

income of the Issuer includes net capital gains, such gains would be treated as ordinary income of the U.S. Shareholder, notwithstanding the fact that generally the character of such gains otherwise would be preserved under the PFIC rules if a QEF election were made. Also, the PFIC rule permitting the deferral of tax on undistributed earnings would not apply.

A holder of Subordinated Securities that is a U.S. Shareholder of the Issuer subject to the CFC rules for only a portion of the time in which it holds Subordinated Securities should consult its own tax advisers regarding the interaction of the PFIC and CFC rules.

Indirect Interests in PFICs and CFCs. If the Issuer holds a security of a non-U.S. corporation that is treated as equity for U.S. federal income tax purposes, U.S. holders of Subordinated Securities could be treated as holding an indirect investment in a PFIC or a CFC and could be subject to certain adverse tax consequences. Prospective purchasers should consult their tax advisers regarding the issues relating to such investments.

Distributions on Subordinated Securities. The treatment of actual cash distributions on the Subordinated Securities, in very general terms, will vary depending on whether a U.S. holder has made a timely QEF election as described above. See “— Investment in a Passive Foreign Investment Company.” If a timely QEF election has been made, dividends (which are distributions up to the amount of current and accumulated earnings and profits of the Issuer) allocable to amounts previously taxed pursuant to the QEF election will not be taxable to U.S. holders. Similarly, if the Issuer is a CFC of which the U.S. holder is a U.S. Shareholder, dividends will be allocated first to amounts previously taxed pursuant to the CFC rules and to this extent will not be taxable to U.S. holders. Dividends in excess of such previously taxed amounts will be taxable to U.S. holders as ordinary income upon receipt. Distributions in excess of any current and accumulated earnings and profits will be treated first as a nontaxable return of capital, to the extent of the holder’s tax basis in the Subordinated Securities, and then as capital gain. The distributions on the Subordinated Securities do not qualify for the benefit of the reduced U.S. tax rate applicable to certain dividends received by individuals.

In the event that a U.S. holder of Subordinated Securities does not make a timely QEF election, then except to the extent that distributions may be attributable to amounts previously taxed pursuant to the CFC rules, some or all of any dividends distributed with respect to the Subordinated Securities may be considered excess distributions, taxable as previously described. See “— Investment in a Passive Foreign Investment Company.”

Sale, Redemption or other Disposition of Subordinated Securities. In general, a U.S. holder of Subordinated Securities will recognize gain or loss (which will be capital gain or loss, except as discussed below) upon the sale or exchange of Subordinated Securities equal to the difference between the amount realized and such holder’s adjusted tax basis in the Subordinated Securities. A U.S. holder’s tax basis in Subordinated Securities will generally equal the amount it paid for the Subordinated Securities, increased by amounts taxable to such holder by virtue of a QEF election, or under the CFC rules, and decreased by actual distributions from the Issuer that are deemed to consist of such previously taxed amounts or represent a return of capital.

If a U.S. holder does not make a timely QEF election as described above and the PFIC rules are otherwise applicable, any gain realized on the sale or exchange of Subordinated Securities will be treated as an excess distribution and effectively taxed as ordinary income with an interest charge under the special tax rules described above. See “— Investment in a Passive Foreign Investment Company.” The pledge of stock of a PFIC may in some circumstances be treated as a disposition of such stock.

If the Issuer were treated as a CFC and a U.S. holder were treated as a U.S. Shareholder therein, then any gain realized by such holder upon the disposition of Subordinated Securities, other than gain constituting an excess distribution under the PFIC rules, would be treated as ordinary income to the extent of the U.S. holder’s share of the current and accumulated earnings and profits of the Issuer. In this respect, earnings and profits would not include any amounts previously taxed pursuant to a QEF election or pursuant to the CFC rules.

Potential Treatment of Subordinated Notes as Debt

If, contrary to the above discussion, the Subordinated Notes were treated as debt for U.S. federal income tax purposes, they would be subject to certain regulations governing contingent payment debt instruments. In that event, the timing and character of income, gain or loss recognized with respect to an investment in the Subordinated