

NXP Semiconductors N.V.
Form SC TO-T/A
March 09, 2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO

Tender Offer Statement under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934

(Amendment No. 25)

NXP Semiconductors N.V.

(Name of Subject Company (Issuer))

Qualcomm River Holdings B.V.

(Offeror)

an indirect, wholly-owned subsidiary of

QUALCOMM Incorporated

(Ultimate Parent of Offeror)

(Names of Filing Persons (identifying status as offeror, issuer or other person))

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Common shares, par value 0.20 per share

(Title of Class of Securities)

N6596X109

(CUSIP Number of Class of Securities)

Donald J. Rosenberg

Executive Vice President, General Counsel and Corporate Secretary

QUALCOMM Incorporated

5775 Morehouse Drive

San Diego, California 92121

Telephone: (858) 587-1121

(Name, address and telephone number of person authorized to receive notices and communications on behalf of filing persons)

with copies to:

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CALCULATION OF FILING FEE

Transaction Valuation*
\$44,805,140,610.61

Amount of Filing Fee**
\$5,247,572.95

* Calculated solely for purposes of determining the filing fee. The calculation of the transaction value is determined by adding the sum of (i) 343,644,985 common shares, par value 0.20 per share (not including treasury shares), of NXP Semiconductors N.V. multiplied by the offer consideration of \$127.50 per share, (ii) the net offer consideration for 3,033,079 shares issuable pursuant to outstanding options with an exercise price less than \$127.50 per share (which is calculated by multiplying the number of shares underlying such outstanding options by an amount equal to \$127.50 minus the weighted average exercise price for such options of \$48.41 per share), (iii) 5,567,543 shares subject to issuance pursuant to restricted stock units multiplied by the offer consideration of \$127.50 per share and (iv) 318,879 shares subject to issuance pursuant to outstanding performance-based restricted stock units multiplied by the offer consideration of \$127.50 per share. The foregoing share figures have been provided by the issuer to the offeror and are as of February 16, 2018, the most recent practicable date.

** The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and (i) with respect to the fee paid with Amendment No. 22, equals the incremental increase in the transaction valuation multiplied by 0.0001245 based on Fee Rate Advisory #1 for Fiscal Year 2018, issued August 24, 2017, and (ii) with respect to fees paid prior to Amendment No. 22, equals the previously-disclosed transaction valuation multiplied by

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0.0001159 based on Fee Rate Advisory #1 for Fiscal Year 2017, issued August 31, 2016.

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

Amount Previously Paid: \$4,456,315.31

Form or Registration No.: Schedule TO

Amount Previously Paid: \$791,257.64

Form or Registration No.: Schedule TO-T/A

Filing Party: Qualcomm River Holdings B.V. and QUALCOMM Incorporated

Date Filed: November 18, 2016

Filing Party: Qualcomm River Holdings B.V. and QUALCOMM Incorporated

Date Filed: February 20, 2018

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- third-party tender offer subject to Rule 14d-1.
- issuer tender offer subject to Rule 13e-4.
- going-private transaction subject to Rule 13e-3.
- amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

- Rule 13e-4(i) (Cross-Border Issuer Tender Offer)
- Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

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This Amendment No. 25 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO initially filed with the Securities and Exchange Commission on November 18, 2016 (together with any amendments and supplements thereto, the Schedule TO) in relation to the tender offer by Qualcomm River Holdings B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) organized under the laws of The Netherlands (Purchaser) and an indirect, wholly owned subsidiary of QUALCOMM Incorporated, a Delaware corporation (Qualcomm or Parent), for all outstanding common shares, par value 0.20 per share (the Shares), of NXP Semiconductors N.V., a public limited liability company (*naamloze vennootschap*) organized under the laws of The Netherlands (NXP). On February 20, 2018, Purchaser and NXP entered into an amendment (the Purchase Agreement Amendment) to that certain Purchase Agreement, dated as of October 27, 2016 (as amended, the Purchase Agreement), by and between Purchaser and NXP. Pursuant to the Purchase Agreement Amendment, the offer price was increased from \$110.00 per Share to \$127.50 per Share, less any applicable withholding taxes and without interest to the holders thereof, payable in cash (the Offer Consideration), upon the terms and conditions set forth in the offer to purchase dated November 18, 2016 (as it may be amended or supplemented from time to time, including by the Amendment and Supplement to the Offer to Purchase, dated February 21, 2018 (a copy of which is attached as Exhibit (a)(1)(G) to the Schedule TO), the Offer to Purchase), a copy of which is attached as Exhibit (a)(1)(A) to the Schedule TO, and in the related letter of transmittal (together with any amendments and supplements thereto, the Letter of Transmittal), a copy of which is attached as Exhibit (a)(1)(B) to the Schedule TO.

Except as otherwise set forth in this Amendment, the information set forth in the Schedule TO and the related Letter of Transmittal remains unchanged and is incorporated herein by reference to the extent relevant to the items in this Amendment. Capitalized terms used but not defined herein have the meanings ascribed to them in the Schedule TO.

Amendment to the Schedule TO

Items 1, 4 and 11. Summary Term Sheet; Terms of the Transaction; and Additional Information.

Items 1, 4 and 11 of the Schedule TO are hereby amended and supplemented by adding the following text thereto:

On March 9, 2018, Parent announced an extension of the expiration of the Offer to 5:00 p.m., New York City time, on March 16, 2018, unless the Offer is further extended or earlier terminated in accordance with the Purchase Agreement. The Offer was previously scheduled to expire at 5:00 p.m., New York City time, on March 9, 2018.

The Depository has advised Parent and Purchaser that, as of 5:00 p.m., New York City time, on March 8, 2018, 65,276,925 Shares (excluding 21,239 Shares tendered pursuant to guaranteed delivery procedures that have not yet been delivered in settlement or satisfaction of such guarantee), representing approximately 19.0% of the outstanding Shares, have been validly tendered pursuant to the Offer and not properly withdrawn.

The full text of the press release issued by Parent announcing the extension of the Offer is attached hereto as Exhibit (a)(5)(EE) and is incorporated by reference herein.

Item 9. Source and Amount of Funds or Other Consideration.

Item 9 of the Schedule TO is hereby amended and supplemented by adding the following text thereto:

On March 6, 2018, Parent entered into a Credit Agreement with the lenders party thereto and Goldman Sachs Bank USA, as administrative agent (the 2018 Credit Agreement). Under the 2018 Credit Agreement, Parent received commitments for (i) a senior unsecured delayed-draw term facility in an aggregate principal amount of \$3.0 billion (the 2018 Term Loan Facility , and the loans thereunder, the 2018 Term Loans), and (ii) a senior unsecured revolving credit facility in an aggregate principal amount of \$3.0 billion (the 2018 Revolving Credit Facility , and together with the 2018 Term Loan Facility, the 2018 Facilities ; and the loans under the 2018 Revolving Credit Facility, the 2018 Revolving Loans). Certain proceeds of the 2018 Facilities, if drawn, will be used in part by Purchaser to finance the transactions contemplated by the Purchase Agreement, and in part by Parent for working capital, capital expenditures and other general corporate purposes.

2018 Credit Agreement

The following summary description of the 2018 Credit Agreement and all other provisions of the 2018 Term Loan Facility and the 2018 Revolving Credit Facility discussed herein are qualified by reference to the 2018 Credit Agreement, which has been filed as Exhibit (b)(11) to the Schedule TO filed with the SEC in connection with the Offer and is incorporated herein by reference. The 2018 Credit Agreement may be examined and copies may be obtained at the places and in the manner set forth in Section 8 Certain Information Concerning Parent and Purchaser. Shareholders and other interested parties should read the 2018 Credit Agreement for a more complete description of the provisions summarized below.

Interest Rates and Fees. Interest under the 2018 Term Loan Facility is payable either, at the option of Parent, at a Base Rate (as defined in the 2018 Credit Agreement) or a reserve-adjusted Eurocurrency Rate (as defined in the 2018 Credit Agreement) plus, in each case, a *per annum* applicable rate that fluctuates between 0.0 basis points and 25.0 basis points, in the case of 2018 Term Loans priced at the Base Rate, and between 75.0 basis points and 125.0 basis points, in the case of 2018 Term Loans priced at the reserve-adjusted Eurocurrency Rate, based on the Parent's Debt Ratings with certain provisions taking into account potential differences in ratings issued by the relevant rating agencies or a lack of ratings issued by such rating agencies. Parent will be required to pay a ticking fee at a rate equal to (a) a *per annum* rate that fluctuates between 4.0 basis points and 12.5 basis points based on the Parent's Debt Ratings, times (b) the actual daily undrawn commitments with respect to the 2018 Term Loan Facility, accruing during the period commencing on March 6, 2018 and ending on the earlier of the date of funding of the 2018 Term Loan Facility and the date the commitments with respect to the 2018 Term Loan Facility terminate.

Interest under the 2018 Revolving Credit Facility is payable either, at the option of Parent, at a Base Rate or a reserve-adjusted Eurocurrency Rate plus, in each case, a *per annum* applicable rate that fluctuates between 0.0 basis points and 12.5 basis points, in the case of 2018 Revolving Loans priced at the Base Rate, and between 62.5 basis points and 112.5 basis points, in the case of 2018 Revolving Loans priced at the reserve-adjusted Eurocurrency Rate, based on the Parent's Debt Ratings with certain provisions taking into account potential differences in ratings issued by the relevant rating agencies or a lack of ratings issued by such rating agencies. Parent will be required to pay an undrawn commitment fee at a rate equal to (a) a *per annum* rate that fluctuates between 4.0 basis points and 12.5 basis points based on the Parent's Debt Ratings, times (b) the actual daily undrawn commitments with respect to the 2018 Revolving Credit Facility.

Prepayments. The 2018 Facilities require that Parent prepay loans and reduce commitments under the 2018 Facilities with the net cash proceeds of certain debt and equity issuances and certain asset sales, subject to customary exceptions and limitations. The 2018 Facilities allow for voluntary prepayments of the 2018 Term Loans and 2018 Revolving Loans in whole or in part without premium or penalty.

Borrower, Guarantors and Collateral. Parent is the borrower under the 2018 Facilities. Obligations under the 2018 Facilities are not guaranteed by any entity and not expected to be guaranteed by any subsidiary of Parent, and the 2018 Facilities are unsecured.

Conditions.

The funding of the 2018 Term Loan Facility and of the initial borrowings under the 2018 Revolving Credit Facility are each subject to the satisfaction of certain conditions precedent, including, without limitation:

- consummation of the Offer in accordance with the Purchase Agreement without giving effect to any modifications, consents, amendments or waivers thereto or thereunder that are materially adverse to the interests of the lenders or lead arrangers under the Term Loan Facility unless consented to in writing by the lead arrangers thereof (provided that the increase in the Offer Consideration pursuant to the Amendment, and any modification of the term Offer Consideration under the Amendment, shall, in each case, be deemed not to be materially adverse to the lenders

or the lead arrangers);

- since October 27, 2016, there will not have occurred any fact, change, event, development, occurrence or effect that would have or reasonably be expected to have, individually or in the aggregate, a Target Material Adverse Effect (as defined in the 2018 Credit Agreement in a manner consistent with the comparable term in the Purchase Agreement; see Section 11 The Purchase Agreement; Other Agreements), but does not require satisfaction of a clause of the definition of Target Material Adverse Effect relating to impairment of NXP's ability to consummate the transactions contemplated by the Purchase Agreement;
- delivery of certain audited and unaudited financial statements of Parent and NXP;
- payment of fees, charges and disbursements of counsel required to be paid under or in connection with the Term Loan Facility;
- delivery of a solvency certificate from the chief financial officer of Parent and certain other customary closing documents (including customary closing certificates, a favorable legal opinion from Parent's counsel as to its registration status under the Investment Company Act of 1940, a customary request for credit extension and documentation required under applicable know your customer and anti-money laundering rules and regulations);
- accuracy of certain specified representations and warranties in the Purchase Agreement and specified representations and warranties in the 2018 Credit Agreement and absence of a default or event of default under the 2018 Credit Agreement relating to non-payment of amounts due, events of default under certain material debt instruments or bankruptcy or insolvency; and
- repayment in full of all amounts due or outstanding in respect of certain credit facilities of NXP or its subsidiaries and the termination of all commitments to extend credit thereunder and the discharge and release of all guarantees and security interests in respect thereof.

The funding of any subsequent borrowings under the 2018 Revolving Credit Facility on or before the date that is 90 days after the Closing Date (as defined in the 2018 Credit Agreement) and the proceeds of which will be used to finance the transactions contemplated by the Purchase Agreement or pay fees and expenses related thereto will be subject to the satisfaction of certain conditions precedent, including, without limitation:

- accuracy of certain specified representations and warranties in the 2018 Credit Agreement and absence of a default or event of default under the 2018 Credit Agreement relating to non-payment of amounts due, events of default under certain material debt instruments or bankruptcy or insolvency; and
- receipt by the administrative agent of a customary request for credit extension.

The funding of any subsequent borrowings under the 2018 Revolving Credit Facility (other than as set forth in the immediately preceding paragraph) is subject to the satisfaction of certain conditions precedent, including, without limitation:

- accuracy of certain representations and warranties in the 2018 Credit Agreement;
- absence of a default under the 2018 Credit Agreement, including after giving effect to the relevant borrowing and the application of proceeds thereof; and
- receipt by the administrative agent of a customary request for credit extension.

Other Terms. The 2018 Credit Agreement contains representations, warranties, conditions precedent, events of default, indemnities and affirmative and negative covenants that are customary for facilities of this type. Affirmative covenants include, among others, covenants pertaining to the delivery of financial statements, notices, certificates and other information, payment of taxes, preservation of corporate existence and compliance with laws. Negative covenants include, among others, covenants that restrict the ability of Parent and its subsidiaries, as applicable, to incur certain liens and make certain fundamental changes, and of Parent's subsidiaries to incur indebtedness. These covenants are subject to a number of important exceptions and qualifications. Certain changes of control also constitute an event of default under the 2018 Credit Agreement. The 2018 Credit Agreement also requires Parent to maintain a consolidated interest coverage ratio (as defined in the 2018 Credit Agreement) of at least 3.00 to 1.00 as of the last day of each fiscal quarter ended following the execution and delivery of the 2018 Credit Agreement. Amounts borrowed under the 2018 Facilities will mature on December 31, 2018.

Termination. Commitments under the 2018 Term Loan Facility terminate on the first to occur of (i) the consummation of

the Offer without using the 2018 Term Loans, (ii) the termination of Purchaser's obligation to consummate the Offer pursuant to the Purchase Agreement, (iii) 11:59 p.m., New York City time, on the End Date and (iv) the termination of the commitments in accordance with the provisions of the 2018 Credit Agreement providing for voluntary and mandatory commitment reductions. The commitments under the 2018 Revolving Credit Facility will terminate on the first to occur of (i) the termination of Purchaser's obligation to consummate the transactions contemplated by the Purchase Agreement, (ii) if the Closing Date has not occurred, 11:59 p.m., New York City time, on the End Date and (iii) the termination of the commitments in accordance with the provisions of the 2018 Credit Agreement providing for voluntary and mandatory commitment reductions.

Item 12. Exhibits.

Item 12 of the Schedule TO is hereby amended and supplemented by adding the following exhibit:

Exhibit No.	Description
(a)(5)(EE)	Text of Press Release issued by QUALCOMM Incorporated, dated March 9, 2018, announcing extension of Tender Offer.
(b)(11)	Credit Agreement, dated March 6, 2018, by and among QUALCOMM Incorporated, the lenders party thereto and Goldman Sachs Bank USA, as administrative agent (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by QUALCOMM Incorporated with the United States Securities and Exchange Commission on March 9, 2018).

Amendments to the Offer to Purchase and the Other Exhibits to the Schedule TO

The information set forth in the Offer to Purchase and Items 1 through 9 and Item 11 of the Schedule TO, as amended, to the extent such Items incorporate by reference the information contained in the Offer to Purchase, is hereby amended and supplemented as follows:

All references to 5:00 p.m., New York City time, on March 9, 2018 in the Offer to Purchase (Exhibit (a)(1)(A)), Letter of Transmittal (Exhibit (a)(1)(B)), Notice of Guaranteed Delivery (Exhibit (a)(1)(C)), Letter from the Information Agent to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (Exhibit (a)(1)(D)), Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (Exhibit (a)(1)(E)) and Amendment and Supplement to the Offer to Purchase (Exhibit (a)(1)(G)) are hereby amended and replaced with 5:00 p.m., New York City time, on March 16, 2018.

SIGNATURES

After due inquiry and to the best of their knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: March 9, 2018

Qualcomm River Holdings B.V.

By: /s/ Adam Schwenker
Name: Adam Schwenker
Title: Managing Director B

QUALCOMM Incorporated

By: /s/ Adam Schwenker
Name: Adam Schwenker
Title: Authorized Signatory

EXHIBIT INDEX

Exhibit No.	Description
(a)(1)(A)	Offer to Purchase, dated November 18, 2016.*
(a)(1)(B)	Form of Letter of Transmittal (including Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9).*
(a)(1)(C)	Form of Notice of Guaranteed Delivery.*
(a)(1)(D)	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(E)	Form of Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(F)	Text of Summary Advertisement as published in <i>The Wall Street Journal</i> on November 18, 2016.*
(a)(1)(G)	Amendment and Supplement to the Offer to Purchase, dated February 21, 2018.*
(a)(2)	Not applicable.
(a)(3)	Not applicable.
(a)(4)	Not applicable.
(a)(5)(A)	Joint Press Release issued by QUALCOMM Incorporated and NXP Semiconductors N.V., dated October 27, 2016 (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by QUALCOMM Incorporated with the United States Securities and Exchange Commission on October 27, 2016).
(a)(5)(B)	Investor Presentation, dated October 27, 2016 (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K filed by QUALCOMM Incorporated with the United States Securities and Exchange Commission on October 27, 2016).
(a)(5)(C)	Text of Press Release issued by QUALCOMM Incorporated, dated November 18, 2016, announcing launch of Tender Offer.*
(a)(5)(D)	Transcript of Video Message from Steve Mollenkopf, Chief Executive Officer of QUALCOMM Incorporated, first made available to employees of NXP Semiconductors N.V. on October 27, 2016 (incorporated by reference to Exhibit 99.1 to the Schedule TO-C filed by QUALCOMM Incorporated with the United States Securities and Exchange Commission on October 27, 2016).
(a)(5)(E)	Transcript of Investor Conference Call held by QUALCOMM Incorporated and NXP Semiconductors N.V. on October 27, 2016 (incorporated by reference to Exhibit 99.2 to the Schedule TO-C filed by QUALCOMM Incorporated with the United States Securities and Exchange Commission on October 27, 2016).
(a)(5)(F)	Transcript of Remarks of George S. Davis, Executive Vice President and Chief Financial Officer, QUALCOMM Incorporated, at Nasdaq Investor Program held on November 29, 2016.*
(a)(5)(G)	Letter to QUALCOMM Incorporated Employees from Steve Mollenkopf, Chief Executive Officer, QUALCOMM Incorporated, dated December 2, 2016.*
(a)(5)(H)	Text of Press Release issued by QUALCOMM Incorporated, dated February 6, 2017, announcing extension of Tender Offer.*
(a)(5)(I)	Text of Press Release issued by QUALCOMM Incorporated, dated March 7, 2017, announcing extension of Tender Offer.*
(a)(5)(J)	Text of Press Release issued by QUALCOMM Incorporated, dated April 4, 2017, announcing extension of Tender Offer.*

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- (a)(5)(K) Excerpts from Edited Transcript of Q2 2017 Earnings Conference Call of QUALCOMM Incorporated, dated April 19, 2017.*
- (a)(5)(L) Text of Press Release issued by QUALCOMM Incorporated, dated May 2, 2017, announcing extension of Tender Offer.*

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- (a)(5)(M) Text of Press Release issued by QUALCOMM Incorporated, dated May 31, 2017, announcing extension of Tender Offer.*
- (a)(5)(N) Text of Press Release issued by QUALCOMM Incorporated, dated June 15, 2017, announcing receipt of antitrust clearance by the Taiwan Fair Trade Commission.*
- (a)(5)(O) Text of Press Release issued by QUALCOMM Incorporated, dated June 28, 2017, announcing extension of Tender Offer.*
- (a)(5)(P) Text of Press Release issued by QUALCOMM Incorporated, dated July 27, 2017, announcing extension of Tender Offer.*
- (a)(5)(Q) Text of Press Release issued by QUALCOMM Incorporated, dated August 24, 2017, announcing extension of Tender Offer.*
- (a)(5)(R) Text of Press Release issued by QUALCOMM Incorporated, dated September 22, 2017, announcing extension of Tender Offer.*
- (a)(5)(S) Text of Press Release issued by QUALCOMM Incorporated, dated October 20, 2017, announcing extension of Tender Offer.*
- (a)(5)(T) Excerpts from Edited Transcript of Q4 and Fiscal 2017 Earnings Conference Call of QUALCOMM Incorporated, dated November 1, 2017.*
- (a)(5)(U) Text of Press Release issued by QUALCOMM Incorporated, dated November 17, 2017, announcing extension of Tender Offer.*
- (a)(5)(V) Text of Press Release issued by QUALCOMM Incorporated, dated December 11, 2017.*
- (a)(5)(W) Text of Press Release issued by QUALCOMM Incorporated, dated December 15, 2017, announcing extension of Tender Offer.*
- (a)(5)(X) Text of Press Release issued by QUALCOMM Incorporated, dated January 12, 2018, announcing extension of Tender Offer.*
- (a)(5)(Y) Text of Press Release issued by QUALCOMM Incorporated, dated January 18, 2018, announcing receipt of antitrust clearance by the European Commission and the Korea Fair Trade Commission.*
- (a)(5)(Z) Text of Press Release issued by QUALCOMM Incorporated, dated February 9, 2018, announcing extension of Tender Offer.*
- (a)(5)(AA) Press Release issued by QUALCOMM Incorporated, dated February 20, 2018 announcing Amendment and Supplement to the Offer to Purchase and extension of the Tender Offer (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by QUALCOMM Incorporated with the United States Securities and Exchange Commission on February 20, 2018).
- (a)(5)(BB) Investor Presentation, dated February 20, 2018 (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K filed by QUALCOMM Incorporated with the United States Securities and Exchange Commission on February 20, 2018).
- (a)(5)(CC) Letter to QUALCOMM Incorporated Employees from Steve Mollenkopf, Chief Executive Officer, QUALCOMM Incorporated, dated February 20, 2018.*
- (a)(5)(DD) Text of Press Release issued by QUALCOMM Incorporated, dated March 5, 2018, announcing extension of Tender Offer.*
- (a)(5)(EE) Text of Press Release issued by QUALCOMM Incorporated, dated March 9, 2018, announcing extension of Tender Offer.*