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ABN AMRO HOLDING N V
Form 425
May 15, 2007

Filed by Banco Santander Central Hispano, S.A.

This communication is filed pursuant to Rule 425 under The Securities Act of 1933, as amended.

Subject Company: ABN AMRO Holding N.V.

Commission File Number: 001-12518

Date: May 14, 2007

Important Information

This communication is made available pursuant to article 9b(1) of the Dutch Decree on the Supervision of the Securities Trade 1995.

In connection with the potential transaction involving ABN AMRO, the Banks (Fortis, RBS and Santander) expect to file with the U.S. Securities and Exchange Commission (the SEC) a Registration Statement on Form F-4, which will constitute a prospectus, as well as a Tender Offer Statement on Schedule TO and other relevant materials. INVESTORS ARE URGED TO READ ANY DOCUMENTS REGARDING THE POTENTIAL TRANSACTION IF AND WHEN THEY BECOME AVAILABLE, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. Investors will be able to obtain a copy of such documents without charge, at the SEC's website (<http://www.sec.gov>) once such documents are filed with the SEC. Copies of such documents may also be obtained from each Bank, without charge, once they are filed with the SEC.

This communication shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of 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. This press release is not an offer of securities for sale into the United States. No offering of securities shall be made in the United States except pursuant to registration under the U.S. Securities Act of 1933, as amended, or an exemption therefrom.

Forward-Looking Statements

This communication includes certain forward-looking statements. These statements are based on the current expectations of the Banks and are naturally subject to uncertainty and changes in certain circumstances. Forward-looking statements include any synergy statements and, without limitation, other statements typically containing words such as intends, expects, anticipates, targets, plans, estimates and words of similar meaning. By their nature, forward-looking statements involve risk and uncertainty because they relate to events and depend on circumstances that will occur in the future. There are a number of factors that could cause actual results and

developments to differ materially from those expressed or implied by such forward-looking statements. These factors include, but are not limited to, the presence of a competitive offer for ABN AMRO, satisfaction of any pre-conditions or conditions to the potential transaction, including receipt of required regulatory and anti-trust approvals, the successful completion of the offer or any subsequent compulsory acquisition procedure, the anticipated benefits of the potential transaction (including anticipated synergies) not being realized, the separation and integration of ABN AMRO and its assets among the Banks being materially delayed or more costly or difficult than expected, as well as additional factors, such as changes in economic conditions, changes in the regulatory environment, fluctuations in interest and exchange rates, the outcome of litigation and government actions. Other unknown or unpredictable factors could cause actual results to differ materially from those in the forward-looking statements. None of the Banks undertake any obligation to update publicly or revise forward-looking statements, whether as a result of new information, future events or otherwise, except to the extent legally required.

The following is a draft purchase and sale agreement by and between ABN AMRO Bank NV and RFS Holdings BV, dated as of May 6, 2007. The draft agreement was posted on Santander's website on May 14, 2007.

DRAFT

~~DPW draft dated May 2, 2007~~

PURCHASE AND SALE AGREEMENT

by and between

ABN AMRO BANK N.V.

and

~~{BUYER}~~

RFS HOLDINGS B.V.

Dated as of May ~~1~~16, 2007

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PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT, dated as of May ~~16~~, 2007 (this Agreement), is by and between ABN AMRO Bank N.V., a company organized under the laws of The Netherlands (Seller), and ~~BUYER~~, a ~~corporation~~ RFS HOLDINGS B.V., a private limited liability company organized under the laws of the Netherlands (Purchaser).

RECITALS

WHEREAS, Seller holds, directly or indirectly, all of the outstanding shares, par value \$1.00 per share, of common stock (the Company Common Stock) of ABN AMRO North America Holding Company, a Delaware corporation (the Company);

WHEREAS, Seller has entered into the Purchase and Sale Agreement dated as of April 22, 2007 (the Bank of America Agreement) by and between Seller and Bank of America Corporation, a Delaware corporation (Bank of America);

WHEREAS, pursuant to Section 5.3(b) of the Bank of America Agreement, Seller has concluded in good faith that the terms of this Agreement constitute a Superior Proposal (as defined below);

WHEREAS, Purchaser has been established by a consortium (the Consortium) comprised of (1) The Royal Bank of Scotland Group plc, a public company incorporated under the laws of Scotland (RBS), (2) Fortis SA/NV, a public company incorporated under the laws of Belgium, and Fortis N.V., a public company incorporated under the laws of the Netherlands (together, Fortis), and (3) Banco Santander Central Hispano, S.A.(Santander), a public company incorporated under the laws of Spain;

WHEREAS, Seller desires to sell and transfer, and Purchaser desires to purchase, the Company Common Stock, on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, the parties desire to make certain representations, warranties, covenants and agreements in connection with this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1. Certain Defined Terms. Unless the context otherwise requires, the following terms, when used in this Agreement, shall have the respective meanings specified below (such meanings to be equally applicable to the singular and plural forms of the terms defined):

ABN EGM shall have the meaning stated in Section 6.1(d).

Affiliate of a Person shall mean any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

Adverse Recommendation Event shall mean that Parent's Managing Board and/or Supervisory Board or any committee thereof shall have withdrawn (or modified in a manner adverse to Purchaser) or publicly proposed to withdraw (or modify in a manner adverse to Purchaser) its recommendation that Parent's shareholders adopt this Agreement and approve the transactions contemplated hereby.

Affiliate Arrangements shall mean any agreement, contract or arrangement between Seller and its Affiliates (other than the Company and its Subsidiaries), on the one hand, and the Company and its Subsidiaries, on the other hand.

Agreed Claims shall have the meaning stated in Section 9.5(c).

Agreement shall have the meaning stated in the preamble to this document.

Balance Sheet shall have the meaning stated in Section 3.6(a).

Balance Sheet Date shall have the meaning stated in Section 3.6(a).

Bank of America shall have the meaning stated in the second recital.

Bank of America Agreement shall have the meaning stated in the second recital.

Bank of America Litigation shall mean any proceedings, claims or actions asserted against Parent, Seller, the Company, Purchaser or any of their respective Affiliates by Bank of America or any of its Affiliates to the extent arising out of or related to the Bank of America Agreement (or any termination thereof), this Agreement or the consummation of the transactions contemplated hereby.

BHCA shall mean the Bank Holding Company Act of 1956, as amended.

Broker-Dealer Subsidiary shall have the meaning stated in Section 3.24.

Business shall mean the businesses of the Company and its Subsidiaries, other than the Excluded Business and any Divested Business.

Business Day shall mean any day other than a Saturday, Sunday or day on which banking institutions any of New York, New York, London, England, Rotterdam, The Netherlands, Madrid, Spain or Brussels, Belgium are authorized or obligated pursuant to legal requirements or executive order to be closed.

Bylaws shall mean the Bylaws of the Company, as currently in effect.

Certificate of Incorporation shall mean the Certificate of Incorporation of the Company, as currently in effect.

Claim Certificate shall have the meaning stated in Section 9.5(a).

Closing shall have the meaning stated in Section 2.3(a).

Closing Date shall mean the date on which the Closing actually occurs.

Closing Income Statement shall have the meaning stated in Exhibit C.

Closing Net Income shall have the meaning stated in Exhibit C.

Code shall mean the Internal Revenue Code of 1986, as amended.

~~Commitment Letter shall have the meaning stated in Section 4.4.~~

Company shall have the meaning stated in the first Recital.

Company Benefit Plans shall have the meaning stated in Section 3.11(a).

Company Confidential Information shall mean confidential information and data (including confidential files, customer lists, mailing lists, documentation or records) concerning the customers and prospects, products and services, employees, intellectual property (including trade secrets), technology, financial or business plans and operations, and unpublished confidential financial information of or relating to the Business, the Company or the Company Subsidiaries.

Company Common Stock shall have the meaning stated in the recitals.

~~Company Employees shall have the meaning stated in Section 6.4(a).~~

Company Financial Statements shall have the meaning stated in Section 3.6(a).

Company Intellectual Property shall have the meaning stated in Section 3.21.

Company-Only Plans shall have the meaning stated in Section 3.11(a).

Company Regulatory Agreement shall have the meaning stated in Section 3.15.

Company Subsidiary and Company Subsidiaries shall have the meaning stated in Section 3.1(b).

Confidentiality Agreement shall mean the Confidentiality Agreement dated as of April 28, 2007 by and between Seller ~~and Purchaser, on the one hand, and RBS, Santander and Fortis, on the other hand~~ (as it may be amended from time to time).

Consortium shall have the meaning stated in the recitals.

Controlled Group Liability means any and all liabilities (i) under Title IV of ERISA, (ii) under Section 302 of ERISA, (iii) under Sections 412 and 4971 of the Code, (iv) as a result of a failure to comply with the continuation coverage requirements of Section 601 et seq. of ERISA and Section 4980B of the Code, or (v) under corresponding or similar provisions of foreign laws or regulations, other than such liabilities that arise solely out of, or relate solely to, the Company-Only Plans identified as such in Section 3.11(a) of the Disclosure Schedule.

Corporate Entity shall mean a bank, corporation, partnership, limited liability company or other organization, whether an incorporated or unincorporated organization.

Covered Claim shall have the meaning stated in Section 10.6(b).

Covered Employees shall have the meaning stated in Section 6.4(a).

Covered Taxes shall mean Taxes attributable to any Excluded Business and Taxes resulting from the Specified Transfers.

CRA shall mean the Community Reinvestment Act of 1997.

Damages shall mean all costs, expenses, damages, liabilities, claims, demands, obligations, diminution in value, fine, awards, judgments, losses, royalty, proceeding, deficiency, interest, awards, judgments and penalties (including reasonable expenses and attorneys' fees and consultants' fees and expenses) suffered or incurred.

~~Disclosed Conditions shall have the meaning stated in Section 4.4.~~

Disclosing Party shall have the meaning stated in Section 6.9.

Disclosure Schedule shall mean the disclosure schedule dated as of the date of the Agreement and delivered by Seller to Purchaser prior to the execution and delivery of the Agreement.

Divested Business shall mean any company, business, product line, business unit or business operation that was owned, operated or conducted by the Company or any Company Subsidiary (or any predecessor thereto) or any former Subsidiary thereof, at any time prior to the Closing and that is not owned, operated or conducted by a Company or any Company Subsidiary as of the Closing Date (without giving effect to any temporary or transitional arrangements under any Transition Services Agreement or that otherwise may be implemented in connection with the transactions contemplated hereby to facilitate a smooth transition of ownership), in each case, whether as a result of a sale, transfer, distribution, contribution, conveyance, or other disposition.

Employees shall have the meaning stated in Section 5.2(e).

ERISA shall have the meaning stated in Section 3.11(a).

ERISA Affiliate , with respect to any Person, means any Person that for the purposes of ERISA is from time to time a member of the controlled group of any Person or under common control with any Person within the meaning of Section 414 of the Code.

Estimated Net Income shall have the meaning stated in Exhibit C.

Excluded Business shall mean the businesses, assets and liabilities of ABN AMRO WCS Holding Company and its Subsidiaries.

Excluded Employees shall have the meaning stated in Section 6.4(c).

Federal Court shall have the meaning stated in Section 10.6(b).

Federal Reserve Board shall mean the Board of Governors of the Federal Reserve System.

Final Net Income shall have the meaning stated in Exhibit C.

Financing shall have the meaning stated in Section 4.4.

Form BD shall have the meaning stated in Section 3.24(b).

Former Excluded Employees shall have the meaning stated in Section 6.4(d).

Fortis shall have the meaning stated in the recitals.

GAAP means accounting principles generally accepted in the United States.

Governmental Entity shall mean any court, administrative agency, arbitrator or commission or other governmental, prosecutorial or regulatory authority or instrumentality, or any SRO.

HSR Act shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

Income Threshold shall have the meaning stated in Exhibit C.

Indemnified Party shall have the meaning stated in Section 9.5(a).

Indemnifying Party shall have the meaning stated in Section 9.5(a).

Intellectual Property shall mean any or all of the following: all patents, trademarks, trade names, service marks, domain names, database rights, copyrights and any applications therefore, mask works, know-how, trade secrets, and computer software programs or applications (in both source code and object code form).

Interest Payment Period shall mean the period commencing on the date that all of the closing conditions set forth in Article VII have been satisfied or waived and ending on the Closing Date.

Interim Period shall mean any taxable year or period commencing on or prior to the Closing Date and ending after the Closing Date.

IRS shall mean the U.S. Internal Revenue Service.

Key Employees shall have the meaning stated in Section 6.5.

Knowledge or knowledge with respect to Seller shall mean the actual knowledge of those individuals set forth on Exhibit B.

Leased Properties shall have the meaning stated in Section 3.20.

LIBOR shall mean the one-month Interbank Official Rate with respect to deposits in U.S. Dollars which appears on the Telerate Page 3750 as of 11:00 a.m., London time, on the 5th Business Day prior to the Closing Date.

Lien shall mean any lien, claim, charge, option, encumbrance, mortgage, pledge or security interest or other restriction of any kind.

LNTD shall have the meaning stated in Section 3.13(c).

Matching Period shall have the meaning stated in Section 5.3.

Material Adverse Effect shall mean any event, circumstance, change or effect that (i) has a material adverse effect on the business, results of operations or financial condition of the Business; or (ii) prevents Seller from consummating the transactions contemplated hereby; provided, however, that, with respect to clause (i), Material Adverse Effect shall not be deemed to include effects to the extent resulting from (A) changes, after the date hereof, in generally accepted accounting principles or regulatory accounting requirements applicable to depository institutions and their holding companies generally, (B) changes, after the date hereof, in laws, rules or regulations of general applicability to depository institutions and their holding companies generally, or interpretations thereof by courts or Governmental Entities, (C) changes, after the date hereof, in global or national or regional political conditions (including the outbreak of war or acts of terrorism) or in general or regional economic or market conditions affecting depository institutions and their holding companies generally except to the extent that such changes in political, economic or market conditions have a disproportionate adverse effect on the Business, (D) public disclosure of this Agreement and the transactions contemplated by this Agreement, (E) any action taken by Seller, the Company or any of their respective Subsidiaries which is expressly required pursuant to this Agreement, ~~or~~ (F) any action taken or not taken to which the Purchaser has expressly and specifically consented or which Purchaser has expressly and specifically requested; or (G) any Bank of America Litigation.

Material Contracts shall have the meaning stated in Section 3.14(a).

Materially Burdensome Regulatory Condition shall have the meaning stated in Section 6.1(a).

Measurement Period shall have the meaning stated in Exhibit C.

Merger Protocol shall mean the Merger Protocol, dated as of May 6, 2007, between Parent, on the one hand, and Purchaser, Fortis, RBS and Santander, on the other hand.

- Multiemployer Plan shall have the meaning stated in Section 3.11(b).
- Multiple Employer Plan shall have the meaning stated in Section 3.11(b).
- National Bank Subsidiaries shall mean LaSalle Bank N.A. and LaSalle Bank Midwest N.A.
- New Plans shall have the meaning stated in Section 6.4(b).
- New York Courts shall have the meaning stated in Section 10.6(b).
- OCC shall mean the U.S. Office of the Comptroller of the Currency.
- Owned Properties shall have the meaning stated in Section 3.20.
- Parent shall mean [ABN AMRO Holding N.V.](#)
- PBGC shall have the meaning stated in Section 3.11(f).
- Permitted Encumbrances shall have the meaning stated in Section 3.20.
- Person shall mean any individual, Corporate Entity or Governmental Entity.
- Post-Closing Period shall mean any taxable year or period that begins after the Closing Date, and, with respect to any Interim Period, the portion of such Interim Period commencing after the Closing Date.
- Pre-Closing Period shall mean any taxable year or period that ends on or before the Closing Date, and, with respect to any Interim Period, the portion of such Interim Period ending on and including the Closing Date.
- Process Agent shall have the meaning stated in Section 10.6(d).
- Public Offer shall mean the offer by the Consortium to acquire all the outstanding shares of Parent, as memorialized in the Merger Protocol, or any other transaction involving the acquisition by the Consortium of at least 80% of the outstanding shares of Parent provided that such other transaction is no less favorable to Parent's shareholders than the offer described in such Merger Protocol.
- Purchase Price shall have the meaning stated in Section 2.2.
- Purchaser shall have the meaning stated in the preamble.
- Purchaser Indemnitees shall have the meaning stated in Section 9.2.
- Purchaser Material Adverse Effect shall mean, with respect to Purchaser, any effect that prevents, or would be reasonably likely to prevent, Purchaser from consummating the transactions contemplated hereby, [excluding any proceedings, claims or actions asserted against Purchaser, Seller or any of their respective Affiliates by Bank of America or any of its Affiliates to the extent arising out of or related to the Bank of America Agreement, this Agreement or the consummation of the transactions contemplated hereby.](#)

RBS shall have the meaning stated in the recitals.

Real Property shall have the meaning stated in Section 3.20.

Regulatory Agencies shall have the meaning stated in Section 3.5.

Reports shall have the meaning stated in Section 3.5.

Representatives shall mean, with respect to any Person, such Person's officers, directors, employees, accountants, counsel, financial advisors, agents and other representatives.

Requisite Regulatory Approvals shall have the meaning stated in Section 7.1(a).

Sale shall have the meaning stated in Section 2.1.

Santander shall have the meaning stated in the recitals.

Seller shall have the meaning stated in the preamble.

Seller Indemnitees shall have the meaning stated in Section 9.3.

Shareholder Approval shall mean that a majority (or such greater number if required under applicable Law to approve the transactions contemplated hereby) of the outstanding shares of Parent's capital stock shall have been affirmatively voted in favor of the transactions contemplated by this Agreement.

Specified Transfers shall have the meaning stated in Section 6.13.

SRO shall mean any domestic or foreign securities, broker-dealer, investment adviser and insurance industry self-regulatory organization.

Subsidiary shall mean, when used with respect to any party, any Corporate Entity which is consolidated with such party for financial reporting purposes. Subsidiary, when used with respect to the Company, shall not include any Corporate Entity which (i) is part of the Excluded Business, (ii) part of a Divested Business or (iii) transferred by the Company or any of its Subsidiaries to Seller or any of its Subsidiaries (other than the Company and its Subsidiaries) as part of the Specified Transfers.

Superior Proposal shall have the meaning stated in Section 5.3(b) of the Bank of America Agreement.

Tax or Taxes shall mean all federal, state, local, and foreign income, excise, gross receipts, gross income, ad valorem, profits, gains, property, capital, sales, transfer, use, value-added, stamp, documentation, payroll, employment, severance, withholding, duties, license, intangibles, franchise, backup withholding, environmental, occupation, alternative or add-on minimum taxes, imposed by any Governmental Entity, and other taxes, charges, levies or like assessments, and including all penalties and additions to tax and interest thereon.

Tax Data shall have the meaning stated in Section 6.8(h).

Tax Documentation shall have the meaning stated in Section 6.8(h).

Tax Return shall mean any return, declaration, report, statement, information statement and other document filed or required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

Termination Fee shall have the meaning stated in Section 5.3.

Transition Services Agreement shall mean any transition services agreement entered into pursuant to Section 6.7.

Unconditional Offer Date shall mean the date on which the Public Offer becomes Wholly Unconditional.

Wholly Unconditional shall mean that Purchaser has publicly declared that the Public Offer has become wholly unconditional.

ARTICLE II

THE SALE

2.1. The Sale. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall (or shall cause its applicable Subsidiaries to) sell, assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase and acquire from Seller and its applicable Subsidiaries, all right, title and interest in, to and under all of the outstanding shares of Company Common Stock, free and clear of any Liens or rights or claims of others (the Sale).

2.2. Purchase Price. In consideration for the Company Common Stock, at the Closing, Purchaser shall pay to Seller an aggregate of U.S.\$~~(1.14)~~ in cash (the Purchase Price 24,500,000,000 in cash, plus interest on such amount at a rate per annum equal to LIBOR during the Interest Payment Period, all as adjusted pursuant to Exhibit C.

2.3. Closing.

(a) Subject to the terms and conditions of this Agreement, the closing of the sale of the Company Common Stock to ~~the~~ Purchaser (the Closing) shall take place ~~as soon as practicable, and in any event no later than the first Business Day of the next calendar month following the month in which the conditions set forth in Article VII hereof (other than conditions to be satisfied at Closing, but subject to their satisfaction) have been satisfied or waived (subject to applicable law~~ on the first Business Day that is at least 90 days after the Unconditional Offer Date (provided that if such date is not a Business Day, then the Closing shall take place on the first Business Day thereafter), unless extended by mutual agreement of the parties. The Closing shall take place at the offices of Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, or at such other location as the parties hereto may agree.

(b) At the Closing:

(i) Purchaser shall:

(A) pay to Seller by wire transfer, to an account designated by Seller not less than two Business Days prior to the Closing, immediately available funds in an amount equal to the Purchase Price as adjusted pursuant to Exhibit C; and

(B) deliver the certificate contemplated by Section 7.3(c).

(ii) Seller shall:

(A) deliver to Purchaser, free and clear of any Liens or rights or claims of others, the stock certificate representing the Company Common Stock, duly endorsed in blank (or accompanied by duly executed stock powers) and with any required stock transfer stamps affixed thereto;

(B) deliver to Purchaser all books and records of the Business in the possession of Seller or any of its Subsidiaries, other than (1) books and records that Seller or any of its Subsidiaries is required by Law to retain (in which case Seller shall deliver copies thereof to Seller); and (2) personnel and employment records for employees and former employees of the Seller or any of its Subsidiaries who are not Transferred Entity Employees; provided that Seller and its Subsidiaries shall have the right to retain a copy of all such books and records to the extent reasonably necessary for, and for use in connection with, Tax, regulatory, litigation or other legitimate, non-competitive purposes; and

(C) deliver the certificates contemplated by Sections 7.2(c) and 7.2(d).

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as disclosed in the Disclosure Schedule (it being agreed that disclosure in any Section of the Disclosure Schedule shall apply only to the indicated Section of this Agreement, except to the extent that it is reasonably apparent on the face of the disclosure that such disclosure is relevant to another Section of this Agreement), Seller represents and warrants to Purchaser that the following is true and correct:

3.1. Corporate Organization.

(a) The Seller has been duly incorporated and is validly existing as a public company with limited liability under the laws of The Netherlands. The Company is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Each of Seller and the Company has the corporate or other organizational power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted, and is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect. The Company is duly registered as a bank holding company under the BHCA and is a financial holding company pursuant to Section 4(l) of the BHCA and meets in all material respects the applicable requirements for qualification as such. True and complete copies of the Certificate of Incorporation and Bylaws, as in effect as of the date of this Agreement, have previously been furnished or made available to Purchaser. The Company is not in violation in any material respect of any of the provisions of the Certificate of Incorporation or Bylaws.

(b) Section 3.1(b) of the Disclosure Schedule sets forth a complete and correct list as of the date hereof of all the Subsidiaries of the Company (each a Company Subsidiary and collectively the Company Subsidiaries). The shares of Company preferred stock held by Persons other than the Company and its Subsidiaries have a liquidation preference of no more than \$200,000,000. All of the outstanding shares of capital stock or other securities evidencing ownership of, or an equity ownership in, the Company Subsidiaries are validly issued, fully paid and nonassessable and such shares or other securities are owned entirely by the Company or a wholly owned Company Subsidiary, free and clear of any Lien with respect thereto. There are no outstanding subscriptions, options, warrants, puts, calls, rights, exchangeable or convertible securities or other commitments or agreements of any character relating to the issued or unissued capital stock or other securities or ownership or equity interests of any Company Subsidiary, or otherwise obligating any Company Subsidiary to issue, transfer, sell, purchase, redeem or otherwise acquire any such stock, securities or interests. Each Company Subsidiary (i) is a duly organized and validly existing corporation, partnership or limited liability company or other legal entity under the laws of its jurisdiction of organization, (ii) is duly qualified to do business and is in good standing in all jurisdictions (whether federal, state, local or foreign) where its ownership or leasing of property or the conduct of its business requires it to be so qualified (except for jurisdictions in which the failure to be so qualified would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect) and (iii) has all requisite corporate or other legal entity power and authority to own or lease its properties and assets and to carry on its business as now conducted. Except for its interests in the Company Subsidiaries, the Company does not own, directly or indirectly, any capital stock, membership interest, partnership interest, joint venture interest or other equity interest with a fair market value as of the date of this Agreement in excess of \$25 million in any Person other than in the ordinary course of business.

3.2. Capitalization. The authorized capital stock of the Company consists of 1,000 shares of Company Common Stock, of which 1,000 are issued and outstanding and have been duly authorized and validly issued, are fully paid, non-assessable and free of preemptive rights, and

2,987,538 shares of Company preferred stock, of which 2,987,538 are issued and outstanding and have been duly authorized and validly issued. The shares of Company preferred stock held by Persons other than the Company and its Subsidiaries have a liquidation preference of no more than \$200,000,000. All of the Company Common Stock is owned by Seller, free and clear of any Liens. Except as set forth above, no shares of capital stock or other voting securities, equity securities or other ownership or equity interests of the Company are issued, reserved for issuance or outstanding. There are no outstanding subscriptions, options, warrants, puts, calls, rights, exchangeable or convertible securities or other commitments or agreements of any character relating to the issued or unissued capital stock or other securities or ownership or equity interests of the Company, or otherwise obligating the Company to issue, transfer, sell, purchase, redeem or otherwise acquire any such stock, securities or interests.

3.3. Authority; No Violation.

(a) Seller has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly approved by the supervisory and managing boards of Seller. No other corporate proceedings (including any approvals of Seller's stockholders) on the part of Seller are necessary to approve this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller. Assuming due authorization, execution and delivery by Purchaser, this Agreement constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforcement may be limited by (i) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other laws affecting or relating to the rights of creditors generally, or (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) Neither the execution and delivery of this Agreement by Seller nor the consummation by Seller of the transactions contemplated hereby, nor compliance by Seller with any of the terms or provisions hereof, will (i) violate any provision of the Certificate of Incorporation or Bylaws or similar organizational documents of Seller or the Company or any of their respective Subsidiaries, (ii) assuming that the consents, approvals and filings referred to in Section 3.4 are duly obtained and/or made, (x) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Seller, the Company or any of their respective Subsidiaries or any of their respective properties or assets or (y) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under or in any payment conditioned, in whole or in part, on a change of control of the Company or any of its Subsidiaries or approval or consummation of transactions of the type contemplated hereby, accelerate the performance required by or rights or obligations under, or result in the creation of any Lien upon any of the respective properties or assets of the Company or any of its Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement, contract, or other instrument or obligation to which Seller, the Company or any of their respective Subsidiaries is a party, or by which they or any of their respective properties,

assets or business activities may be bound or affected, except (in the case of clause (ii)(y) above) for such violations, conflicts, breaches, defaults or the loss of benefits which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

3.4. Consents and Approvals. Except for (i) the filing of any required applications or notices with the Federal Reserve Board under the BHCA or the Federal Reserve Act, as amended, and approval of such applications and notices, (ii) the filing of any required applications, filings or notices with any other U.S. federal or state banking, broker-dealer, insurance or other U.S. regulatory or self-regulatory authorities or instrumentalities, (iii) any consents, authorizations, approvals, filings or exemptions in connection with compliance with the rules and regulations of any applicable industry SRO, and the rules of the Nasdaq, or that are required under U.S. consumer finance, mortgage banking and other similar laws, (iv) any consents, authorizations, approvals, filings with any federal authority or instrumentality, (v) any notices or filings (and, if required, approvals) under the HSR Act, and (vi) any consents, approvals, filings or registration, the absence of which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect, no consents or approvals of or filings or registrations with any Governmental Entity are necessary in connection with (A) the execution and delivery by Seller of this Agreement and (B) the consummation of the transactions contemplated by this Agreement.

3.5. Reports. The Company and each of its Subsidiaries have, filed all reports, forms, correspondence, registrations and statements, together with any amendments required to be made with respect thereto (Reports), that they were required to file since January 1, 2005 with (i) any SRO, (ii) the Federal Reserve Board, (iii) the Federal Deposit Insurance Corporation, (iv) the OCC and (v) any other federal, state or foreign governmental or regulatory agency or authority (the agencies and authorities identified in clauses (i) through (v), inclusive, are, collectively, the Regulatory Agencies), and all other reports and statements required to be filed by them since January 1, 2005, including any report or statement required to be filed pursuant to the laws, rules or regulations of the United States, any state, or any Regulatory Agency and have paid all fees and assessments due and payable in connection therewith, except where the failure to file such report, registration or statement or to pay such fees and assessments would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect. Any such Report and any statement regarding the Business, the Company or its Subsidiaries made in any Report filed with or otherwise submitted to any Regulatory Agency complied in all material respects with relevant legal requirements, including as to content. Except for normal examinations conducted by a Regulatory Agency in the ordinary course of the business of the Company and its Subsidiaries, there is no material pending proceeding before, or, to the Knowledge of Seller, material investigation by, any Regulatory Agency into the business or operations of the Company or any of its Subsidiaries. There are no unresolved violations, criticisms, or exceptions by any Regulatory Agency with respect to any report or statement relating to any examinations of the Company or any of its Subsidiaries, except for any such violations, criticisms or exceptions are not, individually or in the aggregate, material to the Company and its Subsidiaries.

3.6. Financial Statements.

(a) Seller has previously made available to Purchaser copies of the following financial statements, copies of which are attached as Schedule 3.6(a): (i) the audited consolidated statements of condition, consolidated statements of income, consolidated statements of

stockholders' equity and consolidated statements of cash flows of the Company and its Subsidiaries as of and for the fiscal year ended December 31, 2005 and December 31, 2006 (the Audited Financial Statements); and (ii) the unaudited pro forma consolidated statement of condition, and pro forma consolidated statement of income of the Business as of and for the fiscal year ended December 31, 2006 (the Pro Forma Financial Statements and together with the Audited Financial Statements, the Company Financial Statements) (the unaudited pro forma consolidated statement of condition as of December 31, 2006, the Balance Sheet and December 31, 2006, the Balance Sheet Date). The Audited Financial Statements fairly present in all material respects the consolidated financial position and results of operations of the Company as of the respective dates or for the respective periods therein set forth and have been prepared in accordance with GAAP consistently applied during the periods involved. The Pro Forma Financial Statements fairly present in all material respects the consolidated financial position and results of operations of the Business as of the respective dates or for the respective periods therein set forth and have been prepared in accordance with GAAP consistently applied during the periods involved except for the absence of footnote disclosure. The Company Financial Statements have been prepared from, and are in accordance with, the books and records of the Company and its Subsidiaries.

(b) Stockholders' equity on the consolidated statement of condition of the Company and its Subsidiaries as of December 31, 2006 included \$394.534 million of preferred stock issued by Subsidiaries of the Company.

(c) Seller maintains, with respect to the Business and the Company and its Subsidiaries, a system of internal control over financial reporting.

(d) Seller has implemented and maintains disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) to ensure that information material assessed at the level of Seller and relating to Seller, including the Business, the Company and its Subsidiaries, is made known to the chief executive officer and the chief financial officer of Seller by others within those entities. Section 3.6(d) of the Disclosure Schedule sets forth, based on Seller's most recent evaluation prior to the date hereof of its internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act), (i) any significant deficiencies or material weaknesses of Seller in the design or operation of internal control over financial reporting relating to the Business, the Company and its Subsidiaries; and (ii) any events of fraud, whether or not material assessed at the level of Seller, that involve management or other employees who have a significant role in the Company's internal controls over financial reporting and relate to the Business, the Company or its Subsidiaries.

(e) The books and records of the Company and its Subsidiaries have been, and are being, maintained in all material respects in accordance with GAAP and any other applicable legal and accounting requirements and reflect only actual transactions. The minute books of the Company and its Subsidiaries that have been made available to Purchaser contain accurate records in all material respects of all corporate actions of the Company and its Subsidiaries for the relevant periods.

3.7. Undisclosed Liabilities. Except for those liabilities that are reflected or reserved against on the Balance Sheet, and except for liabilities incurred since the Balance Sheet Date in the

ordinary course of business, neither Company nor any of its Subsidiaries has any liability of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether due or to become due) that, individually or in the aggregate with any other such liabilities, would reasonably be expected to have a Material Adverse Effect.

3.8. Absence of Certain Changes or Events. Since the Balance Sheet Date: (i) the Company and its Subsidiaries have, in all material respects, carried on their respective businesses in the ordinary course consistent with their past practices; (ii) the Company has not taken any of the actions that Seller has agreed not to permit Company to take from the date hereof through the Closing Date pursuant to Sections 5.2(a), (b), (c), (d), (f), (g), (h), (i), (j) or (l) of this Agreement, and (iii) there have been no events, circumstances, facts or occurrences that have had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.9. Legal Proceedings. None of Seller, the Company nor any of their respective Subsidiaries is a party to or subject of any, and there are no pending or, to the Knowledge of Seller, threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any nature against Seller, the Company or any of their respective Subsidiaries that would reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect. There is no material injunction, order, judgment, regulatory restrictions (other than those of general application that apply to similarly situated bank holding companies) or decrees imposed upon Seller or its Subsidiaries (with respect to the Business) or the Company or any Company Subsidiaries, or the assets of the Company or any Company Subsidiary.

3.10. Taxes and Tax Returns. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) The Company and each of its Subsidiaries has duly and timely filed or caused to be filed (including all applicable extensions) all federal, state, foreign and local Tax Returns required to be filed by it or with respect to it (all such Tax Returns being accurate and complete) and has duly and timely paid or caused to be paid on their behalf all Taxes that are due and payable other than Taxes that are being contested in good faith, which have not been finally determined, and are adequately reserved against or provided for (in accordance with GAAP) on the most recent consolidated financial statements of the Company. The Company and its Subsidiaries do not have any liability for Taxes in excess of the amount reserved or provided for on their financial statements (but excluding, for this purpose only, any liability reflected thereon for deferred Taxes to reflect timing differences between Tax and financial accounting methods).

(b) No jurisdiction where the Company and its Subsidiaries do not file a Tax Return has made a claim in writing that any of the Company and its Subsidiaries is required to file a Tax Return in such jurisdiction.

(c) No Liens for Taxes exist with respect to any of the assets of the Company and its Subsidiaries, except for statutory Liens for Taxes not yet due and payable.

(d) There are no audits, examinations, disputes or proceedings pending or threatened in writing with respect to, or claims or assessments asserted or threatened in writing for, any material amount of Taxes of the Company or any of its Subsidiaries.

- (e) There is no waiver or extension of the application of any statute of limitations of any jurisdiction regarding the assessment or collection of any Tax with respect to the Company and any of its Subsidiaries, which waiver or extension is in effect.
- (f) All Taxes required to be withheld, collected or deposited by or with respect to the Company and each of its Subsidiaries have been timely withheld, collected or deposited, as the case may be, and to the extent required by applicable law, have been paid to the relevant Governmental Entity.
- (g) To the extent the Company or any of its Subsidiaries has participated in any reportable transaction, as defined in Treasury Regulation Section 1.6011-4(b)(1), or any other transaction required to be reported under a comparable provision of state, local or foreign law, such transaction has been reported in accordance with applicable law.
- (h) Neither the Company nor any of its Subsidiaries is a party to, is bound by, or has any obligation under, any Tax sharing, allocation, indemnity or similar agreements or arrangement that obligates it to make any payment computed by reference to the Taxes, taxable income or taxable losses of any other Person.
- (i) Neither the Company nor any of its Subsidiaries (A) has been a member of a group filing a consolidated, combined or unitary Tax Return (other than a group the common parent of which is or was the Company) or (B) has any liability for the Taxes of any person (other than the Company or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract or otherwise;
- (j) Neither the Company nor any of its Subsidiaries has been, within the past two years or otherwise as part of a plan (or series of related transactions) within the meaning of Section 355(e) of the Code of which the transactions contemplated in this Agreement are also a part, a distributing corporation or a controlled corporation (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of stock intended to qualify for Tax-free treatment under Section 355 of the Code.
- (k) Neither the Company nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any Post-Closing Period as a result of any (i) change in method of accounting for a Pre-Closing Period under Section 481(c) of the Code (or any corresponding or similar provision of state, local or foreign law), (ii) closing agreement described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign law), (iii) installment sale or open transaction disposition or intercompany transaction made on or prior to the Closing Date, or (iv) prepaid amount received on or prior to the Closing Date.
- (l) No Subsidiary of the Company is characterized as a foreign corporation for U.S. federal income tax purposes.

3.11. Employee Benefit Plans.

(a) Section 3.11(a) of the Disclosure Schedule lists all material employee benefit plans, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), whether or not subject to ERISA, and all other material employee benefit, severance or executive compensation plans, policies, practices, programs, arrangements, or agreements, whether written or unwritten, that cover any current or former directors, officers, employees or consultants of Company or its Subsidiaries, or to which contributions must be made or liabilities are outstanding thereunder for current or former directors, officers, employees or consultants of Company or its Subsidiaries, or to which any such individual is party (collectively, the Company Benefit Plans). For purposes hereof, each Company Benefit Plan that is sponsored by Company or its Subsidiaries is referred to as a Company-Only Plan and is so identified on [Section 3.11\(a\) of the Disclosure Schedule](#).

(b) None of the Company Benefit Plans is a multiemployer plan, as defined in Section 4001(a)(3) of ERISA (a Multiemployer Plan) or a plan that has two or more contributing sponsors at least two of whom are not under common control (a Multiple Employer Plan). None of Company or any of its Subsidiaries, Seller or their respective ERISA Affiliates has (i) contributed to or been obligated to contribute to, at any time during the past six years, a Multiemployer Plan or a Multiple Employer Plan, (ii) withdrawn in a complete or partial withdrawal from any Multiemployer Plan or Multiple Employer Plan or (iii) incurred any liability due to the termination or reorganization of a Multiemployer Plan or a Multiple Employer Plan.

(c) The Company and each of its Subsidiaries has reserved the right to amend, terminate or modify at any time all Company Benefit Plans providing for retiree health or life insurance coverage.

(d) Except in each case for such items that individually or in the aggregate would not have a Material Adverse Effect, (i) each Company Benefit Plan and its administration is in material compliance with its terms and all applicable laws, including ERISA and the Code; (ii) each Company Benefit Plan that is intended to be qualified under Section 401 of the Code has received a favorable determination letter from the IRS to such effect and no fact, circumstance or event has occurred or exists since the date of such determination letter that would adversely affect the qualified status of any such Company Benefit Plan; and (iii) each Company Benefit Plan that is a nonqualified deferred compensation plan subject to Section 409A of the Code has been operated in compliance with Section 409A of the Code since January 1, 2005, based upon a good faith, reasonable interpretation of Section 409A of the Code and the guidance issued by the Internal Revenue Service thereunder; provided that no representation is being made under clause (iii) with respect to final regulations under Section 409A of the Code that were issued on April 10, 2007.

(e) All contributions (including all employer contributions and employee salary reduction contributions), premiums and other payments required to have been made under any of the Company Benefit Plans to any funds or trusts established thereunder or in connection therewith have been made by the due date thereof, other than a failure to make contributions that would not have a Material Adverse Effect, and with respect to any such contributions, premiums or other payments required that are not yet due, to the extent required by GAAP, adequate reserves are reflected on the Balance Sheet or liability therefor was incurred in the ordinary course of business consistent with past practice since the end of such fiscal quarter.

(f) Except in each case for such items that individually or in the aggregate would not have a Material Adverse Effect, (i) no liability has been, or is reasonably expected to be, incurred under Section 4062 of ERISA to the Pension Benefit Guaranty Corporation (the PBGC) or to a trustee appointed under Section 4042 of ERISA; and (ii) with respect to each Company-Only Plan that is subject to Title IV or Section 302 of ERISA or Section 412 or 4971 of the Code: (A) there does not exist any accumulated funding deficiency within the meaning of Section 412 of the Code or Section 302 of ERISA, whether or not waived; (B) as of the last day of the most recent fiscal plan year ended prior to the date hereof, the fair market value of the assets of such plan equals or exceeds the actuarial present value of all accrued benefits under such plan (whether or not vested) on an accumulated benefit obligation basis; (C) no reportable event within the meaning of Section 4043(c) of ERISA for which the 30-day notice requirement has not been waived has occurred, and the consummation of the transactions contemplated by this agreement will not result in the occurrence of any such reportable event; (D) all premiums to the PBGC have been timely paid in full; (E) no liability (other than for premiums to the PBGC) under Title IV of ERISA has been or is reasonably expected to be incurred by Company or any of its Subsidiaries; and (F) the PBGC has not instituted proceedings to terminate any such plan and, to Company's knowledge, no condition exists that presents a material risk that such proceedings will be instituted or which would constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any such plan.

(g) None of Company, its Subsidiaries, the officers of Company or the Company Benefit Plans which are subject to ERISA, any trusts created thereunder or any trustee or administrator thereof, has engaged in a prohibited transaction (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) or any other breach of fiduciary responsibility that could subject Company, its Subsidiaries or any officer of Company to any Tax or penalty on prohibited transactions imposed by such Section 4975 or to any liability under Section 502(i) or (1) of ERISA other than, in each case, a Tax, penalty or liability that would not have a Material Adverse Effect.

(h) Except as would not have a Material Adverse Effect or as set forth on Section 3.11(h) of the Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or in conjunction with any other event) result in, cause the accelerated vesting, funding or delivery of, or increase the amount or value of, any payment or benefit to any employee, officer or director of Company or any of its Subsidiaries, or result in any limitation on the right of Company or any of its Subsidiaries to amend, merge, terminate or receive a reversion of assets from any Company Benefit Plan or related trust. Without limiting the generality of the foregoing, except as would not have a Material Adverse Effect, no amount paid or payable (whether in cash, in property, or in the form of benefits) in connection with the transactions contemplated hereby (either solely as a result thereof or as a result of such transactions in conjunction with any other event) will be an excess parachute payment within the meaning of Section 280G of the Code. No Company-Only Benefit Plan provides for a gross up or similar payments in respect of any Taxes that may become payable under Section 409A or Section 4999(a) of the Code.

(i) True, correct and complete copies of the following documents, with respect to each Company Benefit Plan that is an employee benefit plan within the meaning of Section 3(3) of ERISA and is subject to the provisions of ERISA, have, as applicable, been delivered or made available to Purchaser by Seller: (i) the written document evidencing such Company Benefit Plan and the related trust documents or other funding arrangements, and amendments, and (ii) the summary plan description thereof. No later than 30 days following the date hereof, Seller will provide Purchaser with true, correct and complete copies of the following documents, with respect to all Company Benefit Plans to the extent not previously provided: (1) the written document evidencing such plan and the related trust documents or other funding arrangements, and amendments, modifications or supplements thereto or, with respect to any such plan that is not in writing, a written description thereof; and (2) the most recent Forms 5500 and schedules thereto; (3) the summary plan description and any modifications thereto; (4) the most recent annual report, financial statement and/or actuarial report; and (5) the most recent determination letter from the IRS.

(j) There are no pending actions, claims or lawsuits which have been asserted, instituted or, to Knowledge of Seller, threatened, against the Company Benefit Plans, the assets of any of the trusts under such plans or the plan sponsor or the plan administrator, or against any fiduciary of Company Benefit Plans with respect to the operation of such plans (other than routine benefit claims) which could result in any liability to Company that would reasonably be expected to have a Material Adverse Effect.

(k) Except as would not have a Material Adverse Effect, all Company-Only Plans subject to the laws of any jurisdiction outside of the United States (i) have been maintained in accordance with all applicable requirements, (ii) if they are intended to qualify for special tax treatment meet all requirements for such treatment, and (iii) if they are intended to be funded and/or book-reserved, are fully funded and/or book reserved, as appropriate, based upon reasonable actuarial assumptions.

3.12. Employee Matters.

(a) Neither Company nor any of its Subsidiaries is, or has over the past five years been, a party to any collective bargaining agreement or other labor union contract. No labor organization or group of employees of the Company or any of its Subsidiaries has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened to be brought or filed, with the National Labor Relations Board or any other labor relations tribunal or authority. There are no organizing activities, strikes, work stoppages, slowdowns, lockouts, material arbitrations or material grievances, or other material labor disputes pending or threatened against or involving the Company or any of its Subsidiaries.

(b) The Company and each of its Subsidiaries has complied in all material respects with all applicable material laws relating to the employment of employees, including those relating to wages, hours, immigration, the payment of wages, and the classification of employees as exempt or not exempt from the payment of overtime under applicable law, the prohibitions against discrimination and harassment, occupational safety and health, and leaves of absence, except for such noncompliance as would not be material to the Company and its Subsidiaries, taken as a whole.

3.13. Compliance with Applicable Law.

(a) The Company and each Company Subsidiary and each of their employees, and Seller and each of its Subsidiaries and their employees insofar as it relates to the Business, hold all licenses, registrations, franchises, permits and authorizations necessary for the lawful conduct of their respective businesses and are and have been in compliance with, and are not and have not been in violation of, any applicable law, statute, order, rule, regulation, policy and/or guideline of any Governmental Entity, except in each case where the failure to hold such license, registration, franchise, permit or authorization or such noncompliance or violation would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect, and neither the Company nor any of its Subsidiaries has knowledge of, or has received notice of any violations of any of the above, except for such violations that would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

(b) Except as would not be material to the Company and its Subsidiaries, taken as a whole, the Company and each of its Subsidiaries have properly administered all accounts for which the Company or any of its Subsidiaries acts as a fiduciary, including accounts for which the Company or any of its Subsidiaries serves as a trustee, agent, custodian, personal representative, guardian, conservator or investment adviser, in accordance with the terms of the governing documents, applicable state and federal law and regulation and common law. None of the Company or any of its Subsidiaries, or any director, officer or employee of the Company or any of its Subsidiaries, has committed any breach of trust with respect to any such fiduciary account that would be material to the Company and its Subsidiaries, taken as a whole, and the accountings for each such fiduciary account are true and correct in all material respects and accurately reflect in all material respects the assets of such fiduciary account.

(c) Each National Bank Subsidiary ~~is~~ and LaSalle National Trust Delaware (LNTD) are well-capitalized (as that term is defined at 12 C.F.R. 6.4(b)(1) or the relevant regulation of the institution's primary federal bank regulator), and well managed (as that term is defined at 12 C.F.R. 225.2(s)), and ~~the institution~~ each National Bank Subsidiary's CRA rating is no less than satisfactory. Neither National Bank Subsidiary ~~is~~ LNTD has been informed that its status as well-capitalized, well managed or satisfactory for CRA purposes will change within one year. All deposit liabilities of the National Bank Subsidiaries are insured by the Federal Deposit Insurance Corporation to the fullest extent under the law. The National Bank Subsidiaries have met all conditions of such insurance, including timely payment of its premiums.

3.14. Material Contracts.

(a) Neither the Company nor any of its Subsidiaries is a party to or bound by, as of the date hereof, any contract, arrangement, commitment or understanding (whether written or oral) (i) that would be a material contract (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) of the Company and its Subsidiaries to be performed after the date of this Agreement that has not been filed or incorporated by reference in the periodic reports of Seller filed with the SEC prior to the date of this Agreement or otherwise set forth on Section 3.14(a) of

the Disclosure Schedule, (ii) that contains (A) any material non-competition or non-solicitation agreement, or any other agreement or obligation which purports to limit or restrict in any material respect the ability of the Company or its Affiliates (including, after the Closing, Purchaser and its Affiliates) or their businesses to solicit customers or the manner in which, or the localities in which, all or any portion of the business of the Company or its Affiliates (including, after the Closing, Purchaser and its Affiliates) is or may be conducted or (B) any material exclusive dealing agreement or any material agreement that grants any right of first refusal or right of first offer or similar right or that limits or purports to limit the ability of the Company or any of its Affiliates (including, after the Closing, Purchaser and its Affiliates) to own, operate, sell, transfer, pledge or otherwise dispose of any material assets or business or (iii) with or to a labor union or guild (including any collective bargaining agreement). Each contract, arrangement, commitment or understanding of the type described in this Section 3.14(a), whether or not set forth in the Company Disclosure Schedule, and each Affiliate Arrangement is referred to as a Material Contract, and neither the Company nor any of its Subsidiaries knows of, or has received notice of, any violation of any Material Contract by any of the other parties thereto.

(b) (i) Each Material Contract is valid and binding on the Company or its applicable Subsidiary and is in full force and effect, (ii) the Company and each of its Subsidiaries has performed all of the obligations required to be performed by it to date under each Material Contract, and (iii) no event or condition exists that constitutes or, after notice or lapse of time or both, will constitute, a default on the part of the Company or any of its Subsidiaries under any such Material Contract, in each case except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.15. Agreements with Regulatory Agencies. Except as is not material, neither the Company nor any Company Subsidiary, and none of Seller or any of its Subsidiaries with respect to the Business, is subject to any cease-and-desist or other order or enforcement action issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any order or directive by, or since January 1, 2005 has been ordered to pay any civil penalty by, or is a recipient of any supervisory letter from, or has outstanding any board resolutions adopted at the request or suggestion of any Regulatory Agency or other Governmental Entity that restricts the conduct of its business or that relates to its capital adequacy, its ability to pay dividends, its credit or risk management policies, its management or its business (each, whether or not set forth in the Disclosure Schedule, a Company Regulatory Agreement), nor has the Company nor any of its Subsidiaries been advised since January 1, 2005 by any Regulatory Agency or other Governmental Entity that it is considering issuing or requiring any such Company Regulatory Agreement.

3.16. Investment Securities. Except as would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect, (i) each of the Company and its Subsidiaries has good and marketable title to all securities held by it (except securities sold under repurchase agreements or held in any fiduciary or agency capacity) free and clear of any Lien, except to the extent such securities are pledged in the ordinary course of business consistent with prudent business practices to secure obligations of the Company or any of its Subsidiaries and except for such defects in title or Liens that would not be material to the Company and its Subsidiaries and (ii) such securities are valued on the books of the Company and its Subsidiaries in accordance with GAAP.

3.17. Derivative Instruments. Except as would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect, (i) all Derivative Transactions (as herein defined) were entered into in the ordinary course of business consistent with past practice and in accordance with prudent banking practices and applicable rules, regulations and policies of any Regulatory Agency and other policies, practices and procedures employed by the Company and its Subsidiaries and with counterparties believed at the time to be financially responsible and are legal, valid and binding obligations of the Company or one of its Subsidiaries enforceable against it in accordance with their terms (except as may be limited by bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the rights of creditors generally and the availability of equitable remedies), and are in full force and effect, (ii) the Company and each of its Subsidiaries have duly performed their obligations under the Derivative Transactions to the extent required, and (iii) to the Knowledge of Seller, there are no breaches, violations or defaults or allegations or assertions of such by any party thereunder. As used herein, Derivative Transactions means any swap transaction, option, warrant, forward purchase or sale transaction, futures transaction, cap transaction, floor transaction or collar transaction relating to one or more currencies, commodities, bonds, equity securities, loans, interest rates, prices, values, or other financial or non-financial assets, credit-related events or conditions or any indexes, or any other similar transaction or combination of any of these transactions, including collateralized any debt or equity instruments evidencing or embedding any such types of transactions, and any related credit support, collateral or other similar arrangements related to such transactions.

3.18. Environmental Liability. Except as would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect, there are no pending or, to the knowledge of Seller, threatened legal, administrative, arbitral or other proceedings, claims, or actions against the Company or any of its Subsidiaries seeking to impose, or that are reasonably likely to result in, any liability or obligation of the Company or any of its Subsidiaries under any local, state or federal environmental, health or safety statute, regulation, law (including Common Law) or ordinance, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; and neither the Company nor any of its Subsidiaries is subject to any agreement, order, judgment, decree, letter or memorandum by or with any Governmental Entity or third party imposing any liability or obligation on such entity with respect to any of the foregoing.

3.19. Insurance. The Company has in full force and effect the insurance coverage with respect to its business as of the date hereof set forth in Section 3.19 of the Disclosure Schedule.

3.20. Properties. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Company or one of its Subsidiaries (a) has (or will have, at Closing) good and marketable title to all the owned real properties reflected in the Balance Sheet (except properties sold or otherwise disposed of since the date of the Balance Sheet in the ordinary course of business) (the Owned Properties), free and clear of all Liens of any nature whatsoever, except (i) statutory Liens securing payments not yet due (or being conducted in good faith and for which adequate reserves have been established), (ii) Liens for real property Taxes not yet due and payable, (iii) easements, rights of way, and other similar encumbrances that do not materially affect the use of the properties or assets subject thereto or affected thereby or otherwise materially impair business operations at such properties and (iv) such imperfections or irregularities of title or Liens as do not materially affect the use of the properties or assets subject

thereto or affected thereby or otherwise materially impair business operations at such properties (collectively, Permitted Encumbrances), and (b) is the lessee of all leasehold estates reflected in the Balance Sheet (except for leases that have expired by their terms since the date thereof) (the Leased Properties and, collectively with the Owned Properties, the Real Property), free and clear of all Liens of any nature whatsoever, except for Permitted Encumbrances, and is in possession of the properties purported to be leased thereunder, and each such lease is valid without default thereunder by the lessee or, to the Knowledge of Seller, the lessor.

3.21. Intellectual Property. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (i) the Company and its Subsidiaries own, or are licensed or otherwise possess rights to use, all Intellectual Property used by Company and its Subsidiaries as of the date hereof (collectively, the Company Intellectual Property) in the manner that it is currently used by Company and its Subsidiaries, (ii) neither Company nor any of its Subsidiaries has received written notice from any third party alleging any interference, infringement, misappropriation or violation of any Intellectual Property rights of any third party and, neither Company nor any of its Subsidiaries has interfered in any respect with, infringed upon, misappropriated or violated any Intellectual Property rights of any third party; (iii) to the Knowledge of Seller, no third party has interfered with, infringed upon, misappropriated or violated any Company Intellectual Property; (iv) neither Company nor any of its Subsidiaries licenses to, or has entered into any exclusive agreements relating to any Company Intellectual Property with, third parties, or permits third parties to use any Company Intellectual Property rights; (v) neither Company nor any of its Subsidiaries owes any material royalties or payments to any third party for using or licensing to others any Company Intellectual Property and (vi) neither the Company nor any of its Subsidiaries is a party to any agreement to indemnify any Person against a claim of infringement of or misappropriation by any Company Intellectual Property.

3.22. Sufficiency of Assets Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, at the Closing, the Company and its Subsidiaries will own or have the right to use (including pursuant to the Transition Services Agreement) all of the assets, rights and properties necessary to conduct the Business as currently operated on the same terms as all of the foregoing were owned or used by Seller and its Affiliates to operate the Business.

3.23. No Investment Adviser. Neither the Company nor any Company Subsidiary serves in a capacity described in Section 9(a) or 9(b) of the Investment Company Act of 1940, as amended, nor acts as an investment adviser required to register as such under the Investment Advisers Act of 1940, as amended.

3.24. Broker-Dealer Subsidiaries.

(a) Each Company Subsidiary that is a broker-dealer (a Broker-Dealer Subsidiary) is duly registered under the Exchange Act as a broker-dealer with the SEC, and is in compliance in all material respects with the applicable provisions of the Exchange Act, including the net capital requirements and customer protection requirements thereof. Each Broker-Dealer Subsidiary is a member in good standing with all required SROs and in compliance in all material respects with all applicable rules and regulations of such SROs. Each Broker-Dealer Subsidiary and registered representative thereof is duly registered, licensed or qualified as a broker-dealer or

registered representative under, and in compliance in all material respects with, the applicable laws and regulations of all jurisdictions in which it is required to be so registered and each such registration, license or qualification is in full force and effect and in good standing. There is no action, suit, proceeding or investigation pending or, to the knowledge of Seller, threatened that would reasonably be expected to lead to the revocation, amendment, failure to renew, limitation, suspension or restriction of any such registrations, licenses, [memberships](#) and qualifications.

(b) Seller has made available to Purchaser true, correct and complete copies of each Broker-Dealer Subsidiary's Uniform Application for Broker-Dealer Registration on Form BD filed since January 1, 2005, reflecting all amendments thereto to the date hereof (each, a [Form BD](#)). The Forms BD of the Broker-Dealer Subsidiaries are in compliance in all material respects with the applicable requirements of the Exchange Act and do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) None of the Broker-Dealer Subsidiaries nor any associated person thereof (i) is subject to a statutory disqualification as such terms are defined in the Exchange Act, or (ii) is subject to a disqualification that would be a basis for censure, limitations on the activities, functions or operations of, or suspension or revocation of the registration of any Broker-Dealer Subsidiary as broker-dealer, municipal securities dealer, government securities broker or government securities dealer under Section 15, Section 15B or Section 15C of the Exchange Act.

(d) Subject to the foregoing, neither the Company nor its Subsidiaries is required to be registered as a commodity trading advisor, commodity pool operator, futures commission merchant or introducing broker under any laws or regulations.

3.25. [Intercompany Arrangements: Interested Party Transactions](#). Each material agreement and arrangement between a National Bank Subsidiary, on the one hand, and Seller or any of its Subsidiaries or Affiliates (other than Company and its Subsidiaries), on the other hand, is at arm's length terms and complies in all material respects with Section 23A and 23B of the Federal Reserve Act and 12 C.F.R. Part 223.

3.26. [Divested Businesses](#). Section 3.26 of the Disclosure Schedule sets forth a true and complete list of all businesses that have become Divested Businesses since January 1, 2004 and which impose material continuing obligations on the Company or its Subsidiaries or the Business.

3.27. [Broker's Fees](#). Except for any firm all of whose fees and expenses shall be borne entirely by Seller, none of Seller, the Company or any of their respective Subsidiaries has employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement

[3.28. Superior Proposal. The Supervisory Board and the Managing Board of Seller have determined, as of the date hereof, that the transactions contemplated hereby constitute a Superior Proposal as defined in the Bank of America Agreement.](#)

[3.29. Access; Absence of Other Agreements. Except for this Agreement and the Confidentiality Agreement between Seller and Bank of America Corporation, there are no other](#)

agreements, written or oral, between Seller and its Affiliates, on the one hand, and Bank of America Corporation and its Affiliates, on the other hand, relating to the transactions contemplated hereby. In connection with Purchaser's due diligence review of the Company and the Business, Seller has made available to Purchaser and its Representatives the same access to documents, information and data that was made available to Bank of America Corporation in connection with its due diligence review of Seller and the Business.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

OF PURCHASER

Purchaser hereby represents and warrants to Seller as follows:

4.1. Corporate Organization. Purchaser is a ~~corporation~~private limited liability company duly organized, and validly existing ~~and in good standing~~ under the laws of its jurisdiction of organization. Purchaser has the ~~corporate~~limited liability company power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted, and is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified would not reasonably be expected to, individually or in the aggregate, have a Purchaser Material Adverse Effect. True and complete copies of the ~~certificate~~notarial deed of incorporation and ~~bylaws~~the articles of association of Purchaser, as in effect as of the date of this Agreement, have previously been delivered by Purchaser to Seller. Purchaser is not in violation of any of the provisions of its certificate or articles of incorporation or bylaws or other charter or organizational documents, each as amended.

4.2. Authority: No Violation.

(a) Purchaser has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly approved by the Management ~~Board of Directors~~ of Purchaser. No other corporate proceedings (including any approvals of Purchaser's stockholders) on the part of Purchaser are necessary to approve this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Purchaser. Assuming due authorization, execution and delivery by Seller, this Agreement constitutes a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforcement may be limited by (i) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other laws affecting or relating to the rights of creditors generally, or (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) Neither the execution and delivery of this Agreement by Purchaser, nor the consummation by Purchaser of the transactions contemplated hereby, nor compliance by Purchaser with any of the terms or provisions hereof, will (i) violate any provision of the ~~certificate~~notarial deed of incorporation or ~~bylaws~~and the articles of association of Purchaser or (ii) assuming that the consents and approvals referred to in Section 4.3 are duly obtained, (x) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Purchaser or any of its Subsidiaries or any of their respective properties or assets or (y) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by or rights or obligations under, or result in the creation of any Lien upon any of the respective properties or assets of Purchaser or any of its Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement, contract, or other instrument or obligation to which Purchaser or any of its Subsidiaries is a party, or by which they or any of their respective properties, assets or business activities may be bound or affected, except (in the case of clause (ii) above) for such violations, conflicts, breaches, defaults or the loss of benefits that would not reasonably be expected to, individually or in the aggregate, have a Purchaser Material Adverse Effect.

4.3. Consents and Approvals. Except for (i) the Requisite Regulatory Approvals, (ii) the Fortis Shareholder Approval, and ~~(iii)~~ such additional consents and approvals, the failure of which to make or obtain would not be material and would not have a Purchaser Material Adverse Effect, no consents or approvals of or filings or registrations with any Governmental Entity or, of or with any third party, are necessary in connection with (A) the execution and delivery by Purchaser of this Agreement and (B) the consummation by Purchaser of the transactions contemplated hereby. Purchaser has no reason to believe that any Requisite Regulatory Approvals will not be obtained.

4.4. Financing. Purchaser has or will have as of the Closing sufficient cash or cash equivalents available (the Financing), directly or through one or more Affiliates, to pay the Purchase Price to Seller on the terms and conditions contained herein, and there is no restriction on the use of such cash or cash equivalents for such purpose. ~~Purchaser has provided to Seller a true and complete copy of an executed commitment letter, dated as of the date hereof by [] (the Commitment Letter). The aggregate proceeds of the financings to be provided under the Commitment Letter will be in an amount sufficient to enable Purchaser to consummate the transactions contemplated hereby and acquire all shares of the Company Common Stock pursuant to this Agreement, and to pay all fees and expenses related to this Agreement, the Commitment Letter and the transactions contemplated hereby and thereby. There are no material conditions to the funding of the financings described in the Commitment Letter other than the conditions precedent set forth in the Commitment Letter delivered to Purchaser on the date hereof (the conditions so set forth, the Disclosed Conditions), and no Person has any right to (i) impose, and Purchaser has no obligation to accept, any condition precedent to such funding other than the Disclosed Conditions or (ii) reduce the amounts of the financing commitments made in the Commitment Letter (subject to the Disclosed Conditions).~~

4.5. Legal Proceedings.

(a) Neither Purchaser nor any of its Subsidiaries is a party to any, and there are no pending or, to the knowledge of Purchaser, threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any nature against Purchaser or any of its Subsidiaries that would reasonably be expected to, individually or in the aggregate, have a Purchaser Material Adverse Effect.

(b) There is no injunction, order, judgment or decree imposed upon Purchaser, any of its Subsidiaries or the assets of Purchaser or any of its Subsidiaries that would reasonably be expected to, individually or in the aggregate, have a Purchaser Material Adverse Effect.

4.6. Agreements with Regulatory Agencies. Neither Purchaser nor any of its Subsidiaries is subject to any cease-and-desist or other order or enforcement action issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any order or directive that would reasonably be expected to, individually or in the aggregate, have a Purchaser Material Adverse Effect.

4.7. Broker's Fees. Except for any firm all of whose fees and expenses shall be borne entirely by Purchaser, neither Purchaser nor any of its Subsidiaries has employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement.

4.8. Acquisition of Company Common Stock for Investment. Purchaser is acquiring the Company Common Stock for investment and not with a view toward or for sale in connection with any distribution thereof, or with any present intention of distributing or selling the Company Common Stock other than as part of any internal restructuring or reorganization among Purchaser and the members of the Consortium. Purchaser acknowledges that the Company Common Stock have not been registered under the Securities Act or any state securities Laws, and agrees that the Company Common Stock may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the U.S. Securities Act of 1933, as amended, except pursuant to an exemption from such registration available under the U.S. Securities Act of 1933, as amended, and without compliance with foreign securities laws, in each case, to the extent applicable.

ARTICLE V

COVENANTS RELATING TO CONDUCT OF BUSINESS

5.1. Conduct of Business of the Company Prior to the Closing. During the period from the date of this Agreement until the earlier of the Closing or the termination of this Agreement in accordance with its terms, Seller shall, and shall cause the Company and each Company Subsidiary to, (a) conduct the Business in all material respects in the usual, regular and ordinary course consistent with past practice and (b) use commercially reasonable efforts to maintain and preserve intact the business organizations and goodwill of the Business and the Business' current relationships with its customers, regulators, employees and other Persons with which the Business has significant business or other relationships.

5.2. Forbearances of Seller. During the period from the date of this Agreement until the earlier of the Closing or the termination of this Agreement in accordance with its terms, except as set forth in Section 5.2 of the Disclosure Schedule, as expressly contemplated by this Agreement or as required by Applicable Law or Governmental Entity, Seller shall cause the Company and the Company Subsidiaries not to do any of the following, without the prior written consent of Purchaser, which shall not be unreasonably withheld or delayed:

(a) other than in the ordinary course of business consistent with past practices, (i) incur any indebtedness for borrowed money, or assume, guarantee, endorse or otherwise as an accommodation become responsible for the obligations of any other individual, corporation or other entity, or make any loan or advance (it being understood and agreed that incurrence of indebtedness in the ordinary course of business consistent with past practice shall include the creation of deposit liabilities, purchases of Federal funds and FHLB advances, sales of certificates of deposit, issuances of commercial paper and entering into repurchase agreements); or (ii) incur any capital expenditures (other than capital expenditures incurred pursuant to contracts or commitments in force on the date of this Agreement);

(b) other than with respect to the Excluded Business, (i) adjust, split, combine or reclassify any capital stock, (ii) make, declare or pay any dividend or distribution or make any other distribution on any shares of its capital stock (other than (A) dividends on shares of its outstanding preferred stock made in accordance with the terms of the applicable certificate of designations, or (B) by any Company Subsidiary on a pro rata basis to the equity owners thereof; provided that the Company itself shall not be permitted to make any dividend pursuant to this clause (B)) or redeem, purchase or otherwise acquire any securities or obligations convertible into or exchangeable for any shares of its capital stock (and Seller agrees that no such dividend shall have been paid by the Company since December 31, 2006 other than dividends on shares of its outstanding preferred stock made in accordance with the terms of the applicable certificate of designations), (iii) grant any stock appreciation rights or grant to any individual, corporation or other entity any right to acquire any shares of its capital stock, (iv) issue any additional shares of capital stock or (v) enter into any agreement, understanding or arrangement with respect to the sale or voting of its capital stock;

(c) other than with respect to the Excluded Business, sell, transfer, mortgage, encumber or otherwise dispose of any of its properties or assets, including capital stock in any Company Subsidiary and cash, to any individual, corporation or other entity other than a direct or indirect wholly-owned Company Subsidiary, or to any Excluded Business, or cancel, release or assign any indebtedness to any such person or any claims held by any such person (and Seller agrees that no such action with respect to the Excluded Business shall have occurred since December 31, 2006), except (i) in the ordinary course of business consistent with past practice to third parties who are not Affiliates of the Company,

(ii) in the ordinary course of business consistent with past practice to Affiliates of the Company on arm's length terms, (iii) pursuant to contracts or agreements in force at the date of this Agreement that are, if involving properties or assets having a value in excess of \$5,000,000 or any capital stock in any Company Subsidiary, set forth in the Disclosure Schedule or (iv) otherwise with respect to properties, assets and indebtedness with an aggregate fair market value not in excess of \$10,000,000 other than to Seller or its Affiliates;

(d) (i) acquire any business entity, whether by stock purchase, merger, consolidation or otherwise, (ii) make any other investment either by purchase of stock or securities, contributions to capital, property transfers, or purchase of any property or assets of any other individual, corporation, limited partnership or other entity other than a wholly-owned Company Subsidiary, or (iii) incur, assume or accept any liability of the Excluded Business, other than, in the case of clause (ii), (A) for investments in the ordinary course of business consistent with past practice and (B) investments for cash consideration with an aggregate value not in excess of \$10,000,000;

(e) (i) except (A) as required under applicable law or the terms of any existing agreement to which Company is a party as of the date hereof, and (B) for increases in annual base salary at times and in amounts in the ordinary course of business consistent with past practice, which shall not exceed 4% in the aggregate (on an annualized basis), increase in any manner the compensation or benefits of any of the current or former directors, officers or employees of Company or its Subsidiaries (collectively Employees), (ii) pay any amounts to Employees not required by any current plan or agreement (other than base salary in the ordinary course of business) to any Employee, (iii) become a party to, establish, amend, commence participation in, terminate or commit itself to any stock option plan or other stock-based compensation plan, compensation (including any employee co-investment fund), severance, pension, retirement, profit-sharing, welfare benefit, or other employee benefit plan or agreement or employment agreement with or for the benefit of any Employee (or newly hired employees), (iv) accelerate the vesting of any stock-based compensation or other long-term incentive under any Company Benefit Plans, (v) hire or terminate the employment of any current Employee who has (in the case of employees to be terminated) or would have (in the case of employees to be hired) target total compensation (cash and target equity) of \$350,000 or more, other than terminations for cause, or (vi) except as set forth in Section 6.4(d) of this Agreement, transfer any current Employee to Seller or its Affiliates (other than the Company or its Subsidiaries);

(f) settle any claim, action or proceeding other than claims, actions or proceedings in the ordinary course of business consistent with past practice involving solely money damages not in excess of \$5,000,000 individually or \$10,000,000 in the aggregate or involving non-monetary relief that is not material, or waive or release any material rights or claims other than in the ordinary course of business consistent with past practice;

(g) change its methods of accounting (or the manner in which it accrues for liabilities) in effect on the Balance Sheet Date, except as required by changes in GAAP;

(h) make, change or revoke any Tax election, change an annual Tax accounting period, adopt or change any Tax accounting method, file any amended Tax Return, enter into any closing agreement with respect to Taxes, settle any Tax claim or assessment or surrender any right to claim a refund of Taxes if such action would likely have the effect of increasing in any material respect the liability of the Company or its Subsidiaries for any Taxes other than Covered Taxes unless required by applicable law;

(i) adopt or implement any amendment to its Certificate of Incorporation or any changes to its Bylaws or comparable organizational documents;

(j) materially restructure or materially change its investment securities portfolio or its gap position except in the ordinary course of business consistent with past practice (and in consultation with Purchaser), through purchases, sales or otherwise, or the manner in which the portfolio is classified or reported;

(k) enter into, amend in any material respect or terminate, or make any payment not then required under, any Material Contract, other than entering into, renewing or terminating any Material Contracts in the ordinary course of business consistent with past practice, other than any Material Contract that contains (A) any non-competition or non-solicitation agreement, or any other agreement or obligation which purports to limit or restrict in any material respect the ability of the Company or its Affiliates (including, after the Closing, Purchaser and its Affiliates) or their businesses to solicit customers or the manner in which, or the localities in which, all or any portion of the business of the Company or its Affiliates (including, after the Closing, Purchaser and its Affiliates) is or may be conducted or (B) any material exclusive dealing agreement, or any material agreement that grants any right of first refusal or right of first offer or similar right or that limits or purports to limit the ability of the Company or any of its Affiliates (including, after the Closing, Purchaser and its Affiliates) to own, operate, sell, transfer, pledge or otherwise dispose of any material assets or business;

(l) enter into any new line of business that is material to the Company and its Subsidiaries, taken as a whole, or materially change its lending, investment, underwriting, risk and asset liability management and other banking and operating policies that are material to the Company and its Subsidiaries, taken as a whole, except as required by applicable law, regulation or policies imposed by any Governmental Entity;

(m) take any action that is intended or would be reasonably likely to result in any of the conditions set forth in Article VII not being satisfied, except, in every case, as may be required by applicable law;

(n) (i) materially modify, amend or terminate, or waive any rights under, any Affiliate Arrangement, or (ii) enter into any new Affiliate Arrangement or any transaction with Seller or any Affiliate of Seller except in the ordinary course of business consistent with past practice and on arm's length terms; or

(o) agree to, or make any commitment to, take any of the actions prohibited by this Section 5.2.

5.3. Bank of America Matching Period. During the period beginning on the date of this Agreement and continuing until 11:59 p.m., New York time, on the date that is 5 Business Days after the date of this Agreement (the Matching Period), Seller and its Representatives shall ~~have the right to~~ directly or indirectly take any and all actions ~~Seller concludes are necessary or reasonable~~ that are required to comply with the terms of Section 5.3(b) of the Bank of America Agreement. If Bank of America exercises its rights set forth in Section 5.3(b)(iii) of the Bank of America Agreement in a manner that results in Seller concluding that the transactions contemplated by this Agreement no longer constitute a Superior Proposal, then notwithstanding anything else herein to the contrary this Agreement shall automatically terminate without any cost, liability or obligation under this Agreement to the Company, Bank of America or any of their respective Subsidiaries or Affiliates. If at the end of the Matching Period, this Agreement has not automatically terminated pursuant to the preceding sentence, Seller shall promptly terminate the Bank of America Agreement ~~pursuant to~~ in accordance with Section 8.1(f) of the Bank of America Agreement and Purchaser shall, simultaneously with such termination, pay the Termination Fee to Bank of America on behalf of Seller. Termination Fee means an amount in cash equal to U.S.\$200,000,000 (two hundred million dollars), which shall be paid (when due and owing) by wire transfer of immediately available funds denominated in U.S. dollars to the account or accounts designated by the recipient. Unless and until Purchaser pays the Termination Fee as provided above, the obligations of Seller under this Agreement will be conditional and this Agreement will not be final and binding on Seller; provided, however, that Seller acknowledges and agrees that, if Purchaser proffers payment of the Termination Fee to Bank of America and Bank of America refuses acceptance thereof, then Purchaser shall be deemed under this Agreement and the Bank of America Agreement to have paid the Termination Fee to Bank of America at such time as it proffered payment thereof to Bank of America. Purchaser acknowledges that the agreement to pay the Termination Fee in the circumstances set forth in this Section 5.3 is an integral part of the transactions contemplated by this Agreement and that, without this Agreement, Seller would not enter into this Agreement; accordingly, if Purchaser fails to pay such amount when due, Seller shall, in addition to all other remedies available to it, be entitled to interest on such amount at a rate per annum equal to the Prime Rate as published in the *Wall Street Journal*, Eastern Edition, in effect from time to time during the period from the date that the such payment was required to be made pursuant to this Agreement to the date of payment.

ARTICLE VI

ADDITIONAL AGREEMENTS

6.1. Regulatory Matters.

(a) Each of Purchaser and Seller shall, and shall cause its Subsidiaries to, take, or cause to be taken, all commercially reasonable actions necessary or advisable to (i) comply promptly with all legal requirements which may be imposed on such party or its relevant Subsidiaries with respect to the transactions contemplated hereby, including in connection with obtaining any third-party consent that may be required to be obtained in connection with the transactions contemplated by this Agreement, and, subject to the conditions set forth in Article VII hereof, to consummate the transactions contemplated hereby (including, for purposes of this Section 6.1, required in order to continue any contract or agreement with Company or its Subsidiaries following Closing or to avoid any penalty or other fee under such contracts and agreements, in each case arising in connection with the transactions contemplated hereby) and (ii) obtain (and cooperate with the other party to obtain) any consent, authorization, order or approval of, or any exemption by, any Governmental Entity which is required or advisable to be obtained by Seller or Purchaser, respectively, or any of their respective Subsidiaries in connection with the transactions contemplated by this Agreement (it being understood and agreed that it shall be deemed commercially reasonable for Purchaser to take all action other than those that would not be required pursuant to the last sentence of this Section 6.1(a)). The parties hereto shall cooperate with each other and promptly prepare and file all necessary documentation, and to effect all applications, notices, petitions and filings (including, if required, notification under the HSR Act), to obtain as promptly as practicable all permits, consents, approvals and authorizations of all third parties and Governmental Entities which are necessary or advisable to consummate the transactions contemplated by this Agreement. Purchaser and Seller shall have the right to review in advance and, to the extent practicable, each will consult the other on, in each case subject to applicable laws relating to confidentiality or the exchange of information, all the information relating to Seller, Company or Purchaser, as the case may be, and any of their respective Subsidiaries, which appear in any filing made with, or written materials submitted to, any third party or any Governmental Entity in connection with the transactions contemplated by this Agreement. In exercising the foregoing right, each of the parties hereto shall act reasonably and as promptly as practicable. The parties hereto agree that they will consult with each other with respect to the obtaining of all permits, consents, approvals and authorizations of all third parties and Governmental Entities necessary or advisable to consummate the transactions contemplated by this Agreement and each party will keep the other apprised of the status of matters relating to completion of the transactions contemplated herein. Each of Purchaser and Seller shall take all commercially reasonable actions to resolve any objections that may be asserted by any Governmental Entity with respect to this Agreement or the transactions contemplated by this Agreement. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to require Purchaser to take to any action, or commit to take any action, or agree to any condition or restrictions, in connection with obtaining the foregoing permits, consents, approvals and authorizations of Governmental Entities or third parties that would reasonably be expected to have a material adverse effect on the business, results of operations or financial condition of the Business, the Company or Purchaser (measured on a scale relative to the Business) following the Effective Time (a Materially Burdensome Regulatory Condition); provided that the parties

agree that any actions required to be taken by or conditions or restrictions imposed on Purchaser in order to obtain such permits, consents, approvals or authorizations of any Governmental Entity or third party shall not be considered a Materially Burdensome Regulatory Condition to the extent such actions, conditions or restrictions relate to Purchaser's compliance with the conditions in Section 3(d)(2) of the BHCA or in the Bank Merger Act relating to the nationwide deposit cap and to any applicable state deposit caps.

(b) Purchaser and Seller shall, upon request, furnish each other with all information concerning Purchaser, Seller, Company and their respective Subsidiaries, directors, officers and shareholders and such other matters as may be reasonably necessary in connection with any statement, filing, notice or application made by or on behalf of Purchaser, Seller, Company or any of their respective Subsidiaries to any Governmental Entity in connection with the transactions contemplated by this Agreement.

(c) Purchaser and Seller shall promptly advise each other upon receiving any communication from any Governmental Entity or third party whose consent or approval is required for consummation of the transactions contemplated by this Agreement which causes such party to believe that there is a reasonable likelihood that any Requisite Regulatory Approval or other consent or approval will not be obtained or that the receipt of any such approval will be materially delayed.

(d) Parent shall call and hold an extraordinary general meeting of its shareholders (the ABN EGM) as promptly as practicable for the purpose of voting upon the approval of this Agreement and the transactions contemplated hereby. In connection with the ABN EGM, Parent's Managing Board and Supervisory Board shall recommend adoption of this Agreement and approval of the transactions contemplated hereby by Parent's shareholders at such ABN EGM, and Parent's Managing Board and Supervisory Board shall take all other action necessary or advisable to secure the Shareholder Approval, except that Parent's Managing Board and Supervisory Board shall not be required to recommend adoption of this Agreement and approval of the transactions contemplated hereby if by doing so Parent's Managing Board and Supervisory Board would be in violation of its legal obligations under applicable Law. Notwithstanding any of the foregoing, prior to the ABN EGM, Parent's Managing Board and Supervisory Board may withdraw any such recommendation if it would be a violation of its legal obligations under applicable Law to fail to withdraw any such recommendation.

6.2. Access to Information.

(a) Subject to the Confidentiality Agreement, Seller agrees to provide Purchaser ~~and Purchaser's~~ RBS, Fortis and Santander and their respective Representatives, from time to time prior to the Closing Date or the termination of this Agreement, such information as ~~Purchaser~~ Purchaser shall reasonably request with respect to the Business, the Company and the Company Subsidiaries and their respective businesses, financial conditions and operations and such access to the properties and personnel of the Business, the Company and the Company Subsidiaries as Purchaser shall reasonably request, which access shall occur during normal business hours and shall be conducted in such manner as not to interfere unreasonably with the conduct of the Business. Except as required by law, each of Purchaser, RBS, Fortis and Santander will hold, and will cause its Representatives and its Affiliates to hold, any nonpublic information of Seller received from Seller or the Company, directly or indirectly, in accordance with the Confidentiality Agreement.

(b) Seller and Company shall not be required to provide access to or to disclose information where such access or disclosure would violate or prejudice the rights of customers, jeopardize the attorney-client or other legal privilege of the institution in possession or control of such information or contravene any law, rule, regulation, order, judgment, decree, fiduciary duty or binding agreement entered into prior to the date of this Agreement. The parties hereto will make appropriate substitute disclosure arrangements under circumstances in which the restrictions of the preceding sentence apply.

~~6.3. **Public Disclosure.** Seller and Purchaser shall consult with each other before issuing any press release or otherwise making any public statement or making any other public (or non-confidential) disclosure (whether or not in response to an inquiry) regarding the terms of this Agreement or any of the transactions contemplated hereby, and neither shall issue any such press release or make any such statement or disclosure without the prior approval of the other (which approval shall not be unreasonably withheld or delayed), except as may be required by law or the rules of any market or exchange on which the shares of Seller or Purchaser may be listed for trading, in which case the party proposing to issue such press release or make such public statement or disclosure shall consult with the other party before issuing such press release or making such public statement or disclosure.~~ [Intentionally Deleted.](#)

6.4. Employees; Employee Benefit Matters.

(a) Following the Closing Date, Purchaser shall maintain or cause to be maintained employee benefit plans for the benefit of employees who are actively employed by the Company and its Subsidiaries on the Closing Date (Covered Employees) which, in the aggregate, are generally substantially comparable to those employee benefit plans that are made available to similarly situated employees of Purchaser or [one of its Subsidiaries Affiliates](#) (other than the Company and its Subsidiaries), as applicable; provided, that in no event shall any Covered Employee be eligible to participate in any closed or frozen plan of Purchaser or [one of its Subsidiaries Affiliates](#); provided, further, that until such time as Purchaser shall cause Covered Employees to participate in the benefit plans that are made available to similarly situated employees of Purchaser or [one of its Subsidiaries Affiliates](#) (other than the Company and its Subsidiaries), a Covered Employee's continued participation in employee benefit plans of the Company and its Subsidiaries shall be deemed to satisfy the foregoing provisions of this sentence (it being understood that participation in the Purchaser's plans [\(or plans of one of its Affiliates\)](#) may commence at different times with respect to each such plan).

(b) For purposes of eligibility to participate, vesting and benefit accruals (except benefit accrual under any final average pay defined benefit pension plan) under the employee benefit plans of Purchaser and [/or one of its Subsidiaries Affiliates](#) providing benefits to any Covered Employees after the Closing Date (the New Plans), each Covered Employee shall be credited with his or her years of service with the Company and its Subsidiaries and their respective predecessors before the Closing Date, to the same extent as such Covered Employee was entitled, before the Closing Date, to credit for such service under any parallel Company Benefit Plan in which such Covered Employee participated immediately prior to the Closing Date;

provided that the foregoing shall not apply to the extent that its application would result in a duplication of benefits with respect to the same period of service or with respect to any closed or frozen plan. In addition, for purposes of each New Plan providing medical, dental, pharmaceutical and/or vision benefits to any Covered Employee, Purchaser shall use reasonable best efforts to cause all pre-existing condition exclusions and actively-at-work requirements of such New Plan to be waived for such employee and his or her covered dependents, unless such conditions would not have been waived under the comparable Company Benefit Plan in which such employee participated immediately prior to the Closing Date and Purchaser shall cause any eligible expenses incurred by such employee and his or her covered dependents during the portion of the plan year of the Company Benefit Plan ending on the date such employee's participation in the corresponding New Plan begins to be taken into account under such New Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan.

(c) Prior to the Closing Date, Seller shall take all action necessary to ensure that effective as of the Closing Date, (i) any employee or other service provider who is employed by the Company or its Subsidiaries as of immediately prior to the Closing Date but who primarily provides services to or with respect to the business of (A) an Excluded Business or (B) Seller or any of its Affiliates other than the Company and its Subsidiaries (collectively, the Excluded Employees) is transferred from the Company and its Subsidiaries without any liability to the Company or its Subsidiaries and (ii) any employee or other service provider who is employed by the Seller or its Subsidiaries (other than the Company or its Subsidiaries) as of immediately prior to the Closing Date but who primarily provides services to or with respect to the Business is transferred to the Company or any of its Subsidiaries. From the date hereof through the Closing Date, Seller will not make any employment transfers that would result in a modification to whether a particular service provider is classified as primarily providing services to the Business.

(d) Pursuant to the terms of the Transition Services Agreement, the Company or Purchaser, as applicable, will, at Seller's expense (and at cost), administer the payroll and all HR administrative systems for Excluded Employees and all other employees of Seller and its Affiliates who are located in the United States or Canada and who participate in the employee benefit plans that are administered through the Company's and its Subsidiaries' payrolls and HR administrative systems prior to the Closing Date (collectively Transitional Participants) and will, at Seller's expense (and at cost), provide employee benefits coverage to Transitional Participants (for Transitional Participants who are located in Canada, only payroll and HR administrative systems services) that is consistent with such coverage provided to Covered Employees under Section 6.4(a). Seller shall use reasonable best efforts to ensure that the provision of such transitional services ends on or promptly following the Closing Date, it being understood that to the extent that such services continue following the Closing Date, such services will terminate no later than the 60th