

INDEPENDENT BANK CORP

Form 424B3

January 12, 2017

Table of Contents

**Filed Pursuant to Rule 424(b)(3)  
Registration No. 333-214998**

Dear Island Bancorp, Inc. Shareholders:

You are cordially invited to attend a special meeting of shareholders of Island Bancorp, Inc. ( Island ) to be held at 1:00 p.m., local time, on February 28, 2017 at The Old Whaling Church, The Frederick Baylies Room, 89 Main Street, Edgartown, Massachusetts 02539. At the special meeting, you will be asked to consider and vote upon a proposal to approve an agreement and plan of merger that provides for Island to merge with and into Independent Bank Corp. ( Independent ), as well as to vote upon a proposal to authorize the board of directors of Island to adjourn the special meeting, if necessary, to permit further solicitation of proxies on the proposal to approve the agreement and plan of merger or to vote on other matters properly before the special meeting.

If the proposed merger is completed, Island s shareholders will receive in exchange for each share of Island common stock, either (i) \$500.00 in cash or (ii) 9.525 shares of Independent common stock in accordance with the terms and conditions of the merger agreement. You will have the opportunity to elect to receive cash or Independent common stock, or a combination of cash and Independent common stock, for your shares of Island common stock, subject to allocation procedures designed to ensure that 80% of the outstanding shares of Island common stock will be converted into shares of Independent common stock and 20% will be converted into cash. You will receive a separate mailing that will contain instructions for making your election. Island s common stock is not listed on any stock exchange or the over-the-counter marketplace. Independent s common stock is listed on the NASDAQ Global Select Market under the trading symbol INDB and the closing sales price of Independent common stock on January 3, 2017, the last practicable trading day prior to the mailing of this document, was \$70.35. The equivalent value of the stock consideration to be paid in the merger for each share of Island common stock, calculated by multiplying the January 3, 2017 closing price of Independent common stock by the 9.525 exchange ratio, would be \$670.08. The market price for Independent common stock will fluctuate both prior and subsequent to the merger. We urge you to obtain current market quotations for Independent common stock.

If the market price of Independent common stock falls substantially, both in absolute terms (that is, a volume weighted average trading price below \$42.563) and by comparison to the list of banks that comprise the Nasdaq Bank Index, Island may terminate the merger agreement. However, if Island seeks to exercise that termination right, Independent may negate the termination by increasing the exchange ratio from 9.525 shares to a formula amount determined in accordance with the merger agreement, as described in this proxy statement and prospectus.

Independent and Island cannot complete the proposed merger unless Island s shareholders approve the merger agreement and the merger at the special meeting. This letter is accompanied by Island s proxy statement, which Island is providing to solicit your proxy to vote for approval of the merger agreement and the merger at the meeting. The accompanying document is also being delivered to Island s shareholders as Independent s prospectus for its offering of Independent common stock to Island s shareholders in the merger.

Island's board of directors has unanimously recommended that you vote FOR approval of the merger agreement and the transactions contemplated by the merger agreement, including the merger, at the special meeting and FOR approval of the authorization of the board of directors of Island to adjourn the special meeting, if necessary, to permit further solicitation of proxies on the proposal to approve the agreement and plan of merger and to vote on other matters properly before the special meeting.

**This proxy statement/prospectus provides you with detailed information about the proposed merger. It also contains or references information about Independent and Island and related matters. You are encouraged to read this document carefully. In particular, you should read the Risk Factors section beginning on page 12 for a discussion of the risks you should consider in evaluating the proposed merger and how it will affect you.**

**Your vote is very important.** Approval of the Island merger agreement proposal will require the affirmative vote of the holders of at least two-thirds of the outstanding shares of Island common stock entitled to vote. Whether you plan to attend the special meeting, please take the time to vote by completing and mailing the enclosed proxy card. You may also vote by telephone or Internet as indicated on the proxy card. If you do not vote in person or by proxy, it will have the same effect as a vote against the proposal to approve the merger.

Sincerely,

Fielding H. Moore  
President and Chief Executive Officer

Neither the Securities and Exchange Commission nor any state securities regulator has approved or disapproved the proposed merger, the issuance of Independent common stock to be issued in connection with the merger or the other transactions described in this proxy statement/prospectus, or determined if this proxy statement/prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The shares of Independent common stock are not savings accounts, deposits or other obligations of any bank or savings association and are not insured by the Federal Deposit Insurance Corporation or by any other federal or state governmental agency.

This proxy statement/prospectus is dated January 9, 2017 and is first being mailed or otherwise delivered to shareholders of Island on or about January 12, 2017.

**Table of Contents**

**ISLAND BANCORP, INC.**

**2 South Water Street**

**Edgartown, Massachusetts 02539**

**(508) 627-1100**

**Notice of Special Meeting of Shareholders**

**to be held February 28, 2017**

To the shareholders of Island Bancorp, Inc.:

A special meeting of shareholders of Island Bancorp, Inc. ( Island ) will be held at 1:00 p.m., local time, on February 28, 2017 at The Old Whaling Church, The Frederick Baylies Room, 89 Main Street, Edgartown, Massachusetts 02539. Any adjournments or postponements of the special meeting will be held at the same location.

The purpose of the special meeting is to:

1. Approve the Agreement and Plan of Merger, dated as of October 20, 2016 (the merger agreement ), by and among Independent Bank Corp. ( Independent ), Rockland Trust Company, Island, and The Edgartown National Bank, and to approve the transactions contemplated by the merger agreement, including the merger of Island with and into Independent (the merger ); and
2. Authorize the board of directors of Island to adjourn or postpone the special meeting, if necessary, to permit further solicitation of proxies in favor of the Island merger agreement proposal or to vote on other matters properly before the special meeting.

You may vote at the special meeting if you were a shareholder of record at the close of business on January 3, 2017.

The Island board of directors unanimously recommends that you vote FOR approval of the merger agreement and the transactions contemplated by the merger agreement, including the merger, and FOR approval of the authorization of the board of directors of Island to adjourn or postpone the special meeting, if necessary, to permit further solicitation of proxies in favor of the Island merger agreement proposal or to vote on other matters properly before the special meeting.

Under the provisions of the Massachusetts Business Corporation Act, as amended, the holders of Island common stock are entitled to dissenters' rights of appraisal in connection with the merger.

Your vote is very important. Your vote is important regardless of how many shares you own. Whether you plan to attend the special meeting, please promptly vote your shares. Voting procedures are described in the accompanying proxy statement/prospectus and on the proxy card.

Edgar Filing: INDEPENDENT BANK CORP - Form 424B3

By Order of the Board of Directors,

Fielding H. Moore

President and Chief Executive Officer

**IF YOU HAVE ANY QUESTIONS ABOUT VOTING YOUR SHARES, PLEASE CALL OUR PROXY SOLICITOR, MORROW SODALI, AT (800) 662-5200.**

**Table of Contents**

**REFERENCE TO ADDITIONAL INFORMATION**

This proxy statement/prospectus incorporates important business and financial information about Independent from other documents that are not included in, or delivered with, this proxy statement/prospectus. This information is available to you without charge upon your written or oral request. We have listed the documents containing this information on page 87 of this proxy statement/prospectus. You can obtain copies of these documents incorporated by reference in this document through the Securities and Exchange Commission's website at <http://www.sec.gov> or by requesting them in writing or by telephone from Independent at the following address:

For business and financial information about Independent, please contact:

Independent Bank Corp.

288 Union Street

Rockland, Massachusetts 02370

Attention: Edward H. Seksay, General Counsel

(781) 982-6158

If you would like to request documents, you must do so no later than February 17, 2017 in order to receive them before Island's special meeting. You will not be charged for any of these documents that you request.

For additional information regarding where you can find information about Independent and Island, please see the section entitled "Where You Can Find More Information" beginning on page 86 of this proxy statement/prospectus. The information contained in this proxy statement/prospectus with respect to Independent and its subsidiaries was provided by Independent and the information contained in this proxy statement/prospectus with respect to Island and its subsidiaries was provided by Island.

For information on submitting your proxy, please refer to the instructions on the enclosed proxy card.

**Table of Contents**

TABLE OF CONTENTS

	Page
<u>QUESTIONS AND ANSWERS ABOUT THE MERGER AND THE MEETING OF ISLAND S SHAREHOLDERS</u>	1
<u>SUMMARY</u>	5
<u>RISK FACTORS</u>	12
<u>Risks Related to the Merger</u>	12
<u>Risks Related to Independent s Business</u>	15
<u>FORWARD-LOOKING STATEMENTS</u>	23
<u>SUMMARY HISTORICAL AND UNAUDITED PRO FORMA FINANCIAL INFORMATION</u>	24
<u>Per Share Market Price Information of Independent Common Stock</u>	24
<u>Comparative Stock Prices and Dividends</u>	24
<u>Unaudited Comparative Per Share Data</u>	25
<u>Independent Selected Historical Financial and Operating Data</u>	28
<u>Island Selected Historical Consolidated Financial Data</u>	30
<u>THE SPECIAL MEETING OF ISLAND SHAREHOLDERS</u>	31
<u>Date, Time and Place of the Special Meeting</u>	31
<u>Purpose of the Special Meeting</u>	31
<u>Recommendation of Island s Board of Directors</u>	31
<u>Record Date; Shares Entitled to Vote</u>	31
<u>Quorum; Vote Required</u>	31
<u>Island Voting Agreements</u>	32
<u>Voting of Proxies</u>	32
<u>How to Revoke Your Proxy</u>	32
<u>Voting in Person</u>	33
<u>Proxy Solicitation</u>	33
<u>Dissenters Rights of Appraisal</u>	33
<u>Stock Certificates</u>	34
<u>PROPOSAL NO. 1 APPROVAL OF THE AGREEMENT AND PLAN OF MERGER</u>	35
<u>PROPOSAL NO. 2 APPROVAL OF ISLAND TO ADJOURN OR POSTPONE THE SPECIAL MEETING, IF NECESSARY, TO PERMIT FURTHER SOLICITATION OF PROXIES</u>	36
<u>THE MERGER</u>	37
<u>General</u>	37
<u>Background of the Merger</u>	37
<u>Recommendation of Island s Board of Directors</u>	41
<u>Island s Reasons for the Merger</u>	41

<u>Independent s Reasons for the Merger</u>	44
<u>Opinion of Island s Financial Adviser</u>	45
<u>Regulatory Approvals Required to Complete the Merger</u>	51

**Table of Contents**

	Page
<u>Interests of Island's Executive Officers and Directors in the Merger</u>	52
<u>THE MERGER AGREEMENT</u>	56
<u>The Merger</u>	56
<u>Effective Time and Completion of the Merger</u>	56
<u>Consideration to Be Received in the Merger</u>	56
<u>Exchange of Island Stock Certificates for Merger Consideration</u>	57
<u>Representations and Warranties</u>	57
<u>Conduct of Business Pending the Merger</u>	59
<u>Shareholder Approval</u>	62
<u>No Solicitation of Alternative Transactions</u>	63
<u>Employee Benefits Matters</u>	64
<u>Conditions to Complete the Merger</u>	65
<u>Termination of the Merger Agreement</u>	66
<u>Termination Fee</u>	67
<u>Waiver or Amendment of the Merger Agreement</u>	69
<u>Fees and Expenses</u>	69
<u>Restrictions on Resales by Affiliates</u>	69
<u>VOTING AGREEMENTS</u>	70
<u>ACCOUNTING TREATMENT</u>	71
<u>MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE MERGER</u>	72
<u>Tax Consequences of the Merger Generally</u>	73
<u>Reporting Requirements</u>	75
<u>Withholding Requirements</u>	75
<u>THE COMPANIES</u>	76
<u>INDEPENDENT</u>	76
<u>ISLAND</u>	76
<u>DESCRIPTION OF INDEPENDENT'S CAPITAL STOCK</u>	77
<u>Common Stock</u>	77
<u>Preferred Stock</u>	77
<u>Other Provisions</u>	78
<u>Transfer Agent</u>	78
<u>COMPARISON OF RIGHTS OF SHAREHOLDERS OF ISLAND AND INDEPENDENT</u>	79
<u>Capitalization</u>	79
<u>Preemptive Rights</u>	79
<u>Dividends and Other Stock Rights</u>	80
<u>Right to Call Special Meetings of Shareholders</u>	80





**Table of Contents**

	Page
<u>Board of Directors Number and Term of Office</u>	81
<u>Board of Director Nominations</u>	82
<u>Removal and Resignation of Directors</u>	83
<u>Amendment of Bylaws</u>	83
<u>Amendment of Articles of Organization</u>	84
<u>Limitation of Liability and Indemnification</u>	84
<u>LEGAL MATTERS</u>	86
<u>EXPERTS</u>	86
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	86
<u>INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE</u>	87
<u>ANNEX A AGREEMENT AND PLAN OF MERGER</u>	A-1
<u>ANNEX B OPINION OF FIG PARTNERS, LLC</u>	B-1
<u>ANNEX C MASSACHUSETTS LAW ON DISSENTERS RIGHTS</u>	C-1

**Table of Contents**

**QUESTIONS AND ANSWERS ABOUT THE MERGER AND THE MEETING OF ISLAND'S SHAREHOLDERS**

**Q. Why am I receiving this document?**

A. Independent and Island have agreed to the acquisition of Island by Independent under the terms of a merger agreement that is described in this document, a copy of which is attached as Annex A. In order to complete the merger, Island's shareholders must approve the merger agreement and the merger. Island will hold a special meeting of its shareholders to obtain this approval. This document contains important information about the merger, the shares of Independent common stock to be issued in connection with the merger, the merger agreement and other related matters, and you should read it carefully. The enclosed voting materials for the Island special meeting allow you to vote your shares of common stock without attending the special meeting.

**Q. What will happen to Island and The Edgartown National Bank as a result of the merger?**

A. If the merger is completed, Island will merge with and into Independent and Independent will be the surviving entity. Immediately following the merger, The Edgartown National Bank, the wholly owned subsidiary of Island, will merge with and into Rockland Trust Company, the wholly owned subsidiary of Independent, and Rockland Trust Company will be the surviving entity.

**Q. What will Island's shareholders receive in the merger?**

A. Island's shareholders will be entitled to receive in the merger either (i) \$500.00 in cash or (ii) 9.525 shares of Independent common stock for each share of Island common stock they own. Island's shareholders will be able to elect to receive cash, Independent common stock, or a combination of cash and Independent common stock for their shares of Island common stock. Regardless of an Island shareholder's choice, however, elections will be limited by the requirement that 80% of Island common stock be converted into Independent common stock and 20% of Island common stock be exchanged for cash. Therefore, the allocation of cash and Independent common stock that an Island shareholder will receive will depend on the elections of other Island shareholders. The allocation of the consideration payable to Island's shareholders will not be known until the exchange agent tallies the results of the cash/stock elections made by Island's shareholders. If an Island shareholder does not make an election, the consideration that shareholder will receive will depend on the consideration elected by other Island shareholders.

Independent's common stock is listed on the NASDAQ Global Select Market under the trading symbol

INDB. Independent will not issue fractional shares of its common stock in the merger, but will instead pay cash for any fractional shares at a price determined by the volume weighted average closing price of Independent common stock on the NASDAQ Global Select Market for the five trading days ending on the fifth trading day immediately preceding the closing date of the merger, which is referred to herein as the Closing VWAP.

**Q. Are Island's shareholders entitled to dissenters' rights?**

- A. Yes. Massachusetts law affords for dissenters' rights to Island's shareholders in connection with the merger. See Dissenters' Rights of Appraisal beginning on page 33.

**Q. When will the merger be completed?**

- A. The merger will be completed when all of the conditions to completion contained in the merger agreement are satisfied or waived, including obtaining required regulatory approvals and/or waivers and the approval of the merger agreement and the merger by Island's shareholders. We currently expect to complete the merger during the second quarter of 2017. However, because fulfillment of some of the conditions to completion of the merger, such as receiving required regulatory approvals and/or waivers, are not entirely within our control, we cannot predict the actual timing.

**Table of Contents**

**Q. Should Island's shareholders send in their stock certificates now?**

- A. No, Island's shareholders should not send in any stock certificates now. If the merger is approved at the special meeting, Independent will send Island's shareholders written instructions on how to exchange their stock certificates for the merger consideration.

**Q. What are the material U.S. federal income tax consequences of the merger to me?**

- A. The merger is intended to qualify, and the obligation of the parties to complete the merger is conditioned upon the receipt of a legal opinion from their counsel to the effect that the merger will qualify, as a reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended, which is referred to herein as the Code. The tax consequences of the merger to Island's shareholders will depend on whether Island's shareholders receive only cash, only Independent common stock, or a combination of cash and Independent common stock in exchange for their Island common stock. Island's shareholders that exchange their shares solely for Independent common stock should not recognize gain or loss except with respect to any cash they receive in lieu of receiving a fractional share of Independent common stock. Island's shareholders that exchange their shares solely for cash should recognize gain or loss on the exchange. Island's shareholders that exchange their shares for a combination of Independent common stock and cash should recognize gain (but not loss) with respect to the cash portion of the consideration they receive. Because the allocations of cash and Independent common stock that are received will depend on the elections of other Island shareholders, Island's shareholders will not know the actual tax consequences of the merger to them until the allocations are completed. See Material U.S. Federal Income Tax Consequences of the Merger beginning on page 72.

**Q. Are there any risks that I should consider in deciding whether to vote for approval of the merger?**

- A. Yes. You should read and carefully consider the risk factors set forth in the section in this document titled Risk Factors beginning on page 12.

**Q. When and where will Island's shareholders meet?**

- A. Island will hold its special meeting of shareholders on February 28, 2017 at 1:00 p.m., local time, at The Old Whaling Church, The Frederick Baylies Room, located at 89 Main Street, Edgartown, Massachusetts 02539.

**Q. What matters are Island's shareholders being asked to approve at the Island special meeting pursuant to this proxy statement/prospectus?**

- A. Island's shareholders are being asked to approve the merger agreement and the transactions contemplated by the merger agreement, including the merger. We refer to this proposal as the Island merger agreement proposal.

Island's shareholders are also being asked to authorize the board of directors of Island to adjourn or postpone the special meeting, if necessary, to permit further solicitation of proxies in favor of the Island merger agreement proposal or to vote on other matters properly before the special meeting. We refer to this proposal as the Island adjournment proposal.

**Q. What does Island's board of directors recommend with respect to the two proposals?**

A. Island's board of directors has unanimously approved the merger agreement and determined that the merger agreement and the merger are fair to, advisable and in the best interests of Island and its shareholders and unanimously recommends that Island's shareholders vote FOR the Island merger agreement proposal. Island's board of directors also unanimously recommends that Island's shareholders vote FOR approval of the Island adjournment proposal.

**Q. Who can vote at the Island special meeting of shareholders?**

A. Only holders of record of Island common stock at the close of business on January 3, 2017, which is the record date for the Island special meeting of shareholders, are entitled to vote at the special meeting.

**Table of Contents**

**Q. How many votes must be represented in person or by proxy at the Island special meeting to have a quorum?**

- A. The holders of a majority of the shares of Island common stock outstanding and entitled to vote at the special meeting of shareholders, present in person or represented by proxy, will constitute a quorum at the special meeting.

**Q. What vote by Island's shareholders is required to approve the Island special meeting proposals?**

- A. Assuming a quorum is present at the Island special meeting of shareholders, approval of the Island merger agreement proposal will require the affirmative vote of the holders of at least two-thirds of the shares of Island common stock entitled to vote. Abstentions and broker non-votes will have the same effect as shares voted against the Island merger agreement proposal.

Assuming a quorum is present at the Island special meeting, approval of the Island adjournment proposal will require the affirmative vote of a majority of the shares voted on the Island adjournment proposal. Abstentions and broker non-votes will not affect whether the Island adjournment proposal is approved.

**Q. Are any Island shareholders already committed to vote in favor of any of the special meeting proposals?**

- A. Under voting agreements with Independent, each of Island's directors who individually or jointly owns shares of Island common stock with his or her spouse or who is the trustee or co-trustee with his or her spouse of a trust that owns shares of Island common stock, acting solely in his or her capacity as a shareholder, has agreed to vote all of these shares of Island common stock in favor of the Island merger agreement proposal. As of the record date for the Island special meeting of shareholders, the Island directors who are parties to the Island voting agreements collectively owned, or served as trustees of trusts that collectively owned, approximately 33.39% of the Island common stock entitled to vote at the special meeting.

**Q. How may Island's shareholders vote their shares for the special meeting proposals presented in this proxy statement/prospectus?**

- A. Island's shareholders may submit their proxies by:

signing and dating the enclosed proxy card and mailing it in the enclosed, prepaid and addressed envelope;

calling toll-free 1-877-291-3199 and following the instructions; or

accessing the web page at [www.proxyvoting.com/IDBP](http://www.proxyvoting.com/IDBP) and following the on-screen instructions.

Proxies submitted through the Internet or by telephone must be received by 11:59 p.m., Eastern Time, on February 27, 2017. Proxies submitted through the mail must be received by 9:00 a.m., Eastern Time, on February 28, 2017.

**Q. Will a broker or bank holding shares in street name for an Island shareholder vote those shares for the shareholder at the Island special meeting?**

A. No. A broker or bank will not be able to vote your shares at the special meeting without first receiving instructions from you on how to vote. If your shares are held in street name, you will receive separate voting instructions, provided by your broker or bank, with your proxy materials. It is therefore important that you provide timely instructions to your broker or bank to ensure that all of the Island common stock you own is voted at the special meeting.

**Q. Will Island's shareholders be able to vote their shares in person at the Island special meeting?**

A. Yes. Submitting a proxy will not affect the right of any Island shareholder to vote in person at the special meeting of shareholders. If an Island shareholder holds shares in street name, the shareholder must request a proxy from the shareholder's broker or bank in order to vote those shares in person at the special meeting.



**Table of Contents**

**Q. What do Island's shareholders need to do now?**

- A. After carefully reading and considering the information contained in this proxy statement/prospectus, Island's shareholders are requested to complete and return their proxies as soon as possible or vote via telephone or the Internet. The proxy card will instruct the persons named on the proxy card to vote the shareholder's shares of Island common stock at the special meeting as the shareholder directs. If a shareholder signs, dates and sends in a proxy card and does not indicate how the shareholder wishes to vote, the proxy will be voted FOR both of the special meeting proposals.

**Q. May an Island shareholder change its vote after submitting a proxy?**

- A. Yes. An Island shareholder may change a vote at any time before the shareholder's proxy is voted at the Island special meeting. A proxy submitted through the Internet or by telephone may be revoked by executing a later-dated proxy card, by subsequently submitting a proxy through the Internet or by telephone, or by attending the special meeting and voting in person. A shareholder executing a proxy card also may revoke the proxy at any time before it is voted by giving written notice revoking the proxy to Island's Corporate Secretary, by subsequently filing another proxy card bearing a later date or by attending the special meeting and voting in person. Attending the special meeting will not automatically revoke a shareholder's prior submission of a proxy (by Internet, telephone or in writing). All written notices of revocation or other communications with respect to revocation of proxies should be addressed to:

**Island Bancorp, Inc.**

**2 South Water Street, P.O. Box 96, Edgartown, Massachusetts 02539**

**Attention: Fielding H. Moore, President and Chief Executive Officer**

**Q. If I am an Island shareholder, who can help answer my questions?**

- A. If you have any questions about the merger or the special meeting, or if you need additional copies of this proxy statement/prospectus or the enclosed proxy card, you should contact Morrow Sodali, Island's proxy solicitor, at the following address or phone number:

**Morrow Sodali**

**470 West Avenue**

**Stamford, Connecticut 06902**

**(800) 662-5200**

**Q. Where can I find more information about the companies?**

- A. You can find more information about Independent and Island from the various sources described under the section of this document titled *Where You Can Find More Information* beginning on page 86.

**Table of Contents**

**SUMMARY**

*This summary highlights selected information from this document and may not contain all of the information that is important to you. You should carefully read this entire document and the other documents to which this document refers to fully understand the merger and the related transactions. See *Where You Can Find More Information* beginning on page 86 of this document. Most items in this summary include a page reference directing you to a more complete description of those items.*

*Unless the context otherwise requires, throughout this document, *Independent* refers to Independent Bank Corp., *Island* refers to Island Bancorp, Inc., *Rockland Trust* refers to Rockland Trust Company, and *Edgartown National* refers to The Edgartown National Bank; and *we*, *us* and *our* refers to Independent and Island. Also, we refer to the merger between Independent and Island as the *merger*, and the Agreement and Plan of Merger, dated as of October 20, 2016, by and among Independent, Rockland Trust, Island, and Edgartown National as the *merger agreement*.*

**The Companies (see page 76)**

*Independent*

Independent is a state chartered bank holding company headquartered in Rockland, Massachusetts that was incorporated under Massachusetts law in 1985. Independent is the sole shareholder of Rockland Trust, a Massachusetts trust company chartered in 1907. Through its subsidiary, Rockland Trust, Independent offers a full range of banking services through a network of 84 bank branches in eastern Massachusetts and its commercial lending centers and investment management offices in eastern Massachusetts and Providence, Rhode Island. Rockland Trust provides investment management and trust services to individuals, institutions, small businesses, and charitable institutions throughout eastern Massachusetts and Rhode Island.

At September 30, 2016, Independent had total consolidated assets of approximately \$7.5 billion, net loans of approximately \$5.7 billion, total deposits of approximately \$6.3 billion, and total shareholders' equity of approximately \$818.2 million.

Independent Bank Corp.

288 Union Street

Rockland, Massachusetts 02370

(781) 878-6100

*Island*

Island was incorporated under Massachusetts law in 2000 to become the holding company of Edgartown National, a national banking association chartered by the Office of the Comptroller of the Currency in 1905. Headquartered in Edgartown, Massachusetts, Island operates its business from four banking offices on Martha's Vineyard in Massachusetts: two located in Edgartown, one located in Oak Bluffs, and one located in Vineyard Haven. Island, through Edgartown National, provides a variety of financial services to individuals and small businesses primarily in the form of various deposit products, residential and commercial mortgages, and commercial loans and lines of credit.

Edgar Filing: INDEPENDENT BANK CORP - Form 424B3

At September 30, 2016, Island had total consolidated assets of \$194.1 million, net loans of \$151.4 million, total deposits of \$171.1 million, and total shareholders equity of \$16.2 million.

Island Bancorp, Inc.

2 South Water Street

Edgartown, Massachusetts 02539

(508) 627-1100

## **Table of Contents**

### **The Merger and the Merger Agreement (see pages 37 and 56)**

The terms and conditions of the merger are contained in the merger agreement, which is attached as Annex A to this proxy statement/prospectus. Please carefully read the merger agreement, as it is the legal document that governs the merger. Under the terms of the merger agreement, Island will merge with and into Independent and Independent will survive the merger.

### **Special Meeting of Island's Shareholders; Required Vote (see page 31)**

Island will hold a special meeting of shareholders at The Old Whaling Church, The Frederick Baylies Room, located at 89 Main Street, Edgartown, Massachusetts 02539 on February 28, 2017 at 1:00 p.m., local time. Island's shareholders will be asked to:

approve the merger agreement and the transactions it contemplates, including the merger; and

authorize the board of directors of Island to adjourn or postpone the special meeting, if necessary, to permit further solicitation of proxies in favor of the Island merger agreement proposal or to vote on other matters properly before the special meeting.

You can vote at the Island special meeting if you owned Island common stock at the close of business on January 3, 2017. On that date, there were 48,466 shares of Island common stock entitled to vote, approximately 45.12% of which were beneficially owned and entitled to be voted by Island directors and executive officers. You can cast one vote for each share of Island common stock you owned on that date. In order to approve the merger agreement and the transactions it contemplates, the holders of at least two-thirds of the shares of Island common stock entitled to vote must vote in favor of the Island merger agreement proposal.

### **What Holders of Island Common Stock Will Receive in the Merger (see page 56)**

Upon completion of the merger, each share of Island common stock will be converted into the right to receive at the election of the holder either (i) \$500.00 in cash or (ii) 9.525 shares of Independent common stock. Island's shareholders will be able to elect to receive cash, Independent common stock, or a combination of cash and Independent common stock for their shares of Island common stock. Regardless of an Island shareholder's choice, however, elections will be limited by the requirement that 80% of Island common stock be converted into Independent common stock and 20% of Island common stock be exchanged for cash. Therefore, the allocation of cash and Independent common stock that an Island shareholder will receive will depend on the elections of other Island shareholders. The allocation of the consideration payable to Island's shareholders will not be known until the exchange agent tallies the results of the cash/stock elections made by Island's shareholders. If an Island shareholder does not make an election, the consideration that shareholder will receive will depend on the consideration elected by other Island shareholders.

### **Dividend Policy of Independent; Dividends from Island (see page 24)**

The holders of Independent common stock receive dividends as and when declared by Independent's board of directors. Independent declared cash dividends of \$0.29 per share of common stock in the first, second, third and fourth quarters of 2016 and cash dividends of \$0.26 per share of common stock for each quarter of 2015. After completion of the merger, the timing and amount of the payment of dividends will be at the discretion of Independent's

board of directors and will be determined after consideration of various factors, including level of earnings, cash requirements, and financial condition.

The holders of Island common stock receive dividends as and when declared by Island's board of directors. Island declared cash dividends of \$0.50 per share of common stock in the first, second, third and fourth quarters of 2016 and for each quarter of 2015. The United States Department of the Treasury, as the holder of Island's Senior Non-Cumulative Perpetual Preferred Stock, Series A, which we refer to as the Island SBLF preferred stock, also received quarterly cash dividends until September 15, 2016 when the Island SBLF preferred

## **Table of Contents**

stock was redeemed in full. Except for the payment of quarterly cash dividends of \$0.50 per share of common stock in accordance with past practice, the merger agreement prohibits Island from declaring or paying any dividends on any of its capital stock without the prior written consent of Independent, which may be withheld for any reason by Independent in its sole discretion.

### **Fairness Opinion Rendered to the Island Board of Directors (see pages 45 and B-1)**

FIG Partners, LLC, which we referred to as FIG Partners, has provided an opinion to Island's board of directors, dated October 20, 2016, to the effect that, as of that date and based upon and subject to the factors and assumptions set forth in the opinion, the merger consideration was fair, from a financial point of view, to the holders of Island common stock. The full text of FIG Partners' opinion is attached to this proxy statement/prospectus as Annex B, which sets forth, among other things, the assumptions made, procedures followed, matters considered and limitations on the review undertaken by FIG Partners in connection with its opinion. We urge you to read the opinion in its entirety. FIG Partners' opinion is addressed to Island's board of directors, is directed only to the fairness, from a financial point of view, of the merger consideration to the holders of Island common stock and does not constitute a recommendation to any shareholder as to how that shareholder should vote on the merger agreement. Pursuant to an engagement letter between Island and FIG Partners, Island has paid a fee to FIG Partners for rendering its opinion and has agreed to pay FIG Partners a transaction fee, which is payable only upon completion of the merger.

### **Recommendation of Island's Board of Directors (see pages 31 and 41)**

Island's board of directors has unanimously determined that the merger agreement and the merger are advisable and in the best interests of Island and its shareholders and, accordingly, unanimously recommends that Island's shareholders vote FOR the Island merger agreement proposal and FOR the Island adjournment proposal.

### **Island's Reasons for the Merger (see page 41)**

In determining whether to approve the merger agreement, Island's board of directors consulted with certain of its senior management and with its legal and financial advisers. In arriving at its determination, Island's board of directors also considered the factors described under The Merger Reasons for the Merger.

### **Interests of Island's Executive Officers and Directors in the Merger (see page 52)**

Some of the directors and executive officers of Island have financial interests in the merger that are different from, or in addition to, the interests of Island's other shareholders generally. These interests include rights of executive officers under their existing change in control agreements; rights under a consulting agreement and an employment agreement with Rockland Trust executed in connection with the merger agreement; and rights to continued indemnification and insurance coverage by Independent after the merger for acts and omissions occurring before the merger.

The boards of directors of Independent and Island were aware of these interests and considered them, among other matters, in approving the merger agreement and related transactions.

### **Island's Directors Have Agreed to Vote in Favor of the Merger Agreement (see page 70)**

On the record date of January 3, 2017, the directors of Island individually or jointly owned with their spouses, or were the trustee or co-trustee with their spouses of trusts that owned, an aggregate of 16,182 shares of Island common stock, or approximately 33.39% of the outstanding shares of Island common stock. Each of these directors has agreed with Independent to vote his or her share of these shares of Island common stock in favor of the merger agreement and

the transactions it contemplates.



**Table of Contents**

**Approval by Independent's Board of Directors and Reasons for the Merger (see page 44)**

Independent's board of directors has unanimously approved and adopted the merger agreement.

In determining whether to approve the merger agreement, Independent's board of directors consulted with certain of its senior management and with its legal and financial advisers. In arriving at its determination, Independent's board of directors also considered the factors described under "The Merger" Independent's Reasons for the Merger.

**Non-Solicitation (see page 63)**

Island has agreed that it will not solicit or encourage any inquiries or proposals regarding any acquisition proposals by third parties. Island may respond to unsolicited proposals in certain circumstances if required by Island's board of directors' fiduciary duties. Island must promptly notify Independent if it receives any acquisition proposals.

**Conditions to Complete the Merger (see page 65)**

Each of Independent's and Island's obligations to complete the merger is subject to the satisfaction or waiver to the extent legally permitted of a number of mutual conditions, including:

the approval of the merger agreement and the transactions it contemplates, including the merger, by Island's shareholders at the Island special meeting described in this proxy statement/prospectus;

the receipt of all regulatory approvals, waivers, and consents (none of which shall contain a burdensome condition, as defined in the merger agreement), and the expiration of all waiting periods required to complete the merger;

the effectiveness of the registration statement with respect to the Independent common stock to be issued in the merger under the Securities Act of 1933, as amended, and the absence of any stop order or proceedings initiated or threatened by the Securities and Exchange Commission for that purpose; and

the absence of any statute, regulation, rule, decree, injunction or other order in effect by any court or other governmental entity that prohibits completion of the transactions contemplated by the merger agreement.

Each of Independent's and Island's obligations to complete the merger is also separately subject to the satisfaction or waiver (except for the condition set forth in the first bullet below, which may not be waived in any circumstance) of a number of conditions, including:

the receipt by the party of a legal opinion from its counsel with respect to certain U.S. federal income tax consequences of the merger; and

the other party's representations and warranties in the merger agreement being true and correct, in all material respects, and the performance by the other party in all material respects of its obligations under the merger agreement.

Island's obligation to complete the merger is also subject to the condition that the shares of Independent's common stock to be issued in the merger be listed on Nasdaq, and that Independent deposits the merger consideration one business day prior to the closing date.

Independent's obligation to complete the merger is further subject to the conditions that the number of outstanding shares of Island common stock not exceed 48,466 and the holders of no more than 10% of Island outstanding common stock will have taken the actions required by Part 13 of Chapter 156D of the Massachusetts Business Corporation Act to qualify their Island common stock as dissenters' shares.

**Table of Contents**

**Termination of the Merger Agreement (see page 66)**

Independent and Island may mutually agree at any time to terminate the merger agreement without completing the merger, even if Island shareholders have approved the merger. Also, either Independent or Island can terminate the merger agreement in various circumstances, including the following:

if any regulatory approval and/or waiver necessary for consummation of the transactions contemplated by the merger agreement is not obtained;

if the merger is not completed by July 31, 2017;

if the other party breaches the merger agreement in a way that would entitle the party seeking to terminate the merger agreement not to consummate the merger, subject to the right of the breaching party to cure the breach within 30 days following written notice (unless it is not possible due to the nature or timing of the breach for the breaching party to cure the breach); or

if Island shareholders do not approve the merger agreement and the transactions it contemplates. Additionally, Independent may terminate the merger agreement if:

Island has materially breached its non-solicitation obligations described under The Merger Agreement No Solicitation of Alternative Transactions beginning on page 63;

Island's board of directors fails to recommend in this proxy statement/prospectus the approval of the merger agreement or changes its initial recommendation to approve the merger agreement;

Island's board of directors recommends, proposes or publicly announces its intention to recommend or propose, to engage in an Acquisition Transaction with any party other than Independent or a subsidiary of Independent;

Island fails to publicly recommend against a tender or exchange offer for more than 20% of the Island common stock; or

Island breaches its obligation to call, give notice of, convene and hold a meeting of shareholders for the purpose of approving the merger agreement and the transactions it contemplates. Additionally, Island may terminate the merger agreement:

if it enters into a Superior Proposal as described under The Merger Agreement No Solicitation of Alternative Transactions, so long as it pays a termination fee of \$900,000 to Independent; or

pursuant to a walk away right that is subject to a top up option, if (a) the ten-day volume weighted average closing price ( VWAP ) of Independent s common stock as of a measurement date prior to closing is more than 20% below the ten-day VWAP of Independent s common stock for the trading period ending October 19, 2016, (b) the decrease in the ten day VWAP of Independent s common stock for the trading period ending on October 19, 2016 compared to the ten day VWAP of Independent common stock ending on the measurement date is more than 20% greater than the decrease in the ten day average price of the Nasdaq Bank Stock Index during the same time periods, (c) Island elects to terminate the agreement by a majority vote of Island s directors, and (d) following notice to Independent by Island of the exercise of its walk away right, Independent does not exercise its option under the merger agreement to increase the exchange ratio to a number that would compensate Island shareholders for the extent of the decrease in Independent s common stock price below the lowest price per share at which the walk away right would not have been triggered. If Independent exercises its top up option, then no termination will occur.

## **Table of Contents**

### **Termination Fee (see page 67)**

Island has agreed to pay a termination fee of \$900,000 to Independent or reimburse Independent for certain expenses up to \$400,000 if the merger agreement is terminated under any of the circumstances described in The Merger Agreement Termination Fee beginning on page 67.

### **Regulatory Approvals Required for the Merger (see page 51)**

Completion of the transactions contemplated by the merger agreement is subject to regulatory approvals and/or waivers from the Federal Reserve Board, the Federal Deposit Insurance Corporation (the FDIC ), and the Massachusetts Division of Banks. Independent and Island have filed or will file all of the required applications and notices with regulatory authorities. Although we do not know of any reason why we would not be able to obtain the necessary regulatory approvals in a timely manner, we cannot be certain when or if we will receive them.

### **Rights of Independent Shareholders Differ from Those of Island Shareholders (see page 79)**

When the merger is completed, Island shareholders who receive Independent common stock as consideration in the merger will become Independent shareholders. The rights of Independent shareholders differ from the rights of Island shareholders in important ways. Many of these differences relate to provisions in Independent s articles of organization and bylaws that differ from those of Island. See Comparison of Rights of Shareholders of Island and Independent beginning on page 79 for a summary of the material differences between the respective rights of Island and Independent shareholders.

### **Federal Income Tax Consequences of the Merger (see page 72)**

The merger is intended to qualify, and the obligations of the parties to complete the merger is conditioned upon the receipt of a legal opinion from their respective counsel to the effect that the merger will qualify, as a reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended, which is referred to herein as the Code. The federal tax consequences of the merger to Island s shareholders will depend primarily on whether they exchange their Island common stock solely for Independent common stock, solely for cash, or for a combination of Independent common stock and cash. Island s shareholders who exchange their shares solely for Independent common stock should not recognize gain or loss except with respect to any cash they receive in lieu of receiving a fractional share of Independent common stock. Island s shareholders who exchange their shares solely for cash should recognize gain or loss on the exchange. Island s shareholders who exchange their shares for a combination of Independent common stock and cash should recognize gain (but not loss) with respect to the cash portion of the consideration they receive. The actual federal income tax consequences to Island s shareholders of electing to receive cash, Independent common stock or a combination of cash and stock will not be ascertainable at the time Island s shareholders make their election because it will not be known at that time how, or to what extent, the allocation and proration procedures will apply.

**This tax treatment may not apply to all of Island s shareholders. Determining the actual tax consequences of the merger to Island shareholders can be complicated. Island s shareholders should consult their own tax advisor for a full understanding of the merger s tax consequences that are particular to each shareholder.**

To review the tax consequences of the merger to Island s shareholders in greater detail, please see the section Material U.S. Federal Income Tax Consequences of the Merger beginning on page 72.



**Table of Contents****Dissenters' Rights of Appraisal (see page 33)**

Dissenters' rights are statutory rights that, if applicable under law, enable shareholders to dissent from an extraordinary transaction, such as a merger, and to demand that the surviving corporation pay the fair value for their shares in cash as determined by a court in a judicial proceeding instead of receiving the consideration offered to shareholders in connection with the extraordinary transaction. Island's shareholders entitled to vote on the merger have the right to dissent from the merger and, if the merger is consummated and upon their compliance with all requirements of Massachusetts law, to receive a cash payment from Independent equal to the fair value of their shares of Island common stock, determined in the manner set forth under Massachusetts law, instead of the merger consideration. A copy of the section of the Massachusetts Business Corporation Act pertaining to dissenters' appraisals rights is attached as Annex C to this proxy statement/prospectus. You should read the statute carefully and consult with your legal counsel if you intend to exercise these rights. Please see the section "Dissenters' Rights of Appraisal" on page 33.

**Per Share Market Price Information of Independent Common Stock (see page 24)**

Independent common stock trades on the NASDAQ Global Select Market under the symbol INDB. Island common stock is not traded publicly. The following presents the closing sale prices of Independent common stock on October 20, 2016, the last trading day before we announced the merger agreement, and January 3, 2017, the last practicable trading day prior to mailing this document. Since Island common stock is not actively traded, the last known sale of Island common stock prior to October 20, 2016 was for a price of \$243.00 per share, based upon a transaction involving 210 shares on September 16, 2016, and the closing sale prices of Island common stock on October 20, 2016, the last trading day before we announced the merger agreement, and January 3, 2017, the last practicable trading day prior to mailing this document, are not available. The table also represents the equivalent value of the stock consideration to be paid to Island shareholders who elect to receive Independent common stock in the merger for each share of Island common stock that they own on those dates, calculated by multiplying the closing price of Independent common stock on those dates by an exchange ratio of 9.525, which represents the shares of Independent common stock that Island shareholders who elect to receive Independent common stock will receive in the merger for each share of Island common stock that they own.

<b>Date</b>	<b>Independent Closing Price</b>	<b>Island Closing Price</b>	<b>Exchange Ratio</b>	<b>Equivalent Per Share Value</b>
October 20, 2016	\$ 53.55	N/A	9.525	\$ 510.06
January 3, 2017	\$ 70.35	N/A	9.525	\$ 670.08

The market prices of Independent common stock will fluctuate prior to the merger. You should obtain current stock price quotations for Independent common stock.

---

**Table of Contents****RISK FACTORS**

*In addition to the other information included in this proxy statement/prospectus, including the matters addressed under Forward-Looking Information, Island's shareholders should carefully consider the following risks before deciding whether to vote for approval of the merger agreement. In addition, shareholders of Island should read and consider the risks associated with Independent, which can be found in Independent's annual report on Form 10-K for the year ended December 31, 2015, which report is incorporated by reference into this proxy statement/prospectus. You should also consider the other information in this proxy statement/prospectus and the other documents incorporated by reference into this proxy statement/prospectus. See Where You Can Find More Information and Incorporation of Certain Documents by Reference beginning on page 86.*

**Risks Related to the Merger**

***Absent an exercise by Island of its walk away right and a subsequent top up election by Independent, the exchange ratio used to determine the stock consideration in the merger will be 9.525 and will not change due to changes in the market value of Independent common stock before the completion of the merger, regardless of how significant such changes might be.***

Upon completion of the merger, each share of Island common stock will be converted into the right to receive either (i) \$500.00 in cash or (2) 9.525 shares of Independent common stock. The exchange ratio used to determine the stock consideration will not increase based on fluctuations in the market price of Independent common stock regardless of how far the price of Independent common stock falls, except in the event Independent's stock drops beyond certain levels and Island exercises its walk away right and Independent subsequently exercises its right to top up the stock consideration to void the walk away right. The market value of Independent common stock has varied since Independent and Island entered into the merger agreement and will continue to vary in the future due to changes in the business, operations or prospects of Independent, market assessments of the merger, regulatory considerations, market and economic considerations, and other factors both within and beyond the control of Independent. Therefore, at the time of the special meeting, Island's shareholders will not know or be able to calculate the market value of the Independent common stock they will receive upon completion of the merger. For example, based on the range of closing prices of Independent common stock during the period from October 20, 2016, the last trading day before public announcement of the merger, through January 3, 2017, the last practicable date before the date of this document, the exchange ratio represented a market value ranging from a low of \$505.30 to a high of \$675.80 for each share of Island common stock exchanged for the stock consideration.

***Island's shareholders may receive a form of consideration different from what they elect.***

The consideration to be received by Island's shareholders in the merger is subject to the requirement that 80% of the shares of Island common stock be exchanged for Independent common stock and 20% be exchanged for cash. The merger agreement contains proration and allocation procedures to achieve this desired result. If you elect all cash and the available cash is oversubscribed, then you will receive a portion of the merger consideration in Independent common stock. If you elect all stock and the available stock is oversubscribed, then you will receive a portion of the merger consideration in cash.

***The fairness opinion obtained by Island from its financial advisor does not reflect potential changes in circumstances that may occur after the date of the fairness opinion.***

FIG Partners, Island's financial advisor in connection with the merger, has delivered to the board of directors of Island its opinion dated October 20, 2016. The opinion of FIG Partners states that as of the date of such opinion, and based



upon and subject to the factors and assumptions set forth therein, the merger consideration to be paid to the holders of shares of Island common stock pursuant to the merger agreement was fair from a financial point of view to such holders. The opinion does not reflect potential changes that may occur or may have occurred after the date of such opinion, including changes to the operations and prospects of Island

**Table of Contents**

or Independent, changes in general market and economic conditions or regulatory or other factors. Any such changes, or changes in other factors on which the opinion is based, may materially alter or affect the conclusion reached in such opinion.

***Island will be subject to business uncertainties and contractual restrictions while the merger is pending.***

Uncertainty about the effect of the merger on employees and customers may have an adverse effect on Island and, consequently, on Independent. These uncertainties may impair Island's ability to attract, retain and motivate key personnel until the merger is consummated, and could cause customers and others that deal with Island to seek to change existing business relationships with Island. Retention of certain employees may be challenging during the pendency of the merger, as certain employees may experience uncertainty about their future roles with Independent. If key employees depart because of issues relating to the uncertainty or difficulty of integration or a desire not to remain with Independent, Independent's business following the merger could be harmed. In addition, the merger agreement restricts Island from taking certain actions without the consent of Independent until the merger occurs. These restrictions may prevent Island from pursuing attractive business opportunities that may arise prior to the completion of the merger. Please see the section entitled "The Merger Agreement - Conduct of Business Pending the Merger" of this proxy statement/prospectus for a description of the restrictive covenants to which Island is subject.

***Independent may fail to realize all of the anticipated benefits of the merger, particularly if the integration of Independent's and Island's businesses is more difficult than expected.***

The success of the merger will depend, in part, on our ability to successfully combine the businesses of Independent and Island. Independent may fail to realize some or all of the anticipated benefits of the transaction if the integration process takes longer or is more costly than expected. Furthermore, any number of unanticipated adverse occurrences for either the business of Island or Independent may cause us to fail to realize some or all of the expected benefits. The integration process could result in the loss of key employees, the disruption of each company's ongoing businesses or inconsistencies in standards, controls, procedures and policies that adversely affect our ability to maintain relationships with clients, customers, depositors and employees or to achieve the anticipated benefits of the merger. Each of these issues might adversely affect Independent, Island or both during the transition period, resulting in adverse effects on Independent following the merger. As a result, revenues may be lower than expected or costs may be higher than expected and the overall benefits of the merger may not be as great as anticipated.

***The market price of Independent common stock after the merger may be affected by factors different from those affecting Independent common stock currently.***

The businesses of Independent and Island differ in some respects and, accordingly, the results of operations of the combined company and the market price of Independent common stock after the merger may be affected by factors different from those currently affecting the results of operations of each of Independent and Island. For a discussion of the businesses of Independent and Island and of certain factors to consider in connection with those businesses, see the documents incorporated by reference into this proxy statement/prospectus and referred to under "Where You Can Find More Information" and "Incorporation of Certain Documents by Reference" beginning on page 86 and the information regarding Island set forth under "The Companies - Island" beginning on page 76.

***Some of the directors and executive officers of Island may have interests and arrangements that may have influenced their decisions to support and recommend that you approve the merger.***

The interests of some of the directors and executive officers of Island may be different from those of Island shareholders, and certain directors and officers of Island may be participants in arrangements that are different from,

or are in addition to, those of Island shareholders, including agreements in settlement of obligations to such

**Table of Contents**

officers under pre-existing change in control agreements, new consulting and employment agreements with Rockland Trust and provisions in the merger agreement relating to indemnification of directors and officers and insurance for directors and officers of Island for events occurring before the merger. These interests are described in more detail in the section of this proxy statement/prospectus entitled "The Merger - Interests of Island's Executive Officers and Directors in the Merger" beginning on page 52.

***The merger agreement limits Island's ability to pursue alternatives to the merger.***

The merger agreement contains provisions that limit Island's ability to solicit, initiate, encourage or take any actions to facilitate competing third-party proposals to acquire all or substantially all of Island. These provisions, which include a \$900,000 termination fee or the reimbursement of up to \$400,000 in Independent's expenses, payable under certain circumstances, might discourage a potential competing acquiror that might have an interest in acquiring all or substantially all of Island from considering or proposing that acquisition even if it were prepared to pay consideration with a higher per share market price than that proposed in the merger, or might result in a potential competing acquiror proposing to pay a lower per share price to acquire Island than it might otherwise have proposed to pay.

***Regulatory approvals may not be received, may take longer to receive than expected or may impose burdensome conditions that are not presently anticipated.***

Before the merger may be completed, certain approvals or consents must be obtained from the various bank regulatory and other authorities of the United States and the Commonwealth of Massachusetts. These governmental entities, including the Federal Reserve Board, the FDIC and the Massachusetts Division of Banks, may impose conditions on the completion of the merger or require changes to the terms of the merger. While Independent and Island do not currently expect that any such conditions or changes would be imposed, there can be no assurance that they will not be, and such conditions or changes could have the effect of delaying completion of the merger or imposing additional costs on or limiting the revenues of Independent following the merger, any of which might have a material adverse effect on Independent following the merger. Independent is not obligated to complete the merger if the regulatory approvals received in connection with the completion of the merger include any conditions or restrictions that would constitute a "Burdensome Condition" as defined in the merger agreement.

There can be no assurance as to whether the regulatory approvals will be received or the timing of the approvals. For more information, see the section entitled "The Merger - Regulatory Approvals Required to Complete the Merger" of this proxy statement/prospectus beginning on page 51.

***If the merger is not consummated by July 31, 2017, either Independent or Island may choose not to proceed with the merger.***

Either Independent or Island may terminate the merger agreement if the merger has not been completed by July 31, 2017, unless the failure of the merger to be completed has resulted from the failure of the party seeking to terminate the merger agreement to perform its obligations.

***The shares of Independent common stock to be received by Island shareholders as a result of the merger will have different rights from the shares of Island common stock.***

The rights associated with Island common stock are different from the rights associated with Independent common stock. See the section of this proxy statement/prospectus entitled "Comparison of Rights of Shareholders of Island and Independent" beginning on page 79 for a discussion of the different rights associated with Independent common stock.



**Table of Contents**

***Failure to complete the merger could negatively impact the future business and financial results of Island.***

If the merger is not completed, the ongoing business of Island may be adversely affected and Island will be subject to several risks, including the following:

Island may be required, under certain circumstances, to pay Independent a termination fee of \$900,000 or the reimbursement of up to \$400,000 in Independent's expenses under the merger agreement;

Island will be required to pay certain costs relating to the merger, whether or not the merger is completed, such as legal, accounting, financial advisor and printing fees;

under the merger agreement, Island is subject to certain restrictions on the conduct of its business prior to completion of the merger which may adversely affect its ability to execute certain of its business strategies; and

matters relating to the merger may require substantial commitments of time and resources by Island's management, which could otherwise have been devoted to other opportunities that may have been beneficial to Island as an independent company.

In addition, if the merger is not completed, Island may experience negative reactions from its customers and employees. Island also could be subject to litigation related to any failure to complete the merger or to enforcement proceedings commenced against Island to perform its obligations under the merger agreement. If the merger is not completed, Island cannot assure its shareholders that the risks described above will not materialize and will not materially affect the business and financial results of Island.

**Risks Related to Independent's Business**

***Changes in interest rates and other factors could adversely impact Independent's financial condition and results of operations.***

Independent's ability to make a profit, like that of most financial institutions, substantially depends upon its net interest income, which is the difference between the interest income earned on interest earning assets, such as loans and investment securities, and the interest expense paid on interest-bearing liabilities, such as deposits and borrowings. However, certain assets and liabilities may react differently to changes in market interest rates. Further, interest rates on some types of assets and liabilities may fluctuate prior to changes in broader market interest rates, while rates on other types of assets may lag behind. Additionally, some assets such as adjustable-rate mortgages have features, such as rate caps and floors, which restrict changes in their interest rates.

Factors such as inflation, recession, unemployment, money supply, global disorder, instability in domestic and foreign financial markets, and other factors beyond Independent's control, may affect interest rates. Changes in market interest rates will also affect the level of voluntary prepayments on loans and the receipt of payments on mortgage-backed securities, resulting in the receipt of proceeds that may have to be reinvested at a lower rate than the loan or mortgage-backed security being prepaid.

The state of the financial and credit markets, and potential sovereign debt defaults may severely impact the global and domestic economies and may lead to a significantly tighter environment in terms of liquidity and availability of credit. Economic growth may slow down and the national economy may experience additional recession periods. Market disruption, government and central bank policy actions intended to counteract the effects of recession, changes in investor expectations regarding compensation for market risk, credit risk and liquidity risk and changing economic data could continue to have dramatic effects on both the volatility of and the magnitude of the directional movements of interest rates. Although Independent pursues an asset/liability management strategy designed to control its risk from changes in interest rates, changes in market interest rates can have a material adverse effect on Independent's profitability.

---

**Table of Contents**

***If Independent has higher than anticipated loan losses than it has modeled, its earnings could materially decrease.***

Independent's loan customers may not repay loans according to their terms, and the collateral securing the payment of loans may be insufficient to assure repayment. Independent may therefore experience significant credit losses which could have a material adverse effect on its operating results and capital ratios. Independent makes various assumptions and judgments about the collectability of its loan portfolio, including the creditworthiness of borrowers, the value of the real estate and other assets serving as collateral for the repayment of loans, and the enforceability of its loan documents. In determining the amount of the allowance for loan losses, Independent relies on its experience and its evaluation of economic conditions. If its assumptions prove to be incorrect, its current allowance for loan losses may not be sufficient to cover losses inherent in its loan portfolio and an adjustment may be necessary to allow for different economic conditions or adverse developments in its loan portfolio. Consequently, a problem with one or more loans could require Independent to significantly increase the level of its provision for loan losses. In addition, federal and state regulators periodically review Independent's allowance for loan losses and may require it to increase its provision for loan losses or recognize further loan charge-offs. Material additions to the allowance would materially decrease Independent's net income.

***A significant amount of Independent's loans are concentrated in Rockland Trust's geographic footprint and adverse conditions in this area could negatively impact its operations.***

Substantially all of the loans Independent originates are secured by properties located in, or are made to businesses which operate in Massachusetts, and to a lesser extent Rhode Island. Because of the current concentration of Independent's loan origination activities in its geographic footprint, adverse economic conditions, including, but not limited to, increased unemployment, downward pressure on the value of residential and commercial real estate, and political or business developments, may affect the ability of property owners and businesses to make payments of principal and interest on the underlying loans in Rockland Trust's geographic footprint. Independent would likely experience higher rates of loss and delinquency on its loans than if its loans were more geographically diversified, which could have an adverse effect on its results of operations or financial condition.

***A significant portion of Independent's loan portfolio is secured by real estate, and events that negatively impact the real estate market could adversely affect Independent's asset quality and profitability for those loans secured by real property and increase the number of defaults and the level of losses within Independent's loan portfolio.***

The real estate collateral in each case provides an alternate source of repayment in the event of default by the borrower and could deteriorate in value during the time the credit is extended. A downturn in the real estate market in Independent's primary market areas could result in an increase in the number of borrowers who default on their loans and a reduction in the value of the collateral securing their loans, which in turn could have an adverse effect on Independent's profitability and asset quality. If Independent is required to liquidate the collateral securing a loan to satisfy the debt during a period of reduced real estate values, its earnings and shareholders' equity could be adversely affected. The declines in real estate prices in Independent's markets also may result in increases in delinquencies and losses in its loan portfolios. Unexpected decreases in real estate prices coupled with a prolonged economic recovery and elevated levels of unemployment could drive losses beyond that which is provided for in Independent's allowance for loan losses. In that event, Independent's earnings could be adversely affected.

***Independent operates in a highly regulated environment and may be adversely impacted by changes in law, regulations, and accounting policies.***

Independent is subject to extensive regulation, supervision and examination. Any change in the laws or regulations and failure by Independent to comply with applicable law and regulation, or a change in regulators' supervisory



policies or examination procedures, whether by the Massachusetts Division of Banks, the FDIC, the

---

**Table of Contents**

Federal Reserve Board, other state or federal regulators, the United States Congress, or the Massachusetts legislature could have a material adverse effect on Independent's business, financial condition, results of operations, and cash flows. Changes in accounting policies, practices and standards, as may be adopted by the regulatory agencies as well as the Public Company Accounting Oversight Board, the Financial Accounting Standards Board, and other accounting standard setters, could also negatively impact Independent's financial results.

***The recent change in regulatory capital requirements may have an adverse impact on Independent's future financial results.***

In 2013, the FDIC, the OCC and the Federal Reserve Board approved new rules that substantially amended the regulatory risk-based capital rules applicable to Independent and Rockland Trust. The final rule implemented the Basel III regulatory capital reforms and changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The new rules went into effect on January 1, 2015, although certain portions of the rule, including the capital conservation buffer, are being phased in over a period of several years. The application of more stringent capital requirements, including the phase in of the capital conservation buffer, on Independent could, among other things, result in lower returns on equity, require the raising of additional capital, and result in regulatory actions such as a prohibition on the payment of dividends or on the repurchase of shares if Independent were unable to comply with such requirements.

***Independent has strong competition within its market area which may limit Independent's growth and profitability.***

Independent faces significant competition both in attracting deposits and in the origination of loans. Additional mergers and acquisitions of financial institutions within Independent's market area may also occur given the current difficult banking environment and add more competitive pressure. Additionally, Independent's market share and income may be adversely affected by its inability to successfully compete against larger and more diverse financial service providers. If Independent is unable to compete effectively, it may lose market share and income generated from loans, deposits, and other financial products may decline.

***The success of Independent is dependent on hiring and retaining certain key personnel.***

Independent's performance is largely dependent on the talents and efforts of highly skilled individuals. Independent relies on key personnel to manage and operate its business, including major revenue generating functions such as loan and deposit generation. The loss of key staff may adversely affect Independent's ability to maintain and manage these functions effectively, which could negatively affect Independent's revenues. In addition, loss of key personnel could result in increased recruiting and hiring expenses, which could cause a decrease in Independent's net income. Independent's continued ability to compete effectively depends on its ability to attract new employees and to retain and motivate its existing employees.

***Independent's business strategy of growth in part through acquisitions could have an impact on its earnings and results of operations that may negatively impact the value of Independent's stock.***

In recent years, Independent has focused, in part, on growth through acquisitions. From time to time in the ordinary course of business, Independent engages in preliminary discussions with potential acquisition targets. The consummation of any future acquisitions may dilute shareholder value. Although Independent's business strategy emphasizes organic expansion combined with acquisitions, there can be no assurance that, in the future, Independent will successfully identify suitable acquisition candidates, complete acquisitions and successfully integrate acquired operations into Independent's existing operations or expand into new markets. There can be no assurance that

acquisitions will not have an adverse effect upon Independent's operating results while the operations of the acquired business are being integrated into Independent's operations. In addition, once integrated, acquired operations may not achieve levels of profitability comparable to those achieved by Independent's existing operations, or otherwise perform as expected. Further, transaction-related expenses may adversely affect Independent's earnings. These adverse effects on Independent's earnings and results of operations may have a negative impact on the value of Independent's stock.

---

**Table of Contents*****Independent's securities portfolio performance in difficult market conditions could have adverse effects on Independent's results of operations.***

Under U.S. Generally Accepted Accounting Principles ( U.S. GAAP ), Independent is required to review Independent's investment portfolio periodically for the presence of other-than-temporary impairment of its securities, taking into consideration current market conditions, the extent and nature of changes in fair value, issuer rating changes and trends, volatility of earnings, current analysts' evaluations, Independent's ability and intent to hold investments until a recovery of amortized cost, as well as other factors. Adverse developments with respect to one or more of the foregoing factors may require Independent to deem particular securities to be other-than-temporarily impaired, with the credit related portion of the reduction in the value recognized as a charge to Independent's earnings. Market volatility may make it extremely difficult to value certain of Independent's securities. Subsequent valuations, in light of factors prevailing at that time, may result in significant changes in the values of these securities in future periods. Any of these factors could require Independent to recognize further impairments in the value of Independent's securities portfolio, which may have an adverse effect on Independent's results of operations in future periods.

***Impairment of goodwill and/or intangible assets could require charges to earnings, which could result in a negative impact on Independent's results of operations.***

Goodwill arises when a business is purchased for an amount greater than the net fair value of its assets. Independent has recognized goodwill as an asset on the balance sheet in connection with several acquisitions. When an intangible asset is determined to have an indefinite useful life, it is not amortized, and instead is evaluated for impairment. Goodwill is subject to impairment tests annually, or more frequently if necessary, and is evaluated using a two-step impairment approach. A significant and sustained decline in Independent's stock price and market capitalization, a significant decline in Independent's expected future cash flows, a significant adverse change in the business climate, slower growth rates or other factors could result in impairment of goodwill or other intangible assets. If Independent were to conclude that a future write-down of the goodwill or intangible assets is necessary, then Independent would record the appropriate charge to earnings, which could be materially adverse to the results of operations and financial position.

***Deterioration in the Federal Home Loan Bank ( FHLB ) of Boston's capital might restrict the FHLB of Boston's ability to meet the funding needs of its members, cause a suspension of its dividend, and cause its stock to be determined to be impaired.***

Significant components of Rockland Trust's liquidity needs are met through its access to funding pursuant to its membership in the FHLB of Boston. The FHLB is a cooperative that provides services to its member banking institutions. The primary reason for joining the FHLB is to obtain funding from the FHLB of Boston. The purchase of stock in the FHLB is a requirement for a member to gain access to funding. Any deterioration in the FHLB's performance may affect Independent's access to funding and/or require Independent to deem the required investment in FHLB stock to be impaired.

***Reductions in the value of Independent's deferred tax assets could affect earnings adversely.***

A deferred tax asset is created by the tax effect of the differences between an asset's book value and its tax basis. Independent assesses the deferred tax assets periodically to determine the likelihood of Independent's ability to realize their benefits. These assessments consider the performance of the associated business and its ability to generate future taxable income. If the information available to Independent at the time of assessment indicates there is a greater than 50% chance that Independent will not realize the deferred tax asset benefit, Independent is required to establish a valuation allowance for it and reduce its future tax assets to the amount Independent believes could be realized in

future tax returns. Recording such a valuation allowance could have a material adverse effect on the results of operations or financial position. Additionally the deferred tax asset is measured using enacted tax rates expected to apply to taxable income in the years in which the temporary differences are expected to be recovered or settled. Accordingly, a change in enacted tax rates may result in a decrease/increase to Independent's deferred tax asset.

**Table of Contents**

***Independent will need to keep pace with evolving information technology, guard against and react to increased cyber security risks and electronic fraud.***

The potential need to adapt to changes in information technology could adversely impact Independent's operations and require increased capital spending. The risk of electronic fraudulent activity within the financial services industry, especially in the commercial banking sector due to cyber criminals targeting bank accounts and other customer information, could adversely impact Independent's operations, damage its reputation and require increased capital spending. Independent's information technology infrastructure and systems may be vulnerable to cyber terrorism, computer viruses, system failures and other intentional or unintentional interference, negligence, fraud and other unauthorized attempts to access or interfere with these systems and proprietary information. Although Independent believes to have implemented and maintain reasonable security controls over proprietary information as well as information of Independent's customers, shareholders and employees, a breach of these security controls may have a material adverse effect on Independent's business, financial condition and results of operations and could subject us to significant regulatory actions and fines, litigation, loss, third-party damages and other liabilities.

***Independent's business depends on maintaining the trust and confidence of customers and other market participants, and the resulting good reputation is critical to its business.***

Independent's ability to originate and maintain accounts is highly dependent upon the perceptions of consumer and commercial borrowers and deposit holders and other external perceptions of Independent's business practices or financial health. Independent's reputation is vulnerable to many threats that can be difficult or impossible to control, and costly or impossible to remediate. Regulatory inquiries, employee misconduct and rumors, among other things, can substantially damage Independent's reputation, even if they are baseless or satisfactorily addressed. Adverse perceptions regarding Independent's reputation in the consumer, commercial and funding markets could lead to difficulties in generating and maintaining accounts as well as in financing them and to decreases in the levels of deposits that consumer and commercial customers and potential customers choose to maintain with Independent, any of which could have a material adverse effect on Independent's business and financial results.

***If Independent's risk management framework does not effectively identify or mitigate Independent's risks, Independent could suffer unexpected losses and could be materially adversely affected.***

Independent's risk management framework seeks to mitigate risk and appropriately balance risk and return. Independent has established processes and procedures intended to identify, measure, monitor and report the types of risk to which it is subject, including credit risk, operations risk, compliance risk, reputation risk, strategic risk, market risk and liquidity risk. Independent seeks to monitor and control its risk exposure through a framework of policies, procedures and reporting requirements. Management of Independent's risks in some cases depends upon the use of analytical and/or forecasting models. If the models used to mitigate these risks are inadequate, Independent may incur losses. In addition, there may be risks that exist, or that develop in the future, that Independent has not appropriately anticipated, identified or mitigated. If Independent's risk management framework does not effectively identify or mitigate its risks, Independent could suffer unexpected losses and could be materially adversely affected.

***Changes in accounting policies or accounting standards could cause Independent to change the manner in which it reports its financial results and condition in adverse ways and could subject Independent to additional costs and expenses.***

Independent's accounting policies are fundamental to understanding its financial results and condition. Some of these policies require the use of estimates and assumptions that may affect the value of Independent's assets or liabilities and financial results. Independent identified its accounting policies regarding the allowance for loan losses, security

valuations and impairments, goodwill and other intangible assets, and income taxes to be critical because they require management to make difficult, subjective and complex

---

**Table of Contents**

judgments about matters that are inherently uncertain. Under each of these policies, it is possible that materially different amounts would be reported under different conditions, using different assumptions, or as new information becomes available.

From time to time, the FASB and the Securities and Exchange Commission change their guidance governing the form and content of Independent's external financial statements. In addition, accounting standard setters and those who interpret U.S. GAAP, such as the FASB, SEC, and banking regulators, may change or even reverse their previous interpretations or positions on how these standards should be applied. Such changes are expected to continue, and may accelerate dependent upon the FASB and International Accounting Standards Board commitments to achieving convergence between U.S. GAAP and International Financial Reporting Standards. Changes in U.S. GAAP and changes in current interpretations are beyond Independent's control, can be hard to predict and could materially impact how Independent reports its financial results and condition. In certain cases, Independent could be required to apply new or revised guidance retroactively or apply existing guidance differently (also retroactively) which may result in Independent restating prior period financial statements for material amounts. Additionally, significant changes to U.S. GAAP may require costly technology changes, additional training and personnel, and other expenses that will negatively impact Independent's results of operations.

***Independent may be unable to adequately manage its liquidity risk, which could affect its ability to meet its obligations as they become due, capitalize on growth opportunities, or pay regular dividends on its common stock.***

Liquidity risk is the potential that Independent will be unable to meet its obligations as they come due, capitalize on growth opportunities as they arise, or pay regular dividends on its common stock because of an inability to liquidate assets or obtain adequate funding in a timely basis, at a reasonable cost and within acceptable risk tolerances. Liquidity is required to fund various obligations, including credit commitments to borrowers, mortgage and other loan originations, withdrawals by depositors, repayment of borrowings, dividends to shareholders, operating expenses and capital expenditures. Liquidity is derived primarily from retail deposit growth and retention; principal and interest payments on loans; principal and interest payments on investment securities; sale, maturity and prepayment of investment securities; net cash provided from operations, and access to other funding sources.

***Independent is subject to environmental liability risk associated with lending activities which could have a material adverse effect on its financial condition and results of operations.***

A significant portion of Independent's loan portfolio is secured by real property. During the ordinary course of business, Independent may foreclose on and take title to properties securing certain loans. In doing so, there is a risk that hazardous or toxic substances could be found on these properties. If hazardous or toxic substances are found, Independent may be liable for remediation costs, as well as for personal injury and property damage. Environmental laws may require Independent to incur substantial expenses and may materially reduce the affected property's value or limit Independent's ability to use or sell the affected property. In addition, future laws or more stringent interpretations or enforcement policies with respect to existing laws may increase Independent's exposure to environmental liability. Although Independent has policies and procedures to perform an environmental review prior to originating certain commercial real estate loans, as well as before initiating any foreclosure action on real property, these reviews may not be sufficient to detect all potential environmental hazards. The remediation costs and any other financial liabilities associated with an environmental hazard could have a material adverse effect on Independent's financial condition and results of operations.

***Changes in the equity markets could materially affect the level of assets under management and the demand for other fee-based services.***



Economic downturns could affect the volume of income from and demand for fee-based services. Revenues from the investment management business depend in large part on the level of assets under management and

---

**Table of Contents**

administration. Market volatility that leads customers to liquidate investments as well as lower asset values can reduce Independent's level of assets under management and administration and thereby decrease Independent's investment management and administration revenues.

***Independent relies on its systems, employees and certain service providers, and if the system fails or if Independent's security measures are compromised, the operations could be disrupted or the data of Independent's customers could be improperly divulged.***

Independent faces the risk that the design of Independent's controls and procedures, including those to mitigate the risk of fraud by employees or outsiders, may prove to be inadequate or are circumvented, thereby causing delays in detection of errors or inaccuracies in data and information. Independent regularly reviews and updates Independent's internal controls, disclosure controls and procedures, and corporate governance policies and procedures. Any system of controls, however well designed and operated, is based in part on certain assumptions and can provide only reasonable, not absolute, assurances that the objectives of the system are met. Any failure or circumvention of Independent's controls and procedures or failure to comply with regulations related to controls and procedures could have a material adverse effect on Independent's business, results of operations and financial condition. Independent may also be subject to disruptions of the systems arising from events that are wholly or partially beyond Independent's control (including, for example, electrical or telecommunications outages), which may give rise to losses in service to customers and to financial loss or liability. Additionally, Independent's risk exposure to security matters may remain elevated or increase in the future due to, among other things, the increasing size and prominence of Rockland Trust in the financial services industry, Independent's expansion of Internet and mobile banking tools and products based on customer needs, and the system and customer account conversions associated with the integration of merger targets. Independent is further exposed to the risk that external vendors may be unable to fulfill their contractual obligations (or will be subject to the same risk of fraud or operational errors by their respective employees as Independent is) and to the risk that Independent's (or vendors') business continuity and data security systems prove to be inadequate. Independent maintains a control framework designed to monitor vendor risks. While Independent believes these policies and procedures help to mitigate risk, the failure of an external vendor to perform in accordance with the contracted arrangements under service level agreements could be disruptive to Independent's operations, which could have a material adverse impact on the business and, in turn, Independent's financial condition and results of operations.

***Independent's ability to make opportunistic acquisitions is subject to significant risks, including the risk that regulators will not provide the requisite approvals.***

Independent may make opportunistic whole or partial acquisitions of other banks, branches, financial institutions, or related businesses from time to time that it expects may further Independent's business strategy. Any possible acquisition will be subject to regulatory approval, and there can be no assurance that Independent will be able to obtain such approval in a timely manner or at all. Even if Independent obtains regulatory approval, these acquisitions could involve numerous risks, including lower than expected performance or higher than expected costs, difficulties related to integration, diversion of management's attention from other business activities, changes in relationships with customers, and the potential loss of key employees. In addition, Independent may not be successful in identifying acquisition candidates, integrating acquired institutions, or preventing deposit erosion or loan quality deterioration at acquired institutions. Competition for acquisitions can be highly competitive, and Independent may not be able to acquire other institutions on attractive terms. There can be no assurance that Independent will be successful in completing or will even pursue future acquisitions, or if such transactions are completed, that Independent will be successful in integrating acquired businesses into operations. Ability to grow may be limited if Independent chooses not to pursue or is unable to successfully make acquisitions in the future.



**Table of Contents**

***Independent's effective income tax rate could be adversely affected if Independent's community development entity subsidiaries do not receive additional New Markets Tax Credit awards.***

Independent's effective tax rate is determined by a number of factors, including the recognition of federal tax credits in connection with New Markets Tax Credit awards. In 2015, Independent recognized \$6.5 million in federal tax credits through New Markets Tax Credit award deployment. Federal government agencies periodically determine New Markets Tax Credit award recipients through a nationwide application process that is highly competitive. While Independent's community development entity subsidiaries have received four prior New Markets Tax Credit awards, there can be no assurance as to the success of any current or future New Markets Tax Credit applications. If Independent does not obtain additional awards, Independent's effective tax rate could increase substantially in the future, adversely affecting net income, as existing federal tax credits run off.

***Independent may experience losses and expenses if security interests granted for loans are not enforceable.***

When Rockland Trust makes loans, it is sometimes granted liens such as real estate mortgages or other asset pledges to provide Rockland Trust with a security interest in collateral. If there is a loan default, Rockland Trust may need to foreclose upon collateral and enforce the security interests it has been granted to obtain repayment. Drafting errors, other defects or imperfections in the security interests granted to Rockland Trust, and/or changes in law may render liens granted to Rockland Trust unenforceable. Independent may incur losses or expenses if security interests granted to Rockland Trust are or may be unenforceable.

**Table of Contents**

**FORWARD-LOOKING STATEMENTS**

This document contains or incorporates by reference forward-looking statements regarding the financial condition, results of operations, earnings outlook, and business prospects of Independent, Island and the potential combined company and may include statements for the period following the completion of the merger. You can find many of these statements by looking for words such as expects, projects, anticipates, believes, intends, estimates, strategy, plan, potential, possible, and other similar expressions.

The forward-looking statements involve certain assumptions, risks, and uncertainties. In particular, the ability of either Independent or Island to predict results or actual effects of its plans and strategies, or those of the combined company, is inherently uncertain. Accordingly, actual results may differ materially from those expressed in, or implied by, the forward-looking statements. You therefore are cautioned not to place undue reliance on these statements, which speak only as of the date of this document or the date of any document incorporated by reference in this document. Some of the factors that may cause actual results or earnings to differ materially from those contemplated by the forward-looking statements include, but are not limited to, those discussed elsewhere in this proxy statement/prospectus under **Risk Factors**, as well as the following:

those risks and uncertainties Independent discusses or identifies in its public filings with the SEC;

the risk that the businesses of Independent and Island will not be integrated successfully or such integration may be more difficult, time-consuming, or costly than expected;

expected revenue synergies and cost savings from the merger may not be fully realized or realized within the expected time frame;

revenues following the merger may be lower than expected;

costs following the merger may be higher than expected;

competitive pressure among financial services companies may increase significantly;

general economic or business conditions, either nationally, regionally, or in the markets in which Independent and Island do business, may be less favorable than expected;

changes in the interest rate environment may reduce interest margins and impact funding sources;

changes in both companies' businesses during the period between now and the completion of the merger may have adverse impacts on the combined company;

changes in market rates and prices may adversely impact the value of financial products and assets;

deterioration in the credit markets may adversely impact either company or its business;

legislation or regulatory environments, requirements, or changes, including changes in accounting methods, may adversely affect businesses in which either company is engaged;

litigation liabilities, including costs, expenses, settlements and judgments, may adversely affect either company or its businesses;

deposit attrition, operating costs, customer loss and business disruption following the merger, including difficulties in maintaining relationships with employees, may be greater than expected; and

the ability to obtain timely governmental approvals of the merger without the imposition of any conditions that would adversely affect the potential combined company.

All subsequent written and oral forward-looking statements concerning the merger or other matters addressed in this document and attributable to Independent or Island or any person acting on their behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable law or regulation, Independent and Island undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this document or to reflect the occurrence of unanticipated events.

**Table of Contents****SUMMARY HISTORICAL AND UNAUDITED PRO FORMA FINANCIAL INFORMATION****Per Share Market Price Information of Independent Common Stock**

Independent common stock trades on the NASDAQ Global Select Market under the symbol INDB. Island common stock is not traded publicly. The following presents the closing sale prices of Independent common stock on October 20, 2016, the last trading day before we announced the merger agreement, and January 3, 2017, the last practicable trading day prior to mailing this document. Since Island common stock is not traded publicly, the last known sale of Island common stock prior to October 20, 2016 was for a price of \$243.00 per share, based upon a transaction involving 210 shares on September 16, 2016, and the closing sale prices of Island common stock on October 20, 2016, the last trading day before we announced the merger agreement, and January 3, 2017, the last practicable trading day prior to mailing this document, are not available. The table also represents the equivalent value of the stock consideration to be paid to Island shareholders who elect to receive Independent common stock in the merger for each share of Island common stock that they own on those dates, calculated by multiplying the closing price of Independent common stock on those dates by an exchange ratio of 9.525, which represents the shares of Independent common stock that Island shareholders who elect to receive Independent common stock will receive in the merger for each share of Island common stock that they own.

<b>Date</b>	<b>Independent Closing Price</b>	<b>Island Closing Price</b>	<b>Exchange Ratio</b>	<b>Equivalent Per Share Value</b>
October 20, 2016	\$ 53.55	N/A	9.525	\$ 510.06
January 3, 2017	\$ 70.35	N/A	9.525	\$ 670.08

The above table shows only historical comparisons. These comparisons may not provide meaningful information to Island shareholders in determining whether to approve the merger agreement. Island shareholders are urged to obtain current market quotations for Independent common stock and to review carefully the other information contained in this proxy statement/prospectus or incorporated by reference into this proxy statement/prospectus in considering whether to approve the merger agreement. See the section entitled **Where You Can Find More Information** beginning on page 86 of this proxy statement/prospectus.

**Comparative Stock Prices and Dividends**

Independent common stock is listed on the NASDAQ Global Select Market under the symbol INDB. Island common stock is not traded publicly. The following table sets forth, for the periods indicated, the high and low closing prices per share of Independent common stock as reported by the NASDAQ Global Select Market. The table also provides information as to dividends paid per share of Independent common stock and dividends paid per share of Island common stock. As of January 3, 2017, there were 27,005,813 shares of Independent common stock issued and outstanding and approximately 2,701 shareholders of record and 48,466 shares of Island common stock issued and outstanding and approximately 78 shareholders of record.

	<b>Independent Closing Price</b>		<b>Dividend per Share</b>
	<b>High</b>	<b>Low</b>	
<b>2015</b>			
Quarter Ended March 31,	\$ 44.79	\$ 37.83	\$ 0.26

Edgar Filing: INDEPENDENT BANK CORP - Form 424B3

Quarter Ended June 30,	48.94	41.03	0.26
Quarter Ended September 30,	49.90	43.05	0.26
Quarter Ended December 31,	52.17	44.19	0.26
<b>2016</b>			
Quarter Ended March 31,	\$ 47.66	\$ 41.35	\$ 0.29
Quarter Ended June 30,	\$ 49.81	\$ 42.60	0.29
Quarter Ended September 30,	\$ 54.09	\$ 44.26	0.29
Quarter Ended December 31,	\$ 70.95	\$ 52.21	0.29
<b>2017</b>			
Quarter Ended March 31, (through January 3)	\$ 70.35	\$ 70.35	TBD



**Table of Contents**

	<b>Island Dividend per Share</b>
<b>2015</b>	
Quarter Ended March 31,	\$ 0.50
Quarter Ended June 30,	0.50
Quarter Ended September 30,	0.50
Quarter Ended December 31,	0.50
<b>2016</b>	
Quarter Ended March 31,	\$ 0.50
Quarter Ended June 30,	0.50
Quarter Ended September 30,	0.50
Quarter Ended December 31,	0.50
<b>2017</b>	
Quarter Ended March 31, (through January 3)	TBD

After completion of the merger, the timing and amount of the payment of dividends will be at the discretion of Independent's board of directors and will be determined after consideration of various factors, including level of earnings, cash requirements, and financial condition.

Island expects to continue to declare quarterly cash dividends on Island common stock until the merger is completed, subject to the terms and conditions of the merger agreement. Prior to completion of the merger, Island's shareholders will continue to receive any regular quarterly dividends declared and paid by Island, at a rate not to exceed \$0.50 per share of Island common stock. Holders of Island common stock will stop receiving cash dividends with respect to shares of Island common stock upon completion of the merger, when the separate corporate existence of Island will cease.

**Unaudited Comparative Per Share Data**

The table that follows presents, for both Independent and Island, historical information with respect to earnings, dividends, and book value on a per share basis. The table also presents preliminary pro forma information for both companies on a per share basis.

The preliminary pro forma information as of and for the year ended December 31, 2015 assumes that the merger became effective on January 1, 2015 and assumes total merger consideration of approximately \$22 million, consisting of approximately \$4.8 million in cash and 369,310 shares of Independent common stock to be paid or issued to holders of Island common stock upon completion of the merger. The number of shares of Independent common stock was calculated based on 48,466 shares of Island common stock outstanding on December 31, 2015. Based on the closing price of \$46.52 for Independent common stock on December 31, 2015, the value of the merger consideration to be received in exchange for one share of Island common stock not exchanged for \$500.00 in cash would have been \$443.10.

The preliminary pro forma information as of and for the nine months ended September 30, 2016 assumes that the merger became effective on January 1, 2016 and assumes total merger consideration of approximately \$25 million, consisting of approximately \$4.8 million in cash and 369,310 shares of Independent common stock to be paid or issued to holders of Island common stock upon completion of the merger. The number of shares of Independent common stock was calculated based on 48,466 shares of Island common stock outstanding on September 30,

2016. Based on the closing price of \$54.09 for Independent common stock on September 30, 2016, the value of the merger consideration to be received in exchange for one share of Island common stock not exchanged for \$500.00 in cash would have been \$515.21.

The preliminary pro forma equivalent per share information shown for Island in the following table was obtained by multiplying the pro forma per share amounts shown for Independent by the exchange ratio of 9.525. The actual number of shares to be issued by Independent in the merger will also depend on the number of shares of Island common stock outstanding immediately prior to the effective date of the merger.

**Table of Contents**

The preliminary pro forma financial information includes estimated adjustments to record Island's assets and liabilities at their respective fair values based on Independent's management's best estimate using the information available at this time. The preliminary pro forma adjustments may be revised as additional information becomes available and as additional analyses are performed. The final allocation of the purchase price will be determined after the merger is completed and after the completion of a final analysis to determine the fair values of Island's tangible and identifiable intangible assets and liabilities as of the closing date. The final purchase price adjustments may differ materially from the preliminary pro forma adjustments. Increases or decreases in the fair value of certain balance sheet amounts and other items of Island as compared to the information presented in this document may change the amount of the purchase price allocated to goodwill and other assets and liabilities and may impact the statement of income due to adjustments in yield and/or amortization of adjusted assets and liabilities.

It is anticipated that the merger will provide Independent with financial benefits, such as possible expense efficiencies and revenue enhancements, among other factors, although no assurances can be given that these benefits will actually be achieved. The impact of these benefits has not been reflected in the preliminary pro forma financial information. As required, the preliminary pro forma financial information includes adjustments that give effect to events that are directly attributable to the merger and factually supportable. As a result, any planned adjustments affecting the balance sheet, income statement, or shares of common stock outstanding subsequent to the assumed completion date of the merger have not been included.

The preliminary pro forma financial information is presented for illustrative purposes only and is not necessarily indicative of the financial results of the combined companies had the merger actually been completed as of or at the beginning of each period presented nor does it indicate future results for any interim or full-year period.

**Table of Contents**

The information in the following table is derived from and should be read in conjunction with the historical consolidated financial statements and the notes thereto for Independent contained in this proxy statement/prospectus or incorporated into this document by reference.

**Summary Financial Information**

	<b>At or for the Year Ended December 31, 2015</b>	<b>At or for the Nine Months Ended September 30, 2016</b>
<b>Book value per share:</b>		
Independent historical	\$ 29.40	\$ 31.09
Island historical	321.88	333.29
Pro forma combined	29.64	31.41
Island pro forma equivalent	282.34	299.14
<b>Tangible book value per share:</b>		
Independent historical	\$ 21.29	\$ 23.08
Island historical	321.88	333.29
Pro forma combined	21.55	23.33
Island pro forma equivalent	205.27	222.26
<b>Cash dividends declared per share:</b>		
Independent historical	\$ 1.04	\$ 0.87
Island historical	2.00	1.50
Pro forma combined	1.04	0.87
Island pro forma equivalent	9.91	8.29
<b>Basic net income per share:</b>		
Independent historical	\$ 2.51	\$ 2.26
Island historical	21.77	10.71
Pro forma combined	2.41	2.15
Island pro forma equivalent	22.97	20.49
<b>Diluted net income per share:</b>		
Independent historical	\$ 2.50	\$ 2.26
Island historical	21.77	10.71
Pro forma combined	2.41	2.15
Island pro forma equivalent	22.91	20.45

**Table of Contents****Independent Selected Historical Financial and Operating Data**

The following table provides summary historical consolidated financial condition data for Independent as of the end of each of the fiscal years in the five-year period ended December 31, 2015 and operating and per share data and operating ratios for each of the corresponding fiscal years and as of the end of each of the nine months ended September 30, 2016 and September 30, 2015 and for the corresponding fiscal periods. The annual historical consolidated financial condition, operating and per share data, and operating ratios have been derived in part from Independent's audited financial statements and related notes incorporated by reference into this document. The historical consolidated financial condition, operating and per share data, and operating ratios as of the end of each of the nine months ended September 30, 2016 and September 30, 2015 and for the corresponding fiscal periods have been derived from Independent's unaudited financial statements and related notes incorporated by reference into this document and are not necessarily indicative of the results that may be expected for the full year. The following information is only a summary and you should read it in conjunction with Independent's financial statements and related notes incorporated by reference into this document.

	At or for the Nine Months Ended		At or for the Year Ended December 31,				
	2016 (unaudited)	2015 (unaudited)	2015	2014	2013	2012	2011
<i>(Dollars in Thousands, Except Per Share Data)</i>							
<b>FINANCIAL CONDITION DATA:</b>							
Securities available for sale	\$ 387,008	\$ 365,792	\$ 367,249	\$ 348,554	\$ 356,862	\$ 329,286	\$ 305,332
Securities held to maturity	430,763	448,139	477,507	375,453	350,652	178,318	204,956
Loans	5,746,133	5,498,121	5,547,721	4,970,733	4,718,307	4,519,011	3,794,390
Allowance for loan losses	(58,205)	(55,205)	(55,825)	(55,100)	(53,239)	(51,834)	(48,260)
Goodwill and core deposit intangibles	210,834	213,612	212,909	180,306	182,642	162,144	140,722
Total assets	7,502,009	7,134,903	7,210,038	6,364,912	6,099,234	5,756,985	4,970,240
Total deposits	6,269,460	5,914,863	5,990,703	5,210,466	4,986,418	4,546,677	3,876,829
Total borrowings	299,521	350,516	344,502	406,655	448,488	591,055	537,686
Stockholders equity	818,242	759,203	771,463	640,527	591,540	529,320	469,057
Nonperforming loans	24,793	29,567	27,690	27,512	34,659	28,766	28,953
Nonperforming assets	26,591	32,099	29,849	38,894	43,833	42,427	37,149
Shares outstanding	26,320,467	26,212,238	26,236,352	23,998,738	23,805,984	22,774,009	21,499,768

**OPERATING  
DATA:**

Interest income	\$ 183,209	\$ 175,675	\$ 235,545	\$ 216,459	\$ 205,914	\$ 196,192	\$ 195,751
Interest expense	14,117	15,633	20,617	20,417	23,336	23,393	28,672
Net interest income	169,092	160,042	214,928	196,042	182,578	172,799	167,079
Provision (benefit) for loan losses	2,075	1,000	1,500	10,403	10,200	18,056	11,482
Noninterest income	60,666	56,064	75,888	69,943	68,009	62,016	52,700
Noninterest expenses	140,485	150,652	197,138	171,838	173,649	159,459	145,713
Net income	59,469	45,505	64,960	59,845	50,254	42,627	45,436

**PER SHARE  
DATA:**

Net income-basic	\$ 2.26	\$ 1.77	\$ 2.51	\$ 2.50	\$ 2.18	\$ 1.96	\$ 2.12
Net income-diluted	2.26	1.76	2.50	2.49	2.18	1.95	2.12
Cash dividends declared	0.87	0.78	1.04	0.96	0.88	0.84	0.76
Book value	31.09	28.96	29.40	26.69	24.85	23.24	21.82

**OPERATING  
RATIOS:**

Return on average assets	1.09%	0.88%	0.93%	0.95%	0.87%	0.83%	0.96%
Return on average common equity	9.92%	8.35%	8.79%	9.66%	9.09%	8.66%	9.93%
Net interest margin (on a fully tax equivalent basis)	3.42%	3.44%	3.42%	3.45%	3.51%	3.75%	3.90%
Equity to assets	10.91%	10.64%	10.70%	10.06%	9.70%	9.19%	9.44%
Dividend payout ratio	37.13%	42.54%	40.29%	37.50%	30.09%	52.77%	35.30%

**ASSET  
QUALITY  
RATIOS:**

Nonperforming loans as a percent of gross loans	0.43%	0.54%	0.50%	0.55%	0.73%	0.64%	0.76%
Nonperforming assets as a percent of total	0.35%	0.45%	0.41%	0.61%	0.72%	0.74%	0.75%

assets							
Allowance for loan losses as a percent of total loans	1.01%	1.00%	1.01%	1.11%	1.13%	1.15%	1.27%
Allowance for loan losses as a percent of nonperforming loans	234.76%	187.71%	201.61%	200.28%	153.61%	180.19%	166.68%
<b>CAPITAL RATIOS:</b>							
Tier 1 leverage capital ratio	9.59%	9.21%	9.33%	8.84%	8.64%	8.65%	8.61%
Common equity Tier 1 capital ratio	10.78%	10.31%	10.44%	N/A	N/A	N/A	N/A
Tier 1 risk-based capital ratio	12.01%	11.58%	11.71%	10.88%	10.78%	10.36%	10.74%
Total risk-based capital ratio	13.63%	13.23%	13.36%	13.15%	12.58%	12.23%	12.78%

**Table of Contents**

- (1) As discussed in Note 2 to Independent's unaudited financial statements and related notes included in Independent's Form 10-Q for the three and nine months ended September 30, 2016 that is incorporated by reference into this document, effective January 1, 2016, Independent adopted Financial Accounting Standards Board (FASB) Accounting Standards Update 2015-03 Interest Imputation of Interest Subtopic 835-30 (ASU 2015-03). ASU 2015-03 requires that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability. While the standard requires retrospective adoption, the summary historical consolidated financial data for Independent as of the end of each of the fiscal years in the five-year period ended December 31, 2015 and as of September 30, 2015 has not been adjusted to reflect the adoption of ASU 2015-03 as the effects were not deemed to be material.



**Table of Contents****Island Selected Historical Consolidated Financial Data**

The following table provides summary historical consolidated financial data for Island as of the end of and for each of the fiscal years in the five-year period ended December 31, 2015 and as of the end of and for the nine months ended September 30, 2016 and September 30, 2015. The historical consolidated financial data as of the end of and for each of the fiscal years in the five-year period ended December 31, 2015 have been derived in part from Island's unaudited financial statements and related notes. The historical consolidated financial data as of the end of and for the nine months ended September 30, 2016 and September 30, 2015 have been derived from Island's unaudited financial statements and related notes and are not necessarily indicative of the results that may be expected for the full year or any other interim period.

	At or for the Nine Months Ended September 30, 2016		At or for the Year Ended December 31, (unaudited)				
	(unaudited)	(unaudited)	2015	2014	2013	2012	2011
<i>(Dollars in Thousands, Except Per Share Data)</i>							
<b>FINANCIAL CONDITION DATA:</b>							
Securities available for sale	\$ 16,405	\$ 17,394	\$ 16,399	\$ 15,801	\$ 16,972	\$ 14,702	\$ 15,871
Securities held to maturity	0	0	0	0	0	0	0
Loans (Net)	151,423	143,931	147,795	140,858	124,730	113,162	105,074
Allowance for loan losses <sup>(1)</sup>	(1,413)	(1,381)	(1,400)	(1,340)	(1,208)	(1,088)	(1,000)
Total assets	194,135	189,264	177,659	172,376	159,319	149,169	131,993
Total deposits	171,129	163,418	152,214	134,409	134,829	123,882	103,891
Total borrowings	5,015	5,015	5,015	18,190	4,300	5,270	7,326
Total Repurchase Agreements	1,438	2,838	2,501	2,877	1,969	2,162	3,671
Shareholders' equity	16,153	17,333	17,600	16,583	17,959	17,119	16,279
Nonperforming loans							
Nonperforming assets							
Shares outstanding (Common)	48,466	48,466	48,466	48,466	48,466	48,466	48,466
<b>OPERATING DATA:</b>							
Interest income	\$ 4,799	\$ 4,750	\$ 322	\$ 5,975	\$ 5,799	\$ 5,732	\$ 5,520
Interest expense	582	457	631	530	567	586	640
Net interest income	4,217	4,294	5,691	5,445	5,232	5,146	4,880
Provision for loan losses	13	42	60	132	120	88	49
Noninterest income	570	550	730	669	789	886	881

Edgar Filing: INDEPENDENT BANK CORP - Form 424B3

Noninterest expenses	3,665	3,492	4,631	4,571	4,413	4,497	4,269
Net income	633	812	1,076	1,000	929	907	936
Preferred stock dividend	114	15	21	40	40	40	16
Net income available to common shareholders	519	797	1,055	960	889	867	920

**PER SHARE DATA:**

Net income-basic	\$ 13.06	\$ 16.75	\$ 21.77	\$ 19.81	\$ 18.34	\$ 17.89	\$ 18.98
Net income-diluted	13.06	16.75	\$ 21.77	\$ 19.81	\$ 18.34	\$ 17.89	\$ 18.98
Cash dividends declared	1.50	1.50	2.00	2.00	2.00	2.00	0.25
Book value	333.29	316.37	321.88	300.89	288.02	270.68	253.35

**OPERATING RATIOS:**

Return on average assets	0.43%	0.60%	0.60%	0.60%	0.61%	0.65%	0.70%
Return on average common equity	5.33%	7.25%	6.97%	6.99%	6.89%	7.13%	7.80%
Net interest margin (on a fully tax equivalent basis)	3.16%	3.38%	3.34%	3.50%	3.65%	3.91%	3.91%
Equity to assets	8.32%	9.16%	9.91%	9.62%	11.27%	11.48%	12.33%
Dividend payout ratio	11.48%	8.95%	9.19%	10.10%	10.91%	11.18%	1.32%

**ASSET QUALITY RATIOS:**

Nonperforming loans as a percent of gross loans	0.00%	0.00%	0.00%	0.19%	0.65%	1.51%	1.74%
Nonperforming assets as a percent of total assets	0.00%	0.74%	0.79%	0.97%	0.51%	1.15%	2.35%
Allowance for loan losses as a percent of total loans	0.92%	0.95%	0.94%	0.94%	0.96%	0.95%	0.94%
Allowance for loan losses as a percent of nonperforming loans	N/A	N/A	N/A	4.84	1.48	3.93	3.61

**CAPITAL RATIOS:**

Tier 1 leverage capital ratio	8.35%	9.47%	9.70%	9.91%	11.24%	12.07%	11.86%
Common equity Tier 1 capital ratio	13.39%	13.96%	13.95%	N/A	N/A	N/A	N/A
Tier 1 risk-based capital ratio	13.39%	13.96%	13.95%	14.10%	16.43%	16.85%	16.94%
Total risk-based capital ratio	14.62%	15.12%	15.11%	15.29%	17.59%	17.98%	18.05%



**Table of Contents**

**THE SPECIAL MEETING OF ISLAND SHAREHOLDERS**

This proxy statement/prospectus is being provided to holders of Island common stock as Island's proxy statement in connection with the solicitation of proxies by and on behalf of its board of directors to be voted at the special meeting of Island shareholders to be held on February 28, 2017, and at any adjournment or postponement of the special meeting. This proxy statement/prospectus is also being provided to you as Independent's prospectus in connection with the offer and sale by Independent of its shares of common stock as a result of the proposed merger.

**Date, Time and Place of the Special Meeting**

The special meeting is scheduled to be held as follows:

Date: February 28, 2017

Time: 1:00 p.m., Local Time

Place: The Old Whaling Church

The Frederick Baylies Room

89 Main Street

Edgartown, Massachusetts 02539

**Purpose of the Special Meeting**

At the special meeting, Island shareholders will be asked to:

approve the merger agreement and the transactions it contemplates, including the merger; and

authorize the board of directors of Island to adjourn or postpone the special meeting, if necessary, to permit further solicitation of proxies in favor of the Island merger agreement proposal or to vote on other matters properly before the special meeting.

**Recommendation of Island's Board of Directors**

Island's board of directors has unanimously determined that the merger agreement and the merger are advisable and in the best interests of Island and its shareholders and, accordingly, unanimously recommends that Island's shareholders vote FOR the Island merger agreement proposal and FOR the Island adjournment proposal.

**Record Date; Shares Entitled to Vote**

You are entitled to vote if the records of Island show that you held shares of Island common stock as of the close of business on January 3, 2017. Beneficial owners of shares held in the name of a broker, bank or other nominee (street name) should instruct their record holder how to vote their shares. As of the close of business on the record date, 48,466 shares of Island common stock were outstanding. Each share of common stock has one vote on each matter

presented to shareholders. If you are a beneficial owner of shares of Island common stock held in street name and you want to vote your shares in person at the meeting, you will have to get a written proxy in your name from the broker, bank or other nominee who holds your shares.

**Quorum; Vote Required**

We will have a quorum and will be able to conduct the business of the special meeting only if a majority of the outstanding shares of Island common stock entitled to vote is represented in person or by proxy at the special meeting. If you return a valid proxy card or attend the meeting in person, your shares will be counted for determining whether there is a quorum, even if you abstain from voting. Broker non-votes also will be counted for determining the existence of a quorum. A broker non-vote occurs when a broker, bank or other nominee holding shares of Island common stock for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power with respect to that item and has not received voting instructions from the beneficial owner.

## **Table of Contents**

Approval of the Island merger agreement proposal will require the affirmative vote of at least two-thirds of the outstanding shares of Island common stock entitled to vote at the special meeting. **Failure to return a properly executed proxy card or to vote in person will have the same effect as a vote against the proposal. Broker non-votes and abstentions from voting will have the same effect as voting against the proposal.**

The affirmative vote of a majority of the shares voted on the Island adjournment proposal is required to approve the Island adjournment proposal. Broker non-votes and abstentions from voting will have no effect on the proposal.

## **Island Voting Agreements**

As of the record date of January 3, 2017, the directors of Island individually or jointly owned with their spouses, or were the trustees or co-trustees with their spouses of trusts that owned, an aggregate of 16,182 shares of Island common stock. This equals approximately 33.39% of the outstanding shares of Island common stock. All of Island's directors entered into voting agreements with Independent pursuant to which they agreed to vote these shares of Island common stock in favor of the Island merger agreement proposal. As of the same date, neither Independent nor any its subsidiaries, directors or executive officers owned any shares of Island common stock. For more information about the Island voting agreements, see [Voting Agreements](#).

## **Voting of Proxies**

You may vote in person at the special meeting or by proxy. To ensure your representation at the special meeting, Island recommends that you vote by proxy even if you plan to attend the special meeting. You can always change your vote at the special meeting.

Island shareholders whose shares are held in [street name](#) by their broker, bank or other nominee must follow the instructions provided by their broker, bank, or other nominee to vote their shares. Your broker or bank may allow you to deliver your voting instructions via the telephone or the Internet. If your shares are held in [street name](#) and you wish to vote in person at the special meeting, you will have to obtain a [legal proxy](#) from your record holder entitling you to vote at the special meeting.

Voting instructions are included on your proxy form. If you properly complete and timely submit your proxy, your shares will be voted as you have directed. If you are the record holder of your shares of Island common stock and submit your proxy without specifying a voting instruction, your shares of Island common stock will be voted [FOR](#) the Island merger agreement proposal and [FOR](#) the Island adjournment proposal. If you return an incomplete instruction card to your broker, bank or other nominee, that nominee will not vote your shares with respect to any matter.

## **How to Revoke Your Proxy**

You may revoke your proxy at any time before it is voted by:

filing with the Corporate Secretary of Island a duly executed revocation of proxy;

submitting a new executed proxy with a later date;

voting again via the Internet or by telephone; or

voting in person at the special meeting.

Attendance at the special meeting will not, in and of itself, constitute a revocation of a proxy. All written notices of revocation and other communication with respect to the revocation of proxies should be addressed to:

Island Bancorp, Inc.

Attention: Fielding H. Moore, President and Chief Executive Officer

2 South Water Street

P.O. Box 96

Edgartown, Massachusetts 02539

## **Table of Contents**

### **Voting in Person**

If you plan to attend the Island special meeting and wish to vote in person, you will be given a ballot at the special meeting. Please note, however, that if your shares are held of record by a broker, bank, or other nominee and you wish to vote at the Island special meeting, you must bring additional documentation from the broker, bank, or other nominee in order to vote your shares. Whether or not you plan to attend the Island special meeting, Island requests that you complete, sign, date, and return the enclosed proxy card as soon as possible in the enclosed postage-paid envelope, or submit a proxy through the Internet or by telephone as described on the enclosed proxy card. This will not prevent you from voting in person at the Island special meeting but will assure that your vote is counted if you are unable to attend.

### **Proxy Solicitation**

Island is soliciting your proxy. Island will pay for this proxy solicitation. In addition to soliciting proxies by mail, Morrow Sodali, a proxy solicitation firm, will assist Island in soliciting proxies for the special meeting. Island will pay \$9,500 for these services, plus reimbursement of expenses. Additionally, directors, officers, and employees of Island and Edgartown National may solicit proxies personally and by telephone. None of these persons will receive additional or special compensation for soliciting proxies. Island will, upon request, reimburse brokers, banks and other nominees for their expenses in sending proxy materials to their customers who are beneficial owners and obtaining their voting instructions.

### **Dissenters Rights of Appraisal**

Under applicable Massachusetts law, the holders of Island common stock are entitled to dissenters rights of appraisal in connection with the merger.

Section 13.02(a)(1) of the Massachusetts Business Corporation Act generally provides that shareholders of Massachusetts corporations are entitled to assert appraisal rights in the event of a merger and to receive payment in cash for the fair value of their shares of stock instead of the merger consideration. Island has concluded that Island shareholders are entitled to exercise appraisal rights in connection with the proposed merger with Independent. Island shareholders electing to exercise dissenters rights must comply with the provisions of Section 13 of the Massachusetts Business Corporation Act. A copy of the applicable portions of the Massachusetts Business Corporation Act is attached to this proxy statement/prospectus as Annex C. Failure to follow those provisions exactly could result in a loss of appraisal rights, in which case dissenting shareholders will receive the merger consideration with respect to their shares.

Island shareholders who are entitled to vote on the merger and who would like to assert their appraisal rights are required to do the following pursuant to Section 13 of the Massachusetts Business Corporation Act:

Deliver written notice to Island of their intent to demand payment for their shares of Island common stock if the proposed merger is effectuated. The notice must be delivered before the shareholder vote to approve the merger agreement takes place. Voting against, abstaining from voting or failing to vote with respect to the merger agreement does not by itself constitute demand for appraisal for purposes of Massachusetts law. The written objection should be filed with Island Bancorp, Inc., Fielding H. Moore, President and Chief Executive Officer, 2 South Water Street, P.O. Box 96, Edgartown, Massachusetts 02539.



Edgar Filing: INDEPENDENT BANK CORP - Form 424B3

Refrain from voting FOR approval of the Island merger agreement proposal. If a shareholder returns a signed and dated proxy but does not specify a vote AGAINST approval of the Island merger agreement proposal or a direction to ABSTAIN from voting on the proposal, the proxy will be voted FOR approval of the Island merger agreement proposal, which will have the effect of waiving their appraisal rights.

Comply with other procedures required under Section 13 of the Massachusetts Business Corporation Act.

## **Table of Contents**

Section 13 of the Massachusetts Business Corporation Act requires that Independent deliver, within 10 days after the effective date of the merger, a written appraisal notice and forms containing certain information to all shareholders who have properly complied with the procedures for demanding appraisal. Shareholders who have received such notice and wish to exercise appraisal rights must make certain certifications to Independent and deposit their share certificates with Independent in order to perfect their appraisal rights. Each shareholder that has properly perfected their appraisal rights will be entitled to a cash payment of the estimated fair value of the shares, plus interest but subject to any applicable withholding taxes, within 30 days of the written appraisal notice and forms due date, except for shareholders who acquired their shares on or after October 20, 2016, who are not entitled to payment until they accept the offer from Independent. A shareholder that fails to execute and return the forms, and comply with the terms stated therein, will not be entitled to a payment.

If a dissenting shareholder believes that the amount paid or offered to be paid by Independent is less than the fair value of their shares, the dissenting shareholder is required, within 30 days of receipt of the payment or offer of payment, to notify Independent in writing of the shareholder's own estimate of the fair value of the shares and demand payment of that amount plus interest, less any payment received. If the shareholder's demand for payment is not settled within 60 days of Independent's receipt thereof, Independent is required to petition the court to determine the fair value of the shares and accrued interest or, if the petition is not made, to pay the amount demanded plus interest to the dissenting shareholder.

The foregoing summary is not intended to be a complete statement of the procedures for exercising appraisal rights under Massachusetts law. Any shareholder who believes they are entitled to appraisal rights and wishes to preserve those rights should carefully review Sections 13.01 through 13.31 of the Massachusetts Business Corporation Act, which are attached as Annex C to this proxy statement/prospectus, which set forth the procedures to be complied with in perfecting any such rights. Shareholders who wish to dissent from the merger and pursue their appraisal rights should consult with legal counsel to ensure strict compliance with statutory procedures and avoid the loss of any appraisal rights to which they may be entitled. Dissenting shareholders should also consult with a tax advisor regarding the tax consequences of exercising their appraisal rights under Massachusetts law.

## **Stock Certificates**

You should not send in any certificates representing Island common stock at this time. If the merger is approved, you will receive separate instructions for the exchange of your certificates representing Island common stock. For more information regarding these instructions, please see the section in this document titled "The Merger Agreement Exchange of Island Stock Certificate for Merger Consideration" beginning on page 57 of this document.

**Table of Contents**

**PROPOSAL NO. 1**

**APPROVAL OF THE AGREEMENT AND PLAN OF MERGER**

At the Island special meeting, shareholders will consider and vote on the Island merger agreement proposal. Details about the merger, including each party's reasons for the merger, the effect of approval of the agreement and plan of merger and the timing of effectiveness of the merger, are discussed in the section entitled "The Merger" beginning on page 37 of this document.

Approval of the Island merger agreement proposal requires the presence of a quorum and the affirmative vote of the holders of at least two-thirds of the shares of Island common stock entitled to vote at the special meeting.

**Island's board of directors unanimously recommends that Island shareholders vote FOR approval of the Island merger agreement proposal.**

Table of Contents

**PROPOSAL NO. 2**

**APPROVAL OF ISLAND TO ADJOURN OR POSTPONE THE SPECIAL MEETING, IF NECESSARY, TO PERMIT FURTHER SOLICITATION OF PROXIES**

Island is submitting a proposal for consideration at the Island special meeting to authorize the named proxies to authorize the board of directors of Island to adjourn or postpone the special meeting, if necessary, to permit further solicitation of proxies in favor of the Island merger agreement proposal or to vote on other matters properly before the special meeting. Even though a quorum may be present at the Island special meeting, it is possible that Island may not have received sufficient votes to approve the Island merger agreement proposal by the time of the meeting. In that event, the board of directors of Island would need to adjourn the Island special meeting in order to solicit additional proxies. This proposal relates only to authorization of the board of directors of Island to adjourn or postpone the special meeting, if necessary, to permit further solicitation of proxies in favor of the Island merger agreement proposal or to vote on other matters properly before the special meeting. If the Island special meeting is adjourned for less than 30 days, Island is not required to give notice of the time and place of the adjourned meeting if the new time and place is announced at the special meeting before adjournment, unless the board of directors of Island fixes a new record date for the Island special meeting.

The vote required to approve the Island adjournment proposal is the affirmative vote of a majority of the shares voted on the proposal. Abstentions and broker non-votes will have no effect on the outcome of voting on this proposal.

**Island's board of directors unanimously recommends that Island shareholders vote FOR the Island adjournment proposal or to vote on other matters properly before the special meeting.**

**Table of Contents**

**THE MERGER**

*The discussion in this proxy statement/prospectus of the merger and the principal terms of the merger agreement are subject to, and are qualified in their entirety by reference to, the merger agreement, a copy of which is attached to this proxy statement/prospectus as Annex A and is incorporated into this proxy statement/prospectus by reference.*

**General**

The merger is structured as an 80% stock and 20% cash transaction. Under the terms and conditions set forth in the merger agreement, Island will merge with and into Independent, with Independent surviving the merger. At the effective time of the merger, each share of Island common stock outstanding immediately prior to the effective time will, by virtue of the merger and without any action on the part of the shareholder, be converted into the right to receive either (i) \$500.00 in cash or (2) 9.525 shares of Independent common stock. The exchange ratio may be adjusted to reflect the effect of any stock split, split-up, reverse stock split, stock dividend, reorganization, recapitalization, reclassification, or other similar change with respect to the common stock of Independent or Island that occurs before the merger. Independent will not issue any fractional shares of its common stock in the merger, but will instead pay cash (determined on the basis of the Closing VWAP) for any fractional share an Island shareholder would otherwise receive after aggregating all of his or her shares.

Island's shareholders will be able to elect to receive cash, Independent common stock, or a combination of cash and Independent common stock for their shares of Island common stock. Regardless of an Island shareholder's choice, however, elections will be limited by the requirement that 80% of Island common stock be converted into Independent common stock and 20% be exchanged for cash. Therefore, the allocation of cash and Independent common stock that an Island shareholder will receive will depend on the elections of other Island shareholders. The allocation of the consideration payable to Island's shareholders will not be known until the exchange agent tallies the results of the cash/stock elections made by Island's shareholders. If an Island shareholder does not make an election, the type of consideration the shareholder will receive will depend on the consideration elected by other Island shareholders.

Based on the number of shares of Island common stock outstanding on January 3, 2017, of which 80% will be converted to Independent common stock, it is expected that approximately 369,310 shares of Independent common stock will be issued to Island's shareholders in connection with the merger, which would represent approximately 1.35% of the outstanding Independent common stock (based on the number of shares of Independent common stock outstanding as of January 3, 2017 and the number of shares of Independent common stock to be issued to Island's shareholders in connection with the merger).

**Background of the Merger**

Since its organization in 1905, Edgartown National has endeavored to find ways to prudently build value for its shareholders while serving the needs of its customers and the communities of Martha's Vineyard. As a small island-based community bank, the success of Edgartown National has always been inextricably linked to the economy of Martha's Vineyard, and it has faced competition from large and small financial institutions, especially those with Martha's Vineyard offices. Some of these institutions are substantially larger than Edgartown National and benefit from competitive advantages relating to their size, diversification, charter, and/or corporate structure. Throughout its history, Edgartown National has found ways to successfully compete and deliver on its mission to serve and support the families, business, customers, and communities of Martha's Vineyard with outstanding banking products and services.

In 2000, Island was incorporated in Massachusetts and began operating as the bank holding company for Edgartown National. In August of 2011, Island and Edgartown National participated in the Small Business Lending Fund ( SBLF ) of the U.S. Department of the Treasury (the Treasury ), and Island issued \$4 million of

## Table of Contents

its preferred stock to the Treasury and downstreamed the majority of the proceeds to Edgartown National as capital, which enabled Edgartown National to grow and expand its base of earning assets. Initially, the SBLF preferred stock was an inexpensive source of capital. However, pursuant to the terms of the preferred stock, the cost of this capital increased from 1% to 9% during the first calendar quarter of 2016. In light of the increased cost of this capital, Edgartown National and Island redeemed \$2 million of the SBLF preferred stock in 2015, and redeemed the balance in 2016. The redemption of the SBLF preferred stock left Island and Edgartown National well-capitalized, but without sufficient capital to fund significant future growth.

During Edgartown National's and Island's strategic discussions relating to plans to repay the SBLF in the third quarter of 2015, the board of directors evaluated alternative sources of capital. These discussions led to broader discussions regarding the strategic direction, opportunities, and challenges for Island and Edgartown National on terms that would be consistent with the best interests of Island's shareholders.

The Island board of directors has always been committed to assuring its prudent and profitable operations despite challenging economic conditions and growing regulatory burdens. In recent years, these factors have disproportionately and adversely impacted small community banks. The number of banks in the United States has decreased significantly in the past 30 years. Most of the industry consolidation has involved community banks.

Despite these challenges, the Island board of directors and management focused on strategies to improve earnings, maintain asset quality, and achieve greater efficiencies while seeking to control non-interest expenses. This strategy included increasing loan generation, enhancing credit quality, improving sources of non-interest income, and improving control of non-interest expenses. The income of small community banks like Edgartown National is largely dependent on its net interest margin, which is a function of the difference between deposit and borrowing rates and the interest earned from loans and investments. The protracted period of substantially low interest rates and net interest margin compression has been especially challenging for small community banks like Edgartown National, which do not have significant alternative sources of income such as fees to offset the effects of a low interest rate environment.

During the past few years, the Island board of directors discussed strategies to grow Edgartown National to a greater size in order to benefit from perceived efficiencies of scale and to expand the base of Edgartown National's earning assets. Achieving prudent asset growth to a scalable size in Martha's Vineyard was viewed as challenging given the geographic constraints of Martha's Vineyard and the dependence of the Martha's Vineyard economy on tourism and economic development driven by off-island factors. In September 2015, the Island board of directors evaluated Island's ability to grow or raise capital to support growth and replace the remaining \$2 million of SBLF preferred stock in light of the increased dividend rate. The Island board discussed comparative implications of selling the franchise, remaining independent, seeking an affiliation or potential merger of equals or seeking to grow through additional acquisitions of smaller institutions or branches. In September of 2015, the Island board of directors authorized the President, Fielding H. Moore, and Chairman, Warren Vose, to evaluate potential financial advisors to assist with strategic planning and to provide a recommendation to the Island board of directors.

In September 2015, Messrs. Vose and Moore performed the evaluation and several firms were invited for meetings. Following the meetings, Messrs. Vose and Moore agreed to recommend to the board of directors that FIG Partners be invited to meet with the board, and with their recommendation, that the board of directors engage FIG Partners to serve as its financial advisor. FIG Partners was formally engaged in October 2015.

The Island board of directors met with FIG Partners again in November of 2015 and FIG Partners presented the board of directors with various strategic alternatives including a merger with a larger institution. The consensus of the board of directors was that it would be in the best interests of Island and its shareholders to explore a potential sale or merger. FIG Partners was advised that it should complete its review of Island and Edgartown National and provide the

board of directors with a list of qualified institutions to potentially serve as an affiliation partner.



## Table of Contents

In December of 2015, the Island board of directors and FIG Partners discussed an initial list of 36 institutions who would appear to have the size, resources, and potential motivation to consider a potential affiliation with Island, including Independent. In January of 2016, all 36 institutions were contacted by FIG Partners and after executing confidentiality agreements, 16 institutions expressed initial interest in exploring a potential affiliation, and requested copies of a confidential summary memorandum, which had been prepared by FIG Partners.

After reviewing preliminary due diligence materials in late January or early February of 2016, three institutions submitted written non-binding expressions of interest to acquire Island and Edgartown National. The initial expressions of interest included an all-cash bid of \$437 per share from a mutual institution ( Company Y ), a \$425 per share stock and cash bid from Independent, and a \$424 per share stock and cash bid from another stock institution ( Company X ). The stock consideration portion of the bids by each of Independent and Company X was valued on the market price of their stock at that time. The bid by Independent was a mix of 75% stock and 25% cash, based upon a fixed exchange ratio. The consideration mix in the expression of interest from Company X was 80% stock and 20% cash. The three bidders were provided access to a secure data room and invited to submit revised expressions of interest by February 26, 2016.

On February 24, 2016, an unsolicited written non-binding expression of interest was received from a second mutual institution ( Company Z ). The proposed cash consideration set forth in this expression of interest was \$516.50 per share, subject to various conditions.

After executing a confidentiality agreement and being provided access to confidential information relating to Island and Edgartown National, all four institutions revised their bids in late February 2016 and these bids were evaluated by FIG Partners and presented to the Island board of directors. In March 2016, the board of directors considered all four revised expressions of interest. The expression of interest from Independent involved a mixed consideration bid based upon a fixed exchange ratio and represented approximately \$460.63 per share based upon Independent's stock price at that time. The expression of interest from Company X also involved a mixed consideration bid and represented approximately \$441 per share. The expression of interest from Company Y involved an all cash consideration bid of \$467 per share. The cash bid from Company Z was for \$545 per share, but was conditioned upon various factors including a grant of exclusivity.

The Island board of directors, along with its legal and financial advisors, discussed the terms and implications of each expression of interest and considered the relative likelihood of each bidder's ability to consummate the proposed transaction. Three of the proposed transactions were considered to be highly probable of being consummated. The expression of interest from Company Z, however, was considered to have a questionable possibility of consummation. Nonetheless, in light of the fact that this expression of interest represented the highest consideration for Island shareholders based upon the market value of the stock bids at that time, the board of directors voted to further explore a potential affiliation with Company Z, but sought to shorten or eliminate the exclusivity period upon which this bid was conditioned. On March 15, 2016, the Island board of directors authorized the legal and financial advisors of Island to work with the legal and financial advisors of Company Z to evaluate the likelihood of Company Z's affiliation proposal receiving regulatory approval.

In the next few weeks, discussion materials were developed and telephone conferences and meetings scheduled with the state and federal bank regulators whose approval would be required to consummate a transaction with Company Z. As a result of those discussions in June 2016, the Island board of directors, with input from its legal and financial advisors, determined that receipt of all necessary regulatory approvals required to consummate a transaction with Company Z was doubtful and, at a minimum, would involve a timeframe far longer than normal. Accordingly, Island terminated discussions with Company Z in June 2016.



**Table of Contents**

In June 2016, the Island board of directors discussed alternative strategies with their financial and legal advisers. FIG Partners made inquiries to the three previous bidders and reported to the Island board of directors the extent of their continued interest. FIG Partners also made contact with an additional potential bidder who was viewed as having obtained sufficient resources to be considered a potential affiliation partner. The new potential bidder, however, indicated that it was not interested. Other institutions were not solicited again in light of the clear superiority of the prior Independent proposal and the risk that soliciting bids again from other institutions would likely be viewed negatively by Independent and jeopardize its interest. Additionally, based upon the previous broad solicitation of institutions, any additional solicitation was viewed as unlikely to result in a superior proposal.

In mid-June 2016, Independent submitted a revised non-binding expression of interest offering mixed consideration of 80% stock and 20% cash which, based upon the market price of Independent at that time, represented aggregate consideration of approximately \$23.7 million, or \$490 per share. The offer involved a cash price of \$490 per share for 20% of the outstanding Island stock and a fixed exchange ratio of 10.1660 shares of Independent common stock per share for the remainder of Island's stock. The Island board of directors considered the proposal to be attractive and Island and Independent resumed discussions and resumed due diligence on an exclusive basis.

Independent conducted on-site due diligence at Island beginning on July 29, 2016. On August 8, 2016, Island performed on-site reverse due diligence at Independent.

On August 15, 2016, Independent revised its proposed fixed exchange ratio from 10.1660 to 9.9000 shares of Independent common stock per share of Island common stock and increased the cash value of its offer from \$490 to \$500 per share of Island common stock, representing a per share price for Island of approximately \$507.88 based upon Independent's then current stock price. Independent continued with additional due diligence with respect to the future prospects and management of operations in Martha's Vineyard. During the course of that due diligence, Independent questioned whether it could be reasonably assured of its prior plans for the future successful growth and management of Martha's Vineyard operations. In light of those perceived uncertainties and risks, Independent expressed reservations about proceeding with the transaction and, on August 26, 2016, Independent terminated discussions relating to a potential transaction with Island.

After several days and communications between representatives of Island and Independent, the affiliation discussions between Independent and Island resumed. Island agreed to extend exclusivity with Independent through October 20, 2016 to permit further discussions between the parties and to grant Independent additional time to evaluate options for managing Martha's Vineyard operations in the future. Independent ultimately resolved its potential concerns to its satisfaction. The parties continued to negotiate the terms of the transaction, which resulted in revised terms consisting of a fixed exchange ratio of 9.525 shares of Independent common stock per share of Island stock and a cash price of \$500 per share of Island common stock based upon a stock/cash consideration mix of 80%/20%. Based upon the then current market price of Independent common stock, the consideration represented approximately \$504.55 per share on the date the Island board of directors considered the proposal.

During September, documents, including a draft merger agreement, were drafted, circulated, and negotiated by the representatives of Independent and Island.

On October 11, 2016, the Island board of directors met and discussed each of the documents relating to the transaction with Island's legal counsel. FIG Partners participated in this meeting by teleconference and discussed the financial terms of the transaction and responded to questions from the Island board of directors relating to the transaction and the fairness opinion that would be rendered by FIG Partners prior to signing the definitive merger agreement. The board of directors was unanimous in its view that the proposed transaction was in the best interests of Island's shareholders. Directors also discussed the potential impact of the transaction on each of Island's other constituencies

and were of a consensus that the interests of all constituencies had been addressed satisfactorily in the proposed transaction.

## **Table of Contents**

The parties exchanged and reviewed disclosure schedules and finalized employment, consulting, and/or settlement agreements with Mr. Moore, Ms. Judith Soules, Island's Chief Financial Officer, and Delos Lander, Jr. Each of Island's directors also agreed to execute a voting agreement relating to his or her support of the merger in his or her capacities as a shareholder.

Following the satisfactory review of schedules and final execution-ready documents, the board of directors of Island held a meeting on October 20, 2016 to consider and vote upon the proposed merger. At such meeting, Island's legal counsel again reviewed with the board of directors its responsibilities and fiduciary duties, and FIG Partners delivered its fairness opinion. Additionally, at such meeting, the board of directors of Island and Edgartown National unanimously approved the merger agreement and the bank merger agreement and the transactions contemplated by these agreements.

On October 20, 2016, the board of directors of Independent and Rockland Trust met to consider the proposed transaction. Independent's management reviewed the business terms and financial expectations for the proposed merger, and presented a detailed risk assessment of the proposed merger. In addition, Sandler O'Neill + Partners, an investment bank engaged by Independent solely to provide a fairness opinion in connection with the transaction, reviewed the financial aspects of the proposed merger and delivered its opinion that, as of October 20, 2016 and subject to certain limitations, assumptions, and qualifications, the merger consideration was fair to Independent, from a financial point of view. Following those presentations and discussions, and a discussion by the Independent board of directors of the proposed merger, which considered the factors described under Independent's Reasons for the Merger, the board of directors determined that the merger agreement and the transactions contemplated by the merger agreement, including the merger of Island with and into Independent, with Independent the surviving entity, were advisable and in the best interests of Independent and its shareholders. The board of directors of Independent and Rockland Trust then unanimously voted to approve the proposed merger and to authorize the merger agreement and the transactions it contemplated.

Thereafter the parties executed and delivered the merger agreement and ancillary documents. A joint press release announcing the approval, adoption, and execution of the merger agreement was then issued on October 20, 2016 and Independent filed a Form 8-K with the SEC.

## **Recommendation of Island's Board of Directors**

Island's board of directors has unanimously approved the merger agreement and unanimously recommends that Island shareholders vote FOR the approval of the Island merger agreement proposal.

## **Island's Reasons for the Merger**

On October 20, 2016, Island's board of directors, after review and discussion with its legal counsel, Cranmore, Fitzgerald & Meaney, of the merger agreement and related documents at a board meeting and at prior board meetings and after consulting with Island's financial advisor, FIG Partners, determined that the merger was advisable and is fair to, and in the best long-term interests of, Island and its shareholders, customers, and employees, and the communities served by Island, Edgartown National, and each of their constituencies.

In reaching its decision to approve the merger agreement and related transactions, the Island board of directors considered a number of factors, including, among others, the following, which are not presented in order of priority:

the strategic alternatives known or believed to be reasonably available to Island;

the challenge of enhancing Island's existing capital resources on terms consistent with the best interests of shareholders while providing the capital needed to support Island's continued growth;

the challenges of delivering state-of-the-art banking products and services in a cost-effective manner while having an increased regulatory compliance burden;

**Table of Contents**

an understanding of Independent's business, operations, financial condition, asset quality, earnings, stock performance, and prospects, taking into account the results of its due diligence review of Independent and the publicly available information concerning Independent set forth in its filings with the Securities and Exchange Commission, including its Form 10-K for the year ended December 31, 2015 and its Form 10-Qs for the quarters ended March 31, 2016 and June 30, 2016;

the enhanced future prospects of the combined company compared to those that Island was likely to achieve on a stand-alone basis, including the projected stock market capitalization and the liquidity of Independent's stock, the market position of the combined entity and the compatibility of Island's and Independent's business activities;

the price, which, as of October 19, 2016, represented approximately 151.8% of Island's tangible book value at September 30, 2016, 22.6 times Island's 2015 earnings per share, a 5.9% core deposit premium, and a substantial premium above recent and historic sales of Island common stock;

the mix of consideration offered, reflecting its premium to market and comparability with respect to other premiums, and the view of the Island board of directors that Independent's stock represents an investment in a profitable, well-regarded, and well-capitalized institution, which should result in maximizing potential long-term value and increased liquidity for Island shareholders;

the other terms of the merger agreement, including the representations and warranties of the parties and the covenants of the parties;

Island's right to terminate the merger agreement, subject to Independent's ability to make a compensating adjustment to the stock portion of the merger consideration there is a 20% drop in Independent's stock price on an absolute basis and relative to the Nasdaq Bank Stock Index during a time period shortly before the closing date of the merger;

the presentations of Island's executive management and FIG Partners regarding the strategic advantages and disadvantages of combining with Independent, including Independent's knowledge of the markets in which Island operates, the significant opportunities for cost savings as a result of the transaction, and Independent's commitment to growing the franchise in the communities in which Island operates;

the possible social and economic effects of the proposed merger on Island's employees, customers, and creditors, as well as on the economy and the communities in which Island operates, including the fact that the limited geographic overlap between the two companies will minimize the impact of the merger on Island's employees and the communities served;

the potential benefits to Island employees who continue their employment with Rockland Trust of expanded opportunities for professional growth and career advancement within Rockland Trust and Rockland Trust's

more extensive employee benefits, for which Island employees will receive credit for service with Island for purposes of vesting and determination of eligibility to participate;

the severance payments that will be provided to Island employees who do not continue their employment with Rockland Trust;

the results of Island's due diligence investigation of Independent and the reputation, business practices, competence, experience, and integrity of Independent and its management;

the fact that the transaction is expected to be tax-free to the holders of Island common stock to the extent that they receive Independent common stock in exchange for their shares of Island common stock;

Independent's agreement to engage Mr. Moore as a consultant under which he will provide Rockland Trust with certain consulting services for a term of nine months following the effective date of the merger in order to provide continuity in leadership in Island's market;



**Table of Contents**

Independent's agreement to appoint Mr. Lander to serve as Senior Vice President, Martha's Vineyard, of Rockland Trust when the transaction closes;

Independent's agreement that, except for Mr. Moore, who will serve as a consultant to Rockland Trust, all other members of Island's board of directors will be invited to serve on the Rockland Trust Martha's Vineyard Advisory Board.

the current and prospective environment in which Island operates, including national and local economic conditions, the competitive environment, the trend toward consolidation in the financial services industry and the potential risks these pose for Island's potential growth, development, productivity, profitability and strategic options;

the view of the Island board of directors that the size of a banking institution and related economies of scale, as well as diversification of product offerings beyond the level it believed to be reasonably achievable on an independent basis, are becoming increasingly important to continued success in the current financial services environment;

Independent's commitment to retain Edgartown National's offices as branches of Rockland Trust;

the expanded lending limits of Rockland Trust, which will enable it to make larger loans to existing Island customers and future Martha's Vineyard borrowers than is currently permissible for Edgartown National;

the expanded array of products and services offered by Rockland Trust;

the ability of both institutions to complete the merger and the likelihood of receiving necessary regulatory approvals in a timely fashion;

the benefits to Island's shareholders of the cash dividend paid by Independent, currently a quarterly cash dividend rate of \$0.29 per share; and

the opinion, dated October 20, 2016, of FIG Partners to the Island board of directors that, as of the date of the opinion, the total merger consideration to be paid to the shareholders of Island is fair from a financial point of view, as more fully described under "Opinion of Island's Financial Advisor" beginning on page 45. A copy of FIG Partners' written opinion that was delivered to the Island board of directors is included as Annex B to this proxy statement/prospectus. **Shareholders are urged to carefully read the opinion of FIG Partners in its entirety.**

The Island board of directors also considered potential risks relating to the merger, including the following:

the challenges associated with seeking the regulatory approvals required to complete the merger in a timely manner;

the challenges of combining the two companies generally, including the likelihood of a successful integration of the companies, and any differences in cultures and business management philosophies;

the potential for diversion of management and employee attention, and for employee attrition, during the period prior to the completion of the merger and the potential effect on Island's business and relations with customers, service providers, and other stakeholders, whether or not the merger is completed;

the requirement that Island conduct its business in the ordinary course and the other restrictions on the conduct of Island's business prior to completion of the merger, which may delay or prevent Island from undertaking business opportunities that may arise pending completion of the merger;

the risk that potential benefits and synergies sought in the merger may not be realized or may not be realized within the expected time period and the risks associated with the integration of Island and Independent;

**Table of Contents**

the fact that because 80% of the consideration in the merger is a fixed exchange ratio of shares of Independent common stock to Island common stock, Island shareholders could be adversely affected by a decrease in the trading price of Independent common stock during the pendency of and following the merger;

the fact that certain provisions of the merger agreement prohibit Island from soliciting, and limit its ability to respond to, proposals for alternative transactions;

the possible effects on Island should the parties fail to complete the merger, including the possible effects on the price of Island common stock and the associated business and opportunity costs;

the fact that the merger agreement provides that if the merger agreement is terminated by Independent or Island in certain circumstances, including if, among other things, Island commences negotiations regarding an alternative acquisition proposal, accepts an alternative acquisition agreement or consummates an alternative acquisition, Island is obligated to pay Independent a termination fee of \$900,000 or Independent's expenses up to \$400,000 under certain circumstances, which may deter others from proposing an alternative transaction that may be more advantageous to Island shareholders; and

the risks described in the section entitled "Risk Factors" beginning on page 12.

During its consideration of the merger agreement, the Island board of directors was also aware that certain Island officers and directors may have financial interests in the merger that are different from, or are in addition to, the interests of Island shareholders. See "Interests of Island's Executive Officers and Directors in the Merger," beginning on page 52.

The discussion of the information and factors considered by the Island board of directors is not exhaustive, but includes all material factors considered by the Island board of directors. Based on the factors described above, the Island board of directors determined that the merger with Independent would be advisable and in the best interests of Island shareholders and approved the merger agreement and related transactions it contemplates. In view of the wide variety and complexity of factors considered by the Island board of directors in connection with its evaluation of the merger, the Island board of directors did not consider it practical, and did not attempt, to quantify, rank or otherwise assign relative weights to the specific factors it considered in reaching its decision and did not undertake to make any specific determination as to whether any particular factor, or any aspect of any factor, was favorable or unfavorable to the ultimate determination of the Island board of directors. Rather, the Island board of directors made its recommendation based on the totality of information presented to, and the investigation conducted by, it. In considering the factors discussed above, individual directors may have given different weights to different individual factors.

**Independent's Reasons for the Merger**

Independent's board of directors determined that the merger agreement and the merger are advisable and in the best interests of Independent and its shareholders. Accordingly, Independent's board of directors adopted and approved the merger agreement.

The Independent board of directors unanimously approved the merger agreement and the merger because it determined that the merger is a natural expansion and strengthening of its Cape Cod franchise that should increase long-term shareholder value because Edgartown National is, like Rockland Trust, a bank that is deeply committed to its customers, employees, and the communities that it serves. The merger should provide Rockland Trust with access to new and potential customers on Martha's Vineyard and provide Independent with deposit market share in Edgartown, Oak Bluffs, and Vineyard Haven, Massachusetts, three markets in which Rockland Trust does not currently have a physical presence. The transaction is financially attractive to Independent and its shareholders because it allows Independent to add Edgartown National's loan and deposit base to that of Independent while simultaneously providing Independent with the opportunity to maintain and deepen

---

## Table of Contents

relationships with Edgartown National's customers by offering Independent's deeper set of products. The Independent board of directors believes that the combined company should have the potential to realize a stronger competitive position and improved long-term operating and financial results, including revenue and earning enhancements. In addition, Independent's financial advisor, Sandler O'Neill + Partners, reviewed in detail with the board of directors the financial aspects of the proposed merger and delivered its opinion that as of October 20, 2016 and subject to the limitations, assumptions, and qualifications set forth therein, the merger consideration was fair to Independent, from a financial point of view.

After taking into account these and other factors, the Independent board of directors determined that the merger agreement and the merger were in the best interests of Independent and its shareholders and that Independent should enter into the merger agreement and complete the merger. Independent's board of directors evaluated the factors described above, including asking questions of Independent's management and Independent's legal and financial advisers, and reached the unanimous decision that the merger was in the best interests of Independent and its shareholders, its employees, its customers, and the communities served by Independent. This discussion of the factors considered by Independent's board of directors is not exhaustive, but includes all material factors considered by the board. Independent's board of directors considered these factors as a whole, and overall considered them to be favorable to, and to support, its determination. Independent's board of directors did not consider it practical to, nor did it attempt to, quantify, rank or otherwise assign relative weights to the specific factors that it considered in reaching its decision. In considering the factors described above, individual members of Independent's board of directors may have given different weights to different factors. Independent's board of directors considered these factors as a whole, and overall considered them to be favorable to, and to support, its determination.

### **Opinion of Island's Financial Adviser**

FIG Partners has delivered to the board of directors of Island, its opinion that, based upon and subject to the various considerations set forth in its written opinion dated October 20, 2016, the total merger consideration to be paid to the Island shareholders is fair from a financial point of view as of such date. In requesting FIG Partners' advice and opinion, no limitations were imposed by Island upon FIG Partners with respect to the investigations made or procedures followed by it in rendering its opinion. **The full text of the opinion of FIG Partners, dated October 20, 2016, which describes the procedures followed, assumptions made, matters considered and limitations on the review undertaken, is attached hereto as Annex B. Island shareholders should read this opinion in its entirety.**

FIG Partners is a nationally recognized investment banking firm and, as part of its investment banking business, it values financial institutions in connection with mergers and acquisitions, private placements and for other purposes. As a specialist in securities of financial institutions, FIG Partners has experience in, and knowledge of, banks, thrifts and bank and thrift holding companies. Island's board of directors selected FIG Partners to act as its financial advisor in connection with the merger on the basis of the firm's reputation and expertise in transactions such as the merger.

FIG Partners will receive a fee from Island of 1.25% of the aggregate transaction value, determined by the value of Island stock at the date of closing. At October 20, 2016, the aggregate transaction value was \$24.25 million. FIG Partners will also receive a \$25,000 fairness opinion fee for performing its financial advisory services in connection with the merger and rendering a written opinion to the Island board of directors, as to the fairness, from a financial point of view, of the merger to Island's shareholders. FIG Partners' fee for rendering the fairness opinion was not contingent upon any conclusion being reached or upon completion of the merger. Further, Island has agreed to indemnify FIG Partners against any claims or liabilities arising out of FIG Partners' engagement by Island. Upon being retained in October 2015, FIG Partners received a retainer fee of \$5,000. Other than previously disclosed advisory fees, FIG Partners has not received fees from Island or Edgartown National for any other services performed during

the two years preceding the date of its opinion to Island. In addition, FIG Partners has not had a material relationship with Independent or Rockland Trust for which it has received compensation during the prior two years.

**Table of Contents**

**FIG Partners' opinion is directed only to the fairness, from a financial point of view, of the total merger consideration, and, as such, does not constitute a recommendation to any Island shareholder as to how the shareholder should vote at the Island shareholder meeting. The summary of the opinion of FIG Partners set forth in this proxy statement/prospectus is qualified in its entirety by reference to the full text of the opinion.**

The following is a summary of the analyses performed by FIG Partners in connection with its fairness opinion. Certain analyses were confirmed in a presentation to the Island board of directors by FIG Partners. The summary set forth below does not purport to be a complete description of either the analyses performed by FIG Partners in rendering its opinion or the presentation delivered by FIG Partners to the Island board of directors but it does summarize all of the material analyses performed and presented by FIG Partners.

The preparation of a fairness opinion involves various determinations as to the most appropriate and relevant methods of financial analyses and the application of those methods to the particular circumstances. In arriving at its opinion, FIG Partners did not attribute any particular weight to any analysis and factor considered by it, but rather made qualitative judgments as to the significance and relevance of each analysis and factor. FIG Partners may have given various analyses more or less weight than other analyses. Accordingly, FIG Partners believes that its analyses and the following summary must be considered as a whole and that selecting portions of its analyses, without considering all factors could create an incomplete view of the process underlying the analyses set forth in its report to the Island board of directors and its fairness opinion.

In performing its analyses, FIG Partners made numerous assumptions with respect to industry performance, general business and economic conditions and other matters, many of which are beyond the control of Island. The analyses performed by FIG Partners are not necessarily indicative of actual value or actual future results, which may be significantly more or less favorable than suggested by such analyses. Such analyses were prepared solely as part of FIG Partners' analysis of the fairness of the transaction consideration, from a financial point of view, to Island shareholders. The analyses do not purport to be an appraisal or to reflect the prices at which a company might actually be sold or the prices at which any securities may trade at the present time or at any time in the future. FIG Partners' opinion does not address the relative merits of the merger as compared to any other business combination in which Island might engage. In addition, as described above, FIG Partners' opinion to the Island board of directors was one of many factors taken into consideration by the Island board of directors in making its determination to approve the merger agreement.

During the course of its engagement, and as a basis for arriving at its opinion, FIG Partners reviewed and analyzed material bearing upon the financial and operating conditions of Island and Independent and material prepared in connection with the merger, including, among other things, the following:

the merger agreement;

certain historical publicly available business and financial information concerning Island and Independent including, among other things, quarterly and annual reports filed by Independent with the Securities and Exchange Commission, and by the parties to the merger agreement with the FDIC and the Federal Reserve Board;

certain financial projections prepared by management of Island;

meetings and discussions with members of senior management of Island and Independent for purposes of reviewing the future prospects of Island and Independent, including the financial forecasts related to the respective businesses, earnings, assets, liabilities and the amount of and timing of cost savings expected to be achieved as a result of the merger;

the terms of recent mergers and acquisition transactions, to the extent publicly available, involving banks and bank holding companies that FIG Partners considered relevant; and

such other analyses and such other factors as FIG Partners deemed appropriate.



**Table of Contents**

FIG Partners also took into account its experience in other transactions, as well as its knowledge of the commercial banking industry and its general experience in securities valuations.

In rendering its opinion, FIG Partners assumed, without independent verification, the accuracy and completeness of the publicly and non-publicly available financial and other information furnished to FIG Partners by Island and Independent and relied upon the accuracy of the representations and warranties of the parties contained in the merger agreement. FIG Partners also assumed that the financial forecasts furnished to or discussed with FIG Partners by Island and Independent were reasonably prepared and reflected the best currently available estimates and judgments of senior management of Island and Independent as to the future financial performance of Island. FIG Partners has not made any independent evaluation or appraisal of any properties, assets or liabilities of Island or Independent.

*Summary of Proposal*

Pursuant to the terms of the merger agreement, at the effective time of the merger, the shares of Island common stock will be converted into the right to receive 9.525 shares of Independent common stock or \$500.00 per share in cash subject to a limitation of 20% total cash consideration and 80% total stock consideration. Based on Independent's closing price on October 19, 2016 of \$53.25, the merger consideration was equivalent to a price of \$505.77 per share of Island common stock at that date.

*Market Analysis of Independent Stock*

FIG Partners examined the historical stock price performance of Independent (INDB) and made the following comparisons:

<b><u>YTD 2016 Stock Price Change</u></b>	
INDB	13.3%
DJIA	4.1%
S&P 500	4.4%
SNL U.S. Bank Index	-3.4%
<b><u>LMT Total Return</u></b>	
INDB	18.0%
SNL New England U.S. Bank Index	6.5%
SNL U.S. Bank \$5B-\$10B Index	12.2%
SNL U.S. Bank Index	3.5%
<b><u>3 Year Total Return</u></b>	
INDB	56.7%
SNL New England U.S. Bank Index	21.9%
SNL U.S. Bank \$5B-\$10B Index	46.2%
SNL U.S. Bank Index	23.5%
<b><u>5 Year Total Return</u></b>	
INDB	141.1%
SNL New England U.S. Bank Index	136.3%
SNL U.S. Bank \$5B-\$10B Index	164.9%
SNL U.S. Bank Index	113.0%



**Table of Contents***Selected Trading Peers for Independent*

Using publicly available information, FIG Partners compared the financial performance, financial condition, and market performance of Independent to fourteen selected publicly traded bank holding companies with similar business metrics and operating strategies of high noninterest income and trust business revenue (the Operating peers) and FIG Partners compared the financial performance, financial condition, and market performance of Independent to twenty four selected publicly traded bank holding companies public of comparable asset size with lending balances consisting substantially of commercial loans as defined in Independent's 2016 proxy statement (the Proxy peers).

**Operating Peers**

<b>Ticker</b>	<b>Institution</b>	<b>State</b>
FRC	First Repub Bank	CA
SBNY	Signature Bank	NY
PACW	PacWest Bancorp	CA
PVTB	PrivateBancorp Inc.	IL
WBS	Webster Financial Corp.	CT
UMPQ	Umpqua Holdings Corp.	OR
WTFC	Wintrust Financial Corp.	IL
MBFI	MB Financial Inc.	IL
CVBF	CVB Financial Corp.	CA
WSFS	WSFS Financial Corp.	DE
WASH	Washington Trust Bancorp Inc.	RI
COBZ	CoBiz Financial Inc.	CO
BMTC	Bryn Mawr Bank Corp.	PA
CATC	Cambridge Bancorp	MA

**Proxy Peers**

<b>Ticker</b>	<b>Institution</b>	<b>State</b>
STL	Sterling Bancorp	NY
CBU	Community Bank System Inc.	NY
NWBI	Northwest Bancshares, Inc.	PA
NBTB	NBT Bancorp Inc.	NY
PFS	Provident Financial Services	NJ
CBF	Capital Bank Finl Corp	NC
KRNY	Kearny Financial Corp.	NJ
TMP	Tompkins Financial Corporation	NY
BNCL	Beneficial Bancorp Inc	PA
BPFH	Boston Private Financial	MA
STBA	S&T Bancorp Inc.	PA
FCF	First Commonwealth Financial	PA
BHLB	Berkshire Hills Bancorp Inc.	MA

Edgar Filing: INDEPENDENT BANK CORP - Form 424B3

BRKL	Brookline Bancorp Inc.	MA
EBSB	Meridian Bancorp Inc.	MA
UBNK	United Financial Bancorp	CT
WASH	Washington Trust Bancorp Inc.	RI
CUBI	Customers Bancorp Inc	PA
TRST	TrustCo Bank Corp NY	NY
FFIC	Flushing Financial Corp.	NY
DCOM	Dime Community Bancshares Inc.	NY
LBAI	Lakeland Bancorp	NJ
CNOB	ConnectOne Bancorp, Inc.	NJ
CNBKA	Century Bancorp Inc.	MA

	INDB	Operating Peers Median	Operating Peers Average	Proxy Peers Average	Proxy Peers Median
Price/Tangible Book	233.4%	204.2%	195.3%	171.1%	160.3%
Price /LTM EPS	17.9x	17.4x	17.4x	19.5x	16.2x
LTM Total Return	15.9%	7.3%	8.3%	13.0%	11.7%

**Table of Contents***Contribution Analysis*

FIG Partners prepared a contribution analysis as of June 30, 2016 that showed percentages of total assets, total loans, total deposits, and tangible common equity, and net income as of the most recently available period for Island and for Independent to be contributed to the combined company on a pro forma basis. Island shareholders will receive a merger consideration of 80% stock and 20% cash.

	Island Contribution To Independent
Total assets	2.5%
Total loans	2.6%
Total deposits	2.5%
Non-performing assets	0.0%
Branches	4.3%
LTM net income	1.4%

*Franchise Valuation*

FIG Partners applied a franchise-based valuation method of Island, which uses Island's tangible common equity as a value basis and adjusts for credit costs, capital needs, and deposit premiums. The credit mark is based on estimated fair value adjustments to Island's loan portfolio and the capital mark is determined by calculating the capital needed to achieve an 8.0% tier 1 common capital ratio. The deposit premium is calculated by applying a market-based premium to each deposit class. The indicated franchise value was \$24.8 million or \$512.22 per share after applying a net credit mark of (\$0.076) million and a deposit premium of \$8.748 million.

*Comparable Transaction Analysis*

As part of its analysis, FIG Partners reviewed two groups of comparable merger transactions. The first peer group included transactions which have occurred since January 1, 2016 that involved target banks located throughout the United States that had total assets of \$150 million to \$250 million, LTM ROAA greater than 0.0%, and NPA/Assets of less than 3.0% (the Comparable Transactions National). All consideration types were included. The group was also limited to transactions with disclosed pricing and stock-owned banking institutions as targets. This group consisted of the following fifteen transactions:

<b>Date Announced</b>	<b>Buyer</b>	<b>St.</b>	<b>Seller</b>	<b>City</b>	<b>St.</b>
08/24/16	Stonegate Bank	FL	Insignia Bank	Sarasota	FL
07/22/16	Citco Community Bancshares Inc	TN	American Trust Bk of East TN	Knoxville	TN
07/14/16	OakStar Bancshares Inc.	MO	Bancshares of Urbana Inc.	Urbana	MO
07/08/16	Commencement Bank	WA	Thurston First Bank	Olympia	WA
07/01/16	Pinnacle Financial Corp.	GA	Independence Bank of Georgia	Braselton	GA
05/24/16	RCB Holding Co.	OK	Cornerstone Alliance Ltd.	Winfield	KS
04/06/16	First Interstate BancSystem	MT	Flathead Bk of Bigfork Montana	Bigfork	MT
04/05/16	Community Bancshares Corp.	IA	IT&S of Iowa Inc.	Oskaloosa	IA

Edgar Filing: INDEPENDENT BANK CORP - Form 424B3

03/17/16	Independent Bank Corp.	MA	New England Bancorp Inc.	Hyannis	MA
02/29/16	Summit Financial Group Inc.	WV	Highland County Bankshares Inc	Monterey	VA
02/18/16	County Bank Corp	MI	Capac Bancorp Inc.	Capac	MI
02/16/16	State Bank Corp	AZ	Country Bank	Prescott	AZ
	Citizens Community Bncp	WI	Community Bank of Northern	Rice Lake	WI
02/16/16			WI		
02/05/16	Horizon Bancorp	IN	Kosciusko Financial Inc.	Mentone	IN
01/07/16	Ohio Valley Banc Corp.	OH	Milton Bancorp Inc.	Wellston	OH

**Table of Contents**

In addition, FIG Partners also reviewed comparable transactions, the second peer group, which have occurred since January 1, 2014 that involved target banks located in the Northeast U.S. Region (CT, RI, MA, NH, VT, and ME) that had total assets of less than \$500 million, LTM ROAA greater than 0.0%, and NPA/Assets less than 3.0% (the Comparable Transactions Regional ). All consideration types were included. The group was also limited to transactions with disclosed pricing and stock-owned banking institutions as targets. This group consisted of the following nine transactions:

Date Announced	Buyer	St.	Seller	City	St.
10/06/16	Salem Five Bancorp	MA	Georgetown Bancorp Inc.	Georgetown	MA
03/17/16	Independent Bank Corp.	MA	New England Bancorp Inc.	Hyannis	MA
11/23/15	BNH Financial	NH	Community Guaranty Corp.	Plymouth	NH
09/02/15	Randolph Bancorp Inc	MA	First Eastern Bankshares Corp.	Andover	MA
04/27/15	Merchants Bancshares Inc.	VT	NUVO B&TC	Springfield	MA
04/08/15	Adams Community Bank	MA	Lenox National Bank	Lenox	MA
12/11/14	ESB Bancorp MHC	MA	Citizens National Bancorp Inc.	Putnam	CT
04/15/14	Inst for Svgs in Newburyport	MA	Rockport National Bancorp Inc.	Rockport	MA
04/01/14	Bankwell Financial Group Inc.	CT	Quinnipiac B&TC	Hamden	CT

FIG Partners calculated the medians and averages of the following relevant transaction ratios in the Comparable Transactions National and Comparable Transactions U.S. Northeast Region: the percentage of the offer value to tangible book value, earnings, total assets and core deposits. FIG Partners compared these multiples with the corresponding multiples for the merger. As of the date of the fairness opinion, the total consideration that would be received is valued at approximately \$24.25 million in cash, or \$510.06 per Island share. In calculating the multiples for the merger, FIG Partners used Island's June 30, 2016 financial data, and the results of this analysis are as follows:

Transaction	Implied Pricing			
	Tangible Book Value (%)	Price to: LTM Earnings (x)	Total Assets (%)	Core Deposit Premium (%)
Transaction	151.8	26.7	12.6	5.9
<b>Comparable Groups:</b>				
National Median	128.9	16.2	11.8	4.6
Northeast Median	147.6	27.4	15.4	8.3

**Discounted Cash Flow Analysis**

FIG Partners estimated the present value of all shares of Island common stock by estimating the value of Island's estimated future earnings stream beginning in 2016. Reflecting internal projections and FIG's estimates based upon discussions with Island, FIG Partners assumed net income in 2016, 2017, 2018, 2019 and 2020 of \$778,000, \$1,154,000, \$1,121,000, \$1,272,000 and \$1,336,000, respectively. The present value of these earnings was calculated based on a range of discount rates of 11.0%, 12.0%, and 13.0%, respectively. In order to derive the terminal value of Island's earnings stream beyond 2020, FIG performed two separate analyses: (1) an acquisition in 2020 at 22.0 times estimated earnings in the terminal year; and (2) an acquisition in 2020 at 1.50 times estimated tangible book value in

the terminal year. The present value of these terminal amounts was then calculated based on the range of discount rates mentioned above. These rates and values were chosen to reflect different assumptions regarding the required rates of return of holders or prospective buyers of Island's common stock. The two analyses and the underlying assumptions yielded a range of value for all shares of Island's stock of approximately (1) \$324.84 per share to \$420.73 per share; and (2) \$329.68 per share to \$464.71 per share compared to the merger consideration of \$510.06 per share.



## **Table of Contents**

FIG Partners stated that the discounted cash flow present value analysis is a widely used valuation methodology but noted that it relies on numerous assumptions, including asset and earnings growth rates, terminal values and discount rates. The analysis did not purport to be indicative of the actual values or expected values of Island and Independent.

### *Financial Impact Analysis*

FIG Partners performed pro forma merger analyses that combined projected income statement and balance sheet information of Island and Independent. Assumptions regarding the accounting treatment, acquisition adjustments and cost savings were used to calculate the financial impact that the merger would have on certain projected financial results of Independent. In the course of this analysis, FIG Partners used earnings estimates for Island (including assumed cost savings) and for Independent and used publicly available earnings estimates by non-affiliated research analysts covering Independent for 2016, 2017 and 2018 based on tangible book value. This analysis indicated that the merger is expected to be accretive to Independent's estimated earnings per share in 2016 and 2017. The analysis also indicated that the merger is expected to be 0.1% accretive to tangible book value per share for Independent at closing with an immediate earn back period and generally neutral to Independent's tangible common equity to tangible assets ratio, leverage ratio and total risk-based capital ratio. For all of the above analyses, the actual results achieved by Independent following the merger will vary from the projected results and the variations may be material.

### *Other Analyses*

Among other things, FIG Partners also reviewed balance sheet composition and other financial data for Island and Independent. With respect to Independent's public price, FIG Partners reviewed the public price targets of non-affiliated research analysts covering Independent as provided by SNL Financial, a nationally recognized research price target consolidator, which ranged from \$44.00 to \$52.00 per share.

Based upon the foregoing analyses and other investigations and assumptions set forth in its opinion, without giving specific weightings to any one factor or comparison, FIG Partners determined that the merger consideration was fair, from a financial point of view, to Island shareholders.

## **Regulatory Approvals Required to Complete the Merger**

The merger is subject to the condition that all consents and approvals of any governmental authority required to consummate the merger and the other transactions contemplated by the merger agreement shall have been obtained and remain in full force and effect and all statutory waiting periods in respect thereof shall have expired or been terminated. The merger also is subject to the condition that none of the required regulatory approvals shall impose, as reasonably determined by Independent, a Burdensome Condition, which is defined in the merger agreement to mean any prohibition, limitation or other requirement that would prohibit or materially limit the ownership or operation by Island or any of its subsidiaries, or by Independent or any of its subsidiaries, of all or any material portion of the business or assets of Island or any of its subsidiaries or Independent or its subsidiaries, or compel Independent or any of its subsidiaries to dispose of or hold separate all or any material portion of the business or assets of Island or any of its subsidiaries or Independent or any of its subsidiaries.

The consents and approvals of governmental authorities that Independent and Island have determined required to consummate the merger include:

the approval of or waiver of the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956; and

confirmation from the Massachusetts Housing Partnership Fund (the Housing Partnership Fund ) that Independent has made arrangements satisfactory to the Housing Partnership Fund.

## **Table of Contents**

The consents and approvals of governmental authorities that Independent and Island have determined are required to consummate the merger of Edgartown National with Rockland Trust (the bank merger ) are as follows:

the FDIC's approval of the merger of Edgartown National with and into Rockland Trust, with Rockland Trust surviving the merger; and

the approval of the Massachusetts Division of Banks to merge Edgartown National with and into Rockland Trust, with Rockland Trust surviving the merger.

The parties have filed or will file certain applications and notice materials necessary to obtain these regulatory approvals or confirmations in accordance with applicable law. The merger cannot be completed until all the required approvals and confirmations have been obtained, are in full force and effect and all statutory waiting periods in respect thereof have expired, and the bank merger cannot be completed until after both approvals listed above have been obtained. The merger may not be consummated until 30 days after the approval of the Federal Reserve Board (or such shorter period as the Federal Reserve Board may prescribe with the concurrence of the United States Department of Justice, but not less than 15 days), during which time the Department of Justice may challenge the merger on antitrust grounds. The bank merger may not be consummated until 30 days after the approval of the FDIC (or such shorter period as the FDIC may prescribe with the concurrence of the United States Department of Justice, but not less than 15 days), during which time the Department of Justice may challenge the bank merger on antitrust grounds. The commencement of an antitrust action by the Department of Justice would stay the effectiveness of the Federal Reserve Board or FDIC approval, as the case may be, unless a court specifically orders otherwise. In reviewing the merger and the bank merger, the Department of Justice could analyze the merger's effect on competition differently than the Federal Reserve Board and the FDIC, and it is possible that the Department of Justice could reach a different conclusion than the applicable banking regulator regarding the merger's (or the bank merger's) competitive effects.

Independent and Island cannot assure you that all required regulatory approvals, waivers or consents will be obtained, when they will be obtained or whether there will be burdensome conditions in the approvals or any litigation challenging the approvals. Independent and Island also cannot assure you that the United States Department of Justice or the Attorney General of the Commonwealth of Massachusetts will not attempt to challenge the merger on antitrust grounds, or what the outcome will be if such a challenge is made. Independent and Island are not aware of any other government approvals or actions that are required prior to the parties' consummation of the merger. It is currently contemplated that if any additional governmental approvals or actions are required, such approvals or actions will be sought. There can be no assurance, however, that any of the additional approvals or actions will be obtained.

### **Interests of Island's Executive Officers and Directors in the Merger**

Island's executive officers and directors have interests in the merger that may be different from, or in addition to, the interests of other Island shareholders generally. The Island board of directors was aware of these interests and considered them, among other matters, when it approved the merger agreement.

### *Settlement Agreement and Consulting Agreement with Fielding H. Moore*

In connection with the merger agreement, Independent, Rockland Trust, Island and Edgartown National have entered into a settlement agreement (that includes customary waiver and release provisions) with Fielding H. Moore, President and Chief Executive Officer of Island and Edgartown National, for the purpose of setting forth, and avoiding any future disagreement with respect to, the payments and benefits that he is entitled to receive under his pre-existing

executive change in control agreement with Edgartown National.

Pursuant to Mr. Moore's settlement agreement, his pre-existing executive change in control agreement with Edgartown National, and his services to Island and Edgartown National, will terminate immediately prior to the

**Table of Contents**

effective time of the merger and Mr. Moore will look solely to the terms of the settlement agreement to determine his rights to receive severance and other payments and benefits in connection with the termination of his employment. Under Mr. Moore's settlement agreement, a lump sum cash payment will be made within eight days following the effective time of the merger in the amount of \$531,456 (subject to adjustment to avoid payment of excise taxes under Section 4999 of the Internal Revenue Code of 1986) to Mr. Moore in full satisfaction of the obligations of Edgartown National under his pre-existing executive change in control agreement.

Mr. Moore will also be entitled to receive the following benefits under his settlement agreement: (i) payment of the merger consideration pursuant to the merger agreement with respect to his Island common stock; (ii) payment of any vested benefits that Mr. Moore has accrued under any tax-qualified retirement plan maintained or contributed to by Island and/or Edgartown National, in accordance with the terms and conditions of those plans; and (iii) the right to purchase at his sole expense continuation coverage under any group health plan maintained by Edgartown National that is subject to the Consolidated Omnibus Budget Reconciliation Act ( COBRA ) in which he participates immediately prior to the effective time of the merger.

In connection with the merger agreement, Rockland Trust has also entered into a consulting agreement with Mr. Moore under which he will provide Rockland Trust with certain consulting services and attend and participate in Rockland Trust's advisory board for the Martha's Vineyard market area for a term of nine months following the effective date of the merger. In consideration for Mr. Moore providing consulting services for the specified term and Mr. Moore's agreement to be bound by customary confidentiality covenants, Mr. Moore will be paid a lump sum payment of \$150,000 on January 4, 2018 by Rockland Trust.

*Settlement Agreement with Judith Soules*

In connection with the merger agreement, Independent, Rockland Trust, Island and Edgartown National have entered into a settlement agreement (that includes customary waiver and release provisions) with Judith Soules, Vice President and Chief Financial Officer of Edgartown National, for the purpose of setting forth, and avoiding any future disagreement with respect to, the payments and benefits that she is entitled to receive under her pre-existing executive change in control agreement with Edgartown National.

Pursuant to Ms. Soules' settlement agreement, her pre-existing executive change in control agreement with Edgartown National, and her services to Edgartown National, will terminate immediately prior to the effective time of the merger and Ms. Soules will look solely to the terms of the settlement agreement to determine her rights to receive severance and other payments and benefits in connection with the termination of her employment. Under Ms. Soules' settlement agreement, a lump sum cash payment will be made within eight days following the effective time of the merger in the amount of \$127,813 to Ms. Soules in full satisfaction of the obligations of Edgartown National under her pre-existing executive change in control agreement.

Ms. Soules will also be entitled to receive the following benefits under her settlement agreement: (i) payment of the merger consideration pursuant to the merger agreement with respect to her Island common stock; (ii) payment of any vested benefits that Ms. Soules has accrued under any tax-qualified retirement plan maintained or contributed to by Island and/or Edgartown National, in accordance with the terms and conditions of those plans; and (iii) the right to purchase at her sole expense continuation coverage under any group health plan maintained by Edgartown National that is subject to COBRA in which she participates immediately prior to the effective time of the merger.

*Employment Letter Agreement with Delos Lander, Jr.*

In connection with the merger agreement, Rockland Trust has entered into an employment letter agreement with Delos Lander, Jr. under which he will serve as Senior Vice President, Martha's Vineyard, of Rockland Trust for a term of three years commencing on the closing date of the merger. Under the employment letter agreement, Mr. Lander will perform duties and responsibilities as may be reasonably assigned to him by Rockland Trust in

---

**Table of Contents**

accordance with the written job description provided to him. Mr. Lander will receive an initial annual base salary of \$150,000, subject to annual discretionary merit increases within a range of 3% and 5% by Rockland Trust in its sole discretion, a target cash bonus of 15% of his base salary commencing in 2018 for his 2017 performance, computed on a pro rata basis for the amount of time in 2017 that he works for Rockland Trust, and other compensation and benefits commensurate with employees of Rockland Trust with comparable jobs and with the same job tenure with Rockland Trust.

The employment letter agreement also provides for the payment of \$40,000 to Mr. Lander on the closing date of the merger in consideration for his waiver and release of rights that he had under his pre-existing executive change in control agreement with Island and Edgartown National. Soon after his employment starts with Rockland Trust, Mr. Lander will also receive a restricted stock award of 1,000 shares of Independent common stock that vests ratably over five years from the date of grant. In addition, Rockland Trust will make a retention payment of \$40,000 on each of the first, second, and third anniversaries of the closing date of the merger (for a total of \$120,000) to Mr. Lander and grant him a restricted stock award of 500 shares of Independent common stock that vests ratably over five years from the date of grant in each of 2018, 2019 and 2020 when equity awards are customarily made by Rockland Trust; provided, however, that the retention payments and the restricted stock awards in 2018, 2019 and 2020 will not be made if Mr. Landers terminates employment with Rockland Trust other than for Good Reason or if Rockland Trust terminates Mr. Landers for Cause (as each term is defined in the employment letter agreement) prior to the retention payment dates or the grant dates of the restricted stock awards, as the case may be.

Rockland Trust may terminate Mr. Landers employment with or without Cause upon prior written notice to him. Mr. Landers may terminate employment for any reason or for Good Reason. If Rockland Trust terminates Mr. Landers employment without Cause or he terminates his employment for Good Reason, Rockland Trust will pay any unpaid retention payments to Mr. Landers within ten days of the date of his termination of employment and Mr. Landers agrees that for a period of one year following his termination of employment, he will be bound by customary non-solicitation and non-competition covenants.

*Indemnification and Insurance*

The merger agreement provides that following the merger, Independent will indemnify and hold harmless the present and former officers, directors and employees of Island and its subsidiaries against costs or expenses, judgments, fines, losses, claims, damages or liabilities and amounts paid in settlement incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to matters existing or occurring at or prior to the merger, whether asserted or claimed prior to, at or after the effective date of the merger, to the extent the indemnified party would have been indemnified, as a director, officer or employee of Island or any of its subsidiaries under Island's Articles of Organization and Bylaws and as permitted by applicable law. Independent will also continue to cover those persons under a directors and officers liability insurance policy for a period of six years following the effective date of the merger arising out of actions or omissions occurring at or prior to the merger, except that Independent is not required to expend more than \$40,000 per year to maintain the insurance policy.

*Retention Bonuses*

Certain employees who are not executive officers of Edgartown National will be entitled, subject to, at the option of Independent, the employee's execution of a release provided by Independent, to a retention bonus if they maintain their employment with Edgartown National until that person's job function has been converted or transitioned and that person does not accept an offer for continued employment with Rockland Trust.

*Advisory Board*

Except for Fielding Moore, all other members of Island's board of directors will be invited to become members of the Rockland Trust Martha's Vineyard Advisory Board, which we refer to as the Advisory Board. At



**Table of Contents**

meetings of the Advisory Board, Rockland Trust will update the Advisory Board on its activities. The Advisory Board will review the Martha's Vineyard market and attempt to identify opportunities for Rockland Trust. In addition, the Advisory Board will make recommendations to Rockland Trust on how to promote its overall success and, in particular, its success on Martha's Vineyard. The Advisory Board will meet three times in the year following the effective time of the merger and the members of Island's board of directors who agree to serve on the Advisory Board will receive \$750 for each meeting that they attend.

*Ownership Interests of Directors and Certain Executive Officers*

The following table states names and positions of Island's directors and certain executive officers of Edgartown National, their ages as of January 3, 2017 and the amount and percentage of Island common stock beneficially owned by each person individually and in total by all of management and directors as a group.

<b>Name</b>	<b>Position(s) Held With Island<sup>(1)</sup></b>	<b>Age</b>	<b>Shares Beneficially Owned as of January 3, 2017<sup>(2)</sup></b>	<b>Percent of Common Stock<sup>(3)</sup></b>
D. Warren Vose, Jr.	Chairman of the Board	73	12,087	24.94%
Thomas A. Durawa	Vice Chairman	74	5,312	10.96%
John G. Early	Director	71	310	*%
Stuart F. Fuller	Director	54	405	*%
Fielding H. Moore	Director, President and Chief Executive Officer	69	2,335	4.82%
Everett H. Poole	Director	86	1,320	2.72%
Kathleen D. Solitto	Director	67	100	*%
Judith Soules	Treasurer and Clerk	51	0	*%
All Directors and Executive Officers as a Group (8 persons)			21,869	45.12%

\* Less than 1 percent.

(1) The business address of each director and executive officer is c/o Island Bancorp, Inc., 2 South Water Street, Edgartown, Massachusetts 02539.

(2) In accordance with Rule 13d-3 under the Securities Exchange Act of 1934, a person is deemed to be the beneficial owner, for purposes of this table, of any shares of Island common stock if he or she has shared voting or investment power with respect to such security, or has a right to acquire beneficial ownership at any time within 60 days from January 3, 2017. As used herein, "voting power" is the power to vote or direct the voting of shares, and "investment power" is the power to dispose or direct the disposition of shares. The shares set forth above for directors and executive officers include all shares held directly, as well as by spouses and minor children, in trust and other indirect ownership, over which shares the named individuals effectively exercise sole or shared voting and investment power.

(3) Based on 48,466 shares of Island common stock outstanding.

**Table of Contents**

**THE MERGER AGREEMENT**

The following summary describes certain aspects of the merger, including material provisions of the merger agreement. This summary is not complete and is qualified in its entirety by reference to the merger agreement, a copy of which is attached as Annex A to this document and is incorporated into this document by reference. You should read the merger agreement in its entirety, as it is the legal document governing the merger.

**The Merger**

Each of Island's board of directors and Independent's board of directors has unanimously adopted and approved the merger agreement, which provides for the merger of Island with and into Independent. Each share of Independent common stock issued and outstanding at the effective time of the merger will remain issued and outstanding as one share of common stock of Independent, and each share of Island common stock issued and outstanding at the effective time of the merger (other than dissenters' shares, shares held as treasury stock or shares owned directly by Independent in trust accounts, managed accounts and the like) will be converted into the right to receive either (i) \$500.00 in cash or (ii) 9.525 shares of Independent common stock. See Consideration To Be Received in the Merger below.

**Effective Time and Completion of the Merger**

The merger will be completed and will become effective upon the acceptance for filing by the Secretary of the Commonwealth of Massachusetts of the articles of merger related to the merger. However, the parties may agree to a later time for completion of the merger and specify that later time in the articles of merger in accordance with Massachusetts law.

We currently expect that the merger will be completed in the second quarter of 2017, subject to Island shareholders approval of the merger agreement and the transactions it contemplates, the receipt of all necessary regulatory approvals and/or waivers, and the expiration of all regulatory waiting periods. However, completion of the merger could be delayed if there is a delay in obtaining the required shareholder or regulatory approvals or in satisfying any other conditions to the merger. There can be no assurances as to whether, or when, Island and Independent will obtain the required approvals or complete the merger.

**Consideration to Be Received in the Merger**

In the merger, each outstanding share of Island common stock (other than dissenters' shares, shares held as treasury stock or shares owned directly by Independent in trust accounts, managed accounts and the like) will be converted into the right to receive either (i) \$500.00 in cash or (ii) 9.525 shares of Independent common stock. Independent will not issue any fractional shares of its common stock in the merger, but will instead pay cash (determined on the basis of the Closing VWAP) for any fractional share an Island shareholder would otherwise receive after aggregating all of his or her shares.

Island's shareholders will be able to elect to receive cash, Independent common stock or a combination of cash and Independent common stock for their shares of Island common stock. Regardless of an Island shareholder's choice, however, election will be limited by the requirement that 80% of Island common stock be converted into Independent common stock and 20% be exchanged for cash. Therefore, the allocation of cash and Independent common stock that an Island shareholder will receive will depend on the elections of other Island shareholders. The allocation of the consideration payable to Island shareholders will not be known until the exchange agent tallies the results of the cash/stock elections made by Island's shareholders. If an Island shareholder does not make an election, the type of consideration that shareholder will receive will depend on the consideration elected by other Island shareholders.



## **Table of Contents**

### **Exchange of Island Stock Certificates for Merger Consideration**

One business day prior to the closing date of the merger, Independent will cause to be delivered to the exchange agent certificates representing the shares of Independent common stock, or evidence of the shares in book entry form, to be issued in the merger. In addition, Independent will deliver to the exchange agent an aggregate amount of cash sufficient to pay the aggregate cash consideration payable in the merger, as well as cash payable in lieu of fractional shares of Independent common stock. Independent has selected Computershare Limited to act as the exchange agent in connection with the merger.

If the merger is approved, Island's shareholders will receive separate instructions for the exchange of certificates representing Island common stock. No later than five business days following the effective time of the merger, the exchange agent will mail to each Island shareholder of record at the effective time of the merger who did not previously surrender his or her Island stock certificates, a letter of transmittal and instructions for use in surrendering the shareholder's Island stock certificates. When Island shareholders deliver their Island stock certificates to the exchange agent along with a properly completed and duly executed letter of transmittal and any other required documents, their Island stock certificates will be cancelled and in exchange they will receive:

an Independent stock certificate representing the number of whole shares of Independent common stock, if any, that they are entitled to receive under the merger agreement;

a check representing the amount of cash, if any, they are entitled to receive under the merger agreement as payment of merger consideration; and/or

a check representing the amount of cash that they are entitled to receive in lieu of fractional shares, if any. No interest will be paid or accrued on any cash constituting merger consideration, including cash payable in lieu of fractional shares of Independent common stock.

Island shareholders are not entitled to receive any dividends or other distributions on Independent common stock with a record date after the closing date of the merger until they have surrendered their Island stock certificates in exchange for an Independent stock certificate representing the shares of Independent common stock they are entitled to receive (or evidence of the shares in book entry form). After the surrender of their Island stock certificates, Island shareholders of record will be entitled to receive any dividend or other distribution, without interest, which had become payable with respect to their Independent common stock.

Independent will only issue a stock certificate for Independent common stock (or evidence of the shares in book entry form) or a check for cash in payment of merger consideration or in lieu of a fractional share in a name other than the name in which a surrendered Island stock certificate is registered if the exchange agent is presented with all documents required to show and effect the unrecorded transfer of ownership, together with evidence that any applicable stock transfer taxes have been paid.

### **Representations and Warranties**

The merger agreement contains customary representations and warranties of Independent and Island relating to their respective businesses. With the exception of certain representations that must be true and correct in all material

respects, no representation or warranty will be deemed untrue or incorrect as a consequence of the existence or absence of any fact, circumstance or event unless that fact, circumstance or event, individually or when taken together with all other facts, circumstances or events, has had or would reasonably be expected to have a material adverse effect on the party making the representation. In determining whether a material adverse effect has occurred or would reasonably be expected to occur, the parties will disregard any effects resulting from (1) changes in banking and similar laws of general applicability or interpretations thereof by governmental authorities, (2) changes in generally accepted accounting principles or regulatory accounting requirements applicable to banks or bank holding companies generally, (3) any modifications or changes to Island's valuation policies and practices in connection with the merger or restructuring charges taken in connection with the

**Table of Contents**

merger, in each case in accordance with generally accepted accounting principles and with Independent's prior written consent, (4) changes after the date of the merger agreement in general economic or capital market conditions affecting financial institutions or their market prices generally and not disproportionately affecting Island or Independent, including, but not limited to, changes in levels of interest rates generally, (5) the effects of compliance with the merger agreement on the operating performance, business or financial condition of Island or Independent, including the expenses incurred by Island or Independent in negotiating, documenting, effecting and consummating the merger, (6) the effects of any action or omission taken by Island with the prior consent of Independent, and vice versa, or as otherwise expressly permitted or contemplated by the merger agreement, (7) the impact of the merger agreement and the transactions contemplated by the merger agreement on relationships with customers or employees (including the loss of personnel subsequent to the date of the merger agreement), (8) the public disclosure of the merger agreement or the transactions contemplated by the merger agreement, (9) changes in national or international political or social conditions including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States, and (10) national disaster or other force majeure event.

The representations and warranties of each of Independent and Island:

have been qualified by information set forth in confidential disclosure schedules exchanged by the parties in connection with signing the merger agreement, which modifies, qualifies and creates exceptions to the representations and warranties in the merger agreement;

will not survive consummation of the merger and cannot be the basis for any claims under the merger agreement by the other party after termination of the merger agreement;

may be intended not as statements of fact, but rather as a way of allocating the risk to one of the parties to the merger agreement if those statements turn out to be inaccurate;

are subject to the materiality standard described in the merger agreement, which may differ from what may be viewed as material by you; and

were made only as of the date of the merger agreement or such other date as is specified in the merger agreement.

Each of Independent and Island has made representations and warranties to the other regarding, among other things:

capital stock;

corporate matters, including due organization and qualification;

organization and ownership of subsidiaries;

their authority to execute and deliver the merger agreement and the absence of conflicts with, or violations of, organizational documents or other obligations as a result of the merger;

the filing of securities and regulatory reports;

the absence of agreements with regulatory agencies or investigations by regulatory agencies;

governmental filings and regulatory approvals and consents necessary to complete the merger;

financial statements and the absence of undisclosed liabilities;

absence of certain changes or events;

compliance with applicable laws;

regulatory capitalization;

loan, non-performing and classified assets;

**Table of Contents**

trust business and fiduciary accounts;

the Community Reinvestment Act and anti-money laundering requirements;

legal proceedings;

broker's fees payable in connection with the merger;

employee benefit matters;

labor matters;

environmental matters;

tax matters; and

the accuracy of information supplied for inclusion in this document and other similar documents.

In addition, Island has made other representations and warranties about itself and its subsidiaries to Independent as to:

matters relating to certain material contracts;

investment securities;

derivative transactions;

investment management;

repurchase agreements;

allowance for loan losses;

transactions with affiliates and insiders;



tangible properties and assets;

intellectual property;

insurance;

the inapplicability of state anti-takeover laws;

the receipt of a fairness opinion; and

transaction costs.

### **Conduct of Business Pending the Merger**

Island has undertaken customary covenants that place restrictions on it and its subsidiaries until the effective time of the merger. In general, Island has agreed that during this period it will, and will cause each of its subsidiaries to: (1) conduct its business in the ordinary course consistent with past practice; and (2) use commercially reasonable efforts to maintain and preserve intact its business organization and advantageous business relationships, including retaining the services of key officers and key employees and the goodwill of customers and other parties. Island further has agreed that, with certain exceptions, Island will not, and will not permit any of its subsidiaries to, among other things, undertake the following actions without the prior written consent of Independent, which, in some cases, will not be unreasonably withheld, conditioned or delayed:

issue, or enter into an agreement to issue, shares of common stock except pursuant to the exercise of Island stock options outstanding as of the date of the merger agreement, accelerate the vesting of any rights to acquire shares of common stock, or change the number of, or provide for the exchange of, shares of Island stock, any securities convertible into or exchangeable for any additional shares of stock, any rights issued and outstanding prior to the effective date of the merger as a result of a stock split, stock dividend, recapitalization, reclassification, or similar transaction with respect to its outstanding stock or any other such securities;

**Table of Contents**

declare, set aside or pay any dividends or other distributions on any shares of its capital stock, other than dividends paid by any of the wholly owned subsidiaries of Island to Island or to any of its wholly owned subsidiaries, except for the payment of a \$0.50 quarterly dividend on its common stock in accordance with recent past practice;

enter into or amend or renew any employment, consulting, severance or similar agreements or arrangements with any director, officer, employee of Island or any of its subsidiaries, or grant any salary or wage increase or increase any employee benefit plan or grant any equity compensation or pay any incentive, commission or bonus payments, subject to certain exceptions primarily intended to permit increases in compensation and the payment of bonuses in the ordinary course of business;

hire any person except for at-will employees at an annual rate of salary not to exceed \$50,000 to fill vacancies that may arise from time to time in the ordinary course of business, or promote any employee, except fill vacancies that may arise in the ordinary course of business or to satisfy contractual obligations existing as of the date of the merger agreement;

with certain exceptions, enter into, establish, adopt, amend, modify or terminate any benefit plan or other pension, retirement, stock option, stock purchase, savings, profit sharing, deferred compensation, consulting, bonus, group insurance or other employee benefit, incentive or welfare contract, plan or arrangement, or any related trust agreement, in respect of any current or former director, officer or employee;

except pursuant to agreements in effect as of the date of the merger agreement, pay, loan or advance any amount to, or sell, transfer or lease any properties or assets to, or enter into any agreement with, any of its officers or directors or any of their immediate family members or any affiliates or associates of any of its officers or directors other than compensation or business expense reimbursement in the ordinary course of business consistent with past practice;

except for real estate owned in the ordinary course of business consistent with past practice, sell, transfer, mortgage, pledge, encumber or otherwise dispose or discontinue any of its assets, deposits, business or properties, other real estate owned, or cancel or release any indebtedness owed to Island or any of its subsidiaries;

other than in the ordinary course of business and consistent with past practice, acquire other than by way of foreclosures or acquisitions in a bona fide fiduciary capacity or in satisfaction of debts previously contracted in good faith, all or any portion of the assets, business, deposits or properties of any other entity;

make any capital expenditures other than in the ordinary course of business consistent with past practice and expenditures reasonably necessary to maintain existing assets in good repair, each in amounts not exceeding \$50,000 in the aggregate unless consented to in writing by Independent;

amend its articles of organization or bylaws or any equivalent documents of any Island subsidiary;

implement or adopt any change in its accounting principles, practices or methods, other than as may be required by applicable laws, generally accepted accounting principles in the United States of America or at the written direction of a governmental authority;

enter into, amend, modify or terminate any material contract, lease, or insurance policy;

enter into any settlement or similar agreement with respect to any action, suit, proceeding, order or investigation to which Island or any of its subsidiaries is or becomes a party after the date of the merger agreement, which settlement involves payment of an amount exceeding \$25,000 individually or \$50,000 in the aggregate and/or would impose any material restriction on the business of Island or its subsidiaries;

enter into any new material line of business or change in any material respect its lending, investment, underwriting, risk and asset liability management and other banking and operating policies, except as required by applicable law imposed by any governmental authority;

**Table of Contents**

enter into any derivatives transactions, unless consented to in writing by Independent;

incur, modify, extend or renegotiate any indebtedness for borrowed money (except deposits, FHLB borrowings, or federal funds purchased, in each case in the ordinary course of business) or assume, guarantee, endorse or otherwise as an accommodation become responsible for the obligations of any other person, unless consented to in writing by Independent;

acquire, sell or otherwise dispose of any debt security or equity investment, unless consented to in writing by Independent;

make any changes in deposit pricing that are not in the ordinary course of business consistent with recent past practice, unless consented to in writing by Independent;

with respect to loans:

Edgartown National may make or renew any commercial loan, commercial loan commitment, commercial letter of credit or other extension of commercial credit up to \$500,000 that is made in the ordinary course of business in a manner consistent with the current policies and procedures and recent past practice or, if more than \$500,000, only if consented to in writing by Independent;

Edgartown National may make or renew any residential loan or residential loan commitment up to \$750,000 that is made in the ordinary course in a manner consistent with current policies and procedures and recent past practice, so long as the residential loan or residential loan commitment has a loan-to-value ratio that is in compliance with Edgartown National's current and certain other policies and procedures, complies with certain interest rate restrictions and is a qualified mortgage under applicable regulatory guideline or, if more than \$750,000, only if consented to in writing by Independent;

Edgartown National may make or renew any home equity loan or home equity loan commitment up to \$150,000 that is made in the ordinary course of business in a manner consistent with Edgartown National's current policies and procedures and recent past practice or, if more than \$150,000, only if consented to in writing by Independent; and

Edgartown National may not (a) sell any loan participations to, or enter into an loan participations with, any third party other than Rockland Trust, (b) renegotiate, increase, extend or modify any loan, loan commitment, letter of credit or other extension of credit, and (c) purchase loans of any type, or (d) make or renew any consumer or other form of loan, unless consented to in writing by Independent;

with certain exceptions, make any investment or commitment to invest in real estate or in any real estate development project other than by way of foreclosure or deed in lieu of foreclosure;

make or change any material tax election, file any material amended tax return, enter into any material closing agreement, settle or compromise any material liability with respect to taxes, agree to any material adjustment of any tax attribute, file any claim for a material refund of taxes, consent to any extension or waiver of the limitation period applicable to any material tax claim or assessment, or knowingly take any action that would prevent or impede the merger or the bank merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code;

commit any act or omission which constitutes a material breach or default of an agreement with any governmental authority or any other material agreement, lease or license;

except for foreclosures in process as of the date of the merger agreement, foreclose on or take a deed or title to any real estate other than single-family residential properties without first conducting a Phase I environmental assessment of the property or foreclose on or take a deed or title to any real estate other than single-family residential properties if the environmental assessment indicates the presence of hazardous substances or other regulated materials;

**Table of Contents**

except as may be required by applicable law or regulation, or by generally accepting accounting principles, take or fail to take, or adopt any resolutions of its board of directors in support of, any action which would result in (1) any of Island's representations and warranties in the merger agreement becoming untrue in any material respect, (2) any of the conditions to the merger not being satisfied, or (3) a material violation of any provision of the merger agreement;

directly or indirectly repurchase, redeem or otherwise acquire any shares of Island capital stock or any securities convertible into or exercisable for any shares of Island capital stock;

enter into any contract with respect to, or otherwise agree to do any of the actions prohibited by the preceding bullet points;

except as may be required by applicable law or regulation, make application for the opening, relocation or closing of any, or open, relocate, or close any, branch office, loan production or servicing facility or automated banking facility; or

compromise, resolve, or otherwise workout any delinquent or troubled loan unless done in the ordinary course of business consistent with Edgartown National's current policies and procedures and recent past practice, unless consented to in writing by Independent.

Independent has agreed that, except with Island's prior written consent, Independent will not, among other things, undertake the following actions:

except as may be required by applicable law or regulation, take any action or fail to take any action that is intended or reasonably likely to result in: a delay in the consummation of the merger or the transactions contemplated by the merger agreement; any impediment to its ability to consummate the merger or the transactions contemplated by the merger agreement; any of its representations and warranties contained in the merger agreement becoming untrue in any material respect at or prior to the effective time; any of the conditions contained in the merger agreement not being satisfied; or a material violation of any provision of the merger agreement;

knowingly take any action that would prevent or impede the merger or the bank merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code; or

enter into any contract with respect to, or otherwise agree to do any of the actions prohibited by the preceding bullet points.

Independent will deposit the merger consideration with the exchange agent at least one business day prior the closing date of the merger.

The merger agreement also contains mutual covenants relating to preparation of this document, access to information of the other company, public announcements with respect to the transactions contemplated by the merger agreement,

regulatory filings and consents, notification of certain changes, board packages and director resignations, litigation, information systems conversion, coordination of agreements by Island allowing Independent access to Island's customers and suppliers and to conduct environmental assessments of certain real property owned by Island.

### **Shareholder Approval**

Island has called the special meeting to consider and vote upon the Island merger agreement proposal and Island adjournment proposal. Island has agreed to take all lawful action to solicit shareholder approval of the merger agreement, although under certain circumstances Island's board of directors may recommend to Island shareholders a Superior Proposal (as defined below) in the exercise of its fiduciary duties, as described below under No Solicitation of Alternative Transactions.

Under the merger agreement, Island's board of directors must, at all times prior to and during the special meeting, recommend approval of the merger agreement by Island shareholders and may not withhold, withdraw,

**Table of Contents**

amend or modify its recommendation in any manner adverse to Independent or take any other action or make any other public statement inconsistent with its recommendation, except as and to the extent described below under **No Solicitation of Alternative Transactions**.

**No Solicitation of Alternative Transactions**

With certain exceptions described below, Island has agreed that it, its subsidiaries and their officers and directors will not, and Island will cause each of its and its subsidiaries' representatives not to, directly or indirectly:

solicit, initiate or encourage any inquiry with respect to, or the making of, any proposal that constitutes or could reasonably be expected to lead to, an Acquisition Proposal (as defined below);

participate in any negotiations regarding an Acquisition Proposal with, or furnish any nonpublic information relating to an Acquisition Proposal to, any party that has made or, to the knowledge of Island, is considering making an Acquisition Proposal; or

engage in discussions regarding an Acquisition Proposal with any party that has made, or, to Island's knowledge, is considering making, an Acquisition Proposal.

However, prior to the time that Island shareholders approve the merger agreement and the transactions it contemplates, if Island receives a written and unsolicited Acquisition Proposal that Island's board of directors determines in good faith (after consultation with its financial advisers and legal counsel) is or is reasonably likely to lead to a Superior Proposal (as defined below), Island may take the following actions:

furnish nonpublic information to the party making the Superior Proposal, but only if (1) prior to so furnishing the nonpublic information, Island has entered into a customary confidentiality agreement with the party on terms no less favorable to Island than the confidentiality agreement between Island and Independent, and (2) all the nonpublic information has previously been provided to Independent or is provided to Independent prior to or contemporaneously with the time it is provided to the party making the Superior Proposal; and

engage or participate in any discussions or negotiations with the party with respect to the Superior Proposal. Island must promptly advise Independent of the receipt of:

any proposal that constitutes or is reasonably likely to lead to an Acquisition Proposal and the material terms of the proposal; and

any request for non-public information relating to Island or any of its subsidiaries other than requests for information not reasonably likely to be related to an Acquisition Proposal.



Thereafter, Island must keep Independent informed on a reasonably current basis (and in any event at least once every 1 business days) of the status of any Acquisition Proposal (including any material change to its terms).

Except as described below, Island's board of directors may not:

withhold, withdraw, or modify (or publicly propose to withhold, withdraw or modify), in a manner adverse to Independent, its recommendation that Island shareholders approve the merger agreement and the transactions it contemplates; or

approve or recommend (or publicly propose to approve or recommend ) any Acquisition Proposal. Except as set forth below, Island may not, and its board of directors may not allow it to, and Island may not allow any of its subsidiaries to enter into any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement or other agreement (except for customary confidentiality agreements as described above) relating to any Superior Proposal.

**Table of Contents**

Notwithstanding the previous paragraphs, Island's board of directors may, prior to the time Island shareholders approve the merger agreement and the transactions it contemplates, (1) change its recommendation that Island shareholders approve the merger agreement and the transactions it contemplates or (2) terminate the merger agreement (and concurrently with the termination cause Island to enter into a definitive agreement with respect to the Superior Proposal), in either case if and only if the board of directors has determined in good faith, after consulting with its legal counsel, that the failure to take action would be inconsistent with the directors' fiduciary duties. However, the board of directors may not take any such action in connection with an Acquisition Proposal unless:

the Island board of directors has determined that the Acquisition Proposal constitutes a Superior Proposal;

prior to terminating the merger agreement, Island provides written notice to Independent at least four business days in advance of its intention to take action (which notice must specify all material terms and conditions of the Superior Proposal, including documentation related thereto and the identity of the party making the Superior Proposal);

during the four-day notice period, Island negotiates with Independent in good faith if Independent proposes to make adjustments in the terms and conditions of this merger agreement so that the Acquisition Proposal ceases to constitute a Superior Proposal; and

the Acquisition Proposal continues to constitute a Superior Proposal after taking into account any amendments that Independent agrees to make to the merger agreement.

As used in the merger agreement, the term "Acquisition Proposal" means any proposal or offer with respect to any of the following involving Island:

any merger, consolidation, share exchange, business combination or other similar transaction;

any sale, lease, exchange, mortgage, pledge (excluding any FHLB or FRB pledges), transfer or other disposition of assets that constitute 20% or more of the assets of Island in a single transaction or series of transactions;

any tender offer or exchange offer for 20% or more of the outstanding shares of Island's capital stock or the filing of a registration statement under the Securities Act, in connection with a tender offer; or

any public announcement by any party of a proposal, plan or intention to do any of the foregoing or any agreement to engage in any of the foregoing.

As used in the merger agreement, the term "Superior Proposal" means any bona fide written Acquisition Proposal with respect to more than 50% of the combined voting power of the shares of Island common stock then outstanding or all or substantially all of the assets of Island:

that is on terms which Island's board of directors determines in good faith, after consultation with its financial advisor, to be more favorable from a financial point of view to Island shareholders than the transactions contemplated by the merger agreement;

that constitutes a transaction that, in the good faith judgment of Island's board of directors, is reasonably likely to be consummated on the terms set forth, taking into account all legal, financial, regulatory and other aspects of the proposal; and

for which financing, to the extent required, is then committed pursuant to a written commitment letter.

### **Employee Benefits Matters**

#### *Benefit Plans*

The merger agreement provides that following the effective date of the merger, Independent will assume responsibility for administration of Island's frozen noncontributory defined benefit plan, and other Island benefit

---

**Table of Contents**

plans, and will provide those individuals who are employees of Island and its subsidiaries and who continue as employees of Independent or any of its subsidiaries with employee benefit plans of general applicability for which Independent has analogous plans with the employee plans being either those of Island or Independent as selected by Independent; provided, however, that all such employees will be entitled to participate in all benefit plans of general applicability then maintained by Independent to the same extent as similarly-situated employees of Independent. At this time, Independent plans to take the necessary actions to terminate Island's frozen noncontributory defined benefit plan after the merger becomes effective. With respect to the comparable Independent benefit plan, for purposes of determining eligibility to participate, vesting, entitlement to benefits and vacation entitlement (but not for accrual of benefits under any Independent benefit plan, including any post-retirement welfare benefit plan), service by an employee with Island or any of its subsidiaries will be recognized to the same extent such service was recognized immediately prior to the effective time of the merger, or if there is no comparable employee benefit plan, to the same extent such service was recognized under the Edgartown National 401(k) plan immediately prior to the effective time of the merger to the extent applicable; provided however, that such service shall not be recognized to the extent recognition would result in a duplication of benefits. Independent will make all commercially reasonable efforts to cause each benefit plan providing medical or dental benefits to continuing employees to waive any preexisting condition limitations relating to any conditions that were covered under the applicable medical, health or dental plans of Island and its subsidiaries, take into account all eligible expenses incurred for purposes of satisfying the deductible and coinsurance and waive any waiting period limitation or evidence of insurability requirement which would otherwise be applicable to the continuing employee.

*Severance Pay Plan*

Independent has agreed to a severance pay plan that provides for severance benefits for eligible employees not covered by any contractual severance arrangement in connection with certain terminations of employment that occur within one year after the effective date of the merger. Under this severance pay plan, eligible employees whose employment is terminated without cause during the one year following the merger would be entitled to receive severance pay in the amount of twelve weeks plus two weeks' pay for every year of service, up to a maximum of twenty-six weeks' severance and be offered outplacement assistance.

*Retention Bonuses*

Certain employees of Edgartown National will be entitled, subject to, at the option of Independent, the employee's execution of a release provided by Independent, to a retention bonus if they maintain their employment with Edgartown National until that person's job function has been converted or transitioned and that person does not accept an offer for continued employment with Rockland Trust.

**Conditions to Complete the Merger**

Our respective obligations to complete the merger are subject to the fulfillment or waiver if legally permitted (except for the condition set forth in the third bullet below, which may not be waived in any circumstance) of mutual conditions, including:

receipt of approval of the merger agreement by Island shareholders;

the effectiveness of the registration statement of which this document is a part, with respect to the Independent common stock to be issued in the merger under the Securities Act, and the absence of any stop order or proceedings initiated or threatened by the Securities and Exchange Commission or any other governmental authority for that purpose;

the receipt by each party of a legal opinion from its counsel with respect to certain U.S. federal income tax consequences of the merger;

## **Table of Contents**

the receipt and effectiveness of all regulatory approvals, registrations, and consents (none of which shall impose a term, condition or restriction that Independent reasonably determines to be a burdensome condition) and the expiration of all waiting periods required to complete the merger;

the absence of any statute, regulation, rule, decree, injunction or other order in effect by any court or other governmental entity that prohibits completion of the transactions contemplated by the merger agreement; and

the listing on Nasdaq of the shares of Independent common stock issuable pursuant to the merger, subject to official notice of issuance.

Each of Island's and Independent's obligations to complete the merger is also separately subject to the satisfaction or waiver of a number of conditions, including the performance by the other party in all material respects of its obligations under the merger agreement, and the other party's representations and warranties in the merger agreement being true and correct in all material respects (except that, except for certain exceptions, no representation or warranty will be deemed not to be true and correct unless the failure of the representation or warranty to be true and correct, together with all other failures, would have a material adverse effect on the party).

Independent's obligation to complete the merger is further subject to the conditions that the number of outstanding shares of Island common stock shall not exceed 48,466 and the holders of no more than 10% of Island outstanding common stock will have taken the actions required by Part 13 of Chapter 156D of the Massachusetts Business Corporation Act to qualify their Island common stock as dissenters' shares.

We cannot provide assurance as to when or if all of the conditions to the merger can or will be satisfied or waived by the appropriate party. As of the date of this document, we have no reason to believe that any of these conditions will not be satisfied.

## **Termination of the Merger Agreement**

### *General*

The merger agreement may be terminated at any time prior to the completion of the merger by our mutual consent authorized by each of our boards of directors, as determined by a majority vote of each, or by either Independent or Island if:

a governmental entity which must grant a regulatory approval as a condition to the merger denies approval of the merger or any governmental entity has issued an order prohibiting the merger and such action has become final and non-appealable;

the requisite shareholder approval is not obtained from Island shareholders;

the merger is not completed by July 31, 2017 (other than because of a material breach of the Agreement caused by the party seeking termination); or

the other party breaches the merger agreement in a way that would entitle the party seeking to terminate the agreement not to consummate the merger, subject to the right of the breaching party to cure the breach by 30 days following written notice (unless it is not possible due to the nature or timing of the breach for the breaching party to cure the breach).

The merger agreement may also be terminated by Independent if Island has materially breached its non-solicitation obligations; the Island board of directors has failed to recommend in this proxy statement/prospectus the approval of the merger agreement, or made a change in recommendation to its shareholders; the Island board of directors has recommended, proposed or publicly announced its intention to recommend or propose, to engage in an Acquisition Transaction (as defined below under Termination Fee ) with any person other than

---

**Table of Contents**

Independent or a subsidiary or affiliate of Independent; a tender or exchange offer for 20% or more of the outstanding shares of Island common stock is commenced and the board of directors of Island has failed to publicly recommend against a publicly announced Acquisition Proposal within five business days of being requested to do so by Independent; or Island has failed to call the special meeting of Island shareholders. Additionally, Island may terminate the merger agreement:

if it enters into a Superior Proposal as described under The Merger Agreement No Solicitation of Alternative Transactions, so long as it pays a termination fee of \$900,000 to Independent; or

pursuant to a walk away right that is subject to a top up option, if (a) the ten-day VWAP of Independent's common stock as of a measurement date prior to closing is more than 20% below the ten-day VWAP of Independent's common stock for the trading period ending October 19, 2016, (b) the decrease in the ten-day VWAP of Independent's common stock for the trading period ending on October 19, 2016 compared to the ten-day VWAP of Independent common stock ending on the measurement date is more than 20% greater than the decrease in the ten day average price of the Nasdaq Bank Stock Index during the same time periods, (c) Island elects to terminate the agreement by a majority vote of Island's directors, and (d) following notice to Independent by Island of the exercise of its walk away right, Independent does not exercise its option under the merger agreement to increase the exchange ratio to a number that would compensate Island shareholders for the extent of the decrease in Independent's common stock price below the lowest price per share at which the walk away right would not have been triggered. If Independent exercises its top up option, then no termination will occur.

*Effect of Termination*

In the event the merger agreement is terminated as described above, the merger agreement will become void and neither Independent nor Island will have any liability under the merger agreement, except that:

both Independent and Island will remain liable for any willful and material breach of the merger agreement; provided that in no event will a party be liable for any punitive damages; and

designated provisions of the merger agreement, including those relating to the termination fee, the payment of fees and expenses, non-survival of the representations and warranties, and confidential treatment of information will survive the termination.

**Termination Fee**

*Conditions Requiring Payment of Termination Fee*

Island has agreed to pay a termination fee in the amount of \$900,000 to Independent in the following circumstances:

if Island terminates the merger agreement because Island's board of directors has approved, and Island enters into, a definitive agreement with respect to a Superior Proposal (as defined above under No Solicitation of



Alternative Transactions );

if Independent terminates the merger agreement because:

Island materially breaches its non-solicitation obligations;

Island's board of directors fails to recommend that Island shareholders approve the merger agreement and the transactions it contemplates, or made a change in recommendation;

Island's board of directors recommends, proposes or publicly announces its intention to recommend or propose, to engage in an Acquisition Transaction (as defined below) with any party other than Independent or a subsidiary or affiliate of Independent;

**Table of Contents**

A tender or exchange offer for 20% or more of the outstanding shares of Island common stock is commenced and the Island board of directors shall have failed to publicly recommend against the tender or exchange offer within five business days of being requested to do so by Independent; or

Island materially breaches its obligations to call, give notice of, convene and hold a meeting of Island shareholders in order to approve the merger agreement and the transactions it contemplates; or

in the event that

(1) an Acquisition Proposal, whether or not conditional, has been publicly announced (or any person has publicly announced an intention, whether or not conditional, to make an Acquisition Proposal) or (2) Island's board of directors has withheld, withdrawn or modified (or publicly proposed to withhold, withdraw or modify) its recommendation for the merger, prior to or on the date of the shareholder meeting or at any adjournment or postponement thereof at which the vote on the merger agreement is held;

the merger agreement is terminated:

by Independent or Island because shareholder approval is not obtained by Island shareholders;

by Independent or Island because the merger is not completed on or before July 31, 2017; or

by Independent because Island materially breaches the merger agreement, subject to the right of Island to cure the breach; and

within 12 months following the date of termination, Island enters into a definitive agreement with respect to any Acquisition Transaction, the Island board of directors recommends any Acquisition Transaction or Island consummates any Acquisition Transaction,

then Island must pay the termination fee to Independent, less any amount up to \$400,000 reimbursed to Independent with respect to its and its subsidiaries' reasonably documented out-of-pocket fees and expenses in connection with the merger agreement. Island must pay the termination fee prior to the earlier of Island entering into a definitive agreement for or consummating the Acquisition Transaction; provided, however, that all references in the definition of Acquisition Transaction to 20% or more shall instead refer to 50% or more.

In addition, in the event that the merger agreement is terminated (a) by Independent or Island because the merger is not completed on or before July 31, 2017 or (b) by Independent because Island materially breaches the merger agreement, subject to the right of Island to cure the breach, following the occurrence of (x) an Acquisition Proposal, whether or not conditional, being publicly announced (or any person having publicly announced an intention, whether or not conditional, to make an Acquisition Proposal) or (y) the withholding, withdrawing or modification (or public proposal to withhold, withdraw or modify) by Island's board of directors of its recommendation for the merger, prior to

or on the date of the shareholder meeting or at any adjournment or postponement thereof at which the vote on the merger agreement is held, prior to such termination, then Island must immediately reimburse Independent up to \$400,000 of its and its subsidiaries' reasonably documented out-of-pocket fees and expenses in connection with the merger agreement if a termination fee has not been paid or is not payable by Island to Independent because, within 12 months following the date of termination, Island has not entered into a definitive agreement with respect to any Acquisition Transaction, the Island board of directors has not recommended any Acquisition Transaction or Island has not consummated any Acquisition Transaction.

As used in the merger agreement, the term "Acquisition Transaction" means any of the following involving Island:

any merger, consolidation, share exchange, business combination or other similar transaction;

## **Table of Contents**

any sale, lease, exchange, mortgage, pledge (excluding any FHLB or FRB pledges), transfer or other disposition of assets and/or liabilities that constitute 20% or more of the assets of Island in a single transaction or series of transactions; or

any tender offer or exchange offer for 20% or more of the outstanding shares of Island's capital stock or the filing of a registration statement under the Securities Act, in connection with a tender offer or exchange offer.

## **Waiver or Amendment of the Merger Agreement**

Except for the receipt of opinions from Day Pitney LLP and Cranmore, FitzGerald & Meaney to the effect that the merger will be treated for federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code, which may not be waived in any circumstance, either party may waive a provision of the merger agreement and both parties may agree to amend the merger agreement at any time prior to completion of the merger. However, after any approval of the merger by Island shareholders, there may not be, without further approval of the shareholders, any amendment of the merger agreement that requires further approval by shareholders under applicable law.

## **Fees and Expenses**

Except as otherwise described above, each party will bear all expenses incurred by it in connection with the merger agreement and the transactions it contemplates, including fees and expenses of its own financial consultants, accountants and legal counsel, provided that nothing contained herein shall limit either party's rights to recover any liabilities or damages arising out of the other party's willful breach of any provision of the merger agreement.

## **Restrictions on Resales by Affiliates**

Shares of Independent common stock to be issued to Island shareholders in the merger will have been registered under the Securities Act, and may be traded freely and without restriction by those shareholders not deemed to be affiliates (as that term is defined under the Securities Act) of Independent after the merger. Any subsequent transfer of shares, however, by any Island shareholder who is deemed an affiliate of Independent after the merger will, under existing law, require either:

the further registration under the Securities Act of the Independent common stock to be transferred; or

the availability of another exemption from registration.

An affiliate of Independent is a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, Independent. These restrictions are expected to apply to the directors and executive officers of Independent and the holders of 10% or more of the outstanding Independent common stock. The same restrictions apply to the spouses and certain relatives of those persons and any trusts, estates, corporations or other entities in which those persons have a 10% or greater beneficial or equity interest.

Independent will give stop transfer instructions to the exchange agent with respect to the shares of Independent common stock to be received by persons subject to these restrictions.



**Table of Contents**

**VOTING AGREEMENTS**

Concurrently with the execution of the merger agreement, the directors of Island separately entered into voting agreements with Independent under which they agreed to, with respect to shares of Island common stock that they own directly or jointly with their spouse or that are held by a trust for which they are trustee or co-trustee with their spouse:

restrict their ability to transfer or dispose of their shares of Island common stock;

appear at the Island shareholder meeting or otherwise cause their shares of Island common stock to be counted as present at the shareholder meeting for purposes of calculating a quorum;

vote their shares of Island common stock in favor of approval of the merger agreement and the transactions it contemplates;

vote their shares of Island common stock against any action or agreement that would result in a breach of any covenant, representation or warranty, or other obligation or agreement, of Island contained in the merger agreement;

vote their shares of Island common stock against any proposal to acquire Island by any person other than Independent or against any action, agreement or transaction that is intended to, or could reasonably be expected to, impede, interfere or be inconsistent with, delay, postpone, discourage or materially and adversely affect the consummation of the transactions contemplated by the merger agreement; and

not to vote or execute any written consent to rescind or amend in any manner any prior vote or written consent, as a shareholder of Island, to approve or adopt the merger agreement unless the merger agreement is terminated in accordance with its terms.

The voting agreements were executed as a condition of Independent's willingness to enter into the merger agreement, and as an indication of the directors' support for the merger agreement and the transactions contemplated by it and their willingness to vote their shares of Island common stock in favor of the merger agreement at the Island shareholder meeting.

On the record date of January 3, 2017, these directors of Island individually or jointly owned with their spouses, or were the trustees or co-trustees with their spouses of trusts that owned, an aggregate of 16,182 shares, which they have agreed to vote in favor of the merger agreement at the Island shareholder meeting. These shares represent approximately 33.39% of the outstanding shares of Island common stock.

No separate consideration was paid to any of the directors for entering into these voting agreements. However, the directors of Island may be deemed to have interests in the merger as directors that are different from or in addition to those of other Island shareholders. See *The Merger* Interests of Island's Executive Officers and Directors in the Merger beginning on page 52 of this proxy statement/prospectus.



**Table of Contents**

**ACCOUNTING TREATMENT**

Independent has determined that the merger represents a business combination and will account for the merger by applying the acquisition method of accounting, in accordance with the provisions of Topic 805 Business Combinations of the Financial Accounting Standards Board Accounting Standard Codification. As of the date of the merger, Independent will recognize the assets acquired, including intangible assets, and liabilities assumed at their respective estimated fair values. To the extent that the purchase price exceeds the estimated fair value of the net assets acquired, Independent will allocate the excess purchase price to goodwill. The goodwill resulting from the merger will not be amortized to expense, but instead will be reviewed for impairment at least annually. To the extent goodwill is impaired, its carrying value would be written down to its implied fair value and a charge would be made to earnings. Core deposit and other intangibles with definite useful lives will be amortized to expense over their estimated useful lives.

The financial statements of Independent issued after the merger will reflect the results attributable to the acquired operations of Island beginning on the date the merger is completed.



**Table of Contents**

**MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE MERGER**

The following section describes the anticipated material U.S. federal income tax consequences of the merger to U.S. holders (as defined below) of Island common stock. This discussion addresses only those holders that hold their Island common stock as a capital asset within the meaning of Section 1221 of the Internal Revenue Code of 1986, as amended (the Internal Revenue Code), and does not address all the U.S. federal income tax consequences that may be relevant to particular holders in light of their individual circumstances or to holders that are subject to special rules, such as:

financial institutions;

insurance companies;

individual retirement and other tax-deferred accounts;

persons subject to the alternative minimum tax provisions of the Internal Revenue Code;

entities treated as partnerships or other flow-through entities for U.S. federal income tax purposes;

tax-exempt organizations;

dealers in securities;

persons whose functional currency is not the U.S. dollar;

traders in securities that elect to use a mark to market method of accounting;

regulated investment companies, real estate investment trusts and regulated mortgage investment conduits;

persons that hold Island common stock as part of a straddle, hedge, constructive sale or conversion transaction; or

persons who acquired their shares of Island common stock through the exercise of an employee stock option or otherwise as compensation.

The following is based upon the Internal Revenue Code, its legislative history, Treasury regulations promulgated pursuant to the Internal Revenue Code and published rulings and decisions, all as currently in effect as of the date of this document, and all of which are subject to change, possibly with retroactive effect, and to differing interpretations. Tax considerations under state, local and foreign laws, or federal laws other than those pertaining to U.S. federal income tax, are not addressed in this document.

Holders of Island common stock should consult with their own tax advisers as to the U.S. federal income tax consequences of the merger as well as the effect of state, local, foreign and other tax laws and of proposed changes to applicable tax laws, in light of their particular circumstances.

For purposes of this discussion, the term "U.S. holder" means a beneficial owner of Island common stock that is:

a U.S. citizen or resident, as determined for federal income tax purposes;

a corporation, or entity taxable as a corporation, created or organized in or under the laws of the United States or any of its political subdivisions;

a trust that (i) is subject to the supervision of a court within the United States and the control of one or more U.S. persons or (ii) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person; or

an estate that is subject to United States federal income taxation on its income regardless of its source.

**Table of Contents**

The U.S. federal income tax consequences of a partner in a partnership holding Island common stock generally will depend on the status of the partner and the activities of the partnership. We recommend that partners in such a partnership consult their own tax advisers.

**Tax Consequences of the Merger Generally**

Independent and Island have structured the merger to qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code. It is a condition to Independent's obligation to complete the merger that Independent receive an opinion of its legal counsel, Day Pitney LLP, dated the closing date of the merger, to the effect that the merger will be treated as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code. It is a condition to Island's obligation to complete the merger that Island receive an opinion of its legal counsel, Cranmore, FitzGerald & Meaney, dated the closing date of the merger, to the effect that the merger will be treated as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code. These opinions will be based on assumptions, representations, warranties and covenants, including those contained in the merger agreement and in letters and certificates provided by Island and Independent. The accuracy of such assumptions, representations and warranties, and compliance with such covenants, could affect the conclusions set forth in the opinions. None of the tax opinions given in connection with the merger or the opinions described below will be binding on the Internal Revenue Service. Neither Independent nor Island intends to request any ruling from the Internal Revenue Service as to the U.S. federal income tax consequences of the merger. Consequently, no assurance can be given that the Internal Revenue Service will not assert, or that a court would not sustain, a position contrary to any of those set forth below. In addition, if any of the representations or assumptions upon which those opinions are based is inconsistent with the actual facts, the U.S. federal income tax consequences of the merger could be adversely affected.

As a result of the merger qualifying as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code, based upon the opinions of Day Pitney LLP and Cranmore, FitzGerald & Meaney, the following is a summary of their respective opinions of the material U.S. federal income tax consequences that will result:

***Exchange Solely for Independent Common Stock.*** No gain or loss will be recognized by an Island shareholder who receives solely shares of Independent common stock (except for cash received in lieu of fractional shares, as discussed below) in exchange for all of his or her shares of Island common stock. The tax basis of the shares of Independent common stock received by an Island shareholder in the exchange will be equal (except for the basis attributable to any fractional shares of Independent common stock, as discussed below) to the basis of the Island common stock surrendered in exchange for the Independent common stock. The holding period of the Independent common stock received will include the holding period of shares of Island common stock surrendered in exchange for the Independent common stock.

***Exchange Solely for Cash.*** An Island shareholder who receives solely cash in exchange for all of his or her shares of Island common stock (and is not treated as constructively owning Independent common stock after the merger under the circumstances referred to below under "Possible Dividend Treatment") will recognize gain or loss for federal income tax purposes equal to the difference between the cash received and the shareholder's tax basis in the Island common stock surrendered in exchange for the cash. Such gain or loss generally will be a capital gain or loss. Such gain or loss will be long-term capital gain or loss if the Island shareholder's holding period is more than one year at the effective time of the merger. Long-term capital gains of certain non-corporate U.S. holders, including individuals, are generally subject to U.S. federal income tax at preferential rates. The Internal Revenue Code contains limitations on the extent to which a taxpayer may deduct capital losses.

***Exchange for Independent Common Stock and Cash.*** An Island shareholder who receives a combination of Independent common stock and cash (excluding cash received in lieu of a fractional share of Independent common

stock) in exchange for his or her Island common stock will not be permitted to recognize any loss for federal income tax purposes. The shareholder will recognize gain, if any, equal to the lesser of (1) the amount of cash received or (2) the amount of gain realized in the transaction. The amount of gain an Island shareholder

---

**Table of Contents**

realizes will equal the amount by which (a) the cash plus the fair market value at the effective time of the merger of Independent common stock received exceeds (b) the shareholder's adjusted tax basis in the Island common stock to be surrendered in the exchange for the cash and Independent common stock. Any recognized gain could be taxed as a capital gain or a dividend, as described below. The tax basis of the shares of Independent common stock received by the Island shareholder will be the same as the basis of the shares of Island common stock surrendered in exchange for the shares of Independent common stock, reduced by the amount of cash received by the holder in the merger (excluding any cash received in lieu of a fractional share of Independent common stock) and increased by the amount of gain, if any, recognized by the holder (excluding any gain or loss resulting from the deemed receipt and exchange of fractional shares of Independent common stock). The holding period for shares of Independent common stock received by the Island shareholder will include the shareholder's holding period for the Island common stock surrendered in exchange for the Independent common stock.

If a U.S. holder of Island common stock acquired different blocks of Island common stock at different times or different prices, any gain or loss will be determined separately with respect to each block of Island common stock and the U.S. holder's bases and holding periods in their shares of Independent common stock may be determined with reference to each block of Island common stock. Any such holders should consult their tax advisors regarding the manner in which cash and Independent common stock received in the merger should be allocated among different blocks of Island common stock and regarding their bases and holding periods in the particular shares of Independent common stock received in the merger.

***Possible Dividend Treatment.*** In certain circumstances, an Island shareholder who receives solely cash or a combination of cash and Independent common stock in the merger may receive dividend income, rather than capital gain, treatment on all or a portion of the gain recognized by that shareholder if the receipt of cash has the effect of the distribution of a dividend. The determination of whether a cash payment has that effect is based on a comparison of the Island shareholder's proportionate interest in Independent after the merger with the proportionate interest the shareholder would have had if the shareholder had received solely Independent common stock in the merger. Possible dividend treatment could apply because of a shareholder's purchase (or the purchase by a family member or certain entities described below) of additional Independent stock or a repurchase of shares by Independent. For purposes of this comparison, the Island shareholder may be deemed to constructively own shares of Independent common stock held by certain members of the shareholder's family or certain entities in which the shareholder has an ownership or beneficial interest and certain stock options may be aggregated with the shareholder's shares of Independent common stock. The amount of the cash payment that may be treated as a dividend is limited to the shareholder's ratable share of the accumulated earnings and profits of Island at the effective time of the merger. Any gain that is not treated as a dividend generally will be taxed as a capital gain. Because the determination of whether a cash payment will be treated as having the effect of a dividend depends primarily upon the facts and circumstances of each Island shareholder, Island shareholders are urged to consult their own tax advisors regarding the tax treatment of any cash received in the merger.

***Cash in Lieu of Fractional Shares.*** An Island shareholder who holds Island common stock as a capital asset and who receives in the merger, in exchange for such stock, solely Independent common stock and cash in lieu of a fractional share interest in Independent common stock will be treated as having received such fractional share and then having received such cash in redemption of such fractional share. Gain or loss generally will be recognized based on the difference between the amount of cash received in lieu of the fractional share and the portion of the shareholder's aggregate adjusted basis in the shares of Island common stock surrendered which is allocable to the fractional share. Such gain or loss generally will be long-term capital gain or loss if the shareholder's holding period for its Island common stock exceeds one year at the effective time of the merger.

***Tax Treatment of the Entities.*** No gain or loss will be recognized by Independent or Island as a result of the merger. The tax basis of the assets of Island in the hands of Independent will be the same as the tax basis of assets in the hands of Island immediately prior to the merger.

**Table of Contents**

**Reporting Requirements**

An Island shareholder who receives Independent common stock as a result of the merger will be required to retain records pertaining to the merger. Certain Island shareholders are subject to certain reporting requirements with respect to the merger. In particular, such shareholders will be required to attach a statement to their tax returns for the year of the merger that contains the information listed in Treasury Regulation Section 1.368-3(b). The statement must include the shareholder's adjusted tax basis in its Island common stock and other information regarding the reorganization. Island's shareholders are urged to consult with their tax advisers with respect to these and other reporting requirements applicable to the merger.

**Withholding Requirements**

Certain Island shareholders may be subject to U.S. federal backup withholding, at a rate of 28%, on cash received pursuant to the merger. Backup withholding will not apply, however, to an Island shareholder who provides proof of an applicable exemption or furnishes its taxpayer identification number, and otherwise complies with all applicable requirements of the backup withholding rules. Amounts withheld, if any, generally are not an additional tax and may be refunded or credited against the Island shareholder's U.S. federal income tax liability, provided that the Island shareholder timely furnishes the required information to the Internal Revenue Service.

THE PRECEDING DISCUSSION IS A SUMMARY OF THE MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE MERGER AND DOES NOT PURPORT TO BE A COMPLETE ANALYSIS OR DISCUSSION OF ALL POTENTIAL TAX CONSEQUENCES RELEVANT THERETO. SHAREHOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISERS AS TO THE U.S. FEDERAL INCOME TAX CONSEQUENCES TO THEM OF THE MERGER (INCLUDING, BUT NOT LIMITED TO, TAX RETURN REPORTING REQUIREMENTS), AS WELL AS THE EFFECT OF STATE, LOCAL, FOREIGN AND OTHER TAX LAWS AND ANY PROPOSED CHANGES TO APPLICABLE TAX LAWS.

**Table of Contents**

**THE COMPANIES**

**INDEPENDENT**

Independent is a Massachusetts corporation organized in 1985 and is registered with the Federal Reserve as a bank holding company under the Bank Holding Company Act. Independent is the sole shareholder of Rockland Trust, and its primary business is serving as the holding company of Rockland Trust.

Rockland Trust is a Massachusetts-chartered trust company. Rockland Trust was chartered in 1907. Rockland Trust's deposits are insured by the Deposit Insurance Fund of the FDIC up to applicable limits. Rockland Trust offers a full range of banking services through a network of 84 bank branches in eastern Massachusetts and its commercial lending centers and investment management offices in eastern Massachusetts and Providence, Rhode Island. Rockland Trust provides investment management and trust services to individuals, institutions, small businesses, and charitable institutions throughout eastern Massachusetts and Rhode Island.

At September 30, 2016, Independent had total consolidated assets of approximately \$7.5 billion, net loans of approximately \$5.7 billion, total deposits of approximately \$6.3 billion and total shareholders' equity of approximately \$818.2 million.

You can find more information about Independent in Independent's filings with the Securities and Exchange Commission referenced in the sections in this document titled "Where You Can Find More Information" and "Incorporation of Certain Documents by Reference" beginning on page 86.

**Island**

Island was incorporated under Massachusetts law in 2000 to become the holding company of Edgartown National, a national banking association. Headquartered in Edgartown, Massachusetts, Island operates its business from four banking offices located in Massachusetts: two located in Edgartown, one located in Oak Bluffs and one located in Vineyard Haven. Island provides a variety of financial services to individuals and small businesses primarily in the form of various deposit products, residential and commercial mortgage loans, and commercial loans and lines of credit.

At September 30, 2016, Island had total consolidated assets of \$194.1 million, net loans of \$151.4 million, total deposits of \$171.1 million, and total shareholders' equity of \$16.2 million.



**Table of Contents**

**DESCRIPTION OF INDEPENDENT'S CAPITAL STOCK**

Independent is authorized to issue up to 75,000,000 shares of common stock, par value \$0.01 per share, with 27,005,813 shares outstanding as of January 3, 2017. Independent is also authorized to issue up to 1,000,000 shares of preferred stock, par value \$0.01 per share, none of which was issued as of January 3, 2017. The capital stock of Independent does not represent or constitute a deposit account and is not insured by the FDIC or by the Depositors Insurance Fund.

The following description of the Independent capital stock does not purport to be complete and is qualified in all respects by reference to Independent's articles of organization and bylaws, and the Massachusetts Business Corporation Act.

**Common Stock**

*General*

Each share of Independent common stock has the same relative rights and is identical in all respects with each other share of common stock.

*Voting Rights*

Each holder of common stock is entitled to one vote in person or by proxy for each share held on all matters voted upon by shareholders. Shareholders are not permitted to cumulate votes in elections of directors.

*Preemptive Rights*

Holders of common stock do not have any preemptive rights with respect to any shares that may be issued by Independent in the future. Thus, Independent may sell shares of its common stock without first offering them to the then holders of common stock.

*Liquidation*

In the event of any liquidation or dissolution of Independent, whether voluntary or involuntary, the holders of Independent common stock would be entitled to receive pro rata, after payment of all debts and liabilities of Independent (including all deposits of subsidiary banks and interest on those deposits), all assets of Independent available for distribution, subject to the rights of the holders of any preferred stock which may be issued with a priority in liquidation or dissolution over the holders of common stock.

**Preferred Stock**

The Independent board of directors is authorized, subject to limitations by its articles of organization and by applicable law, to issue preferred stock in one or more series. The Independent board of directors may fix the dividend, redemption, liquidation and conversion rights of each series of preferred stock, and may provide for a sinking fund or redemption or purchase account to be provided for the preferred stock. The board of directors may also grant voting rights to the holders of any series of preferred stock, subject to certain limitations in Independent's articles of organization. Specifically, the holders of any series of preferred stock may not be given the right to more than one vote per share on any matters requiring the approval or vote of the holders of Independent common stock, except as otherwise required by applicable law, the right to elect more than two Independent directors or, together

with the holders of all other series of preferred stock, the right to elect in the aggregate more than six Independent directors.

**Table of Contents**

**Other Provisions**

The articles of organization and bylaws of Independent contain a number of provisions that may have the effect of discouraging or delaying attempts to gain control of Independent, including provisions:

classifying the Independent board of directors into three classes to serve for three years, with one class being elected annually;

authorizing the Independent board of directors to fix the size of the Independent board of directors;

limiting for removal of directors by a majority of shareholders to removal for cause; and

increasing the amount of stock required to be held by shareholders seeking to call a special meeting of shareholders above the minimum established by statute.

Massachusetts has adopted a business combination statute (Chapter 110F of the Massachusetts Business Corporation Act) that may also have additional anti-takeover effects to provisions in Independent's articles of organization and bylaws. Massachusetts has also adopted a control share statute (Chapter 110D of the Massachusetts Business Corporation Act), the provisions of which Independent has provided in its bylaws shall not apply to control share acquisitions of Independent within the meaning of said Chapter 110D.

**Transfer Agent**

The transfer agent and registrar for Independent common stock is Computershare Limited.

**Table of Contents**

**COMPARISON OF RIGHTS OF SHAREHOLDERS OF ISLAND AND INDEPENDENT**

*This section describes the differences between the rights of holders of Island common stock and the rights of holders of Independent common stock. While we believe that the description covers the material differences between the rights of the holders, this summary may not contain all of the information that is important to you. You should carefully read this entire document and refer to the other documents discussed below for a more complete understanding of the differences between your rights as a holder of Island common stock and your rights as a holder of Independent common stock.*

As a shareholder of Island, a Massachusetts corporation, your rights are governed by Massachusetts law, Island's articles of organization, as currently in effect, and Island's bylaws, as currently in effect. When the merger becomes effective and you receive Independent common stock in exchange for your Island shares, you will become a shareholder of Independent, a Massachusetts corporation. Independent's common stock is listed on the NASDAQ Global Select Market under the symbol INDB. As an Independent shareholder, your rights will be governed by Massachusetts law, Independent's articles of organization, as in effect from time to time, and Independent's bylaws, as in effect from time to time.

The following discussion of the rights of Island shareholders and Independent shareholders under Massachusetts law, and the similarities and material differences between (i) the rights of Island shareholders under the articles of organization and bylaws of Island and (ii) the rights of Independent shareholders under the articles of organization and bylaws of Independent. This discussion is only a summary of some provisions and is not a complete description of these similarities and differences. This discussion is qualified in its entirety by reference to Massachusetts law and the full texts of the articles of organization and bylaws of Island and of the articles of organization and bylaws of Independent.

**Capitalization**

*Island*

The total authorized capital stock of Island consists of 100,000 shares of common stock, \$0.01 par value per share, and 4,000 shares of preferred stock, \$0.01 par value per share. As of the record date, there were 48,466 shares of common stock outstanding and no shares of preferred stock outstanding.

*Independent*

The total authorized capital stock of Independent consists of 75,000,000 shares of common stock, par value \$0.01 per share and 1,000,000 shares of preferred stock, par value \$0.01 per share. As of the record date, there were 27,057,430 shares of common stock outstanding, including 51,617 shares in the form of unvested performance based restricted stock awards without dividend or voting rights, and 109,650 shares reserved for future issuance pursuant to outstanding options granted under Independent's benefit plans and no shares of preferred stock outstanding.

**Preemptive Rights**

A preemptive right allows a shareholder to maintain its proportionate share of ownership of a corporation by permitting the shareholder to purchase a proportionate share of any new stock issuances. Preemptive rights protect the shareholders from dilution of value and control upon new stock issuances. Under Massachusetts law, unless the articles of organization say otherwise, shareholders have no preemptive rights.

*Island*

Island does not have a provision authorizing preemptive rights; in fact, Island's articles of organization contain provisions specifically denying them. Accordingly, Island's shareholders do not have preemptive rights.

## **Table of Contents**

### *Independent*

Independent also does not have a provision authorizing preemptive rights; in fact, Independent's articles of organization contain provisions specifically denying them. Accordingly, Independent's shareholders do not have preemptive rights.

## **Dividends and Other Stock Rights**

### *Island*

Subject to applicable Massachusetts law and the Island articles of organization and bylaws, Island may from time to time declare and pay dividends on outstanding shares of its capital stock. Island board of directors is authorized to issue blank check preferred stock to (i) designate preferred stock, (ii) set dividend rates or the amount of dividends to be paid on the preferred stock, (iii) determine voting powers of the preferred stock, (iv) determine whether the preferred stock is redeemable by Island, (v) determine the amount or amounts payable upon the preferred stock in the event of a voluntary or involuntary liquidation, dissolution or winding up of Island, (vi) determine whether the preferred stock is entitled to the benefits of a sinking or retirement fund to be applied to the preferred stock, (vii) determine whether the preferred stock is convertible or exchangeable for shares of another class of Island stock, (viii) determine the purchase price of the preferred stock, and (ix) make other determinations with respect to preferred stock.

When and if a quarterly cash dividend is declared by the board of directors, if any Island shares of preferred stock are outstanding, the holders of the shares of preferred stock will be entitled to receive dividends in an amount per share described in Island's articles of organization, subject to the rights of the holders of any shares of any series of preferred stock ranking prior and superior to Independent preferred stock with respect to dividends.

### *Independent*

Independent can also pay dividends on its common stock in accordance with Massachusetts law. Independent's board of directors is also authorized to issue blank check preferred stock to (i) designate preferred stock, (ii) set dividend rates or the amount of dividends to be paid on the preferred stock, (iii) determine voting powers of the preferred stock, (iv) determine whether the preferred stock is redeemable by Independent, (v) determine the amount or amounts payable upon the preferred stock in the event of a voluntary or involuntary liquidation, dissolution or winding up of Independent, (vi) determine whether the preferred stock is entitled to the benefits of a sinking or retirement fund to be applied to the preferred stock, (vii) determine whether the preferred stock is convertible or exchangeable for shares of another class of Independent stock, (viii) determine the purchase price of the preferred stock, and (ix) make other determinations with respect to preferred stock.

When and if a quarterly cash dividend is declared by the board of directors, if any Independent shares of preferred stock are outstanding, the holders of shares of preferred stock will be entitled to receive dividends in an amount per share described in Independent's articles of organization, subject to the rights of the holders of any shares of any series of preferred stock ranking prior and superior to Independent preferred stock with respect to dividends.

## **Right to Call Special Meetings of Shareholders**

### *Island*

Special meetings may be called:

by the board of directors; or

## **Table of Contents**

by the Clerk of Island or in case of the death, absence, incapacity or refusal of the Clerk, by any other officer, upon written application of one or more shareholders who hold at least (i) 10% of the capital stock entitled to vote at the meeting or (ii) a lesser percentage, if any, as shall be determined to be the maximum percentage which Island is permitted by applicable law to establish for calling the meeting.

### *Independent*

Special meetings may be called:

by the chairman of the board, if any;

by the president;

by a majority of the directors; or

by the secretary or other officer at the written direction of the holders of at least two-thirds of the capital stock of the Independent entitled to vote at the meeting.

For shareholders to call a special meeting, Independent requires the written application of the holders of at least two-thirds of the capital stock, as opposed to the written application of the holders of at least 10% of Island capital stock entitled to vote at a meeting that is required for Island shareholders to call a special meeting. Therefore, it may be more difficult for Independent's shareholders to call a special meeting.

## **Notice of Shareholder Meetings**

### *Island*

Island requires that notice of shareholder meetings be given at least 7 days before the meeting.

### *Independent*

Independent requires that notice of shareholder meetings be given not less than 7 days nor more than 60 days before the meeting.

## **Board of Directors Number and Term of Office**

### *Island*

Island's bylaws provide that the number of directors of Island shall consist of not less than five nor more than nine members who shall be shareholders, as fixed by the board of directors of Island by resolution or by resolution of the shareholders at any annual meeting. Island's articles of organization provide that the board of directors shall not be divided into different classes of directors. Each director serves for a term ending on the date of the annual meeting of shareholders following the annual meeting at which the director was elected and upon the election and qualification of his or her successor. The vote of a plurality of the votes cast at a meeting is required to elect directors of Island. Island's bylaws provide that any vacancy occurring in the board of directors may be filled by action of the



board of directors; provided, however, that a majority of the full board of directors may not increase the number of directors by more than two over the number of directors most recently elected by shareholders and the total number of directors shall not exceed nine. A director elected to fill a vacancy will be elected to hold office until the next meeting of shareholders at which directors are elected, unless the director resigns or is removed from office. If a director resigns, is removed from office or dies and the remaining directors do not fill the vacancy within 45 days, then the number of directors is automatically decreased by the number of unfilled vacancies.

*Independent*

Independent's bylaws and articles of organization provide that the number of directors shall be between three and 25 as fixed from time to time by vote of the board of directors at any regular or special meeting

**Table of Contents**

thereof. The board of directors may increase or decrease the number of directors in one or more classes to ensure that the three classes shall be as nearly equal as possible. Preference Stock Directors are those who may be elected by the holders of any class or series of stock having a preference over the common stock as to dividends or upon liquidation. Directors other than Preference Stock Directors shall be divided into three classes as nearly equally as possible, creating a staggered board of directors. Independent's bylaws and governance principles provide for majority voting in uncontested director elections. In an uncontested election, if an incumbent director standing for election is not reelected by a majority of the votes cast, the director is required to promptly tender a notice of resignation to the board of directors. The resignation is not effective unless accepted by the board of directors. The nominating committee would then recommend whether the board of directors should accept or reject a tendered resignation. In determining whether to accept a tendered resignation, the board of directors would consider the potential impact of the resignation on compliance with applicable legal and listing standards and any other factors deemed relevant. An election is uncontested if the number of persons nominated does not exceed the number of director positions to be filled at the meeting. In contested elections, the vote standard would be a plurality of votes cast. No director shall continue to serve once he or she attains the age of 72. Except for Preference Stock Directors, newly created directorships and vacancies on the board of directors shall be filled by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum. Any director so elected shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred.

**Board of Director Nominations***Island*

Nominations for the election of directors at an annual meeting of shareholders may be made by, or at the direction of, a majority of the board of directors. Additionally, shareholders may nominate directors to be elected at a meeting of shareholders if the shareholders' nominations are made in writing, meet the informational and other requirements set forth in the bylaws, and are delivered to the Clerk of Island not less than 75 days or more than 120 days prior to the anniversary date of the preceding year's shareholder meeting; provided, however, that in the event that the shareholder meeting is scheduled to be held on a date more than 30 days before or 60 days after the anniversary date, nominations by shareholders must be received not later than the close of business on the 75th day prior to the scheduled date of the shareholder meeting or the 15th day following the day on which public announcements of the shareholder meeting is made by Island. If shareholders do not comply with the foregoing process for nominating directors, no nominations for directors except those made by the board of directors will be voted on at a meeting of shareholders.

*Independent*

Nominations for election to the board of directors at the annual meeting of shareholders may be made by or at the direction of the board of directors, the nominating committee, or by any shareholder entitled to vote for the election of directors at the time of the nomination and at the time of the meeting who provides appropriate written notice to the secretary. Notice shall be delivered to or mailed and received at the principal executive offices of the corporation not less than 75 nor more than 125 days prior to the anniversary date of the immediately preceding annual meeting of shareholders; provided, however, that in the event that the meeting is called for a date more than 75 days prior to such anniversary date, notice must be so received not later than the close of business on the 20th day following the day on which notice of the date of the meeting was mailed or public disclosure of the date of the meeting was made, whichever first occurs.

The notice shall set forth (a) as to each person whom the shareholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class and number of shares of capital stock of Independent, if any, which are

beneficially owned by the person, (iv) any other information regarding the nominee as would be required to be included in a proxy statement or other filings required to be filed pursuant to the proxy rules, and

## **Table of Contents**

(v) the consent of each nominee to serve if elected; and (b) as to the shareholder giving notice, (i) the name and record address of the shareholder, (ii) the class and number of shares of capital stock of Independent beneficially owned by the shareholder as of the record date for the meeting (if the date has been made publicly available) and as of the date of the notice, (iii) a representation that the shareholder intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice, (iv) a representation that the shareholder (and any party on whose behalf or in concert with whom the shareholder is acting) is qualified at the time of giving notice to have the individual serve as the nominee of the shareholder (and any party on whose behalf or in concert with whom the shareholder is acting) if the individual is elected, accompanied by copies of any notification or filings with, or orders or other actions by, any governmental authority which are required in order for the shareholder (and any party on whose behalf the shareholder is acting) to be so qualified, (v) a description of all arrangements or understandings between the shareholder and each nominee and any other person or persons (naming the person or persons) pursuant to which the nomination or nominations are to be made by the shareholder, and (vi) such other information regarding the shareholder as would be required to be included in a proxy statement or other filings required to be filed pursuant to the proxy rules contained in the securities laws.

## **Removal and Resignation of Directors**

### *Island*

Island's bylaws provide that a director may resign by delivering a written resignation to Island or to the president or the Clerk, which will become effective upon receipt unless it specifies some other time or that it is effective upon the happening of some other event.

Island's bylaws provide that a director may be removed, with cause, by a vote of a majority of the directors then in office. Island's bylaws also provide that shareholders may remove a director only with cause and by the affirmative vote of at least two-thirds of the total votes which would be eligible to be cast in the election of the director.

### *Independent*

Independent does not make specific provision for a method of resignation, but the bylaws do provide that vacancies can arise from resignation. A director may be removed for cause by the affirmative vote of the holders of a majority of all shares of the corporation outstanding and then entitled to vote generally in the election of directors.

## **Amendment of Bylaws**

### *Island*

Island's bylaws may be adopted, amended or repealed by the affirmative vote of a majority of the directors of Island then in office, unless Massachusetts law, the articles of organization or the bylaws require shareholder action. Following the amendment or repealing of a bylaw by the board of directors, notice of the amendment or repealing shall be given to all shareholders no later than the time when notice is given for the next annual meeting of shareholders.

Island's bylaws may also be amended or repealed by an affirmative vote of the holders of at least two-thirds of the outstanding shares of capital stock of Island eligible to be cast on the amendment or repealing, voting together as a single class; provided, however, that if the Island board of directors recommends an amendment or repealing of a bylaw at an Island shareholder meeting, then only a majority of the outstanding shares of capital stock of Island that are eligible to be cast on the amendment or repealing, voting together as a single class, are needed to amend or repeal

a bylaw. Notwithstanding the foregoing, no shareholder approval is required to amend Island s bylaws unless mandated by Island s articles of organization, its bylaws or other applicable law.

## **Table of Contents**

### *Independent*

The bylaws may be amended by the shareholders if appropriate notice has been given setting forth the substance of the proposed change. The bylaws, except those provisions that specify otherwise, may be amended or repealed by the board of directors.

Independent's bylaws provide that the shareholders may amend the bylaws, but make no provision for repeal by the shareholders. Independent's bylaws may be amended or repealed by the directors.

## **Amendment of Articles of Organization**

### *Island*

The articles of organization of Island are silent as to amendments. Massachusetts law provides that amendments be adopted by the board of directors and submitted to a vote of shareholders except that certain housekeeping amendments that do not affect substantive shareholder rights in any meaningful way may be effected by action of the board of directors without a shareholder vote. For amendments requiring a shareholder vote, such amendments require an affirmative vote of at least two-thirds of the stock outstanding and entitled to vote; provided, however, that the affirmative vote of only a majority of the stock outstanding and entitled to vote is required for amendments to increase or decrease any class or series of authorized capital stock, to change the number of authorized shares or exchange shares on a pro rata basis for a different number of shares of the same class or series, or to change the corporate name.

### *Independent*

Generally, the articles of organization of Independent may be amended or repealed only by a majority vote of the shareholders. Sections 4 and 5 of Article VI, dealing with preemptive rights and the amendment of the articles of organization, may be amended or repealed only by a two-thirds majority vote of the shareholders.

## **Limitation of Liability and Indemnification**

### *Island*

Island's articles of organization provide that, notwithstanding any provisions of law imposing liability, no director will be personally liable to Island or its shareholders for monetary damages for breach of fiduciary duty by the director as a director; provided, however, that the articles of organization do not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to Island or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law; or (iii) for any transaction where the director derived an improper personal benefit, any illegal distributions under Massachusetts law or any loan to directors or officers that is not repaid unless a majority of disinterested directors or a majority of disinterested shares had approved the loan. No amendment or appeal of the limitation of liability portion of the articles of organization will apply to or have any effect on the liability or alleged liability of any director for or with respect to any acts or omissions of the director occurring prior to the amendment or appeal.

Island's bylaws provide for indemnification of each person (and his heirs, executors, administrators, or other legal representatives) who is or has been a director, officer, employee or agent of Island or any person who is serving, or will serve, as a director, officer, employee or agent of another organization in which Island owns shares or of which it is a creditor, against all liabilities and expenses (including judgments, fines, penalties and attorneys' fees and all amounts paid, other than to Island or such other organization, in compromise or settlement) reasonably incurred by the

director, officer or person in connection with, or arising out of, any action, suit or proceeding in which the person may be a defendant or with which the person may be threatened or otherwise involved, directly or indirectly, by reason of the person being or having been a director or officer of

---

**Table of Contents**

Island or such other organization, except in relation to matters as to which the director, officer or person will be finally adjudged (other than by consent) in the action, suit or proceeding to not have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of Island or such other organization, and, with respect to any criminal action or proceeding, the person had no reasonable cause to believe his conduct was unlawful. However, indemnity shall not be made with respect to any amounts paid in compromise or settlement or by consent, unless the Island board of directors determines in good faith that the director, officer or person making the compromise, settlement or consent acted, in connection with the matter or matters out of which the compromise, settlement, or consent arose, in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of Island or such other organization, and, with respect to any criminal action or proceeding, the person had no reasonable cause to believe his conduct was unlawful. Indemnification may include payment by Island of expenses in defending a civil or criminal action or proceeding in advance of the final disposition of the action or proceeding upon receipt of any undertaking by the indemnified person to repay such payment if he is adjudicated to not be entitled to indemnification.

*Independent*

Independent's bylaws and articles of organization provide for the limitation on liability of directors and officers. Under the bylaws a director or officer shall not be personally liable to Independent or its shareholders for monetary damages for breach of fiduciary duty as a director or officer. However, the bylaws do not eliminate or limit the liability of a director or officer (i) for any breach of the director's or officer's duty of loyalty to Independent or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for improper distributions under Section 6.40 of Chapter 156D of the General Laws of Massachusetts, or (iv) for any transaction from which the director or officer derived an improper personal benefit. The stated intention of the bylaw provision is to limit the liability of a director or officer to the maximum extent allowed by law. To that end, the bylaws further provide that if the Massachusetts Business Corporation Act is amended to authorize the further elimination of, or limitation on, the liability of directors or officers, then the liability of a director or officer of Independent, in addition to the limitation of personal liability provided herein, shall be limited to the full extent permitted by the amendment or amendments.

The bylaws further provide that a director's or officer's conduct with respect to an employee benefit plan for a purpose he or she reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan is conduct that satisfies the requirement that his or her conduct was at least not opposed to the best interests of Independent.

Except in the circumstances described above, Independent may only indemnify a director or officer if so ordered by a court.

The determination of whether an officer or director has met the requirements for indemnification shall be made (i) if there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by vote; (ii) by special legal counsel; (iii) by the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination. Independent may, in some circumstances, advance expenses to a director or officer who is a party to a proceeding.



**Table of Contents**

**LEGAL MATTERS**

Day Pitney LLP has issued a legal opinion concerning the validity of the shares of Independent common stock to be issued in connection with the merger. Certain U.S. federal income tax consequences relating to the merger will also be passed upon by Day Pitney LLP.

**EXPERTS**

The consolidated financial statements of Independent, appearing in Independent's Annual Report (Form 10-K) for the year ended December 31, 2015, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

**WHERE YOU CAN FIND MORE INFORMATION**

Independent files annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission. You may read and copy any reports, statements, or other information that Independent files with the Securities and Exchange Commission at the Securities and Exchange Commission's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549.

You may obtain information on the operation of the Public Reference Room by calling the Securities and Exchange Commission at 1-800-SEC-0330. The Securities and Exchange Commission filings of Independent are also available to the public from commercial document retrieval services and at the web site maintained by the Securities and Exchange Commission at <http://www.sec.gov>. Reports, proxy statements, and other information concerning Independent also may be inspected at the offices of Nasdaq located at 1735 K Street, N.W., Washington, D.C. 20006. Independent's Securities and Exchange Commission file number is 001-09047.

Independent has filed a registration statement on Form S-4 with the Securities and Exchange Commission to register the Independent common stock to be issued to Island shareholders in the merger. This document is a part of that registration statement and constitutes a prospectus of Independent in addition to constituting a proxy statement for Island. As allowed by Securities and Exchange Commission rules, this document does not contain all the information you can find in Independent's registration statement or the exhibits to the registration statement. Statements made in this document as to the content of any contract, agreement or other document referenced are not necessarily complete. With respect to each of those contracts, agreements or other documents to be filed or incorporated by reference as an exhibit to the registration statement, you should refer to the corresponding exhibit, when it is filed, for a more complete description of the matter involved and read all statements in this document in light of that exhibit.

**Table of Contents**

**INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The Securities and Exchange Commission allows Independent to incorporate by reference the information that Independent files with the Securities and Exchange Commission. Incorporation by reference means that Independent can disclose important information to you by referring you to other documents filed separately with the Securities and Exchange Commission that are legally considered to be part of this document, and later information that is filed by Independent with the Securities and Exchange Commission will automatically update and supersede the information in this document and the documents listed below.

For purposes of this proxy statement/prospectus, any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated herein by reference modifies or supersedes the statement in the document.

Independent incorporates by reference the specific documents listed below and any future filings that Independent makes with the Securities and Exchange Commission under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 after the date of this document and prior to the later of the date of the Island shareholders meeting or the date on which the offering of shares of Independent common stock under this document is terminated:

Annual Report on Form 10-K for the year ended December 31, 2015;

Quarterly Reports on Form 10-Q for each of the three months ended March 31, 2016, June 30, 2016, and September 30, 2016;

Current Reports on Form 8-K filed with the Securities and Exchange Commission on January 21, 2016, January 25, 2016, February 17, 2016, March 7, 2016, March 17, 2016, March 17, 2016, March 18, 2016, March 23, 2016, April 21, 2016, April 25, 2016, May 24, 2016, May 24, 2016, June 16, 2016, July 21, 2016, September 15, 2016, September 20, 2016, October 17, 2016, October 20, 2016, October 20, 2016, November 7, 2016, November 10, 2016, November 17, 2016 and December 8, 2016 (except, with respect to each of the foregoing, for portions of such reports which were deemed to be furnished and not filed); and

Definitive proxy statement on Schedule 14A for the 2016 annual meeting of shareholders.

You can obtain any of the Independent documents incorporated by reference into this document, and any exhibits specifically incorporated by reference as an exhibit in this document, at no cost, by contacting Independent at:

**Independent Bank Corp.**

**288 Union Street**

**Rockland, Massachusetts 02370**

**Attention: Edward H. Seksay, General Counsel**

**(781) 982-6158**

You should rely only on the information contained or incorporated by reference into this document. Independent has supplied all information contained or incorporated by reference into this document relating to Independent. Island has supplied all information contained in this document relating to Island. Neither Independent nor Island has authorized anyone to provide you with information that is different from what is contained in this document. This document is dated January 9, 2017. You should not assume that the information contained in this document is accurate as of any date other than that date. Neither the mailing of this document to Island shareholders nor the issuance of Independent common stock in the merger creates any implication to the contrary.

Table of Contents

**ANNEX A AGREEMENT AND PLAN OF MERGER**

*Execution Version*

**AGREEMENT AND PLAN OF MERGER**

**DATED AS OF OCTOBER 20, 2016**

**BY AND AMONG**

**INDEPENDENT BANK CORP.,**

**ROCKLAND TRUST COMPANY,**

**ISLAND BANCORP, INC.,**

**AND**

**THE EDGARTOWN NATIONAL BANK**

A-1

**Table of Contents****Table of Contents**

	<b>Page</b>
ARTICLE I THE MERGER	A-5
Section 1.01 <u>The Merger</u>	A-5
Section 1.02 <u>Articles of Organization and Bylaws</u>	A-5
Section 1.03 <u>Directors and Officers of Surviving Entity</u>	A-5
Section 1.04 <u>Effective Time; Closing.</u>	A-6
Section 1.05 <u>Tax Consequences</u>	A-6
Section 1.06 <u>Additional Actions</u>	A-6
ARTICLE II MERGER CONSIDERATION; EXCHANGE PROCEDURES	A-6
Section 2.01 <u>Merger Consideration</u>	A-6
Section 2.02 <u>Rights as Shareholders; Stock Transfers</u>	A-7
Section 2.03 <u>Fractional Shares</u>	A-7
Section 2.04 <u>Election Procedures.</u>	A-7
Section 2.05 <u>Exchange Procedures.</u>	A-9
Section 2.06 <u>Anti-Dilution Provisions</u>	A-10
ARTICLE III REPRESENTATIONS AND WARRANTIES OF COMPANY	A-11
Section 3.01 <u>Making of Representations and Warranties.</u>	A-11
Section 3.02 <u>Organization, Standing and Authority.</u>	A-11
Section 3.03 <u>Capital Stock</u>	A-12
Section 3.04 <u>Subsidiaries.</u>	A-12
Section 3.05 <u>Corporate Power; Minute Books</u>	A-13
Section 3.06 <u>Corporate Authority</u>	A-13
Section 3.07 <u>Regulatory Approvals; No Defaults.</u>	A-13
Section 3.08 <u>Reports; Internal Controls.</u>	A-14
Section 3.09 <u>Financial Statements; Undisclosed Liabilities.</u>	A-15
Section 3.10 <u>Absence of Certain Changes or Events</u>	A-15
Section 3.11 <u>Legal Proceedings.</u>	A-16
Section 3.12 <u>Compliance With Laws.</u>	A-16
Section 3.13 <u>Material Contracts; Defaults.</u>	A-17
Section 3.14 <u>Agreements with Regulatory Agencies</u>	A-17
Section 3.15 <u>Brokers</u>	A-17
Section 3.16 <u>Employee Benefit Plans</u>	A-18
Section 3.17 <u>Labor Matters</u>	A-19
Section 3.18 <u>Environmental Matters.</u>	A-20
Section 3.19 <u>Tax Matters.</u>	A-21
Section 3.20 <u>Investment Securities</u>	A-22
Section 3.21 <u>Derivative Transactions.</u>	A-22
Section 3.22 <u>Regulatory Capitalization</u>	A-23
Section 3.23 <u>Loans; Nonperforming and Classified Assets.</u>	A-23
Section 3.24 <u>Allowance for Loan Losses</u>	A-24
Section 3.25 <u>Trust Business; Administration of Fiduciary Accounts</u>	A-24
Section 3.26 <u>Investment Management and Related Activities</u>	A-24
Section 3.27 <u>Repurchase Agreements</u>	A-24

Section 3.28 <u>CRA, Anti-Money Laundering and Customer Information Security</u>	A-24
Section 3.29 <u>Transactions with Affiliates</u>	A-25
Section 3.30 <u>Tangible Properties and Assets.</u>	A-25
Section 3.31 <u>Intellectual Property</u>	A-25
Section 3.32 <u>Insurance.</u>	A-26
Section 3.33 <u>Anti-Takeover Provisions</u>	A-26
Section 3.34 <u>Fairness Opinion</u>	A-26

A-2

**Table of Contents**

	<b>Page</b>
Section 3.35 <u>Proxy Statement-Prospectus</u>	A-26
Section 3.36 <u>Transaction Costs.</u>	A-26
Section 3.37 <u>Disclosure</u>	A-26
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER	A-27
Section 4.01 <u>Making of Representations and Warranties.</u>	A-27
Section 4.02 <u>Organization, Standing and Authority</u>	A-27
Section 4.03 <u>Capital Stock</u>	A-27
Section 4.04 <u>Corporate Power; Minute Books</u>	A-28
Section 4.05 <u>Corporate Authority</u>	A-28
Section 4.06 <u>SEC Documents; Other Reports; Internal Controls.</u>	A-28
Section 4.07 <u>Financial Statements; Undisclosed Liabilities.</u>	A-29
Section 4.08 <u>Regulatory Approvals; No Defaults.</u>	A-30
Section 4.09 <u>Agreements with Regulatory Agencies</u>	A-30
Section 4.10 <u>Absence of Certain Changes or Events</u>	A-31
Section 4.11 <u>Compliance with Laws.</u>	A-31
Section 4.12 <u>Proxy Statement-Prospectus Information; Registration Statement</u>	A-31
Section 4.13 <u>Legal Proceedings.</u>	A-31
Section 4.14 <u>Brokers</u>	A-32
Section 4.15 <u>Employee Benefit Plans.</u>	A-32
Section 4.16 <u>Labor Matters</u>	A-32
Section 4.17 <u>Tax Matters.</u>	A-32
Section 4.18 <u>Loans: Nonperforming and Classified Assets.</u>	A-33
Section 4.19 <u>CRA and Anti-Money Laundering</u>	A-33
Section 4.20 <u>Regulatory Capitalization</u>	A-34
Section 4.21 <u>Environmental Matters</u>	A-34
Section 4.22 <u>Administration of Trust and Fiduciary Accounts</u>	A-34
Section 4.23 <u>Disclosure</u>	A-34
ARTICLE V COVENANTS	A-34
Section 5.01 <u>Covenants of Company</u>	A-34
Section 5.02 <u>Covenants of Buyer.</u>	A-38
Section 5.03 <u>Commercially Reasonable Effort</u>	A-39
Section 5.04 <u>Shareholder Approval</u>	A-39
Section 5.05 <u>Registration Statement; Proxy Statement-Prospectus; Nasdaq Listing.</u>	A-39
Section 5.06 <u>Regulatory Filings; Consents.</u>	A-41
Section 5.07 <u>Publicity</u>	A-41
Section 5.08 <u>Access; Information.</u>	A-42
Section 5.09 <u>No Solicitation by Company.</u>	A-42
Section 5.10 <u>Indemnification; Directors and Officers Insurance.</u>	A-44
Section 5.11 <u>Employees; Benefit Plans.</u>	A-45
Section 5.12 <u>Notification of Certain Changes</u>	A-46
Section 5.13 <u>Current Information</u>	A-46
Section 5.14 <u>Board Packages</u>	A-47
Section 5.15 <u>Transition; Informational Systems Conversion</u>	A-47
Section 5.16 <u>Access to Customers and Suppliers.</u>	A-47
Section 5.17 <u>Environmental Assessments.</u>	A-48
Section 5.18 <u>Certain Litigation</u>	A-48

Section 5.19 <u>Reserved</u>	A-48
Section 5.20 <u>Director Resignations</u>	A-48
Section 5.21 <u>Third Party Consents</u>	A-48
Section 5.22 <u>Coordination.</u>	A-48

A-3



**Table of Contents**

	<b>Page</b>
Section 5.23 <u>Bank Merger</u>	A-49
Section 5.24 <u>Certain Transactional Expenses</u>	A-49
ARTICLE VI CONDITIONS TO CONSUMMATION OF THE MERGER	A-50
Section 6.01 <u>Conditions to Obligations of the Parties to Effect the Merger</u>	A-50
Section 6.02 <u>Conditions to Obligations of Company</u>	A-50
Section 6.03 <u>Conditions to Obligations of Buyer</u>	A-51
Section 6.04 <u>Frustration of Closing Conditions</u>	A-51
ARTICLE VII TERMINATION	A-51
Section 7.01 <u>Termination</u>	A-51
Section 7.02 <u>Termination Fee; Reimbursement</u>	A-53
Section 7.03 <u>Effect of Termination</u>	A-54
ARTICLE VIII DEFINITIONS	A-55
Section 8.01 <u>Definitions</u>	A-55
ARTICLE IX MISCELLANEOUS	A-62
Section 9.01 <u>Survival</u>	A-62
Section 9.02 <u>Waiver; Amendment</u>	A-62
Section 9.03 <u>Governing Law; Waiver.</u>	A-62
Section 9.04 <u>Expenses</u>	A-63
Section 9.05 <u>Notices</u>	A-63
Section 9.06 <u>Entire Understanding; No Third Party Beneficiaries</u>	A-63
Section 9.07 <u>Severability</u>	A-64
Section 9.08 <u>Enforcement of the Agreement</u>	A-64
Section 9.09 <u>Interpretation</u>	A-64
Section 9.10 <u>Assignment</u>	A-64
Section 9.11 <u>Counterparts</u>	A-64

**EXHIBITS**

Exhibit A	Form of Voting Agreement
-----------	--------------------------

**Table of Contents**

This **AGREEMENT AND PLAN OF MERGER** (this Agreement ) is dated as of October 20, 2016, by and among Independent Bank Corp. ( Buyer ), Rockland Trust Company, a wholly owned subsidiary of Buyer ( Buyer Bank ), Island Bancorp, Inc. ( Company ), and The Edgartown National Bank, a wholly owned subsidiary of Company ( Company Bank ). Capitalized terms used in this Agreement have the meaning set forth in Article VIII.

**WITNESSETH**

**WHEREAS**, the board of directors of Buyer and the board of directors of Company have each (i) determined that this Agreement and the business combination and related transactions it contemplates are in the best interests of their respective entities, shareholders and other constituencies; and (ii) approved this Agreement;

**WHEREAS**, in accordance with the terms of this Agreement, (i) Company will merge with and into the Buyer, with Buyer as the surviving entity (the Merger ), and (ii) Company Bank will immediately thereafter merge with and into Buyer Bank, with Buyer Bank as the surviving entity (the Bank Merger );

**WHEREAS**, as a material inducement to Buyer to enter into this Agreement, each of the directors of Company, acting solely in his or her capacity as a shareholder, has entered into a voting agreement with Buyer dated as of this date (a Voting Agreement ), substantially in the form attached as Exhibit A pursuant to which each of them has agreed to vote all Shares of Company Common Stock (as defined herein) he or she owns in favor of the approval of this Agreement and the transactions it contemplates;

**WHEREAS**, the parties desire to make certain representations, warranties and agreements and prescribe certain conditions in connection with the transactions described in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

**ARTICLE I**

**THE MERGER**

Section 1.01 The Merger. Subject to the terms and conditions of this Agreement, at the Effective Time, Company shall merge with and into Buyer in accordance with the Massachusetts Business Corporation Act (the MBCA ), regulatory requirements, and other applicable law. Upon consummation of the Merger, the separate corporate existence of Company shall cease and Buyer shall survive and continue to exist as a corporation incorporated under the MBCA (Buyer, as the surviving entity in the Merger, sometimes being referred to herein as the Surviving Entity ).

Section 1.02 Articles of Organization and Bylaws. The Articles of Organization and Bylaws of the Surviving Entity upon consummation of the Merger shall be the Articles of Organization and Bylaws of Buyer as in effect immediately prior to consummation of the Merger.

Section 1.03 Directors and Officers of Surviving Entity. The directors of the Surviving Entity immediately after the Merger shall be the directors of Buyer in office immediately prior to the Effective Time. The executive officers of the Surviving Entity immediately after the Merger shall be the executive officers of Buyer immediately prior to the Merger. Each of the directors and executive officers of the Surviving Entity immediately after the Merger shall hold office until his or her successor is elected and qualified or otherwise in accordance with the Articles of Organization and Bylaws of the Surviving Entity.



## **Table of Contents**

### Section 1.04 Effective Time; Closing.

(a) Subject to the terms and conditions of this Agreement, Buyer and Company will make all such filings as may be required to consummate the Merger by applicable Laws. The Merger shall become effective as set forth in the articles of merger related to the Merger (the Articles of Merger ) that shall be filed with the Massachusetts Secretary of the Commonwealth on the Closing Date. The Effective Time of the Merger shall be the date and time when the Merger becomes effective as set forth in the Articles of Merger.

(b) A closing (the Closing ) shall take place immediately prior to the Effective Time by the electronic (PDF), facsimile, or overnight courier exchange of executed documents at the offices of Day Pitney LLP, One International Place, Boston, MA 02110, or such other place or on such other date as the parties may mutually agree upon (such date, the Closing Date ). At the Closing, there shall be delivered to Buyer and Company the certificates and other documents required to be delivered under Article VI hereof.

Section 1.05 Tax Consequences. It is intended that the Merger shall qualify as a reorganization under Section 368(a) of the Code and the Treasury Regulations promulgated thereunder, and that this Agreement shall constitute a plan of reorganization for purposes of Sections 354 and 361 of the Code and the Treasury Regulations promulgated thereunder. From and after the date of this Agreement and until the Closing, each party shall use its reasonable best efforts to cause the Merger and the Bank Merger each to qualify as a reorganization under Section 368(a) of the Code and shall refrain from taking any action that reasonably could be expected to cause the Merger and the Bank Merger each to fail to qualify as such a reorganization.

Section 1.06 Additional Actions. If, at any time after the Effective Time, Buyer shall consider or be advised that any further deeds, documents, assignments or assurances in Law or any other acts are necessary or desirable to (i) vest, perfect or confirm, of record or otherwise, in Buyer its right, title or interest in, to or under any of the rights, properties, or assets of Company or any Company Subsidiary, or (ii) otherwise carry out the purposes of this Agreement, Company and its officers and directors shall be deemed to have granted to Buyer an irrevocable power of attorney to execute and deliver, in such official corporate capacities, all such deeds, assignments, or assurances in law or any other acts as are necessary or desirable to (a) vest, perfect or confirm, of record or otherwise, in Buyer its right, title or interest in, to or under any of the rights, properties, or assets of Company or (b) otherwise carry out the purposes of this Agreement, and the officers and directors of the Buyer are authorized in the name of Company or otherwise to take any and all such action.

## **ARTICLE II**

### **MERGER CONSIDERATION; EXCHANGE PROCEDURES**

Section 2.01 Merger Consideration. Subject to the provisions of this Agreement, at the Effective Time, automatically by virtue of the Merger and without any action on the part of Buyer, Company or any shareholder of Company:

(a) Each share of Buyer Common Stock that is issued and outstanding immediately prior to the Effective Time shall remain outstanding following the Effective Time and shall be unchanged by the Merger.

(b) Each share of Company Common Stock (i) held as treasury stock or (ii) owned directly by Buyer (other than, in the case of clause (ii), shares in trust accounts, managed accounts and the like for the benefit of customers or shares held in satisfaction of a debt previously contracted) shall be cancelled and retired immediately prior to the Effective Time without any conversion, and no payment shall be made with respect to them.

(c) Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than Dissenters' Shares and shares described in Section 2.01(b) above) shall become and be converted into, as provided in and subject to the limitations set forth in this Agreement, the right to receive at the

A-6

**Table of Contents**

election of the holder either: (i) \$500.00 in cash (the Cash Consideration ); or 9.525 shares (the Exchange Ratio) of Buyer Common Stock (the Stock Consideration ). The Cash Consideration, the Stock Consideration, and any cash in lieu of fractional shares paid pursuant to Section 2.03 are sometimes referred to collectively as the Merger Consideration.

(d) Notwithstanding anything in this Agreement to the contrary, Buyer shall not pay for any shares of Company Common Stock, the holders of which have exercised their rights under Part 13 of Chapter 156D of the MBCA ( Dissenters Shares ) and any holders of Dissenters Shares shall not be entitled to receive any Merger Consideration; provided, that if appraisal rights under Part 13 of Chapter 156D of the MBCA with respect to any Dissenters Shares shall have been effectively withdrawn or lost they will cease to be treated as Dissenters Shares and shall be converted into the right to receive the Merger Consideration pursuant to Section 2.01(c).

Section 2.02 Rights as Shareholders: Stock Transfers. All shares of Company Common Stock, if and when converted as provided in Section 2.01(c), shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each Certificate previously evidencing them shall represent only the right to receive for each such share of Company Common Stock, the Merger Consideration. After the Effective Time, there shall be no transfers on the stock transfer books of Company of shares of Company Common Stock.

Section 2.03 Fractional Shares. Notwithstanding any other provision of this Agreement, no fractional shares of Buyer Common Stock will be issued in the Merger. Buyer shall instead pay to each holder of a fractional share of Buyer Common Stock an amount of cash (without interest) determined by multiplying the fractional share interest to which such holder would otherwise be entitled by the VWAP of the Buyer Common Stock for the five (5) consecutive trading days ending on the fifth trading day immediately preceding the Closing Date, rounded to the nearest whole cent.

Section 2.04 Election Procedures.

(a) An election form and other appropriate and customary transmittal materials (which shall specify that delivery shall be effected, and risk of loss and title to Certificates shall pass, only upon proper delivery of such Certificates to the Exchange Agent in such form as Company and Buyer shall mutually agree (the Election Form ), shall be mailed no more than forty (40) and no less than twenty (20) Business Days prior to the anticipated Election Deadline (the Mailing Date ) to each holder of record of Company Common Stock other than holders of Dissenters Shares. Each Election Form shall permit the holder of record of Company Common Stock, other than holders of Dissenters Shares, (or in the case of nominee record holders, the beneficial owner through proper instructions and documentation) to (i) elect to receive the Cash Consideration for all or a portion of the holder's shares (a Cash Election ), (ii) elect to receive the Stock Consideration for all or a portion of the holder's shares (a Stock Election ), or (iii) make no election with respect to the receipt of the Cash Consideration or the Stock Consideration (a Non-Election ); provided that, subject to Section 2.04(c), eighty percent (80%) of the total number of shares of Company Common Stock issued and outstanding immediately prior to the Effective Time, excluding any treasury stock and shares described in Section 2.01(b)(ii) (the Stock Conversion Number ), shall be converted into the Stock Consideration and twenty percent (20%) of such shares of Company Common Stock shall be converted into the Cash Consideration in accordance with the allocation procedures set forth in Section 2.04(c). A record holder acting in different capacities or acting on behalf of other Persons in any way will be entitled to submit an Election Form for each capacity in which such record holder so acts with respect to each Person for which it so acts. Shares of Company Common Stock as to which a Cash Election has been made are referred to as Cash Election Shares. Shares of Company Common Stock as to which a Stock Election has been made are referred to as Stock Election Shares. Shares of Company Common Stock as to which no election has been made (or as to which an Election Form is not properly completed and returned in a timely fashion) are referred to as Non-Election Shares. The aggregate number of shares of Company Common Stock with

respect to which a Stock Election has been made is referred to herein as the Stock Election Number.

A-7

---

**Table of Contents**

(b) To be effective, a properly completed Election Form shall be submitted to the Exchange Agent on or before 5:00 p.m., New York City time, on a date no later than the 5th Business Day prior to the Closing Date to be mutually agreed upon by the parties (which date shall be publicly announced by Buyer as soon as practicable prior to such date) (the Election Deadline), accompanied by the Certificates as to which such Election Form is being made or by an appropriate guarantee of delivery of such Certificates, as set forth in the Election Form, from a member of any registered national securities exchange or a commercial bank or trust company in the United States (provided that such Certificates are in fact delivered to the Exchange Agent by the time required in such guarantee of delivery; failure to deliver shares of Company Common Stock covered by such guarantee of delivery within the time set forth on such guarantee shall be deemed to invalidate any otherwise properly made election, unless otherwise determined by Buyer, in its sole discretion). For shares of Company Common Stock held in book entry form, Buyer shall establish procedures for delivery of such shares, which procedures shall be reasonably acceptable to Company. If a holder of Company Common Stock either (i) does not submit a properly completed Election Form in a timely fashion or (ii) revokes the holder's Election Form prior to the Election Deadline (without later submitting a properly completed Election Form prior to the Election Deadline), the shares of Company Common Stock held by such holder shall be designated Non-Election Shares. In addition, all Election Forms shall automatically be revoked, and all Certificates returned, if the Exchange Agent is notified in writing by Buyer and Company that this Agreement has been terminated. Subject to the terms of this Agreement and of the Election Form, the Exchange Agent shall have reasonable discretion to determine whether any election, revocation or change has been properly or timely made and to disregard immaterial defects in any Election Form, and any good faith decisions of the Exchange Agent regarding such matters shall be binding and conclusive. Neither Buyer nor the Exchange Agent shall be under any obligation to notify any Person of any defect in an Election Form.

(c) The allocation among the holders of shares of Company Common Stock of rights to receive the Cash Consideration and the Stock Consideration will be made as follows:

(i) If the Stock Election Number exceeds the Stock Conversion Number, then all Cash Election Shares and all Non-Election Shares shall be converted into the right to receive the Cash Consideration, and, subject to Section 2.03 hereof, each holder of Stock Election Shares will be entitled to receive the Stock Consideration in respect of that number of Stock Election Shares held by such holder equal to the product obtained by multiplying (x) the number of Stock Election Shares held by such holder by (y) a fraction, the numerator of which is the Stock Conversion Number and the denominator of which is the Stock Election Number, with the remaining number of the holder's Stock Election Shares being converted into the right to receive the Cash Consideration;

(ii) If the Stock Election Number is less than the Stock Conversion Number (the amount by which the Stock Conversion Number exceeds the Stock Election Number being referred to herein as the Shortfall Number), then all Stock Election Shares shall be converted into the right to receive the Stock Consideration and the Non-Election Shares and the Cash Election Shares shall be treated in the following manner:

(A) if the Shortfall Number is less than or equal to the number of Non-Election Shares, then all Cash Election Shares shall be converted into the right to receive the Cash Consideration and, subject to Section 2.03 of this Agreement, each holder of Non-Election Shares shall receive the Stock Consideration in respect of that number of Non-Election Shares held by the holder equal to the product obtained by multiplying (x) the number of Non-Election Shares held by the holder by (y) a fraction, the numerator of which is the Shortfall Number and the denominator of which is the total number of Non-Election Shares, with the remaining number of the holder's Non-Election Shares being converted into the right to receive the Cash Consideration; or

(B) if the Shortfall Number exceeds the number of Non-Election Shares, then all Non-Election Shares shall be converted into the right to receive the Stock Consideration, and, subject to Section 2.03 of this Agreement, each



holder of Cash Election Shares shall receive the Stock Consideration

A-8

---

**Table of Contents**

in respect of that number of Cash Election Shares equal to the product obtained by multiplying (x) the number of Cash Election Shares held by the holder by (y) a fraction, the numerator of which is the amount by which (1) the Shortfall Number exceeds (2) the total number of Non-Election Shares and the denominator of which is the total number of Cash Election Shares, with the remaining number of the holder's Cash Election Shares being converted into the right to receive the Cash Consideration.

If the tax opinions referred to in Section 6.01(e) cannot be rendered (as reasonably determined by Day Pitney LLP and Cranmore, FitzGerald & Meaney, respectively) as a result of the Merger potentially failing to qualify as a reorganization under Section 368(a) of the Code, then Buyer may, in its sole discretion, increase the number of shares of Company Common Stock entitled to receive the Stock Consideration by the minimum amount necessary to enable such tax opinions to be rendered.

**Section 2.05 Exchange Procedures.**

(a) One Business Day prior to the Closing Date, for the benefit of the holders of Certificates (other than holders of Dissenters' Shares), (i) Buyer shall cause to be delivered to the Exchange Agent, for exchange in accordance with this Article II, certificates representing the shares of Buyer Common Stock issuable pursuant to this Article II or evidence of shares in book entry form ( New Certificates ) and (ii) Buyer shall deliver, or shall cause to be delivered, to the Exchange Agent cash equal to the aggregate amount of the Cash Consideration issuable pursuant to this Article II plus an estimated amount of cash to be paid in lieu of fractional shares of Buyer Common Stock (that cash and New Certificates, being referred to as the Exchange Fund ).

(b) As promptly as practicable, but in any event no later than five (5) Business Days following the Effective Time, and provided that Company has delivered, or caused to be delivered, to the Exchange Agent all information that is necessary for the Exchange Agent to perform its obligations as specified herein, the Exchange Agent shall mail to each holder of record of a Certificate or Certificates who has not previously surrendered such Certificate or Certificates with an Election Form, a form of letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent) and instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration as provided for in this Agreement. Upon proper surrender of a Certificate for exchange and cancellation to the Exchange Agent, together with a properly completed letter of transmittal, duly executed, the holder of the Certificate shall be entitled to receive in exchange, as applicable, (i) a New Certificate representing that number of shares of Buyer Common Stock (if any) to which such former holder of Company Common Stock shall have become entitled pursuant to this Agreement, (ii) a check representing that amount of cash (if any) to which such former holder of Company Common Stock shall have become entitled pursuant to this Agreement and/or (iii) a check representing the amount of cash (if any) payable in lieu of a fractional share of Buyer Common Stock which the former holder has the right to receive in respect of the Certificate surrendered pursuant to this Agreement, and the Certificate so surrendered shall be cancelled. Until surrendered as contemplated by this Section 2.05(b), each Certificate (other than Certificates representing shares described in Section 2.01(b) and each Certificate representing Dissenters' Shares) shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Merger Consideration as provided for in this Agreement and any unpaid dividends and distributions as provided in paragraph (c) of this Section 2.05. No interest shall be paid or accrued on any cash constituting Merger Consideration (including any cash in lieu of fractional shares) and any unpaid dividends and distributions payable to holders of Certificates. For shares of Company Common stock held in book entry form, Buyer shall establish procedures for their delivery, which procedures shall be reasonably acceptable to Company.

(c) No dividends or other distributions with a record date after the Effective Time with respect to Buyer Common Stock shall be paid to the holder of any unsurrendered Certificate until the holder shall surrender such Certificate in

accordance with this Section 2.05. After the surrender of a Certificate in accordance with this Section 2.05, the record holder shall be entitled to receive any such dividends or other distributions, without any

A-9

---

**Table of Contents**

interest, which had become payable with respect to shares of Buyer Common Stock represented by such Certificate. None of Buyer, Company or the Exchange Agent shall be liable to any Person in respect of any shares of Company Common Stock (or dividends or distributions with respect to them) or cash from the Exchange Fund delivered, as required by Law, to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(d) The Exchange Agent and Buyer, as the case may be, shall not be obligated to deliver cash and/or a New Certificate or New Certificates representing shares of Buyer Common Stock to which a holder of Company Common Stock would otherwise be entitled as a result of the Merger until such holder surrenders the Certificate or Certificates representing the shares of Company Common Stock for exchange as provided in this Section 2.05, or an appropriate affidavit of loss and indemnity agreement and a bond in such amount as shall be required in each case by Buyer (but not more than the amount required under Buyer's contract with its transfer agent). If any New Certificates evidencing shares of Buyer Common Stock are to be issued in a name other than that in which the Certificate evidencing Company Common Stock surrendered in exchange is registered, it shall be a condition of the issuance that the Certificate so surrendered shall be properly endorsed or accompanied by an executed form of assignment separate from the Certificate and otherwise in proper form for transfer, and that the Person requesting such exchange pay to the Exchange Agent any transfer or other recordation tax required by reason of the issuance of a New Certificate for shares of Buyer Common Stock in any name other than that of the registered holder of the Certificate surrendered or otherwise establish to the satisfaction of the Exchange Agent that such tax has been paid or is not payable.

(e) Any portion of the Exchange Fund that remains unclaimed by the shareholders of Company for six (6) months after the Effective Time (as well as any interest or proceeds from any investment thereof) shall be delivered by the Exchange Agent to Buyer. Any shareholders of Company who have not complied with Section 2.05(b) shall thereafter look only to the Surviving Entity for the Merger Consideration deliverable in respect of each share of Company Common Stock the shareholder holds as determined pursuant to this Agreement, in each case without any interest. If outstanding Certificates for shares of Company Common Stock are not surrendered or the payment for them is not claimed prior to the date on which such shares of Buyer Common Stock or cash would otherwise escheat to or become the property of any governmental unit or agency, the unclaimed items shall, to the extent permitted by abandoned property and any other applicable Law, become the property of Buyer (and to the extent not in its possession shall be delivered to it), free and clear of all claims or interest of any Person previously entitled to the property. Neither the Exchange Agent nor any party to this Agreement shall be liable to any holder of shares of Company Common Stock represented by any Certificate for any consideration paid to a public official pursuant to applicable abandoned property, escheat, or similar Laws. Buyer and the Exchange Agent shall be entitled to rely upon the stock transfer books of Company to establish the identity of those Persons entitled to receive the Merger Consideration specified in this Agreement, which books shall be deemed conclusive. In the event of a dispute with respect to ownership of any shares of Company Common Stock represented by any Certificate, Buyer and the Exchange Agent shall be entitled to tender to the custody of any court of competent jurisdiction any Merger Consideration represented by such Certificate and file legal proceedings interpleading all parties to such dispute, and will thereafter be relieved with respect to any claims.

(f) Buyer (through the Exchange Agent, if applicable) shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement to any holder of shares of Company Common Stock such amounts as Buyer is required to deduct and withhold under applicable Law. Any amounts so deducted and withheld shall be treated for all purposes of this Agreement as having been paid to the holder of Company Common Stock for whom the deduction and withholding was made by Buyer.

Section 2.06 Anti-Dilution Provisions. In the event Buyer changes (or establishes a record date for changing) the number of, or provides for the exchange of, shares of Buyer Common Stock issued and outstanding prior to the Effective Time as a result of a stock split, reverse stock split, stock dividend, recapitalization, reclassification, or

similar transaction with respect to the outstanding Buyer Common Stock, the Exchange Ratio shall be proportionately and appropriately adjusted so as to provide the holders of the Company Common Stock

A-10

**Table of Contents**

the same economic benefit as contemplated by this Agreement prior to that event; provided that, for the avoidance of doubt, no adjustment shall be made with regard to the Buyer Common Stock if (i) Buyer issues additional shares of Buyer Common Stock and receives consideration for such shares (including, without limitation, upon the exercise of outstanding stock options or other equity awards) or (ii) Buyer issues employee or director stock grants or similar equity awards in the ordinary course of business consistent with past practice.

**ARTICLE III**

**REPRESENTATIONS AND WARRANTIES OF COMPANY**

Section 3.01 Making of Representations and Warranties.

(a) On or prior to the date of this Agreement, Company has delivered to Buyer a schedule (the Company Disclosure Schedule ) setting forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision of this Agreement or as an exception to one or more representations or warranties contained in Article III or to one or more of its covenants contained in Article V; provided, however, that the mere inclusion of an item in the Company Disclosure Schedule as an exception to a representation or warranty shall not be deemed an admission by a party that such item represents an exception or fact, event or circumstance or that, absent such inclusion in the Company Disclosure Schedule, the item is or would be reasonably likely to result in a Material Adverse Effect with respect to Company.

(b) Except as set forth in the Company Disclosure Schedule, Company and Company Bank represent and warrant, jointly and severally, to Buyer that the statements contained in this Article III are correct as of the date of this Agreement and will be correct as of the Closing Date (as though made on and as of the Closing Date), except as to any representation or warranty which specifically speaks as of an earlier date (including without limitation representations made as of the date hereof ), which only need be correct as of such earlier date. No representation or warranty of Company contained in this Article III shall be deemed untrue or incorrect, and Company shall not be deemed to have breached a representation or warranty, as a consequence of the existence of any fact, circumstance or event unless such fact, circumstance, or event, individually or taken together with all other facts, circumstances or events inconsistent with any section of this Article III, has had or would reasonably be expected to have a Material Adverse Effect with respect to Company, disregarding for the purposes of this Section 3.01(b) any materiality or Material Adverse Effect qualification contained in any representation or warranty; provided, however, that the foregoing standard shall not apply to the representations and warranties contained in Sections 3.02, 3.03, 3.05, 3.06, 3.08, 3.10 and 3.15, which shall be deemed untrue, incorrect, and breached if not true and correct in all material respects.

Section 3.02 Organization, Standing and Authority.

(a) Company is a Massachusetts corporation duly organized, validly existing and in good standing under the Laws of the Commonwealth of Massachusetts, and is duly registered as a bank holding company under the BHC Act. Company has full corporate power and authority to carry on its business as now conducted. Company is duly licensed or qualified to do business in each foreign jurisdiction where its ownership or leasing of property or the conduct of its business requires such qualification, except for those jurisdictions where failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Company Bank is a national bank association duly organized, validly existing, and in good standing under the laws of the United States. Company Bank's deposits are insured by the FDIC in the manner and to the full extent provided by applicable law, and all premiums and assessments required to be paid to the FDIC have been paid by Company Bank when due. Company Bank is a member in good standing of FHLB.

A-11

---

**Table of Contents**

Section 3.03 Capital Stock. The authorized capital stock of Company consists of 100,000 shares of Company Common Stock and 4,000 shares of Company Preferred Stock all of which had been designated as SBLF Preferred Stock. As of the date of this Agreement, there were (i) 48,466 shares of Company Common Stock outstanding, (ii) no shares of Company Preferred Stock outstanding, (iii) 420 shares held in treasury and (iv) no shares held by Company Subsidiaries. The outstanding shares of Company Common Stock have been duly authorized and are validly issued and are fully paid and non-assessable. There are no options, warrants or other similar rights, convertible or exchangeable securities, phantom stock rights, stock appreciation rights, stock based performance units, agreements, arrangements, commitments or understandings to which Company is a party, whether or not in writing, of any character relating to the issued or unissued capital stock or other securities of Company or any of Company's Subsidiaries or obligating Company or any of Company's Subsidiaries to issue (whether upon conversion, exchange or otherwise) or sell any share of capital stock of, or other equity interests in or other securities of, Company or any of Company's Subsidiaries. All shares of Company Common Stock subject to issuance as set forth in this Section 3.03 or Company Disclosure Schedule 3.03 shall, upon issuance on the terms and conditions specified in the instruments pursuant to which they are issuable, be duly authorized, validly issued, fully paid and nonassessable. There are no obligations, contingent or otherwise, of Company or any of Company's Subsidiaries to repurchase, redeem, or otherwise acquire any shares of Company Common Stock or capital stock of any of Company's Subsidiaries or any other securities of Company or any of Company's Subsidiaries or to provide funds to or make any investment (in the form of a loan, capital contribution or otherwise) in any such Subsidiary or any other entity. All of the outstanding shares of capital stock of each of Company's Subsidiaries are duly authorized, validly issued, fully paid, and nonassessable. Neither Company nor any of its Subsidiaries has any trust capital securities or other similar securities outstanding. No bonds, debentures, notes or other indebtedness issued by the Company or any of the Company's Subsidiaries (i) having the right to vote on any matters on which shareholders of the Company may vote (or which is convertible into, or exchangeable for, securities having such right), or (ii) the value of which is directly based upon or derived from the capital stock, voting securities or other ownership interests of the Company, are issued or outstanding.

Section 3.04 Subsidiaries.

(a) (i) Company Disclosure Schedule 3.04 sets forth a complete and accurate list of all of Company's Subsidiaries, including the jurisdiction of organization of each Subsidiary, (ii) except as set forth on Company Disclosure Schedule 3.04, Company owns, directly or indirectly, all of the issued and outstanding equity securities of each Subsidiary, (iii) no equity securities of any of Company's Subsidiaries are or may become required to be issued (other than to Company) by reason of any contractual right, preemptive right, or otherwise, (iv) there are no contracts, commitments, understandings, or arrangements by which any of such Subsidiaries is or may be bound to sell or otherwise transfer any of its equity securities (other than to Company or a wholly-owned Subsidiary of Company), (v) there are no contracts, commitments, understandings, or arrangements relating to Company's rights to vote or to dispose of the securities of any Subsidiary and (vi) all of the equity securities of each Subsidiary held by Company, directly or indirectly, are validly issued, fully paid and nonassessable, are not subject to preemptive or similar rights and are owned by Company free and clear of all Liens.

(b) Except as set forth on Company Disclosure Schedule 3.04 or Company Disclosure Schedule 3.20, Company does not own (other than in a bona fide fiduciary capacity or in satisfaction of a debt previously contracted) beneficially, directly or indirectly, any equity securities or similar interests of any Person, or any interest in a partnership or joint venture of any kind.

(c) Each of Company's Subsidiaries has been duly organized and qualified and is in good standing under the Laws of the jurisdiction of its organization and is duly qualified to do business and is in good standing in the jurisdictions where its ownership or leasing of property or the conduct of its business requires it to be so qualified, except for those



jurisdictions where failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. A complete and accurate list of all such jurisdictions is set forth on Company Disclosure Schedule 3.04.

A-12

---

**Table of Contents**

Section 3.05 Corporate Power; Minute Books. Company and each of its Subsidiaries has the corporate power and authority to carry on its business as it is now being conducted and to own all its properties and assets; and each of Company and Company Bank has the corporate power and authority to execute, deliver and perform its obligations under this Agreement and to consummate the contemplated transactions, subject to receipt of all necessary approvals of Governmental Authorities and the approval of Company's shareholders of this Agreement and the Company of the Plan of Bank Merger. The Company has made available to Buyer complete and correct copies of the minutes (or, in the case of draft minutes, the most recent drafts) of all meetings of the board of directors and each committee of the Company board of directors and the board of directors and each committee of the Company's Subsidiaries held since January 1, 2013; provided, that, the minutes of the Company, board of directors or committees did not contain any discussions related to any potential corporate transaction involving the Company otherwise related to deliberations of the Company board of directors with respect to the consideration of strategic alternatives. The minute books of Company and each of its Subsidiaries contain true, complete and accurate records of all corporate actions taken by shareholders of Company and each of its Subsidiaries and the board of the directors of Company (including committees of Company's board of directors) and each of its Subsidiaries.

Section 3.06 Corporate Authority. Subject only to the approval of the Merger and this Agreement by the holders of at least two-thirds of the Company Common Stock entitled to vote ( Requisite Company Shareholder Approval ), this Agreement and the transactions contemplated by this Agreement have been authorized by all necessary corporate action of Company and Company Bank and Company's and Company Bank's board of directors on or prior to the date of this Agreement. Company's board of directors has directed that this Agreement be submitted to Company's shareholders for approval and, except for the receipt of the Requisite Company Shareholder Approval in accordance with the MBCA, Company's Articles of Organization and Bylaws, no other vote of the shareholders of Company is required by Law, the Articles of Organization of Company, the Bylaws of Company or otherwise to approve this Agreement and the transactions contemplated by this Agreement. Company and Company Bank each has duly executed and delivered this Agreement and, assuming due authorization, execution, and delivery by Buyer and Buyer Bank, this Agreement is a valid and legally binding obligation of Company and Company Bank, enforceable in accordance with its terms (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer, and similar Laws of general applicability relating to or affecting creditors' rights or by general equity principles).

Section 3.07 Regulatory Approvals; No Defaults.

(a) No consents or approvals of, or waivers by, or filings or registrations with, any Governmental Authority or with any third party are required to be made or obtained by Company or any of its Subsidiaries in connection with the execution, delivery, or performance by Company of this Agreement or to consummate the contemplated transactions, except for (i) filings of applications or notices with, and consents, approvals or waivers by the FRB, the FDIC, the OCC, the Massachusetts Commissioner of Banks, and the Massachusetts Housing Partnership Fund; (ii) the Requisite Company Shareholder Approval, (iii) the approval of Bank Merger and the Plan of Bank Merger by Company, the sole shareholder of Company Bank; (v) the filing and effectiveness of the Registration Statement with the SEC, and (vi) the filing of the Articles of Merger with the Secretary of the Commonwealth of Massachusetts. Each consent, approval, receipt, or waiver by the FRB, the FDIC, the OCC, and The Massachusetts Commissioner of Banks as referred to in clause (i) is a Regulatory Approval. As of the date of this Agreement, Company is not aware of any reason relating to Company why the approvals set forth above and referred to in Section 6.01(b) will not be received in a timely manner or will include a Burdensome Condition as defined in Section 5.06.

(b) Subject to receipt, or the making, of the consents, approvals, waivers and filings referred to in the immediately preceding paragraph, and the expiration of related waiting periods, the execution, delivery and performance of this Agreement by Company and Company Bank, as applicable, and the consummation of the contemplated transactions

do not and will not (i) constitute a breach or violation of, or a default under, the

A-13

---

**Table of Contents**

Articles of Organization or Bylaws (or similar governing documents) of Company or Company Bank, (ii) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Company or Company Bank, or any of its properties or assets, or (iii) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the properties or assets of Company or Company Bank under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, contract, agreement or other instrument or obligation to which Company or Company Bank is a party, or by which it or any of its properties or assets may be bound or affected.

Section 3.08 Reports: Internal Controls.

(a) Neither the Company nor any of Company's Subsidiaries is required to file periodic reports with the SEC pursuant to Section 13 or 15(d) of the Exchange Act.

(b) Company and each of its Subsidiaries have timely filed all reports, forms, schedules, registrations, statements and other documents, together with any required amendments, that they were required to file since December 31, 2012 with any Governmental Authority and have paid all fees and assessments due and payable in connection therewith. Except for normal examinations conducted by a Governmental Authority in the regular course of the business of Company and its Subsidiaries, no Governmental Authority has notified Company that it has initiated any proceeding or, to the Knowledge of Company, threatened an investigation into the business or operations of Company or any of its Subsidiaries since December 31, 2012. There is no material unresolved violation or exception by any Governmental Authority with respect to any report, form, schedule, registration, statement or other document filed by, or relating to any examinations by any such Governmental Authority of, Company or any of its Subsidiaries.

(c) Company has disclosed, based on its most recent evaluation prior to the date of this Agreement, to Company's auditors and the audit committee of Company's board of directors (i) any significant deficiencies or material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect in any material respect Company's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in Company's internal controls over financial reporting.

(d) The records, systems, controls, data and information of Company and its Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of Company or its Subsidiaries or accountants (including all means of access to them), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a Material Adverse Effect on the system of internal accounting controls described in the following sentence. Company and its Subsidiaries have devised and maintain a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP.

(e) Company has designed, implemented, and maintained disclosure controls and procedures to ensure that material information relating to Company and its Subsidiaries is made known to the management of Company by others within those entities as appropriate to allow timely decisions regarding required disclosure and as otherwise required by Law.

(f) Since December 31, 2012, (x) neither Company nor any of its Subsidiaries nor, to the Knowledge of Company, any director, officer, employee, auditor, accountant or representative of Company or any of its Subsidiaries has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or

oral, regarding the accounting or auditing practices, procedures, methodologies or methods of Company or any of its Subsidiaries or their respective internal accounting controls, including any

A-14

**Table of Contents**

material complaint, allegation, assertion or claim that Company or any of its Subsidiaries has engaged in questionable accounting or auditing practices, and (y) no attorney representing Company or any of its Subsidiaries, whether or not employed by Company or any of its Subsidiaries, has reported evidence of a material violation of securities Laws, breach of fiduciary duty or similar violation by Company or any of its officers, directors, employees, or agents to the board of directors of Company or any committee of the board of directors or to any director or officer of Company.

Section 3.09 Financial Statements: Undisclosed Liabilities.

(a) The unaudited consolidated financial statements of Company (including any related notes and schedules) complied as to form, as of their respective dates, in all material respects, with all applicable accounting requirements, have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be disclosed therein), and fairly present, in all material respects, the consolidated financial position of Company and its Subsidiary and the consolidated results of operations, changes in shareholders' equity and cash flows of such company as of the dates and for the periods shown. The books and records of Company and its Subsidiary have been, and are being, maintained in all material respects in accordance with GAAP and any other applicable legal and accounting requirements and reflect only actual transactions.

(b) Except for (i) those liabilities that are fully reflected or reserved for in the unaudited consolidated financial statements of Company at March 31, 2016; (ii) liabilities or obligations incurred in the ordinary course of business since March 31, 2016 in amounts consistent with past practice; (iii) liabilities that have been discharged or paid in full before the Effective Date; or (iv) liabilities or obligations incurred directly as a result of this Agreement, neither Company nor any of its Subsidiaries has incurred any material liability of any nature whatsoever (whether absolute, accrued or contingent or otherwise and whether due or to become due), and, there is no existing condition, situation or set of circumstances that would reasonably be expected to result in such a liability, other than pursuant to or as contemplated by this Agreement or that, either alone or when combined with all other liabilities of a type not described in (i) or (ii) has had or would be reasonably expected to have, a Material Adverse Effect on the Company.

Section 3.10 Absence of Certain Changes or Events. Except as disclosed in Company Disclosure Schedule 3.10, or as otherwise expressly permitted or expressly contemplated by this Agreement, since December 31, 2015 (the Company Balance Sheet Date), there has not been (i) any change or development in the business, operations, assets, liabilities, condition (financial or otherwise), results of operations, cash flows or properties of Company or any of its Subsidiaries which has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect with respect to Company, and to the Knowledge of Company, no fact or condition exists which is reasonably likely to cause a Material Adverse Effect with respect to Company in the future, (ii) any change by Company or any of its Subsidiaries in its accounting methods, principles or practices, other than changes required by applicable Law or GAAP or regulatory accounting as concurred in by Company's independent accountants, (iii) any entry by Company or any of its Subsidiaries into any contract or commitment of (A) more than \$50,000 or (B) \$25,000 per annum with a term of more than one year, other than borrowings, loans and loan commitments in the ordinary course of business, (iv) any declaration, setting aside or payment of any dividend or distribution in respect of any capital stock of Company or any of its Subsidiaries or any redemption, purchase or other acquisition of any of its securities, other than in the ordinary course of business consistent with past practice, (v) any increase in or establishment of any bonus, insurance, severance, deferred compensation, pension, retirement, profit sharing, stock option (including, without limitation, the granting of stock options, stock appreciation rights, performance awards, or restricted stock awards), stock purchase or other employee benefit plan, or any other increase in the compensation payable or to become payable to any directors, officers or employees of Company or any of its Subsidiaries, or any grant of severance or termination pay, or any contract or arrangement entered into to make or grant any severance or termination pay, any payment of any bonus (except in the ordinary course of business consistent with past practice), or the taking of any action not in the ordinary course of business with respect to the compensation or employment of directors,

A-15

**Table of Contents**

officers, or employees of Company or any of its Subsidiaries, (vi) any material election made by Company or any of its Subsidiaries for federal or state income tax purposes, (vii) any material change in the credit policies or procedures of Company or any of its Subsidiaries, the effect of which was or is to make any such policy or procedure less restrictive, (viii) other than loans and loan commitments, investment securities, and other real estate owned in the ordinary course of business and consistent with past practice, any material acquisition or disposition of any assets or properties, or any contract for any such acquisition or disposition entered into, or (ix) any material lease of real or personal property entered into, other than in connection with foreclosed property or in the ordinary course of business consistent with past practice.

Section 3.11 Legal Proceedings.

(a) Other than as set forth in Company Disclosure Schedule 3.11, neither Company nor any of its Subsidiaries is a party to any, nor are there any pending or, to Company's Knowledge, threatened, civil, criminal, administrative or regulatory actions, suits, demand letters, claims, hearings, notices of violation, arbitrations, investigations, orders to show cause, market conduct examinations, notices of non-compliance or other proceedings of any nature against Company or any of its Subsidiaries in which, to Company's Knowledge, there is a reasonable probability of any material recovery against or other Material Adverse Effect with respect to Company or which challenges the validity or propriety of the transactions contemplated by this Agreement.

(b) There is no injunction, order, judgment, or decree imposed upon Company or any of its Subsidiaries, or the assets of Company or any of its Subsidiaries, and neither Company nor any of its Subsidiaries has been advised of, or is aware of, the threat of any such action.

Section 3.12 Compliance With Laws.

(a) Company and each of its Subsidiaries is and since January 1, 2013 has been in compliance with all applicable federal, state, local and foreign statutes, Laws, regulations, ordinances, rules, judgments, orders or decrees or applicable to the Company, its Subsidiaries and their respective employees, including without limitation, all Laws related to data protection or privacy, the USA PATRIOT Act, the Equal Credit Opportunity Act, the Fair Housing Act, the Community Reinvestment Act, the Fair Credit Reporting Act, the Truth in Lending Act and any other Law relating to discriminatory lending, financing or leasing practices, Sections 23A and 23B of the Federal Reserve Act, the Sarbanes-Oxley Act and the Dodd-Frank Act, except where noncompliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(b) Company and each of its Subsidiaries has all material permits, licenses, authorizations, orders and approvals of, and have made all filings, applications and registrations with, all Governmental Authorities that are required in order to permit it to own or lease their properties and to conduct their business as presently conducted; all such permits, licenses, certificates of authority, orders and approvals are in full force and effect and, to Company's Knowledge, no suspension or cancellation of any of them is threatened.

(c) Neither Company nor any of its Subsidiaries has received, since January 1, 2013, notification or communication from any Governmental Authority (i) asserting that it is not in compliance with any of the statutes, regulations or ordinances which such Governmental Authority enforces or (ii) threatening to revoke any license, franchise, permit or governmental authorization (nor, to Company's Knowledge, do any grounds for any of the foregoing exist).

(d) Company has not engaged in any activities only permissible for a financial holding company under Section 4(k) of the BHC Act.



A-16

---

**Table of Contents**Section 3.13 Material Contracts; Defaults.

(a) Other than as set forth in Company Disclosure Schedule 3.13, neither Company nor any of its Subsidiaries is a party to, bound by or subject to any agreement, contract, arrangement, commitment or understanding (whether written or oral) (i) with respect to the employment of any directors, officers, employees or consultants, (ii) which would entitle any present or former director, officer, employee or agent of Company or any of its Subsidiaries to indemnification from Company or any of its Subsidiaries, (iii) the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement, or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement, (iv) which grants any right of first refusal, right of first offer, or similar right with respect to any material assets or properties of Company and or Subsidiaries; (v) which provides for payments to be made by Company or any of its Subsidiaries upon a change in control; (vi) which provides for the lease of personal property having a value in excess of \$25,000 individually or \$50,000 in the aggregate; (vii) which relates to capital expenditures and involves future payments in excess of \$25,000 individually or \$50,000 in the aggregate; (viii) which relates to the disposition or acquisition of assets or any interest in any business enterprise outside the ordinary course of Company's business; (ix) which is not terminable on sixty (60) days or less notice and involving the payment of more than \$25,000 per annum; or (x) which materially restricts the conduct of any business by Company or any of its Subsidiaries (collectively, Material Contracts ). Company has previously delivered to Buyer true, complete and correct copies of each Material Contract.

(b) To Company's Knowledge, neither Company nor any of its Subsidiaries is in default under any contract, agreement, commitment, arrangement, lease, insurance policy or other instrument to which it is a party, by which its assets, business, or operations may be bound or affected, or under which it or its assets, business, or operations receives benefits, and there has not occurred any event that, with the lapse of time or the giving of notice or both, would constitute a default. No power of attorney or similar authorization given directly or indirectly by Company is currently outstanding.

(c) Other than the consents, approvals, authorizations, notices or other actions (collectively, Company Third Party Consents ) required under Material Contracts as set forth on Company Disclosure Schedule 3.13, no third party consent by any Person is required in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

Section 3.14 Agreements with Regulatory Agencies. Neither Company nor any of its Subsidiaries is subject to any cease-and-desist or other order issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is a recipient of any extraordinary supervisory letter from, or is subject to any order or directive by, or has adopted any board resolutions at the request of (each, a Company Regulatory Agreement ) any Governmental Authority that restricts, or by its terms will in the future restrict, the conduct of its business or that in any manner relates to its capital adequacy, its credit or risk management policies, its dividend policies, its management, its business or its operations, nor has Company or any of its Subsidiaries been advised by any Governmental Authority that it is considering issuing or requesting (or is considering the appropriateness of issuing or requesting) any Company Regulatory Agreement. To the Knowledge of Company, there are no investigations relating to any material regulatory matters pending before any Governmental Authority with respect to Company or any of its Subsidiaries.

Section 3.15 Brokers. Neither Company, Company Bank nor any of its officers or directors has employed any broker or finder or incurred any liability for any broker's fees, commissions, or finder's fees in connection with any of the transactions contemplated by this Agreement, except that Company has engaged, and will pay a fee or commission to, FIG Partners, LLC in accordance with the terms of a letter agreement between FIG Partners, LLC and Company, a

true, complete and correct copy of which has been delivered by Company to Buyer.

A-17

---

**Table of Contents**

Section 3.16 Employee Benefit Plans.

(a) All benefit and compensation plans, contracts, policies, or arrangements (whether or not written) (i) covering current or former employees of Company or any of its Subsidiaries (the Company Employees ), (ii) covering current or former directors of Company or any of its Subsidiaries, or (iii) with respect to which Company or any Subsidiary has or may have any liability or contingent liability (including liability arising from affiliation under Section 414 of the Code or Section 4001 of ERISA) including, but not limited to, employee benefit plans within the meaning of Section 3(3) of ERISA, and deferred compensation, stock option, stock purchase, stock appreciation rights, stock based, incentive and bonus plans (the Company Benefit Plans ), are identified in Company Disclosure Schedule 3.16(a). True and complete copies of all Company Benefit Plans including, but not limited to, any trust instruments and insurance contracts forming a part of any Company Benefit Plans and all amendments to them, IRS Forms 5500 (for the three most recently completed plan years), current summary plan descriptions, and the most recent IRS determination letters with respect to them, have been made available to Buyer.

(b) To Company's Knowledge, all Company Benefit Plans are in compliance in form and operation with all applicable Laws, including ERISA and the Code. Each Company Benefit Plan which is an employee pension benefit plan within the meaning of Section 3(2) of ERISA (a Company Pension Plan ) and which is intended to be qualified under Section 401(a) of the Code, has received a favorable determination or opinion letter from the IRS that is currently in effect, and Company is not aware of any circumstance that would reasonably be expected to result in revocation of any such favorable determination letter or the loss of the qualification of the Company Pension Plan under Section 401(a) of the Code. There is no pending or, to Company's Knowledge, threatened litigation relating to the Company Benefit Plans. Neither Company nor any of its Subsidiaries has engaged in, or is aware of, a transaction with respect to any Company Benefit Plan or Company Pension Plan that, assuming the taxable period of the transaction expired as of the date of this Agreement, would reasonably be expected to subject Company or any of its Subsidiaries to a tax or penalty imposed by either Section 4975 of the Code or Section 502(i) of ERISA.

(c) No liability under Subtitle C or D of Title IV of ERISA has been or is expected to be incurred by Company or any of its Subsidiaries with respect to any ongoing, frozen, or terminated single employer plan, within the meaning of Section 4001(a)(15) of ERISA (including any multiple employer plan as described in 29 C.F.R. Section 4001.2), currently or formerly maintained or contributed to by Company, any of its Subsidiaries, or any entity which is considered one employer with Company or any of its Subsidiaries under Section 4001 of ERISA or Section 414 of the Code (an ERISA Affiliate ). None of Company or any ERISA Affiliate has contributed to (or been obligated to contribute to) a multiemployer plan within the meaning of Section 3(37) of ERISA at any time during the six-year period ending on the Closing Date, and neither Company nor any of its Subsidiaries has incurred, or could incur, any withdrawal liability with respect to a multiemployer plan under Subtitle E of Title IV of ERISA (regardless of whether based on contributions of an ERISA Affiliate). No notice of a reportable event, within the meaning of Section 4043 of ERISA for which the thirty (30) day reporting requirement has not been waived, has been required to be filed for any Company Pension Plan or by any ERISA Affiliate within the thirty-six (36) month period ending on the date of this Agreement or will be required to be filed in connection with the transactions contemplated by this Agreement.

(d) All contributions required to be made with respect to all Company Benefit Plans have been timely made or have been reflected on the financial statements of Company. No Company Pension Plan or single-employer plan of an ERISA Affiliate has an accumulated funding deficiency (whether or not waived) within the meaning of Section 412 of the Code or Section 302 of ERISA or has otherwise failed to satisfy the minimum funding requirements of Section 412 of the Code or Sections 302 and 303 of ERISA, and none of Company or any ERISA Affiliate has an outstanding funding waiver. No Company Plan is considered to be an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA.

(e) Other than as set forth in Company Disclosure Schedule 3.16(e), neither Company nor any of its Subsidiaries has any obligations for retiree health or life benefits under any Company Benefit Plan, other than coverage as may be required under Section 4980B of the Code or Part 6 of Title I of ERISA, or under the

A-18

**Table of Contents**

continuation of coverage provisions of the Laws of any state or locality. All Company Benefit Plans that are group health plans have been operated in compliance with the group health plan continuation requirements of Section 4980B of the Code and Sections 601-609 of ERISA, the certification of prior coverage and other requirements of Sections 701-702 and 711-713 of ERISA and the terms and conditions of the Patient Protection and Affordable Care Act. Company may amend or terminate any such Company Benefit Plan at any time without incurring any liability thereunder, other than routine administrative costs.

(f) Other than as set forth in Company Disclosure Schedule 3.16(f) or as otherwise expressly provided in this Agreement, the execution of this Agreement, shareholder approval of this Agreement or consummation of any of the transactions contemplated by this Agreement will not (i) entitle any Company Employee to severance pay or any increase in severance pay upon any termination of employment after the date of this Agreement under any Company Benefit Plans, (ii) accelerate the time of payment or vesting or trigger any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or trigger any other material obligation pursuant to, any of the Company Benefit Plans, (iii) result in any breach or violation of, or a default under, any of the Company Benefit Plans, (iv) result in any payment under any Company Benefit Plans that would be a parachute payment to a disqualified individual as those terms are defined in Section 280G of the Code, without regard to whether such payment is reasonable compensation for personal services performed or to be performed in the future, (v) limit or restrict the right of Company or Company Bank or, after the consummation of the transactions contemplated by this Agreement, Buyer or any of its Subsidiaries, to merge, amend or terminate any of the Company Benefit Plans, (vi) result in payments under any of the Company Benefit Plans which would not be deductible under Section 162(m) or Section 280G of the Code, or (vii) result in any accounting accruals under any Company Benefit Plans not in the ordinary course of business.

(g) Each Company Benefit Plan that is a deferred compensation plan is in compliance with Section 409A of the Code, to the extent applicable. All elections made with respect to compensation deferred under an arrangement subject to Section 409A of the Code have been made in accordance with the requirements of Section 409(a)(4) of the Code, to the extent applicable. Neither Company nor any of its Subsidiaries (i) has taken any action, or has failed to take any action, that has resulted or would reasonably be expected to result in the interest and tax penalties specified in Section 409A(a)(1)(B) of the Code being owed by any participant in a Company Benefit Plan or (ii) has agreed to reimburse or indemnify any participant or beneficiary in a Company Benefit Plan for any of the interest and the penalties specified in Section 409A(a)(1)(B) of the Code that may be currently due or triggered in the future.

(h) Company Disclosure Schedule 3.16(h) show the monetary amounts payable as of the date specified, whether individually or in the aggregate (including good faith estimates of all amounts not subject to precise quantification as of the date of this Agreement, such as tax indemnification payments in respect of income or excise taxes), under any employment, change-in-control, severance or similar contract, plan or arrangement with or which covers any present or former director, officer, or employee of Company or any of its Subsidiaries who may be entitled to any amount and identifying the types and estimated amounts of the in-kind benefits due under any Company Benefit Plans (other than a plan qualified under Section 401(a) of the Code) for each such person, specifying the assumptions in such schedule and providing estimates of other required contributions to any trusts for any related fees or expenses.

(i) To Company's Knowledge, Company and its Subsidiaries have correctly classified all individuals who directly or indirectly perform services for Company or any of its Subsidiaries for purposes of each Company Benefit Plan, ERISA, the Code, tax withholding, unemployment compensation Laws, workers' compensation Laws and all other applicable Laws.

Section 3.17 Labor Matters. Neither Company nor any of its Subsidiaries is a party to or bound by any collective bargaining agreement, contract, or other agreement or understanding with a labor union or labor organization, nor is

there any proceeding pending or, to Company s Knowledge threatened, asserting that

A-19

**Table of Contents**

Company or any of its Subsidiaries has committed an unfair labor practice (within the meaning of the National Labor Relations Act, as amended) or seeking to compel Company or any of its Subsidiaries to bargain with any labor organization as to wages or conditions of employment, nor is there any strike or other labor dispute involving it pending or, to Company's Knowledge, threatened, nor is Company aware of any activity involving its employees seeking to certify a collective bargaining unit or engaging in other organizational activity.

Section 3.18 Environmental Matters.

(a) To Company's Knowledge, no real property (including buildings or other structures) currently owned or operated by Company or any of its Subsidiaries or any predecessor, or any property in which Company or any of its Subsidiaries holds a security interest, Lien or a fiduciary or management role ( Company Loan Property ), has had any presence or Release of, any Hazardous Substance in a manner that violates Environmental Law or requires reporting, investigation, remediation, or monitoring under Environmental Law.

(b) To Company's Knowledge, no real property (including buildings or other structures) formerly owned or operated by Company or any of its Subsidiaries had, during such ownership or operation, any presence or Release of any Hazardous Substance in a manner that violated Environmental Law or required reporting, investigation, remediation or monitoring under Environmental Law.

(c) To Company's Knowledge, Company and each of its Subsidiaries is in compliance, in all material respects, with applicable Environmental Law.

(d) To Company's Knowledge, neither Company nor any of its Subsidiaries could be deemed the owner or operator of, or to have participated in the management of, any Company Loan Property which has had presence or any Release of, any Hazardous Substance in a manner that violates Environmental Law or requires reporting, investigation, remediation, or monitoring under Environmental Law.

(e) To Company's Knowledge, neither Company nor any of its Subsidiaries nor any predecessor has any liability under Environmental Law arising from the presence, Release, or disposal of any Hazardous Substance on any real property currently or formerly owned by Company or any of its Subsidiaries or any predecessor, or any Company Loan Property or any other location.

(f) Neither Company nor any of its Subsidiaries has received (i) any written notice, demand letter, or claim alleging any violation of, or liability under, any Environmental Law or (ii) any written request for information reasonably indicating an investigation or other inquiry by any Government Authority concerning a possible violation of, or liability under, any Environmental Law.

(g) No Lien or encumbrance has been imposed on property owned by Company or on any Company Loan Property in connection with any liability or potential liability arising from or related to Environmental Law and to Company's Knowledge, there is no action, proceeding, writ, injunction, or claim pending or threatened which could result in the imposition or any such Lien or encumbrance.

(h) Neither Company nor any of its Subsidiaries is, or has been, subject to any order, decree, or injunction relating to a violation of or allegation of liability under any Environmental Law.

(i) To Company's Knowledge, there are no circumstances or conditions (including the presence of asbestos, underground storage tanks, lead products, polychlorinated biphenyls, prior manufacturing operations, dry-cleaning, or automotive services) involving Company, any of its Subsidiaries, any predecessor, any currently or formerly owned or



operated property, or any Company Loan Property, that would reasonably be expected pursuant to applicable Environmental Law to (i) result in any claim, liability, or investigation against Company or any of its Subsidiaries, (ii) result in any restriction on the ownership, use, or transfer of any property, or (iii) adversely affect the value of any Company Loan Property.

A-20

**Table of Contents**

(j) Company has delivered to Buyer copies of all environmental reports, studies, sampling data, correspondence, filings and other information in its possession or reasonably available to it relating to environmental conditions at or on any real property (including buildings or other structures) currently or formerly owned or operated by Company or any of its Subsidiaries or any Company Loan Property.

(k) There is no litigation pending or, to the Knowledge of Company, threatened against Company or any of its Subsidiaries relating to any property now or formerly owned or used by Company or any of its Subsidiaries or any predecessor or any Company Loan Property, before any court, or Governmental Authority (i) for alleged noncompliance (including by any predecessor) with any Environmental Law or (ii) relating to the presence or Release into the environment of any Hazardous Substance, whether or not occurring at, on or involving a Company Loan Property.

(l) To Company's Knowledge, there are no underground storage tanks on, in or under any property currently owned or operated by Company or any of its Subsidiaries, or any Company Loan Property and, to the Knowledge of Company, no underground storage tank has been closed or removed from any Company Loan Property except in compliance with Environmental Law.

Section 3.19 Tax Matters.

(a) Company and each of its Subsidiaries has timely filed all income, franchise, and other material Tax Returns that it was required to file under applicable Laws prior to the Effective Time, other than Tax Returns that are not yet due or for which a request for extension was filed consistent with requirements of applicable Laws. All such Tax Returns were correct and complete in all material respects and were prepared in substantial compliance with all applicable Laws. Taxes due and owing by Company or any of its Subsidiaries (whether or not shown on any Tax Return) have been paid, other than any such Taxes that have been reserved or accrued on the balance sheet of Company or which Company is contesting in good faith. No written claim has ever been made by an authority in a jurisdiction where Company or any Subsidiary does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Liens for Taxes (other than statutory liens for Taxes not yet due and payable, or Taxes that are being contested in good faith and for which adequate provision has been made on the balance sheet of the Company) upon any of the assets of Company or any of its Subsidiaries.

(b) Company and each Subsidiary have withheld and paid all material Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, shareholder, or other third party.

(c) No foreign, federal, state, or local tax audits or administrative or judicial Tax proceedings are being conducted or, to the Knowledge of Company, are pending with respect to Company or any Subsidiary. Other than with respect to audits that have already been completed and resolved, neither Company nor any Subsidiary has received from any foreign, federal, state, or local taxing authority (including in jurisdictions where Company or any Subsidiary has not filed Tax Returns) any (i) written notice indicating an intent to open an audit or other review, (ii) request for information related to Tax matters, or (iii) written notice of deficiency or proposed adjustment for any material amount of Tax proposed, asserted, or assessed by any taxing authority against Company or any Subsidiary.

(d) Company has made available to Buyer true and complete copies of the United States federal, state, local, and foreign income Tax Returns filed with respect to Company and each Subsidiary for taxable periods ended December 31, 2015, 2014 and 2013. Company has delivered to Buyer correct and complete copies of all examination reports and statements of deficiencies assessed against or agreed to by Company or any Subsidiary filed for the years ended December 31, 2015, 2014 and 2013. Company and each Subsidiary have timely and properly taken such actions in

response to and in compliance with notices Company or any Subsidiary has received from the IRS in respect of information reporting and backup and nonresident withholding as are required by Law. Company has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

A-21

---

**Table of Contents**

(e) Neither Company nor any Subsidiary has been a United States real property holding corporation within the meaning of Code Section 897(c)(2) during the applicable period specified in Code Section 897(c)(1)(A)(ii). Company and each Subsidiary have disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Code Section 6662. Neither Company nor any Subsidiary is a party to or bound by any Tax allocation or sharing agreement (other than an unwritten agreement with Company Bank and its Subsidiaries). Neither Company nor any Subsidiary (i) has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was Company), or (ii) has liability for the Taxes of any individual, bank, corporation, partnership, association, joint stock company, business trust, limited liability company, or unincorporated organization (other than Company or any Subsidiary) under IRS Reg. Section 1.1502-6 (or any similar provision of state, local, or foreign Law), as a transferee or successor, by contract, or otherwise.

(f) The unpaid Taxes of Company and each Subsidiary (i) did not, as of December 31, 2015, materially exceed the reserve for Tax liability (which reserve is distinct and different from any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Company financial statements as of December 31, 2015 (rather than in any notes to such financial statements), and (ii) do not exceed that reserve as adjusted for the passage of time through the Effective Time in accordance with the past practice of Company in filing its Tax Returns. Since December 31, 2015 neither Company nor any Subsidiary has incurred any liability for Taxes arising from extraordinary gains or losses, as that term is used in GAAP, outside the ordinary course of business consistent with past practice.

(g) Neither Company nor any Subsidiary shall be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) closing agreement as described in Code Section 7121 (or any corresponding or similar provision of state, local or foreign income Tax Law) executed on or prior to the Closing Date; (iii) intercompany transactions or any excess loss account described in Treasury Regulations under Code Section 1502 (or any corresponding or similar provision of state, local or foreign income Tax Law); (iv) installment sale or open transaction disposition made on or prior to the Closing Date; or (v) prepaid amount received on or prior to the Closing Date.

(h) Neither Company nor any Subsidiary has distributed stock of another Person or had its stock distributed by another Person in a transaction that was purported or intended to be governed in whole or in part by Section 355 or Section 361 of the Code.

(i) Neither Company nor any Subsidiary is or has been a party to any listed transaction, as defined in Code Section 6707A(c)(2) and Reg. Section 1.6011-4(b)(2).

(j) Company has not taken or agreed to take any action and has no Knowledge of any fact, agreement, plan, or other circumstance that is reasonably likely to prevent or impede the Merger and Bank Merger from qualifying as a reorganization under Section 368(a) of the Code.

Section 3.20 Investment Securities. Company Disclosure Schedule 3.20 sets forth as of September 30, 2016 the investment securities, mortgage backed securities and any other securities owned by the Company or any Subsidiary, as well as their descriptions, CUSIP numbers, book values, fair values and coupon rates. Neither Company nor any of its Affiliates owns in excess of 5% of the outstanding equity of any savings bank, savings and loan association, savings and loan holding company, credit union, bank or bank holding company, insurance company, mortgage or loan broker or any other financial institution.

Section 3.21 Derivative Transactions.

(a) All Derivative Transactions entered into by Company or any of its Subsidiaries or for the account of any of its customers were entered into in accordance with applicable Laws and regulatory policies of any

A-22

**Table of Contents**

Governmental Authority, and in accordance with the investment, securities, commodities, risk management and other policies, practices and procedures employed by Company or any of its Subsidiaries, and were entered into with counterparties believed at the time to be financially responsible and able to understand (either alone or in consultation with its advisers) and to bear the risks of the Derivative Transactions. Company and each of its Subsidiaries have duly performed, in all material respects, all of their obligations under the Derivative Transactions to the extent that such obligations to perform have accrued, and, to the Knowledge of Company, there are no breaches, violations, or defaults or allegations or assertions of default by any party to the Derivative Transactions.

(b) Except as set forth in Company Disclosure Schedule 3.21, no Derivative Transaction, were it to be a Loan held by Company, would be classified as Special Mention, Substandard, Doubtful, Loss, Classified, Criticized, Credit Risk Assets, Concerned Loans, Watch List or words of similar import. Each Derivative Transaction is listed on Company Disclosure Schedule 3.21, and the financial position of Company under or with respect to each has been reflected in the books and records of Company in accordance with GAAP consistently applied and no open exposure of Company with respect to any such instrument (or with respect to multiple instruments with respect to any single counterparty) exceeds \$25,000.

Section 3.22 Regulatory Capitalization. Company Bank is well-capitalized, as such term is defined in the rules and regulations promulgated by the OCC.

Section 3.23 Loans; Nonperforming and Classified Assets.

(a) Except as set forth in Company Disclosure Schedule 3.23, as of the date of this Agreement, neither Company nor any of its Subsidiaries is a party to any written or oral loan, loan agreement, note or borrowing arrangement (including, without limitation, leases, credit enhancements, commitments, guarantees and interest-bearing assets) (collectively, Loans), under the terms of which the obligor was, as of September 30, 2016, over sixty (60) days delinquent in payment of principal or interest or in default of any other material provision. Company Disclosure Schedule 3.23 identifies (x) each Loan that as of September 30, 2016 was classified as Special Mention, Substandard, Doubtful, Loss, Classified, Criticized, Credit Risk Assets, Concerned Loans, Watch List or words of similar import and (y) the principal amount of and accrued and unpaid interest on each such Loan and the identity of the borrower thereunder, and (y) each asset of Company that as of September 30, 2016 was classified as other real estate owned (OREO) and its book value as of the date of this Agreement. Set forth in Company Disclosure Schedule 3.23 is a true and correct copy of Company's Policy Exception Report as of September 30, 2016.

(b) Each Loan held in Company Bank's loan portfolio (Company Loan) (i) is evidenced by notes, agreements or other evidences of indebtedness that are true, genuine, and what they purport to be, (ii) to the extent secured, has been secured by valid Liens which have been perfected and (iii) to the Knowledge of Company, is a legal, valid, and binding obligation of the obligor named in such documents, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent conveyance, and other Laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) All currently outstanding Company Loans were solicited, originated, and, currently exist in material compliance with all applicable requirements of Law and Company Bank's lending policies at the time of origination of such Company Loans, and the loan documents with respect to each Company Loan are complete and correct in all material respects. There are no oral modifications or amendments or additional agreements related to the Company Loans that are not reflected in the written records of Company Bank. Other than loans pledged to the FHLB or the Federal Reserve Bank of Boston, all such Company Loans are owned by Company Bank free and clear of any Liens. No claims of defense as to the enforcement of any Company Loan have been asserted in writing against Company Bank.

for which there is a reasonable possibility of an adverse determination, and each of Company and Company Bank is aware of no acts or omissions which would give rise

A-23

**Table of Contents**

to any claim or right of rescission, set-off, counterclaim, or defense for which there is a reasonable possibility of an adverse determination to Company Bank. Except as set forth in Company Disclosure Schedule 3.23, none of the Company Loans are presently serviced by third parties, and there is no obligation which could result in any Loan becoming subject to any third party servicing.

(d) Neither Company nor Company Bank is a party to any agreement or arrangement with (or otherwise obligated to) any Person which obligates Company to repurchase from any such Person any Loan or other asset of Company or Company Bank, unless there is material breach of a representation or covenant by Company or its Subsidiaries.

Section 3.24 Allowance for Loan Losses. Company's allowance for loan losses as reflected in Company's audited balance sheet at December 31, 2015 was, and the allowance shown on the balance sheets in Company financial statements for periods ending after such date, in the opinion of management, was as of their dates, in compliance with Company's existing methodology for determining the adequacy of its allowance for loan losses as well as the standards established by applicable Governmental Authority, the Financial Accounting Standards Board and GAAP, and is adequate under all such standards.

Section 3.25 Trust Business: Administration of Fiduciary Accounts. Company and Company Bank do not engage in any trust business, nor does either administer or maintain accounts for which either acts as fiduciary (other than individual retirement accounts, Keogh accounts, and health savings accounts), including, but not limited to, accounts for which either serves as a trustee, agent, custodian, personal representative, guardian, conservator, or investment advisor.

Section 3.26 Investment Management and Related Activities. None of Company, any of its Subsidiaries or Company's or its Subsidiaries' directors, officers, or employees is required to be registered, licensed, or authorized under the Laws issued by any Governmental Authority as an investment adviser, a broker or dealer, an insurance agency or company, a commodity trading adviser, a commodity pool operator, a futures commission merchant, an introducing broker, a registered representative or associated person, investment adviser, representative or solicitor, a counseling officer, an insurance agent, a sales person or in any similar capacity with a Governmental Authority.

Section 3.27 Repurchase Agreements. With respect to all agreements pursuant to which Company or any of its Subsidiaries has purchased securities subject to an agreement to resell, if any, Company or any of its Subsidiaries, as the case may be, has a valid, perfected first lien or security interest in the government securities or other collateral securing the repurchase agreement, and the value of such collateral equals or exceeds the amount of the debt secured thereby.

Section 3.28 CRA, Anti-Money Laundering and Customer Information Security. Neither Company nor any of its Subsidiaries is a party to any agreement with any individual or group regarding Community Reinvestment Act matters and Company is not aware of, and none of Company and its Subsidiaries has been advised of, or has any reason to believe (because of Company Bank's Home Mortgage Disclosure Act data for the fiscal year ended December 31, 2015, filed with the FDIC, or otherwise) that any facts or circumstances exist which would cause Company Bank: (i) to be deemed not to be in satisfactory compliance with the Community Reinvestment Act and its implementing regulations, or to be assigned a rating for Community Reinvestment Act purposes by federal or state bank regulators of lower than satisfactory; or (ii) to be deemed to be operating in violation of the Bank Secrecy Act and its implementing regulations (31 C.F.R. Part 103), the USA PATRIOT Act, any order issued with respect to anti-money laundering by the U.S. Department of the Treasury's Office of Foreign Assets Control, or any other applicable anti-money laundering statute, rule, or regulation; or (iii) to be deemed not to be in satisfactory compliance with the applicable privacy of customer information requirements contained in any federal and state privacy Laws, including, without limitation, in Title V of the Gramm-Leach-Bliley Act of 1999 and its implementing regulations, as well as the



provisions of the information security program adopted by Company Bank pursuant to 12 C.F.R. Part 364. Furthermore, the board of directors of

A-24

---

**Table of Contents**

Company Bank has adopted and Company Bank has implemented an anti-money laundering program that contains adequate and appropriate customer identification verification procedures that has not been deemed ineffective by any Governmental Authority and that meets the requirements of Sections 352 and 326 of the USA PATRIOT Act.

Section 3.29 Transactions with Affiliates. Except as set forth in Company Disclosure Schedule 3.29, there are no outstanding amounts payable to or receivable from, or advances by Company or any of its Subsidiaries to, and neither Company nor any of its Subsidiaries is otherwise a creditor or debtor to, any director, Executive Officer, five percent or greater shareholder or other Affiliate of Company or any of its Subsidiaries, or to the Knowledge of Company, any person, corporation or enterprise controlling, controlled by or under common control with any of the foregoing, other than part of the normal and customary terms of such persons' employment or service as a director with Company or any of its Subsidiaries and other than deposits held by Company Bank in the ordinary course of business. Except as set forth in Company Disclosure Schedule 3.29, neither Company nor any of its Subsidiaries is a party to any transaction or agreement with any of its respective directors, Executive Officers, or other Affiliates other than deposit accounts of such individuals at Company Bank. All agreements between Company and any of its Affiliates comply, to the extent applicable, with Regulation W of the FRB.

Section 3.30 Tangible Properties and Assets.

(a) Company Disclosure Schedule 3.30 sets forth a true, correct, and complete list of all real property owned by Company and each of its Subsidiaries. Except as set forth in Company Disclosure Schedule 3.30, and except for properties and assets disposed of in the ordinary course of business or as permitted by this Agreement, Company or its Subsidiary has good, valid, and marketable title to, valid leasehold interests in or otherwise legally enforceable rights to use all of the real property, personal property, and other assets (tangible or intangible), used, occupied, and operated or held for use by it in connection with its business as presently conducted in each case, free and clear of any Lien, except for (i) statutory Liens for amounts not yet delinquent and (ii) Liens incurred in the ordinary course of business or imperfections of title, easements, and encumbrances, if any, that, individually and in the aggregate, are not material in character, amount or extent, and do not materially detract from the value and do not materially interfere with the present use, occupancy, or operation of any material asset.

(b) Company Disclosure Schedule 3.30 sets forth a true, correct, and complete schedule of all leases, subleases, licenses and other agreements under which Company uses or occupies or has the right to use or occupy, now or in the future, real property (the "Leases"). Each of the Leases is valid, binding, and in full force and effect and neither Company nor any of its Subsidiaries has received a written notice of, and otherwise has no Knowledge of any, default or termination with respect to any Lease. There has not occurred any event and no condition exists that would constitute a termination event or a material breach by Company or any of its Subsidiaries of, or material default by Company or any of its Subsidiaries in, the performance of any covenant, agreement, or condition contained in any Lease, and to Company's Knowledge, no lessor under a Lease is in material breach or default in the performance of any material covenant, agreement, or condition contained in such Lease. Except as set forth on Company Disclosure Schedule 3.30, there is no pending or, to Company's Knowledge, threatened legal, administrative, arbitral or other proceeding, claim, action, or governmental or regulatory investigation of any nature with respect to the real property that Company or any of its Subsidiaries uses or occupies or has the right to use or occupy, now or in the future, including without limitation a pending or threatened taking of any real property by eminent domain. Company and each of its Subsidiaries has paid all rents and other charges to the extent due under the Leases.

Section 3.31 Intellectual Property. Company Disclosure Schedule 3.31 sets forth a true, complete and correct list of all Company Intellectual Property. Company or its Subsidiaries owns or has a valid license to use all Company Intellectual Property, free and clear of all Liens, royalty, or other payment obligations (except for royalties or payments with respect to off-the-shelf Software at standard commercial rates). The Company



## Table of Contents

Intellectual Property constitutes all of the Intellectual Property necessary to carry on the business of Company as currently conducted. The Company Intellectual Property owned by Company, and to the Knowledge of Company, all other Company Intellectual Property, is valid and enforceable and has not been cancelled, forfeited, expired, or abandoned, and neither Company nor any of its Subsidiaries has received notice challenging the validity or enforceability of Company Intellectual Property. To the Knowledge of Company, the conduct of the business of Company or any of its Subsidiaries does not violate, misappropriate, or infringe upon the intellectual property rights of any third party. The consummation of the transactions contemplated by this Agreement will not result in the loss or impairment of the right of Company or any of its Subsidiaries to own or use any of Company Intellectual Property.

### Section 3.32 Insurance.

(a) Company Disclosure Schedule 3.32 identifies all of the material insurance policies, binders, or bonds currently maintained by Company and its Subsidiaries, other than credit-life policies (the Insurance Policies ), including the insurer, policy numbers, amount of coverage, effective and termination dates and any pending claims involving more than \$25,000. Company and each of its Subsidiaries is insured with reputable insurers against such risks and in amounts as the management of Company reasonably has determined to be prudent in accordance with industry practices. All the Insurance Policies are in full force and effect, and neither Company nor any of its Subsidiaries is in material default of them and all claims under the Insurance Policies have been filed in a timely fashion.

(b) Company Disclosure Schedule 3.32 sets forth a true, correct and complete description of all bank owned life insurance ( BOLI ) owned by Company or its Subsidiaries, including the value of BOLI as of the end of the month prior to the date of this Agreement. The value of such BOLI is and has been fairly and accurately reflected in the Company Balance Sheet in accordance with GAAP.

Section 3.33 Anti-Takeover Provisions. The board of directors of the Company has taken all necessary and appropriate action to render Chapters 110D and 110F of the MBCA inapplicable to this Agreement, the Merger, and the other transactions contemplated by this Agreement.

Section 3.34 Fairness Opinion. The board of directors of Company has received the written opinion of FIG Partners, LLC to the effect that as of the date of this Agreement the Merger Consideration is fair to the holders of Company Common Stock from a financial point of view.

Section 3.35 Proxy Statement-Prospectus. As of the date of the Proxy Statement- Prospectus and the date of the Company Meeting to which such Proxy Statement-Prospectus relates, none of the information supplied or to be supplied by Company for inclusion or incorporation by reference in the Proxy Statement-Prospectus will contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained in the Proxy Statement-Prospectus, in light of the circumstances under which they were made, not misleading; provided, however, that information as of a later date shall be deemed to modify information as of an earlier date.

Section 3.36 Transaction Costs. Company Disclosure Schedule 3.36 sets forth attorneys fees, investment banking fees, accounting fees and other costs or fees that Company and its Subsidiaries have accrued through September 30, 2016, and to Company s Knowledge as of the most reasonable practicable date, a good faith estimate of the attorneys fees, investment banking fees, and accounting fees that Company and its Subsidiaries expect to pay to retained representatives in connection with the transactions contemplated by this Agreement. All accounting and attorney fees will be billed at no more than current standard hourly rates.

Section 3.37 Disclosure. The representations and warranties contained in this Article III, when considered as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the

statements and information contained in this Article III not misleading.

A-26

---

**Table of Contents**

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF BUYER**

Section 4.01 Making of Representations and Warranties.

(a) On or prior to the date of this Agreement, Buyer has delivered to Company a schedule (the Buyer Disclosure Schedule ) setting forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement of this Agreement or as an exception to one or more representations or warranties contained in this Article IV or to one or more of its covenants contained in Article V; provided, however, that the mere inclusion of an item in the Buyer Disclosure Schedule as an exception to a representation or warranty shall not be deemed an admission by a party that such item represents an exception or fact, event, or circumstance or that, absent such inclusion in the Buyer Disclosure Schedule, it is or would be reasonably likely to result in a Material Adverse Effect with respect to Buyer.

(b) Except as set forth in the Buyer Disclosure Schedule, Buyer and Buyer Bank represent and warrant, jointly and severally, to Company that the statements contained in this Article IV are correct as of the date of this Agreement and will be correct as of the Closing Date (as though made on and as of the Closing Date), except as to any representation or warranty which specifically relates to an earlier date, which only need be correct as of the earlier date. No representation or warranty of Buyer contained in this Article IV shall be deemed untrue or incorrect, and Buyer shall not be deemed to have breached a representation or warranty, as a consequence of the existence of any fact, circumstance, or event unless such fact, circumstance or event, individually or taken together with all other facts, circumstances, or events inconsistent with any section of this Article IV, has had or would reasonably be expected to have a Material Adverse Effect with respect to Buyer, disregarding for the purposes of this Section 4.01(b) any materiality or Material Adverse Effect qualification contained in any representation or warranty; provided, however, that the foregoing standard shall not apply to the representations and warranties contained in Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.10 and 4.12, which shall be deemed untrue, incorrect, and breached if they are not true and correct in all material respects.

Section 4.02 Organization, Standing and Authority. Buyer is a Massachusetts corporation duly organized, validly existing, and in good standing under the Laws of the Commonwealth of Massachusetts, and is duly registered as a bank holding company under the BHC Act. Buyer has full corporate power and authority to carry on its business as now conducted. Buyer is duly licensed or qualified to do business in the Commonwealth of Massachusetts and each other foreign jurisdiction where its ownership or leasing of property or the conduct of its business requires such qualification, except for those jurisdictions where failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Buyer Bank is a Massachusetts-chartered bank and trust company duly organized, validly existing and in good standing under the Laws of the Commonwealth of Massachusetts. Buyer Bank's deposits are insured by the FDIC in the manner and to the full extent provided by applicable Law, and all premiums and FDIC assessments required to be paid have been paid by Buyer Bank when due. Buyer Bank is a member in good standing of the FHLB.

Section 4.03 Capital Stock. As of September 30, 2016, the authorized capital stock of Buyer consists solely of (a) 1,000,000 shares of preferred stock, \$0.01 par value per share, of which no shares are outstanding and (b) 75,000,000 shares of Buyer Common Stock, of which (i) 26,364,381 shares are outstanding as of the date of this Agreement (including 54,494 shares in the form of unvested performance based restricted stock awards without dividend or voting rights), (ii) no shares are held by Buyer Subsidiaries and (iii) 117,150 shares are reserved for future issuance pursuant to outstanding options granted under the Buyer Benefit Plans. The outstanding shares of Buyer Common Stock have been duly authorized and validly issued and are fully paid and non-assessable. All of the outstanding

shares of capital stock of each of Buyer's Subsidiaries are duly authorized, validly issued, fully paid, and nonassessable and not subject to preemptive rights, and all such shares are owned by Buyer or another Subsidiary of Buyer free and clear of all security interests, liens, claims, pledges, taking actions, agreements, limitations in Buyer's voting rights, charges or other encumbrances of any nature

A-27

**Table of Contents**

whatsoever. There are no options, warrants, or other similar rights, convertible or exchangeable securities, phantom stock rights, stock appreciation rights, stock based performance units, agreements, arrangements, commitments or understandings to which Buyer is a party, whether or not in writing, of any character relating to the issued or unissued capital stock or other securities of Buyer or any of Buyer's Subsidiaries or obligating Buyer or any of Buyer's Subsidiaries to issue (whether upon conversion, exchange, or otherwise) or sell any share of capital stock of, or other equity interests in or other securities of, Buyer or any of Buyer's Subsidiaries, except for (i) shares of Buyer Common Stock issuable pursuant to the Buyer Benefits Plans and (ii) by virtue of this Agreement. The shares of Buyer Common Stock to be issued pursuant to this Agreement, when issued in accordance with the terms of this Agreement, will be duly authorized, validly issued, fully paid, and nonassessable and will not be subject to preemptive rights.

Section 4.04 Corporate Power; Minute Books. Buyer and Buyer Bank have the corporate power and authority to carry on their business as it is now being conducted and to own all their properties and assets; and Buyer and Buyer Bank have the corporate power and authority to execute, deliver, and perform their obligations under this Agreement and to consummate the transactions contemplated by this Agreement, subject to receipt of all necessary approvals of Governmental Authorities and Buyer of the Plan of Bank Merger. Buyer has made available to the Company complete and correct copies of the minutes (or, in the case of draft minutes, the most recent drafts) of all meetings of the board of directors held since January 1, 2015, with any discussions of regulatory examination redacted. The minute books of Buyer and each of its Subsidiaries contain true, complete, and accurate records of all corporate actions taken by shareholders of Buyer and each of its Subsidiaries and the board of the directors of Buyer (including committees of Buyer's board of directors) and each of its Subsidiaries.

Section 4.05 Corporate Authority. This Agreement and the transactions contemplated by this Agreement have been authorized by all necessary corporate action of Buyer and Buyer Bank on or prior to the date of this Agreement. No vote of the shareholders of Buyer is required by Law, the Articles of Organization of Buyer, the Bylaws of Buyer or otherwise to approve this Agreement and the transactions it contemplates. Buyer and Buyer Bank each has duly executed and delivered this Agreement and, assuming due authorization, execution, and delivery by Company and Company Bank, this Agreement is a valid and legally binding obligation of Buyer and Buyer Bank, enforceable in accordance with its terms (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer, and similar Laws of general applicability relating to or affecting creditors' rights or by general equity principles).

Section 4.06 SEC Documents; Other Reports; Internal Controls.

(a) Buyer has filed all required reports, forms, schedules, registration statements and other documents with the SEC since December 31, 2012 (the Buyer Reports) and has paid all associated fees and assessments due and payable. As of their respective dates of filing with the SEC (or, if amended or superseded by a subsequent filing, as of the date of that subsequent filing), the Buyer Reports complied as to form in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations of the SEC applicable to such Buyer Reports, and none of the Buyer Reports when filed with the SEC, and if amended, as of the date of the amendment, contained any untrue statement of a material fact or omitted to state a material fact required to be stated or necessary to make the statements, in light of the circumstances under which they were made, not misleading. There are no outstanding comments from or unresolved issues raised by the SEC, as applicable, with respect to any of the Buyer Reports. None of Buyer's Subsidiaries is required to file periodic reports with the SEC pursuant to Section 13 or 15(d) of the Exchange Act.

(b) Buyer and each of its Subsidiaries have timely filed all reports, schedules, forms, registrations, statements and other documents, together with any amendments required to be made with respect thereto, that they were required to file since December 31, 2012 with any Governmental Authority (other than Buyer Reports) and have paid all fees and



assessments due and payable. Except for normal examinations conducted by a Governmental Authority in the regular course of the business of Buyer and its Subsidiaries, no Governmental

A-28

**Table of Contents**

Authority has notified Buyer that it has initiated any proceeding or, to the Knowledge of Buyer, threatened an investigation into the business or operations of Buyer or any of its Subsidiaries since December 31, 2012, which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Buyer. There is no material unresolved violation or exception by any Governmental Authority with respect to any report, form, schedule, registration, statement or other document filed by, or relating to any examinations by any such Governmental Authority of, Buyer or any of its Subsidiaries.

(c) Buyer has disclosed, based on its most recent evaluation prior to the date of this Agreement, to Buyer's auditors and the audit committee of Buyer's board of directors and has listed in the Buyer Disclosure Schedule 4.06(c) (i) any significant deficiencies or material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect in any material respect Buyer's ability to record, process, summarize, and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in Buyer's internal controls over financial reporting.

(d) The records, systems, controls, data and information of Buyer and its Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical, or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of Buyer or its Subsidiaries or accountants (including all means of access to and from), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a Material Adverse Effect on the system of internal accounting controls described in the following sentence. Buyer and its Subsidiaries have devised and maintain a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP.

(e) Buyer has designed, implemented, and maintained disclosure controls and procedures (within the meaning of Rules 13a-15(e) and 15d-15(e) of the Exchange Act) to ensure that material information relating to Buyer and its Subsidiaries is made known to the management of Buyer by others within those entities as appropriate to allow timely decisions regarding required disclosure and to make the certifications required by the Exchange Act with respect to the Buyer Reports.

(f) Since December 31, 2012, (x) neither Buyer nor any of its Subsidiaries nor, to the Knowledge of Buyer, any director, officer, employee, auditor, accountant, or representative of Buyer or any of its Subsidiaries has received or otherwise had or obtained Knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies, or methods of Buyer or any of its Subsidiaries or their respective internal accounting controls, including any material complaint, allegation, assertion, or claim that Buyer or any of its Subsidiaries has engaged in questionable accounting or auditing practices, and (y) no attorney representing Buyer or any of its Subsidiaries, whether or not employed by Buyer or any of its Subsidiaries, has reported evidence of a material violation of securities Laws, breach of fiduciary duty, or similar violation by Buyer or any of its officers, directors, employees, or agents to the board of directors of Buyer or any board committee or to any director or officer of Buyer.

Section 4.07 Financial Statements; Undisclosed Liabilities.

(a) The financial statements of Buyer (including any related notes and schedules) included in the Buyer Reports complied as to form, as of their respective dates of filing with the SEC (or, if amended or superseded by a subsequent filing, as of the date of such subsequent filing), in all material respects, with all applicable accounting requirements and with the published rules and regulations of the SEC (except, in the case of unaudited statements, as permitted by the rules of the SEC), have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be otherwise disclosed), and fairly present, in all material respects, the consolidated financial

position of Buyer and its Subsidiaries and the consolidated results of operations, changes in shareholders' equity and cash flows as of the dates and for the periods shown. The books and records of Buyer and its Subsidiaries have been, and are being, maintained in all

A-29

---

**Table of Contents**

material respects in accordance with GAAP and any other applicable legal and accounting requirements and reflect only actual transactions.

(b) Except for (i) those liabilities that are fully reflected or reserved for in the consolidated financial statements of Buyer included in its Annual Report filed on Form 10-K for the fiscal year ended December 31, 2015, as filed with the SEC, (ii) liabilities or obligations incurred in the ordinary course of business since December 31, 2015 in amounts consistent with past practice (including such liabilities contained in the Buyer Reports); (iii) liabilities that have been discharged or paid in full before the Effective Date; or (iv) liabilities or obligations incurred directly as a result of this Agreement, neither Buyer nor any of its Subsidiaries has incurred any liability of any nature whatsoever (whether absolute, accrued or contingent or otherwise and whether due or to become due), and there is no existing condition, situation or set of circumstances that would reasonably be expected to result in such a liability that, either alone or when combined with all other liabilities of a type not described in clause (i) or (ii), has had, or would be reasonably expected to have, a Material Adverse Effect on Buyer.

**Section 4.08 Regulatory Approvals; No Defaults.**

(a) No consents or approvals of, or waivers by, or filings or registrations with, any Governmental Authority or with any third party are required to be made or obtained by Buyer or any of its Subsidiaries or Affiliates in connection with the execution, delivery or performance by Buyer of this Agreement, or to consummate the transactions contemplated by this Agreement, except for (i) as applicable, filings of, applications or notices with, and consents, approvals or waivers by, or the making of satisfactory arrangements with, the FRB, the FDIC, the Massachusetts Housing Partnership Fund, the Massachusetts Commissioner of Banks; (ii) the approval of the Bank Merger and the Plan of Bank Merger by Buyer, as sole shareholder of Buyer Bank, (iii) the filing and effectiveness of the Registration Statement with the SEC; (iv) the approval of the listing on The Nasdaq Global Select Market ( Nasdaq ) of the Buyer Common Stock to be issued in the Merger and (v) the filing of the Articles of Merger with the Secretary of the Commonwealth of Massachusetts. As of the date of this Agreement, Buyer is not aware of any reason why the approvals set forth above and referred to in Section 6.01(b) will not be received in a timely manner or will include a Burdensome Condition as defined in Section 5.06.

(b) Subject to receipt, or the making, of the consents, approvals, waivers and filings referred to in the immediately preceding paragraph and expiration of the related waiting periods, the execution, delivery, and performance of this Agreement by Buyer and Buyer Bank, as applicable, and the consummation of the transactions contemplated by this Agreement do not and will not (i) constitute a breach or violation of, or a default under, the articles of organization or bylaws (or similar governing documents) of Buyer or any of its Subsidiaries or Affiliates, (ii) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Buyer or any of its Subsidiaries, or any of their respective properties or assets or (iii) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of Buyer or any of its Subsidiaries or Affiliates under, any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, contract, agreement or other instrument or obligation to which Buyer or any of its Subsidiaries or Affiliates is a party, or by which they or any of their respective properties or assets may be bound or affected.

**Section 4.09 Agreements with Regulatory Agencies.** Neither Buyer nor any of its Subsidiaries is subject to any cease-and-desist or other order issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is a recipient of any extraordinary supervisory letter from, or is subject to any order or directive by, or has adopted any board resolutions at

the request of (each, whether or not set forth in the Buyer Disclosure Schedule 4.09, Buyer Regulatory Agreement ), any Governmental Authority that restricts, or by its terms in the future will restrict, the conduct of its business or that in any manner relates to its capital adequacy, its credit or risk

A-30

## Table of Contents

management policies, its dividend policy, its management, its business or its operations, nor has Buyer or any of its Subsidiaries been advised by any Governmental Authority that it is considering issuing or requesting (or is considering the appropriateness of issuing or requesting) any Buyer Regulatory Agreement. To the Knowledge of Buyer, there are no investigations relating to any material regulatory matters pending before any Governmental Authority with respect to Buyer or any of its Subsidiaries.

Section 4.10 Absence of Certain Changes or Events. Except as reflected in Buyer's audited balance sheet as of December 31, 2015 or in the Buyer Reports filed prior to the date of this Agreement, since December 31, 2015, there has been no change or development or combination of changes or developments which, individually or in the aggregate, has had or is reasonably likely to have a Material Adverse Effect with respect to Buyer or its Subsidiaries, and to the Knowledge of Buyer, no fact or condition exists which is reasonably likely to cause a Material Adverse Effect with respect to Buyer or Buyer Bank in the future.

### Section 4.11 Compliance with Laws.

(a) Buyer and each of its Subsidiaries is and since December 31, 2012 has been in compliance with all applicable federal, state, local, and foreign statutes, Laws, judgments, orders or decrees applicable to it and its employees conducting such businesses, including, without limitation, any applicable Law, including without limitation, all Laws related to data protection or privacy, the USA PATRIOT Act, the Bank Secrecy Act, the Equal Credit Opportunity Act, the Fair Housing Act, the Community Reinvestment Act, the Fair Credit Reporting Act, the Truth in Lending Act and any other Law relating to discriminatory lending, financing or leasing practices, Sections 23A and 23B of the Federal Reserve Act, the Sarbanes-Oxley Act and the Dodd-Frank Act.

(b) Buyer and each of its Subsidiaries has all material permits, licenses, authorizations, orders, and approvals of, and have made all filings, applications and registrations with, all Governmental Authorities that are required in order to permit it to own or lease their properties and to conduct their business as presently conducted; all such permits, licenses, certificates of authority, orders, and approvals are in full force and effect and, to Buyer's Knowledge, no suspension or cancellation of any of them is threatened.

(c) Other than as set forth in Buyer Disclosure Schedule 4.11, neither Buyer nor any of its Subsidiaries has received, since December 31, 2012, notification or communication from any Governmental Authority (i) asserting that it is not in compliance with any of the statutes, regulations, or ordinances which such Governmental Authority enforces or (ii) threatening to revoke any license, franchise, permit, or governmental authorization (nor, to Buyer's Knowledge, do any grounds for any of the foregoing exist).

Section 4.12 Proxy Statement-Prospectus Information; Registration Statement. As of the date of the Proxy Statement-Prospectus and the date of the Company Meeting to which such Proxy Statement-Prospectus relates, none of the information supplied or to be supplied by Buyer for inclusion or incorporation by reference in the Proxy Statement-Prospectus and the registration statement on Form S-4 (the "Registration Statement") will contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; provided, however, that that information as of a later date shall be deemed to modify information as of an earlier date.

### Section 4.13 Legal Proceedings.

(a) Other than as set forth in Buyer Disclosure Schedule 4.13, there are no civil, criminal, administrative or regulatory actions, suits, demand letters, demands for indemnification, claims, hearings, notices of violation, arbitrations, investigations, orders to show cause, market conduct examinations, notices of non-compliance or other proceedings of

any nature pending or, to Buyer's Knowledge, threatened against Buyer or any of its Subsidiaries.

A-31

**Table of Contents**

(b) Neither Buyer nor any of its Subsidiaries is a party to any, nor are there any pending or, to Buyer's Knowledge, threatened, civil, criminal, administrative or regulatory actions, suits, demand letters, claims, hearings, notices of violation, arbitrations, investigations, orders to show cause, market conduct examinations, notices of non-compliance or other proceedings of any nature against Buyer or any of its Subsidiaries in which, to Buyer's Knowledge, there is a reasonable probability of any material recovery against or other Material Adverse Effect with respect to Buyer or which challenges the validity or propriety of the transactions contemplated by this Agreement.

Section 4.14 Brokers. None of Buyer, Buyer Bank, or any of their officers or trustees has employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with any of the transactions contemplated by this Agreement.

Section 4.15 Employee Benefit Plans.

(a) All material benefit and compensation plans, contracts, policies or arrangements covering current or former employees of Buyer or any of its Subsidiaries and current or former directors of Buyer or any of its Subsidiaries including, but not limited to, employee benefit plans within the meaning of Section 3(3) of ERISA, and deferred compensation, stock option, stock purchase, stock appreciation rights, stock based, incentive and bonus plans (the Buyer Benefit Plans), including, but not limited to, any trust instruments and insurance contracts forming a part of any Buyer Benefit Plans and all amendments to them, have been made available to Company.

(b) All Buyer Benefit Plans are in substantial compliance in form and operation with all applicable Laws, including ERISA and the Code.

Section 4.16 Labor Matters. Neither Buyer nor any of its Subsidiaries is a party to or bound by any collective bargaining agreement, contract, or other agreement or understanding with a labor union or labor organization, nor is there any proceeding pending or, to Buyer's Knowledge threatened, asserting that Buyer or any of its Subsidiaries has committed an unfair labor practice (within the meaning of the National Labor Relations Act, as amended) or seeking to compel Buyer or any of its Subsidiaries to bargain with any labor organization as to wages or conditions of employment, nor is there any strike or other labor dispute involving it pending or, to Buyer's Knowledge, threatened, nor is Buyer aware of any activity involving its employees seeking to certify a collective bargaining unit or engaging in other organizational activity.

Section 4.17 Tax Matters.

(a) Buyer and each of its Subsidiaries have filed all income, franchise, and other material Tax Returns that they were required to file under applicable Laws prior to the Effective Time, other than Tax Returns that are not yet due or for which a request for extension was filed consistent with requirements of applicable Laws. All such Tax Returns were correct and complete in all material respects and were prepared in substantial compliance with all applicable Laws. All Taxes due and owing by Buyer or any of its Subsidiaries (whether or not shown on any Tax Return) have been paid other than any such Taxes that have been reserved or accrued on the balance sheet of Buyer or which Buyer is contesting in good faith. No written claim has ever been made by an authority in a jurisdiction where Buyer or any Subsidiary does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Liens for Taxes (other than statutory liens for Taxes not yet due and payable, or Taxes that are being contested in good faith and for which adequate provision has been made on the balance sheet of Buyer or a Subsidiary of the Buyer) upon any of the assets of Buyer or any of its Subsidiaries.

(b) Buyer has withheld and paid all material Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, shareholder, or other third party.





**Table of Contents**

(c) No foreign, federal, state, or local tax audits or administrative or judicial Tax proceedings are being conducted or to the Knowledge of Buyer are pending with respect to Buyer or any Subsidiary. Other than with respect to audits that have already been completed and resolved, neither Buyer nor any of its Subsidiaries has received from any foreign, federal, state, or local taxing authority (including jurisdictions where Buyer or its Subsidiaries has not filed Tax Returns) any (i) notice indicating an intent to open an audit or other review, (ii) request for information related to Tax matters, or (iii) written notice of deficiency or proposed adjustment for any material amount of Tax proposed, asserted, or assessed by any taxing authority against Buyer or any of its Subsidiaries.

(d) The unpaid Taxes of Buyer (i) did not, as of the end of the most recent period covered by the Buyer Reports filed on or prior to the date of this Agreement, materially exceed the reserve for Tax liability (which reserve is distinct and different from any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the financial statements included in the Buyer Reports filed on or prior to the date of this Agreement (rather than in any notes), and (ii) do not exceed that reserve as adjusted for the passage of time through the Effective Time in accordance with the past practice of Buyer in filing its Tax Returns. Since the end of the most recent period covered by the Buyer Reports filed prior to the date of this Agreement, Buyer has not incurred any liability for Taxes arising from extraordinary gains or losses, as that term is used in GAAP, outside the ordinary course of business consistent with past practice.

(e) Buyer has not taken or agreed to take any action and has no knowledge of any fact, agreement, plan or other circumstance that is reasonably likely to prevent or impede the Merger and Bank Merger from qualifying as a reorganization under Section 368(a) of the Code.

Section 4.18 Loans: Nonperforming and Classified Assets.

(a) Except as set forth in Buyer Disclosure Schedule 4.18, as of the date of this Agreement, neither Buyer nor any of its Subsidiaries is a party to (i) any Loans under the terms of which the obligor was, as of September 30, 2016, over sixty (60) days delinquent in payment of principal or interest or in default of any other material provision, or (ii) Loan with any director, Executive Officer or five percent or greater shareholder of Buyer or any of its Subsidiaries, or to the Knowledge of Buyer, any person, corporation or enterprise controlling, controlled by, or under common control with any of the foregoing. Buyer Disclosure Schedule 4.18 identifies (x) each Loan that as of September 30, 2016 was classified as Special Mention, Substandard, Doubtful, Loss, Classified, Criticized, Credit Risk Assets, C Loans, Watch List or words of similar import by Buyer, Buyer Bank, or any bank examiner, together with the principal amount of and accrued and unpaid interest on each such Loan and the identity of the borrower, and (y) each asset of Buyer that as of September 30, 2016 was classified as OREO and its book value as of the date of this Agreement.

(b) Each Loan held in Buyer Bank's loan portfolio (i) is evidenced by notes, agreements or other evidences of indebtedness that are true, genuine, and what they purport to be, (ii) to the extent secured, has been secured by valid Liens which have been perfected and (iii) to the Knowledge of Buyer, is a legal, valid, and binding obligation of the obligor named, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent conveyance, and other Laws of general applicability relating to or affecting creditors' rights and to general equity principles.

Section 4.19 CRA and Anti-Money Laundering. Neither Buyer nor any of its Subsidiaries is a party to any agreement with any individual or group regarding Community Reinvestment Act matters and Buyer is not aware of, and none of Buyer and its Subsidiaries has been advised of, or has any reason to believe (because of the Buyer Bank's Home Mortgage Disclosure Act data for the year ended December 31, 2015, filed with the FDIC, or otherwise) that any facts or circumstances exist which would cause Buyer Bank: (i) to be deemed not to be in satisfactory compliance with the Community Reinvestment Act, and its implementing regulations, or to be assigned a rating for Community

Reinvestment Act purposes by federal or state bank regulators of lower than satisfactory; (ii) to be deemed to be operating in violation of the Bank Secrecy Act and its implementing

A-33

**Table of Contents**

regulations (31 C.F.R. Part 103), the USA PATRIOT Act, any order issued with respect to anti-money laundering by the U.S. Department of Treasury's Office of Foreign Assets Control, or any other applicable anti-money laundering statute, rule, or regulation; or (iii) to be deemed not to be in satisfactory compliance with the applicable privacy of customer information requirements contained in any federal and state privacy Laws, including, without limitation, in Title V of the Gramm-Leach-Bliley Act of 1999 and its implementing regulations, as well as the provisions of the information security program adopted by Buyer Bank pursuant to 12 C.F.R. Part 364. Furthermore, the board of directors of Buyer Bank has adopted and Buyer Bank has implemented an anti-money laundering program that contains adequate and appropriate customer identification verification procedures that has not been deemed ineffective by any Governmental Authority and that meets the requirements of Sections 352 and 326 of the USA PATRIOT Act.

Section 4.20 Regulatory Capitalization. Buyer Bank is well-capitalized, as such term is defined in the rules and regulations promulgated by the FDIC. Buyer is well-capitalized, as such term is defined in the rules and regulations promulgated by the FRB.

Section 4.21 Environmental Matters. To Buyer's Knowledge, no real property (including buildings or other structures) currently owned or operated by Buyer or any of its Subsidiaries or any predecessor, or any property in which Buyer or any of its Subsidiaries holds a security interest, Lien or a fiduciary or management role, has had any presence or Release of any Hazardous Substance in that would create a material liability to Buyer or its Subsidiaries caused by a violation of Environmental Law.

Section 4.22 Administration of Trust and Fiduciary Accounts. Buyer has administered all accounts for which it acts as a fiduciary or agent, including but not limited to accounts for which it serves as a trustee, agent, custodian, personal representative, guardian, conservator or investment advisor, in accordance with the terms of the governing documents and applicable state and federal law and regulation and common law in all material respects, and Buyer has not received any written customer demands, complaints, or other communications that are unresolved and which assert facts or circumstances that would, if true, constitute a breach of trust with respect to any fiduciary or agency account.

Section 4.23 Disclosure. The representations and warranties contained in this Article IV, when considered as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements and information contained in this Article IV not misleading.

**ARTICLE V**

**COVENANTS**

Section 5.01 Covenants of Company. During the period from the date of this Agreement and continuing until the Effective Time, except as expressly contemplated or permitted by this Agreement or with the prior written consent of Buyer, Company shall carry on its business in the ordinary course consistent with past practice and consistent with prudent banking practice and in compliance in all material respects with all applicable Laws. Company will use commercially reasonable efforts to (i) preserve its business organization intact, (ii) keep available to itself and Buyer the present services of the current officers and employees of Company and its Subsidiaries and (iii) preserve for itself and Buyer the goodwill of the customers of Company and others with whom business relationships exist. Without limiting the generality of the foregoing, and except as set forth in the Company Disclosure Schedule or as otherwise expressly contemplated or permitted by this Agreement or consented to in writing (which may include electronic mail) by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed, except in the case of subsections (b), (i), (o), (p), (q), (r), and portions of (s), which may be withheld by Buyer for any reason in its sole discretion) neither Company nor any of its Subsidiaries shall:

(a) Stock. (i) Issue, sell or otherwise permit to become outstanding, or authorize the creation of, any additional shares of its stock, any Rights, or any securities (including units of beneficial ownership interest in any

A-34

---

**Table of Contents**

partnership or limited liability company), (ii) enter into any agreement with respect to the foregoing, (iii) accelerate the vesting of any existing Rights, or (iv) change (or establish a record date for changing) the number of, or provide for the exchange of, shares of its stock, any securities (including units of beneficial ownership interest in any partnership or limited liability company) convertible into or exchangeable for any additional shares of stock, any Rights issued and outstanding prior to the Effective Time as a result of a stock split, stock dividend, recapitalization, reclassification, or similar transaction with respect to its outstanding stock or any other such securities.

(b) **Dividends; Other Distributions.** Except for the payment of a \$0.50 quarterly dividend on its common stock in accordance with recent past practice, declare, set aside or pay any dividends on or make other distributions (whether in cash or otherwise) in respect of any of its capital stock, except dividends by Subsidiaries of Company to such Subsidiary's parent or another Subsidiary of Company.

(c) **Compensation; Employment Agreements, Etc.** Enter into or amend or renew any employment, consulting, severance or similar agreements or arrangements with any director, officer, or employee of Company or any of its Subsidiaries, or grant any salary or wage increase or increase any employee benefit or pay any incentive, commission or bonus payments, or grant any equity compensation except (i) normal increases in base compensation to employees, including officers, in the ordinary course of business consistent with past practice and pursuant to written policies currently in effect, provided that such increases shall not result in an annual adjustment in total annual cash compensation of more than 3% for any individual or 3% in the aggregate for all employees of Company other than as disclosed on Company Disclosure Schedule 5.01(c), (ii) as may be required by Law, (iii) to satisfy written contractual obligations existing as of the date of this Agreement and disclosed on Company Disclosure Schedule 5.01(c), if any, (iv) bonus, commission and incentive compensation payments in the ordinary course of business consistent with past practices and, if applicable, pursuant to written policies currently in effect, *provided that* such payments shall not exceed the aggregate amount set forth on Company Disclosure Schedule 5.01(c). Notwithstanding anything to the contrary contained in this Section 5.01(c), no compensation of any type shall be paid or granted to any disqualified individual for whom such payment would be an excess parachute payment as defined in Section 280G of the Code.

(d) **Hiring; Promotions.** (i) Hire any person as an employee of Company or any of its Subsidiaries, except for at-will employees at an annual rate of salary not to exceed \$50,000 to fill vacancies that may arise from time to time in the ordinary course of business, or (ii) promote any employee, except to fill vacancies that may arise in the ordinary course of business or to satisfy contractual obligations existing as of the date of this Agreement and set forth on Company Disclosure Schedule 5.01(d), if any.

(e) **Benefit Plans.** Enter into, establish, adopt, amend, modify or terminate (except (i) as may be required by or to make consistent with applicable Law, subject to the provision of prior written notice to and consultation with Buyer, or (ii) to satisfy contractual obligations existing as of the date of this Agreement and set forth on Company Disclosure Schedule 5.01(e)), any Company Benefit Plan or other pension, retirement, stock option, stock purchase, savings, profit sharing, deferred compensation, consulting, bonus, group insurance or other employee benefit, incentive or welfare contract, plan or arrangement, or any related trust agreement (or similar arrangement), in respect of any current or former director, officer, or employee of Company or any of its Subsidiaries.

(f) **Transactions with Officers and Directors.** Except pursuant to agreements or arrangements in effect on the date of this Agreement and set forth on Company Disclosure Schedule 5.01(f), pay, loan or advance any amount to, or sell, transfer or lease any properties or assets (real, personal or mixed, tangible or intangible) to, or enter into any agreement or arrangement with, any of its officers or directors or any of their immediate family members or any Affiliates or associates (as such terms are defined under the Exchange Act) of any of its officers or directors other than compensation or business expense reimbursement in the ordinary course of business consistent with past practice.

A-35

**Table of Contents**

(g) Dispositions. Except for real estate owned in the ordinary course of business consistent with past practice, sell, transfer, mortgage, pledge, encumber or otherwise dispose of or discontinue any of its assets, deposits, business or properties, other real estate owned, or cancel or release any indebtedness owed to Company or any of its Subsidiaries.

(h) Acquisitions. Acquire (other than by way of foreclosures or acquisitions of control in a bona fide fiduciary capacity or in satisfaction of debts previously contracted in good faith, in each case in the ordinary and usual course of business consistent with past practice) all or any portion of the assets, business, deposits or properties of any other entity.

(i) Capital Expenditures. Make any capital expenditures other than capital expenditures in the ordinary course of business consistent with past practice and expenditures reasonably necessary to maintain existing assets in good repair, each in amounts not exceeding \$50,000 in the aggregate, unless such capital expenditure is consented to in writing by Buyer acting through its Chief Financial Officer or his designee(s).

(j) Governing Documents. Amend Company's Articles of Organization or Bylaws or any equivalent documents of Company's Subsidiaries.

(k) Accounting Methods. Implement or adopt any change in its accounting principles, practices or methods, other than as may be required by applicable Laws, GAAP or at the written direction of a Governmental Authority.

(l) Contracts. Enter into, amend, modify or terminate any Material Contract, Lease, or Insurance Policy.

(m) Claims. Enter into any settlement or similar agreement with respect to any action, suit, proceeding, order or investigation to which Company or any of its Subsidiaries is or becomes a party after the date of this Agreement, which settlement or agreement involves payment by Company or any of its Subsidiaries of an amount which exceeds \$25,000 individually or \$50,000 in the aggregate and/or would impose any material restriction on the business of Company or any of its Subsidiaries.

(n) Banking Operations. Enter into any new material line of business; change in any material respect its lending, investment, underwriting, risk and asset liability management and other banking and operating policies, except as required by applicable Law imposed by any Governmental Authority.

(o) Derivative Transactions. Enter into any Derivative Transaction unless Buyer acting through its Chief Financial Officer or his designee(s) first consents in writing.

(p) Indebtedness. Incur, modify, extend or renegotiate any indebtedness for borrowed money (other than deposits, FHLB borrowings, or federal funds purchased, in each case in the ordinary course of business consistent with past practice) or assume, guarantee, endorse or otherwise as an accommodation become responsible for the obligations of any other Person unless Buyer acting through its Chief Financial Officer or his designee(s) first consents in writing.

(q) Investment Securities. Acquire (other than (i) by way of foreclosures or acquisitions in a bona fide fiduciary capacity or (ii) in satisfaction of debts previously contracted in good faith), sell or otherwise dispose of any debt security or equity investment, unless Buyer acting through its Chief Financial Officer or his designee(s) first consents in writing.

(r) Deposits. Make any changes to deposit pricing that are not in the ordinary course of business consistent with recent past practice unless Buyer acting through its Chief Financial Officer or his designee(s) first consents in writing.



A-36

---

**Table of Contents**

(s) Loans. Except as expressly permitted below, take any actions with respect to loans. Loans or transactions already approved as of the date of this Agreement that are listed on Company Disclosure Schedule 5.01(s) are excluded from the following requirements:

- (i) **Commercial Loans:** Company Bank may make or renew any commercial loan, commercial loan commitment, commercial letter of credit, or other extension of commercial credit up to \$500,000 that is made in the ordinary course of business in a manner consistent with Company Bank's current policies and procedures and recent past practice. Company Bank may not make or renew any commercial loan, commercial loan commitment, commercial letter of credit, or other extension of commercial credit that is greater than \$500,000 unless Buyer acting through its Executive Vice President of Commercial Lending or his designee(s) first consents in writing (which consent will not be unreasonably withheld or delayed); notwithstanding the above, Buyer's consent shall be deemed given in accordance with this Section if Buyer's Executive Vice President of Commercial Lending or his designee(s) does not provide written consent or objection within five (5) Business Days from receiving Company Bank's request for consent.
- (ii) **Residential Loans:** Company Bank may make or renew any residential loan or residential loan commitment up to \$750,000 that is made in the ordinary course of business in a manner consistent with Company Bank's current policies and procedures and recent past practice so long as (A) any residential loan or residential loan commitment has a loan-to-value ratio that is in compliance with Company Bank's current policies and procedures and is priced for residential loans at an interest rate that is no less than the Freddie Mac Primary Mortgage Market Survey rate plus 0.125% and is priced for jumbo residential loans at an interest rate that is no less than the Freddie Mac Primary Mortgage Market Survey rate plus 0.375% and (B) is a qualified mortgage under applicable regulatory guidelines. Company Bank may not make or renew any residential loan or residential loan commitment greater than \$750,000 unless Buyer acting through its Chief Financial Officer or his designee(s) first consents in writing (which consent will not be unreasonably withheld or delayed); notwithstanding the above, Buyer's consent shall be deemed given in accordance with this Section if Buyer's Chief Financial Officer or his designee(s) does not provide written consent or objection within five (5) Business Days from receiving Company Bank's request for consent.
- (iii) **Home Equity Loans:** Company Bank may make or renew any home equity loan or home equity loan commitment up to \$150,000 that is made in the ordinary course of business in a manner consistent with Company Bank's current policies and procedures and recent past practice. Company Bank may not make or renew any home equity loan or home equity loan commitment greater than \$150,000 unless Buyer acting through its Chief Financial Officer or his designee(s) first consents in writing (which consent will not be unreasonably withheld or delayed); notwithstanding the above, Buyer's consent shall be deemed given in accordance with this Section if Buyer's Chief Financial Officer or his designee(s) does not provide written consent or objection within five (5) Business Days from receiving Company Bank's request for consent.
- (iv) **Loan Participations, Loan Modifications, Loan Purchases, and Other Loans:** Unless the Buyer acting through its Executive Vice President of Commercial Lending or his designee(s) consents in writing,

the Company and the Company Bank shall not: (a) sell any loan participations to, or enter into any loan participations with, any third party other than Buyer Bank; (b) renegotiate, increase, extend or modify any loan, loan commitment, letter of credit or other extension of credit; and, shall not (c) purchase loans of any type; (d) make or renew any consumer or other form of loan.

(t) Investments in Real Estate. Except as set forth on Company Disclosure Schedule 5.01(t), make any investment or commitment to invest in real estate or in any real estate development project other than by way of foreclosure or deed in lieu of foreclosure.

(u) Taxes.

A-37

**Table of Contents**

(i) Make or change any material Tax election, file any material amended Tax Return, enter into any material closing agreement, settle or compromise any material liability with respect to Taxes, agree to any material adjustment of any Tax attribute, file any claim for a material refund of Taxes, or consent to any extension or waiver of the limitation period applicable to any material Tax claim or assessment, provided, that, for purposes of this subsection (u), material shall mean affecting or relating to \$25,000 or more of taxable income.

(ii) Knowingly take any action that would prevent or impede the Merger or the Bank Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

(v) Compliance with Agreements. Commit any act or omission which constitutes a material breach or default by Company under any agreement with any Governmental Authority or under any Material Contract, Lease or other material agreement or material license to which it is a party or by which it or its properties is bound or under which it or its assets, business, or operations receives benefits.

(w) Environmental Assessments. Except for foreclosures in process as of the date of this Agreement, foreclose on or take a deed or title to any real estate other than single-family residential properties without first conducting an ASTM 1527-05 Phase I Environmental Site Assessment of the property that satisfies the requirements of the all appropriate inquiries standard of CERCLA §101(35)( Phase I Assessment ), 42 U.S.C. §9601(35) and evaluates the possibility of Hazardous Substances in indoor air and building materials, or foreclose on or take a deed or title to any real estate other than single-family residential properties if such environmental assessment indicates the presence of Hazardous Substances or other materials regulated under Environmental Laws.

(x) Adverse Actions. Take any action or fail to take, or adopt any resolutions of its board of directors in support of, any action that is intended or is reasonably likely to result in (i) any of its representations and warranties set forth in this Agreement being or becoming untrue in any material respect at any time at or prior to the Effective Time, (ii) any of the conditions to the Merger set forth in Article VI not being satisfied or (iii) a material violation of any provision of this Agreement, except, in each case, as may be required by applicable Laws or by GAAP.

(y) Capital Stock Purchase. Directly or indirectly repurchase, redeem or otherwise acquire any shares of its capital stock or any securities convertible into or exercisable for any shares of its capital stock.

(z) Commitments. Enter into any contract with respect to, or otherwise agree or commit to do, any of the foregoing.

(aa) Facilities. Except as required by Law, make application for the opening, relocation or closing of any, or open, relocate or close any, branch office, loan production or servicing facility, or automated banking facility.

(bb) Loan Workouts. Compromise, resolve, or otherwise workout any delinquent or troubled loan unless any such loan workout is done in the ordinary course of business, consistent with Company Bank's current policies and procedures and recent past practice unless Buyer acting through its Executive Vice President of Commercial Lending or his designee(s) first consents in writing (which consent will not be unreasonably withheld or delayed).

Section 5.02 Covenants of Buyer.

(a) Affirmative Covenants. From the date of this Agreement until the Effective Time, except as expressly contemplated or permitted by this Agreement, Buyer will (i) carry on its business consistent with prudent banking practices and in compliance in all material respects with all applicable Laws, and (ii) use reasonable best efforts to maintain and preserve intact its business organization, properties, leases, employees and advantageous business relationships and retain the service of its officer and key employees.

A-38

---

**Table of Contents**

(b) Negative Covenants. From the date of this Agreement until the Effective Time, except as expressly contemplated or permitted by this Agreement, without the prior written consent of Company, Buyer will not, and will cause each of its Subsidiaries not to:

(i) Adverse Actions. Take any action or fail to take any action that is intended or is reasonably likely to result in (A) a delay in the consummation of the Merger or the transactions contemplated by this Agreement, (B) any impediment to Buyer's ability to consummate the Merger or the transactions contemplated by this Agreement, (C) any of its representations and warranties set forth in this Agreement being or becoming untrue in any material respect at any time at or prior to the Effective Time, (D) any of the conditions to the Merger set forth in Article VI not being satisfied, or (E) a material violation of any provision of this Agreement except, in each case, as may be required by applicable Law or regulation,

(ii) Tax Free Reorganization. Knowingly take any action that would prevent or impede the Merger or the Bank Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code, or

(iii) Commitments. Enter into any contract with respect to, or otherwise agree or commit to do, any of the foregoing.

(c) Delivery of Merger Consideration. Buyer will deposit the Merger Consideration with the Exchange Agent at least one (1) Business Day prior to the Closing Date.

Section 5.03 Commercially Reasonable Effort. Subject to the terms and conditions of this Agreement, each of the parties agrees to use commercially reasonable efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws, so as to permit consummation of the transactions contemplated by this Agreement as promptly as practicable, including the satisfaction of the conditions set forth in Article VI of this Agreement, and shall cooperate fully to that end.

Section 5.04 Shareholder Approval. Company agrees to take, in accordance with applicable Law, the Articles of Organization of Company and the Bylaws of Company, all action necessary to convene a meeting of its shareholders to consider and vote upon the approval of this Agreement and any other matters required to be approved by Company's shareholders in order to permit consummation of the transactions contemplated by this Agreement (including any adjournment or postponement, the Company Meeting ) and, subject to Section 5.09, shall take all lawful action to solicit such approval by such shareholders. Company agrees to use commercially reasonable efforts to convene the Company Meeting within forty-five (45) days following the time when the Registration Statement becomes effective. Except with the prior approval of Buyer, no other matters shall be submitted for the approval of Company shareholders at the Company Meeting. The board of directors of Company shall at all times prior to and during the Company Meeting recommend approval of this Agreement by the shareholders of Company and shall not withhold, withdraw, amend or modify such recommendation in any manner adverse to Buyer or take any other action or make any other public statement inconsistent with such recommendation, except as and to the extent expressly permitted by Section 5.09 (a Change in Recommendation ). In the event that there is present at the Company Meeting, in person or by proxy, sufficient favorable voting power to secure the Requisite Company Shareholder Approval, Company will not adjourn or postpone the Company Meeting unless Company is advised by counsel that failure to do so would result in a breach of the U.S. federal securities Laws or fiduciary duties of Company's board of directors. Company shall keep Buyer updated with respect to the proxy solicitation results in connection with the Company Meeting as reasonably requested by Buyer.

Section 5.05 Registration Statement; Proxy Statement-Prospectus; Nasdaq Listing.

(a) Buyer and Company agree to cooperate in the preparation of the Registration Statement to be filed by Buyer with the SEC in connection with the issuance of the Buyer Common Stock in the Merger (including the Proxy Statement-Prospectus and all related documents). Each of Buyer and Company agree to use commercially

A-39

**Table of Contents**

reasonable efforts to cause the Registration Statement to be declared effective by the SEC as promptly as reasonably practicable after its filing and to keep the Registration Statement effective as long as is necessary to consummate the Merger and the transactions it contemplates. Buyer also agrees to use commercially reasonable efforts to obtain any necessary state securities Law or blue sky permits and approvals required to carry out the transactions contemplated by this Agreement. Company agrees to cooperate with Buyer and Buyer's counsel and accountants in requesting and obtaining appropriate opinions, consents, and letters from the financial advisor and Company's independent auditors in connection with the Registration Statement and the Proxy Statement-Prospectus. After the Registration Statement is declared effective under the Securities Act, Company, at its own expense, shall promptly mail or cause to be mailed the Proxy Statement-Prospectus to its shareholders.

(b) Buyer will promptly advise Company of the time when the Registration Statement has become effective or any supplement or amendment has been filed, of the issuance of any stop order or the suspension of the qualification of Buyer Common Stock for offering or sale in any jurisdiction, of the initiation or threat of any proceeding for any such purpose, or of any request by the SEC for the amendment or supplement of the Registration Statement or for additional information.

(c) The Proxy Statement-Prospectus and the Registration Statement shall comply as to form in all material respects with the applicable provisions of the Securities Act and the Exchange Act and their implementing rules and regulations. Buyer will notify Company promptly upon the receipt of any comments (whether written or oral) from the SEC or its staff and of any request by the SEC or its staff or any government officials for amendments or supplements to the Registration Statement, the Proxy Statement-Prospectus, or for any other filing or for additional information and will supply Company with copies of all correspondence between Buyer or any of its representatives, on the one hand, and the SEC, or its staff or any other government officials, on the other hand, with respect to the Registration Statement, the Proxy Statement-Prospectus, the Merger, or any other filing. If at any time prior to the Company Meeting there shall occur any event that should be disclosed in an amendment or supplement to the Proxy Statement-Prospectus or the Registration Statement, Company and Buyer shall use their commercially reasonable efforts to promptly prepare, file with the SEC (if required under applicable Law) and mail to Company shareholders an amendment or supplement.

(d) Buyer will provide Company and its counsel with a reasonable opportunity to review and comment on the Registration Statement and the Proxy Statement-Prospectus and all responses to requests for additional information by and replies to comments of the SEC prior to filing such with, or sending such to, the SEC, and will provide Company and its counsel with a copy of all SEC filings.

(e) Buyer agrees to use commercially reasonable efforts to list, prior to the Effective Date, on Nasdaq the shares of Buyer Common Stock to be issued in connection with the Merger.

(f) Company acknowledges that Buyer is in or may be in the process of acquiring other bank holding companies, banks, financial institutions and/or other entities and that in connection with other acquisitions, information concerning Company may be required to be included in the registration statements, if any, for the issuance of securities of Buyer or in Buyer Reports in connection with other acquisitions. Company agrees to provide Buyer with any information, certificates, documents or other materials about Company as are reasonably necessary to be included in such other SEC reports or registration statements, including the Registration Statements referenced in Section 5.05(a) and any other registration statements which may be filed by Buyer prior to the Effective Time. Company shall use its reasonable efforts to cause its attorneys and accountants to provide Buyer and any underwriters for Buyer with any consents, opinion letters, reports or information which are necessary to complete the registration statements and applications for any other acquisition or issuance of securities. Buyer shall reimburse Company for reasonable expenses incurred by Company if another acquisition is terminated for any reason. Buyer shall not file with the SEC



any registration statement or amendment or supplement containing information regarding Company unless Company shall have consented to the disclosure contained in the filing, which consent shall not be unreasonably delayed or withheld.

A-40

---

**Table of Contents**Section 5.06 Regulatory Filings: Consents.

(a) Each of Buyer and Company and their respective Subsidiaries shall cooperate and use their respective commercially reasonable efforts (i) to prepare all documentation (including the Proxy Statement-Prospectus), to effect all filings, to obtain all permits, consents, approvals and authorizations of all third parties and Governmental Authorities necessary to consummate the transactions contemplated by this Agreement, including, without limitation, all Regulatory Approvals and all other consents and approvals of a Governmental Authority required to consummate the Merger, (ii) to comply with the terms and conditions of such permits, consents, approvals and authorizations and (iii) to cause the transactions contemplated by this Agreement to be consummated as expeditiously as practicable (including by avoiding or setting aside any preliminary or permanent injunction or other order of any United States federal or state court of competent jurisdiction or any other Governmental Authority); provided, however, that in no event shall Buyer be required to agree to any prohibition, limitation, or other requirement which would prohibit or materially limit the ownership or operation by Buyer or any of its Subsidiaries, of all or any material portion of the business or assets of Company or any of its Subsidiaries or Buyer or its Subsidiaries, or compel Buyer or any of its Subsidiaries to dispose of or hold separate all or any material portion of the business or assets of Company or any of its Subsidiaries or Buyer or any of its Subsidiaries (together, the Burdensome Conditions ). Buyer and Company will furnish each other and each other's counsel with all information concerning themselves, their Subsidiaries, directors, trustees, officers and shareholders and such other matters as may be necessary or advisable in connection with the Proxy Statement-Prospectus and any application, petition, or any other statement or application made by or on behalf of Buyer or Company to any Governmental Authority in connection with the transactions contemplated by this Agreement. Each party shall have the right to review and approve in advance all characterizations of the information relating to it and any of its Subsidiaries that appear in any filing made in connection with the transactions contemplated by this Agreement with any Governmental Authority. In addition, Buyer and Company shall each furnish to the other for review a copy of each such filing made in connection with the transactions contemplated by this Agreement with any Governmental Authority prior to its filing.

(b) Company will notify Buyer promptly and shall promptly furnish Buyer with copies of notices or other communications received by Company or any of its Subsidiaries of (i) any communication from any Person alleging that the consent of such Person (or another Person) is or may be required in connection with the transactions contemplated by this Agreement (and the response thereto from Company, its Subsidiaries or its representatives), (ii) subject to applicable Laws and the instructions of any Governmental Authority, any communication from any Governmental Authority in connection with the transactions contemplated by this Agreement (and the response thereto from Company, its Subsidiaries or its representatives), and (iii) any legal actions threatened or commenced against or otherwise affecting Company or any of its Subsidiaries that are related to the transactions contemplated by this Agreement (and the response from Company, its Subsidiaries or its representatives). With respect to any of the foregoing, Company will consult with Buyer and its representatives so as to permit Company and Buyer and their respective representatives to cooperate to take appropriate measures to avoid or mitigate any adverse consequences that may result from any of the foregoing.

(c) Buyer will notify Company promptly and shall promptly furnish Company with copies of notices or other communications received by Buyer or any of its Subsidiaries of (i) any communication from any Person alleging that the consent of that Person (or other Person) is or may be required in connection with the transactions contemplated by this Agreement (and the response from Buyer or its representatives), (ii) subject to applicable Laws and the instructions of any Governmental Authority, any communication from any Governmental Authority in connection with the transactions contemplated by this Agreement (and the response from Buyer or its representatives), and (iii) any legal actions threatened or commenced against or otherwise affecting Company or any of its Subsidiaries that are related to the transactions contemplated by this Agreement (and the response from Company, its Subsidiaries or its representatives).

Section 5.07 Publicity. Buyer and Company shall consult with each other before issuing any press release with respect to this Agreement or the transactions it contemplates and shall not issue any such press release or make any such public statement without the prior consent of the other party, which shall not be

A-41

---

**Table of Contents**

unreasonably delayed, conditioned or withheld; provided, however, that a party may, without the prior consent of the other party (but after such consultation, to the extent practicable in the circumstances), issue such press release or make such public statements as may upon the advice of outside counsel be required by Law. Without limiting the preceding sentence, Buyer and Company shall (i) cooperate to develop all public announcement materials; and (ii) make appropriate management available at presentations related to the transactions contemplated by this Agreement as reasonably requested by the other. In addition, Company and its Subsidiaries shall coordinate with Buyer regarding all communications with customers, suppliers, employees, shareholders, and the community in general related to the transactions contemplated by this Agreement.

Section 5.08 Access: Information.

(a) Company and Buyer agree that upon reasonable notice and subject to applicable Laws relating to the exchange of information, each shall afford the other party and its officers, employees, counsel, accountants, and other authorized representatives such access during normal business hours throughout the period prior to the Effective Time to its books, records (including, without limitation, Tax Returns and work papers of independent auditors), properties, and personnel and to such other information relating to it as the other party may reasonably request and, during such period, shall furnish promptly to the other party all information concerning its business, properties, and personnel as the other party may reasonably request. Notwithstanding the foregoing, neither Company nor Buyer shall be required to provide access to or to disclose information, where such access or disclosure would (i) violate the rights of such entity's customers, (ii) jeopardize the attorney-client privilege of the entity in possession or control of such information, (iii) result in the disclosure of any trade secrets of third parties; (iv) violate any obligation of Company or Buyer with respect to confidentiality (provided that the party who owes an obligation of confidentiality makes a reasonable effort to obtain a waiver of such obligation); (v) interfere with the prudent operation of such entity; or (vi) contravene any Law, rule, regulation, order, judgment, decree, or binding agreement entered into prior to the date of this Agreement. The parties will make appropriate substitute disclosure arrangements under circumstances in which the restrictions of the previous sentence apply.

(b) No investigation by a party or its representatives shall be deemed to modify or waive any representation, warranty, covenant or agreement of the other party set forth in this Agreement, or the conditions to the respective obligations of Buyer and Company to consummate the transactions contemplated by this Agreement.

Section 5.09 No Solicitation by Company.

(a) Company and its Subsidiaries shall immediately cease, and Company and its Subsidiaries shall cause each of their respective representatives to immediately cease, any discussions or negotiations with any parties conducted prior to the date of this Agreement with respect to an Acquisition Proposal. Except as permitted by this Section 5.09, after the execution and delivery of this Agreement, Company and its directors, executive officers and Subsidiaries shall not, and Company shall cause each of its and its Subsidiaries' representatives not to, directly or indirectly, (i) solicit, initiate or encourage any inquiry with respect to, or the making of, any proposal that constitutes or could reasonably be expected to lead to an Acquisition Proposal, (ii) participate in any negotiations regarding an Acquisition Proposal with, or furnish any nonpublic information relating to an Acquisition Proposal to, any Person that has made or, to the Knowledge of Company, is considering making an Acquisition Proposal, or (iii) engage in discussions regarding an Acquisition Proposal with any Person that has made, or, to Company's Knowledge, is considering making, an Acquisition Proposal, except to notify such Person of the existence of the provisions of this Section 5.09.

(b) Notwithstanding Section 5.09(a), if, prior to the time Requisite Company Shareholder Approval is obtained, Company receives a written and unsolicited Acquisition Proposal that the board of directors of Company determines in good faith (after consultation with its financial advisors and outside counsel) constitutes or is reasonably likely to

lead to a Superior Proposal, Company may take the following actions: (1) furnish nonpublic information with respect to Company and its Subsidiaries to the Person making such Acquisition

A-42

---

**Table of Contents**

Proposal, but only if (A) prior to so furnishing such information, Company has entered into a customary confidentiality agreement with such Person on terms no less favorable to Company than the confidentiality agreement by and between Company and Buyer dated as of December 22, 2015, and (B) all such information has previously been provided to Buyer or is provided to Buyer prior to or contemporaneously with the time it is provided to the Person making such Superior Proposal or such Person's representatives, and (2) engage or participate in any discussions or negotiations with such Person with respect to the Superior Proposal. Company promptly (and in any event within 48 hours) shall advise Buyer orally and in writing of the receipt of (i) any proposal that constitutes or is reasonably likely to lead to an Acquisition Proposal and the material terms of such proposal (including the identity of the party making such proposal and, if applicable, copies of any documents or correspondence evidencing such proposal), and (ii) any request for information relating to Company or any of its Subsidiaries other than requests for information not reasonably likely to be related to an Acquisition Proposal. Company shall keep Buyer informed on a reasonably current basis (and in any event at least once every two (2) Business Days) of the status of any such Acquisition Proposal (including any material change to its terms).

(c) Except as set forth in Section 5.09(d), the board of directors of Company shall not (i) withhold, withdraw, or modify (or publicly propose to withhold, withdraw or modify), in a manner adverse to Buyer, its recommendation referred to in Section 5.04, or (ii) approve or recommend (or publicly propose to approve or recommend) any Acquisition Proposal. Except as set forth in Section 5.09(d), Company shall not, and its board of directors shall not allow Company to, and Company shall not allow any of Company's Subsidiaries to, enter into any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement, or other agreement (except for confidentiality agreements permitted under Section 5.09(b)) relating to any Superior Proposal.

(d) Notwithstanding anything to the contrary set forth in this Agreement, the board of directors of Company may, prior to the time the Requisite Company Shareholder Approval is obtained, in response to a Superior Proposal which did not result from a breach of Section 5.09(a) or (b), (i) make a Change in Recommendation and/or (ii) terminate this Agreement pursuant to Section 7.01 (and concurrently with such termination cause Company to enter into a definitive agreement with respect to the Superior Proposal), in each case of clauses (i) or (ii), if the board of directors of Company has determined in good faith, after consulting with its outside counsel, that the failure to take such action would be inconsistent with the directors' fiduciary duties under applicable Law; provided that the board of directors may not take any such action in connection with an Acquisition Proposal unless (1) the board of directors has determined that such Acquisition Proposal constitutes a Superior Proposal, (2) prior to terminating this Agreement pursuant to Section 7.01(g), Company provides prior written notice to Buyer at least four (4) Business Days in advance (the Notice Period) of its intention to take such action, which notice shall specify all material terms and conditions of such Superior Proposal (including the identity of the party making such Superior Proposal and copies of any documents or correspondence evidencing such Superior Proposal), and any material modifications to any of the foregoing, (3) during the Notice Period Company shall, and shall cause its financial advisors and outside counsel to, negotiate with Buyer in good faith should Buyer propose to make such adjustments in the terms and conditions of this Agreement so that such Superior Proposal ceases to constitute (in the good faith judgment of Company's board of directors) a Superior Proposal and (4) such Superior Proposal continues to constitute (in the good faith judgment of Company's board of directors) a Superior Proposal after taking into account any such amendments that Buyer shall have agreed to make prior to the end of the Notice Period.

(e) Nothing contained in this Section 5.09 shall prohibit Company from (i) making any disclosure to Company's shareholders if, after consultation with its outside legal counsel, Company determines that such disclosure would be required under applicable Law; provided, however, that any such disclosure relating to an Acquisition Proposal shall be deemed to be a Change in Recommendation unless it is limited to a stop, look, and listen communication or Company's board of directors reaffirms the recommendation referred to in Section 5.04 in such disclosure and does not recommend that Company shareholders tender their shares, or (ii) informing any Person of the existence of the

provisions contained in this Section 5.09.

A-43

---

**Table of Contents**Section 5.10 Indemnification: Directors and Officers Insurance.

(a) From and after the Effective Time, Buyer (the Indemnifying Party ) shall indemnify and hold harmless each present and former director, officer and employee of Company or any of its Subsidiaries (the Indemnified Parties ) and any person who becomes an Indemnified Person between the date of this Agreement and the Effective Time, against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities and amounts paid in settlement incurred after the Effective Time in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of matters existing or occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, based in whole or in part, or arising in whole or in part out of, or pertaining to the fact that he or she was a director, officer or employee of Company or any of its Subsidiaries or is or was serving at the request of Company or any of its Subsidiaries as a director, officer, employee, trustee or other agent of any other organization or in any capacity with respect to any employee benefit plan of Company, including without limitation any matters arising in connection with or related to the negotiation, execution, and performance of this Agreement or any of the transactions it contemplates, to the full extent to which such Indemnified Parties would be entitled to have the right to advancements of expenses or to be indemnified under the Articles of Organization and Bylaws of Company as in effect on the date of this Agreement as though such Articles of Organization and Bylaws continue to remain in effect after the Effective Time and as permitted by applicable Law. Buyer's obligations under this Section 5.10(a) shall continue in full force and effect for a period of six years from the Effective Time; provided, however, that all rights to indemnification in respect of any claim asserted or made within such period shall continue until the final disposition of such claim.

(b) Any Indemnified Party wishing to claim indemnification under this Section 5.10, upon learning of any such claim, action, suit, proceeding or investigation, shall promptly notify the Indemnifying Party, but the failure to so notify shall not relieve the Indemnifying Party of any liability it may have to such Indemnified Party if such failure does not actually prejudice the Indemnifying Party and, if so, only to the extent of such actual prejudice. In the event of any such claim, action, suit, proceeding or investigation (whether arising before or after the Effective Time), (i) the Indemnifying Party shall have the right to assume the defense and the Indemnifying Party shall not be liable to such Indemnified Parties for any legal expenses of other counsel or any other expenses subsequently incurred by such Indemnified Parties in connection with the defense, except that if the Indemnifying Party elects not to assume such defense or counsel for the Indemnified Parties advises that there are issues which raise conflicts of interest between the Indemnifying Party and the Indemnified Parties, the Indemnified Parties may retain counsel which is reasonably satisfactory to the Indemnifying Party, and the Indemnifying Party shall pay, promptly as statements are received, the reasonable fees and expenses of such counsel for the Indemnified Parties (which may not exceed one firm in any jurisdiction), (ii) the Indemnified Parties will cooperate in the defense of any such matter, (iii) the Indemnifying Party shall not be liable for any settlement effected without its prior written consent and (iv) the Indemnifying Party shall have no obligation hereunder in the event that a federal or state banking agency or a court of competent jurisdiction shall determine that indemnification of an Indemnified Party is prohibited by applicable Laws and regulations.

(c) Prior to the Effective Time, Company shall and if Company is unable to, Buyer shall cause the Surviving Entity as of the Effective Time to obtain and fully pay the premium for the extension of Company's existing directors' and officers' insurance policies, in each case for a claims reporting or discovery period of at least six (6) years from and after the Effective Time from an insurance carrier with the same or better credit rating as Company's current insurance carrier with respect to directors' and officers' liability insurance ( D&O Insurance ) with terms, conditions, retentions, and limits of liability that are at least as favorable to the Indemnified Parties as Company's existing policies with respect to any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or any matter claimed against a director or officer of Company or any of its Subsidiaries by reason of him or her serving in such capacity that existed or occurred at or prior to the Effective Time (including in connection with this Agreement or the transactions or actions it contemplates); provided, however, that in no event shall Company expend,



or Buyer or the Surviving Entity be required to expend, for such tail policy in the aggregate and on an annual basis a premium amount in excess of

A-44

**Table of Contents**

\$40,000 (the Maximum D&O Tail Premium ); provided further, that if the cost of such a tail policy exceeds the Maximum D&O Tail Premium, Company, Buyer or the Surviving Entity shall obtain a tail policy with the greatest coverage available for a cost not exceeding Maximum D&O Tail Premium.

(d) If Buyer or any of its successors or assigns shall consolidate with or merge into any other entity and shall not be the continuing or surviving entity of such consolidation or merger or shall transfer all or substantially all of its assets to any other entity, then and in each case, proper provision shall be made so that the successors and assigns of Buyer shall assume the obligations set forth in this Section 5.10.

(e) Nothing in this Agreement is intended to, shall be construed to or shall release, waive, or impair any rights to directors and officers insurance claims under any policy that is or has been in existence with respect to Company or its officers, directors and employees, and that the indemnification of this Section 5.10 is not a substitute for any claims under any policies.

(f) Any indemnification payments made pursuant to this Section 5.10 are subject to and conditioned upon their compliance with Section 18(k) of the Federal Deposit Insurance Act (12 U.S.C. 1828(k)) and the regulations promulgated by the Federal Deposit Insurance Corporation (12 C.F.R. Part 359).

Section 5.11 Employees: Benefit Plans.

(a) All Company Employees who remain employed by Company or any of its Subsidiaries as of the Effective Time shall be subject to Buyer Bank's normal and customary employment procedures and practices, including customary background screening and evaluation procedures, and satisfactory employment performance. In addition, Company and Company Bank agree, upon Buyer's reasonable request, to facilitate discussions between Buyer and Company Employees regarding employment, consulting, or other arrangements to be effective prior to or following the Merger. Any interaction between Buyer and Company's employees shall be coordinated by Company.

(b) Company Employees (other than those who are parties to an employment, change of control, or other type of agreement which provides for severance) as of the date of this Agreement who remain employed by Company or any of its Subsidiaries as of the Effective Time and whose employment is terminated by Buyer (absent termination for cause as determined by the employer) within one year after the Effective Time shall, subject to the execution by each such Company Employee of a standard release in favor of Buyer and Buyer Bank (i) receive payments as set forth in Buyer Disclosure Schedule 5.11(h) in lieu of any severance pay plans that may be in effect at Company or any of its Subsidiaries prior to the Effective Time and (ii) be offered outplacement assistance.

(c) Following the Closing Date, Buyer will assume responsibility for administration of the Company's frozen noncontributory defined benefit plan and may choose to maintain any or all of the other Company Benefit Plans in its sole discretion, subject to the next sentence of this Section 5.11(c). For any Company Benefit Plan terminated for which there is a comparable Buyer Benefit Plan of general applicability, Company Employees shall be entitled to participate in such Buyer Benefit Plan to the same extent as similarly-situated employees of Buyer or Buyer Bank (it being understood that inclusion of Company Employees in the Buyer Benefit Plans may occur, if at all, at different times with respect to different plans). With respect to such comparable Buyer Benefit Plan, for purposes of determining eligibility to participate, vesting, entitlement to benefits and vacation entitlement (but not for accrual of benefits under any Buyer Benefit Plan, including any post-retirement welfare benefit plan of Buyer), service by an Employee with the Company or any Subsidiary shall be recognized to the same extent such service was recognized immediately prior to the Effective Time under a comparable Plan in which such Employee was a participant immediately before the Effective Time, or if there is no such comparable employee benefit plan, to the same extent such service was recognized under the Company 401(k) Plan immediately prior to the Effective Time to the extent

applicable; provided, however, that such service shall not be recognized to the extent such recognition would result in a duplication of benefits.

A-45

**Table of Contents**

(d) If employees of Company or any of its Subsidiaries become eligible to participate in a medical, dental, or health plan of Buyer or Buyer Bank upon termination of a similar plan of Company or any of its Subsidiaries, Buyer shall use commercially reasonable efforts to cause each plan to (i) waive any preexisting condition limitations to the extent such conditions are covered under the applicable medical, health, or dental plans of Buyer or Buyer Bank, (ii) provide full credit under such plans for any deductible, co-payment, and out-of-pocket expenses incurred by the employees and their beneficiaries during the portion of the plan year prior to participation and (iii) waive any waiting period limitation or evidence of insurability requirement which would otherwise be applicable to such employee on or after the Effective Time, in each case to the extent such employee had satisfied any similar limitation or requirement under an analogous plan prior to the Effective Time for the plan year in which the Effective Time occurs.

(e) Buyer shall honor, and the Surviving Entity shall continue to be obligated to perform, in accordance with their terms, all vested benefit obligations to, and contractual rights of, current and former employees and directors of Company existing as of the Effective Time, as well as all employment, severance, deferred compensation, retirement or change-in-control agreements, plans, or policies of Company but only if such obligations, rights, agreements, plans or policies are set forth on the Company Disclosure Schedule. Buyer acknowledges that the consummation of the Merger will constitute a change-in-control of Company for purposes of any benefit plans, agreements, and arrangements of Company. Nothing in this Agreement shall limit the ability of Buyer or Buyer Bank to amend or terminate any of the Company Benefit Plans or Buyer Benefit Plans in accordance with their terms at any time after the Effective Time, subject to vested rights of employees and directors that may not be terminated pursuant to the terms of the Company Benefit Plans.

(f) Reserved.

(g) Nothing in this Section 5.11, expressed or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section 5.11. Without limiting the foregoing, no provision of this Section 5.11 will create any third party beneficiary rights in any current or former employee, director, or consultant of Company or its Subsidiaries in respect of continued employment (or resumed employment) or any other matter. Nothing in this Section 5.11 is intended (i) to amend any Company Benefit Plan or any Buyer Benefit Plan, (ii) interfere with Buyer's or the Surviving Entity's right from and after the Closing Date to amend or terminate any Company Benefit Plan or Buyer Benefit Plan or (iii) interfere with Buyer's or the Surviving Entity's right from and after the Effective Time to terminate the employment or provision of services by any director, employee, independent contractor, or consultant.

(h) Buyer and Company have made agreements regarding Company Employees and directors of the Company as set forth on Buyer Disclosure Schedule 5.11(h).

Section 5.12 Notification of Certain Changes. Buyer and Company shall promptly advise the other party of any change or event having, or which would reasonably be expected to have, a Material Adverse Effect with respect to it or which it believes would reasonably be expected to, cause or constitute a material breach of any of its representations, warranties or covenants contained in this Agreement. Prior to the Effective Time (and on the date prior to the Closing Date), Buyer and Company will supplement or amend their respective Disclosure Schedules delivered in connection with the execution of this Agreement to reflect any matter which, if existing, occurring or known at the date of this Agreement, would have been required to be set forth or described in such Disclosure Schedule or which is necessary to correct any information in such Disclosure Schedule which has been rendered materially inaccurate. No supplement or amendment to the Buyer or Company Disclosure Schedule shall have any effect for the purpose of determining satisfaction of the conditions set forth in Sections 6.02(a) or 6.03(a), or compliance by Buyer or Company with the respective covenants and agreements.

Section 5.13 Current Information. During the period from the date of this Agreement to the Effective Time, Company will cause one or more of its designated representatives to confer on a regular and frequent basis (not less than weekly) with representatives of Buyer and to report the general status of the ongoing operations of

A-46

---

**Table of Contents**

Company and its Subsidiaries. Without limiting the foregoing, (A) Company agrees to provide to Buyer (i) a copy of each report filed by Company or any of its Subsidiaries with a Governmental Authority (if permitted by Law) within one (1) Business Day following its filing, and (ii) a consolidated balance sheet and a consolidated statement of operations, without related notes, within twenty-five (25) days after the end of each month, prepared in accordance with Company's current financial reporting practices, and (B) Company shall provide Buyer, on a monthly basis, with a schedule of all new loans, leases, extensions of credit, and renewal loans, leases and extensions of credit, or any increase in any customer's aggregate credit outstanding or lease commitment (whether or not subject to prior approval under Section 5.01(s)), and provide Buyer with a copy of, and the opportunity to discuss upon request, the relevant documentation for any loan, extension of credit, lease, or renewal.

Section 5.14 Board Packages. Company shall distribute by overnight mail or by electronic mail a copy of any Company or Company Bank board package, including the agenda and any draft minutes, to Buyer at the same time in which it distributes a copy to the board of directors of Company or Company Bank; provided, however, that Company shall not be required to copy Buyer on any documents that disclose confidential discussions of this Agreement or the transactions it contemplates or any third party proposal to acquire control of Company or any other matter that Company's board of directors has been advised by counsel may violate a confidentiality obligation or fiduciary duty or any Law or regulation, or may result in a waiver of Company's attorney-client privilege or violate the privacy rights of any customer.

Section 5.15 Transition; Informational Systems Conversion. From and after the date of this Agreement, Buyer and Company shall use their commercially reasonable efforts to facilitate the integration of Company with the business of Buyer following consummation of the transactions contemplated by this Agreement, and shall meet on a regular basis to discuss and plan for the conversion of the data processing and related electronic informational systems of Company and each of its Subsidiaries (the Information Systems Conversion) to those used by Buyer, which planning shall include, but not be limited to, (a) discussion of third-party service provider arrangements of Company and each of its Subsidiaries; (b) non-renewal, after the Effective Time, of personal property leases and software licenses used by Company and each of its Subsidiaries in connection with systems operations; (c) retention of outside consultants and additional employees to assist with the conversion; (d) outsourcing, as appropriate after the Effective Time, of proprietary or self-provided system services; and (e) any other actions necessary and appropriate to facilitate the conversion, as soon as practicable following the Effective Time. Buyer shall promptly reimburse Company for any reasonable out-of-pocket fees, expenses, or charges that Company may incur as a result of taking, at the request of Buyer, any action to facilitate the Information Systems Conversion.

Section 5.16 Access to Customers and Suppliers.

(a) Access to Customers. Company and Buyer will work together to promote good relations between Company Bank and its customers and to retain and grow Company Bank customer relationships prior to and after the Effective Time. Company and Buyer agree that it may be necessary or advisable from and after the date of this Agreement for representatives of Company Bank and/or of Buyer Bank to meet with Company Bank customers to discuss the business combination and related transactions contemplated by this Agreement with Company Bank customers. Company Bank shall promptly make arrangements for discussions and meetings between Company Bank customers and Buyer Bank as reasonably requested by Buyer Bank and Company Bank representatives shall have the right to participate in any discussions or meetings between Company Bank customers and Buyer Bank.

(b) Access to Suppliers. From and after the date of this Agreement, Company shall, upon Buyer's reasonable request, introduce Buyer and its representatives to suppliers of Company and its Subsidiaries for the purpose of facilitating the integration of Company and its business into that of the Buyer. Any interaction between Buyer and Company's suppliers shall be coordinated by Company. Company shall have the right to participate in any discussions between

Buyer and Company's suppliers.

A-47

**Table of Contents**

Section 5.17 Environmental Assessments.

(a) Company shall cooperate with and grant access to an environmental consulting firm selected by Buyer and reasonably acceptable to Company, during normal business hours (and at such other times as may be agreed), to any property set forth on Company Disclosure Schedule 3.30 for the purpose of conducting (i) Phase I Assessments (which also may include an evaluation of asbestos containing materials, polychlorinated biphenyls, lead based paint, lead in drinking water, mold, and radon); (ii) Phase II Environmental Assessments, including subsurface investigation of soil, soil vapor, and groundwater ( Phase II Assessment ); and/or (iii) surveys and sampling of indoor air and building materials for the presence of radon, asbestos containing materials, mold, microbial matter, polychlorinated biphenyls, and other Hazardous Substances. Buyer and its environmental consulting firm shall conduct all environmental assessments pursuant to this Section 5.17 at mutually agreeable times and so as to eliminate or minimize to the greatest extent possible interference with Company's operation of its business, and Buyer shall maintain or cause to be maintained reasonably adequate insurance with respect to any assessment conducted. Buyer shall be required to restore each property to substantially its pre-assessment condition. All costs and expenses incurred in connection with any Phase I or Phase II and any restoration and clean up shall be borne solely by Buyer.

(b) To the extent requested by the Buyer, each environmental assessment shall include an estimate by the environmental consulting firm preparing such environmental assessment of the costs of investigation, monitoring, personal injury, property damage, clean up, remediation, penalties, fines or other liabilities, as the case may be, relating to the potential environmental condition(s) or recognized environmental condition(s) or other conditions which are the subject of the environmental assessment.

Section 5.18 Certain Litigation. In the event that any shareholder litigation related to this Agreement or the Merger or the other transactions contemplated by this Agreement is brought or, to Company's Knowledge, threatened, against Company and/or the members of the board of directors of Company prior to the Effective Time, Company shall consult with Buyer regarding the defense or settlement of the litigation, and no such settlement shall be agreed to without Buyer's prior written consent (not to be unreasonably withheld, conditioned or delayed). Company shall (i) promptly notify Buyer of any shareholder litigation brought, or threatened, against Company and/or members of the board of directors of Company, (ii) keep Buyer reasonably informed with respect to the litigation's status, provided, however, that no information need to be provided if doing so would jeopardize the attorney-client privilege or contravene any Law or binding agreement entered into prior to the date of this Agreement, and (iii) give Buyer the opportunity to participate at its own expense in the defense or settlement of any shareholder litigation. Company shall consult with Buyer regarding the selection of counsel to represent Company in any such shareholder litigation.

Section 5.19 Reserved.

Section 5.20 Director Resignations. Company shall use commercially reasonable efforts to deliver to Buyer resignations of all directors of the Company, Company Bank, and any of their Subsidiaries to be effective as of the Effective Time.

Section 5.21 Third Party Consents. Company shall use its best efforts to obtain the Company Third Party Consents prior to Closing.

Section 5.22 Coordination.

(a) Company and Company Bank shall take any actions Buyer may reasonably request prior to the Effective Time to facilitate the consolidation of the operations of Company Bank with Buyer Bank. Without limiting the foregoing, senior officers of Company and Buyer shall meet as Buyer may reasonably request, and in any event not less than



monthly, to review the financial and operational affairs of Company and Company Bank, and Company shall give due consideration to Buyer's input, with the understanding that, notwithstanding any

A-48

---

**Table of Contents**

other provision contained in this Agreement, neither Buyer nor Buyer Bank shall under any circumstance be permitted to exercise control of Company or any of its Subsidiaries prior to the Effective Time. Company and Company Bank shall permit representatives of Buyer Bank to be onsite at Company Bank to facilitate consolidation of operations and assist with any other coordination efforts as necessary.

(b) Upon Buyer's reasonable request, prior to the Effective Time and consistent with GAAP, the rules and regulations of the SEC and applicable banking Laws and regulations, (i) each of Company and its Subsidiaries shall modify or change its loan, OREO, accrual, reserve, tax, litigation, and real estate valuation policies and practices (including loan classifications and levels of reserves) so as to be applied on a basis that is consistent with that of Buyer and (ii) Company shall make such accruals under the Company Benefit Plans as Buyer may reasonably request to reflect the benefits payable under such Company Benefit Plans upon the completion of the Merger. Notwithstanding the foregoing, no such modifications, changes, or divestitures of the type described in this Section 5.22(b) need be made prior to the satisfaction of the conditions set forth in Sections 6.01(a) and 6.01(b).

(c) Company and Company Bank shall, consistent with GAAP and regulatory accounting principles, use their commercially reasonable efforts to implement at Buyer's request internal control procedures which are consistent with Buyer's and Buyer Bank's current internal control procedures to allow Buyer to fulfill its reporting requirement under Section 404 of the Sarbanes-Oxley Act, provided, however, that no such modifications, changes, or divestitures need be made prior to the satisfaction of the conditions set forth in Sections 6.01(a) and 6.01(b).

(d) No accrual or reserve or change in policy or procedure made by Company or any of its Subsidiaries pursuant to this Section 5.22 shall constitute or be deemed to be a breach, violation, of or failure to satisfy any representation, warranty, covenant, agreement, condition, or other provision of this Agreement or otherwise be considered in determining whether any such breach, violation, or failure to satisfy shall have occurred. The recording of any such adjustment shall not be deemed to imply any misstatement of previously furnished financial statements or information and shall not be construed as concurrence of Company or its management with any such adjustments.

(e) Subject to Section 5.22(b), Buyer and Company shall cooperate (i) to minimize any potential adverse impact to the Buyer under ASC 805, and (ii) to maximize potential benefits to the Buyer and its Subsidiaries under Code Section 382 in connection with the transactions contemplated by this Agreement, in each case consistent with GAAP, the rules and regulations of the SEC, and applicable banking Laws.

Section 5.23 Bank Merger. Buyer and Company agree to take all action necessary and appropriate, including causing the entering into of an appropriate Plan of Bank Merger, to cause Company Bank to merge with Buyer Bank in accordance with applicable Laws and the terms of the Plan of Bank Merger at the Effective Time.

Section 5.24 Certain Transactional Expenses. Company has provided in Company Disclosure Schedule 5.24 a reasonable good faith estimate of costs and fees that Company and its Subsidiaries expect to pay to retained representatives in connection with the transactions contemplated by this Agreement (collectively, Company Expenses ). Company shall use its commercially reasonable efforts to cause the aggregate amount of all Company Expense not to exceed the total expenses disclosed in Company Disclosure Schedule 5.24. Company shall promptly notify Buyer if or when it determines that it expects to exceed its budget.

**Table of Contents**

**ARTICLE VI**

**CONDITIONS TO CONSUMMATION OF THE MERGER**

Section 6.01 Conditions to Obligations of the Parties to Effect the Merger. Except for the conditions set forth in Section 6.01(e) which may not be waived in any circumstance, the respective obligations of Buyer and Company to consummate the Merger are subject to the fulfillment or, to the extent permitted by applicable Law, written waiver by the parties prior to the Closing Date of each of the following conditions:

(a) Shareholder Vote. This Agreement and the transactions it contemplates shall have received the Requisite Company Shareholder Approval at the Company Meeting.

(b) Regulatory Approvals; No Burdensome Condition. All Regulatory Approvals and all other consents and approvals of a Governmental Authority required to consummate the Merger shall have been obtained and shall remain in full force and effect and all statutory waiting periods shall have expired or been terminated. None of such regulatory approvals shall impose any term, condition, or restriction upon Buyer or any of its Subsidiaries that Buyer reasonably determines is a Burdensome Condition.

(c) No Injunctions or Restraints; Illegality. No judgment, order, injunction, or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the consummation of any of the transactions contemplated by this Agreement shall be in effect. No statute, rule, regulation, order, injunction, or decree shall have been enacted, entered, promulgated, or enforced by any Governmental Authority that prohibits or makes illegal the consummation of any of the transactions contemplated by this Agreement.

(d) Effective Registration Statement. The Registration Statement shall have become effective and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the SEC or any other Governmental Authority.

(e) Tax Opinions Relating to the Merger. Buyer and Company, respectively, shall have received opinions from Day Pitney LLP and Cranmore, FitzGerald & Meaney, respectively, each dated as of the Closing Date, both in substance and form reasonably satisfactory to Company and Buyer, to the effect that, on the basis of the facts, representations, and assumptions set forth in such opinions, the Merger will be treated for federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code. In rendering their opinions, each of Day Pitney LLP and Cranmore, FitzGerald & Meaney may require and rely upon representations contained in certificates of officers of each of Company and Buyer.

(f) Nasdaq Listing. The shares of Buyer Common Stock issuable pursuant to the Merger shall have been listed on Nasdaq, subject to official notice of issuance.

Section 6.02 Conditions to Obligations of Company. The obligations of Company to consummate the Merger also are subject to the fulfillment or written waiver by Company prior to the Closing Date of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of Buyer set forth in this Agreement shall be true and correct as of the date of this Agreement and (except to the extent such representations and warranties speak as of an earlier date) as of the Closing Date as though made on and as of the Closing Date, in any case subject to the standard set forth in Section 4.01. Company shall have received a certificate, dated as of the Closing Date, signed on behalf of Buyer by the Chief Executive Officer and the Chief Financial Officer of Buyer to that effect.

(b) Performance of Obligations of Buyer. Buyer shall have performed and complied with all of its obligations under this Agreement in all material respects at or prior to the Closing Date, and Company shall have received a certificate, dated as of the Closing Date, signed on behalf of Buyer by the Chief Executive Officer and the Chief Financial Officer of Buyer to that effect.

A-50

## **Table of Contents**

(c) **Other Actions**. Buyer shall have furnished Company with such certificates of their respective officers or others and such other documents to evidence fulfillment of the conditions set forth in Sections 6.01 and 6.02 as Company may reasonably request.

Section 6.03 **Conditions to Obligations of Buyer**. The obligations of Buyer to consummate the Merger are subject to the fulfillment or written waiver by Buyer prior to the Closing Date of each of the following conditions:

(a) **Company Common Stock**. Notwithstanding the standard set forth in Section 3.01, the number of shares of Company Common Stock outstanding as of the Closing Date of this Agreement shall not exceed 48,466.

(b) **Representations and Warranties**. The representations and warranties of Company set forth in this Agreement shall be true and correct as of the date of this Agreement and (except to the extent such representations and warranties speak as of an earlier date) as of the Closing Date as though made on and as of the Closing Date, in any case subject to the standard set forth in Section 3.01. Buyer shall have received a certificate, dated the Closing Date, signed on behalf of Company by the Chief Executive Officer of Company to that effect.

(c) **Performance of Obligations of Company**. Company shall have performed and complied with all of its obligations under this Agreement in all material respects at or prior to the Closing Date, and Buyer shall have received a certificate, dated the Closing Date, signed on behalf of Company by the Chief Financial Officer and Chief Executive Officer of Company to that effect.

(d) **Dissenters Shares**. As of the Effective Time, the holders of no more than ten percent (10%) of Company Common Stock shall have taken the actions required by Part 13 of Chapter 156D of the MBCA to qualify their Company Common Stock as Dissenters Shares.

(e) **Other Actions**. Company shall have furnished Buyer with such certificates of its officers or others and such other documents to evidence fulfillment of the conditions set forth in Sections 6.01 and 6.03 as Buyer may reasonably request.

Section 6.04 **Frustration of Closing Conditions**. Neither Buyer nor Company may rely on the failure of any condition set forth in Section 6.01, 6.02, or 6.03, to be satisfied if such failure was caused by such party's failure to use commercially reasonable efforts to consummate the Merger, as required by and subject to Section 5.03.

## **ARTICLE VII**

### **TERMINATION**

Section 7.01 **Termination**. This Agreement may be terminated and the Merger and the Bank Merger may be abandoned:

(a) **Mutual Consent**. At any time prior to the Effective Time, by the mutual consent of Buyer and Company if the board of directors of Buyer and the board of directors of Company each so determines by a majority vote of its entire board of directors.

(b) **No Regulatory Approval**. By either Buyer or Company, if its board of directors so determines by a majority vote of the members of its entire board of directors, in the event the approval of any Governmental Authority required for consummation of the Merger or the Bank Merger shall have been denied by final, nonappealable action by such Governmental Authority or an application seeking approval of the Merger or the Bank Merger shall have been

permanently withdrawn at the request of a Governmental Authority.

A-51

**Table of Contents**

(c) No Shareholder Approval. By either Buyer or Company (provided in the case of Company that it shall not be in material breach of any of its obligations under Section 5.04), if the Requisite Company Shareholder Approval shall not have been obtained by reason of the failure to obtain the required vote at a duly held meeting or any adjournment or postponement of the shareholders meeting.

(d) Breach of Representations and Warranties. By either Buyer or Company (provided that the terminating party is not then in material breach of any representation, warranty, covenant, or other agreement in this Agreement in a manner that would entitle the other party not to consummate the Merger or the Bank Merger) if there shall have been a breach of any of the representations or warranties set forth in this Agreement by the other party (subject to the standard set forth in Sections 3.01 and 4.01, respectively) which is not cured prior to thirty (30) days following written notice to the party committing the breach from the other party, or if the breach, by its nature, cannot be cured prior to the Closing.

(e) Breach of Covenants. By either Buyer or Company (provided that the terminating party is not then in material breach of any representation, warranty, covenant, or other agreement contained in this Agreement in a manner that would entitle the other party not to consummate the Merger or the Bank Merger) if there shall have been a material breach of any of the covenants or agreements set forth in this Agreement on the part of the other party which shall not have been cured prior to thirty (30) days following written notice to the party committing the breach from the other party, or if the breach, by its nature, cannot be cured prior to the Closing.

(f) Delay. By either Buyer or Company if the Merger shall not have been consummated on or before July 31, 2017 (the Termination Date ), unless the failure of the Closing to occur by that date shall be due to a material breach of this Agreement by the party seeking to terminate this Agreement.

(g) Superior Proposal. By Company if at any time after the date of this Agreement and prior to obtaining the Requisite Company Shareholder Approval, Company receives an Acquisition Proposal; provided, however, that Company shall not terminate this Agreement pursuant to the foregoing clause unless:

(i) Company shall have complied with Section 5.09 of this Agreement, including the conclusion by the board of directors of Company in good faith that the Acquisition Proposal is a Superior Proposal;

(ii) the board of directors of Company concurrently approves, and Company concurrently enters into, a definitive agreement with respect to the Superior Proposal; and

(iii) Company concurrently pays the Termination Fee payable pursuant to Section 7.02.

(h) Failure to Recommend; Third-Party Acquisition Transaction; Etc. At any time prior to the Company Meeting, by Buyer if (i) Company shall have materially breached its obligations under Section 5.09, (ii) the board of directors of Company shall have failed to make its recommendation referred to in Section 5.04 or made a Change in Recommendation, whether or not permitted by Section 5.09, (iii) the board of directors of Company shall have recommended, proposed, or publicly announced its intention to recommend or propose, to engage in an Acquisition Transaction with any Person other than Buyer or a Subsidiary or Affiliate of Buyer, whether or not permitted by Section 5.09, (iv) a tender or exchange offer for 20% or more of the outstanding shares of Company Common Stock is commenced and the board of directors of Company shall have failed to publicly recommend against such tender or exchange offer within five (5) Business Days of being requested to do so by Buyer, or (v) Company shall have materially breached its obligations under Section 5.04 by failing to call, give notice of, convene, and hold the Company Meeting in accordance with Section 5.04.

(i) Price of the Buyer Common Stock. By Company, if the board of directors of Company so determines by a majority vote of its members, in the event that, as of the Determination Date, both of the following conditions are satisfied:

(i) the Average Determination Price shall be less than 80% of the Buyer Starting Price; and

A-52



**Table of Contents**

(ii) (A) the number obtained by dividing the Average Determination Price by the Buyer Starting Price (such number, the Buyer Ratio ) is less than (B) the number obtained by dividing the Final Index Price by the Initial Index Price and subtracting 0.20 from such quotient (such number, the Index Ratio ).

If Company elects to exercise its termination right pursuant to this Section 7.01(i), it shall give written notice to Buyer not later than the end of the third Business Day next following the Determination Date. During the five (5) Business Day period commencing with its receipt of such notice, Buyer may, at its option, increase the Exchange Ratio to a number equal to the lesser of (x) a quotient (rounded to the nearest one-ten-thousandth), the numerator of which is equal to the product of the Exchange Ratio (as then in effect) and the Index Ratio, and the denominator of which is equal to the Buyer Ratio, or (y) a quotient (rounded to the nearest one-ten-thousandth), the numerator of which is the product of the Exchange Ratio (as then in effect), the Buyer Starting Price and 0.80, and the denominator of which is the Average Determination Price. If Buyer makes an election contemplated by the preceding sentence within such five (5) Business Day period, it shall give prompt written notice to Company of such election and the revised Exchange Ratio and no termination shall have occurred pursuant to this Section 7.01(i) and this Agreement shall remain in effect in accordance with its terms (except that the Exchange Ratio shall be modified), and any references in this Agreement to Exchange Ratio shall thereafter be deemed to refer to the Exchange Ratio as adjusted pursuant to this Section 7.01(i).

If the outstanding shares of Buyer Common Stock or any company belonging to the Index shall be changed into a different number of shares by reason of any stock dividend, reclassification, recapitalization, split-up, combination, exchange of shares, or similar transaction between the date of the Agreement and the Determination Date, the prices for the common stock of such company will be appropriately adjusted.

For purposes of this Section 7.01(i), the following terms shall have the meanings set forth below:

**Buyer Starting Price** shall mean the average, rounded to the nearest one-tenth of a cent, of the VWAP of the Buyer Common Stock for the ten trading day period ending on the day immediately preceding the date of this Agreement.

**Average Determination Price** of the Buyer Common Stock shall mean the average, rounded to the nearest one-tenth of a cent, of the VWAP of the Buyer Common Stock for the ten (10) trading day period ending on the trading date immediately preceding the Determination Date.

**Determination Date** means the date on which the last required approval of a Governmental Entity is obtained with respect to the Merger, without regard to any requisite waiting period.

**Final Index Price** means the average, rounded to the nearest one-tenth of a cent, of the closing prices of the Index for the same trading days used in calculating the Average Determination Price.

**Index** means the Nasdaq Bank Stock Index or, if such Index is not available, such substitute or similar index as substantially replicates the Nasdaq Bank Stock Index.

**Initial Index Price** means the average, rounded to the nearest one-tenth of a cent, of the closing prices of the Index for the same trading days used in calculating the Buyer Starting Price.

**Section 7.02 Termination Fee; Reimbursement.**

(a) In recognition of the efforts, expenses and other opportunities foregone by Buyer while structuring and pursuing the Merger, Company shall pay to Buyer by wire transfer of immediately available funds a termination fee equal to

\$900,000 (the Termination Fee )

(i) in the event Company terminates this Agreement pursuant to Section 7.01(g), in which case Company shall pay the Termination Fee at or prior to the time of such termination, and

A-53

---

**Table of Contents**

(ii) in the event Buyer terminates this Agreement pursuant to Section 7.01(h), in which case Company shall pay the Termination Fee as promptly as practicable (but in any event within three (3) Business Days).

(b) In the event that (A) (i) an Acquisition Proposal, whether or not conditional, shall have been publicly announced after the date of this Agreement (or any Person shall have, after the date of this Agreement, publicly announced an intention, whether or not conditional, to make an Acquisition Proposal) or (ii) the board of directors of Company has made a Change in Recommendation (or publicly proposed to make a Change in Recommendation), prior to or on the date of Company Meeting (including any adjournment or postponement at which the vote on the Merger is held), (B) this Agreement is thereafter terminated by either Buyer or Company pursuant to Section 7.01(c) or Section 7.01(f) or by Buyer pursuant to Section 7.01(d) or Section 7.01(e), and (C) within twelve (12) months following the date of such termination, Company enters into a definitive agreement with respect to any Acquisition Transaction, the board of directors of Company recommends any Acquisition Transaction or Company consummates any Acquisition Transaction (whether or not such Acquisition Transaction resulted from or was related to the Acquisition Proposal referred to in the foregoing clause (A)(i), if applicable), then Company shall pay Buyer the Termination Fee, less the Buyer Reimbursement Amount (but only to the extent that Company has actually paid to Buyer the Buyer Reimbursement Amount), which amount shall be payable by wire transfer of immediately available funds on or prior to the earlier of Company entering into a definitive agreement for or consummating such Acquisition Transaction, provided, however, that for purposes of this clause (C), all references in the definition of Acquisition Transaction to 20% or more shall instead refer to 50% or more .

(c) In the event that this Agreement is terminated by Buyer under Section 7.01(d), Section 7.01(e) or Section 7.01(f) and a circumstance referred to in clause (A)(i) or (A)(ii) of Section 7.02(b) shall have occurred prior to such termination but the Termination Fee has not been paid and is not payable because the circumstances referred to in clause (C) of Section 7.02(b) shall not have occurred, then Company shall pay at Buyer's direction as promptly as possible (but in any event within three (3) Business Days) following receipt of an invoice therefor up to \$400,000 of Buyer's and its Subsidiaries reasonably documented out-of-pocket fees and expenses (including reasonable legal fees and expenses) actually incurred by Buyer and its Subsidiaries prior to the termination of this Agreement in connection with the negotiation, execution, delivery, or performance of this Agreement by Buyer and Buyer Bank (the Buyer Reimbursement Amount ).

(d) Company and Buyer each agree that the agreements contained in this Section 7.02 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Buyer would not enter into this Agreement; accordingly, if Company fails promptly to pay any amounts due under this Section 7.02 and, in order to obtain such payment, Buyer commences a suit that results in a judgment against Company for such amounts, Company shall pay interest on such amounts from the date payment of such amounts were due to the date of actual payment at the rate of interest equal to the sum of (x) the rate of interest published from time to time in The Wall Street Journal, Eastern Edition (or any successor publication), designated therein as the prime rate on the date such payment was due, plus 200 basis points, together with the costs and expenses of Buyer (including reasonable legal fees and expenses) in connection with the suit.

(e) Notwithstanding anything to the contrary set forth in this Agreement, if Company pays or causes to be paid to Buyer or to Buyer Bank the Termination Fee, neither Company nor Company Bank (or any successor in interest of Company or Company Bank) will have any further obligations or liabilities to Buyer or Buyer Bank with respect to this Agreement or the transactions contemplated by this Agreement, except in the cases of fraud or intentional misrepresentation. However, nothing in this Agreement shall in any way limit the right of Company to seek damages, specific performance, or any remedies at law or in equity, in the event of a breach of this Agreement by Buyer.

Section 7.03 Effect of Termination. In the event of termination of this Agreement pursuant to this Article VII, no party to this Agreement shall have any liability or further obligation to any other party other than as set forth in Section 7.02, provided however that except as set forth in Section 7.02(e), termination will not

A-54

**Table of Contents**

relieve a breaching party from liability for any willful and material breach of any covenant, agreement, representation, or warranty of this Agreement giving rise to such termination and provided that in no event will a party be liable for any punitive damages. For purposes of this Agreement, willful and material breach shall mean a material breach that is a consequence of an act undertaken by the breaching party with the knowledge (actual or constructive) that the taking of such act would, or would be reasonably expected to, cause a breach of this Agreement.

**ARTICLE VIII**

**DEFINITIONS**

Section 8.01 Definitions. The following terms are used in this Agreement with the meanings set forth below:

**Acquisition Proposal** means any proposal or offer after the date of this Agreement with respect to any Acquisition Transaction or any public announcement by any Person (which shall include any regulatory application or notice) of a proposal, plan, or intention with respect to any Acquisition Transaction.

**Acquisition Transaction** means any of the following (other than the transactions contemplated by this Agreement) involving Company: (a) any merger, consolidation, share exchange, business combination, or other similar transaction; (b) any sale, lease, exchange, mortgage, pledge (excluding any FHLB or FRB pledges), transfer or other disposition of assets and/or liabilities that constitute 20% or more of the assets of Company in a single transaction or series of transactions; or (c) any tender offer or exchange offer for 20% or more of the outstanding shares of its capital stock or the filing of a registration statement under the Securities Act in connection with a tender offer or exchange offer.

**Affiliate** means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. As used in this definition, control (including, with its correlative meanings, controlled by and under common control with ) means the possession, directly or indirectly, of power to direct or cause the direction of the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise.

**Agreement** means this Agreement and Plan of Merger (including Exhibits and Disclosure Schedules), as amended or modified in accordance with Section 9.02.

**Articles of Merger** has the meaning set forth in Section 1.04(a).

**Average Determination Price** has the meaning set forth in Section 7.01(i).

**Bank Merger** has the meaning set forth in the recitals.

**Bank Secrecy Act** means the Bank Secrecy Act of 1970, as amended.

**BHC Act** means the Bank Holding Company Act of 1956, as amended.

**BOLI** has the meaning set forth in Section 3.32(b).

**Burdensome Conditions** has the meaning set forth in Section 5.06(a).

**Business Day** means Monday through Friday of each week, except a legal holiday recognized as such by the U.S. government or any day on which banking institutions in The Commonwealth of Massachusetts are authorized or

obligated to close.

A-55

**Table of Contents**

Buyer has the meaning set forth in the preamble to this Agreement.

Buyer Bank has the meaning set forth in the preamble to this Agreement.

Buyer Benefit Plans has the meaning set forth in Section 4.15(a).

Buyer Common Stock means the common stock, \$0.01 par value per share, of Buyer.

Buyer Disclosure Schedule has the meaning set forth in Section 4.01(a).

Buyer Ratio has the meaning set forth in Section 7.01(i).

Buyer Regulatory Agreement has the meaning set forth in Section 4.09.

Buyer Reimbursement Amount has the meaning set forth in Section 7.02(c).

Buyer Reports has the meaning set forth in Section 4.06(a).

Buyer Starting Price has the meaning set forth in Section 7.01(i).

Cash Consideration has the meaning set forth in Section 2.01(c).

Cash Election has the meaning set forth in Section 2.04(a).

Cash Election Shares has the meaning set forth in Section 2.04(a).

Certificate means any certificate or book entry statement which immediately prior to the Effective Time represents shares of Company Common Stock.

Change in Recommendation has the meaning set forth in Section 5.04.

Closing and Closing Date have the meanings set forth in Section 1.04(b).

Code means the Internal Revenue Code of 1986, as amended.

Community Reinvestment Act or CRA means the Community Reinvestment Act of 1977, as amended.

Company has the meaning set forth in the preamble to this Agreement.

Company Balance Sheet Date has the meaning set forth in Section 3.10.

Company Bank has the meaning set forth in the preamble to this Agreement.

Company Benefit Plans has the meaning set forth in Section 3.16(a).

Company Common Stock means the common stock, \$0.01 par value per share, of Company.

Company Disclosure Schedule has the meaning set forth in Section 3.01(a).

Company Employees has the meaning set forth in Section 3.16(a).

Company Expenses has the meaning set forth in Section 5.24.

A-56



**Table of Contents**

Company Intellectual Property means the Intellectual Property used in or held for use in the conduct of the business of Company and its Subsidiaries.

Company Loan has the meaning set forth in Section 3.23(b).

Company Loan Property has the meaning set forth in Section 3.18(a).

Company Meeting has the meaning set forth in Section 5.04.

Company Pension Plan has the meaning set forth in Section 3.16(b).

Company Preferred Stock means the preferred stock, \$0.01 par value per share, of Company.

Company Regulatory Agreement has the meaning set forth in Section 3.14.

Company Third Party Consent has the meaning set forth in Section 3.13(c).

D&O Insurance has the meaning set forth in Section 5.10(c).

Derivative Transaction means any swap transactions, option, warrant, forward purchase or sale transactions, futures transactions, cap transactions, floor transactions, or collar transactions relating to one or more currencies, commodities, bonds, equity securities, loans, interest rates, catastrophe events, weather-related events, credit-related events, or conditions or any indexes, or any other similar transactions (including any option with respect to any of these transactions) or combination of any of these transactions, including collateralized mortgage obligations or other similar instruments or any debt or equity instruments evidencing or embedding any such types of transactions, and any related credit support, collateral or other similar arrangements related to them.

Determination Date has the meaning set forth in Section 7.01(i).

Dissenters Shares has the meaning set forth in Section 2.01(d).

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Effective Time has the meaning set forth in Section 1.04(a).

Election Deadline has the meaning set forth in Section 2.04(b).

Election Form has the meaning set forth in Section 2.04(a).

Environmental Law means any federal, state or local Law, regulation, order, decree, permit, authorization, opinion, or agency requirement relating to: (a) pollution, the protection or restoration of the indoor or outdoor environment, human health, or natural resources, (b) the handling, use, presence, disposal, release or threatened release of any Hazardous Substance, or (c) any injury or threat of injury to persons or property in connection with any Hazardous Substance. The term Environmental Law includes, but is not limited to, the following statutes, as amended, any successor law, and any implementing regulations, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: (a) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq.; the Federal Water Pollution Control Act, as amended,

33 U.S.C. § 1251, et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 1101, et seq.; the Safe Drinking Water Act; 42 U.S.C. § 300f, et seq.; (b) common law that may impose liability (including without limitation strict liability) or obligations for injuries or damages due to the presence of or exposure to any Hazardous Substance.

A-57

**Table of Contents**

Equal Credit Opportunity Act means the Equal Credit Opportunity Act, as amended.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

ERISA Affiliate has the meaning set forth in Section 3.16(c).

Exchange Act means the Securities Exchange Act of 1934, as amended.

Exchange Agent means such exchange agent as may be designated by Buyer and reasonably acceptable to Company to act as agent for purposes of conducting the exchange procedures described in Section 2.05(a) (which shall be Buyer's transfer agent).

Exchange Fund has the meaning set forth in Section 2.05(a).

Exchange Ratio has the meaning set forth in Section 2.01(c).

Executive Officer means each officer of (i) Buyer who files reports with the SEC pursuant to Section 16(a) of the Exchange Act, and (ii) those officers of the Company set forth on Appendix A.

Fair Housing Act means the Fair Housing Act, as amended.

FDIC means the Federal Deposit Insurance Corporation.

FHLB means the Federal Home Loan Bank of Boston.

Final Index Price has the meaning set forth in Section 7.01(i).

FRB means the Federal Reserve Bank of Boston.

GAAP means accounting principles generally accepted in the United States of America.

Governmental Authority means any federal, state or local court, regulator, administrative agency, or commission or other governmental authority or instrumentality.

Hazardous Substance means any and all substances (whether solid, liquid or gas) defined, listed, or otherwise regulated as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, flammable or explosive materials, radioactive materials, or words of similar meaning or regulatory effect under any present or future Environmental Law or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives, mold, mycotoxins and airborne pathogens (naturally occurring or otherwise).

Home Mortgage Disclosure Act means Home Mortgage Disclosure Act of 1975, as amended.

Indemnified Parties and Indemnifying Party have the meanings set forth in Section 5.10(a).

Index has the meaning set forth in Section 7.01(i).

Index Ratio has the meaning set forth in Section 7.01(i).

Initial Index Price has the meaning set forth in Section 7.01(i).

Information Systems Conversion has the meaning set forth in Section 5.15.

A-58

**Table of Contents**

Insurance Policies has the meaning set forth in Section 3.32(a).

Intellectual Property means (a) trademarks, service marks, trade names, Internet domain names, designs, logos, slogans, and general intangibles of like nature, together with all goodwill, registrations and applications related to them; (b) patents and industrial designs (including any continuations, divisionals, continuations-in-part, renewals, reissues, and applications for any of them); (c) copyrights (including any registrations and applications for any of them); (d) Software; and (e) technology, trade secrets and other confidential information, know-how, proprietary processes, formulae, algorithms, models, and methodologies.

IRS means the Internal Revenue Service.

Knowledge of any Person (including references to a Person being aware of a particular matter) as used with respect to Company and its Subsidiaries means those facts that are actually known, after reasonable inquiry, by the Executive Officers of Company and the directors of Company and Company Bank, and as used with respect to Buyer and its Subsidiaries means those facts that are actually known, after reasonable inquiry, by the Executive Officers of Buyer and the directors of Buyer. Without limiting the scope of the immediately preceding sentence, the term Knowledge includes any fact, matter, or circumstance set forth in any written notice received by Company or Buyer, respectively, from any Governmental Authority.

Law means any statute, law, ordinance, rule, or regulation of any Governmental Authority that is applicable to the referenced Person.

Leases has the meaning set forth in Section 3.30(b).

Liens means any charge, mortgage, pledge, security interest, restriction, claim, lien or encumbrance, conditional and installment sale agreement, charge or other claim of third parties of any kind.

Loans has the meaning set forth in Section 3.23(a).

Mailing Date has the meaning set forth in Section 2.04(a).

Material Adverse Effect means with respect to any Person, any effect, circumstance, occurrence or change that is material and adverse to the financial position, results of operations, or business of such Person and its Subsidiaries, taken as a whole, or which would materially impair the ability of such Person to perform its obligations under this Agreement or otherwise materially impairs the ability of such Person to consummate the transactions contemplated by this Agreement; provided, however, that Material Adverse Effect shall not be deemed to include the impact of (i) changes in banking and similar Laws of general applicability or interpretations of banking and similar Laws of general applicability by Governmental Authorities, (ii) changes in GAAP or regulatory accounting requirements applicable to banks or bank holding companies generally, (iii) any modifications or changes to Company valuation policies and practices in connection with the transactions contemplated by this Agreement or restructuring charges taken in connection with the transactions contemplated by this Agreement, in each case in accordance with GAAP and with Buyer's prior written consent, (iv) changes after the date of this Agreement in general economic or capital market conditions affecting financial institutions or their market prices generally and not disproportionately affecting Company or Buyer, including, but not limited to, changes in levels of interest rates generally, (v) the effects of compliance with this Agreement on the operating performance, business, or financial condition of Company or Buyer, including the expenses incurred by Company or Buyer in negotiating, documenting, effecting, and consummating the transactions contemplated by this Agreement, (vi) the effects of any action or omission taken by Company with the prior consent of Buyer, and vice versa, or as otherwise expressly permitted or contemplated by this Agreement; (vii)

the impact of the Agreement and the transactions it contemplates on relationships with customers or employees (including the loss of personnel subsequent to the date of this Agreement); (viii) the public disclosure of this Agreement or the transactions it contemplates; (ix) changes in national or international political or social conditions including the

A-59

**Table of Contents**

engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States and (x) natural disaster or other force majeure event.

Material Contracts has the meaning set forth in Section 3.13(a).

Maximum D&O Tail Premium has the meaning set forth in Section 5.10(c).

MBCA has the meaning set forth in Section 1.01.

Merger has the meaning set forth in the recitals.

Merger Consideration has the meaning set forth in Section 2.01(c).

Nasdaq has the meaning set forth in Section 4.08(a).

National Labor Relations Act means the National Labor Relations Act of 1935, as amended.

New Certificates has the meaning set forth in Section 2.05(a).

Non-Election has the meaning set forth in Section 2.04(a).

Non-Election Shares has the meaning set forth in Section 2.04(a).

Notice Period has the meaning set forth in Section 5.09(d).

OCC means the Office of the Comptroller of the Currency.

OREO has the meaning set forth in Section 3.23(a).

Person means any individual, bank, corporation, partnership, association, joint-stock company, business trust, limited liability company, unincorporated organization, or other organization or firm of any kind or nature.

Phase I Assessment has the meaning set forth in Section 5.01(w).

Phase II Assessment has the meaning set forth in Section 5.17(a).

Plan of Bank Merger means the agreement and plan of merger to be entered into between Buyer Bank and Company Bank providing for the merger of Company Bank and Buyer Bank.

Proxy Statement-Prospectus means the proxy statement and prospectus and other proxy solicitation materials constituting a part of them, together with any amendments and supplements, to be delivered to holders of Company Common Stock in connection with the solicitation of their approval of this Agreement.

Registration Statement has the meaning set forth in Section 4.12.

Regulatory Approval has the meaning set forth in Section 3.07(a).

Release means, with respect to any Hazardous Substance, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the indoor or outdoor environment.

Requisite Company Shareholder Approval has the meaning set forth in Section 3.06.

A-60



**Table of Contents**

**Rights** means, with respect to any Person, warrants, options, rights, convertible securities, and other arrangements or commitments which obligate the Person to issue or dispose of any of its capital stock or other ownership interests.

**Sarbanes-Oxley Act** means the Sarbanes-Oxley Act of 2002, as amended.

**SBLF Preferred Stock** means the Senior Non-Cumulative Perpetual Preferred Stock, Series A, par value \$0.01 per share, of Company.

**SEC** means the Securities and Exchange Commission.

**Securities Act** means the Securities Act of 1933, as amended.

**Shortfall Number** has the meaning set forth in Section 2.04(c)(ii).

**Software** means computer programs, whether in source code or object code form (including any and all software implementation of algorithms, models and methodologies), databases, and compilations (including any and all data and collections of data), and all documentation (including user manuals and training materials) related to them.

**Stock Consideration** has the meaning set forth in Section 2.01(c).

**Stock Conversion Number** has the meaning set forth in Section 2.04(a).

**Stock Election** has the meaning set forth in Section 2.04(a).

**Stock Election Number** has the meaning set forth in Section 2.04(a).

**Stock Election Shares** has the meaning set forth in Section 2.04(a).

**Subsidiary** means, with respect to any party, any corporation or other entity of which a majority of the capital stock or other ownership interest having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by the party. For purposes of this Agreement any reference to a Company Subsidiary means, unless the context otherwise requires, any current or former Subsidiary of Company.

**Superior Proposal** means any bona fide written Acquisition Proposal with respect to more than 50% of the combined voting power of the shares of Company Common Stock then outstanding or all or substantially all of the assets of Company that is (a) on terms which the board of directors of Company determines in good faith, after consultation with its financial advisor, to be more favorable from a financial point of view to Company's shareholders than the transactions contemplated by this Agreement, (b) that constitutes a transaction that, in the good faith judgment of the board of directors of Company, is reasonably likely to be consummated on the terms set forth, taking into account all legal, financial, regulatory, and other aspects of the proposal, and (c) for which financing, to the extent required, is then committed pursuant to a written commitment letter.

**Surviving Entity** shall have the meaning set forth in Section 1.01.

**Tax and Taxes** mean all federal, state, local or foreign income, gross income, gains, gross receipts, sales, use, ad valorem, goods and services, capital, production, transfer, franchise, windfall profits, license, withholding, payroll, employment, disability, employer health, excise, estimated, severance, stamp, occupation, property, environmental,

custom duties, unemployment or other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest, additions or penalties, whether disputed or not, and any interest on interest and penalties.

A-61

**Table of Contents**

**Tax Returns** means any return, declaration or other report, claim for refund, or information return or statement relating to Taxes, including any schedule, or amendment of any Tax Returns.

**Termination Date** has the meaning set forth in Section 7.01(f).

**Termination Fee** has the meaning set forth in Section 7.02(a).

The date hereof or the date of this Agreement shall mean October 20, 2016.

**Truth in Lending Act** means the Truth in Lending Act of 1968, as amended.

**Treasury** means the United States Department of Treasury.

**USA PATRIOT Act** means the USA PATRIOT Act of 2001, Public Law 107-56, and its implementing regulations.

**Voting Agreement** has the meaning set forth in the recitals.

**VWAP** means volume-weighted average trading price of a share of (i) Buyer Common Stock on Nasdaq or (ii) the Index, in each case as reported by Bloomberg L.P.

**WARN Act** has the meaning set forth in Section 5.11(f).

**ARTICLE IX**

**MISCELLANEOUS**

Section 9.01 **Survival**. No representations, warranties, agreements, and covenants contained in this Agreement shall survive the Effective Time (other than agreements or covenants that by their express terms are to be performed after the Effective Time) or the termination of this Agreement if this Agreement is terminated prior to the Effective Time (other than this Article IX, which shall survive any such termination). Notwithstanding anything in the foregoing to the contrary, no representations, warranties, agreements, and covenants contained in this Agreement shall be deemed to be terminated or extinguished so as to deprive a party or any of its Affiliates of any defense at law or in equity which otherwise would be available against the claims of any Person, including without limitation any shareholder or former shareholder.

Section 9.02 **Waiver; Amendment**. Prior to the Effective Time, except for the condition set forth in Section 6.01(e) and the introductory language of Section 6.01 relating to Section 6.01(e), which may not be waived in any circumstance, any provision of this Agreement may be (a) waived by the party benefited by the provision or (b) amended or modified at any time, by an agreement in writing among the parties executed in the same manner as this Agreement, except that after the Company Meeting no amendment shall be made which by Law requires further approval by the shareholders of Buyer or Company without obtaining that approval.

Section 9.03 **Governing Law; Waiver**.

(a) This Agreement shall be governed by, and interpreted in accordance with, the Laws of the Commonwealth of Massachusetts, without regard for conflict of law.

(b) Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each party irrevocably and unconditionally waives any right such party may have to a trial by jury in any litigation directly or indirectly arising out of or

A-62

**Table of Contents**

relating to this Agreement, or the transactions it contemplates. Each party certifies and acknowledges that (i) no representative, agent or attorney of any other party has represented, expressly or otherwise, that any other party would not, in the event of litigation, seek to enforce the foregoing waiver, (ii) each party understands and has considered the implications of this waiver, (iii) each party makes this waiver voluntarily, and (iv) each party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 9.03.

Section 9.04 Expenses. Except as otherwise provided in Sections 5.05(f) and 7.02, each party will bear all expenses incurred by it in connection with this Agreement and the transactions it contemplates, including fees and expenses of its own financial consultants, accountants and counsel, provided that nothing in this Agreement shall limit either party's rights to recover any liabilities or damages arising out of the other party's willful breach of any provision of this Agreement.

Section 9.05 Notices. All notices, requests, and other communications to a party shall be in writing and shall be deemed given if personally delivered, mailed by registered or certified mail (return receipt requested), by properly addressed electronic mail delivery, or sent by reputable courier service to the party at its address set forth below or such other address as such party may specify by notice. All notices shall be deemed effective upon delivery.

If to Buyer:

Independent Bank Corp.

288 Union Street

Rockland, Massachusetts 02370

Attention: Edward H. Seksay, General Counsel

E-mail: edward.seksay@rocklandtrust.com

With a copy (which shall not constitute notice) to:

Day Pitney LLP

1 Jefferson Road

Parsippany, NJ 07054

Attention: Michael T. Rave, Esq.

E-mail: mrave@daypitney.com

If to Company:

Island Bancorp, Inc.

2 South Water Street

Edgartown, Massachusetts 02539

Attention: Fielding H. Moore, President and CEO

E-mail:

With a copy (which shall not constitute notice) to:

Cranmore, FitzGerald & Meaney

49 Wethersfield Avenue

Hartford, Connecticut 06114

Attention: J. J. Cranmore, Esq.

E-mail: JCranmore@cfmlawfirm.com

Section 9.06 Entire Understanding; No Third Party Beneficiaries. This Agreement, together with the Exhibits, the Disclosure Schedules, and the confidentiality agreements between Company and Buyer, dated December 22, 2015, represents the entire understanding of the parties with reference to the transactions

A-63

---

**Table of Contents**

contemplated by this Agreement, and this Agreement supersedes any and all other oral or written agreements previously made, except that the confidentiality agreements between the parties shall remain in full force and effect. Except for the Indemnified Parties' rights under Section 5.10, which are expressly intended to be for the irrevocable benefit of, and shall be enforceable by, each Indemnified Party and his or her heirs and representatives, Buyer and Company agree that their respective representations, warranties, and covenants are solely for the benefit of the other party, in accordance with and subject to the terms of this Agreement, and this Agreement is not intended to, and does not, confer upon any Person (including any person or Employees who might be affected by Section 5.11), other than the parties, any rights or remedies, including the right to rely upon the representations and warranties set forth in this Agreement. The representations and warranties in this Agreement are the product of negotiations among the parties and are for the sole benefit of the parties. Any inaccuracies in the representations and warranties are subject to waiver by the parties in accordance with Section 9.02 without notice or liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties of risks associated with particular matters regardless of the Knowledge of any of the parties. Consequently, Persons other than the parties may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

Section 9.07 Severability. In the event that any one or more provisions of this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, by any court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and the parties shall use their reasonable efforts to substitute a valid, legal, and enforceable provision which, insofar as practical, implements the purposes and intentions of this Agreement.

Section 9.08 Enforcement of the Agreement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any federal or state court in the Commonwealth of Massachusetts having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity. The parties consent to the personal jurisdiction of any federal or state court in the Commonwealth of Massachusetts having jurisdiction over any dispute arising under this Agreement.

Section 9.09 Interpretation. When a reference is made in this Agreement to sections, exhibits, or schedules, the reference shall be to a section of, or exhibit or schedule to, this Agreement unless otherwise expressly indicated. The table of contents and headings contained in this Agreement are for reference purposes only and are not part of this Agreement. Whenever the words include, includes, or including are used in this Agreement, they shall be deemed to be followed by the words without limitation.

Section 9.10 Assignment. No party may assign either this Agreement or any of its rights, interests, or obligations under this Agreement without the prior written approval of the other party. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

Section 9.11 Counterparts. This Agreement may be executed by facsimile and in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart. Signatures delivered by facsimile or by electronic data file shall have the same effect as originals.

*[Signature Pages Follow]*

A-64



**Table of Contents**

IN WITNESS WHEREOF, the parties have executed this Agreement in counterparts by their duly authorized officers, all as of the day and year on page one.

**INDEPENDENT BANK CORP.**

By: /s/ Christopher Oddleifson  
Name: Christopher Oddleifson  
Title: President and Chief Executive Officer

**ROCKLAND TRUST COMPANY**

By: /s/ Christopher Oddleifson  
Name: Christopher Oddleifson  
Title: President and Chief Executive Officer

**ISLAND BANCORP, INC.**

By: /s/ Fielding H. Moore  
Name: Fielding H. Moore  
Title: President and Chief Executive Officer

**THE EDGARTOWN NATIONAL BANK**

By: /s/ Fielding H. Moore  
Name: Fielding H. Moore  
Title: President and Chief Executive Officer

Signature Page of Agreement and Plan of Merger

Table of Contents

**ANNEX B OPINION OF FIG PARTNERS, LLC**

October 20, 2016

Board of Directors

Island Bancorp, Inc.

2 South Water Street

Edgartown, MA 02539

Dear Members of the Board:

We understand that Island Bancorp, Inc. (or the Company), parent of Edgartown National Bank, has entered into an Agreement and Plan of Merger, dated as of October 20, 2016 (the Agreement) pursuant to which, among other things, Island Bancorp, Inc. will merge with and ultimately into (the Merger), Independent Bank Corp., parent of Rockland Trust Company. Independent Bank Corp. is headquartered in Rockland, MA. As of June 30, 2016, Independent Bank Corp. had total assets of \$7.4 billion and operated 84 branches throughout Massachusetts. Pursuant to the terms detailed in the Agreement, upon the effective date of such Merger, each holder of issued and outstanding shares of Company common stock (the Seller Common Stock) will receive either \$500.00 in cash for each outstanding share or 9.525 shares of INDB stock ( Merger Consideration ) with 20% of the Merger Consideration in cash and 80% in stock. In connection therewith, you have requested our opinion as to the fairness (the Opinion), from a financial point of view, of the Merger Consideration to be paid to the shareholders of Island Bancorp, Inc. pursuant to the Agreement.

FIG Partners LLC (or FIG), as part of its investment banking business, is continually engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, negotiated underwritings, competitive bidding, secondary distributions of listed and unlisted securities, private placements and valuations for estate, corporate and other purposes. As specialists in the securities of banking companies, we have experience and knowledge of the valuation of banking institutions. This opinion has been reviewed by FIG's compliance officer consistent with internal policy; it has not been reviewed by a fairness committee. In addition FIG has not had a material relationship with any party to the transaction for which we have received compensation during the prior two years.

We were retained exclusively by the Board of Directors of Island Bancorp, Inc. to act as its financial advisor in connection with the Merger and in rendering this fairness opinion. We will receive compensation from Island Bancorp, Inc. in connection with our services, upon the successful completion of the transaction. This compensation includes \$25,000 for the issuance of the fairness opinion dated October 20, 2016. Island Bancorp, Inc. has agreed to indemnify us for certain liabilities arising out of our engagement.

During the course of our engagement and for the purposes of the opinion set forth herein, we have:

- (i) reviewed the Agreement;

- (ii) reviewed certain historical publicly available business and financial information concerning Island Bancorp, Inc. and Independent Bank Corp. including, among other things, quarterly and annual reports filed by the parties with the Federal Deposit Insurance Corporation;
- (iii) reviewed certain financial projections prepared by management of Island Bancorp, Inc.;
- (iv) held discussions with members of the senior managements of Island Bancorp, Inc. and Independent Bank Corp. for the purpose of reviewing future prospects of the potential pro forma institution related

B-1

**Table of Contents**

Board of Directors

October 20, 2016

Page 2 of 3

to the respective businesses, earnings, assets, liabilities and the amount of and timing of cost savings (the Synergies ) expected to be achieved as a result of the Merger;

(v) reviewed the terms of recent merger and acquisition transactions, to the extent publicly available, involving banks, thrifts and bank and thrift holding companies that we considered relevant; and

(vi) performed such other analyses and considered such other factors as we have deemed appropriate. We also took into account our assessment of general economic, market and financial conditions and our experience in other transactions as well as our knowledge of the banking industry and our general experience in securities valuations.

In rendering this opinion, we have assumed, without independent verification, the accuracy and completeness of the financial and other information and representations contained in the materials provided to us by Island Bancorp, Inc. and Independent Bank Corp. and in the discussions with the respective management teams of Island Bancorp, Inc. and Independent Bank Corp. In that regard, we have assumed that the financial forecasts, including, without limitation, the synergies and projections of the pro forma institution have been reasonably prepared on a basis reflecting the best currently available information and judgments and estimates of Island Bancorp, Inc. and Independent Bank Corp. and that such forecasts will be realized in the amounts and at the times contemplated thereby. We are not experts in the evaluation of loan and lease portfolios for purposes of assessing the adequacy of the allowances for losses with respect thereto and have assumed and relied upon management's estimates and projections. We were not retained to and did not conduct a physical inspection of any of the properties or facilities of Island Bancorp, Inc. and Independent Bank Corp. or their respective subsidiaries. In addition, we have not reviewed individual credit files nor have we made an independent evaluation or appraisal of the assets and liabilities of Island Bancorp, Inc., Independent Bank Corp. or any of their respective subsidiaries, and we were not furnished with any such evaluations or appraisals.

We have assumed that the Merger will be consummated substantially in accordance with the terms set forth in the Agreement. We have further assumed that the Merger will be accounted for as a purchase under generally accepted accounting principles. We have assumed that the Merger is, and will be, in compliance with all laws and regulations that are applicable to Island Bancorp, Inc. and Independent Bank Corp. In rendering this Opinion, we have been advised by Island Bancorp, Inc. and Independent Bank Corp., and we have assumed that there are no factors that would impede any necessary regulatory or governmental approval of the Merger.

Our Opinion is based solely upon the information available to us and the economic, market and other circumstances, as they exist as of the date hereof. Events occurring and information that becomes available after the date hereof could materially affect the assumptions and analyses used in preparing this opinion. We have not undertaken to reaffirm or revise this opinion or otherwise comment upon any events occurring or information that becomes available after the date hereof, except as otherwise agreed in our engagement letter.

Edgar Filing: INDEPENDENT BANK CORP - Form 424B3

This letter is solely for the information of the Board of Directors of Island Bancorp, Inc. and is not to be used, circulated, quoted or otherwise referred to for any other purpose, nor is it to be filed with, included in or referred to in whole or in part in any proxy statement or any other document, except in each case in accordance with our prior written consent, which shall not be unreasonably withheld; provided, however, that we hereby consent to the inclusion and reference to this letter in any proxy statement, information statement or tender offer document to be delivered to the holders of Island Bancorp, Inc. common stock in connection with the Merger if and only if this letter is quoted in full or attached as an exhibit to such document and this letter has not been withdrawn prior to the date of such document.

B-2

**Table of Contents**

Board of Directors

October 20, 2016

Page 3 of 3

Subject to the foregoing and based on our experience as investment bankers, our activities and assumptions as described above, and other factors we have deemed relevant, we are of the opinion as of the date hereof that the Merger Consideration to be received by the holders of Island Bancorp, Inc. Common Stock pursuant to the Agreement is fair, from a financial point of view, to the shareholders of Island Bancorp, Inc.

Sincerely,

FIG PARTNERS, LLC

B-3

**Table of Contents**

**ANNEX C MASSACHUSETTS LAW ON DISSENTERS RIGHTS**

Under Massachusetts law, dissenters rights are set forth in the Massachusetts Business Corporation Act, Chapter 156D, Section 13. The relevant provisions under Section 13 are as follows:

**Section 13.01. DEFINITIONS**

In this PART the following words shall have the following meanings unless the context requires otherwise:

**Affiliate** , any person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control of or with another person.

**Beneficial shareholder** , the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

**Corporation** , the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 13.22 to 13.31, inclusive, includes the surviving entity in a merger.

**Fair value** , with respect to shares being appraised, the value of the shares immediately before the effective date of the corporate action to which the shareholder demanding appraisal objects, excluding any element of value arising from the expectation or accomplishment of the proposed corporate action unless exclusion would be inequitable.

**Interest** , interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

**Marketable securities** , securities held of record by, or by financial intermediaries or depositories on behalf of, at least 1,000 persons and which were

(a) listed on a national securities exchange,

(b) designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or

(c) listed on a regional securities exchange or traded in an interdealer quotation system or other trading system and had at least 250,000 outstanding shares, exclusive of shares held by officers, directors and affiliates, which have a market value of at least \$5,000,000.

**Officer** , the chief executive officer, president, chief operating officer, chief financial officer, and any vice president in charge of a principal business unit or function of the issuer.

**Person** , any individual, corporation, partnership, unincorporated association or other entity.

**Record shareholder** , the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

**Shareholder** , the record shareholder or the beneficial shareholder.

**Section 13.02. RIGHT TO APPRAISAL**

(a) A shareholder is entitled to appraisal rights, and obtain payment of the fair value of his shares in the event of, any of the following corporate or other actions:

(1) consummation of a plan of merger to which the corporation is a party if shareholder approval is required for the merger by section 11.04 or the articles of organization or if the corporation is a subsidiary that is merged with its parent under section 11.05, unless, in either case, (A) all shareholders are to receive only cash for their shares in amounts equal to what they would receive upon a dissolution of the corporation

C-1



**Table of Contents**

or, in the case of shareholders already holding marketable securities in the merging corporation, only marketable securities of the surviving corporation and/or cash and (B) no director, officer or controlling shareholder has a direct or indirect material financial interest in the merger other than in his capacity as (i) a shareholder of the corporation, (ii) a director, officer, employee or consultant of either the merging or the surviving corporation or of any affiliate of the surviving corporation if his financial interest is pursuant to bona fide arrangements with either corporation or any such affiliate, or (iii) in any other capacity so long as the shareholder owns not more than five percent of the voting shares of all classes and series of the corporation in the aggregate;

(2) consummation of a plan of share exchange in which his shares are included unless: (A) both his existing shares and the shares, obligations or other securities to be acquired are marketable securities; and (B) no director, officer or controlling shareholder has a direct or indirect material financial interest in the share exchange other than in his capacity as (i) a shareholder of the corporation whose shares are to be exchanged, (ii) a director, officer, employee or consultant of either the corporation whose shares are to be exchanged or the acquiring corporation or of any affiliate of the acquiring corporation if his financial interest is pursuant to bona fide arrangements with either corporation or any such affiliate, or (iii) in any other capacity so long as the shareholder owns not more than five percent of the voting shares of all classes and series of the corporation whose shares are to be exchanged in the aggregate;

(3) consummation of a sale or exchange of all, or substantially all, of the property of the corporation if the sale or exchange is subject to section 12.02, or a sale or exchange of all, or substantially all, of the property of a corporation in dissolution, unless:

(i) his shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for his shares; or

(ii) the sale or exchange is pursuant to court order; or

(iii) in the case of a sale or exchange of all or substantially all the property of the corporation subject to section 12.02, approval of shareholders for the sale or exchange is conditioned upon the dissolution of the corporation and the distribution in cash or, if his shares are marketable securities, in marketable securities and/or cash, of substantially all of its net assets, in excess of a reasonable amount reserved to meet unknown claims under section 14.07, to the shareholders in accordance with their respective interests within one year after the sale or exchange and no director, officer or controlling shareholder has a direct or indirect material financial interest in the sale or exchange other than in his capacity as (i) a shareholder of the corporation, (ii) a director, officer, employee or consultant of either the corporation or the acquiring corporation or of any affiliate of the acquiring corporation if his financial interest is pursuant to bona fide arrangements with either corporation or any such affiliate, or (iii) in any other capacity so long as the shareholder owns not more than five percent of the voting shares of all classes and series of the corporation in the aggregate;

(4) an amendment of the articles of organization that materially and adversely affects rights in respect of a shareholder's shares because it:

(i) creates, alters or abolishes the stated rights or preferences of the shares with respect to distributions or to dissolution, including making non-cumulative in whole or in part a dividend theretofore stated as cumulative;

(ii) creates, alters or abolishes a stated right in respect of conversion or redemption, including any provision relating to any sinking fund or purchase, of the shares;

(iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) excludes or limits the right of the holder of the shares to vote on any matter, or to cumulate votes, except as such right may be limited by voting rights given to new shares then being authorized of an existing or new class; or

C-2

**Table of Contents**

(v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section 6.04;

(5) an amendment of the articles of organization or of the bylaws or the entering into by the corporation of any agreement to which the shareholder is not a party that adds restrictions on the transfer or registration or any outstanding shares held by the shareholder or amends any pre-existing restrictions on the transfer or registration of his shares in a manner which is materially adverse to the ability of the shareholder to transfer his shares;

(6) any corporate action taken pursuant to a shareholder vote to the extent the articles of organization, bylaws or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to appraisal;

(7) consummation of a conversion of the corporation to nonprofit status pursuant to subdivision B of PART 9; or

(8) consummation of a conversion of the corporation into a form of other entity pursuant to subdivision D of PART 9.

(b) Except as otherwise provided in subsection (a) of section 13.03, in the event of corporate action specified in clauses (1), (2), (3), (7) or (8) of subsection (a), a shareholder may assert appraisal rights only if he seeks them with respect to all of his shares of whatever class or series.

(c) Except as otherwise provided in subsection (a) of section 13.03, in the event of an amendment to the articles of organization specified in clause (4) of subsection (a) or in the event of an amendment of the articles of organization or the bylaws or an agreement to which the shareholder is not a party specified in clause (5) of subsection (a), a shareholder may assert appraisal rights with respect to those shares adversely affected by the amendment or agreement only if he seeks them as to all of such shares and, in the case of an amendment to the articles of organization or the bylaws, has not voted any of his shares of any class or series in favor of the proposed amendment.

(d) The shareholder's right to obtain payment of the fair value of his shares shall terminate upon the occurrence of any of the following events:

(i) the proposed action is abandoned or rescinded; or

(ii) a court having jurisdiction permanently enjoins or sets aside the action; or

(iii) the shareholder's demand for payment is withdrawn with the written consent of the corporation.

(e) A shareholder entitled to appraisal rights under this chapter may not challenge the action creating his entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

**Section 13.03. ASSERTION OF RIGHTS BY NOMINEES AND BENEFICIAL OWNERS**

(a) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(b) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(1) submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in subclause (ii) of clause (2) of subsection (b) of section 13.22; and

C-3

**Table of Contents**

(2) does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

**Section 13.20. NOTICE OF APPRAISAL RIGHTS**

(a) If proposed corporate action described in subsection (a) of section 13.02 is to be submitted to a vote at a shareholders meeting or through the solicitation of written consents, the meeting notice or solicitation of consents shall state that the corporation has concluded that shareholders are, are not or may be entitled to assert appraisal rights under this Part and refer to the necessity of the shareholder delivering, before the vote is taken, written notice of his intent to demand payment and to the requirement that he not vote his shares in favor of the proposed action. If the corporation concludes that appraisal rights are or may be available, a copy of this Part shall accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to section 11.05, the parent corporation shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice shall be sent within 10 days after the corporate action became effective and include the materials described in section 13.22.

**Section 13.21. NOTICE OF INTENT TO DEMAND PAYMENT**

(a) If proposed corporate action requiring appraisal rights under section 13.02 is submitted to vote at a shareholders meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(1) shall deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

(2) shall not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) is not entitled to payment under this chapter.

**Section 13.22. APPRAISAL NOTICE AND FORM**

(a) If proposed corporate action requiring appraisal rights under subsection (a) of section 13.02 becomes effective, the corporation shall deliver a written appraisal notice and form required by clause (1) of subsection (b) to all shareholders who satisfied the requirements of section 13.21 or, if the action was taken by written consent, did not consent. In the case of a merger under section 11.05, the parent shall deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice shall be sent no earlier than the date the corporate action became effective and no later than 10 days after such date and must:

(1) supply a form that specifies the date of the first announcement to shareholders of the principal terms of the proposed corporate action and requires the shareholder asserting appraisal rights to certify (A) whether or not beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date and (B) that the shareholder did not vote for the transaction;

(2) state:

(i) where the form shall be sent and where certificates for certificated shares shall be deposited and the date by which those certificates shall be deposited, which date may not be earlier than the date for receiving the required form under

subclause (ii);

C-4

### **Table of Contents**

(ii) a date by which the corporation shall receive the form which date may not be fewer than 40 nor more than 60 days after the date the subsection (a) appraisal notice and form are sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

(iii) the corporation's estimate of the fair value of the shares;

(iv) that, if requested in writing, the corporation will provide, to the shareholder so requesting, within 10 days after the date specified in clause (ii) the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) the date by which the notice to withdraw under section 13.23 shall be received, which date shall be within 20 days after the date specified in subclause (ii) of this subsection; and

(3) be accompanied by a copy of this chapter.

### **Section 13.23. PERFECTION OF RIGHTS; RIGHT TO WITHDRAW**

(a) A shareholder who receives notice pursuant to section 13.22 and who wishes to exercise appraisal rights shall certify on the form sent by the corporation whether the beneficial owner of the shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to clause (1) of subsection (b) of section 13.22. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 13.25. In addition, a shareholder who wishes to exercise appraisal rights shall execute and return the form and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subclause (ii) of clause (2) of subsection (b) of section 13.22. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to said subsection (b).

(b) A shareholder who has complied with subsection (a) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to subclause (v) of clause (2) of subsection (b) of section 13.22. A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(c) A shareholder who does not execute and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in subsection (b) of section 13.22, shall not be entitled to payment under this chapter.

### **Section 13.24. PAYMENT**

(a) Except as provided in section 13.25, within 30 days after the form required by subclause (ii) of clause (2) of subsection (b) of section 13.22 is due, the corporation shall pay in cash to those shareholders who complied with subsection (a) of section 13.23 the amount the corporation estimates to be the fair value of their shares, plus interest.

(b) The payment to each shareholder pursuant to subsection (a) shall be accompanied by:

- (1) financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;
- (2) a statement of the corporation's estimate of the fair value of the shares, which estimate shall equal or exceed the corporation's estimate given pursuant to subclause (iii) of clause (2) of subsection (b) of section 13.22; and

C-5



**Table of Contents**

- (3) a statement that shareholders described in subsection (a) have the right to demand further payment under section 13.26 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted the payment in full satisfaction of the corporation's obligations under this chapter.

**Section 13.25. AFTER-ACQUIRED SHARES**

(a) A corporation may elect to withhold payment required by section 13.24 from any shareholder who did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to clause (1) of subsection (b) of section 13.22.

(b) If the corporation elected to withhold payment under subsection (a), it must, within 30 days after the form required by subclause (ii) of clause (2) of subsection (b) of section 13.22 is due, notify all shareholders who are described in subsection (a):

(1) of the information required by clause (1) of subsection (b) of section 13.24;

(2) of the corporation's estimate of fair value pursuant to clause (2) of subsection (b) of said section 13.24;

(3) that they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section 13.26;

(4) that those shareholders who wish to accept the offer shall so notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and

(5) that those shareholders who do not satisfy the requirements for demanding appraisal under section 13.26 shall be deemed to have accepted the corporation's offer.

(c) Within 10 days after receiving the shareholder's acceptance pursuant to subsection (b), the corporation shall pay in cash the amount it offered under clause (2) of subsection (b) to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(d) Within 40 days after sending the notice described in subsection (b), the corporation must pay in cash the amount if offered to pay under clause (2) of subsection (b) to each shareholder deserved in clause (5) of subsection (b).

**Section 13.26. PROCEDURE IF SHAREHOLDER DISSATISFIED WITH PAYMENT OR OFFER**

(a) A shareholder paid pursuant to section 13.24 who is dissatisfied with the amount of the payment shall notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest, less any payment under section 13.24. A shareholder offered payment under section 13.25 who is dissatisfied with that offer shall reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

(b) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (a) within 30 days after receiving the corporation's payment or offer of payment under section 13.24 or section 13.25, respectively, waives the right to demand payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

**Section 13.30. COURT ACTION**

(a) If a shareholder makes demand for payment under section 13.26 which remains unsettled, the corporation shall commence an equitable proceeding within 60 days after receiving the payment demand and

C-6

**Table of Contents**

petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to section 13.26 plus interest.

(b) The corporation shall commence the proceeding in the appropriate court of the county where the corporation's principal office, or, if none, its registered office, in the commonwealth is located. If the corporation is a foreign corporation without a registered office in the commonwealth, it shall commence the proceeding in the county in the commonwealth where the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

(c) The corporation shall make all shareholders, whether or not residents of the commonwealth, whose demands remain unsettled parties to the proceeding as an action against their shares, and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law or otherwise as ordered by the court.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint 1 or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings.

(e) Each shareholder made a party to the proceeding is entitled to judgment (i) for the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares or (ii) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under section 13.25.

**Section 13.31. COURT COSTS AND COUNSEL FEES**

(a) The court in an appraisal proceeding commenced under section 13.30 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess cost against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(b) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(1) against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of sections 13.20, 13.22, 13.24 or 13.25; or

(2) against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(c) If the court in an appraisal proceeding finds that the services of counsel for any shareholder were of substantial benefit to other shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the shareholders who were benefited.

(d) To the extent the corporation fails to make a required payment pursuant to sections 13.24, 13.25, or 13.26, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all costs and expenses of the suit, including counsel fees.

C-7