

KINGSWAY FINANCIAL SERVICES INC

Form S-4

September 28, 2018

Table of Contents

As filed with the Securities and Exchange Commission on September 28, 2018

Registration No. 333-[]

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

Form S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

KINGSWAY FINANCIAL SERVICES INC.
(Exact Name of Registrant as Specified in Its Charter)

Ontario*
(State or Other Jurisdiction of
Incorporation)

6331
(Primary Standard Industrial
Classification Code Number)

Not applicable
(I.R.S. Employer
Identification Number)

Edgar Filing: KINGSWAY FINANCIAL SERVICES INC - Form S-4

45 St. Clair Avenue West, Suite 400

Toronto, Ontario, Canada M4V 1K9

(416) 848-1171

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

with copies to:

**John T. Fitzgerald
President and Chief Executive Officer
Kingsway Financial Services Inc.
150 Pierce Road, 6th Floor
(847) 700-9154**

**Eric Orsic
McDermott Will & Emery LLP
444 West Lake Street, Suite 4000
Chicago, IL 60606-0029
(312) 372-2000**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement becomes effective and the consummation of the Domestication transaction covered hereby.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earliest effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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 definitions of large accelerated filer, accelerated filer, smaller reporting company and emerging growth company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer
 Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company
Emerging growth company
 If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act .

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, \$0.01 par value	23,660,855(1)	\$2.9625(2)	\$70,095,283	\$8,727

- (1) Includes the shares into which all Common Shares of Kingsway that are issued and outstanding immediately prior to the Domestication (as hereinafter defined) will be converted in the Domestication, based on the number of Common Shares of Kingsway outstanding on September 25, 2018.
- (2) Estimated solely for the purpose of calculating the registration fee, based on the average of the high and low prices of the common shares of Kingsway on the New York Stock Exchange on September 25, 2018 (\$2.9625 per share), in accordance with Rule 457(f)(1).

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant files a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

- * The Registrant intends, subject to shareholder approval, to effect domestication under Section 388 of the General Corporation Law of the State of Delaware, pursuant to which the Registrant's state of incorporation will be Delaware.

Table of Contents

Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This document shall not constitute an offer to sell or the solicitation of any offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

PRELIMINARY SUBJECT TO COMPLETION DATED SEPTEMBER 28, 2018

KINGSWAY FINANCIAL SERVICES INC.

PROPOSED DOMESTICATION YOUR VOTE IS VERY IMPORTANT

Dear Shareholders:

We are furnishing this management proxy circular to shareholders of Kingsway Financial Services Inc. in connection with the solicitation of proxies by our management for use at a Special Meeting of our shareholders. The meeting will be held on [], 2018 at [] a.m. (Toronto time), at Norton Rose Fulbright Canada LLP, Suite 3800, Royal Bank Plaza, South Tower, Toronto, Ontario, M5J 2Z4.

The purpose of the meeting is to obtain shareholder approval to change our jurisdiction of incorporation from the province of Ontario to the State of Delaware in the United States of America through the adoption of a certificate of corporate domestication and a new certificate of incorporation.

We believe that our Domestication will enable us to eliminate a number of potentially material income tax inefficiencies we believe we would inevitably encounter, particularly once we close our previously announced sale of our property-casualty insurance companies including the related distribution to Kingsway America Inc., a subsidiary of Kingsway Financial Services Inc., of the passive investments currently owned by our property-casualty insurance companies. We believe our Domestication will also reduce operating expenses and transactional inefficiencies that currently result from being subject to Canadian corporate laws despite having no operations in Canada.

We chose the State of Delaware to be our domicile because the more favourable corporate environment afforded by Delaware will help us compete effectively in raising the capital necessary for us to continue to implement our strategic plan, particularly our announced focus on growing our extended warranty segment with accretive acquisitions.

If we complete the Domestication, we will continue our legal existence in Delaware as if we had originally been incorporated under Delaware law. In addition, each outstanding Common Share of Kingsway Financial Services Inc. as an Ontario corporation will then represent one Common Share of Kingsway Financial Services Inc. as a Delaware corporation. Our Common Shares are currently traded on the New York Stock Exchange (NYSE) and on the Toronto Stock Exchange (TSX) under the symbol KFS, and our Series B Warrants are traded on the TSX under the symbol KFS-WV . In connection with the Domestication, we anticipate seeking to delist our Common Shares and Series B Warrants from the TSX. We also anticipate reduced listing fees in connection with delisting from the TSX. Following the completion of our Domestication, our Common Shares will continue to be listed on the NYSE under the symbol KFS and our Series B Warrants will continue to be listed on the OTC under the symbol KFSYF. Our Common Shares and Series B Warrants will no longer be listed on the TSX following the completion of the Domestication.

The proposal for Domestication is subject to approval by at least two-thirds of the votes cast by the holders of our Common Shares, voting together as a single class, whether in person or by proxy at a meeting. Dissenting shareholders have the right to be paid the fair value of their shares under Section 185 of the Ontario Business Corporations Act. Our Board of Directors has reserved the right to terminate or abandon our Domestication at any time prior to its effectiveness, notwithstanding shareholder approval, if it determines for any reason that the consummation of our Domestication would be inadvisable or not in our and your best interests.

The Board may, in its sole discretion, decide not to act on this Resolution even if the Resolution is passed by shareholders. The Board's determination in this regard may specifically include considering whether shareholders exercise dissent rights, and, if so, the number of shareholders that exercise such dissent rights, and the corresponding costs to the Corporation of effecting the Domestication with respect to the exercise of such dissent rights.

Table of Contents

If approved by our shareholders, it is anticipated that the Domestication will become effective on or about [], 2018 or as soon as practicable after the meeting of our shareholders.

Direct Registration Statements (DRS) have been provided to holders of our Kingsway Financial Services Inc. Class A Preferred Shares, Series 1 non-voting shares and Common Shares voting shares. The DRS will represent the same number of the same class of shares of our capital stock after the Domestication without any action on your part. We will issue new stock certificates to you representing shares of capital stock of Kingsway Financial Services Inc. as a Delaware corporation upon a transfer of the shares by you or at your request.

The accompanying management proxy circular provides a detailed description of our proposed Domestication and other information to assist you in considering the proposal on which you are asked to vote. We urge you to review this information carefully and, if you require assistance, to consult with your financial, tax or other professional advisers.

Our Board of Directors unanimously recommends that you vote FOR the approval of our Domestication as further described in this management proxy circular.

Your vote is very important. Whether or not you plan to attend the meeting, we ask that you indicate the manner in which you wish your shares to be voted and sign and return your proxy as promptly as possible in the enclosed envelope so that your vote may be recorded. If your shares are registered in your name, you may vote your shares in person if you attend the meeting, even if you send in your proxy.

We appreciate your continued interest in our company.

Very truly yours,

/s/ Terence M. Kavanagh
Terence M. Kavanagh
Chairman of the Board of Directors

These securities involve a high degree of risk. See Risk Factors beginning on page 12 of this management proxy circular for a discussion of specified matters that should be considered.

Neither the Securities and Exchange Commission nor any state securities commission, or similar authority in any province of Canada, has approved or disapproved of these securities or determined if the management proxy circular is truthful or complete. Any representation to the contrary is a criminal offense.

This management proxy circular is dated [], 2018 and is first being mailed to shareholders on or about [], 2018.

Table of Contents

**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS OF
KINGSWAY FINANCIAL SERVICES INC.
MANAGEMENT PROXY CIRCULAR
FOR THE MEETING TO BE HELD ON [], 2018**

DATED [], 2018

Table of Contents

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

NOTICE IS HEREBY GIVEN THAT a special meeting (the Meeting) of the shareholders of Kingsway Financial Services Inc. (the Corporation) will be held at [] (Toronto time) on [], 2018 at the offices of Norton Rose Fulbright Canada LLP, Suite 3800, Royal Bank Plaza, South Tower, Toronto, Ontario, M5J 2Z4, for the following purposes:

- 1) To consider, and if deemed advisable, pass, with or without variation, a special resolution authorizing the board of directors to change the jurisdiction of incorporation of the Corporation from the province of Ontario to the State of Delaware, as described in greater detail in the accompanying management proxy circular (the Resolution); and
- 2) To transact such other business as may properly come before the Meeting, and any postponements or adjournments thereof.

The accompanying management proxy circular provides additional information relating to the matters to be dealt with at the Meeting and is deemed to form part of this Notice of Meeting.

Only shareholders of record at the close of business on [], 2018 are entitled to notice of the Meeting and to vote at the Meeting or any adjournment or postponement thereof.

SHAREHOLDERS WHO ARE UNABLE TO ATTEND THE MEETING IN PERSON SHOULD COMPLETE, DATE AND SIGN THE ENCLOSED FORM OF PROXY, AND RETURN IT IN THE ENVELOPE PROVIDED FOR THAT PURPOSE, OR VOTE BY TELEPHONE OR OVER THE INTERNET.

Registered shareholders have the right to dissent in respect of the Resolution pursuant to Section 185 of the Ontario Business Corporations Act (OBCA). It is recommended that any shareholder wishing to avail itself of its dissent rights seek legal advice, as failure to comply strictly with the provisions of Section 185 of the OBCA may prejudice any such rights. See the section entitled Dissenting Rights of Shareholders in the accompanying management proxy circular.

Proxies to be used at the Meeting must be deposited with Computershare Investor Services Inc., Proxy Department, 100 University Avenue, 8th Floor, Toronto, Ontario, M5J 2Y1, before [](Toronto time) on [], 2018, or if the Meeting is adjourned or postponed, no later than 5:00 p.m. (Toronto time) on the second business day preceding the day to which the Meeting is adjourned or postponed. The proxy voting cut-off may be waived or extended by the Chairman of the Board at his discretion without notice.

By Order of the Board of Directors

Terence M. Kavanagh

Terence M. Kavanagh

Chairman of the Board of Directors

Toronto, Ontario

[], 2018

IMPORTANT NOTICE REGARDING THE INTERNET AVAILABILITY OF PROXY MATERIALS FOR THE MEETING OF SHAREHOLDERS TO BE HELD ON [] 2018.

The management proxy circular and Annual Report on Form 10-K, including all amendments thereto, are available on our website, www.kingsway-financial.com.

Table of Contents

REFERENCES TO ADDITIONAL INFORMATION

This management proxy circular incorporates important information that is not included in or delivered with this management proxy circular. This information is available for you to review at the SEC's public reference room located at 100 F Street, N.E., Room 1580, Washington, D.C. 20549, and through the SEC's website at www.sec.gov.

You may request copies of and any of the documents incorporated by reference into this management proxy circular or other information concerning Kingsway Financial Services Inc., without charge, by written request to Kingsway Financial Services Inc., Attention: Investor Relations, 45 St. Clair Avenue West, Suite 400, Toronto, Ontario, M4V 1K9 Canada.

In order for you to receive timely delivery of the documents in advance of the Meeting, you must request the information no later than five business days prior to the date of the Meeting, by [], 2018.

Table of Contents

MANAGEMENT PROXY CIRCULAR

TABLE OF CONTENTS

	Page
<u>Questions and Answers about Domestication and the Meeting</u>	1
<u>Summary</u>	8
<u>Risk Factors</u>	12
<u>Information Regarding Forward-Looking Statements</u>	14
<u>The Meeting</u>	15
<u>Proposal No. 1 The Domestication</u>	17
<u>General</u>	17
<u>Principal Reasons for the Domestication</u>	17
<u>Effects of Change of Jurisdiction</u>	18
<u>Regulatory Approvals: Canadian and US Securities Laws and Stock Exchange Implications</u>	18
<u>Officers and Directors</u>	19
<u>Treatment of the Outstanding Capital Stock: Options and Warrants</u>	19
<u>No Change in Business, Locations, Fiscal Year or Employee Plans</u>	19
<u>Shareholder Approval</u>	19
<u>Dissent Rights of Shareholders</u>	19
<u>Accounting Treatment of the Domestication</u>	21
<u>U.S. Federal and Canadian Income Tax Considerations</u>	22
<u>Description of Capital Stock</u>	34
<u>Communications with the Board of Directors</u>	36
<u>Legal Matters</u>	36
<u>Experts</u>	36
<u>Where You Can Find More Information</u>	37
<u>Exhibit A Special Resolution</u>	A-1
<u>Exhibit B Form of Certificate of Corporate Domestication</u>	B-1
<u>Exhibit C Form of Certificate of Incorporation</u>	C-1
<u>Exhibit D Form of By-laws</u>	D-1
<u>Exhibit E Section 185 of the Business Corporations Act (Ontario)</u>	E-1
<u>Exhibit F Summary of Effects of Change of Jurisdiction</u>	F-1

Table of Contents

QUESTIONS AND ANSWERS ABOUT DOMESTICATION AND THE MEETING

The following are some questions that you, as a shareholder of Kingsway Financial Services Inc. may have regarding the Domestication (as defined below) and the Meeting of the Corporation's shareholders (which is referred to as the Meeting in this management proxy circular), and brief answers to those questions. Unless otherwise provided in this management proxy circular (the Circular), references to the Corporation, we, us, and our refer to Kingsway Financial Services Inc., a corporation formed under the laws of Ontario, prior to the Domestication. References to Kingsway Delaware refer solely to Kingsway Financial Services Inc., a Delaware corporation, as of the effective time of the Domestication. We urge you to read carefully the remainder of this Circular because the information in this section may not provide all the information that might be important to you with respect to the Domestication being considered at the Meeting. Additional important information is also contained in the annexes to, and the documents incorporated by reference in, this Circular.

Set forth below in a question and answer format is general information regarding the Meeting, to which this Circular relates. This general information regarding the Meeting is followed by a more detailed summary of the process relating to, reasons for and effects of our proposed change in jurisdiction of incorporation to which we refer in this Circular as the Domestication.

Q: What am I voting on?

A: Shareholders are voting on a special resolution authorizing us to change the jurisdiction of the Corporation from the province of Ontario to the State of Delaware and adopt a certificate of incorporation of Kingsway Financial Services Inc. to be effective as of the date of the Corporation's Domestication.

Q. Who is entitled to vote?

A: Shareholders as of the close of business on the Record Date are entitled to vote. Each common share of the Corporation (a Common Share) is entitled to one (1) vote on those items of business identified in the Notice of Meeting. Holders of the currently outstanding class A convertible preferred shares, series 1 of the Corporation (the Preferred Shares) are not entitled to vote at the Meeting. The form of proxy you received indicates the number of Common Shares that you own and are entitled to vote.

Q: How do I vote?

A: If you are a registered shareholder there are a number of ways you can vote your Common Shares:

In Person: You may vote in person at the Meeting.

Edgar Filing: KINGSWAY FINANCIAL SERVICES INC - Form S-4

By Mail: You may sign the enclosed form of proxy appointing the named persons or some other person you choose, who need not be a shareholder, to represent you as proxyholder and vote your Common Shares at the Meeting. Return the form of proxy by mail to:

Computershare Investor Services

100 University Avenue, 8th Floor

Toronto, Ontario

M5J 2Y1

By Telephone: Shareholders located in Canada or in the United States may vote by telephone by calling 1-866-732-8683. You will need to enter the 15-digit control number provided on the form of proxy to vote your Common Shares over the phone.

By Internet: You may vote over the Internet by going to www.investorvote.com. You will need to enter the 15-digit control number provided on the form of proxy to vote your Common Shares over the internet.

Voting by telephone or on the Internet is fast, convenient and your vote is immediately confirmed and tabulated. If you choose to vote by telephone or on the Internet, instructions to do so are set forth on the

Table of Contents

form of proxy. The telephone and Internet voting procedures are designed to authenticate votes cast by use of a control number, which appears on the form of proxy. These procedures allow shareholders to appoint a proxy to vote their Common Shares and to confirm that their instructions have been properly recorded. If you vote by telephone, you will not be able to appoint a proxyholder. If you vote by telephone or on the Internet, your vote must be received by [] (Toronto time), on [], 2018.

If you are a beneficial shareholder, the intermediary (usually a bank, trust company, broker, securities dealer or other financial institution) through which you hold your Common Shares will send you instructions on how to vote your Common Shares. Please follow the instructions on your voting instruction form.

Q: What if I plan to attend the Meeting and vote in person?

A: If you are a registered shareholder and plan to attend the Meeting on [], 2018 and wish to vote your Common Shares in person at the Meeting, do not complete or return the form of proxy. When you arrive to vote in person at the Meeting, please register with the transfer agent, Computershare Investor Services Inc. (Computershare), and your vote will be counted in person. If your Common Shares are held in the name of a nominee and you wish to attend the Meeting, refer to the answer to the question If my Common Shares are not registered in my name but are held in the name of a nominee (a bank, trust company, securities broker, trustee or other), how do I vote my Common Shares? for voting instructions.

Q: Who is soliciting my proxy?

A: **Your proxy is being solicited by or on behalf of management and the Board.** The associated costs will be borne by the Corporation. The solicitations will be made primarily by mail, but proxies may also be solicited personally or by telephone by directors, officers and regular employees of the Corporation, none of whom will receive additional compensation for assisting with the solicitation, and the estimated cost of which will be nominal. We encourage you to vote as soon as possible after carefully reviewing this Circular and all information incorporated by reference into this Circular.

Q: What happens if I sign the form of proxy enclosed with this Circular?

A: Signing the enclosed form of proxy gives authority to Terence M. Kavanagh, Chairman of the Board, or failing him, John T. Fitzgerald, President and Chief Executive Officer of the Corporation, respectively, or to another person you have appointed, to vote your Common Shares at the Meeting.

Q: Can I appoint someone other than these representatives to vote my Common Shares?

A: Yes, you may appoint a person or company to represent you at the Meeting other than the persons assigned in the form of proxy. Write the name of this person or entity, who need not be a shareholder, in the blank space

provided in the form of proxy. It is important to ensure that any other person you appoint is attending the Meeting and is aware that he or she has been appointed to vote your Common Shares. Proxyholders should, upon arrival at the Meeting, register with Computershare.

Q: What do I do with my completed proxy?

A: Return it to Computershare in the envelope provided or at Computershare Investor Services Inc., Proxy Department, 100 University Avenue, 8th Floor, Toronto, Ontario, M5J 2Y1. Your form of proxy must be received by Computershare by no later than 48 hours (excluding Saturdays, Sundays and holidays) before the time and the date of the Meeting, or in the case of any adjournment or postponement thereof, no later than 48 hours (excluding Saturdays, Sundays and holidays) before the time and the date at which the Meeting is reconvened. This will ensure that your vote is recorded. The proxy voting cut-off may be waived or extended by the Chairman of the Board at his discretion without notice.

Table of Contents

Q: How will my Common Shares be voted if I give my proxy?

A: On the form of proxy, you can indicate how you want your proxyholder to vote your Common Shares, or you can let your proxyholder decide for you. Your proxyholder must vote or withhold from voting in accordance with your instructions on any ballot that may be called for, and if you have specified on the form of proxy how you want your Common Shares to be voted on any matter to be acted upon, your Common Shares will be voted accordingly.

If you have not specified on the form of proxy how you want your Common Shares to be voted on a particular issue, then your proxyholder can vote your Common Shares as he or she sees fit in accordance with their best judgment.

In the absence of such directions, however, the management nominees will vote your Common Shares in favour of the Resolution.

Q: If I change my mind, can I revoke or change my proxy once I have given it?

A: Yes. You may revoke your proxy and change your vote at any time before the Meeting in one of four ways:

- (i) Send a written notice that is received by the deadline specified below stating that you revoke your proxy to the Corporation's Executive Vice President & Chief Financial Officer at the following address: 45 St. Clair Avenue West, Suite 400, Toronto, Ontario, M4V 1K9 Canada. The statement must be signed by you or your attorney as authorized in writing or, if the shareholder is a corporation, signed under its corporate seal or by a duly authorized officer or attorney of the corporation;
- (ii) If you sent a form of proxy by mail, complete a new form of proxy bearing a later date and properly submit it so that it is received before the deadline set forth below;
- (iii) Log onto the Internet website specified on the form of proxy in the same manner you would to submit your proxy electronically or call the toll-free number specified on the form of proxy prior to the Meeting, in each case if you are eligible to do so, and follow the instructions on the form of proxy; or
- (iv) Appear in person at the Meeting, declare your prior proxy to be revoked and then vote in person at the Meeting (although merely attending the Meeting will not revoke your proxy).

Any revocation of a proxy must be delivered either to the registered office of the Corporation at any time up to and including the last business day preceding the day of the Meeting or any adjournment or postponement of the Meeting, or to the Chairman of the Board on the day of the Meeting, [], 2018, or any adjournment or postponement of the Meeting, prior to the time of the Meeting.

Q:

What if amendments are made to the matter to be voted upon or if other matters are brought before the Meeting?

A: The persons named in the form of proxy will have discretionary authority with respect to amendments or variations to matters identified in the Notice of Meeting and with respect to other matters which may properly come before the Meeting or any adjournment or postponement thereof, whether or not the amendment, variation or other matter that comes before the Meeting is routine, and whether or not the amendment, variation or other matter that comes before the Meeting is contested.

As of the date of this Circular, management of the Corporation and the Board know of no such amendment, variation or other matter expected to come before the Meeting. If any other matter properly comes before the Meeting, the persons named in the accompanying form of proxy will vote on such matter in accordance with their best judgment.

Q: What are the tax consequences of the Domestication?

A: *Canadian Income Tax Considerations*

Under the *Income Tax Act* (Canada), the Domestication will cause the Corporation to cease to be resident in Canada and as a result the Corporation will be deemed to have a tax year end. The Corporation will also be

Table of Contents

deemed to have disposed of each of its properties immediately before its deemed year end for proceeds of disposition equal to the fair market value of such properties and to have reacquired such properties immediately thereafter at a cost amount equal to fair market value. The Corporation will be subject to income tax on any income and net taxable capital gains realized as a result of the deemed dispositions of its properties. The Corporation will also be subject to an additional emigration tax on the amount by which the fair market value, immediately before its deemed year end resulting from the Domestication, of all of the property owned by the Corporation, exceeds the total of certain of its liabilities and the paid-up capital of all the issued and outstanding shares of the Corporation immediately before the deemed year end. Management of the Corporation has advised that, in its view and as of the date hereof, (i) the fair market value of the property of the Corporation does not exceed the adjusted cost base of such property and (ii) the aggregate of the paid-up capital of the shares and the liabilities of the Corporation is not less than the aggregate fair market value of all of the property of the Corporation. Accordingly, management of the Corporation expects that the deemed disposition of the Corporation's properties that will occur on the Domestication will not result in any taxable income to the Corporation under Part I of the *Income Tax Act (Canada)* and that the Domestication will not result in any liability for emigration tax.

Shareholders who are resident in Canada for purposes of the *Income Tax Act (Canada)* will not be considered to have disposed of their Common Shares as a result of the Domestication. If a Canadian resident shareholder sells or otherwise disposes of Common Shares following the Domestication, such shareholder will realize a capital gain (or a capital loss) equal to the amount by which the proceeds of disposition for the Common Shares exceed (or are exceeded by) the aggregate of the adjusted cost base of such Common Shares and any reasonable costs of disposition.

The foregoing is a brief summary of the principal income tax considerations only and is qualified in its entirety by the more detailed description of income tax considerations in the Canadian Income Tax Considerations section of this Circular, which shareholders are urged to read. This summary does not discuss all aspects of Canadian tax consequences that may apply in connection with the Domestication. Shareholders should consult their own tax advisors as to the tax consequences of the Domestication applicable to them.

U.S. Federal Income Tax Considerations

As discussed more fully under U.S. Federal Income Tax Considerations below, it is intended that the Domestication will constitute a tax-free reorganization within the meaning of Section 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended (the Code). Assuming that the Domestication so qualifies, U.S. Holders (as defined in U.S. Federal Income Tax Considerations below) of Common Shares will be subject to Section 367(b) of the Code and, as a result:

A U.S. Holder of Common Shares whose Common Shares have a fair market value of less than \$50,000 USD on the date of the Domestication will not recognize any gain or loss and will not be required to include any part of Corporation's earnings in income.

A U.S. Holder of Common Shares whose Common Shares have a fair market value of \$50,000 USD or more, but who on the date of the Domestication owns (actually and constructively) less than 10% of the total combined voting power of all classes of Common Shares entitled to vote, will generally recognize gain (but not loss) on the deemed exchange of Common Shares for Kingsway Delaware Common Shares pursuant to the Domestication. As an alternative to recognizing gain, such U.S. Holders may file an election to include in income, as a dividend, the all earnings and profits amount (as defined in the Treasury Regulations under Section 367) attributable to its Common Shares provided certain other requirements are satisfied.

A U.S. Holder of Common Shares whose Common Shares have a fair market value of \$50,000 USD or more, and who on the date of the Domestication owns (actually and constructively) 10% or more of the total combined voting power

of all classes of Common Shares entitled to vote, will generally be required to include in income, as a dividend, the all earnings and profits amount (as defined in the Treasury Regulations under Section 367) attributable to its Common Shares provided certain other requirements are satisfied.

Table of Contents

The Corporation has calculated its earnings and profits for the tax years 2008 through 2017. Based on these calculations, the Corporation generated negative earnings and profits in the years 2011, 2013, 2014, 2016 and 2017 and positive earnings and profits in 2008, 2009, 2010, 2012 and 2015. However, there can be no assurance the Internal Revenue Service (IRS) would agree with our earnings and profits calculations. If the IRS does not agree with our earnings and profits calculations, a shareholder may owe additional U.S. federal income taxes as a result of the Domestication. The Corporation intends to provide on its website (kingsway-financial.com) information regarding the Corporation's earnings and profits for the years 2008 through 2017, which will be updated to include 2018 (through the date of the Domestication) once the information is available. Currently, the Corporation does not anticipate that it will generate a positive earnings and profits in 2018 through the date of the Domestication. However, there can be no assurance that once all of the Corporation's activities through the date of the Domestication are considered, the Corporation's 2018 earnings and profits will remain negative.

As discussed further under U.S. Federal Income Tax Considerations below, the Corporation believes that it was not a passive foreign investment company (PFIC) before 2018 and it does not anticipate that it will be a PFIC in 2018, but there can be no assurance that the Corporation will not become a PFIC in 2019. Accordingly, the Domestication will likely not be a taxable event for any U.S. Holder under the PFIC rules if the Domestication occurs during 2018. The determination of whether a foreign corporation is a PFIC is primarily factual, and there is little administrative or judicial authority on which to rely to make a determination. Therefore, the IRS might not agree that the Corporation is not and has never been a PFIC. If the Corporation is considered a PFIC for U.S. federal income tax purposes, proposed Treasury Regulations, if finalized in their current form, would generally require U.S. Holders of Common Shares to recognize gain on the deemed exchange of Common Shares for Kingsway Delaware Common Shares pursuant to the Domestication unless such U.S. Holder has made certain tax elections with respect to such holder's Common Shares. The tax on any such gain would be imposed at the rate applicable to ordinary income and an interest charge would apply based on complex rules designed to offset the tax deferral to such holders on the undistributed earnings, if any, of the Corporation. It is not possible to determine at this time whether, in what form, and with what effective date, final Treasury Regulations under Section 1291(f) will be adopted. For a more complete discussion of the potential application of the PFIC rules to U.S. Holders as a result of the Domestication, see U.S. Federal Income Tax Considerations beginning on page 22 of this Circular.

Additionally, the Domestication may cause non-U.S. Holders (as defined in U.S. Federal Income Tax Considerations below) to become subject to U.S. federal income withholding taxes on any dividends paid in respect of such non-U.S. Holder's Kingsway Delaware Common Shares subsequent to the Domestication.

The tax consequences of the Domestication are complex and will depend on a holder's particular circumstances. All holders are strongly urged to consult their tax advisor for a full description and understanding of the tax consequences of the Domestication, including the applicability and effect of U.S. federal, state, local and foreign income and other tax laws. For a more complete discussion of the U.S. federal income tax considerations of the Domestication, see U.S. Federal Income Tax Considerations beginning on page 22 of this Circular.

The foregoing is a brief summary of the principal income tax considerations only and is qualified in its entirety by the more detailed description of income tax considerations in the U.S. Federal and Canadian Income Tax Considerations section of this Circular, which shareholders are urged to read. This summary does not discuss all aspects of the United States and Canadian tax consequences that may apply in connection with the Domestication. Shareholders should consult their own tax advisors as to the tax consequences of the Domestication applicable to them.

Q. How many Common Shares are entitled to vote?

A: As of the Record Date, there were [] Common Shares entitled to be voted at the Meeting. Each registered shareholder has one (1) vote for each Common Share held at the close of business on the Record Date.

Table of Contents

Q: What vote is required to approve the Domestication?

A: Two-thirds of those votes cast at the Meeting by the holders of Common Shares.

Q: How will the votes be counted?

A: Approval of the Domestication requires two-thirds of votes cast at the Meeting by holders of Common Shares. In the case of equal votes, the Chairman of the Meeting is not entitled to a second or casting vote. Abstentions from voting and broker non-votes will not be counted and will have no effect on the approval of matters to be considered at the Meeting. A broker non-vote occurs when a broker does not vote on some matter on the form of proxy because the broker does not have discretionary voting power for that particular item and has not received instructions from the beneficial owner.

Q: Who counts the votes?

A: The Corporation's transfer agent, Computershare, counts and tabulates the proxies.

Q: If I need to contact the transfer agent, how do I reach them?

A: You can contact the transfer agent as follows:

by mail:

Computershare Investor Services Inc.

Proxy Department

100 University Avenue, 8th Floor

Toronto, Ontario, M5J 2Y1

by telephone or email:

within Canada and the United States at 1-800-564-6253

all other countries at (416) 981-9633

or by email: service@computershare.com

Q: If my Shares are not registered in my name but are held in the name of a nominee (a bank, trust company, securities broker, trustee or other), how do I vote my Shares?

A: Generally, your Common Shares may be voted in one of two ways:

- (i) Unless you have previously informed your nominee that you do not wish to receive material relating to the Meeting, you will have received this Circular from your nominee, together with a request for voting instructions for the number of Common Shares you hold. If you do not plan on attending the Meeting, or do not otherwise wish to vote in person at the Meeting, please follow the voting instructions provided by your nominee.

- (ii) If you wish to attend and vote your Common Shares at the Meeting, the Corporation will have no record of your shareholdings or of your entitlement to vote unless your nominee has appointed you as proxyholder. Therefore, if you wish to vote in person at the Meeting, insert your own name in the space provided on the voting instruction form sent to you by your nominee. Then sign and return the voting instruction form by following the signing and returning instructions provided by your nominee. By doing so, you are instructing your nominee to appoint you as proxyholder. Do not otherwise complete the voting instruction form as your vote will be taken at the Meeting. Please register with the transfer agent, Computershare, upon arrival at the Meeting.

Notwithstanding the foregoing, shareholders must explicitly follow any instructions provided by their nominee.

Q: How can I obtain additional information about the Corporation?

A: Financial Information is provided in our Annual Report on Form 10-K for the year ended December 31, 2017, and all amendments thereto (the Form 10-K), can be found under the Corporation's name on the System for Electronic Document Analysis and Retrieval (SEDAR) at www.sedar.com, on the Securities and Exchange Commission's (SEC) Electronic Data Gathering, Analysis, and Retrieval System

Table of Contents

(EDGAR) at www.sec.gov, or on our website at www.kingsway-financial.com. We will furnish to any shareholder, upon written request, any exhibit described in the list accompanying the Form 10-K without charge. Any such requests should include a representation that the shareholder was the beneficial owner of Common Shares on the Record Date, and should be directed to Kingsway Financial Services Inc., Attention: Investor Relations, 45 St. Clair Avenue West, Suite 400, Toronto, Ontario M4V 1K9 Canada. You may also access the exhibits described in the Form 10-K through the SEC website at www.sec.gov.

We are subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (the Exchange Act), which requires that we file reports, proxy statements and other information with the SEC. The SEC maintains a website on the Internet that contains reports, proxy and information statements and other information regarding registrants, including us, that file electronically with the SEC. The SEC s website address is www.sec.gov. In addition, our Exchange Act filings, proxy statements and other information can be inspected and copied at the public reference facilities maintained by the SEC at 100 F Street, N.E., Washington, DC 20549. Copies of such materials may also be obtained by mail from the Public Reference Section of the SEC at 100 F Street, N.E., Washington, DC 20549, upon payment of the SEC s customary fees. Information regarding the public reference facilities may be obtained from the SEC by telephoning 1-800-SEC-0330.

Table of Contents

KINGSWAY FINANCIAL SERVICES INC.

MANAGEMENT PROXY CIRCULAR

SUMMARY

This summary highlights selected information appearing elsewhere in this the Circular, and does not contain all the information that you should consider in making a decision with respect to the proposal described in this Circular. You should read this summary together with the more detailed information incorporated by reference into this Circular, including our financial statements and the related notes incorporated by reference into this Circular from our Annual Report on Form 10-K for the year ended December 31, 2017 and our subsequently filed Quarterly Reports on Form 10-Q, and the exhibits attached hereto. You should carefully consider, among other things, the matters discussed in *Risk Factors* and *Management's Discussion and Analysis of Financial Condition and Results of Operations* which are included in this Circular or are incorporated by reference into this Circular. You should read this Circular and the documents incorporated by reference into this Circular in their entirety.

All of the dollar amounts in this Circular are expressed in U.S. dollars, except where otherwise indicated. References to dollars or \$ are to U.S. dollars, and any references to CAD\$ are to Canadian dollars.

Kingsway Financial Services Inc.

45 St. Clair Avenue West, Suite 400,

Toronto, Ontario, M4V 1K9 Canada

(416) 848-1171

Kingsway Financial Services Inc. is currently a Canadian holding company with operating subsidiaries located in the United States. We own or control subsidiaries primarily in the insurance, extended warranty, asset management and real estate industries. Kingsway Financial Services Inc. conducts its business through the following two reportable segments: Extended Warranty (formerly Insurance Services) and Leased Real Estate. Extended Warranty and Leased Real Estate conduct their business and distribute their products in the United States.

Quorum

A quorum is required in order for the Meeting to be properly constituted. Two (2) or more shareholders personally present and representing, either in their own right or by proxy, not less than twenty-five percent (25%) of the issued and outstanding Common Shares shall constitute a quorum of the Meeting.

Continuation of the Corporation from the Province of Ontario to the State of Delaware (see page 17)

The Board is proposing to change the Corporation's jurisdiction of incorporation from the province of Ontario to the State of Delaware pursuant to a continuance effected in accordance with Section 181 of the Ontario Business Corporations Act (OBCA), also referred to as a domestication (the Domestication) under Section 388 of the General Corporation Law of the State of Delaware (the DGCL). The Corporation will become subject to the DGCL on the date of the Domestication, but will be deemed for the purposes of the DGCL to have commenced its existence in Delaware on the date the Corporation originally commenced its existence in Ontario. Under the DGCL, a corporation becomes domesticated in Delaware by filing a certificate of corporate domestication and a certificate of incorporation for the

corporation being domesticated. The Board has unanimously approved the Corporation's Domestication and the related certificate of incorporation, believes it to be in the Corporation's best interests and in the best interests of its shareholders, and unanimously recommends approval of the Domestication to its shareholders.

Table of Contents

The Domestication will be effective on the date set forth in the certificate of corporate domestication and the certificate of incorporation, as filed with the office of the Secretary of State of the State of Delaware. Thereafter, the Corporation will be subject to the certificate of incorporation filed in Delaware. Proposed forms of the certificate of corporate Domestication, the certificate of incorporation and amended and restated by-laws that will be adopted by the Corporation are set out in Exhibits B, C and D, respectively.

Risk Factors (see page 12)

In evaluating the Domestication, you should carefully read this Circular and especially consider the factors discussed in the section titled *Risk Factors* beginning on page 12 of this Circular.

The Meeting; Shareholders Entitled to Vote; Required Vote (see page 15)

The Meeting of the Shareholders to be held on [], 2018 at [] (Toronto time) at the offices of Norton Rose Fulbright Canada LLP, Suite 3800, Royal Bank Plaza, South Tower, Toronto, Ontario, M5J 2Z4. At the Meeting, the Corporation's shareholders will be asked to:

- 1) Consider and, if deemed advisable, pass, with or without variation, a special resolution authorizing the board of directors to change the jurisdiction of incorporation of the Corporation from the province of Ontario to the State of Delaware, as described herein; and
- 2) Transact such other business as may properly come before the Meeting, and any postponements or adjournments thereof.

Only shareholders of record at the close of business on [], 2018 are entitled to notice of the Meeting and to vote at the Meeting or any adjournment or postponement thereof.

The authorized capital of the Corporation consists of an unlimited number of Common Shares and an unlimited number of Preferred Shares issuable in series. As of the close of business on [], 2018, the record date for the Meeting (the Record Date), [] Common Shares were outstanding of which [] Common Shares are currently restricted from voting (each a Restricted Common Share) pursuant to the Corporation's 2013 Equity Incentive Plan, as amended (the 2013 Equity Incentive Plan). The Restricted Common Shares represent []% of the Common Shares; therefore, there are [] Common Shares entitled to vote at the Meeting. Each Common Share is entitled to one (1) vote. The Common Shares are listed on the Toronto Stock Exchange (the TSX) and the New York Stock Exchange (the NYSE) under the symbol KFS.

As of the close of business on [], 2018, there were 222,876 Preferred Shares issued and outstanding. Each Preferred Share is convertible into 6.25 Common Shares at a conversion price of \$4.00 per Common Share at the option of the holder at any time prior to April 1, 2021. The currently outstanding Preferred Shares are not entitled to vote at the Meeting. Holders of Preferred Shares have no right to participate if a takeover bid is made for the Common Shares.

Stock Ownership of Directors and Executive Officers