DYNEGY INC.
Form PREM14A
September 03, 2010
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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

(Rule 14a-101)

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

Check the appropriate box:

x 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

DYNEGY 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.

x 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:
Common stock, par value $0.01 per share.

(2) Aggregate number of securities to which transaction applies:
120,737,451 shares of the Registrant s common stock and 3,387,884 of the Registrant s phantom stock units.

(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):
Solely for the purpose of calculating the registration fee, the underlying value of the transaction was calculated as the *sum* of (A) 120,737,451 of the Registrant s shares of common stock (including restricted common stock), *multiplied* by $4.50 per share and (B) 3,387,884 of the Registrant s phantom stock units *multiplied* by $4.50 per phantom stock unit.

(4) Proposed maximum aggregate value of transaction:
$558,564,008

(5) Total fee paid:
$39,825.61, determined based upon multiplying 0.00007130 by the proposed maximum aggregate value of transaction of $558,564,008.

¨ 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:

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[ ], 2010

Dear Stockholder:

We cordially invite you to attend a special meeting of stockholders of Dynegy Inc., a Delaware corporation, which we refer to as the Company, to be held on [ ], 2010 at [ ], at Dynegy s headquarters, Wells Fargo Plaza, 1000 Louisiana Street, Houston, Texas, 77002.

On August 13, 2010, the Company entered into a merger agreement providing for the acquisition of the Company by Denali Parent Inc., an entity formed by an affiliate of The Blackstone Group L.P. At the special meeting, you will be asked to consider and vote upon a proposal to adopt the merger agreement.

Concurrently with the execution of the merger agreement, an entity formed and wholly owned by Denali Parent Inc. entered into a purchase and sale agreement with NRG Energy, Inc., which we refer to as NRG, pursuant to which NRG will purchase four of our natural gas-fired assets. The completion of the merger is contingent upon the concurrent closing of the transaction with NRG. No approval of the holders of our common stock is required in order to complete the transaction with NRG and no such approval is being sought from you. The transaction with NRG will not occur if the merger is not consummated.

If the merger contemplated by the merger agreement is completed, you will be entitled to receive $4.50 in cash, without interest, less any applicable withholding taxes, for each share of our common stock owned by you (unless you have properly exercised your appraisal rights with respect to such shares), which represents a premium of approximately 62% to the closing price of our common stock on August 12, 2010, the last trading day prior to the public announcement of the execution of the merger agreement, and a premium of approximately 26% to the average closing price of our common stock during the 30-day trading period ended on August 12, 2010. The $4.50 per share is a discount to the trading price of our common stock for recent periods prior to June 28, 2010.

The board of directors of the Company has determined that the merger is fair to, and in the best interests of, the Company and its stockholders and approved and declared advisable the merger agreement and the merger and the other transactions contemplated by the merger agreement. The Company s board of directors made its determination after consultation with its legal and financial advisors and consideration of a number of factors. **The board of directors of the Company recommends that you vote FOR approval of the proposal to adopt the merger agreement and FOR approval of the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.**

Approval of the proposal to adopt the merger agreement requires the affirmative vote of holders of a majority of the outstanding shares of our common stock entitled to vote thereon.

Your vote is very important. Whether or not you plan to attend the special meeting, please complete, date, sign and return, as promptly as possible, the enclosed proxy card in the accompanying prepaid reply envelope, or submit your proxy by telephone or the Internet. If you attend the special meeting and vote in person, your vote by ballot will revoke any proxy previously submitted. **The failure to vote will have the same effect as a vote AGAINST approval of the proposal to adopt the merger agreement.**

If your shares of our common stock are held in street name by your bank, brokerage firm or other nominee, your bank, brokerage firm or other nominee will be unable to vote your shares of our common stock without instructions from you. You should instruct your bank, brokerage firm or other nominee to vote your shares of our common stock in accordance with the procedures provided by your bank, brokerage firm or other

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nominee. **The failure to instruct your bank, brokerage firm or other nominee to vote your shares of our common stock FOR approval of the proposal to adopt the merger agreement will have the same effect as voting AGAINST approval of the proposal to adopt the merger agreement.**

The accompanying proxy statement provides you with detailed information about the special meeting, the merger agreement, the merger, the NRG purchase and sale agreement and the NRG transaction. A copy of each of the merger agreement and the NRG purchase and sale agreement is attached as **Annex A** to the proxy statement. We encourage you to read the entire proxy statement and its annexes, including the merger agreement and the NRG purchase and sale agreement, carefully. You may also obtain additional information about the Company from documents we have filed with the Securities and Exchange Commission.

If you have any questions or need assistance voting your shares of our common stock, please contact MacKenzie Partners, Inc., our proxy solicitor, by calling toll-free at (800) 322-2885 or (212) 929-5500 (call collect) or by e-mailing dynegy@mackenziepartners.com.

Thank you in advance for your cooperation and continued support.

Sincerely,

Bruce A. Williamson

Chairman of the Board, President and Chief Executive Officer

The proxy statement is dated [ ], 2010, and is first being mailed to our stockholders on or about [ ], 2010.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THE MERGER, PASSED UPON THE MERITS OR FAIRNESS OF THE MERGER AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING THE PROPOSED MERGER AND THE NRG SALE, OR PASSED UPON THE ADEQUACY OR ACCURACY OF THE INFORMATION CONTAINED IN THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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DYNEGY INC.

1000 Louisiana Street, Suite 5800

Houston, TX 77002

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS [ ], 2010

DATE:	[ ], 2010
TIME:	[ ]
PLACE:	Dynegy s headquarters, Wells Fargo Plaza, 1000 Louisiana Street, Houston, Texas, 77002
ITEMS OF BUSINESS:	1. To consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of August 13, 2010, as it may be amended from time to time, which we refer to as the merger agreement, among the Company, Denali Parent Inc., a Delaware corporation, which we refer to as Parent, and Denali Merger Sub Inc., a Delaware corporation and a wholly owned subsidiary of Parent, which we refer to as Merger Sub. A copy of the merger agreement is attached as **Annex A** to the accompanying proxy statement. 2. To consider and vote on a proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement. 3. To transact any other business incident to the conduct of the meeting that may properly come before the special meeting, or any adjournment or postponement of the special meeting, by or at the direction of the board of directors of the Company.
RECORD DATE:	Only stockholders of record at the close of business on [ ], 2010 are entitled to notice of, and to vote at, the special meeting. All stockholders of record as of that date are cordially invited to attend the special meeting in person.

PROXY VOTING:	**Your vote is very important, regardless of the number of shares of common stock of the Company you own.** The merger cannot be completed unless the merger agreement is adopted by the affirmative vote of the holders of a majority of the outstanding shares of the Company s common stock entitled to vote thereon. Even if you plan to attend the special meeting in person, we request that you complete, sign, date and return, as promptly as possible, the enclosed proxy card

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	in the accompanying prepaid reply envelope or submit your proxy by telephone or the Internet prior to the special meeting to ensure that your shares of common stock of the Company will be represented at the special meeting if you are unable to attend. If you fail to return your proxy card or fail to submit your proxy by phone or the Internet, your shares of common stock of the Company will not be counted for purposes of determining whether a quorum is present at the special meeting and will have the same effect as a vote **AGAINST** approval of the proposal to adopt the merger agreement.
	If you are a stockholder of record, voting in person at the special meeting will revoke any proxy previously submitted. If you hold your shares of common stock of the Company through a bank, brokerage firm or other nominee, you should follow the procedures provided by your banker, brokerage firm or other nominee in order to vote.
RECOMMENDATION:	The board of directors of the Company has determined that the merger is fair to, and in the best interests of, the Company and its stockholders and approved and declared advisable the merger agreement and the merger and the other transactions contemplated by the merger agreement. The board of directors of the Company made its determination after consultation with its legal and financial advisors and consideration of a number of factors. **The board of directors of the Company recommends that you vote FOR approval of the proposal to adopt the merger agreement and FOR approval of the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.**
ATTENDANCE:	Only stockholders of record, their duly authorized proxy holders, beneficial stockholders with proof of ownership and our guests may attend the special meeting. To gain admittance, you must present valid photo identification, such as a driver s license or passport. If your shares of common stock of the Company are held through a bank, brokerage firm or other nominee, please bring to the special meeting a copy of your brokerage statement evidencing your beneficial ownership of the common stock of the Company and valid photo identification. If you are the representative of a corporate or institutional stockholder, you must present valid photo identification along with proof that you are the representative of such stockholder. Please note that cameras, recording devices and other electronic devices will not be permitted at the special meeting.
APPRAISAL:	Stockholders of the Company who do not vote in favor of the proposal to adopt the merger agreement will have the right to seek appraisal of the fair value of their shares of common stock of the Company if they deliver a demand for appraisal before the vote is taken on the merger agreement and comply with all the requirements of Delaware law, which are summarized in the accompanying proxy statement and reproduced in their entirety in **Annex D** to the accompanying proxy statement.

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WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING, PLEASE COMPLETE, DATE, SIGN AND RETURN, AS PROMPTLY AS POSSIBLE, THE ENCLOSED PROXY CARD IN THE ACCOMPANYING PREPAID REPLY ENVELOPE, OR SUBMIT YOUR PROXY BY TELEPHONE OR THE INTERNET. IF YOU ATTEND THE SPECIAL MEETING AND VOTE IN PERSON, YOUR VOTE BY BALLOT WILL REVOKE ANY PROXY PREVIOUSLY SUBMITTED.

By Order of the Board of Directors,

Kimberly M. O Brien

Corporate Secretary

Dated: [ ], 2010

Houston, Texas

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This proxy statement and a proxy card are first being mailed on or about [ ], 2010 to stockholders who owned shares of the Company s common stock as of the close of business on [ ], 2010.

SUMMARY

The following summary highlights selected information in this proxy statement and may not contain all the information that may be important to you. Accordingly, we encourage you to read carefully this entire proxy statement, its annexes and the documents referred to in this proxy statement. Each item in this summary includes a page reference directing you to a more complete description of that topic. You may obtain the information incorporated by reference in this proxy statement without charge by following the instructions under Where You Can Find More Information beginning on page [ ].

Parties to the Merger (Page [ ])

Dynegy Inc., or Dynegy, the Company, we or us, is a Delaware corporation headquartered in Houston, Texas. Our primary business is the production and sale of electric energy, capacity and ancillary services to regional transmission organizations and independent system operators, integrated utilities, electric cooperatives, municipalities, transmission and distribution utilities, industrial customers, power marketers, financial participants, other power generators and commercial end-users in seven U.S. states in the midwest, the northeast and the west regions of the U.S.

Denali Parent Inc., or Parent, is a Delaware corporation that was created by an affiliate of The Blackstone Group L.P., which we refer to as Blackstone, solely for the purpose of entering into the merger agreement and completing the transactions contemplated by the merger agreement. Blackstone is one of the world s leading investment and advisory firms. Its alternative asset management businesses include the management of private equity funds, real estate funds, hedge funds, credit-oriented funds, collateralized loan obligation vehicles (CLOs) and closed-end mutual funds. Blackstone also provides various financial advisory services, including mergers and acquisitions advisory, restructuring and reorganization advisory and fund placement services. Upon completion of the merger, the Company will be a direct wholly owned subsidiary of Parent.

Denali Merger Sub Inc., or Merger Sub, is a Delaware corporation that was formed by Parent solely for the purpose of entering into the merger agreement and completing the transactions contemplated by the merger agreement and entering into the NRG PSA and completing the transactions contemplated by the NRG PSA. For a description of the NRG PSA and the transactions contemplated thereby, see The NRG PSA beginning on page [ ]. Upon completion of the merger, Merger Sub will cease to exist.

In this proxy, we refer to the Agreement and Plan of Merger, dated as of August 13, 2010, as it may be amended from time to time, among the Company, Parent and Merger Sub, as the merger agreement, and the merger of Merger Sub with and into the Company as the merger. We also refer to the Purchase and Sale Agreement, dated as of August 13, 2010, as it may be amended from time to time, between NRG Energy, Inc., which we refer to as NRG, and Merger Sub, as the NRG PSA.

The Special Meeting (Page [ ])

Time, Place and Purpose of the Special Meeting (Page [ ])

The special meeting will be held on [ ], 2010, at [ ], at Dynegy s headquarters, Wells Fargo Plaza, 1000 Louisiana Street, Houston, Texas, 77002.

At the special meeting, holders of our common stock, par value $0.01 per share, which we refer to as our common stock or the common stock, will be asked to approve the proposal to adopt the merger agreement, and to

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approve the proposal to adjourn the special meeting, if necessary or appropriate, for the purpose of soliciting additional proxies if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement.

Record Date and Quorum (Page [ ])

You are entitled to receive notice of, and to vote at, the special meeting if you owned shares of our common stock at the close of business on [ ], 2010, which the Company has set as the record date for the special meeting and which we refer to as the record date. You will have one vote for each share of our common stock that you owned on the record date. As of the record date, there were [ ] shares of our common stock outstanding and entitled to vote at the special meeting. A majority of the shares of our common stock outstanding at the close of business on the record date and entitled to vote, present in person or represented by proxy, at the special meeting constitutes a quorum for the purposes of the special meeting. Abstentions and broker non-votes are counted as present for the purpose of determining whether a quorum is present.

Vote Required (Page [ ])

Approval of the proposal to adopt the merger agreement requires the affirmative vote of the holders of a majority of the outstanding shares of our common stock entitled to vote thereon. Abstentions and broker non-votes will have the same effect as a vote **AGAINST** approval of the proposal to adopt the merger agreement.

Approval of the proposal to adjourn the special meeting, if necessary or appropriate, for the purpose of soliciting additional proxies requires the affirmative vote of the holders of a majority of the shares of our common stock present in person or represented by proxy and entitled to vote on the matter at the special meeting, whether or not a quorum is present. Abstentions will have the same effect as a vote **AGAINST** approval of this proposal. Broker non-votes are not counted for purposes of this proposal.

As of [ ], 2010, the record date, the directors and executive officers of the Company beneficially owned and were entitled to vote, in the aggregate, [ ] shares of our common stock (not including any shares of our common stock deliverable upon exercise or conversion of any options, or any phantom stock units), representing [ ]% of the outstanding shares of our common stock. The directors that approved the merger and the merger agreement and the executive officers of the Company beneficially owned and were entitled to vote, in the aggregate, [ ] shares of our common stock, representing [ ]% of the outstanding shares of our common stock, and these directors and executive officers have informed the Company that they currently intend to vote all of their shares of our common stock **FOR** approval of the proposal to adopt the merger agreement and **FOR** approval of the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.

Proxies and Revocation (Page [ ])

Any stockholder of record entitled to vote at the special meeting may submit a proxy by telephone, over the Internet, by returning the enclosed proxy card in the accompanying prepaid reply envelope, or may vote in person by appearing at the special meeting. If your shares of our common stock are held in street name through a bank, brokerage firm or other nominee, you should instruct your bank, brokerage firm or other nominee on how to vote your shares of our common stock using the instructions provided by your bank, brokerage firm or other nominee. If you fail to submit a proxy or to vote in person at the special meeting, or do not provide your bank, brokerage firm or other nominee with instructions, as applicable, your shares of our common stock will not be voted on the proposal to adopt the merger agreement, which will have the same effect as a vote **AGAINST** approval of the proposal to adopt the merger agreement, and your shares of our common stock will not have an effect on the proposal to adjourn the special meeting.

You have the right to revoke a proxy, whether delivered over the Internet, by telephone or by mail, at any time before it is exercised, by voting again at a later date through any of the methods available to you, by giving

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written notice of revocation to our Corporate Secretary, which must be filed with the Corporate Secretary by the time the special meeting begins, or by attending the special meeting and voting in person.

The Merger (Page [ ])

The merger agreement provides that Merger Sub will merge with and into the Company. The Company will be the surviving corporation in the merger, which we refer to as the surviving corporation, and will continue to do business following the merger. As a result of the merger, the Company will cease to be a publicly traded company. If the merger is completed, you will not own any shares of the capital stock of the surviving corporation.

Merger Consideration (Page [ ])

In the merger, each outstanding share of our common stock (except for shares owned by Parent, Merger Sub, the Company and their respective wholly owned subsidiaries and not held on behalf of third parties, and shares owned by stockholders who have properly demanded appraisal rights, which we refer to collectively as excluded shares) will be converted into the right to receive $4.50 in cash, without interest, which amount we refer to as the per share merger consideration, less any applicable withholding taxes.

The NRG Sale (Page [ ])

Concurrently with the execution of the merger agreement, Merger Sub and NRG entered into the NRG PSA pursuant to which NRG will purchase four of our natural gas-fired assets from the surviving corporation, which we refer to as the NRG sale. A copy of the NRG PSA is attached as **Exhibit A** to the merger agreement, which is attached hereto as **Annex A**. The completion of the merger between the Company and Merger Sub is contingent upon the concurrent closing of the NRG sale. The NRG sale will not occur if the merger is not consummated. The proceeds from the NRG sale will be paid to the surviving corporation, and will not be distributed to or held for the benefit of the holders of our common stock prior to the merger. No approval of the holders of our common stock is required to complete the NRG sale and no such approval is being sought from you. NRG has agreed with Merger Sub that it will not take certain actions related to the consummation of an acquisition of the Company by a third party, directly or indirectly, until the earliest to occur of (i) 270 days after the date the NRG PSA was signed, (ii) the consummation of an acquisition of the Company by a third party, and (iii) 90 days after the stockholder vote on the merger agreement.

Reasons for the Merger; Recommendation of the Board of Directors (Page [ ])

After careful consideration of various factors described in the section entitled The Merger Reasons for the Merger; Recommendation of the Board of Directors , beginning on page [ ], the board of directors of the Company, which we refer to as the board of directors, (i) determined that the merger is fair to, and in the best interests of, the Company and our stockholders, (ii) approved and declared advisable the merger agreement and the merger and the other transactions contemplated by the merger agreement, (iii) resolved that the merger agreement be submitted for consideration by the stockholders of the Company at a special meeting of stockholders and (iv) recommended that our stockholders vote to adopt the merger agreement. One director of the Company voted against approval of the merger and the merger agreement. See The Merger Background of the Merger beginning on page [ ].

In considering the recommendation of the board of directors with respect to the proposal to adopt the merger agreement, you should be aware that our directors and executive officers have interests in the merger that are different from, or in addition to, yours. The board of directors was aware of and considered these interests, among other matters, in evaluating and negotiating the merger agreement and the merger, and in recommending that the merger agreement be adopted by the stockholders of the Company. See the section entitled The Merger Interests of Certain Persons in the Merger beginning on page [ ].

The board of directors recommends that you vote FOR approval of the proposal to adopt the merger agreement and FOR approval of the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.

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Opinions of Financial Co-Advisors (Page [ ])

Opinion of Greenhill & Co., LLC (Page [ ])

Greenhill & Co., LLC, which we refer to as Greenhill, delivered its opinion to the board of directors that, as of August 13, 2010 and based upon and subject to the factors and assumptions set forth therein, the per share merger consideration to be received by the holders of our common stock (excluding Parent, Merger Sub and any of their affiliates) pursuant to the merger agreement was fair, from a financial point of view, to such holders.

The full text of Greenhill s written opinion dated August 13, 2010, which contains the assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex B to this proxy statement. The summary of Greenhill s opinion in this proxy statement is qualified in its entirety by reference to the full text of the opinion. Greenhill s written opinion was addressed to the board of directors. It was not a recommendation to the board of directors as to whether it should approve the merger or the merger agreement, nor does it constitute a recommendation as to whether the stockholders of the Company should adopt the merger agreement or take any other action with respect to the merger at any meeting of the stockholders convened in connection with the merger. Greenhill was not requested to opine as to, and its opinion did not in any manner address, the Company s underlying business decision to proceed with or effect the merger.

Under the terms of Greenhill s engagement with the Company, the Company has agreed to pay Greenhill a fee of $10 million in the aggregate, of which $5 million was paid following delivery of Greenhill s written opinion and $5 million is payable upon the consummation of the merger. For a more complete description, see Opinions of Financial Co-Advisors Opinion of Greenhill & Co., LLC beginning on page [ ]. See also **Annex B** to this proxy statement.

We encourage you to read the opinion of Greenhill described above in its entirety for a description of the assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with such opinion.

Opinion of Goldman, Sachs & Co. (Page [ ])

Goldman, Sachs & Co., which we refer to as Goldman Sachs, delivered its opinion to the board of directors that, as of August 13, 2010 and based upon and subject to the factors and assumptions set forth therein, the per share merger consideration to be paid to the holders of our common stock pursuant to the merger agreement was fair from a financial point of view to such holders.

The full text of the written opinion of Goldman Sachs, dated August 13, 2010, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex C to this proxy statement. Goldman Sachs provided its opinion for the information and assistance of the board of directors in connection with its consideration of the proposed merger. Goldman Sachs opinion is not a recommendation as to how any holder of our common stock should vote with respect to the merger or any other matter.

Under the terms of Goldman Sachs engagement with the Company, the Company has agreed to pay Goldman Sachs a fee of $10 million in the aggregate, of which $5 million was paid following delivery of Goldman Sachs written opinion and $5 million is payable upon the consummation of the merger. For a more complete description, see Opinions of Financial Co-Advisors Opinion of Goldman, Sachs & Co. beginning on page [ ]. See also **Annex C** to this proxy statement.

We encourage you to read the opinion of Goldman Sachs described above carefully in its entirety for a description of the assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with such opinion.

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Financing of the Merger (Page [ ])

We anticipate that the total funds needed by Parent and Merger Sub to complete the merger will be obtained as follows:

- the funds needed to pay our stockholders the amounts due to them under the merger agreement as holders of common stock and/or restricted stock (which we anticipate, based upon the shares of our common stock and restricted stock outstanding as of August 31, 2010, will be approximately $543 million), certain amounts due in connection with the merger and certain fees and expenses related to the merger, will be funded by equity financing of up to $580 million to be provided or secured by Blackstone Capital Partners V L.P., which we refer to as the guarantor, or other parties to whom it assigns a portion of its commitment; and

- the funds needed to (i) repay or refinance indebtedness outstanding under the Company s existing credit facility that will come due as a result of the merger (which we anticipate, based upon indebtedness outstanding as of August 30, 2010, will be approximately $918 million, consisting of an $850 million term letter of credit facility (Term LC Facility) and a $68 million senior secured term loan facility) and (ii) replace or refinance the letters of credit issued under the Term LC Facility (as of August 30, 2010, letters of credit issued under the Term LC Facility were approximately $470 million), will collectively be funded from the cash on hand of the Company, restricted cash of the Company associated with the Term LC Facility and proceeds the surviving corporation receives in the NRG sale (as of August 30, 2010, (a) the cash on hand of the Company was approximately $650 million and (b) restricted cash of the Company associated with the Term LC Facility was approximately $850 million).

We anticipate the remaining proceeds from the NRG sale will be used to provide liquidity to the Company in support of its operations and for other corporate purposes.

Parent has obtained the equity commitment letter described below, and the funding under the equity commitment letter is subject to certain conditions. In addition, Merger Sub has entered into the NRG PSA with NRG, and the closing of the merger is subject to the concurrent closing of the NRG sale. We believe the amounts committed under the equity commitment letter and to be received by the surviving corporation from the NRG sale, together with cash on hand of the Company and cash of the Company that is restricted under our existing credit facility, will be sufficient to complete the merger and to repay or refinance any outstanding indebtedness that will come due as a result of the merger, but we cannot assure you of that. Those amounts may be insufficient if, among other things, the guarantor fails to fund the committed amount in breach of the equity commitment, the outstanding indebtedness of the Company at the closing of the merger is greater than anticipated, cash on hand of the Company and cash of the Company that is restricted under the Company s existing credit facility are less than expected, or the fees, expenses or other amounts required to be paid in connection with the merger are greater than anticipated. Although obtaining the proceeds of the equity financing is not a condition to the completion of the merger, the failure of Parent and Merger Sub to obtain sufficient equity financing is likely to result in the failure of the merger to be completed. In that case, if a court of competent jurisdiction declines to specifically enforce the obligations of Parent and Merger Sub under the merger agreement, Parent may be obligated to pay the Company a fee of $100 million, which we refer to as the Parent fee. In addition, if the merger agreement is terminated or the merger is not consummated, Merger Sub may be obligated to pay the Company 50% of certain amounts Merger Sub or any of its affiliates receive from NRG negotiated in connection with a termination of the NRG PSA or a failure of the NRG sale to be consummated, which we refer to as the NRG payment. See The Merger Agreement Termination Fees beginning on page [ ] for a further discussion of the Parent fee and the NRG payment. The Parent fee and the NRG payment are guaranteed by the guarantor pursuant to the limited guaranty referred to below.

Equity Financing (Page [ ])

Parent has entered into a letter agreement, which we refer to as the equity commitment letter, with the guarantor, dated August 13, 2010, pursuant to which the guarantor has committed to make or secure capital

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contributions to Parent at or prior to the closing of the merger up to an aggregate amount of $580 million. The guarantor is permitted to capitalize Parent directly or indirectly through one or more affiliated entities or other designated co-investors (other than NRG or any of its affiliates), including with debt financing to the extent available from lenders other than NRG or the Company or any of their respective affiliates. However, in connection with the closing of the merger (i) no credit support in connection with any debt financing utilized to capitalize Parent may be provided by NRG, the Company or any of their affiliates and (ii) no new indebtedness of the Company or any of its subsidiaries, and no assets of the Company or any of its subsidiaries, will be used to pay any portion of the aggregate merger consideration to be paid to holders of our common stock.

The guarantor s obligation to fund the financing contemplated by the equity commitment letter is subject only to the satisfaction of the conditions to Parent s and Merger Sub s obligations to consummate the transactions contemplated by the merger agreement. The Company is a third party beneficiary of the equity commitment letter to the extent that the Company seeks specific performance of Parent s obligation to cause the guarantor to fund its equity commitment in certain limited circumstances in accordance with the terms of the merger agreement.

Limited Guaranty (Page [ ])

Pursuant to the limited guaranty delivered by the guarantor in favor of the Company, dated August 13, 2010, the guarantor has guaranteed the due and punctual payment when due of (i) the obligations of Parent under the merger agreement to pay the Parent fee and any NRG payment to the Company as and when due and (ii) certain expense reimbursement and indemnification obligations of Parent to the Company in connection with the Company s cooperation with certain financing and third party investment activities. See The Merger Agreement Termination Fees beginning on page [ ]. However, the guarantor s obligations under the limited guaranty are subject to a cap equal to (x) the sum of the Parent fee, the amount of any NRG payment and any expenses incurred by the Company in connection with enforcing its right to such amounts minus (y) any expense reimbursement and indemnification payments actually paid by Parent or Merger Sub to the Company in connection with the Company s cooperation with certain financing and third party investment activities.

Interests of Certain Persons in the Merger (Page [ ])

In considering the recommendation of our board of directors that you vote to approve the proposal to adopt the merger agreement, you should be aware that our directors and executive officers have interests in the merger that are different from, or in addition to, those of our stockholders generally. The board of directors was aware of and considered these interests, among other matters, in evaluating and negotiating the merger agreement and the merger, and in recommending that the merger agreement be adopted by the stockholders of the Company. These interests include the following:

- the vesting and cashing-out of all unvested shares of restricted stock, phantom stock and certain performance units held by our executive officers, and the payment in cash of the directors deferred compensation balances under the Company s Deferred Compensation Plan for Certain Directors; and

- pursuant to an executive change in control severance plan, the payment of severance payments (including, if applicable, a tax gross-up relating to parachute payment excise taxes resulting from such severance payments) in connection with a termination of employment that may occur in connection with or following the merger.

Material U.S. Federal Income Tax Consequences of the Merger (Page [ ])

The exchange of shares of our common stock for cash pursuant to the merger generally will be a taxable transaction to U.S. holders for U.S. federal income tax purposes. Stockholders who are U.S. holders and who exchange their shares of our common stock in the merger will generally recognize gain or loss in an amount equal to the difference, if any, between the cash payments made pursuant to the merger and their adjusted tax basis in their shares of our common stock. Backup withholding may also apply to the cash payments made pursuant to the merger unless the U.S. holder or other payee provides a taxpayer identification number, certifies that such number is correct and otherwise complies with the backup withholding rules. You should read The Merger Material U.S. Federal Income Tax Consequences of the Merger beginning on page [ ] for a definition of U.S. holder and a more detailed discussion of the U.S. federal income tax consequences of the merger. You

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should also consult your tax advisor for a complete analysis of the effect of the merger on your federal, state and local and/or foreign taxes.

Regulatory Approvals (Page [ ])

Under the terms of the merger agreement, the merger cannot be completed until the waiting periods applicable to the consummation of the merger and the NRG sale under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, or the HSR Act, have expired or been earlier terminated. On August 27, 2010, the Company and the guarantor filed notification of the proposed merger with the Federal Trade Commission, or the FTC, and the Antitrust Division of the Department of Justice, or the DOJ, under the HSR Act. On August 27, 2010, the guarantor and NRG filed notification of the proposed NRG sale with the FTC and the DOJ under the HSR Act.

In addition, the merger and the NRG sale cannot be completed without prior approval of the merger and the NRG sale by the Federal Energy Regulatory Commission, or FERC. The Company, certain of the Company s subsidiaries, Parent, Merger Sub and NRG filed with FERC a joint application for approval of the merger and the NRG sale under Section 203 of the Federal Power Act on August 27, 2010. FERC may grant approval subject to conditions, including conditions that would require divestiture of substantial assets of the Company, Parent, or NRG in order to consummate the merger and/or the NRG sale, and also retains the authority to issue supplemental orders imposing additional conditions at any time.

The merger and the NRG sale are, or may be, subject to the regulatory requirements of other state and federal regulatory agencies and authorities. The Company, Parent and Merger Sub filed a joint petition for approval, or a determination that no approval is required, for the merger with the New York Public Service Commission, or the NYPSC, under Sections 70 and 83 of the New York Public Service Law, or the PSL, on August 27, 2010. The NYPSC generally concludes that no approval is required by applying what is known as the *Wallkill* presumption , as further described under The Merger Regulatory Approvals .

The Company, on behalf of itself, Blackstone and NRG, also filed voluntary notifications relating to the merger and the NRG sale with the California Public Utilities Commission, or the CPUC, and the California Independent System Operator Corporation, or the CAISO, under CPUC General Order No. 167 on August 13, 2010. Although CPUC General Order No. 167 contemplates the filing of such notifications at least 90 days prior to consummation of the subject transactions, the CPUC has recognized that 90-day notice will not always be practical and has stated that the notice period will be enforced with reasonable flexibility, provided the notifications are made as soon as legally possible. No further action on these notifications is required.

Litigation Relating to the Merger (Page [ ])

In connection with the proposed merger, nineteen stockholder lawsuits have been filed against the Company, its directors and Blackstone in the District Courts of Harris County, Texas between August 13, 2010 and the date of this proxy statement; Parent, Merger Sub, the guarantor, NRG and/or certain executive officers of the Company have also been named as defendants in certain of these lawsuits. One stockholder lawsuit has been filed against the Company, its directors, Blackstone, Parent and Merger Sub in the United States District Court in the Southern District of Texas on August 31, 2010. Six similar stockholder actions against the Company, its directors and Blackstone were filed in the Court of Chancery of the State of Delaware between August 17, 2010 and August 23, 2010, and were consolidated on August 24, 2010. Each of the Texas and Delaware complaints generally alleges, among other things, that our board of directors and certain executive officers have violated various fiduciary duties. Further, certain of the complaints allege that the Company and/or Blackstone aided and abetted such alleged breaches of fiduciary duties. Among other remedies, the plaintiffs seek to enjoin the merger and/or the stockholder vote, declaratory relief with respect to the alleged breaches of fiduciary duty, and monetary damages including attorneys fees and expenses. All defendants deny any wrongdoing in connection with the proposed merger and plan to vigorously defend against all pending claims.

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The Merger Agreement (Page [ ])

Treatment of Common Stock, Options and Other Equity Awards (Page [ ])

Common Stock. At the effective time of the merger, each share of our common stock issued and outstanding (except for the excluded shares) will be converted into the right to receive the per share merger consideration of $4.50 in cash, without interest, less any applicable withholding taxes.

Options. None of the outstanding Company stock options has an exercise price that is lower than the per share merger consideration. Accordingly, holders of Company stock options will not be entitled to receive any payment in exchange for their options. All Company stock options will be cancelled for no payment at the effective time of the merger.

Restricted Stock. At the effective time of the merger, each outstanding share of restricted stock will fully vest and be cancelled and converted into the right to receive, as soon as reasonably practicable after the effective time of the merger, but in any event no later than the earlier of (i) the second payroll period or (ii) thirty (30) days following the effective time of the merger, an amount in cash equal to the per share merger consideration, less any applicable withholding taxes.

Phantom Stock Units. At the effective time of the merger, each outstanding phantom stock unit will fully vest and be cancelled and converted into the right to receive, as soon as reasonably practicable after the effective time of the merger, but in any event no later than the earlier of (i) the second payroll period or (ii) thirty (30) days following the effective time of the merger, an amount in cash equal to the per share merger consideration, less any applicable withholding taxes.

Performance Awards. At the effective time of the merger, the Company s performance awards granted in 2009 and 2010 will be payable at 100% of target , fully vested and settled in cash, and each outstanding performance award granted prior to 2009 will be fully vested and cancelled for no payment in accordance with the terms of the agreements governing such Company performance awards.

Solicitation of Acquisition Proposals (Page [ ])

The merger agreement provides that for the period beginning on August 13, 2010 and continuing until 11:59 p.m., Eastern time, on September 22, 2010, which we refer to as the go-shop period, we are permitted to solicit any inquiry or the making of any acquisition proposals from third parties and to participate in any negotiations or discussions with third parties with respect to any acquisition proposals. From and after 12:00 a.m., Eastern time, on September 23, 2010, which we refer to as the no-shop period start date, and until the effective time of the merger or the termination of the merger agreement, we are not permitted to solicit any inquiry or the making of any acquisition proposals or engage in any negotiations or discussions with any person relating to an acquisition proposal. Notwithstanding these restrictions, under certain circumstances, we may, from and after the no-shop period start date and prior to the time our stockholders adopt the merger agreement, respond to a written acquisition proposal or engage in discussions or negotiations with the person making such an acquisition proposal. At any time before the merger agreement is adopted by our stockholders, if the board of directors determines that an acquisition proposal is a superior proposal, we may terminate the merger agreement and enter into any acquisition, merger or similar agreement, which we refer to as an alternative acquisition agreement, with respect to such superior proposal, so long as we comply with certain terms of the merger agreement, including paying a termination fee to Parent. See The Merger Agreement Solicitation of Acquisition Proposals beginning on page [ ] and The Merger Agreement Termination Fees beginning on page [ ].

Conditions to the Merger (Page [ ])

The respective obligations of the Company, Parent and Merger Sub to consummate the merger are subject to the satisfaction or waiver of certain customary conditions, including the adoption of the merger agreement by our stockholders, receipt of required regulatory approvals, the absence of any legal prohibitions, the accuracy of the representations and warranties of the parties and compliance by the parties with their respective obligations under

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the merger agreement. Parent s and Merger Sub s obligations to consummate the merger are also subject to the satisfaction or waiver of the conditions to the obligations of NRG and Merger Sub to effect the NRG sale under the NRG PSA (other than those conditions that by their nature are to be satisfied at the closing of the NRG sale, and the condition relating to the consummation of the merger) and to NRG being ready, willing and able to complete the NRG sale. See The NRG PSA Conditions to the NRG Sale beginning on page [ ].

Termination (Page [ ])

We and Parent may, by mutual written consent, terminate the merger agreement and abandon the merger at any time prior to the effective time of the merger, whether before or after the adoption of the merger agreement by our stockholders.

The merger agreement may also be terminated and the merger abandoned at any time prior to the effective time of the merger as follows:

by either Parent or the Company, if:

the merger has not been consummated by February 13, 2011, which we refer to as the termination date and which may be extended by either Parent or the Company to May 13, 2011 if any of the conditions to the closing of the merger are not fulfilled or waived but remain capable of being satisfied on February 13, 2011;

our stockholders meeting has been held and completed and our stockholders have not adopted the merger agreement at such meeting or any adjournment or postponement of such meeting; or

a law or an order permanently restraining, enjoining or otherwise prohibiting or making illegal the consummation of the merger, which we refer to as an order, has become final and non-appealable.

However, none of the termination rights described in the preceding bullet points will be available to any party if the failure to consummate the merger prior to the termination date was primarily due to the failure of such party to perform any of its obligations under the merger agreement.

by the Company, if:

at any time prior to the adoption of the merger agreement by our stockholders, (i)

0.000%

If, for example, the final underlier level were determined to be 25.000% of the initial underlier level, the cash settlement amount that we would deliver on your notes at maturity would be 31.250% of the face amount of your notes, as shown in the table above. As a result, if you purchased your notes on the original issue date at the face amount and held them to the stated maturity date, you would lose 68.750% of your investment (if you purchased your notes at a premium to face amount you would lose a correspondingly higher percentage of your investment). If the final underlier level were determined to be 0.000% of the initial underlier level, you would lose your entire investment in the notes. In addition, if the final underlier level were determined to be 150.000% of the initial underlier level, the cash settlement amount that we would deliver on your notes at maturity would be capped at the maximum settlement amount, or 114.900% of each $1,000 face amount of your notes, as shown in the table above. As a result, if you held your notes to the stated maturity date, you would not benefit from any increase in the final underlier level of greater than 114.900% of the initial underlier level.

The following chart shows a graphical illustration of the hypothetical cash settlement amounts that we would pay on your notes on the stated maturity date, if the final underlier level were any of the hypothetical levels shown on the horizontal axis. The hypothetical cash settlement amounts in the chart are expressed as percentages of the face amount of your notes and the hypothetical final underlier levels are expressed as percentages of the initial underlier level. The chart shows that any hypothetical final underlier level of less than 80.000% (the section left of the 80.000% marker on the horizontal axis) would result in a hypothetical cash settlement amount of less than 100.000% of the face amount of your notes (the section below the 100.000% marker on the vertical axis) and, accordingly, in a loss of principal to the holder of the notes. The chart also shows that any hypothetical final underlier level of greater than or equal to 114.900% (the section right of the 114.900% marker on the horizontal axis) would result in a capped return on your investment.

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The cash settlement amounts shown above are entirely hypothetical; they are based on market prices for the underlier stocks that may not be achieved on the determination date and on assumptions that may prove to be erroneous. The actual market value of your notes on the stated maturity date or at any other time, including any time you may wish to sell your notes, may bear little relation to the hypothetical cash settlement amounts shown above, and these amounts should not be viewed as an indication of the financial return on an investment in the offered notes. The hypothetical cash settlement amounts on notes held to the stated maturity date in the examples above assume you purchased your notes at their face amount and have not been adjusted to reflect the actual issue price you pay for your notes. The return on your investment (whether positive or negative) in your notes will be affected by the amount you pay for your notes. If you purchase your notes for a price other than the face amount, the return on your investment will differ from, and may be significantly lower than, the hypothetical returns suggested by the above examples. Please read Additional Risk Factors Specific to the Underlier-Linked Notes The Market Value of Your Notes May Be Influenced by Many Unpredictable Factors in the accompanying Product Supplement No. 6.

Payments on the notes are economically equivalent to the amounts that would be paid on a combination of other instruments. For example, payments on the notes are economically equivalent to a combination of an interest-bearing bond bought by the holder and one or more options entered into between the holder and us (with one or more implicit option premiums paid over time). The discussion in this paragraph does not modify or affect the terms of the notes or the U.S. federal income tax treatment of the notes, as described elsewhere in this Pricing Supplement.

We cannot predict the actual final underlier level or what the market value of your notes will be on any particular trading day, nor can we predict the relationship between the underlier level and the market value of your notes at any time prior to the stated maturity date. The actual amount that you will receive, if any, at maturity and the rate of return on the offered notes will depend on the actual final underlier level determined by the calculation agent as described above. Moreover, the assumptions on which the hypothetical returns are based may turn out to be inaccurate. Consequently, the amount of cash to be paid in respect of your notes, if any, on the stated maturity date may be very different from the information reflected in the table and chart above.

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ADDITIONAL RISK FACTORS SPECIFIC TO YOUR NOTES

An investment in your notes is subject to the risks described below, as well as the risks and considerations described under Risk Factors in the accompanying Prospectus, under Risk Factors in the accompanying Prospectus Supplement, under Additional Risk Factors Specific to the Notes in the accompanying General Terms Supplement, and under Additional Risk Factors Specific to the Underlier-Linked Notes in the accompanying Product Supplement No. 6. You should carefully review these risks and considerations as well as the terms of the notes described herein and in the accompanying Prospectus, the accompanying Prospectus Supplement, the accompanying General Terms Supplement and the accompanying Product Supplement No. 6. Your notes are a riskier investment than ordinary debt securities. Also, your notes are not equivalent to investing directly in the underlier stocks, i.e., the stocks comprising the underlier to which your notes are linked. You should carefully consider whether the offered notes are suited to your particular circumstances.

The Notes Are Subject to the Credit Risk of the Bank

Although the return on the notes will be based on the performance of the underlier, the payment of any amount due on the notes is subject to the credit risk of the Bank, as issuer of the notes. The notes are our unsecured obligations. As further described in the accompanying Prospectus and Prospectus Supplement, the notes will rank on par with all of the other unsecured and unsubordinated debt obligations of the Bank, except such obligations as may be preferred by operation of law. Investors are dependent on our ability to pay all amounts due on the notes, and therefore investors are subject to our credit risk and to changes in the market s view of our creditworthiness. See Description of Senior Debt Securities Ranking on page 2 of the accompanying Prospectus.

The Amount Payable on Your Notes Is Not Linked to the Level of the Underlier at Any Time Other than the Determination Date

The final underlier level will be based on the closing level of the underlier on the determination date (subject to adjustment as described elsewhere in this Pricing Supplement). Therefore, if the closing level of the underlier dropped precipitously on the determination date, the cash settlement amount for your notes may be significantly less than it would have been had the cash settlement amount been linked to the closing level of the underlier prior to such drop in the level of the underlier. Although the actual level of the underlier on the stated maturity date or at other times during the life of your notes may be higher than the final underlier level, you will not benefit from the closing level of the underlier at any time other than on the determination date.

You May Lose Your Entire Investment in the Notes

You may lose your entire investment in the notes. The cash payment on your notes, if any, on the stated maturity date will be based on the performance of the S&P 500® Index as measured from the initial underlier level to the closing level on the determination date. If the final underlier level is *less than* the buffer level, you will lose, for each $1,000 of the face amount of your notes, an amount equal to the *product* of the buffer rate *times* the *sum* of the underlier return *plus* the buffer amount *times* $1,000. Thus, you may lose your entire investment in the

notes, which would include any premium to face amount you paid when you purchased the notes.

Also, the market price of your notes prior to the stated maturity date may be significantly lower than the purchase price you pay for your notes. Consequently, if you sell your notes before the stated maturity date, you may receive significantly less than the amount of your investment in the notes.

Your Notes Do Not Bear Interest

You will not receive any interest payments on your notes. As a result, even if the cash settlement amount payable for your notes on the stated maturity date exceeds the face amount of your notes, the overall return you earn on your notes may be less than you would have earned by investing in a non-index-linked debt security of comparable maturity that bears interest at a prevailing market rate.

The Potential for the Value of Your Notes to Increase Will Be Limited by the Maximum Settlement Amount

Your ability to participate in any change in the value of the underlier over the life of your notes will be limited because of the cap level. The maximum settlement amount will limit the cash settlement amount you may receive for each of your notes at maturity, no matter how much the level of the underlier may rise beyond the cap level over the life of your notes. Accordingly, the amount payable for each of your notes may be significantly less than it

would have been had you invested directly in the underlier.

The Notes Will Not Be Listed on Any Securities Exchange and We Do Not Expect A Trading Market For the Notes to Develop

The notes will not be listed or displayed on any securities exchange or any automated quotation system. Although CIBCWM and/or its affiliates may purchase the notes from holders, they are not obligated to do so and are not required to make a market for the notes. There can be no assurance that a secondary market will develop for the notes. Because we do not expect that any market makers will participate in a secondary market for the notes, the price at which you may be able to sell your notes is likely to depend on the price, if any, at which CIBCWM and/or its affiliates are willing to buy your notes.

If a secondary market does exist, it may be limited. Accordingly, there may be a limited number of buyers if you decide to sell your notes prior to the stated maturity date. This may affect the price you receive upon such sale. Consequently, you should be willing to hold the notes to the stated maturity date.

The Historical Performance of the Underlier Should Not Be Taken as an Indication of Its Future Performance

The final level of the underlier will determine the amount to be paid on the notes at maturity. The historical performance of the underlier does not necessarily give an indication of its future performance. As a result, it is impossible to predict whether the level of the underlier will rise or fall during the term of the notes. The level of the underlier will be influenced by complex and interrelated political, economic, financial and other factors.

You Have No Shareholder Rights or Rights to Receive Any Underlier Stock

Investing in the notes will not make you a holder of any of the underlier stocks. Neither you nor any other holder or owner of the notes will have any rights with respect to the underlier stocks, including any voting rights, any right to receive dividends or other distributions, any rights to make a claim against the underlier stocks or any other rights of a holder of the underlier stocks. Your notes will be paid in cash and you will have no right to receive delivery of any underlier stocks.

We May Sell an Additional Aggregate Face Amount of the Notes at a Different Issue Price

At our sole option, we may decide to sell an additional aggregate face amount of the notes subsequent to the date of this Pricing Supplement. The issue price of the notes in the subsequent sale may differ substantially (higher or lower) from the original issue

price you paid as provided on the cover of this Pricing Supplement.

If You Purchase Your Notes at a Premium to Face Amount, the Return on Your Investment Will Be Lower Than the Return on Notes Purchased at Face Amount and the Impact of Certain Key Terms of the Notes Will Be Negatively Affected

The cash settlement amount will not be adjusted based on the issue price you pay for the notes. If you purchase notes at a price that differs from the face amount of the notes, then the return on your investment in such notes held to the stated maturity date will differ from, and may be substantially less than, the return on notes purchased at face amount. If you purchase your notes at a premium to face amount and hold them to the stated maturity date, the return on your investment in the notes will be lower than it would have been had you purchased the notes at face amount or a discount to face amount. In addition, the impact of the buffer level and the cap level on the return on your investment will depend upon the price you pay for your notes relative to face amount. For example, if you purchase your notes at a premium to face amount, the cap level will only permit a lower positive return on your investment in the notes than would have been the case for notes purchased at face amount or a discount to face amount. Similarly, the buffer level, while still providing some protection for the return on the notes, will allow a greater percentage decrease in your investment in the notes than would have been the case for notes purchased at face amount or a discount to face amount.

There are Potential Conflicts of Interest Between You and the Calculation Agent

The calculation agent will, among other things, determine the cash settlement amount payable at maturity of the notes. We will serve as the calculation agent. We may appoint a different calculation agent without your consent and without notifying you. The calculation agent will exercise its judgment when performing its functions. For example, the calculation agent may have to determine whether a market disruption event affecting the underlier has occurred. This determination may, in turn, depend on the calculation agent s judgment as to whether the

event has materially interfered with our ability or the ability of one of our affiliates or a similarly situated party to unwind our hedge positions. Since this determination by the calculation agent will affect the payment at maturity on the notes, the calculation agent may have a conflict of interest if it needs to make a determination of this kind. See General Terms of the Underlier-Linked Notes Role of Calculation Agent in the accompanying Product Supplement No. 6.

The Inclusion of Dealer Spread and Projected Profit from Hedging in the Original Issue Price is Likely to Adversely Affect Secondary Market Prices

Assuming no change in market conditions or any other relevant factors, the price, if any, at which CIBCWM or any other party is willing to purchase the notes at any time in secondary market transactions will likely be significantly lower than the original issue price, since secondary market prices are likely to exclude underwriting commissions paid with respect to the notes and the cost of hedging our obligations under the notes that are included in the original issue price. The cost of hedging includes the projected profit that we, our affiliates or any third-party who may conduct hedging activities related to the notes, including any dealer in the notes, may realize in consideration for assuming the risks inherent in managing the hedging transactions. These secondary market prices are also likely to be reduced by the costs of unwinding the related hedging transactions. In addition, any secondary market prices may differ from values determined by pricing models used by CIBCWM as a result of dealer discounts, mark-ups or other transaction costs. Furthermore, if the dealer from which you purchase notes is to conduct trading and hedging activities for us in connection with the notes, that dealer may profit in connection with such trading and hedging activities and such profit, if any, will be in addition to the compensation that the dealer receives for the sale of the notes to you. You should be aware that the potential to earn a profit in connection with hedging activities may create a further incentive for the dealer to sell the notes to you, in addition to the compensation they would receive for the sale of the notes.

The Bank s Estimated Value of the Notes Is Lower than the Original Issue Price (Price to Public) of the Notes

The Bank s estimated value is only an estimate using several factors. The original issue price of the notes exceeds the Bank s estimated value because costs associated with selling and structuring the notes, as well as hedging the notes, are included in the original issue price of the notes. See The Bank s Estimated Value of the Notes in this Pricing Supplement.

The Bank s Estimated Value Does Not Represent Future Values of the Notes and May Differ from Others Estimates

The Bank s estimated value of the notes was determined by reference to the Bank s internal pricing models when the terms of the notes were set. This estimated value was based on market conditions and other relevant factors existing at that time and the Bank s assumptions about market parameters, which can include volatility, dividend rates, interest rates and other factors. Different pricing models and assumptions could provide valuations for the notes that are greater than or less than the Bank s estimated value. In addition, market conditions and other relevant factors in the future may change, and any assumptions may prove to be incorrect. On future dates, the value of the notes could change significantly based on, among other things, changes in market conditions, our creditworthiness, interest rate movements and other relevant factors, which may impact the price, if any, at which CIBCWM or any other person would be willing to buy notes from you in secondary market transactions. See The Bank s Estimated Value of the Notes in this Pricing Supplement.

The Bank s Estimated Value Was Not Determined by Reference to Credit Spreads for Our Conventional Fixed-Rate Debt

The internal funding rate used in the determination of the Bank s estimated value generally represents a discount from the credit spreads for our conventional fixed-rate debt. If the Bank were to have used the interest rate implied by our conventional fixed-rate credit spreads, we would expect the economic terms of the notes to be more favorable to you. Consequently, our use of an internal funding rate had an adverse effect on the terms of the notes and could have an adverse effect on any secondary market prices of the notes. See The Bank s Estimated Value of the Notes in this Pricing Supplement.

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We Cannot Control Actions By Any of the Unaffiliated Companies Whose Securities are Included in the Underlier

Actions by any company whose securities are included in the underlier may have an adverse effect on the price of its security, the final underlier level and the value of the notes. These companies will not be involved in the offering of the notes and will have no obligations with respect to the notes, including any obligation to take our or your interests into consideration for any reason. These companies will not receive any of the proceeds of the offering of the notes and will not be responsible for, and will not have participated in, the determination of the timing of, prices for, or quantities of, the notes to be issued. These companies will not be involved with the administration, marketing or trading of the notes and will have no obligations with respect to the cash settlement amount to be paid to you at maturity.

We and Our Respective Affiliates Have No Affiliation with the Underlier Sponsor and Have Not Independently Verified Its Public Disclosure of Information

We and our respective affiliates are not affiliated in any way with the underlier sponsor and have no ability to control or predict its actions, including any errors in or discontinuation of disclosure regarding the methods or policies relating to the calculation of the underlier. We have derived the information about the underlier sponsor and the underlier contained herein from publicly available information, without independent verification. You, as an investor in the notes, should make your own investigation into the underlier and the underlier sponsor. The underlier sponsor is not involved in the offering of the notes made hereby in any way and has no obligation to consider your interest as an owner of notes in taking any actions that might affect the value of the notes.

The U.S. Federal Tax Consequences of An Investment in the Notes Are Unclear

There is no direct legal authority regarding the proper U.S. federal tax treatment of the notes, and we do not plan to request a ruling from the U.S. Internal Revenue Service (the IRS). Consequently, significant aspects of the tax treatment of the notes are uncertain, and the IRS or a court might not agree with the treatment of the notes as prepaid cash-settled derivative contracts. If the IRS were successful in asserting an alternative treatment of the notes, the tax consequences of the ownership and disposition of the notes might be materially and adversely affected. 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. See Supplemental Discussion of U.S. Federal Income Tax Consequences in the accompanying Product Supplement No. 6. 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 notes, 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. Both U.S. and non-U.S. persons considering an investment in the notes should review carefully the section of the accompanying Product Supplement No. 6 entitled Supplemental Discussion of U.S. Federal Income Tax Consequences and consult their tax advisers regarding the U.S. federal tax consequences of an investment in the notes (including possible alternative treatments and the issues presented by the notice), as well as tax consequences arising under the laws of any state, local or non-U.S. taxing jurisdiction.

There Can Be No Assurance that the Canadian Federal Income Tax Consequences of an Investment in the Notes Will Not Change in the Future

There can be no assurance that Canadian federal income tax laws, the judicial interpretation thereof, or the administrative policies and assessing practices of the Canada Revenue Agency will not be changed in a manner that adversely affects investors. For a discussion of the Canadian federal income tax consequences of investing in the notes, please read the section of this Pricing Supplement entitled Certain Canadian Federal Income Tax Considerations as well as the section entitled Material Income Tax Consequences Canadian Taxation in the accompanying Prospectus. You should consult your tax advisor with respect to your own particular situation.

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THE UNDERLIER

The S&P 500® Index (the underlier) includes a representative sample of 500 leading companies in leading industries of the U.S. economy. The underlier is calculated, maintained and published by S&P Dow Jones Indices LLC (S&P).

As of July 31, 2017, companies with multiple share class lines are no longer eligible for inclusion in the underlier. Constituents of the underlier prior to July 31, 2017 with multiple share class lines will be grandfathered in and continue to be included in the underlier. If a constituent company of the underlier reorganizes into a multiple share class line structure, that company will remain in the underlier at the discretion of the S&P Index Committee in order to minimize turnover. Also as of July 31, 2017, the criteria employed by S&P for purposes of making additions to the underlier were changed as follows:

- with respect to the U.S. company criterion, (i) the IEX was added as an eligible exchange for the primary listing of the relevant company s common stock and (ii) the former corporate governance structure consistent with U.S. practice requirement was removed; and

- with respect to constituents of the S&P MidCap 400® Index and the S&P SmallCap 600® Index that are being considered for addition to the underlier, the financial viability, public float and/or liquidity eligibility criteria no longer need to be met if the S&P Index Committee decides that such an addition will enhance the representativeness of the underlier as a market benchmark.

As of July 31, 2017, the 500 companies included in the underlier were divided into eleven Global Industry Classification Sectors. The Global Industry Classification Sectors include (with the approximate percentage currently included in such sectors indicated in parentheses): Information Technology (22.8%), Financials (14.5%), Health Care (14.4%), Consumer Discretionary (12.3%), Industrials (10.1%),Consumer Staples (8.7%), Energy (6.0%), Utilities (3.2%), Real Estate (3.0%), Materials (2.9%), and Telecommunication Services (2.2%). Sector designations are determined by the underlier sponsor using criteria it has selected or developed. Index sponsors may use very different standards for determining sector designations. In addition, many companies operate in a number of sectors, but are listed in only one sector and the basis on which that sector is selected may also differ. As a result, sector comparisons between indices with different index sponsors may reflect differences in methodology as well as actual differences in the sector composition of the indices.

The above information supplements the description of the underlier found in the accompanying General Terms Supplement. This information was derived from information prepared by the underlier sponsor, however, the percentages we have listed above are approximate and may not match the information available on the underlier sponsor s website due to subsequent corporation actions or other activity relating to a particular stock. For more details about the underlier, the underlier sponsor and license agreement between the underlier sponsor and the Issuer, see The Underliers S&P 500® Index in the accompanying General Terms Supplement.

License Agreement

We and S&P have entered into a non-transferable, non-exclusive license agreement providing for the sublicense to us, in exchange for a fee, of the right to use the S&P 500® Index in connection with the issuance of the notes.

The S&P 500® Index is a product of S&P Dow Jones Indices LLC (SPDJI), and has been licensed for use by CIBC. Standard & Poor s®, S&P® and S&P 500® are registered trademarks of Standard & Poor s Financial Services LLC; Dow Jones® is a registered trademark of Dow Jones Trademark Holdings LLC (Dow Jones); and these trademarks have been licensed for use by SPDJI and sublicensed for certain purposes by CIBC. The notes are not sponsored, endorsed, sold or promoted by SPDJI, Dow Jones, Standard & Poor s Financial Services LLC, or their respective affiliates, and none of such parties make any representation regarding the advisability of investing in the notes nor do they have any liability for any errors, omissions, or interruptions of the S&P 500® Index.

Historical Closing Levels of the Underlier

The closing level of the underlier has fluctuated in the past and may, in the future, experience significant fluctuations. Any historical upward or downward trend in the closing level of the underlier during the period shown below is not an indication that the underlier is more or less likely to increase or decrease at any time during the

life of your notes.

You should not take the historical levels of the underlier as an indication of the future performance of the underlier. We cannot give you any assurance that the future performance of the underlier or the underlier stocks will result in your receiving an amount greater than the outstanding face amount of your notes on the stated maturity date.

Neither we nor any of our affiliates make any representation to you as to the performance of the underlier. Before investing in the offered notes, you should consult publicly available information to determine the levels of the underlier between the date of this Pricing Supplement and the date of your purchase of the offered notes. The actual performance of the underlier over the life of the offered notes, as well as the cash settlement amount, may bear little relation to the historical closing levels shown below.

The graph below shows the daily historical closing levels of the underlier from August 14, 2007 through August 14, 2017. We obtained the closing levels in the graph below from Bloomberg Financial Services, without independent verification.

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THE BANK S ESTIMATED VALUE OF THE NOTES

The Bank s estimated value of the notes set forth on the cover of this Pricing Supplement is equal to the sum of the values of the following hypothetical components: (1) a fixed-income debt component with the same maturity as the notes, valued using our internal funding rate for structured debt described below, and (2) the derivative or derivatives underlying the economic terms of the notes. The Bank s estimated value does not represent a minimum price at which CIBCWM or any other person would be willing to buy your notes in any secondary market (if any exists) at any time. The internal funding rate used in the determination of the Bank s estimated value generally represents a discount from the credit spreads for our conventional fixed-rate debt. The discount is based on, among other things, our view of the funding value of the notes as well as the higher issuance, operational and ongoing liability management costs of the notes in comparison to those costs for our conventional fixed-rate debt. For additional information, see Additional Risk Factors Specific to Your Notes The Bank s Estimated Value Was Not Determined by Reference to Credit Spreads for Our Conventional Fixed-Rate Debt in this Pricing Supplement. The value of the derivative or derivatives underlying the economic terms of the notes is derived from the Bank s or a third party hedge provider s internal pricing models. These models are dependent on inputs such as the traded market prices of comparable derivative instruments and on various other inputs, some of which are market-observable, and which can include volatility, dividend rates, interest rates and other factors, as well as assumptions about future market events and/or environments. Accordingly, the Bank s estimated value of the notes was determined when the terms of the notes were set based on market conditions and other relevant factors and assumptions existing at that time. See Additional Risk Factors Specific to Your Notes The Bank s Estimated Value Does Not Represent Future Values of the Notes and May Differ from Others Estimates in this Pricing Supplement.

The Bank s estimated value of the notes is lower than the original issue price of the notes because costs associated with selling, structuring and hedging the notes are included in the original issue price of the notes. These costs include the selling commissions paid to the Bank and other affiliated or unaffiliated dealers, the projected profits that our hedge counterparties, which may include our affiliates, expect to realize for assuming risks inherent in hedging our obligations under the notes and the estimated cost of hedging our obligations under the notes. Because hedging our obligations entails risk and may be influenced by market forces beyond our control, this hedging may result in a profit that is more or less than expected, or it may result in a loss. We or one or more of our affiliates will retain any profits realized in hedging our obligations under the notes. See Additional Risk Factors Specific to Your Notes The Bank s Estimated Value of the Notes Is Lower Than the Original Issue Price (Price to Public) of the Notes in this Pricing Supplement.

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SUPPLEMENTAL PLAN OF DISTRIBUTION (CONFLICTS OF INTEREST)

Pursuant to the terms of a distribution agreement, the Bank will sell to CIBCWM, and CIBCWM will purchase from the Bank, the aggregate face amount of the offered notes specified on the front cover of this Pricing Supplement. CIBCWM proposes initially to offer the notes to the public at the price to public set forth on the cover page of this Pricing Supplement, and to certain unaffiliated securities dealers at such price less a concession not in excess of 1.96% of the face amount. The price to the public for notes purchased by certain fee-based advisory accounts will be 98.04% of the face amount, which reflects a foregone agent s commission with respect to such notes (i.e., the agent s commission specified on the cover of this Pricing Supplement with respect to such notes is 0.00%).

The Bank owns, directly or indirectly, all of the outstanding equity securities of CIBCWM. In accordance with FINRA Rule 5121, CIBCWM may not make sales in this offering to any of its discretionary accounts without the prior written approval of the customer.

We will deliver the notes against payment therefor in New York, New York on August 21, 2017, which is the fifth scheduled business day following the date of this Pricing Supplement and of the pricing of the notes. Under Rule 15c6-1 of the Securities Exchange Act of 1934, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade notes on any date prior to three business days before delivery will be required, by virtue of the fact that the notes will settle in five business days (T + 5), to specify alternative settlement arrangements to prevent a failed settlement.

The Bank may use this Pricing Supplement in the initial sale of the notes. In addition, CIBCWM or another of the Bank s affiliates may use this Pricing Supplement in market-making transactions in any notes after their initial sale. Unless CIBCWM or we inform you otherwise in the confirmation of sale, this Pricing Supplement is being used by CIBCWM in a market-making transaction.

While CIBCWM may make markets in the notes, it is under no obligation to do so and may discontinue any market-making activities at any time without notice. The price that it makes available from time to time after the issue date at which it would be willing to repurchase the notes will generally reflect its estimate of their value. That estimated value will be based upon a variety of factors, including then prevailing market conditions, our creditworthiness and transaction costs. However, for a period of approximately three months after the trade date, the price at which CIBCWM may repurchase the notes is expected to be higher than their estimated value at that time. This is because, at the beginning of this period, that price will not include certain costs that were included in the original issue price, particularly our hedging costs and profits. As the period continues, these costs are expected to be gradually included in the price that CIBCWM would be willing to pay, and the difference between that price and CIBCWM s estimate of the value of the notes will decrease over time until the end of this period. After this period, if CIBCWM continues to make a market in the notes, the prices that it would pay for them are expected to reflect its estimated value, as well as customary bid-ask spreads for similar trades. In addition, the value of the notes shown on your account statement may not be identical to the price at which CIBCWM would be willing to purchase the notes at that time, and could be lower than CIBCWM s price. See the section titled Supplemental Plan of Distribution Conflicts of Interest in the accompanying Prospectus Supplement.

The price at which you purchase the notes includes costs that the Bank or its affiliates expect to incur and profits that the Bank or its affiliates expect to realize in connection with hedging activities related to the notes, as set forth above. These costs and profits will likely reduce the secondary market price, if any secondary market develops, for the notes.

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CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a brief summary of the material U.S. federal income tax considerations relating to an investment in the notes. The following summary is not complete and is both qualified and supplemented by the discussion entitled Supplemental Discussion of U.S. Federal Income Tax Consequences in the accompanying Product Supplement No. 6, which you should carefully review prior to investing in the notes.

The U.S. federal income tax considerations of your investment in the notes are uncertain. No statutory, judicial or administrative authority directly discusses how the notes should be treated for U.S. federal income tax purposes. In the opinion of our tax counsel, Mayer Brown LLP, it would generally be reasonable to treat the notes as prepaid cash-settled derivative contracts. Pursuant to the terms of the notes, you agree to treat the notes in this manner for all U.S. federal income tax purposes. If this treatment is respected, you should generally recognize capital gain or loss upon the sale, exchange or payment upon maturity in an amount equal to the difference between the amount you receive in such transaction and the amount that you paid for your notes. Such gain or loss should generally be treated as long-term capital gain or loss if you have held your notes for more than one year.

The expected characterization of the notes is not binding on the IRS or the courts. It is possible that the IRS would seek to characterize the notes in a manner that results in tax consequences to you that are different from those described above or in the accompanying Product Supplement No. 6. Such alternate treatments could include a requirement that a holder accrue ordinary income over the life of the notes or treat all gain or loss at maturity as ordinary gain or loss. For a more detailed discussion of certain alternative characterizations with respect to the notes and certain other considerations with respect to an investment in the notes, you should consider the discussion set forth in Supplemental Discussion of U.S. Federal Income Tax Consequences of Product Supplement No. 6. We are not responsible for any adverse consequences that you may experience as a result of any alternative characterization of the notes for U.S. federal income tax or other tax purposes.

U.S. tax rules treat certain financial products issued to non-U.S. holders in 2017 or thereafter as giving rise to withholdable dividend equivalent payments when the financial product provides a payment or credit in respect of dividend payments on certain U.S. underliers. These rules do not apply if the financial product references a qualified index and does not contain short positions on more than 5 percent of the components within the index. Additionally, Treasury Regulations exclude financial products issued prior to 2019 that are not delta-one with respect to underlying securities that could pay withholdable dividend equivalent payments. In the opinion of Mayer Brown LLP, these rules should not apply to the notes.

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CERTAIN CANADIAN FEDERAL INCOME TAX CONSIDERATIONS

In the opinion of Blake, Cassels & Graydon LLP, our Canadian tax counsel, the following summary describes the principal Canadian federal income tax considerations under the *Income Tax Act* (Canada) (the Canadian Tax Act) generally applicable at the date hereof to a purchaser who acquires beneficial ownership of a note pursuant to this Pricing Supplement and who for the purposes of the Canadian Tax Act and the regulations thereto and at all relevant times: (a) is neither resident nor deemed to be resident in Canada; (b) deals at arm s length with CIBC and any transferee resident (or deemed to be resident) in Canada to whom the purchaser disposes of the note; (c) does not use or hold and is not deemed to use or hold the note in, or in the course of, carrying on a business in Canada; (d) is entitled to receive all payments (including any interest and principal) made on the note, and (e) is not a, and deals at arm s length with any, specified shareholder of CIBC for purposes of the thin capitalization rules in the Canadian Tax Act (a Non-Resident Holder). A specified shareholder for these purposes generally includes a person who (either alone or together with persons with whom that person is not dealing at arm s length for the purposes of the Canadian Tax Act) owns or has the right to acquire or control or is otherwise deemed to own 25% or more of CIBC s shares determined on a votes or fair market value basis. Special rules which apply to non-resident insurers carrying on business in Canada and elsewhere are not discussed in this summary.

This summary is supplemental to and should be read together with the description of material Canadian federal income tax considerations relevant to a Non-Resident Holder owning notes under Material Income Tax Consequences Canadian Taxation in the accompanying Prospectus and a Non-Resident Holder should carefully read that description as well.

This summary is of a general nature only and is not intended to be, nor should it be construed to be, legal or tax advice to any particular Non-Resident Holder. Non-Resident Holders are advised to consult with their own tax advisors with respect to their particular circumstances.

Based on Canadian tax counsel s understanding of the Canada Revenue Agency s administrative policies and having regard to the terms of the notes, interest payable on the notes should not be considered to be participating debt interest as defined in the Canadian Tax Act and accordingly, a Non-Resident Holder should not be subject to Canadian non-resident withholding tax in respect of amounts paid or credited or deemed to have been paid or credited by CIBC on a note as, on account of or in lieu of payment of, or in satisfaction of, interest.

Non-Resident Holders should consult their own tax advisors regarding the consequences to them of a disposition of the notes to a person with whom they are not dealing at arm s length for purposes of the Canadian Tax Act.

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VALIDITY OF THE NOTES

In the opinion of Blake, Cassels & Graydon LLP, as Canadian counsel to the Bank, the issue and sale of the notes has been duly authorized by all necessary corporate action of the Bank in conformity with the indenture, and when the notes have been duly executed, authenticated and issued in accordance with the indenture, the notes will be validly issued and, to the extent validity of the notes is a matter governed by the laws of the Province of Ontario or the federal laws of Canada applicable therein, will be valid obligations of the Bank, subject to applicable bankruptcy, insolvency and other laws of general application affecting creditors rights, equitable principles, and subject to limitations as to the currency in which judgments in Canada may be rendered, as prescribed by the *Currency Act* (Canada), and subject to any bail-in conversion requirements under the *Canada Deposit Insurance Corporation Act* (Canada). This opinion is given as of the date hereof and is limited to the laws of the Province of Ontario and the federal laws of Canada applicable therein. In addition, this opinion is subject to customary assumptions about the trustee s authorization, execution and delivery of the indenture and the genuineness of signature, and to such counsel s reliance on the Bank and other sources as to certain factual matters, all as stated in the opinion letter of such counsel dated February 27, 2017, which has been filed as Exhibit 5.2 to the Bank s Registration Statement on Form F-3 filed with the SEC on February 27, 2017.

In the opinion of Mayer Brown LLP, when the notes have been duly completed in accordance with the indenture and issued and sold as contemplated by the Prospectus Supplement and the Prospectus, the notes will constitute valid and binding obligations of the Bank, entitled to the benefits of the indenture, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors rights and to general equity principles. This opinion is given as of the date hereof and is limited to the laws of the State of New York. This opinion is subject to customary assumptions about the trustee s authorization, execution and delivery of the indenture and such counsel s reliance on the Bank and other sources as to certain factual matters, all as stated in the legal opinion dated February 27, 2017, which has been filed as Exhibit 5.1 to the Bank s Registration Statement on Form F-3 filed with the SEC on February 27, 2017.

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We have not authorized anyone to provide any information or to make any representations other than those contained or incorporated by reference in this Pricing Supplement, the accompanying Product Supplement No. 6, the accompanying General Terms Supplement, the accompanying Prospectus Supplement or the accompanying Prospectus. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This Pricing Supplement, the accompanying Product Supplement No. 6, the accompanying General Terms Supplement, the accompanying Prospectus Supplement and the accompanying Prospectus is 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 in this Pricing Supplement, the accompanying Product Supplement No. 6, the accompanying General Terms Supplement, the accompanying Prospectus Supplement and the accompanying Prospectus is current only as of the respective dates of such documents.

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$17,500,000

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CIBC World Markets