



## DISCLOSURE STATEMENT

### *Market-Linked Certificate of Deposit*

MapleMark Bank, Dallas, Texas (the “**Bank**”) may offer its index-linked principal protected time deposits (“**CDs**” or in the singular a “**CD**”) from time to time. The CDs are time deposits linked to a specified index or group of indices whose components are equity securities. The CDs are principal protected, up to the amount of the applicable Federal Deposit Insurance Corporation (“**FDIC**”) limits, if held to maturity.

This Disclosure Statement describes certain terms and conditions that will generally apply to CDs that the Bank may offer in connection with this Disclosure Statement. The specific and certain additional terms and conditions of any particular CDs the Bank may offer will be described in a separate Term Sheet or disclosure supplement related to those CDs only. Each separate Term Sheet or disclosure supplement is generally referred to in this Disclosure Statement as a “Term Sheet.” In the event of any inconsistency between this Disclosure Statement and the Term Sheet applicable to a specific offering of CDs, the terms and conditions set forth in the Term Sheet will control.

**Investing in the CDs involves risks not associated with conventional certificates of deposit, including the risk that the depositor will receive no more than the full principal amount of the CDs and will receive principal only at maturity. See the section entitled “Risk Factors.” The CDs described in this Disclosure Statement and accompanying Term Sheet are not appropriate for all depositors, and involve important legal and tax consequences and investment risks, which should be discussed with the depositor’s professional advisers.**

The CDs will be obligations of the Bank only, and not obligations of any broker or any affiliate of the Bank.

The principal amount of the CDs is insured by the FDIC within applicable limits (generally up to \$250,000 in aggregate for individual depositors and up to \$250,000 per participant in the case of certain retirement plans and accounts and IRAs). FDIC insurance is described more fully in the section of this Disclosure Statement entitled “*Deposit Insurance.*” A depositor purchasing a principal amount of CDs that is in excess of \$250,000, or which, together with other deposits that the depositor maintains at the Bank in the same ownership capacity is in excess of such limit, should not rely on the availability of deposit insurance with respect to the amount in excess of the FDIC insurance coverage limit(s). In addition, the FDIC has taken the position that any amount in excess of the principal amount of the CDs payable at maturity based upon changes in an index, security or basket of indices or securities to which the return on the CDs is linked are not insured by the FDIC.

The CDs will be made available directly from the Bank.

**The CDs are being offered on a “when and if issued” basis. The Bank reserves the right to suspend offering the CDs at any time. No deposit relationship shall be deemed to exist prior to the receipt and acceptance of the depositor’s funds by the Bank.**

**In making a decision to invest in a CD, the depositor should rely only on the information contained or incorporated by reference in this Disclosure Statement and the accompanying Term Sheet, confirmation and the related account agreement between the depositor and the Bank. The Bank has not authorized anyone to give the depositor any additional or different information. The information in this Disclosure Statement and the accompanying Term Sheet is only accurate as of the date of the Term Sheet, and the Bank has no obligation to update the information after the date of the Term Sheet. The CDs are not registered under the Securities Act of 1933, as amended, or any state securities law, and are not required to be registered. The certificates have not been recommended by any federal or state securities commission or regulatory authority, and no governmental or regulatory authority has confirmed the accuracy or determined the adequacy of this document. Any representation to the contrary is a criminal offense. The information contained in this Disclosure Statement may not be modified by any oral representation made prior or subsequent to the purchase of the CDs.**

**The CDs are insured only within applicable FDIC limits, which are described in more detail in this Disclosure Statement and in any accompanying Term Sheet. Any payment on the CDs in excess of FDIC insurance limits is subject to the credit risk of the Bank.**

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## I. DESCRIPTION OF THE CDS

### A. General

The return on the CDs will be linked to the level of a single stock index (e.g., the S&P 500® Index, each referred to herein as an “**Index**,” and in plural “**Indices**”), which level is derived from the price of various underlying equity shares (“**Shares**” or “**Equity Shares**”) or the price of various underlying exchange-traded funds (“**Fund Shares**”). Each of the relevant linked Indices may also be referred to herein as a “**Reference Asset**.”

The “**Maturity Date**” for the CDs will be set forth in the relevant Term Sheet, and is subject to adjustment if the Maturity Date specified in the Term Sheet is not a Business Day (as defined below) or is postponed as described in this Disclosure Statement under “*Description of the CDs—Market Disruption Events*.”

Generally, the CDs will pay interest, if any, at periodic intervals (e.g., annually). The method of payment will be specified in the applicable Term Sheet.

#### Periodic Contingent Interest Payments

The Bank will make contingent interest payments (“**Interest Payments**”) on the principal amount of the CD on stated **Interest Payment Dates** (as detailed in the applicable Term Sheet) if, but only if, the conditions set forth herein and in the applicable Term Sheet (the “**Performance-Based Interest Conditions**”) are satisfied. There will be no minimum amount of interest that will be guaranteed by the Bank. **Accordingly, the depositor will receive zero interest on the applicable Interest Payment Date when any Performance-Based Interest Conditions for a CD have not been satisfied.**

The Performance-Based Interest Conditions will be specified in the applicable Term Sheet and will generally be conditioned upon an increase in the value of the linked Index as observed upon specified dates set forth in the applicable Term Sheet (such dates referred to herein as “**Valuation Dates**”). Unless otherwise specified in the applicable Term Sheet, the Performance-Based Interest Conditions will be satisfied if, but only if, the Valuation Price of the linked Index on the applicable Valuation Date is greater than or equal to the stated Strike Level.

The “**Strike Level**” of an Index will be specified in the applicable Term Sheet or will be determined in the manner described in the applicable Term Sheet. For example, the Strike Level for a particular CD might be equal to some stated percentage, multiplied by the level the linked Index as of the close of trading on the applicable Pricing Date. Unless another date is designated in the Term Sheet as the “**Pricing Date**,” the Pricing Date will be the same as the “**Issue Date**” for the CD, as stated in the Term Sheet. The performance of an Index for purposes of calculating the Strike Level will be measured versus the Index’s initial level on the Pricing Date (its “**Initial Index Level**”), and not on a year-over-year basis.

Interest Payment Dates are subject to adjustment if any Interest Payment Date specified in the Term Sheet is not a Business Day (as defined below) or to otherwise comply with the “Business Day Convention” rules under the Internal Revenue Code of 1986, as amended (the “**Code**”) for payment of qualified stated interest.

#### Payment of Principal at Maturity

If held to maturity, the Bank will pay the full principal amount of the CD to the depositor on the maturity date stated in the Term Sheet, regardless of any changes in the applicable Index during the term of the CD. However, the depositor will be entitled to receive 100% of the CD principal only if the CD is held to maturity. Early Redemptions (*previously described as **Early Withdrawals***), if permitted, may result in the depositor receiving an amount less than the principal amount of the CD on redemption. Early Redemption fees and other terms relating to the particular CDs the Bank may offer will be described in the applicable Term Sheet.

## B. Definitions

The following are meanings assigned to certain important terms which are used, but which may not be otherwise defined in this Disclosure Statement.

- A “**Business Day**” is any day other than a Saturday or Sunday which is not a holiday observed by the Board of Governors of the Federal Reserve System.
- A “**Reference Index Sponsor**” means the sponsor of an Index that is linked to a CD.
- A “**Relevant Exchange**” means, with respect to any Index, the primary exchange for each share, futures contract or other financial instrument or measure which is then a component of such Index and, with respect to any Share, the primary exchange for such Share.
- A “**Related Exchange**” means, with respect to any Index or Share, each exchange or quotation system, if any, on which options or futures contracts related to such Index or Share, as the case may be, are traded or quoted or any substitute or temporary exchange or quotation system to which trading in the futures or options contracts relating to the Index has temporarily relocated (provided that the Calculation Agent has determined that there is comparable liquidity relative to the futures or options contracts on the substitute or temporary exchange or quotation system as on the original Related Exchange) and where trading has a material effect (as determined by the Calculation Agent) on the overall market for options or futures contracts related to the relevant Reference Asset.
- A “**Scheduled Closing Time**” means the scheduled weekday closing time of the Relevant Exchange or Related Exchange, as the case may be, on any Trading Day, without regard to after hours or any other trading outside of the regular trading session hours.
- A “**Trading Day**” (or “**Scheduled Trading Day**”) is, (a) with respect to a Share, any day on which the Relevant Exchange and each Related Exchange are scheduled to be open for trading for such Share and (b) with respect to any Index, any day on which all of the Relevant Exchanges and Related Exchanges for the Index are scheduled to be open for trading.

Additional terms not otherwise defined in this Disclosure Statement will have the meaning given to them in the applicable Term Sheet.

## C. Calculation of Interest Payment(s)

Unless otherwise stated in the applicable Term Sheet, the CDs will have designated periodic Interest Payment Dates (e.g., annually). If the Performance-Based Interest Conditions are satisfied on the corresponding Valuation Date, the periodic contingent Interest Payment will equal the principal amount of the CD multiplied by the Interest Rate set forth in the applicable Term Sheet. If the Performance-Based Interest Conditions are not satisfied on the corresponding Valuation Date, the depositor will not be entitled to any Interest Payment on that Interest Payment Date. The Valuation Dates, or the method for determining the Valuation Dates, will be specified in the applicable Term Sheet.

## D. Calculation Agent

The Bank, or a third party retained by the Bank for this purpose, will act as the “**Calculation Agent**” for the CDs. The Calculation Agent will be solely responsible for all determinations and calculations with respect to the CDs, including:

- the calculation, as applicable and on relevant Valuation Dates or other relevant dates, of the Initial Index Level, the Index Valuation Level, the Strike Level and whether the Performance-Based Interest Conditions have been satisfied (collectively, the “**Relevant Value Measures**,” or singularly, a “**Relevant Value Measure**”);
- the amount of any contingent Interest Payment, if applicable;

- whether a Market Disruption Event (as defined below) has occurred;
- whether any of the Indices have been discontinued; and
- whether there has been a material change in the method of calculating an Index.

All determinations made by the Calculation Agent will be at the sole discretion of the Calculation Agent and will, in the absence of manifest error, be conclusive for all purposes and binding on the depositor and on the Bank. The Bank may appoint a different Calculation Agent from time to time after the date of the relevant Term Sheet without notifying or obtaining the consent of the depositor.

All calculations with respect to each Relevant Value Measure will be rounded to the nearest one hundred-thousandth, with five one-millionths rounded upward (for example, .876545 would be rounded to .87655). All dollar amounts related to determination of an Interest Payment, if any, per CD will be rounded to the nearest ten-thousandth, with five one hundred-thousandths rounded upward (for example, .76545 would be rounded up to .7655). Dollar amounts paid to a single depositor on the aggregate number of CDs owned by the depositor and paying on the same day will be rounded to the nearest cent, with one-half cent rounded upward.

#### **E. Early Redemption** *(described previously as **Early Withdrawal**)*

##### Depositor Redemption

If provided in the applicable Term Sheet, each depositor will be entitled to redeem his or her CDs in whole, or in part, on any “**Early Redemption Date**” (as defined in the applicable Term Sheet), subject to an Early Redemption charge which will be expressed as a percentage of the principal amount of the CD in the applicable Term Sheet (the “**Early Redemption Charge**”). Depending upon the amount of the Early Redemption Charge, the amount of principal that the depositor is entitled to receive upon redemption and after deduction of any Early Redemption Charge (the “**Early Redemption Amount**”) may be less (and may be substantially less) than the principal amount paid for the CD(s) being redeemed. Upon an Early Redemption, the depositor will not be entitled to an amount in respect of any future Interest Payments or any other return on his or her CD(s) redeemed.

The depositor will receive the Early Redemption Amount for each CD so redeemed on the related Early Redemption Date; the funds will be deposited according to the depositor’s settlement instructions.

**F. A depositor will not be entitled to any return on his or her CD (other than any Interest Payments previously received, if applicable) if that depositor elects to redeem his or her CD on any Early Redemption Date. Further, the Early Redemption Amount may be less (and may be substantially less) than the principal amount of the CD.**

##### Redemption upon Death or Adjudication of Incompetence of a Depositor

In the event of the death or declaration of legal incompetency of any depositor, the full withdrawal of the principal amount of the CDs of that depositor will be permitted (*hereafter referred to as **Early Redemption***). In that event, prior written notice of the proposed withdrawal must be given to the Bank, together with appropriate documentation to support the request, each within 180 days of the death or declaration of legal incompetency of such depositor. In that event, only a full withdrawal of the principal amount of the CDs will be permitted on the next scheduled Early Redemption Date. CDs so redeemed will not be entitled to any return on the principal amount of the CDs other than any Interest Payment received prior to such redemption, if applicable.

#### **G. Market Disruption Event**

With respect to any Reference Asset or any component thereof, unless otherwise provided in the applicable Term Sheet, if the date on which the value thereof would otherwise be scheduled to be determined for purposes of calculating Relevant Value Measure or any other purpose (any such date an “**Observation Date**”) is not a Scheduled Trading Day (as defined herein), then the Observation Date will be the next day that is a Scheduled Trading Day. Unless otherwise provided in the applicable Term Sheet, if a

Market Disruption Event (as defined herein) occurs with respect to a Reference Asset or a component thereof on an Observation Date, then the Observation Date for such Reference Asset or such component thereof shall be the first succeeding Scheduled Trading Day on which there is no Market Disruption Event with respect to such Reference Asset or such component thereof. If the Observation Date is postponed on each of eight consecutive Scheduled Trading Days immediately following the original date that, but for the occurrence of the Market Disruption Event, would have been the Observation Date, then that eighth Scheduled Trading Day shall be the Observation Date, and the Calculation Agent shall determine the value of any such Reference Asset or component thereof on that date in good faith and in its sole discretion.

**“Market Disruption Event”** means for purposes this Disclosure Statement, the occurrence or existence of any of the following conditions which the Calculation Agent determines is material: (i) any suspension of or limitation imposed on trading by any Relevant Exchanges or any Related Exchange or otherwise, and whether by reason of movements in price exceeding limits permitted by the Relevant Exchange or any Related Exchange or otherwise, (A) relating to any stock included in the Index then constituting 20% or more of the level of the Index or any Successor Index (as defined below) or (B) in any futures or options contracts relating to an Index or Successor Index, as the case may be, on any Related Exchange; (ii) any event (other than any event described in (iii) below) that disrupts or impairs (as determined by the Calculation Agent) the ability of market participants in general (A) to effect transactions in, or obtain market values for, any stock included in the level of the Index or any Successor Index or (B) to effect transactions in, or obtain market values for, any futures or options contracts relating to such Index or any Successor Index, as the case may be, on any relevant Related Exchange; (iii) the closure on any Scheduled Trading Day of any Relevant Exchanges or any Related Exchange relating to any stock included in the Index then constituting 20% or more of the level of the Index or any Successor Index prior to its Scheduled Closing Time (unless the earlier closing time is announced by the Relevant Exchange or Related Exchange at least one hour prior to the earlier of (A) the actual closing time for the regular trading session on such exchange; or (B) the submission deadline for orders to be entered on the Relevant Exchange or Related Exchange for execution at the Scheduled Closing Time on that Scheduled Trading Day); or (iv) the Relevant Exchange or Related Exchange for such Index or Successor Index fails to open for trading during its regular trading session.

#### **H. Discontinuation or Modification of an Index; Successor Index**

If a Reference Index Sponsor discontinues publication of or otherwise fails to publish an Index on any day on which such Index is scheduled to be published and the Reference Index Sponsor or another entity publishes a successor or substitute index that the Calculation Agent determines, in its sole discretion, to be comparable to the discontinued Index (such index being referred to herein as a **“Successor Index”**), then such Successor Index will be deemed to be the Index for all purposes relating to the CD.

Upon any selection by the Calculation Agent of a Successor Index, the Calculation Agent will cause written notice thereof to be furnished to the Bank. If a Successor Index is selected by the Calculation Agent, the Successor Index will be used as a substitute for the Index for all purposes, including for purposes of determining whether a Market Disruption Event exists.

If an Index is discontinued or if a Reference Index Sponsor fails to publish the Index and the Calculation Agent determines that no Successor Index is available at such time, then the Calculation Agent will determine the level of such Index that is to be used for such trading day using the same general methodology previously used by the Reference Index Sponsor. The Calculation Agent shall continue to make such a determination until the earlier of (i) the final Observation Date or (ii) a determination by the Calculation Agent that the Index or a Successor Index is available. In such case, the Calculation Agent will notify the Bank of its determination of the index level or availability of a Successor Index, as appropriate.

If at any time the method of calculating any Index or a Successor Index, or the level thereof, is changed in a material respect, or if any Index or a Successor Index is in any other way modified so that, in the determination of the Calculation Agent, the level of such index does not fairly represent the level of such Index or such Successor Index that would have prevailed had such changes or modifications not been made, then the Calculation Agent will make such calculations and adjustments as may be necessary in order to determine an Index level comparable to the level that would have prevailed had such changes or modifications not been made. If, for example, the method of calculating the Index or a Successor Index is modified so that the level of such index is a fraction of what it would have been if it had not been modified

(e.g., due to a split in the index), then the Calculation Agent will adjust such index in order to arrive at a level of the Index or such Successor Index as if it had not been modified (e.g., as if such split had not occurred). In such case, the Calculation Agent (unless the Bank is the Calculation Agent) will notify the Bank of its determination of the index level or availability of a Successor Index, as appropriate.

**Notwithstanding these alternative arrangements, discontinuance of the publication of any Index to which a CD is linked may adversely affect the value of the CDs.**

#### **I. Hypothetical Returns on the CDs**

The relevant Term Sheet may include a table, chart or graph showing various hypothetical returns on the CDs based on a range of hypothetical Index Valuation Levels, Strike Levels, Initial Index Levels, trading levels or closing levels of the relevant Reference Asset of Reference Assets, as applicable, assuming the CD is held until the Maturity Date.

Any table, chart or graph showing hypothetical returns will be provided for purposes of illustration only and should not be viewed as an indication or prediction of the performance of the CDs or as representative of every possible scenario concerning the potential return of the CDs. Rather, any such table, chart or graph is intended merely to illustrate the impact that hypothetical market values of the relevant Reference Asset as of certain specified potentially relevant dates would have on the performance of the CDs, if the depositor continued to hold his or her CDs until such potentially relevant dates. Any amounts payable at maturity or on potential Interest Payment Dates specified in the relevant Term Sheet will be entirely hypothetical.

The return on the CDs will not reflect the return the depositor would realize if the depositor actually owned the Shares underlying the relevant Index and received the dividends paid on those assets. Among other things, an investment in the underlying stocks is likely to have tax consequences that are different from a deposit in the CDs.

Various risk factors that may affect the market value of the CDs, and the unpredictable nature of that market value, are described below under “*Risk Factors*”.

#### **J. Settlement of Interest Payments**

With respect to the settlement of Interest Payments issued by the Bank, the Bank will credit such payments (when and as earned) at the end of the business day designated as the Interest Payment Date in the applicable Term Sheet. Interest Payments on the CD will be credited to your designated deposit account with the Bank, and access to the funds credited should be available on the next Business Day. If the funds are being credited to an interest-bearing account, interest may not begin to accrue on the funds until the business day that the financial institution receives the credit for the funds, which may be the business day following the Interest Payment Date. Where applicable, if a depositor indicates and the Bank agrees that Interest Payments on the CD are to be delivered by check, in most instances the Bank will mail any such check on the business day following the applicable Interest Payment Date.

#### **K. Governing Law**

The CDs will be governed by and interpreted in accordance with the laws of the State of Texas and, as applicable, the laws of the United States.

### **II. RISK FACTORS**

***The CDs differ from conventional bank deposits.***

The CDs combine features of equity and traditional certificates of deposit. The terms of the CDs differ from those of conventional bank deposits. The specific product features applicable to a particular CD offering will be specified in the relevant Term Sheet and must be closely reviewed in order to understand the potential risk and potential rewards of owning the CD. Unlike a conventional interest-bearing bank deposit, the potential return on the CDs will be linked, in whole or in part, to how specified indices perform over a

relevant period. Zero interest will be paid if the relevant Reference Asset does not satisfy the Performance-Based Interest Conditions on the relevant dates.

***There can be no assurance that the Performance-Based Interest Conditions will be satisfied, and accordingly, the CDs may not pay more than the full principal amount of the CDs.***

The payment of interest on a CD, if any, will be subject to the satisfaction of certain Performance-Based Interest Conditions and events that are tied to the prices or levels of the Reference Assets on specified dates. If these Performance-Based Interest Conditions are not satisfied, the depositor will receive zero interest over the entire term of the CD. A depositor holding a CD to maturity is entitled to repayment of at least the principal amount of the CD. However, because Interest Payments are based upon Performance-Based Interest Conditions that may not be satisfied, there can be no assurances that any interest or other return will be received by the depositor on the CD.

***The full principal amount of the CDs, and any Interest Payments, may not be protected by deposit insurance.***

CDs are only insured by the FDIC within the limits and to the extent described in this Disclosure Statement under the section entitled “*Deposit Insurance*.” As a general matter, a depositor purchasing a principal amount of CDs which, together with other deposits that it maintains at the Bank in the same ownership capacity, is in excess of the FDIC insurance limits, should not rely on the availability of deposit insurance with respect to the excess. In addition, the FDIC has taken the position that any amount in excess of the principal amount payable at maturity based upon changes in an Index or other Reference Assets to which the return on the CDs is linked are not insured by the FDIC. See “*Deposit Insurance*”.

***Ownership of the CDs is not the same as ownership of the Reference Assets or the stocks or other securities or investments comprising the linked Index.***

Purchasing the CDs will not make the depositor the owner of the Reference Assets or any of the securities or other investments comprising any Index to which the CD is linked. Holders of the CDs will not have any voting rights, any rights to receive dividends or other distributions or any other rights with respect to any property or securities of the companies comprising the Reference Assets or any underlying any relevant Index. The Reference Index Sponsors, and the issuers of securities and other investments underlying any relevant Indices, have no affiliation with the Bank and no obligations relating to the CDs or amounts to be paid to depositors, or any other obligation to take the needs of the depositors into consideration for any reason.

***The return on the CDs will not reflect dividends on the common stocks used as Reference Assets or as components of Reference Assets.***

The return on the CDs will not reflect the return the depositor would realize if the depositor actually owned common stocks that are components of Indices that are used as Reference Assets and received the dividends paid on the common stocks. The yield derived from the CDs will not be the same as if the depositor had purchased shares of the common stocks that are components of Indices used as Reference Assets and held them for a similar term.

***The CDs are designed to be held to maturity.***

The CDs are designed so that if, and only if, they are held to maturity, the depositor will be entitled to receive no less than the principal amount of each CD. If a depositor redeems the CDs early, the depositor will not be entitled to, and may not receive, the benefit of principal protection. A depositor that redeems CDs early will be entitled solely to the actual Early Redemption Amount calculated by the Calculation Agent, and will not be entitled to an amount in respect of any unpaid interest on the CDs. *The Early Redemption Amount may be less (and may be substantially less) than the principal amount of the CDs.*

**A. There will be no market for secondary trading of the CDs.**

The CDs will not be listed on an organized securities exchange. No secondary market for the CDs exists. The depositor will not be permitted to sell or otherwise transfer the CDs prior to maturity, even in cases



where the linked Index has appreciated since the date of the issuance of the CDs. The depositor therefore must be willing and able to hold the CDs until maturity.

***Market disruptions may adversely affect the return on the CDs.***

The Calculation Agent may, in its sole discretion, decide that the markets have been affected in a manner that prevents it from properly determining a Relevant Value Measure. These events may include disruptions or suspensions of trading in the markets as a whole. If the Calculation Agent, in its sole discretion, determines that these events prevent the Bank from properly adjusting or unwinding all of a material portion of our hedge with respect to the CDs, it is possible that the Observation Date and Maturity Date may be postponed and the return on the CDs will be adversely affected. See “*Description of the CDs—Market Disruption Events.*”

***The CDs will likely be variable rate debt instruments or contingent payment debt instruments for United States federal income tax purposes.***

Unlike a traditional certificate of deposit that provides for periodic payments of interest at a single fixed rate with respect to which a cash-method holder generally recognizes income only upon payment of stated interest, the CDs will, unless otherwise noted in the applicable Term Sheet, be expected to be treated as “variable rate debt instruments” or “contingent payment debt instruments” for U.S. federal income tax purposes and will therefore be subject to special tax rules. Under these rules, if the depositor is a U.S. taxable investor and the CDs are treated as variable rate debt instruments, amounts received as interest on CDs treated as a variable rate debt instrument will be taxable to a U.S. taxable investor as ordinary interest income at the time that such payments are accrued or are received (in accordance with the U.S. taxable investor’s method of tax accounting). Under these rules, if the depositor is a U.S. taxable investor and the CDs are treated as contingent payment debt instruments, regardless of its method of accounting, the depositor will be required to accrue original issue discount (“OID”) as interest income on the CDs on a constant yield basis in each year that it holds the CDs, despite the fact that no stated interest may actually be paid on the CDs during any given year. As a result, the depositor will be required to pay taxes annually on the amount of accrued OID, even though no cash will be paid on the CDs from which to pay the taxes. See the section of this Disclosure Statement entitled, “*Certain U.S. Federal Income Tax Consequences.*” The depositor should consult its tax adviser regarding the tax treatment of the CDs in light of its particular situation.

***The Calculation Agent may have economic interests that are adverse to depositors.***

The Bank may serve as the Calculation Agent and, if so, will be solely responsible for the determination and calculation of any Interest Payments to be made on the CDs, and any other determinations and calculations in connection with the CDs. If the Bank were to serve as Calculation Agent, it may have economic interests adverse to those of the depositors, including with respect to certain determinations and judgments that the Calculation Agent must make in determining, for example, any Interest Payment or if a Market Disruption Event has occurred.

***We obtained the information about the Reference Assets and any related Reference Index Sponsors from public filings***

We have derived all information in the applicable Term Sheet about the relevant Indices and Reference Index Sponsors from publicly available documents. We have not participated and will not participate in the preparation of any of those documents. Nor have we made or will we make any “due diligence” investigation or any inquiry with respect to any Index or Reference Index Sponsor in connection with the offering of the CDs. We do not make any representation that any publicly available document or any other publicly available information about any Index or Reference Index Sponsor is accurate or complete. Furthermore, we do not know whether all events occurring before the date of the applicable Term Sheet, including events that would affect the accuracy or completeness of the publicly available documents referred to above or the trading value of any relevant Index or Reference Index Sponsor, have been publicly disclosed. Subsequent disclosure of any events of this kind or the disclosure of or failure to disclose material future events concerning any Index or Reference Index Sponsor could affect the ability of the Calculation Agent to accurately calculate any Relevant Value Measure with respect to your CDs.

***The Sponsor of an Index may change the instruments comprising the Index, in a way that adversely affects the Reference Asset value and consequently the value of the CDs***

The sponsor of an Index can add, delete or substitute the instruments underlying the instruments that comprise the Reference Asset or make other methodological changes that could adversely change the level of any such instrument, and consequently the value of the Reference Asset and the CDs. You should realize that changes in the instrument or instruments underlying an Index will affect the value of the Index, as a newly added instrument or instruments may perform significantly better or worse than the instrument or instruments it replaces.

***The securities underlying a Reference Asset may be concentrated in one or more industries or economic sectors***

The CDs are subject to the risk of an investment in a Reference Asset, which may be concentrated in securities or other instruments representing a particular economic sector. These include the risks of movements in the values of assets in these sectors, including the values of securities or other instruments underlying the Reference Asset. If the assets underlying a Reference Asset is concentrated in an industry or group of industries or a particular economic sector, the potential return on the CDs may be impacted by price movements in that sector.

### **III. DEPOSIT INSURANCE**

#### **A. Coverage of the CDs**

The CDs are protected by federal deposit insurance provided by the Bank Insurance Fund which is administered by the FDIC and backed by the full faith and credit of the U.S. Government at the current maximum level of \$250,000 per individual depositor for all accounts held by the depositor at the Bank in the same ownership capacity or, in the case of certain retirement accounts as described in more detail below, \$250,000 per participant. Any accounts or deposits a depositor maintains directly with the Bank in the same legal capacity as such depositor maintains its CDs would be aggregated with such CDs for purposes of FDIC insurance limits. Additionally, the FDIC has taken the position that any amount in excess of the principal amount payable at maturity based upon changes in an index, security or basket to which the return on the CDs is linked and any secondary market premium paid by a depositor above the principal amount of the CDs are not insured by the FDIC.

**Each depositor is responsible for monitoring the total amount of its deposits in order to determine the extent of deposit insurance coverage available to it on such deposits, including the CDs. In circumstances in which FDIC insurance coverage is needed, (a) the FDIC will not be responsible for the uninsured portion of the CDs or such portion of any other deposits and (b) the Bank will not be responsible for any insured or uninsured portion of the CDs or any other deposits. Persons considering the ownership of a CD should consult their legal advisers concerning the availability of FDIC insurance.**

If the CDs or other deposits of a depositor at the Bank are assumed by another depository institution pursuant to a merger or consolidation, such CDs or deposits will continue to be separately insured from the deposits that such depositor might have established with the acquirer until (a) the maturity date of the CDs or other time deposits which were assumed by the acquirer; or (b) with respect to deposits which are not time deposits, the expiration of a six-month period from the date of the acquisition. Thereafter, any assumed deposits will be aggregated with the existing deposits maintained with the acquirer and held in the same legal capacity for purposes of federal deposit insurance. Any deposit opened at the acquired institution after the acquisition will be aggregated with deposits established with the acquirer for purposes of federal deposit insurance.

The application of the federal deposit insurance limitation per depositor per depository institution in certain common factual situations is illustrated below:

*Single Ownership Accounts.* A single ownership account is a deposit owned by one person. Funds owned by an individual and held in an account in the name of an agent or nominee of such individual (such as the CDs held in a brokerage account) are not treated as owned by the agent or nominee,

but are added to other single ownership accounts of such individual and are insured up to \$250,000 in the aggregate.

*Custodial Accounts.* Custodial accounts are treated as single ownership accounts. Accounts established for a person by a custodian, guardian or conservator (for example, under the Uniform Gifts to Minors Act) (collectively "**Custodian**") are not treated as owned by the Custodian, but are treated as single ownership accounts of the person for which the account was established. These accounts are added to other single ownership accounts of such person and are insured up to \$250,000 in the aggregate.

*Joint Accounts.* The interests of co-owners in funds in an account held under any form of joint ownership valid under applicable state law (hereinafter referred to as a "**Joint Account**") may be insured up to

\$250,000 in the aggregate, separately and in addition to the \$250,000 allowed on other single ownership deposits owned by any of the co-owners of such account. Joint Accounts will be insured separately from such single ownership accounts only if each of the co-owners is an individual person and has a right of redemption on the same basis as the other co-owners. If the Joint Account meets the foregoing criteria then it shall be deemed to be jointly owned; provided that the account records of the Bank are clear and unambiguous as to the ownership of the account. However, if the account records are ambiguous or unclear as to the manner in which the account is owned, then the FDIC may consider evidence other than such account records to determine ownership. The names of two or more persons on a deposit account shall be conclusive evidence that the account is a Joint Account unless the deposit records as a whole are ambiguous and some other evidence indicates that there is a contrary ownership capacity.

In the event an individual has an interest in more than one Joint Account and different co-owners are involved, the individual's interest in all of such Joint Accounts (subject to the limitation that such individual's insurable interest in any one account may not exceed \$250,000 divided by the number of owners of such account) is then added together and insured up to \$250,000 in the aggregate, with the result that no individual's insured interest in the joint account category can exceed \$250,000. For deposit insurance purposes, the co-owners of any Joint Account are deemed to have equal interests in the Joint Account unless otherwise stated in the Bank's records.

*Entity Accounts.* The deposit accounts of any corporation, partnership or unincorporated association that is operated primarily for some purpose other than to increase deposit insurance are added together and insured up to \$250,000 in the aggregate per depository institution.

*Revocable Trust Accounts.* There are two types of revocable trust accounts insured under the FDIC's ownership coverage rules for revocable trust ownership: (1) informal trust accounts; and (2) formal trust accounts. Informal trust accounts are comprised of a signature card on which the owner designates the beneficiaries to whom the funds in the account will pass upon the owner's death. These are the most common type of revocable trust accounts and generally are referred to as "payable-on-death" ("**POD**") accounts or in-trust-for ("**ITF**") accounts or Totten Trust accounts. Formal trust accounts are accounts established in connection with a formal written revocable trust document.

While the trust owner is the insured party for FDIC insurance purposes, coverage is provided for the interests of each beneficiary in the account. The beneficiary must be a person, charity or another non-profit. For informal trusts, the account title must include a commonly accepted term such as "payable on death," "in trust for," "as trustee for" or similar language to indicate the existence of a trust relationship and the beneficiaries must be identified by name in the account records. For formal trust accounts, the account title must indicate that the account is held pursuant to a trust relationship.

A revocable trust account owner with up to five different beneficiaries named in all his or her revocable trust accounts at one FDIC-insured institution will be insured up to \$250,000 per beneficiary. Revocable trust account owners with more than \$1,250,000 and more than five different beneficiaries named in the trust account(s) will be insured for the greater of either: \$1,250,000 or the aggregate

amount of all the beneficiaries' proportional interests in the trust(s), limited to \$250,000 per beneficiary.

*Irrevocable Trust Accounts.* Funds in an account for an irrevocable trust (as determined under applicable state law) will be insured for up to \$250,000 for the interest of each beneficiary, provided that the beneficiary's interest in the account is non-contingent (*i.e.*, capable of determination without evaluation of contingencies). The deposit insurance of each beneficiary's interest is separate from the coverage provided for other accounts maintained by the beneficiary, the grantor, the trustee or beneficiaries. The interests of a beneficiary in all irrevocable trust accounts at the Bank created by the same grantor will be aggregated and insured up to \$250,000. When a bankruptcy trustee commingles the funds of two or more bankruptcy estates in the same trust account, the funds of each bankruptcy estate will receive separate pass-through coverage for up to \$250,000.

*Retirement Plans and Accounts—General.* CDs are sometimes held in retirement plans and accounts. There are many types of plans and accounts. The amount of deposit insurance each will be entitled to and whether CDs held by the plan or account will be considered separately or aggregated with CDs of the Bank held in other plans or accounts in determining the amount of deposit insurance such accounts are entitled to will vary depending upon the type of plan or account. It is therefore important to understand the type of plan or account holding the CD. Moreover, the Federal Deposit Insurance Corporation Improvement Act of 1991 (“**FDICIA**”) and the Federal Deposit Insurance Reform Act of 2005 (“**Reform Act**”) and regulations enacted by the FDIC to implement these laws have made changes to the deposit insurance coverage of deposits held in retirement plans and accounts. The following sections entitled “*Individual Retirement Accounts*” and “*Employee Benefit Plans*” discuss the rules that apply to deposits of retirement plans and accounts.

*Individual Retirement Accounts.* Deposits made in a depository institution in connection with any individual retirement account (“**IRAs**”) described in section 408(a) of the Code are insured, in aggregate, for up to \$250,000 as of April 1, 2006. However, deposits in IRAs are aggregated with the depositor's interests in deposits, including CDs, of eligible deferred compensation programs described in section 408(a) of the Code, and with individual account plans (as defined in section 3(34) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”)) to the extent that participants have the right to direct the investment of assets held in individual accounts maintained on their behalf under the plan, in applying the \$250,000 deposit insurance coverage limit.

*Employee Benefit Plans.* With certain limitations and exceptions, any deposit of an Employee Benefit Plan (as defined below) is insured, on a “pass-through” basis, up to \$250,000 for the vested and non-contingent interest in such deposit of each Employee Benefit Plan participant, provided that the records of the depository institution indicate that the deposit is held for the benefit of each Employee Benefit Plan participant, and provided further that the Employee Benefit Plan participants can be identified from the records of the Employee Benefit Plan administrator. This deposit insurance coverage is separate from, and in addition to, the coverage to which each participant is entitled for deposits held in the same depository institution but in other capacities.

The term “Employee Benefit Plan” has the meaning given such term in section 3(3) of ERISA and also includes any plan described in section 401(d) of the Code, and any eligible deferred compensation plan described in section 457 of the Code. This includes “Keogh Plans” of owner-employees described in section 401(d) of the Code, tax-qualified pension, profit-sharing or stock bonus plans, and government and church plans. It does not include employee welfare plans (such as health and welfare trust funds, or medical or life insurance plans).

“Pass-through” insurance means that, instead of the Employee Benefit Plan's deposits at one depository institution being entitled to only \$250,000 of insurance in total per institution, each participant in the Employee Benefit Plan is entitled to insurance of his or her interest in the Employee Benefit Plan's deposits of up to \$250,000 per institution (subject to the exceptions and limitations noted below).

This general rule regarding pass-through insurance is subject to the following limitations and exceptions:

- **Total Coverage.** Might Not Equal \$250,000 Times Number of Participants. Each deposit held by

an Employee Benefit Plan may not necessarily be insured for an amount equal to the number of participants multiplied by \$250,000. For example, suppose an Employee Benefit Plan owns \$500,000 in CDs at one institution. Suppose, further, that the Employee Benefit Plan has two participants, one with a vested non-contingent interest of \$300,000 and one with a vested non-contingent interest of \$200,000. The individual with the \$300,000 interest would be insured up to the \$250,000 limit and the individual with the \$200,000 interest would be insured up to the full value of such interest.

- *Aggregation.* An individual's non-contingent interests in funds deposited with the same depository institution by different Employee Benefit Plans of the same employer or employee organization are aggregated for purposes of applying this pass-through \$250,000 per participant deposit insurance limit, and are insured in aggregate only up to \$250,000 per participant.
- *Contingent Interests/Overfunding.* Any portion of an Employee Benefit Plan's deposits that is not attributable to the non-contingent interests of Employee Benefit Plan participants is not eligible for pass-through deposit insurance coverage, and is insured, in aggregate, only up to \$250,000.

The examples above are based on rules issued by the FDIC, which are subject to change from time to time. In certain instances, additional terms and conditions may apply which are not described above. Accordingly, such examples are qualified in their entirety by such rules, and the holder is urged to discuss with its attorney the insurance coverage afforded to any CD that it may purchase. Additionally, questions about how CDs will be insured may be addressed to the depositor's broker. Depositors may also write to the following address: FDIC Division of Depositor and Consumer Protection, 550 17th Street, N.W., Washington, D.C. 20429.

To the extent that a CD depositor expects its beneficial interest in the CDs to be fully covered by FDIC insurance, such depositor, by investing in a CD, is deemed to represent to the Bank that its beneficial interest (or if it is an agent, nominee, custodian or other person who is investing in a CD for its beneficial owners, that each beneficial owner's beneficial interest) in other deposits in the Bank, when aggregated with the beneficial interest in the CD so purchased, to the extent that aggregation is required in determining insurance of accounts under the federal deposit insurance regulations, does not exceed the applicable FDIC insurance coverage limits.

The Bank will not be obligated to any depositor for amounts not covered by deposit insurance, nor will the Bank be obligated to make any payments to any depositor in satisfaction of any loss such depositor might incur resulting from (a) a delay in insurance payouts applicable to its CD, (b) its receipt of a decreased return on the reinvestment of the proceeds received as a result of a payment on a CD prior to its scheduled maturity, (c) payment in cash of the CD principal prior to maturity in connection with the liquidation of an insured institution or the assumption of all or a portion of its deposit liabilities at a lower interest rate or (d) its receipt of a decreased return as compared to the percentage change in any Index, as the case may be.

## **B. Preference in Right of Payment**

Federal legislation adopted in 1993 provides for a preference in right of payment of certain claims made in the liquidation or other resolution of any FDIC-insured depository institution. The statute requires claims to be paid in the following order:

- first, administrative expenses of the receiver;
- second, any deposit liability of the institution;
- third, any other general or senior liability of the institution not described below;
- fourth, any obligation subordinated to depositors or general creditors not described below;
- fifth, any obligation to shareholders or members (including any depository institution holding company or any shareholder or creditor of such company).

For purposes of the statute, deposit liabilities include any deposit payable at an office of the insured depository institution in the United States. They do not include international banking facility deposits or deposits payable at an office of the insured depository institution outside the United States.

In addition, in the view of the FDIC, any obligation of an FDIC-insured depository institution that is contingent at the time of the insolvency of the institution may not provide a basis for a claim against the FDIC as receiver for the insolvent institution.

#### **IV. NO SECONDARY MARKET**

The CDs will not be listed on an organized securities exchange. *There will be no secondary market for the CDs.* The depositor will not be permitted to sell or otherwise transfer the CDs prior to maturity, even in cases where the linked Index has appreciated since the date of the issuance of the CDs. The depositor therefore must be willing and able to hold the CDs until maturity.

#### **V. FEES**

Agents of the Bank may receive a placement fee from the Bank in connection with the depositor's purchase of a CD. Such fees and the cost to the Bank of hedging its obligations under the CDs are reflected in the structure of the CDs and are not additional charges to the depositor.

#### **VI. HEDGING**

The Bank, through its affiliates or others, may hedge some or all of its anticipated exposure in connection with the CDs by taking positions in applicable Index or its underlying stocks. In addition, the Bank may enter into arrangements to hedge its exposure with respect to principal protection of the CDs. While the Bank cannot predict an outcome, this hedging activity, coupled with the Bank's other hedging activity, could potentially be adverse to holders of the CDs. Although the Bank has no reason to believe that any of these activities will have a material impact on the prices or levels of the applicable Reference Assets or the value of the CDs, the Bank cannot assure the depositor that these activities will not have an adverse effect.

The Bank has no obligation to engage in any manner of hedging activity and will do so solely at the Bank's discretion and for its own account. No holder of CDs will have any rights or interest in the Bank's hedging activity or any positions the Bank may take in connection with its hedging activity.

#### **VII. THE BANK**

The CDs will be issued by the Bank. The CDs are obligations of the Bank only, and not obligations of any broker or any affiliate of the Bank. The Bank is a Texas state non-member bank, and its deposits are insured up to applicable limits by the FDIC.

#### **VIII. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES**

##### **A. No Reliance**

This summary is limited to the federal income tax issues addressed herein. It does not address all aspects of the U.S. federal income of the CDs that may be relevant to a depositor in light of its particular circumstances.

**TO ENSURE COMPLIANCE WITH THE UNITED STATES INTERNAL REVENUE SERVICE CIRCULAR 230: (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED HEREIN WERE WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE CDS; (B) SUCH DISCUSSIONS WERE NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY PERSON, FOR THE PURPOSE OF AVOIDING ANY U.S. FEDERAL TAX PENALTIES THAT MAY BE IMPOSED ON SUCH PERSONS; AND (C) EACH DEPOSITOR SHOULD SEEK ADVICE BASED UPON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISER.**

##### **B. Introduction**

The following is a general discussion of the principal U.S. federal income tax consequences of the acquisition, ownership and disposition of CDs by an initial holder of CDs who purchases the CDs at their issue price for cash and who holds the CDs as capital assets within the meaning of Section 1221 of the Code.

This summary is based on the Code, existing and proposed Treasury regulations, revenue rulings, administrative interpretations and judicial decisions, in each case as currently in effect, all of which are subject to change, possibly with retroactive effect. This summary does not address all aspects of the U.S. federal income taxation of the CDs that may be relevant to a depositor in light of its particular circumstances or if it is a holder of CDs who is subject to special treatment under the U.S. federal income tax laws, such as:

- a financial institution;
- an insurance company;
- a “regulated investment company” as defined in Code Section 851;
- a “real estate investment trust” as defined in Code Section 856;
- a tax-exempt entity, including an “individual retirement account” or “Roth IRA” as defined in Code Section 408 or 408A, respectively;
- a dealer in securities or foreign currencies;
- a person holding the CDs as part of a hedging transaction, “straddle,” synthetic security, conversion transaction, or other integrated transaction, or who has entered into a “constructive sale” with respect to the CDs;
- a U.S. Holder (as defined below) whose functional currency is not the U.S. dollar;
- a trader in securities who elects to apply a mark-to-market method of tax accounting; or
- an entity that is classified as a partnership for U.S. federal income tax purposes.

As the law applicable to the U.S. federal income taxation of instruments such as the CDs is technical and complex, the discussion below necessarily represents only a general summary. Moreover, the effects of any applicable federal non-income, state, local or foreign tax laws are not discussed. Depositors are urged to consult their tax adviser concerning the U.S. federal income tax consequences of owning and disposing of the CDs, as well as any consequences under the laws of any state, local or foreign taxing jurisdiction.

### **C. Tax Treatment of the CDs**

Although the tax treatment of the CDs depends upon the facts at the time of the relevant issuance, it is expected that the CDs will be treated as “variable rate debt instruments,” for U.S. federal income tax purposes. This discussion does not address the tax treatment of CD products not described above. The applicable Term Sheet will indicate whether this treatment applies to the CDs, or whether an alternative treatment applies.

### **D. Tax Consequences to U.S. Holders**

The following discussion applies to a depositor only if it is a “U.S. Holder” of CDs. A depositor is deemed to be a “U.S. Holder” if it is a beneficial owner of a CD for U.S. federal income tax purposes that is:

- a citizen or resident of the United States;
- an entity taxable as a corporation that is created or organized under the laws of the United States or any political subdivision thereof; or
- an estate or trust the income of which is subject to U.S. federal income taxation regardless of its source.

If an entity that is classified as a partnership for U.S. federal income tax purposes holds CDs, the U.S. federal income tax treatment of a partner will generally depend upon the status of the partner and upon the activities of the partnership. Partners of partnerships holding CDs should consult with their tax advisers.

This discussion assumes that CDs are treated as “variable rate debt instruments” for U.S. federal income tax purposes. These CDs will be subject to the variable rate debt instrument provisions of the Code and the Treasury regulations issued thereunder if the CDs qualify as variable rate debt instruments. A CD with contingent interest payments may qualify as a variable rate debt instrument if the interest is payable at least annually at a “qualified floating rate” or at an “objective rate.” A “qualified floating rate” is generally any variable rate where variations in the value of the rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds in the currency in which the variable rate debt instrument is denominated. An “objective rate” is generally a rate that is not itself a qualified floating rate but which is determined using a single fixed formula and which is based on objective financial or economic

information. Amounts received as interest on a CD treated as a variable rate debt instrument will be taxable to a U.S. Holder as ordinary interest income at the time that such payments are accrued or are received (in accordance with the U.S. Holder's method of tax accounting).

There can be no assurance that the Internal Revenue Service ("IRS") or a court will agree with the characterization of the CDs as variable rate debt instruments. Moreover, the IRS could possibly assert, and a court could possibly agree, that the CDs should be characterized for U.S. federal income tax purposes as "contingent payment debt instruments" issued by the Bank. In such event, each CD would be subject to the special Treasury regulations governing contingent payment debt instruments, and among other tax consequences, each CD would be treated as having been issued with original issue discount or "OID" that must be accrued over the term of the CD.

#### **E. Tax Consequences to Non-U.S. Holders**

A depositor is deemed to be a "Non-U.S. Holder" if it is a beneficial owner of a CD for U.S. federal income tax purposes that is:

- an individual who is classified as a nonresident alien for U.S. federal income tax purposes;
- a foreign corporation; or
- a foreign estate or trust.

A depositor is not a Non-U.S. Holder if it is an individual present in the United States for 183 days or more in the taxable year of disposition of a CD. In this case, the depositor should consult its own tax adviser regarding the U.S. federal income tax consequences of the disposition.

If a depositor is a Non-U.S. Holder, interest paid to it on the CDs, and any gain realized by the depositor on a sale or exchange of the CDs, will be exempt from U.S. federal income tax (including withholding tax), provided generally that such amounts are not effectively connected with the depositor's conduct of a U.S. trade or business.

If a depositor is engaged in a trade or business in the United States and if the income or gain on the CDs, if any, is effectively connected with its conduct of such trade or business, although exempt from the withholding tax discussed above, the depositor will generally be subject to regular U.S. income tax on such income or gain in the same manner as if it was a U.S. Holder. Depositors to whom this paragraph applies should consult their tax adviser with respect to other tax consequences of the ownership and disposition of the CDs, including the possible imposition of a 30% branch profits tax.

#### **IX. S&P 500® DISCLAIMERS**

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