

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (date of earliest event reported): January 28, 2016

WELLS FARGO & COMPANY  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation)

001-2979  
(Commission File  
Number)

No. 41-0449260  
(IRS Employer  
Identification No.)

420 Montgomery Street, San Francisco, California 94104  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: 1-866-249-3302

Not applicable  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

Article FOURTH of Wells Fargo & Company's (the "Company") Restated Certificate of Incorporation, as amended, authorizes the issuance from time to time of shares of Preferred Stock, without par value. On January 28, 2016, the Company filed with the Delaware Secretary of State a Certificate of Designation which, effective upon filing, designated a series of such Preferred Stock as "Non-Cumulative Perpetual Class A Preferred Stock, Series W," authorized 40,000 shares of Non-Cumulative Perpetual Class A Preferred Stock, Series W, without par value and with a liquidation preference amount of \$25,000 per share (referred to herein as the "Series W Preferred Stock"), and set forth the voting powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of the Series W Preferred Stock which are not fixed by the Company's Restated Certificate of Incorporation. A copy of the Certificate of Designation is attached hereto as Exhibit 4.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits

On January 29, 2016, the Company sold 40,000,000 Depositary Shares, each Depositary Share representing a 1/1,000th interest in a share of the Company's Series W Preferred Stock (the "Depositary Shares"). Exhibits are filed herewith in connection with the Registration Statement on Form S-3 (File No. 333-195697) filed by the Company with the Securities and Exchange Commission. The following documents are being filed with this report on Form 8-K: (i) Underwriting Agreement, dated January 19, 2016, among the Company and Wells Fargo Securities, LLC, as representative of the several underwriters named therein; (ii) Certificate of Designation of the Company dated January 28, 2016; (iii) Deposit Agreement dated as of January 29, 2016 among the Company, Wells Fargo Bank, N.A., as depositary, and the holders from time to time of Depositary Receipts; (iv) form of Depositary Receipt; and (v) opinions with respect the Series W Preferred Stock, Deposit Agreement, and Depositary Receipts.

(d) Exhibits

- 1.1 Underwriting Agreement, dated January 19, 2016, among Wells Fargo & Company and Wells Fargo Securities, LLC, as representative of the several underwriters named therein
- 4.1 Certificate of Designation of Wells Fargo & Company with respect to the Non-Cumulative Perpetual Class A Preferred Stock, Series W dated January 28, 2016
- 4.2 Deposit Agreement dated as of January 29, 2016 among Wells Fargo & Company, Wells Fargo Bank, N.A., as depositary, and the holders from time to time of Depositary Receipts
- 4.3 Form of Depositary Receipt (included as part of Exhibit 4.2)
- 5.1 Opinion of Richards, Layton & Finger, P.A. regarding the Non-Cumulative Perpetual Class A Preferred Stock, Series W

- 5.2 Opinion of Faegre Baker Daniels LLP regarding the Deposit Agreement and the Depositary Receipts
- 23.1 Consent of Richards, Layton & Finger, P.A. (included as part of Exhibit 5.1)
- 23.2 Consent of Faegre Baker Daniels LLP (included as part of Exhibit 5.2)

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

WELLS FARGO & COMPANY

DATED: January 29, 2016

/s/ Barbara S. Brett  
Barbara S. Brett  
Senior Vice President and Assistant Treasurer

## **Index to Exhibits**

<u>Exhibit No.</u>	<u>Description</u>	<u>Method of Filing</u>
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**Wells Fargo & Company**

**Depository Shares, Each Representing a 1/1,000th Interest in a Share of Non-Cumulative  
Perpetual Class A Preferred Stock, Series W**

**Underwriting Agreement**

January 19, 2016

Wells Fargo Securities, LLC

as Representative of the several Underwriters named in Schedule I  
c/o Wells Fargo Securities, LLC  
550 South Tryon Street, 5<sup>th</sup> Floor  
Charlotte, North Carolina 28202  
Attn: Transaction Management Department

Ladies and Gentlemen:

Wells Fargo & Company, a Delaware corporation (the “Company”), proposes to issue and sell to the several underwriters named in Schedule I hereto (the “Underwriters”), for whom you are acting as representative (the “Representative”), an aggregate of 35,000,000 Depository Shares (the “Firm Shares”), each representing a 1/1,000th interest in a share of the Company’s Non-Cumulative Perpetual Class A Preferred Stock, Series W, no par value, with a liquidation preference amount of \$25,000 per share (equivalent to \$25 per depository share) (the “Preferred Stock”) and, at the election of the Underwriters, up to an additional 5,000,000 Depository Shares (the “Option Shares”). The Firm Shares and the Option Shares are herein collectively referred to as the “Shares.” The Preferred Stock, when issued, will be deposited by the Company with Wells Fargo Bank, N.A., as depository, transfer agent and registrar (the “Depository”) under a deposit agreement, to be dated January 29, 2016 (the “Deposit Agreement”), among the Company, the Depository and the holders from time to time of the Depository Receipts issued thereunder against delivery to, or upon the order of, the Company of depository receipts (the “Depository Receipts”), which will evidence the Shares. For purposes of this Agreement, “Depository Shares” means the depository shares, each representing a 1/1,000th interest in a share of the Company’s Non-Cumulative Perpetual Class A Preferred Stock, Series W, no par value, with a liquidation preference amount of \$25,000 per share (equivalent to \$25 per depository share).

The Company meets the requirements for use of Form S-3 under the Securities Act of 1933, as amended (the “Securities Act”) and has filed with the Securities and Exchange Commission (the “SEC”) an automatic shelf registration statement on Form S-3 (No. 333-195697) as defined in Rule 405 under the Securities Act for the registration of securities, including the Shares, under the Securities Act, and the offering thereof from time to time in accordance with Rule 415 of the rules and regulations of the SEC under the Securities Act (the “Securities Act Regulations”). No notice of objection of the SEC to the use of such registration

statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act has been received by the Company. Such registration statement, including any amendments thereto, became effective upon filing and no order suspending the effectiveness of such registration statement has been issued by the SEC and no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering has been initiated or threatened by the SEC. The Company proposes to file with the SEC pursuant to Rule 424 under the Securities Act a supplement to a form of prospectus included in such registration statement relating to the Shares in the form heretofore delivered to you. Such registration statement, including all exhibits thereto, as amended at the date of this Agreement, and including any prospectus supplement relating to the Shares that is filed with the SEC pursuant to Rule 424(b) under the Securities Act and deemed part of such registration statement pursuant to Rule 430B under the Securities Act, is hereinafter called the "Registration Statement"; such prospectus in the form in which it appears in the Registration Statement is hereinafter called the "Basic Prospectus" and such supplemented form of prospectus, in the form in which it shall be filed with the SEC pursuant to Rule 424(b) (including the Basic Prospectus as so supplemented) is hereinafter called the "Final Prospectus." Any preliminary form of the Final Prospectus which has been or will be filed pursuant to Rule 424 is hereinafter called the "Preliminary Final Prospectus." The term "Free Writing Prospectus" shall mean a free writing prospectus, as defined in Rule 405 under the Securities Act. The term "Issuer Free Writing Prospectus" shall mean an issuer free writing prospectus, as defined in Rule 433 under the Securities Act, that (i) is required to be filed with the SEC by the Company or (ii) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Shares or the offering that does not reflect the final terms. The term "Applicable Time" shall mean the Applicable Time listed in Schedule II hereto. The term "Disclosure Package" shall mean (A) the Basic Prospectus, as amended and supplemented to the Applicable Time, (B) any Preliminary Final Prospectus, (C) the Issuer Free Writing Prospectuses and any other information identified in Schedule III hereto, and (D) any other Free Writing Prospectus that the parties hereto shall hereafter expressly agree in writing to treat as part of the Disclosure Package. Any reference herein to the Registration Statement, the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus shall be deemed to refer to and include the documents filed by the Company under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and incorporated therein as of the date of this Agreement, or the issue date of the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus, or the relevant Applicable Time, as the case may be. Any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement, the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the date of this Agreement, or the issue date of the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus, as the case may be, and deemed to be incorporated therein by reference.

1. *Company Representations and Warranties.* The Company represents and warrants to, and agrees with, each Underwriter that:

- (a) Registration Statement and Final Prospectus. As of the date hereof, when the Final Prospectus is first filed pursuant to Rule 424(b) under the Securities Act, when, prior to the Closing Date (as hereinafter defined), any amendment to the Registration Statement becomes effective (including the filing of any document

incorporated by reference in the Registration Statement), when any supplement to the Final Prospectus is filed with the SEC and at the Closing Date, (i) the Registration Statement, as amended as of any such time, and the Final Prospectus, as amended or supplemented as of any such time, will comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act and the respective rules thereunder, (ii) the Registration Statement, as amended as of any such time, does not or will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading, and (iii) the Final Prospectus, as amended or supplemented as of any such time, does not or will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representations or warranties as to the information contained in or omitted from the Registration Statement or the Final Prospectus or any amendment thereof or supplement thereto in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Representative or directly by any Underwriter specifically for use in connection with the preparation of the Registration Statement and the Final Prospectus (it being understood and agreed that the only such information contained in the Registration Statement or Final Prospectus furnished by any Underwriter consists of such information described as such in one or more letters, each dated the Closing Date (each an “Underwriter Blood Letter” and collectively, the “Underwriter Blood Letters”) delivered to the Company by the Representative, on behalf of the Underwriters, or individually by any Underwriter.

- (b) Disclosure Matters. At the Applicable Time, the Disclosure Package does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by any Underwriter through the Representative or directly by any Underwriter specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in any Underwriter Blood Letter provided by such parties.
- (c) Well-Known Seasoned Issuer Status. (i) At the time of filing of and the automatic effectiveness of the Registration Statement, (ii) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Sections 13 or 15(d) of the Exchange Act or form of prospectus) and (iii) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) under the Securities Act) made any offer relating to the Shares in reliance on the exemption

in Rule 163 under the Securities Act, the Company was or is (as the case may be) a “well-known seasoned issuer” as defined in Rule 405 under the Securities Act. The Company agrees to pay the fees required by the SEC relating to the Shares within the time required by Rule 456(b)(1) under the Securities Act without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the Securities Act.

- (d) Ineligible Issuer Status. At the earliest time after the filing of the Registration Statement that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) under the Securities Act) of the Shares and at the date of this Agreement, the Company was not and is not an “Ineligible Issuer” (as defined in Rule 405 under the Securities Act).
- (e) Issuer Free Writing Prospectuses. Each Issuer Free Writing Prospectus does not include any information that conflicts with the information contained in the Registration Statement, including any document incorporated by reference therein and any prospectus or prospectus supplement deemed to be a part thereof that has not been superseded or modified. The foregoing sentence does not apply to statements in or omissions from any Issuer Free Writing Prospectus made in reliance upon and in conformity with information furnished to the Company by any Underwriter through the Representative or directly by any Underwriter specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in any Underwriter Blood Letter provided by such parties.
- (f) Financial Statements.
  - (i) The financial statements (including the related notes thereto) of the Company and its consolidated subsidiaries included or incorporated by reference in the Registration Statement, the Disclosure Package and the Final Prospectus comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and present fairly, in all material respects, the financial position of the Company and its consolidated subsidiaries as of the dates indicated and the results of operations and the changes in cash flows for the periods specified; such financial statements have been prepared in conformity with generally accepted accounting principles (“GAAP”) applied on a consistent basis throughout the periods covered thereby, and any supporting schedules included or incorporated by reference in the Registration Statement present fairly the information required to be stated therein; the other financial information of the Company and its consolidated subsidiaries included or incorporated by reference in the Registration Statement, the Disclosure Package and the Final Prospectus has been derived from the accounting records of the Company and its consolidated subsidiaries and presents fairly the information shown thereby.

(ii) Since the date of the most recent financial statements of the Company and its consolidated subsidiaries included or incorporated by reference in the Registration Statement, the Disclosure Package and the Final Prospectus, (i) there has not been any change in the capital stock (other than changes in Common Stock (including treasury stock) resulting from repurchases and issuances of Common Stock pursuant to director and employee compensation and other benefit plans described in, the Registration Statement, the Disclosure Package and the Final Prospectus), material increase in the long-term debt of the Company or any of its subsidiaries, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock, or any material adverse change in or affecting the business, properties, management, financial condition, stockholders' equity, results of operations or business prospects of the Company and its subsidiaries taken as a whole; (ii) neither the Company nor any of its subsidiaries has entered into any transaction or agreement (whether or not in the ordinary course of business) that is material to the Company and its subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company and its subsidiaries taken as a whole, other than in the ordinary course of business; and (iii) neither the Company nor any of its subsidiaries has sustained any loss or interference with its business that is material to the Company and its subsidiaries taken as a whole and that is either from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority, except, in each case, as otherwise disclosed in the Registration Statement, the Disclosure Package and the Final Prospectus.

(iii) KPMG LLP, who has certified certain financial statements of the Company and its subsidiaries, is an independent registered public accounting firm with respect to the Company and its subsidiaries within the applicable rules and regulations adopted by the SEC and the Public Company Accounting Oversight Board (United States) and as required by the Securities Act.

- (g) Authorized Capitalization. The Company has an authorized capitalization as set forth in the Registration Statement, the Disclosure Package and the Final Prospectus; all the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any pre-emptive or similar rights; except pursuant to plans discussed in, or except as otherwise described in or expressly contemplated by, the Disclosure Package and the Final Prospectus, there are no outstanding rights (including, without limitation, pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in the Company or any of its subsidiaries, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company or any such subsidiary, any such convertible or exchangeable securities or any such rights, warrants or options; the capital stock of the Company conforms in all material respects to the description thereof contained in the Registration Statement, the Disclosure Package and the

Final Prospectus; and all the outstanding shares of capital stock or other equity interests of each Significant Subsidiary (as hereinafter defined) owned, directly or indirectly, by the Company have been duly and validly authorized and issued, are fully paid and (except as provided in 12 U.S.C. § 55 in the case of Wells Fargo Bank, N.A.) non-assessable and are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party.

- (h) Authorization and Validity of this Agreement and the Deposit Agreement. This Agreement and the Deposit Agreement have each been or will be duly executed and delivered by the Company. The Company has all corporate power and authority necessary to execute and deliver this Agreement and the Deposit Agreement, and to perform its obligations under this Agreement and under the Deposit Agreement; the execution, delivery and performance of the Deposit Agreement by the Company, the compliance with the provisions under the Deposit Agreement by the Company and the consummation of the transactions contemplated under the Deposit Agreement have been duly authorized by all necessary corporate action and will not conflict with or constitute a breach of, or default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, any contract, indenture, mortgage, loan agreement, note, lease or other instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, except where such breach or default would not reasonably be expected to have a material adverse effect upon the business, condition, or properties of the Company and its subsidiaries, taken as a whole, nor will such action result in any violation of the provisions of the Restated Certificate of Incorporation or By-laws of the Company or any law, administrative regulation or administrative or court order or decree; and no consent, approval, authorization, order or decree of any court or governmental agency or body is required for the consummation by the Company of the transactions contemplated by the Deposit Agreement, except such as may be required under the Securities Act or the rules and regulations of the Commission thereunder, all of which have been obtained, or such as may be required under state securities or “blue sky” laws or regulations adopted by the Financial Industry Regulatory Authority, Inc. (“FINRA”) in connection with the purchase and distribution of the Shares by the Underwriters.
- (i) Authorization and Validity of the Shares. The Preferred Stock to be issued by the Company underlying the Shares to be sold by the Company to the Underwriters hereunder and the Shares have been duly and validly authorized and, when the Preferred Stock is issued and delivered to the Depositary against receipt of the Shares as provided in the Deposit Agreement, the Preferred Stock will be duly and validly issued, fully paid and non-assessable. All corporate action required to be taken for the authorization and issue of the Preferred Stock underlying the Shares and sale of the Shares has been, or will be before the Closing Date, validly and sufficiently taken. The Company has all corporate power and authority

necessary to execute and deliver the Certificate of Designation with respect to the Preferred Stock. The Certificate of Designation with respect to the Preferred Stock will be duly filed with the Secretary of State of the State of Delaware. Upon deposit of the Preferred Stock underlying the Shares with the Depositary pursuant to the Deposit Agreement and the due execution by the Depositary of the Deposit Agreement and the Depositary Receipts, in accordance with the Deposit Agreement, the Depositary Receipts evidencing the Shares representing the Preferred Stock will entitle the holders thereof to the rights specified in the Deposit Agreement; the Preferred Stock and Shares will conform to the descriptions of the Preferred Stock and Shares, respectively, contained in the Disclosure Package and the Final Prospectus; and the issuance of the Shares is not subject to any preemptive or similar rights.

- (j) Legal Proceedings; Contracts. Except as described in the Registration Statement, the Disclosure Package and the Final Prospectus, there are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or any of its subsidiaries is a party or to which any property of the Company or any of its subsidiaries is the subject that, individually or in the aggregate, would reasonably be expected to have a material adverse effect upon the business, condition or properties of the Company and its subsidiaries, taken as a whole; except as described in the Registration Statement, the Disclosure Package and the Final Prospectus, no such investigations, actions, suits or proceedings are threatened or, to the knowledge of the Company, contemplated by any governmental or regulatory authority or threatened by others; and (i) there are no current or pending legal, governmental or regulatory actions, suits or proceedings that are required under the Securities Act to be described in the Registration Statement, the Disclosure Package or the Final Prospectus that are not so described in the Registration Statement, the Disclosure Package and the Final Prospectus and (ii) there are no contracts or other documents that are required under the Securities Act to be filed as exhibits to the Registration Statement or described in the Registration Statement, the Disclosure Package or the Final Prospectus that are not so filed as exhibits to the Registration Statement or described in the Registration Statement, the Disclosure Package and the Final Prospectus.

- (k) Controls.

(i) The Company maintains an effective system of “disclosure controls and procedures” (as defined in Rule 13a-15(e) of the Exchange Act) that complies with the requirements of the Exchange Act and that has been designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure. The Company has carried

out evaluations of the effectiveness of its disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.

(ii) The Company maintains a system of “internal control over financial reporting” (as defined in Rule 13a-15(f) of the Exchange Act) that complies with the requirements of the Exchange Act and has been designed by, or under the supervision of, its principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including, but not limited to, internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in the Registration Statement, the Disclosure Package and the Final Prospectus, there are no material weaknesses in the Company’s internal controls.

- (l) Anti-Money Laundering. Except as described in the Registration Statement, the Disclosure Package and the Final Prospectus, the operations of the Company and its Significant Subsidiaries are conducted in accordance with the policies and procedures that are reasonably designed to ensure compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, and the money laundering statutes, and any similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency, of all jurisdictions in which the Company conducts material operations (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Significant Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened, which would have a material adverse effect on the business or operations of the Company and the Significant Subsidiaries, taken as a whole.
- (m) Investment Company Act of 1940. The Company is not subject to registration or regulation under the Investment Company Act of 1940, as amended.

2. *Purchase and Sale.* Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company agrees to issue and sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Company, at the purchase price set forth in Schedule II hereto, the number of Firm Shares set forth opposite such Underwriter’s name in Schedule I hereto.

In addition, the Company agrees to issue and sell the Option Shares to the several Underwriters as provided in this Agreement, and the Underwriters, subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, shall have the option to purchase, severally and not jointly, from the Company the Option Shares at the purchase price set forth on Schedule II hereto.

If any Option Shares are to be purchased, the number of Option Shares to be purchased by each Underwriter shall be the number of Option Shares which bears the same ratio to the aggregate number of Option Shares being purchased as the number of Firm Shares set forth opposite the name of such Underwriter in Schedule I hereto (or such number increased as set forth in Section 8 hereof) bears to the aggregate number of Firm Shares being purchased from the Company by the several Underwriters, subject, however, to such adjustments to eliminate any fractional Shares as the Representative in their sole discretion shall make.

The Underwriters may exercise the option to purchase Option Shares at any time in whole, or from time to time in part (but in no event shall the Underwriters exercise such option more than twice), on or before the thirtieth day following the date of the Final Prospectus, by written notice from the Representative to the Company. Such notice shall set forth the aggregate number of Option Shares as to which the option is being exercised and the date and time when the Option Shares are to be delivered and paid for, which may be the same date and time as the Closing Date but shall not be earlier than the Closing Date or later than the tenth full business day (as hereinafter defined) after the date of such notice (unless such time and date are postponed in accordance with the provisions of Section 8 hereof). Any such notice shall be given at least five business days prior to the date and time of delivery specified therein.

The Company understands that the Underwriters intend to make a public offering of the Shares as soon after the effectiveness of this Agreement as in the judgment of the Representative is advisable, and initially to offer the Shares on the terms set forth in the Final Prospectus. The Company acknowledges and agrees that the Underwriters may offer and sell Shares to or through any affiliate of an Underwriter.

3. *Delivery and Payment.* Delivery of, and payment for, the Shares shall be made, in the case of the Firm Shares, at the office, on the date and at the time specified in Schedule II hereto, which date and time may be postponed by agreement between the Representative and the Company or as provided in Section 8 hereof (such date and time of delivery and payment for the Firm Shares being herein called the “Closing Date”) or, in the case of the Option Shares, on the date and at the time and place specified by the Representative in the written notice of the Underwriters’ election to purchase the Option Shares (such date and time of delivery and payment for the Option Shares being herein called an “Additional Closing Date”). Delivery of the Shares to be purchased on the Closing Date or any Additional Closing Date, as the case may be, shall be made to the Representative for the respective accounts of the several Underwriters, with any transfer taxes payable in connection with the sale of such Shares duly paid by the Company, against payment by the several Underwriters through the Representative of the purchase price thereof in the manner set forth in Schedule II hereto. Delivery of the Shares will be made through the facilities of The Depository Trust Company (“DTC”) unless the Representative shall otherwise instruct.

4. *Agreements.* The Company agrees with the several Underwriters that:
- (a) The Company will provide to counsel for the Underwriters one manually executed copy of the Registration Statement, including all exhibits thereto, in the form it became effective, and all amendments thereto. Prior to the Closing Date, the Company will not file any amendment of the Registration Statement or supplement (including the Final Prospectus) to the Basic Prospectus unless the Company has furnished you a copy for your review prior to filing and the Company will not file any such proposed amendment or supplement to which you reasonably object promptly after notice thereof. Neither the Representative's consent to, nor the Underwriters' delivery of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 5 hereof. Subject to the foregoing sentence, the Company will cause the Final Prospectus to be filed pursuant to Rule 424(b) under the Securities Act not later than the close of business on the second business day following the execution and delivery of this Agreement. The Company will promptly advise the Representative (i) when the Final Prospectus shall have been filed with the SEC pursuant to Rule 424(b), (ii) when any amendment to the Registration Statement relating to the Shares shall have become effective, (iii) of any request by the SEC for any amendment of the Registration Statement or amendment of or supplement to the Final Prospectus or for any additional information, (iv) of the issuance by the SEC of any stop order suspending the effectiveness of the Registration Statement, or of any notice that would prevent its use, or the institution or threatening of any proceeding for that purpose and (v) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose. In the event of the issuance of any stop order preventing or suspending the use of any Preliminary Final Prospectus or Final Prospectus, the Company will promptly use its best efforts to obtain the withdrawal of such stop order.
  - (b) If there occurs an event or development as a result of which the Disclosure Package would include an untrue statement of a material fact or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances then prevailing, not misleading, the Company will promptly notify the Representative so that any use of the Disclosure Package may cease until it is amended or supplemented and will, upon request of the Representative, amend or supplement the Disclosure Package to correct such statement or omission.
  - (c) If, at any time when a prospectus relating to the Shares is required to be delivered under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), any event occurs as a result of which the Final Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, or if it shall be necessary to amend or supplement the Final Prospectus to comply with the Securities Act or the

Exchange Act or the respective rules thereunder, including in connection with use or delivery of the Final Prospectus, the Company will promptly notify you and will, upon your request, prepare and file with the SEC an amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance. Neither the Representative's request for, nor the Underwriters' delivery of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 5 hereof.

- (d) The Company will make generally available to its security holders as soon as practicable an earnings statement or statements of the Company and its subsidiaries which will satisfy the provisions of Section 11(a) of the Securities Act.
- (e) The Company will furnish to the Representative and counsel for the Underwriters, without charge, copies of the Registration Statement (as originally filed) and each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated by reference in the Final Prospectus) which shall become effective on or prior to the Closing Date and, so long as delivery of a prospectus by an Underwriter or dealer may be required by the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), as many copies of any Preliminary Final Prospectus, the Final Prospectus and each Issuer Free Writing Prospectus included in the Disclosure Package and any amendments thereof and supplements thereto as the Representative may reasonably request. The Company will pay the expenses of printing or other production of all documents relating to the offering and the expenses incurred in distributing the Final Prospectus to the Underwriters.
- (f) The Company will arrange to qualify the Shares for offering and sale under the applicable securities laws of such states and other jurisdictions of the United States as the Representative may designate and will maintain such qualifications in effect for as long as may be required for the distribution of the Shares; *provided, however*, that the Company shall not be obligated to file any general consent to service of process, to subject itself to taxation in any jurisdiction where it is not so subject or to qualify as a foreign corporation in any jurisdiction in which it is not so qualified. The Company will file such statements and reports as may be required by the laws of each jurisdiction in which the Shares have been qualified as above provided. The Company will promptly advise each Underwriter of the receipt by the Company of any notification with respect to the suspension of the qualification of the Shares for sale in any such state or jurisdiction or the initiating or threatening of any proceeding for such purpose.
- (g) During a period of 30 days from the date of the Prospectus, to not, without the prior written consent of the Representative, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any Preferred Stock or Depositary Shares, any securities

that are substantially similar to the Preferred Stock or the Depositary Shares, or any securities convertible into or exercisable or exchangeable for Preferred Stock, Depositary Shares or substantially similar securities, or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of Preferred Stock or Depositary Shares, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of Preferred Stock or Depositary Shares or such other securities, in cash or otherwise, without the prior written consent of the Representative. The foregoing restriction shall not apply to (i) the Preferred Stock and Depositary Shares to be sold hereunder (ii) the grant or issuance of stock options or other securities pursuant to or in connection with any employment contract, benefit plan or similar arrangement with or for the benefit of employees, officers, directors or consultants in effect on the date hereof or any employment contract, benefit plan or similar arrangement adopted after the date hereof to facilitate any merger or acquisition transaction described in the Disclosure Package and the Final Prospectus, (iii) sales or issuances of securities pursuant to contractually binding requirements or agreements in effect on the date hereof, or in settlement of the foregoing, (iv) any issuance or commitment to issue securities in connection with any merger or acquisition transaction described in the Disclosure Package and the Final Prospectus or (v) any issuance that is the result of an exchange or conversion of any class or series of capital stock for any other series of capital stock pursuant to the terms of such capital stock in effect on the date hereof.

- (h) The Company will use its best efforts to list, subject to notice of issuance, the Shares on the New York Stock Exchange (the “Exchange”).
- (i) The Company agrees that, unless it obtains the prior written consent of the Representative, and each Underwriter, severally and not jointly, agrees with the Company that, unless it has obtained or will obtain, as the case may be, the prior written consent of the Company, it has not made and will not make any offer relating to the Shares that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a Free Writing Prospectus required to be filed with the SEC or retained by the Company under Rule 433 under the Securities Act; *provided* that the prior written consent of the parties hereto shall be deemed to have been given in respect of the Free Writing Prospectuses included in Schedule III hereto. Any such Free Writing Prospectus consented to by the Representative or the Company is hereinafter referred to as a “Permitted Free Writing Prospectus.” The Company agrees that (x) it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus and (y) it has complied and will comply, as the case may be, with the requirements of Rules 164 and 433 under the Securities Act applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the SEC, legending and record keeping.
- (j) The Company will pay all expenses incident to the performance of its obligations under this Agreement, for any filing fees or other expenses (including reasonable

fees and disbursements of counsel for the Underwriters) in connection with qualification of the Shares for sale and determination of their eligibility for investment under the laws of such domestic and foreign jurisdictions as the Representative may designate and the printing of memoranda relating thereto, for any fees or other expenses in connection with preparing the Shares and Depositary Receipts, for any fees and expense of any transfer agent or registrar, for the fees and expenses of the Depositary and any agent of the Depositary and the fees and disbursements of counsel for the Depositary in connection with the Deposit Agreement and the Shares, for any fees charged by investment rating agencies for the rating of the Shares, for any travel expenses of the Company's officers and employees and any other expenses of the Company in connection with attending or hosting meetings with prospective purchasers of Shares and for expenses incurred in printing and distributing any Basic Prospectus, Preliminary Final Prospectus, the Free Writing Prospectuses included in Schedule III hereto or the Final Prospectus.

5. *Conditions to the Obligations of the Underwriters.* The obligations of the Underwriters to purchase the Firm Shares on the Closing Date and the Option Shares on any Additional Closing Date, as the case may be, will be subject to the accuracy of the representations and warranties on the part of the Company contained herein, as of the date hereof, as of the date of the effectiveness of any amendment to the Registration Statement filed after the date hereof and prior to the Closing Date (including the filing of any document incorporated by reference therein) and as of the Closing Date or any Additional Closing Date, as the case may be, and to the accuracy of the statements of the Company's officers made in any certificate furnished pursuant to the provisions of this Agreement, to the performance and observance by the Company of all of its covenants and agreements herein contained and to the following additional conditions:

- (a) No stop order suspending the effectiveness of the Registration Statement, as amended from time to time, or any notice under Rule 401(g)(2) under the Securities Act that would prevent its use, shall have been issued and no proceedings for that purpose shall have been instituted or threatened by the SEC; the Final Prospectus shall have been filed with the SEC pursuant to Rule 424(b) under the Securities Act not later than the close of business on the second business day following the execution and delivery of this Agreement; and any material required to be filed by the Company pursuant to Rule 433(d) under the Securities Act shall have been filed with the SEC within the applicable time periods prescribed for such filings by Rule 433 under the Securities Act.
- (b) Legal Opinions. On the Closing Date, or any Additional Closing Date, as the case may be, each Underwriter shall have received the following legal opinions, dated as of the Closing Date, or any Additional Closing Date, as the case may be, and in form and substance satisfactory to such Underwriter:
  - (i) Opinion of Company Counsel. The opinion of Jeannine E. Zahn, Senior Counsel of the Company, or another of the Company's lawyers

satisfactory to the Underwriters, dated the Closing Date or any Additional Closing Date, as the case may be, to the effect that:

(A) The Company has been duly incorporated and is a validly existing corporation in good standing under the laws of the State of Delaware.

(B) The Company has the corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Final Prospectus, and is duly registered as a financial holding company and a bank holding company under the Bank Holding Company Act of 1956, as amended; Wells Fargo Bank, National Association (“Wells Fargo Bank”) is a national banking association authorized to transact the business of banking under the National Bank Act of 1864, as amended; and WFC Holdings Corporation (“WFC Holdings,” and together with Wells Fargo Bank, the “Significant Subsidiaries”) is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware.

(C) Each of the Company and the Significant Subsidiaries is duly qualified to do business and is in good standing in each jurisdiction which requires such qualification wherein it owns or leases any material properties or conducts any material business, except where the failure to so qualify would not have any material adverse effect upon the business, condition or properties of the Company and its subsidiaries, taken as a whole.

(D) All of the outstanding shares of capital stock of each Significant Subsidiary have been duly and validly authorized and issued and are fully paid and (except as provided in 12 U.S.C. §55 in the case of Wells Fargo Bank) non-assessable, and are directly or indirectly owned by the Company free and clear of any perfected security interest and, to the knowledge of such counsel, any other security interests, claims, liens or encumbrances.

(E) The number and type of equity securities the Company is authorized to issue is as set forth in the Disclosure Package and the Final Prospectus; all the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable; the capital stock of the Company conforms in all material respects to the description thereof contained in the Registration Statement, the Disclosure Package and the Final Prospectus.

(F) The Shares have been duly and validly authorized; upon deposit of the Preferred Stock underlying the Shares with the

Depository pursuant to the Deposit Agreement and the due execution by the Depository of the Deposit Agreement and the Depository Receipts, in accordance with the Deposit Agreement, the Depository Receipts evidencing the Shares representing the Preferred Stock will entitle the holders thereof to the rights specified in the Deposit Agreement.

(G) To such counsel's knowledge, there are no legal or governmental proceedings pending or threatened which are required to be disclosed in the Final Prospectus, other than those disclosed therein.

(H) None of the execution and delivery of this Agreement or the Deposit Agreement by the Company, the consummation by the Company of the transactions contemplated by this Agreement and the Deposit Agreement, the issuance of the Preferred Stock underlying the Shares and the issue and sale of the Shares being delivered on the Closing Date or such Additional Closing Date, as the case may be, and, with respect to the Deposit Agreement, the fulfillment of the terms thereof, (i) will conflict with or constitute a breach of, or default under, any indenture or other agreement or instrument to which the Company or any Significant Subsidiary is a party or bound and which constitutes a material contract and is set forth as an exhibit to the Company's most recent Annual Report on Form 10-K or any subsequent Quarterly Reports on Form 10-Q or Current Reports on Form 8-K, or any other indenture or material agreement or instrument known to such counsel and to which the Company or any Significant Subsidiary is a party or bound, the breach of which would have a material adverse effect on the financial condition of the Company and its subsidiaries, taken as a whole, or (ii) violate any order or regulation known to such counsel to be applicable to the Company or any Significant Subsidiary of any court, regulatory body, administrative agency, governmental body, or arbitrator having jurisdiction over the Company or any Significant Subsidiary; nor will the execution and delivery of this Agreement or the Deposit Agreement by the Company, the consummation by the Company of the transactions contemplated by this Agreement and the Deposit Agreement, the issue and sale of the Shares being delivered on the Closing Date or such Additional Closing Date, as the case may be, and, with respect to the Deposit Agreement, the fulfillment of the terms thereof result in any violation of the provisions of the Restated Certificate of Incorporation or By-laws of the Company.

(I) The statements in the Final Prospectus (other than statements furnished in writing to the Company by or on behalf of

an Underwriter through the Representative or directly by any Underwriter, it being understood and agreed that the only such information furnished by the Representative or directly by any Underwriter consists of such information described as such in any Underwriter Blood Letter provided by such parties) under the captions “Description of the Series W Preferred Stock,” “Description of the Depositary Shares” and “Underwriting (Conflicts of Interest)” insofar as they purport to summarize certain provisions of documents or laws specifically referred to therein, are accurate summaries of such provisions or laws or of the sources from which such summaries were derived (other than the foreign selling restrictions and statements with respect to FINRA set forth under the caption “Underwriting (Conflicts of Interest)” as to which no opinion need be rendered).

(J) The Shares conform in all material respects to the description thereof contained in the Disclosure Package and the Final Prospectus; the Shares have been duly authorized for listing, subject to official notice of issuance, on the Exchange; and holders of outstanding shares of common stock of the Company are not entitled to statutory or contractual preemptive rights in connection with the issuance of the Shares.

(K) This Agreement has been duly authorized, executed and delivered by the Company.

(L) The Deposit Agreement has been duly authorized, executed and delivered by the Company and (assuming such Deposit Agreement has been duly authorized, executed and delivered by the Depositary) constitutes a valid and legally binding agreement of the Company enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting enforcement of creditors’ rights generally or by general equitable principles (regardless of whether enforceability is considered in a proceeding in equity or in law), and except further as enforcement thereof may be limited by governmental authority to limit, delay or prohibit the making of payments outside the United States.

(M) The Registration Statement is effective under the Securities Act and, to the knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement, as amended, or any notice under Rule 401(g)(2) that would prevent its use, has been issued under the Securities Act and no proceedings for that purpose have been initiated or, to the knowledge of such counsel, threatened by the SEC; and any

required filing of the Final Prospectus pursuant to Rule 424(b) has been made in the manner and within the time period required by Rule 424(b) under the Securities Act.

(N) The Registration Statement, the Final Prospectus and each amendment thereof or supplement thereto as of their respective effective or issue dates (other than financial statements and other financial and statistical information contained therein and statements furnished in writing to the Company by or on behalf of an Underwriter through the Representative or directly by any Underwriter, as to which no opinion need be rendered, it being understood and agreed that the only such information furnished by the Representative or directly by any Underwriter consists of such information described as such in any Underwriter Blood Letter provided by such parties) complied as to form in all material respects with the requirements of the Securities Act and the regulations under the Securities Acts.

(O) To such counsel's knowledge, there are no contracts, indentures, mortgages, loan agreements, notes, leases or other instruments or documents required to be described or referred to in the Registration Statement and the Final Prospectus or to be filed as exhibits to the Registration Statement other than those described or referred to therein or filed or incorporated by reference as exhibits thereto, and the descriptions thereof or references thereto are correct.

(P) Each document filed pursuant to the Exchange Act and incorporated by reference in the Final Prospectus complied when filed as to form in all material respects with the Exchange Act and the regulations thereunder (other than financial statements and other financial and statistical information included therein, as to which no opinion need be rendered).

(Q) No consent, approval, authorization or order of any court or government agency or body is required for the consummation of the transactions contemplated by this Agreement, except such as have been obtained under the Securities Act and such as may be required under the Blue Sky laws of any jurisdiction or regulations adopted by FINRA in connection with the purchase and distribution of the Shares by the Underwriters.

(R) Such counsel has no reason to believe that (i) the Registration Statement, at the time it became effective (other than the financial statements and related notes and other financial and financial reserve information and statistical and accounting data contained therein and other than statements to the Company by or

on behalf of an Underwriter through the Representative or directly by any Underwriter, as to which such counsel need express no opinion, it being understood and agreed that the only such information furnished by the Representative or directly by any Underwriter consists of such information described as such in any Underwriter Blood Letter provided by such parties) contained any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein not misleading, (ii) the Final Prospectus, as amended or supplemented as of the date hereof and as of the date the opinion is being rendered (other than the financial statements and related notes and other financial and financial reserve information and statistical and accounting data contained therein and other than statements to the Company by or on behalf of an Underwriter through the Representative or directly by any Underwriter, as to which such counsel need express no opinion, it being understood and agreed that the only such information furnished by the Representative or directly by any Underwriter consists of such information described as such in any Underwriter Blood Letter provided by such parties), includes any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of circumstances under which they were made, not misleading or (iii) the Disclosure Package, as of the Applicable Time (other than the financial statements and related notes and other financial and financial reserve information and statistical and accounting data contained therein and other than statements to the Company by or on behalf of an Underwriter through the Representative or directly by any Underwriter, as to which such counsel need express no opinion, it being understood and agreed that the only such information furnished by the Representative or directly by any Underwriter consists of such information described as such in any Underwriter Blood Letter provided by such parties), contained any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of circumstances under which they were made, not misleading.

In rendering such opinion, such counsel may rely (A) as to matters involving the application of laws of any jurisdiction other than the State of Minnesota or the United States, to the extent deemed proper and specified in such opinion, upon the opinion of counsel who are satisfactory to counsel for the Underwriters, including special Delaware counsel to the Company with respect to the transactions contemplated hereby; and (B) as to matters of fact, to the extent deemed proper, on certificates of responsible officers of the Company and its subsidiaries and public officials.

(ii) Opinion of Delaware Counsel. The opinion of Richards, Layton & Finger P.A., Delaware counsel to the Company, dated the Closing Date or any Additional Closing Date, as the case may be, to the effect that:

(A) The shares of Preferred Stock to be issued pursuant to the Deposit Agreement and the resolutions of the Securities Committee of the Board of Directors (the “Committee Resolutions”) have been duly authorized for issuance by the Company and, when issued, delivered and paid for in accordance with the Deposit Agreement and the Committee Resolutions, will be validly issued, fully paid and non-assessable under the General Corporation Law of the State of Delaware.

(B) The issuance and sale of the Preferred Stock pursuant to the Deposit Agreement and the Committee Resolutions will not violate the Restated Certificate of Incorporation or By-laws of the Company.

(iii) Opinion of Counsel to the Underwriters. Gibson, Dunn & Crutcher LLP, counsel to the Underwriters, shall have furnished to the Representative an opinion with respect to the issuance and sale of the Shares, the Registration Statement, the Disclosure Package, the Final Prospectus and other related matters as the Representative may reasonably require, and the Company shall have furnished to such counsel such documents as it requests for the purpose of enabling it to pass upon such matters, dated the Closing Date or any Additional Closing Date, as the case may be.

(c) Officer’s Certificates. The Underwriters shall have received a certificate signed by any Senior Vice President or Executive Vice President and the principal financial or accounting officer of the Company (provided that no person shall sign such certificate in more than one official capacity) dated as of the Closing Date and any Additional Closing Date, to the effect that:

(i) since the date of the most recent financial statements included in the Final Prospectus, there has not been any material adverse change in the condition, financial or otherwise, or in the earnings, business, properties or business prospects of the Company and its subsidiaries, taken as a whole, whether or not arising in the ordinary course of business, except as set forth in or contemplated in the Final Prospectus;

(ii) the representations and warranties of the Company contained in Section 1 of this Agreement are true and correct with the same force and effect as though expressly made at and as of the date of such certificate;

(iii) the Company has performed or complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the date of such certificate;

(iv) no stop order suspending the effectiveness of the Registration Statement, as amended, or notice under Rule 401(g)(2) of the Securities Act that would prevent its use, has been issued and no proceedings for that purpose have been initiated or threatened by the SEC; and

(v) he or she has reviewed the Company's Current Report on Form 8-K dated January 15, 2016 (the "Current Report") including the following financial information contained in the Current Report and incorporated by reference into the Registration Statement and Final Prospectus: the Company's unaudited incomplete consolidated balance sheet as of December 31, 2015, the related unaudited incomplete consolidated statements of income and comprehensive income for the three- and twelve-month periods ended December 31, 2015 and the unaudited incomplete condensed consolidated statement of changes in total equity for the twelve-month period ended December 31, 2015 (collectively, the "Financial Information"); and such Financial Information is consistent with the Company's accounting records, and is stated on a basis substantially consistent with that of the audited consolidated financial statements of the Company (including the Company's operating segments that have been updated in subsequent interim financial statements and reflected in the Current Report) incorporated by reference into the Registration Statement and Final Prospectus.

- (d) Comfort Letter. At the Closing Date and any Additional Closing Date, as the case may be, KPMG LLP, who has certified certain financial statements of the Company and its consolidated subsidiaries, shall have furnished to the Representative, at the request of the Company, letters, dated the respective dates of delivery thereof and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representative, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in the Registration Statement, the Disclosure Package and the Final Prospectus; provided, that the letters delivered on the Closing Date or such Additional Closing Date, as the case may be, shall use a "cut-off" date no more than five business days prior to such Closing Date or such Additional Closing Date, as the case may be.
- (e) Other Documents. Counsel to the Underwriters shall have been furnished with such documents and opinions as such counsel may reasonably require for the purpose of enabling such counsel to pass upon the issuance and sale of Shares as herein contemplated and related proceedings, or in order to evidence the accuracy and completeness of any of the representations and warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of Shares as herein contemplated shall be satisfactory in form and substance to the Underwriters and to counsel for the Underwriters.
- (f) Material Adverse Change. As of the Closing Date or any Additional Closing Date, as the case may be, there shall not have occurred since the date hereof any

change in the condition, financial or otherwise, or in the earnings, business, properties, results of operations or business prospects of the Company and its subsidiaries, taken as a whole, whether or not in the ordinary course of business, from that set forth in the Disclosure Package and the Final Prospectus, as amended or supplemented as of the date hereof, that, in the judgment of the Representative, is material and adverse and that makes it, in the judgment of the Representative, impracticable to market or sell the Shares on the terms and in the manner contemplated by the Disclosure Package or the final Prospectus, as so amended or supplemented.

- (g) No Conflict. No action shall have been taken, to the Company's knowledge, and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Date or any Additional Closing Date, as the case may be, prevent the issuance or sale of the Shares; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the Closing Date or any Additional Closing Date, as the case may be, prevent the issuance or sale of the Shares.
- (h) Listing Approval. The Shares to be delivered on the Closing Date or any Additional Closing Date, as the case may be, shall have been approved for listing on the Exchange, subject to official notice of issuance.

If (i) any of the conditions specified in this Section 5 shall not have been fulfilled when and as provided in this Agreement, or (ii) any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be reasonably satisfactory in form and substance to the Representative and its counsel, this Agreement and all obligations of the Underwriters hereunder may be cancelled on, or at any time prior to, the Closing Date or any Additional Closing Date, as the case may be, by the Representative. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

6. *Reimbursement of Underwriters' Expenses*. If the sale of the Shares provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 5 hereof is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Underwriters, the Company will reimburse the Underwriters severally upon demand for all out-of-pocket expenses (including, without limitation, reasonable fees and disbursements of counsel and those described in Section 4(j) hereof) that shall have been incurred by them in connection with the proposed purchase and sale of the Shares.

7. *Indemnification and Contribution*.

- (a) The Company agrees to indemnify and hold harmless each Underwriter and each person who controls any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, arising out of or based upon any

untrue statement or alleged untrue statement of a material fact contained in the Registration Statement for the registration of the Shares as originally filed or in any amendment thereof, or in the Basic Prospectus, any Preliminary Final Prospectus, the Final Prospectus, any Issuer Free Writing Prospectus or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and agrees to reimburse each such indemnified party to the extent set forth below, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; *provided, however*, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter through the Representative or directly by any Underwriter specifically for use therein (it being understood and agreed that the only such information furnished by any Underwriter consists of such information described as such in any Underwriter Blood Letter provided by such parties). This indemnity agreement will be in addition to any liability which the Company may otherwise have.

- (b) Each Underwriter, severally and not jointly, agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who signs the Registration Statement, and each person who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Company to each Underwriter, but only with reference to written information relating to such Underwriter furnished to the Company by or on behalf of such Underwriter through the Representative or directly by any Underwriter for use in the preparation of the documents referred to in the foregoing indemnity (it being understood and agreed that the only such information furnished by any Underwriter consists of such information described as such in any Underwriter Blood Letter provided by such parties). This indemnity agreement will be in addition to any liability which any Underwriter may otherwise have.
- (c) Promptly after receipt by an indemnified party under this Section 7 of notice of the commencement of any action (including any governmental investigation), such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under clause (a) or (b) of this Section 7, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party otherwise than under clause (a) or (b) of this Section 7. In case any such action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein, and to the extent that it shall wish, jointly, with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party

(who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party). In any such proceeding, any indemnified party shall have the right to obtain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnified party and the indemnifying party and representation of both parties by the same counsel would be inappropriate due to actual or potential conflicts of interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate identified firm (in addition to any identified local counsel) for all such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by the Representative in the case of parties to be indemnified pursuant to paragraph (a) of this Section 7 and by the Company in the case of parties to be indemnified pursuant to paragraph (b) of this Section 7. An indemnifying party shall not be liable for any settlement of any proceeding effected without its prior written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party (which consent shall not be unreasonably withheld or delayed), effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of the indemnified party.

- (d) To the extent the indemnification provided for in Section 7(a) or 7(b) hereof is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and each Underwriter, on the other hand, from the offering of such Shares or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and each Underwriter, on the other hand, in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and each Underwriter, on the other hand, in connection with the offering of such Shares shall be deemed to be in the same

respective proportions as the total net proceeds from the offering of such Shares (before deducting expenses) received by the Company bear to the total discounts and commissions received by each Underwriter in respect thereof. The relative fault of the Company, on the one hand, and each Underwriter, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by such Underwriter and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. Each Underwriter's obligation to contribute pursuant to this Section 7 shall be several in the proportion that the number of Shares the sale of which by such Underwriter gave rise to such losses, claims, damages or liabilities bears to the aggregate number of Shares the sale of which by all Underwriters gave rise to such losses, claims, damages or liabilities, and not joint.

- (e) The Company and the Underwriters agree that it would not be just or equitable if contribution pursuant to Section 7(d) hereof were determined by *pro rata* allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 7(d) hereof. The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 7(d) hereof shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Shares referred to in Section 7(d) hereof that were offered and sold to the public through such Underwriter exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11 (f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

8. *Default by an Underwriter.* If on the Closing Date or any Additional Closing Date, as the case may be, any one or more Underwriters shall fail to purchase and pay for any of the Shares agreed to be purchased by such Underwriter or Underwriters hereunder on such date, the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the number of shares of the Shares set forth opposite their names in Schedule I hereto bear to the aggregate number of shares of the Shares set forth opposite the names of all the remaining Underwriters) the Shares which the defaulting Underwriter or Underwriters agreed but failed to purchase on such date; *provided, however*, that in the event that the aggregate number of the Shares which the defaulting Underwriter or Underwriters agreed but failed to purchase on such date shall exceed 10% of the aggregate number of the Shares to be purchased on the Closing Date or any Additional Closing Date, as the case may be, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of such Shares; *provided further*, that if the remaining Underwriters do not exercise their right to

purchase such Shares and arrangements for the purchase of such Shares satisfactory to the Company and the Representative are not made within 36 hours after such default, then this Agreement or, with respect to any Additional Closing Date, the obligation of the Underwriters to purchase Shares on such Additional Closing Date, as the case may be, will terminate without liability to any non-defaulting Underwriter or the Company. In the event of a default by any Underwriter as set forth in this Section 8, the Closing Date or any Additional Closing Date, as the case may be, shall be postponed for such period, not exceeding seven days, as the Representative shall determine in order that the required changes in the Registration Statement and the Final Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company and any non-defaulting Underwriter for damages occasioned by its default hereunder.

9. *Underwriter Representations and Agreements.*

- (a) Each Underwriter severally agrees that it will timely file with the Corporate Financing Department of FINRA (the “Association”) any documents required to be filed under Rule 5110 of the FINRA Rules relating to the offering of the Shares.
- (b) In relation to Canada, each Underwriter severally represents and agrees with respect to the Shares offered or sold by it, that:
  - (i) The Shares may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the Shares must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.
  - (ii) Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus supplement (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser’s province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser’s province or territory for particulars of these rights or consult with a legal advisor.
  - (iii) Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the Underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with the offering contemplated by the Preliminary Final Prospectus and the Final Prospectus.

- (c) In relation to each Member State of the European Economic Area which has implemented Directive 2003/71/EC, as amended, including by Directive 2010/73/EU (the “Prospectus Directive”) (each, a “Relevant Member State”), each Underwriter severally represents and agrees that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the “Relevant Implementation Date”), it has not made and will not make an offer of the Shares which are the subject of the offering contemplated by the Preliminary Final Prospectus and the Final Prospectus to the public in that Relevant Member State other than: (i) to any legal entity which is a qualified investor as defined in the Prospectus Directive; (ii) to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), subject to obtaining the prior consent of the relevant Underwriter or Underwriters nominated by the Company for any such offer; or (iii) in any other circumstances falling within Article 3(2) of the Prospectus Directive; provided that no such offer of securities shall require the Company or any Underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.
- (d) In relation to the United Kingdom, each Underwriter severally represents and agrees with respect to the Shares offered or sold by it, that:
- (i) in relation to any Shares which have a maturity of less than one year, (1) it and each of its affiliates is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (2) it and each of its affiliates has not offered or sold and will not offer or sell any Shares other than to persons whose ordinary activities involve them acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the securities would otherwise constitute a contravention of Section 19 of the Financial Services and Markets Act 2000 (as amended) (the “FSMA”);
  - (ii) it and each of its affiliates has complied, and will comply, with all applicable provisions of the FSMA with respect to anything done by it in relation to the Shares in, from or otherwise involving the United Kingdom; and
  - (iii) it and each of its affiliates has only communicated, or caused to be communicated, and will only communicate, or cause to be communicated, an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the Shares in circumstances in which Section 21(1) of the FSMA does not apply to it, its affiliates or the Company.
- (e) It has not offered or sold the Shares in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public

within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a “prospectus” within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32, Laws of Hong Kong), and has not issued, or possessed for the purpose of issuing, any advertisement, invitation or document relating to the Shares (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to the Shares which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

- (f) It has not circulated or distributed the Final Prospectus, the Basic Prospectus, any Free Writing Prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the Shares, and it has not offered or sold the Shares, or made the Shares the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the “SFA”), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA. Where the Shares are subscribed or purchased under Section 275 by a relevant person which is: (a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries’ rights and interest in that trust shall not be transferable for 6 months after that corporation or that trust has acquired the Shares under Section 275 except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person pursuant to Section 275(2), or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; or (3) by operation of law.
- (g) It will restrict transfer of the Shares, pursuant to the Financial Instruments and Exchange Law of Japan (the “Financial Instruments and Exchange Law”) and the securities will not be registered under the Financial Instruments and Exchange Law. It will not, directly or indirectly, offer or sell any securities in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or

indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

- (h) In the event that the offer or sale of the Shares by an Underwriter in any jurisdiction requires any action on the part of the Company in or with respect to such jurisdiction, such Underwriter represents and agrees that it will (i) inform the Company that the Company is required to take such action prior to the time such action is required to be taken, and (ii) cooperate with and assist the Company in complying with such requirements. Each Underwriter severally agrees that it will, to the best of its knowledge and belief, comply with all applicable securities laws and regulations in force in any jurisdiction in which it purchases, offers, sells or delivers the Shares or possesses or distributes any Preliminary Final Prospectus, the Final Prospectus, any Free Writing Prospectus or any other offering material relating to the Shares, and will use its reasonable efforts to obtain any required consent, approval or permission for its purchase, offer, sale or delivery of the Shares under the laws and regulations in force in any jurisdiction to which it is subject or in which it makes any such purchases, offers, sales or deliveries.

10. *Termination.* This Agreement shall be subject to termination in the absolute discretion of the Representative, by notice given to the Company prior to delivery of and payment for the Firm Shares on the Closing Date or, in the case of the Option Shares, prior to any Additional Closing Date, if prior to such time there shall have occurred any (i) suspension or material limitation of trading generally on the New York Stock Exchange or the NASDAQ Global Market or a material disruption in settlement services in the United States, (ii) suspension of trading of any securities of the Company on any exchange or in any over-the-counter market, (iii) declaration of a general moratorium on commercial banking activities in California or New York by either Federal or state authorities, (iv) lowering of the rating assigned to any debt securities of the Company by any nationally-recognized securities rating agency or public announcement by any such rating agency that it has under surveillance or review, with possible negative consequences, its rating of any debt securities of the Company or (v) outbreak or escalation of hostilities in which the United States is involved, declaration of war by Congress or change in financial markets or calamity or crisis including, without limitation, an act of terrorism, that, in the judgment of the Representative, is material and adverse and, in the case of any of the events described in clauses (i) through (v), such event, either alone or together with any other such event, makes it, in the judgment of the Representative, impracticable to proceed with completion of the public offering of, or sale of and payment for, the Shares at the Closing Date or any Additional Closing Date, as the case may be.

11. *Representations and Indemnities to Survive.* The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Company or any of the officers, directors or controlling persons referred to in Section 7 hereof, and will survive delivery of and payment for the Shares. The provisions of Sections 6 and 7 hereof shall survive the termination or cancellation of this Agreement.

12. *Notices.* Unless otherwise provided herein, all notices required under the terms and provisions hereof shall be in writing, either delivered by hand, by mail or by facsimile, telex, telecopier, or telegram and confirmed to the recipient, and any such notice shall be effective when received if sent to the Representative, at the address specified in Schedule II hereto, or if sent to the Company at:

Wells Fargo & Company  
Attention: Treasury Global Funding  
90 South Seventh Street, 13th Floor  
MAC: N9305-131  
Minneapolis, MN 55479

In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

13. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and controlling persons referred to in Section 7 hereof, and no other person will have any right or obligation hereunder.

14. *No Fiduciary Duty.* The Company hereby acknowledges that (a) the purchase and sale of the Shares pursuant to this Agreement is an arm's-length commercial transaction between the Company, on the one hand, and the Underwriters and any affiliate through which they may be acting, on the other, (b) the Underwriters are acting as principal and not as an agent or fiduciary of the Company under this Agreement and (c) the Company's engagement of the Underwriters in connection with the transactions contemplated by this Agreement is as independent contractors and not in any other capacity. Furthermore, the Company agrees that it is solely responsible for making its own judgments in connection with the offering (irrespective of whether any of the Underwriters has advised or is currently advising the Company on related or other matters). The Company agrees that it will not claim that the Underwriters have rendered advisory services of any nature or respect, or owe an agency or fiduciary duty to the Company, in connection with the purchase and sale of the Shares pursuant to this Agreement or the process leading to such purchase and sale.

15. *Integration.* This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company and the several Underwriters, or any of them, with respect to the subject matter hereof.

16. *Governing Law.* This Agreement and all the rights and obligations of the parties shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed in such State.

17. *Business Day.* As used herein, the term “business day” shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions are authorized or required by law or regulation to close New York, New York.

18. *Counterparts.* This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, which taken together shall constitute one and the same instrument.

If the foregoing is in accordance with the Underwriters' understanding of our agreement, please sign and return to the Company a counterpart of this Agreement, whereupon this instrument along with all counterparts will represent a binding agreement among the Company and the several Underwriters in accordance with its terms.

Very truly yours,

WELLS FARGO & COMPANY

By: /s/ Barbara S. Brett

Name: Barbara S. Brett

Title: Senior Vice President and Assistant Treasurer

The foregoing Agreement is hereby  
confirmed and accepted as of the  
date specified in Schedule II hereto.

WELLS FARGO SECURITIES, LLC,  
as Representative of the Underwriters

By: /s/ Carolyn Hurley

Name: Carolyn Hurley

Title: Director

# SCHEDULE I

<u>Underwriter</u>	<u>Number of Shares to be purchased</u>
Wells Fargo Securities, LLC.....	4,287,500
Citigroup Global Markets Inc. ....	4,287,500
Goldman, Sachs & Co.....	4,287,500
J.P. Morgan Securities LLC.....	4,287,500
Merrill Lynch, Pierce, Fenner & Smith Incorporated.....	4,287,500
Morgan Stanley & Co. LLC.....	4,287,500
RBC Capital Markets, LLC .....	4,287,500
UBS Securities LLC .....	4,287,500
C.L. King & Associates, Inc. ....	175,000
Drexel Hamilton, LLC .....	175,000
Samuel A. Ramirez & Company, Inc. ....	175,000
Siebert Brandford Shank & Co., L.L.C. ....	175,000
Total .....	<u>35,000,000</u>

## SCHEDULE II

Underwriting Agreement dated January 19, 2016 (this “Agreement”)

Registration Statement No. 333-195697

Representative, including address:  
Wells Fargo Securities, LLC  
550 South Tryon Street, 5<sup>th</sup> Floor  
Charlotte, North Carolina 28202  
Attn: Transaction Management Department

Title, Purchase Price and Description of Shares:

Title: Depositary Shares, Each Representing a 1/1,000th Interest in a Share of Non-Cumulative Perpetual Class A Preferred Stock, Series W

Price to Public: \$25.00 per share

Purchase price (include type of funds, if other than Federal Funds, and accrued distributions, if applicable):

\$24.7500 per share sold to institutional investors

\$24.2125 per share sold to retail investors

Number of Firm Shares: 35,000,000

Number of Option Shares: 5,000,000

Underwriting Discount:

\$0.2500 per depositary share sold to institutional investors

\$0.7875 per depositary share sold to retail investors

Applicable Time: 4:37 P.M., New York City Time, January 19, 2016

Closing Date, Time and Location: 10:00 A.M., New York City Time, January 29, 2016 at the offices of Gibson, Dunn & Crutcher LLP, 555 Mission Street, Suite 3000, San Francisco, CA 94105.

SCHEDULE III  
Free Writing Prospectuses Included in Disclosure Package

Free Writing Prospectus of the Company dated January 19, 2016 and filed pursuant to Rule 433 of the Act.

**WELLS FARGO & COMPANY**

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**CERTIFICATE OF DESIGNATION**

Pursuant to Section 151(g) of the  
General Corporation Law  
of the State of Delaware

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**NON-CUMULATIVE PERPETUAL CLASS A PREFERRED STOCK, SERIES W  
(Without Par Value)**

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WELLS FARGO & COMPANY, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), HEREBY CERTIFIES that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Restated Certificate of Incorporation of the Corporation, as amended, which authorize the issuance of not more than 20,000,000 shares of Preferred Stock, without par value, and pursuant to authority conferred upon the Securities Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the unanimous written consent of the Committee duly adopted on January 27, 2016, in accordance with Section 141(f) of the General Corporation Law:

**RESOLVED**, that pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated April 29, 2014, the provisions of the Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, no par value, of the Corporation be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**RIGHTS AND PREFERENCES**

**Section 1. Designation.** The shares of such series of Preferred Stock shall be designated Non-Cumulative Perpetual Class A Preferred Stock, Series W, with no par value and a liquidation preference amount of \$25,000 per share (the “*Series W Preferred Stock*”). Each share of Series W Preferred Stock shall be identical in all respects to every other share of Series W Preferred Stock except with respect to the date from which dividends may accrue. Series W Preferred Stock will rank equally with Parity Stock with respect to the payment of dividends and distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation and will rank senior to Junior Stock with respect to the payment of dividends and/or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series W Preferred Stock shall be 40,000. Such number may from time to time be increased (but not in

excess of the total number of authorized shares of Preferred Stock) or decreased (but not below the number of shares of Series W Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series W Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series W Preferred Stock:

*“Business Day”* means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions are authorized or required by law or regulation to close in New York, New York.

*“Certificate of Designation”* means this Certificate of Designation relating to the Series W Preferred Stock, as it may be amended from time to time.

*“Common Stock”* means the common stock of the Corporation, par value \$1 $\frac{2}{3}$  per share, as the same exists at the date of this Certificate of Designation or as such stock may be constituted from time to time.

*“Depository Company”* has the meaning set forth in Section 6(d) hereof.

*“Dividend Payment Date”* has the meaning set forth in Section 4(a) hereof.

*“Dividend Period”* has the meaning set forth in Section 4(a) hereof.

*“DTC”* means The Depository Trust Company, together with its successors and assigns.

*“Junior Stock”* means the Common Stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which the Series W Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

*“Liquidation Preference”* has the meaning set forth in Section 5(a) hereof.

*“Nonpayment Event”* shall have the meaning set forth in Section 7(b).

*“Parity Stock”* means any other class or series of stock of the Corporation now existing or hereafter authorized that ranks on par with the Series W Preferred Stock in the payment of dividends (whether such dividends are cumulative or non-cumulative) or in the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

“*Preference Stock*” means any and all series of preference stock, having no par value, of the Corporation.

“*Preferred Stock*” means any and all series of preferred stock, having no par value, of the Corporation, including the Series W Preferred Stock.

“*Preferred Stock Directors*” shall have the meaning set forth in Section 7(b).

“*Regulatory Capital Treatment Event*” means the Corporation’s reasonable determination that as a result of any (i) amendment to, clarification of, or change (including any announced prospective change) in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective on or after January 19, 2016; (ii) proposed change in those laws or regulations that is announced or becomes effective on or after January 19, 2016; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced on or after January 19, 2016, there is more than an insubstantial risk that the Corporation will not be entitled to treat the full liquidation preference amount of all shares of Series W Preferred Stock then outstanding as Tier 1 capital (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the appropriate federal banking agency, as then in effect and applicable, for as long as any share of Series W Preferred Stock is outstanding.

“*Series W Preferred Stock*” has the meaning set forth in Section 1 hereof.

“*Voting Parity Stock*” means any Parity Stock having similar voting rights as the Series W Preferred Stock.

#### **Section 4. Dividends.**

(a) **Rate.** Dividends on the Series W Preferred Stock will not be mandatory. Holders of Series W Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference amount of \$25,000 per share of the Series W Preferred Stock, payable quarterly in arrears on the 15th day of March, June, September and December of each year (commencing on March 15, 2016); provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, without any interest or other payment in respect of such delay (each such day on which dividends are payable a “*Dividend Payment Date*”). A “*Dividend Period*” means the period from, and including, a Dividend Payment Date to, but excluding, the next succeeding Dividend Payment Date, except for the initial Dividend Period, which will be the period from, and including, January 29, 2016 to, but excluding, March 15, 2016. Dividends on each share of Series W Preferred Stock will accrue at a rate *per annum* equal to 5.70%. The record date for payment of dividends on the Series W Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls or such other date as determined by the Corporation’s Board of Directors.

The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation will be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series W Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series W Preferred Stock on any Dividend Payment Date are not declared prior to such Dividend Payment Date, then such dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series W Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on the Dividend Payment Date for such Dividend Period or at any time in the future or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series W Preferred Stock or any other series of authorized Preferred Stock, Preference Stock, or Common Stock of the Corporation.

**(c) Priority of Dividends.** So long as any shares of Series W Preferred Stock remain outstanding,

(1) no dividend shall be declared and paid or set aside for payment and no distribution shall be declared and made or set aside for payment on any Common Stock, and no shares of Common Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly, nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Common Stock by the Corporation (other than (i) a dividend payable in Common Stock or (ii) the acquisition of shares of Common Stock in exchange for, or through application of proceeds of the sale of, shares of Common Stock);

(2) no dividend shall be declared and paid or set aside for payment and no distribution shall be declared and made or set aside for payment on any Junior Stock other than Common Stock, and no shares of Junior Stock other than Common Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly, nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock other than Common Stock by the Corporation (other than (i) a dividend payable solely in shares of Junior Stock, (ii) any dividend in connection with the implementation of a stockholder rights plan, or the redemption or repurchase of any rights under any such plan, (iii) any dividend in the form of stock, warrants, options or other rights where the dividend stock or stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equally with or junior to such stock, (iv) as a result of a reclassification of Junior Stock other than Common Stock for or into other Junior Stock, (v) the exchange or conversion of one share of Junior Stock other than Common Stock for or into another share of Junior Stock, (vi) through the use of proceeds of a substantially contemporaneous sale of other shares of Junior Stock, (vii) any purchase, redemption or other acquisition of Junior Stock other than Common Stock pursuant to any of the Corporation's or any of its subsidiaries' employee, consultant or director incentive or benefit plans or arrangements (including any employment, severance or consulting arrangements) adopted before or after January 19, 2016, (viii) any purchase of fractional interests in shares of Junior Stock other than Common Stock pursuant to the conversion or exchange provisions of such Junior Stock other than Common Stock or the securities being converted or exchanged, (ix) the

purchase of Junior Stock other than Common Stock by Wells Fargo Securities, LLC, or any other affiliate of the Corporation, in connection with the distribution thereof or (x) the purchase of Junior Stock other than Common Stock by Wells Fargo Securities, LLC, or any other affiliate of the Corporation, in connection with market-making or other secondary market activities in the ordinary course of business); and

(3) no shares of Parity Stock will be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or a *pro rata* portion, of the Series W Preferred Stock and such Parity Stock during a Dividend Period (other than (i) as a result of a reclassification of Parity Stock for or into other Parity Stock or Junior Stock, (ii) the exchange or conversion of one share of Parity Stock for or into another share of Parity Stock or Junior Stock, (iii) through the use of proceeds of a substantially contemporaneous sale of other shares of Parity Stock or Junior Stock, (iv) any purchase, redemption or other acquisition of Parity Stock pursuant to any of the Corporation's or any of its subsidiaries' employee, consultant or director incentive or benefit plans or arrangements (including any employment, severance or consulting arrangements) adopted before or after January 19, 2016, (v) any purchase of fractional interests in shares of Parity Stock pursuant to the conversion or exchange provisions of such Parity Stock or the securities being converted or exchanged, (vi) the purchase of Parity Stock by Wells Fargo Securities, LLC, or any other affiliate of the Corporation, in connection with the distribution thereof or (vii) the purchase of Parity Stock by Wells Fargo Securities, LLC, or any other affiliate of the Corporation, in connection with market-making or other secondary market activities in the ordinary course of business),

unless, in each case, the full dividends for the then-current Dividend Period on all outstanding shares of the Series W Preferred Stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside.

Subject to the succeeding sentence, for so long as any shares of Series W Preferred Stock remain outstanding, no dividends shall be declared, paid, or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series W Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series W Preferred Stock and on any Parity Stock but cannot make full payment of those declared dividends, the Corporation will allocate the dividend payments on a proportional basis among the holders of shares of Series W Preferred Stock and the holders of any Parity Stock then outstanding where the terms of such Parity Stock provide similar dividend rights.

Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on the Common Stock and any other stock that is Parity Stock or Junior Stock, from time to time out of any assets legally available for such payment, and the shares of Series W Preferred Stock shall not be entitled to participate in any such dividends.

## **Section 5. Liquidation Rights.**

(a) **Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series W Preferred Stock shall be entitled to receive in full out of assets available for distribution to its stockholders before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of the Common Stock or any other Junior Stock, and subject to the rights of the holders of Parity Stock or any stock of the Corporation ranking senior to the Series W Preferred Stock as to such distribution, a liquidating distribution in the amount of \$25,000 per share, plus an amount equal to any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation (the “*Liquidation Preference*”). The holders of Series W Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

(b) **Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the Liquidation Preference to all holders of Series W Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series W Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preference of Series W Preferred Stock and all such Parity Stock.

(c) **Residual Distributions.** If the Liquidation Preference has been paid in full to all holders of Series W Preferred Stock and all other amounts payable upon liquidation, dissolution or winding up of the Corporation have been paid in full to all holders of any Parity Stock, the holders of Common Stock and any other Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

(d) **Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

## **Section 6. Redemption.**

(a) **Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem, subject to the prior approval of the Federal Reserve Board, out of funds legally available therefor, in whole or in part, the shares of Series W Preferred Stock at the time outstanding, at any time on any Dividend Payment Date on or after March 15, 2021, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series W Preferred Stock

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

Notwithstanding the foregoing, within 90 days of the Corporation's good faith determination that a Regulatory Capital Treatment Event has occurred, the Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may, subject to the approval of the appropriate federal banking agency, redeem out of funds legally available therefor, in whole, but not in part, the shares of Series W Preferred Stock at the time outstanding, prior to March 15, 2021, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series W Preferred Stock shall be \$25,000 per share plus an amount equal to any dividends that have been declared but not paid, without accumulation of any undeclared dividends.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series W Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 40 days and not more than 70 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series W Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series W Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series W Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, if applicable, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for those shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series W Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series W Preferred Stock at the time outstanding, the shares of Series W Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series W Preferred Stock in proportion to the number of Series W Preferred Stock held by such holders or in such other manner consistent with the rules and policies of the New York Stock Exchange as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series W Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been irrevocably set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and

continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from the Depository Company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of two years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

## **Section 7. Voting Rights.**

**(a) General.** The holders of Series W Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraph 7(b) below or as required by applicable law.

**(b) Right To Elect Two Directors Upon Nonpayment Events.** Whenever dividends payable on any shares of Series W Preferred Stock or any class or series of Voting Parity Stock have not been declared and paid in an aggregate amount equal to, as to any class or series, at least six quarterly Dividend Periods or their equivalent, whether or not for consecutive Dividend Periods (a “*Nonpayment Event*”), the holders of the outstanding Series W Preferred Stock, voting together as a class with holders of Voting Parity Stock whose voting rights are exercisable, will be entitled to vote for the election of two additional directors of the Corporation’s Board of Directors at the Corporation’s next annual meeting of stockholders and at each subsequent annual meeting of stockholders (the “*Preferred Stock Directors*”) by a plurality of the votes cast; *provided* that the Board of Directors shall at no time include more than two Preferred Stock Directors (including, for purposes of this limitation, all directors that the holders of any series of Voting Parity Stock are entitled to elect pursuant to like voting rights). Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series W Preferred Stock (together with the holders of shares of any one or more other series of Voting Parity Stock). At elections for such directors, each holder of the Series W Preferred Stock shall be entitled to 25 votes for each share held (the holders of shares of any other series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock as may be granted to them). The right of the holders of the Series W Preferred Stock (voting together as a class with the holders of shares of any one or more other series of Voting Parity Stock) to elect Preferred Stock Directors shall continue until such time as the Corporation has paid in full dividends for the equivalent of at least four quarterly Dividend Periods or their equivalent, at which time such right with respect to

the Series W Preferred Stock shall terminate, except as provided by law, and subject to reverting in the event of each and every subsequent default of the character described in this Section 7(b).

Upon any termination of the right of the holders of all shares of Series W Preferred Stock and Voting Parity Stock to vote for Preferred Stock Directors, the term of office of all Preferred Stock Directors then in office elected by only those holders voting as a class shall terminate immediately. Any Preferred Stock Director may be removed at any time without cause by the holders of a majority of the outstanding shares of Series W Preferred Stock and Voting Parity Stock, when they have the voting rights described above (voting together as a class). In case any vacancy shall occur among the Preferred Stock Directors, a successor may be elected by a plurality of the votes cast by the holders of Series W Preferred Stock and Voting Parity Stock having the voting rights described above, voting together as a class, unless the vacancy has already been filled. The Preferred Stock Directors shall each be entitled to one vote per director on any matter that shall come before the Board of Directors for a vote. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting powers vested in such holders as provided in this Section 7(b) shall have expired, the number of directors shall be such number as may be provided for in the By-Laws irrespective of any increase made pursuant to this Section 7(b).

**(c) Other Voting Rights.** In addition to any other vote required by law or the Restated Certificate of Incorporation, so long as any shares of the Series W Preferred Stock remain outstanding, the vote or consent of the holders of the outstanding shares of Series W Preferred Stock and outstanding shares of all other series of Voting Parity Stock entitled to vote on the matter, by a vote of at least 66 2/3% in voting power of all such outstanding Series W Preferred Stock and such Voting Parity Stock, voting together as a class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following actions, whether or not such approval is required by Delaware law: (i) the issuance of any class or series of Preferred Stock or Preference Stock ranking senior to the Series W Preferred Stock in the payment of dividends or the distribution of assets in the event of the Corporation's voluntary or involuntary liquidation, dissolution or winding up; (ii) any amendment, alteration or repeal of any provision of the Restated Certificate of Incorporation, including the Certificate of Designation, or the Bylaws that would adversely affect the rights, preferences, privileges or voting powers of the Series W Preferred Stock; (iii) any amendment or alteration of the Restated Certificate of Incorporation, including the Certificate of Designation, or Bylaws to authorize, create, or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of the Corporation's capital stock ranking senior to the Series W Preferred Stock with respect to either the payment of dividends or in the distribution of assets in the event of the Corporation's voluntary or involuntary liquidation, dissolution or winding up; or (iv) any consummation of a reclassification involving the Series W Preferred Stock or a merger or consolidation with another corporation or other entity, except holders of the Series W Preferred Stock will have no right to vote under this Section 7(c)(iv) if in each case (a) the shares of Series W Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (b) such shares of Series W Preferred Stock remaining outstanding or such preference

securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series W Preferred Stock, taken as a whole; *provided, however,* that any authorization, creation or increase in the authorized amount of or issuance of the Series W Preferred Stock or any Parity Stock or Junior Stock or any securities convertible into any class or series of Parity Stock (whether dividends payable in respect of such Parity Stock are cumulative or non-cumulative) or Junior Stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the Series W Preferred Stock, and holders of the Series W Preferred Stock shall have no right to vote thereon.

If any amendment, alteration, repeal, reclassification, merger or consolidation specified in this Section 7(c) would adversely affect one or more but not all series of voting Preferred Stock (including the Series W Preferred Stock), then only those series affected by and entitled to vote on the matter shall vote on the matter together as a class (in lieu of all other series of Preferred Stock).

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

**(d) Changes after Provision for Redemption.** No vote or consent of the holders of Series W Preferred Stock shall be required pursuant to Section 7(b) or (c) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding Series W Preferred Stock shall have been redeemed, or notice of redemption has been given and sufficient funds shall have been irrevocably deposited in trust to effect such redemption.

**(e) Procedures for Voting and Consents.** The rules and procedures for calling and conducting any meeting of the holders of Series W Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Restated Certificate of Incorporation, the Bylaws, applicable law and any national securities exchange or other trading facility in which the Series W Preferred Stock is listed or traded at the time.

**Section 8. Preemption and Conversion.** The holders of Series W Preferred Stock shall not have any rights of preemption or rights to convert such Series W Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Reacquired Shares.** Shares of Series W Preferred Stock which have been issued and redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of Preferred Stock without designation as to series.

**Section 10. No Sinking Fund.** Shares of Series W Preferred Stock are not subject to the operation of a sinking fund.

**Section 11. Additional Classes or Series of Stock.** Notwithstanding anything set forth in the Restated Certificate of Incorporation or this Certificate of Designation to the contrary, the Board of Directors of the Corporation, or any authorized committee of the Board of Directors of the Corporation, (i) without the vote of the holders of the Series W Preferred Stock, may authorize and issue additional shares of Junior Stock and Parity Stock and (ii) with the requisite vote of the holders of the Series W Preferred Stock and Parity Stock entitled to vote thereon, may authorize and issue any additional class or series of Preferred Stock or Preference Stock senior to the Series W Preferred Stock as to the payment of dividends and/or the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

*[Signature Page Follows]*

US.104339260.01

**IN WITNESS WHEREOF, WELLS FARGO & COMPANY** has caused this Certificate of Designation to be signed by Barbara S. Brett, its Senior Vice President and Assistant Treasurer, and Jeannine E. Zahn, its Assistant Secretary, this 28th day of January, 2016.

**WELLS FARGO & COMPANY**

By: /s/ Barbara S. Brett  
Barbara S. Brett, Senior Vice President and  
Assistant Treasurer

/s/ Jeannine E. Zahn  
Jeannine E. Zahn, Assistant Secretary

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DEPOSIT AGREEMENT

among

Wells Fargo & Company,  
as the Company

Wells Fargo Bank, N.A.  
as Depositary,

and

THE HOLDERS FROM TIME TO TIME OF  
THE DEPOSITARY RECEIPTS DESCRIBED HEREIN

Dated as of January 29, 2016

*Relating to the Non-Cumulative Perpetual Class A  
Preferred Stock, Series W, of the Company*

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# TABLE OF CONTENTS

## Page

### ARTICLE I

#### DEFINED TERMS

Section 1.1.	Definitions.....	1
--------------	------------------	---

### ARTICLE II

#### FORM OF RECEIPTS, DEPOSIT OF SERIES W PREFERRED STOCK, EXECUTION AND DELIVERY, TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS

Section 2.1.	Form and Transfer of Receipts. ....	3
Section 2.2.	Deposit of Series W Preferred Stock; Execution and Delivery of Receipts in Respect Thereof. ....	4
Section 2.3.	Registration of Transfer of Receipts. ....	5
Section 2.4.	Split-ups and Combinations of Receipts; Surrender of Receipts and Withdrawal of Series W Preferred Stock.....	5
Section 2.5.	Limitations on Execution and Delivery, Transfer, Surrender and Exchange of Receipts. ....	6
Section 2.6.	Lost Receipts, etc. ....	6
Section 2.7.	Cancellation and Destruction of Surrendered Receipts. ....	7
Section 2.8.	Redemption of Series W Preferred Stock. ....	7
Section 2.9.	Receipts Issuable in Global Registered Form. ....	8

### ARTICLE III

#### CERTAIN OBLIGATIONS OF HOLDERS OF RECEIPTS AND THE COMPANY

Section 3.1.	Filing Proofs, Certificates and Other Information. ....	9
Section 3.2.	Payment of Taxes or Other Governmental Charges. ....	10
Section 3.3.	Warranty as to Series W Preferred Stock. ....	10
Section 3.4.	Warranty as to Receipts. ....	10

## ARTICLE IV

### THE DEPOSITED SECURITIES; NOTICES

Section 4.1.	Cash Distributions.....	10
Section 4.2.	Distributions Other than Cash, Rights, Preferences or Privileges. ....	11
Section 4.3.	Subscription Rights, Preferences or Privileges. ....	11
Section 4.4.	Notice of Dividends, etc.; Fixing Record Date for Holders of Receipts. ....	12
Section 4.5.	Voting Rights. ....	13
Section 4.6.	Changes Affecting Deposited Securities and Reclassifications, Recapitalizations, etc. ....	13
Section 4.7.	Delivery of Reports.....	14
Section 4.8.	Lists of Receipt Holders.....	14

## ARTICLE V

### THE DEPOSITARY, THE DEPOSITARY’S AGENTS, THE REGISTRAR AND THE COMPANY

Section 5.1.	Maintenance of Offices, Agencies and Transfer Books by the Depositary; Registrar.....	14
Section 5.2.	Prevention of or Delay in Performance by the Depositary, the Depositary’s Agents, the Registrar or the Company.....	15
Section 5.3.	Obligations of the Depositary, the Depositary’s Agents, the Registrar and the Company. ....	15
Section 5.4.	Resignation and Removal of the Depositary; Appointment of Successor Depositary. ....	17
Section 5.5.	Corporate Notices and Reports. ....	17
Section 5.6.	Indemnification by the Company.....	18
Section 5.7.	Fees, Charges and Expenses. ....	18

## ARTICLE VI

### AMENDMENT AND TERMINATION

Section 6.1.	Amendment.....	19
--------------	----------------	----

Section 6.2.	Termination.....	19
--------------	------------------	----

## ARTICLE VII

### MISCELLANEOUS

Section 7.1.	Counterparts.....	19
Section 7.2.	Exclusive Benefit of Parties.....	20
Section 7.3.	Invalidity of Provisions.....	20
Section 7.4.	Notices. ....	20
Section 7.5.	Depository's Agents.....	21
Section 7.6.	Appointment of Registrar and Transfer Agent in Respect of the Receipts.....	21
Section 7.7.	Holders of Receipts Are Parties.....	21
Section 7.8.	Governing Law. ....	21
Section 7.9.	Inspection of Deposit Agreement. ....	21
Section 7.10.	Headings. ....	21
Exhibit A	Form of Receipt .....	A-1
Exhibit B	Certificate of Designation .....	B-1

DEPOSIT AGREEMENT dated as of January 29, 2016, among (i) Wells Fargo & Company, a Delaware corporation, (ii) Wells Fargo Bank, N.A., a national banking association formed under the laws of the United States, as Depositary and (iii) the holders from time to time of the Receipts described herein.

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of shares of Non-Cumulative Perpetual Class A Preferred Stock, Series W, of the Company with the Depositary for the purposes set forth in this Deposit Agreement and for the issuance hereunder of Depositary Shares representing a fractional interest in the Series W Preferred Stock deposited and for the execution and delivery of Receipts evidencing Depositary Shares;

WHEREAS, the Receipts are to be substantially in the form of Exhibit A attached hereto, with appropriate insertions, modifications and omissions, as hereinafter provided in this Deposit Agreement; and

WHEREAS, the terms and conditions of the Series W Preferred Stock of the Company are substantially set forth in the Certificate of Designation attached hereto as Exhibit B;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

## ARTICLE I

### DEFINED TERMS

#### Section 1.1. *Definitions.*

The following definitions shall for all purposes, unless otherwise indicated, apply to the respective terms (in the singular and plural forms of such terms) used in this Deposit Agreement and the Receipts:

“*Certificate of Designation*” shall mean the relevant Certificate of Designation filed with the Secretary of State of the State of Delaware establishing the Series W Preferred Stock as a series of preferred stock of the Company.

“*Company*” shall mean Wells Fargo & Company, a Delaware corporation, and its successors.

“*Deposit Agreement*” shall mean this agreement, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof.

“*Depositary*” shall mean Wells Fargo Bank, N.A., a national banking association formed under the laws of the United States, and any successor as Depositary hereunder.

“*Depositary Share Redemption Price*” shall have the meaning set forth in Section 2.8.

*“Depositary Shares”* shall mean the depositary shares, each representing a 1/1,000th fractional interest in a share of the Series W Preferred Stock, and the same proportionate interest in any and all other property received by the Depositary in respect of such share of Series W Preferred Stock and held under this Deposit Agreement, all as evidenced by the Receipts issued hereunder. Subject to the terms of this Deposit Agreement, each owner of a Depositary Share is entitled, proportionately, to all the rights, preferences and privileges of the Series W Preferred Stock represented by such Depositary Share (including the dividend, voting, redemption and liquidation rights contained in the Certificate of Designation).

*“Depositary’s Agent”* shall mean an agent appointed by the Depositary pursuant to Section 7.5.

*“Depositary’s Office”* shall mean the principal office of the Depositary at which at any particular time its depositary receipt business in respect of matters governed by this Deposit Agreement shall be administered.

*“DTC”* shall mean The Depositary Trust Company.

*“Exchange Event”* shall mean with respect to any Global Registered Receipt:

(1) (A) the Global Receipt Depositary which is the holder of such Global Registered Receipt or Receipts notifies the Company that it is no longer willing or able to properly discharge its responsibilities under any Letter of Representations or that it is no longer eligible or in good standing under the Securities Exchange Act, and (B) the Company has not appointed a qualified successor Global Receipt Depositary within ninety (90) calendar days after the Company received such notice, or

(2) the Company in its sole discretion notifies the Depositary in writing that the Receipts or portion thereof issued or issuable in the form of one or more Global Registered Receipts shall no longer be represented by such Global Receipt or Receipts.

*“Global Receipt Depositary”* shall mean, with respect to any Receipt issued hereunder, DTC or such other entity designated as Global Receipt Depositary by the Company in or pursuant to this Deposit Agreement, which Person must be, to the extent required by any applicable law or regulation, a clearing agency registered under the Securities Exchange Act.

*“Global Registered Receipts”* shall mean a global registered Receipt, in definitive or book-entry form, registered in the name of a nominee of DTC.

*“Letter of Representations”* shall mean any applicable agreement among the Company, the Depositary and a Global Receipt Depositary with respect to such Global Receipt Depositary’s rights and obligations with respect to any Global Registered Receipts, as the same may be amended, supplemented, restated or otherwise modified from time to time and any successor agreement thereto.

*“Preferred Stock Redemption Price”* shall have the meaning set forth in Section 2.8.

“*Receipt*” shall mean a receipt issued hereunder to evidence one or more Depositary Shares held of record by the record holder of such Depositary Shares, whether in definitive or temporary form, substantially in the form set forth as Exhibit A.

“*record holder*” or “*holder*” as applied to a Receipt shall mean the person in whose name a Receipt is registered on the books of the Depositary maintained by the Depositary for such purpose.

“*Registrar*” shall mean the Depositary or such other bank or trust company which shall be appointed by the Company to register ownership and transfers of Receipts as herein provided and if a Registrar shall be so appointed, references herein to “the books” of or maintained by the Depositary shall be deemed, as applicable, to refer as well to the register maintained by such Registrar for such purpose.

“*Securities Act*” shall mean the Securities Act of 1933, as amended.

“*Securities Exchange Act*” shall mean the Securities Act of 1934, as amended.

“*Series W Preferred Stock*” shall mean shares of the Company’s Non-Cumulative Perpetual Class A Preferred Stock, Series W, no par value, with a liquidation preference amount of \$25,000 per share, designated and described in the Certificate of Designation.

## ARTICLE II

### FORM OF RECEIPTS, DEPOSIT OF SERIES W PREFERRED STOCK, EXECUTION AND DELIVERY, TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS

#### Section 2.1. *Form and Transfer of Receipts.*

Definitive Receipts shall be substantially in the form set forth in Exhibit A attached to this Deposit Agreement, in each case with appropriate insertions, modifications and omissions, as hereinafter provided and shall be engraved or otherwise prepared so as to comply with applicable rules of the New York Stock Exchange or its successor.

Receipts shall be executed by the Depositary by the manual signature of a duly authorized officer of the Depositary; provided, that such signature may be a facsimile if a Registrar for the Receipts (other than the Depositary) shall have been appointed and such Receipts are countersigned by a duly authorized officer of the Registrar. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been executed manually by a duly authorized officer of the Depositary or, if a Registrar for the Receipts (other than the Depositary) shall have been appointed, by manual or facsimile signature of a duly authorized officer of the Depositary and countersigned by a duly authorized officer of such Registrar. The Depositary shall record on its books each Receipt so signed and delivered as hereinafter provided.

Receipts shall be in denominations of any number of whole Depositary Shares. All receipts shall be dated the date of their issuance.

Receipts may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement all as may be required by the Depositary and approved by the Company or required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange upon which the Series W Preferred Stock, the Depositary Shares or the Receipts may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject.

Title to Depositary Shares evidenced by a Receipt which is properly endorsed or accompanied by a properly executed instrument of transfer, shall be transferable by delivery with the same effect as in the case of a negotiable instrument; provided, however, that until transfer of any particular Receipt shall be registered on the books of the Depositary as provided in Section 2.3, the Depositary may, notwithstanding any notice to the contrary, treat the record holder thereof at such time as the absolute owner thereof for the purpose of determining the person entitled to distributions of dividends or other distributions or to any notice provided for in this Deposit Agreement and for all other purposes.

*Section 2.2. Deposit of Series W Preferred Stock; Execution and Delivery of Receipts in Respect Thereof.*

Subject to the terms and conditions of this Deposit Agreement, the Company may from time to time deposit shares of the Series W Preferred Stock under this Deposit Agreement by delivering to the Depositary, including via electronic book-entry, such shares of the Series W Preferred Stock to be deposited, properly endorsed or accompanied by a duly executed instrument of transfer or endorsement, if applicable and required by the Depositary, in form satisfactory to the Depositary, together with all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement and all other information required to be set forth, and together with a written order of the Company directing the Depositary to execute and deliver to, or upon the written order of, the person or persons stated in such order a Receipt or Receipts evidencing in the aggregate the number of Depositary Shares representing such deposited Series W Preferred Stock.

Deposited Series W Preferred Stock shall be held by the Depositary at the Depositary's Office or at such other place or places as the Depositary shall determine. The Depositary shall not lend any Series W Preferred Stock deposited hereunder.

Upon receipt by the Depositary of Series W Preferred Stock deposited in accordance with the provisions of this Section, together with the other documents required as above specified, and upon recordation of the Series W Preferred Stock on the books of the Company (or its duly appointed transfer agent) in the name of the Depositary or its nominee, the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver to or upon the order of the person or persons named in the written order delivered to the Depositary referred to in the first paragraph of this Section, a Receipt or Receipts evidencing in the aggregate the number of Depositary Shares representing the Series W Preferred Stock so deposited and registered in such name or names as may be requested by such person or persons. The Depositary shall execute and deliver such Receipt or Receipts at the Depositary's Office or such

other offices, if any, as the Depositary may designate. Delivery at other offices shall be at the risk and expense of the person requesting such delivery.

Section 2.3. *Registration of Transfer of Receipts.*

Subject to the terms and conditions of this Deposit Agreement, the Depositary shall register on its books from time to time transfers of Receipts upon any surrender thereof by the holder in person or by duly authorized attorney, properly endorsed or accompanied by a properly executed instrument of transfer. Thereupon, the Depositary shall execute a new Receipt or Receipts evidencing the same aggregate number of Depositary Shares as those evidenced by the Receipt or Receipts surrendered and deliver such new Receipt or Receipts to or upon the order of the person entitled thereto.

The Depositary shall not be required (a) to issue, transfer or exchange any Receipts for a period beginning at the opening of business fifteen days next preceding any selection of Depositary Shares and Series W Preferred Stock to be redeemed and ending at the close of business on the day of the mailing of notice of redemption, or (b) to transfer or exchange for another Receipt any Receipt called or being called for redemption in whole or in part except as provided in Section 2.8.

Section 2.4. *Split-ups and Combinations of Receipts; Surrender of Receipts and Withdrawal of Series W Preferred Stock.*

Upon surrender of a Receipt or Receipts at the Depositary's Office or at such other offices as it may designate for the purpose of effecting a split-up or combination of such Receipt or Receipts, and subject to the terms and conditions of this Deposit Agreement, the Depositary shall execute a new Receipt or Receipts in the authorized denomination or denominations requested, evidencing the aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered, and shall deliver such new Receipt or Receipts to or upon the order of the holder of the Receipt or Receipts so surrendered.

Any holder of a Receipt or Receipts may withdraw the number of whole shares of Series W Preferred Stock and all money and other property, if any, represented thereby by surrendering such Receipt or Receipts, at the Depositary's Office or at such other offices as the Depositary may designate for such withdrawals. Thereafter, without unreasonable delay, the Depositary shall deliver to such holder, or to the person or persons designated by such holder as hereinafter provided, the number of whole shares of Series W Preferred Stock and all money and other property, if any, represented by the Receipt or Receipts so surrendered for withdrawal, but holders of such whole shares of Series W Preferred Stock will not thereafter be entitled to deposit such Series W Preferred Stock hereunder or to receive a Receipt evidencing Depositary Shares therefor. If a Receipt delivered by the holder to the Depositary in connection with such withdrawal shall evidence a number of Depositary Shares in excess of the number of Depositary Shares representing the number of whole shares of Series W Preferred Stock to be so withdrawn, the Depositary shall at the same time, in addition to such number of whole shares of Series W Preferred Stock and such money and other property, if any, to be so withdrawn, deliver to such holder, or subject to Section 2.3 upon such holder's order, a new Receipt evidencing such excess number of Depositary Shares.

In no event will fractional shares of Series W Preferred Stock (or any cash payment in lieu thereof) be delivered by the Depositary. Delivery of the Series W Preferred Stock and money and other property, if any, being withdrawn may be made by the delivery of such certificates, documents of title and other instruments as the Depositary may deem appropriate.

If the Series W Preferred Stock and the money and other property, if any, being withdrawn are to be delivered to a person or persons other than the record holder of the Receipt or Receipts being surrendered for withdrawal of Series W Preferred Stock, such holder shall execute and deliver to the Depositary a written order so directing the Depositary and the Depositary may require that the Receipt or Receipts surrendered by such holder for withdrawal of such shares of Series W Preferred Stock be properly endorsed in blank or accompanied by a properly executed instrument of transfer in blank.

Delivery of the Series W Preferred Stock and the money and other property, if any, represented by Receipts surrendered for withdrawal shall be made by the Depositary at the Depositary's Office, except that, at the request, risk and expense of the holder surrendering such Receipt or Receipts and for the account of the holder thereof, such delivery may be made at such other place as may be designated by such holder.

*Section 2.5. Limitations on Execution and Delivery, Transfer, Surrender and Exchange of Receipts.*

As a condition precedent to the execution and delivery, registration of transfer, split-up, combination, surrender or exchange of any Receipt, the Depositary, any of the Depositary's Agents or the Company may require payment to it of a sum sufficient for the payment (or, in the event that the Depositary or the Company shall have made such payment, the reimbursement to it) of any charges or expenses payable by the holder of a Receipt pursuant to Section 5.7, may require the production of evidence satisfactory to it as to the identity and genuineness of any signature and may also require compliance with such regulations, if any, as the Depositary or the Company may establish consistent with the provisions of this Deposit Agreement and/or applicable law.

The deposit of Series W Preferred Stock may be refused, the delivery of Receipts against Series W Preferred Stock may be suspended, the registration of transfer of Receipts may be refused and the registration of transfer, surrender or exchange of outstanding Receipts may be suspended (i) during any period when the register of stockholders of the Company is closed or (ii) if any such action is deemed necessary or advisable by the Depositary, any of the Depositary's Agents or the Company at any time or from time to time because of any requirement of law or of any government or governmental body or commission or under any provision of this Deposit Agreement.

*Section 2.6. Lost Receipts, etc.*

In case any Receipt shall be mutilated, destroyed, lost or stolen, the Depositary in its discretion may execute and deliver a Receipt of like form and tenor in exchange and substitution for such mutilated Receipt, or in lieu of and in substitution for such destroyed, lost or stolen Receipt, upon (i) the filing by the holder thereof with the Depositary of evidence satisfactory to

the Depositary of such destruction or loss or theft of such Receipt, of the authenticity thereof and of such holder's ownership thereof and (ii) the holder thereof furnishing of the Depositary with reasonable indemnification satisfactory to the Depositary.

Section 2.7. *Cancellation and Destruction of Surrendered Receipts.*

All Receipts surrendered to the Depositary or any Depositary's Agent shall be cancelled by the Depositary. Except as prohibited by applicable law or regulation, the Depositary is authorized and directed to destroy all Receipts so cancelled.

Section 2.8. *Redemption of Series W Preferred Stock.*

Whenever the Company shall be permitted and shall elect to redeem shares of Series W Preferred Stock in accordance with the provisions of the Certificate of Designation (including on account of a Regulatory Capital Treatment Event, as described therein), it shall (unless otherwise agreed to in writing with the Depositary) give or cause to be given to the Depositary, not less than 40 days and not more than 70 days prior to the Redemption Date (as defined below), notice of the date of such proposed redemption of Series W Preferred Stock and of the number of such shares held by the Depositary to be so redeemed and the applicable Depositary Share Redemption Price, which notice shall be accompanied by a certificate from the Company stating that such redemption of Series W Preferred Stock is in accordance with the provisions of the Certificate of Designation. On the date of such redemption, provided that the Company shall then have paid or caused to be paid in full to the Depositary the redemption price per share of Series W Preferred Stock to be redeemed, plus an amount equal to any accrued and unpaid dividends thereon to the date fixed for redemption, in accordance with and as required by the provisions of the Certificate of Designation (the "*Preferred Stock Redemption Price*"), the Depositary shall redeem the number of Depositary Shares representing such Series W Preferred Stock. The Depositary shall mail notice of the Company's redemption of Series W Preferred Stock and the proposed simultaneous redemption of the number of Depositary Shares representing the Series W Preferred Stock to be redeemed by first-class mail, postage prepaid (or another reasonably acceptable transmission method), not less than 30 days and not more than 60 days prior to the date fixed for redemption of such Series W Preferred Stock and Depositary Shares (the "*Redemption Date*"), to the record holders of the Receipts evidencing the Depositary Shares to be so redeemed at the addresses of such holders as they appear on the records of the Depositary, but neither failure to mail any such notice of redemption of Depositary Shares to one or more such holders nor any defect in any notice of redemption of Depositary Shares to one or more such holders shall affect the sufficiency of the proceedings for redemption as to the other holders. Each such notice shall be prepared by the Company and shall state: (i) the Redemption Date; (ii) the number of Depositary Shares to be redeemed and, if less than all the Depositary Shares held by any such holder are to be redeemed, the number of such Depositary Shares held by such holder to be so redeemed; (iii) the Depositary Share Redemption Price (as defined below); and (iv) the place or places where Receipts evidencing Depositary Shares are to be surrendered for payment of the Depositary Share Redemption Price (as defined below). In case less than all the outstanding Depositary Shares are to be redeemed, the Depositary Shares to be so redeemed shall be selected by the Depositary either *pro rata* (as nearly as may be) or in any other manner consistent with the rules and policies of the New York Stock Exchange determined

by the Depositary in its sole discretion to be fair and equitable. In any case, the Depositary will redeem Depositary Shares only in increments of 1,000 Depositary Shares and multiples thereof.

Notice having been mailed or transmitted by the Depositary as aforesaid, from and after the Redemption Date (unless the Company shall have failed to provide the funds necessary to redeem the Series W Preferred Stock evidenced by the Depositary Shares called for redemption) (i) all shares of Series W Preferred Stock called for redemption shall cease to be outstanding and any rights with respect to such shares shall cease and terminate (except for the right to receive the Preferred Stock Redemption Price without interest), (ii) the Depositary Shares being redeemed from such proceeds shall cease to be outstanding and all rights of the holders of Receipts evidencing such Depositary Shares shall, to the extent of such Depositary Shares, cease and terminate (except the right to receive the Depositary Share Redemption Price without interest), and (iii) upon surrender in accordance with such redemption notice of the Receipts evidencing any such Depositary Shares called for redemption (properly endorsed or assigned for transfer, if the Depositary or applicable law shall so require), such Depositary Shares shall be redeemed by the Depositary at a redemption price per Depositary Share (the “*Depositary Share Redemption Price*”) equal to 1/1,000th of the Preferred Stock Redemption Price per share of Series W Preferred Stock so redeemed plus all money and other property, if any, represented by such Depositary Shares.

If fewer than all of the Depositary Shares evidenced by a Receipt are called for redemption, the Depositary will deliver to the holder of such Receipt upon its surrender to the Depositary, together with the redemption payment, a new Receipt evidencing the Depositary Shares evidenced by such prior Receipt and not called for redemption.

#### Section 2.9. *Receipts Issuable in Global Registered Form.*

If the Company shall determine in a writing delivered to the Depositary that the Receipts are to be issued in whole or in part in the form of one or more Global Registered Receipts, then the Depositary shall, in accordance with the other provisions of this Deposit Agreement, execute and deliver one or more Global Registered Receipts evidencing such Receipts, which (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, the Receipts to be represented by such Global Registered Receipt or Receipts, and (ii) shall be registered in the name of the Global Receipt Depositary therefor or its nominee.

Notwithstanding any other provision of this Deposit Agreement to the contrary, unless otherwise provided in the Global Registered Receipt, a Global Registered Receipt may only be transferred in whole and only by the applicable Global Receipt Depositary for such Global Registered Receipt to a nominee of such Global Receipt Depositary, or by a nominee of such Global Receipt Depositary to such Global Receipt Depositary or another nominee of such Global Receipt Depositary, or by such Global Receipt Depositary or any such nominee to a successor Global Receipt Depositary for such Global Registered Receipt selected or approved by the Company or to a nominee of such successor Global Receipt Depositary. Except as provided below, owners solely of beneficial interests in a Global Registered Receipt shall not be entitled to receive physical delivery of the Receipts represented by such Global Registered Receipt. Neither any such beneficial owner nor any direct or indirect participant of a Global Receipt Depositary shall have any rights under this Deposit Agreement with respect to any Global Registered

Receipt held on their behalf by a Global Receipt Depository and such Global Receipt Depository may be treated by the Company, the Depository and any director, officer, employee or agent of the Company or the Depository as the holder of such Global Registered Receipt for all purposes whatsoever.

Unless and until definitive Receipts are delivered to the owners of the beneficial interests in a Global Registered Receipt, (1) the applicable Global Receipt Depository will make book-entry transfers among its participants and receive and transmit all payments and distributions in respect of the Global Registered Receipts to such participants, in each case, in accordance with its applicable procedures and arrangements, and (2) whenever any notice, payment or other communication to the holders of Global Registered Receipts is required under this Deposit Agreement, the Company and the Depository shall give all such notices, payments and communications specified herein to be given to such holders to the applicable Global Receipt Depository.

If an Exchange Event has occurred with respect to any Global Registered Receipt, then, in any such event, the Depository shall, upon receipt of a written order from the Company for the execution and delivery of individual definitive registered Receipts in exchange for such Global Registered Receipt, shall execute and deliver individual definitive registered Receipts, in authorized denominations and of like tenor and terms in an aggregate principal amount equal to the principal amount of the Global Registered Receipt surrendered in exchange for such Global Registered Receipt.

Definitive registered Receipts issued in exchange for a Global Registered Receipt pursuant to this Section shall be registered in such names and in such authorized denominations as the Global Receipt Depository for such Global Registered Receipt, pursuant to instructions from its participants, shall instruct the Depository in writing. The Depository shall deliver such Receipts to the persons in whose names such Receipts are so registered.

Notwithstanding anything to the contrary in this Deposit Agreement, should the Company determine that the Receipts should be issued as a Global Registered Receipt, the parties hereto shall comply with the terms of each Letter of Representations.

### ARTICLE III

#### CERTAIN OBLIGATIONS OF HOLDERS OF RECEIPTS AND THE COMPANY

##### Section 3.1. *Filing Proofs, Certificates and Other Information.*

Any holder of a Receipt may be required from time to time to file such proof of residence, or other matters or other information, to execute such certificates and to make such representations and warranties as the Depository or the Company may reasonably deem necessary or proper. The Depository or the Company may withhold the delivery, or delay the registration of transfer or redemption, of any Receipt or the withdrawal of the Series W Preferred Stock represented by the Depository Shares evidenced by any Receipt or the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof until such proof

or other information is filed or such certificates are executed or such representations and warranties are made.

Section 3.2. *Payment of Taxes or Other Governmental Charges.*

Holders of Receipts shall be obligated to make payments to the Depositary of certain charges and expenses, as provided in Section 5.7. Registration of transfer of any Receipt or any withdrawal of Series W Preferred Stock and all money or other property, if any, represented by the Depositary Shares evidenced by such Receipt may be refused until any such payment due is made, and any dividends or other distributions may be withheld or any part of or all the Series W Preferred Stock or other property represented by the Depositary Shares evidenced by such Receipt and not theretofore sold may be sold for the account of the holder thereof (after attempting by reasonable means to notify such holder prior to such sale), and such dividends or other distributions or the proceeds of any such sale may be applied to any payment of such charges or expenses, the holder of such Receipt remaining liable for any deficiency.

Section 3.3. *Warranty as to Series W Preferred Stock.*

The Company hereby represents and warrants that the Series W Preferred Stock, when issued, will be duly authorized, validly issued, fully paid and nonassessable (subject to 12 U.S.C. § 55). Such representation and warranty shall survive the deposit of the Series W Preferred Stock and the issuance of Receipts.

Section 3.4. *Warranty as to Receipts.*

The Company hereby represents and warrants that the Receipts, when issued, will represent legal and valid interests in the Series W Preferred Stock. Such representation and warranty shall survive the deposit of the Series W Preferred Stock and the issuance of Receipts.

## ARTICLE IV

### THE DEPOSITED SECURITIES; NOTICES

Section 4.1. *Cash Distributions.*

Whenever the Depositary shall receive any cash dividend or other cash distribution on Series W Preferred Stock, the Depositary shall, subject to Sections 3.1 and 3.2, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.4 such amounts of such dividend or distribution as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders; provided, however, that in case the Company or the Depositary shall be required to withhold and shall withhold from any cash dividend or other cash distribution in respect of the Series W Preferred Stock an amount on account of taxes, the amount made available for distribution or distributed in respect of Depositary Shares shall be reduced accordingly. The Depositary shall distribute or make available for distribution, as the case may be, only such amount, however, as can be distributed without attributing to any holder of Depositary Shares a fraction of one cent. If the calculation of a cash distribution results in an amount that is a fraction of a cent and that fraction is equal to or greater than \$0.005, the Depositary shall round that amount up to the next highest whole cent and

will request that Company pay the resulting additional amount to the Depositary for the relevant dividend or other cash distribution. If the fractional amount is less than \$0.005, the Depositary shall disregard that fractional amount and any balance thus not distributable shall be held by the Depositary (without liability for interest thereon) and shall be added to and be treated as part of the next sum received by the Depositary for distribution to record holders of Receipts then outstanding. Each holder of a Receipt shall provide the Depositary with its certified tax identification number on a properly completed Form W-8 or W-9, as may be applicable. Each holder of a Receipt acknowledges that, in the event of non-compliance with the preceding sentence, the Internal Revenue Code of 1986, as amended, may require withholding by the Depositary of a portion of any of the distributions to be made hereunder.

*Section 4.2. Distributions Other than Cash, Rights, Preferences or Privileges.*

Whenever the Depositary shall receive any distribution other than cash, rights, preferences or privileges upon Series W Preferred Stock, the Depositary shall, at the direction of the Company, subject to Sections 3.1 and 3.2, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.4 such amounts of the securities or property received by it as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders, in any manner that the Company may deem equitable and practicable for accomplishing such distribution. If in the opinion of the Depositary such distribution cannot be made proportionately among such record holders in accordance with the direction of the Company, or if for any other reason (including any requirement that the Company or the Depositary withhold an amount on account of taxes) the Depositary deems, after consultation with the Company, such distribution not to be feasible, the Depositary may, with the approval of the Company, adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale (at public or private sale) of the securities or property thus received, or any part thereof, in a commercially reasonable manner. The net proceeds of any such sale shall, subject to Sections 3.1 and 3.2, be distributed or made available for distribution, as the case may be, by the Depositary to record holders of Receipts as provided by Section 4.1 in the case of a distribution received in cash. The Company shall not make any distribution of such securities or property to the Depositary and the Depositary shall not make any distribution of such securities or property to the holders of Receipts unless the Company shall have provided an opinion of counsel stating that such securities or property have been registered under the Securities Act or do not need to be registered in connection with such distributions.

*Section 4.3. Subscription Rights, Preferences or Privileges.*

If the Company shall at any time offer or cause to be offered to the persons in whose names Series W Preferred Stock is recorded on the books of the Company any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be made available by the Depositary to the record holders of Receipts in such manner as the Company shall instruct the Depositary in writing, either by the issue to such record holders of warrants representing such rights, preferences or privileges or by such other method as may be approved by the Company; provided, however, that (i) if at the time of issue or offer of any such rights, preferences or privileges the Depositary determines that it is not lawful or (after consultation

with the Company) not feasible to make such rights, preferences or privileges available to holders of Receipts by the issue of warrants or otherwise, or (ii) if and to the extent so instructed by holders of Receipts who do not desire to exercise such rights, preferences or privileges, then the Depositary, in its discretion (with approval of the Company, in any case where the Depositary has determined that it is not feasible to make such rights, preferences or privileges available), may, if applicable laws or the terms of such rights, preferences or privileges permit such transfer, sell such rights, preferences or privileges at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Sections 3.1 and 3.2, be distributed by the Depositary to the record holders of Receipts entitled thereto as provided by Section 4.1 in the case of a distribution received in cash.

The Company shall notify the Depositary whether registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for holders of Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, and the Company agrees with the Depositary that it will file promptly a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its reasonable best efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges. In no event shall the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any securities unless and until such registration statement shall have become effective, or the Company shall have provided to the Depositary an opinion of counsel to the effect that the offering and sale of such securities to such holders are exempt from registration under the provisions of the Securities Act.

The Company shall notify the Depositary whether any other action under the laws of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, and the Company agrees with the Depositary that the Company will use its reasonable best efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

#### Section 4.4. *Notice of Dividends, etc.; Fixing Record Date for Holders of Receipts.*

Whenever any cash dividend or other cash distribution shall become payable or any distribution other than cash shall be made, or if rights, preferences or privileges shall at any time be offered, with respect to Series W Preferred Stock, or whenever the Depositary shall receive notice of any meeting at which holders of Series W Preferred Stock are entitled to vote or of which holders of Series W Preferred Stock are entitled to notice, or whenever the Depositary and the Company shall decide it is appropriate, the Depositary shall in each such instance fix a record date (which shall be the same date as the record date fixed by the Company with respect to, or otherwise in accordance with the terms of, the Series W Preferred Stock, as identified in a written notice to the Depositary of such record date) for the determination of the holders of Receipts who shall be entitled to receive such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, or to give instructions for the exercise of voting

rights at any such meeting, or who shall be entitled to notice of such meeting or for any other appropriate reasons.

#### Section 4.5. *Voting Rights.*

Subject to the provisions of the Certificate of Designation, upon receipt of notice of any meeting at which the holders of Series W Preferred Stock are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the record holders of Receipts a notice prepared by the Company which shall contain (i) such information as is contained in such notice of meeting and (ii) a statement that the holders may, subject to any applicable restrictions, instruct the Depositary as to the exercise of the voting rights pertaining to the amount of Series W Preferred Stock represented by their respective Depositary Shares (including an express indication that instructions may be given to the Depositary to give a discretionary proxy to a person designated by the Company) and a brief statement as to the manner in which such instructions may be given. Upon the written request of the holders of Receipts on the relevant record date, the Depositary shall endeavor insofar as practicable to vote or cause to be voted, in accordance with the instructions set forth in such requests, the maximum number of whole shares of Series W Preferred Stock represented by the Depositary Shares evidenced by all Receipts as to which any particular voting instructions are received. The Company hereby agrees to take all reasonable action which may be deemed necessary by the Depositary in order to enable the Depositary to vote such Series W Preferred Stock or cause such Series W Preferred Stock to be voted. In the absence of specific instructions from holders of Receipts, the Depositary will abstain from voting (but shall appear) at any meeting with respect to the Series W Preferred Stock (unless directed to the contrary by the record holders of all related Receipts) to the extent of the Depositary Shares (or portion thereof) represented by the applicable Depositary Shares evidenced by such Receipt.

#### Section 4.6. *Changes Affecting Deposited Securities and Reclassifications, Recapitalizations, etc.*

Upon any change in par or stated value, split-up, combination or any other reclassification of the Series W Preferred Stock subject to the provisions of the Certificate of Designation, or upon any recapitalization, reorganization, merger or consolidation affecting the Company or to which it is a party, the Depositary may in its discretion with the approval of, and shall upon the instructions of, the Company, and (in either case) in such manner as the Depositary may deem equitable, (i) make such adjustments as are certified by the Company in the fraction of an interest represented by one Depositary Share in one share of Series W Preferred Stock and in the ratio of the Depositary Share Redemption Price to the Preferred Stock Redemption Price, in each case as may be necessary fully to reflect the effects of such change in par or stated value, split-up, combination or other reclassification of Series W Preferred Stock, or of such recapitalization, reorganization, merger or consolidation and (ii) treat any securities which shall be received by the Depositary in exchange for or upon conversion of or in respect of the Series W Preferred Stock as new deposited securities so received in exchange for or upon conversion or in respect of such Series W Preferred Stock. In any such case the Depositary may in its discretion, with the approval of the Company, execute and deliver additional Receipts or may call for the surrender of all outstanding Receipts to be exchanged for new Receipts specifically describing such new deposited securities. Anything to the contrary herein

notwithstanding, holders of Receipts shall have the right from and after the effective date of any such change in par or stated value, split-up, combination or other reclassification of the Series W Preferred Stock or any such recapitalization, reorganization, merger or consolidation to surrender such Receipts to the Depositary with instructions to convert, exchange or surrender the Series W Preferred Stock represented thereby only into or for, as the case may be, the kind and amount of shares of Series W Preferred Stock and other securities and property and cash into which the Series W Preferred Stock represented by such Receipts might have been converted or for which such Series W Preferred Stock might have been exchanged or surrendered immediately prior to the effective date of such transaction.

Section 4.7. *Delivery of Reports.*

The Depositary shall furnish to holders of Receipts any reports and communications received from the Company which are received by the Depositary and which the Company is required to furnish to the holders of the Series W Preferred Stock.

Section 4.8. *Lists of Receipt Holders.*

Promptly upon request from time to time by the Company, the Depositary shall furnish to it a list, as of the most recent practicable date, of the names, addresses and holdings of Depositary Shares of all record holders of Receipts.

## ARTICLE V

### THE DEPOSITARY, THE DEPOSITARY'S AGENTS, THE REGISTRAR AND THE COMPANY

Section 5.1. *Maintenance of Offices, Agencies and Transfer Books by the Depositary;  
Registrar.*

Upon execution of this Deposit Agreement, the Depositary shall maintain at the Depositary's Office, facilities for the execution and delivery, registration and registration of transfer, surrender and exchange of Receipts, and at the offices of the Depositary's Agents, if any, facilities for the delivery, registration of transfer, surrender and exchange of Receipts, all in accordance with the provisions of this Deposit Agreement.

The Depositary shall keep books at the Depositary's Office for the registration and registration of transfer, surrender and exchange of Receipts, which books at all reasonable times shall be open for inspection by the record holders of Receipts; provided that any such holder requesting to exercise such right shall certify to the Depositary that such inspection shall be for a proper purpose reasonably related to such person's interest as an owner of Depositary Shares evidenced by the Receipts.

The Depositary may close such books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties hereunder.

The Depositary may, with the approval of the Company, appoint a Registrar for registration of the Receipts or the Depositary Shares evidenced thereby. If the Receipts or the

Depository Shares evidenced thereby or the Series W Preferred Stock represented by such Depository Shares shall be listed on one or more national stock exchanges, the Depository will appoint a Registrar (acceptable to the Company) for registration of such Receipts or Depository Shares in accordance with any requirements of such exchange. Such Registrar (which may be the Depository if so permitted by the requirements of any such exchange) may be removed and a substitute Registrar appointed by the Depository upon the request or with the approval of the Company. If the Receipts, such Depository Shares or such Series W Preferred Stock are listed on one or more other stock exchanges, the Depository will, at the request of the Company, arrange such facilities for the delivery, registration, registration of transfer, surrender and exchange of such Receipts, such Depository Shares or such Series W Preferred Stock as may be required by law or applicable stock exchange regulation.

*Section 5.2. Prevention of or Delay in Performance by the Depository, the Depository's Agents, the Registrar or the Company.*

Neither the Depository nor any Depository's Agent nor any Registrar nor the Company shall incur any liability to any holder of any Receipt if by reason of any provision of any present or future law, or regulation thereunder, of the United States of America or of any other governmental authority or, in the case of the Depository, the Depository's Agent or the Registrar, by reason of any provision, present or future, of the Company's Restated Certificate of Incorporation (including the Certificate of Designation), or by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depository, the Depository's Agent, the Registrar or the Company shall be prevented or forbidden from, or subjected to any penalty on account of, doing or performing any act or thing which the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depository, any Depository's Agent, any Registrar or the Company incur liability to any holder of a Receipt (i) by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing which the terms of this Deposit Agreement shall provide shall or may be done or performed, or (ii) by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement except as otherwise explicitly set forth in this Deposit Agreement.

*Section 5.3. Obligations of the Depository, the Depository's Agents, the Registrar and the Company.*

Neither the Depository nor any Depository's Agent nor any Registrar nor the Company assumes any obligation or shall be subject to any liability under this Deposit Agreement to holders of Receipts other than for its gross negligence or willful misconduct. Notwithstanding anything in this Deposit Agreement to the contrary, neither the Depository, nor the Depository's Agent nor any Registrar nor the Company shall be liable in any event for special, punitive, incidental, indirect or consequential losses or damages of any kind whatsoever (including but not limited to lost profits).

Neither the Depository nor any Depository's Agent nor any Registrar nor the Company shall be under, any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of the Series W Preferred Stock, the Depository Shares or the Receipts which in its opinion may involve it in expense or liability unless indemnity satisfactory to it against all expense and liability be furnished as often as may be required.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall be liable for any action or any failure to act by it in reliance upon the advice of legal counsel or accountants, or information from any person presenting Series W Preferred Stock for deposit, any holder of a Receipt or any other person believed by it in good faith to be competent to give such information. The Depositary, any Depositary's Agent, any Registrar and the Company may each rely and shall each be protected in acting upon or omitting to act upon any written notice, request, direction or other document believed by it to be genuine and to have been signed or presented by the proper party or parties.

The Depositary will indemnify the Company against any liability which may directly arise out of acts performed or omitted by the Depositary due to its gross negligence or willful misconduct, however, in no event shall the Depositary be liable for consequential, special or indirect damages of any kind regardless of whether the Depositary is put on notice of the possibility of such damages. The Depositary shall not be liable for the acts or omissions due to the gross negligence or willful misconduct of any Depositary's Agent, so long as such Depositary's Agent was appointed with due care.

The Depositary shall not be responsible for any failure to carry out any instruction to vote any of the shares of Series W Preferred Stock or for the manner or effect of any such vote made, as long as any such action or non-action is not taken in bad faith. The Depositary undertakes, and any Registrar shall be required to undertake, to perform such duties and only such duties as are specifically set forth in this Deposit Agreement, and no implied covenants or obligations shall be read into this Deposit Agreement against the Depositary or any Registrar.

The Depositary, the Depositary's Agents, and any Registrar may own and deal in any class of securities of the Company and its affiliates and in Receipts. The Depositary may also act as transfer agent or registrar of any of the securities of the Company and its affiliates.

The Depositary shall not be under any liability for interest on any monies at any time received by it pursuant to any of the provisions of this Deposit Agreement or of the Receipts, the Depositary Shares or the Series W Preferred Stock nor shall it be obligated to segregate such monies from other monies held by it, except as required by law. The Depositary shall not be responsible for advancing funds on behalf of the Company and shall have no duty or obligation to make any payments if it has not timely received sufficient funds to make timely payments.

In the event the Depositary believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Depositary hereunder, or in the administration of any of the provisions of this Deposit Agreement, the Depositary shall deem it necessary or desirable that a matter be proved or established prior to taking, omitting or suffering to take any action hereunder, the Depositary may, in its sole discretion upon written notice to the Company, refrain from taking any action and shall be fully protected and shall not be liable in any way to the Company, any holders of Receipts or any other person or entity for refraining from taking such action, unless the Depositary receives written instructions or a certificate signed by the Company which eliminates such ambiguity or uncertainty to the satisfaction of the Depositary or which proves or establishes the applicable matter to the satisfaction of the Depositary. The Depositary shall not be liable to

the Company, any holder of Receipts, or any action taken by it in accordance with the written instruction of the Company or the holders of Receipts.

Section 5.4. *Resignation and Removal of the Depositary; Appointment of Successor Depositary.*

The Depositary may at any time resign as Depositary hereunder by delivering notice of its election to do so to the Company, such resignation to take effect upon the appointment of a successor Depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Company by notice of such removal delivered to the Depositary, such removal to take effect upon the appointment of a successor Depositary hereunder and its acceptance of such appointment as hereinafter provided.

In case at any time the Depositary acting hereunder shall resign or be removed, the Company shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor Depositary, which shall be a bank or trust company having its principal office in the United States of America and having a combined capital and surplus of at least \$50,000,000. If no successor Depositary shall have been so appointed and have accepted appointment within 60 days after delivery of such notice, the resigning or removed Depositary may petition any court of competent jurisdiction for the appointment of a successor Depositary. Every successor Depositary shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder, and thereupon such successor Depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depositary under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Company, shall promptly execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all right, title and interest in the Series W Preferred Stock and any moneys or property held hereunder to such successor, and shall deliver to such successor a list of the record holders of all outstanding Receipts and such records, books and other information in its possession relating thereto. Any successor Depositary shall promptly mail notice of its appointment to the record holders of Receipts.

Any entity into or with which the Depositary may be merged, consolidated or converted shall be the successor of such Depositary without the execution or filing of any document or any further act, and notice thereof shall not be required hereunder. Such successor Depositary may authenticate the Receipts in the name of the predecessor Depositary or in the name of the successor Depositary.

Section 5.5. *Corporate Notices and Reports.*

The Company agrees that it will deliver to the Depositary, and the Depositary will, promptly after receipt thereof, transmit to the record holders of Receipts, in each case at the addresses recorded in the Depositary's books, copies of all notices and reports (including without limitation financial statements) required by law, by the rules of any national securities exchange upon which the Series W Preferred Stock, the Depositary Shares or the Receipts are listed or by

the Company's Restated Certificate of Incorporation, as amended (including the Certificate of Designation), to be furnished to the record holders of Receipts. Such transmission will be at the Company's expense and the Company will provide the Depositary with such number of copies of such documents as the Depositary may reasonably request. In addition, the Depositary will transmit to the record holders of Receipts at the Company's expense such other documents as may be requested by the Company. Unless otherwise required by law, the requirements set forth in this Section 5.5 may be satisfied by publicly filing or furnishing such information with or to the U.S. Securities and Exchange Commission.

*Section 5.6. Indemnification by the Company.*

Notwithstanding Section 5.3 to the contrary, the Company shall indemnify the Depositary, any Depositary's Agent and any Registrar (including each of their officers, directors, agents and employees) against, and hold each of them harmless from, any loss, damage, cost, penalty, liability or expense (including the reasonable costs and expenses of defending itself) which may arise out of acts performed, suffered or omitted to be taken in connection with this Deposit Agreement and the Receipts by the Depositary, any Registrar or any of their respective agents (including any Depositary's Agent) and any transactions or documents contemplated hereby, except for any liability arising out of gross negligence or willful misconduct on the respective parts of any such person or persons. The obligations of the Company set forth in this Section 5.6 shall survive any succession of any Depositary, Registrar or Depositary's Agent.

*Section 5.7. Fees, Charges and Expenses.*

The Company agrees promptly to pay the Depositary the compensation to be agreed upon with the Company for all services rendered by the Depositary hereunder and to reimburse the Depositary for its reasonable out-of-pocket expenses (including reasonable counsel fees and expenses) incurred by the Depositary without gross negligence or willful misconduct on its part (or on the part of any Depositary's Agent) in connection with the services rendered by it (or such Depositary's Agent) hereunder. The Company shall pay all charges of the Depositary in connection with the initial deposit of the Series W Preferred Stock and the initial issuance of the Depositary Shares, all withdrawals of shares of the Series W Preferred Stock by owners of Depositary Shares, and any redemption or exchange of the Series W Preferred Stock at the option of the Company. The Company shall pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. All other transfer and other taxes and governmental charges shall be at the expense of holders of Depositary Shares evidenced by Receipts. If, at the request of a holder of Receipts, the Depositary incurs charges or expenses for which the Company is not otherwise liable hereunder, such holder will be liable for such charges and expenses; provided, however, that the Depositary may, at its sole option, require a holder of a Receipt to prepay the Depositary any charge or expense the Depositary has been asked to incur at the request of such holder of Receipts. The Depositary shall present its statement for charges and expenses to the Company at such intervals as the Company and the Depositary may agree.

## ARTICLE VI

### AMENDMENT AND TERMINATION

#### Section 6.1. *Amendment.*

The form of the Receipts and any provisions of this Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary in any respect which they may deem necessary or desirable; provided, however, that no such amendment which shall materially and adversely alter the rights of the holders of Receipts shall be effective unless such amendment shall have been approved by the holders of at least a majority (or, in the case of such amendments relating to or affecting rights to receive dividends or distributions or voting or redemption rights, two-thirds of the holders) of the Depositary Shares then outstanding. Every holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by the Deposit Agreement as amended thereby. In no event shall any amendment impair the right, subject to the provisions of Sections 2.5 and 2.6 and Article III, of any owner of Depositary Shares to surrender any Receipt evidencing such Depositary Shares to the Depositary with instructions to deliver to the holder the Series W Preferred Stock and all money and other property, if any, represented thereby, except in order to comply with mandatory provisions of applicable law or the rules and regulations of any governmental body, agency or commission, or applicable stock exchange.

#### Section 6.2. *Termination.*

This Deposit Agreement may be terminated by the Company or the Depositary only if (i) all outstanding Depositary Shares have been redeemed pursuant to Section 2.8 or (ii) there shall have been made a final distribution in respect of the Series W Preferred Stock in connection with any liquidation, dissolution or winding up of the Company and such distribution shall have been distributed to the holders of Depositary Shares pursuant to Section 4.1 or 4.2, as applicable.

Upon the termination of this Deposit Agreement, the Company shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary, any Depositary's Agent and any Registrar under Sections 5.6 and 5.7.

## ARTICLE VII

### MISCELLANEOUS

#### Section 7.1. *Counterparts.*

This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Deposit Agreement by facsimile or electronic mail shall be effective as delivery of a manually executed counterpart of this Deposit Agreement.

Section 7.2. *Exclusive Benefit of Parties.*

This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person whatsoever.

Section 7.3. *Invalidity of Provisions.*

In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby.

Section 7.4. *Notices.*

Any and all notices to be given to the Company hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram, facsimile transmission or electronic mail confirmed by letter, addressed to the Company at

Wells Fargo & Company  
Attention: Treasury Global Funding  
90 South Seventh Street, 13th Floor  
MAC: N9305-131  
Minneapolis, MN 55479

or at any other addresses of which the Company shall have notified the Depositary in writing.

Any and all notices to be given to the Depositary hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by facsimile transmission confirmed by letter, addressed to the Depositary at the Depositary's Office at

Wells Fargo Bank, N.A.  
1110 Centre Pointe Curve, Suite 101  
Mendota Heights, MN 55120-4100  
Attention: Relationship Manager  
Facsimile No.: 651-450-4078

or at any other address of which the Depositary shall have notified the Company in writing.

Any and all notices to be given to any record holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or facsimile transmission confirmed by letter, addressed to such record holder at the address of such record holder as it appears on the books of the Depositary, or if such holder shall have timely filed with the Depositary a written request that notices intended for such holder be mailed to some other address, at the address designated in such request.

Delivery of a notice sent by mail or by facsimile transmission shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a facsimile transmission) is deposited, postage prepaid, in a post office letter box. The Depositary or the Company may, however, act upon any facsimile transmission received by it from the other or from any holder of a Receipt, notwithstanding that such facsimile transmission shall not subsequently be confirmed by letter or as aforesaid.

Section 7.5. *Depositary's Agents.*

The Depositary may from time to time appoint Depositary's Agents to act in any respect for the Depositary for the purposes of this Deposit Agreement and may at any time appoint additional Depositary's Agents and vary or terminate the appointment of such Depositary's Agents. The Depositary will promptly notify the Company of any such action.

Section 7.6. *Appointment of Registrar and Transfer Agent in Respect of the Receipts.*

The Company hereby appoints the Depositary as Registrar and Transfer Agent in respect of the Receipts and the Depositary hereby accepts such appointments.

Section 7.7. *Holders of Receipts Are Parties.*

The holders of Receipts from time to time shall be parties to this Deposit Agreement and shall be bound by all of the terms and conditions hereof and of the Receipts by acceptance of delivery thereof.

Section 7.8. *Governing Law.*

This Deposit Agreement and the Receipts and all rights hereunder and thereunder and provisions hereof and thereof shall be governed by, and construed in accordance with, the laws of the State of Minnesota.

Section 7.9. *Inspection of Deposit Agreement.*

Copies of this Deposit Agreement shall be filed with the Depositary and, to the extent determined by the Depositary, with the Depositary's Agents, and shall be open to inspection during business hours at the Depositary's Office and the respective offices of such Depositary's Agents, if any, by any holder of a Receipt.

Section 7.10. *Headings.*

The headings of articles and sections in this Deposit Agreement and in the form of the Receipt set forth in Exhibit A hereto have been inserted for convenience only and are not to be regarded as a part of this Deposit Agreement or the Receipts or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

IN WITNESS WHEREOF, the Company and the Depositary have duly executed this Deposit Agreement as of the day and year first above set forth, and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

WELLS FARGO & COMPANY

By: /s/ Barbara S. Brett  
Name: Barbara S. Brett  
Title: Senior Vice President and Assistant  
Treasurer

WELLS FARGO BANK, N.A.

By: /s/ Andrea Severson  
Name: Andrea Severson  
Title: Assistant Vice President – Client  
Services

## EXHIBIT A

[FORM OF FACE OF RECEIPT]

UNLESS THIS RECEIPT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO WELLS FARGO & COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

DEPOSITARY SHARES

40,000,000

DEPOSITARY RECEIPT FOR DEPOSITARY SHARES EACH  
REPRESENTING A 1/1,000TH INTEREST IN A SHARE OF NON-CUMULATIVE  
PERPETUAL CLASS A PREFERRED STOCK, SERIES W

OF

Wells Fargo & Company

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

CUSIP 94988U 714

SEE REVERSE FOR CERTAIN DEFINITIONS

Wells Fargo Bank, N.A., a national banking association formed under the laws of the United States, as Depositary (the “Depositary”), hereby certifies that Cede & Co. is the registered owner of 40,000,000 DEPOSITARY SHARES (“Depositary Shares”), each Depositary Share representing a 1/1,000th interest in a share of Non-Cumulative Perpetual Class A Preferred Stock, Series W, no par value, with a liquidation preference amount of \$25,000 per share (the “Series W Preferred Stock”), of Wells Fargo & Company, a Delaware corporation (the “Company”), on deposit with the Depositary, subject to the terms and entitled to the benefits of the Deposit Agreement dated as of January 29, 2016 (the “Deposit Agreement”), among the Company, the Depositary and the holders from time to time of the Depositary Receipts. By accepting this Depositary Receipt, the holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This Depositary Receipt shall not be valid or obligatory for any purpose or entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depositary by the manual signature of a duly authorized officer or, if executed in facsimile by the Depositary, countersigned by a Registrar in respect of the Depositary Receipts by the manual signature of a duly authorized officer thereof.

This Depositary Receipt is transferable in New York, New York and Mendota Heights, Minnesota.

Dated: \_\_\_\_\_

Wells Fargo Bank, N.A., Depositary

By: \_\_\_\_\_  
Authorized Officer

[FORM OF REVERSE OF RECEIPT]

WELLS FARGO & COMPANY

WELLS FARGO & COMPANY WILL FURNISH WITHOUT CHARGE TO EACH HOLDER OF RECEIPT WHO SO REQUESTS A COPY OF THE DEPOSIT AGREEMENT AND A COPY OR SUMMARY OF THE CERTIFICATE OF DESIGNATION ESTABLISHING THE NON-CUMULATIVE PERPETUAL CLASS A PREFERRED STOCK, SERIES W, OF WELLS FARGO & COMPANY ANY SUCH REQUEST IS TO BE ADDRESSED TO THE DEPOSITARY NAMED ON THE FACE OF THIS RECEIPT.

The Company will furnish without charge to each holder of receipt who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof of the Company, and the qualifications, limitations or restrictions of such preferences and/or rights. Such request may be made to the Company or to the Registrar.

EXPLANATION OF ABBREVIATIONS

The following abbreviations when used in the form of ownership on the face of this certificate shall be construed as though they were written out in full according to applicable laws or regulations. Abbreviations in addition to those appearing below may be used.

Abbreviation	Equivalent Phrase	Abbreviation	Equivalent Phrase
JT TEN	As joint tenants, with right of survivorship and not as tenants in common	TEN BY ENT	As tenants by the entireties
TEN IN COM	As tenants in common	UNIF GIFT MIN ACT	Uniform Gifts to Minors Act

Abbreviation	Equivalent Word	Abbreviation	Equivalent Word	Abbreviation	Equivalent Word
ADM	Administrator(s), Administratrix	EX	Executor(s), Executrix	PAR	Paragraph
AGMT	Agreement	FBO	For the benefit of	PL	Public Law
ART	Article	FDN	Foundation	TR	(As) trustee(s), for, of
CH	Chapter	GDN	Guardian(s)	U	Under
CUST	Custodian for	GDNSHP	Guardianship	UA	Under agreement
DEC	Declaration	MIN	Minor(s)	UW	Under will of, Of will of, Under last will & testament
EST	Estate, of Estate of				

For value received, \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s)  
unto

\_\_\_\_\_  
PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE  
PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING POSTAL ZIP CODE OF ASSIGNEE

Depository Shares represented by the within Receipt, and do(es) hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer the said Depository Shares on the books of the within named Depository with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTICE: The signature to the assignment must correspond with the name as written upon the face of this Receipt in every particular, without alteration or enlargement or any change whatsoever.

#### SIGNATURE GUARANTEED

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations, and credit unions with membership in an approved signature guarantee medallion program), pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

## **EXHIBIT B**

[Certificate of Designation attached]

## WELLS FARGO & COMPANY

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### CERTIFICATE OF DESIGNATION

Pursuant to Section 151(g) of the  
General Corporation Law  
of the State of Delaware

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### NON-CUMULATIVE PERPETUAL CLASS A PREFERRED STOCK, SERIES W (Without Par Value)

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WELLS FARGO & COMPANY, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), HEREBY CERTIFIES that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Restated Certificate of Incorporation of the Corporation, as amended, which authorize the issuance of not more than 20,000,000 shares of Preferred Stock, without par value, and pursuant to authority conferred upon the Securities Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the unanimous written consent of the Committee duly adopted on January 27, 2016, in accordance with Section 141(f) of the General Corporation Law:

**RESOLVED**, that pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated April 29, 2014, the provisions of the Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, no par value, of the Corporation be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

### RIGHTS AND PREFERENCES

**Section 1. Designation.** The shares of such series of Preferred Stock shall be designated Non-Cumulative Perpetual Class A Preferred Stock, Series W, with no par value and a liquidation preference amount of \$25,000 per share (the “*Series W Preferred Stock*”). Each share of Series W Preferred Stock shall be identical in all respects to every other share of Series W Preferred Stock except with respect to the date from which dividends may accrue. Series W Preferred Stock will rank equally with Parity Stock with respect to the payment of dividends and distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation and will rank senior to Junior Stock with respect to the payment of dividends and/or the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series W Preferred Stock shall be 40,000. Such number may from time to time be increased (but not in

excess of the total number of authorized shares of Preferred Stock) or decreased (but not below the number of shares of Series W Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series W Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series W Preferred Stock:

*“Business Day”* means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions are authorized or required by law or regulation to close in New York, New York.

*“Certificate of Designation”* means this Certificate of Designation relating to the Series W Preferred Stock, as it may be amended from time to time.

*“Common Stock”* means the common stock of the Corporation, par value \$1 $\frac{2}{3}$  per share, as the same exists at the date of this Certificate of Designation or as such stock may be constituted from time to time.

*“Depository Company”* has the meaning set forth in Section 6(d) hereof.

*“Dividend Payment Date”* has the meaning set forth in Section 4(a) hereof.

*“Dividend Period”* has the meaning set forth in Section 4(a) hereof.

*“DTC”* means The Depository Trust Company, together with its successors and assigns.

*“Junior Stock”* means the Common Stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which the Series W Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

*“Liquidation Preference”* has the meaning set forth in Section 5(a) hereof.

*“Nonpayment Event”* shall have the meaning set forth in Section 7(b).

*“Parity Stock”* means any other class or series of stock of the Corporation now existing or hereafter authorized that ranks on par with the Series W Preferred Stock in the payment of dividends (whether such dividends are cumulative or non-cumulative) or in the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

“*Preference Stock*” means any and all series of preference stock, having no par value, of the Corporation.

“*Preferred Stock*” means any and all series of preferred stock, having no par value, of the Corporation, including the Series W Preferred Stock.

“*Preferred Stock Directors*” shall have the meaning set forth in Section 7(b).

“*Regulatory Capital Treatment Event*” means the Corporation’s reasonable determination that as a result of any (i) amendment to, clarification of, or change (including any announced prospective change) in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective on or after January 19, 2016; (ii) proposed change in those laws or regulations that is announced or becomes effective on or after January 19, 2016; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced on or after January 19, 2016, there is more than an insubstantial risk that the Corporation will not be entitled to treat the full liquidation preference amount of all shares of Series W Preferred Stock then outstanding as Tier 1 capital (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the appropriate federal banking agency, as then in effect and applicable, for as long as any share of Series W Preferred Stock is outstanding.

“*Series W Preferred Stock*” has the meaning set forth in Section 1 hereof.

“*Voting Parity Stock*” means any Parity Stock having similar voting rights as the Series W Preferred Stock.

#### **Section 4. Dividends.**

(a) **Rate.** Dividends on the Series W Preferred Stock will not be mandatory. Holders of Series W Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference amount of \$25,000 per share of the Series W Preferred Stock, payable quarterly in arrears on the 15th day of March, June, September and December of each year (commencing on March 15, 2016); provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, without any interest or other payment in respect of such delay (each such day on which dividends are payable a “*Dividend Payment Date*”). A “*Dividend Period*” means the period from, and including, a Dividend Payment Date to, but excluding, the next succeeding Dividend Payment Date, except for the initial Dividend Period, which will be the period from, and including, January 29, 2016 to, but excluding, March 15, 2016. Dividends on each share of Series W Preferred Stock will accrue at a rate *per annum* equal to 5.70%. The record date for payment of dividends on the Series W Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls or such other date as determined by the Corporation’s Board of Directors.

The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation will be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series W Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series W Preferred Stock on any Dividend Payment Date are not declared prior to such Dividend Payment Date, then such dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series W Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on the Dividend Payment Date for such Dividend Period or at any time in the future or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series W Preferred Stock or any other series of authorized Preferred Stock, Preference Stock, or Common Stock of the Corporation.

**(c) Priority of Dividends.** So long as any shares of Series W Preferred Stock remain outstanding,

(1) no dividend shall be declared and paid or set aside for payment and no distribution shall be declared and made or set aside for payment on any Common Stock, and no shares of Common Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly, nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Common Stock by the Corporation (other than (i) a dividend payable in Common Stock or (ii) the acquisition of shares of Common Stock in exchange for, or through application of proceeds of the sale of, shares of Common Stock);

(2) no dividend shall be declared and paid or set aside for payment and no distribution shall be declared and made or set aside for payment on any Junior Stock other than Common Stock, and no shares of Junior Stock other than Common Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly, nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock other than Common Stock by the Corporation (other than (i) a dividend payable solely in shares of Junior Stock, (ii) any dividend in connection with the implementation of a stockholder rights plan, or the redemption or repurchase of any rights under any such plan, (iii) any dividend in the form of stock, warrants, options or other rights where the dividend stock or stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equally with or junior to such stock, (iv) as a result of a reclassification of Junior Stock other than Common Stock for or into other Junior Stock, (v) the exchange or conversion of one share of Junior Stock other than Common Stock for or into another share of Junior Stock, (vi) through the use of proceeds of a substantially contemporaneous sale of other shares of Junior Stock, (vii) any purchase, redemption or other acquisition of Junior Stock other than Common Stock pursuant to any of the Corporation's or any of its subsidiaries' employee, consultant or director incentive or benefit plans or arrangements (including any employment, severance or consulting arrangements) adopted before or after January 19, 2016, (viii) any purchase of fractional interests in shares of Junior Stock other than Common Stock pursuant to the conversion or exchange provisions of such Junior Stock other than Common Stock or the securities being converted or exchanged, (ix) the

purchase of Junior Stock other than Common Stock by Wells Fargo Securities, LLC, or any other affiliate of the Corporation, in connection with the distribution thereof or (x) the purchase of Junior Stock other than Common Stock by Wells Fargo Securities, LLC, or any other affiliate of the Corporation, in connection with market-making or other secondary market activities in the ordinary course of business); and

(3) no shares of Parity Stock will be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or a *pro rata* portion, of the Series W Preferred Stock and such Parity Stock during a Dividend Period (other than (i) as a result of a reclassification of Parity Stock for or into other Parity Stock or Junior Stock, (ii) the exchange or conversion of one share of Parity Stock for or into another share of Parity Stock or Junior Stock, (iii) through the use of proceeds of a substantially contemporaneous sale of other shares of Parity Stock or Junior Stock, (iv) any purchase, redemption or other acquisition of Parity Stock pursuant to any of the Corporation's or any of its subsidiaries' employee, consultant or director incentive or benefit plans or arrangements (including any employment, severance or consulting arrangements) adopted before or after January 19, 2016, (v) any purchase of fractional interests in shares of Parity Stock pursuant to the conversion or exchange provisions of such Parity Stock or the securities being converted or exchanged, (vi) the purchase of Parity Stock by Wells Fargo Securities, LLC, or any other affiliate of the Corporation, in connection with the distribution thereof or (vii) the purchase of Parity Stock by Wells Fargo Securities, LLC, or any other affiliate of the Corporation, in connection with market-making or other secondary market activities in the ordinary course of business),

unless, in each case, the full dividends for the then-current Dividend Period on all outstanding shares of the Series W Preferred Stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside.

Subject to the succeeding sentence, for so long as any shares of Series W Preferred Stock remain outstanding, no dividends shall be declared, paid, or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series W Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series W Preferred Stock and on any Parity Stock but cannot make full payment of those declared dividends, the Corporation will allocate the dividend payments on a proportional basis among the holders of shares of Series W Preferred Stock and the holders of any Parity Stock then outstanding where the terms of such Parity Stock provide similar dividend rights.

Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on the Common Stock and any other stock that is Parity Stock or Junior Stock, from time to time out of any assets legally available for such payment, and the shares of Series W Preferred Stock shall not be entitled to participate in any such dividends.

## **Section 5. Liquidation Rights.**

(a) **Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series W Preferred Stock shall be entitled to receive in full out of assets available for distribution to its stockholders before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of the Common Stock or any other Junior Stock, and subject to the rights of the holders of Parity Stock or any stock of the Corporation ranking senior to the Series W Preferred Stock as to such distribution, a liquidating distribution in the amount of \$25,000 per share, plus an amount equal to any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation (the “*Liquidation Preference*”). The holders of Series W Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

(b) **Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the Liquidation Preference to all holders of Series W Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series W Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preference of Series W Preferred Stock and all such Parity Stock.

(c) **Residual Distributions.** If the Liquidation Preference has been paid in full to all holders of Series W Preferred Stock and all other amounts payable upon liquidation, dissolution or winding up of the Corporation have been paid in full to all holders of any Parity Stock, the holders of Common Stock and any other Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

(d) **Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

## **Section 6. Redemption.**

(a) **Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem, subject to the prior approval of the Federal Reserve Board, out of funds legally available therefor, in whole or in part, the shares of Series W Preferred Stock at the time outstanding, at any time on any Dividend Payment Date on or after March 15, 2021, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series W Preferred Stock

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

Notwithstanding the foregoing, within 90 days of the Corporation's good faith determination that a Regulatory Capital Treatment Event has occurred, the Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may, subject to the approval of the appropriate federal banking agency, redeem out of funds legally available therefor, in whole, but not in part, the shares of Series W Preferred Stock at the time outstanding, prior to March 15, 2021, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series W Preferred Stock shall be \$25,000 per share plus an amount equal to any dividends that have been declared but not paid, without accumulation of any undeclared dividends.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series W Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 40 days and not more than 70 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series W Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series W Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series W Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, if applicable, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for those shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series W Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series W Preferred Stock at the time outstanding, the shares of Series W Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series W Preferred Stock in proportion to the number of Series W Preferred Stock held by such holders or in such other manner consistent with the rules and policies of the New York Stock Exchange as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series W Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been irrevocably set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and

continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from the Depository Company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of two years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

## **Section 7. Voting Rights.**

**(a) General.** The holders of Series W Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraph 7(b) below or as required by applicable law.

**(b) Right To Elect Two Directors Upon Nonpayment Events.** Whenever dividends payable on any shares of Series W Preferred Stock or any class or series of Voting Parity Stock have not been declared and paid in an aggregate amount equal to, as to any class or series, at least six quarterly Dividend Periods or their equivalent, whether or not for consecutive Dividend Periods (a “*Nonpayment Event*”), the holders of the outstanding Series W Preferred Stock, voting together as a class with holders of Voting Parity Stock whose voting rights are exercisable, will be entitled to vote for the election of two additional directors of the Corporation’s Board of Directors at the Corporation’s next annual meeting of stockholders and at each subsequent annual meeting of stockholders (the “*Preferred Stock Directors*”) by a plurality of the votes cast; *provided* that the Board of Directors shall at no time include more than two Preferred Stock Directors (including, for purposes of this limitation, all directors that the holders of any series of Voting Parity Stock are entitled to elect pursuant to like voting rights). Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series W Preferred Stock (together with the holders of shares of any one or more other series of Voting Parity Stock). At elections for such directors, each holder of the Series W Preferred Stock shall be entitled to 25 votes for each share held (the holders of shares of any other series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock as may be granted to them). The right of the holders of the Series W Preferred Stock (voting together as a class with the holders of shares of any one or more other series of Voting Parity Stock) to elect Preferred Stock Directors shall continue until such time as the Corporation has paid in full dividends for the equivalent of at least four quarterly Dividend Periods or their equivalent, at which time such right with respect to

the Series W Preferred Stock shall terminate, except as provided by law, and subject to reverting in the event of each and every subsequent default of the character described in this Section 7(b).

Upon any termination of the right of the holders of all shares of Series W Preferred Stock and Voting Parity Stock to vote for Preferred Stock Directors, the term of office of all Preferred Stock Directors then in office elected by only those holders voting as a class shall terminate immediately. Any Preferred Stock Director may be removed at any time without cause by the holders of a majority of the outstanding shares of Series W Preferred Stock and Voting Parity Stock, when they have the voting rights described above (voting together as a class). In case any vacancy shall occur among the Preferred Stock Directors, a successor may be elected by a plurality of the votes cast by the holders of Series W Preferred Stock and Voting Parity Stock having the voting rights described above, voting together as a class, unless the vacancy has already been filled. The Preferred Stock Directors shall each be entitled to one vote per director on any matter that shall come before the Board of Directors for a vote. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting powers vested in such holders as provided in this Section 7(b) shall have expired, the number of directors shall be such number as may be provided for in the By-Laws irrespective of any increase made pursuant to this Section 7(b).

**(c) Other Voting Rights.** In addition to any other vote required by law or the Restated Certificate of Incorporation, so long as any shares of the Series W Preferred Stock remain outstanding, the vote or consent of the holders of the outstanding shares of Series W Preferred Stock and outstanding shares of all other series of Voting Parity Stock entitled to vote on the matter, by a vote of at least 66 2/3% in voting power of all such outstanding Series W Preferred Stock and such Voting Parity Stock, voting together as a class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following actions, whether or not such approval is required by Delaware law: (i) the issuance of any class or series of Preferred Stock or Preference Stock ranking senior to the Series W Preferred Stock in the payment of dividends or the distribution of assets in the event of the Corporation's voluntary or involuntary liquidation, dissolution or winding up; (ii) any amendment, alteration or repeal of any provision of the Restated Certificate of Incorporation, including the Certificate of Designation, or the Bylaws that would adversely affect the rights, preferences, privileges or voting powers of the Series W Preferred Stock; (iii) any amendment or alteration of the Restated Certificate of Incorporation, including the Certificate of Designation, or Bylaws to authorize, create, or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of the Corporation's capital stock ranking senior to the Series W Preferred Stock with respect to either the payment of dividends or in the distribution of assets in the event of the Corporation's voluntary or involuntary liquidation, dissolution or winding up; or (iv) any consummation of a reclassification involving the Series W Preferred Stock or a merger or consolidation with another corporation or other entity, except holders of the Series W Preferred Stock will have no right to vote under this Section 7(c)(iv) if in each case (a) the shares of Series W Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (b) such shares of Series W Preferred Stock remaining outstanding or such preference

securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series W Preferred Stock, taken as a whole; *provided, however,* that any authorization, creation or increase in the authorized amount of or issuance of the Series W Preferred Stock or any Parity Stock or Junior Stock or any securities convertible into any class or series of Parity Stock (whether dividends payable in respect of such Parity Stock are cumulative or non-cumulative) or Junior Stock will be deemed not to adversely affect the rights, preferences, privileges or voting powers of the Series W Preferred Stock, and holders of the Series W Preferred Stock shall have no right to vote thereon.

If any amendment, alteration, repeal, reclassification, merger or consolidation specified in this Section 7(c) would adversely affect one or more but not all series of voting Preferred Stock (including the Series W Preferred Stock), then only those series affected by and entitled to vote on the matter shall vote on the matter together as a class (in lieu of all other series of Preferred Stock).

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

**(d) Changes after Provision for Redemption.** No vote or consent of the holders of Series W Preferred Stock shall be required pursuant to Section 7(b) or (c) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding Series W Preferred Stock shall have been redeemed, or notice of redemption has been given and sufficient funds shall have been irrevocably deposited in trust to effect such redemption.

**(e) Procedures for Voting and Consents.** The rules and procedures for calling and conducting any meeting of the holders of Series W Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Restated Certificate of Incorporation, the Bylaws, applicable law and any national securities exchange or other trading facility in which the Series W Preferred Stock is listed or traded at the time.

**Section 8. Preemption and Conversion.** The holders of Series W Preferred Stock shall not have any rights of preemption or rights to convert such Series W Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Reacquired Shares.** Shares of Series W Preferred Stock which have been issued and redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of Preferred Stock without designation as to series.

**Section 10. No Sinking Fund.** Shares of Series W Preferred Stock are not subject to the operation of a sinking fund.

**Section 11. Additional Classes or Series of Stock.** Notwithstanding anything set forth in the Restated Certificate of Incorporation or this Certificate of Designation to the contrary, the Board of Directors of the Corporation, or any authorized committee of the Board of Directors of the Corporation, (i) without the vote of the holders of the Series W Preferred Stock, may authorize and issue additional shares of Junior Stock and Parity Stock and (ii) with the requisite vote of the holders of the Series W Preferred Stock and Parity Stock entitled to vote thereon, may authorize and issue any additional class or series of Preferred Stock or Preference Stock senior to the Series W Preferred Stock as to the payment of dividends and/or the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

*[Signature Page Follows]*

US.103920609.06

1) **IN WITNESS WHEREOF, WELLS FARGO & COMPANY** has caused this Certificate of Designation to be signed by Barbara S. Brett, its Senior Vice President and Assistant Treasurer, and Jeannine E. Zahn, its Assistant Secretary, this 28th day of January, 2016.

**WELLS FARGO & COMPANY**

By: /s/ Barbara S. Brett  
Barbara S. Brett, Senior Vice President and  
Assistant Treasurer

/s/ Jeannine E. Zahn  
Jeannine E. Zahn, Assistant Secretary

Richards, Layton & Finger, P.A. Letterhead

January 29, 2016

Wells Fargo & Company  
420 Montgomery Street  
San Francisco, CA 94163

Ladies and Gentlemen:

We are acting as special Delaware counsel to Wells Fargo & Company, a Delaware corporation (the “Company”), in connection with the issuance of 40,000 shares of the Non-Cumulative Perpetual Class A Preferred Stock, Series W, no par value, of the Company (the “Series W Preferred Stock”) pursuant to the Deposit Agreement, dated as of January 29, 2016, among the Company, Wells Fargo Bank, National Association (the “Depositary”) and the Holders from Time to Time of the Depositary Receipts Described Herein (the “Deposit Agreement”). In this connection you have requested our opinion as to certain matters under the General Corporation Law of the State of Delaware (the “General Corporation Law”).

For the purpose of rendering our opinion as expressed herein, we have been furnished and have reviewed the following documents:

(i) the Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware (the “Secretary of State”) on September 28, 2006, as amended by the Certificates of Eliminations of the Company, as filed with the Secretary of State on March 15, 2007, March 12, 2008, January 12, 2009, April 13, 2009, March 24, 2010, March 17, 2011, November 29, 2011, February 23, 2012, January 9, 2013, January 8, 2014, February 2, 2015 and January 28, 2016, respectively; the Certificates of Designation of the Company, as filed with the Secretary of State on March 15, 2007, March 12, 2008, May 19, 2008, September 10, 2008, October 28, 2008, December 30, 2008, March 23, 2010, March 17, 2011, January 10, 2012, August 15, 2012, November 19, 2012, January 9, 2013, March 21, 2013, July 19, 2013, December 17, 2013, January 8, 2014, April 21, 2014, July 18, 2014, January 22, 2015, March 25, 2015, September 11, 2015, January 5, 2016 and January 28, 2016, respectively; the Certificate of Amendment of Certificate of Incorporation of the Company, as filed with the Secretary of State on April 29, 2010; the Certificates of Merger, as filed with the Secretary of State on December 30, 2008, December 15, 2010, February 18, 2011, September 1, 2011, December 14, 2011, January 31, 2012, March 28, 2012, August 1, 2012 and October 11, 2013, respectively; and the Certificates of Ownership and Merger as filed with the Secretary of State on September 17, 2009, August 1, 2011, September 1, 2011, October 3, 2011, October 26, 2011, November 2, 2011, December 1, 2011, February 24, 2012, May 1, 2012, May 2, 2012, July 29, 2013, May 19, 2015 and November 19, 2015, respectively (collectively, the “Certificate of Incorporation”);

- (ii) the current Bylaws of the Company in effect since December 17, 2015 (“Bylaws”);
- (iii) the Bylaws of the Company in effect from January 25, 2011 through December 17, 2015;
- (iv) the By-laws of the Company in effect from February 23, 1999 through January 24, 2006;
- (v) a certificate of an officer of the Company, dated the date hereof, as to certain matters;
- (vi) the resolutions of the Board of Directors of the Company (the “Board”) adopted at the meetings of the Board held on January 24, 2006, April 29, 2014 and November 18, 2014 (collectively, the “Board Resolutions”);
- (vii) the resolutions of the Securities Committee of the Board, adopted at a meeting of the Securities Committee held on January 19, 2016 (the “First Committee Resolutions”);
- (viii) the unanimous written consent of the Securities Committee of the Board, dated January 27, 2016 (the “Second Committee Resolutions” and, with the First Committee Resolutions, the “Committee Resolutions”);
- (ix) the Deposit Agreement;
- (x) the Instruction Letter from the Company to Wells Fargo Bank, National Association, dated January 29, 2016; and
- (xi) a certificate of the Secretary of State, dated the date hereof, as to the good standing of the Company.

With respect to the foregoing documents, we have assumed: (a) the genuineness of all signatures, and the incumbency, authority, legal right and power and legal capacity under all applicable laws and regulations, of each of the officers and other persons and entities signing or whose signatures appear upon each of said documents as or on behalf of the parties thereto; (b) the authenticity of all documents submitted to us as originals; (c) the conformity to authentic originals of all documents submitted to us as certified, conformed, photostatic, electronic or other copies; and (d) that the foregoing documents, in the forms submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein. We have not reviewed any document other than the documents listed above for purposes of rendering our opinion as expressed herein, and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed herein. In addition, we have conducted no independent factual investigation of our own, but rather have

relied solely upon the foregoing documents furnished for our review as listed above, the statements of facts and factual information set forth in said documents, and the additional matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

In addition to the foregoing, for purposes of rendering our opinion as expressed herein, we have assumed:

(1) that there is no “interested stockholder” of the Company within the meaning of Section 203 of the General Corporation Law;

(2) that the Company has, and at all relevant times will have, sufficient authorized but unissued shares of Series W Preferred Stock available for issuance pursuant to and in accordance with the Deposit Agreement and the Committee Resolutions which have not been subscribed for, reserved for other issuance or otherwise committed for issuance;

(3) that a duly authorized officer of the Company has or will deliver to the record holder of the Series W Preferred Stock the notice required by Section 151(f) of the General Corporation Law;

(4) that the issuance of the shares of Series W Preferred Stock pursuant to and in accordance with the Deposit Agreement and the Committee Resolutions has been, or will be, duly recorded in the stock ledger of the Company at the time of such issuance;

(5) that, prior to or contemporaneous with the issuance of the shares of Series W Preferred Stock pursuant to the Deposit Agreement and the Committee Resolutions, the Company will receive the consideration therefor specified in the Deposit Agreement and the Committee Resolutions;

(6) that the shares of Series W Preferred Stock to be issued pursuant to the Deposit Agreement and the Committee Resolutions will be issued in accordance with the Deposit Agreement and the Committee Resolutions; and

(7) that the Deposit Agreement constitutes a legal, valid and binding obligation of the Depositary, enforceable against the Depositary in accordance with its terms.

As to matters relating to the enforceability of the Deposit Agreement against the Company, we have relied, with the Company’s consent, upon the opinion of even date herewith addressed to the Company by Faegre Baker Daniels LLP (the “Faegre Opinion”). All assumptions, qualifications and exceptions in the Faegre Opinion are incorporated herein by reference.

Based upon and subject to the foregoing and upon our review of such matters of law as we have deemed necessary and appropriate to render our opinion as expressed herein, and

subject to the assumptions, exceptions, limitations and qualifications set forth herein, it is our opinion that the shares of Series W Preferred Stock to be issued pursuant to the Deposit Agreement and the Committee Resolutions have been duly authorized for issuance by the Company and, when issued, delivered and paid for in accordance with the Deposit Agreement and the Committee Resolutions, will be validly issued, fully paid and non-assessable under the General Corporation Law.

We are admitted to practice law in the State of Delaware and do not hold ourselves out as being experts on the law of any other jurisdiction. The foregoing opinion is limited to the General Corporation Law currently in effect, and we have not considered and express no opinion on the effect of any other laws of the State of Delaware or the laws of any other state or jurisdiction, including state or federal laws relating to securities or other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

Subject to the immediately following two sentences, the foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein and, without our prior written consent, may not be relied upon by you for any other purpose or be furnished or quoted to, or be relied upon by, any other person or entity for any purpose. This opinion may be relied upon by Faegre Baker Daniels LLP for purposes of rendering its opinion that is an exhibit to the Current Report on Form 8-K referred to in the next sentence. We consent to the filing of this opinion with the Securities and Exchange Commission (the "SEC") as an exhibit to a Current Report on Form 8-K and its incorporation by reference into the Registration Statement on Form S-3 (Registration No. 333-195697) filed by the Company with the SEC, as declared effective on May 5, 2014 and as supplemented by a prospectus supplement dated January 19, 2016 and filed by the Company with the SEC on January 21, 2016. In giving the foregoing consent, we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the SEC thereunder.

Very truly yours,

/s/ Richards, Layton & Finger, P.A.

MJG/BVF/JJV

**Faegre Baker Daniels LLP**  
2200 Wells Fargo Center 90 South Seventh Street  
Minneapolis Minnesota 55402-3901  
**Phone +1 612 766 7000**  
**Fax +1 612 766 1600**

January 29, 2016

Wells Fargo & Company  
420 Montgomery Street  
San Francisco, California 94104

Ladies and Gentlemen:

We have acted as counsel for Wells Fargo & Company (the “Company”) in connection with (i) the preparation of a Registration Statement on Form S-3, File No. 333-195697 (the “Registration Statement”) of the Company filed with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”), relating to the proposed offer and sale from time to time of the securities referred to therein and (ii) the Prospectus Supplement dated January 19, 2015 to the Prospectus dated May 5, 2014 (together, the “Prospectus”) relating to the offer and sale by the Company under the Registration Statement of 40,000,000 depositary shares (the “Depositary Shares”), each representing a 1/1,000th interest in a share of Non-Cumulative Perpetual Class A Preferred Stock, Series W, no par value (the “Series W Preferred Stock”) of the Company.

The Depositary Shares are to be issued under the Deposit Agreement, dated January 29, 2016, entered into by the Company, Wells Fargo Bank, National Association, as depositary (the “Depositary”), and the holders from time to time of depositary receipts (the “Depositary Receipts”) evidencing Depositary Shares (the “Deposit Agreement”), and sold pursuant to the Underwriting Agreement, dated January 19, 2015, between the Company and the underwriters named therein (the “Underwriting Agreement”).

We have examined or are otherwise familiar with such documents, records, and instruments as we have deemed necessary or appropriate for the purposes of this opinion.

Based upon the foregoing, and subject to the qualifications, assumptions and limitations stated herein, we are of the opinion that (a) the Deposit Agreement has been duly authorized and executed by the Company and is a valid and binding obligation of Company, and (b) upon the due execution by the Depositary of the Depositary Receipts evidencing the Depositary Shares against the deposit of the shares of Series W Preferred Stock in accordance with the provisions of the Deposit Agreement and payment for the Depositary Shares in accordance with the Underwriting Agreement, the Depositary Receipts evidencing the Depositary Shares will be

valid and binding obligations of the Company and will entitle the holders thereof to the rights specified in the Deposit Agreement.

The foregoing opinions are subject to applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance, receivership or other laws affecting creditors' rights generally from time to time in effect and subject to general equity principles, including without limitation, concepts of materiality, reasonableness, good faith, fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies (regardless of whether enforceability is considered in a proceeding in equity or at law) and except further as enforcement thereof may be limited by any governmental authority that limits, delays or prohibits the making of payments outside of the United States. As contemplated by the foregoing qualifications, in rendering the foregoing opinions, we are expressing no opinion as to Federal or state laws relating to fraudulent transfers.

We have relied as to certain relevant facts upon certificates of, and/or information provided by officers and employees of the Company as to the accuracy of such factual matters without independent verification thereof or other investigation. We have also relied, without investigation, upon the following assumptions: (i) the Deposit Agreement has been duly authorized, executed and delivered by the Depositary, (ii) natural persons acting on behalf of the Company have sufficient legal capacity to enter into and perform, on behalf of the Company, the transaction in question; (iii) each party to agreements or instruments relevant hereto other than the Company has satisfied those legal requirements that are applicable to it to the extent necessary to make such agreements or instruments enforceable against it; (iv) each party to agreements or instruments relevant hereto other than the Company has complied with all legal requirements pertaining to its status as such status relates to its rights to enforce such agreements or instruments against the Company; and (v) each document submitted to us for review is accurate and complete, each such document that is an original is authentic, each such document that is a copy conforms to an authentic original, and all signatures on each such document are genuine.

The opinions expressed herein are limited to the specific issues addressed and to documents and laws existing on the date hereof. By rendering our opinion, we do not undertake to advise you with respect to any other matter or of any change in such documents and laws or in the interpretation thereof which may occur after the date hereof.

As to matters relating to the Series W Preferred Stock being validly issued, fully paid and non-assessable, we have relied, with the Company's consent, upon the opinion of even date herewith addressed to the Company by Richards, Layton & Finger, P.A. All assumptions, qualifications and exceptions in such opinion are incorporated herein by reference.

Our opinions set forth herein are limited to the laws of the State of Minnesota and the General Corporation Law of the State of Delaware, and we are expressing no opinion as to the effect of any other laws.

We hereby consent to the filing of this opinion as an exhibit to a Current Report on Form 8-K of the Company filed with the Commission and thereby incorporated by reference into the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

FAEGRE BAKER DANIELS LLP

By: /s/ Sonia A. Shewchuk  
Sonia A. Shewchuk