

Orchard Enterprises, Inc.  
Form PRER14A  
June 07, 2010

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**SCHEDULE 14A  
(AMENDMENT No. 1)**

**Proxy Statement Pursuant to Section 14(a) of the  
Securities Exchange Act of 1934**

Filed by the Registrant  x  
Filed by a Party other than the Registrant  o  
Check the appropriate box:

x Preliminary Proxy Statement  
 o **Confidential, for Use of the Commission Only (as Permitted by Rule 14a-6(e)(2))**  
 o Definitive Proxy Statement  
 o Definitive Additional Materials  
 o Soliciting Material under Rule 14a-12

**THE ORCHARD ENTERPRISES, INC.**

(Name of Registrant as Specified in Its Charter)

**N/A**

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

o No fee required.  
 x Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11  
(1) Title of each class of securities to which transaction applies:  
Common Stock, par value \$0.01 per share, of The Orchard Enterprises, Inc. ( Common Stock )

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(2) Aggregate number of securities to which transaction applies:  
3,645,888 shares of Common Stock<sup>(1)</sup>

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

The maximum aggregate value of the transaction was determined by multiplying 3,645,882 shares of Common Stock by \$2.05 per share, the per share cash merger consideration.<sup>(2)</sup> In accordance with Exchange Act Rule 0-11(c), the filing fee was determined by multiplying 0.00007130 by the amount of the preceding sentence.

(4) Proposed maximum aggregate value of transaction:  
\$7,474,070

(5) Total fee paid:  
\$532.90

x Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

(1) Includes 5,963 shares of Common Stock that are issuable upon conversion of 1,789 shares of The Orchard Enterprises, Inc.'s Series A convertible preferred stock held by non-affiliates of Dimensional Associates, LLC. Each outstanding and unexercised stock option and stock appreciation right has an exercise price per share greater than \$2.05 and, consequently, holders thereof will not receive any cash merger consideration at the effective time of the merger. Nonetheless, pre-merger option and stock appreciation rights holders will receive a contingent right to their portion, if any, of any additional consideration in the event of a resale transaction, as described more fully herein. Because the amount of such additional consideration, if any, is not determinable at this time, it has not been included in the calculation of the maximum aggregate value of the transaction.

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TABLE OF CONTENTS

**PRELIMINARY PROXY STATEMENT, SUBJECT TO COMPLETION  
DATED JUNE 7, 2010**

**THE ORCHARD ENTERPRISES, INC.  
23 East 4<sup>th</sup> Street, 3<sup>rd</sup> Floor  
New York, New York 10003**

To Our Stockholders:

On July , 2010, The Orchard Enterprises, Inc. will hold its 2010 Annual Meeting of Stockholders at the offices of Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, New York 10112. The meeting will begin at 10:00 a.m., Eastern Daylight Time. The Board of Directors has fixed the close of business on June , 2010 as the record date for the purpose of determining the stockholders entitled to receive notice of and vote at the annual meeting and any adjournment or postponement of the annual meeting.

At the annual meeting, you will be asked to consider and vote upon a proposal to approve and adopt the Agreement and Plan of Merger dated as of March 15, 2010, as amended, among The Orchard Enterprises, Inc., a Delaware corporation, Dimensional Associates, LLC, a New York limited liability company, and Orchard Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Dimensional Associates, and the transactions contemplated thereby. Dimensional Associates is The Orchard s majority stockholder and holds, along with its affiliates, approximately 54% of The Orchard s voting stock as of the record date for the annual meeting.

If the merger is completed, our stockholders, other than Dimensional Associates and its affiliates and stockholders who properly exercise and perfect their appraisal rights under Delaware law, will have the right to receive, for each share of our common stock they hold at the time of the merger, \$2.05 in cash. In addition, each stockholder, other than Dimensional Associates and its affiliates and stockholders who properly exercise and perfect their appraisal rights under Delaware law, will receive a contingent right to receive additional consideration, under certain circumstances if Dimensional Associates or The Orchard or any of their affiliates enters into a commitment to sell at least 80% of The Orchard s voting securities or assets within six months of the consummation of the merger.

Upon completion of the proposed merger, we will cease to be a publicly traded company and Dimensional Associates will own more than 99% of our outstanding securities, assuming that none of the current Series A convertible preferred stock holders convert their shares into common stock. As a result, you will no longer have any direct or indirect equity interest in The Orchard or any interest in The Orchard s future earnings or growth, if any. Following completion of the merger, the registration of our common stock and our reporting obligations with respect to our common stock under the Securities Exchange Act of 1934 are expected to be terminated. In addition, upon completion of the merger, shares of our common stock will no longer be listed on the Nasdaq Stock Market.

After careful consideration, our Board of Directors has determined that the merger is advisable and that the terms of the merger are fair to, and in the best interest of, The Orchard and its stockholders and, therefore, has approved the merger agreement and the transactions contemplated thereby, including the merger, and recommends that you vote FOR approval of the merger agreement and the transactions contemplated thereby. This recommendation is based upon the unanimous recommendation of a special committee of the Board of Directors consisting of five independent and disinterested directors.

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In addition, you are being asked at the annual meeting (1) to approve an amendment to the Certificate of Designations of our Series A convertible preferred stock, necessary to permit the transactions contemplated by the merger agreement to be effected, (2) to elect seven (7) directors, each for a one (1) year term, until his successor is duly elected and qualified, (3) to ratify the appointment of Marcum LLP as our independent registered public accounting firm for fiscal year 2010 and (4) to approve the adjournment of the annual meeting, if necessary, to permit further solicitation and vote of proxies if there are insufficient votes at the time of

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TABLE OF CONTENTS

the annual meeting to approve the merger and to approve and adopt the merger agreement. The proposal to amend our Certificate of Designations is conditioned upon and subject to the approval of the merger agreement and the transactions contemplated thereby. If the merger agreement proposal is not approved, the Certificate of Designations proposal will not be presented at the meeting. Our Board of Directors unanimously recommends that you vote (1) FOR the amendment to our Certificate of Designations, (2) FOR the election of each nominee for director as proposed, (3) FOR the ratification of our independent registered public accounting firm for fiscal year 2010 and (4) FOR the adjournment of the annual meeting, if necessary, to permit further solicitation and vote of proxies if there are insufficient votes at the time of the annual meeting to approve the merger and to approve and adopt the merger agreement. The accompanying notice of annual meeting and proxy statement provide information regarding the matters to be acted on at the annual meeting, including any adjournment or postponement of the annual meeting.

Please read these materials carefully.

YOUR VOTE IS VERY IMPORTANT, regardless of the number of shares you own. We cannot complete the merger unless the holders of a majority of all the outstanding shares of our voting securities entitled to vote on the matter, other than voting securities held by Dimensional Associates and its affiliates, vote to approve the merger and to approve and adopt the merger agreement. Once you have read the accompanying materials, please take the time to vote on the matters submitted to stockholders at the annual meeting, whether or not you plan to attend the annual meeting. I urge you to vote your shares promptly by using the telephone or Internet or by signing and returning the enclosed proxy card. Voting by proxy will not prevent you from voting your shares in person if you subsequently choose to attend the annual meeting in person. Your vote in person will revoke any proxy previously submitted.

If your shares are held in street name by your broker, bank or other nominee, your broker, bank or other nominee will be unable to vote your shares on the merger proposal or any of the other proposals, other than the ratification of the appointment of our independent registered public accounting firm, without instructions from you. You should instruct your broker, bank or other nominee to vote your shares by following the procedures provided by your broker, bank or other nominee.

Our Board of Directors and management urge you to vote FOR all of the proposals.

Sincerely,

Michael J. Donahue  
*Chair of the Special Committee and  
Chairman of the Board of Directors*

**Neither the Securities and Exchange Commission nor any state securities regulatory agency has approved or disapproved the merger, passed upon the merits or fairness of the merger or passed upon the adequacy or accuracy of the disclosure in this document. Any representation to the contrary is a criminal offense.**

The proxy statement is dated June , 2010, and is first being mailed to stockholders on or about June , 2010.

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TABLE OF CONTENTS

# THE ORCHARD ENTERPRISES, INC.

**23 East 4th Street, 3rd Floor  
New York, New York 10003**

## **NOTICE OF ANNUAL MEETING OF STOCKHOLDERS To Be Held July , 2010**

To Our Stockholders:

On July , 2010, The Orchard Enterprises, Inc., a Delaware corporation (the Company or The Orchard ), will hold its 2010 Annual Meeting of Stockholders at the offices of Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, New York 10112. The meeting will begin at 10:00 a.m., Eastern Daylight Time, for the following purposes:

- To consider and vote on a proposal to approve and adopt the Agreement and Plan of Merger dated as of March 15, 2010, as amended, among The Orchard Enterprises, Inc., a Delaware corporation, Dimensional Associates, LLC, a New York limited liability company, and Orchard Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Dimensional Associates, and to approve the merger and the other transactions contemplated thereby (the Merger Proposal ).
- To approve an amendment to the Certificate of Designations of the Series A convertible preferred stock (the Certificate Amendment Proposal ) that would permit The Orchard to consummate the merger as contemplated by the merger agreement, without which amendment the merger consideration that our common stockholders would otherwise receive in the merger would be required to be allocated first to holders of our Series A convertible preferred stock, primarily Dimensional Associates, to satisfy their right to a liquidation preference. The Certificate Amendment Proposal is conditioned upon and subject to the approval of the Merger Proposal. If the Merger Proposal is not adopted, the Certificate Amendment Proposal will not be presented at the meeting.
- To elect the seven (7) nominees named in the attached proxy statement to our Board of Directors to serve a one (1) year term.
4. To ratify the appointment of our independent registered public accounting firm for fiscal year 2010.
- To approve the adjournment of the annual meeting, if necessary, to permit further solicitation and vote of proxies if there are insufficient votes at the time of the annual meeting to approve the merger and to approve and adopt the merger agreement (the Adjournment Proposal ).
- To transact such other business as may properly come before the meeting or any adjournment or postponement of the meeting.
- Only stockholders who owned shares of our common stock or our Series A convertible preferred stock at the close of business on June , 2010 will be entitled to notice of, and to vote at, this meeting or any adjournments or postponements of the meeting. A complete list of stockholders entitled to vote at the meeting will be available for examination by any stockholder, for any purpose relating to the meeting, during ordinary business hours at our principal offices located at 23 East 4<sup>th</sup> Street, 3<sup>rd</sup> Floor, New York, New York 10003, at least ten days before the

meeting.

We urge you to read the accompanying proxy statement carefully as it sets forth details of each proposal to be voted on, including the proposed merger and other important information related to the merger.

Under Delaware law, if the merger is completed, holders of our common stock who do not vote in favor of approval and adoption of the merger agreement will have the right to seek appraisal of the fair value of their shares as determined by the Delaware Court of Chancery. In order to exercise your appraisal rights, you

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TABLE OF CONTENTS

must (i) submit a written demand for an appraisal prior to the stockholder vote on the merger agreement, (ii) not vote in favor of approval and adoption of the merger agreement and (iii) comply with other Delaware law procedures explained in the proxy statement.

Your vote is important and we urge you to submit your proxy for voting at the annual meeting on the Internet, by telephone or by completing, signing, dating and returning your proxy card as promptly as possible by mail, whether or not you expect to attend the annual meeting. If you are unable to attend in person and you return your properly executed proxy card in time for the annual meeting, your shares will be voted at the annual meeting in accordance with your instructions as reflected on your proxy. Properly executed proxies that do not contain voting instructions will be voted FOR the approval of the Merger Proposal, FOR the approval of the Certificate Amendment Proposal, FOR each director nominee, FOR the ratification of our independent registered public accounting firm and FOR approval of the Adjournment Proposal. If your shares are held in street name by your broker, bank or other nominee, only that holder can vote your shares unless you obtain a valid legal proxy from such broker, bank or nominee. You should follow the directions provided by your broker, bank or nominee regarding how to instruct such broker, bank or nominee to vote your shares.

The merger is described in the accompanying proxy statement, which we urge you to read carefully. A copy of the merger agreement and the amendments to the merger agreement are attached as Appendices A, A-1 and A-2 to the proxy statement.

**Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Stockholders to be Held on July , 2010. Our proxy statement is attached. Financial and other information concerning The Orchard is contained in (1) our Annual Report on Form 10-K for the fiscal year ended December 31, 2009 filed with the Securities and Exchange Commission (SEC) on March 25, 2010, as amended on April 30, 2010, a copy of which is enclosed with this proxy statement as part of our 2009 Annual Report to Stockholders and (2) our Quarterly Report on Form 10-Q for the quarter ended March 31, 2010 filed with the SEC on May 14, 2010, a copy of which is enclosed with this proxy statement. This proxy statement, our fiscal 2009 Annual Report and our Quarterly Report on Form 10-Q are available on our website at [www.theorchard.com/about/investor-relations](http://www.theorchard.com/about/investor-relations). Additionally, and in accordance with SEC rules, registered stockholders may access our proxy materials at [www.envisionreports.com/ORCD](http://www.envisionreports.com/ORCD) and beneficial stockholders may access our proxy materials at [www.edocumentview.com/ORCD](http://www.edocumentview.com/ORCD).**

Your Board of Directors recommends that you vote in favor of the five proposals outlined in the proxy statement. Please refer to the proxy statement for detailed information on each of the proposals.

By Order of the Board of Directors,

Alexis H. Shapiro  
*Senior Vice President, General Counsel and Secretary*  
New York, New York  
June , 2010



TABLE OF CONTENTS

**THE ORCHARD ENTERPRISES, INC.**

**TABLE OF CONTENTS**

	Page
<u>SUMMARY TERM SHEET</u>	1
<u>The Parties to the Merger</u>	1
<u>The Merger and its Effects</u>	1
<u>Merger Consideration</u>	1
<u>Treatment of Options, Restricted Stock, Stock Appreciation Rights and Warrants</u>	2
<u>Interests of Certain Persons in the Merger</u>	2
<u>Required Vote for Merger Proposal</u>	2
<u>Recommendation of the Special Committee and the Board of Directors</u>	3
<u>Opinion of Fesnak and Associates, LLP</u>	3
<u>Restrictions on Solicitation of Other Offers</u>	3
<u>Conditions to the Completion of the Merger</u>	4
<u>Termination of the Merger Agreement</u>	5
<u>Expense Reimbursement</u>	6
<u>Share Ownership of Directors and Executive Officers</u>	6
<u>Rights of Appraisal</u>	6
<u>Market Price of Our Common Stock</u>	6
<u>Material United States Federal Income Tax Consequences</u>	6
<u>QUESTIONS AND ANSWERS ABOUT THE MERGER AND THE ANNUAL MEETING OF STOCKHOLDERS</u>	8
<u>SPECIAL FACTORS</u>	12
<u>Background of the Merger</u>	12
<u>Fairness of the Merger, Recommendation of the Special Committee and the Board of Directors</u>	23
<u>Opinion of the Special Committee's Financial Advisor</u>	29
<u>Purpose and Reasons for the Merger for Dimensional Associates, Merger Sub and Certain of Their Affiliates</u>	42
<u>Position of Dimensional Associates, Merger Sub and Certain of Their Affiliates as to the Fairness of the Merger</u>	43
<u>Plans for The Orchard After the Merger</u>	45
<u>Financing of the Merger</u>	45
<u>Certain Financial Projections</u>	45
<u>Interests of Certain Persons in the Merger</u>	50
<u>Material United States Federal Income Tax Consequences of the Merger</u>	52
<u>Fees and Expenses of the Merger</u>	56
<u>Provisions for the Non-Continuing Stockholders</u>	56
<u>SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>	57
<u>THE ANNUAL MEETING</u>	59
<u>Date, Time and Place of the Annual Meeting</u>	59
<u>Purpose of the Annual Meeting</u>	59



TABLE OF CONTENTS

	Page
<u>Record Date; Shares Entitled to Vote; Quorum</u>	<u>59</u>
<u>Vote Required</u>	<u>59</u>
<u>Voting of Proxies</u>	<u>60</u>
<u>Revocability of Proxies</u>	<u>61</u>
<u>Attendance at Annual Meeting</u>	<u>61</u>
<u>Rights of Stockholders Who Object to the Merger</u>	<u>61</u>
<u>Solicitation of Proxies</u>	<u>61</u>
<u>Other Business</u>	<u>61</u>
<u>APPROVAL AND ADOPTION OF THE MERGER AGREEMENT</u>	<u>62</u>
<u>Proposal</u>	<u>62</u>
<u>Vote Required</u>	<u>62</u>
<u>Recommendation of the Board</u>	<u>63</u>
<u>THE MERGER AGREEMENT</u>	<u>64</u>
<u>The Merger</u>	<u>64</u>
<u>Effective Time</u>	<u>64</u>
<u>Merger Consideration</u>	<u>64</u>
<u>Payment Procedures</u>	<u>65</u>
<u>Appraisal Rights</u>	<u>66</u>
<u>Treatment of Options, Restricted Stock, Stock Appreciation Rights and Warrants</u>	<u>66</u>
<u>Representations and Warranties</u>	<u>67</u>
<u>Definition of Company Material Adverse Change</u>	<u>69</u>
<u>Covenants Relating to the Conduct of Our Business</u>	<u>69</u>
<u>Restrictions on Solicitations of Other Offers</u>	<u>72</u>
<u>Stockholders Meeting</u>	<u>73</u>
<u>Restrictions on Change of Recommendation to Stockholders</u>	<u>73</u>
<u>Other Actions; Notification</u>	<u>74</u>
<u>Indemnification and Insurance</u>	<u>75</u>
<u>Employee Matters</u>	<u>76</u>
<u>Other Covenants</u>	<u>76</u>
<u>Conditions to the Completion of the Merger</u>	<u>77</u>
<u>Termination of the Merger Agreement</u>	<u>78</u>
<u>Expense Reimbursement</u>	<u>79</u>
<u>Amendment and Waiver</u>	<u>80</u>
<u>IMPORTANT INFORMATION REGARDING THE ORCHARD</u>	<u>81</u>
<u>Summarized Financial Data</u>	<u>81</u>
<u>Book Value Per Share</u>	<u>81</u>
<u>Transactions in Common Stock</u>	<u>82</u>
<u>Market Price of our Common Stock and Dividend Information</u>	<u>83</u>
<u>Description of Business</u>	<u>83</u>

TABLE OF CONTENTS

	Page
<u>Description of Property</u>	<u>83</u>
<u>Legal Proceedings</u>	<u>83</u>
<u>IMPORTANT INFORMATION REGARDING MERGER SUB</u>	<u>84</u>
<u>IMPORTANT INFORMATION REGARDING DIMENSIONAL ASSOCIATES AND CERTAIN OF ITS AFFILIATES</u>	<u>85</u>
<u>HISTORICAL RELATIONSHIP BETWEEN DIMENSIONAL ASSOCIATES AND THE ORCHARD</u>	<u>85</u>
<u>APPRAISAL RIGHTS</u>	<u>86</u>
<u>APPROVAL OF AMENDMENT TO CERTIFICATE OF DESIGNATIONS OF SERIES A CONVERTIBLE PREFERRED STOCK</u>	<u>90</u>
<u>Proposal</u>	<u>90</u>
<u>Vote Required</u>	<u>90</u>
<u>Recommendation of the Board</u>	<u>90</u>
<u>ELECTION OF DIRECTORS</u>	<u>91</u>
<u>Nominees</u>	<u>91</u>
<u>Director Independence</u>	<u>93</u>
<u>Attendance at Board Meetings and Board Committees</u>	<u>93</u>
<u>Consideration of Director Nominees</u>	<u>95</u>
<u>Code of Business Conduct</u>	<u>96</u>
<u>Communications with the Board by Stockholders</u>	<u>96</u>
<u>Director Compensation</u>	<u>97</u>
<u>Vote Required</u>	<u>98</u>
<u>Recommendation of the Board</u>	® Component Stock’s Select Sector Index assignment should be changed, S&P will disseminate notice of the change following its standard procedure for announcing index changes, and will implement the change in the affected Select Sector Indexes on a date no less than one week

after the initial dissemination of information on the sector change to the maximum extent practicable.

SPDR<sup>®</sup> Component Stocks removed from and added to the S&P 500<sup>®</sup> Index will be deleted from and added to the appropriate Select Sector Index on the same schedule used by S&P for additions and deletions from the S&P 500<sup>®</sup> Index insofar as practicable.

P-10 RBC Capital Markets, LLC

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Buffered Enhanced Return Notes Linked to a Basket of  
Three Exchange Traded Funds

HISTORICAL INFORMATION

The graphs below set forth the information relating to the historical performance of the Basket Components. We obtained the information regarding the historical performance of the Basket Components in the graphs below from Bloomberg Financial Markets.

We have not independently verified the accuracy or completeness of the information obtained from Bloomberg Financial Markets. The historical performance of any Basket Component should not be taken as an indication of its future performance, and no assurance can be given as to the prices of the Basket Components at any time. We cannot give you assurance that the performance of the Basket Components will not result in the loss of all or part of your investment.

Historical Information for the Energy Select Sector SPDR<sup>®</sup> Fund (“XLE”)

The graph below illustrates the performance of this Basket Component from January 1, 2009 to May 2, 2019, assuming an Initial Level of \$63.66, which was its closing price on May 2, 2019. The actual Initial Level of this Basket Component will be based on its closing price on the Trade Date.

P-11 RBC Capital Markets, LLC

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Buffered Enhanced Return Notes Linked to a Basket of  
Three Exchange Traded Funds

Historical Information for the Industrial Select Sector SPDR® Fund (“XLI”)

The graph below illustrates the performance of this Basket Component from January 1, 2009 to May 2, 2019, assuming an Initial Level of \$77.46, which was its closing price on May 2, 2019. The actual Initial Level of this Basket Component will be based on its closing price on the Trade Date.

P-12 RBC Capital Markets, LLC

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Buffered Enhanced Return Notes Linked to a Basket of  
Three Exchange Traded Funds

Historical Information for the Technology Select Sector SPDR® Fund (“XLK”)

The graph below illustrates the performance of this Basket Component from January 1, 2009 to May 2, 2019, assuming an Initial Level of \$78.10, which was its closing price on May 2, 2019. The actual Initial Level of this Basket Component will be based on its closing price on the Trade Date.

P-13 RBC Capital Markets, LLC

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Buffered Enhanced Return Notes Linked to a Basket of  
Three Exchange Traded Funds

SUPPLEMENTAL DISCUSSION OF  
U.S. FEDERAL INCOME TAX CONSEQUENCES

The following disclosure supplements, and to the extent inconsistent supersedes, the discussion in the product prospectus supplement dated September 11, 2018 under “Supplemental Discussion of U.S. Federal Income Tax Consequences.”

Under Section 871(m) of the Code, a “dividend equivalent” payment is treated as a dividend from sources within the United States. Such payments generally would be subject to a 30% U.S. withholding tax if paid to a non-U.S. holder.

Under U.S. Treasury Department regulations, payments (including deemed payments) with respect to equity-linked instruments (“ELIs”) that are “specified ELIs” may be treated as dividend equivalents if such specified ELIs reference an interest in an “underlying security,” which is generally any interest in an entity taxable as a corporation for U.S. federal income tax purposes if a payment with respect to such interest could give rise to a U.S. source dividend. However, the IRS has issued guidance that states that the U.S. Treasury Department and the IRS intend to amend the effective dates of the U.S. Treasury Department regulations to provide that withholding on dividend equivalent payments will not apply to specified ELIs that are not delta-one instruments and that are issued before January 1, 2021. Based on our determination that the Notes are not delta-one instruments, non-U.S. holders should not be subject to withholding on dividend equivalent payments, if any, under the Notes. However, it is possible that the Notes could be treated as deemed reissued for U.S. federal income tax purposes upon the occurrence of certain events affecting the Basket Components or the Notes (for example, upon a rebalancing of the underlying Basket Components), and following such occurrence the Notes could be treated as subject to withholding on dividend equivalent payments. Non-U.S. holders that enter, or have entered, into other transactions in respect of the Basket Components or the Notes should consult their tax advisors as to the application of the dividend equivalent withholding tax in the context of the Notes and their other transactions. If any payments are treated as dividend equivalents subject to withholding, we (or the applicable withholding agent) would be entitled to withhold taxes without being required to pay any additional amounts with respect to amounts so withheld.

The accompanying product prospectus supplement notes that FATCA withholding on payments of gross proceeds from a sale or redemption of Notes will only apply to payments made after December 31, 2018. That discussion is modified to reflect regulations proposed by the U.S. Treasury Department in December 2018 indicating an intent to eliminate the requirement under FATCA of withholding on gross proceeds of the disposition of financial instruments.

The U.S. Treasury Department has indicated that taxpayers may rely on these proposed regulations pending their finalization. Prospective investors are urged to consult with their own tax advisors regarding the possible implications of FATCA on their investment in the Notes.

SUPPLEMENTAL PLAN OF DISTRIBUTION (CONFLICTS OF INTEREST)

We expect that delivery of the Notes will be made against payment for the Notes on or about May 9, 2019, which is the third (3<sup>rd</sup>) business day following the Trade Date (this settlement cycle being referred to as “T+3”). See “Plan of Distribution” in the prospectus dated September 7, 2018. For additional information as to the relationship between us and RBCCM, please see the section “Plan of Distribution—Conflicts of Interest” in the prospectus dated September 7, 2018.

We expect to deliver the Notes on a date that is greater than two business days following the Trade Date. Under Rule 15c6-1 of the Exchange Act, trades in the secondary market generally are required to settle in two business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the Notes more than two business days prior to the original Issue Date will be required to specify alternative arrangements to prevent a failed settlement.

In the initial offering of the Notes, they will be offered to investors at a purchase price equal to par, except with respect to certain accounts as indicated on the cover page of this document.

The value of the Notes shown on your account statement may be based on RBCCM’s estimate of the value of the Notes if RBCCM or another of our affiliates were to make a market in the Notes (which it is not obligated to do).

That estimate will be based upon the price that RBCCM may pay for the Notes in light of then prevailing market conditions, our creditworthiness and transaction costs. For a period of approximately 3 months after the issue date of the Notes, the value of the Notes that may be shown on your account statement may be higher than RBCCM's estimated value of the Notes at that time. This is because the estimated value of the Notes will not include the underwriting discount and our hedging costs and profits; however, the value of the Notes shown on your account statement during that period may initially be a higher amount, reflecting the addition of RBCCM's underwriting discount and our estimated costs and profits from hedging the Notes. This excess is expected to decrease over time until the end of this period. After this period, if RBCCM repurchases your Notes, it expects to do so at prices that reflect their estimated value.

We may use this terms supplement in the initial sale of the Notes. In addition, RBCCM or another of our affiliates may use this terms supplement in a market-making transaction in the Notes after their initial sale. Unless we or our agent informs the purchaser otherwise in the confirmation of sale, this terms supplement is being used in a market-making transaction.

P-14 RBC Capital Markets, LLC

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Buffered Enhanced Return Notes Linked to a Basket of  
Three Exchange Traded Funds

STRUCTURING THE NOTES

The Notes are our debt securities, the return on which is linked to the performance of the Basket Components. As is the case for all of our debt securities, including our structured notes, the economic terms of the Notes reflect our actual or perceived creditworthiness at the time of pricing. In addition, because structured notes result in increased operational, funding and liability management costs to us, we typically borrow the funds under these Notes at a rate that is more favorable to us than the rate that we might pay for a conventional fixed or floating rate debt security of comparable maturity. Using this relatively lower implied borrowing rate rather than the secondary market rate, is a factor that is likely to reduce the initial estimated value of the Notes at the time their terms are set. Unlike the estimated value that will be included in the final pricing supplement, any value of the Notes determined for purposes of a secondary market transaction may be based on a different funding rate, which may result in a lower value for the Notes than if our initial internal funding rate were used.

In order to satisfy our payment obligations under the Notes, we may choose to enter into certain hedging arrangements (which may include call options, put options or other derivatives) on the issue date with RBCCM or one of our other subsidiaries. The terms of these hedging arrangements take into account a number of factors, including our creditworthiness, interest rate movements, the volatility of the Basket Components, and the tenor of the Notes. The economic terms of the Notes and their initial estimated value depend in part on the terms of these hedging arrangements.

The lower implied borrowing rate is a factor that reduces the economic terms of the Notes to you. The initial offering price of the Notes also reflects the underwriting commission and our estimated hedging costs. These factors result in the initial estimated value for the Notes on the Trade Date being less than their public offering price. See “Selected Risk Considerations—The Initial Estimated Value of the Notes Will Be Less than the Price to the Public” above.

P-15RBC Capital Markets, LLC

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Sona Chawla

2.

To ratify the appointment of KPMG LLP as independent registered public accounting firm.

Thomas J. Folliard

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- 3.

To approve, in an advisory (non-binding) vote, the compensation of our named executive officers.

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Shira Goodman

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- 4.

To vote on a shareholder proposal for a report on political contributions, if properly presented at the meeting.

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Robert J. Hombach

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5.

To transact any other business that may properly come before the Annual Meeting or any postponements or adjournments thereof.

David W. McCreight

In their discretion, the named proxies are authorized to vote upon such other business as may properly come before the Annual Meeting. This proxy, when properly executed, will be voted as directed herein by the undersigned shareholder. If no direction is made, this proxy will be voted FOR all nominees in Proposal 1; FOR Proposal 2; FOR Proposal 3; and AGAINST Proposal 4.

To change the address on your account, please check the box at right and indicate your new address in the address space above. Please note that changes to the registered name(s) on the account may not be submitted via this method.

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Signature of Shareholder   Date:   Signature of Shareholder   Date:

Note: Please sign exactly as your name or names appear on this Proxy. When shares are held jointly, each holder should sign. When signing as executor, administrator, attorney, trustee or guardian, please give full title as such. If the signer is a corporation, please sign full corporate name by duly authorized officer, giving full title as such. If signer is a partnership, please sign in partnership name by authorized person.

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CARMAX, INC.

Proxy for Annual Meeting of Shareholders on June 26, 2018

Solicited on Behalf of the Board of Directors

As an alternative to completing this form, you may enter your vote instruction by telephone at 1-800-PROXIES, or via the Internet at [WWW.VOTEPROXY.COM](http://WWW.VOTEPROXY.COM) and follow the simple instructions. Use the Control Number shown on your proxy card.

The undersigned hereby appoints Tom Reedy and Eric Margolin (the “named proxies”), and each of them, with full power of substitution and power to act alone, as proxies to vote all the shares of CarMax, Inc. Common Stock, which the undersigned would be entitled to vote if personally present and acting at the Annual Meeting of Shareholders of CarMax, Inc., to be held at 1:00 p.m. ET June 26, 2018, at the Hilton Richmond Hotel, Short Pump, 12042 West Broad Street, Richmond, Virginia 23233, and at any postponements or adjournments thereof, as follows:

(Continued and to be signed on the reverse side.)