

**SPECIAL NOTICE FOR INVESTORS IN BAIL-INABLE YANKEE CDs ISSUED BY  
THE BANK OF NOVA SCOTIA THROUGH ITS HOUSTON BRANCH**

Yankee CDs that are bail-inable CDs (the “CDs”) will be subject to conversion in whole or in part – by means of a transaction or series of transactions and in one or more steps – into common shares of The Bank of Nova Scotia (the “Bank”) or any of its affiliates under subsection 39.2(2.3) of the CDIC Act and to variation or extinguishment in consequence, and subject to the application of the laws of the Province of Ontario and the federal laws of Canada applicable therein in respect of the operation of the CDIC Act with respect to the CDs.

The CDs include waivers of the branch-creditor provisions (which are sometimes referred to as “marshalling” or “ring fencing” provisions) of the U.S. Federal and Texas State banking laws applicable in the case of certain bankruptcy, insolvency, liquidation, winding-up or dissolution events involving the Bank.

The following information describes the Canadian bank resolution powers applicable to the CDs, including the bail-in regime (as defined below), and the branch-creditor provisions under U.S. Federal and Texas State banking laws. Capitalized terms used but not defined in this Special Notice have the meanings ascribed to them in the applicable term sheet for the CDs.

**Risk Factors Relating to the CDs as a Result of Canadian Bank Resolution Powers**

An investment in the CDs is subject to the risks described under “*Risk Factors*” in the management’s discussion and analysis of financial condition and results of operations included in the Bank’s Annual Report on Form 40-F for the fiscal year ended October 31, 2019, and in subsequent quarterly reports to shareholders that the Bank has filed on Form 6-K, which are incorporated by reference herein. You should carefully consider whether the CDs are suited to your particular circumstances. The risks described below result from the Canadian bank resolution powers applicable to the CDs.

***The CDs will be subject to risks, including non-payment in full or conversion in whole or in part – by means of a transaction or series of transactions and in one or more steps – into common shares of the Bank or any of its affiliates, under Canadian bank resolution powers.***

Under Canadian bank resolution powers, the Canada Deposit Insurance Corporation (the “CDIC”) may, in circumstances where the Bank has ceased, or is about to cease, to be viable, assume temporary control or ownership of the Bank and may be granted broad powers by one or more orders of the Governor in Council (*Canada*), each of which we refer to as an “*Order*,” including the power to sell or dispose of all or a part of the assets of the Bank, and the power to carry out or cause the Bank to carry out a transaction or a series of transactions the purpose of which is to restructure the business of the Bank. As part of the Canadian bank resolution powers, certain provisions of and regulations under the Bank Act, the CDIC Act and certain other Canadian federal statutes pertaining to banks, which we refer to collectively as the “*bail-in regime*,” provide for a bank recapitalization regime for banks designated by the Superintendent (*Canada*) as domestic systemically important banks, which include the Bank. We refer to those domestic systemically important banks as “*D-SIBs*.” See “*Canadian Bank Resolution Powers Including Bail-in*” below.

If the CDIC were to take action under the Canadian bank resolution powers with respect to the Bank, this could result in holders or beneficial owners of the CDs being exposed to losses and conversion of the CDs in whole or in part – by means of a transaction or series of transactions and in one or more steps – into common shares of the Bank or any of its affiliates, which we refer to as a “*bail-in conversion*.”

Upon a bail-in conversion, if your CDs or any portion thereof are converted into common shares of the Bank or any of its affiliates, you will be obligated to accept those common shares, even if you do not at the time consider the common shares to be an appropriate investment for you, and despite any change in the Bank or any of its affiliates, or the fact that the common shares may be issued by an affiliate of the Bank, or any disruption to or lack of a market for the common shares or disruption to capital markets generally.

As a result, holders of CDs should consider the risk that they may lose all of their investment, including the

principal amount plus any accrued interest, if CDIC were to take action under the Canadian bank resolution powers, including the bail-in regime, and that any remaining outstanding CDs, or common shares of the Bank or any of its affiliates into which CDs are converted, may be of little value at the time of a bail-in conversion and thereafter.

***The CDs will provide only limited acceleration and enforcement rights for the CDs and will include other provisions intended to qualify the CDs as TLAC.***

The terms of the CDs provide that acceleration will occur only if certain bankruptcy, insolvency or reorganization events occur with respect to the Bank or the Bank's Houston Branch (the "Branch").

Acceleration will occur only if an Order has not been made pursuant to subsection 39.13(1) of the CDIC Act in respect of the Bank. Notwithstanding acceleration of the CDs, the CDs will continue to be subject to bail-in conversion until repaid in full. If less than all of the CDs are converted in a bail-in conversion, the portion of the CDs that is not converted will remain outstanding in accordance with their terms.

The terms of the CDs also provide that holders or beneficial owners of CDs will not be entitled to exercise, or direct the exercise of, any set-off or netting rights with respect to the CDs. In addition, where an amendment, modification or other variance that can be made to the CDs would affect the recognition of the CDs by the Superintendent (*Canada*) as TLAC, that amendment, modification or variance will require the prior approval of the Superintendent (*Canada*).

***The circumstances surrounding a bail-in conversion are unpredictable and can be expected to have an adverse effect on the market price of the CDs.***

The decision as to whether the Bank has ceased, or is about to cease, to be viable is a subjective determination by the Superintendent (*Canada*) that is outside the control of the Bank. Upon a bail-in conversion, the interests of depositors and holders of liabilities and securities of the Bank that are not converted will effectively all rank in priority to the portion of CDs that are converted. In addition, except as provided for under the compensation regime under the CDIC Act, the rights of holders in respect of the CDs that have been converted will rank on parity with other holders of common shares of the Bank (or, as applicable, common shares of the affiliate whose common shares are issued on the bail-in conversion).

There is no limitation on the type of Order that may be made where it has been determined that the Bank has ceased, or is about to cease, to be viable. As a result, holders of CDs may be exposed to losses through the use of Canadian bank resolution powers other than bail-in conversion or in liquidation. See "*The CDs will be subject to risks, including non-payment in full or conversion in whole or in part – by means of a transaction or series of transactions and in one or more steps – into common shares of the Bank or any of its affiliates, under Canadian bank resolution powers.*" above.

Because of the uncertainty regarding when and whether an Order will be made and the type of Order that may be made, it will be difficult to predict when, if at all, CDs could be converted into common shares of the Bank or any of its affiliates, and there is not likely to be any advance notice of an Order. As a result of this uncertainty, trading behavior in respect of the CDs may not follow trading behavior associated with convertible or exchangeable securities or, in circumstances where the Bank is trending towards ceasing to be viable, other senior debt. Any indication, whether real or perceived, that the Bank is trending towards ceasing to be viable can be expected to have an adverse effect on the market price of the CDs, whether or not the Bank has ceased, or is about to cease, to be viable. Therefore, in those circumstances, holders of CDs may not be able to sell their CDs easily or at prices comparable to those of senior debt securities not subject to bail-in conversion.

***The number of common shares to be issued in connection with, and the number of common shares that will be outstanding following, a bail-in conversion are unknown. It is also unknown whether the shares to be issued will be those of the Bank or one of its affiliates.***

Under the bail-in regime there is no fixed and pre-determined contractual conversion ratio for the conversion

of the CDs, or other shares or liabilities of the Bank that are subject to a bail-in conversion, into common shares of the Bank or any of its affiliates, nor are there specific requirements regarding whether liabilities subject to a bail-in conversion are converted into common shares of the Bank or any of its affiliates. CDIC determines the timing of the bail-in conversion, the portion of bail-inable shares and liabilities to be converted and the terms and conditions of the conversion, subject to parameters set out in the bail-in regime set out below under “*Canadian Bank Resolution Powers Including Bail-in—Bail-in Conversion*”.

As a result, it is not possible to anticipate the potential number of common shares of the Bank or its affiliates that would be issued in respect of any CD converted in a bail-in conversion, the aggregate number of such common shares that will be outstanding following the bail-in conversion, the effect of dilution on the common shares received from other issuances under or in connection with an Order or related actions in respect of the Bank or its affiliates or the value of any common shares received by the holder or beneficial owner, which could be significantly less than the principal amount of the converted CDs. It is also not possible to anticipate whether shares of the Bank or shares of its affiliates would be issued in a bail-in conversion. There may be an illiquid market, or no market at all, in the common shares issued upon a bail-in conversion and such holders or beneficial owners may not be able to sell those common shares at a price equal to the value of the converted CDs and as a result may suffer significant losses that may not be offset by compensation, if any, received as part of the compensation process.

***By acquiring CDs, each holder or beneficial owner is deemed to agree to be bound by a bail-in conversion and so will have no further rights in respect of CDs that are converted in a bail-in conversion other than those provided under the bail-in regime. Any potential compensation to be provided through the compensation process under the CDIC Act is unknown.***

The CDIC Act provides for a compensation process for persons that, immediately prior to the making of an Order, directly or through an intermediary, owned CDs that were converted in a bail-in conversion. Given the considerations involved in determining the amount of compensation, if any, that such a person that previously held CDs may be entitled to following an Order, it is not possible to anticipate what, if any, compensation would be payable in such circumstances. By its acquisition of an interest in any CD, each holder or beneficial owner of that CD is deemed to agree to be bound by a bail-in conversion and so will have no further rights in respect of CDs to the extent those CDs are converted in a bail-in conversion, other than those provided under the bail-in regime.

***Following a bail-in conversion, holders or beneficial owners that held CDs that have been converted will no longer have rights against the Branch or the Bank as creditors with respect to the converted CDs.***

Upon a bail-in conversion, the rights, terms and conditions of the portion of CDs that are converted, including with respect to priority and rights on liquidation, will no longer apply as the portion of converted CDs will have been converted on a full and permanent basis into common shares of the Bank or any of its affiliates ranking on parity with all other outstanding common shares of that entity. If a bail-in conversion occurs, then the interest of the depositors, other creditors and holders of liabilities of the Bank not bailed-in as a result of the bail-in conversion will all rank in priority to those common shares.

Given the nature of the bail-in conversion, holders or beneficial owners of CDs that are converted will become holders or beneficial owners of common shares at a time when the Bank’s and potentially its affiliates’ financial condition has deteriorated. They may also become holders or beneficial owners of common shares at a time when the relevant entity may have received or may receive a capital injection or equivalent support with terms that may rank in priority to the common shares issued in a bail-in conversion with respect to payment of dividends, rights on liquidation or other terms although there is no certainty that any such capital injection or support will be forthcoming.

***The CDs may be redeemed after the occurrence of a TLAC Disqualification Event.***

If specified in the applicable term sheet for your CDs, the Bank, acting through the Branch, may, at its option, with the prior approval of the Superintendent (*Canada*), redeem all but not less than all of the CDs prior to their stated maturity date after the occurrence of a TLAC Disqualification Event, at the time and at the redemption price or prices specified in the CD, together with unpaid interest accrued thereon to, but excluding, the date fixed for

redemption. If CDs are redeemed, the holder or beneficial owner of the CD may not be able to reinvest the redemption proceeds in securities offering a comparable anticipated rate of return. Additionally, although the terms of the CDs are anticipated to be established to satisfy the TLAC criteria within the meaning of the TLAC Guideline to which the Bank is subject, it is possible that any CDs may not satisfy the criteria established in future rulemakings or interpretations.

***If the Bank were to be subject to bankruptcy, insolvency or liquidation proceedings, the holders and beneficial owners of the CDs have waived the benefits of the separate proceedings that would be conducted with respect to the Texas or other U.S. branches and agencies of the Bank. Holders of bail-inable instruments may recover less under the bail-in regime and the compensation regime under the CDIC Act than they would otherwise receive in a U.S. receivership proceeding involving the Branch.***

As described below under “*Branch Resolution Proceedings in the United States*,” each of Section 204.120 of the Texas Finance Code and Section 4(j) of the International Banking Act provides for separate proceedings with respect to U.S. branches and agencies of non-U.S. banks, such as the Branch, in the case of an insolvency and certain other events with respect to the non-U.S. bank. However, by its acquisition of an interest in any CD, each holder or beneficial owner of that CD is deemed to irrevocably waive its rights to bring claims and/or enjoy any priority in any such proceeding at any time when any of the events described in clause (i) under “*Events of Default*” has occurred and is continuing, and the Department or the Office of the Comptroller of the Currency (the “*OCC*”), as the case may be, takes possession, or is in possession, of the business, property and/or assets of the Branch. As a consequence, the holders and beneficial owners of CDs may recover less ratably than the holders of all other liabilities issued by the Bank, acting through the Branch, that are entitled to the preference under U.S. receivership proceedings involving the Branch described above. In the event bankruptcy, insolvency or liquidation proceedings for the Bank are pending, holders and beneficial owners would be required to pursue their claims with respect to the CDs in a Canadian insolvency or liquidation proceeding for the Bank. To the extent that holders of the CDs are entitled to recovery with respect to the CDs in any Canadian action or proceeding, the holders of the CDs would not be entitled in such an action or proceeding to a recovery in U.S. dollars and would be entitled in such an action or proceeding only to a recovery in Canadian dollars.

As described below under “*Canadian Bank Resolution Powers Including Bail-in—Compensation Regime*”, the compensation to which holders or beneficial owners of bail-inable instruments, such as the CDs, are entitled under the compensation regime under the CDIC Act is the difference, to the extent it is positive, between the estimated liquidation value and the estimated resolution value of the relevant bail-inable instruments. As a result of the waiver described above, holders and beneficial owners of the CDs will not be entitled to the protections to which they would otherwise be entitled in a U.S. receivership proceeding involving the Branch and they may therefore recover less in connection with the bail-in of the Bank than would be the case in the absence of the waiver. Accordingly, holders of bail-inable instruments may recover less under the bail-in regime and the compensation regime under the CDIC Act than they would otherwise receive in a U.S. receivership proceeding involving the Branch.

### **Canadian Bank Resolution Powers Including Bail-in**

Under Canadian bank resolution powers, the CDIC may, in circumstances where the Bank has ceased, or is about to cease, to be viable, assume temporary control or ownership of the Bank and may be granted broad powers by one or more Orders of the Governor in Council (*Canada*), including the power to sell or dispose of all or a part of the assets of the Bank, and the power to carry out or cause the Bank to carry out a transaction or a series of transactions the purpose of which is to restructure the business of the Bank. As part of the Canadian bank resolution powers, certain provisions of, and regulations under the Bank Act and certain other Canadian federal statutes pertaining to banks, which we refer to collectively as the “*bail-in regime*,” provide for a bank recapitalization regime for banks designated by the Superintendent (*Canada*) as D-SIBs.

The expressed objectives of the bail-in regime include reducing government and taxpayer exposure in the unlikely event of a failure of a D-SIB, reducing the likelihood of such a failure by increasing market discipline and reinforcing that bank shareholders and creditors are responsible for the D-SIBs’ risks and not taxpayers, and preserving financial stability by empowering the CDIC to quickly restore a failed D-SIB to viability and allow it to remain open and operating, even where the D-SIB has experienced severe losses.

Under the CDIC Act, in circumstances where the Superintendent (*Canada*) is of the opinion that the Bank has ceased, or is about to cease, to be viable and viability cannot be restored or preserved by exercise of Superintendent (*Canada*)’s powers under the Bank Act, the Superintendent (*Canada*), after providing the Bank with a reasonable opportunity to make representations, is required to provide a report to CDIC. Following receipt of the Superintendent (*Canada*)’s report, CDIC may request the Minister of Finance for Canada (the “*Minister of Finance*”) to recommend that the Governor in Council (*Canada*) make an Order and, if the Minister of Finance is of the opinion that it is in the public interest to do so, the Minister of Finance may recommend that the Governor in Council (*Canada*) make, and on that recommendation, the Governor in Council (*Canada*) may make, one or more of the following Orders:

- vesting in CDIC, the shares and subordinated debt of the Bank specified in the Order, which we refer to as a “*vesting order*”;
- appointing CDIC as receiver in respect of the Bank, which we refer to as a “*receivership order*”;
- if a receivership order has been made, directing the Minister of Finance to incorporate a federal institution designated in the Order as a bridge institution wholly-owned by CDIC and specifying the date and time as of which the Bank’s deposit liabilities are assumed, which we refer to as a “*bridge bank order*”; or
- if a vesting order or receivership order has been made, directing CDIC to carry out a conversion, by converting or causing the Bank to convert, in whole or in part – by means of a transaction or series of transactions and in one or more steps – the shares and liabilities of the Bank that are subject to the bail-in regime into common shares of the Bank or any of its affiliates, which we refer to as a “*conversion order*”.

Following a vesting order or receivership order, CDIC will assume temporary control or ownership of the Bank and will be granted broad powers under that Order, including the power to sell or dispose of all or a part of the assets of the Bank, and the power to carry out or cause the Bank to carry out a transaction or a series of transactions the purpose of which is to restructure the business of the Bank.

Under a bridge bank order, CDIC has the power to transfer the Bank’s insured deposit liabilities and certain assets and other liabilities of the Bank to a bridge institution. Upon the exercise of that power, any assets and liabilities of the Bank that are not transferred to the bridge institution would remain with the Bank, which would then be wound up. In such a scenario, any liabilities of the Bank, including any outstanding CDs (whether or not such CDs are bail-inable instruments), that are not assumed by the bridge institution could receive only partial or no repayment in the ensuing wind-up of the Bank.

Upon the making of a conversion order, prescribed shares and liabilities under the bail-in regime that are subject to that conversion order will, to the extent converted, be converted into common shares of the Bank or any of its affiliates, as determined by the CDIC.

Subject to certain exceptions discussed below, senior debt issued on or after September 23, 2018, with an initial or amended term to maturity (including explicit or embedded options) greater than 400 days, that is unsecured or partially secured and that has been assigned a CUSIP or ISIN or similar identification number are subject to a bail-in conversion. We refer to senior debt instruments that are subject to bail-in conversion, such as the CDs, as “*bail-inable instruments*.” Shares, other than common shares, and subordinated debt of the Bank are also subject to a bail-in conversion, unless they are non-viability contingent capital.

Shares and liabilities which would otherwise be bail-inable but were issued before September 23, 2018 are not subject to a bail-in conversion unless, in the case of any such liability, including any CDs, the terms of such liability are amended to increase their principal amount or to extend their term to maturity on or after September 23, 2018, and that liability, as amended, meets the requirements to be subject to a bail-in conversion. Covered bonds, certain derivatives and certain structured notes (as such term is used under the bail-in regime) are expressly excluded from a bail-in conversion. To the extent that any debt instruments constitute structured notes (as such

term is used under the bail-in regime) they will not be bail-inable instruments. As a result, claims of some creditors whose claims would otherwise rank equally with those of the holders holding bail-inable instruments would be excluded from a bail-in conversion and thus the holders and beneficial owners of bail-inable instruments will have to absorb losses ahead of these other creditors as a result of the bail-in conversion. The terms and conditions of the bail-in conversion will be determined by CDIC in accordance with and subject to certain requirements discussed below.

### ***Bail-in Conversion***

Under the bail-in regime there is no fixed and pre-determined contractual conversion ratio for the conversion of the bail-inable instruments, or other shares or liabilities of the Bank that are subject to a bail-in conversion, into common shares of the Bank or any of its affiliates nor are there specific requirements regarding whether liabilities subject to a bail-in conversion are converted into common shares of the Bank or any of its affiliates. CDIC determines the timing of the bail-in conversion, the portion of bail-inable shares and liabilities to be converted and the terms and conditions of the conversion, subject to parameters set out in the bail-in regime. Those parameters include that:

- in carrying out a bail-in conversion, CDIC must take into consideration the requirement in the Bank Act for banks to maintain adequate capital;
- CDIC must use its best efforts to ensure that shares and liabilities subject to a bail-in conversion are only converted after all subordinate ranking shares and liabilities that are subject to a bail-in conversion and any subordinate non-viability contingent capital instruments have been previously converted or are converted at the same time;
- CDIC must use its best efforts to ensure that the converted part of the liquidation entitlement of a share subject to a bail-in conversion, or the converted part of the principal amount and accrued and unpaid interest of a liability subject to a bail-in conversion, is converted on a pro rata basis for all shares or liabilities subject to a bail-in conversion of equal rank that are converted during the same restructuring period;
- holders of shares and liabilities that are subject to a bail-in conversion must receive a greater number of common shares per dollar of the converted part of the liquidation entitlement of their shares, or the converted part of the principal amount and accrued and unpaid interest of their liabilities, than holders of any subordinate shares or liabilities subject to a bail-in conversion that are converted during the same restructuring period or of any subordinate non-viability contingent capital that is converted during the same restructuring period;
- holders of shares or liabilities subject to a bail-in conversion of equal rank that are converted during the same restructuring period must receive the same number of common shares per dollar of the converted part of the liquidation entitlement of their shares or the converted part of the principal amount and accrued and unpaid interest of their liabilities; and
- holders of shares or liabilities subject to a bail-in conversion must receive, if any non-viability contingent capital of equal rank to the shares or liabilities is converted during the same restructuring period, a number of common shares per dollar of the converted part of the liquidation entitlement of their shares, or the converted part of the principal amount and accrued and unpaid interest of their liabilities, that is equal to the largest number of common shares received by any holder of the non-viability contingent capital per dollar of that capital.

### ***Compensation Regime***

The CDIC Act provides for a compensation process for holders of bail-inable instruments who immediately prior to the making of an Order, directly or through an intermediary, own bail-inable instruments that are converted in a bail-in conversion. While this process applies to successors of those holders it does not apply to assignees or

transferees of the holder following the making of the Order and does not apply if the amounts owing under the relevant bail-inable instruments are paid in full.

Under the compensation process, the compensation to which such holders are entitled is the difference, to the extent it is positive, between the estimated liquidation value and the estimated resolution value of the relevant bail-inable instruments. The liquidation value is the estimated value the bail-inable instrument holders would have received if an order under the *Winding-up and Restructuring Act* (Canada) had been made in respect of the Bank, as if no Order had been made and without taking into consideration any assistance, financial or otherwise, that is or may be provided to the Bank, directly or indirectly, by CDIC, the Bank of Canada, the Government of Canada or a province of Canada, after any order to wind up the Bank has been made.

The resolution value in respect of relevant bail-inable instruments is the aggregate estimated value of the following: (a) the relevant bail-inable instruments, if they are not held by CDIC and they are not converted, after the making of an Order, into common shares under a bail-in conversion; (b) common shares that are the result of a bail-in conversion after the making of an Order; (c) any dividend or interest payments made, after the making of the Order, with respect to the relevant bail-inable instruments to any person other than CDIC; and (d) any other cash, securities or other rights or interests that are received or to be received with respect to the relevant bail-inable instruments as a direct or indirect result of the making of the Order and any actions taken in furtherance of the Order, including from CDIC, the Bank, the liquidator of the Bank, if the Bank is wound up, the liquidator of a CDIC subsidiary incorporated or acquired by Order of the Governor in Council for the purposes of facilitating the acquisition, management or disposal of real property or other assets of the Bank that CDIC may acquire as the result of its operations that is liquidated or the liquidator of a bridge institution if the bridge institution is wound up.

In connection with the compensation process, CDIC is required to estimate the liquidation value and the resolution value in respect of the portion of converted bail-inable instruments and is required to consider the difference between the estimated day on which the liquidation value would be received and the estimated day on which the resolution value is, or would be, received.

CDIC must, within a reasonable period following a bail-in conversion, make an offer of compensation by notice to the relevant holders that held bail-inable instruments equal to, or in value estimated to be equal to, the amount of compensation to which such holders are entitled or provide a notice stating that such holders are not entitled to any compensation. In either case such notice is required to include certain prescribed information, including important information regarding the rights of such holders to seek to object and have the compensation to which they are entitled determined by an assessor (a Canadian Federal Court judge) where holders of liabilities representing at least 10% of the principal amount and accrued and unpaid interest of the liabilities of the same class object to the offer or absence of compensation. The period for objecting is limited (45 days following the day on which a summary of the notice is published in the *Canada Gazette*) and failure by holders holding a sufficient principal amount plus accrued and unpaid interest of affected bail-inable instruments to object within the prescribed period will result in the loss of any ability to object to the offered compensation or absence of compensation, as applicable. CDIC will pay the relevant holders the offered compensation within 135 days after the date on which a summary of the notice is published in the *Canada Gazette* if the offer of compensation is accepted, the holder does not notify CDIC of acceptance or objection to the offer or if the holder objects to the offer but the 10% threshold described above is not met within the aforementioned 45-day period.

Where an assessor is appointed, the assessor could determine a different amount of compensation payable, which could either be higher or lower than the original amount. The assessor is required to provide holders, whose compensation it determines, notice of its determination. The assessor's determination is final and there are no further opportunities for review or appeal. CDIC will pay the relevant holders the compensation amount determined by the assessor within 90 days of the assessor's notice.

By its acquisition of an interest in any bail-inable instrument, each holder or beneficial owner of that instrument is deemed to be bound by a bail-in conversion and so will have no further rights in respect of its bail-inable instruments to the extent those bail-inable instruments are converted in a bail-in conversion, other than those provided under the bail-in regime.

A similar compensation process to the one set out above applies, in certain circumstances, where as a result of

CDIC's exercise of bank resolution powers, notes are assigned to an entity which is then wound-up.

### ***TLAC Guideline***

In connection with the bail-in regime, the TLAC Guideline applies to and establishes standards for D-SIBs, including the Bank. Under the TLAC Guideline, beginning November 1, 2021, the Bank is required to maintain a minimum capacity to absorb losses composed of unsecured external long-term debt that meets the prescribed criteria or regulatory capital instruments to support recapitalization in the event of a failure. Bail-inable instruments and regulatory capital instruments that meet the prescribed criteria will constitute TLAC of the Bank.

In order to comply with the TLAC Guideline, the instrument must provide for terms and conditions for the bail-inable instruments necessary to meet the prescribed criteria and qualify at their issuance as TLAC instruments of the Bank under the TLAC Guideline. Those criteria include the following:

- the Bank cannot directly or indirectly have provided financing to any person for the express purpose of investing in the bail-inable instrument;
- the bail-inable instrument is not subject to set-off or netting rights;
- the bail-inable instrument must not provide rights to accelerate repayment of principal or interest payments outside of bankruptcy, insolvency, wind-up or liquidation, except that events of default relating to the non-payment of scheduled principal and/or interest payments will be permitted where they are subject to a cure period of no less than 30 business days and clearly disclose to investors that: (i) acceleration is only permitted where an Order has not been made in respect of the Bank; and (ii) notwithstanding any acceleration, the instrument could still be subject to a bail-in conversion prior to its repayment;
- the bail-inable instrument may be redeemed or purchased for cancellation only at the initiative of the Bank and, where the redemption or purchase would lead to a breach of the Bank's TLAC requirements, that redemption or purchase would be subject to the prior approval of the Superintendent (*Canada*);
- the bail-inable instrument does not have credit-sensitive dividend or coupon features that are reset periodically based in whole or in part on the Bank's credit standing; and
- where an amendment or variance of the bail-inable instrument's terms and conditions would affect its recognition as TLAC, that amendment or variance will only be permitted with the prior approval of the Superintendent (*Canada*).

### **Branch Resolution Proceedings in the United States**

A general discussion of the regulation and supervision of the Bank's operations in the United States and in other jurisdictions can be found in the section "*Regulatory developments*" in the Bank's Annual Information Form, which is part of the Bank's Report on Form 40-F for the fiscal year ended October 31, 2019, which is incorporated by reference herein. The U.S. branches of the Bank, including the Branch, are subject to direct supervision and regulation by the jurisdictions by which they were licensed. The branch resolution regime applicable to the Branch is described below.

The Branch is a branch of the Bank licensed by the Commissioner of the Texas Department of Banking (the "*Department*") under the Texas Finance Code. The Branch is examined by the Department and the Federal Reserve Bank of Dallas and is subject to Texas and U.S. Federal banking laws and regulations applicable to a foreign bank that operates a Texas branch.

The terms of the CDs provide that by its acquisition of an interest in any CD, each holder or beneficial owner of that CD is deemed to irrevocably waive its rights, at any time when any of the events described in clause (i) under "*Events of Default*" in the applicable term sheet for the CDs has occurred and is continuing, (i) to establish an



accepted claim under Section 204.120 of the Texas Finance Code and/or an allowed or proved claim for purposes of Section 4(j) of the International Banking Act and (ii) to any preference to which it may become entitled under Section 204.120 of the Texas Finance Code, under Section 4(j) of the International Banking Act or under any other similar law to the extent necessary so that the CDs are not legally or economically senior to the Bank's depositors and/or other general creditors if any of the events described in clause (i) under "*Events of Default*" in the applicable term sheet for the CDs occurs.

Section 204.120 of the Texas Finance Code provides that the Department may take possession of the business and property of the Bank in the State of Texas if it is necessary or desirable for the protection of the interests of the depositors and creditors of the Bank's business in Texas or for the protection of the public and the Department finds that any of the factors set forth in Section 204.116 of the Texas Finance Code are true, including that the Bank:

- does not currently meet the criteria for original issuance of a Texas license;
- has refused to permit the Department to examine its books, papers, accounts, records or affairs or has failed to make a report required under the Texas Finance Code or made a material false or misleading statement in the report;
- has violated any law or rule applicable to a foreign bank or a Texas state branch or agency, or a final and enforceable order of the Department or the Finance Commission of Texas;
- has misrepresented or concealed a material fact in the original application for license violated a condition of its license or an agreement between the Bank and the Department; or
- conducts business in an unsafe and unsound manner.

The claims of creditors arising out of transactions with the Branch may be accepted or rejected. If the Department takes possession of the property and business of the Bank in the State of Texas, the Department will as soon as practicable thereafter initiate a receivership proceeding to liquidate the property and business of the Bank in the State of Texas, under circumstances and using procedures to liquidate such property and business of the Bank as if it were a Texas state bank, with absolute preference and priority given to allowed claims of creditors arising out of transactions with and recorded on the books of the Branch over the creditors of the Bank's offices located outside of the State of Texas. After completion of the liquidation of the property and business of the Bank in the State of Texas, Section 204.120(e) provides that the Department is to turn over the remaining assets to the Bank, except that (i) if the Bank has an office in another state of the United States that is in liquidation and the assets of the office appear to be insufficient to pay in full the creditors of that office, a court will order the Department to transfer to the liquidator of that office of the amount of the remaining assets that appears to be necessary to cover the insufficiency, or (ii) if the Bank has two or more such offices in liquidation and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to the offices, a court will order the distribution of the remaining assets among the liquidators of the offices in the manner the court finds equitable.

In addition, the OCC has the authority to take possession of all the property and assets of a non-U.S. bank in the United States in the circumstances set forth in Section 4(j) of the International Banking Act. Section 4(j) provides that the OCC may appoint a receiver (i) to take possession of all the non-U.S. bank's assets in the United States, and (ii) to distribute to each depositor and each other creditor of the non-U.S. bank with a "proved" or "allowed" claim the full amount of the claim arising out of transactions with the U.S. branches and agencies of the non-U.S. bank, subject to specified exceptions, if:

- the OCC revokes the license of a non-U.S. bank to operate a Federal branch or agency under the International Banking Act;
- the non-U.S. bank fails to satisfy a judgment against any Federal branch or agency it operates arising out of a transaction with any such Federal branch or agency; or
- the OCC determines that the non-U.S. bank has become insolvent.

Upon payment in full of the “proved” and “allowed” claims as well as the expenses of the receivership, Section 4(j) would direct the receiver to turn over the remaining assets to the home office of the non-U.S. bank or, if applicable, to the appointed liquidator or receiver of the foreign bank in the jurisdiction of its domicile.

As a consequence of each holder’s and beneficial owner’s waiver of the rights to those preferences, if the Department or the OCC (or any appointed receiver), as the case may be, takes possession, or is in possession, of the business, property and/or assets of the Branch, the holders of CDs may recover less ratably than the holders of all other liabilities issued by the Bank, acting through the Branch, that are entitled to the preference under U.S. receivership proceedings involving the Branch described above. In the event bankruptcy, insolvency, liquidation or wind-up proceedings for the Bank are pending, holders and beneficial owners would be required to pursue their claims with respect to the CDs in a Canadian bankruptcy, insolvency, liquidation or wind-up proceeding for the Bank. To the extent that holders of the CDs are entitled to recovery with respect to the CDs in any Canadian action or proceeding, the holders of the CDs would not be entitled in such an action or proceeding to a recovery in U.S. dollars and would be entitled in such an action or proceeding only to a recovery in Canadian dollars.

In addition, the compensation to which holders or beneficial owners of bail-inable instruments, such as the CDs, are entitled under the compensation regime under the CDIC Act is the difference, to the extent it is positive, between the estimated liquidation value and the estimated resolution value of the relevant bail-inable instruments. As a result of the waiver described above, holders and beneficial owners of the CDs will not be entitled to the protections to which they would otherwise be entitled in a U.S. receivership proceeding involving the Branch and they may therefore recover less in connection with the bail-in of the Bank than would be the case in the absence of the waiver. Accordingly, holders of bail-inable instruments may recover less under the bail-in regime and the compensation regime under the CDIC Act than they would otherwise receive in a U.S. receivership proceeding involving the Branch. See “Risk Factors Relating to the CDs as a Result of Canadian Bank Resolution Powers—*If the Bank were to be subject to bankruptcy, insolvency or liquidation proceedings, the holders and beneficial owners of the CDs have waived the benefits of the separate proceedings that would be conducted with respect to the Branch. Holders of bail-inable instruments may recover less under the bail-in regime and the compensation regime under the CDIC Act than they would otherwise receive in a U.S. receivership proceeding involving the Branch.*” and “*Waiver of Certain Priority Rights Under U.S. Banking Laws*” above.