

SEATTLE GENETICS INC /WA
Form 10-Q
August 08, 2008
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended June 30, 2008

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission file number 0-32405

SEATTLE GENETICS, INC.

(Exact name of registrant as specified in its charter)

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Delaware
(State or other jurisdiction of
incorporation or organization)

91-1874389
(I.R.S. Employer
Identification No.)

21823 30th Drive SE

Bothell, Washington 98021

(Address of principal executive offices, including zip code)

(Registrant's telephone number, including area code): (425) 527-4000

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large Accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES NO

As of August 7, 2008, there were 79,644,177 shares of the registrant's common stock outstanding.

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Seattle Genetics, Inc.

For the quarter ended June 30, 2008

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Table of Contents**PART I. FINANCIAL INFORMATION****Item 1. Financial Statements****Seattle Genetics, Inc.****Condensed Consolidated Balance Sheets****(Unaudited)****(In thousands)**

	June 30, 2008	December 31, 2007
Assets		
Current assets		
Cash and cash equivalents	\$ 34,908	\$ 59,644
Short-term investments	78,603	51,717
Interest receivable	1,959	758
Accounts receivable	7,592	5,988
Prepaid expenses and other	6,924	1,244
Total current assets	129,986	119,351
Property and equipment, net	10,674	10,294
Long-term investments	84,348	18,223
Other non-current assets	667	662
Total assets	\$ 225,675	\$ 148,530
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts payable and accrued liabilities	\$ 11,150	\$ 10,475
Current portion of deferred revenue	21,312	18,873
Total current liabilities	32,462	29,348
Long-term liabilities		
Deferred revenue, less current portion	67,882	64,786
Deferred rent and other long-term liabilities	1,210	410
Total long-term liabilities	69,092	65,196
Commitments and contingencies		
Stockholders' equity		
Preferred stock, \$0.001 par value, 5,000,000 shares authorized; none issued		
Common stock, \$0.001 par value, 100,000,000 shares authorized; 79,312,851 shares issued and outstanding at June 30, 2008 and 67,524,182 shares issued and outstanding at December 31, 2007	79	68
Additional paid-in capital	386,329	282,324
Accumulated other comprehensive gain (loss)	(626)	115
Accumulated deficit	(261,661)	(228,521)
Total stockholders' equity	124,121	53,986

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Total liabilities and stockholders' equity	\$ 225,675	\$ 148,530
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The accompanying notes are an integral part of these condensed consolidated financial statements.

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Seattle Genetics, Inc.

Condensed Consolidated Statements of Operations

(Unaudited)

(In thousands, except per share amounts)

	Three months ended June 30,		Six months ended June 30,	
	2008	2007	2008	2007
Revenues from collaboration and license agreements	\$ 10,004	\$ 5,611	\$ 17,089	\$ 9,947
Operating expenses				
Research and development	23,499	15,179	45,651	26,984
General and administrative	4,094	2,814	8,029	5,634
Total operating expenses	27,593	17,993	53,680	32,618
Loss from operations	(17,589)	(12,382)	(36,591)	(22,671)
Investment income, net	1,561	1,832	3,451	3,293
Net loss	\$ (16,028)	\$ (10,550)	\$ (33,140)	\$ (19,378)
Net loss per share basic and diluted	\$ (0.20)	\$ (0.18)	\$ (0.43)	\$ (0.35)
Shares used in computation of net loss per share basic and diluted	79,277	57,064	77,768	55,808

The accompanying notes are an integral part of these condensed consolidated financial statements.

Table of Contents**Seattle Genetics, Inc.****Condensed Consolidated Statements of Cash Flows****(Unaudited)****(In thousands)**

	Six months ended June 30,	
	2008	2007
Operating activities		
Net loss	\$ (33,140)	\$ (19,378)
Adjustments to reconcile net loss to net cash used in operating activities		
Share-based compensation expense	4,974	3,415
Depreciation and amortization	1,609	1,228
Amortization on investments	467	(574)
Deferred rent and other long-term liabilities	818	(12)
Changes in operating assets and liabilities		
Interest receivable	(1,201)	(535)
Accounts receivable	(1,604)	(4,087)
Prepaid expenses and other	(5,679)	(619)
Accounts payable and accrued liabilities	1,338	1,205
Deferred revenue	5,535	63,654
Net cash (used in) provided by operating activities	(26,883)	44,297
Investing activities		
Purchases of securities available for sale	(133,239)	(140,360)
Proceeds from maturities of securities available for sale	39,015	91,132
Purchases of property and equipment	(2,671)	(1,418)
Net cash used in investing activities	(96,895)	(50,646)
Financing activities		
Net proceeds from issuance of common stock	97,628	
Proceeds from exercise of stock options and employee stock purchase plan	1,414	2,287
Net cash provided by financing activities	99,042	2,287
Net decrease in cash and cash equivalents	(24,736)	(4,062)
Cash and cash equivalents, at beginning of period	59,644	9,137
Cash and cash equivalents, at end of period	\$ 34,908	\$ 5,075

The accompanying notes are an integral part of these condensed consolidated financial statements.

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Seattle Genetics, Inc.

Notes to Condensed Consolidated Financial Statements

(Unaudited)

1. Basis of presentation

The accompanying unaudited condensed consolidated financial statements reflect the accounts of Seattle Genetics, Inc. and its wholly-owned subsidiary, Seattle Genetics UK, Ltd. (collectively "Seattle Genetics" or the "Company"). These financial statements have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission, or SEC, and generally accepted accounting principles for unaudited condensed consolidated financial information. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete consolidated financial statements. These financial statements reflect all adjustments consisting of normal recurring adjustments which, in the opinion of management, are necessary for a fair statement of the Company's financial position and results of its operations, as of and for the periods presented. Management has determined that the Company operates in one segment; the development of pharmaceutical products on its own behalf or in collaboration with others.

Unless indicated otherwise, all amounts presented in financial tables are presented in thousands, except for per share amounts.

These unaudited condensed consolidated financial statements should be read in conjunction with the audited financial statements and footnotes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2007 as filed with the Securities and Exchange Commission.

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts. Actual results could differ from those estimates. The results of the Company's operations for the three month and six month periods ended June 30, 2008 are not necessarily indicative of the results to be expected for a full year.

2. Recent Accounting Pronouncements

In May 2008, the FASB issued Statement No. 162, *The Hierarchy of Generally Accepted Accounting Principles* (FAS 162). FAS 162 identifies the sources of accounting principles and the framework for selecting the principles used (order of authority) in the preparation of financial statements that are presented in conformity with generally accepted accounting principles in the United States. FAS 162 is effective 60 days following the Securities and Exchange Commission's approval of the Public Company Accounting Oversight Board amendments to AU Section 411, *The Meaning of Present Fairly in Conformity with Generally Accepted Accounting Principles*. The Company does not expect the adoption of FAS 162 to have a material impact on its financial statements.

Effective January 1, 2008, the Company adopted EITF Issue No. 07-3, *Accounting for Nonrefundable Advance Payments for Goods or Services to Be Used in Future Research and Development Activities*. Under EITF 07-3, nonrefundable advance payments for goods or services that will be used or rendered for future research and development activities are capitalized and recognized as expense as the related goods are delivered or the related services are performed. The Company's adoption of EITF Issue No. 07-3 results in the temporary deferral of charges to expense of amounts incurred for research and development activities from the time payouts are made until the time goods or services are provided.

In March 2008, the FASB issued SFAS No. 161 *Disclosures about Derivative Instruments and Hedging Activities* which requires enhanced disclosures about (a) how and why derivative instruments are used, (b) how derivative instruments and related hedged items are accounted for and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance and cash flows. SFAS No. 161 will be effective for the Company beginning in January 2009. The Company's adoption of SFAS No. 161 is not expected to have a material effect on its financial statements since it currently does not have any derivative instruments or hedging activities.

In November 2007, the Emerging Issues Task Force Board ratified *EITF Issue No. 07-1, Accounting for Collaborative Arrangements Related to the Development and Commercialization of Intellectual Property*. Under EITF 07-1, the Company will disclose the nature and purpose of its co-development collaborative arrangements in the annual financial statements, its rights and obligations under collaborative arrangements, the stage of the underlying endeavor's life cycle, the Company's accounting policies for the arrangements and the statement of operations classification and significant financial statement amounts related to the collaborative arrangements. EITF 07-1 will be effective for the Company beginning in January 2009 and will require the Company to apply this Issue as a change in accounting principle through retrospective application to all prior periods for all collaborative arrangements existing as of the effective date. The Company is currently assessing the impact

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of EITF 07-1 on its results of operations, cash flows and financial condition.

3. Net loss per share

Basic and diluted net loss per share has been computed using the weighted-average number of shares of common stock outstanding during the period. The Company has excluded all convertible preferred stock, warrants and options to purchase common stock from the calculation of diluted net loss per share as such securities are antidilutive for all periods presented.

The following table presents the weighted-average shares that have been excluded from the number of shares used to calculate basic and diluted net loss per share (in thousands):

	Three months ended		Six months ended	
	June 30,		June 30,	
	2008	2007	2008	2007
Convertible preferred stock		9,285		10,438
Warrants to purchase common stock	1,925	2,050	1,925	2,050
Options to purchase common stock	7,583	6,944	7,513	6,773
Total	9,508	18,279	9,438	19,261

Table of Contents**4. Comprehensive loss**

Comprehensive loss includes certain changes in equity that are excluded from net loss. Specifically, unrealized gains or losses in available-for-sale investments are included in comprehensive loss. Comprehensive loss and its components were as follows (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2008	2007	2008	2007
Net loss	\$ (16,028)	\$ (10,550)	\$ (33,140)	\$ (19,378)
Unrealized loss on securities available for sale	(926)	(23)	(741)	(99)
Comprehensive loss	\$ (16,954)	\$ (10,573)	\$ (33,881)	\$ (19,477)

5. Investments

Investments consist of available-for-sale securities as follows (in thousands):

	Amortized cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
June 30, 2008				
U.S. corporate obligations	\$ 99,237	\$ 60	\$ (640)	\$ 98,657
Auction rate securities	14,450		(35)	14,415
U.S. government and agencies	31,564	2	(82)	31,484
Taxable municipal bonds	18,818	92	(23)	18,887
Total	\$ 164,069	\$ 154	\$ (780)	\$ 163,443
Contractual Maturities:				
Due in one year or less	\$ 79,176			\$ 79,095
Due in one to three years	70,443			69,933
Due in 2017	14,450			14,415
Total	\$ 164,069			\$ 163,443

	Payment Closing(per Values Note)
First	Reference \$1,000.00 Asset A: (Principal \$21.00 Amount) (greater than or equal to + \$28.50 its (Contingent Initial Interest Value and Payment) Contingent Interest Barrier

Value)
 Reference
 Asset B:
 \$41.50
(greater than or equal to its
 Initial
 Value and
 Contingent
 Interest
 Barrier
 Value)
 \$1,028.50
 (Total
 Payment
 upon
 Automatic
 Call)

If on the first Call Observation Date, the Closing Value of a Reference Asset is greater than or equal to its Call Threshold Value (and therefore also greater than the Contingent Interest Barrier Value), then the Notes will be automatically called and, on the Call Payment Date, we will pay you a cash payment equal to \$1,028.50 per Note, reflecting the Principal Amount plus the applicable Contingent Interest Payment, for a return of 2.85% per Note. No further amounts will be owed under the Notes.

The Closing Value of a Reference Asset is Greater than or Equal to its Contingent Interest Barrier Value on
Example 2 — Each of the Contingent Interest Observation Dates, the Notes Are Not Automatically Called on any Call Observation Date and the Final Value of Each Reference Asset is Greater Than its Barrier Value and Contingent Interest Barrier Value.

Contingent Interest and Call Observation Date	Closing Value	Payment (per Note)
First through Seventh	Reference Asset A: Various (all <u>greater than or equal to</u> its Contingent Interest Barrier Value; <u>less than</u> its Initial Value)	\$199.50 (Aggregate Contingent Interest Payments)
	Reference Asset B: Various (all <u>greater than or equal to</u> its Contingent Interest Barrier Value; <u>less than</u> its Initial Value)	\$1,000.00 (Principal Amount)
	Reference Asset A: \$18.00 (<u>greater than or equal to</u> its Barrier Value and Contingent Interest Barrier Value)	
Final Valuation Date	Reference Asset B: \$38.00 (<u>greater than or equal to</u> its Barrier Value and Contingent Interest Barrier Value)	<u>+ \$28.50</u> (Contingent Interest Payment) \$1,028.50 (Total Payment on Maturity Date)

If the Closing Value of a Reference Asset on each of the first through seventh Contingent Interest Observation Dates is greater than or equal to its Contingent Interest Barrier Value and less than its Call Threshold Value on each Call Observation Date, we will pay the Contingent Interest Payment on the applicable Contingent Interest Payment Date and the Notes will not be subject to an automatic call. If the Final Value of each Reference Asset is greater than or equal to its Barrier Value on the Final Valuation Date and greater than or equal to its Contingent Interest Barrier Value on the Contingent Interest Observation Date, then on the Maturity Date we will pay you a cash payment equal to \$1,028.50 per Note, reflecting the Principal Amount plus the applicable Contingent Interest Payment. When added to the Contingent Interest Payments of \$199.50 paid in respect of the prior Contingent Interest Payment Dates, we will have paid you a total of \$1,228.00 per Note, a return of 22.80% per Note.

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Example 3 — The Closing Value of a Reference Asset is Less than its Contingent Interest Barrier Value on Each of the Contingent Interest Observation Dates, the Notes Are Not Automatically Called on any Call Observation Date and the Final Value of the Least Performing Reference Asset is Less Than its Barrier Value and Contingent Interest Barrier Value.

Contingent Interest and Call Observation Date	Closing Value	Payment (per Note)
First through Seventh	Reference Asset A: Various (all less than its Contingent Interest Barrier Value)	\$0
	Reference Asset B: Various (all greater than or equal to its Contingent Interest Barrier Value)	= \$1,000 + (\$1,000 x Percentage Change)
Final Valuation Date	Reference Asset A: \$10.00 (less than its Barrier Value and Contingent Interest Barrier Value)	= \$1,000 + (\$1,000 x -50.00%)
	Reference Asset B: \$42.00 (greater than or equal to its Barrier Value and Contingent Interest Barrier Value)	= \$500.00 (Total Payment on Maturity Date)

If the Closing Value of any Reference Asset on each of the first through seventh Contingent Interest Observation Dates is less than its Contingent Interest Barrier Value and less than its Call Threshold Value on each Call Observation Date, we will not pay the Contingent Interest Payment on any of the applicable Contingent Interest Payment Dates and the Notes will not be subject to an automatic call. If on the Final Valuation Date the Final Value of the Least Performing Reference Asset is less than its Barrier Value and Contingent Interest Barrier Value, then on the Maturity Date we will pay you a cash payment equal to the Principal Amount plus the product of the Principal Amount and Least Performing Percentage Change, for a total of \$500.00 per Note, a loss of 50.00% per Note.

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Information Regarding the Reference Assets

Each Reference Asset is registered under the Exchange Act. Companies with securities registered under the Exchange Act are required to file periodically certain financial and other information specified by the SEC. Information provided to or filed with the SEC can be inspected and copied at the public reference facilities maintained by the SEC or through the SEC's website at www.sec.gov. In addition, information regarding each Reference Asset may be obtained from other sources including, but not limited to, press releases, newspaper articles and other publicly disseminated documents.

We have not independently verified the accuracy or completeness of reports filed by the Investment Advisor with the SEC, information published by it on its website or in any other format, information about it obtained from any other source or the information provided below.

We obtained the information regarding the Investment Advisor from publicly available information, including its filings with the SEC and obtained the historical performance of the Reference Asset from Bloomberg Professional® (“Bloomberg”) service. We have not conducted any independent review or due diligence about any such information. You are urged to conduct your own investigation into the Reference Asset and the Investment Advisor.

We have derived all information contained herein regarding the Reference Assets from publicly available information. With respect to each Reference Asset, such information reflects the policies of, and is subject to change by the issuer of such Reference Asset. TD has not undertaken an independent review or due diligence of any publicly available information regarding the Reference Assets.

VanEck Vectors® Gold Miners ETF

We have derived all information contained herein regarding the VanEck Vectors® Gold Miners ETF (the “GDX Fund”) from publicly available information. Such information reflects the policies of, and is subject to change by the VanEck Vectors ETF Trust (the “Trust”), and Van Eck Associates Corporation (“Van Eck” or the “Investment Advisor”). TD has not undertaken an independent review or due diligence of any publicly available information regarding the GDX Fund.

The GDX Fund is an investment portfolio maintained and managed by the Trust and advised by Van Eck. The Trust is a registered open-end investment company that consists of numerous separate investment portfolios, including the GDX Fund. The GDX Fund seeks to replicate the performance of the NYSE Arca Gold Miners Index (the “Target Index”) by investing in a portfolio of securities that generally replicates the Target Index. The Target Index, calculated by NYSE Arca, is a modified market capitalization-weighted index consisting of common stocks and American depository receipts (“ADRs”) of publicly traded companies involved primarily in mining for gold. The GDX Fund is passively managed and may not hold each Target Index component in the same weighting as the Target Index. The GDX Fund is classified as a “non-diversified” investment company under the Investment Company Act of 1940.

As of January 31, 2019 the net expense ratio of the GDX Fund is expected to accrue at an annual rate of 0.53% of the GDX Fund's average daily net asset value. Expenses of the GDX Fund reduce the net value of the assets held by the GDX Fund and, therefore, reduce value of the shares of the GDX Fund.

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As of January 31, 2019 the GDX Fund's five largest company holdings include: Barrick Gold Corporation (11.24%), Newmont Mining Corporation (8.18%), Franco-Nevada Corporation (6.51%), Newcrest Mining Ltd (6.17%) and Agnico Eagle Mines Ltd (4.94%).

In making your investment decision you should review the prospectus related to the GDX Fund filed by the Trust.

TD has not undertaken an independent review or due diligence of any publicly available information regarding the GDX Fund Prospectus, and such information is not incorporated by reference in, and should not be considered part of, this document or any document incorporated herein by reference.

The GDX Fund's website is vaneck.com/funds/GDX.aspx. Shares of the GDX Fund are listed on the NYSE Arca under ticker symbol "GDX."

Information filed by the Trust with the SEC can be found by reference to its SEC file numbers: 333-123257 and 811-10325.

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Historical Information

The graph below illustrates the performance of the GDX Fund from February 27, 2009 to February 27, 2019.

We obtained the information regarding the historical performance of the GDX Fund in the chart below from Bloomberg and have not independently verified the accuracy or completeness of the information obtained from Bloomberg. The historical performance of the GDX Fund should not be taken as an indication of its future performance, and no assurance can be given as to the market value of the GDX Fund on any Call Observation Date or Contingent Interest Observation Date (including the Final Valuation Date).

PAST PERFORMANCE IS NOT INDICATIVE OF FUTURE RESULTS.

TD SECURITIES (USA) LLC P-17

SPDR® S&P® Oil & Gas Exploration & Production ETF

We have derived all information contained herein regarding the SPDR® S&P® Oil & Gas Exploration & Production ETF (the “XOP Fund”) from publicly available information. Such information reflects the policies of, and is subject to change by, SSgA Funds Management, Inc., the investment advisor (the “Investment Advisor”) of the XOP Fund. TD has not undertaken an independent review or due diligence of any publicly available information regarding the XOP Fund.

The XOP Fund seeks to provide investment results that, before fees and expenses, correspond generally to the total return performance of the S&P Oil & Gas Exploration & Production Select Industry Index (the “Target Index”). The XOP Fund employs a sampling strategy, which means that the XOP Fund is not required to purchase all of the securities represented in the Target Index. Instead, the XOP Fund may purchase a subset of the securities in the Target Index in an effort to hold a portfolio of securities with generally the same risk and return characteristics of the Target Index. Under normal market conditions, the XOP Fund generally invests substantially all, but at least 80%, of its total assets in the securities comprising the Target Index. In addition, the XOP Fund may invest in equity securities that are not included in the Target Index, cash and cash equivalents or money market instruments, such as repurchase agreements and money market funds (including money market funds advised by the Investment Advisor).

The Target Index represents the oil and gas exploration and production industry group of the S&P Total Market Index that satisfy the following criteria: (i) have a float-adjusted market capitalization above \$500 million with a float-adjusted liquidity ratio (defined by dollar value traded over the previous 12 months divided by the float-adjusted market capitalization as of the index rebalancing reference date) above 90% or have a float-adjusted market capitalization above \$400 million with a float-adjusted liquidity ratio (as defined above) above 150%; and (ii) are U.S. based companies. The market capitalization threshold and the liquidity threshold are each reviewed from time to time based on market conditions. Rebalancing occurs on the third Friday of the quarter ending month.

As of December 31, 2018, ordinary operating expenses of the XOP Fund are expected to accrue at an annual rate of 0.35% of the XOP Fund’s daily net asset value. Expenses of the XOP Fund reduce the net value of the assets held by the XOP Fund.

As of December 31, 2018, the XOP Fund’s five largest company holdings include: Valero Energy Corporation (2.05%), PBF Energy Inc. Class A (2.04%), Diamondback Energy Inc. (2.00%), Newfield Exploration Company (2.00%) and Phillips 66 (1.99%).

In making your investment decision you should review the prospectus supplement and the prospectus related to the XOP Fund filed by the SPDR® Series Trust.

TD has not undertaken an independent review or due diligence of any publicly available information regarding the XOP Fund Prospectus, and such information is not incorporated by reference in, and should not be considered part of,

this document or any document incorporated herein by reference.

The XOP Fund's website is us.spdrs.com/en/etf/spdr-sp-oil-gas-exploration-production-etf-XOP. Shares of the XOP Fund are listed on the NYSE Arca under ticker symbol "XOP."

Information filed by the XOP Fund with the SEC can be found by reference to its SEC file numbers: 333-57793 and 811-08839.

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Historical Information

The graph below illustrates the performance of the XOP Fund from February 27, 2009 to February 27, 2019.

We obtained the information regarding the historical performance of the XOP Fund in the chart below from Bloomberg and have not independently verified the accuracy or completeness of the information obtained from Bloomberg. The historical performance of the XOP Fund should not be taken as an indication of its future performance, and no assurance can be given as to the market value of the XOP Fund on any Call Observation Date or Contingent Interest Observation Date (including the Final Valuation Date).

PAST PERFORMANCE IS NOT INDICATIVE OF FUTURE RESULTS.

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Supplemental Discussion of U.S. Federal Income Tax Consequences

The U.S. federal income tax consequences of your investment in the Notes are uncertain. No statutory, regulatory, judicial or administrative authority directly discusses the characterization for U.S. federal income tax purposes of securities with terms that are substantially the same as the Notes. Some of these tax consequences are summarized below, but we urge you to read the more detailed discussion under “Supplemental Discussion of U.S. Federal Income Tax Consequences” in the product prospectus supplement and to discuss the tax consequences of your particular situation with your tax advisor. This discussion is based upon the Internal Revenue Code of 1986, as amended (the “Code”), final, temporary and proposed U.S. Treasury Department (the “Treasury”) regulations, rulings and decisions, in each case, as available and in effect as of the date hereof, all of which are subject to change, possibly with retroactive effect. This discussion applies to you only if you are a U.S. holder, as defined in the product prospectus supplement. An investment in the Notes is not appropriate for non-U.S. holders and we will not attempt to ascertain the tax consequences to non-U.S. holders of the purchase, ownership or disposition of the Notes. Tax consequences under state, local and non-U.S. laws are not addressed herein. No ruling from the U.S. Internal Revenue Service (the “IRS”) has been sought as to the U.S. federal income tax consequences of your investment in the Notes, and the following discussion is not binding on the IRS.

U.S. Tax Treatment. Pursuant to the terms of the Notes, TD and you agree, in the absence of a statutory or regulatory change or an administrative determination or judicial ruling to the contrary, to treat the Notes as prepaid derivative contracts with respect to the Reference Assets. If your Notes are so treated, any Contingent Interest Payments paid on the Notes (including any Contingent Interest Payments paid on or with respect to the Maturity Date) would be treated as ordinary income includable in income by you in accordance with your regular method of accounting for U.S. federal income tax purposes. Holders are urged to consult their tax advisors concerning the significance, and the potential impact, of the above considerations.

Upon the taxable disposition of your Notes, you generally should recognize gain or loss equal to the difference between the amount realized on such taxable disposition (adjusted for amounts or proceeds attributable to any accrued and unpaid Contingent Interest Payments, which would be treated as ordinary income) and your tax basis in the Note. Your tax basis in a Note generally should equal your cost for the Note. Subject to the discussion below regarding the constructive ownership rules of Section 1260 of the Code, such gain or loss should generally be long-term capital gain or loss if you have held your Notes for more than one year (otherwise such gain or loss should be short-term capital gain or loss if held for one year or less). The deductibility of capital losses is subject to limitations. Although uncertain, it is possible that proceeds received from the sale or exchange of your Notes prior to a Contingent Interest Payment Date, but that could be attributed to an expected Contingent Interest Payment, could be treated as ordinary income. You should consult your tax advisor regarding this risk.

Based on certain factual representations received from us, our special U.S. tax counsel, Cadwalader, Wickersham & Taft LLP, is of the opinion that it would be reasonable to treat your Notes in the manner described above. However, because there is no authority that specifically addresses the tax treatment of the Notes, it is possible that your Notes could alternatively be treated for tax purposes as a single contingent payment debt instrument, or pursuant to some other characterization (including possible treatment as a “constructive ownership” transaction), such that the timing and character of your income from the Notes could differ materially and adversely from the treatment described above, as described further under “Supplemental Discussion of U.S. Federal Income Tax Consequences – Alternative Treatments” in the product prospectus supplement.

Section 1260. Because each Reference Asset would be treated as a “pass-thru entity” for purposes of Section 1260 of the Code, it is possible that an investment in the Notes could be treated as a “constructive ownership transaction” within the meaning of Section 1260 of the Code. If the Notes were treated as a constructive ownership transaction certain

adverse U.S. federal income tax consequences could apply (i.e., all or a portion of any long-term capital gain that you recognize upon the taxable disposition of your Notes could be recharacterized as ordinary income and you could be subject to an interest charge on deferred tax liability with respect to such recharacterized gain). We urge you to read the discussion concerning the possible treatment of the Notes as a constructive ownership transaction under “Supplemental Discussion of U.S. Federal Income Tax Consequences — Section 1260” in the product prospectus supplement.

Except to the extent otherwise required by law, TD intends to treat your Notes for U.S. federal income tax purposes in accordance with the treatment described above and under “Supplemental Discussion of U.S. Federal Income Tax Consequences” in the product prospectus supplement, unless and until such time as the Treasury and the IRS determine that some other treatment is more appropriate.

Notice 2008-2. In 2007, the IRS released a notice that may affect the taxation of holders of the Notes. According to Notice 2008-2, the IRS and the Treasury are actively considering whether the holder of an instrument similar to the Notes should be required to accrue ordinary income on a current basis, and they are seeking taxpayer comments on the subject. It is not possible to determine what guidance they will ultimately issue, if any. It is possible, however, that under such guidance, holders of the Notes will ultimately be required to accrue income currently and this could be applied on a retroactive basis. The IRS and the Treasury are also considering other relevant issues, including whether additional gain or loss from such instruments should be treated as ordinary or capital, and whether the special “constructive ownership rules” of Section 1260 of the Code should be applied to such instruments. You are urged to consult your tax advisor concerning the significance, and the potential impact, of the above considerations.

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Medicare Tax on Net Investment Income. U.S. holders that are individuals, estates or certain trusts are subject to an additional 3.8% tax on all or a portion of their “net investment income” or “undistributed net investment income” in the case of an estate or trust, which may include any income or gain with respect to the Notes, to the extent of their net investment income or undistributed net investment income (as the case may be) that when added to their other modified adjusted gross income, exceeds \$200,000 for an unmarried individual, \$250,000 for a married taxpayer filing a joint return (or a surviving spouse), \$125,000 for a married individual filing a separate return or the dollar amount at which the highest tax bracket begins for an estate or trust. The 3.8% Medicare tax is determined in a different manner than the income tax. You should consult your tax advisors as to the consequences of the 3.8% Medicare tax to your investment in the Notes.

Specified Foreign Financial Assets. U.S. holders may be subject to reporting obligations with respect to their Notes if they do not hold their Notes in an account maintained by a financial institution and the aggregate value of their Notes and certain other “specified foreign financial assets” (applying certain attribution rules) exceeds an applicable threshold. Significant penalties can apply if a U.S. holder is required to disclose its Notes and fails to do so.

Proposed Legislation. In 2007, legislation was introduced in Congress that, if it had been enacted, would have required holders of Notes purchased after the bill was enacted to accrue interest income over the term of the Notes despite the fact that there may be no interest payments over the term of the Notes.

Furthermore, in 2013, the House Ways and Means Committee released in draft form certain proposed legislation relating to financial instruments. If it had been enacted, the effect of this legislation generally would have been to require instruments such as the Notes to be marked to market on an annual basis with all gains and losses to be treated as ordinary, subject to certain exceptions.

It is impossible to predict whether any similar or identical bills will be enacted in the future, or whether any such bill would affect the tax treatment of your Notes. You are urged to consult your tax advisor regarding the possible changes in law and their possible impact on the tax treatment of your Notes.

You are urged to consult your tax advisor concerning the application of U.S. federal income tax laws to an investment in the Notes, as well as any tax consequences of the purchase, beneficial ownership and disposition of the Notes arising under the laws of any state, local, non-U.S. or other taxing jurisdiction (including that of TD and those of the Reference Asset Constituent Issuers).

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Supplemental Plan of Distribution (Conflicts of Interest)

We have appointed TDS, an affiliate of TD, as the Agent for the sale of the Notes. Pursuant to the terms of a distribution agreement, TDS will purchase the Notes from TD at the public offering price less the underwriting discount set forth on the cover page of this pricing supplement and may use all or a portion of that commission to allow selling concessions to other registered broker-dealers in connection with the distribution of the Notes. Certain dealers who purchase the Notes for sale to certain fee-based advisory accounts may forego some or all of their selling concessions, fees or commissions. The public offering price for investors purchasing the Notes in these accounts may be as low as \$995.00 (99.50%) per Note. The underwriting discount represents the selling concessions for other dealers in connection with the distribution of the Notes. The other dealers may forego, in their sole discretion, some or all of their selling concessions. TD will reimburse TDS for certain expenses in connection with its role in the offer and sale of the Notes, and TD will pay TDS a fee in connection with its role in the offer and sale of the Notes.

Conflicts of Interest. TDS is an affiliate of TD and, as such, has a “conflict of interest” in this offering within the meaning of Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 5121. In addition, TD will receive the net proceeds from the initial public offering of the Notes, thus creating an additional conflict of interest within the meaning of FINRA Rule 5121. This offering of the Notes will be conducted in compliance with the provisions of FINRA Rule 5121. In accordance with FINRA Rule 5121, neither TDS nor any other affiliated agent of ours is permitted to sell the Notes in this offering to an account over which it exercises discretionary authority without the prior specific written approval of the account holder.

We, TDS, another of our affiliates or third parties may use this pricing supplement in the initial sale of the Notes. In addition, we, TDS, another of our affiliates or third parties may use this pricing supplement in a market-making transaction in the Notes after their initial sale. ***If a purchaser buys the Notes from us, TDS, another of our affiliates or third parties, this pricing supplement is being used in a market-making transaction unless we, TDS, another of our affiliates or third parties informs such purchaser otherwise in the confirmation of sale.***

Prohibition of Sales to European Economic Area Retail Investors

The Notes are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the European Economic Area (“EEA”). For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU, as amended (“MiFID II”); (ii) a customer within the meaning of Directive 2002/92/EC, as amended, where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (iii) not a qualified investor as defined in Directive 2003/71/EC, as amended. Consequently no key information document required by Regulation (EU) No 1286/2014, as amended (the “PRIIPs Regulation”), for offering or selling the Notes or otherwise making them available to retail investors in the EEA has been prepared and therefore offering or selling the Notes or otherwise making them available to any retail investor in the EEA may be unlawful under the PRIIPs Regulation.

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Additional Information Regarding the Estimated Value of the Notes

The final terms for the Notes will be determined on the date the Notes are initially priced for sale to the public, which we refer to as the Pricing Date, based on prevailing market conditions on the Pricing Date, and will be communicated to investors in a final pricing supplement.

The economic terms of the Notes are based on our internal funding rate (which is our internal borrowing rate based on variables such as market benchmarks and our appetite for borrowing), and several factors, including any sales commissions expected to be paid to TDS or another affiliate of ours, any selling concessions, discounts, commissions or fees expected to be allowed or paid to non-affiliated intermediaries, the estimated profit that we or any of our affiliates expect to earn in connection with structuring the Notes, estimated costs which we may incur in connection with the Notes and the estimated cost which we may incur in hedging our obligations under the Notes. Because our internal funding rate generally represents a discount from the levels at which our benchmark debt securities trade in the secondary market, the use of an internal funding rate for the Notes rather than the levels at which our benchmark debt securities trade in the secondary market is expected to have an adverse effect on the economic terms of the Notes.

On the cover page of this pricing supplement, we have provided the initial estimated value range for the Notes. This range of estimated values was determined by reference to our internal pricing models which take into account a number of variables and are based on a number of assumptions, which may or may not materialize, typically including volatility, interest rates (forecasted, current and historical rates), price-sensitivity analysis, time to maturity of the Notes, and our internal funding rate. For more information about the initial estimated value, see “Additional Risk Factors” beginning on page P-7. Because our internal funding rate generally represents a discount from the levels at which our benchmark debt securities trade in the secondary market, the use of an internal funding rate for the Notes rather than the levels at which our benchmark debt securities trade in the secondary market is expected, assuming all other economic terms are held constant, to increase the estimated value of the Notes. For more information see the discussion under “Additional Risk Factors — The Estimated Value of Your Notes Is Based on Our Internal Funding Rate.”

Our estimated value on the Pricing Date is not a prediction of the price at which the Notes may trade in the secondary market, nor will it be the price at which the Agent may buy or sell the Notes in the secondary market. Subject to normal market and funding conditions, the Agent or another affiliate of ours intends to offer to purchase the Notes in the secondary market but it is not obligated to do so.

Assuming that all relevant factors remain constant after the Pricing Date, the price at which the Agent may initially buy or sell the Notes in the secondary market, if any, may exceed our estimated value on the Pricing Date for a temporary period expected to be approximately 3 months after the Issue Date because, in our discretion, we may elect to effectively reimburse to investors a portion of the estimated cost of hedging our obligations under the Notes and other costs in connection with the Notes which we will no longer expect to incur over the term of the Notes. We made such discretionary election and determined this temporary reimbursement period on the basis of a number of factors, including the tenor of the Notes and any agreement we may have with the distributors of the Notes. The amount of our estimated costs which we effectively reimburse to investors in this way may not be allocated ratably throughout the reimbursement period, and we may discontinue such reimbursement at any time or revise the duration of the reimbursement period after the Issue Date of the Notes based on changes in market conditions and other factors that cannot be predicted.

We urge you to read the “Additional Risk Factors” beginning on page P-7 of this pricing supplement.

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Events of Default

The indenture provides holders of Notes with remedies if we fail to perform specific obligations, such as making payments on the Notes, or if we become bankrupt. Holders should review the applicable provisions and understand which of our actions would trigger an event of default and which actions would not.

Under the indenture, “event of default” means any of the following:

we default in the payment of the principal of or interest on, as applicable, any note of that series and, in each case, the default continues for a period of 30 Business Days; or
we become insolvent or bankrupt or subject to the provisions of the Winding-up and Restructuring Act (Canada), or any statute hereafter enacted in substitution therefor, as such act, or substituted act, may be amended from time to time, (ii) we go into liquidation, either voluntary or under an order of a court of competent jurisdiction or (iii) we pass a resolution for our winding-up, liquidation or dissolution (with certain exceptions).

The indenture permits the issuance of notes in one or more series, and, in many cases, whether an event of default has occurred is determined on a series by series basis. For purposes of this section, with respect to notes issued on or after September 23, 2018, “series” refers to notes having identical terms, except as to issue date, principal amount and, if applicable, the date from which interest begins to accrue.

The indenture provides that:

if an event of default due to the default in payment of principal of or, if applicable, any premium or interest on, any series of senior notes issued under the indenture, or due to any event of default referred to in the last bullet of the preceding paragraph applicable to the senior notes of that series but not applicable to all outstanding senior notes issued under the indenture, occurs and is continuing, either the trustee or the holders of not less than 25% in aggregate principal amount of the outstanding senior notes of each affected series, voting as a single class, by notice in writing to TD, may declare the principal of (or such other amount as may be specified) all senior notes of each affected series and, if applicable, interest accrued thereon to be due and payable immediately; and

if an event of default due to specified events of bankruptcy, insolvency, winding up or liquidation of TD, occurs and is continuing, either the trustee or the holders of not less than 25% in aggregate principal amount of all outstanding senior notes issued under the senior debt indenture, treated as one class, by notice in writing to TD may declare the principal of (or such other amount as may be specified) all those senior notes and, if applicable, interest accrued thereon to be due and payable immediately.

Annulment of Acceleration and Waiver of Defaults.

In some circumstances, if any and all events of default under the indenture, other than the non-payment of the principal of the securities that has become due as a result of an acceleration, have been cured, waived or otherwise remedied, then the holders of a majority in aggregate principal amount of all series of outstanding senior notes affected, voting as one class, may annul past declarations of acceleration of or waive past defaults of the senior notes.

Differences in Events of Default

Notes issued by us prior to September 23, 2018, such as the Series A notes and the Series B notes, contain events of default that are different from those set forth above. In particular, the events of default applicable to the Series A notes and the Series B notes do not provide for a 30-business-day cure period with respect to any failure by us to pay the principal of or, if applicable, interest on those senior notes. Accordingly, if we fail to pay the principal of any series of Series A notes or Series B notes when due, the holders of such notes would be entitled to declare their securities due and payable following a 7-day cure period, whereas holders of Series C notes, Series D notes or Series E notes would

not be entitled to accelerate the notes until 30 Business Days after our failure to pay the principal of the notes. In addition, if we fail to pay, if applicable, interest on any series of Series A notes or Series B notes when due, the holders of such notes would be entitled to declare their securities due and payable following a 30-calendar day cure period, whereas holders of Series C notes, Series D notes or Series E notes would not be entitled to accelerate the notes until 30 Business Days after our failure to pay, if applicable, the interest on the notes.

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