

OVERSEAS SHIPHOLDING GROUP INC
Form DEF 14A
April 27, 2018

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

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No. ___)

Filed by the Registrant
Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement
Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
 Definitive Proxy Statement
Definitive Additional Materials
Soliciting Material Pursuant to §240.14a-12

OVERSEAS SHIPHOLDING GROUP, INC.
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

OVERSEAS SHIPHOLDING GROUP, INC.
NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
June 6, 2018

To the Stockholders of Overseas Shipholding Group, Inc.:

You are cordially invited to attend the Annual Meeting of Stockholders (the "Annual Meeting") of Overseas Shipholding Group, Inc. (the "Company" or "OSG"), which will be held in the Conch Room at The Westin Tampa Waterside, 725 S Harbour Island Blvd., Tampa, Florida on Wednesday, June 6, 2018, at 9:00 A.M., Eastern Time ("ET").

The meeting will be held for the following purposes:

- (1) To elect eight directors, the names of whom are set forth in the accompanying Proxy Statement, to serve until the 2019 Annual Meeting of Stockholders of the Company;
- (2) To ratify the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the year 2018;
- (3) To approve, by advisory vote, the compensation of the Named Executive Officers for 2017 (as described in the "Compensation Discussion and Analysis" section and in the accompanying compensation tables and narrative in the accompanying Proxy Statement); and
- (4) To transact such other business as may properly be brought before the meeting.

Stockholders of record at the close of business on April 12, 2018 are the only stockholders entitled to notice of, and to vote at, the Annual Meeting. The list of stockholders will be open to the examination of stockholders for any purpose germane to the Annual Meeting, during ordinary business hours for a period of ten days prior to the Annual Meeting, at the Company's offices, 302 Knights Run Avenue, Suite 1200, Tampa, Florida. This Proxy Statement and the accompanying proxy will first be sent to stockholders on or about April 24, 2018.

We are taking advantage of the Securities and Exchange Commission rules that allow issuers to furnish proxy materials to their stockholders over the Internet. We believe these rules allow us to provide stockholders with the information they need, while lowering the costs of delivery and reducing the environmental impact of our Annual Meeting. If you received a printed copy of the materials, we have enclosed a copy of the Company's Annual Report on Form 10-K for the year ended December 31, 2017 (the "2017 Form 10-K") with this notice and the accompanying Proxy Statement.

Your vote and that your shares be represented at the meeting are both very important. We urge you to vote as soon as possible by telephone, over the Internet or by marking, signing and returning your proxy or voting instruction card, even if you plan to attend the Annual Meeting in person. If you attend the meeting and wish to vote in person, you may withdraw your proxy and vote in person. Your prompt consideration is greatly appreciated.

By order of the Board of Directors,

SUSAN ALLAN
Vice President, General Counsel and Corporate Secretary
Tampa, Florida
April 27, 2018

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF
PROXY MATERIALS FOR THE ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON JUNE 6, 2018

The Notice of Annual Meeting of Stockholders of the Company to be held on June 6, 2018, the Company's Proxy Statement for the 2018 Annual Meeting of Stockholders and the 2017 Form 10-K are available at <http://ir.osg.com>.

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OVERSEAS SHIPHOLDING GROUP, INC.
302 Knights Run Avenue, Suite 1200
Tampa, FL 33602

PROXY STATEMENT

INFORMATION CONCERNING SOLICITATION AND VOTING

The accompanying proxy is solicited on behalf of the Board of Directors (the “Board”) of Overseas Shipholding Group, Inc. (the “Company”) for use at the Annual Meeting of Stockholders (the “Annual Meeting”) to be held on June 6, 2018 at 9:00 a.m. (ET), or any adjournment or postponement thereof, for the purposes set forth herein and in the accompanying Notice of Annual Meeting of Stockholders. The Annual Meeting will be held in the Conch Room at The Westin Tampa Waterside, 725 S Harbour Island Blvd., Tampa, Florida.

Any stockholder giving a proxy may revoke it at any time before it is exercised at the meeting.

Record Date, Shares Outstanding and Voting

Only stockholders of record at the close of business on April 12, 2018 (the “Record Date”) will be entitled to vote at the Annual Meeting. The Company has one class of voting securities, its Common Stock (the “Common Stock”), with each share entitled to one vote. As of the Record Date, 78,734,178 shares were outstanding.

All shares represented by an eligible proxy, will be voted at the meeting in accordance with the instructions provided therein. If no such instructions are provided, the proxy will be voted: (1) FOR the election of directors, (2) FOR the ratification of the appointment of Ernst & Young LLP as the Company’s independent registered public accounting firm for 2018, and (3) FOR the approval, in an advisory vote, of the compensation for 2017 of the executive officers named in the Summary Compensation Table in this Proxy Statement (each, a “Named Executive Officer” and collectively, the “Named Executive Officers” or “NEOs”), as described in the “Compensation Discussion and Analysis” section and in the accompanying compensation tables and narrative in this Proxy Statement.

Each of the election of directors, the ratification of the appointment of the Company’s independent registered public accounting firm for 2018, and the advisory vote to approve the compensation of the NEOs requires the affirmative vote (in person or by proxy) of a majority of the votes cast by the holders of the shares of Common Stock present in person or represented by proxy at the meeting and entitled to vote thereon. If the appointment of the Company’s independent registered public accounting firm for 2018 is not ratified, the Audit Committee will reconsider the appointment and review its future selection of an independent registered public accounting firm. The advisory vote to approve the compensation of the NEOs for 2017 is non-binding, but the Board and the Human Resources and Compensation Committee (the “Compensation Committee”) will review the voting results in connection with their ongoing evaluation of the Company’s compensation program.

Some of the Company’s stockholders hold their shares through a broker, trustee, or other nominee rather than directly in their own name. As summarized below, there are some distinctions between shares held of record and those shares owned beneficially.

- **Stockholder of Record.** If your shares are registered directly in your name with the Company’s transfer agent, Computershare Limited, then you are considered, with respect to those shares, the “stockholder of record.” As the stockholder of record, you have the right to grant your voting proxy directly to the Company or to a third

party, or to vote in person at the Annual Meeting.

Beneficial Owner. If your shares are held in a brokerage account, by a trustee, or by another nominee, then you are considered the “beneficial owner” of those shares. As the beneficial owner of those shares, you have the right to direct your broker, trustee, or nominee how to vote and you also are invited to attend the Annual Meeting. However, because a beneficial owner is not the stockholder of record, you may not vote these shares in person at the Annual Meeting unless you obtain a “legal proxy” as discussed below.

If you are not a stockholder of record, please understand that the Company may not know that you are a stockholder, or how many shares you own. As a stockholder of record, you may vote by one of the following four methods:

1

Internet Voting. You may use the Internet as described on the proxy card to vote your shares of Common Stock by giving the Company a proxy. You will be able to vote your shares by the Internet and confirm that your vote has been properly recorded. Please see your proxy card for specific instructions.

Telephone Voting. You may vote your shares of Common Stock by giving the Company a proxy using the toll-free number listed on the proxy card. The procedure allows you to vote your shares and to confirm that your vote was recorded. Please see your proxy card for specific instructions.

Voting By Mail. You may sign, date, and mail your proxy card in the postage-paid envelope provided. This option is available only to those stockholders who have received a paper copy of a proxy card by mail.

Voting In Person. You may vote in person at the meeting.

If your shares are held through a broker, bank, trustee or other nominee, you will receive a request for voting instructions with respect to your shares of Common Stock from the broker, bank, trustee or other nominee. You should respond to the request for voting instructions in the manner specified by the broker, bank, trustee or other nominee. If you have questions about voting your shares, you should contact your broker, bank, trustee or other nominee.

If you hold your shares through a broker, bank, trustee or other nominee and you wish to vote in person at the meeting, you will need to bring a legal proxy to the meeting. You must request a legal proxy through your broker, bank, trustee or other nominee. Please note that if you request a legal proxy, any proxy with respect to your shares of Common Stock previously executed by your broker, bank, trustee, or other nominee will be revoked and your vote will not be counted unless you appear at the meeting and vote in person or legally appoint another proxy to vote on your behalf.

Your vote and that your shares be represented at the meeting are both very important. We urge you to vote as soon as possible by telephone, over the Internet or by marking, signing and returning your proxy or voting instruction card, even if you plan to attend the Annual Meeting in person.

To conduct the business of the Annual Meeting, we must have a quorum. The presence in person or by proxy of at least a majority of the shares entitled to vote is necessary to constitute a quorum at the Annual Meeting. Abstentions will be counted toward fulfillment of quorum requirements. Abstentions and broker non-votes will not be counted in tabulations of the votes cast on any of the proposals presented at the Annual Meeting. A broker non-vote occurs when a nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power with respect to that proposal and has not received instructions from the beneficial owner. In the absence of voting instructions from the beneficial owner of the shares, nominee holders will not have discretionary authority to vote the shares at the Annual Meeting in the election of directors or for the advisory vote to approve the compensation of the NEOs, but will have discretionary authority to vote on the ratification of the appointment of the Company's independent registered public accounting firm for the fiscal year ending December 31, 2018. Proxies that are transmitted by nominee holders for beneficial owners will count toward a quorum and will be voted as instructed by the nominee holder.

As all of these matters are very important to the Company, we urge you to vote your shares by telephone, over the Internet or by marking, signing and returning your proxy or voting instruction card.

Expenses

The cost of soliciting proxies for the meeting will be borne by the Company. The Company will also reimburse brokers and others who are only record holders of the Company's shares for their reasonable expenses incurred in obtaining voting instructions from beneficial owners of such shares.

Proposals for 2019 Annual Meeting of Stockholders

Any stockholder who wishes to propose a matter for action at the Company's next Annual Meeting, including the nomination of a director, must notify the Company in writing, and provide the information required by the Company's Amended and Restated By-laws, no earlier than 90 days and no later than 60 days prior to April 27, 2019, the first anniversary of this year's Notice of Annual Meeting. In other words, the notice and such information must be received no earlier than March 8, 2019, and no later than April 7, 2019. Stockholders can obtain a copy of the By-laws by writing the Corporate Secretary at the following address: Corporate Secretary, Overseas Shipholding Group, Inc., 302 Knights Run Avenue, Suite 1200, Tampa, Florida 33602.

**OWNERSHIP OF COMMON STOCK BY DIRECTORS, EXECUTIVE OFFICERS
AND CERTAIN OTHER BENEFICIAL OWNERS**

The tables below set forth certain beneficial ownership information with respect to the Company's director nominees, executive officers, and each person who is known to the Company to be the beneficial owner of more than 5% of the outstanding shares of Common Stock. The information with respect to beneficial ownership by the identified stockholders was prepared based on information supplied by such stockholders in their filings with the SEC. Except as disclosed in the notes to these tables and subject to applicable community property laws, the Company believes that each beneficial owner identified in the table possesses sole voting and investment power over all Common Stock shown as beneficially owned by the beneficial owner.

Beneficial ownership for the purposes of the following tables is determined in accordance with the rules and regulations of the SEC. Those rules generally provide that a person is the beneficial owner of shares if such person has or shares the power to vote or direct the voting of shares, or to dispose or direct the disposition of shares or has the right to acquire such powers within 60 days. For purposes of calculating each person's percentage ownership, shares of Common Stock issuable pursuant to options or warrants exercisable within 60 days are included as outstanding and beneficially owned for that person, but are not deemed outstanding for the purposes of computing the percentage ownership of any other person. In some cases, the Company believes that foreign ownership or other restrictions may limit the ability of warrant holders to exercise warrants they hold, meaning that such persons may not be required to report share ownership as they would not be entitled to receive the underlying shares of Common Stock. The percentage of beneficial ownership is based on 78,733,688 shares of the Company's Common Stock outstanding as of the Measurement Date (April 6, 2018). On the Measurement Date, there were 50,272,211 warrants (exercisable for 9,551,720 shares of Common Stock) that were not included in that calculation (other than to the extent set forth with respect to any individual stockholder below).

Directors and Executive Officers

The table below sets forth information as to the Company's director nominees and executive officers, and includes the amount and percentage of the Company's Common Stock of which each director nominee, each NEO, and all director nominees and executive officers as a group, was the "beneficial owner" (as defined in regulations of the SEC) on the Measurement Date, all as reported to the Company. The address of each person identified below as of the date of this Proxy Statement is c/o Overseas Shipholding Group, Inc., 302 Knights Run Avenue, Suite 1200, Tampa, Florida 33602.

Name	Shares of Common Stock Beneficially Owned(1)	
	Number	Percentage Beneficially Owned
Directors/Nominees		
Douglas D. Wheat	33,885	*
Timothy J. Bernlohr**	19,888	*
Joseph I. Kronsberg	—	(2)*
Anja L. Manuel	—	*
Samuel H. Norton	1,004,959(3)	1.27%
John P. Reddy	—	*
Julie E. Silcock	—	*

Ronald Steger**	19,888	*
Gary E. Taylor	19,888	*
Ty E. Wallach	—	(4)*

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Name	Shares of Common Stock Beneficially Owned(1)	
	Number	Percentage Beneficially Owned
Other Named Executive Officers		
Richard Trueblood	25,000	*
Patrick J. O'Halloran	35,910	*
Damon M. Mote	35,824	*
Susan Allan	9,828	*
Christopher W. Wolf***	—	*
All Directors/Nominees and Executive Officers as a Group (15 persons)	1,205,070	1.53%

* Less than 1%

** Mr. Bernlohr and Mr. Steger are current directors but are not standing for re-election.

*** Mr. Wolf's stock grants were forfeited when he resigned from the Company in June 2017.

- (1) Includes shares of Common Stock issuable within 60 days of the Measurement Date upon the exercise of options or warrants owned by the indicated stockholders on that date.
Mr. Kronsberg is an employee of Cyrus Capital Partners, L.P. ("CCP") which beneficially owns 12,024,997 shares of Common Stock, including 37,300 shares which were granted by the Company to CCP under the Company's non-Employee Director Incentive Compensation Plan in 2017. The grant was made to CCP pursuant to agreements between CCP and Mr. Kronsberg under which CCP is required to receive all compensation in connection with Mr. Kronsberg's directorship. Mr. Kronsberg disclaims beneficial ownership of all Company securities held by CCP except to the extent of his pecuniary interest therein, if any.
- (2) Includes options that vested immediately for 494,118 shares of Common Stock.
Mr. Wallach is a Partner at Paulson and a Co-Portfolio Manager at Paulson's credit funds. Paulson is the investment manager of certain funds and accounts which beneficially own 10,236,431 shares of Common Stock. Mr. Wallach disclaims beneficial ownership of such securities except to the extent of his pecuniary interest therein, if any.
- (3) Includes options that vested immediately for 494,118 shares of Common Stock.
Mr. Wallach is a Partner at Paulson and a Co-Portfolio Manager at Paulson's credit funds. Paulson is the investment manager of certain funds and accounts which beneficially own 10,236,431 shares of Common Stock. Mr. Wallach disclaims beneficial ownership of such securities except to the extent of his pecuniary interest therein, if any.
- (4) Includes options that vested immediately for 494,118 shares of Common Stock.
Mr. Wallach is a Partner at Paulson and a Co-Portfolio Manager at Paulson's credit funds. Paulson is the investment manager of certain funds and accounts which beneficially own 10,236,431 shares of Common Stock. Mr. Wallach disclaims beneficial ownership of such securities except to the extent of his pecuniary interest therein, if any.

Other Beneficial Owners

The following table sets forth information as of the Measurement Date (except as otherwise noted) with respect to persons known by us to be the beneficial owners of more than 5% of Common Stock, based solely on the information reported by such persons in their Schedule 13D and 13G filings with the SEC. For each entity included in the table below, percentage ownership is calculated by dividing the number of shares reported as beneficially owned by such entity by the number of shares of Common Stock outstanding as of the Measurement Date, as reported to the Company and the SEC.

Name	Shares of Common Stock Beneficially Owned*(1)	
	Number	Percentage Beneficially Owned

BlueMountain Funds (2)	9,142,048	11.61%
Cyrus Capital Partners, L.P. (3)	12,024,997	15.27%
Paulson & Co. Inc (4)	10,236,431	13.00%

* Unless otherwise stated in the notes to this table, the share and percentage ownership information presented is as of the Measurement Date.

Includes shares of Common Stock underlying all warrants owned by such person (at the Measurement Date stock exercise ratio of 0.19 shares for every warrant), owned by such person, and assumes gross exercise of warrants (1) without withholding of any shares pursuant to the cashless exercise procedures of the warrants. The warrants are immediately exercisable, but may only be exercised with the Company's consent and are subject to certain citizenship rules and limitations on exercise, sale, transfer or other disposition.

Based on an amendment to a Schedule 13D filed on February 15, 2018 with the SEC by the BlueMountain Funds (as defined below) with respect to beneficial ownership, shared voting power and shared dispositive power of (i) 9,142,048 shares by BlueMountain Capital Management, LLC ("Investment Manager"), (ii) 9,142,048 shares by BlueMountain GP Holdings, LLC ("GP Holdings"), (iii) 9,142,048 shares by BlueMountain Nautical LLC ("Nautical"), (iv) 9,142,048 shares by BlueMountain Guadalupe Peak Fund L.P. ("Guadalupe"), and (v) 9,142,048 shares by BlueMountain Long/Short Credit GP, LLC ("General Partner", and together with Investment Manager, GP Holdings, Nautical and Guadalupe, the "BlueMountain Funds"). The principal business of: (i) each of Nautical and Guadalupe is to serve as a private investment fund; (ii) the General Partner is to serve as the general partner of Guadalupe and certain other private funds for which the Investment Manager serves as investment manager; (iii) GP Holdings is to serve as the sole owner of the General Partner and a number of other entities which act as the general partner of private investment funds for which the Investment Manager serves as investment manager (including Guadalupe); and (iv) the Investment Manager is to serve as investment manager to a number of private

investment funds (including Guadalupe), to serve as non-member manager of Nautical and to make investment decisions on behalf of such entities. The business address of Nautical, Guadalupe, the General Partner, Investment Manager and GP Holdings is 280 Park Avenue, 12th Floor, New York, New York 10017.

Based on a Form 4 filed on June 24, 2016 and an amendment to a Schedule 13D filed on June 23, 2016 with the SEC by Cyrus Capital Partners, L.P. (“CCP”) with respect to beneficial ownership, shared voting power and shared dispositive power of 12,024,997 shares by each of CCP and Cyrus Capital Partners GP, L.L.C. (3) (“CCPGP”) of which 2,636,376 shares are obtainable upon the exercise of 13,851,382 warrants. As the (i) principal of CCP and (ii) principal of CCPGP., the general partner of CCP, Stephen C. Freidheim (“Freidheim”) may be deemed the beneficial owner of 12,016,565 shares of Class A Common Stock. The address of each of CCP, CCPGP and Freidheim is 399 Park Avenue, 39th Floor, New York, NY 10022.

Based on a Form 4 filed on December 1, 2017 and an amendment to a Schedule 13D filed on July 6, 2017 with the SEC by Paulson & Co. Inc. ("Paulson") with respect to beneficial ownership of 10,236,431 shares by Paulson. (4) Paulson is the investment advisor, or manager, of PCO Shipping LLC and certain separately managed accounts (collectively, the “Paulson Accounts”). The address of Paulson and the Paulson Accounts is c/o Paulson & Co. Inc., 1251 Avenue of the Americas, 50th Floor, New York, NY 10020.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The following table provides information as of December 31, 2017 with respect to the Company’s equity compensation plans, which have been approved by the Company’s stockholders.

Plan Category	Number of Securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) In addition, in 2007 the U.S. Treasury Department and the IRS released a notice requesting comments on various issues regarding the U.S. federal income tax treatment of “prepaid forward contracts” and similar instruments. Any Treasury regulations or other guidance promulgated after consideration of these issues could materially and adversely affect the tax consequences of an investment in the securities, including the character and

timing of income or loss and the degree, if any, to which income realized by non-U.S. persons should be subject to withholding tax, possibly with retroactive effect. You should read carefully the discussion under “United States Federal Tax Considerations” in this pricing supplement. You should also consult your tax adviser regarding the U.S. federal tax consequences of an investment in the securities, as well as tax consequences arising under the laws of any state, local or non-U.S. taxing jurisdiction.

PRS-14

**Determining Payment at
Stated Maturity**

On the stated maturity date,
you will receive a cash
payment per security (the
cash settlement amount)
calculated as follows:

PRS-15

Hypothetical Returns

The following table illustrates, for a range of hypothetical final underlier levels:

the hypothetical percentage change from the initial underlier level to the hypothetical final underlier level; and
the hypothetical pre-tax total return.

The table below and the examples that follow assume that an investor purchases the securities for \$1,000 per security.

Hypothetical underlier return	Hypothetical pre-tax total return
50.00%	16.575%
40.00%	16.575%
30.00%	16.575%
20.00%	16.575%
11.05%	16.575%
10.00%	15.000%
5.00%	7.500%
0.00%	0.000%
-5.00%	0.000%
-10.00%	0.000%
-17.50%	0.000%
-18.00%	-0.606%
-25.00%	-9.091%
-50.00%	-39.394%
-75.00%	-69.697%
-100.00%	-100.000%

The above figures are for purposes of illustration only and may have been rounded for ease of analysis. The actual amount you receive at stated maturity and the resulting pre-tax return will

depend on the actual final underlier level.

If, for example, the underlier return were determined to be -75.00%, the pre-tax return on your securities at maturity would be approximately -69.697%, as shown in the table above. As a result, if you purchased your securities on the original issue date at the face amount and held them to the stated maturity date, you would lose approximately 69.697% of your investment. In addition, if the underlier return were determined to be 50.00%, the cash settlement amount that we would deliver on your securities at maturity would be capped at the maximum settlement amount, and the pre-tax return on your securities would therefore be capped at 16.575%, as shown in the table above. As a result, if you held your securities to the stated maturity date, you would not benefit from any underlier return in excess of 11.05%.

PRS-16

Additional Terms of the Securities

Wells Fargo will issue the securities as part of a series of senior unsecured debt securities entitled “Medium-Term Notes, Series S,” which is more fully described in the prospectus supplement. Information included in this pricing supplement supersedes information in the market measure supplement, prospectus supplement and prospectus to the extent that it is different from that information.

Calculation Agent

Wells Fargo Securities, LLC, one of our subsidiaries, will act as initial calculation agent for the securities and may appoint agents to assist it in the performance of its duties. Pursuant to the calculation agent agreement, we may appoint a different calculation agent without your consent and without notifying you.

The calculation agent will determine the cash settlement amount you receive at stated maturity. In addition, the calculation agent will, among other things:

determine whether a market disruption event or non-trading day has occurred;

determine if adjustments are required to the closing level of the underlier under various circumstances; and if publication of the underlier is discontinued, select a successor underlier (as defined below) or, if no successor underlier is available, determine the closing level of the underlier.

All determinations made by the calculation agent will be at the sole discretion of the calculation agent and, in the absence of manifest error, will be conclusive for all purposes and binding on us and you. The calculation agent will have no liability for its determinations.

Market Disruption Events

A “market disruption event” means any of the following events as determined by the calculation agent in its sole discretion:

- (A) The occurrence or existence of a material suspension of or limitation imposed on trading by the relevant stock exchanges or otherwise relating to securities which then comprise 20% or more of the level of the underlier or any successor underlier at any time during the one-hour period that ends at the close of trading on that day, whether by reason of movements in price exceeding limits permitted by those

relevant stock
exchanges or otherwise.
The occurrence or
existence of a material
suspension of or
limitation imposed on
trading by any related
futures or options
exchange or otherwise
in futures or options
contracts relating to the
underlier or any
successor underlier on

(B) any related futures or
options exchange at any
time during the
one-hour period that
ends at the close of
trading on that day,
whether by reason of
movements in price
exceeding limits
permitted by the related
futures or options
exchange or otherwise.

The occurrence or
existence of any event,
other than an early
closure, that materially
disrupts or impairs the
ability of market
participants in general to
effect transactions in, or
obtain market values

(C) for, securities that then
comprise 20% or more
of the level of the
underlier or any
successor underlier on
their relevant stock
exchanges at any time
during the one-hour
period that ends at the
close of trading on that
day.

(D) The occurrence or
existence of any event,
other than an early
closure, that materially
disrupts or impairs the
ability of market

participants in general to effect transactions in, or obtain market values for, futures or options contracts relating to the underlier or any successor underlier on any related futures or options exchange at any time during the one-hour period that ends at the close of trading on that day.

The closure on any exchange business day of the relevant stock exchanges on which securities that then comprise 20% or more of the level of the underlier or any successor underlier are traded or any related futures or options exchange prior to its scheduled closing time unless the earlier closing time is announced by the relevant stock exchange or related futures or options

(E) exchange, as applicable, at least one hour prior to the earlier of (1) the actual closing time for the regular trading session on such relevant stock exchange or related futures or options exchange, as applicable, and (2) the submission deadline for orders to be entered into the relevant stock exchange or related futures or options exchange, as applicable, system for execution at such actual closing time on that day.

(F)

The relevant stock exchange for any security underlying the underlier or successor underlier or any related futures or options exchange fails to open for trading during its regular trading session.

For purposes of determining whether a market disruption event has occurred:

the relevant percentage contribution of a security to the level of the underlier or any successor underlier will (1) be based on a comparison of (x) the portion of the level of such underlier attributable to that security and (y) the

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overall level of the underlier or successor underlier, in each case immediately before the occurrence of the market disruption event;

(2) the “close of trading” on any trading day for the underlier or any successor underlier means the scheduled closing time of the relevant stock exchanges with respect to the securities underlying the underlier or successor underlier on such trading day; provided that, if the actual closing time of the regular trading session of any such relevant stock exchange is earlier than its scheduled closing time on such trading day, then (x) for purposes of clauses (A) and (C) of the definition of “market disruption event” above, with respect to any security underlying the underlier or successor underlier for which such relevant stock exchange is its relevant stock exchange, the “close of trading” means such actual closing time and (y) for purposes of clauses (B) and (D) of the definition of “market disruption event” above, with respect to any futures or options contract relating to the underlier or successor

- underlier, the “close of trading” means the latest actual closing time of the regular trading session of any of the relevant stock exchanges, but in no event later than the scheduled closing time of the relevant stock exchanges;
- the “scheduled closing time” of any relevant stock exchange or related futures or options exchange on any trading day for the underlier or any successor underlier means the scheduled
- (3) weekday closing time of such relevant stock exchange or related futures or options exchange on such trading day, without regard to after hours or any other trading outside the regular trading session hours; and an “exchange business day” means any trading day for the underlier or any successor underlier on which each relevant stock exchange for the securities underlying the underlier or any successor underlier and each related futures or
- (4) options exchange are open for trading during their respective regular trading sessions, notwithstanding any such relevant stock exchange or related futures or options exchange closing prior to its scheduled closing time.

If a market disruption event occurs or is continuing on the determination date, then the determination date will be postponed to the first succeeding trading day on which a market disruption event has not occurred and is not continuing; however, if such first succeeding trading day has not occurred as of the eighth trading day after the originally scheduled determination date, that eighth trading day shall be deemed to be the determination date. If the determination date has been postponed eight trading days after the originally scheduled determination date and a market disruption event occurs or is continuing on such eighth trading day, the calculation agent will determine the closing level of the underlier on such eighth trading day in accordance with the formula for and method of calculating the closing level of the underlier last in effect prior to commencement of the market disruption event, using the closing price (or, with respect to any relevant security, if a market disruption event has occurred with respect to such security, its good faith estimate of the value of such security at the scheduled closing time of the relevant stock exchange for such security or, if earlier, the actual closing time of the regular trading session of such relevant stock exchange) on such

date of each security included in the underlier. As used herein, “closing price” means, with respect to any security on any date, the relevant stock exchange traded or quoted price of such security as of the scheduled closing time of the relevant stock exchange for such security or, if earlier, the actual closing time of the regular trading session of such relevant stock exchange.

Adjustments to the Underlier

If at any time the method of calculating the underlier or a successor underlier, or the closing level thereof, is changed in a material respect, or if the underlier or a successor underlier is in any other way modified so that such underlier does not, in the opinion of the calculation agent, fairly represent the level of such underlier had those changes or modifications not been made, then the calculation agent will, at the close of business in New York, New York, on each date that the closing level of such underlier is to be calculated, make such calculations and adjustments as, in the good faith judgment of the calculation agent, may be necessary in order to arrive at a level of an underlier comparable to the underlier or successor underlier as if those changes or modifications had not been made, and the calculation agent will calculate the

closing level of the underlier or successor underlier with reference to such underlier, as so adjusted. Accordingly, if the method of calculating the underlier or successor underlier is modified so that the level of such underlier is a fraction or a multiple of what it would have been if it had not been modified (e.g., due to a split or reverse split in such equity underlier), then the calculation agent will adjust the underlier or successor underlier in order to arrive at a level of such underlier as if it had not been modified (e.g., as if the split or reverse split had not occurred).

Discontinuance of the Underlier

If the sponsor or publisher of the underlier (the “underlier sponsor”) discontinues publication of the underlier, and the underlier sponsor or another entity publishes a successor or substitute equity index that the calculation agent determines, in its sole discretion, to be comparable to the underlier (a “successor underlier”), then, upon the calculation agent’s notification of that determination to the trustee and Wells Fargo, the calculation agent will substitute the successor underlier as calculated by the relevant underlier sponsor or any other entity and calculate the final underlier level as

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described above. Upon any selection by the calculation agent of a successor underlier, Wells Fargo will cause notice to be given to holders of the securities.

In the event that the underlier sponsor discontinues publication of the underlier prior to, and the discontinuance is continuing on, the determination date and the calculation agent determines that no successor underlier is available at such time, the calculation agent will calculate a substitute closing level for the underlier in accordance with the formula for and method of calculating the underlier last in effect prior to the discontinuance, but using only those securities that comprised the underlier immediately prior to that discontinuance. If a successor underlier is selected or the calculation agent calculates a level as a substitute for the underlier, the successor underlier or level will be used as a substitute for the underlier for all purposes, including the purpose of determining whether a market disruption event exists.

If on the determination date the underlier sponsor fails to calculate and announce the level of the underlier, the calculation agent will calculate a substitute closing level of the

underlier in accordance with the formula for and method of calculating the underlier last in effect prior to the failure, but using only those securities that comprised the underlier immediately prior to that failure; *provided* that, if a market disruption event occurs or is continuing on such day, then the provisions set forth above under “—Market Disruption Events” shall apply in lieu of the foregoing.

Notwithstanding these alternative arrangements, discontinuance of the publication of, or the failure by the underlier sponsor to calculate and announce the level of, the underlier may adversely affect the value of the securities.

Events of Default and Acceleration

If an event of default with respect to the securities has occurred and is continuing, the amount payable to a holder of a security upon any acceleration permitted by the securities, with respect to each security, will be equal to the cash settlement amount, calculated as provided herein. The cash settlement amount will be calculated as though the date of acceleration were the determination date.

S&P 500® Index

The S&P 500® Index is an equity index that is intended to provide an indication of the pattern of common stock price movement in the large capitalization segment of the United States equity market. Wells Fargo & Company is one of the companies currently included in the S&P 500® Index. See “Description of Equity Indices—The S&P Indices” in the accompanying market measure supplement for additional information about the S&P 500® Index.

In addition, information about the S&P 500® Index may be obtained from other sources including, but not limited to, the S&P 500® Index sponsor’s website (including information regarding the S&P 500® Index’s sector weightings). We are not incorporating by reference into this pricing supplement the website or any material it includes. Neither we nor the agent makes any representation that such publicly available information regarding the S&P 500® Index is accurate or complete.

Historical Information

We obtained the closing levels of the S&P 500® Index from Bloomberg Financial Markets without independent verification.

The historical performance of the underlier should not be taken as an indication of the future performance of the underlier during the term of the securities.

The following graph sets forth the daily closing levels of the underlier for each day in the period from January 1, 2014 through March 4, 2019. The closing level on March 4, 2019 was 2,792.81.

S&P 500[®] Index Daily
Closing Levels

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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 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 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 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 (collectively, “Non-ERISA Arrangements”), are not subject to the requirements of ERISA, or Section 4975 of the Code, but may be subject to similar rules under other applicable laws or regulations (“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 securities are purchased by a plan. In particular, the fiduciary of the plan should consider whether statutory or administrative exemptive relief is available. 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 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 of the plan receives no less, and pays no more, than “adequate consideration” (within the

meaning of Section 408(b)(17) of ERISA).

Any purchaser or holder of the securities or any interest in the 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 securities constitutes assets of any plan or Non-ERISA Arrangement; or the purchase and holding of the 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 any Similar Laws.

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 securities on behalf of or with “plan assets” of any plan consult with their counsel regarding the potential consequences under ERISA and the Code of the acquisition of the securities and the availability of exemptive relief.

The securities are contractual financial instruments. The financial exposure provided by the securities is not a substitute

or proxy for, and is not intended as a substitute or proxy for, individualized investment management or advice for the benefit of any purchaser or holder of the securities. The securities have not been designed and will not be administered in a manner intended to reflect the individualized needs and objectives of any purchaser or holder of the securities.

Each purchaser or holder of the securities acknowledges and agrees that:

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- the purchaser or holder or its fiduciary has made and shall make all investment decisions for the purchaser or holder and the purchaser or holder has not relied and shall not rely in any way upon us or our affiliates to act as a fiduciary or
- (i) adviser of the purchaser or holder with respect to (a) the design and terms of the securities, (b) the purchaser or holder's investment in the securities, or (c) the exercise of or failure to exercise any rights we have under or with respect to the securities; we and our affiliates have acted and will act solely for our own account in connection with (a) all transactions
 - (ii) relating to the securities and (b) all hedging transactions in connection with our obligations under the securities; any and all assets and positions relating to hedging transactions by us or our affiliates are
 - (iii) assets and positions of those entities and are not assets and positions held for the benefit of the purchaser or holder; our interests may be
 - (iv) adverse to the interests of the purchaser or holder; and
 - (v) neither we nor any of our affiliates is a fiduciary or adviser of the purchaser or holder

in connection with any such assets, positions or transactions, and any information that we or any of our affiliates may provide is not intended to be impartial investment advice.

Purchasers of the securities have the exclusive responsibility for ensuring that their purchase, holding and subsequent disposition of the securities does not violate the fiduciary or prohibited transaction rules of ERISA, the Code or any Similar Law. Nothing herein shall be construed as a representation that an investment in the securities would be appropriate for, or would meet any or all of the relevant legal requirements with respect to investments by, plans or Non-ERISA Arrangements generally or any particular plan or Non-ERISA Arrangement.

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United States Federal Tax Considerations

The following is a discussion of the material U.S. federal income and certain estate tax consequences of the ownership and disposition of the securities. It applies to you only if you purchase a security for cash in the initial offering at the “issue price,” which is the first price at which a substantial amount of the securities is sold to the public, and hold the security as a capital asset within the meaning of Section 1221 of the Code. It does not address all of the tax consequences that may be relevant to you in light of your particular circumstances or if you are an investor subject to special rules, such as:

- a financial institution;
- a “regulated investment company”;
- a tax-exempt entity, including an “individual retirement account” or “Roth IRA”;
- a dealer or trader subject to a mark-to-market method of tax accounting with respect to the securities;
- a person holding a security as part of a “straddle” or conversion transaction or who has entered into a “constructive sale” with respect to a security;
- a U.S. holder (as defined below) whose functional currency is not the U.S. dollar; or

an entity classified as a partnership for U.S. federal income tax purposes. If an entity that is classified as a partnership for U.S. federal income tax purposes holds the securities, 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. If you are a partnership holding the securities or a partner in such a partnership, you should consult your tax adviser as to your particular U.S. federal tax consequences of holding and disposing of the securities.

We will not attempt to ascertain whether any of the issuers of the underlying stocks of the underlier (the “underlying stocks”) is treated as a “U.S. real property holding corporation” (“USRPHC”) within the meaning of Section 897 of the Code or as a “passive foreign investment company” (“PFIC”) within the meaning of Section 1297 of the Code. If any of the issuers of the underlying stocks were so treated, certain adverse U.S. federal income tax consequences might apply to you, in the case of a USRPHC if you are a non-U.S. holder (as defined below) and in the case of a PFIC if you are a U.S. holder (as defined below), upon the sale, exchange or other disposition of the securities. You should refer to information filed with the

Securities and Exchange Commission or another governmental authority by the issuers of the underlying stocks and consult your tax adviser regarding the possible consequences to you if any of the issuers of the underlying stocks is or becomes a USRPHC or PFIC.

This discussion is based on the Code, administrative pronouncements, judicial decisions and final, temporary and proposed Treasury regulations, all as of the date of this pricing supplement, changes to any of which subsequent to the date of this pricing supplement may affect the tax consequences described herein, possibly with retroactive effect. This discussion does not address the effects of any applicable state, local or non-U.S. tax laws, any alternative minimum tax consequences, the potential application of the Medicare tax on investment income or the consequences to taxpayers subject to special tax accounting rules under Section 451(b) of the Code. You should consult your tax adviser concerning the application of U.S. federal income and estate tax laws to your particular situation (including the possibility of alternative treatments of the securities), as well as any tax consequences arising under the laws of any state, local or non-U.S. jurisdiction.

Tax Treatment of the Securities

In the opinion of our counsel, Davis Polk & Wardwell LLP, which is based on current market conditions, a security should be treated as a prepaid derivative contract that is an “open transaction” for U.S. federal income tax purposes. By purchasing a security, you agree (in the absence of an administrative determination or judicial ruling to the contrary) to this treatment.

Due to the absence of statutory, judicial or administrative authorities that directly address the U.S. federal tax treatment of the securities or similar instruments, significant aspects of the treatment of an investment in the securities are uncertain. We do not plan to request a ruling from the IRS, and the IRS or a court might not agree with the treatment described below. Accordingly, you should consult your tax adviser regarding all aspects of the U.S. federal income and estate tax consequences of an investment in the securities. Unless otherwise indicated, the following discussion is based on the treatment of the securities as prepaid derivative contracts that are “open transactions.”

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Tax Consequences to U.S. Holders

This section applies only to U.S. holders. You are a “U.S. holder” if you are a beneficial owner of a security that is, for U.S. federal income tax purposes:

a citizen or individual resident of the United States;
a corporation created or organized in or under the laws of the United States, any state therein or the District of Columbia; or
an estate or trust the income of which is subject to U.S. federal income taxation regardless of its source.
Tax Treatment Prior to Maturity. You should not be required to recognize income over the term of the securities prior to maturity, other than pursuant to a sale, exchange or retirement as described below.

Sale, Exchange or Retirement of the Securities. Upon a sale, exchange or retirement of the securities, you should recognize gain or loss equal to the difference between the amount realized on the sale, exchange or retirement and your tax basis in the securities that are sold, exchanged or retired. Your tax basis in the securities should equal the amount you paid to acquire them. This gain or loss should be long-term capital gain or

loss if at the time of the sale, exchange or retirement you held the securities for more than one year, and short-term capital gain or loss otherwise. Long-term capital gains recognized by non-corporate U.S. holders are generally subject to taxation at reduced rates. The deductibility of capital losses is subject to certain limitations.

Possible Alternative Tax Treatments of an Investment in the Securities

Alternative U.S. federal income tax treatments of the securities are possible that, if applied, could materially and adversely affect the timing and/or character of income, gain or loss with respect to them. It is possible, for example, that the securities could be treated as debt instruments governed by Treasury regulations relating to the taxation of contingent payment debt instruments. In that case, regardless of your method of tax accounting for U.S. federal income tax purposes, you generally would be required to accrue income based on our comparable yield for similar non-contingent debt, determined as of the time of issuance of the securities, in each year that you held the securities, even though we are not required to make any payment with respect to the securities prior to maturity. In addition, any

gain on the sale, exchange or retirement of the securities would be treated as ordinary income.

Other possible U.S. federal income tax treatments of the securities could also affect the timing and character of income or loss with respect to the securities. In 2007, the U.S. Treasury Department and the IRS released a notice requesting comments on the U.S. federal income tax treatment of “prepaid forward contracts” and similar instruments. The notice focuses in particular on whether to require holders of these instruments to accrue income over the term of their investment. It also asks for comments on a number of related topics, including the character of income or loss with respect to these instruments; whether short-term instruments should be subject to any such accrual regime; the relevance of factors such as the exchange-traded status of the instruments and the nature of the underlying property to which the instruments are linked; and whether these instruments are or should be subject to the “constructive ownership” regime, which very generally can operate to recharacterize certain long-term capital gain as ordinary income and impose a notional interest charge. While the notice requests comments on appropriate transition rules

and effective dates, any Treasury regulations or other guidance promulgated after consideration of these issues could materially and adversely affect the tax consequences of an investment in the securities, possibly with retroactive effect. You should consult your tax adviser regarding the possible alternative treatments of an investment in the securities and the issues presented by this notice.

Tax Consequences to Non-U.S. Holders

This section applies only to non-U.S. holders. You are a “non-U.S. holder” if you are a beneficial owner of a security that is, for U.S. federal income tax purposes:

an individual who is classified as a nonresident alien;

a foreign corporation; or
a foreign estate or trust.

You are not a non-U.S. holder for purposes of this discussion if you are (i) an individual who is present in the United States for 183 days or more in the taxable year of disposition or (ii) a former citizen or resident of the United States. If you are or may become such a person during the period in which you hold a security, you should consult your tax adviser regarding the U.S. federal tax consequences of an investment in the securities.

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Sale, Exchange or Retirement of the Securities.

Subject to the possible application of Section 897 of the Code and the discussion below regarding Section 871(m), you generally should not be subject to U.S. federal income or withholding tax in respect of amounts paid to you, provided that income in respect of the securities is not effectively connected with your conduct of a trade or business in the United States.

If you are engaged in a U.S. trade or business, and if income from the securities is effectively connected with the conduct of that trade or business, you generally will be subject to regular U.S. federal income tax with respect to that income in the same manner as if you were a U.S. holder, unless an applicable income tax treaty provides otherwise. If you are such a holder and you are a corporation, you should also consider the potential application of a 30% (or lower treaty rate) branch profits tax.

Tax Consequences Under Possible Alternative

Treatments. If all or any portion of a security were recharacterized as a debt instrument, subject to the possible application of Section 897 of the Code and the discussions below

regarding FATCA and Section 871(m), any payment made to you with respect to the security generally should not be subject to U.S. federal withholding or income tax, provided that: (i) income or gain in respect of the security is not effectively connected with your conduct of a trade or business in the United States, and (ii) you provide an appropriate IRS Form W-8 certifying under penalties of perjury that you are not a United States person.

Other U.S. federal income tax treatments of the securities are also possible. In 2007, the U.S. Treasury Department and the IRS released a notice requesting comments on the U.S. federal income tax treatment of “prepaid forward contracts” and similar instruments. Among the issues addressed in the notice is the degree, if any, to which income with respect to instruments such as the securities should be subject to U.S. withholding tax. While the notice requests comments on appropriate transition rules and effective dates, it is possible that any Treasury regulations or other guidance promulgated after consideration of these issues might materially and adversely affect the withholding tax consequences of an investment in the securities, possibly with retroactive

effect. Accordingly, you should consult your tax adviser regarding the issues presented by the notice.

Possible Withholding Under Section 871(m) of the Code. Section 871(m) of the Code and Treasury regulations promulgated thereunder (“Section 871(m)”) generally impose a 30% withholding tax on dividend equivalents paid or deemed paid to non-U.S. holders with respect to certain financial instruments linked to U.S. equities (“U.S. underlying equities”) or indices that include U.S. underlying equities. Section 871(m) generally applies to instruments that substantially replicate the economic performance of one or more U.S. underlying equities, as determined based on tests set forth in the applicable Treasury regulations (a “specified security”). However, the regulations, as modified by an IRS notice, exempt financial instruments issued prior to January 1, 2021 that do not have a “delta” of one. Based on the terms of the securities and representations provided by us, our counsel is of the opinion that the securities should not be treated as transactions that have a “delta” of one within the meaning of the regulations with respect to any U.S. underlying equity and, therefore, should not be specified securities subject

to withholding tax under Section 871(m).

A determination that the securities are not subject to Section 871(m) is not binding on the IRS, and the IRS may disagree with this treatment. Moreover, Section 871(m) is complex and its application may depend on your particular circumstances. For example, if you enter into other transactions relating to a U.S. underlying equity, you could be subject to withholding tax or income tax liability under Section 871(m) even if the securities are not specified securities subject to Section 871(m) as a general matter. You should consult your tax adviser regarding the potential application of Section 871(m) to the securities.

In the event withholding applies, we will not be required to pay any additional amounts with respect to amounts withheld.

U.S. Federal Estate Tax

If you are an individual non-U.S. holder or an entity the property of which is potentially includible in such an individual's gross estate for U.S. federal estate tax purposes (for example, a trust funded by such an individual and with respect to which the individual has retained certain interests or powers), you should note that, absent an applicable

treaty exemption, the securities may be treated as U.S. situs property subject to U.S. federal estate tax. If you are such an individual or entity, you should consult your tax adviser regarding the U.S. federal estate tax consequences of investing in the securities.

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Information Reporting and Backup Withholding

Amounts paid on the securities, and the proceeds of a sale, exchange or other disposition of the securities, may be subject to information reporting and, if you fail to provide certain identifying information (such as an accurate taxpayer identification number if you are a U.S. holder) or meet certain other conditions, may also be subject to backup withholding at the rate specified in the Code. If you are a non-U.S. holder that provides an appropriate IRS Form W-8, you will generally establish an exemption from backup withholding. Amounts withheld under the backup withholding rules are not additional taxes and may be refunded or credited against your U.S. federal income tax liability, provided the relevant information is timely furnished to the IRS.

FATCA

Legislation commonly referred to as “FATCA” generally imposes a withholding tax of 30% on payments to certain non-U.S. entities (including financial intermediaries) with respect to certain financial instruments, unless various U.S. information reporting and due diligence requirements have been satisfied. An

intergovernmental agreement between the United States and the non-U.S. entity's jurisdiction may modify these requirements. This legislation applies to certain financial instruments that are treated as paying U.S.-source interest, dividends or dividend equivalents or other U.S.-source "fixed or determinable annual or periodical" income ("FDAP income"). If required under FATCA, withholding applies to payments of FDAP income. While existing Treasury regulations would also require withholding on payments of gross proceeds of the disposition (including upon retirement) of certain financial instruments treated as paying U.S.-source interest or dividends, the U.S. Treasury Department has indicated in subsequent proposed regulations its intent to eliminate this requirement. If the securities were treated as debt instruments or as subject to Section 871(m), the withholding regime under FATCA would apply to the securities. If withholding applies to the securities, we will not be required to pay any additional amounts with respect to amounts withheld. If you are a non-U.S. holder, or a U.S. holder holding securities through a non-U.S. intermediary, you should consult your tax adviser

regarding the potential application of FATCA to the securities.

The preceding discussion constitutes the full opinion of Davis Polk & Wardwell LLP regarding the material U.S. federal tax consequences of owning and disposing of the securities.

You should consult your tax adviser regarding all aspects of the U.S. federal income and estate tax consequences of an investment in the securities and any tax consequences arising under the laws of any state, local or non-U.S. taxing jurisdiction.

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