, on any dividend payment date on or after March 15, 2021. In addition, within 90 days of our good faith determination that a Regulatory Capital Treatment Event (as such term is defined in the certificate of designation for the Series W preferred stock), we, at the option of our board of directors or any duly authorized committee of the board of directors, may, subject to approval of the appropriate federal banking agency, redeem in whole, but not in part, the shares of Series W preferred stock at the time outstanding prior to March 15, 2021. Any redemption shall be at the redemption price of \$25,000 per share plus an amount equal to any dividends that have been declared but not paid to the redemption date without accumulation of any undeclared dividends.

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series W preferred stock are entitled to receive a liquidating distribution in the amount of \$25,000 per share, plus

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an amount equal to any dividends that have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation, out of our assets legally available for distribution to our stockholders, before any distribution is made to holders of our common stock or any securities ranking junior to the Series W preferred stock and subject to the rights of the holders of Parity Stock or any of our stock ranking senior to the Series W preferred stock as to such distribution and the rights of our depositors and other creditors.

Holders of our Series W preferred stock do not have any voting rights and are not entitled to elect any directors, except as required by law and except for the voting rights provided for below.

Whenever dividends payable on any shares of Series W preferred stock or any class or series of Voting Parity Stock (as such term is defined in the certificate of designation for the Series W preferred stock) have not been declared and paid in an aggregate amount equal to, as to any class or series, at least six quarterly dividend periods or their equivalent, whether or not for consecutive dividend periods, the holders of our Series W preferred stock, voting together as a class with holders of Voting Parity Stock whose voting rights are exercisable, will be entitled to vote for the election of two additional directors of our board of directors at our next annual meeting of stockholders and at each subsequent meeting of stockholders, by a plurality of votes cast; *provided* that our board of directors shall at no time include more than two such directors and including, for purposes of this limitation, all directors that the holders of any series of Voting Parity Stock are entitled to elect pursuant to like voting rights. Upon the vesting of such right of such holders, the maximum authorized number of members of our board of directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series W preferred stock (together with the holders of shares of any one or more other series of Voting Parity Stock). At elections for such directors, each holder of Series W preferred stock shall be entitled to 25 votes for each share held (the holders of shares of any other series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock as may be granted to them). The right of the holders of the Series W preferred stock (voting together as a class with the holders of shares of any one or more other series of Voting Parity Stock) to elect such directors shall continue until such time as we have paid in full dividends for the equivalent of at least four quarterly dividend periods or their equivalent, at which time such right with respect to the Series W preferred stock shall terminate, except as provided by law, and subject to re-vesting in the event of each and every subsequent nonpayment of dividends. Upon any termination of the right of the holders of all shares of Series W preferred stock and Voting Parity Stock to vote for directors, the term of office of all such directors then in office elected by only those holders voting as a class shall terminate immediately. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting powers vested in such holders shall have expired, the number of directors shall be such number as may be provided for in our by-laws.

In addition to any other vote required by law or our restated certificate of incorporation, as amended, so long as any shares of our Series W preferred stock are outstanding, the vote or consent of the holders of the outstanding shares of our Series W preferred stock and outstanding shares of all other series of Voting Parity Stock entitled to vote on the matter, by a vote of at least 66 $\frac{2}{3}$ % in voting power of all such outstanding Series W preferred stock and such Voting Parity stock, voting together as a class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, will be necessary to permit, effect or validate any one or more of the following actions, whether or not such approval is required by Delaware law:

the issuance of any series of preferred stock or preference stock ranking senior to the Series W preferred stock with respect to either the payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up;

any amendment, alteration or repeal of any provision of our restated certificate of incorporation, as amended (including the certificate of designation relating to the Series W preferred stock) or our by-laws that would adversely affect the rights, preferences, privileges or voting powers of the Series W preferred stock;



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any amendment or alteration of our restated certificate of incorporation, as amended, or by-laws to authorize, create or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of our capital stock ranking senior to the Series W preferred stock with respect to either payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up; or

the consummation of a reclassification involving the Series W preferred stock or a merger or consolidation with another corporation or other entity, except holders of the Series W preferred stock will have no right to vote under this provision if in each case (i) the shares of Series W preferred stock remain outstanding or, in the case of any such merger or consolidation with respect to which we are not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (ii) such shares of Series W preferred stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series W preferred stock, taken as a whole;

*provided, however,* that any authorization, creation or increase in the authorized amount of or issuance of our Series W preferred stock or any class or series of Parity Stock or securities ranking junior to the Series W preferred stock or any securities convertible into any class or series of Parity Stock (whether dividends payable in respect of such Parity Stock are cumulative or non-cumulative) or securities ranking junior to the Series W preferred stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the Series W preferred stock, and holders of the Series W preferred stock shall have no right to vote thereon.

If an amendment, alteration, repeal, reclassification, merger or consolidation described above would adversely affect one or more but not all series of voting preferred stock (including the Series W preferred stock for this purpose), then only those series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

Each holder of the Series W preferred stock will have 25 votes per share on any matter on which holders of the Series W preferred stock are entitled to vote, whether separately or together with any other series of our stock (the holders of any shares of any other series of stock being entitled to such number of votes, if any, for each share of stock as may be granted to them), pursuant to Delaware law or otherwise, including by written consent.

***Series W Depositary Shares.*** Each Series W depositary share issued by us represents a 1/1,000th interest in one share of our Series W preferred stock. The shares of our Series W preferred stock are deposited with Wells Fargo Bank, N.A., as depositary. Pursuant to the deposit agreement, the depositary issued Series W depositary shares, which are evidenced by depositary receipts.

Wells Fargo Bank, N.A. acts as transfer agent and registrar and paying agent with respect to the Series W depositary shares.

The depositary's office at which the depositary receipts are administered is located at Wells Fargo Bank, N.A., 1110 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120.

The Series W depositary shares were issued in book-entry form through DTC. This means that actual depositary receipts will not be issued, except in limited circumstances. This means that the Series W depositary shares will be in the form of a single global depositary receipt deposited with a DTC nominee. Each beneficial holder must rely on the procedures of DTC and if the Series W depositary shares are held through a broker or financial institution nominee,

the beneficial holder must rely on the procedures of such broker or financial institution to assert the rights of a depositary receipt holder described in this section.

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The depositary will distribute all cash dividends or other cash distributions received on the Series W preferred stock to the holders of record of Series W depositary shares in proportion to the numbers of such depositary shares owned by each holder. In the event of a distribution other than in cash, the depositary will distribute property received by it to the holders of record of the Series W depositary shares in proportion to the number of Series W depositary shares held by each holder, unless the depositary determines that it is not feasible to make such distribution, in which case the depositary may, with our approval, adopt a method of distribution that it deems practicable, including the sale of such property and distribution of the net proceeds from such sale to such holders.

Record dates for the payment of dividends and other matters relating to the Series W depositary shares are the same as the corresponding record dates for the Series W preferred stock.

The amounts distributed to holders of the Series W depositary shares will be reduced by any amounts required to be withheld by the depositary or by us on account of taxes or other governmental charges.

If the Series W preferred stock underlying the Series W depositary shares is redeemed (i) after March 15, 2021, in whole or in part, or (ii) prior to March 15, 2021 in whole, but not in part, due to the occurrence of a Regulatory Capital Treatment Event, Series W depositary shares will be redeemed with the proceeds received by the depositary from the redemption of the Series W preferred stock held by the depositary. The redemption price per Series W depositary share will be equal to 1/1,000th of the applicable redemption price per share payable with respect of such Series W preferred stock (or \$25 per Series W depositary share), plus an amount equal to any declared and unpaid dividends, without accumulation of any undeclared dividends. If less than all the Series W preferred stock is redeemed after March 15, 2021, the Series W depositary shares to be redeemed will be selected pro rata, or in any other manner consistent with the rules and policies of the NYSE as the depositary may determine to be fair and equitable.

When the depositary receives notice of any meeting at which the holders of the Series W preferred stock are entitled to vote, the depositary will mail, or otherwise transmit by an authorized method, the information contained in the notice and any accompanying proxy material to the record holders of the Series W depositary shares relating to the Series W preferred stock. Each record holder of the Series W depositary shares on the record date, which will be the same date as the record date for the Series W preferred stock, may instruct the depositary to vote the amount of the Series W preferred stock represented by the holder's Series W depositary shares. To the extent possible, the depositary will vote the amount of the Series W preferred stock represented by the Series W depositary shares in accordance with the instructions it receives. We will agree to take all reasonable actions that the depositary determines are necessary to enable the depositary to vote as instructed. If the depositary does not receive specific instructions from the holders of any Series W depositary shares representing the Series W preferred stock, it will not vote the amount of Series W preferred stock represented by such Series W depositary shares.

***Series X Preferred Stock.*** Our Non-Cumulative Perpetual Class A Preferred Stock, Series X, which refer to as our Series X preferred stock, with no par value, ranks senior to our common stock and to any other securities that we may issue in the future that are expressly made junior to our Series X preferred stock, as to payment of dividends and/or distribution of assets upon our liquidation, dissolution or winding up. The Series X preferred stock ranks equally with our Parity Stock (as such term is defined in the certificate of designation for the Series X preferred stock) as to payment of dividends and distribution of assets upon our liquidation, dissolution or winding up.

Dividends on shares of our Series X preferred stock are not mandatory. Holders of our Series X preferred stock are entitled to receive, when, as and if declared by our board of directors or any duly authorized committee of our board of directors out of legally available assets, non-cumulative cash dividends on the liquidation preference amount, which is \$25,000 per share of Series X preferred stock. These dividends accrue at a rate per annum equal to 5.50%, payable quarterly in arrears on each March 15, June 15, September 15 and



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December 15. The right of holders of our Series X preferred stock to receive dividends is non-cumulative. The Series X preferred stock was issued on June 15, 2016, and the first dividend payment date was September 15, 2016.

To the extent we declare dividends on the Series X preferred stock and on any other Parity Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a proportional basis among the holders of shares of Series X preferred stock and the holders of any Parity Stock then outstanding where the terms of such Parity Stock provide similar dividend rights. No interest will be payable in respect of any dividend payment that may be in arrears.

We cannot pay dividends on our common stock or other securities ranking junior to the Series X preferred stock or repurchase, redeem or otherwise acquire for consideration shares of our common stock, other securities ranking junior to the Series X preferred stock or Parity Stock, subject to certain exceptions, unless the full dividends for the then-current period on all outstanding shares of Series X preferred stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside.

We, at the option of our board of directors or any duly authorized committee of our board of directors, may redeem, subject to the prior approval of the FRB, the Series X preferred stock, in whole or in part, on any dividend payment date on or after September 15, 2021. In addition, within 90 days of our good faith determination that a Regulatory Capital Treatment Event (as such term is defined in the certificate of designation for the Series X preferred stock), we, at the option of our board of directors or any duly authorized committee of the board of directors, may, subject to approval of the appropriate federal banking agency, redeem in whole, but not in part, the shares of Series X preferred stock at the time outstanding prior to September 15, 2021. Any redemption shall be at the redemption price of \$25,000 per share plus an amount equal to any dividends that have been declared but not paid to the redemption date without accumulation of any undeclared dividends.

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series X preferred stock are entitled to receive a liquidating distribution in the amount of \$25,000 per share, plus an amount equal to any dividends that have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation, out of our assets legally available for distribution to our stockholders, before any distribution is made to holders of our common stock or any securities ranking junior to the Series X preferred stock and subject to the rights of the holders of Parity Stock or any of our stock ranking senior to the Series X preferred stock as to such distribution and the rights of our depositors and other creditors.

Holders of our Series X preferred stock do not have any voting rights and are not entitled to elect any directors, except as required by law and except for the voting rights provided for below.

Whenever dividends payable on any shares of Series X preferred stock or any class or series of Voting Parity Stock (as such term is defined in the certificate of designation for the Series X preferred stock) have not been declared and paid in an aggregate amount equal to, as to any class or series, at least six quarterly dividend periods or their equivalent, whether or not for consecutive dividend periods, the holders of our Series X preferred stock, voting together as a class with holders of Voting Parity Stock whose voting rights are exercisable, will be entitled to vote for the election of two additional directors of our board of directors at our next annual meeting of stockholders and at each subsequent meeting of stockholders, by a plurality of votes cast; *provided* that our board of directors shall at no time include more than two such directors and including, for purposes of this limitation, all directors that the holders of any series of Voting Parity Stock are entitled to elect pursuant to like voting rights. Upon the vesting of such right of such holders, the maximum authorized number of members of our board of directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series X preferred stock (together with the holders of shares of any one or more other series of Voting Parity Stock). At

elections for such directors, each holder of Series X preferred stock shall be entitled to 25 votes for each share held (the holders of shares of any other series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock as may be granted to them). The right of the

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holders of the Series X preferred stock (voting together as a class with the holders of shares of any one or more other series of Voting Parity Stock) to elect such directors shall continue until such time as we have paid in full dividends for the equivalent of at least four quarterly dividend periods or their equivalent, at which time such right with respect to the Series X preferred stock shall terminate, except as provided by law, and subject to revesting in the event of each and every subsequent nonpayment of dividends. Upon any termination of the right of the holders of all shares of Series X preferred stock and Voting Parity Stock to vote for directors, the term of office of all such directors then in office elected by only those holders voting as a class shall terminate immediately. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting powers vested in such holders shall have expired, the number of directors shall be such number as may be provided for in our by-laws.

In addition to any other vote required by law or our restated certificate of incorporation, as amended, so long as any shares of our Series X preferred stock are outstanding, the vote or consent of the holders of the outstanding shares of our Series X preferred stock and outstanding shares of all other series of Voting Parity Stock entitled to vote on the matter, by a vote of at least 66 $\frac{2}{3}$ % in voting power of all such outstanding Series X preferred stock and such Voting Parity stock, voting together as a class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, will be necessary to permit, effect or validate any one or more of the following actions, whether or not such approval is required by Delaware law:

the issuance of any series of preferred stock or preference stock ranking senior to the Series X preferred stock with respect to either the payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up;

any amendment, alteration or repeal of any provision of our restated certificate of incorporation, as amended (including the certificate of designation relating to the Series X preferred stock) or our by-laws that would adversely affect the rights, preferences, privileges or voting powers of the Series X preferred stock;

any amendment or alteration of our restated certificate of incorporation, as amended, or by-laws to authorize, create or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of our capital stock ranking senior to the Series X preferred stock with respect to either payment of dividends or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up; or

the consummation of a reclassification involving the Series X preferred stock or a merger or consolidation with another corporation or other entity, except holders of the Series X preferred stock will have no right to vote under this provision if in each case (i) the shares of Series X preferred stock remain outstanding or, in the case of any such merger or consolidation with respect to which we are not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (ii) such shares of Series X preferred stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series X preferred stock, taken as a whole;

*provided, however*, that any authorization, creation or increase in the authorized amount of or issuance of our Series X preferred stock or any class or series of Parity Stock or securities ranking junior to the Series X preferred stock or any securities convertible into any class or series of Parity Stock (whether dividends payable in respect of such Parity Stock are cumulative or non-cumulative) or securities ranking junior to the Series X preferred stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the Series X preferred stock, and holders of the Series X preferred stock shall have no right to vote thereon.



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If an amendment, alteration, repeal, reclassification, merger or consolidation described above would adversely affect one or more but not all series of voting preferred stock (including the Series X preferred stock for this purpose), then only those series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

Each holder of the Series X preferred stock will have 25 votes per share on any matter on which holders of the Series X preferred stock are entitled to vote, whether separately or together with any other series of our stock (the holders of any shares of any other series of stock being entitled to such number of votes, if any, for each share of stock as may be granted to them), pursuant to Delaware law or otherwise, including by written consent.

**Series X Depositary Shares.** Each Series X depositary share issued by us represents a 1/1,000th interest in one share of our Series X preferred stock. The shares of our Series X preferred stock are deposited with Wells Fargo Bank, N.A., as depositary. Pursuant to the deposit agreement, the depositary issued Series X depositary shares, which are evidenced by depositary receipts.

Wells Fargo Bank, N.A. acts as transfer agent and registrar and paying agent with respect to the Series X depositary shares.

The depositary's office at which the depositary receipts are administered is located at Wells Fargo Bank, N.A., 1110 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120.

The Series X depositary shares were issued in book-entry form through DTC. This means that actual depositary receipts will not be issued, except in limited circumstances. This means that the Series X depositary shares will be in the form of a single global depositary receipt deposited with a DTC nominee. Each beneficial holder must rely on the procedures of DTC and if the Series X depositary shares are held through a broker or financial institution nominee, the beneficial holder must rely on the procedures of such broker or financial institution to assert the rights of a depositary receipt holder described in this section.

The depositary will distribute all cash dividends or other cash distributions received on the Series X preferred stock to the holders of record of Series X depositary shares in proportion to the numbers of such depositary shares owned by each holder. In the event of a distribution other than in cash, the depositary will distribute property received by it to the holders of record of the Series X depositary shares in proportion to the number of Series X depositary shares held by each holder, unless the depositary determines that it is not feasible to make such distribution, in which case the depositary may, with our approval, adopt a method of distribution that it deems practicable, including the sale of such property and distribution of the net proceeds from such sale to such holders.

Record dates for the payment of dividends and other matters relating to the Series X depositary shares are the same as the corresponding record dates for the Series X preferred stock.

The amounts distributed to holders of the Series X depositary shares will be reduced by any amounts required to be withheld by the depositary or by us on account of taxes or other governmental charges.

If the Series X preferred stock underlying the Series X depositary shares is redeemed (i) after September 15, 2021, in whole or in part, or (ii) prior to September 15, 2021, in whole, but not in part, due to the occurrence of a Regulatory Capital Treatment Event, Series X depositary shares will be redeemed with the proceeds received by the depositary from the redemption of the Series X preferred stock held by the depositary. The redemption price per Series X depositary share will be equal to 1/1,000th of the applicable redemption price per share payable with respect of such Series X preferred stock (or \$25 per Series X depositary share), plus an amount equal to any declared and unpaid dividends, without accumulation of any undeclared dividends. If less than all the Series X preferred stock is redeemed

after September 15, 2021, the Series X depositary shares to be redeemed will be selected pro rata, or in any other manner consistent with the rules and policies of the NYSE as the depositary may determine to be fair and equitable.

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When the depositary receives notice of any meeting at which the holders of the Series X preferred stock are entitled to vote, the depositary will mail, or otherwise transmit by an authorized method, the information contained in the notice and any accompanying proxy material to the record holders of the Series X depositary shares relating to the Series X preferred stock. Each record holder of the Series X depositary shares on the record date, which will be the same date as the record date for the Series X preferred stock, may instruct the depositary to vote the amount of the Series X preferred stock represented by the holder's Series X depositary shares. To the extent possible, the depositary will vote the amount of the Series X preferred stock represented by the Series X depositary shares in accordance with the instructions it receives. We will agree to take all reasonable actions that the depositary determines are necessary to enable the depositary to vote as instructed. If the depositary does not receive specific instructions from the holders of any Series X depositary shares representing the Series X preferred stock, it will not vote the amount of Series X preferred stock represented by such Series X depositary shares.

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**DESCRIPTION OF DEPOSITARY SHARES**

This section describes the general terms and provisions of the depositary shares. The prospectus supplement will describe the specific terms of the depositary shares offered through that prospectus supplement and any general terms outlined in this section that will not apply to those depositary shares.

We have summarized the material terms and provisions of the deposit agreement, the depositary shares and the depositary receipts in this section. We have also filed the form of deposit agreement, including the form of depositary receipt, as an exhibit to the registration statement of which this prospectus is a part. You should read the forms of deposit agreement and depositary receipt relating to a series of preferred stock for additional information before you buy any depositary shares that represent preferred stock of that series.

**General**

We may offer fractional interests in preferred stock, rather than full shares of preferred stock. If we do, we will provide for the issuance by a depositary to the public of receipts for depositary shares, each of which will represent a fractional interest in a share of a particular series of preferred stock.

The shares of any series of preferred stock underlying the depositary shares will be deposited under a separate deposit agreement between us and a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$50 million, which we refer to in this section as the depositary. We will name the depositary in the applicable prospectus supplement. Subject to the terms of the deposit agreement, each owner of a depositary share will have a fractional interest in all the rights and preferences of the preferred stock underlying the depositary share. Those rights include any dividend, voting, redemption, conversion and liquidation rights.

The depositary shares will be evidenced by depositary receipts issued under the deposit agreement. If you purchase fractional interests in shares of the related series of preferred stock, you will receive depositary receipts as described in the applicable prospectus supplement. While the final depositary receipts are being prepared, we may order the depositary to issue temporary depositary receipts substantially identical to the final depositary receipts although not in final form. The holders of the temporary depositary receipts will be entitled to the same rights as if they held the depositary receipts in final form. Holders of the temporary depositary receipts can exchange them for the final depositary receipts at our expense.

Unless we specify otherwise in the applicable prospectus supplement, you will not be entitled to receive the whole shares of preferred stock underlying the depositary shares.

**Dividends and Other Distributions**

The depositary will distribute all cash dividends or other cash distributions received with respect to the preferred stock to the record holders of depositary shares representing the shares of preferred stock in proportion to the numbers of depositary shares owned by the holders on the relevant record date. The depositary will not distribute amounts less than one cent. The depositary will distribute any balance with the next sum received for distribution to record holders of depositary shares.

If there is a distribution other than in cash, the depositary will distribute property to the holders of depositary shares, unless the depositary determines that it is not feasible to make the distribution. If this occurs, the depositary may, with our approval, sell the property and distribute the net proceeds from the sale to the holders of depositary shares.

The deposit agreement will also contain provisions relating to how any subscription or similar rights offered by us to holders of the preferred stock will be made available to the holders of depositary shares.

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### **Conversion and Exchange**

If any series of preferred stock underlying the depositary shares is subject to conversion or exchange, the applicable prospectus supplement will describe the rights or obligations of each record holder of depositary receipts to convert or exchange the depositary shares.

### **Redemption of Depositary Shares**

If the series of the preferred stock underlying the depositary shares is subject to redemption, all or a part of the depositary shares will be redeemed from the redemption proceeds of that series of the preferred stock held by the depositary. The depositary will mail notice of redemption between 30 to 60 days prior to the date fixed for redemption to the record holders of the depositary shares to be redeemed at their addresses appearing in the depositary's records. The redemption price per depositary share will bear the same relationship to the redemption price per share of preferred stock that the depositary share bears to the underlying preferred stock. Whenever we redeem preferred stock held by the depositary, the depositary will redeem, as of the same redemption date, the number of depositary shares representing the preferred stock redeemed. If less than all the depositary shares are to be redeemed, the depositary shares to be redeemed will be selected by lot or pro rata as determined by the depositary.

After the date fixed for redemption, the depositary shares called for redemption will no longer be outstanding. When the depositary shares are no longer outstanding, all rights of the holders will cease, except the right to receive money or other property that the holders of the depositary shares were entitled to receive upon the redemption. Payments will be made when holders surrender their depositary receipts to the depositary.

### **Voting the Preferred Stock**

When the depositary receives notice of any meeting at which the holders of the preferred stock may vote, the depositary will mail information about the meeting contained in the notice, and any accompanying proxy materials, to the record holders of the depositary shares relating to the preferred stock. Each record holder of such depositary shares on the record date, which will be the same date as the record date for the preferred stock, will be entitled to instruct the depositary as to how the preferred stock underlying the holder's depositary shares should be voted.

The depositary will try, if practical, to vote the number of shares of preferred stock underlying the depositary shares according to the instructions received. We will agree to take all action requested by and deemed necessary by the depositary in order to enable the depositary to vote the preferred stock in that manner. The depositary will not vote any preferred stock for which it does not receive specific instructions from the holders of the depositary shares relating to such preferred stock.

### **Taxation**

Owners of depositary shares will be treated for federal income tax purposes as if they were owners of the preferred stock represented by the depositary shares. Accordingly, for federal income tax purposes they will have the income and deductions to which they would be entitled if they were holders of the preferred stock. In addition:

no gain or loss will be recognized for federal income tax purposes upon the withdrawal of preferred stock in exchange for depositary shares as provided in the deposit agreement;

the tax basis of each share of preferred stock to an exchanging owner of depositary shares will, upon the exchange, be the same as the aggregate tax basis of the depositary shares exchanged for such preferred stock; and

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the holding period for the preferred stock, in the hands of an exchanging owner of depositary shares who held the depositary shares as a capital asset at the time of the exchange, will include the period that the owner held the depositary shares.

### **Amendment and Termination of the Deposit Agreement**

The form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may be amended by agreement between us and the depositary at any time. However, any amendment that materially and adversely alters the rights of the existing holders of depositary shares will not be effective unless approved by the record holders of at least a majority of the depositary shares then-outstanding (or, in the case of such amendments relating to or affecting rights to receive dividends or distributions or voting or redemption rights, two-thirds of the holders). A deposit agreement may be terminated by us or the depositary only if:

all outstanding depositary shares relating to the deposit agreement have been redeemed; or

there has been a final distribution on the preferred stock of the relevant series in connection with our liquidation, dissolution or winding up of our business and the distribution has been distributed to the holders of the related depositary shares.

### **Charges of Depositary**

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. We will pay associated charges of the depositary for the initial deposit of the preferred stock and any redemption of the preferred stock. Holders of depositary shares will pay transfer and other taxes and governmental charges and any other charges that are stated to be their responsibility in the deposit agreement.

### **Miscellaneous**

We will forward to the depositary, for distribution to the holders of depositary shares, all reports and communications that we must furnish to the holders of the preferred stock.

Neither the depositary nor we will be liable if the depositary is prevented or delayed by law or any circumstance beyond its control in performing its obligations under the deposit agreement. Our obligations and the depositary's obligations under the deposit agreement will be limited to performance in good faith of duties set forth in the deposit agreement. Neither the depositary nor we will be obligated to prosecute or defend any legal proceeding connected with any depositary shares or preferred stock unless satisfactory indemnity is furnished to us and/or the depositary. We and the depositary may rely upon written advice of counsel or accountants, or information provided by persons presenting preferred stock for deposit, holders of depositary shares or other persons believed to be competent and on documents believed to be genuine.

### **Resignation and Removal of Depositary**

The depositary may resign at any time by delivering notice to us. We may also remove the depositary at any time. Resignations or removals will take effect when a successor depositary is appointed and it accepts the appointment. The successor depositary must be appointed within 60 days after delivery of the notice of resignation or removal and must be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$50 million.





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**DESCRIPTION OF COMMON STOCK**

This section describes the general terms and provisions of the shares of our common stock. The prospectus supplement will describe the specific terms of the common stock offered through that prospectus supplement in connection with the conversion, exchange or exercise of debt securities, preferred stock, depositary shares or securities warrants and any general terms outlined in this section that will not apply to that common stock.

We have summarized the material terms and provisions of the common stock in this section. We have also filed our restated certificate of incorporation, as amended, and our by-laws, as amended, as exhibits to the registration statement of which this prospectus is a part. You should read our restated certificate of incorporation, as amended, and our by-laws, as amended, for additional information before you buy any securities which may be exercised or exchangeable for or converted into common stock.

**General**

**Shares Outstanding.** As of September 30, 2016, our authorized common stock was 9,000,000,000 shares. From these authorized shares, we had issued 5,481,811,474 shares, of which 5,023,889,201 shares were outstanding and 457,922,273 shares were held as treasury shares.

**Dividends.** Holders of common stock may receive dividends if, when and as declared by our board of directors out of our funds that we can legally use to pay dividends. We may pay dividends in cash, stock or other property. In certain cases, holders of common stock may not receive dividends until we have satisfied our obligations to any holders of outstanding preferred stock. Other restrictions on our ability to pay dividends are described below under **Dividend Restrictions** and above under **Description of Preferred Stock Outstanding Preferred Stock**.

**Voting Rights.** Holders of common stock have the exclusive power to vote on all matters presented to our stockholders unless Delaware law or the certificate of designation for an outstanding series of preferred stock gives the holders of that preferred stock the right to vote on certain matters. Each holder of common stock is entitled to one vote per share. Holders of common stock have no cumulative voting rights for the election of directors. This means a holder of a single share of common stock cannot cast more than one vote for each position to be filled on our board of directors.

**Other Rights.** If we voluntarily or involuntarily liquidate, dissolve or wind up our business, holders of common stock will receive pro rata, according to shares held by them, any of our remaining assets available for distribution to stockholders after we have provided for payment of all debts and other liabilities, including any liquidation preference for outstanding shares of preferred stock. When we issue securities in the future, holders of common stock have no preemptive rights. This means the holders of common stock have no right, as holders of common stock, to buy any portion of those issued securities. Holders of our common stock have no rights to have their shares of common stock redeemed by us or to convert their shares of common stock into shares of any other class of our capital stock.

**Listing.** Our outstanding shares of common stock are listed on the New York Stock Exchange under the symbol **WFC**. Wells Fargo Bank, N.A. serves as the transfer agent and registrar for the common stock.

**Fully Paid.** The outstanding shares of common stock are fully paid and non-assessable. This means the full purchase price for the outstanding shares of common stock has been paid and the holders of such shares will not be assessed any additional amounts for such shares. Any additional common stock that we may issue in the future upon the conversion or exercise of other securities offered under this prospectus will also be fully paid and non-assessable.



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### **Restrictions on Payment of Dividends**

We are incorporated in Delaware and are governed by the General Corporation Law of the State of Delaware law allows a corporation to pay dividends only out of surplus, as determined under Delaware law, or, if there is no surplus, out of net profits for the fiscal year in which the dividend was declared and for the preceding fiscal year. However, under Delaware law, we cannot pay dividends out of net profits if, after we pay the dividend, our capital would be less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of our assets.

As a bank holding company, our ability to pay dividends is affected by the ability of our bank and non-bank subsidiaries to pay dividends to us. Various federal laws limit the amount of dividends our national bank subsidiaries can pay to us without regulatory approval. State-chartered banks are subject to state regulations that limit dividends.

The terms of our outstanding junior subordinated debt securities prohibit us from declaring or paying any dividends or distributions on our capital stock, including our common stock, or purchasing, acquiring, or making a liquidation payment on such stock, if an event of default has occurred and is continuing under the applicable indenture, we are in default with respect to a guarantee payment under the guarantee of the related trust preferred securities or we have given notice of our election to defer interest payments but the related deferral period has not yet commenced or a deferral period is continuing. In addition, the terms of each of our outstanding series of preferred stock prohibit us from declaring or paying any dividends or distributions on our common stock unless all accrued and unpaid dividends for all completed dividend periods with respect to that preferred stock have been paid.

### **Anti-takeover Provisions Contained in the Certificate of Incorporation and By-laws**

Certain provisions of Delaware law could make it more difficult for a third party to acquire control of us or have the effect of discouraging a third party from attempting to acquire control of us. For example, we are subject to Section 203 of the General Corporation Law of the State of Delaware, which would make it more difficult for another party to acquire us without the approval of our board of directors. Certain provisions of our restated certificate of incorporation, as amended, may make it less likely that our management would be changed or someone would acquire voting control of our company without our board's consent. These provisions may delay, deter or prevent tender offers or takeover attempts that stockholders may believe are in their best interests, including tender offers or attempts that might allow stockholders to receive premiums over the market price of their common stock.

***Preferred Stock.*** Our board of directors can at any time, under our restated certificate of incorporation, as amended, and without stockholder approval, issue one or more new series of preferred stock. In some cases, the issuance of preferred stock without stockholder approval could discourage or make more difficult attempts to take control of our company through a merger, tender offer, proxy contest or otherwise. Preferred stock with special voting rights or other features issued to persons favoring our management could stop a takeover by preventing the person trying to take control of our company from acquiring enough voting shares necessary to take control.

***Nomination Procedures.*** In addition to our board of directors, stockholders can nominate candidates for election to our board of directors. However, a stockholder must follow the advance notice procedures described in Section 3.11 of our by-laws, as amended. In general, a stockholder must deliver a written notice of the nomination to our chief executive officer and our corporate secretary at least 90 days but not more than 120 days prior to the first anniversary of the preceding year's annual meeting for consideration at an annual meeting or, for consideration at a special meeting, at least 90 days but not more than 120 days prior to the date of such meeting or, if our first public announcement of the date of such special meeting is less than 100 days prior to the date of such special meeting, then during the 10 days following our public announcement. Subject to all of the terms and conditions specified in the

by-laws, an eligible stockholder (or a group of up to 20 eligible stockholders) who has

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continuously owned for three years at least three percent of our outstanding shares may also nominate and include in our proxy materials nominees constituting up to the greater of two directors and 20 percent of the board of directors. A stockholder must deliver written notice of the proxy access nomination to our corporate secretary at least 120 days prior to the first anniversary of the filing date of our definitive proxy statement for the preceding year's annual meeting and no earlier than 150 days prior to such date.

***Proposal Procedures.*** Stockholders can propose that business other than nominations to our board of directors be considered at an annual meeting of stockholders only if a stockholder follows the advance notice procedures described in our by-laws, as amended. In general, a stockholder must submit a written notice of the proposal and the stockholder's interest in the proposal to our chief executive officer and our corporate secretary at least 90 days but not more than 120 days prior to the first anniversary of the preceding year's annual meeting. Stockholders seeking to have a stockholder proposal considered for inclusion in our annual proxy statement must comply with the requirements of Rule 14a-8 of the federal proxy rules.

***Stockholder Requested Special Meetings.*** Our by-laws provide procedures pursuant to which record holders of not less than 25% of the voting power of issued and outstanding shares of our common stock may request that the board of directors call a special meeting of stockholders. Our by-laws impose certain informational and procedural requirements on stockholders requesting such a meeting (including the provision of the same information required by the advance notice procedures described in Section 3.11 of our by-laws), as well as provisions designed to avoid the calling of a special meeting to conduct the same or similar business that was recently addressed or soon will be addressed at another stockholder meeting or that would be held close in time to our annual meeting.

***Amendment of By-laws.*** Under our by-laws and restated certificate of incorporation, as amended, our board of directors can adopt, amend or repeal the by-laws, subject to limitations under the General Corporation Law of the State of Delaware or in the by-laws, as amended. Under the General Corporation Law of the State of Delaware, our stockholders also have the power to change or repeal our by-laws.

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**DESCRIPTION OF PURCHASE CONTRACTS**

This section describes the general terms and provisions of the purchase contracts. The prospectus supplement will describe the specific terms of the purchase contracts offered through that prospectus supplement and any general terms outlined in this section that will not apply to those purchase contracts.

We have summarized the material terms and provisions of the purchase contracts in this section. We have also filed the forms of purchase contracts as exhibits to the registration statement of which this prospectus is a part. You should read the applicable purchase contract for additional information before you buy any purchase contracts.

**General**

We may issue purchase contracts, including purchase contracts issued as part of a unit with one or more debt securities, for the purchase or sale of:

our debt securities, preferred stock, depositary shares or common stock;

securities of an entity not affiliated with Wells Fargo, a basket of those securities, an index or indices of those securities or any combination of the above;

currencies; or

commodities.

We refer to the property in the above clauses as purchase contract property. In this section, when we refer to a unit we mean a unit consisting of purchase contracts and one or more debt securities and not any other combination of securities registered under the registration statement of which this prospectus is a part.

Each purchase contract will obligate the holder to purchase or sell, and obligate us to sell or purchase, on specified dates, the purchase contract property at a specified price or prices, all as described in the applicable prospectus supplement. The applicable prospectus supplement will also specify the methods by which the holders may purchase or sell the purchase contract property and any acceleration, cancellation or termination provisions or other provisions relating to the settlement of a purchase contract.

**Purchase Contracts Issued as Part of a Unit**

Purchase contracts issued as part of a unit will be governed by the terms and provisions of a unit agreement. See Significant Provisions of the Unit Agreement. The applicable prospectus supplement will specify the following:

whether the purchase contract obligates the holder to purchase or sell the purchase contract property;

whether a purchase contract issued as part of a unit may be separated from the other securities constituting part of that unit prior to the purchase contract's settlement date, except that purchase contracts issued in the United States may not be so separated prior to the 91st day after the issuance of a unit;

the methods by which the holders may purchase or sell the purchase contract property;

any acceleration, cancellation or termination provisions or other provisions relating to the settlement of a purchase contract; and



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whether the purchase contracts will be issued in fully registered or bearer form, in definitive or global form or in any combination of these forms, although, in any case, the form of a purchase contract included in a unit will correspond to the form of the unit and of any debt security included in that unit.

***Settlement of Purchase Contracts.*** Where purchase contracts issued together with debt securities as part of a unit require the holders to buy purchase contract property, the unit agent may apply principal payments from the debt securities in satisfaction of the holders' obligations under the related purchase contract as specified in the applicable prospectus supplement. The unit agent will not so apply the principal payments if the holder has delivered cash to meet its obligations under the purchase contract. To settle the purchase contract and receive the purchase contract property, the holder must present and surrender the unit certificates at the office of the unit agent. If a holder settles its obligations under a purchase contract that is part of a unit in cash rather than by delivering the debt security that is part of the unit, that debt security will remain outstanding if the maturity extends beyond the relevant settlement date and, as more fully described in the applicable prospectus supplement, the holder will receive that debt security or an interest in the relevant global debt security.

***Pledge by Purchase Contract Holders to Secure Performance.*** To secure the obligations of the purchase contract holders contained in the unit agreement and in the purchase contracts, the holders, acting through the unit agent, as their attorney-in-fact, will grant, sell, convey, assign, transfer and pledge the items in the following sentence, which we refer to as the pledge, to the collateral agent for our benefit. The pledge is a security interest in and to, and a lien upon and right of set-off against, all of the holders' right, title and interest in and to:

any debt securities that are part of units that include the purchase contracts, or other property as may be specified in the applicable prospectus supplement, which we refer to as the pledged items ;

all additions to and substitutions for the pledged items as may be permissible, if so specified in the applicable prospectus supplement;

all income, proceeds and collections received or to be received, or derived or to be derived, at any time from or in connection with the pledged items described in the two clauses above; and

all powers and rights owned or thereafter acquired under or with respect to the pledged items.

The pledge constitutes collateral security for the performance when due by each holder of its obligations under the unit agreement and the applicable purchase contract. The collateral agent will forward all payments from the pledged items to us, unless the payments have been released from the pledge in accordance with the unit agreement. We will use the payments received from the pledged items to satisfy the obligations of the holder of the unit under the related purchase contract.

***Property Held in Trust by Unit Agent.*** If a holder fails to settle in cash its obligations under a purchase contract that is part of a unit and fails to present and surrender its unit certificate to the unit agent when required, that holder will not receive the purchase contract property. Instead, the unit agent will hold that holder's purchase contract property, together with any distributions, as the registered owner in trust for the benefit of the holder until the holder presents and surrenders the certificate or provides satisfactory evidence that the certificate has been destroyed, lost or stolen. We or the unit agent may require an indemnity from the holder for liabilities related to any destroyed, lost or stolen

certificate. If the holder does not present the unit certificate, or provide the necessary evidence of destruction or loss and indemnity, on or before the second anniversary of the settlement date of the related purchase contract, the unit agent will pay to us the amounts it received in trust for that holder. Thereafter, the holder may recover those amounts only from us and not the unit agent. The unit agent will have no obligation to invest or to pay interest on any amounts it holds in trust pending distribution.

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### **General Terms of Units**

We will issue the units under one or more unit agreements, each referred to as a unit agreement, to be entered into between us and a bank or trust company, as unit agent. We may issue units in one or more series, which will be described in the applicable prospectus supplement.

We have summarized the material terms and provisions of the unit agreement below. We have also filed the form of unit agreement as an exhibit to the registration statement of which this prospectus is a part. You should read the unit agreement for additional information before you buy any units.

The applicable prospectus supplement relating to units consisting of one or more debt securities and purchase contracts will describe:

the designation and the terms of the units and of the combination of debt securities and purchase contracts constituting the units, including whether and under what circumstances the debt securities or purchase contracts may be traded separately;

any additional terms of the unit agreement;

any additional provisions for the issuance, payment, settlement, transfer or exchange of the units or of the debt securities or purchase contracts constituting the units; and

any special United States federal income tax consequences.

The terms and conditions described under Description of Debt Securities, and Description of Purchase Contracts and those described below under Significant Provisions of the Unit Agreement will apply to each unit and to any debt security or purchase contract included in each unit unless otherwise specified in the applicable prospectus supplement.

### **Significant Provisions of the Unit Agreement**

*Obligations of Unit Holder.* Under the terms of the unit agreement, each owner of a unit:

consents to and agrees to be bound by the terms of the unit agreement;

appoints the unit agent as its authorized agent to execute, deliver and perform any purchase contract included in the unit in which that owner has an interest; and

irrevocably agrees to be a party to and be bound by the terms of any purchase contract included in the unit in which that owner has an interest.

***Assumption of Obligations by Transferee.*** Upon the registration of transfer of a unit, the transferee will assume the obligations, if any, of the transferor under any purchase contract included in the unit and under any other security constituting that unit, and the transferor will be released from those obligations. Under the unit agreement, we consent to the transfer of these obligations to the transferee, to the assumption of these obligations by the transferee and to the release of the transferor, if the transfer is made in accordance with the provisions of the unit agreement.

***Remedies.*** Upon the acceleration of the debt securities constituting any units, our obligations and those of the owners under any purchase contracts constituting a part of the units may also be accelerated upon the request of the owners of not less than 25% of the affected purchase contracts, on behalf of all the owners.

***Limitation on Actions by You as an Individual Holder.*** No owner of any unit will have any right under the unit agreement to institute any action or proceeding at law or in equity or in bankruptcy or otherwise

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regarding the unit agreement, or for the appointment of a trustee, receiver, liquidator, custodian or other similar official, unless the owner will have given written notice to the unit agent and to us of the occurrence and continuance of a default thereunder and:

in the case of an event of default under the debt securities or the applicable indenture, unless the procedures, including notice to us and the trustee, described in such indenture have been complied with; and

in the case of a failure by us to observe or perform any of our obligations under the unit agreement relating to any purchase contracts included in the unit, unless:

owners of not less than 25% of the affected purchase contracts have (a) requested the unit agent to institute that action or proceeding in its own name as unit agent under the unit agreement and (b) offered the unit agent reasonable indemnity;

the unit agent has failed to institute that action or proceeding within 60 days of that request by the owners referred to above; and

the owners of a majority of the outstanding affected units have not given directions to the unit agent inconsistent with those of the owners referred to above.

If these conditions have been satisfied, any owner of an affected unit may then, but only then, institute an action or proceeding. Notwithstanding the above, the owner of any unit or purchase contract will have the unconditional right to purchase or sell, as the case may be, purchase contract property under the purchase contract and to institute suit for the enforcement of that right.

***Absence of Protections against All Potential Actions of Wells Fargo.*** There are no covenants or other provisions in the unit agreement providing for a put right or increased interest or otherwise that would afford holders of units additional protection in the event of a recapitalization transaction, a change of control of Wells Fargo or a highly leveraged transaction.

***Modification without Consent of Holders.*** We and the unit agent may amend the unit agreement and the terms of the purchase contracts and the purchase contract certificates without the consent of the holders to:

cure any ambiguity;

correct or supplement any defective or inconsistent provision;

add to our covenants or the covenants of the unit agent;

change or eliminate any provisions of the unit agreement so long as no units are outstanding or the change does not affect any unit outstanding; or

amend the terms in any other manner which we may deem necessary or desirable and which will not adversely affect the interests of the affected holders in any material respect.

***Modification with Consent of Holders.*** We and the unit agent, with the consent of the holders of not less than a majority of all series of outstanding units affected, voting as one class, may modify the rights of the holders of the units of each series so affected or the terms of any purchase contracts included in any of those series of units and the terms of the unit agreement relating to the purchase contracts of each series so affected. However, we and the unit agent may not make any of the following modifications without the consent of the holder of each outstanding unit affected by the modification:

impair the right to institute suit for the enforcement of any purchase contract;

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materially adversely affect the holders' rights under any purchase contract;

reduce the percentage of purchase contracts constituting part of outstanding units the consent of whose owners is required for the modification of the provisions of the unit agreement relating to those purchase contracts or for the waiver of any defaults under the unit agreement relating to those purchase contracts;

materially adversely affect the holders' units or the terms of the unit agreement (other than terms related to the first three clauses above); or

reduce the percentage of outstanding units the consent of whose owners is required for the modification of the provisions of the unit agreement (other than terms related to the first three clauses above).

Modifications of any debt securities included in units may only be made in accordance with the applicable indenture, as described under "Description of Debt Securities - Modification and Waiver."

***Merger, Consolidation, Sale, Lease or Conveyance.*** The unit agreement provides that we will not merge or consolidate with any other person and will not sell, lease or convey all or substantially all of our assets to any person unless:

we will be the continuing corporation; or

the successor corporation or person that acquires all or substantially all of our assets:

will be a corporation organized under the laws of the United States, a state of the United States or the District of Columbia; and

will expressly assume all of our obligations under the unit agreement; and

immediately after the merger, consolidation, sale, lease or conveyance, we, that person or that successor corporation will not be in default in the performance of the covenants and conditions of the unit agreement applicable to us.

***Replacement of Unit Certificates or Purchase Contract Certificates.*** We will replace any mutilated certificate evidencing a definitive unit or purchase contract at the expense of the holder upon surrender of that certificate to the unit agent. We will replace certificates that have been destroyed, lost or stolen at the expense of the holder upon delivery to us and the unit agent of evidence satisfactory to us and the unit agent of the destruction, loss or theft of the certificates. In the case of a destroyed, lost or stolen certificate, an indemnity satisfactory to the unit agent and to us may be required at the expense of the holder of the units or purchase contracts evidenced by that certificate before a replacement will be issued.

The unit agreement provides that, notwithstanding the foregoing, no replacement certificate need be delivered:

during the period beginning 15 days before the day of mailing of a notice of redemption or of any other exercise of any right held by us with respect to the unit or any security constituting the unit evidenced by the mutilated, destroyed, lost or stolen certificate and ending on the day of the giving of that notice;

if the mutilated, destroyed, lost or stolen certificate evidences any security selected or called for redemption or other exercise of a right held by us; or



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at any time on or after the date of settlement or redemption for any purchase contract included in the unit evidenced by the mutilated, destroyed, lost or stolen certificate, except with respect to any units that remain or will remain outstanding following the date of settlement or redemption.

***Unit Agreement Not Qualified under Trust Indenture Act.*** The unit agreement will not be qualified as an indenture under, and the unit agent will not be required to qualify as a trustee under, the Trust Indenture Act. Accordingly, the holders of units and purchase contracts will not have the benefits of the protections of the Trust Indenture Act. However, any debt securities issued as part of a unit will be issued under an indenture qualified under the Trust Indenture Act, and the trustee under that indenture will be qualified as a trustee under the Trust Indenture Act.

***Title.*** We, the unit agent, the applicable trustee and any of their agents will treat the registered owner of any unit as its owner, notwithstanding any notice to the contrary, for all purposes.

***New York Law to Govern.*** The unit agreement, the units and the purchase contracts constituting part of the units will be governed by, and construed in accordance with, the laws of the State of New York.

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**DESCRIPTION OF SECURITIES WARRANTS**

This section describes the general terms and provisions of the securities warrants. The prospectus supplement will describe the specific terms of the securities warrants offered through that prospectus supplement and any general terms outlined in this section that will not apply to those securities warrants.

We may issue warrants for the purchase of debt securities, preferred stock, depositary shares or common stock. Securities warrants may be issued alone or together with debt securities, preferred stock or depositary shares offered by any prospectus supplement and may be attached to or separate from those securities. Each series of securities warrants will be issued under a separate securities warrant agreement between us and a bank or trust company, as securities warrant agent, which will be described in the applicable prospectus supplement. The securities warrant agent will act solely as our agent in connection with the securities warrants and will not act as an agent or trustee for any holders of securities warrants.

We have summarized the material terms and provisions of the securities warrant agreements and securities warrants in this section. We have also filed the forms of securities warrant agreements and the certificates representing the securities warrants as exhibits to the registration statement of which this prospectus is a part. You should read the applicable forms of securities warrant agreement and securities warrant certificate for additional information before you buy any securities warrants.

**General**

If we offer securities warrants, the applicable prospectus supplement will describe their terms. If securities warrants for the purchase of debt securities are offered, the applicable prospectus supplement will describe the terms of those securities warrants, including the following if applicable:

the offering price;

the currencies in which the securities warrants are being offered;

the designation, aggregate principal amount, currencies, denominations and terms of the series of the debt securities that can be purchased if a holder exercises the securities warrants;

the designation and terms of any series of debt securities, preferred stock or depositary shares with which the securities warrants are being offered and the number of securities warrants offered with each debt security, share of preferred stock or depositary share;

the date on and after which the holder of the securities warrants can transfer them separately from the related series of debt securities, preferred stock or depositary shares;

the principal amount of the series of debt securities that can be purchased if a holder exercises the securities warrant and the price at which and currencies in which the principal amount may be purchased upon exercise;

the date on which the right to exercise the securities warrants begins and the date on which the right expires;

whether the securities warrants will be in registered or bearer form;

United States federal income tax consequences; and

any other terms of the securities warrants.

Unless we state otherwise in the applicable prospectus supplement, the securities warrants for the purchase of debt securities will be in registered form only.

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If securities warrants for the purchase of preferred stock, depositary shares or common stock are offered, the applicable prospectus supplement will describe the terms of those securities warrants, including the following where applicable:

the offering price;

the total number of shares that can be purchased if a holder of the securities warrants exercises them and, in the case of securities warrants for preferred stock or depositary shares, the designation, total number and terms of the series of preferred stock that can be purchased upon exercise or that are underlying the depositary shares that can be purchased upon exercise;

the designation and terms of the series of debt securities, preferred stock or depositary shares with which the securities warrants are being offered and the number of securities warrants being offered with each debt security, share of preferred stock or depositary share;

the date on and after which the holder of the securities warrants can transfer them separately from the related series of debt securities, preferred stock or depositary shares;

the number of shares of preferred stock, depositary shares or shares of common stock that can be purchased if a holder exercises the securities warrant and the price at which the preferred stock, depositary shares or common stock may be purchased upon each exercise;

the date on which the right to exercise the securities warrants begins and the date on which the right expires;

any special United States federal income tax consequences; and

any other terms of the securities warrants.

Securities warrants for the purchase of preferred stock, depositary shares or common stock will be in registered form only.

A holder of securities warrant certificates may exchange them for new certificates of different denominations, present them for registration of transfer, and exercise them at the corporate trust office of the securities warrant agent or any other office indicated in the applicable prospectus supplement.

Until any securities warrants to purchase debt securities are exercised, the holder of such securities warrants will not have any of the rights of holders of the debt securities that can be purchased upon exercise, including any right to receive payments of principal, premium or interest on the underlying debt securities or to enforce covenants in the applicable indenture. Until any securities warrants to purchase preferred stock, depositary shares or common stock are

exercised, holders of such securities warrants will not have any rights of holders of the underlying preferred stock, depositary shares or common stock, including any right to receive dividends or to exercise any voting rights.

### **Exercise of Securities Warrants**

Each holder of a securities warrant is entitled to purchase the principal amount of debt securities or number of shares of preferred stock, depositary shares or shares of common stock, as the case may be, at the exercise price described in the applicable prospectus supplement. After the close of business on the day when the right to exercise terminates, or a later date if we extend the time for exercise, unexercised securities warrants will become void.

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A holder of securities warrants may exercise them by following the general procedure outlined below:

delivering to the securities warrant agent the payment required by the applicable prospectus supplement to purchase the underlying security;

properly completing and signing the reverse side of the securities warrant certificate representing the securities warrants; and

delivering the securities warrant certificate representing the securities warrants to the securities warrant agent, or other office indicated in the applicable prospectus supplement, within five business days of the securities warrant agent receiving payment of the exercise price.

If you comply with the procedures described above, your securities warrants will be considered to have been exercised when the securities warrant agent receives payment of the exercise price. After you have completed those procedures, we will, as soon as practicable, issue and deliver to you the debt securities, preferred stock, depositary shares or common stock that you purchased upon exercise. If you exercise fewer than all of the securities warrants represented by a securities warrant certificate, the securities warrant agent will issue to you a new securities warrant certificate for the unexercised amount of securities warrants. Holders of securities warrants will be required to pay any tax or governmental charge that may be imposed in connection with transferring the underlying securities in connection with the exercise of the securities warrants.

## **Amendments and Supplements to Securities Warrant Agreements**

We may amend or supplement a securities warrant agreement without the consent of the holders of the applicable securities warrants if the changes are not inconsistent with the provisions of the securities warrants and do not materially adversely affect the interests of the holders of the securities warrants. We, along with the securities warrant agent, may also modify or amend a securities warrant agreement and the terms of the securities warrants if a majority of the then-outstanding unexercised securities warrants affected by the modification or amendment consent. However, no modification or amendment that accelerates the expiration date, increases the exercise price, reduces the majority consent requirement for any such modification or amendment, or otherwise materially adversely affects the rights of the holders of the securities warrants may be made without the consent of each holder affected by the modification or amendment.

## **Common Stock Warrant Adjustments**

Unless the applicable prospectus supplement states otherwise, the exercise price of, and the number of shares of common stock covered by, a warrant for common stock will be adjusted in the manner set forth in the applicable prospectus supplement if certain events occur, including:

if we issue capital stock as a dividend or distribution on the common stock;

if we subdivide, reclassify or combine the common stock;

if we issue rights or warrants to all holders of common stock entitling them, for a period expiring 45 days after the date fixed for determining the stockholders entitled to receive such rights or warrants, to purchase common stock at less than the current market price, as defined in the warrant agreement for such series of common stock warrants; or

if we distribute to all holders of common stock evidences of our indebtedness or our assets, excluding certain cash dividends and distributions, or if we distribute to all holders of common stock rights or warrants, excluding those referred to in the bullet point above.

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Except as stated above, the exercise price and number of shares of common stock covered by a common stock warrant will not be adjusted if we issue common stock or any securities convertible into or exchangeable for common stock, or securities carrying the right to purchase common stock or securities convertible into or exchangeable for common stock.

Holders of common stock warrants may have additional rights under the following circumstances:

a reclassification or change of the common stock;

a consolidation or merger involving our company; or

a sale or conveyance to another corporation of all or substantially all of our property and assets.

If one of the above transactions occurs and holders of our common stock are entitled to receive stock, securities, other property or assets, including cash, with respect to or in exchange for common stock, the holders of the common stock warrants then outstanding will be entitled to receive upon exercise of their common stock warrants the kind and amount of shares of stock and other securities or property that they would have received upon the reclassification, change, consolidation, merger, sale or conveyance if they had exercised their common stock warrants immediately before the transaction.

## **Outstanding Warrants**

In connection with our participation in the Troubled Asset Relief Program ( TARP ) Capital Purchase Program, we issued to the U.S. Treasury Department warrants to purchase 110,261,688 shares of our common stock with an exercise price of \$34.01 per share expiring on October 28, 2018. The terms of the warrants require the exercise price to be adjusted under certain circumstances when our quarterly common stock dividend exceeds \$0.34 per share, which began occurring in second quarter 2014. Accordingly, with each quarterly common stock dividend above \$0.34 per share, we must calculate whether an adjustment to the exercise price is required by the terms of the warrants, including whether certain minimum thresholds have been met to trigger an adjustment, and notify the holders of any such change. Our board of directors authorized the repurchase of up to \$1 billion of the warrants. At September 30, 2016, there were 33,137,573 warrants outstanding, exercisable at \$33.840 per share, and \$452 million of unused warrant repurchase authority.



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**BENEFIT PLAN INVESTOR CONSIDERATIONS**

Each fiduciary of a pension, profit-sharing or other employee benefit plan to which Title I of the Employee Retirement Income Security Act of 1974 (ERISA) applies (a plan), should consider the fiduciary standards of ERISA in the context of the plan's particular circumstances before authorizing an investment in the offered securities. Accordingly, among other factors, the fiduciary should consider whether the investment would satisfy the prudence and diversification requirements of ERISA and would be consistent with the documents and instruments governing the plan. When we use the term holder in this section, we are referring to a beneficial owner of the offered securities and not the record holder.

Section 406 of ERISA and Section 4975 of the Code prohibit plans, as well as individual retirement accounts and Keogh plans to which Section 4975 of the Code applies (also plans), from engaging in specified transactions involving plan assets with persons who are parties in interest under ERISA or disqualified persons under the Code (collectively, parties in interest) with respect to such plan. A violation of those prohibited transaction rules may result in an excise tax or other liabilities under ERISA and/or Section 4975 of the Code for such persons, unless statutory or administrative exemptive relief is available. Therefore, a fiduciary of a plan should also consider whether an investment in the offered securities might constitute or give rise to a prohibited transaction under ERISA and the Code.

Employee benefit plans that are governmental plans, as defined in Section 3(32) of ERISA, certain church plans, as defined in Section 3(33) of ERISA, and foreign plans, as described in Section 4(b)(4) of ERISA, are not subject to the requirements of ERISA, or Section 4975 of the Code, but may be subject to other legal restrictions (similar laws).

We and our affiliates may each be considered a party in interest with respect to many plans. Special caution should be exercised, therefore, before the offered securities are purchased by a plan. In particular, the fiduciary of the plan should consider whether statutory or administrative exemptive relief is available under an applicable statutory or administrative exemption. The U.S. Department of Labor has issued five prohibited transaction class exemptions (PTCEs) that may provide exemptive relief for direct or indirect prohibited transactions resulting from the purchase or holding of the offered securities. Those class exemptions are:

PTCE 96-23, for specified transactions determined by in-house asset managers;

PTCE 95-60, for specified transactions involving insurance company general accounts;

PTCE 91-38, for specified transactions involving bank collective investment funds;

PTCE 90-1, for specified transactions involving insurance company separate accounts; and

PTCE 84-14, for specified transactions determined by independent qualified professional asset managers.

In addition, Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code provide an exemption for transactions between a plan and a person who is a party in interest (other than a fiduciary who has or exercises any discretionary

authority or control with respect to investment of the plan assets involved in the transaction or renders investment advice with respect thereto) solely by reason of providing services to the plan (or by reason of a relationship to such a service provider), if in connection with the transaction the plan receives no less, nor pays no more, than adequate consideration (within the meaning of Section 408(b)(17) of ERISA).

The foregoing list of exemptions is not exhaustive. Other statutory or administrative class exemptions may be applicable. In addition, a purchaser or holder may obtain an individual administrative exemption.

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Any purchaser or holder of the offered securities or any interest in the offered securities will be deemed to have represented by its purchase and holding that either:

no portion of the assets used by such purchaser or holder to acquire or purchase the offered securities constitutes assets of any plan or plan subject to similar law; or

the purchase and holding of the offered securities by such purchaser or holder will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or similar violation under similar law.

Due to the complexity of these rules and the penalties that may be imposed upon persons involved in non-exempt prohibited transactions, it is particularly important that fiduciaries or other persons considering purchasing the offered securities on behalf of or with plan assets of any plan consult with their counsel regarding the potential consequences under ERISA, the Code, and any applicable similar law, of the acquisition of the offered securities and the availability of exemptive relief under PTCE 96-23, 95-60, 91-38, 90-1 or 84-14 or another applicable statutory or administrative exemption.

Purchasers of the offered securities have the exclusive responsibility for ensuring that their purchase, holding and subsequent disposition of the offered securities does not violate the prohibited transaction rules of ERISA, the Code or similar law, and we are not advising any potential purchaser or holder of the offered securities to avail themselves of any exemption described above or any other exemption that may be available under ERISA, the Code, or any similar law.

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**UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

The following discussion is a summary of the material U.S. federal income tax considerations relevant to the purchase, beneficial ownership and disposition of the debt securities, common stock and preferred stock offered by this prospectus. The material U.S. federal income tax consequences relevant to the purchase, beneficial ownership and disposition of warrants, purchase contracts and units offered by this prospectus will be provided in the applicable prospectus supplement. This summary is based on the Code, as amended, current or proposed Treasury regulations promulgated thereunder ( Treasury Regulations ), administrative pronouncements of the Internal Revenue Service ( IRS ) and judicial decisions, all as currently in effect and all of which are subject to change and to different interpretations. Changes to any of the foregoing authorities could apply on a retroactive basis, and could affect the U.S. federal income tax consequences described below. We will not seek a ruling from the IRS with respect to the matters discussed in this section and we cannot assure you that the IRS will not challenge one or more of the tax consequences described below.

This summary does not address all of the U.S. federal income tax considerations that may be relevant to a particular investor's circumstances, and does not discuss any aspect of U.S. federal tax law other than income taxation or any state, local or non-U.S. tax consequences of the purchase, ownership and disposition of the debt securities, common stock and preferred stock. This summary addresses only debt securities purchased at initial issuance and debt securities, shares of common and shares of preferred stock held as capital assets within the meaning of the Code (generally, property held for investment) and does not address U.S. federal income tax considerations applicable to investors that may be subject to special tax rules, such as:

securities dealers or brokers, or traders in securities electing mark-to-market treatment;

banks, thrifts, or other financial institutions;

insurance companies;

regulated investment companies or real estate investment trusts;

common trust funds;

tax-exempt organizations;

retirement plans;

persons holding our debt securities or shares, as applicable, as part of a straddle, hedge, synthetic security, constructive sale transaction or conversion transaction for U.S. federal income tax purposes, or as part of some other integrated investment;

partnerships or other pass-through entities;

persons subject to the alternative minimum tax;

certain former citizens or residents of the United States;

foreign corporations that are classified as passive foreign investment companies or controlled foreign corporations for U.S. federal income tax purposes; or

U.S. Holders (as defined below) whose functional currency is not the U.S. dollar.

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In addition, with respect to a particular offering of debt securities or shares of common or preferred stock, the discussion below must be read with the discussion of material U.S. federal income tax consequences that may appear in the applicable prospectus supplement for that offering. When we use the term holder in this section, we are referring to a beneficial holder of the debt securities, common stock or preferred stock.

As used herein, a U.S. Holder is a beneficial owner of debt securities or shares of common or preferred stock, as the case may be, that is, for U.S. federal income tax purposes, (i) an individual citizen or resident of the United States, (ii) a corporation (or any other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia, (iii) an estate whose income is subject to U.S. federal income tax regardless of its source, or (iv) a trust if (A) a United States court has the authority to exercise primary supervision over the administration of the trust and one or more U.S. persons (as defined under the Code) are authorized to control all substantial decisions of the trust or (B) it has a valid election in place to be treated as a U.S. person. An individual may, subject to certain exceptions, be deemed to be a resident of the United States by reason of being present in the United States for at least 31 days in the calendar year and for an aggregate of at least 183 days during a three-year period ending in the current calendar year (counting for such purposes all of the days present in the current year, one-third of the days present in the immediately preceding year and one-sixth of the days present in the second preceding year).

A Non-U.S. Holder is any beneficial owner of a debt security or shares of common or preferred stock, as the case may be, that, for U.S. federal income tax purposes, is not a U.S. Holder and that is not a partnership (or other entity treated as a partnership for U.S. federal income tax purposes).

If a partnership (or other entity treated as a partnership for U.S. federal income tax purposes) holds debt securities or shares of common or preferred stock, the U.S. federal income tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. A partnership holding debt securities or shares of common or preferred stock, and partners in such a partnership, should consult their own tax advisors with regard to the U.S. federal income tax consequences of the purchase, ownership and disposition of the debt securities or shares of common or preferred stock by the partnership.

THE DISCUSSION OF THE MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE DEBT SECURITIES, COMMON STOCK AND PREFERRED STOCK IS NOT INTENDED TO BE, NOR SHOULD IT BE CONSTRUED TO BE, LEGAL OR TAX ADVICE TO ANY PARTICULAR PERSON. ACCORDINGLY, ALL PROSPECTIVE INVESTORS ARE URGED TO CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE U.S. FEDERAL, STATE AND LOCAL AND NON-U.S. TAX CONSEQUENCES RELATING TO THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE DEBT SECURITIES, COMMON STOCK OR PREFERRED STOCK BASED ON THEIR PARTICULAR CIRCUMSTANCES.

**U.S. Federal Income Taxation of U.S. Holders**

***Debt Securities***

*Payments of Interest.* Except as set forth below, interest on debt securities generally will be taxable to a U.S. Holder as ordinary interest income from domestic sources at the time that such interest is paid or accrued in accordance with the U.S. Holder's regular method of accounting for U.S. federal income tax purposes.

*Original Issue Discount.* Special tax accounting rules apply to debt securities issued with original issue discount (OID) for U.S. federal income tax purposes (OID debt securities). In general, debt securities will be treated as issued

with OID if the issue price of the debt securities is less than their stated redemption price at maturity unless the amount of such difference is *de minimis* (less than 0.25% of the stated redemption price at

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maturity multiplied by the number of complete years to maturity). Regardless of the regular method of accounting used by a U.S. Holder for U.S. federal income tax purposes, OID generally must be accrued into gross income on a constant yield basis, in advance of the receipt of some or all of the cash attributable to such OID.

The issue price of debt securities will be the initial offering price to the public at which a substantial amount of the debt securities is sold for cash (ignoring sales to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The stated redemption price at maturity of debt securities is the sum of all payments to be made on the debt securities other than qualified stated interest payments. A qualified stated interest payment is stated interest that is unconditionally payable at least annually at a single fixed rate (appropriately taking into account the length of the interval between payments).

For OID debt securities having a term of more than one year, the amount of OID includible in gross income by a U.S. Holder of the OID debt securities is the sum of the daily portions of OID with respect to the OID debt securities for each day during the taxable year in which such U.S. Holder held the OID debt securities. The daily portion is determined by allocating to each day in any accrual period a pro rata portion of the OID allocable to such accrual period.

The amount of OID allocable to any accrual period is generally equal to the excess (if any) of (i) the product of the adjusted issue price of the OID debt securities at the beginning of such accrual period and the yield to maturity of the OID debt securities, as determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period, over (ii) the sum of any qualified stated interest payments allocable to the accrual period. For this purpose, accrual periods may be of any length and may vary in length over the term of the OID debt securities provided that each accrual period is no longer than one year and each scheduled payment of principal or interest occurs at the beginning or the end of an accrual period.

The adjusted issue price of OID debt securities at the start of any accrual period is generally equal to the issue price, increased by the accrued OID for each prior accrual period, and reduced by certain prior payments with respect to the OID debt securities that were not qualified stated interest payments.

Under the constant yield method for accruing OID, a U.S. Holder generally will have to include in gross income increasingly greater amounts of OID in successive accrual periods.

Debt securities may contain provisions allowing the debt securities to be redeemed prior to their stated maturity date at our option or at the option of holders. For purposes of determining yield and maturity, debt securities that may be redeemed prior to their stated maturity date at the option of the issuer generally will be treated from the time of issuance as having a maturity date for U.S. federal income tax purposes on such redemption date if such redemption would result in a lower yield to maturity. Conversely, debt securities that may be redeemed prior to their stated maturity date at the option of the holder generally will be treated from the time of issuance as having a maturity date for U.S. federal income tax purposes on such redemption date if such redemption would result in a higher yield to maturity. If the exercise of such an option does not occur, contrary to the assumptions made as of the issue date, then solely for purposes of the accrual of OID, the debt securities will be treated as reissued on the date of the change in circumstances for an amount equal to their adjusted issue price.

We are required to report to the IRS the amount of OID accrued in respect of OID debt securities held by persons other than exempt holders.

*Short-Term Debt Securities.* In the case of debt securities that have a fixed maturity of one year or less (short-term debt securities), all payments, including all payments of stated interest, will be included in the stated redemption price



at maturity. The short-term debt securities will be treated for U.S. federal income tax purposes as having been issued with OID in the amount of the difference between their issue price and stated

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redemption price at maturity. In general, U.S. Holders that use the accrual method of accounting for U.S. federal income tax purposes and certain other U.S. Holders are required to accrue OID in respect of short-term debt securities into gross income either on a ratable basis or, if a U.S. Holder so elects, on a constant yield basis using daily compounding. U.S. Holders that are individuals and certain other U.S. Holders that use the cash method of accounting for U.S. federal income tax purposes are not required to accrue OID on short-term debt securities in advance of the receipt of payment unless they elect to do so. If such a U.S. Holder does not elect to accrue OID on short-term debt securities into gross income, then gain subsequently recognized upon the sale, retirement or other disposition of the short-term debt securities generally will be treated as ordinary interest income to the extent of the OID that has accrued through the date of such disposition. Furthermore, a non-electing U.S. Holder of short-term debt securities may be required to defer deductions for a portion of the U.S. Holder's interest expense with respect to any indebtedness incurred or maintained to purchase or carry the short-term debt securities.

*Variable Rate Debt Securities.* Treasury regulations prescribe special rules for variable rate debt instruments that provide for the payment of interest based on certain floating or objective rates. In general, debt securities will qualify as variable rate debt instruments (variable rate debt securities) if (i) the issue price of the debt securities does not exceed the total non-contingent principal payments due in respect of the debt securities by more than an amount equal to the lesser of (A) 0.015 multiplied by the product of the total non-contingent principal payments and the number of complete years to maturity from the issue date or (B) 15% of the total non-contingent principal payments, and (ii) the debt securities provide for stated interest, paid or compounded at least annually, at current values of (A) one or more qualified floating rates, (B) a single fixed rate and one or more qualified floating rates, (C) a single objective rate, or (D) a single fixed rate and a single objective rate that is a qualified inverse floating rate. A current value of a rate is the value of the rate on any date that is no earlier than three months prior to the first day on which that value is in effect and no later than one year following that first day.

A qualified floating rate is any variable rate where variations in the value of such rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds in the currency in which the variable rate debt securities are denominated. Although a multiple of a qualified floating rate generally will not itself constitute a qualified floating rate, a variable rate equal to the product of a qualified floating rate and a fixed multiple that is greater than 0.65 but not more than 1.35 can constitute a qualified floating rate. A variable rate equal to the product of a qualified floating rate and a fixed multiple that is greater than 0.65 but not more than 1.35, increased or decreased by a fixed rate, will also constitute a qualified floating rate. In addition, two or more qualified floating rates that can reasonably be expected to have approximately the same values throughout the term of the variable rate debt securities (e.g., two or more qualified floating rates with values within 25 basis points of each other as determined on the issue date) will be treated as a single qualified floating rate. Notwithstanding the foregoing, a variable rate that would otherwise constitute a qualified floating rate but which is subject to one or more restrictions such as a maximum stated interest rate (i.e., a cap), a minimum stated interest rate (i.e., a floor) or a restriction on the amount of increase or decrease in the stated interest (i.e., a governor) may, under certain circumstances, fail to be treated as a qualified floating rate unless such restrictions are fixed throughout the term of the variable rate debt securities or are reasonably expected to not have a significant effect on the yield of the variable rate debt securities.

An objective rate is a rate that is not itself a qualified floating rate but which is determined using a single fixed formula and that is based on objective financial or economic information. A rate will not qualify as an objective rate if it is based on information that is within the control of the issuer (or a related party) or that is unique to the circumstances of the issuer (or a related party), such as dividends, profits, or the value of the issuer's stock (although a rate does not fail to be an objective rate merely because it is based on the credit quality of the issuer). An objective rate is a qualified inverse floating rate if the rate is equal to a fixed rate minus a qualified floating rate, as long as variations in the rate can reasonably be expected to inversely reflect contemporaneous variations in the qualified floating rate. If debt securities provide for stated interest at a fixed rate for an initial period of one year or less

followed by a variable rate that is either a qualified floating rate or an

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objective rate and if the variable rate on the issue date is intended to approximate the fixed rate (*e.g.*, the value of the variable rate on the issue date does not differ from the value of the fixed rate by more than 0.25%), then the fixed rate and the variable rate together will constitute either a single qualified floating rate or objective rate, as the case may be.

If variable rate debt securities provide for stated interest at either a single qualified floating rate or a single objective rate throughout their term, and such interest is unconditionally payable in cash or property (other than debt instruments of the issuer) at least annually, then all stated interest on such variable rate debt securities will constitute qualified stated interest that is included in gross income by U.S. Holders as received or accrued in accordance with their regular methods of accounting for U.S. federal income tax purposes. Thus, such variable rate debt securities generally will not be treated as having been issued with OID unless the variable rate securities are sold at a discount from their stated principal amount, subject to a *de minimis* exception. In general, the amount of qualified stated interest and OID, if any, that accrues during an accrual period on such variable rate debt securities is determined under the rules described above by assuming that the variable rate is a fixed rate equal to (i) in the case of a qualified floating rate or qualified inverse floating rate, the value as of the issue date of the qualified floating rate or qualified inverse floating rate, or (ii) in the case of an objective rate (other than a qualified inverse floating rate), a fixed rate that reflects the yield that is reasonably expected for the variable rate debt securities. The qualified stated interest allocable to an accrual period is increased (or decreased) if the interest actually paid during an accrual period exceeds (or is less than) the interest that was accrued under the foregoing approach.

For other variable rate debt securities, the timing and amount of OID and qualified stated interest will be determined by converting the variable rate debt securities into equivalent fixed rate debt instruments. The conversion of the variable rate debt securities into equivalent fixed rate debt instruments generally involves substituting for any qualified floating rate or qualified inverse floating rate a fixed rate equal to the value of the qualified floating rate or qualified inverse floating rate, as the case may be, as of the issue date, or substituting for any objective rate (other than a qualified inverse floating rate) a fixed rate that reflects the yield that is reasonably expected for the variable rate debt securities. In the case of variable rate debt securities that provide for stated interest at a fixed rate in addition to either one or more qualified floating rates or a qualified inverse floating rate, the fixed rate is initially converted into a qualified floating rate (or a qualified inverse floating rate, if the variable rate debt securities provide for a qualified inverse floating rate). Under such circumstances, the qualified floating rate or qualified inverse floating rate that replaces the fixed rate must be such that the fair market value of the variable rate debt securities as of their issue date is approximately the same as the fair market value of an otherwise identical debt instrument that provides for either the qualified floating rate or qualified inverse floating rate rather than the fixed rate. Subsequent to converting the fixed rate into either a qualified floating rate or a qualified inverse rate, the variable rate debt securities are then converted into equivalent fixed rate debt instruments in the manner described above.

Once the variable rate debt securities are converted into equivalent fixed rate debt instruments pursuant to the foregoing rules, the timing and amount of OID and qualified stated interest, if any, are determined for the equivalent fixed rate debt instruments by applying the general OID rules to the equivalent fixed rate debt instruments. A U.S. Holder of such variable rate debt securities will account for OID and qualified stated interest as if the U.S. Holder held the equivalent fixed rate debt instruments. For each accrual period, appropriate adjustments will be made to the amount of qualified stated interest or OID assumed to have been accrued or paid with respect to the equivalent fixed rate debt instruments in the event that such amounts differ from the actual amount of interest accrued or paid on the variable rate debt securities during the accrual period.

*Contingent Payment Debt Securities.* If debt securities provide for variable rates of interest or other contingent payments but fail to qualify as variable rate debt securities under the rules described above, then the debt securities may become subject to the Treasury regulations governing contingent payment debt instruments (contingent payment debt securities). Under these Treasury regulations, a U.S. Holder of contingent payment debt securities generally

would be required to accrue interest income each taxable year based upon a comparable yield for a hypothetical fixed rate debt instrument with no contingent payments but with terms and

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conditions otherwise similar to the contingent payment debt securities, but in any event not less than the applicable Federal rate (based on the overall maturity of the debt securities). We would be required to determine the comparable yield and prepare, solely for U.S. federal income tax purposes, a projected payment schedule that includes all non-contingent payments and estimates of the amount and timing of all contingent payments on the debt securities.

If the actual contingent payments made on the contingent payment debt securities in a taxable year differ from the projected contingent payments set forth on the projected payment schedule, adjustments will be made for such differences. A net positive adjustment for the amount by which actual contingent payments during the taxable year exceed the projected contingent payments for such taxable year will be treated as additional interest income. A net negative adjustment for the amount by which actual contingent payments during the taxable year are less than the projected contingent payments for such taxable year (i) first, will reduce the amount of interest required to be accrued in the current taxable year, (ii) second, any negative adjustments that exceed the amount of interest accrued in the current year will be treated as ordinary loss to the extent that the total interest inclusions previously accrued in respect of the contingent payment debt securities exceed the total amount of net negative adjustments treated as ordinary loss in prior taxable years, and (iii) third, any excess adjustments will be treated as a regular negative adjustment in the succeeding taxable year.

Upon the sale, retirement or other disposition of contingent payment debt securities, any gain recognized by a U.S. Holder would be treated as ordinary income. Any loss arising in such a disposition would be treated as an ordinary loss to the extent that the holder's total interest inclusions exceed the total amount of net negative adjustments treated as ordinary loss. The balance of such loss generally would constitute a capital loss.

The U.S. federal income tax treatment of any debt securities that will be treated as contingent payment debt securities subject to these Treasury regulations will be more fully described in the applicable prospectus supplement. The rules regarding contingent payment debt securities are complex. U.S. Holders should carefully examine the applicable prospectus supplement for any such debt securities and should consult their own tax advisors regarding the U.S. federal income tax consequences of the ownership and disposition of such debt securities before deciding to purchase such debt securities.

*Market Discount.* If a U.S. Holder purchases debt securities (other than debt securities purchased at original issue at or above the issue price and other than short-term debt securities) for an amount that is less than their stated redemption price at maturity or, in the case of OID debt securities, their revised issue price, the amount of the difference will be treated as market discount for U.S. federal income tax purposes, unless that difference is less than a specified *de minimis* amount. Under the market discount rules, a U.S. Holder generally will be required to treat any payments received in respect of the debt securities, other than payments of qualified stated interest, and any gain derived from the sale, retirement or other disposition of the debt securities, as ordinary income to the extent of the market discount that has accrued on the debt securities (on a ratable basis or, at the election of the U.S. Holder, a constant yield basis) but has not previously been included in gross income by the U.S. Holder. In addition, a U.S. Holder may be required to defer until the maturity of the debt securities, or their earlier disposition in a taxable transaction, the deduction of all or a portion of any interest expense incurred on indebtedness incurred to purchase or carry such debt securities.

A U.S. Holder may elect to currently include market discount in gross income as it accrues, under either a ratable or constant yield method, in which case the rules described above regarding characterization of payments and gain as ordinary income and the deferral of interest deductions will not apply. An election to currently include market discount in gross income, once made, applies to all market discount obligations acquired by the U.S. Holder on or after the first taxable year to which the election applies and may not be revoked without the consent of the IRS. Prospective investors should consult their own tax advisors before making this election.

*Acquisition Premium.* If a U.S. Holder acquires OID debt securities for an amount greater than their adjusted issue price but less than the sum of all amounts (other than qualified stated interest) payable with respect

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to the OID debt securities after the date of acquisition, the OID debt securities will be treated as acquired at an acquisition premium. For OID debt securities acquired with acquisition premium, the amount of OID that the U.S. Holder must include in gross income with respect to the OID debt securities for any taxable year will be reduced by the portion of acquisition premium properly allocable to such taxable year.

*Amortizable Bond Premium.* If a U.S. Holder purchases debt securities for an amount in excess of the sum of all amounts payable on the debt securities after the purchase date other than payments of qualified stated interest, the U.S. Holder will be considered to have purchased the debt securities at a premium for U.S. federal income tax purposes. In such case, the U.S. Holder generally may elect to amortize the premium over the remaining term of the debt securities, on a constant yield method, as an offset to interest includible in gross income with respect to the debt securities, and the U.S. Holder would not be required to include OID, if any, in gross income in respect of the debt securities. In the case of debt securities that provide for alternative payment schedules, the amount of premium generally is determined by assuming that a holder will exercise or not exercise options in a manner that maximizes the holder's yield, and that the issuer will exercise or not exercise options in a manner that minimizes the holder's yield. Any election to amortize premium would apply to all debt securities (other than debt securities the interest on which is excludable from gross income) held or subsequently acquired by a U.S. Holder on or after the first day of the first taxable year to which the election applies and is irrevocable without the consent of the IRS. Prospective investors should consult their own tax advisors before making this election.

*Election to Treat All Interest as OID.* U.S. Holders may elect to treat all interest in respect of debt securities as OID and to calculate the amount includible in gross income for any taxable year under the constant yield method described above. For purposes of this election, interest includes stated interest, acquisition discount (the difference between an instrument's stated redemption price at maturity and a holder's basis), OID, *de minimis* OID, market discount, *de minimis* market discount, and unstated interest, as adjusted by any amortizable bond premium or acquisition premium. If a U.S. Holder makes this election for debt securities with amortizable bond premium, the election is treated as an election under the amortizable bond premium rules described above and the electing U.S. Holder will be required to amortize bond premium for all other debt instruments with amortizable bond premium held or subsequently acquired by the U.S. Holder. The election to treat all interest as OID must be made for the taxable year in which the U.S. Holder acquires the debt securities, and the election may not be revoked without the consent of the IRS. Prospective investors should consult their own tax advisors before making this election.

*Sale, Retirement or Other Taxable Disposition of Debt Securities.* Upon the sale, retirement or other taxable disposition of debt securities, a U.S. Holder generally will recognize U.S. source gain or loss equal to the difference between the amount realized upon the sale, retirement or other taxable disposition (other than amounts representing accrued and unpaid qualified stated interest, which will be taxable as ordinary interest income to the extent not previously included in gross income) and the U.S. Holder's adjusted tax basis of the debt securities. In general, the U.S. Holder's adjusted tax basis of the debt securities will equal the U.S. Holder's cost for the debt securities, increased by all accrued OID or market discount previously included in gross income and reduced by any amortized premium and certain cash payments previously received in respect of the debt securities other than qualified stated interest payments. Except as described above with respect to certain short-term debt securities, contingent payment debt securities and debt securities acquired at a market discount, and except with respect to gain or loss attributable to changes in exchange rates (as discussed below), such gain or loss generally will be capital gain or loss and will be long-term capital gain or loss if at the time of sale, retirement or other taxable disposition the debt securities have been held for more than one year. Under current U.S. federal income tax law, certain non-corporate U.S. Holders, including individuals, are eligible for preferential rates of U.S. federal income taxation in respect of long-term capital gains. The deductibility of capital losses is subject to limitations under the Code.



*Foreign Currency Debt Securities.* In the case of debt securities denominated in a foreign currency (foreign currency debt securities), U.S. Holders will need to calculate and convert income into U.S. dollar

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values, and may be required to account for gain or loss in respect of exchange rate fluctuations, in accordance with special rules. In general, if an interest payment is made in a foreign currency to a cash-method U.S. Holder, the U.S. Holder will be required to include in gross income the U.S. dollar value of the interest payment, determined by translating the interest payment at the spot rate in effect for the foreign currency on the date that payment is received, regardless of whether the payment in fact is converted into U.S. dollars at that time. The U.S. Holder will not recognize any exchange gain or loss with respect to the receipt of the interest payment.

An accrual-method U.S. Holder will be required to include in gross income for each taxable year the U.S. dollar value of the interest that has accrued during such year, determined by translating interest at the average rate of exchange for the period or periods during which interest accrued. Upon receipt of an interest payment on the foreign currency debt securities (or the receipt of payment of sale or other disposition proceeds attributable to unpaid interest that was previously accrued into gross income), such a U.S. Holder will recognize exchange gain or loss in an amount equal to the difference between the U.S. dollar value of the payment, determined by translating the foreign currency received at the spot rate in effect of such foreign currency on the date received, and the U.S. dollar value of the interest income that the U.S. Holder has previously included in gross income with respect to the payment. Any exchange gain or loss generally will be treated as ordinary income or loss, but will not be treated as interest income or expense, except to the extent provided in Treasury regulations or administrative pronouncements of the IRS.

For purposes of translating interest accruals under the foregoing rules, the average rate of exchange for an interest accrual period generally is the simple average of the exchange rates in effect for each business day of the application period (or another average that is reasonably derived and consistently applied by the U.S. Holder). A U.S. Holder may elect, however, to translate interest accruals at the spot rate in effect on the last day of the accrual period (or last day of the taxable year in the case of an accrual period that straddles the U.S. Holder's taxable year), or on the date that the interest payment is received if that date is within five business days of the end of the accrual period. The election would apply to all foreign currency debt securities held or subsequently acquired by the U.S. Holder on or after the first day of the first taxable year to which the election applies and is irrevocable without the consent of the IRS.

The amount of OID on foreign currency debt securities will be determined for any accrual period in the applicable foreign currency and then translated into U.S. dollars in the same manner as interest income accrued by a U.S. Holder using the accrual method of accounting for U.S. federal income tax purposes, as described above. Likewise, a U.S. Holder will recognize exchange gain or loss when payments attributable to the OID are made to the extent of the difference between the U.S. dollar value of the accrued OID (determined in the same manner as for accrued interest) and the U.S. dollar value of the payment (determined by translating any foreign currency received at the spot rate for the foreign currency on the date of payment). For this purpose, all receipts on foreign currency debt securities will be viewed (i) first, as the receipt of any periodic interest payments provided under the terms of the foreign currency debt securities, (ii) second, as the receipt of previously accrued OID (to the extent of such OID), with payments considered made beginning with the earliest accrual periods, and (iii) thereafter, as the receipt of principal.

If a U.S. Holder purchases foreign currency debt securities with previously-owned foreign currency, then the initial tax basis of the foreign currency debt securities will be the U.S. dollar value of the foreign currency paid, determined at the time of purchase. In the case of foreign currency debt securities that are traded on an established securities market, a cash-method U.S. Holder (or an accrual-method U.S. Holder that so elects) will determine the U.S. dollar value of the cost of the foreign currency debt securities by translating the amount paid at the spot rate in effect on the settlement date of the purchase. A U.S. Holder who purchases foreign currency debt securities with previously owned foreign currency will recognize exchange gain or loss at the time of purchase attributable to the difference at the time of purchase, if any, between the U.S. Holder's adjusted tax basis in the foreign currency and the fair market value of the foreign currency debt securities, in U.S. dollars, on the date of purchase. The exchange gain or loss will be ordinary income or loss.



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When determining the amount of any gain or loss recognized by a U.S. Holder on the sale, retirement or other taxable disposition of foreign currency debt securities, the amount realized will be the U.S. dollar value of the amount realized in the foreign currency (other than amounts attributable to accrued but unpaid interest, which generally will be treated as a payment of interest), determined at the time of the sale, retirement or other taxable disposition and in accordance with the U.S. Holder's applicable method of accounting for U.S. federal income tax purposes. In the case of foreign currency debt securities that are denominated in a foreign currency and traded on an established securities market, a cash basis U.S. Holder (or an accrual basis U.S. Holder that so elects) will determine the U.S. dollar value of the amount realized by translating at the spot rate in effect on the settlement date of the sale. A U.S. Holder will recognize exchange gain or loss attributable to the movement in exchange rates between the time of purchase and disposition of foreign currency debt securities. Such gain or loss generally will be treated as ordinary income or loss from U.S. sources. The amount of exchange gain or loss will be limited to the amount of overall gain or loss realized on the sale, retirement or other taxable disposition of the foreign currency debt securities.

A U.S. Holder's tax basis in foreign currency received as interest on foreign currency debt securities will be the U.S. dollar value of the interest payment at the spot rate in effect on the date that the foreign currency is received. The tax basis in foreign currency received on the sale, retirement or other taxable disposition of foreign currency debt securities will be equal to the U.S. dollar value of the foreign currency, determined at the time of the sale, retirement or other taxable disposition in the manner described above. Any gain or loss recognized by a U.S. Holder on a taxable disposition of the foreign currency will be ordinary income or loss, but will not be treated as interest income or expense, except to the extent provided in Treasury regulations or administrative pronouncements of the IRS.

Special rules apply to foreign currency debt securities that are denominated in one of certain hyperinflationary currencies, denominated in multiple currencies, and contingent payment debt securities denominated in a foreign currency. Prospective investors should carefully examine the applicable prospectus supplement for any such debt securities and should consult their own tax advisors regarding the U.S. federal income tax consequences of the ownership and disposition of such debt securities before deciding to purchase such debt securities.

*Reportable Transactions.* Applicable Treasury regulations require taxpayers that participate in reportable transactions to disclose their participation to the IRS by attaching Form 8886 to their U.S. federal tax returns and to retain a copy of all documents and records related to the transaction. In addition, material advisors with respect to such a transaction are required to file returns and maintain records, including lists identifying investors in the transactions, and to furnish those records to the IRS upon demand. A transaction may be a reportable transaction based on any of several criteria, one or more of which may be present with respect to an investment in the debt securities. Whether an investment in the debt securities constitutes a reportable transaction for any investor depends on that investor's particular circumstances. The regulations provide that, in addition to certain other transactions, a loss transaction constitutes a reportable transaction. A loss transaction is any transaction resulting in the taxpayer claiming a loss under Section 165 of the Code in an amount equal to or in excess of certain threshold amounts. The regulations specifically provide that a loss resulting from a Section 988 transaction (which includes a transaction payable in a foreign currency) will constitute a Section 165 loss. Therefore, losses realized with respect to foreign currency debt securities may constitute a Section 988 transaction, and a holder of such debt securities that recognizes exchange loss in an amount that exceeds the loss threshold amount applicable to that holder may be required to file Form 8886. U.S. Holders should consult their own tax advisors concerning any possible disclosure obligation they may have with respect to their investment in foreign currency debt securities and should be aware that, should any material advisor determine that the return filing or investor list maintenance requirements apply to an offering of such debt securities, they would be required to comply with these requirements.



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**Table of Contents*****Common Stock and Preferred Stock***

*Distributions.* A distribution paid by us in respect of common or preferred stock will constitute a dividend for U.S. federal income tax purposes to the extent the distribution is paid out of our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. The gross amount of any such dividend to a U.S. Holder will be included in the gross income of the U.S. Holder, as ordinary dividend income from U.S. sources. In general, distributions in excess of our current or accumulated earnings and profits will not be taxable to a U.S. Holder to the extent that such distributions to the U.S. Holder do not exceed the U.S. Holder's adjusted tax basis in the shares of common or preferred stock with respect to which the distribution is paid, but rather will reduce the U.S. Holder's adjusted tax basis in such common or preferred stock (but not below zero). To the extent that distributions exceed our current and accumulated earnings and profits as well as the U.S. Holder's adjusted tax basis in the common or preferred stock, such distributions generally will be taxable as capital gain realized in respect of the common or preferred stock.

Under current U.S. federal income tax law, dividends paid to certain non-corporate U.S. Holders, including individuals, generally will constitute qualified dividend income eligible for preferential rates of U.S. federal income tax, provided certain conditions and requirements are satisfied, such as minimum holding period requirements. U.S. Holders that are corporations may be eligible for a partial dividends-received deduction with respect to dividend distributions that are paid in respect of common or preferred stock, subject to certain conditions and requirements, such as minimum holding period requirements. There can be no assurance that we will have sufficient current or accumulated earnings and profits for distributions in respect of common or preferred stock to qualify as dividends for U.S. federal income tax purposes.

U.S. Holders should be aware that dividends exceeding certain thresholds in relation to such U.S. Holders' tax basis in the common or preferred stock could be characterized as "extraordinary dividends" (as defined in Section 1059 of the Code). Generally, a corporate U.S. Holder that receives an extraordinary dividend is required to reduce its tax basis in the common or preferred stock by the portion of such dividend that is not taxed because of the dividends received deduction, and is required to recognize taxable gain to the extent such portion of the dividend exceeds the U.S. Holder's tax basis in the common or preferred stock. U.S. Holders who are individuals and who receive an "extraordinary dividend" would be required to treat any losses on the sale of the common or preferred stock as long-term capital losses to the extent that the dividends received by them qualified for the reduced tax rate on qualified dividend income, as described above. Prospective investors in common or preferred stock should consult their own tax advisors with respect to the potential application of the "extraordinary dividend" rules to an investment in the common or preferred stock.

*Sale or Other Taxable Dispositions of Common or Preferred Stock.* In general, a U.S. Holder will recognize capital gain or loss upon the sale or other taxable disposition of common or preferred stock in an amount equal to the difference between the sum of the fair market value of any property and the amount of cash received in such disposition and such U.S. Holder's adjusted tax basis in the common or preferred stock at the time of the disposition. Any such capital gain will be long-term capital gain if the common or preferred stock has been held by the U.S. Holder for more than one year. Under current U.S. federal income tax law, certain non-corporate U.S. Holders (including individuals) are eligible for preferential rates of U.S. federal income tax on long-term capital gains. The ability to utilize capital losses is subject to limitations under the Code.

*Redemptions of Common Stock or Preferred Stock.* A redemption of shares of common or preferred stock generally will be treated under Section 302 of the Code as a distribution unless the redemption satisfies one of the tests set forth in Section 302(b) of the Code and is therefore treated as a sale or exchange of the common or preferred stock that is redeemed. If a redemption of shares of common or preferred stock is treated as a sale or exchange, the redemption will

be taxable as described under Sale or Other Taxable Dispositions of Common or Preferred Stock above, except that an amount received in respect of declared but unpaid dividends generally will be taxable as a dividend if we have sufficient current or accumulated earnings and profits, as described above under Distributions.

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A redemption will be treated as a sale or exchange if it (i) results in a complete termination of a U.S. Holder's interest in us, (ii) is substantially disproportionate with respect to a U.S. Holder, or (iii) is not essentially equivalent to a dividend with respect to a U.S. Holder, all within the meaning of Section 302(b) of the Code. In determining whether any of these tests has been met, shares of common or preferred stock deemed owned by a U.S. Holder by reason of certain constructive ownership rules, as well as shares actually owned by such U.S. Holder, must be taken into account. A redemption of shares of common and preferred stock held by a U.S. Holder generally will qualify for sale or exchange treatment if the U.S. Holder does not own (actually or constructively) any shares of any classes of our common or preferred stock following the redemption, or if the U.S. Holder owns (actually or constructively) only an insubstantial percentage of our common or preferred stock, the redemption has the effect of decreasing such ownership percentage and the U.S. Holder does not participate in our control or management. However, the determination as to whether any of the tests of Section 302(b) of the Code will be satisfied with respect to any particular U.S. Holder depends upon the facts and circumstances at the time of the redemption.

If a redemption of shares of common or preferred stock is treated as a distribution, the entire amount received will be taxable as described under the caption "Distributions" above. U.S. Holders should consult their tax advisors regarding the effect of such transaction on the tax basis of any remaining shares of common or preferred stock held by such holder immediately after the redemption.

Prospective investors should consult their own tax advisors for purposes of determining the tax consequences resulting from redemption of shares of common or preferred stock in their particular circumstances.

*Terms of Preferred Stock.* The U.S. federal income tax consequences of the purchase, ownership or disposition of preferred stock will depend on a number of factors, including the specific terms of the preferred stock (such as any put or call option or redemption provisions, any conversion or exchange features and the price at which the preferred stock is sold). Prospective investors should carefully examine the applicable prospectus supplement and should consult their own tax advisors, regarding the material U.S. federal income tax consequences, if any, of the ownership and disposition of preferred stock based upon their particular circumstances and the terms of the preferred stock.

***Medicare Tax***

A U.S. Holder that is an individual or estate, or a trust that does not fall into a special class of trusts that is exempt from such tax, will be subject to a 3.8% tax on the lesser of (1) the U.S. Holder's net investment income for the relevant taxable year and (2) the excess of the U.S. Holder's modified adjusted gross income for the taxable year over a certain threshold. A U.S. Holder's net investment income will generally include its interest and dividend income and net gain from the disposition of the debt securities and common and preferred stock, unless such income and net gain is derived in the ordinary course of the conduct of a trade or business (other than a trade or business that consists of certain passive or trading activities). Net investment income may, however, be reduced by properly allocable deductions to such income. U.S. Holders that are individuals, estates or trusts are urged to consult their tax advisors regarding the applicability of the Medicare tax to their income and gains from the debt securities, common stock and preferred stock.

**U.S. Federal Income Taxation of Non-U.S. Holders*****Debt Securities***

*Payments of Interest (including OID).* Subject to the discussion below concerning backup withholding and the Foreign Account Tax Compliance Act (FATCA), payments of interest (including OID, if any) on the debt securities by us or our paying agent to any Non-U.S. Holder will be exempt from U.S. federal income tax (including withholding tax),



provided that:

the Non-U.S. Holder does not own, actually or constructively, 10% or more of the total combined voting power of all classes of our stock entitled to vote;

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the Non-U.S. Holder is not a controlled foreign corporation related, directly or indirectly, to us through stock ownership or a bank receiving interest described in Section 881(c)(3)(A) of the Code;

the interest is not effectively connected with the conduct by the Non-U.S. Holder of a trade or business within the United States (or, if a tax treaty applies, is not attributable to a permanent establishment maintained by the Non-U.S. Holder in the United States);

the interest is not considered contingent interest under Section 871(h)(4)(A) of the Code and the Treasury regulations thereunder; and

the certification requirement has been fulfilled with respect to the beneficial owner, as discussed below.

The certification requirement referred to above will be fulfilled if (i) the beneficial owner of the debt securities certifies on IRS Form W-8BEN or W-8BEN-E or other successor form, under penalties of perjury, that such beneficial owner is not a U.S. person and provides its name and address, and (ii) the beneficial owner files IRS Form W-8BEN or W-8BEN-E or other successor form with the paying agent, or in the case of debt securities held on behalf of the beneficial owner by a securities clearing organization, bank, or other financial institution holding customers' securities in the ordinary course of its trade or business, such financial institution files with the paying agent a statement that it has received the IRS Form W-8BEN or W-8BEN-E or other successor form from the beneficial owner and furnishes the paying agent with a copy. With respect to debt securities held by a foreign partnership, unless the foreign partnership has entered into a withholding agreement with the IRS, the foreign partnership generally will be required to provide an IRS Form W-8IMY or other successor form and to associate with such form an appropriate certification or other appropriate documentation from each partner. Prospective investors, including foreign partnerships and their partners, should consult their tax advisors regarding additional reporting possible requirements.

If the requirements are not satisfied, a 30% withholding tax will apply to the gross amount of interest (including OID, if any) on the debt securities that is paid to a Non-U.S. Holder, unless either: (a) an applicable income tax treaty reduces or eliminates such tax, and the Non-U.S. Holder claims the benefit of that treaty by providing a properly completed and duly executed IRS Form W-8BEN or W-8BEN-E or other successor form establishing qualification for benefits under the treaty, or (b) interest (including OID, if any) on the debt securities is effectively connected with the Non-U.S. Holder's conduct of a trade or business in the United States and the Non-U.S. Holder provides an appropriate statement to that effect on a properly completed and duly executed IRS Form W-8ECI, W-8BEN or W-8BEN-E, as applicable, or other successor form. If a Non-U.S. Holder of debt securities is engaged in the conduct of a trade or business in the United States, and interest (including OID, if any) on the debt securities is effectively connected with the conduct of such trade or business (and, if required by an applicable tax treaty, is attributable to a permanent establishment maintained by the Non-U.S. Holder in the United States), the Non-U.S. Holder, although exempt from the withholding tax discussed in the preceding sentence, will be subject to regular U.S. federal income tax on its effectively connected income, generally in the same manner as a U.S. Holder (or in a manner specified by an applicable income tax treaty). See U.S. Federal Income Taxation of U.S. Holders above. In addition, a Non-U.S. Holder that is a foreign corporation may be subject to a 30% branch profits tax (unless reduced or eliminated by an applicable tax treaty) on its earnings and profits for the taxable year attributable to its effectively connected income, subject to certain adjustments.

***Sale, Retirement, or Other Taxable Disposition of Debt Securities.***

A Non-U.S. Holder generally will not be subject to U.S. federal income tax on gain realized on the sale, retirement or other taxable disposition of the debt securities, unless:

the Non-U.S. Holder is an individual who is present in the U.S. for 183 days or more in the taxable year of the disposition and certain other conditions are met; or

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the gain is effectively connected with the Non-U.S. Holder's conduct of a trade or business in the United States (and, if required by an applicable tax treaty, is attributable to a permanent establishment maintained by the Non-U.S. Holder in the United States).

If the first exception applies, the Non-U.S. Holder generally will be subject to U.S. federal income tax at a rate of 30% on the amount by which its U.S.-source capital gains exceed its U.S.-source capital losses. If the second exception applies, the non-U.S. holder will generally be subject to U.S. federal income tax on the net gain derived from the sale or other disposition of the debt securities in the same manner as a U.S. Holder. See U.S. Federal Income Taxation of U.S. Holders above. In addition, a Non-U.S. Holder that is a foreign corporation may be subject to a 30% branch profits tax (unless reduced or eliminated by an applicable tax treaty) on its earnings and profits for the taxable year attributable to its effectively connected income, subject to certain adjustments.

***Common Stock and Preferred Stock***

*Distributions.* Except as described below, dividends paid to a Non-U.S. Holder in respect of common or preferred stock generally will be subject to U.S. federal withholding tax at a 30% rate, or such lower rate as may be specified by an applicable tax treaty. In order to claim the benefits of an applicable tax treaty, a Non-U.S. Holder will be required to satisfy applicable certification (for example, IRS Form W-8BEN or W-8BEN-E or other applicable or successor form) and other requirements prior to the distribution date. Non-U.S. Holders should consult their own tax advisors regarding their entitlement to benefits under an applicable income tax treaty and the requirements for claiming any such benefits.

Dividends paid to a Non-U.S. Holder that are effectively connected with its conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, are attributable to a permanent establishment maintained by the Non-U.S. Holder in the United States) generally are exempt from the 30% U.S. federal withholding tax. Instead, any such dividends generally will be subject to U.S. federal income tax in the same manner as if the Non-U.S. Holder were a U.S. Holder, as described above. See U.S. Federal Income Taxation of U.S. Holders above. Non-U.S. Holders will be required to comply with certification (for example, IRS Form W-8ECI or other applicable or successor form) and other requirements in order for effectively connected income to be exempt from the 30% U.S. federal withholding tax. A corporate Non-U.S. Holder also may be subject to an additional branch profits tax at a 30% rate (or such lower rate as may be specified by an applicable tax treaty) with respect to any effectively connected dividends, subject to certain adjustments.

*Sale or Other Taxable Disposition of Common or Preferred Stock.* A Non-U.S. Holder generally will be subject to U.S. federal income tax on gain recognized on a sale or other taxable disposition of common or preferred stock under the same principles discussed in Sale, Retirement, or Other Taxable Disposition of Debt Securities above as long as we are not and have not been a United States real property holding corporation for U.S. federal income tax purposes at any time during the five year period (or shorter period in some situations) ending on the date of the disposition. We have not been, are not and do not anticipate becoming a United States real property holding corporation for U.S. federal income tax purposes.

As discussed above under U.S. Federal Income Taxation of U.S. Holders Common Stock and Preferred Stock Redemptions of Common Stock or Preferred Stock, the proceeds received from a redemption of shares of common or preferred stock may be treated as a distribution in certain circumstances, in which case, the discussion above under Distributions would be applicable.

*Terms of Preferred Stock.* The U.S. federal income tax consequences of the purchase, ownership or disposition of preferred stock will depend on a number of factors, including the specific terms of the preferred stock (such as any put or call option or redemption provisions, any conversion or exchange features and the price at which the preferred

stock is sold). Prospective investors should carefully examine the applicable prospectus supplement and should consult their own tax advisors, regarding the material U.S. federal income tax consequences, if any, of the ownership and disposition of preferred stock based upon their particular circumstances and the terms of the preferred stock.

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**Table of Contents****Backup Withholding and Information Reporting**

*U.S. Holders.* In general, a U.S. Holder (other than exempt holders) will be subject to information reporting requirements with respect to (i) payments of principal, premium (if any), and interest (including OID) paid in respect of, and the proceeds from a sale, redemption or other disposition of the debt securities, and (ii) dividends and other taxable distributions paid in respect of, and the proceeds from a sale, redemption or other disposition of, the common or preferred stock. In addition, such a U.S. Holder may be subject to backup withholding on such payments if the U.S. Holder (i) fails to provide an accurate taxpayer identification number to the payor; (ii) has been notified by the IRS of a failure to report all interest or dividends required to be shown on its U.S. federal income tax returns; or (iii) in certain circumstances, fails to comply with applicable certification requirements.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a U.S. Holder's U.S. federal income tax liability provided the required information is furnished to the IRS on a timely basis. U.S. Holders should consult their tax advisors regarding the application of information reporting and backup withholding rules in their particular situations, the availability of an exemption therefrom, and the procedure for obtaining such an exemption, if applicable.

*Non-U.S. Holders.* In general, we or our paying agent must report to the IRS and to a Non-U.S. Holder the amount of interest (including OID, if any) on the debt securities, and dividends on the common or preferred stock, paid to the Non-U.S. Holder and the amount of U.S. federal withholding tax, if any, deducted from those payments. Copies of the information returns reporting such interest and dividend payments and any associated U.S. federal withholding tax also may be made available to the tax authorities in the country in which the Non-U.S. Holder resides under the provisions of an applicable tax treaty. A Non-U.S. Holder generally will not be subject to backup withholding with respect to payments that we make on the debt securities or shares of common or preferred stock provided that we or our paying agent does not have actual knowledge or reason to know that the Non-U.S. Holder is a U.S. person (as defined under the Code), and we or our paying agent has received from the Non-U.S. Holder an appropriate certification of non-U.S. status (*i.e.*, IRS Form W-8BEN or W-8BEN-E or other applicable or successor Form W-8). Information reporting and, depending on the circumstances, backup withholding will apply to the payment of the proceeds of a sale of debt securities or shares of common or preferred stock, as the case may be, that is effected within the United States or effected outside the United States through certain U.S.-related financial intermediaries, unless the Non-U.S. Holder certifies under penalty of perjury as to its non-U.S. status, and the payor does not have actual knowledge or reason to know that the beneficial owner is a U.S. person, or the Non-U.S. Holder otherwise establishes an exemption.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a Non-U.S. Holder's U.S. federal income tax liability provided the required information is furnished to the IRS on a timely basis. Non-U.S. Holders of debt securities should consult their tax advisors regarding the application of information reporting and backup withholding in their particular situations, the availability of an exemption therefrom, and the procedure for obtaining an exemption, if applicable.

**Legislation Affecting the Taxation of Debt Securities, Common Stock and Preferred Stock Held by or through Foreign Entities**

FATCA, contained in Sections 1471 through 1474 of the Code, imposes a 30% withholding tax on withholdable payments (as defined below) made to a foreign financial institution, unless such institution enters into an agreement with the Treasury to, among other things, collect and provide to it substantial information regarding such institution's United States financial account holders, including certain account holders that are foreign entities with United States owners. The legislation also generally imposes a 30% withholding tax on withholdable payments to a non-financial

foreign entity unless such entity provides the paying agent with a certification that it does not have any substantial United States owners or a certification identifying the direct and indirect substantial United States owners of the entity. Withholdable payments include payments of interest

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(including OID) with respect to debt securities and distributions in respect of common or preferred stock from sources within the United States, as well as gross proceeds from the sale of any property of a type which can produce interest or distributions from sources within the United States, unless the payments of interest, distributions or gross proceeds are effectively connected with the conduct of a United States trade or business and taxed as such. Under final Treasury regulations and other administrative guidance, withholding on gross proceeds will be delayed until January 1, 2019. An intergovernmental agreement between the United States and an applicable foreign country, or future Treasury regulations, may modify these requirements. Investors are urged to consult their own tax advisors regarding the application of the legislation and Treasury regulations to the debt securities.



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**EU DIRECTIVE ON THE TAXATION OF SAVINGS INCOME**

The EC Council Directive 2003/48/EC on the taxation of savings income, as amended (the Directive ), has been repealed from January 1, 2017, in the case of Austria, and from January 1, 2016, in the case of all other EU Member States (subject to on-going requirements to fulfill administrative obligations such as the reporting and exchange of information relating to, and accounting for withholding taxes on, payments made before those dates). The repeal is meant to prevent overlap between the Directive and a new automatic exchange of information regime implemented under Council Directive 2011/16/EU on Administrative Cooperation in the field of Taxation (as amended by Council Directive 2014/107/EU). Council Directive 2011/16/EU (as amended) effectively implements the Organization for Economic Co-operation and Development's common reporting standard on automatic exchange of financial account information in tax matters, requires governments to obtain detailed account information from financial institutions and exchange that information automatically with other jurisdictions annually. Council Directive 2011/16/EU (as amended) is generally broader in scope than the Directive, although it does not impose withholding taxes. The agreements with non-EU countries on the basis of the Directive are being revised to be aligned with Council Directive 2011/16/EU (as amended).

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**PLAN OF DISTRIBUTION (CONFLICTS OF INTEREST)**

We may sell the securities offered under this prospectus through agents, through underwriters or dealers or directly to one or more purchasers. We may also offer the securities in exchange for our outstanding indebtedness.

Underwriters, dealers and agents that participate in the distribution of the securities offered under this prospectus may be underwriters as defined in the Securities Act of 1933 and any discounts or commissions received by them from us and any profit on the resale of the offered securities by them may be treated as underwriting discounts and commissions under the Securities Act. Any underwriters or agents will be identified and their compensation, including any underwriting discount or commission, will be described in the applicable prospectus supplement. The applicable prospectus supplement will also describe other terms of the offering, including the initial public offering price, any discounts or concessions allowed or reallocated or paid to underwriters, dealers or agents and any securities exchanges on which the offered securities may be listed. The maximum discount or commission that may be received by any member of FINRA for sales of securities pursuant to this prospectus, together with the reimbursement of any counsel fees by us, will not exceed 8.00% of the initial gross proceeds from the sale of any securities being sold.

The distribution of the securities offered under this prospectus may occur from time to time in one or more transactions at a fixed price or prices, which may be changed, at market prices prevailing at the time of sale, at prices related to the prevailing market prices or at negotiated prices.

We may determine the price or other terms of the securities offered under this prospectus by use of an electronic auction. We will describe in the applicable prospectus supplement how any auction will be conducted to determine the price or any other terms of the securities, how potential investors may participate in the auction and, where applicable, the nature of the underwriters' obligations with respect to the auction.

If the applicable prospectus supplement indicates, we will authorize dealers or our agents to solicit offers by institutions to purchase offered securities from us under contracts that provide for payment and delivery on a future date. We must approve all institutions, but they may include, among others:

commercial and savings banks;

insurance companies;

pension funds;

investment companies; and

educational and charitable institutions.

The institutional purchaser's obligations under the contract are only subject to the condition that the purchase of the offered securities at the time of delivery is allowed by the laws that govern the purchaser. The dealers and our agents will not be responsible for the validity or performance of the contracts.

One or more of our indirectly, wholly-owned subsidiaries, including, but not limited to, Wells Fargo Clearing Services, LLC and Wells Fargo Securities, LLC may help place some of the securities offered under this prospectus. If this occurs, the placement will comply with Rule 5121 of FINRA. The underwriters, agents and dealers participating in the sale of securities offered by this prospectus will not confirm sales to accounts over which they exercise discretionary authority without the prior specific written approval of the customer in accordance with Rule 5121 of FINRA.

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This prospectus, together with any applicable prospectus supplement, may also be used by our affiliates, including, but not limited to, Wells Fargo Clearing Services, LLC and Wells Fargo Securities, LLC, in connection with offers and sales of the offered securities in market-making transactions at negotiated prices related to prevailing market prices at the time of sale. Such affiliates may act as principals or agents in such transactions. None of our affiliates have any obligation to make a market in any of the offered securities and each may discontinue any market-making activities at any time without notice, at its sole discretion.

The aggregate initial offering price specified on the cover of the applicable supplement will relate to an initial offering of securities, and will not relate to any securities to be sold in market-making transactions. Wells Fargo Clearing Services, LLC and Wells Fargo Securities, LLC, or another of our affiliates, may use this prospectus in a market-making transaction in any of these securities after their initial sale. Information about the trade and settlement dates, as well as the purchase price, for a market-making transaction will be provided to the purchaser in a separate confirmation of sale. The securities to be sold in market-making transactions include securities issued after the date of this prospectus.

We may have agreements with the underwriters, dealers and agents, including our subsidiaries mentioned above, to indemnify them against certain civil liabilities, including liabilities under the Securities Act, or to contribute with respect to payments which the underwriters, dealers or agents may be required to make as a result of those certain civil liabilities.

In connection with any offering of the securities offered under this prospectus, underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of such securities or any other securities the prices of which may be used to determine payments on such securities. These transactions may include short sales, stabilizing transactions and purchases to cover positions created by short sales. Short sales involve the sale by underwriters of a greater number of securities than the underwriters are required to purchase in the offering. Stabilizing transactions consist of certain bids or purchases made for the purpose of preventing or retarding a decline in the market price of the securities while the offering is in progress.

Underwriters may also impose a penalty bid in any offering of securities offered under this prospectus through a syndicate of underwriters. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the other underwriters have repurchased securities sold by or for the account of such underwriter in stabilizing or short covering transactions.

These activities by underwriters may stabilize, maintain or otherwise affect the market price of the securities offered under this prospectus. As a result, the price of such securities may be higher than the price that otherwise might exist in the open market. If these activities are commenced, they may be discontinued by underwriters at any time. These transactions may be effected in the over-the-counter market or otherwise.

When we issue the securities offered by this prospectus, except for shares of common stock or debt securities issued upon a reopening of an existing series of debt securities, they may be new securities without an established trading market. If we sell a security offered by this prospectus to an underwriter for public offering and sale, the underwriter may make a market for that security, but the underwriter will not be obligated to do so and could discontinue any market making without notice at any time. Therefore, we cannot give any assurances to you concerning the liquidity of any security offered by this prospectus.

Underwriters and agents and their affiliates may engage in various activities which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. Underwriters and agents and their affiliates may be customers

of, engage in transactions with, or perform services for us or our subsidiaries in the ordinary course of their businesses. In addition, in the ordinary course of their various business activities, the underwriters and agents and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for

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their own account and for the accounts of their customers, and such investment and securities activities may involve securities and instruments of ours or our affiliates. Certain of the underwriters and agents and their affiliates may have a lending relationship with us and hedge their credit exposure to us consistent with their customary risk management policies. Typically, such underwriters, agents or their affiliates would hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities, including potentially the securities offered hereby. Any such short positions could adversely affect future trading prices of the securities offered hereby. In addition, in connection with the distribution of the securities offered under this prospectus, we may enter into swap or other hedging transactions with, or arranged by, underwriters or agents or their affiliates. These underwriters or agents or their affiliates may receive compensation, trading gain or other benefits from these transactions. The underwriters and agents and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments. The underwriters and agents and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may at any time hold, or recommend to clients that they acquire, long or short positions in such securities and instruments.

Delivery of the securities will be made against payment therefor on or about the issue date specified in a supplement to this prospectus. Under Rule 15c6-1 of the Exchange Act, trades in the secondary market generally are required to settle in three business days after the date the securities are priced, unless the parties to any such trade expressly agree otherwise. Accordingly, if the applicable supplement to this prospectus specifies that the issue date is more than three business days after the date on which the securities are priced, purchasers who wish to trade such securities at any time prior to the third business day preceding the issue date will be required, by virtue of the fact that the securities will not settle in T+3, to specify an alternative settlement cycle at the time of any such trade to prevent a failed settlement; such purchasers should also consult their own advisors in this regard.

## **Sales Restrictions**

### ***General***

Each underwriter will agree that it will, to the best of its knowledge and belief, comply with all applicable securities laws and regulations in force in any jurisdiction in which it purchases, offers, sells or delivers our securities or possesses or distributes this prospectus or the accompanying prospectus supplement or any other offering material and will obtain any required consent, approval or permission for its purchase, offer, sale or delivery of such securities under the laws and regulations in force in any jurisdiction to which it is subject or in which it makes purchases, offers, sales or deliveries. We will not have any responsibility for an underwriter's compliance with applicable securities laws.

### ***Notice to Prospective Investors in the European Economic Area***

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a Relevant Member State ), each underwriter will represent and agree, with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the Relevant Implementation Date ), that it has not made and will not make an offer of the securities to the public in that Relevant Member State prior to the publication of a prospectus in relation to the securities which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date make an offer of the securities to the public in that Relevant Member State at any time:

to any legal entity that is a qualified investor as defined in the Prospectus Directive;

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to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive) subject to obtaining the prior consent of the issuer; or

in any other circumstances falling within Article 3(2) of the Prospectus Directive; provided that no such offer of securities shall require us to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive or any measure implementing the Prospectus Directive.

For the purposes of this provision, the expression an offer of the securities to the public in relation to any securities in any Relevant Member State means the communication in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to the securities, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Member State and the expression Prospectus Directive means Directive 2003/71/EC (including by the 2010 PD Amending Directive), and includes any relevant implementing measure in the Relevant Member State.

This prospectus has been prepared on the basis that all offers of the securities in any Member State of the European Economic Area will be made pursuant to an exemption under Article 3(2) of the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for offers of the securities. Accordingly, any person making or intending to make any offer of the securities in that Relevant Member State may only do so in circumstances in which no obligation arises for us, our affiliates or any of the underwriters to publish a prospectus pursuant to the Prospectus Directive for such offer. Neither we nor any underwriter will authorize the making of any offer of the securities in circumstances in which an obligation arises for us or any underwriter to publish a prospectus pursuant to the Prospectus Directive for such offer.

***Notice to Prospective Investors in the United Kingdom***

In relation to the United Kingdom, each underwriter will represent and agree with respect to the securities offered or sold by it, that:

in relation to any securities, which have a maturity of less than one year, (1) it and each of its affiliates is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (2) it and each of its affiliates has not offered or sold and will not offer or sell any securities other than to persons whose ordinary activities involve them acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the securities would otherwise constitute a contravention of Section 19 of the Financial Services and Markets Act 2000 (as amended) (the FSMA ) by us;

it and each of its affiliates has complied, and will comply, with all applicable provisions of the FSMA with respect to anything done by it in relation to the securities in, from or otherwise involving the United Kingdom; and



it and each of its affiliates has only communicated, or caused to be communicated, and will only communicate, or cause to be communicated, an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the securities in circumstances in which Section 21(1) of the FSMA does not apply to it, its affiliates or us.

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***Notice to Prospective Investors in Hong Kong***

The securities may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to professional investors within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a prospectus within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32, Laws of Hong Kong), and no advertisement, invitation or document relating to the securities may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to securities which are or are intended to be disposed of only to persons outside Hong Kong or only to professional investors within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

***Notice to Prospective Investors in Singapore***

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the securities may not be circulated or distributed, nor may the securities be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the SFA ), (ii) to a relevant person pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions, specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the securities are subscribed or purchased under Section 275 of the SFA by a relevant person which is: (a) a corporation (which is not an accredited investor) (as defined in Section 4A of the SFA) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an individual who is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust shall not be transferable for 6 months after that corporation or that trust has acquired the securities under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person, as defined in Section 275(2) of the SFA, or to any person pursuant to an offer that is made on terms that such securities of that corporation or such rights and interest in that trust are acquired at a consideration of not less than S\$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets, and further, for corporations, in accordance with the conditions specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; or (3) when the transfer is by operation of law.

***Notice to Prospective Investors in Japan***

The securities have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the Financial Instruments and Exchange Law ) and each underwriter will represent and agree that it will not, directly or indirectly, offer or sell any securities in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and

Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

Purchasers of our securities may be required to pay stamp taxes and other charges in accordance with the laws and practices of the country of purchase in addition to the price to public disclosed in the applicable prospectus supplement.

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**LEGAL OPINIONS**

Faegre Baker Daniels LLP will issue an opinion about the legality of the securities offered by this prospectus. Jeannine E. Zahn, who is our Senior Counsel, or another of our lawyers, will issue an opinion to the underwriters or agents on certain matters related to the securities. Ms. Zahn owns, or has the right to acquire, a number of shares of our common stock which represents less than 0.1% of the total outstanding common stock. Unless otherwise provided in the applicable prospectus supplement, certain legal matters will be passed upon for any underwriters or agents by Gibson, Dunn & Crutcher LLP, San Francisco, California. Gibson, Dunn & Crutcher LLP represents us and certain of our subsidiaries in other legal matters. Ms. Zahn may rely on Gibson, Dunn & Crutcher LLP as to matters of New York law and as to certain matters of California law.

**EXPERTS**

The consolidated financial statements of Wells Fargo & Company and Subsidiaries as of December 31, 2015 and 2014, and for each of the years in the three-year period ended December 31, 2015, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2015 have been incorporated by reference herein in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

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No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus supplement and accompanying prospectus. You must not rely on any unauthorized information or representations. This prospectus supplement and the accompanying prospectus are an offer to sell only the notes offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained or incorporated by reference in this prospectus supplement and accompanying prospectus is current only as of their respective dates.

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**Wells Fargo & Company**

**CAD 1,000,000,000**

**3.184% Notes Due February 8, 2024**

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**PROSPECTUS SUPPLEMENT**

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**RBC Capital Markets**

**Wells Fargo Securities**

**CIBC Capital Markets**

**Scotiabank**

**BMO Capital Markets**

**National Bank Financial Markets**

**TD Securities**

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