Exhibit 1

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

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the Fiscal Year Ended December 31, 2007
OR
☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

COMMISSION FILE NO. 1-13990

LANDAMERICA FINANCIAL GROUP, INC.

(Exact name of registrant as specified in its charter)

Virginia	**54-1589611**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
5600 Cox Road **Glen Allen, Virginia**	**23060**
(Address of principal executive offices)	(Zip Code)

(804) 267-8000
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, no par value	**New York Stock Exchange**

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. **Yes** ☐ **No** ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. **Yes** ☐ **No** ☒

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). **Yes** ☐ **No** ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant, computed by reference to the closing sale price of the registrant's common stock as reported by the New York Stock Exchange on June 30, 2007, the last business day of the registrant's most recently completed second fiscal quarter, was approximately $1,584.6 million.

The number of shares of the registrant's common stock outstanding on February 22, 2008 was 15,351,550.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement to be made available to shareholders in connection with the 2008 Annual Meeting of Shareholders (to be filed) are incorporated by reference into Part III of this report.

LANDAMERICA FINANCIAL GROUP, INC.

TABLE OF CONTENTS

FORM 10-K

LANDAMERICA FINANCIAL GROUP, INC.

PART I

Forward-Looking and Cautionary Statements

This Annual Report on Form 10-K contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Among other things, these statements relate to our financial condition, results of operations and future business plans, operations, opportunities and prospects. In addition, we and our representatives may from time to time make written or oral forward-looking statements, including statements contained in other filings with the Securities and Exchange Commission and in our reports to shareholders. These forward-looking statements are generally identified by the use of words such as we “expect,” “believe,” “anticipate,” “could,” “should,” “may,” “plan,” “will,” “predict,” “estimate” and similar expressions or words of similar import. These forward-looking statements are based upon our current knowledge and assumptions about future events and involve risks and uncertainties that could cause our actual results, prospects, performance or achievements to be materially different from any anticipated results, prospects, performance or achievements expressed or implied by such forward-looking statements. Such risks and uncertainties include: (1) the Company's results of operations and financial condition are susceptible to changes in mortgage interest rates, the availability of mortgage financing, and general economic conditions; (2) changes to the participants in the secondary mortgage market could affect the demand for title insurance products; (3) the Company is subject to government regulation; (4) heightened regulatory scrutiny of the Company and the title insurance industry, including any future resulting reductions in the pricing of title insurance products and services, could materially and adversely affect its business, operating results, and financial condition; (5) the Company may not be able to fuel its growth through acquisitions; (6) the Company’s inability to integrate and manage successfully its acquired businesses could adversely affect its business, operating results, and financial condition; (7) regulatory non-compliance, fraud or defalcations by the Company’s title insurance agents or employees could adversely affect its business, operating results, and financial condition; (8) competition in the Company’s industry affects its revenue; (9) significant industry changes and new product and service introductions require timely and cost-effective responses; (10) the Company’s litigation risks include substantial claims by large classes of claimants; (11) the Company’s claims experience may require it to increase its provision for title losses or to record additional reserves, either of which may adversely affect its earnings, (12) key accounting and essential product delivery systems are concentrated in a few locations; (13) provisions of the Company’s articles of incorporation and bylaws and applicable state corporation, insurance, and banking laws could limit another party’s ability to acquire the Company and could deprive shareholders of the opportunity to obtain a takeover premium for shares of common stock owned by them; (14) the Company’s future success depends on its ability to continue to attract and retain qualified employees; (15) the Company’s conduct of business in foreign markets creates financial and operational risks and uncertainties that may materially and adversely affect its business, operating results, and financial condition; and (16) various external factors including general market conditions, governmental actions, economic reports and shareholder activism may affect the trading volatility and price of the Company’s common stock. For a description of factors that may cause actual results to differ materially from such forward-looking statements, see Part I, Item 1A, “Risk Factors” on page 18 of this report. We caution investors not to place undue reliance on any forward-looking statements as these statements speak only as of the date when made. We undertake no obligation to update any forward-looking statements made in this report.

ITEM 1. BUSINESS

General Information

Unless the context otherwise requires, the terms “LandAmerica,” “the Company,” “we,” “us” or “our” refers to LandAmerica Financial Group, Inc. and its consolidated subsidiaries on a combined basis.

LandAmerica was incorporated under the laws of the Commonwealth of Virginia on June 24, 1991. We are a holding company and operate through our subsidiaries. Our principal executive offices are located at 5600 Cox Road, Glen Allen, Virginia 23060 and our telephone number is (804) 267-8000. We maintain an internet website at www.landam.com.

Our shareholders and the public may access our periodic and current reports (including annual, quarterly and current reports on Form 10-K, Form 10-Q and Form 8-K, respectively, and any amendments to those reports) filed with or furnished to the Securities and Exchange Commission ("SEC") pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, through the "Investor Information" section of our website. The reports are made available on this website as soon as practicable following the filing of the reports with the SEC. The information is free of charge and may be reviewed, downloaded and printed from the website at any time.

In addition, our Corporate Governance Guidelines, Code of Business Conduct and Ethics, Code of Ethics for Senior Financial Officers and the charters of the Audit Committee, Corporate Governance Committee and the Executive Compensation Committee are available to shareholders and the public through the "Investor Information" section of our website. Printed copies of the documents are available to any shareholder upon written request to our Secretary at the address set forth above.

The certifications of our Chief Executive Officer and Chief Financial Officer required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 are being filed as exhibits to this Form 10-K with the SEC. In addition, our Chief Executive Officer annually certifies to the New York Stock Exchange ("NYSE") that he is not aware of any violation by us of the NYSE's corporate governance listing standards. In accordance with NYSE Rules, on June 14, 2007, following the 2007 Annual Meeting of shareholders, we filed the annual certification by our Chief Executive Officer certifying that he was unaware of any violation by us of the NYSE's corporate governance listing standards at the time of the certification.

Overview of the Business

Our products and services facilitate the purchase, sale, transfer, and financing of residential and commercial real estate. We provide these products and services to a broad-based customer group including: residential and commercial property buyers and sellers, real estate agents and brokers, developers, attorneys, mortgage brokers and lenders, and title insurance agents. We operate through approximately 700 offices and a network of more than 10,000 active agents, and we also conduct business in Mexico, Canada, the Caribbean, Latin America, Europe, and Asia. Based on title premium revenue, we are one of the largest title insurance underwriters in the United States.

In addition to our core title insurance business, we provide a comprehensive suite of other products and services for residential and commercial real estate transactions, including title search, examination, escrow, and closing services. We also offer appraisals, home inspections, and warranties for residential real estate transactions. For commercial real estate transactions, we provide property appraisal and valuation, building and site assessments and other due diligence services, construction disbursement, coordination of national multi-state transactions, tax-deferred real property exchanges pursuant to Section 1031 of the Internal Revenue Code, and Uniform Commercial Code products insuring personal property. We provide specialized services primarily to our national and regional mortgage lending customers, such as real estate tax processing, flood zone determinations, consumer mortgage credit reporting, default management services, and mortgage loan subservicing. In addition, we offer to our national and regional mortgage lending customers a full range of centralized and integrated residential real estate services through our subsidiary, LandAmerica OneStop, Inc. ("LandAmerica OneStop").

Operating Segments

Our principal business operations are organized under three primary operating segments: Title Operations, Lender Services, and Financial Services. Other operating business segments not required to be reported separately are combined with unallocated corporate expenses and reported in a category called Corporate and Other. Information regarding each of these operating segments is set forth below. Certain financial information regarding our operating segments is presented in Note 19 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data" and in Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations."

Title Operations

Products and Services

Title Insurance – Title insurance policies are insured statements of the condition of title to real property. These policies indemnify the insured from losses resulting from certain outstanding liens, encumbrances and other defects in title to real property that appear as matters of public record, and from certain other matters not of public record. Title insurance is generally accepted as the most efficient means of determining title to, and priority of interests in, real estate in nearly all parts of the United States. Many of the principal customers of title insurance companies buy insurance for the accuracy and reliability of the title search as well as for the indemnity features of the policy. The beneficiaries of title insurance policies are generally owners or buyers of real property or parties who make loans using real property as security. An owner's policy protects the named insured against title defects, liens, and encumbrances existing as of the date of the policy and not specifically excluded or excepted from its provisions, while a lender's policy also insures the validity and priority of the lien of the insured mortgage as stated in the title policy.

While most other forms of insurance provide for the assumption of risk of loss arising out of unforeseen future events, title insurance serves to protect the policyholder from the risk of loss from events that predate the issuance of the policy. This distinction underlies the low claims loss experience of title insurers as compared to other insurance underwriters. Losses generally result either from judgment errors or mistakes made in the title search and examination process or the escrow process or from hidden defects such as fraud, forgery, incapacity, or missing heirs. Title insurers incur considerable operating costs related to the personnel required to process forms, search titles, collect information on specific properties, and prepare title insurance commitments and policies.

We issue title insurance policies primarily through three principal title underwriting subsidiaries: Commonwealth Land Title Insurance Company ("Commonwealth"), Lawyers Title Insurance Corporation ("Lawyers Title"), and Transnation Title Insurance Company ("Transnation"). We also own three other title insurance underwriters: Commonwealth Land Title Insurance Company of New Jersey, Title Insurance Company of America, and United Capital Title Insurance Company. Effective December 12, 2007, we merged one of our title insurance underwriters, Land Title Insurance Company, into Lawyers Title. The collective operations of these subsidiaries cover the entire United States (with the exception of Iowa, which does not recognize title insurance), and certain territories of the United States. In addition, we offer our customers international title policy services in Mexico, Canada, the Caribbean, Latin America, Europe, and Asia.

Escrow and Closing Services – In addition to the issuance of title insurance policies, we provide escrow and closing services to a broad-based customer group that includes lenders, developers, real estate agents, attorneys, and property buyers and sellers. In California and a number of other western states, it is a general practice, incidental to the issuance of title insurance policies, to hold funds and documents in escrow for delivery in real estate transactions upon fulfillment of the conditions to such delivery. In the mid-western states, Florida and some eastern cities, it is customary for the title company to close the transaction and disburse the sale or loan proceeds. Fees for escrow and closing services are generally separate and distinct from premiums paid for title insurance policies and other real estate-related services.

Commercial Services – Our Commercial Services business assists customers in handling the more complex nature of commercial transactions and facilitates the coordination and delivery of products and services. In addition to title insurance, escrow, and closing services, we provide a range of specialized services that include construction disbursement, coordination of national multi-state transactions, tax-deferred real property exchanges pursuant to Section 1031 of the Internal Revenue Code, and Uniform Commercial Code products insuring personal property. The combined capital position of our three principal title underwriting subsidiaries enables us to underwrite large commercial policies and to participate in multi-state transactions.

Operations

We issue title insurance policies through branch offices of our title insurance underwriters, wholly-owned or partially-owned and consolidated subsidiary agencies or independent title insurance agents. Where the policy is issued through a branch or wholly-owned subsidiary, the search is performed by us or at our direction, and the premiums collected are retained by us. Where the policy is issued through a partially-owned or independent title insurance agent, the agent generally performs the search (in some areas searches are performed by attorneys and in some instances agents purchase the search), examines the title, collects the premium, and retains a majority of the premium. The agent remits to us the remainder of the premium as compensation, part of which is for bearing the risk of loss in the event a claim is made under the policy. The percentage of the premium retained by an agent varies and is sometimes regulated by the states. We are obligated to pay title claims in accordance with the terms of our policies, regardless of whether we issue policies through direct operations or agents. We maintain a quality assurance program for our independent agents. See “Insured Risk on Policies in Force.”

The premium for title insurance is due in full when the real estate transaction is closed. We recognize title insurance premium revenue from direct operations upon the closing of the transaction, whereas we recognize premium revenue from agency operations upon the reporting of such premiums by the agent. Premiums from agents are typically remitted to us after the closing of the real estate transaction, with the average time between closing and reporting being approximately 110 days for 2007.

Underwriting

We issue title insurance policies on the basis of a title report, prepared pursuant to our prescribed underwriting guidelines, generally after a search of the public records, maps and documents to ascertain the existence of easements, restrictions, rights of way, conditions, encumbrances, liens, or other matters affecting the title to, or use of, real property. In certain instances, a visual inspection of the property is also made. Title examinations may be made by branch employees, agency personnel, or approved attorneys, whose reports are utilized by or rendered to a branch or agent and are the basis for the issuance of policies. In the case of difficult or unusual legal or underwriting issues involving potential title risks, the branch office or agent is instructed to consult with, and obtain prior approval of, a designated supervising office. Our contracts with independent agents require that the agent seek our prior approval before we assume a risk over a stated dollar limit.

We own a number of title plants and in some areas lease or participate with other title insurance companies or agents in the cooperative operation of such plants. Title plants are compilations of copies of public records, maps, and documents that are indexed to specific properties in an area, and they serve to facilitate the preparation of title reports. To maintain the value of the title plants, we continually update our records by regularly adding current information from the public records and other sources. In this way, we maintain the ability to produce quickly, and at a reduced expense, a statement of the instruments that constitute the chain of title to a particular property. In many of the larger markets, the title plant and search procedures have been automated. We anticipate that the use of electronic media at courthouses and state and local governments will continue to grow over the next several years which may reduce the value of our title plants in the future.

Insured Risk on Policies in Force

The amount of the insured risk or “face amount” of insurance under a title insurance policy is generally equal to either the purchase price of the property or the amount of the loan secured by the property. The insurer is also responsible for the cost of defending the insured title against covered claims. The insurer’s actual exposure at any time is significantly less than the total face amount of policies in force because the risk on an owner’s policy is often reduced over time as a result of subsequent transfers of the property and the reissuance of title insurance by other title insurance underwriters, and the coverage of a lender’s policy is reduced and eventually terminated as a result of payment of the mortgage loan. Because of these factors, the total liability of a title underwriter on outstanding policies cannot be ascertained.

In the ordinary course of business, our underwriting subsidiaries represent and defend the interests of their insureds, and our consolidated financial statements provide for estimated losses and loss adjustment expenses arising from claims. Title insurers are sometimes subject to unusual claims (such as claims of Indian tribes to land formerly inhabited by them), claims resulting from fraud and defalcation, claims from large classes of claimants, and other claims arising outside the insurance contract, including but not limited to, alleged negligence in search, examination or closing, alleged improper claims handling, alleged bad faith, alleged collection of excess premiums from certain consumers alleged to be entitled to a re-issue rate, and alleged improper charges for recording and other fees. The damages alleged in such claims arising outside the insurance contract may exceed the stated liability limits of the policies involved.

Standard & Poor's® ("S&P"), a division of The McGraw-Hill Companies, Inc., has assigned a financial strength rating of "A-" to our title insurance operations. According to S&P, an insurer rated "A" has strong financial security characteristics, but is somewhat more likely to be affected by adverse business conditions than are insurers with higher ratings, and the minus (-) rating indicates relative standing within the "A" category. S&P assigns a ratings outlook along with its letter ratings to indicate its expectations of trends that relate to the financial strength rating for the rated company. The ratings outlook assigned by S&P may be either "positive," "stable," or "negative." According to S&P, our ratings outlook is "negative." Fitch, Inc. ("Fitch") has assigned an "A-" rating to our financial strength. According to Fitch, an "A" rating is assigned to those companies that possess strong capacity to meet policyholder and contract obligations, where risk factors are moderate and the effect of any adverse business and economic factors is expected to be small. Fitch also assigns a ratings outlook along with its letter ratings to indicate its expectations of trends that relate to the financial strength rating for the rated company. The ratings outlook assigned by Fitch may be either "positive," "stable," or "negative." According to Fitch, our ratings outlook is "stable." Additionally, our senior debt is currently assigned a rating of "BBB-" by both S&P and Fitch. The S&P and Fitch ratings are not designed for the protection of investors, do not constitute recommendations to buy, sell or hold any security, may be subject to revision or withdrawal at any time, and should be evaluated independently of any other rating. We believe that we are sufficiently capitalized with an aggregate statutory equity of $428.5 million as of December 31, 2007.

We place a high priority on maintaining effective quality assurance and claims administration programs. Our quality assurance program focuses on quality control, claims prevention and product risk assessment for our independent agencies. In addition, to reduce the incidence of claims losses, we established due diligence requirements in connection with the appointment of new agents, procedures for renewing existing agents, and an Agency Audit Program. The claims administration program focuses on improving liability analysis, prompt, fair and effective handling of claims, early evaluation of settlement or litigation with first and third-party claimants and appropriate use of ADR (Alternative Dispute Resolution) in claims processing. We continue to refine our systems for maintaining effective quality assurance and claims administration programs.

Facultative Reinsurance and Coinsurance

Our title insurance subsidiaries distribute large title insurance risks by entering into facultative reinsurance agreements with other insurance companies (the "reinsurer"). In facultative reinsurance agreements, the reinsurer assumes a portion of the risk that the primary insurance company (the "ceding company" or "ceder") decides not to retain in consideration of a premium. The ceder, however, remains liable to the insured under the policy for the total risk, whether or not the reinsurer meets its obligation. Reinsurance agreements may be entered into with related insurance companies and/or with unaffiliated insurance companies. When facultative reinsurance agreements are entered into, a primary risk generally in the amount of 5 percent of the total risk with a $5 million minimum and a $20 million maximum is retained by the ceder. We enter into reinsurance arrangements both as the reinsurer and the ceder.

We generally purchase facultative reinsurance from unaffiliated reinsurers based upon our review of the underwriting risks, the retention laws of the state where the property is located, the state where the ceding company is domiciled, and the retention limitations imposed by the customer.

We occasionally utilize coinsurance to enable us to provide coverage in amounts greater than we would be willing or able to undertake individually. In coinsurance transactions, generally, each individual underwriting company issues a separate policy and assumes a portion of the overall total risk from the first dollar. Each coinsurer is liable only for the particular portion of the risk it assumes.

Our title insurance subsidiaries enter into facultative reinsurance and coinsurance arrangements with most of the larger participants in the title insurance market, and such arrangements are not concentrated with any single title insurance company. Revenue and claims from facultative reinsurance are not material to our business as a whole. The exposure on assumed reinsurance risks is reduced due to the ceding company's retention of a significant primary risk. In addition, the exposure under these agreements generally ceases upon a transfer of the property and, with respect to insured loans, is decreased by reductions in mortgage loan balances. For these reasons, the actual exposure is much less than the total reinsurance our title insurance subsidiaries have assumed. Loss reserves on assumed reinsurance business are maintained on a basis consistent with reserves for direct business.

We have not paid as reinsurer or recovered as ceder any material reinsured losses under a facultative reinsurance agreement during the three year period ended December 31, 2007.

Title Process Errors and Omissions Coverage

We maintain two title process errors and omissions insurance policies through Lloyd's of London totaling $50 million. The Lloyd's of London policies provide fidelity and title loss coverage, with a $20 million primary layer and a $30 million excess layer. There is a $20 million deductible for the title process errors and omissions coverage. With respect to fidelity coverage, there is a $500 thousand deductible for employees and a $2.5 million deductible for agents.

Title Operations Revenue

The table below sets forth, for the years ended December 31, 2007, 2006 and 2005, the approximate title operating revenue and percentages of our total title revenue for the five states representing the largest percentages of such revenue in the most recent year and for all other states and countries combined:

Revenue by State
(Dollars in millions)

	2007		2006		2005	
California	$ 412.9	13.1%	$ 504.2	14.4%	$ 661.1	19.0%
Texas	391.2	12.4	388.3	11.1	353.1	10.1
New York	309.9	9.9	269.7	7.7	256.5	7.4
Florida	268.3	8.5	377.7	10.7	368.1	10.6
Pennsylvania	196.5	6.3	175.3	5.0	62.4	1.8
Other	1,566.5	49.8	1,795.0	51.1	1,780.9	51.1
Total Title Revenue	$ 3,145.3	100.0%	$ 3,510.2	100.0%	$ 3,482.1	100.0%

Title operating revenue as a percentage of our total consolidated operating revenue was 88.1 percent as of December 31, 2007, 90.3 percent as of December 31, 2006, and 90.3 percent as of December 31, 2005.

Sales and Marketing

For sales and marketing purposes, we have organized our business into three customer groups: residential services, commercial services, and agency services. In each of these groups, we continue our transition from title insurance product delivery to being a single source provider of the multiple products and services involved in real estate transactions.

Residential Services – Residential transaction services business results from the construction, sale, resale, and refinancing of residential properties. Most of our residential business comes from local attorneys, real estate brokers and developers, financial institutions, mortgage brokers, and independent escrow agents. Our marketing strategy for the residential business focuses on maintaining and expanding these local business sources by providing superior customer service. Our commitment to customer service is supported by our Superior Service Guarantee, which provides for refund of the escrow or closing fee when a residential customer is not satisfied with our service. In 2006, we introduced Landamclosing.com, a web-based site for opening and closing orders and the management of documents by our residential customers. We also maintain a website, KnowYourClosing.com, a consumer education resource that gives consumers answers to commonly asked questions regarding their closings and tells them where to turn for reliable information. Although we serve the residential market through two major distribution channels: direct company operated offices and title insurance agents, we only include the offices that we directly operate in the residential services group.

Commercial Services – Commercial real estate business results from the construction, sale, resale and refinancing of properties with a business or commercial use. Our commercial services group specializes in coordinating, underwriting and closing complex commercial and multi-property transactions. Our financial strength is an important factor in marketing our commercial title business capabilities because it enables us to write larger title policies and retain higher levels of risk without purchasing reinsurance from a third party. As part of our customer focused strategy, each office provides transaction and support services to national and local commercial accounts. The transaction and support services benefit both our owned offices as well as independent agents who handle substantial commercial transactions, although we consider business from such independent agents to be part of the agency services business. Commercial services business supports LandAmerica Commercial Connection, a web-based site for opening and closing orders, and the management of documents by our commercial customers.

Agency Services – We consider our network of more than 10,000 agents, whom we refer to as our Agent Partners to be one of our four main customer groups. We offer a suite of services called AgentXtra® to provide our Agent Partners with solutions for their businesses, to improve their relationships with their customers, and to grow their businesses.

Customers

As of December 31, 2007, no single agent was responsible for more than 5 percent of our title insurance revenue. In addition, our title insurance business is not dependent upon any single customer. The loss of any one independent agent or customer would not have a material adverse effect on our business, operating results and financial condition.

Competition

The business of providing real estate transaction services is very competitive. We compete for residential title insurance business primarily on the quality of service in those states that regulate rates that we can charge for our services, and on price and service in other states that do not regulate rates. Quality of service is based upon a number of factors, including the ability to respond quickly and accurately to customers, and technological capabilities (resulting in the delivery of a readily accessible, efficient, and reliable product). Competition for commercial title business is based primarily on service, expertise in complex transactions, the size and financial strength of the insurer, and price, to the extent permitted by rate regulations. Title insurance underwriters also compete for agents on the basis of service and commission levels. For each of our customer groups, we have increased our emphasis on service levels and the variety of services and products we provide.

Our principal competitors are other major title insurance underwriters and their agency networks. During 2007, our principal competitors were Fidelity National Financial, Inc., The First American Corporation, Stewart Information Services, Inc., and Old Republic International Corporation. While there are approximately 86 title insurance underwriting companies licensed in the United States that generate 99 percent of the industry's underwriting market, the top five companies (consisting of us and our four principal competitors and their consolidated subsidiaries) accounted for approximately 93 percent of the title insurance underwriting market in 2006, the latest date for which information is available, based on public filings made by those companies.

Our title insurance subsidiaries are subject to regulation by the insurance authorities and enforcement of laws by other governmental authorities of the states in which they do business. Our title insurance subsidiaries and other subsidiaries that provide settlement services are subject to compliance with the Real Estate Settlement Procedures Act ("RESPA") on one to four family residential transactions which is primarily enforced by the U.S. Department of Housing and Urban Development. See "Regulation." Within this regulatory framework, we compete with respect to premium rates, coverage, risk evaluation, service, and business development.

State regulatory authorities impose underwriting limits on title insurers based primarily on levels of available capital and surplus. In addition, we have established our own internal risk limits, which are in some cases at levels lower than those permitted by state law. In determining the amount of underwriting risk we will undertake, we may spread the risk of a large underwriting liability over our three principal title underwriting subsidiaries.

Cyclicality and Seasonality

The title insurance business is closely related to the overall level of residential and commercial real estate activity, which is generally affected by the relative strength or weakness of the United States economy. In addition, title insurance volumes fluctuate based on changes in interest rates and the availability of mortgage financing. Periods of increasing interest rates and reduced mortgage financing availability usually have an adverse effect on residential real estate activity and therefore decrease our title insurance premiums and fee revenue. In contrast, periods of declining interest rates and good mortgage financing liquidity usually have a positive effect on residential real estate activity which increases our title insurance premiums and fee revenue.

Commercial real estate volumes are less sensitive to changes in interest rates, but fluctuate based on local supply and demand conditions for space and mortgage financing availability.

The title insurance business tends to be seasonal as well as cyclical. Residential buy/sell activity is generally slower in the winter, when fewer families buy or sell homes, with increased volumes in the spring and summer. Residential refinancing activity is generally more uniform throughout the seasons, but is subject to interest rate variability. We typically report our lowest revenue in the first quarter, with revenue increasing into the second quarter and through the third quarter. The fourth quarter customarily may be as strong as the third quarter, depending on the level of activity of residential refinancing and of commercial real estate transactions. However, because of significant decline in the availability of mortgage financing in 2007, operating revenue did not reflect the typical seasonal pattern as evidenced by sharp declines in revenue in the third and fourth quarters.

Environmental Matters

Title insurance policies specifically exclude any liability for environmental risks or contamination. Policies issued before 1984, while not specifically addressing environmental risks, are not considered to provide any coverage for such matters, and we have not experienced and do not expect any significant expenses related to environmental claims.

Through our subsidiaries, we sometimes act as a temporary title holder to real estate under a nominee holding agreement and sometimes participate in title holding agreements involving tax-deferred exchanges. In such situations involving non-residential property, we require that an appropriate environmental assessment be made or have currently been made to evaluate and avoid any potential liability.

Lender Services

Products and Services

The Lender Services segment focuses on mortgage lenders as a distinct customer base for certain of our products and services, which include centralized real estate transaction management services, appraisal and valuation services, flood zone determinations, consumer mortgage credit reporting, real estate tax processing services, default management services, and mortgage loan subservicing. In 2007, we continued to support LenderXtra℠, a flexible approach to product bundling that allows national lenders to create customized service packages that include LenderXtraOrder®, our online platform that allows real-time, instant price quotes and order conversion for bundled lender services.

Real Estate Transaction Management Services – LandAmerica OneStop offers to the national and regional mortgage lending community a full range of integrated residential real estate services and the ability to manage the delivery of those services through a centralized source. We provide these mortgage originators with a single, convenient point of contact through which they may place all of their orders for title insurance and real estate-related services. Transaction management services include the coordination and delivery of title insurance, mortgage credit reporting, flood zone determinations, property appraisal and valuation, property inspections, closing and escrow services, and real estate tax processing services.

Appraisal and Valuation Services – We offer a broad suite of valuation applications, which include automated valuation models, traditional appraisals, broker price opinions, collateral scores and appraisal reviews utilized by participants in the secondary mortgage markets.

Flood Zone Determinations – LandAmerica Flood Services provides mortgage lenders with certifications that indicate whether the property securing the loan is located in a special flood hazard area as defined by the U.S. Federal Emergency Management Agency ("FEMA"). Our flood service includes an initial flood zone determination report provided to the lender at the origination of the loan and subsequent notifications provided to the lender during the term of the loan of any changes in a property's flood zone status brought about by changes in flood insurance rate maps issued by FEMA.

Consumer Mortgage Credit Reporting – LandAmerica Credit Services is a nationwide provider of consumer credit reports and income, employment, and tax return verifications to lenders engaged in mortgage origination. Our technology interfaces with many loan origination systems and directly with Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan and Mortgage Corporation ("Freddie Mac") and permits 24 hours, 7 days a week monitoring and response. Our credit information is obtained using technology linked to the three major credit repositories: Equifax, Experian and Trans Union. In addition, through Bureau Direct™, a borrower's erroneous credit information can be updated at each of the three major credit repositories in 72 hours or less, thereby reducing the necessary paperwork and time required by the borrower and the lender seeking to close a consumer's lending transaction.

Tax Services – LandAmerica Tax Services offers real estate tax processing services to mortgage lenders. We monitor and report real estate property tax data needed by mortgage lenders on secured properties. Where the lender requires an escrow for the payment of taxes by borrowers during the term of the loan, we capture and report the amount of the taxes due on secured property and interface with the loan servicing department of the mortgage lender and the various local taxing authorities to facilitate the timely payment of real property taxes. Where the borrower is directly responsible for payment of property taxes, we provide an annual report to lenders on their secured property of the status of the payment of the taxes due. During the lending process, we also advise lenders whether any delinquent taxes are associated with the property in the origination process, and when the loan transfers, or goes into foreclosure.

Services performed for mortgage lenders vary significantly. While some lenders prefer complete outsourcing of all tax service functions, other lenders prefer to perform their own tax services and purchase data from us. Recently, we believe that the trend among large lenders has been to perform certain functions of their own tax processing services, known as insourcing. We have developed a series of products to provide those lenders with the data and other tools they need to insource their tax service functions.

Default Management – LandAmerica Default Services provides comprehensive default management services to lenders and mortgage servicing operations. These services consist of foreclosure processing in Washington, Oregon, California, Arizona, Nevada and Idaho, broker price opinions and appraisal coordination, management of properties acquired at foreclosure (REO), senior lien monitoring, junior lien analytics, field services (property inspection and preservation services) and default title and real estate settlement services. During 2007, we discontinued performing bankruptcy and lien processing services.

Through a 2006 acquisition, we now offer BackInTheBlack, a web-based application that focuses on loss mitigation and collections and is implemented with client specific rules to provide clients the capability to manage the entire default process from beginning to end, from collections to bankruptcy and foreclosure. BackInTheBlack transforms default servicing by replacing current home-grown, paper-based techniques with a unified problem loan underwriting solution.

Although there are numerous suppliers of mortgage origination and loan services, our largest competitors with whom we compete on the basis of price and service are The First American Corporation, Fidelity National Information Services, CBC Companies, Equifax and Kroll Factual Data, Inc.

Subservicing – LoanCare Servicing Center, Inc. ("LoanCare") is an approved servicer for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the Federal Housing Administration, the Veterans Administration, several nationwide financial institutions, and a number of private investors. Our loan subservicing services are offered through interim and private label subservicing programs. Interim subservicing is utilized by lenders selling loans in the secondary market pending the transfer of the loans and the related servicing rights to a permanent purchaser/investor. The private label subservicing program is utilized by lenders wishing to promote the relationship between themselves and their borrowers.

Although there are numerous providers of subservicing services, our largest competitors with whom we compete on the basis of price and service are Dovenmuehle, Cenlar FSB, GMAC Mortgage Corporation, and Countrywide Home Loans, Inc.

The top five customers in our Lender Services segment account for approximately 32.8 percent of operating revenue.

Cyclicality and Seasonality

Portions of our Lender Services segment, particularly real estate transaction management, appraisal and valuation, flood zone determinations and consumer mortgage credit reporting, have cyclical and seasonal trends similar to our Title Operations segment. In contrast, we believe that a higher interest rate environment and weakness in the overall economy increases the volume of mortgage defaults, which increases our default management business.

Financial Services

The Financial Services segment includes Orange County Bancorp and its wholly-owned subsidiary, Centennial Bank, a California industrial bank we acquired in November 2003 ("Centennial"). Centennial's primary business is the origination and bulk purchase of commercial real estate loans in the Southern California market, and to a lesser degree, in the Arizona and Nevada markets. Deposits are solicited through the internet for both certificates of deposit and passbook savings accounts. As an industrial bank, Centennial does not accept demand deposits, such as checking accounts, that provide for payment to third parties. Centennial does not offer banking services such as credit cards or automated teller machines. We utilize Centennial to hold a portion of our escrow deposits. The following is a summary of certain information relating to Centennial's deposits, loans, and allowances for loan losses for the last five years.

Total deposits held by Centennial were $564.5 million at December 31, 2007 and $618.2 million at December 31, 2006. Certificates of deposit and passbook savings accounts represented 66.0 percent and 34.0 percent of total deposits, respectively, at December 31, 2007 and 35.9 percent and 64.1 percent of total deposits, respectively, at December 31, 2006.

Centennial had outstanding loans of $643.1 million, or 113.9 percent of total deposits, at December 31, 2007 and $535.5 million, or 86.6 percent of total deposits, at December 31, 2006. The average loan balance outstanding was $0.8 million at December 31, 2007 and $1.2 million at December 31, 2006. Centennial makes loans only on a secured basis at loan-to-value percentages typically no greater than 75 percent. Substantially all of Centennial's loans are made on a variable rate basis. Loans that Centennial made or acquired during 2007 ranged in amount from $12 thousand to $7.7 million and $0.3 million to $5.3 million made or acquired during 2006. Centennial's commercial real estate loans are typically smaller in size and more tailored to fit the customer than those issued by large financial institutions that maintain minimum size requirements of $5 million or more. Centennial's primary competitors in the California market are local community banks, thrift and loan companies and, to a lesser extent, commercial banks.

The average yield on Centennial's loan portfolio as of December 31, 2007 was 7.1 percent. A number of factors are included in the determination of average yield, principal among which are interest, loan fees and closing points amortized to income, prepayment penalties recorded as income, and amortization of premiums on purchased loans.

The following table presents Centennial's outstanding loans, by category, as of the dates indicated.

	Year Ended December 31,				
	2007	2006	2005	2004	2003
	(In millions)				
Commercial, financial, and agricultural	$ –	$ –	$ –	$ –	$ 0.1
Real estate – mortgage	643.1	535.5	435.8	342.3	253.9
Installment loans to individuals	–	–	0.3	1.5	4.3
Total	$ 643.1	$ 535.5	$ 436.1	$ 343.8	$ 258.3

The performance of Centennial's loan portfolio is evaluated on an ongoing basis by our management. Loans are typically classified as non-accrual if they miss three or more contractual payments. Loans may be returned to accrual status when all principal and interest amounts contractually due (including arrearages) are reasonably assured of repayment within an acceptable period of time, in accordance with the contractual payment terms of interest and principal. While a loan is classified as non-accrual and future collectibility of the recorded loan balance is doubtful, collections of both interest and principal are generally applied as a reduction to principal outstanding. When the future collectibility of the recorded loan balance is expected, interest may be recognized on a cash basis. There have been no loans classified as non-accrual during the past five years.

The allowance for loan losses is established through a provision for loan losses. A loan is charged off against the allowance for loan losses when we believe that collectibility of the principal is unlikely. The allowance is an amount that we believe is adequate to absorb estimable and probable losses on existing loans and contracts. We take into consideration changes in the nature and volume of our portfolio, overall portfolio quality, prior loss experience, review of specific problem loans and contracts, regulatory guidelines and current economic conditions that may affect the borrower's ability to pay. Additionally, certain regulatory agencies, as part of their examination process, periodically review our allowance for loan losses. These agencies may require adjustments to the allowance based on their judgment regarding information made available to them. See Note 1 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

The following table provides certain information with respect to Centennial's allowance for loan losses and charge-off and recovery activity for the periods indicated.

	Year Ended December 31,				
	2007	2006	2005	2004	2003
	(Dollars in millions)				
Balance at beginning of period	$ 4.9	$ 4.2	$ 3.4	$ 2.6	$ 2.1
Charge-offs:					
Installment loans to individuals	–	–	–	0.1	0.3
Total loans charged off	–	–	–	0.1	0.3
Recoveries:					
Installment loans to individuals	–	–	–	–	0.1
Total recoveries	–	–	–	–	0.1
Net charge-offs	–	–	–	0.1	0.2
Provision for loan losses	–	0.7	0.8	0.9	0.7
Balance at end of period	$ 4.9	$ 4.9	$ 4.2	$ 3.4	$ 2.6
Ratio of net charge-offs to average loans outstanding during the period	0.0%	0.0%	0.0%	0.0%	0.1%

The following table shows the allocation of Centennial's allowance for loan losses and the percent of loans in each category to total loans as of the dates indicated.

	Year Ended December 31,									
	2007		2006		2005		2004		2003	
	(Dollars in millions)									
	Amount	%[1]	Amount	%[1]	Amount	%[1]	Amount	%[1]	Amount	%[1]
Real estate – mortgage	$ 4.7	95.9%	$ 4.7	95.9%	$ 2.1	50.0%	$ 1.7	50.0%	$ 1.3	50.0%
Installment loans to individuals	–	–	–	–	–	–	0.1	2.9	0.2	7.7
Unallocated	0.2	4.1	0.2	4.1	2.1	50.0	1.6	47.1	1.1	42.3
Total	$ 4.9	100.0%	$ 4.9	100.0%	$ 4.2	100.0%	$ 3.4	100.0%	$ 2.6	100.0%

(1) Each percentage represents the percent of the loans in the applicable category to total loans.

Corporate and Other

The Corporate and Other group of businesses include LandAmerica Assessment Corporation, LandAmerica Valuation Corporation, LandAmerica Property Inspection Services, and Buyers Home Warranty Company.

LandAmerica Assessment Corporation – LandAmerica Assessment Corporation offers due diligence services to assist clients in determining the initial feasibility of commercial real estate transactions and ongoing due diligence requirements in the United States, Canada, Mexico, the Caribbean, Europe and Asia. Our field professionals provide coverage for a variety of due diligence services including property condition assessment services, environmental assessment services, construction monitoring services, and project consultancy. The 2007 acquisition of CNP, Limited, a building and project consultancy firm with offices throughout Europe, significantly increased LandAmerica Assessment Corporation's service offerings and capacity in the United Kingdom and continental Europe.

Property condition assessment services typically involve the assessment of the condition of a property and its systems including structural integrity, HVAC, mechanical and electrical, fire and safety, as well as zoning, building code and handicap compliance. LandAmerica Assessment Corporation also will assess seismic vulnerability, providing our clients with a statement of probable maximum loss based on field observation, geotechnical information, seismicity, liquefaction and slope gradient.

Environmental assessment services are used to determine the environmental liability risk of a given property. LandAmerica Assessment Corporation is well-versed in a wide variety of scope variations and has experience with most major lending institutions and investment banking criteria including ASTM E 1528, Fannie Mae, Freddie Mac, Thrift Bill 16, and S&P.

Construction monitoring services include construction cost analysis and construction progress monitoring on all types of projects such as commercial/retail, residential tract development and assisted living, hospitality, and industrial developments.

Project consultancy consists of providing professional advice on all aspects of the construction process, including, but not limited to, planning supervision, project management and monitoring, cost control and contract administration.

LandAmerica Valuation Corporation – LandAmerica Valuation Corporation offers commercial appraisals and valuations on all types of commercial property including office, retail, industrial, multi-family, special purpose, and hospitality. Custom report formats are offered based on lender specifications in addition to all standard commercial reports.

LandAmerica Property Inspection Services – LandAmerica Property Inspection Services provides primarily residential inspections for real estate transactions in Arizona, California, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, Missouri, New Jersey, North Carolina, Ohio, Texas, Washington, and Wisconsin.

Buyers Home Warranty Company – Buyers Home Warranty has the ability to provide and service home warranty contracts in every state.

Corporate and Other also includes the unallocated portion of the corporate expenses related to our corporate offices in Richmond, Virginia (including unallocated interest expense).

Business Strategy

Our long-term goal is to be the premier provider of integrated real estate transaction services while maximizing our profitability throughout the real estate market cycle.

Focusing on the Customer – We employ a customer-focused strategy to strengthen our relationships with our customers. In conjunction with this strategy, we have leadership positions and teams to support our primary customer groups: agency services, lender services, residential services and commercial services. With the objective of fostering customer loyalty, these leaders and teams are responsible for consistent service quality and operational excellence by providing common support platforms and structures for the various markets in which we operate. Our shared support resources are organized to provide direct support to our customer-focused operations. Production and Process Improvement is a shared resource providing title production services to our teams that support our primary customer groups. Technology Resources focuses on providing superior customer service and increasing our operational efficiency through electronic business solutions and technology support. Our other shared resources, such as Human Resources, Financial and Legal, provide direct support to our internal customers.

Expanding Title Insurance Distribution Capabilities and Broadening Real Estate Transaction Services Offerings – We seek to increase our share of the title insurance market by expanding and enhancing our distribution channels through the hiring and retention of experienced industry professionals with strong local relationships, the opening of new offices in markets with the potential for significant transaction volume, acquisitions of title insurance agencies or underwriters, and selectively engaging in title insurance agency joint ventures in order to strengthen our presence in particularly attractive markets. In the case of the acquisition of agencies or small to medium-size underwriters, we review the agency's or underwriter's profitability, location, growth potential in its existing market, claims experience and, in the case of an underwriter, the adequacy of its reserves. In 2007, we acquired a building and project consultancy, a commercial appraisal business, and a title insurance agency. Throughout our title customer base, there is demand for providers of multiple, diverse real estate transaction services. Our strategy is to continue to expand our array of real estate transaction products and services available to title customers as well as our distribution channels.

Maintaining Commercial Real Estate Market Strength – Participation in the commercial real estate market partially offsets some of the cyclicality of the residential real estate market, where transaction volumes are more susceptible to changes in interest rates. We maintain our presence in the commercial real estate market primarily due to the high quality service that we provide and our expertise in handling complex transactions, the financial strength ratings of our underwriting subsidiaries, and our strong capital position. In particular, the combined capital position of our three principal underwriting subsidiaries enables us to underwrite large commercial policies while purchasing less facultative reinsurance, thus increasing profitability.

Reducing Costs and Expenses – Losses resulting from claims under title insurance policies represent a relatively small part of our overall costs. Operating costs constitute the largest portion of expenses relating to providing title insurance and are relatively high compared to other types of insurers. During 2007, we continued work on our initiative referred to as Technology Fusion and we retired approximately 100 of our technology applications during the year. During 2008 and 2009, we expect to continue work on significantly reducing our technology applications. Also during 2007, we consolidated over 50 production centers, which are responsible for the delivery of title products to our direct company operated offices and title insurance agents. In some locations, we utilize a production unit model in which our three principal title operating subsidiaries share a single back office processing platform while continuing to market from separate storefronts under different operating names. We provide escrow support from several centralized locations, thereby increasing service levels and improving efficiency. We have also implemented out-sourcing and off-shoring initiatives to streamline operations in areas where it has been determined that these initiatives will be cost efficient, improve customer service, and provide value to our shareholders.

Enhancing Cost Control Flexibility – We manage our personnel and other operational expenses to reflect changes in the level of activity in the real estate market. As a result, our employee base expands and contracts over time in response to changes in the real estate market and acquisitions we have made. However, personnel and administrative costs do not decrease as rapidly as transaction volumes decrease because there are some fixed costs which cannot be reduced proportionally as volume decreases. In an effort to manage personnel costs more efficiently throughout the real estate cycle, we use temporary or part time employees where appropriate to staff operations so we can respond more rapidly to changes in real estate activity.

Regulation

The title insurance business is regulated by state regulatory authorities that possess broad powers relating to the granting and revoking of licenses, and the type and amount of investments which our title insurance subsidiaries may make. These state authorities also regulate insurance rates, forms of policies, claims handling procedures and the form and content of required annual statements, and have the power to audit and examine financial and other records and the market conduct of these companies. These and other governmental authorities have the power to enforce state and federal laws to which our title insurance subsidiaries are subject, including but not limited to, state anti-rebate and anti-kickback statutes and RESPA. Some states require title insurers to own or lease title plants. A substantial portion of the assets of our title insurer subsidiaries consists of their portfolios of investment securities. Each of these subsidiaries is required by the laws of its state of domicile to maintain assets of a statutorily defined quality and amount. See “Investment Policies” below. Under state laws, certain levels of capital and surplus must be maintained and certain amounts of portfolio securities must be segregated or deposited with appropriate state officials. Various state statutes require title insurers to defer a portion of all premiums in a reserve for the protection of policyholders and to segregate investments in a corresponding amount. State regulatory policies also require prior notice to regulators in the event of a change of control, or a dividend or distribution, and restrict the amount of dividends and distributions that title insurance companies may pay to their shareholders without prior regulatory approval. Generally, all of the title insurers that meet certain financial thresholds are required to engage independent auditors to audit their statutory basis financial statements which, along with the auditor’s report, must be filed with the state insurance regulators.

The National Association of Insurance Commissioners (“NAIC”) has adopted model legislation that, if enacted by individual states, would regulate title insurers and agents nationally and change certain statutory reporting requirements. The model legislation would also require title insurers to audit agents periodically and require licensed agents to maintain professional liability insurance. A number of states have adopted legislation similar to some of the provisions contained in the NAIC model legislation. We cannot predict whether any other legislation further regulating title insurers and agents will be adopted in any other states or federally. Also, the NAIC has adopted an instruction requiring an annual certification of reserve adequacy by a qualified actuary. Most of the states where our title subsidiaries operate have adopted the NAIC instruction and, in these states, each of our title subsidiaries must file an actuarial opinion with respect to the adequacy of its reserves unless it qualifies for an exemption.

Elements of our non-title insurance business are also regulated at both the state and federal levels. Our California-chartered industrial bank, Centennial, is regulated by the Federal Reserve Bank, the Federal Deposit Insurance Corporation and the California Department of Financial Institutions. Our home warranty business is subject to regulation in some states by insurance authorities and other regulatory entities. Our credit operations are subject to regulation under federal and some state laws. Our loan subservicing operation, LoanCare is regulated by state authorities that grant and revoke licenses, and LoanCare must comply with applicable state and federal laws in the operation of its business. Our appraisal operations are subject to licensing and compliance requirements at the state level. Our home inspection operations are also subject to state licensing and compliance requirements in certain states. Our subsidiary that handles exchanges under Section 1031 of the Internal Revenue Code is subject to regulatory requirements in certain states and must comply with applicable federal laws in the operation of its business.

Investment Policies

We earn investment income from our investment portfolio which primarily resides in our title insurance subsidiaries and consists of fixed-maturity and equity securities. Our policy is to invest predominantly in high-quality fixed-maturity securities with a focus on preservation of capital and a secondary focus on maximizing our risk adjusted investment returns. Our investment portfolio is managed by professional investment advisors under guidelines that govern the types of permissible investments, investment quality, maturity, duration, and concentration of issuer to comply with the various state regulatory requirements while maximizing net after-tax yield. These guidelines and our investment strategies are established and periodically reexamined by the Investment Funds Committee of our Board of Directors. In addition, under our investment guidelines, up to 10 percent of the investment portfolio may be invested in equity securities and up to 5 percent of the investment portfolio may be invested in non-fixed-maturity investments which may include real estate, tax credits and private placement securities. Our Investment Funds Committee also reviews the performance of the investment advisors on a quarterly basis. See Note 3 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

The following is a summary of fixed-maturity securities by type at December 31, 2007:

	Fair Value	% of Total
	(Dollars in millions)	
U.S. treasuries	$ 27.3	2.4%
U.S. government corporations and agencies	18.6	1.6
State and political subdivisions	489.6	42.8
Foreign governments	5.5	0.5
Public utilities	22.3	2.0
Corporate:		
Industrials and other	94.1	8.2
Financial	139.4	12.2
Asset backed	30.2	2.6
U.S. agencies:		
Mortgage-backed securities	175.2	15.3
Collateralized mortgage obligation	21.7	1.9
Non-U.S. agencies:		
Collateralized mortgage obligation	114.9	10.1
Preferred stock	4.8	0.4
Total fixed-maturities	$ 1,143.6	100.0%

Substantially all of our fixed-maturity portfolio is investment grade. All of our mortgage-backed securities ("MBS") and collateralized mortgage obligations had a Moody's rating of Aa1 or better at December 31, 2007. In addition, we do not own any sub prime, interest only, principal only or residual tranches of MBS.

MBS, including collateralized mortgage obligations, are subject to prepayment risks that vary with, among other things, interest rates. During periods of declining interest rates, MBS generally prepay faster as the underlying mortgages are prepaid and refinanced by the borrowers in order to take advantage of the lower rates. As a result, during periods of falling interest rates, proceeds from such prepayments generally must be reinvested at lower prevailing yields. In addition, MBS that have an amortized cost that is greater than par (i.e., purchased at a premium) may incur a reduction in yield or a loss as a result of such prepayments. Conversely, during periods of rising interest rates, the rate of prepayments generally slows. MBS that have an amortized value that is less than par (i.e., purchased at a discount) may incur a decrease in yield as a result of a slower rate of prepayments. Changes in estimated cash flows due to changes in prepayment assumptions from the original purchase assumptions are revised based on current interest rates and the economic environment.

Additionally, we earn investment income from our portfolio of loans receivable at Centennial. These loans consist primarily of moderately sized commercial real estate loans to individuals, corporations, LLCs and partnerships. Loan applications go through a rigorous underwriting process before being submitted for approval to the Loan Committee of Centennial's Board of Directors. Although the vast majority of loans are secured by real estate located in California, the portfolio is well diversified by borrower, property location and property type. Beginning in 2006, Centennial started to underwrite loans in Nevada and Arizona. Loans typically meet maximum loan to value requirements of 75 percent. Operating income and rental income generated by the real estate of the borrower generally results in a debt coverage ratio in excess of 1.15x. Monthly loan portfolio performance reports are reviewed by Centennial's Board of Directors.

Employees

At December 31, 2007, we had approximately 11,050 full-time equivalents. Our relationship with our employees is good. No employees are covered by any collective bargaining agreements, and we are not aware of any union organizing activity relating to our employees.

ITEM 1A. RISK FACTORS

Our business is subject to various risks, including the risks described below. Our business, operating results and financial condition could be materially and adversely affected by any of these risks. Please note that additional risks not presently known to us or that we currently deem immaterial may also impair our business and operations.

Our results of operations and financial condition are susceptible to changes in mortgage interest rates, the availability of mortgage financing, and general economic conditions.

The demand for our title insurance and other real estate transaction products and services is dependent upon, among other things, the volume of commercial and residential real estate transactions, including mortgage refinancing transactions. The volume of these transactions has historically been influenced by factors such as interest rates, the availability of mortgage financing, and the state of the overall economy. When interest rates are increasing, the availability of mortgage financing is limited, or during an economic downturn or recession, real estate activity typically declines and we tend to experience lower revenue and profitability. In addition, foreign hostilities could adversely impact the demand for real estate transactions. The cyclical nature of our business has caused fluctuations in revenue and profitability in the past and is expected to do so in the future. In addition, changes in interest rates may have an adverse impact on our return on our investments, the market value of our investment portfolio and interest paid on our bank debt.

Changes to the participants in the secondary mortgage market could affect the demand for title insurance products.

The demand for our title insurance products and services depends upon, among other things, the volume of commercial and residential real estate transactions, including mortgage refinancing transactions. In turn, the volume of commercial and residential real estate transactions depends in part upon the requirements of participants in the secondary mortgage market, who purchase large volumes of real estate loans secured by commercial and residential real property (including but not limited to Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association) to obtain title insurance policies on such real property. Therefore, changes to the composition of the participants in the secondary mortgage market or their requirements that title insurance policies be obtained could adversely affect the demand for our title insurance products.

We are subject to government regulation.

We are subject to federal and state laws and regulations that are administered and enforced by insurance regulators and other governmental authorities. These laws and regulations are generally intended for the protection of policyholders and consumers rather than security holders. The nature and extent of these laws and regulations vary from jurisdiction to jurisdiction, and their applicability varies from subsidiary to subsidiary, but typically involve:

- prior approval of the acquisition and control of an insurance company, any company controlling an insurance company or Centennial;
- regulation of certain transactions, including dividend payments, entered into by an insurance company with any of its affiliates;
- approval of premium rates for insurance;
- standards of solvency and minimum amounts of capital surplus that must be maintained;
- limitations on types and amounts of investments;
- restrictions on the size of risks that may be insured by a single company;
- licensing of insurers, agents, inspectors, appraisers, home warranty, loan subservicing and other companies and/or employees and independent contractors;
- deposits of securities for the benefit of policyholders;
- approval of policy forms;
- methods of accounting;
- establishing reserves for losses and loss adjustment expenses;
- regulation of underwriting, marketing and business practices;
- regulation of reinsurance;
- regulation of escrow accounts;
- regulation regarding the use of personal information; and
- filing of annual and other reports with respect to financial condition and other matters.

Centennial is subject to regulation and supervision by the Federal Reserve Bank, the Federal Deposit Insurance Corporation and the California Department of Financial Institutions. Banking regulations are intended primarily to protect depositors and the federal deposit insurance funds and not shareholders. Regulatory requirements affect, among other things, our banking subsidiary's practices, capital level, investment practices, dividend policies and growth.

These laws and regulations are subject to change and may impede, impose burdensome conditions on, or cause rate adjustments or other actions that could materially and adversely affect our business, operating results and financial condition. In addition, state regulatory examiners perform periodic examinations of insurance companies. We can make no assurances regarding the potential impact of state or federal laws, regulations, policies or interpretations that may change the nature or scope of title insurance or other regulation.

Heightened regulatory scrutiny of us and the title insurance industry, including pricing of title insurance products and services, could materially and adversely affect our business, operating results, and financial condition.

We have been subject to information requests and subpoenas from various regulatory authorities relating to investigations of our business practices and those of the title insurance industry. Various states are studying the title insurance product, market, pricing, business practices, and potential regulatory and legislative changes. Multiple states are examining pricing levels and/or title insurance regulations. If it is determined that prices are not justified, rate changes may be implemented, including potential reductions. These rate actions could result in decreased levels of revenue. If we fail to reduce our staffing and other costs to a level consistent with decreased revenues, there could be a material and adverse effect on our business, operating results, and financial condition. Any restrictions imposed or actions taken by states with respect to us or the title insurance industry in general may adversely affect our business, operating results, and financial condition.

We may not be able to fuel our growth through acquisitions.

Our growth has been facilitated by acquisitions, which may or may not be available on acceptable terms in the future, and which, if consummated, may or may not be advantageous to us. While we expect to continue making acquisitions or entering into joint ventures as part of our long-term business strategy to expand the services we provide and their distribution, no assurances can be given that we will do so or that we will continue to acquire businesses at the levels previously experienced. We may not be able to identify suitable acquisition candidates or complete acquisitions on satisfactory terms. Our competitors also have adopted the strategy of expanding and diversifying through acquisitions, and as a result, we may be forced to pay more to acquire companies.

Our inability to integrate and manage successfully our acquired businesses could adversely affect our business, operating results, and financial condition.

Our acquisitions and joint ventures may or may not be outside of our traditional business operations. The process of integrating any acquired business involves a number of special risks, including our inexperience in managing businesses that provide products and services beyond our traditional business; new regulatory requirements; diversion of management's attention; failure to retain key acquired personnel (resulting from changes in compensation, reporting relationships, future prospects, or the direction of the business); increased costs to improve managerial, operational, financial and administrative systems; legal liabilities; amortization of acquired intangible assets; and failure in the implementation of controls, procedures and policies appropriate for a larger public company that the acquired business lacked prior to acquisition. In addition, there can be no assurance that acquired businesses will achieve anticipated levels of revenue, earnings or performance. Our failure to manage acquisitions successfully could materially and adversely affect our business, operating results, and financial condition.

Regulatory non-compliance, fraud or defalcations by our title insurance agents or employees could adversely affect our business, operating results, and financial condition.

Our title insurance agents are entities that often represent more than one title insurance underwriter and operate their businesses independently, but subject to various underwriting guidelines from their title underwriter(s). In addition to potential liability on policies written by our agents, governmental authorities or litigants may seek to assign liability to us for the actions of our agents in circumstances where they were acting outside the scope of their authority as agents. In certain circumstances, we may incur losses for the fraud, defalcation, regulatory noncompliance and other misconduct of our agents and employees. To the extent that any loss is substantial, there could be a material adverse effect on our business, operating results, and financial condition.

Competition in our industry affects our revenue.

The business of providing real estate transaction products and services is very competitive. Competition for residential title insurance business is based primarily on quality of service and price within regulatory parameters. With respect to national and regional mortgage lenders, service quality includes a large distribution network and the ability to deliver a broad array of real estate services quickly, efficiently and through a single point of contact. Competition for commercial title business is based primarily on price within regulatory parameters, service, expertise in complex transactions and the size and financial strength of the insurer. Title insurance underwriters also compete for agents on the basis of service and commission levels. Although we are one of the largest providers of real estate transaction products and services in the United States, four other companies—Fidelity National Financial, Inc., The First American Corporation, Old Republic International Corporation and Stewart Information Services, Inc.— have the size, capital base and agency networks to compete effectively with our products and services, both in the United States and abroad. In addition, some of our competitors may have now or in the future greater capital and other resources than us. Competition among the major providers of real estate transaction products and services and any new entrants could materially and adversely affect our business, operating results, and financial condition.

Significant industry changes and new product and service introductions require timely and cost-effective responses.

As a national provider of real estate transaction products and services, we participate in an industry that is subject to significant change, frequent new product and service introductions, evolving industry standards and increased customer leverage. In addition, alternatives to traditional title insurance, such as lien protection products, have emerged in recent years. We believe that our future success will depend on our ability to anticipate changes in technology and customer demands and to offer products and services with state of the art technological attributes that meet evolving standards on a timely and cost-effective basis. The development and implementation of new products, services and technology may require significant capital expenditures and other resources and involve new risks we have not previously managed. There is a risk that customers may not accept our new products, services or technology and we may not successfully identify, develop and introduce new product and service opportunities or simplify and update our technology to be more operationally efficient and/or better able to deliver superior customer service in a timely and cost-effective manner. In addition, products and services that our competitors and other real estate industry participants develop or introduce may render certain of our products and services obsolete or noncompetitive. We license software and technology from third parties, including some competitors, and incorporate it into or sell it in conjunction with our own software products, some of which is critical to the operation of our business. If any of the third party software vendors were to change product offerings, increase prices or terminate our licenses, we might need to seek alternative vendors and incur additional internal or external development costs to ensure continued performance of our products. Such alternatives may not be available on attractive terms, or may not be as widely accepted or as effective as the software provided by our existing vendors. The costs associated with licensing or maintenance of these third party software products or other technology or simplification and updating of our technology could cause our gross margin levels to decrease significantly. Further, our third party vendors may not have the capacity to develop and support software and systems that are necessary to process large volumes of transactions. In addition, interruption in functionality of our products could adversely affect future sales of licenses and services. Advances in technology could also reduce the useful lives of our products, preventing us from recovering fully our investment in particular products and services. As a result, our inability to anticipate industry changes and to respond with competitive and profitable products and services could materially and adversely affect our business, operating results, and financial condition.

Our litigation risks include substantial claims by large classes of claimants.

From time to time we are involved in litigation arising in the ordinary course of our business. In addition, we currently are and have in the past been subject to claims and litigation not arising in the ordinary course of business from large classes of claimants seeking substantial damages. Material pending legal proceedings not arising in the ordinary course of business are disclosed in our filings with the Securities and Exchange Commission. See Part I, Item 3 “Legal Proceedings” set forth elsewhere in this report. An unfavorable outcome in any class action suit or other claim, inquiry, investigation or litigation against us could have a material adverse effect on our business, operating results, and financial condition.

Our claims experience may require us to increase our provision for title losses or to record additional reserves, either of which may adversely affect our earnings.

Estimating future loss payments is difficult, and our assumptions about future losses may prove inaccurate, particularly losses involving new products and services and business in foreign markets. Claims are often complex and involve uncertainties as to the dollar amount and timing of individual payments. Claims are often paid many years after a policy is issued. From time to time, we experience large losses from title policies that have been issued, which require us to increase our title loss reserves. These events are unpredictable and may adversely affect our earnings.

Key accounting and essential product delivery systems are concentrated in a few locations.

Our corporate headquarters, accounting and technology operations are concentrated in Richmond, Virginia. Our agency services center is located in Louisville, Kentucky, which is operated by Intellihub Solutions and Services, LLC, a joint venture in which we own a minority interest. These critical business operations are subject to interruption by natural disasters, fire, power shortages, and other events beyond our control. Although we are upgrading our disaster recovery functionality and have prepared a business continuity plan, a catastrophic event that results in the destruction or disruption of any of our critical business operations or systems could severely affect our ability to conduct normal business operations and, as a result, there could be a material and adverse effect on our business, operating results, and financial condition.

Provisions of our articles of incorporation and bylaws and applicable state corporation, insurance, and banking laws could limit another party's ability to acquire us and could deprive shareholders of the opportunity to obtain a takeover premium for shares of common stock owned by them.

Provisions in our articles of incorporation and bylaws may make it difficult for another company to acquire us and for shareholders to receive any related takeover premium for our common stock. These provisions include, among other things:

- a staggered board of directors in which the board of directors is divided into three classes, with one class elected each year to serve a three year term;
- the absence of cumulative voting in the election of directors;
- the removal of directors only for cause and only upon the affirmative vote of the holders of at least 80 percent of the outstanding shares entitled to vote; and
- a vote of at least 80 percent of the outstanding shares entitled to vote is required for the approval of a merger or consolidation with, or a sale, lease or exchange of substantially all our assets to, any shareholder that directly or indirectly owns or controls 10 percent or more of the voting power of us.

The laws of Virginia also contain provisions designed to deter certain takeovers of Virginia corporations. The "affiliated transaction" provisions of Virginia law prohibit, subject to certain exceptions, a Virginia corporation from engaging in specified transactions with the beneficial owner of more than 10 percent of any class of the corporation's voting securities for a period of three years following the date upon which the shareholder acquires the requisite number of securities. The types of transactions covered by the law include certain mergers, share exchanges, material dispositions of corporate assets not in the ordinary course of business, dissolutions, reclassifications and recapitalizations.

Other provisions of Virginia corporation law generally deny voting rights to shares of a public corporation acquired in a "control share acquisition," which is an acquisition by any person of beneficial ownership of shares that meet or exceed a specified threshold percentage (20 percent, 33.33 percent or 50 percent) of the total votes entitled to be cast for the election of directors, unless approved by a majority vote of all outstanding shares other than those held by the acquiring person. Although our articles of incorporation currently makes these provisions inapplicable to acquisitions of shares of our common stock, these provisions could become applicable in the future if an amendment to our articles is approved by our Board of Directors and shareholders.

Many state insurance regulatory laws intended primarily for the protection of policyholders contain provisions that require advance approval by state agencies of any change in control of an insurance company or insurance holding company that is domiciled (or, in some cases, doing business) in that state. Under such current laws, any future transaction that would constitute a change in control would generally require approval by the state insurance departments of California, Nebraska, New Jersey, and Texas. Such a requirement could have the effect of delaying or preventing certain transactions affecting the control or the ownership of our common stock, including transactions that could be advantageous to our shareholders.

In addition, state banking laws applicable to our business also contain provisions that require advance approval by state agencies that regulate banks, loan subservicers and other financial institutions, of any change of control of any such institution licensed in that state. Similar to the insurance laws, such a requirement could have the effect of delaying or preventing certain transactions affecting the control or the ownership of our common stock, including transactions that could be advantageous to our shareholders.

Our future success depends on our ability to continue to attract and retain qualified employees.

Our success depends upon our ability to continue to attract and retain highly skilled technical, managerial, sales and marketing personnel, especially sales and marketing personnel who control customer relationships critical to our business. If our efforts in these areas are not successful, our costs may increase, development and sales efforts may be hindered and our customer service may suffer. Although we invest significant resources in recruiting and retaining employees, there is intense competition for personnel in the title insurance industry. From time to time, we experience difficulties in locating enough highly qualified candidates in desired geographic locations, or with required industry-specific expertise.

Our conduct of business in foreign markets creates financial and operational risks and uncertainties that may materially and adversely affect our business, operating results, and financial condition.

We currently provide title insurance and other real estate transaction products and services in foreign countries. As of December 31, 2007, we conducted business in a number of foreign markets, including Mexico, Canada, the Caribbean, Latin America, Europe and Asia. In certain countries where we do business, our products and services have a limited history and are not well-established. As a result, market acceptance of our products and services is uncertain, and we may not be able to successfully implement our business plan. Government regulations may determine how we operate in various countries, which could limit our growth and strategy plans. Our foreign business is subject to potential changes in political and economic conditions in the local markets in which they operate, which could adversely affect their performance. We are also subject to foreign taxes in the countries in which we operate, and changes in tax laws or the interpretation of tax laws may reduce our earnings or may increase our tax cost.

The trading volatility and price of our common stock may be affected by various external factors.

The volatility and price of our common stock are subject to various factors over which we have no control, such as general market conditions and governmental actions or reports about economic activity that may have a market-moving impact, regardless of whether the action or activity directly relates to our business. In addition, shareholder activism that seeks to influence corporate policies or affect our business strategies may lead to speculative trading activity in our common stock. Any substantial trading activity, whether due to speculation or otherwise, has the potential to affect the market price and volatility of our stock. We cannot predict the timing or impact of these factors on the volatility or price of our common stock.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

We lease a three building complex in Glen Allen, Virginia that is currently used for our corporate offices. This property consists of approximately 298,000 square feet of office space and parking facilities. Our subsidiaries conduct their business operations primarily in leased office space in forty-one states, Washington DC, Puerto Rico, Canada, Mexico, Germany, Switzerland and the United Kingdom. In addition, we own certain properties that, in the aggregate, are not material to our business taken as a whole.

Our title plants constitute a principal asset. Title plants consist of copies of public records, maps, documents, previous reports, and policies indexed to specific properties in an area. The title plants are generally located at the office which serves a particular locality or in “service centers” serving multiple localities in major metropolitan areas. They enable title personnel to examine title matters relating to a specific parcel of real property as reflected in the title plant, and eliminate or reduce the need for a separate search of the public records. They contain material dating back a number of years and are updated (with the exception of certain title plants) through the addition of copies of documents filed of record which affect real property. We maintain title plants covering many of the areas in which we operate, although certain offices utilize title plants jointly owned and maintained with other title insurers. We capitalize only the initial cost of title plants. The cost of maintaining such plants is charged to expense as incurred. The title plants and title examination procedures have been automated and computerized to a large extent in many areas.

On February 23, 1998, we entered into an Agreement Containing Consent Order (the “Consent Order”) with the Federal Trade Commission (the “FTC”) in connection with the acquisition of Commonwealth and Transnation. The Consent Order required, and we completed, the divestiture of certain title plants in 12 localities named in the Consent Order. Seven of such localities were in Florida, three were in Michigan, and one each was in Washington, D.C. and St. Louis, Missouri. Pursuant to the terms of the Consent Order, we may not acquire, without prior notice to the FTC, any interest in a title plant in any of the named localities for a period of 10 years following the date of the Consent Order.

We believe that our properties are maintained in good operating condition and are suitable and adequate for our purposes.

ITEM 3. LEGAL PROCEEDINGS

General

We are involved in certain litigation arising in the ordinary course of our businesses. Although the ultimate outcome of these matters cannot be ascertained at this time and the results of legal proceedings cannot be predicted with certainty, based on current knowledge we believe that the resolution of these matters will not have a material adverse effect on our financial position or results of operations.

Litigation Not in the Ordinary Course of Business

On January 25, 2002, Miles R. Henderson and Patricia A. Henderson (“Plaintiffs in the Henderson Suit”) filed a putative class action suit (the “Henderson Suit”) against Lawyers Title Insurance Corporation (“Lawyers Title”) in the Court of Common Pleas for Cuyahoga County, Ohio. Lawyers Title removed the case to the District Court for the Northern District of Ohio on March 6, 2002, and Plaintiffs in the Henderson Suit amended the complaint on March 8, 2002. On June 28, 2002, the District Court remanded the case to the Court of Common Pleas for Cuyahoga County, Ohio. A similar putative class action suit was filed against Commonwealth, by Rodney P. Simon and Tracy L. Simon (“Plaintiffs in the Simon Suit”) in the Court of Common Pleas for Cuyahoga County, Ohio on March 5, 2003. Plaintiffs’ complaints in both suits alleged that the defendants charged original rates for owners’ title insurance policies instead of a lower, reissue rate for which the customers were eligible. Both defendants moved to compel arbitration of the Plaintiffs’ claims, but lost the motion in both the trial court and on appeal to the Ohio Supreme Court. On remand to the trial court, Plaintiffs in the Henderson Suit are now seeking to have the case certified as a class action on behalf of all sellers and buyers of residential property in Ohio who paid the higher original rate from 1992 to the present. Plaintiffs in the Simon Suit are seeking to have the case certified as a class action on behalf of all sellers of residential property in Ohio, who paid the original rate from 1993 to the present, as requested in the original complaint. Plaintiffs’ complaints in both cases demand an unspecified amount of compensatory damages, declaratory and injunctive relief, punitive damages, and attorneys’ fees and costs. In December 2007, a voluntary mediation was held in the Henderson Suit and the parties agreed in principle on several key terms of a settlement that is within the reserve established during third quarter 2007. Should the parties be unable to finalize their agreement, a class certification hearing will be scheduled in March 2008. A hearing date on the Motion for Class Certification filed by the Plaintiffs’ in the Simon Suit has not been scheduled. Should further litigation prove necessary, defendants believe that they have meritorious defenses.

On September 20, 2004, Kenneth and Deete Higgins (“Plaintiffs in the Higgins Suit”) filed a putative class action suit (the “Higgins Suit”) against Commonwealth Land Title Insurance Company (“Commonwealth”) in the Circuit Court of Nassau County, Florida. On February 3, 2005, Plaintiffs in the Higgins Suit filed an Amended Class Action Complaint. Plaintiffs in the Higgins Suit allege that Commonwealth charged refinance borrowers higher basic rates for title insurance, rather than the lower reissue rates for which they are alleged to have qualified. The Amended Class Action Complaint also states that Commonwealth failed to disclose the potential availability of the lower rates to customers. Plaintiffs in the Higgins Suit seek to have the case certified as a class action on behalf of all Florida persons or entities who refinanced their mortgages or fee interests on the identical premises from July 1, 1999 to the present where there was no change in the fee ownership and who were charged a premium in excess of the reissue premium. Plaintiffs' complaints in the Higgins Suit demand an unspecified amount of compensatory damages, declaratory relief, attorneys' fees, costs and pre-judgment interest. Initial discovery has been exchanged between the parties. Commonwealth objected to answering interrogatories and producing documents in the possession of the company's agents. Plaintiffs in the Higgins Suit moved to compel this discovery, which motion was granted by the trial court. Commonwealth filed a Petition for Writ of Certiorari to the First District Court of Appeal to overturn the trial court's ruling. Briefing was completed and oral argument heard on July 24, 2007. No motion for class certification has been filed to date, and Commonwealth believes it has meritorious defenses.

On July 24, 2006, A. D. Alberton ("Plaintiff in the Alberton Suit") filed a putative class action suit (the "Alberton Suit") against Commonwealth which is currently pending in the United States District Court for the Eastern District of Pennsylvania. A similar putative class action suit was filed against Lawyers Title by Shariee L. De Cooman ("Plaintiff in the De Cooman Suit") in the Court of Common Pleas of Allegheny County, Pennsylvania on or about August 12, 2005. On November 1, 2005, Plaintiff in the De Cooman Suit filed an Amended Complaint. Plaintiff's complaint in the Alberton Suit alleges that Commonwealth charged rates for title insurance in excess of statutorily mandated rates and/or failed to disclose to consumers that they were entitled to reduced title insurance premiums. The Alberton Suit seeks to certify a class on behalf of all consumers who paid premiums for the purchase of title insurance on Pennsylvania properties from Commonwealth at any time from January 2000 until August 2005 and did not receive a discounted refinance or reissue rate for which they qualified. Plaintiff's complaint in the De Cooman Suit alleges that Lawyers Title charged the basic rate rather than a reissue or discounted rate to certain consumers. The DeCooman Suit seeks to certify a class on behalf of all owners of residential real estate in Pennsylvania who, at any time during the ten years prior to August 12, 2005 paid premiums for the purchase of title insurance from Lawyers Title, qualified for a reissue or other discounted rate, and did not receive such rate. A class certification hearing in the Alberton Suit was held on October 16, 2007. On January 31, 2008, the court issued an order granting in part the motion of Plaintiff in the Alberton Suit for class certification and certifying a class of all persons who from July 25, 2000 until August 1, 2005 paid premiums for the purchase of title insurance from Commonwealth in connection with a refinance of a mortgage or fee interest on Pennsylvania properties that were insured by a prior title insurance policy within ten years of the refinance transaction and were not charged the applicable reissue rate or refinance rate discount for title insurance on file with the Pennsylvania Insurance Commissioner. The parties are engaged in negotiations to settle the Alberton Suit. A class certification hearing in the De Cooman Suit was held on October 9, 2007. Plaintiff's complaint in the Alberton Suit demands an unspecified amount of compensatory damages, declaratory relief, triple damages, restitution, pre-judgment and post-judgment interest and expert fees, attorneys' fees and costs. Plaintiff's complaint in the De Cooman Suit demands an unspecified amount of compensatory damages, punitive damages, triple damages, prejudgment interest, and attorneys' fees, litigation expenses and costs. The defendants believe they have meritorious defenses.

With respect to the class action litigation disclosed above, the cases are subject to many uncertainties and complexities, including but not limited to: the underlying facts of each matter; variations between jurisdictions in which matters are being litigated; differences in applicable laws and judicial interpretations; the length of time before many of these matters might be resolved by settlement or through litigation; the timing and structure of their resolution relative to other similar cases brought against other companies; the fact that many of these matters are putative class actions in which a class is not clearly defined and has not been certified; and the current challenging legal environment faced by large corporations and insurance companies. For the reasons specified above, at this stage of the litigation, the amount or range of loss that could result from an unfavorable outcome cannot be reasonably estimated, except with respect to a reserve of $10 million established during third quarter 2007 in connection with the Henderson and Alberton cases.

We are defendants in a number of other purported class action cases pending in various states that include allegations that certain consumers were overcharged for title insurance and/or related services. The dollar amount of damages sought has generally not been specified in these cases except for jurisdictional limits. We intend to vigorously defend these actions.

Regulatory Proceedings

We have received certain information requests and subpoenas from various regulatory authorities relating to our business practices and those of the title insurance industry.

The Government Accountability Office released its final report on the title insurance industry on April 17, 2007 (the "Report"). The Report makes recommendations regarding federal and state oversight of the title insurance industry, including but not limited to, better consumer information, consideration of the need for modification to the Real Estate Settlement Procedures Act and increased cooperation among regulators.

Various states are studying the title insurance product, market, pricing, business practices, and potential regulatory and legislative changes. Multiple states, including California, Florida, New Mexico, New York, Texas, and Washington, are examining pricing levels and/or title insurance regulations. If it is determined that prices are not justified, rate changes may be implemented, including potential rate reductions.

Some of the pricing examinations, like those conducted in Texas and New Mexico, are conducted annually or biannually and usually result in adjustments to the prices we can charge. Subsequent to the 2004 Texas Title Insurance Biennial Hearings in August 2006, the Texas Commissioner of Insurance ordered a rate reduction of 3.2 percent effective February 1, 2007. The Texas Commissioner of Insurance issued a Consent Order on February 25, 2008 agreeing to settle the ratemaking phase of the 2006 Texas Title Insurance Biennial Hearing with no change to current rates.

Subsequent to a hearing of the New Mexico title rate case for 2006, which concluded on January 18, 2007, the New Mexico Superintendent of Insurance (the "Superintendent") issued an order on July 20, 2007 (the "Final Order") mandating a rate reduction of 6.36 percent and a change in the agent/underwriter split from 80/20 to 84.2/15.8 effective September 1, 2007. The New Mexico Land Title Association (the "NMLTA") filed a Motion for Reconsideration with the Superintendent on August 3, 2007. As a result of the Superintendent taking no action with respect to that Motion, on August 20, 2007, the NMLTA filed a Request for Review of Superintendent's Final Order, a stay and hearing by the New Mexico Public Regulatory Commission (the "Commission"). Various underwriters also filed an appeal to the Commission. On August 28, 2007, the Superintendent issued an Order denying the NMLTA's Motion for Reconsideration and granting the stay request until the Commission completes its review of the case with a requirement that the rate differential be escrowed during the stay and a notice of potential refund be provided to consumers. The Commission heard oral argument on the issues January 23, 2008. If the Commission upholds the Final Order, it can then be appealed to a New Mexico district court, with further appellate review available up to the New Mexico Supreme Court. The NMLTA and certain underwriters filed motions on October 19, 2007 seeking various remedies relating to the 2006 rate case, which resulted in certain Commissioners recusing themselves and if granted could result in the 2006 rate decision being vacated. The Superintendent has not yet issued an order on the completed 2007 rate case. The New Mexico Attorney General has asked the Superintendent to reduce title insurance rates in the 2007 rate case by more than 11 percent.

The California Department of Insurance ("CA DOI") submitted to the Office of Administrative Law ("OAL") proposed regulations governing the rating of title insurance and related services that could impose future rate reductions and filing of mandated statistical plans that impose substantially higher costs on title insurance operations in California. On February 21, 2007, OAL disapproved the regulatory action for failure to comply with certain standards and requirements and on February 28, 2007 issued a written decision detailing the reasons for disapproval. On June 28, 2007, CA DOI submitted revised regulations to OAL that were approved by OAL on July 25, 2007 and subsequently released by the California Secretary of State. The date for compliance with the requirements of the regulations varies by provision during 2009 and 2010. LandAmerica and other title companies doing business in the California market have been engaged in discussions with CA DOI regarding alternative approaches to the regulations but may pursue an appeal if such discussions are unsuccessful. The Commissioner of CA DOI has agreed to propose substantial changes to the data call (i.e. a request to submit information for the insurance experience) and statistical plan portion of the regulations to simplify them and minimize compliance costs, including delaying the effective dates by one year, through a new rulemaking file. The Commissioner has committed further to (i) eliminate the interim rate reduction if the industry helps CA DOI obtain an alternative method to enforce the data call and (ii) eliminate the maximum rate formula if the industry works with CA DOI to enact substantive alternate reforms. An External Title Insurance Working Group is working directly with CA DOI on these matters.

The Florida Office of Insurance Regulation and Department of Financial Services held a public hearing on August 23, 2007, in which numerous title insurance executives were questioned about Florida title insurance issues.

In addition, a number of state inquiries have focused on captive reinsurance. Captive reinsurance involves the provision of reinsurance by a reinsurance company that is owned by another entity, typically a lender, developer or other party that is a provider of real estate-related services. From the inception of our captive reinsurance programs in 1997 through 2004, reinsurance premiums paid by us to captive reinsurers totaled approximately $12.0 million. The revenues from these programs were not material to our results of operations. We voluntarily terminated our captive reinsurance arrangements as of February 2005, notwithstanding our belief that we had operated the programs in accordance with applicable law. We settled these investigations with six states, representing approximately 81.4 percent of our captive reinsurance business, without admitting any liability.

In June 2005, we established reserves of $19.0 million to cover anticipated exposure to regulatory matters nationwide, an amount which includes settlements with the California, Arizona, Nevada, Virginia, Colorado, and North Carolina departments of insurance. Based on these settlements and the status of inquiries, we released $8.5 million of this reserve back into earnings during fiscal years 2005-2007. The remaining reserve at December 31, 2007 was approximately $1.3 million.

We may receive additional subpoenas and/or requests for information in the future from state or federal government agencies. We will evaluate, and we intend to cooperate in connection with, all such subpoenas and requests.

Based on the information known to management at this time, it is not possible to predict the outcome of any of the currently pending governmental inquiries and investigations into the title insurance industry’s market, business practices, pricing levels, and other matters, or the market’s response thereto. However, any material change in our business practices, pricing levels, or regulatory environment may have an adverse effect on our business, operating results and financial condition.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter of 2007.

EXECUTIVE OFFICERS OF THE REGISTRANT

Set forth below are the persons who serve as our executive officers, their ages and positions as of February 28, 2008, and their business experience during the prior five years. There are no family relationships between any of such persons and any director, executive officer or person nominated or chosen to become a director or executive officer.

Name	Age	Office and Experience
Kenneth Astheimer	59	President – Agency Services since January 1, 2007 and Executive Vice President – Agency Services of LandAmerica from September 2002 through December 31, 2006. Mr. Astheimer also serves as Executive Vice President for each of Lawyers Title, Commonwealth and Transnation, positions held for more than five years.

Name	**Age**	**Office and Experience**
Theodore L. Chandler, Jr.	55	Chairman and Chief Executive Officer of LandAmerica since January 1, 2007; President and Chief Executive Officer of LandAmerica from January 1, 2005 through December 31, 2006 and Chairman and Chief Executive Officer of each of Lawyers Title, Commonwealth and Transnation since January 1, 2005. Mr. Chandler served as Chief Operating Officer of LandAmerica and each of Lawyers Title, Commonwealth and Transnation from July 24, 2002 to December 31, 2003.
Ross W. Dorneman	61	Executive Vice President and Chief Administrative Officer of LandAmerica since January 1, 2007 and Executive Vice President – Human Resources of LandAmerica from December 2002 through December 31, 2006.
G. William Evans	53	Executive Vice President and Chief Financial Officer of LandAmerica since September 15, 1999. Mr. Evans previously served as Chief Financial Officer of each of Lawyers Title, Commonwealth and Transnation from September 15, 1999 to December 1, 2005. Mr. Evans also serves as Senior Executive Vice President each of Lawyers Title, Commonwealth and Transnation, positions he has held since December 1, 2005.
Michelle H. Gluck	48	Executive Vice President and Chief Legal Officer of LandAmerica since May 15, 2007; Executive Vice President, Chief Legal Officer and Corporate Secretary from January 1, 2007 to May 15, 2007; Executive Vice President, General Counsel and Secretary of LandAmerica from January 1, 2004 through December 31, 2006 and Executive Vice President of each of Lawyers Title, Commonwealth and Transnation since January 1, 2004. Ms. Gluck served previously as Vice President, Associate General Counsel and Assistant Secretary of Kmart Corporation from June 2001 to September 2003.
Richard P. Gonzalez	66	Executive Vice President and Chief Technology Officer since January 1, 2007; Senior Vice President and Chief Technology Officer from May 1, 2005 to December 31, 2006. Mr. Gonzalez served previously as an independent management consultant from March 2003 until March 2005. Prior to that time, he served as a Senior Vice President of the NASDAQ Stock Market.
Melissa A. Hill	51	President – Residential Services since January 1, 2007 and Executive Vice President – Production and Process Improvement of LandAmerica from January 1, 2004 through December 31, 2006. Ms. Hill previously served as President of LandAmerica OneStop from August 2002 to December 2003.

Name	Age	Office and Experience
Jeffrey C. Selby	62	President – Commercial Services since January 1, 2007 and Executive Vice President – Commercial Services of LandAmerica from January 1, 2004 through December 31, 2006. Mr. Selby also serves as Executive Vice President of Commonwealth, Lawyers Title and Transnation, positions he has held for more than five years. Mr. Selby served as Executive Vice President - Director of National Commercial Services and Manager of National Agents and Affiliates of LandAmerica from February 17, 1999 to December 31, 2003.
Christine R. Vlahcevic	45	Senior Vice President - Corporate Controller of LandAmerica since January 1, 2005. Ms. Vlahcevic also serves as Chief Financial Officer for each of Lawyers Title, Commonwealth and Transnation, positions she has held since December 1, 2005. Ms. Vlahcevic previously served as Senior Vice President – Corporate Controller of each of Lawyers Title, Commonwealth and Transnation from January 1, 2005 to December 1, 2005. Ms. Vlahcevic served as Controller of Chesapeake Corporation from October 2000 to December 2004.
Albert V. Will	52	President – Lender Services since January 1, 2007 and Executive Vice President – Lender Services from March 15, 2005 through December 31, 2006. Mr. Will previously served as President of Lincoln Abstract, LLC, a position he held from April 2004 to March 2005. Prior to April 2004, Mr. Will served as Executive Vice President, Radian Guaranty and President, Radianexpress.com of Radian Group, Inc., positions he held for more than five years.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Price of Common Stock and Dividends

Our common stock trades on the New York Stock Exchange ("NYSE") under the symbol "LFG."

The following table sets forth the reported high and low sales prices per share of our common stock on the NYSE Composite Tape, based on published financial sources, and the cash dividends per share declared on the common stock for the calendar quarter indicated.

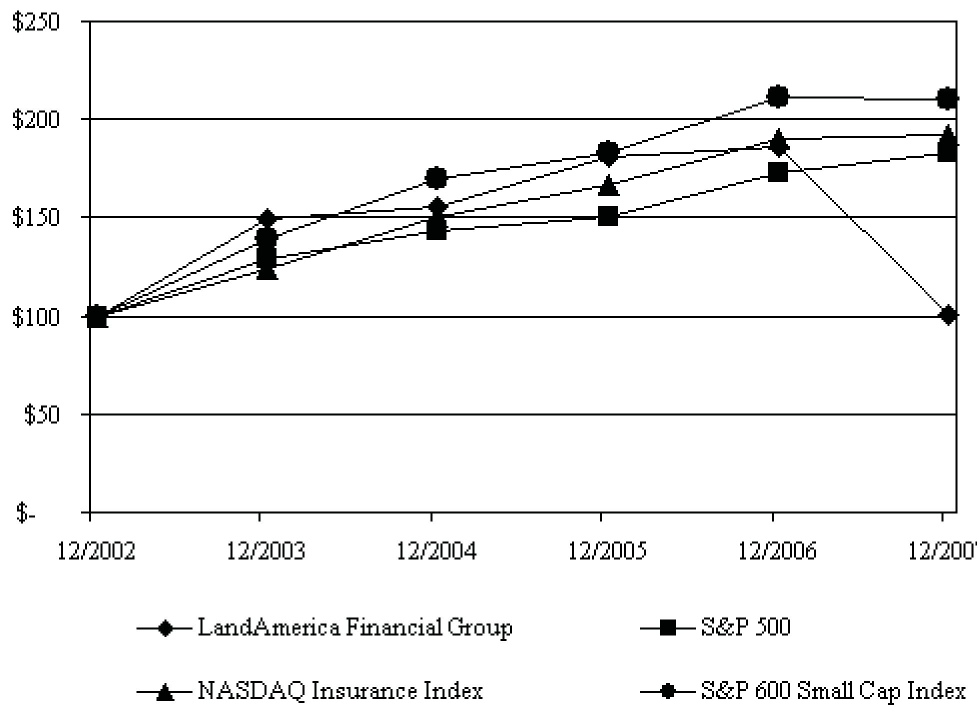
	Price Range		
	High	Low	Dividends
Year Ended December 31, 2006			
First quarter	$69.50	$60.14	$0.18
Second quarter	71.04	61.08	0.18
Third quarter	67.59	58.75	0.22
Fourth quarter	69.85	59.15	0.22
Year Ended December 31, 2007			
First quarter	$75.55	$60.58	$0.22
Second quarter	106.66	74.00	0.22
Third quarter	96.90	36.85	0.30
Fourth quarter	41.22	23.60	0.30

Our current dividend policy anticipates the payment of quarterly dividends in the future. The declaration and payment of dividends to holders of common stock will be at the discretion of the Board of Directors and will be dependent upon our future earnings, financial condition, capital requirements and other factors.

Because we are a holding company, our ability to pay dividends will depend largely on the earnings of, and cash flow available from, our subsidiaries. During 2006, our three principal title underwriting subsidiaries, Commonwealth, Lawyers Title and Transnation, redomesticated to Nebraska. These insurance subsidiaries are subject to state regulations that require approval of the Nebraska Department of Insurance prior to payment of any extraordinary dividends or distributions. Under Nebraska's laws and regulations, an extraordinary dividend or distribution is any amount which exceeds the greater of (a) ten percent of such insurer's policyholders surplus as of the preceding year end or (b) net income not including realized capital gains, for the preceding calendar year. In determining whether a dividend or distribution is extraordinary, an insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. For the 12-month period ending December 31, 2007, our three principal underwriters are permitted to distribute approximately $186.1 million to us without prior regulatory approval.

Stock Performance Graph

The following graph compares the cumulative total return to our shareholders for the last five fiscal years with the total return on the S&P 500 Index and the NASDAQ Insurance Index. The graph makes the same comparison to the S&P 600 Small Cap Index. The graph assumes the investment of $100 in our common stock on December 31, 2002, and the reinvestment of all dividends.



SOURCE: Bloomberg Financial Database

Index Data	12/2002	12/2003	12/2004	12/2005	12/2006	12/2007
LandAmerica Financial Group	$100	$149	$155	$181	$186	$101
S&P 500	$100	$129	$143	$150	$173	$183
NASDAQ Insurance Index	$100	$124	$150	$167	$190	$192
S&P 600 Small Cap Index	$100	$139	$170	$183	$211	$210

Number of Shareholders of Record

As of February 22, 2008, there were approximately 1,448 shareholders of record of our common stock, including the Depository Trust Corporation, which acts as a clearinghouse and nominee for multiple brokerage and custodial accounts.

Issuer Purchases of Equity Securities

The following table sets forth the details of purchases of common stock under our share purchase plans and our Executive Voluntary Deferral Plan and Outside Directors Deferral Plan that occurred in the fourth quarter of 2007:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs
October 1 through October 31, 2007	304,630	$37.46	302,900	1,851,329
November 1 through November 30, 2007	165,924	$28.06	164,130	1,685,405
December 1 through December 31, 2007	32,742	$28.06	29,850	1,652,663

(1) A total of 6,416 shares of our common stock were purchased in connection with the Executive Voluntary Deferral Plan and the Outside Directors Deferral Plan during fourth quarter 2007. These repurchases were made in open-market transactions on behalf of a trust maintained by us for the Executive Voluntary Deferral Plan and the Outside Directors Deferral Plan. For additional information on these plans, see Part II, Item 8, “Financial Statements and Supplementary Data.”

(2) In February 2007, the Board of Directors approved a share repurchase program expiring in October 2008 (the “2007 Program”) that authorizes us to repurchase 1.5 million shares of our common stock. Under the 2007 Program, we repurchased 106,500 shares during fourth quarter 2007 for $4.4 million, at an average cost of $40.92 per share. As of December 31, 2007, there were no authorized shares remaining under the 2007 Program.

(3) In August 2007, the Board of Directors approved a share repurchase program expiring in March 2009 (the “2007 II Program”) that authorizes us to repurchase 1.5 million shares of our common stock. Under the 2007 II Program, we repurchased 390,380 shares during fourth quarter 2007 for $12.4 million at an average cost of $31.82 per share. As of December 31, 2007, there were approximately 1,109,620 authorized shares remaining under the 2007 II Program.

ITEM 6. SELECTED FINANCIAL DATA

The information set forth in the following table should be read in conjunction with Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and Part II, Item 8, “Financial Statements and Supplementary Data.”

	2007	2006	2005	2004	2003
	(Dollars in millions, except per share amounts)				
For the year ended December 31:					
Total revenue	$ 3,705.8	$ 4,015.9	$ 3,959.6	$ 3,522.1	$ 3,406.0
Net (loss) income	(54.1) (1)	98.8 (2)	165.6 (3)	171.6 (4)	202.8 (5)
Net (loss) income per share	(3.31)	5.80	9.45	9.46	11.01
Net (loss) income per share assuming dilution	(3.31)	5.61	9.29	9.39	10.88
Dividends per share	1.04	0.80	0.66	0.50	0.34
At December 31:					
Notes payable	579.5	685.3	479.3	465.4	327.4
Total assets	3,853.7	4,174.8	3,695.0	3,264.9	2,710.1
Shareholders' equity	1,200.7	1,395.8	1,278.5	1,197.7	1,065.8

---

(1) In 2007, we incurred $25.3 million, or $15.4 million after taxes, for the write-off of intangible and long-lived assets and $6.4 million, or $4.2 million after taxes, for the early extinguishment of debt.

(2) In 2006, we incurred $14.7 million, or $9.5 million after taxes, for the write-off of intangible and long-lived assets.

(3) In 2005, we (1) recorded the recognition of deferred income of $33.8 million, or $20.0 million after taxes, (2) recorded the write-off of intangible and long-lived assets of $39.1 million, or $23.2 million after taxes, and (3) incurred legal and settlement costs of $22.6 million, or $15.4 million after taxes.

(4) In 2004, we (1) incurred litigation settlement costs of $9.2 million, or $5.9 million after taxes, (2) amended our pension plan effective December 31, 2004 to cease future accruals resulting in a curtailment gain of $4.8 million, or $3.1 million after taxes, (3) recorded exit and termination costs of $6.5 million, or $4.2 million after taxes, and (4) recorded title plant impairments of $5.0 million, or $3.2 million after taxes.

(5) In 2003, we recorded title plant impairments of $4.9 million, or $3.2 million after taxes.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of financial condition and results of operations is provided to supplement, and should be read in conjunction with, Part I, Item 1, "Business" and Part II, Item 8, "Financial Statements and Supplementary Data." For information on risks and uncertainties related to our business that may make past performance not indicative of future results, or cause actual results to differ materially from any forward-looking statements made by us, see Part I, "Forward-Looking and Cautionary Statements," and Part I, Item 1A, "Risk Factors."

Executive Overview

Our long-term goal is to be the premier provider of integrated real estate transaction services while maximizing our profitability throughout the real estate market cycle. To accomplish this objective, we have expanded our operations through internal growth and selective strategic acquisitions. Our business operations are organized under three primary business segments: Title Operations, Lender Services, and Financial Services. Other operating business segments not required to be reported separately are combined with unallocated corporate expenses and reported in a category called Corporate and Other. In 2007, we refined our definition and measurement of commercial revenue and have revised our 2005 and 2006 commercial revenue to be comparable to the 2007 presentation.

Given our relative size and market share, we believe that our business generally trends with the overall real estate industry. The Mortgage Bankers Association ("MBA") estimated that there were $2.3 trillion residential mortgage originations in 2007, $2.7 trillion in 2006, and $3.0 trillion in 2005. The MBA's statistics at February 15, 2008 estimate that approximately 50 percent of new mortgage originations in 2007, 2006, and 2005 were refinance transactions. Similar to the real estate industry, we experienced a record year in 2005 due to a low interest rate environment and strong commercial activity. During 2006, rising mortgage interest rates coupled with several years of strong appreciation in home prices, reduced consumer housing affordability and caused a decline in housing sales and the volume of refinance activity. The sharp contraction in the mortgage credit markets in 2007 further compounded the deterioration in the residential real estate market. In 2007, commercial revenue was 30.8 percent of direct title business. Commercial revenue tends to be less sensitive to interest rate fluctuations. Both 2006 and 2007 benefited from strong levels of commercial activity. The MBA forecast anticipates a decrease in overall mortgage originations of approximately 16 percent to $2.0 trillion in 2008, with refinancing transactions accounting for 53 percent of the market. We believe that our results for 2008 will mirror the MBA expectations. In addition, we believe that the commercial real estate cycle may have reached its peak in 2007 and may level off in 2008.

Operating revenues were $3,569.4 million, $3,885.2 million, and $3,853.6 million in 2007, 2006, and 2005, respectively. Pretax operating (loss) income was $(81.6) million, $154.0 million, and $261.3 million in 2007, 2006, and 2005, respectively. Our predominant business operation continues to be our Title Operations segment which accounted for 88.1 percent of our operating revenue in 2007 and 90.3 percent of our operating revenue in 2006 and 2005. In 2007, we experienced a decline in operating revenues from agency and direct title operations in the Title Operations segment and declines in certain lines of the mortgage originations and loan servicing businesses in the Lender Services segment, as well as declines in the home warranty and property inspections businesses when compared with 2006. These declines were offset in part by increased business volume as the result of the merger with Capital Title Group, Inc. ("Capital Title") and other acquisitions, growth in the title and non-title commercial operations, and growth in the default management services business.

The pretax operating loss in 2007 was primarily due to the effects of the sharp decline in the residential housing market. In addition, the following items affected the results for 2007: (1) we recorded an impairment charge in first quarter 2007 for a customer relationship intangible in our Lender Services segment, (2) we incurred a higher claims provision ratio in our Title Operations segment, (3) we recorded a legal accrual for two class action lawsuits, (4) we incurred incremental costs to close offices in response to current market conditions, and (5) we incurred a charge related to the prepayment of certain senior notes. Pretax operating losses were offset in part by continued strength in the commercial real estate market, proceeds from a lawsuit settlement, and growth in the default services line of our loan servicing business.

As conditions in the real estate market became increasingly difficult in 2007, we aggressively sought to reduce our operating costs while remaining focused on activities designed to improve our underlying fundamentals. We reviewed our operating performance and related staffing requirements during the year in each of the local markets we serve. Based on this review, we reduced full-time equivalent ("FTE") counts by approximately 3,200, or 22 percent, as of December 31, 2007 and we closed or consolidated approximately 285 offices. As a result of these actions, we incurred approximately $43.9 million of related pretax charges in 2007 compared to $6.6 million in 2006.

Additionally, we are transforming our cost structure through our Fusion initiatives. In order to transform LandAmerica into a unified operating company, we are actively engaged in a number of initiatives to maximize our operating efficiency and thereby improve our return on equity. We call these initiatives Fusion. Under Production Fusion, we have consolidated just over 50 production centers, or a decrease of 60 percent, from the beginning of the year. Technology Fusion is our initiative to reduce the complexity and cost of over 300 operating applications to a substantially reduced number when completely phased in during 2009. In 2007, we met our goal to decommission approximately 100 systems and will continue this process in 2008.

In first quarter 2007, we recorded a customer relationship intangible impairment charge of $20.8 million, or $12.5 million net of taxes, as a result of the probable loss of business from one of our tax and flood processing customers, Fremont General Corporation. For further details, see Note 13 in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data.”

Our provision for claims as a percentage of operating revenue has trended upward recently, primarily due to claims frequency and severity for recent policy years. We have noted a similar upward trend in provisions for claims occurring throughout the title insurance industry. Since we are subject to liability for claims for an extended period of time, slight increases in claims frequency and severity for more recent policy years can result in a significant increase in the amount of liability required for potential claims.

In August 2007, we settled a lawsuit with Mercury Companies, Inc. and received a payment in the amount of $12.5 million as part of the settlement. The payment is reflected as a reduction of legal fees and costs expended in the litigation in the “General, administrative and other” line (approximately $11.7 million) and in the “Salaries and employee benefits” line (approximately $0.3 million) of the Consolidated Statements of Operations. In September 2007, we established reserves of $10.0 million for anticipated exposure to class action litigation. For further details, see Note 14 in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data.”

On October 10, 2007, we received net proceeds of $100 million under our existing $200 million revolving credit agreement with SunTrust Bank. All of the proceeds received were used to prepay certain of our senior notes. We exercised our option to prepay the senior notes to enhance our financial flexibility. We recorded a charge of $6.4 million in fourth quarter 2007 primarily as a result of a “make-whole” payment applicable to the senior notes. For further details, see Note 10 in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data.”

Title Operations

Our Title Operations segment is affected by the level of real estate activity which itself is often driven by the cost and availability of mortgage funds and by economic developments. The demand for our title insurance products and services is dependent upon, among other things, the volume of residential and commercial real estate transactions, including mortgage refinancing transactions. The volume of these transactions has historically been influenced by factors such as interest rates and the state of the overall economy. For example, when interest rates are increasing or the economy is experiencing a downturn or recession, real estate activity typically declines and we experience lower revenue and profitability. The cyclical nature of our business has caused fluctuations in revenue and profitability in the past and is expected to do so in the future. Earnings pressure during a cyclical downturn can be further pressured by the fixed cost components of our operating structure. In addition to cyclicality in our title business, we also experience seasonality. Residential real estate activity is generally slower in the winter, when fewer families buy or sell homes, with increased volumes in the spring and summer. Residential refinancing activity is generally more uniform throughout the seasons, but is subject to interest rate variability. We typically report our lowest revenue in the first quarter, with revenue increasing into the second quarter and through the third quarter. The fourth quarter may be as strong as the third quarter, depending on the level of activity in the commercial real estate market and residential refinancing activity. Commercial real estate volumes are less sensitive to changes in interest rates, but fluctuate based on local supply and demand. Due to a downturn in the residential real estate environment that began in 2006 and continued into 2007 and the contraction in the mortgage credit markets in 2007, our results did not follow the typical seasonal patterns as evidenced by sharp declines in revenue in the third and fourth quarters. See Part I, Item 1, “Cyclicality and Seasonality.”

Revenue from our Title Operations segment includes title premiums, escrow fees, and fees for other ancillary services. Premiums and fees are determined both by competition and by state regulation in those states that regulate rates that we can charge for our services. In addition, revenue from our Title Operations segment is influenced by our sales and marketing efforts. Revenue from title operations owned by us is recognized at the time the real estate transaction closes. There can be a delay of up to several months between the point in time that a title order is opened and the real estate transaction closes. Consequently, expenses may be incurred and recognized related to a direct title order in advance of revenue being recognized. Operating revenue from independent agents is recognized when we receive notification from the agent that a policy has been issued. Agent notification typically occurs later than the closing of the real estate transaction. The delay in notification varies from year to year, from agent to agent, and between regions of the country. During 2007, we experienced an average delay between closing and reporting by agents of approximately 110 days. The delay in notification by agents defers revenue recognition and may also create a lag between changes in general real estate activity and the effect of such changes on the portion of our Title Operations segment revenue attributable to agents.

On September 8, 2006, we completed the merger with Capital Title, which consisted of a title insurance underwriter, several title and escrow agency operations, a property appraisal company, a settlement services provider, and other related companies. Capital Title serviced customers primarily in Arizona, California, and Nevada in addition to providing lender services on a national basis. Under the terms of the merger, we acquired 100 percent of Capital Title's common stock for approximately $252.6 million which included direct transaction costs of $3.6 million. Our merger with Capital Title strengthened our title operations presence in key western states and added scale to the services we provide to our mortgage lending customers. During 2007, we achieved annualized pretax cost savings of approximately $16 million in conjunction with our integration.

Our profit margins are affected by several factors including: the volume of real estate transactions, the type of title policies issued, the distribution channel used to issue our policies, the amount of liability insured, and the level of cancellations.

- Volume is an important determinant of profitability because we, like any other real estate services company, have a significant level of fixed costs arising from personnel, occupancy costs, and maintenance of title plants. While we utilize title orders opened as a forward-looking indicator of business volume, our results are affected during times of rapidly increasing or decreasing volumes since we cannot immediately match our staffing requirements to changes in business volumes.
- The type of title policies issued affects our profitability margin. Profit margins from refinancing activity are generally lower than those from buy/sell activity because, in many states, there are premium discounts on refinance transactions.
- The distribution channel used to issue our policies affects our profitability margin. Our direct operations generally provide higher margins because we retain the entire premium from each transaction instead of paying a commission to an independent agent. We regularly review the profitability of our agents, adjust commission levels or cancel certain agents where profitability objectives are not being met, and expand operations where acceptable levels of profitability are available.
- The amount of liability insured is also a determinant of profitability. Because premiums are based on the face amount of the policy, larger policies generate higher premiums although expenses of issuance do not necessarily increase in proportion to policy size.
- Cancellations affect profitability because costs incurred both in opening and in processing orders typically are not offset by premiums and fees.

We continually evaluate our cost structure in relation to anticipated changes in business levels discussed above. Our profit margin (which is defined as income before taxes as a percentage of total revenue) was 0.9 percent in 2007 compared to 6.3 percent in 2006 and 9.2 percent in 2005. The decline in profit margin in 2007 from 2006 was due primarily to the decline in the residential real estate market. See "Executive Overview" above for further discussion of factors that affected 2007 profit margin.

Generally, title insurance claims rates are lower than other types of insurance because title insurance policies insure against prior events affecting the quality of real estate titles rather than against unforeseen, and therefore less predictable, future events. Based on our review of the underlying claims data and trends therein, we have provided for title losses at 8.6 percent of operating revenue from the Title Operations segment for 2007 compared to 6.1 percent in 2006 and 5.2 percent in 2005. The increase in the loss percentage in 2007 compared to 2006 was due to upward development primarily in policy years 2004, 2005, and 2006 and a higher claims rate for the 2007 policy year. Since there is an extended time period for which we are liable, slight changes in frequency and severity of claims in more recent policy years can have a significant affect on the amount of liability required for Incurred But Not Reported ("IBNR") claims. See "Critical Accounting Estimates – Policy and Contract Claims" below for further discussion.

Lender Services

Our Lender Services segment provides services to regional and national lending institutions which complement those offered in our title insurance business. The management of the Lender Services segment is focused on three lines of business: mortgage origination, loan servicing, and loan subservicing. Our mortgage origination business consists primarily of centralized transaction management services, flood zone determinations, appraisal and valuation services, and consumer mortgage credit reporting. Our loan servicing business provides real estate tax processing services and default management services, and our loan subservicing business provides national loan subservicing through our subsidiary LoanCare Servicing Center, Inc. Over the past three years, we have expanded our Lender Services platform through strategic acquisitions. In 2005, we expanded the national scope of our businesses in these areas through the purchase of one flood certification business, four credit reporting businesses, and one default management business. Our merger with Capital Title in 2006 further expanded our Lender Services platform with the addition of a centralized management services business and an appraisal and valuation business. In 2006, we also acquired a business that developed a web-based application that manages the default mortgage process and we acquired a flood determination business. We expect to continue expanding organically and through small acquisitions or partnerships in this segment and to build on cross-selling opportunities.

Lender Services currently realizes approximately 17 percent of its reported revenue through service revenue associated with tracking and reporting of real estate tax payments related to mortgage loans for lending institutions. Our servicing agreements typically call for us to service the mortgage loan until cancellation or sale. The lenders pay for these services at the time they add a loan to their servicing portfolio. We defer a significant portion of the revenue received for these services to account for the life of loan servicing aspects of the contracts. As a result, revenue reported in the financial statements represents the amortization of both current and prior service fees and is not representative of new contract sales levels. Expenses on the other hand are charged to the income statement as incurred and are not deferred. Thus, an understanding of the levels of deferred revenue or new contract cash received in this area is critical to understanding the relative strength of the underlying business related to tax and flood services. The estimated life of loans is reviewed regularly to determine if there have been changes in contract lives and/or changes in the number or timing of prepayments and adjusted to reflect current trends. In certain instances, we are required to reimburse part of the fees if the lender sells a loan to another party. See further discussion in "Critical Accounting Estimates" below.

Financial Services

The business reported in this segment includes Centennial, whose primary business is the origination and bulk purchase of commercial real estate loans in the Southern California market and, to a lesser degree, in Arizona and Nevada; Centennial's business is dependent on the viability of the commercial real estate market in these markets. Deposits are solicited through the internet for both certificates of deposit and passbook savings accounts. As an industrial bank, Centennial does not accept demand deposits, such as checking accounts, that provide for payment to third parties. Centennial does not offer banking services such as credit cards or automated teller machines. We utilize Centennial to hold a portion of our escrow deposits. At December 31, 2007, the escrow balance was approximately $87.7 million. We expect to continue to expand the depository service capabilities of Centennial to facilitate escrow transactions.

We facilitate tax-deferred property exchanges for customers pursuant to Section 1031 of the Internal Revenue Code. In second quarter 2007, the governor of the State of Nevada approved a consumer protection law that affects tax-deferred property exchanges in that state. Under the new state law, funds related to tax-deferred property exchanges are required to be deposited in federally insured or similar financial institutions. In addition, the Internal Revenue Service and U.S. Treasury Department are proposing similar regulations. In response to this new state law and proposed federal regulation, during 2007 we began moving the location and administration of affected funds to Centennial. At December 31, 2007, Centennial held $131.9 million of tax-deferred property exchange deposits previously held in third party accounts, which were not considered to be our assets. We are not certain whether or when similar laws will be approved in other states or on a national level and what effect such laws may have on the location and administration of other funds related to tax-deferred real property exchanges. For further details, see Note 1 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Corporate and Other

This category includes businesses that are not significant enough in size to be reported as separate segments as well as the unallocated portion of the corporate expenses related to our corporate offices in Glen Allen, Virginia and unallocated interest expense. The businesses reported in this category provide residential property inspections, home warranties, commercial property valuations and assessments, and due diligence services.

During the past three years, we have expanded the scope and scale of businesses included in Corporate and Other through strategic acquisitions. We acquired residential home inspection businesses during 2005 and 2006. In 2007, we acquired a commercial appraisal business and a building and project consultancy.

Commercial revenue was 62.7 percent of operating revenue in Corporate and Other and, as discussed above, tends to be less sensitive to interest rate fluctuations. The full year 2007 continued to benefit from strong levels of commercial activity. Consequently, operating revenue in 2007 increased 18.4 percent over 2006. We believe that the commercial real estate cycle may have reached its peak in 2007 and may level off in 2008.

Critical Accounting Estimates

This discussion and analysis of our financial condition and results of operations is based upon our accompanying Consolidated Financial Statements which have been prepared in accordance with accounting principles generally accepted in the United States. We are required to make estimates and judgments about future events that can affect the reported amounts of certain assets, liabilities, and disclosures with respect to contingent liabilities and commitments at the date of our financial statements and the reported amounts of revenues and expenses during the period. We consider the following accounting estimates to be critical in preparing and understanding such statements. Actual results could differ from those estimates. Significant accounting policies are disclosed in Note 1 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

A quantitative sensitivity analysis is provided where that information is reasonably available, can be reliably estimated, and provides material information to financial statement users. The amounts used to assess sensitivity (e.g., 1 percent, 6 months, etc.) are included to allow users of our financial statements to understand a general direction cause and effect of changes in the estimates and do not represent our predictions of variability.

Policy and Contract Claims

Claims payment experience has historically extended for more than 20 years after the issuance of a policy. Due to the length of time over which claim payments are made and changes in underlying economic conditions, these estimates are subject to variability. We review our claims experience quarterly to evaluate the adequacy of our claims reserve. We consider factors such as historical timing of reported claims and claims payments over the period in which policies are effective against actual experience by year of policy issue to determine the amount of claims liability required for each year for which policies are outstanding. We also consider the effect of current trends in marketplace activity, including refinance activity, which may shorten the time period a policy is outstanding, bankruptcies and individual large claims attributable to any particular period in determining the expected liability associated with each year. These projections are compared to recorded reserves to evaluate the adequacy of such recorded reserves and any necessary adjustments are included in current expenses. Our recorded liability for claim losses at December 31, 2007 includes reserves for known claims of $165.8 million and reserves for losses that have been incurred but have not yet been reported of $710.7 million. Reserves for known claims include the estimated amount of the claim and the costs required to resolve the claim. A provision for estimated claims that are incurred but not yet reported is established at the time premium revenue is recognized based on reported claims, historical loss experience, and other factors, including industry trends.

Provisions for title losses as a percentage of operating revenues from the Title Operations segment were 8.6 percent for 2007, 6.1 percent for 2006, and 5.2 percent for 2005. A change of 1 percent in this percentage would have changed the provision for title losses and pretax earnings by approximately $31.4 million for the year ended December 31, 2007. We review our loss provision rates quarterly and adjust as experience develops or new information becomes known.

Valuation of Investments

We review our available-for-sale investment portfolio quarterly for factors that may indicate that a decline in fair value of an investment is other-than-temporary. Some factors considered in evaluating whether or not the decline in fair value is other-than-temporary include: (1) the significance of the decline; (2) whether the investments were rated below investment grade; (3) how long the securities have been in the unrealized loss position; and (4) our ability and intent to retain the investment for a significant period of time for it to recover. Investments are selected for analysis whenever an unrealized loss is greater than a certain threshold that we determine based on our judgment. Fixed-maturity investments that have unrealized losses caused by interest rate movements are not at risk as we have the ability and intent to hold them to maturity. Unrealized losses on investments in equity securities and fixed-maturity instruments that are susceptible to credit related declines are evaluated based on the aforementioned factors. We believe that our monitoring and analysis has allowed for the proper recognition of other-than-temporary impairments over the past three year period. Any change in estimate in this area will have an effect on the results of operations of the period in which a charge is taken. See also "Investment Policies" under Part I.

Purchase Accounting and Goodwill and Long-Lived Assets Valuations

We completed 3 acquisitions with a total purchase price of $26.0 million in 2007, 11 acquisitions with a total purchase price of $266.5 million in 2006, and 9 acquisitions with a total purchase price of $26.1 million in 2005. These acquisitions were intended to grow our title operations and expand our real estate transaction services portfolio. As a result of these acquisitions, we assigned fair values to the assets and liabilities purchased and increased the amount of goodwill and other intangibles recorded on our balance sheet.

In accordance with Statement of Financial Accounting Standard ("SFAS") No. 142, *Goodwill and Other Intangibles* ("SFAS 142"), we assess the recoverability of goodwill for each of our reporting units. Reporting units are business components of an operating segment, and goodwill is assigned to the reporting unit which benefits from the synergies arising from each business acquisition. We test for the recoverability of goodwill annually or sooner if events or changes in circumstances indicate that the carrying amount of our reporting units, including goodwill, may exceed their fair values. The fair value of the reporting units is determined using cash flow analysis which projects the future cash flows produced by the reporting units and discounts those cash flows to the present value. The projection of future cash flows is necessarily dependent upon assumptions on the future levels of income as well as business trends, prospects, and market and economic conditions. When the fair value is less than the carrying value for the net assets of the reporting unit, including goodwill, an impairment loss may be charged to operations. Based on our annual analysis, no impairment was identified for the year ending December 31, 2007.

Our intangible assets primarily include capitalized customer relationships and non-competition arrangements which are amortized over their useful lives. Pursuant to SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* ("SFAS 144"), tests for impairment must be performed for intangible assets that are amortizable with definite lives if conditions exist that indicate the carrying value may not be recoverable. Such conditions may include a loss of a significant customer or a change in the assessment of future operations. During 2007, we became aware that one of our tax and flood processing customers, Fremont General Corporation, received a cease and desist order from the Federal Deposit Insurance Corporation relating to lending practices in its mortgage origination business. As a result of this probable loss of business from this customer, we conducted an impairment test of LandAmerica Tax and Flood's customer relationship intangible asset and determined that its customer relationship intangible asset was impaired. We recorded an impairment charge of $20.8 million, or $12.5 million net of taxes, which has been reflected in our results of operations for the year ended December 31, 2007.

During 2005, LandAmerica Tax & Flood ceased providing future tax services in two states, California and Colorado, for one of its largest tax and flood customers. We determined that LandAmerica Tax & Flood's customer relationship intangible was impaired by $37.6 million, which was reflected in our results of operations for the year ended December 31, 2005. At December 31, 2007, there was approximately $4.5 million of customer relationship intangibles remaining related to the acquisition of LandAmerica Tax & Flood in 2003.

Additionally, we determined that certain non-competition intangible assets in our Title Operations segment were impaired and we recorded impairment losses of $3.0 million in 2007 and $1.5 million in 2005. There were no impairments of non-competition intangible assets in 2006. See further details in Note 13 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

We also review the status of our title plants at least annually. As a result of these reviews, we periodically determine that a title plant will no longer be used or has been abandoned at which time we take a charge to earnings. During 2007 and 2006, we identified several title plants in the Title Operations segment that will not continue to be used or maintained. Accordingly, in 2007 and 2006 we recorded an impairment loss of $1.5 million and $4.4 million, respectively, which was reflected in "Impairment of intangible and long-lived assets" in Part II, Item 8, "Financial Statements and Supplementary Data." We did not have any material charges related to title plants in 2005. We anticipate that additional charges in future periods may be taken as state and local courts and municipalities continue to automate their property records and make them available through electronic media.

Income Taxes

We are subject to income taxes primarily in the U.S. and some foreign jurisdictions. Significant judgments are required to determine the consolidated provision for income taxes. During the ordinary course of business, there are many transactions and calculations for which the ultimate tax determination is uncertain including certain positions that may be challenged and may not be fully sustained upon review by tax authorities. To the extent that the final outcome of matters is different from the amounts recorded, such differences will affect income tax expense in the period in which such determination is made.

Significant judgment is also required to determine any valuation allowance recorded against deferred tax assets. Many deductions for tax return purposes cannot be taken until the expenses are actually paid, rather than when the expenses are recorded under Generally Accepted Accounting Principles ("GAAP"). In these circumstances, under GAAP, we accrue for the tax benefit expected to be received in future years if, in our judgment, it is "more likely than not" that we will receive such benefits. The most significant factor in this determination is the projected future timing and amounts of taxable income. If we determine that it is no longer "more likely than not" that an asset will be utilized, we record a valuation allowance which would reduce net income in the period recorded. Deferred tax assets created from tax benefits expected to be realized were $174.1 million at December 31, 2007 and $156.4 million at December 31, 2006. Valuation allowances have been provided against a portion of our deferred tax assets of $11.0 million at December 31, 2007 and $1.0 million at December 31, 2006. See Note 9 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Pension and Other Postretirement Benefits

We have pension and other postretirement benefit plans covering a portion of our employees. These plans are valued annually using assumptions that are critical in determining our projected liabilities and related expenses for pension and other postretirement benefits. The assumptions used in the valuations are reviewed annually. We believe the most critical assumptions are the discount rate and the expected long-term rate of return on plan assets ("EROA").

A lower discount rate increases the projected benefit obligation and subsequent-year expense. Changes in the projected benefit obligation resulting from changes in discount rate may also affect our funding decisions in the future. The discount rate utilized is based on rates on high quality fixed income debt instruments that mature in a pattern similar to the expected payments to be made under the plans. We utilized a discount rate of 6.0 percent in determining our 2007 benefit obligations.

A lower EROA increases the amount of subsequent-year pension expense. Differences between actual returns and expected returns are deferred, along with other actuarial gains and losses, and are amortized into expense over the expected remaining service life of participants. We use current and targeted asset mix, in conjunction with historical and expected future long-term investment returns, to develop our EROA. Our EROA was 8.0 percent as of the 2007 valuation date.

Changing the discount rate and EROA would have the following impact:

	2007 Projected Benefit Obligation	Estimated 2008 Expense
	(In millions)	
Increase of 0.5% in discount rate	$ (10.2)	$ (0.2)
Decrease of 0.5% in discount rate	$ 11.2	$ 0.3
Increase of 0.5% in EROA	N/A	$ (1.0)
Decrease of 0.5% in EROA	N/A	$ 1.1

See further information in Note 12 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Deferred Service Arrangements

When we acquire tax processing and home warranty companies, all of their assets and liabilities are adjusted to fair value in accordance with purchase method accounting. In making these adjustments, any balance in the deferred revenue account at the acquisition date, which represents amounts that have been deferred prior to acquisition and would have been amortized over the remaining lives of the contracts are eliminated. The deferred revenue account is replaced with an account called deferred service obligations representing the estimated fair value of the obligation to provide the required services over the remaining life of the subject contracts. This account, established as of the acquisition date, is amortized over the remaining lives of existing contracts.

As previously noted, real estate tax processing and home warranty service fees received on new contracts entered into subsequent to the acquisition dates are deferred and amortized over the estimated lives of the contracts to which they relate. The sum of amortization of the "initial deferred service obligation" and amortization related to fees accrued on new contracts represent the earned fee amount for the period.

The estimated remaining contractual life for real estate tax processing services can vary depending on a number of factors, including but not limited to: type of loan, lender, credit quality of the borrower, interest rates, and portfolio turnover. We evaluate the portfolio of loans under service quarterly to determine the appropriate portfolio life for loans under service. An increase/decrease of six months in the average service life for all loans serviced would result in the following approximate changes to revenue recognized for real estate tax monitoring revenue:

	Revenue Recognized
	(In millions)
Increase of 6 months	$ (2.7)
Decrease of 6 months	$ 3.3

Recently Issued Accounting Standards

In December 2007, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standard ("SFAS") No. 141(R), *Business Combinations* ("SFAS 141(R)"). SFAS 141(R) establishes principles and requirements for how the acquirer in a business combination recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree; recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase; and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS 141(R) replaces SFAS 141, *Business Combinations* ("SFAS 141"), but retains the fundamental requirements in SFAS 141 that the acquisition method of accounting (which SFAS 141 called the purchase method) be used for all business combinations and for an acquirer to be identified for each business combination. SFAS 141(R) also retains the guidance in SFAS 141 for identifying and recognizing intangible assets separately from goodwill. SFAS 141(R) is to be applied prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after January 1, 2009. The effect of adopting SFAS 141(R) will be dependent on future business combinations that we may pursue after its effective date.

In December 2007, FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements – an amendment of ARB No. 51* ("SFAS 160"). SFAS 160 amends ARB 51 to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This statement changes the way the consolidated statement of operations are presented by requiring consolidated net income to be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. SFAS 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after January 1, 2009 and is to be applied prospectively except for the presentation and disclosure requirements which shall be applied retrospectively for all periods presented. We are evaluating the effect of adopting SFAS 160 on our financial statements.

In September 2006, FASB issued SFAS No. 157, *Fair Value Measurements* ("SFAS 157"). SFAS 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. SFAS 157 is effective for us beginning January 1, 2008 for financial assets and liabilities, as well as for any other assets and liabilities that are carried at fair value on a recurring basis in the financial statements. In February 2008, FASB issued Staff Position No. 157-b, *Effective Date of FASB Statement No. 157* ("FSP 157-b"). FSP 157-b delayed the effective date of SFAS 157 for all non financial assets and liabilities to fiscal years beginning January 1, 2009. The provisions of SFAS 157 that are to be applied prospectively for financial assets and liabilities will not have a material effect on our financial statements. We are evaluating the effect of adopting SFAS 157 on our financial statements for non financial assets and liabilities **.**

In February 2007, FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS 159"). SFAS 159 provides companies with an option to report selected financial assets and liabilities at fair value ("fair value option"). The fair value option may be elected on an instrument-by-instrument basis and is irrevocable unless a new election date occurs. SFAS 159 is effective for us on January 1, 2008. We did not apply the fair value option to any of our outstanding instruments; therefore, SFAS 159 did not have an effect on our financial statements.

In March 2007, FASB ratified Emerging Issues Task Force ("EITF") Issue No. 06-10, *Accounting for Collateral Assignment Split-Dollar Life Insurance Arrangements* ("EITF No. 06-10"). EITF No. 06-10 requires an employer to recognize a liability for the post-retirement benefit related to a collateral assignment split-dollar life insurance arrangement in accordance with either SFAS 106 or Accounting Principles Board ("APB") Opinion No. 12 if the employer has agreed to maintain a life insurance policy during the employee's retirement or provide the employee with a death benefit. EITF No. 06-10 also requires an employer to recognize and measure an asset based on the nature and substance of the collateral assignment split-dollar life insurance arrangement. EITF No. 06-10 is effective for us January 1, 2008. We have determined that the adoption of EITF No. 06-10 will not have a material effect on our financial statements.

Recently Adopted Accounting Standards

In September 2006, FASB issued SFAS No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106 and 132(R)* ("SFAS 158"). This standard requires employers to recognize the underfunded or overfunded status of a defined benefit postretirement plan as an asset or liability in its statement of financial position and to recognize changes in the funded status in the year in which the changes occur through accumulated other comprehensive income. Additionally, SFAS 158 requires employers to measure the funded status of a plan as of the date of its year-end statement of financial position. The new reporting requirement and related new footnote disclosure rules of SFAS 158 were adopted in 2006. See Note 12 for additional information. The new measurement date requirement applies for the years beginning January 1, 2009.

In February 2006, FASB issued SFAS No. 155, *Accounting for Certain Hybrid Financial Instruments, an amendment of FASB Statements No. 133 and 140* ("SFAS 155"). SFAS 155 permits remeasurement for certain financial instruments, clarifies which financial instruments are not subject to the requirements of Statement No. 133, establishes a requirement to evaluate certain interests in securitized financial assets, and makes certain amendments to Statement No. 140 regarding a qualifying special-purpose entity's ability to hold certain types of financial instruments. SFAS 155 was effective January 1, 2007 and did not have a material effect on our financial statements.

In June 2006, FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109* ("FIN 48) and in May 2007, FASB issued FASB Staff Position FIN-48-1, *Definition of Settlement in FASB Interpretation No. 48* ("FSP FIN 48-1"). FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FSP FIN-48-1 provides guidance on how an enterprise should determine whether a tax provision is effectively settled for the purpose of recognizing previously unrecognized tax benefits. We adopted the provisions of FIN 48 on January 1, 2007. Upon adoption, the balance of the unrecognized tax benefits was $4.0 million.

Cyclicality and Seasonality

The title insurance business is closely related to the overall level of residential and commercial real estate activity, which is generally affected by the relative strength or weakness of the United States economy. In addition, title insurance volumes fluctuate based on changes in interest rates. Periods of increasing interest rates and reduced mortgage financing availability usually have an adverse effect on residential real estate activity and therefore decrease our title insurance premiums and fee revenue. In contrast, periods of declining interest rates and good mortgage financing liquidity usually have a positive effect on residential real estate activity which increase our title insurance premiums and fee revenue.

Commercial real estate volumes are less sensitive to changes in interest rates, but fluctuate based on local supply and demand conditions for space and mortgage financing availability.

The title insurance business tends to be seasonal as well as cyclical. Residential buy/sell activity is generally slower in the winter, when fewer families buy or sell homes, with increased volumes in the spring and summer. Residential refinancing activity is generally more uniform throughout the seasons, but is subject to interest rate variability. We typically report our lowest revenue in the first quarter, with revenue increasing into the second quarter and through the third quarter. The fourth quarter customarily may be as strong as the third quarter, depending on the level of activity of residential refinancing and of commercial real estate transactions. Due to a downturn in the residential real estate environment that began in 2006 and continued into 2007, and the contraction in the mortgage credit markets in 2007, our results did not follow the typical seasonal patterns as evidenced by sharp declines in revenue in the third and fourth quarters.

Results of Operations

Operating Revenue

A summary of our operating revenue for the years ended December 31, 2007, 2006, and 2005 is as follows:

	2007		2006		2005	
			(Dollars in millions)			
Title Operations						
Direct Operations	$ 1,383.4	38.7%	$ 1,528.3	39.3%	$ 1,523.9	39.5%
Agency Operations	1,761.9	49.4	1,981.9	51.0	1,958.2	50.8
	3,145.3	88.1	3,510.2	90.3	3,482.1	90.3
Lender Services	279.4	7.8	252.7	6.6	268.4	7.0
Financial Services	0.8	–	0.8	–	1.2	0.1
Corporate and Other	143.9	4.1	121.5	3.1	101.9	2.6
Total	$ 3,569.4	100.0%	$ 3,885.2	100.0%	$ 3,853.6	100.0%

Title Operations – Operating revenue from direct title operations decreased by $144.9 million, or 9.5 percent, in 2007 from 2006. Direct operating revenue during 2007 was affected by the decline in residential mortgage originations and the contraction in the credit markets partially offset by incremental volume from the merger with Capital Title and strong commercial revenues. Title insurance revenue from commercial operations was $426.5 million for 2007, an increase of 12.9 percent over 2006.

Closed orders from direct title operations were approximately 597,000 in 2007 with an average fee per closed order (which includes title insurance premiums and other revenue related to completed transactions by direct operations) of approximately $2,300, compared to 731,000 in 2006 with an average fee per closed order of approximately $2,100.

Operating revenue from agency title operations decreased by $220.0 million, or 11.1 percent, in 2007 compared to 2006. This decrease was due to the decline in residential market conditions, particularly in certain southeastern markets.

Operating revenue from direct title operations increased by $4.4 million, or 0.3 percent, in 2006 from 2005. Capital Title contributed approximately $66.9 million to operating revenue from direct operations for 2006. Direct operating revenue during 2006 was affected by the decline in volume from residential operations offset, in part, by strong commercial revenues. Title insurance revenue from commercial operations was $377.9 million for 2006, an increase of 4.9 percent over 2005.

Closed orders from direct title operations were approximately 731,000 in 2006 with an average fee per closed order of approximately $2,100 compared to 861,000 in 2005 with an average fee per closed order of approximately $1,800. Closed orders from acquired companies were approximately 31,000 in 2006.

Operating revenue from agency title operations increased by $23.7 million, or 1.2 percent, in 2006 compared to 2005. This increase was due to growth in the agency business, particularly in certain southeastern and southwestern markets, partially offset by declines in midwest markets. An additional factor is the timing in the reporting of transactions by agents. The timing of policy reporting, and therefore revenue reporting by agents, varies from year to year, from agent to agent and between regions of the country.

Lender Services – Operating revenue in the Lender Services segment increased by $26.7 million, or 10.6 percent, in 2007 compared to 2006. Operating revenue for 2007 was also positively affected by incremental volume from the merger with Capital Title, growth in default management services, and the acceleration of deferred revenue in the loan servicing business in first quarter 2007. These increases were offset in part by lower volumes in certain product lines in the mortgage origination and loan servicing businesses due to declines in the residential real estate market. The default management services business experienced growth in volume during 2007 due to increased demand for lien monitoring, broker price opinion and appraisal, foreclosure, reconveyance, and other related services as a result of the downturn in the residential real estate market.

The real estate tax processing and flood zone certification business receives cash in advance to provide service over the life of the loan. We are required to defer a significant portion of the revenue received for these services over the anticipated service life of contracts. As a result, revenue reported in the financial statements represents the amortization of both current and prior service fees. In 2007, real estate tax processing and flood certification services revenue was made up of gross receipts of $51.7 million, reduced by deferred recognition of revenue for $37.0 million of these receipts and increased by the recognition into revenue of approximately $49.8 million of our previously deferred service arrangements. The expected service life of the portfolio increases with an increasing mortgage interest rate environment because loans tend to be outstanding longer in periods when interest rates increase. This reduces the amount of deferred service arrangements that is amortized into revenue for each period on our life of loan products. If interest rates vary from the current expected trend, the estimated service life is expected to increase or decrease inversely to changes in interest rates. In 2007, the service life of our portfolio had not significantly increased compared to 2006.

Operating revenue in the Lender Services segment decreased by $15.7 million, or 5.8 percent, in 2006 compared to 2005. Acquired companies contributed approximately $18.3 million to operating revenue for 2006. Results for 2005 included accelerated deferred revenue related to our tax and flood business of $33.8 million. In 2006, real estate tax processing and flood certification services revenue was made up of gross receipts of $71.3 million, reduced by deferred recognition of revenue for $54.4 million of these receipts and increased by the recognition into revenue of approximately $49.9 million of our previously deferred service arrangements. In 2006, the service life of our portfolio had not significantly increased compared to 2005.

Corporate and Other – Operating revenue in Corporate and Other increased by $22.4 million, or 18.4 percent, in 2007 from 2006, primarily due to strong commercial revenues offset in part by declines in the home warranty and property inspection businesses. Operating revenue in Corporate and Other increased by $19.6 million, or 19.2 percent, in 2006 from 2005, primarily due to strong commercial business and increased revenue in the home warranty business.

Investment and Other Income

Investment and other income was $121.2 million in 2007, $123.6 million in 2006, and $101.8 million in 2005. Investment and other income decreased by $2.4 million, or 1.9 percent, in 2007 compared to 2006. Investment and other income includes income generated from our investment and loan portfolios and income generated from our equity interests in unconsolidated affiliates.

Investment and other income increased by $21.8 million, or 21.4 percent, in 2006 compared to 2005. The Financial Services segment generated $11.4 million of additional investment income during 2006 compared to 2005, which was due to higher balances in the portfolio of loans receivable and investments and a modest increase in interest rates. The remaining increase in investment and other income was due to increased yields and higher invested balances in our remaining investment portfolio.

Net Realized Investment Gains

Net realized investment gains totaled $15.2 million in 2007, $7.1 million in 2006, and $4.2 million in 2005. The increase in net realized investment gains from 2006 to 2007 was primarily due to net gains from the continued repositioning of our REIT and bond portfolios and the reclassification of unrealized net gains on trading investments from accumulated other comprehensive income (loss) in first quarter 2007, and gains on the sale of equity securities.

The increase in net realized investment gains from 2005 to 2006 was primarily due to the repositioning of our REIT portfolio. Net realized investment gains in 2006 included a charge of $2.9 million related to the other-than-temporary impairment of certain securities. We had no other-than-temporary impairments on investments in 2007. See Note 3 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Agents' Commissions

A summary of agents' commissions and related revenue in the Title Operations segment is as follows:

	2007	2006	2005
		(Dollars in millions)	
Agents' commissions	$ 1,420.9	$ 1,585.1	$ 1,561.8
Agent revenue	1,761.9	1,981.9	1,958.2
Percent retained by agents	80.6%	80.0%	79.8%

The commission rate paid to agents varies by geographic area in which the commission was paid and by individual agent agreement, and has varied around 80 percent over the past several years.

Salaries and Employee Benefits

A summary of our salaries and employee benefits expenses is as follows:

	2007		2006		2005	
			(Dollars in millions)			
Title Operations	$ 936.0	81.6%	$ 990.3	83.8%	$ 945.8	84.6%
Lender Services	101.6	8.9	98.4	8.3	91.4	8.2
Financial Services	3.2	0.3	2.6	0.2	2.4	0.2
Corporate and Other	106.1	9.2	91.4	7.7	78.7	7.0
Total	$ 1,146.9	100.0%	$ 1,182.7	100.0%	$ 1,118.3	100.0%

Title Operations – Our Title Operations segment accounted for approximately 81.6 percent of our total salaries and other personnel expenses in 2007. In particular, the direct operations portion of the Title Operations segment is labor intensive and, as a result, salaries and employee benefits are a significant component of variable expense for this segment. We manage personnel expenses to reflect changes in the level of activity in the real estate market. As a result, our employee base expands and contracts over time. In order to manage personnel costs more effectively throughout the real estate cycle, we use temporary or part time employees where appropriate to staff operations so that we can respond promptly to changes in real estate activity. We continuously monitor personnel levels in connection with changes in real estate transaction volumes. Depending on the speed and severity of change in real estate activity, we may not be able, in the short run, to match decreasing levels of title orders with reduced staffing levels. As a result, in periods of declining activity, personnel costs as a percentage of revenue, may increase.

Salaries and employee benefit expenses in the Title Operations segment decreased by $54.3 million, or 5.5 percent, in 2007 from 2006. Average FTE counts decreased to approximately 10,500 in 2007 from approximately 10,900 in 2006, a decrease of 3.7 percent. Salary and employee benefit costs and average FTE counts decreased primarily due to declines in staffing levels in the agency and direct title operations in response to declines in the residential real estate market. These declines were offset in part by increases to service additional business from the merger with Capital Title and the increase in commercial business during the first nine months of 2007.

Salaries and employee benefit expenses in the Title Operations segment increased by $44.5 million, or 4.7 percent, in 2006 over 2005. Before the effect of the Capital Title merger, salary and employee benefit costs declined by $2.3 million, or 0.2 percent, in 2006 primarily due to reduced staffing levels in response to lower business volume. Average FTE counts increased to approximately 10,900 in 2006 from approximately 10,800 in 2005, an increase of approximately 0.9 percent (a decrease of approximately 4.2 percent before Capital Title).

Lender Services – Lender Services personnel costs tend to increase during periods of increased sales volume and decrease when sales volume is lower. This is the case because a significant amount of work is required to set up new accounts. Once accounts are established, monitoring and maintenance activities are less labor intensive. Salaries and employee benefit expenses in the Lender Services segment increased by $3.2 million, or 3.3 percent, in 2007 from 2006 primarily to service additional business as the result of the merger with Capital Title. This increase was offset in part by declines in staffing levels in certain product lines in the loan servicing and mortgage origination businesses to adjust for lower business volume.

Salaries and employee benefit expenses in the Lender Services segment increased by $7.0 million, or 7.7 percent, in 2006 from 2005. Before the effect of acquisitions, salaries and employee benefit expenses increased to $91.6 million, or 0.2 percent, in 2006 due to compensation increases partially offset by decreased FTE counts in the loan servicing business of 3.1 percent. Taking into account the effect of acquisitions, FTE counts increased to approximately 1,600 in 2006 from approximately 1,500 in 2005, an increase of 6.7 percent.

Financial Services – Salary and employee benefit expenses for the Financial Services segment increased by 23.1 percent from 2006 to 2007 primarily due to incremental average FTE counts and higher incentives accrued in 2007. Salary and employee benefit expenses were essentially flat from 2005 to 2006.

Corporate and Other – Salary and employee benefit expenses for Corporate and Other increased by $14.7 million, or 16.1 percent, in 2007 from 2006 primarily as a result of acquisitions and to support continued strong commercial business. Salary and employee benefit expenses for Corporate and Other increased by $12.7 million, or 16.1 percent, in 2006 from 2005. In 2006, we incurred higher personnel costs in response to growth in the non-title commercial and home warranty businesses and investments in technology resources.

Provision for Title Policy and Contract Claims

The provision for title policy and contract claims includes an estimate of known and anticipated claims. The estimate for anticipated claims that are incurred but not yet reported is established at the time premium revenue is recognized based on reported claims, historical loss experience and other factors, including industry trends.

Provisions for title losses as a percentage of operating revenues from the Title Operations segment were 8.6 percent for 2007, 6.1 percent for 2006, and 5.2 percent for 2005. The increase in the loss percentage in 2007 compared to 2006 was due to upward development primarily in policy years 2004, 2005, and 2006 and a higher claims rate for the 2007 policy year. The increase in the loss percentage in 2006 compared to 2005 reflects upward development primarily in the 2003 and 2004 policy years. We review our loss provision rates quarterly and adjust the rates as experience develops or new information becomes known.

Impairment of Intangible and Long-Lived Assets

In first quarter 2007, we recorded an impairment of $20.8 million related to a customer relationship intangible asset of the tax and flood business in our Lender Services segment. The effect of the impairment is expected to reduce amortization expense by approximately $3.2 million on an annual basis. In fourth quarter 2007, we wrote off $3.0 million of a non-competition intangible asset related to one of our title acquisitions.

In first quarter 2006, we announced our plan to relocate and consolidate our corporate offices and shared resources operations. As a result, we wrote down the corporate office building and related assets to fair value less cost to sell by $10.3 million, which was reflected in our results of operations for the year ended December 31, 2006. In fourth quarter 2006, we sold the corporate office building and related assets.

In 2005, we wrote off $37.6 million of a customer relationship intangible asset related to our tax and flood business and $1.5 million of a non-competition intangible asset related to one of our title acquisitions.

We identified certain title plants in 2007 and 2006 that will not continue to be used or maintained. As a result, we took a charge to earnings of $1.5 million in 2007 and $4.4 million in 2006 to reflect the reduction in value of these plants. We did not have any material charges related to title plants in 2005. We anticipate that as a result of the trend toward automation of property records by municipalities and courts, we will continue to record charges related to the lessening in value of our title plants in future periods.

For further details, see Note 13 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Amortization

Amortization expense decreased by $4.0 million in 2007 compared to 2006 and decreased by $2.9 million in 2006 compared to 2005. The decrease from 2006 to 2007 was primarily due to the impairment of a customer relationship intangible asset in the tax and flood business of our Lender Services segment. The decrease from 2005 to 2006 was primarily the result of the write-off of customer relationship intangible assets of $37.6 million in 2005 within our Lender Services segment, offset by increases in intangible assets due to acquisitions. We are amortizing the intangible assets acquired as part of these businesses over their estimated useful lives. See Note 13 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Interest Expense

Interest expense is comprised of interest paid on long-term debt primarily in the Corporate and Other category and interest paid to holders of deposits in the Financial Services segment. Interest expense increased by $5.1 million in 2007 from 2006 and increased by $11.4 million in 2006 from 2005. The increase in interest expense in 2007 was primarily due to an increase in senior debt balances and interest on increased deposits. The increase in interest expense in 2006 was due to increases in interest-bearing deposits and borrowings at Centennial and interest on our senior notes issued in third quarter 2006 and on the revolving credit facility. Our senior notes issued in third quarter 2006 and the revolving credit facility were used to pay a portion of the purchase price for Capital Title and replace maturing senior notes.

General, Administrative, and Other

A summary of general, administrative, and other expenses is as follows:

	2007		2006		2005	
	(Dollars in millions)					
Title Operations	$ 509.8	65.0%	$ 502.5	68.7%	$ 473.9	70.0%
Lender Services	155.1	19.8	121.4	16.6	113.4	16.8
Financial Services	1.4	0.2	1.6	0.2	1.4	0.2
Corporate and Other	117.4	15.0	106.3	14.5	87.9	13.0
Total	$ 783.7	100.0%	$ 731.8	100.0%	$ 676.6	100.0%

Title Operations – General, administrative, and other expenses for the Title Operations segment increased by $7.3 million, or 1.5 percent, in 2007 compared to 2006 primarily to support additional business as a result of the merger with Capital Title and commercial operations as well as $10.0 million related to a legal accrual for two class action lawsuits and approximately $31.6 million of incremental costs to close offices. These increases were partially offset by cost reductions to match declines in residential business volume and by the proceeds from a lawsuit settlement of $12.0 million.

General, administrative, and other expenses for the Title Operations segment increased by $28.6 million, or 6.0 percent, in 2006 compared to 2005. Incremental costs from Capital Title contributed $26.2 million of the increase in 2006. The reductions to Capital Title's overhead costs in response to softening market conditions did not have a significant effect on 2006 costs.

Lender Services – General, administrative, and other expenses for the Lender Services segment increased by $33.7 million, or 27.8 percent, in 2007 from 2006 and increased by $8.0 million, or 7.1 percent, in 2006 from 2005. The increase in 2007 was primarily due to the merger with Capital Title and other acquisitions and to support growth in the default management services line within the loan servicing business. These increases were offset in part by declines in the credit services line of the mortgage origination business to match declines in business volume. Before the effect of acquisitions, general, administrative, and other expenses decreased 4.0 percent in 2006 from 2005 as a result of lower volumes in the mortgage origination business.

Corporate and Other – General, administrative, and other expenses in Corporate and Other increased by $11.1 million, or 10.4 percent, in 2007 from 2006. The increase in these expenses was primarily due to investments in technology, acquisitions, and to support increased commercial business. General, administrative, and other expenses in Corporate and Other increased by $18.4 million, or 20.9 percent, in 2006 from 2005. The increase in these expenses was primarily related to increased expenses associated with improvement in our commercial assessment business and $5.2 million of relocation and related exit costs of our corporate offices.

Early Extinguishment of Debt

Early extinguishment of debt of $6.4 million in 2007 is primarily due to a "make-whole" amount applicable to the prepayment of certain of our senior notes. See Note 10 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Operating Income

Title Operations – The Title Operations segment reported pretax income of $27.4 million in 2007, $226.5 million in 2006, and $326.9 million in 2005. Pretax income for 2007 compared to 2006 was negatively affected by the decline in the residential housing market, a higher claims provision ratio, higher charges to close offices, and a $10.0 million legal accrual for two class action lawsuits, partially offset by continued strength in the commercial market and proceeds from a lawsuit settlement of approximately $12 million. We incurred charges to close offices of $34.5 million in 2007 compared to $2.9 million in 2006. Before acquisitions, pretax income for 2006 compared to 2005 was negatively affected by lower volumes in the residential real estate market, increased interest expense, an increase in the write-down in the value of certain title plants, and a higher claims provision ratio.

Lender Services – The Lender Services segment had pretax (loss) income of $(10.3) million in 2007, $26.4 million in 2006, and $8.3 million in 2005. Pretax losses in 2007 reflect an impairment charge of $20.8 million for a customer relationship intangible asset and the effects of the decline in the residential housing market, partially offset by growth in the default management services line within the loan servicing business. Before acquisitions, the increase in pretax income from 2005 to 2006 was due to a gain realized from the sale of a joint venture of $4.5 million combined with cost reductions in response to lower volumes in the mortgage originations business.

Financial Services – The Financial Services segment reported pretax income of $18.3 million in 2007, $17.7 million in 2006, and $13.5 million in 2005. The increase in pretax income from 2006 to 2007 was due primarily to an increase in interest income related to growth in loans receivable and a modest increase in interest rates offset in part by higher interest expense due to an increase in interest rates on certificate of deposit liabilities and increased deposit liability balances. The increase in pretax income from 2005 to 2006 was due to growth in the loans receivable and investment portfolios that exceeded the increase in interest-bearing deposits. Pretax income in 2006 was also affected by a modest increase in interest rates that had a positive effect on the investment portfolio.

Corporate and Other – Corporate and Other reported pretax losses of $(117.0) million in 2007, $(116.6) million in 2006, and $(87.4) million in 2005. Corporate and Other includes unallocated corporate expenses and our home warranty, residential inspection, and commercial appraisal and assessment businesses. The increase in pretax losses from 2006 to 2007 was due primarily to a $6.4 million charge related to the prepayment of certain of our senior notes offset in part by increased commercial business. The increase in pretax losses from 2005 to 2006 was due in part to the write-down of the corporate offices building of $10.3 million, relocation and related exit cost of our corporate offices of $5.2 million, higher interest expense related to the merger with Capital Title, and increases in personnel costs from investments in technology resources.

Income Taxes

The effective income tax rate, which includes a provision for state income and franchise taxes, was 33.7 percent for 2007, 35.8 percent for 2006, and 36.6 percent for 2005. The difference in the effective tax rates was primarily due to pretax income/loss in relation to permanent differences and the mix of state taxable income/loss from our non-insurance subsidiaries. In addition, the difference in the effective tax rates between 2007 and 2006 also included the recognition of valuation allowances and the release of a tax liability.

Net (Loss) Income

We reported net (loss) income for 2007 of $(54.1) million, or $(3.31) per share on a diluted basis, compared to $98.8 million, or $5.61 per share on a diluted basis, for 2006, and $165.6 million, or $9.29 per share on a diluted basis, for 2005.

Liquidity and Capital Resources

Consolidated

Liquidity and capital resources represent our overall financial strength and our ability to generate strong cash flows from our businesses, borrow funds at competitive rates, and raise new capital to meet our operating and growth needs.

The following table sets forth our condensed consolidated cash flows for the years indicated:

	Years Ended December 31,		
	2007	2006	2005
		(In millions)	
Net cash from operating activities	$ 114.2	$ 178.6	$ 422.5
Net cash provided by (used in) investing activities	217.2	(386.6)	(526.4)
Net cash (used in) provided by financing activities	(315.7)	201.4	120.0

Cash flows from operating activities are affected by the timing of premiums received, fees received, investment income, and expenses paid. Principal sources of cash at the operating subsidiary level include sales of our products and services. The decrease in cash flows from operating activities for the year ended December 31, 2007 compared to December 31, 2006 was primarily the result of lower business volumes which led to a decline in net income offset in part by the timing of income tax payments. The decrease in cash flows from operating activities for the year ended December 31, 2006 compared to December 31, 2005 was primarily the result of timing of payments for federal income taxes and other accrued expenses as well as lower business volumes which led to a decline in net income.

The principal sources of cash provided by investing activities for the three year period ended December 31, 2007 were proceeds from investment sales or maturities. The principal uses of cash in investing activities during this period were additions to the investment portfolio and the acquisition of businesses, net of cash acquired; including $202.9 million to merge with Capital Title in 2006.

The most significant uses of cash in financing activities for the three year period ended December 31, 2007 were debt repayments, including a repayment of $100 million in 2007 of the credit liability associated with the Capital Title merger; share repurchases; and dividend payments to shareholders. The most significant sources of cash provided by financing activities during this period were proceeds from the issuance of debt, including $150.0 million in senior notes and the draw down of $100.0 million on a new credit facility in 2006 to fund the Capital Title merger and replace maturing senior notes. Escrow deposits held by Centennial declined during 2007 trending with the general decline in the real estate market.

Total assets were $3.9 billion at December 31, 2007 compared to $4.2 billion at December 31, 2006. The decrease in total assets was driven primarily by a reduction in investment balances. Total liabilities were $2.7 billion at December 31, 2007 compared to $2.8 billion at December 31, 2006.

Parent Company

We conduct all our operations through our operating subsidiaries. Dividends from our subsidiaries and permitted payments to us under our tax sharing arrangements with our subsidiaries are our principal sources of cash to pay shareholder dividends to meet our holding company obligations, including payments of principal and interest on our outstanding indebtedness and for share repurchases as well as other items.

Our primary uses of funds at our holding company level include payment of general operating expenses, payment of principal, interest and other expenses related to holding company debt, payment of dividends on our common stock, and share repurchases. At December 31, 2007, there was approximately $27.0 million of cash, short-term investments, and marketable securities at the holding company level available for general corporate purposes and to pay dividends to our shareholders.

Our operating results and cash flows are heavily dependent on the real estate market. While we have continued to diversify our products and services portfolio over the last several years, a significant downturn in the real estate market would adversely affect our cash flows. Our business is labor intensive. Changes to the real estate market are monitored closely and staffing levels are adjusted accordingly. There is typically a lag between changes in the real estate market and changes in personnel levels resulting in higher personnel costs in periods where the real estate market declines in advance of headcount reductions. The Lender Services segment provides real estate tax payment and flood certification services for the life of loans for which we receive cash at loan closing. This revenue related to the long-term servicing is deferred and amortized over the life of the loan. As a result, our cash flows in the Lender Services segment may be greater than reported earnings. Revenue, cash receipts, and loans in our Financial Services segment are dependent on the ability of the bank to attract deposits and qualified commercial customers. We believe that our product diversification efforts along with our management of operating expenses and significant working capital position will aid our ability to manage cash resources through declines in the real estate market.

Investment Strategy

Our investment strategy is intended to assure funding of our long-term obligations to insurance policyholders among others. As such, substantially all of our fixed-maturity portfolio is investment grade with no exposure to sub prime, interest only, principal only or residual tranches of mortgage-backed securities.

At December 31, 2006, our investment portfolio was designated as available-for-sale. During first quarter 2007, we transferred $142.6 million of our fixed-maturity securities from available-for-sale securities to trading securities. We did not transfer any of our securities between investment categories during the last nine months of 2007. We review the status of our available-for-sale investment portfolio quarterly to determine whether an other-than-temporary impairment has occurred. In making our determination, we consider a number of factors including: (1) the significance of the decline, (2) whether the investments were rated below investment grade, (3) how long the securities have been in the unrealized loss position, and (4) our ability and intent to retain the investment for a significant period of time for it to recover. See Note 3 in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data.”

We do not match maturities of our investments with anticipated claims payments, which may result in our having periods in which cash flows from operations are positively or negatively affected by the difference between the liability for claims being established and the actual payment stream. As opposed to insurance companies where claims account for a substantial portion of premiums, our title insurance claims have typically ranged from approximately 5 percent to 8 percent of title insurance operating revenue since 1997. Additionally, the time period in which we are liable for a claim is long, with potential claims being paid over 20 years after a title policy is issued and the timing of claims payments may vary from period to period. Over the past several years, exclusive of our operating cash flows, our investment income returns plus maturities of fixed obligation securities have resulted in a maturity and investment income to claims payment ratio in excess of two times.

Mergers and Acquisitions

We completed a number of acquisitions during 2007, none of which were material individually or in the aggregate.

During 2006, we acquired 100 percent of Capital Title's common stock for approximately $252.6 million, which consisted of $202.9 million of cash, including direct transaction costs of $3.6 million, and $49.7 million of our common stock which represented 775,576 shares. Our merger with Capital Title strengthened our title operations presence in key western states and added scale to the services we provide to our mortgage lending customers. We funded approximately $100.0 million of the merger through our line of credit and an additional $100.0 million through the issuance of senior notes. The remaining cash consideration was funded through a mixture of cash and short-term investments. During 2007, we have achieved annualized pretax cost savings of approximately $16 million in conjunction with our integration. We will continue to selectively evaluate additional acquisitions should attractive candidates be identified. See Note 2 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data" for further details about the merger.

Financing

On November 30, 2007, we entered into an amendment ("First Amendment to the Note Purchase Agreement") to our Note Purchase and Master Shelf Agreement dated July 28, 2006 with Prudential Investment Management Inc. and the other purchasers thereunder (the "Note Purchaser Agreement"). The First Amendment to the Note Purchase Agreement decreased the interest coverage ratio from its then current level of 3.0:1.0 to 1.5:1.0 through December 31, 2008, after which time the interest coverage ratio will return to 3.0:1.0. Prior to execution of the First Amendment to the Note Purchase Agreement, we were not in breach of or in default under the Note Purchase Agreement. We executed the First Amendment to the Note Purchase Agreement as a proactive measure given current market conditions. See Note 10 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

On November 29, 2007, we entered into an amendment ("First Amendment") to our $200 million revolving credit agreement dated July 28, 2006 (the "Credit Agreement") with the lenders party thereto and SunTrust Bank, as administrative agent for the lenders, issuing bank, and swingline lender. The First Amendment made the following significant changes to our Credit Agreement: (1) decreased the interest coverage ratio from its then current level of 3.0:1.0 to 1.5:1.0 through September 30, 2008, after which time the interest coverage ratio will return to 3.0:1.0, and (2) modified the consolidated net worth requirement from 85% to 80% of shareholders' equity as of December 31, 2005. Prior to execution of the First Amendment, we were not in breach of or default under our Credit Agreement prior to the execution of the First Amendment. We executed the First Amendment as a proactive measure given current market conditions. See Note 10 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

On October 10, 2007, we received net proceeds of $100 million under our existing Credit Agreement. All of the proceeds received were used to prepay our outstanding 7.45% Senior Notes, Series B, Due 2008 (the "Series B Notes"), and all of our outstanding 7.88% Senior Notes, Series C, Due 2011 (the "Series C Notes," and collectively with the Series B Notes, the "Notes"), issued pursuant to that certain Note Purchase Agreement dated August 31, 2001 (the "Note Agreement"), by and among LandAmerica and each of the purchasers of the Notes. As of October 10, 2007, the aggregate principal amount of the Notes was $100 million. The Notes were prepaid at our option in accordance with the terms of the Note Agreement at a price of $107.6 million, representing the aggregate principal amount of the Notes plus accrued and unpaid interest and a “make-whole” amount applicable to the Notes. We recorded a charge of $6.7 million in fourth quarter 2007 as a result of the make-whole payment. The prepayment of the Notes was funded from the $100 million draw under the Credit Agreement and available cash. As a result of the prepayment of the Notes, the Notes were surrendered to us and cancelled and will not be reissued. We exercised our option to prepay the Notes to enhance our financial flexibility. See Note 10 in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data.”

Regulatory

In June 2006, we completed the process of redomesticating our three principal title insurance subsidiaries, Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation, and Transnation Title Insurance Company from the States of Pennsylvania, Virginia, and Arizona, respectively, to the State of Nebraska. In 2007, we redomesticated an additional insurance underwriter, Title Insurance Company of America, from the State of Tennessee to the State of Nebraska. The redomestication of these title insurance subsidiaries has resulted in streamlined regulatory, tax, and statutory accounting functions derived from having these subsidiaries subject to the same laws and regulations. Under Nebraska insurance laws and regulations, $186.1 million of the net assets of our three principal insurance subsidiaries are available during 2008 for ordinary dividends, loans, or advances to us. As part of our annual release of statutory premium reserves, our subsidiaries released $147.2 million of excess statutory over GAAP claims reserves in third quarter 2007. We received approximately $126.2 million in dividends from our three principal title insurance subsidiaries during 2007. We anticipate that any such additional dividends will be used for general corporate purposes, including but not limited to the repayment of debt, acquisitions, and the repurchase of our common stock. As of December 31, 2007, statutory claims reserve exceeded GAAP claims reserves by $119.1 million before income taxes.

Shareholders’ Equity

In December 2005, we filed a universal shelf registration statement on Form S-3 with the U.S. Securities and Exchange Commission which permits us to offer and sell, from time to time, various types of securities, including debt securities, preferred stock, common stock, warrants, stock purchase contracts and stock purchase units, having an aggregate offering price up to $400.0 million. We are ineligible to use the universal shelf registration statement following the late filing of a current report on Form 8-K with the Securities and Exchange Commission regarding the resignation of a senior officer. We will again be eligible to use our universal shelf registration statement on January 1, 2009.

We issued Convertible Senior Debentures totaling $125.0 million in 2004 and $115.0 million in 2003. These Debentures are convertible only upon the occurrence of certain events. In February 2005, we made an irrevocable election under the terms of our 2003 Debentures to satisfy in cash 100 percent of the principal amount of the 2003 Debentures converted after February 15, 2005. Prior to the election, we had the ability to make payment upon conversion for the principal amount of the 2003 Debentures in cash or shares of our common stock.

In connection with the issuance of the 2004 debentures, we entered into a call option designed to mitigate the potential dilution from the conversion of the 2004 debentures. Under the ten-year term of the call option, we may require a counterparty to deliver approximately 2.3 million shares of our common stock to us at a price which approximates the conversion price of the 2004 debentures.

In December 2004, the Board of Directors approved a program that authorized us to repurchase up to 1 million shares at a cost not to exceed $60.0 million. During fourth quarter 2005, we fully executed the share repurchase program approved in December 2004. In October 2005, the Board of Directors approved a program that authorized us to repurchase an additional 1.25 million shares. As of March 31, 2007, we had fully executed the share repurchase program approved in October 2005.

In February 2007, the Board of Directors approved a repurchase program expiring in October 2008 that authorized us to repurchase 1.5 million shares. As of December 31, 2007, we had fully executed the share repurchase program approved in February 2007.

In August 2007, the Board of Directors approved a repurchase program expiring in March 2009 that authorized us to repurchase 1.5 million shares. As of December 31, 2007, we had repurchased 390,380 shares for $12.4 million under the current repurchase program and there were approximately 1,109,620 shares remaining at December 31, 2007. See Note 11 in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data.”

Other

Centennial maintains an allowance for loan losses related to our loans receivable. During 2007, we did not experience a significant change in the underlying components of the allowance for loan losses or the balance in total. There have been no significant changes in the underlying rationale for our provision for loan losses or significant changes in asset quality.

Summary

We believe our revolving credit facilities and anticipated cash flows from operations will provide us with sufficient liquidity to meet our operating requirements for the foreseeable future. For further information about our borrowings, see Note 10 in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data.”

Off-Balance Sheet Arrangements

We administer escrow and trust deposits as a service to our customers. These deposits totaled $2,545.5 million and $3,747.3 million at December 31, 2007 and 2006, respectively. Except for Centennial, escrow and trust deposits are not considered our assets and are not included in the accompanying balance sheets. However, we remain contingently liable for the disposition of these deposits. Of the $2,545.5 million in escrow, we have deposited $87.7 million in Centennial and those assets and liabilities have been reflected in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data.”

Additionally, we facilitate tax-deferred property exchanges for customers pursuant to Section 1031 of the Internal Revenue Code (“like-kind” exchanges). As a facilitator and intermediary, we hold the proceeds from sales transactions until a qualified acquisition occurs. These deposits totaled $863.2 million and $1,702.3 million at December 31, 2007 and 2006, respectively. Similarly, we also facilitate tax-deferred reverse exchanges pursuant to Revenue Procedure 2000-37. These exchanges require us, using the customer’s funds, to acquire qualifying property on behalf of the customer and take temporary title to the customer’s property until a qualifying acquisition occurs. Reverse property exchanges totaled $1,900.0 million and $179.5 million at December 31, 2007 and 2006, respectively. Funds related to like-kind exchange transactions held on deposit at Centennial and included in the accompanying consolidated balance sheet were $131.9 million at December 31, 2007. Due to the structure utilized to facilitate these transactions, reverse exchanges and like-kind exchanges not held at Centennial are not considered our assets and are not included in the accompanying consolidated balance sheets. However, we remain contingently liable for the transfers of property, disbursement of proceeds, and the return on the proceeds at the agreed upon rate.

In the ordinary course of business, we enter into business arrangements that fall within the scope of FIN No. 45, *Guarantors Accounting and Disclosure Requirements Including Guarantees of Indebtedness of Others*, and FIN No. 46, *Variable Interest Entities*. There were no arrangements in these categories that are reasonably likely to have a material impact, individually or in the aggregate, on our financial condition or results of operations. See Notes 14 and 15 in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data.”

Contractual Obligations

A summary of our contractual obligations and commercial commitments is as follows:

	Payment Due by Period (In millions)				
Contractual Obligations	Total	Less than 1 Year	1-3 years	4-5 Years	More than 5 Years
Long-term debt obligations	$ 579.5	$ 43.0	$ 45.5	$ 115.6	$ 375.4
Operating lease obligations	296.4	90.0	116.1	49.8	40.5
Purchase obligations [1]	97.5	55.7	26.4	10.4	5.0
Total obligations	$ 973.4	$ 188.7	$ 188.0	$ 175.8	$ 420.9

(1) We included all purchase obligations in excess of $100,000 in value irrespective of their termination dates. These include annually renewable corporate insurance programs, payments required under software licensing agreements, vehicle leasing arrangements, annual line of credit availability fees and fees to certain joint venture partners. Purchase obligations not exceeding $100,000 were not material to us, either individually or in the aggregate.

Our policy and contract claims loss reserve projected annual payments as of December 31, 2007 were as follows:

	2008	2009	2010	2011	2012	Thereafter	Total
	(Dollars in millions)						
Policy and contract claims loss reserve	$172.0	$141.1	$111.9	$84.7	$65.0	$301.8	$876.5
Percentage of total	19.6%	16.1%	12.8%	9.7%	7.4%	34.4%	100.0%

As of December 31, 2007, we had a policy and contract claims reserve of $876.5 million. The amounts and timing of these obligations are estimated and are not set contractually. Nonetheless, based on historical insurance claim experience, we anticipate the above payment patterns. While we believe that historical loss payments are a reasonable source for projecting future claim payments, there is significant inherent uncertainty in this payment pattern estimate. Changes in claim reporting patterns, claim settlement patterns, judicial decisions, legislation, economic conditions and other factors could affect the timing and amount of actual claims payments.

We maintain an Executive Voluntary Deferral Plan and an Outside Directors Deferral Plan. The Executive Voluntary Deferral Plan allows executives to defer eligible compensation into deferred stock units or a cash account bearing interest at a fixed rate of return. The Outside Directors Deferral Plan allows directors to defer eligible compensation into deferred stock units bearing interest at a fixed rate of return. We funded the purchase of 42,451 shares of common stock related to these plans in 2007. The shares are held in a trust to be used for payments to participants under the plans. The trustee held 342,784 shares at December 31, 2007. Further information on these plans can be found in Note 11 in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data.”

We have no required employer contributions to our Cash Balance Pension Plan at this time. We do not anticipate making any contributions to the Plan during 2008. See Note 12 in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data” for estimated future benefit payments related to unfunded postretirement benefit plans.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The matters discussed in this Item may contain "forward-looking statements" as described in the introductory paragraph of Part I and, as such, should be read in conjunction with that paragraph as well as Part I, Item 1A, "Risk Factors" for discussion of various risks and uncertainties that may affect our future.

Our primary exposure to market risk relates to interest rate risk and equity price risk. Interest rate risk is generally related to certain investment securities, loans receivable, debt, and certain deposits. We are subject to equity price risk through various portfolios of equity securities. We have operations in certain foreign countries, but these operations, in the aggregate, are not material to the Company's financial condition or results of operations.

Interest Rate Risk

The following table provides information about our financial instruments that are sensitive to changes in interest rates. For investment securities and loans receivable, the table presents principal cash flows and related weighted-average interest rates by expected maturity dates. Actual cash flows could differ from the expected amounts.

Principal Amount by Expected Maturity
Average Interest Rate

(Dollars in millions)

	2008	2009	2010	2011	2012	2013 and after	Total	Fair Value
Assets:								
Taxable available-for-sale securities:								
Book value	$ 22.7	35.6	28.5	48.9	49.2	372.2	$ 557.1	$ 561.3
Average yield	4.6%	5.1%	4.9%	5.4%	5.2%	5.5%	5.3%	
Non-taxable available-for-sale securities:								
Book value	$ 18.6	15.8	25.1	30.3	28.8	323.7	$ 442.3	$ 453.0
Average yield	4.6%	4.1%	4.1%	4.3%	4.2%	4.2%	4.3%	
Taxable trading securities:								
Book value	$ 1.1	2.2	1.9	4.6	4.5	76.0	$ 90.3	$ 90.3
Average yield	5.3%	5.9%	5.5%	5.8%	5.2%	5.7%	5.7%	
Non-taxable trading securities:								
Book value	$ –	2.3	0.5	3.3	1.6	26.5	$ 34.2	$ 34.2
Average yield	–	4.3%	3.6%	3.7%	4.6%	4.2%	4.2%	
Preferred stock:								
Book value	$ –	–	–	–	–	5.9	$ 5.9	$ 4.8
Average yield	–	–	–	–	–	5.9%	5.9%	
Loans receivable, excluding reserves, discounts and other costs:								
Book value	$ 0.7	2.9	1.9	8.2	7.7	620.2	$ 641.6	$ 647.2
Average yield	9.2%	7.5%	7.2%	7.1%	7.7%	7.1%	7.1%	
Liabilities:								
Interest bearing passbook liabilities:								
Book value	$ 104.4	–	–	–	–	–	$ 104.4	$ 104.4
Average yield	3.6%	–	–	–	–	–	3.6%	
Interest bearing certificate of deposit liabilities:								
Book value	$ 282.2	51.1	28.1	6.8	4.2	–	$ 372.4	$ 389.1
Average Yield	5.1%	4.7%	4.8%	5.2%	5.0%	–	5.1%	

Changes in maturities and yields from 2006 to 2007 primarily relate to timing of purchases and sales of securities and the effect that the securities sold or purchased have on the average portfolio yield, timing of payments received from, and the extension of loans to, customers in the commercial real estate market, and timing of amounts held for customers.

We have long-term debt of $579.5 million bearing interest at an average rate of 4.9 percent at December 31, 2007. Our debt portfolio is primarily fixed rate obligations and not subject to variability. Additionally, we have non-interest bearing passbook deposit liabilities of $87.7 million at December 31, 2007 that are included in the accompanying consolidated balance sheets.

During first quarter 2007, we transferred $142.6 million of our fixed-maturity securities from available-for-sale securities to trading securities. This transfer introduced incremental interest rate risk into our statements of operations. We do not expect the incremental interest rate risk to have a material effect on our financial statements. See Note 3 in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data.”

Equity Price Risk

At December 31, 2007 we were invested in $81.1 million of equity securities. A 10 percent change in market prices of those securities would affect the fair value of those equity securities by approximately $8.1 million based on an instantaneous market shock analysis of our equity portfolio.

The carrying values of investments subject to equity price risks are based on quoted market prices. Market prices are subject to fluctuation and, therefore, the amount realized in the sale of an investment may differ significantly from the reported market value. Fluctuation in the market prices of securities may result from perceived changes in the underlying economic characteristics of the investee, the price of alternative investments, and general market conditions. Also, amounts realized in the sale of securities may be affected by the relative quantities of the securities being sold.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO FINANCIAL INFORMATION

Financial statement schedules not listed are either omitted because they are not applicable or the required information is shown in the consolidated financial statements or in the notes thereto.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM ON INTERNAL CONTROL OVER FINANCIAL REPORTING

The Board of Directors and Shareholders of
LandAmerica Financial Group, Inc.

We have audited LandAmerica Financial Group, Inc. and subsidiaries' internal control over financial reporting as of December 31, 2007, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). LandAmerica Financial Group, Inc. and subsidiaries' management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, LandAmerica Financial Group, Inc. and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2007, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of LandAmerica Financial Group, Inc. and subsidiaries as of December 31, 2007 and 2006, and the related consolidated statements of operations, changes in shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2007 and our report dated February 22, 2008 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Richmond, Virginia
February 22, 2008

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
LandAmerica Financial Group, Inc.

We have audited the accompanying consolidated balance sheets of LandAmerica Financial Group, Inc. and subsidiaries as of December 31, 2007 and 2006, and the related consolidated statements of operations, changes in shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2007. Our audits also included the financial statement schedules listed in the Index at Item 15(a). These financial statements and schedules are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedules based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of LandAmerica Financial Group, Inc. and subsidiaries at December 31, 2007 and 2006, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2007, in conformity with U. S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedules, when considered in relation to the basic financial statements taken as a whole, present fairly in all material respects the information set forth therein.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), LandAmerica Financial Group Inc. and subsidiaries' internal control over financial reporting as of December 31, 2007, based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 22, 2008 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Richmond, Virginia
February 22, 2008

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS, DECEMBER 31

(In millions)

	2007	2006
ASSETS		
INVESTMENTS:		
Fixed maturities available-for-sale – at fair value (amortized cost: 2007 – $1,005.3; 2006 – $1,267.2)	$ 1,019.1	$ 1,275.8
Equity securities available-for-sale – at fair value (cost: 2007 – $85.6; 2006 – $111.3)	81.1	129.8
Fixed maturities trading – at fair value	124.5	–
Federal funds sold	59.6	50.4
Short-term investments	160.3	403.0
Total Investments	1,444.6	1,859.0
CASH	98.2	82.5
LOANS RECEIVABLE	638.4	535.8
ACCRUED INTEREST RECEIVABLE	16.8	20.2
NOTES AND ACCOUNTS RECEIVABLE;		
Notes (less allowance for doubtful accounts: 2007 – $1.8; 2006 – $1.5)	22.7	19.3
Trade accounts receivable (less allowance for doubtful accounts: 2007 – $11.1; 2006 – $10.2)	127.9	139.2
Total Notes and Accounts Receivable	150.6	158.5
INCOME TAXES RECEIVABLE	22.7	60.4
PROPERTY AND EQUIPMENT - at cost (less accumulated depreciation and amortization: 2007 – $233.6; 2006 – $224.5)	133.4	164.2
TITLE PLANTS	102.4	105.0
GOODWILL	809.9	783.4
INTANGIBLE ASSETS (less accumulated amortization: 2007 – $100.1; 2006 – $78.2)	94.4	135.2
DEFERRED INCOME TAXES	120.1	84.1
OTHER ASSETS	222.2	186.5
Total Assets	$ 3,853.7	$ 4,174.8

See Notes to Consolidated Financial Statements.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS, DECEMBER 31

(In millions, except share amounts)

	2007	2006
LIABILITIES		
POLICY AND CONTRACT CLAIMS	$ 876.5	$ 789.1
DEPOSITS	564.5	618.2
ACCOUNTS PAYABLE AND ACCRUED LIABILITIES	365.3	400.0
NOTES PAYABLE	579.5	685.3
DEFERRED SERVICE ARRANGEMENTS	199.9	218.6
OTHER	67.3	67.8
Total Liabilities	2,653.0	2,779.0
SHAREHOLDERS' EQUITY		
Common stock, no par value, 45,000,000 shares authorized, shares issued and outstanding: 2007 – 15,351,550; 2006 – 17,604,632	335.4	465.3
Accumulated other comprehensive loss	(26.2)	(32.2)
Retained earnings	891.5	962.7
Total Shareholders' Equity	1,200.7	1,395.8
Total Liabilities and Shareholders' Equity	$ 3,853.7	$ 4,174.8

See Notes to Consolidated Financial Statements.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
YEARS ENDED DECEMBER 31

(In millions, except per share amounts)

	2007	2006	2005
REVENUES			
Operating revenue	$ 3,569.4	$ 3,885.2	$ 3,853.6
Investment and other income, net	121.2	123.6	101.8
Net realized investment gains	15.2	7.1	4.2
	3,705.8	4,015.9	3,959.6
EXPENSES			
Agents' commissions	1,420.9	1,585.1	1,561.8
Salaries and employee benefits	1,146.9	1,182.7	1,118.3
General, administrative and other	783.7	731.8	676.6
Provision for policy and contract claims	288.5	231.3	197.2
Premium taxes	43.5	45.2	42.7
Interest expense	50.3	45.2	33.8
Amortization of intangible assets	21.9	25.9	28.8
Impairment of intangible and long-lived assets	25.3	14.7	39.1
Early extinguishment of debt	6.4	–	–
	3,787.4	3,861.9	3,698.3
(LOSS) INCOME BEFORE INCOME TAXES	(81.6)	154.0	261.3
INCOME TAX (BENEFIT) EXPENSE	(27.5)	55.2	95.7
NET (LOSS) INCOME	$ (54.1)	$ 98.8	$ 165.6
NET (LOSS) INCOME PER SHARE	$(3.31)	$5.80	$9.45
WEIGHTED AVERAGE NUMBER OF SHARES OUTSTANDING	16.3	17.0	17.5
NET (LOSS) INCOME PER SHARE ASSUMING DILUTION	$(3.31)	$5.61	$9.29
WEIGHTED AVERAGE NUMBER OF SHARES OUTSTANDING ASSUMING DILUTION	16.3	17.6	17.8

See Notes to Consolidated Financial Statements.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
YEARS ENDED DECEMBER 31

(In millions)

	2007	2006	2005
Cash flows from operating activities:			
Net (loss) income	$ (54.1)	$ 98.8	$ 165.6
Adjustments to reconcile net (loss) income to cash provided by operating activities:			
Depreciation and amortization	69.1	60.5	58.8
Amortization of bond premium	5.8	6.6	6.2
Impairment of intangible and long-lived assets	25.3	14.7	39.1
Early extinguishment of debt	6.4	–	–
Net realized investment gains	(15.2)	(7.1)	(4.2)
Net change in fair value of trading securities	20.5	–	–
Deferred income tax (benefit) expense	(38.5)	36.5	(27.8)
Loss on disposal of property and equipment	10.6	2.0	1.0
Change in assets and liabilities, net of businesses acquired:			
Accounts and notes receivable	21.4	(3.4)	(16.3)
Income taxes receivable/payable	30.9	(77.2)	65.3
Accounts payable and accrued expenses	(23.7)	(31.6)	62.7
Policy and contract claims	87.4	69.5	53.8
Deferred service arrangements	(18.7)	4.0	8.8
Other	(13.0)	5.3	9.5
Net cash provided by operating activities	114.2	178.6	422.5
Cash flows from investing activities:			
Purchases of title plants, property and equipment	(24.5)	(66.2)	(39.7)
Purchases of business, net of cash acquired	(27.7)	(213.1)	(24.0)
Change in short-term investments, net of businesses acquired	242.9	107.9	(208.1)
Cost of investments acquired:			
Fixed maturities available-for sale	(251.0)	(394.0)	(450.4)
Equity securities available-for sale	(83.0)	(66.6)	(77.0)
Proceeds from investment sales or maturities:			
Fixed maturities available-for-sale	359.6	314.3	366.1
Equity securities available-for sale	124.8	61.3	18.8
Net change in federal funds sold	(9.2)	(46.2)	0.3
Change in loans receivable	(108.6)	(98.4)	(94.1)
Other	(6.1)	14.4	(18.3)
Net cash provided by (used in) investing activities	217.2	(386.6)	(526.4)
Cash flows from financing activities:			
Net change in deposits	(53.7)	71.0	174.1
Proceeds from the exercise of options and incentive plans	2.8	1.4	7.9
Tax benefit of stock options exercised	1.8	1.2	–
Cost of shares repurchased	(143.6)	(40.1)	(64.0)
Dividends paid	(17.1)	(13.8)	(11.7)
Proceeds from issuance of notes payable	165.2	304.2	45.7
Payments on notes payable	(271.1)	(122.5)	(32.0)
Net cash (used in) provided by financing activities	(315.7)	201.4	120.0
Net increase (decrease) in cash	15.7	(6.6)	16.1
Cash at beginning of year	82.5	89.1	73.0
Cash at end of year	$ 98.2	$ 82.5	$ 89.1
Supplemental cash flow information:			
Non cash investing activities – transfer of fixed maturities from available-for-sale to trading	$ 142.6	$ –	$ –
Non cash financing activities – common shares issued for Capital Title merger	$ –	$ 49.7	$ –

See Notes to Consolidated Financial Statements.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

(In millions, except per share amounts)

	Common Stock Shares	Common Stock Amounts	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Total Shareholders' Equity
BALANCE – December 31, 2004	18.0	$ 491.5	$ (17.6)	$ 723.8	$ 1,197.7
Comprehensive income:					
Net income	–	–	–	165.6	165.6
Other comprehensive loss					
Net unrealized loss on securities, net of tax benefit of $10.8	–	–	(20.1)	–	(20.1)
Pension liability adjustment, net of tax benefit of $2.6	–	–	(4.6)	–	(4.6)
					140.9
Purchase of call options, net of tax	–	(1.0)	–	–	(1.0)
Common stock retired	(1.1)	(64.0)	–	–	(64.0)
Stock options and incentive plans	0.4	16.6	–	–	16.6
Common dividends ($0.66/share)	–	–	–	(11.7)	(11.7)
BALANCE – December 31, 2005	17.3	443.1	(42.3)	877.7	1,278.5
Comprehensive income:					
Net income	–	–	–	98.8	98.8
Other comprehensive income (loss)					
Net unrealized gain on securities, net of tax expense of $(3.5)	–	–	6.1	–	6.1
Pension liability adjustment, net of tax expense of $(4.0)	–	–	8.4	–	8.4
SFAS 158 adoption adjustment, net of tax benefit of $2.7	–	–	(4.4)	–	(4.4)
					108.9
Common stock retired	(0.6)	(40.1)	–	–	(40.1)
Common stock issued	0.8	49.7	–	–	49.7
Stock options and incentive plans	0.1	12.6	–	–	12.6
Common dividends ($0.80/share)	–	–	–	(13.8)	(13.8)
BALANCE – December 31, 2006	17.6	465.3	(32.2)	962.7	1,395.8
Comprehensive loss:					
Net loss	–	–	–	(54.1)	(54.1)
Other comprehensive income (loss)					
Net unrealized loss on securities, net of tax benefit of $6.2	–	–	(11.2)	–	(11.2)
Postretirement benefits liability adjustment, net of tax expense of $(10.3)	–	–	17.5	–	17.5
Foreign currency translation	–	–	(0.3)	–	(0.3)
					(48.1)
Common stock retired	(2.5)	(143.6)	–	–	(143.6)
Stock options and incentive plans	0.2	13.7	–	–	13.7
Common dividends ($1.04/share)	–	–	–	(17.1)	(17.1)
BALANCE – December 31, 2007	15.3	$ 335.4	$ (26.2)	$ 891.5	$ 1,200.7

See Notes to Consolidated Financial Statements.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The consolidated financial statements of LandAmerica Financial Group, Inc. and its wholly owned subsidiaries have been prepared in conformity with accounting principles generally accepted in the United States which differ from statutory accounting practices prescribed or permitted by regulatory authorities for its insurance company subsidiaries.

When used in these notes, the terms “LandAmerica,” “we,” “us” or “our” means LandAmerica Financial Group, Inc. and all entities included in our consolidated financial statements.

Organization

We are engaged principally in the title insurance business. Title insurance policies are insured statements of the condition of title to real property, showing ownership as indicated by public records, as well as outstanding liens, encumbrances and other matters of record and certain other matters not of public record. Our business results primarily from resales and refinancings of residential real estate and to a lesser extent, from commercial transactions and the sale of new housing.

Through our subsidiaries, we are one of the largest title insurance companies in the United States. Our principal title insurance underwriters – Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation and Transnation Title Insurance Company – together provide the majority of our insurance products in the United States, Mexico, Canada, the Caribbean, Latin America, Europe, and Asia. We also provide escrow and closing services, commercial real estate services and other real estate transaction management services that are included in the Title Operations segment.

Additionally, we provide real estate transaction products and services to national and regional mortgage lenders including centralized real estate transaction management services, appraisal and valuation services, flood zone determinations, consumer mortgage credit reporting, real estate tax processing services, default management services, and mortgage loan subservicing. These businesses are included in the Lender Services segment.

We operate a California industrial bank which makes up the Financial Services segment. The bank’s primary business is the origination and bulk purchase of commercial real estate loans in the Southern California market, and to a lesser degree, in the Arizona and Nevada markets.

We also provide inspection services primarily on residential real estate, home warranties to buyers of residential real estate, commercial property valuations and assessments, and due diligence services. These services, along with the unallocated portion of the corporate expenses related to our corporate offices in Richmond, Virginia (including unallocated interest expense) have been included in Corporate and Other in our segment disclosures.

See Note 19 for additional information regarding our business segments.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires that we make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts and operations, after intercompany eliminations, of LandAmerica and its subsidiaries. We also consolidate any variable interest entity of which we are the primary beneficiary in accordance with Financial Accounting Standards Board ("FASB") Interpretation No. 46, *Variable Interest Entities.* Our investments in non-majority owned partnerships and affiliates that are not variable interest entities are accounted for under the equity method.

Investments

Available-for-sale fixed-maturity and equity securities are carried at fair value. Debt securities and mandatorily redeemable preferred stock are classified as fixed maturities. The change in the unrealized appreciation and depreciation on such available-for-sale securities is reported as a separate component of shareholders' equity. The amortization of premiums and accretion of discounts related to debt securities acquired at other than par value is included in net investment income.

Trading fixed-maturity securities are carried at fair value with the holding gains and losses included in net realized investment gains and losses in the current period.

Mortgage-backed securities in our available-for-sale portfolio are accounted for on the retrospective method.

Federal funds sold are carried at cost, which approximates fair value.

Short-term investments consist primarily of securities purchased under agreements to resell, commercial paper and money market instruments and have an original maturity of one year or less. Short-term investments are carried at amortized cost, which approximates fair value.

Realized gains and losses on the sale of investments, as well as declines in value of a security considered to be other than temporary, are recognized in operations on the specific identification basis.

Loans Receivable

Loans receivable are carried at face value net of participations sold, unearned discounts, deferred loan fees and an allowance for losses. Loans are typically classified as non-accrual if the borrowers miss three or more contractual payments. Loans may be returned to accrual status when all principal and interest amounts contractually due (including arrearages) are reasonably assured of repayment within an acceptable period of time, in accordance with the contractual interest and principal payment terms of interest and principal.

While a loan is classified as non-accrual and future collectibility of the recorded loan balance is doubtful, collections of interest and principal are generally applied as a reduction to principal outstanding. When the future collectibility of the recorded loan balance is expected, interest may be recognized on a cash basis.

Loans Receivable Allowance

The allowance for loans receivable losses is established through a provision for loan losses. A loan is charged off against the allowance for loan losses when we believe that collectibility of the principal is unlikely. The allowance is an amount that we believe is adequate to absorb estimable and probable losses on existing loans and contracts. When establishing the allowance, we consider changes in the nature and volume of our portfolio, overall portfolio quality, prior loss experience, review of specific problem loans and contracts, regulatory guidelines and current economic conditions that may affect the borrower's ability to pay. Additionally, certain regulatory agencies, as part of their examination process, periodically review our allowance for loan losses. These agencies may require adjustments to the allowance based on their judgment regarding information made available to them.

Loans receivable are impaired when, based on current information and events, it is probable that we will be unable to collect all amounts due according to the contractual terms of the loan agreement. Impaired loans receivable are generally measured at the present value of expected cash flows discounted at the loan's effective interest rate. In the case of collateral-dependent loans, impairment is based on the fair value of the collateral.

Notes and Accounts Receivable

The carrying value of notes and accounts receivable approximates fair value. The allowance for doubtful accounts represents an estimate of amounts considered uncollectible and is determined based on our evaluation of historical collection experience, adverse situations which may affect an individual customer's ability to repay and prevailing economic conditions.

Property and Equipment

Property and equipment, including capitalized software costs, is recorded at cost less accumulated depreciation. Software costs are capitalized when it reaches the application development stage until the software is ready for use.

Property and equipment is depreciated principally on a straight-line basis over the estimated useful lives of the various assets. Leasehold improvements are depreciated on a straight-line basis over the lesser of the term of the applicable lease or the estimated useful lives of such assets. Depreciation lives range from 3 to 10 years for furniture and equipment, 5 to 40 years for buildings and leasehold improvements, 3 to 5 years for capitalized software, and 15 years for the airplane.

Title Plants

Title plants are compilations of copies of public records, maps, and documents that are indexed to specific properties in an area and are generally carried at cost. The costs of acquiring existing title plants and building new title plants, prior to the time that a plant is put into operation, are capitalized. Costs associated with current maintenance, such as salaries and supplies, are charged to expense in the year incurred. Properly maintained title plants are not amortized or depreciated because there is no indication of decline in their value. We review our title plants for impairment on an annual basis or sooner if events or changes in circumstances are deemed to be an indicator of impairment.

Goodwill

Goodwill is the excess of the purchase price over the fair value of net assets acquired. Goodwill is tested for recoverability annually, or sooner if events or changes in circumstances indicate that the carrying amount of the reporting units, including goodwill, may exceed their fair values. Our reporting units are determined in accordance with SFAS No. 142, *Goodwill and Other Intangible Assets.* The fair value of the reporting units is determined using cash flow analysis which projects the future cash flows produced by the reporting units and discounts those cash flows to the present value. The projection of future cash flows is necessarily dependent upon assumptions on the future levels of income as well as business trends, prospects and market and economic conditions. When the fair value is less than the carrying value for the net assets of the reporting unit, including goodwill, an impairment loss may be charged to operations. Based on our annual analysis on October 1, no impairment was identified for the three years ended December 31, 2007. See Notes 2 and 6 for additional information.

Intangible Assets

Intangible assets primarily include capitalized customer relationships and non-competition arrangements. These assets were initially recognized and measured at fair value in accordance with SFAS No. 141, *Business Combinations*. These assets are amortized on a straight-line basis over their expected useful lives of 18 months to 10 years. See Notes 2 and 6 for additional information.

Impairment of Long-lived Assets

Long-lived assets, other than goodwill, are tested for impairment whenever recognized events or changes in circumstances indicate that the carrying value of these assets may exceed fair value. If indicators of impairment are present, we test the recoverability of such assets by projecting undiscounted cash flows expected to be generated from the use of those assets and their eventual disposal. If the projected undiscounted cash flows are less than the carrying values, the recovered amounts are written down to fair value. In 2007, 2006 and 2005, we identified certain intangible and long-lived assets that were impaired. See Note 13 for additional information.

Policy and Contract Claims Liability

Policy and contract claims represent the estimated ultimate net cost of all reported and unreported losses incurred for policies for which revenue has been recognized through December 31, 2007. We reserve for reported claims based on a review of the estimated amount of the claims and costs required to settle the claim. The reserves for unreported losses and loss adjustment expenses are estimated using historical loss and loss development analyses.

Title insurance reserve estimates are subject to a significant degree of inherent variability due to the length of time over which claim payments are made and the effects of external factors, such as general economic conditions. Although we believe that the reserve for policy and contract claims is reasonable, it is possible that our actual incurred policy and contract claims will not conform to the assumptions inherent in the determination of these reserves. Accordingly, the ultimate settlement of policy and contract claims may vary significantly from the estimates included in our financial statements. We believe that the reserve for policy and contract claims is our best estimate of the future costs to settle claims at December 31, 2007. The estimates are continually reviewed and adjusted as experience develops or new information becomes known; such adjustments are included in current operations.

Income Taxes

Deferred income taxes reflect the tax consequences in future years of differences between the tax bases of assets and liabilities and their financial reporting amounts. Future tax benefits are recognized to the extent that realization of such benefits are more likely than not. We record interest and penalties as tax expense in our consolidated statements of operations.

Escrow and Trust Deposits

As a service to our customers, we administer escrow and trust deposits which represent undisbursed amounts received for settlements of real estate transactions. These escrow and trust deposits totaled approximately $2,545.5 million at December 31, 2007 and $3,747.3 million at December 31, 2006. Escrow funds held on deposit at Centennial and included in the accompanying consolidated balance sheets were $87.7 million at December 31, 2007 and $288.5 million at December 31, 2006. The remaining balance in escrow funds of $2,457.8 million at December 31, 2007 and $3,458.8 million at December 31, 2006 are not considered our assets and are excluded from the accompanying consolidated balance sheets.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

Revenue Recognition

Title Insurance

Premiums on title insurance policies issued by our insurance subsidiaries are recognized as revenue when we are legally or contractually entitled to collect the premium. Revenues from title policies issued through independent agents are recognized when the policies are reported by the agent and are recorded on a "gross" basis (before the deduction of agent commissions). Title search and escrow fees are recorded as revenue when the order is closed.

Lender Services

Fees for real estate tax processing services are received in advance for the entire period that a loan will be serviced. Revenue is recognized for real estate tax processing services on a straight-line basis over the anticipated life of the loan. The amount not recognized as revenue in the financial statements in the period received is reported in the accompanying balance sheet as deferred service arrangements in accordance with Staff Accounting Bulletin No. 104, *Revenue Recognition in Financial Statement*s. The amortization period is evaluated quarterly to determine if there have been changes in the estimated life of the loan and/or changes in the number and/or timing of prepayments.

Revenue is primarily recognized on other Lender Services products at the time of delivery, as we have no significant ongoing obligation after delivery.

Financial Services

Interest income is recognized by our California industrial bank on the outstanding principal balance using the accrual basis of accounting. Unearned discounts and deferred loan fees are recognized using the interest method. Interest is accrued daily on outstanding balances using the simple-interest method.

In accordance with SFAS No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases*, certain origination fees and direct costs associated with lending activities are capitalized and amortized over the respective lives of the loans receivable as a yield adjustment using the effective interest method.

Corporate and Other

Fees for home warranty revenue are received in advance for the entire period the contract is in force and revenue is recognized over the term of the contract. The amount not recognized as revenue in the financial statements in the period received is reported in the accompanying balance sheet as deferred service arrangements. Revenue is recognized on other products in this group of businesses at the time of delivery, as we have no significant ongoing obligations after delivery.

Like Kind Exchanges

We facilitate tax-deferred property exchanges for customers pursuant to Section 1031 of the Internal Revenue Code ("like-kind" exchanges). As a facilitator and intermediary, we hold the proceeds from sales transactions until a qualified acquisition occurs. These deposits totaled $863.2 million and $1,702.3 million at December 31, 2007 and 2006, respectively. Similarly, we also facilitate tax-deferred reverse exchanges pursuant to Revenue Procedure 2000-37. These exchanges require us, using the customer's funds, to acquire qualifying property on behalf of the customer and take temporary title to the customer's property until a qualifying acquisition occurs. Reverse property exchanges totaled $1,900.0 million and $179.5 million at December 31, 2007 and 2006, respectively. Funds related to like-kind exchange transactions held on deposit at Centennial and included in the accompanying consolidated balance sheet were $131.9 million at December 31, 2007. Due to the structure utilized to facilitate these transactions, reverse exchanges and like-kind exchanges not held at Centennial are not considered our assets and are not included in the accompanying consolidated balance sheets. However, we remain obligated for the transfers of property, disbursement of proceeds and the return on the proceeds at the agreed upon rate.

Fair Values of Financial Instruments

The carrying amounts reported in the balance sheet for cash, federal funds sold, short-term investments, and notes and accounts receivable approximate those assets' fair values. Fair values for investment securities are based on quoted market prices, to the extent they are available, or pricing models that vary by asset class and incorporate available trade, bid and other market information. The fair value of loans receivable was estimated based on the discounted value of future cash flows using the current rates offered for loans with similar terms to borrowers of similar credit quality. The fair value of the fixed-rate portion of our notes payable are estimated using discounted cash flow analyses, based on our current incremental borrowing rates for similar types of borrowing arrangements. The remaining portion of our notes payable approximates fair value since the interest rate is variable. The fair value of deposits was estimated based on the discounted value of future cash flows using a discount rate approximating current market for similar liabilities. We have no other material financial instruments. See Notes 3, 4, 7 and 10 for additional information.

A summary of the fair value of our financial assets and liabilities is as follows:

	2007		2006	
	Fair Value	Carrying Value	Fair Value	Carrying Value
	(In millions)			
Investments	$ 1,444.6	$ 1,444.6	$ 1,859.0	$ 1,859.0
Loans receivable	644.0	638.4	532.6	535.8
Deposits	581.2	564.5	643.9	618.2
Notes payable	559.5	579.5	625.4	685.3

Stock-Based Compensation

Effective January 1, 2006, we adopted the provisions of SFAS No. 123, *Accounting for Stock-Based Compensation* ("SFAS 123") as revised by SFAS 123(R), *Share-Based Payment* ("SFAS 123-(R)"). We have used the modified prospective adoption method. Under this method, the share-based compensation cost recognized beginning January 1, 2006 includes compensation cost for (1) all share-based payments granted prior to, but not vested as of January 1, 2006, based on the grant date fair value originally estimated in accordance with the provisions of SFAS 123 and (2) all share-based payments granted subsequent to December 31, 2005, based on the grant date fair value estimated in accordance with the provisions of SFAS 123-(R). Compensation cost under SFAS 123-(R) is recognized ratably using the straight-line attribution method over the expected vesting period or to the retirement eligibility date, if less than the vesting period when vesting is not contingent upon any future performance. The cumulative effect of adopting SFAS 123-(R) was not significant.

Prior to January 1, 2006, we accounted for share-based compensation plans in accordance with the provisions of APB Opinion No. 25, *Accounting for Stock Issued to Employees*, as permitted by SFAS 123. Accordingly, no compensation expense was recognized for our stock options since all options granted had an exercise price equal to the market value of the underlying stock on the date of grant. The pro forma effect on 2005 net income and earnings per share from compensation expense for our employee stock options based on the fair value method of accounting was not material. No stock options have been granted since 2002. See Note 11 for additional information.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

Earnings Per Share

The following table sets forth the computation of basic and diluted (loss) earnings per share for the years ended December 31:

	2007	2006	2005
	(In millions, except per share amounts)		
Numerator:			
Net (loss) income for basic and diluted earnings per share	$ (54.1)	$ 98.8	$ 165.6
Denominator:			
Weighted average shares – for basic earnings per share	16.3	17.0	17.5
Effect of dilutive securities:			
Convertible debt (See Note 11)	–	0.4	0.1
Employee stock options and restricted stock	–	0.2	0.2
Denominator for diluted earnings per share	16.3	17.6	17.8
Basic (loss) earnings per share	$ (3.31)	$ 5.80	$ 9.45
Diluted (loss) earnings per share	$ (3.31)	$ 5.61	$ 9.29

For the year 2007, 0.5 million common shares, representing all potential dilutive shares for the period, were excluded from the diluted common share total as they are anti-dilutive due to the net loss for the year.

Recently Issued Accounting Standards

In December 2007, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standard ("SFAS") No. 141(R), *Business Combinations* ("SFAS 141(R)"). SFAS 141(R) establishes principles and requirements for how the acquirer in a business combination recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree; recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase; and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS 141(R) replaces SFAS 141, *Business Combinations* ("SFAS 141"), but retains the fundamental requirements in SFAS 141 that the acquisition method of accounting (which SFAS 141 called the purchase method) be used for all business combinations and for an acquirer to be identified for each business combination. SFAS 141(R) also retains the guidance in SFAS 141 for identifying and recognizing intangible assets separately from goodwill. SFAS 141(R) is to be applied prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after January 1, 2009. The effect of adopting SFAS 141(R) will be dependent on future business combinations that we may pursue after its effective date.

In December 2007, FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements – an amendment of ARB No. 51* ("SFAS 160"). SFAS 160 amends ARB 51 to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This statement changes the way the consolidated statement of operations are presented by requiring consolidated net income to be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. SFAS 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after January 1, 2009 and is to be applied prospectively except for the presentation and disclosure requirements which shall be applied retrospectively for all periods presented. We are evaluating the effect of adopting SFAS 160 on our financial statements.

In September 2006, FASB issued SFAS No. 157, *Fair Value Measurements* ("SFAS 157"). SFAS 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. SFAS 157 is effective for us beginning January 1, 2008 for financial assets and liabilities, as well as for any other assets and liabilities that are carried at fair value on a recurring basis in the financial statements. In February 2008, the FASB issued Staff Position No. 157-b, *Effective Date of FASB Statement No. 157* ("FSP 157-b"). FSP 157-b delayed the effective date of SFAS 157 for all non financial assets and liabilities to fiscal years beginning January 1, 2009. The provisions of SFAS 157 that are to be applied prospectively for financial assets and liabilities will not have a material effect on our financial statements. We are evaluating the effect of adopting SFAS 157 on our financial statements for non financial assets and liabilities.

In February 2007, FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS 159"). SFAS 159 provides companies with an option to report selected financial assets and liabilities at fair value ("fair value option"). The fair value option may be elected on an instrument-by-instrument basis and is irrevocable unless a new election date occurs. SFAS 159 is effective for us on January 1, 2008. We did not apply the fair value option to any of our outstanding instruments; therefore, SFAS 159 did not have an effect on our financial statements.

In March 2007, FASB ratified Emerging Issues Task Force ("EITF") Issue No. 06-10, *Accounting for Collateral Assignment Split-Dollar Life Insurance Arrangements* ("EITF No. 06-10"). EITF No. 06-10 requires an employer to recognize a liability for the post-retirement benefit related to a collateral assignment split-dollar life insurance arrangement in accordance with either SFAS 106 or Accounting Principles Board ("APB") Opinion No. 12 if the employer has agreed to maintain a life insurance policy during the employee's retirement or provide the employee with a death benefit. EITF No. 06-10 also requires an employer to recognize and measure an asset based on the nature and substance of the collateral assignment split-dollar life insurance arrangement. EITF No. 06-10 is effective for us January 1, 2008. We have determined that the adoption of EITF No. 06-10 will not have a material effect on our financial statements.

Recently Adopted Accounting Standards

In September 2006, FASB issued SFAS No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106 and 132(R)* ("SFAS 158"). This standard requires employers to recognize the underfunded or overfunded status of a defined benefit postretirement plan as an asset or liability in its statement of financial position and to recognize changes in the funded status in the year in which the changes occur through accumulated other comprehensive income. Additionally, SFAS 158 requires employers to measure the funded status of a plan as of the date of its year-end statement of financial position. The new reporting requirement and related new footnote disclosure rules of SFAS 158 were adopted in 2006. See Note 12 for additional information. The new measurement date requirement applies for the years beginning January 1, 2009.

In February 2006, FASB issued SFAS No. 155, *Accounting for Certain Hybrid Financial Instruments, an amendment of FASB Statements No. 133 and 140* ("SFAS 155"). SFAS 155 permits remeasurement for certain financial instruments, clarifies which financial instruments are not subject to the requirements of Statement No. 133, establishes a requirement to evaluate certain interests in securitized financial assets, and makes certain amendments to Statement No. 140 regarding a qualifying special-purpose entity's ability to hold certain types of financial instruments. SFAS 155 was effective January 1, 2007 and did not have a material effect on our financial statements.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

In June 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109* ("FIN 48) and in May 2007, the FASB issued FASB Staff Position FIN-48-1, *Definition of Settlement in FASB Interpretation No. 48* ("FSP FIN 48-1"). FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FSP FIN-48-1 provides guidance on how an enterprise should determine whether a tax provision is effectively settled for the purpose of recognizing previously unrecognized tax benefits. We adopted the provisions of FIN 48 on January 1, 2007. Upon adoption, the balance of the unrecognized tax benefits was $4.0 million.

2. MERGERS AND ACQUISITIONS

We completed a number of acquisitions during 2007, none of which were material individually or in the aggregate.

On September 8, 2006, we completed the merger with Capital Title Group, Inc. ("Capital Title") whereby Capital Title became a wholly-owned subsidiary of LandAmerica. Capital Title consisted of a title insurance underwriter, several title and escrow agency operations, a property appraisal company, a settlement services provider and other related companies. Capital Title serviced customers primarily in Arizona, California and Nevada in addition to providing lender services on a national basis. Our merger with Capital Title strengthened our title operations presence in key western states and added scale to the services we provide to our mortgage lending customers.

The merger was accounted for using the purchase method in accordance with FASB SFAS No. 141, *Business Combinations* ("SFAS 141"). Under the terms of the merger, we acquired 100 percent of Capital Title's common stock for approximately $252.6 million which consisted of $202.9 million of cash, including direct transaction costs of $3.6 million, and $49.7 million of our common stock, which represented 775,576 shares. In recording the merger, the value of the 775,576 shares issued was determined based on the measurement criteria in EITF 99-12, *Determination of the Measurement Date for the Market Price of Acquirer Securities Issued in a Purchase Business Combination*.

The following table summarizes the number of acquisitions by segment, as defined in Note 19, for the past three years:

	Year Ended December 31,		
	2007	2006	2005
		(Dollars in millions)	
Number of acquisitions:			
Title Operations	1	3[1]	3
Lender Services	–	2	–
Corporate and Other	2	6	6
	3	11	9
Total purchase price recognized in acquisitions	$ 26.0	$ 266.5	$ 26.1
Total goodwill recognized in acquisitions	$ 15.6	$ 190.9	$ 11.9

[1]Includes the merger of Capital Title.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

These acquisitions have been accounted for using the purchase method of accounting and each of the acquisitions' results has been included in the consolidated financial statements since the acquisition date. These businesses were not considered significant individually or in the aggregate for 2007, 2006, and 2005. Substantially all of these acquisitions in 2007, 2006, and 2005 have escrow agreements where a portion of the consideration has been placed in escrow until predetermined criteria have been met. Additionally, in certain instances, we have entered into purchase agreements which contain provisions for additional payments should the acquired company meet certain operating results. Neither the escrow agreements nor the contingent consideration are expected to be material to our financial statements or operations.

The following table summarizes intangible assets acquired during 2007, exclusive of any contingent payments and finalization of purchase accounting adjustments:

	Intangible Assets	Weighted Average Amortization Period
	(In millions)	(In years)
Customer relationships	$ 3.8	10
Non-compete agreements	2.4	3
Other	1.0	5
Intangibles	7.2	7
Goodwill	15.6	
Total intangible assets acquired	$ 22.8	

Approximately $2.1 million of the goodwill acquired in 2007 is expected to be tax deductible.

3. INVESTMENTS

We classify our fixed-maturity and equity investments as trading or available-for-sale. Trading investments are bought and held principally for the purpose of selling them in the near term. All fixed-maturity and equity investments not classified as trading are classified as available-for-sale. During first quarter 2007, we transferred $142.6 million of our fixed-maturity securities from available-for-sale securities to trading securities. Additionally $2.3 million of unrealized gains on these available-for-sale securities which were previously included in accumulated other comprehensive income (loss) were reclassified and recorded in the consolidated statement of operations caption "Net realized investment gains." We did not transfer any of our securities between investment categories during the remainder of 2007.

The amortized cost and estimated fair value of available-for-sale fixed-maturity securities at December 31, 2007 and 2006 were as follows:

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

	2007			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
	(In millions)			
U.S. treasury securities	$ 20.7	$ 1.0	$ –	$ 21.7
Obligations of U.S. government corporations and agencies	18.1	0.1	–	18.2
Obligations of states and political subdivisions	444.7	11.1	(0.4)	455.4
Fixed maturities issued by foreign governments	5.4	0.1	–	5.5
Public utilities	20.5	0.3	(0.3)	20.5
Corporate securities	241.3	3.1	(2.3)	242.1
Mortgage-backed securities	248.7	3.3	(1.1)	250.9
Preferred stock	5.9	–	(1.1)	4.8
Fixed maturities	$ 1,005.3	$ 19.0	$ (5.2)	$ 1,019.1

	2006			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
	(In millions)			
U.S. treasury securities	$ 26.5	$ 0.3	$ (0.1)	$ 26.7
Obligations of U.S. government corporations and agencies	77.5	–	(0.4)	77.1
Obligations of states and political subdivisions	487.7	10.5	(1.0)	497.2
Fixed maturities issued by foreign governments	5.0	0.1	–	5.1
Public utilities	8.0	–	–	8.0
Corporate securities	473.5	3.8	(3.8)	473.5
Mortgage-backed securities	180.6	1.4	(2.3)	179.7
Preferred stock	8.4	0.1	–	8.5
Fixed maturities	$ 1,267.2	$ 16.2	$ (7.6)	$ 1,275.8

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

The amortized cost and estimated fair value of available-for-sale fixed-maturity securities at December 31, 2007, by contractual maturity are shown below. Actual maturities will differ from contractual maturities because borrowers may have the right to call or prepay obligations.

	Amortized Cost	Estimated Fair Value
	(In millions)	
Due in one year or less	$ 41.1	$ 41.2
Due after one year through five years	259.5	264.2
Due after five years through ten years	301.1	307.2
Due after ten years	154.9	155.6
Mortgage-backed securities	248.7	250.9
	$ 1,005.3	$ 1,019.1

Realized and unrealized gains (losses) representing the change in fair value and cost on fixed-maturity and equity securities for the three years ended December 31, are summarized below:

	2007	2006	2005
		(In millions)	
Net realized gains (losses):			
Fixed maturities	$ (1.5)	$ (0.6)	$ (0.4)
Equity securities	14.6	10.6	4.6
Change in unrealized holding gains – trading securities	2.1	–	–
Other-than-temporary impairment	–	(2.9)	–
	$ 15.2	$ 7.1	$ 4.2
Change in unrealized:			
Fixed maturities	$ 5.2	$ (0.7)	$ (28.1)
Equity securities	(22.9)	10.6	(2.8)
	$ (17.7)	$ 9.9	$ (30.9)

Gross unrealized gains and (losses) relating to investments in equity securities were $5.2 million and $(9.6) million at December 31, 2007 and $20.3 million and $(1.8) million at December 31, 2006.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

Gross unrealized losses and fair value related to our available-for-sale securities and length of time that individual securities have been in a continuous unrealized loss position were as follows:

	December 31, 2007					
	Less Than 12 Months		12 Months or More		Total	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
	(In millions)					
Fixed maturities :						
U.S. treasuries	$ –	$ –	$ 0.8	$ –	$ 0.8	$ –
U.S. government corporations and agencies	0.5	–	2.0	–	2.5	–
States and political subdivisions	26.9	0.3	27.6	0.1	54.5	0.4
Fixed maturities issued by foreign governments	–	–	3.6	–	3.6	–
Public utilities	6.2	0.2	3.0	0.1	9.2	0.3
Corporate securities	43.8	1.2	45.8	1.1	89.6	2.3
Mortgage-backed securities	13.4	0.2	67.8	0.9	81.2	1.1
Preferred stock	4.4	1.1	–	–	4.4	1.1
Equity securities	37.5	8.6	2.2	1.0	39.7	9.6
Total	$ 132.7	$ 11.6	$ 152.8	$ 3.2	$ 285.5	$ 14.8

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

	December 31, 2006					
	Less Than 12 Months		12 Months or More		Total	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
	(In millions)					
Fixed maturities :						
U.S. treasuries	$ 24.9	$ 0.1	$ 7.4	$ –	$ 32.3	$ 0.1
U.S. government corporations and agencies	0.7	0.2	2.0	0.2	2.7	0.4
States and political subdivisions	65.0	0.3	39.2	0.7	104.2	1.0
Fixed maturities issued by foreign governments	4.1	–	0.4	–	4.5	–
Public utilities	4.7	–	0.5	–	5.2	–
Corporate securities	93.9	0.5	172.7	3.3	266.6	3.8
Mortgage-backed securities	45.4	0.2	105.7	2.1	151.1	2.3
Preferred stock	1.0	–	0.5	–	1.5	–
Equity securities	8.7	1.3	4.2	0.5	12.9	1.8
Total	$ 248.4	$ 2.6	$ 332.6	$ 6.8	$ 581.0	$ 9.4

At December 31, 2007, we held 738 securities which were in an unrealized loss position with a total estimated fair value of $285.5 million and gross unrealized losses of $14.8 million. Of the 738 securities, 217 had been in a continuous unrealized loss position for greater than one year and had a total estimated fair value of $152.8 million and gross unrealized losses of $3.2 million. The 217 securities with unrealized losses in excess of twelve months were investment grade debt and equity securities which we have the intent and the ability to hold those securities until recovery.

At December 31, 2006, we held 805 securities which were in an unrealized loss position with a total estimated fair value of $581.0 million and gross unrealized losses of $9.4 million. Of the 805 securities, 408 had been in a continuous unrealized loss position for greater than one year and had a total estimated fair value of $332.6 million and gross unrealized losses of $6.8 million. The 408 securities with unrealized losses in excess of twelve months were investment grade debt and equity securities which we had the intent and the ability to hold those securities until recovery.

We review the status of each security quarterly to determine whether an other-than-temporary impairment has occurred. In making our determination, we consider a number of factors including: (1) the significance of the decline, (2) whether the securities were rated below investment grade, (3) how long the securities have been in the unrealized loss position, and (4) our ability and intent to retain the investment for a sufficient period of time for it to recover. In 2006, we recognized a loss of $2.9 million as we no longer had the intent to hold certain fixed-maturity securities to recovery. We have concluded that none of the other available-for-sale securities with unrealized losses at December 31, 2007 has experienced an other-than-temporary impairment.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

The proceeds and gross realized gains (losses) from the sale of available-for-sale securities, net of calls or maturities, during the years ended December 31, 2007, 2006 and 2005 were as follows:

	2007	2006	2005
		(In millions)	
Fixed maturities:			
Proceeds	$ 228.4	$ 225.6	$ 295.3
Gross realized gains	0.8	0.9	2.5
Gross realized losses	(2.7)	(1.5)	(2.9)
Equity securities:			
Proceeds	$ 124.8	$ 61.3	$ 18.8
Gross realized gains	21.6	12.7	4.7
Gross realized losses	(7.0)	(2.1)	(0.1)

At December 31, 2007, no industry group comprised more than 10 percent of our investment portfolio. This portfolio is widely diversified among various geographic regions in the United States, and is not dependent on the economic stability of one particular region.

At December 31, 2007, we did not hold any fixed-maturity securities in any single issuer which exceeded 10 percent of shareholders' equity other than securities issued or guaranteed by the U.S. government.

Investment Income

Earnings on investments and net realized gains for the years ended December 31 follow:

	2007	2006	2005
		(In Millions)	
Fixed maturities	$ 58.5	$ 57.3	$ 51.3
Loans receivable	39.6	30.3	24.0
Short-term investments	13.1	22.6	12.3
Net realized gains	15.2	7.1	4.2
Equity securities	3.6	4.0	2.8
Other investment income	0.4	0.1	0.2
Total investment income	130.4	121.4	94.8
Investment expenses	(2.8)	(2.1)	(2.0)
Net investment income	127.6	119.3	92.8
Other income	8.8	11.4	13.2
Investment and other income	$ 136.4	$ 130.7	$ 106.0

4. LOANS RECEIVABLE

Loans receivable at December 31, 2007 and December 31, 2006 are summarized as follows:

	2007	2006
	(In millions)	
Commercial real estate mortgages	$ 641.6	$ 534.8
Commercial loans	–	5.0
	641.6	539.8
Allowance for loan losses	(4.9)	(4.9)
Unearned income on loans	(1.3)	(1.2)
Deferred loan fees	3.0	2.1
	$ 638.4	$ 535.8

The average yield on our loan portfolio was 7.1 percent for the year ended December 31, 2007 and 6.9 percent for the year ended December 31, 2006. Average yields are affected by amortization of discounts on loans, prepayment penalties recorded as income, amortization of loan fees and market interest rates.

The activity in the allowance for loan losses for the years ended December 31, 2007 and December 31, 2006 is as follows:

	2007	2006
	(In millions)	
Beginning of year	$ 4.9	$ 4.3
Add: Provision for loan losses	–	0.6
Balance at end of year	$ 4.9	$ 4.9

There were no investments in loans for which an impairment has been recognized. There were no loans in non-accrual status at December 31, 2007 and December 31, 2006.

The allowance for loan losses is maintained at a level that we consider appropriate to provide for risks in the portfolio.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

5. PROPERTY AND EQUIPMENT

Property and equipment consists of the following at December 31:

	2007	2006
	(In millions)	
Furniture and equipment	$ 219.0	$ 260.7
Buildings and leasehold improvements	79.1	62.8
Capitalized software	62.1	58.4
Airplane	4.5	4.4
Land	2.3	2.4
	367.0	388.7
Accumulated depreciation	(233.6)	(224.5)
Net property and equipment	$ 133.4	$ 164.2

6. INTANGIBLES

Goodwill balances by segment are as follows:

	Consolidated	Title Operations	Lender Services	Financial Services	Corporate and Other
			(In millions)		
Balance as of December 31, 2005	$ 584.3	$ 319.0	$ 231.3	$ 6.4	$ 27.6
Acquisitions/purchase accounting adjustments	199.1	129.5	65.3	–	4.3
Balance as of December 31, 2006	783.4	448.5	296.6	6.4	31.9
Acquisitions/purchase accounting adjustments	26.5	37.7	(26.3)	–	15.1
Balance as of December 31, 2007	$ 809.9	$ 486.2	$ 270.3	$ 6.4	$ 47.0

The following table presents details of our intangible assets that are subject to amortization as of December 31, 2007 and December 31, 2006:

	Gross Carrying Amount	Accumulated Amortization	Net
		(In millions)	
2007			
Customer relationships	$ 148.0	$ 69.4	$ 78.6
Non-compete agreements	36.3	26.1	10.2
Other	10.2	4.6	5.6
	$ 194.5	$ 100.1	$ 94.4
2006			
Customer relationships	$ 167.3	$ 54.9	$ 112.4
Non-compete agreements	37.0	20.3	16.7
Other	9.1	3.0	6.1
	$ 213.4	$ 78.2	$ 135.2

The estimated future amortization expense of intangible assets for the next five years is $20.3 million in 2008, $19.0 million in 2009, $15.4 million in 2010, $13.0 million in 2011, and $11.7 million in 2012. See Note 13 for discussion of impairments related to certain intangible assets.

7. DEPOSITS

Passbook and investment certificate accounts at December 31, 2007 and December 31, 2006 are summarized as follows:

	2007	2006
	(Dollars in millions)	
Interest-bearing passbook accounts	$ 192.1	$ 396.0
Certificate accounts:		
Less than one year	282.2	142.4
One to two years	51.1	22.8
Two to three years	28.1	31.9
Three to four years	6.8	20.3
Four to five years	4.2	4.8
	372.4	222.2
	$ 564.5	$ 618.2
Annualized average interest rates:		
Interest-bearing passbook accounts	3.6%	5.1%
Certificate accounts	5.1%	4.8%

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

Interest bearing passbook accounts were $104.4 million at December 31, 2007 and $107.5 million at December 31, 2006. Non-interest bearing passbook accounts related to escrow balances were $87.7 million at December 31, 2007 and $288.5 million at December 31, 2006.

The aggregate amount of time deposits in denominations of $100,000 or more was $385.4 million at December 31, 2007 and $476.2 million at December 31, 2006.

8. POLICY AND CONTRACT CLAIMS

A summary of our policy and contract claims, broken down into its components of known claims and incurred but not reported claims ("IBNR") follows:

	December 31, 2007		December 31, 2006	
	(Dollars in millions)			
Known claims	$ 165.8	18.9%	$ 146.0	18.5%
IBNR	710.7	81.1	643.1	81.5
Total policy and contract claims	$ 876.5	100.0%	$ 789.1	100.0%

Reserves for known claims include the estimated amount of the claim and the costs required to resolve the claim. A provision for estimated claims that are incurred but not yet reported is established at the time premium revenue is recognized based on reported claims, historical loss experience and other factors, including industry trends.

Activity in the liability for unpaid claims and claim adjustment expenses is summarized as follows:

	2007	2006	2005
	(In millions)		
Balance at January 1	$ 789.1	$ 697.6	$ 643.8
Acquired	–	22.0	–
Provision related to:			
Current year	235.1	224.9	219.1
Prior years	53.4	6.4	(21.9)
Total incurred	288.5	231.3	197.2
Paid related to:			
Current year	36.0	30.0	34.7
Prior years	165.1	131.8	108.7
Total paid	201.1	161.8	143.4
Balance at December 31	$ 876.5	$ 789.1	$ 697.6

Current year incurred losses include escrow and small claims payments. Claims paid related to our title insurance business were $189.5 million in 2007, $149.4 million in 2006, and $132.6 million in 2005.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

Provisions for title losses as a percentage of title operating revenues for the Title Operations segment were 8.6 percent for 2007, 6.1 percent for 2006, and 5.2 percent for 2005. The increase in the loss percentage in 2007 compared to 2006 was due to upward development primarily in policy years 2004, 2005 and 2006, and a higher claims rate for the 2007 policy year of 6.8 percent. The increase in the loss percentage in 2006 compared to 2005 reflects upward development primarily in the 2003 and 2004 policy years.

9. INCOME TAXES

We file a consolidated federal income tax return. Significant components of our deferred tax assets and liabilities at December 31, 2007 and 2006 were as follows:

	2007	2006
	(In millions)	
Deferred tax assets:		
Deferred income	$ 64.3	$ 61.1
Policy and contract claims	25.1	8.6
Employee benefit plans	54.0	45.3
Goodwill	–	9.4
Pension liability	–	7.2
Tax and flood claims	4.5	6.6
Federal, state and foreign net operating losses	7.8	1.0
Legal settlement accrual	5.4	3.7
Convertible debt	1.7	3.5
Exit and termination accrual	9.3	0.8
Allowance for bad debts	6.7	5.6
Other	6.3	4.6
Total gross deferred tax assets	185.1	157.4
Less valuation allowance	(11.0)	(1.0)
Total net deferred tax assets	174.1	156.4
Deferred tax liabilities:		
Other intangibles	13.6	30.7
Unrealized gains	2.3	6.3
Fixed assets	8.3	12.8
Title plants	11.7	10.9
Capitalized system development costs	3.3	3.0
Pension liability	2.5	–
Goodwill	1.2	–
Other	11.1	8.6
Total deferred tax liabilities	54.0	72.3
Net deferred tax asset	$ 120.1	$ 84.1

In assessing the realizability of deferred tax assets, we consider whether it is more likely than not that some or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets depends on the generation of future taxable income during the period in which those temporary differences are deductible. At

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

December 31, 2006, a valuation allowance of $1.0 million was established for certain foreign net operating losses because, in our judgment, it was more likely than not that realization would not occur. During 2007, we provided for an additional $10.0 million primarily related to state deferred tax assets for one of our subsidiaries and for a U. S. federal net operating loss related to a consolidated joint venture, both of which we believe it is more likely than not that realization will not occur.

At December 31, 2007, we have net operating loss carryforwards for certain state and foreign jurisdictions of $7.8 million which are available to offset future income in those jurisdictions. These net operating losses could fully expire after 2027.

Prior to 2007, it was our intent to repatriate all accumulated earnings from our foreign subsidiaries to the U.S. Accordingly, we provided for deferred income taxes on all such undistributed earnings through December 31, 2006. During 2007, we made a decision to use foreign earnings to expand operations outside of the U.S. instead of repatriating those earnings to the U.S. Accordingly, pursuant to APB No. 23, *Accounting for Income Taxes-Special Areas* ("APB 23"), we have not accrued incremental U.S. taxes on foreign earnings recognized in 2007 as these earnings are considered to be indefinitely reinvested outside of the U.S. Deferred U.S. income taxes on unremitted earnings from other foreign entities have not been provided as such earnings are deemed to be permanently reinvested. As of December 31, 2007, U.S. income taxes not provided on unremitted earnings of subsidiaries operating outside the U.S. were immaterial.

The breakout of our income tax expense between current and deferred is as follows:

	2007	2006	2005
		(In millions)	
Current:			
Federal	$ 14.0	$ 13.2	$114.1
State	(0.7)	3.3	9.4
Foreign	(2.3)	2.2	–
Total	11.0	18.7	123.5
Deferred:			
Federal	(32.8)	39.3	(22.4)
State	(3.8)	(3.1)	(5.4)
Foreign	(1.9)	0.3	–
Total	(38.5)	36.5	(27.8)
Net tax (benefit) expense	$ (27.5)	$ 55.2	$ 95.7

The provision for income tax differs from the amount of income tax determined by applying the U.S. statutory income tax rate (35 percent) to pretax income as a result of the following:

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

	2007	2006	2005
		(In millions)	
Tax expense at federal statutory rate	$ (28.5)	$ 53.9	$ 91.5
Nontaxable interest	(6.3)	(6.2)	(5.5)
Meals and entertainment	5.8	6.4	6.4
State income taxes, net of federal benefit	(4.3)	2.5	2.9
Valuation allowance	10.0	1.0	–
Other, net	(4.2)	(2.4)	0.4
Income tax (benefit) expense	$ (27.5)	$ 55.2	$ 95.7

Taxes refunded were $21.4 million in 2007, and taxes paid were $97.4 million in 2006 and $54.2 million in 2005.

As a result of an audit of the 2003 to 2004 tax years, the Internal Revenue Service ("IRS") has proposed certain adjustments relating to our tax treatment of agency revenue. Currently, revenue from title policies issued through independent agents is recognized when the policies are reported by the agent for book and tax purposes. The IRS believes we are required to estimate the income and commissions associated with the sale of policies by agents during the tax year. The effect of this proposed adjustment would be an increase in the current tax liability and an increase in deferred tax assets of $35 million. However, we are disputing the proposed adjustment as we continue to believe that our tax treatment of these transactions is correct and we believe we will prevail in any dispute with the IRS related to this matter. Accordingly, no interest or penalties have been accrued for this proposed IRS adjustment as of December 31, 2007. We expect to defend the matter vigorously through the IRS appeal process and, if necessary, through litigation. We do not expect that the ultimate resolution of this matter will have a material adverse effect on our financial condition or results of operations.

On January 1, 2007, we adopted the provisions of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109* ("FIN 48") and FASB Staff Position FIN 48-1, *Definition of Settlement in FASB Interpretation No. 48* ("FSP FIN 48-1"). At January 1, 2007, the balance of the unrecognized tax benefits was $4.0 million which, if recognized, would affect our effective tax rate. A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

	(In millions)
Balance January 1, 2007	$ 4.0
Gross decreases in unrecognized tax benefits – related to prior periods	(1.9)
Additions in unrecognized tax benefits – current period	1.0
Balance December 31, 2007	$ 3.1

We file tax returns in the U.S. federal jurisdiction and various state and foreign jurisdictions. For federal and most state and local taxes, the statute of limitations has expired and we are no longer subject to examinations by tax authorities for years prior to 2003. Also related to the audit of the 2003 to 2004 tax years, in third quarter 2007, the IRS conceded in full a proposed adjustment from the audit related to original issue discount for convertible debt. Accordingly, we consider this issue effectively settled under FIN 48, which resulted in a reduction in the unrecognized tax benefits of $1.9 million. However, it is reasonably possible that within the next twelve months the amount of unrecognized tax benefits will increase as a result of other tax positions taken during the current period, the nature of which are consistent with those unrecognized tax benefits at December 31, 2007. The estimated range of the increase is from $0.5 million to $0.8 million.

10. CREDIT ARRANGEMENTS

A summary of our debt and credit arrangements are as follows:

	2007	2006
	(In millions)	
Revolving credit agreement at LIBOR plus margin (5.77% at December 31, 2007)	$ 100.0	$ 100.0
3.125% senior convertible debentures, due November 2033	98.5	115.0
3.25% senior convertible debentures, due May 2034	125.0	125.0
7.45% senior notes, due 2008	–	50.0
7.88% senior notes, due 2011	–	50.0
6.66% senior notes (Series D), due 2016	50.0	50.0
6.70% senior notes (Series E), due 2016	100.0	100.0
Borrowings from Federal Home Loan Bank Board	86.1	64.6
Other notes with maturities through 2011, average rate approximately 7.84%	19.9	30.7
	$ 579.5	$ 685.3

Credit Facility

On July 28, 2006, we entered into a five-year revolving credit agreement with SunTrust Bank, as administrative agent for a syndicate of other banks, issuing bank and swingline lender. The credit agreement established a credit facility with the aggregate principal amount of up to $200.0 million. Interest accrues on the outstanding principal balance of the credit facility, at our option, based on (1) LIBOR (reserve adjusted) for 30, 60, 90 or 180 days with respect to any Eurodollar Borrowing plus a margin determined by our leverage ratio or (2) SunTrust's Base Rate as defined in the credit agreement. The credit agreement contains certain restrictive covenants, including a minimum debt to capital ratio, an interest coverage ratio and maintenance of consolidated net worth requirement.

On November 29, 2007, we amended the credit agreement as a proactive measure given current market conditions. In general, the material terms of the amendment decreased the interest coverage ratio from its current level of 3.0:1.0 to 1.5:1.0 through September 30, 2008, after which time it will return to 3.0:1.0 and modified the consolidated net worth requirement from 85% to 80% of shareholder's equity as of December 31, 2005. We were in compliance with all debt covenants at December 31, 2007.

Senior Notes

On July 28, 2006, we entered into a Note Purchase and Master Shelf Agreement (the "Note Purchase Agreement") with Prudential Investment Management, Inc. ("Prudential") and the other purchasers thereunder. Under the Note Purchase Agreement, we issued $50.0 million of Senior Notes, Series D (the "Series D Notes") to the Series D Note purchasers on August 31, 2006 and we issued $100.0 million of Senior Notes, Series E (the "Series E Notes") to the Series E Note purchasers on September 7, 2006. In addition, the Note Purchase Agreement contained provisions for an uncommitted shelf facility for which we may issue, on or prior to July 28, 2009, up to $75.0 million of Senior Notes (the "Shelf Notes") to Prudential, upon mutually acceptable terms and conditions as may be agreed upon at the time of issuance. The Shelf Notes, if issued, will bear interest at a to-be-determined per annum rate and will have maturities of no more than ten years. At December 31, 2007, there were no borrowings outstanding under the Shelf Notes.

The Note Purchase Agreement, which governs the Series D Notes, Series E Notes and Shelf Notes, contains certain restrictive covenants, including a minimum debt to capitalization ratio and debt service ratio. On November 30, 2007, we amended the Note Purchase Agreement as a proactive measure given current market conditions. The amendment to the Note Purchase Agreement decreased the interest coverage ratio from its current level of 3.0:1.0 to 1.5:1.0 through December 31, 2008, after which time it will return to 3.0:1.0. We were in compliance with all debt covenants at December 31, 2007.

On October 10, 2007, we prepaid in full, all of our outstanding 7.45% Senior Notes, Series B, Due 2008 (the “Series B Notes”), and all of our outstanding 7.88% Senior Notes, Series C, Due 2011 (the “Series C Notes,” and collectively with the Series B Notes, the “Notes”), issued pursuant to the Note Purchase Agreement dated August 31, 2001 (the “Note Agreement”). The Notes were prepaid at our option in accordance with the terms of the Note Agreement at a price of $107.6 million, representing the aggregate principal amount of the Notes plus accrued and unpaid interest and a “make-whole” amount applicable to the Notes. We incurred $6.7 million in fourth quarter 2007 as a result of the make-whole payment which was reflected in our results of operations. The prepayment of the Notes was funded from the $100 million draw under the credit agreement and available cash.

Convertible Debt

In November 2003, we issued $115.0 million of 3.125% Convertible Senior Debentures due 2033 through a private placement. The debentures are convertible into our common shares at $65.21 per share (see additional information in Note 11). We may redeem some or all of the senior convertible debentures at any time on or after November 15, 2010. The holders may also require us to repurchase the debentures for cash at five designated repurchase dates as defined in the indenture. Additionally, we may be required to pay contingent interest during interest periods beginning in 2010, depending on the trading price of the debentures, as defined in the indenture. In October 2007, certain holders exercised their conversion rights for $16.5 million of these debentures resulting in a $0.3 million extinguishment gain.

In May 2004, we issued $125.0 million principal amount of 3.25% Convertible Senior Debentures due 2034 through a private placement. The 2004 debentures are convertible into our common shares at an equivalent price of $52.93 per share. We may redeem some or all of the senior convertible debentures at any time on or after May 2014. The holders may also require us to repurchase the debentures for cash at four designated repurchase dates as defined in the indenture. See additional information in Note 11.

Federal Home Loan Bank

Our banking subsidiary has a line of credit with the Federal Home Loan Bank of San Francisco ("FHLB") in the amount of $158.0 million, with an outstanding balance of $86.1 million at December 31, 2007. All advances under this line of credit were collateralized with loans receivable and FHLB stock of $5.1 million in 2007. These borrowings, which included fixed term and fixed rate advances maturing 2008 through 2012, bear or carry interest rates ranging from 2.7 percent to 5.3 percent.

Contractual Maturities

The aggregate annual maturities for notes payable in each of the five years after December 31, 2007, are as follows:

	(In millions)
2008	$ 43.0
2009	23.4
2010	22.1
2011	111.1
2012	4.5

Interest paid was $58.7 million in 2007, $48.5 million in 2006 and $30.7 million in 2005.

11. SHAREHOLDERS' EQUITY

Stock Options and Award Plans

At December 31, 2007, we had three stock compensation plans which have been approved by the shareholders: the 1991 and 1992 stock plans and the 2000 Stock Incentive Plan, as amended (the "2000 Plan"). No further awards may be granted under the 1991 and 1992 stock plans. All future grants of stock compensation will be granted through the 2000 Plan. Under the 2000 Plan, we may grant/award common stock, restricted stock, stock options, stock appreciation rights and phantom stock to officers, directors, employees, agents, consultants and advisors of us and our subsidiaries, as determined at the discretion of the Executive Compensation Committee of the Board of Directors. Shares of phantom stock are designated as cash units and payable solely in cash. The maximum number of shares of common stock authorized for issuance under the 2000 Plan is 3,600,000 subject to adjustment as described in the 2000 Plan. At December 31, 2007, there were 2,039,686 shares available for future grant under the 2000 Plan.

The total compensation expense for these plans was $12.2 million ($7.9 million, net of tax) in 2007, $16.7 million ($10.7 million, net of tax) in 2006, and $8.2 million ($5.1 million, net of tax) in 2005. As of December 31, 2007, there was $8.9 million of unrecognized compensation cost related to non-vested share-based compensation arrangements under the plan. That cost is expected to be recognized over a weighted-average period of approximately 2 years.

In 2007, 6,960 shares of common stock were granted to non-employee directors at a fair value of $87.99 per share.

Certain awards provide for accelerated vesting in the event of a change of control, retirement, disability or death.

The intrinsic value of awards exercised or converted was $12.1 million in 2007, $9.4 million in 2006, and $11.5 million in 2005. The fair value of shares vested was $6.8 million in 2007, $7.7 million in 2006, and $4.0 million in 2005.

Stock Options

All stock options have been granted with an exercise price equal to the fair market value of a share of common stock at the date of grant. All options granted to directors vest ratably over four years and expire ten years from the date of grant; all other options generally vest ratably over four years and expire seven years from the date of grant. There have been no stock options granted since 2002. All outstanding stock options were fully vested as of December 31, 2005 and there is no unrecognized compensation cost remaining. The following schedule summarizes stock option activity for the year ended December 31, 2007:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Life	Aggregate Intrinsic Value
			(Years)	(In millions)
Options outstanding, December 31, 2006 (221,250 exercisable)	221,250	$29		
Granted	–	–		
Exercised	116,350	30		
Forfeited	–	–		
Options outstanding, December 31, 2007 (104,900 exercisable)	104,900	$29	2	$0.6

Restricted Stock

Restricted stock and related cash units may be granted pursuant to the 2000 Plan and vest over three to four years. The fair value of non-vested shares is determined based on the closing trading price of our shares on the grant date. We recognize compensation expense on a straight-line basis over the requisite service period for the entire award. Recipients of restricted stock are entitled to vote and receive dividends on the shares. The shares are subject to certain transfer restrictions and may be forfeited if a participant leaves our company for reasons other than retirement, disability or death.

	2007		
	Restricted Stock	Weighted Average Grant-Date Fair Value	Cash Units
Nonvested grants at start of year	245,070	$57	155,724
Granted	117,034	73	84,749
Forfeited	(23,711)	65	(17,163)
Vested	(98,530)	52	(56,883)
Nonvested grants at end of year	239,863	$66	166,427

The weighted average grant-date fair value of awards granted was $73 in 2007, $67 in 2006, and $55 in 2005. Cash settlement of vested cash units was $3.8 million in 2007, $3.5 million in 2006, and $1.2 million in 2005.

Employee Stock Purchase Plan

The Employee Stock Purchase Plan ("ESPP"), available to substantially all employees, allows participants to purchase our common stock at a 15 percent discount from the fair market value on the purchase date. Common stock purchases are paid for through periodic payroll deductions and a company match. Compensation expense for the employee match was $0.7 million in 2007, $0.8 million in 2006, and $0.4 million in 2005.

Savings and Stock Ownership Plan

We have registered 3,100,000 shares of common stock for use in connection with the LandAmerica Financial Group, Inc. Savings and Stock Ownership Plan ("the Plan"). Substantially all of our employees are eligible to participate in the Plan.

We match employee contributions in cash. The total number of shares purchased and allocated to employees including both company match and employee contributions and cost follows:

2007		2006		2005	
Shares	Cost	Shares	Cost	Shares	Cost
		(Dollars in millions)			
169,246	$8.2	138,072	$7.2	124,135	$7.1

Amounts charged to income for our matching contributions were $19.8 million in 2007, $21.0 million in 2006 and $18.8 million in 2005.

Deferral Plans

Under our Executive Voluntary Deferral Plan, executives can defer eligible compensation into deferred stock units or a cash account bearing interest at a fixed rate of return. Under the Outside Directors Deferral Plan, directors can defer eligible compensation into deferred stock units bearing interest at a fixed rate of return. Under the terms of the original plans, deferred stock units were settled by a cash payment to the plan participant. Effective April 24, 2002, we amended the deferral plans to provide for the settlement of deferred stock units in our common stock. Effective January 1, 2004, the Executive Voluntary Deferral Plan and the Outside Directors Deferral Plan were amended to provide a maximum of 800,000 and 100,000, respectively, of common stock that can be issued under the plans. A trust has been established to hold the shares of common stock to be used to fund payments to executives and directors. We provide the trustee of the Plans with the funds to purchase shares of common stock on the open market to match the number of deferred stock units credited to participants' accounts under the deferral plans. The aggregate number of shares purchased by the trustee of the plans in 2007 was 42,451 at a cost of $2.7 million. At December 31, 2007, there were 543,043 shares available for future grant under our Executive Voluntary Deferral Plan and Outside Directors Deferral Plan.

Convertible Debt

In November and December 2003, we issued $115.0 million of 3.125% Convertible Senior Debentures due 2033 (the "2003 debentures") through a private placement. The 2003 debentures are convertible into shares of our common stock at the current conversion rate of 15.3358 shares per $1,000 principal amount of the debentures, which is equivalent to a conversion price of $65.21 per share of common stock. The conversion rate is subject to adjustment upon the occurrence of certain specified events. On February 15, 2005, we made an irrevocable election to satisfy in cash 100 percent of the principal amount of the 2003 debentures converted after that date. The remainder, if any, of our conversion obligation may be satisfied in cash or common stock. We may redeem some or all of the 2003 debentures at any time on or after November 2010. The holders may also require us to repurchase the 2003 debentures for cash or common stock at five designated repurchase dates as defined in the indenture. Holders may convert the 2003 debentures into cash and shares, if any, of our common stock prior to stated maturity, under the following circumstances: (1) during any calendar quarter (and only during such calendar quarter) commencing after December 31, 2003, and before December 31, 2028, if the last reported sale price of our common stock is greater than or equal to 125 percent of the conversion price for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter; (2) at any time on or after

January 1, 2029, if the last reported sale price of our common stock on any date on or after December 31, 2028, is greater than or equal to 125 percent of the conversion price; (3) subject to certain limitations, during the five business day period after any five consecutive trading day period in which the trading price per 2003 debenture for each day of that period was less than 98 percent of the product of the conversion rate and the last reported sale price of our common stock; (4) if we call the 2003 debentures for redemption; (5) upon the occurrence of certain corporate transactions; or (6) if we obtain credit ratings for the 2003 debentures, at any time when the credit ratings assigned to the 2003 debentures are below the specified levels in the indenture. In October 2007, certain holders exercised their conversion rights for $16.5 million of the 2003 debentures resulting in a $0.3 million extinguishment gain.

In May 2004, we issued approximately $125.0 million principal amount of 3.25% Convertible Senior Debentures due 2034 (the “2004 debentures”) through a private placement. The 2004 debentures are convertible into shares of our common stock at current conversion rate of 18.8933 shares per $1,000 principal amount of the 2005 debentures, which is equivalent to a conversion price of approximately $52.93 per share of common stock. The conversion rate is subject to adjustment upon the occurrence of certain specified events. Upon conversion, we will deliver cash equal to the lesser of the aggregate principal amount of 2004 debentures to be converted and our total conversion obligation and common stock in respect of the remainder, if any, of our conversion obligation. Holders may convert the 2004 debentures into cash and shares, if any, of our common stock prior to stated maturity, under the following circumstances: (1) during any calendar quarter (and only during such calendar quarter) commencing after June 30, 2004, and before June 30, 2029, if the last reported sale price of our common stock is greater than or equal to 125 percent of the conversion price for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter; (2) at any time on or after July 1, 2029 if the last reported sale price of our common stock on any date on or after June 30, 2029 is greater than or equal to 125 percent of the conversion price; (3) subject to certain limitations, during the five business day period after any five consecutive trading day period in which the trading price per 2004 debenture for each day of that period was less than 98 percent of the product of the conversion rate and the last reported sale price of our common stock; (4) if we call the 2004 debentures for redemption; (5) upon the occurrence of certain corporate transactions; or (6) if we obtain credit ratings for the 2004 debentures, at any time when the credit ratings assigned to the 2004 debentures are below the specified levels in the indenture. At December 31, 2007, none of the 2004 debentures had been converted or redeemed.

Based on their conversion features, the 2003 and 2004 debentures are not considered conventional convertible securities. We have evaluated each debenture for embedded derivatives pursuant to SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities* and EITF 00-19, *Accounting for Derivative Instruments Indexed to and Potentially Settled in a Company’s Own Stock*. The characteristics of the embedded conversion features would not require a net cash settlement, and therefore have not been valued as a separate derivative instrument. The 2004 debentures had registration rights requirements through May 2006, for which we maintained compliance through the expiration date.

Concurrently with the sale of the 2004 debentures, we entered into a bond hedge transaction designed to mitigate the potential dilution from the conversion of the 2004 debentures. Under the ten year term of the bond hedge transaction, we may exercise an option to require a counterparty to deliver our shares of common stock at a price approximately equal to the conversion price of the 2004 debentures.

The cost of the bond hedge transaction was partially offset by our sale to a counterparty of warrants to acquire up to 2,301,894 shares of our common stock. The warrants were initially exercisable at a price of approximately $63.98 per share, subject to adjustment. The warrants may be settled through a net share settlement based on the amount by which the then current market price of our common stock exceeds the exercise price.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

Stock Repurchase Program

During the first three quarters of 2004, we repurchased 1.25 million shares under a stock repurchase program authorized by the Board of Directors. As a result, in December 2004, the Board of Directors approved a program that authorized us to repurchase up to 1 million additional shares at a cost not to exceed $60.0 million. During fourth quarter 2005, we fully executed the share repurchase program approved in December 2004. In October 2005, the Board of Directors approved a program that authorized us to repurchase an additional 1.25 million shares. As of March 31, 2007, we had fully executed the share repurchase program approved in October 2005.

In February 2007, the Board of Directors approved a repurchase program expiring in October 2008 that authorized us to repurchase 1.5 million shares. As of December 31, 2007, we had fully executed the share repurchase program approved in February 2007.

In August 2007, the Board of Directors approved a repurchase program expiring in March 2009 that authorized us to repurchase 1.5 million shares. As of December 31, 2007, we had repurchased 390,380 shares for $12.4 million under the current repurchase program and there were approximately 1,109,620 shares remaining at December 31, 2007.

Comprehensive Income

We have elected to display comprehensive income in the statements of shareholders' equity, net of reclassification adjustments. Reclassification adjustments are made to avoid double counting in comprehensive income items that are displayed as part of net income for a period that also had been displayed as part of other comprehensive income in that period or earlier periods.

A summary of unrealized investment gains (losses) and reclassification adjustments, net of tax, of available-for-sale securities for the years ended December 31, 2007, 2006 and 2005 were as follows:

	2007	2006	2005
		(In millions)	
Unrealized holding (losses) gains arising during the period	$ (2.3)	$ 6.3	$ (14.6)
Reclassification adjustment for gains previously included in other comprehensive income (net of tax expense of $4.9 million – 2007; $0.1 million – 2006 and $3.0 million – 2005)	(8.9)	(0.2)	(5.5)
Net unrealized holding (losses) gains arising during the period	$ (11.2)	$ 6.1	$ (20.1)

For a summary of unrealized gains (losses) and reclassification adjustments, net of tax, related to postretirement benefit liabilities for the three years ended December 31, 2007, see Note 12.

Accumulated other comprehensive income (loss) at December 31, 2007, 2006 and 2005 was as follows:

	2007	2006	2005
		(In millions)	
Accumulated other comprehensive income (loss):			
Postretirement benefits liability, net of tax	$ (32.0)	$ (49.5)	$ (53.5)
Unrealized investment gains, net of tax	6.1	17.3	11.2
Foreign currency translation	(0.3)	–	–
	$ (26.2)	$ (32.2)	$ (42.3)

12. PENSIONS AND OTHER POSTRETIREMENT BENEFITS

We have pension and other postretirement benefit plans covering a portion of our employees. On December 31, 2004, we froze the accumulation of benefits available under our principal defined benefit pension plan. Effective December 31, 2004, we ceased future accruals to the retirement plan accounts of all plan participants (other than annual interest credits on account balances), caused the accrued benefits of participants to be fully vested as of December 31, 2004 and limited participation in the plan to those individuals who were participants in the Plan as of December 31, 2004. Participants prior to January 1, 1999, who met the requirements for early retirement on that date, may elect to receive their retirement benefits under the applicable prior plan or formula.

Additionally we sponsor a postretirement benefit plan that provides for postretirement health care benefits to eligible employees hired prior to January 1, 2000 and life insurance benefits to eligible employees. We also sponsor non-qualified, unfunded supplemental benefit plans covering key management personnel.

We adopted the reporting requirements and related footnote disclosure rules of SFAS 158 in 2006. Our measurement date for 2007 was September 30. In accordance with SFAS 158, we will be changing our measurement date to December 31 for 2008.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

The following table summarizes information about the funded status of our pension and other postretirement benefit plans:

	Pension Benefits		Other Benefits	
	2007	2006	2007	2006
	(In millions)			
Change in benefit obligation:				
Benefit obligation at beginning of year	$ 263.2	$ 274.6	$ 61.8	$ 74.2
Service cost	–	–	1.1	1.1
Interest cost	14.0	14.1	3.3	3.6
Plan participants' contributions	–	–	1.9	1.5
Effect of Medicare Act	–	–	–	–
Actuarial loss (gain)	2.6	(4.5)	(4.3)	(6.5)
Plan amendment	–	–	–	(6.5)
Curtailments	–	–	(0.9)	–
Settlements	(26.8)	–	–	–
Benefits paid	(9.5)	(21.0)	(5.4)	(5.6)
Benefit obligation at end of year	$ 243.5	$ 263.2	$ 57.5	$ 61.8
Change in plan assets:				
Fair value of plan assets at beginning of year	$ 247.1	$ 233.2	$ –	$ –
Actual return on plan assets	31.6	19.9	–	–
Company contributions	–	15.0	3.5	4.1
Plan participants' contributions	–	–	1.9	1.5
Settlements	(26.8)	–	–	–
Benefits paid	(9.5)	(21.0)	(5.4)	(5.6)
Fair value of plan assets at end of year	$ 242.4	$ 247.1	$ –	$ –
Funded (underfunded) status of the plan	$ (1.1)	$ (16.1)	$ (57.5)	$ (61.8)
Contribution between measurement date and year-end	–	–	0.2	0.1
Liability recognized in the balance sheet	$ (1.1)	$ (16.1)	$ (57.3)	$ (61.7)
Amounts in accumulated other comprehensive income ("AOCI"), pretax:				
Net actuarial loss	$ 48.1	$ 70.3	$ 2.2	$ 7.5
Prior service cost	–	–	0.6	0.9
Amounts in AOCI	$ 48.1	$ 70.3	$ 2.8	$ 8.4

During 2007, workforce reductions resulted in a curtailment of the postretirement plans. During 2006, a postretirement plan was amended to cap benefits to certain retirees. The accumulated benefit obligation for the cash balance plan is equal to the projected benefit obligation since the plan is frozen.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

Net periodic benefit cost and changes in AOCI for the years ended December 31 were as follows:

	Pension Benefits			Other Benefits		
	2007	2006	2005	2007	2006	2005
	(In millions)					
Components of net periodic pension cost:						
Service cost	$ –	$ –	$ –	$ 1.1	$ 1.1	$ 1.0
Interest cost	14.0	14.1	14.4	3.3	3.6	3.9
Expected return on plan assets	(18.0)	(17.7)	(17.1)	–	–	–
Amortization of unrecognized transition (asset) obligation	–	–	–	–	0.8	1.2
Prior service cost recognized	–	–	–	0.3	0.7	0.5
Loss due to settlement or curtailment	5.3	–	4.6	–	–	–
Recognized loss	5.8	7.1	4.6	0.1	0.3	0.4
Net periodic benefit cost	$ 7.1	$ 3.5	$ 6.5	$ 4.8	$ 6.5	$ 7.0
Change in amounts in AOCI:						
Net actuarial loss (gain) arising during the period	$ (11.1)	$ –	$ –	$ (5.2)	$ –	$ –
Amortization of gain (loss) through net periodic pension cost	(11.1)	–	–	(0.1)	–	–
Amortization of prior service cost through net periodic pension cost	–	–	–	(0.3)	–	–
SFAS 158 adoption adjustment	–	–	–	–	7.1	–
Minimum pension liability adjustment	–	(13.7)	7.2	–	1.3	–
Change in amounts in AOCI	$ (22.2)	$ (13.7)	$ 7.2	$ (5.6)	$ 8.4	$ –

For 2008, the amounts in AOCI expected to be recognized as components of net periodic benefit cost are:

	Projected 2008	
	Pension Benefits	Other Benefits
	(In millions)	
Amortization of loss	$ (4.3)	$ –
Amortization of prior service cost	–	(0.3)

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

Assumptions

Weighted-average assumptions used to determine benefit obligations at the measurement date:

	Pension Benefits		Other Benefits	
	2007	2006	2007	2006
Discount rate	6.00%	5.75%	6.00%	5.75%
Expected return on plan assets	8.00%	8.25%	N/A	N/A
Rate of compensation increase	N/A	N/A	4.50%	4.50%

Weighted-average assumptions used to determine net cost for years ended December 31:

	Pension Benefits		Other Benefits	
	2007	2006	2007	2006
Discount rate	5.75%	5.50%	5.75%	5.50%
Expected return on plan assets	8.25%	8.25%	N/A	N/A
Rate of compensation increase	N/A	N/A	4.50%	4.50%

Assumed health care cost trend rates:

	2007	2006
Health care cost trend rate assumed for next year	8.00%	9.00%
Rate that the cost trend rate gradually declines to	5.00%	5.00%
Year that the rate reaches the rate it is assumed to remain at	2012	2012

Assumed health care cost trend rates has a significant effect on the amounts reported for the health care plans. A one-percentage-point change in assumed health care cost trend rates would have the following effects:

	One-Percentage-Point Increase	One-Percentage-Point Decrease
	(In millions)	
Effect on total of service and interest cost	$ –	$ –
Effect on postretirement benefit obligation	$ 0.6	$ (0.5)

Pension Assets

Our pension plan asset allocation at September 30, 2007 and 2006 and target allocation for 2007 by asset category are as follows:

	Target Allocation	Percentage of Plan Assets	
	2007	2007	2006
Equity securities	55.0%	54.0%	54.9%
Debt securities	35.0	35.1	35.5
Other	10.0	10.9	9.6
Total	100.0%	100.0%	100.0%

We use current and targeted asset mix, in conjunction with historical and expected future long-term investment returns, to develop our expected rate of return on plan assets. Our investment strategy is to provide average market returns through the strategic use of equity and fixed-income and alternative investments to ensure both liquidity and stability of the portfolio. It is anticipated that the current mix of investments will enable the plan to meet our expected rate of return while maintaining principal throughout a variety of market conditions. Plan assets were not invested in LandAmerica securities during 2007 and 2006. No plan assets are expected to be returned to us during 2008.

Employer Contributions

Employer contributions to our pension and other postretirement benefit plans for the years ended December 31, 2007 and 2006, and projected contributions for the year ending December 31, 2008 are as follows:

	Actual		Projected
	2007	2006	2008
	(In millions)		
Pension	$ –	$15.0	$–
Other benefits	3.5	4.1	5.5

Estimated Future Benefit Payments

The following benefit payments, which reflect expected future service, as appropriate, are expected to be paid:

	Pension Benefits	Other Benefits
	(In millions)	
2008	$ 39.3	$ 5.5
2009	19.0	5.4
2010	19.1	5.3
2011	19.4	5.4
2012	19.0	5.5
Years 2013 - 2017	92.0	24.7

The expected benefit payments for our other postretirement benefit plans do not reflect any estimated federal subsidies expected to be received under the Medicare Prescription Drug, Improvement and Modernization Act of 2003. Federal subsidies are estimated at approximately $0.4 million annually from 2008 to 2012 and at approximately $2.2 million for the period 2013 through 2017.

13. IMPAIRMENT AND EXIT AND TERMINATION CHARGES

Impairment Charges

In first quarter 2007, we became aware that one of our tax and flood processing customers, Fremont General Corporation, received a cease and desist order from the Federal Deposit Insurance Corporation relating to lending practices in its mortgage origination business. As a result of the probable loss of business from this customer, we conducted an impairment test of LandAmerica Tax and Flood Services, Inc.'s ("Tax & Flood") customer relationship intangible asset in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, and we determined it was impaired. We recorded a customer relationship intangible impairment charge of $20.8 million which was reflected in our results of operations. Also in 2007, we determined that a non-competition intangible asset in the Title Operations segment was impaired and we recorded an impairment loss of $3.0 million.

In January 2006, we announced our plan to relocate and consolidate our corporate offices and shared resources operations. As a result, we wrote down the corporate office building and related assets to the fair value less cost by $10.3 million, which was reflected in our results of operations for the year ended December 31, 2006. In fourth quarter 2006, we sold the corporate office building and related assets.

In 2005, Tax & Flood ceased providing a portion of future tax services to one of its largest tax customers. As a result of the loss of business, we conducted an impairment test of Tax & Flood's long-lived assets and determined that its customer relationship intangible was impaired by $37.6 million and this impairment was reflected in our results of operations for the year ended December 31, 2005. Also in 2005, we determined that a non-competition intangible asset in the Title Operations segment was impaired and we recorded an impairment loss of $1.5 million.

During 2007 and 2006, we identified certain title plants in the Title Operations segment that will not continue to be used or maintained. Accordingly, we recorded impairment losses of $1.5 million in 2007 and $4.4 million in 2006, which was reflected in "Impairment of intangible and long-lived assets" in the Consolidated Statements of Operations. There were no material impairment charges related to title plants in 2005.

14. COMMITMENTS AND CONTINGENCIES

Lease Commitments

We conduct a major portion of our operations from leased office facilities under operating leases that generally expire over the next 10 years but are renewable. Additionally, we lease data processing and other equipment under operating leases that generally expire over the next five years but for the most part are renewable.

Following is a schedule of future minimum rental payments required under operating leases that have initial or remaining non-cancelable lease terms in excess of one year as of December 31, 2007.

	(In millions)
2008	$ 90.0
2009	67.7
2010	48.4
2011	31.1
2012	18.7
Thereafter	40.5
	$ 296.4

Rent expense was $114.3 million in 2007, $109.7 million in 2006 and $93.2 million in 2005.

Other Commitments and Guarantees

In November 2002, FASB issued Interpretation No. 45, *Guarantors Accounting and Disclosure Requirements Including Guarantees of Indebtedness of Others* ("FIN 45"). We had guarantees of indebtedness of others of approximately $2.1 million at December 31, 2007, and $3.4 million at December 31, 2006.

Concentrations of Credit Risk and Significant Customers

Our banking subsidiary loan portfolio is collateralized primarily by commercial real estate properties throughout Southern California, and to a lesser extent in Arizona and Nevada. As a result, the loan portfolio consists of similar property types in the same region. Although we have a diversified portfolio, a substantial portion of its debtors' ability to honor their contracts may be dependent on the economies of Southern California, Arizona, and Nevada.

The top five customers in our Lender Services segment account for approximately 32.8 percent of the operating revenue.

Although we conduct our business primarily on a national basis through a network of branch and agency offices, approximately 50.2 percent, 48.9 percent and 48.9 percent of consolidated title revenues for the years ended December 31, 2007, 2006 and 2005, respectively, were generated in the states of California, Texas, New York, Florida and Pennsylvania.

Pending Legal Proceedings

General

We are involved in certain litigation arising in the ordinary course of our businesses. Although the ultimate outcome of these matters cannot be ascertained at this time and the results of legal proceedings cannot be predicted with certainty, based on current knowledge we believe that the resolution of these matters will not have a material adverse effect on our financial position or results of operations.

Litigation Not in the Ordinary Course of Business

On January 25, 2002, Miles R. Henderson and Patricia A. Henderson ("Plaintiffs in the Henderson Suit") filed a putative class action suit (the "Henderson Suit") against Lawyers Title Insurance Corporation ("Lawyers Title") in the Court of Common Pleas for Cuyahoga County, Ohio. Lawyers Title removed the case to the District Court for the Northern District of Ohio on March 6, 2002, and Plaintiffs in the Henderson Suit amended the complaint on March 8, 2002. On June 28, 2002, the District Court remanded the case to the Court of Common Pleas for Cuyahoga County, Ohio. A similar putative class action suit was filed against Commonwealth, by Rodney P. Simon and Tracy L. Simon ("Plaintiffs in the Simon Suit") in the Court of Common Pleas for Cuyahoga County, Ohio on March 5, 2003. Plaintiffs' complaints in both suits alleged that the defendants charged original rates for owners' title insurance policies instead of a lower, reissue rate for which the customers were eligible. Both defendants moved to compel arbitration of the Plaintiffs' claims, but lost the motion in both the trial court and on appeal to the Ohio Supreme Court. On remand to the trial court, Plaintiffs in the Henderson Suit are now seeking to have the case certified as a class action on behalf of all sellers and buyers of residential property in Ohio who paid the higher original rate from 1992 to the present. Plaintiffs in the Simon Suit are seeking to have the case certified as a class action on behalf of all sellers of residential property in Ohio, who paid the original rate from 1993 to the present, as requested in the original complaint. Plaintiffs' complaints in both cases demand an unspecified amount of compensatory damages, declaratory and injunctive relief, punitive damages, and attorneys' fees and costs. In December 2007, a voluntary mediation was held in the Henderson Suit and the parties agreed in principle on several key terms of a settlement that is within the reserve established during third quarter 2007. Should the parties be unable to finalize their agreement, a class certification hearing will be scheduled in March 2008. A hearing date on the Motion for Class Certification filed by the Plaintiffs' in the Simon Suit has not been scheduled. Should further litigation prove necessary, defendants believe that they have meritorious defenses.

On September 20, 2004, Kenneth and Deete Higgins ("Plaintiffs in the Higgins Suit") filed a putative class action suit (the "Higgins Suit") against Commonwealth Land Title Insurance Company ("Commonwealth") in the

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

Circuit Court of Nassau County, Florida. On February 3, 2005, Plaintiffs in the Higgins Suit filed an Amended Class Action Complaint. Plaintiffs in the Higgins Suit allege that Commonwealth charged refinance borrowers higher basic rates for title insurance, rather than the lower reissue rates for which they are alleged to have qualified. The Amended Class Action Complaint also states that Commonwealth failed to disclose the potential availability of the lower rates to customers. Plaintiffs in the Higgins Suit seek to have the case certified as a class action on behalf of all Florida persons or entities who refinanced their mortgages or fee interests on the identical premises from July 1, 1999 to the present where there was no change in the fee ownership and who were charged a premium in excess of the reissue premium. Plaintiffs' complaints in the Higgins Suit demand an unspecified amount of compensatory damages, declaratory relief, attorneys' fees, costs and pre-judgment interest. Initial discovery has been exchanged between the parties. Commonwealth objected to answering interrogatories and producing documents in the possession of the company's agents. Plaintiffs in the Higgins Suit moved to compel this discovery, which motion was granted by the trial court. Commonwealth filed a Petition for Writ of Certiorari to the First District Court of Appeal to overturn the trial court's ruling. Briefing was completed and oral argument heard on July 24, 2007. No motion for class certification has been filed to date, and Commonwealth believes it has meritorious defenses.

On July 24, 2006, A. D. Alberton ("Plaintiff in the Alberton Suit") filed a putative class action suit (the "Alberton Suit") against Commonwealth which is currently pending in the United States District Court for the Eastern District of Pennsylvania. A similar putative class action suit was filed against Lawyers Title by Shariee L. De Cooman ("Plaintiff in the De Cooman Suit") in the Court of Common Pleas of Allegheny County, Pennsylvania on or about August 12, 2005. On November 1, 2005, Plaintiff in the De Cooman Suit filed an Amended Complaint. Plaintiff's complaint in the Alberton Suit alleges that Commonwealth charged rates for title insurance in excess of statutorily mandated rates and/or failed to disclose to consumers that they were entitled to reduced title insurance premiums. The Alberton Suit seeks to certify a class on behalf of all consumers who paid premiums for the purchase of title insurance on Pennsylvania properties from Commonwealth at any time from January 2000 until August 2005 and did not receive a discounted refinance or reissue rate for which they qualified. Plaintiff's complaint in the De Cooman Suit alleges that Lawyers Title charged the basic rate rather than a reissue or discounted rate to certain consumers. The DeCooman Suit seeks to certify a class on behalf of all owners of residential real estate in Pennsylvania who, at any time during the ten years prior to August 12, 2005 paid premiums for the purchase of title insurance from Lawyers Title, qualified for a reissue or other discounted rate, and did not receive such rate. A class certification hearing in the Alberton Suit was held on October 16, 2007. On January 31, 2008, the court issued an order granting in part the motion of Plaintiff in the Alberton Suit for class certification and certifying a class of all persons who from July 25, 2000 until August 1, 2005 paid premiums for the purchase of title insurance from Commonwealth in connection with a refinance of a mortgage or fee interest on Pennsylvania properties that were insured by a prior title insurance policy within ten years of the refinance transaction and were not charged the applicable reissue rate or refinance rate discount for title insurance on file with the Pennsylvania Insurance Commissioner. The parties are engaged in negotiations to settle the Alberton Suit. A class certification hearing in the De Cooman Suit was held on October 9, 2007. Plaintiff's complaint in the Alberton Suit demands an unspecified amount of compensatory damages, declaratory relief, triple damages, restitution, pre-judgment and post-judgment interest and expert fees, attorneys' fees and costs. Plaintiff's complaint in the De Cooman Suit demands an unspecified amount of compensatory damages, punitive damages, triple damages, prejudgment interest, and attorneys' fees, litigation expenses and costs. The defendants believe they have meritorious defenses.

With respect to the class action litigation disclosed above, the cases are subject to many uncertainties and complexities, including but not limited to: the underlying facts of each matter; variations between jurisdictions in which matters are being litigated; differences in applicable laws and judicial interpretations; the length of time before many of these matters might be resolved by settlement or through litigation; the timing and structure of their resolution relative to other similar cases brought against other companies; the fact that many of these matters are putative class actions in which a class is not clearly defined and has not been certified; and the current challenging legal environment faced by large corporations and insurance companies. For the reasons specified above, at this stage of the litigation, the amount or range of loss that could result from an unfavorable outcome cannot be reasonably estimated, except with respect to a reserve of $10 million established during third quarter 2007 in connection with the Henderson and Alberton cases.

We are defendants in a number of other purported class action cases pending in various states that include allegations that certain consumers were overcharged for title insurance and/or related services. The dollar amount of damages sought has generally not been specified in these cases except for jurisdictional limits. We intend to vigorously defend these actions.

Regulatory Proceedings

We have received certain information requests and subpoenas from various regulatory authorities relating to our business practices and those of the title insurance industry.

The Government Accountability Office released its final report on the title insurance industry on April 17, 2007 (the "Report"). The Report makes recommendations regarding federal and state oversight of the title insurance industry, including but not limited to, better consumer information, consideration of the need for modification to the Real Estate Settlement Procedures Act and increased cooperation among regulators.

Various states are studying the title insurance product, market, pricing, business practices, and potential regulatory and legislative changes. Multiple states, including California, Florida, New Mexico, New York, Texas, and Washington, are examining pricing levels and/or title insurance regulations. If it is determined that prices are not justified, rate changes may be implemented, including potential rate reductions.

Some of the pricing examinations, like those conducted in Texas and New Mexico, are conducted annually or biannually and usually result in adjustments to the prices we can charge. Subsequent to the 2004 Texas Title Insurance Biennial Hearings in August 2006, the Texas Commissioner of Insurance ordered a rate reduction of 3.2 percent effective February 1, 2007. The Texas Commissioner of Insurance issued a Consent Order on February 25, 2008 agreeing to settle the ratemaking phase of the 2006 Texas Title Insurance Biennial Hearing with no change to current rates.

Subsequent to a hearing of the New Mexico title rate case for 2006 which concluded on January 18, 2007, the New Mexico Superintendent of Insurance (the "Superintendent") issued an order on July 20, 2007 (the "Final Order") mandating a rate reduction of 6.36 percent and a change in the agent/underwriter split from 80/20 to 84.2/15.8 effective September 1, 2007. The New Mexico Land Title Association (the "NMLTA") filed a Motion for Reconsideration with the Superintendent on August 3, 2007. As a result of the Superintendent taking no action with respect to that Motion, on August 20, 2007, the NMLTA filed a Request for Review of Superintendent's Final Order, a stay and hearing by the New Mexico Public Regulatory Commission (the "Commission"). Various underwriters also filed an appeal to the Commission. On August 28, 2007, the Superintendent issued an Order denying the NMLTA's Motion for Reconsideration and granting the stay request until the Commission completes its review of the case with a requirement that the rate differential be escrowed during the stay and a notice of potential refund be provided to consumers. The Commission heard oral argument on the issues January 23, 2008. If the Commission upholds the Final Order, it can then be appealed to a New Mexico district court, with further appellate review available up to the New Mexico Supreme Court. The NMLTA and certain underwriters filed motions on October 19, 2007 seeking various remedies relating to the 2006 rate case, which resulted in certain Commissioners recusing themselves and if granted could result in the 2006 rate decision being vacated. The Superintendent has not yet issued an order on the completed 2007 rate case. The New Mexico Attorney General has asked the Superintendent to reduce title insurance rates in the 2007 rate case by more than 11 percent.

The California Department of Insurance ("CA DOI") submitted to the Office of Administrative Law ("OAL") proposed regulations governing the rating of title insurance and related services that could impose future rate reductions and filing of mandated statistical plans that impose substantially higher costs on title insurance operations in California. On February 21, 2007, OAL disapproved the regulatory action for failure to comply with certain standards and requirements and on February 28, 2007 issued a written decision detailing the reasons for disapproval. On June 28, 2007, CA DOI submitted revised regulations to OAL that were approved by OAL on July 25, 2007 and subsequently released by the California Secretary of State. The date for compliance with the requirements of the regulations varies by provision during 2009 and 2010. LandAmerica and other title companies doing business in the California market have been engaged in discussions with CA DOI regarding alternative approaches to the regulations but may pursue an appeal if such discussions are unsuccessful. The Commissioner of CA DOI has agreed to propose substantial changes to the data call (i.e. a request to submit information for the insurance experience) and statistical plan portion of the regulations to simplify them and minimize compliance costs, including delaying the effective dates by one year, through a new rulemaking file. The Commissioner has committed further to (i) eliminate the interim rate reduction if the industry helps CA DOI obtain an alternative method to enforce the data call and (ii) eliminate the maximum rate formula if the industry works with CA DOI to enact substantive alternate reforms. An External Title Insurance Working Group is working directly with CA DOI on these matters.

The Florida Office of Insurance Regulation and Department of Financial Services held a public hearing on August 23, 2007, in which numerous title insurance executives were questioned about Florida title insurance issues.

In addition, a number of state inquiries have focused on captive reinsurance. Captive reinsurance involves the provision of reinsurance by a reinsurance company that is owned by another entity, typically a lender, developer or other party that is a provider of real estate-related services. From the inception of our captive reinsurance programs in 1997 through 2004, reinsurance premiums paid by us to captive reinsurers totaled approximately $12.0 million. The revenues from these programs were not material to our results of operations. We voluntarily terminated our captive reinsurance arrangements as of February 2005, notwithstanding our belief that we had operated the programs in accordance with applicable law. We settled these investigations with six states, representing approximately 81.4 percent of our captive reinsurance business, without admitting any liability.

In June 2005, we established reserves of $19.0 million to cover anticipated exposure to regulatory matters nationwide, an amount which includes settlements with the California, Arizona, Nevada, Virginia, Colorado, and North Carolina departments of insurance. Based on these settlements and the status of inquiries, we released $8.5 million of this reserve back into earnings during fiscal years 2005-2007. The remaining reserve at December 31, 2007 was approximately $1.3 million.

We may receive additional subpoenas and/or requests for information in the future from state or federal government agencies. We will evaluate, and we intend to cooperate in connection with, all such subpoenas and requests.

Based on the information known to management at this time, it is not possible to predict the outcome of any of the currently pending governmental inquiries and investigations into the title insurance industry's market, business practices, pricing levels, and other matters, or the market's response thereto. However, any material change in our business practices, pricing levels, or regulatory environment may have an adverse effect on our business, operating results and financial condition.

15. VARIABLE INTEREST ENTITIES

We enter into joint ventures and partnerships related to our title operations and title plants in the ordinary course of our business. These entities are immaterial to our financial position and results of operations individually and in the aggregate. At December 31, 2007, we had no material exposure to loss associated with variable interest entities to which we are a party.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

16. STATUTORY FINANCIAL CONDITION OF INSURANCE SUBSIDIARIES AND RESULTS OF OPERATIONS

The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States which differ in some respects from statutory accounting practices prescribed or permitted in the preparation of financial statements for submission to insurance regulatory authorities. Combined statutory equity of our insurance subsidiaries was $428.5 million at December 31, 2007 and $619.4 million at December 31, 2006. The difference between statutory equity and equity determined on the basis of accounting principles generally accepted in the United States is primarily due to differences between (1) the provision for policy and contract claims included in the accompanying financial statements and the statutory premium reserve, which is calculated in accordance with statutory requirements, and (2) statutory regulations that preclude the recognition of certain assets and limit the recognition of goodwill and deferred income tax assets. Statutory net income for our insurance subsidiaries was $37.6 million in 2007, $226.7 million in 2006 and $124.4 million in 2005.

Statutory-basis financial statements are prepared in accordance with accounting practices prescribed or permitted by insurance regulatory authorities. These regulatory authorities recognize only statutory accounting practices prescribed or permitted by their individual state for determining and reporting the financial condition and results of operations of an insurance company and for determining their solvency. The National Association of Insurance Commissioners' ("NAIC"*) Accounting Practices and Procedures* manual ("NAIC SAP") has been adopted as a component of prescribed or permitted practices by each of the states that regulate us. Each of the states have adopted a material prescribed accounting practice that differs from that found in NAIC SAP. Specifically, amounts added to the statutory unearned premium reserve are released more rapidly under NAIC SAP than is allowed by state statute.

A reconciliation of our insurance subsidiaries' net statutory surplus between NAIC SAP and practices prescribed and permitted by these states at December 31 is shown below:

	2007	2006
	(In millions)	
Statutory surplus	$ 428.5	$ 619.4
State prescribed practices:		
Release of statutory premium reserve	22.4	24.4
Bonds	–	1.7
Total adjustments	22.4	26.1
Statutory surplus, NAIC SAP	$ 450.9	$ 645.5

In a number of states, our insurance subsidiaries are subject to regulations which require minimum amounts of statutory equity and which require that the payment of any extraordinary dividends receive prior approval of the Insurance Commissioners of these states. An extraordinary dividend is generally defined by various statutes in the state of domicile of the subsidiary insurer. Under such statutory regulations, net assets of our three principal insurance subsidiaries aggregating $186.1 million of 2007 net assets is available for dividends, loans or advances to us during the year 2008 without prior approval.

At December 31, 2007 our insurance and industrial bank subsidiaries had $44.4 million on deposit with various state and federal regulatory agencies that are shown primarily as investments on the consolidated balance sheet.

17. FACULTATIVE REINSURANCE

We cede and assume title policy risks to and from other insurance companies in order to limit and diversify our risk. We cede insurance on risks in excess of certain underwriting limits, which provides for recovery of a portion of losses. We remain contingently liable to the extent that reinsuring companies cannot meet their obligations under reinsurance agreements. The companies that we cede insurance to have financial ratings from external rating agencies of A or better, which indicate an excellent or superior ability to meet their obligations.

We cede and assume all of our title reinsurance primarily with four other insurance companies. The amount of paid and recovered reinsured losses during the three years ended December 31, 2007 was immaterial to our financial position and results of operations. The total amount of premiums for assumed and ceded risks was less than 1 percent of title premiums in each of the last three years.

18. REGULATORY REQUIREMENTS AND RESTRICTIONS

We operate a California industrial bank through a wholly-owned subsidiary, Orange County Bancorp and its subsidiary, Centennial Bank (“Centennial”), which makes up the Financial Services segment. Centennial is subject to supervision and regulation by Federal and state banking agencies. These authorities regulate Centennial’s issuance of deposits, place limits on the size and nature of the loans that can be made, and specify the maintenance of minimum liquidity levels. In addition, Centennial is subject to various regulatory capital requirements administered by the Federal and state banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory and possibly additional discretionary actions by regulators that, if undertaken, could have a material effect on the financial position and results of operations of our Financial Services segment. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, Centennial must meet specific capital guidelines that involve quantitative measures of their assets, liabilities, and certain off-balance-sheet items as calculated under regulatory accounting practices. The capital amounts and classifications are also subject to qualitative judgments by the regulators about components, risk weightings, and other factors.

Quantitative measures established by regulation to ensure capital adequacy require Centennial to maintain minimum amounts and ratios (set forth in the table below) of total and Tier 1 capital (as defined in the regulations) to risk-weighted assets (as defined), and of Tier 1 capital (as defined) to average assets (as defined). Centennial met all capital adequacy requirements to which it is subject as of December 31, 2007 and December 31, 2006.

The most recent notification from the Federal Deposit Insurance Corporation (“FDIC”) categorized Centennial as “well capitalized” under the framework for prompt correction action as of December 31, 2007 and December 31, 2006. To be categorized as well capitalized, an institution must maintain minimum total risk-based, Tier 1 risk-based, and Tier 1 leverage ratios as set forth in the table. There are no conditions or events since that notification that have changed Centennial’s category.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

Centennial's actual capital amounts and ratios as of December 31, 2007 and December 31, 2006 are presented in the table below:

	Actual		Minimum Capital Requirements for Capital Adequacy Purposes		Minimum To Be "Well Capitalized" Under Prompt Corrective Action Provision	
	Amount	Ratio	Amount	Ratio	Amount	Ratio
			(Dollars in thousands)			
2007						
Total capital (to risk weighted assets)	$ 79,568	11.86%	$ 53,660	8.00%	$ 67,076	10.00%
Tier 1 capital (to risk weighted assets)	74,649	11.13	26,830	4.00	40,245	6.00
Tier 1 leverage (to average allowable assets)	74,649	10.71	27,888	4.00	34,860	5.00
2006						
Total capital (to risk weighted assets)	$ 68,557	11.68%	$ 46,939	8.00%	$ 58,696	10.00%
Tier 1 capital (to risk weighted assets)	63,640	10.85	23,470	4.00	35,193	6.00
Tier 1 leverage (to average allowable assets)	63,640	7.90	32,220	4.00	40,278	5.00

19. SEGMENT INFORMATION

We are engaged in the business of providing title insurance as well as a broad array of real estate transaction related services through our subsidiaries. We have three reporting segments that fall within three primary business segments: Title Operations, Lender Services, and Financial Services. The remaining immaterial reportable segments have been combined into a group called Corporate and Other.

Title Operations includes residential and commercial title insurance business, escrow and closing services, commercial real estate services, and other real estate transaction management services.

Lender Services provides services to national and regional mortgage lenders consisting primarily of mortgage origination (e.g. real estate transaction management services, consumer mortgage credit reporting, flood zone determinations, residential appraisal and valuation services, etc.), loan servicing (e.g. real estate tax processing and default management) and loan subservicing.

Financial Services consists of Centennial, a California industrial bank.

Corporate and Other includes a residential home warranty business, a residential property inspection business, a commercial property valuation business and a commercial assessment business, as well as the unallocated portion of the corporate expenses related to our corporate offices in Richmond, Virginia and unallocated interest expense.

We provide title services through direct operations and agents throughout the United States. We also offer title insurance in Mexico, Europe, Canada, the Caribbean, Latin America, and Asia. The international operations were not material for the three years ended December 31, 2007. Tax related services and appraisal services are offered nationwide.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

Selected financial information about our operations by segment for each of the three past years is as follows:

	Title Operations	Lender Services	Financial Services	Corporate and Other	Total
			(In millions)		
2007					
Operating revenues	$ 3,145.3	$ 279.4	$ 0.8	$ 143.9	$ 3,569.4
Salaries and employee benefits	936.0	101.6	3.2	106.1	1,146.9
Depreciation	27.3	8.9	0.1	10.9	47.2
Amortization	11.9	5.7	0.2	4.1	21.9
Income (loss) before taxes	27.4	(10.3)	18.3	(117.0)	(81.6)
Assets	2,383.4	380.3	734.6	355.4	3,853.7
Capital expenditures	22.4	1.9	0.2	–	24.5
2006					
Operating revenues	$ 3,510.2	$ 252.7	$ 0.8	$ 121.5	$ 3,885.2
Salaries and employee benefits	990.3	98.4	2.6	91.4	1,182.7
Depreciation	25.2	5.4	0.1	3.9	34.6
Amortization	11.4	10.7	0.2	3.6	25.9
Income (loss) before taxes	226.5	26.4	17.7	(116.6)	154.0
Assets	2,529.6	452.4	758.7	434.1	4,174.8
Capital expenditures	40.7	5.5	0.2	19.8	66.2
2005					
Operating revenues	$ 3,482.1	$ 268.4	$ 1.2	$ 101.9	$ 3,853.6
Salaries and employee benefits	945.8	91.4	2.4	78.7	1,118.3
Depreciation	20.8	4.2	0.1	4.9	30.0
Amortization	11.2	14.1	0.2	3.3	28.8
Income (loss) before taxes	326.9	8.3	13.5	(87.4)	261.3
Assets	2,256.8	412.3	681.9	344.0	3,695.0
Capital expenditures	31.4	3.6	0.2	4.5	39.7

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

20. QUARTERLY FINANCIAL DATA (UNAUDITED)

Selected quarterly financial information follows:

	March 31[1]	June 30	September 30	December 31
	(In millions, except per share amounts)			
2007				
Operating revenue	$ 911.3	$ 971.5	$ 874.0	$ 812.6
Investment income	37.3	33.5	32.8	32.8
Income (loss) before income taxes	7.3	11.7	(28.4)	(72.2)
Net income	4.7	7.9	(20.8)	(45.9)
Net income (loss) per share	0.27	0.48	(1.28)	(3.01)
Net income (loss) per share – assuming dilution	$ 0.26	$ 0.42	$ (1.28)	$ (3.01)
2006				
Operating revenue	$ 902.3	$ 971.1	$ 954.2	$ 1,057.6
Investment income	30.6	31.0	37.8	31.3
Income before income taxes	18.5	57.4	24.6	53.5
Net income	13.7	35.6	15.2	34.3
Net income per share	0.81	2.13	0.92	2.01
Net income per share – assuming dilution	$ 0.78	$ 2.06	$ 0.89	$ 1.95

[1] In first quarter 2007, we recorded an impairment of a customer relationship intangible asset of $20.8 million, or $12.5 million after taxes. See Note 13 for further discussion.

Schedule I

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

SUMMARY OF INVESTMENTS
DECEMBER 31, 2007

(In millions)

Type of Investment	Amortized Cost	Estimated Fair Value	Amount at Which Shown in the Balance Sheet
Fixed maturities:			
United States Government and government agencies and authorities	$ 44.6	$ 45.9	$ 45.9
States, municipalities and political subdivisions	477.9	489.6	489.6
Foreign governments	5.4	5.5	5.5
Public utilities	22.4	22.3	22.3
All other corporate bonds	263.3	263.7	263.7
Mortgage-backed securities	308.2	311.8	311.8
Preferred stock	5.9	4.8	4.8
Total fixed maturities	1,127.7	1,143.6	1,143.6
Equity securities:			
Common stocks:			
Industrial, miscellaneous and all other	85.6	81.1	81.1
Total equity securities	85.6	81.1	81.1
Federal funds sold	59.6	XXX	59.6
Short-term investments	160.3	XXX	160.3
Total investments	$ 1,433.2	XXX	$ 1,444.6

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONDENSED FINANCIAL INFORMATION OF REGISTRANT
PARENT COMPANY BALANCE SHEETS
DECEMBER 31

(In millions, except share amounts)

	2007	2006
ASSETS		
Fixed maturities – at fair value (amortized cost: 2007 – $0; 2006 – $68.1)	$ –	$ 67.6
Short-term investments	9.9	76.6
Cash	17.1	21.3
Investment in affiliates	1,572.3	1,799.0
Notes receivable (less allowance for doubtful accounts: 2007 – $1.1; 2006 – $1.1)	15.2	16.2
Notes receivable from affiliates	13.5	13.5
Accounts receivable from affiliates	66.7	31.0
Income taxes receivable	8.9	51.6
Property and equipment, net	20.9	25.8
Deferred income taxes	35.8	36.3
Other assets	96.0	69.9
Total Assets	$ 1,856.3	$ 2,208.8
LIABILITIES		
Notes payable	$ 473.5	$ 605.0
Accounts payable and accrued liabilities	118.3	148.5
Other liabilities	63.8	59.5
Total Liabilities	655.6	813.0
SHAREHOLDERS' EQUITY		
Common stock, no par value, 45,000,000 shares authorized, shares issued and outstanding: 2007 – 15,351,550; 2006 – 17,604,632	335.4	465.3
Accumulated other comprehensive loss	(26.2)	(32.2)
Retained earnings	891.5	962.7
Total Shareholders' Equity	1,200.7	1,395.8
Total Liabilities and Shareholders' Equity	$ 1,856.3	$ 2,208.8

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONDENSED FINANCIAL INFORMATION OF REGISTRANT
PARENT COMPANY STATEMENTS OF OPERATIONS
YEARS ENDED DECEMBER 31

(In millions)

	2007	2006	2005
REVENUES			
Management fees from affiliates	$ 38.5	$ 32.9	$ 23.8
Other income	55.9	41.1	21.9
	94.4	74.0	45.7
EXPENSES			
Interest expense	27.4	25.4	21.1
Early extinguishment of debt	6.4	–	–
Administrative expenses	35.4	35.3	22.7
	69.2	60.7	43.8
INCOME BEFORE EQUITY IN UNDISTRIBUTED INCOME OF SUBSIDIARIES	25.2	13.3	1.9
INCOME TAX EXPENSE (BENEFIT)	3.4	9.5	(9.8)
EQUITY IN UNDISTRIBUTED (LOSS) INCOME OF CONSOLIDATED SUBSIDIARIES	(75.9)	95.0	153.9
NET (LOSS) INCOME	$ (54.1)	$ 98.8	$ 165.6

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONDENSED FINANCIAL INFORMATION OF REGISTRANT
PARENT COMPANY STATEMENTS OF CASH FLOWS
YEARS ENDED DECEMBER 31

(In millions)

	2007	2006	2005
Cash flows from operating activities:			
Net (loss) income	$ (54.1)	$ 98.8	$ 165.6
Adjustments to reconcile the net (loss) income to cash provided by operating results:			
Earnings of affiliates, net of distributions	214.6	58.5	(74.8)
Depreciation and amortization	4.7	2.4	2.4
Early extinguishment of debt	6.4	–	–
Change in assets and liabilities:			
Receivables from affiliates	(34.3)	10.4	(75.1)
Income taxes receivable/payable	42.0	(71.8)	14.3
Accounts payable and accrued expenses	(5.9)	6.9	16.1
Other	(9.8)	3.5	(4.2)
Net cash provided by operating activities	163.6	108.7	44.3
Cash flows from investing activities:			
Cost of fixed maturities acquired	(7.7)	(12.7)	(47.3)
Proceeds from sale of fixed maturities	70.1	10.9	40.5
Change in short-term investments	66.7	(65.3)	(6.6)
Change in cash surrender value of life insurance	(2.7)	(2.6)	–
Purchase of property and equipment, net	0.2	(19.6)	(4.2)
Investment in affiliates	(11.5)	(204.7)	(11.3)
Capital transactions with affiliates	(10.3)	20.4	78.7
Net cash provided by (used in) investing activities	104.8	(273.6)	49.8
Cash flows from financing activities:			
Cost of shares repurchased	(143.6)	(40.1)	(64.0)
Dividends paid	(17.1)	(13.8)	(11.7)
Proceeds from issuance of notes payable	–	253.0	–
Payments on notes payable	(116.5)	(50.0)	(18.0)
Proceeds from the exercise of options and incentive plans	2.8	1.4	7.9
Tax benefit of stock options exercised	1.8	1.2	–
Net cash (used in) provided by financing activities	(272.6)	151.7	(85.8)
Net (decrease) increase in cash	(4.2)	(13.2)	8.3
Cash at beginning of year	21.3	34.5	26.2
Cash at end of year	$ 17.1	$ 21.3	$ 34.5
Supplemental cash flow information:			
Non cash financing activities:			
Common shares issued for Capital Title merger	$ –	$ 49.7	$ –
Note forgiveness	$ (15.0)	$ –	$ –

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONDENSED FINANCIAL INFORMATION OF REGISTRANT
NOTES TO PARENT COMPANY FINANCIAL STATEMENTS

NOTE 1 – ACCOUNTING POLICIES

Basis of presentation - The accompanying parent company financial statements should be read in conjunction with our Consolidated Financial Statements.

NOTE 2 – CASH DIVIDENDS RECEIVED

The Company has received cash dividends from affiliates of $149.3 million, $153.7 million, and $79.1 million in 2007, 2006, and 2005, respectively.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

VALUATION AND QUALIFYING ACCOUNTS
YEAR ENDED DECEMBER 31, 2007

(In millions)

Description	Balance at Beginning of Period	Additions: Charged to Costs and Expenses	Additions: Charged to Other Accounts [1]	Deductions	Balance at End of Period
Reserve deducted from accounts receivable:					
Registrant – None					
Consolidated	$ 10.2	1.7	–	(0.8)	$ 11.1
Reserve deducted from notes receivable:					
Registrant	$ 1.1	–	0.2	(0.2)	$ 1.1
Consolidated	$ 1.5	0.3	–	–	$ 1.8
Reserve deducted from loans receivable					
Registrant – None					
Consolidated	$ 4.9	–	–	–	$ 4.9
Reserve for policy and contract claims					
Registrant – None					
Consolidated	$ 789.1	288.5	–	(201.1)	$ 876.5

[1] Represents intercompany activity between registrant and a consolidated subsidiary.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

VALUATION AND QUALIFYING ACCOUNTS
YEAR ENDED DECEMBER 31, 2006

(In millions)

Description	Balance at Beginning of Period	Additions: Charged to Costs and Expenses	Additions: Charged to Other Accounts [1]	Deductions	Balance at End of Period
Reserve deducted from accounts receivable:					
Registrant – None					
Consolidated	$ 7.9	2.0	0.7	(0.4)	$ 10.2
Reserve deducted from notes receivable:					
Registrant	$ 0.7	–	0.4	–	$ 1.1
Consolidated	$ 4.3	(2.6)	(0.2)	–	$ 1.5
Reserve deducted from loans receivable					
Registrant – None					
Consolidated	$ 4.3	0.6	–	–	$ 4.9
Reserve for policy and contract claims					
Registrant – None					
Consolidated	$ 697.6	231.3	22.0	(161.8)	$ 789.1

(1) Primarily relates to new acquisitions, whereby the increase in balance was entirely related to the take-on balance sheet of the consolidated subsidiary.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

VALUATION AND QUALIFYING ACCOUNTS
YEAR ENDED DECEMBER 31, 2005

(In millions)

Description	Balance at Beginning of Period	Additions: Charged to Costs and Expenses	Additions: Charged to Other Accounts[1]	Deductions	Balance at End of Period
Reserve deducted from accounts receivable:					
Registrant – None					
Consolidated	$ 8.2	6.6	0.4	(7.3)	$ 7.9
Reserve deducted from notes receivable:					
Registrant	$ 0.7	–	0.1	(0.1)	$ 0.7
Consolidated	$ 4.1	0.4	0.4	(0.6)	$ 4.3
Reserve deducted from loans receivable					
Registrant – None					
Consolidated	$ 4.1	0.8	–	(0.6)	$ 4.3
Reserve for policy and contract claims					
Registrant – None					
Consolidated	$ 643.8	197.2	–	(143.4)	$ 697.6

(1) Primarily relates to new acquisitions, whereby the increase in balance was entirely related to the take-on balance sheet of the consolidated subsidiary.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to provide assurances that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 (the "Exchange Act"), as amended, is recorded, processed, summarized and reported within the time periods required by the Securities and Exchange Commission.

Our management, under the direction of our Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in the Exchange Act Rules 13a-15(e) and 15d-15(e)) as of December 31, 2007. Based upon this evaluation our management, including our Chief Executive Officer and our Chief Financial Officer, has concluded that our disclosure controls and procedures were effective as of December 31, 2007.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in the Exchange Act Rules 13a-15(f) and 15(d)-15-(f). Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of published financial statements in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in "Internal Control - Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based on our assessment, we believe that our internal control over financial reporting was effective as of December 31, 2007. Management reviewed the results of their assessment with our Audit Committee. The effectiveness of our internal control over financial reporting as of December 31, 2007 has been audited by Ernst & Young LLP, an independent registered public accounting firm, which is included in Part II, Item 8, "Financial Statements and Supplementary Data" of this report.

Changes in Internal Control over Financial Reporting

There have not been any changes in our internal control over financial reporting (as such term is defined in the Exchange Act Rules 13a-15(f) and 15d-15(f)) during the fourth quarter of fiscal 2007 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Except as to certain information regarding executive officers included in Part I under the caption, "Executive Officers of the Registrant" and the matters set forth below, the information required by this item is incorporated herein by reference to our definitive proxy statement for the 2008 Annual Meeting of Shareholders to be filed within 120 days after the end of the last fiscal year.

We have adopted a Code of Ethics for Senior Financial Officers that applies to our principal executive officer, principal financial officer and controller and contains provisions relating to honest and ethical conduct (including the handling of conflicts of interest between personal and professional relationships), the preparation of full, fair, accurate and timely disclosure in reports and documents filed with the Securities and Exchange Commission and in other public communications made by us, compliance with governmental laws, rules and regulations and other matters. A copy of the Code of Ethics for Senior Financial Officers is available through the "Corporate Governance" section of our internet website at www.landam.com. Any amendment to or waiver from a provision of the Code of Ethics will be promptly disclosed on our website.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated herein by reference to our definitive proxy statement for the 2008 Annual Meeting of Shareholders to be filed within 120 days after the end of the last fiscal year.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this item is incorporated herein by reference to our definitive proxy statement for the 2008 Annual Meeting of Shareholders to be filed within 120 days after the end of the last fiscal year.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this item is incorporated herein by reference to our definitive proxy statement for the 2008 Annual Meeting of Shareholders to be filed within 120 days after the end of the last fiscal year.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this item is incorporated herein by reference to our definitive proxy statement for the 2008 Annual Meeting of Shareholders to be filed within 120 days after the end of the last fiscal year.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) (1) and (2) *Financial Statements and Financial Statement Schedules.* The Financial Statements and Financial Statement Schedules filed as part of this report are listed in the accompanying index at page 57 in Part II, Item 8 of this report.

(a) (3) *Exhibits.* See Exhibit Index, which is incorporated in this item by reference.

(b) *Exhibits*. See Item 15 (a)(3) above.

(c) *Financial Statement Schedules*. See Item 15 (a)(2) above.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

LANDAMERICA FINANCIAL GROUP, INC.

By: /s/ Theodore L. Chandler, Jr.
Theodore L. Chandler, Jr.
Chairman and Chief Executive Officer

February 25, 2008

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Theodore L. Chandler, Jr. Theodore L. Chandler, Jr.	Chairman, Chief Executive Officer and Director (Principal Executive Officer)	February 25, 2008
/s/ G. William Evans G. William Evans	Chief Financial Officer (Principal Financial Officer)	February 25, 2008
/s/ Christine R. Vlahcevic Christine R. Vlahcevic	Senior Vice President-Corporate Controller (Principal Accounting Officer)	February 25, 2008
/s/ Janet A. Alpert Janet A. Alpert	Director	February 25, 2008
/s/ Gale K. Caruso Gale K. Caruso	Director	February 25, 2008
/s/ Michael Dinkins Michael Dinkins	Director	February 25, 2008
/s/ Charles H. Foster, Jr. Charles H. Foster, Jr.	Director	February 25, 2008
/s/ John P. McCann John P. McCann	Director	February 25, 2008
/s/ Dianne M. Neal Dianne M. Neal	Director	February 25, 2008
/s/ Robert F. Norfleet, Jr. Robert F. Norfleet, Jr.	Director	February 25, 2008

Signature	Title	Date
/s/ Robert T. Skunda Robert T. Skunda	Director	February 25, 2008
/s/ Julious P. Smith, Jr. Julious P. Smith, Jr.	Director	February 25, 2008
/s/ Thomas G. Snead, Jr. Thomas G. Snead, Jr.	Director	February 25,008
/s/ Eugene P. Trani Eugene P. Trani	Director	February 25, 2008
/s/ Marshall B. Wishnack Marshall B. Wishnack	Director	February 25, 2008

ITEM 15(a)(3)
INDEX TO EXHIBITS

Exhibit Number And Applicable Section of Item 601 Of Regulation S-K	
3.1	Amended and Restated Articles of Incorporation of the Registrant, incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K, dated May 24, 2006, File No. 1-13990.
3.2	Bylaws of LandAmerica Financial Group, Inc. (amended and restated October 25, 2006), incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K, dated October 25, 2006, File No. 1-13990.
3.3	Articles of Amendment to the Articles of Incorporation of the Registrant, incorporated by reference to Exhibit 3.1 of the Registrant's Quarterly Report on Form 10-Q, filed October 31, 2007, File No. 1-13990.
4.1	Form of Common Stock Certificate, incorporated by reference to Exhibit 4.5 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005, File No. 1-13990.
4.2	Indenture, dated November 26, 2003, between the Registrant and JP Morgan Chase Bank, as trustee, including Form of 3.125% Convertible Senior Notes due 2033, incorporated by reference to Exhibit 4.7 of the Registrant's Registration Statement on Form S-3, File No. 333-113004, filed February 23, 2004.
4.3	Registration Rights Agreement, dated November 26, 2003, between the Registrant and the initial purchasers of the Registrant's 3.125% Convertible Senior Notes due 2033, incorporated by reference to Exhibit 4.8 of the Registrant's Registration Statement on Form S-3, File No. 333-113004, filed February 23, 2004.
4.4	Indenture, dated May 11, 2004, between the Registrant and JP Morgan Chase Bank, as Trustee, including Form of 3.25% Senior Convertible Debentures due 2034, incorporated by reference to Exhibit 4.1 of the Registrant's Form 10-Q for the quarter ended June 30, 2004, File No. 1-13990.
4.5	Registration Rights Agreement, dated May 11, 2004, between the Registrant and the initial purchasers of the Registrant's 3.25% Senior Convertible Debentures due 2034, incorporated by reference to Exhibit 4.2 of the Registrant's Form 10-Q for the quarter ended June 30, 2004, File No. 1-13990.
4.6	Note Purchase and Master Shelf Agreement, dated as of July 28, 2006, by and among the Registrant and the purchasers named therein, with accompanying forms of 6.66% Senior Note, Series D, due 2016, 6.70% Senior Note, Series E, due 2016 and Shelf Note. The foregoing exhibits need not be filed herewith pursuant to Item 601(b)(4)(iii) of Regulation S-K. The Registrant, by signing this Report on Form 10-K, agrees to furnish the Securities and Exchange Commission, upon its request, a copy of any instrument which defines the rights of holders of long-term debt of the Registrant and its consolidated subsidiaries, and for any unconsolidated subsidiaries for which financial statements are required to be filed that authorizes a total amount of securities not in excess of 10% of the total assets of the Registrant and its subsidiaries on a consolidated basis.

Exhibit Number And Applicable Section of Item 601 Of Regulation S-K	
4.7	First Amendment to the Note Purchase and Master Shelf Agreement dated as of November 30, 2007, by and among the Registrant and the purchasers named therein, with accompanying forms of 6.66% Senior Note, Series D, due 2016, 6.70% Senior Note, Series E, due 2016 and Shelf Note. The foregoing exhibits need not be filed herewith pursuant to Item 601(b)(4)(iii) of Regulation S-K. The Registrant, by signing this Report on Form 10-K, agrees to furnish the Securities and Exchange Commission, upon its request, a copy of any instrument which defines the rights of holders of long-term debt of the Registrant and its consolidated subsidiaries, and for any unconsolidated subsidiaries for which financial statements are required to be filed that authorizes a total amount of securities not in excess of 10% of the total assets of the Registrant and its subsidiaries on a consolidated basis.
10.1	Lawyers Title Insurance Corporation Deferred Income Plan, incorporated by reference to Exhibit 10C of the Registrant's Form 10 Registration Statement, as amended, File No. 0-19408.†
10.2	Lawyers Title Corporation 1992 Stock Option Plan for Non-Employee Directors, as amended May 21, 1996, incorporated by reference to Exhibit 10.5 of the Registrant's Form 10-Q for the quarter ended June 30, 1996, File No. 1-13990.†
10.3	Form of Lawyers Title Corporation Non--Employee Director Non-Qualified Stock Option Agreement, incorporated by reference to Exhibit 10.18 of the Registrant's Form 10-K for the year ended December 31, 1994, File No. 0-19408.†
10.4	Form of Lawyers Title Insurance Corporation Split-Dollar Life Insurance Agreement and Collateral Assignment, incorporated by reference to Exhibit 10.25 of the Registrant's Form 10-K for the year ended December 31, 1994, File No. 0-19408.†
10.5	Agreement Containing Consent Order, dated February 6, 1998, by and between the Registrant and the Federal Trade Commission, incorporated by reference to Exhibit 10.29 of the Registrant's Form 10-K for the year ended December 31, 1997, File No. 1-13990.
10.6	Form of LandAmerica Financial Group, Inc. Employee Non-Qualified Stock Option Agreement, dated February 16, 1999, with Schedule of Optionees and Options Awarded, incorporated by reference to Exhibit 10.29 of the Registrant's Form 10-K for the year ended December 31, 1998, File No. 1-13990.†
10.7	LandAmerica Financial Group, Inc. 1991 Stock Incentive Plan, as amended May 16, 1995, May 21, 1996, November 1, 1996, June 16, 1998, May 18, 1999 and February 23, 2000, incorporated by reference to Exhibit 10.30 of the Registrant's Form 10-K for the year ended December 31, 1999, File No. 1-13990.†
10.8	Form of LandAmerica Financial Group, Inc. Employee Non-Qualified Stock Option Agreement, dated February 23, 2000, with Schedule of Optionees and Options Awarded, incorporated by reference to Exhibit 10.35 of the Registrant's Form 10-K for the year ended December 31, 1999, File No. 1-13990.†

Exhibit Number And Applicable Section of Item 601 Of Regulation S-K	
10.9	Form of LandAmerica Financial Group, Inc. Employee Non-Qualified Stock Option Agreement, dated May 17, 2000, with Schedule of Optionees and Options Awarded, incorporated by reference to Exhibit 10.1 of the Registrant's Form 10-Q for the quarter ended June 30, 2000, File No. 1-13990.†
10.10	Form of LandAmerica Financial Group, Inc. Amendment to Non-Qualified Stock Option Agreements, dated June 20, 2000, with Schedule of Optionees and Agreements Being Amended, incorporated by reference to Exhibit 10.3 of the Registrant's Form 10-Q for the quarter ended June 30, 2000, File No. 1-13990.†
10.11	Form of LandAmerica Financial Group, Inc. Non-Employee Director Non-Qualified Stock Option Agreement, incorporated by reference to Exhibit 10.4 of the Registrant's Form 10-Q for the quarter ended June 30, 2000, File No. 1-13990.†
10.12	Form of LandAmerica Financial Group, Inc. Employee Non-Qualified Stock Option Agreement, dated February 20, 2001, with Schedule of Optionees and Options Awarded, incorporated by reference to Exhibit 10.43 of the Registrant's Form 10-K for the year ended December 31, 2000, File No. 1-13990.†
10.13	Form of LandAmerica Financial Group, Inc. Non-Employee Director Non-Qualified Stock Option Agreement, dated May 23, 2001, with Schedule of Optionees, incorporated by reference to Exhibit 10.26 of the Registrant's Form 10-K for the year ended December 31, 2003, File No. 1.13990.†
10.14	Form of LandAmerica Financial Group, Inc. Employee Non-Qualified Stock Option Agreement, dated December 20, 2001, with Schedule of Optionees and Options Awarded, incorporated by reference to Exhibit 10.44 of the Registrant's Form 10-K for the year ended December 31, 2001, File No. 1-13990.†
10.15	Form of Split-Dollar Life Insurance Agreement, between the Registrant and the named executive officers listed on the attached Schedule, incorporated by reference to Exhibit 10.45 of the Registrant's Form 10-K for the year ended December 31, 2001, File No. 1-13990.†
10.16	Form of Modification to Agreement between the Registrant and the named executive officers listed on the attached Schedule, incorporated by reference to Exhibit 10.46 of the Registrant's Form 10-K for the year ended December 31, 2001, File No. 1-13990.†
10.17	Form of Modification to Agreement, dated as of January 23, 2002, between the Registrant and the named executive officers listed on the attached Schedule, incorporated by reference to Exhibit 10.47 of the Registrant's Form 10-K for the year ended December 31, 2001, File No. 1-13990.†
10.18	Form of LandAmerica Financial Group, Inc. Non-Employee Director Non-Qualified Stock Option Agreement, dated May 22, 2002, with Schedule of Optionees, incorporated by reference to Exhibit 10.27 of the Registrant's Form 10-K for the year ended December 31, 2003, File No. 1.13990.†

Exhibit Number And Applicable Section of Item 601 Of Regulation S-K	
10.19	Letter Agreement, dated May 5, 2004 between the Registrant and JP Morgan Chase Bank constituting a high strike call confirmation, incorporated by reference to Exhibit 10.1 of the Registrant's Form 10-Q for the quarter ended June 30, 2004, File No. 1-13990.
10.20	Letter Agreement, dated May 5, 2004 between the Registrant and JP Morgan Chase Bank constituting a low strike call confirmation, incorporated by reference to Exhibit 10.2 of the Registrant's Form 10-Q for the quarter ended June 30, 2004, File No. 1-13990.
10.21	LandAmerica Financial Group, Inc. Outside Directors Deferral Plan, as amended and restated effective January 1, 2005, incorporated by reference to Exhibit 10.3 of the Registrant's Current Report on Form 8-K, dated February 21, 2006, File No. 1-13990.†
10.22	LandAmerica Financial Group, Inc. Executive Voluntary Deferral Plan, as amended and restated effective January 1, 2005, incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K, dated February 21, 2006, File No. 1-13990.
10.23	LandAmerica Financial Group, Inc. Benefit Restoration Plan, as amended and restated effective January 1, 2005, incorporated by reference to Exhibit 10.4 of the Registrant's Current Report on Form 8-K, dated February 21, 2006, File No. 1-13990.†
10.24	Restricted Stock Agreement with Theodore L. Chandler, Jr., dated January 1, 2005, incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, dated January 6, 2005, File No. 1-13990.†
10.25	Cash Unit Agreement with Theodore L. Chandler, Jr., dated January 1, 2005, incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K, dated January 6, 2005, File No. 1-13990.†
10.26	LandAmerica Financial Group, Inc. 2000 Stock Incentive Plan, as amended and restated effective January 1, 2005, incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K dated February 21, 2006, File No. 1-13990. †
10.27	Form of LandAmerica Financial Group, Inc. 2005 Restricted Stock Agreement, dated February 28, 2005, with Schedule of Grantees and number of shares granted, incorporated by reference to Exhibit 10.45 of the Registrant's Form 10-K for the year ended December 31, 2004, File No. 1-13990.†
10.28	Form of LandAmerica Financial Group, Inc. 2005 Cash Unit Agreement, dated February 28, 2005, with Schedule of Grantees and number of units granted, incorporated by reference to Exhibit 10.46 of the Registrant's Form 10-K for the year ended December 31, 2004, File No. 1-13990.†

Exhibit Number And Applicable Section of Item 601 Of Regulation S-K	
10.29	LandAmerica Financial Group, Inc. Executive Officer Incentive Plan, incorporated by reference to Appendix B of the Registrant's Definitive Proxy Statement filed on April 7, 2005, File No. 1-13990.†
10.30	Form of LandAmerica Financial Group, Inc. Non-Employee Director Restricted Stock Agreement, dated May 18, 2005, with Schedule of Grantees, incorporated by reference to Exhibit 10.1 of the Registrant's Form 10-Q for the quarter ended June 30, 2005, File No. 1-13990.†
10.31	Form of Amendment to LandAmerica Financial Group, Inc. Non-Employee Director Restricted Stock Agreement, incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, dated October 26, 2005, File No. 1-13990.†
10.32	Form of Amendments to LandAmerica Financial Group, Inc. Cash Unit Agreements and Restricted Stock Agreements, incorporated by reference to Exhibit 10.9 of the Registrant's Current Report on Form 8-K, dated February 21, 2006, File No. 1-13990.†
10.33	Form of LandAmerica Financial Group, Inc. 2006 Restricted Stock Agreement, dated February 28, 2006, with Schedule of Grantees and number of shares granted, incorporated by reference to Exhibit 10.53 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005, File No. 1-13990.†
10.34	Form of LandAmerica Financial Group, Inc. 2006 Cash Unit Agreement, dated February 28, 2006, with Schedule of Grantees and number of units granted incorporated by reference to Exhibit 10.54 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005, File No. 1-13990.†
10.35	Amendment dated July 24, 2006 to the LandAmerica Financial Group, Inc. Executive Voluntary Deferral Plan, as amended and restated, incorporated by reference to Exhibit 10.2 of the Registrant's Form 10-Q for the quarter ended June 30, 2006, File No. 1-13990.
10.36	Revolving Credit Agreement, dated July 28, 2006, between the Registrant and SunTrust Bank, as Administrative Agent for a syndicate of financial institutions named therein, incorporated by reference to Exhibit 10.1 of the Registrant's Form 10-Q for the quarter ended June 30, 2006, File No. 1-13990.
10.37	Agreement and Plan of Merger by and among LandAmerica Financial Group, Inc. and CTG Acquisition Corp. and Capital Title Group, Inc. dated March 28, 2007, incorporated by reference to Exhibit 2.1 of the Registrant's Current Report on Form 8-K dated March 28, 2006, File No. 1-13990.
10.38	First Amendment to Revolving Credit Agreement dated November 30, 2007 between the Registrant and SunTrust Bank, as Administrative Agent for a syndicate of financial institutions named therein, incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed November 30, 2007, File No. 1-13990.
10.39	Form of LandAmerica Financial Group, Inc. Change of Control Employment Agreement dated January 1, 2008, with Schedule of Executive Officers and Multiplier, incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, dated January 4, 2008, File No. 1-13990.†

Exhibit Number And Applicable Section of Item 601 Of Regulation S-K	
10.40	Supplemental Change of Control Employment Agreement dated January 1, 2008 incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K dated January 4, 2008, File No. 1-13990. †
21	Subsidiaries of the Registrant.*
23	Consent of Ernst & Young LLP.*
31.1	Rule 13a-14(a) Certification of Chief Executive Officer.*
31.2	Rule 13a-14(a) Certification of Chief Financial Officer.*
32.1	Statement of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350.*
32.2	Statement of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350.*

†Denotes Compensatory Plans
*Filed Herewith

Exhibit 2

LES File Number: OLX-08-000494-00

LandAmerica
1031 Exchange Services

EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT ("Exchange Agreement") is made September 22, 2008, by and between LANDAMERICA 1031 EXCHANGE SERVICES, INC., with its principal office in Richmond, Virginia ("LES"), and Denise J. Wilson ("TAXPAYER").

RECITALS

A. Taxpayer owns that certain parcel or parcels of land, and all improvements thereon and appurtenances thereto located at 4011 Chestnut Drive West, University Place, WA and which is more particularly described on Exhibit "A" hereto (the "Relinquished Property").

B. Taxpayer desires to exchange the Relinquished Property for property or properties of like-kind (the "Replacement Property") in an exchange qualifying under Section 1031 and related sections of the Internal Revenue Code of 1986, as amended (the "Code"), and regulations promulgated thereunder.

C. LES is willing and agrees to facilitate such like-kind exchange as provided in this Exchange Agreement.

D. Taxpayer has entered into that certain purchase and sale agreement for the Relinquished Property with George Bell and Dinahfinella Bell ("Recipient") dated August 17, 2008 containing terms related to the purchase, assignment and transfer of the Relinquished Property (as the same may be amended, the "Agreement of Sale"), a copy of which is attached hereto as Exhibit "B".

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LES and Taxpayer agree as follows:

AGREEMENT

1. __Exchange of Property.__

(a) LES agrees to acquire from Taxpayer, and Taxpayer agrees to convey to LES the Relinquished Property, and LES hereby agrees to convey to Taxpayer, in exchange for the Relinquished Property, the Replacement Property. LES agrees to acquire the Replacement Property from its seller (the "Seller") in a purchase transaction for the purpose of effectuating a like kind exchange.

(b) On or before the close of the sale for the Relinquished Property (the "Initial Closing Date"), Taxpayer shall assign its rights but not its obligations in and under the Agreement of Sale to LES, and LES agrees to accept an assignment in form and substance approved by LES. Taxpayer shall give written notice of the assignment of the Agreement of Sale to LES to all parties to the Agreement of Sale on or before the Initial Closing Date.

(c) In order to save duplicative recording fees, escrow costs and other similar charges, LES shall on and as of the Initial Closing Date direct Taxpayer, and Taxpayer shall convey on behalf of LES, the Relinquished Property to Recipient. In addition, Taxpayer agrees to execute all bills of sale and assignment of leases, security deposits and trade names and other assets, which are necessary to close the transaction directly in favor of Recipient. If closing on the sale does not occur on the Initial Closing Date, as that date may be extended by the parties thereto, LES shall assign all of its rights, title and interest in and to the Agreement of Sale to Taxpayer by an assignment agreement in form and substance acceptable to LES and Taxpayer shall accept such assignment.

(d) The transfers described in this Section 1 are part of an integrated, interdependent, mutual and reciprocal plan intended to effectuate an exchange by Taxpayer of like-kind real properties pursuant to and in accordance with the provisions of Section 1031 of the Code, and to the extent possible, state tax statutes.

2. <u>Treatment of Exchange Funds.</u>

(a) LES agrees to hold and apply the Exchange Funds in accordance with the terms and conditions of this Exchange Agreement. For purposes of this Agreement, Exchange Funds shall mean the total consideration received from the closing of the sale of the Relinquished Property reduced by the remaining principal and interest balance of all debts secured by liens against the Relinquished Property, if any, as of the Initial Closing Date, taken subject to by LES, all real estate commissions, prorations of income and expenses, closing costs, title insurance premiums, escrow fees, and any other amounts chargeable to LES in the closing of the sale for the Relinquished Property. Exchange Funds wired to LES and not received by LES by 1:00 p.m. Eastern Time will not begin to accrue interest pursuant to paragraph 3(a) below until the next business day. Exchange Funds delivered to LES by check will not begin to accrue interest pursuant to paragraph 3(a) below until the second business day after receipt of the check by LES. **If the Exchange Funds are to be held less than 48 hours, then no interest shall be paid to Taxpayer on the Exchange Funds.**

(b) LES shall make payments from the Exchange Funds to acquire the Replacement Property or Properties identified in accordance with the Notice(s) of Identification to be completed by Taxpayer on or before 45 days from the transfer of the Relinquished Property, and received from or on behalf of Taxpayer pursuant to Paragraph 4, including the payment of deposit or option fees provided in the purchase agreement for the purchase of the Replacement Property (the "Replacement Property Contract").

(c) LES shall have sole and exclusive possession, dominion, control and use of all Exchange Funds, including interest, if any, earned on the Exchange Funds until the first business day after the earliest of the following to occur: (i) the end of the Identification Period, as hereafter defined, if Taxpayer has not identified the Replacement Property or has properly revoked in writing any identifications of Replacement Property; (ii) after Taxpayer has received all the Replacement Property identified pursuant to Section 4 and which Taxpayer is entitled to under this Agreement; (iii) the earlier of the date which is 180 days after the transfer of the Relinquished Property to Recipient or the due date of Taxpayer's income tax return (including extension) for the taxable year in which the transfer of the Relinquished Property occurs (the "Exchange Period"); or (iv) the date after the occurrence of a material and substantial contingency that (x) specified in the written Notice of Identification, (y) relates to the exchange contemplated by this Exchange Agreement, and (z) is beyond the control of Taxpayer or any disqualified person as provided in Treasury Regulation Section 1.1031(k)-1(*g*)(6)(iii)(B)(3) (the dates described in (i)–(iv) each referred to as a "Termination Date"). Taxpayer shall have no right, title, or interest in or to the Exchange Funds or any earnings thereon and Taxpayer shall have no right, power, or option to demand, call for, receive, pledge, borrow or otherwise obtain the benefits of any of Exchange Funds, including interest, if any, earned on the Exchange Funds except that the balance of Exchange Funds, if any, held by LES after applying such Exchange Funds in accordance with this Exchange Agreement shall be paid to Taxpayer on the applicable Termination Date. Provided, however, in no event shall any of the foregoing be deemed the Termination Date prior to the expiration of the Identification Period or as otherwise provided under Treasury Regulation Section 1.1031(k)-1(*g*)(6).

Notwithstanding anything to the contrary herein, in the event of a Presidentially declared disaster or terroristic military action for which the IRS publishes a Notice and/or Service News Release and with regard to which the Taxpayer is an "affected taxpayer", the forty-five (45) day identification period and the Exchange Period shall be deemed to be, and shall be, extended as provided in Rev. Proc. 2007-56 (Section 17), to such later date as authorized by the Revenue Procedure in reference to the IRS News Release or similar authoritative guidance. In such event the restrictions on distribution set forth herein, including as provided for in paragraph (g)(6) of Treas. Reg. 1.1031(k)-(1), shall apply without interruption during the extensions. LES has no obligation to notify Taxpayer of such a determination.

3. <u>Investment of Exchange Funds.</u>

(a) LES will deposit the Exchange Funds in an account maintained at SunTrust Bank in Richmond, Virginia, and guarantees Taxpayer will receive interest on the Exchange Funds at an annualized adjusting rate equal to 100% of the intended Federal Funds Rate as announced by the Federal Open Market Committee less one hundred fifty basis points (150 bps), compounded daily, adjusting as the Federal Funds Rate does, one day following the same (the "Growth Factor") from the first business day following receipt of funds via wire transfer at Richmond, Virginia, or from three business days after receipt in Richmond, Virginia if sent by check, to the day of withdrawal. LES and Taxpayer agree that the Growth Factor, if not applied to the acquisition of the Replacement Property identified by Taxpayer pursuant to Paragraph 4, shall be paid to Taxpayer after the Termination Date. Taxpayer acknowledges and agrees that the amount of the Exchange Funds may be in excess of the maximum amount of deposit insurance carried by the depository institution indicated above; however, LES unconditionally guarantees the return and availability of the Exchange Funds and the guaranteed interest stated above.

(b) LES shall file information returns reporting as taxable income to Taxpayer the interest and other earnings, if any, paid to Taxpayer during any calendar year on such returns, reports, and other filings as are required by applicable law. Taxpayer represents and warrants to LES that its **social security or taxpayer identification number is 556-15-1833.** Taxpayer will recognize such interest and other earnings, if any, as taxable income to Taxpayer regardless of whether such interest or other earnings are used to acquire Replacement Property. LES shall have no obligation to pay any income, gains or other taxes that may be imposed with respect to any of the transactions contemplated by this Exchange Agreement. Taxpayer further certifies under penalties of perjury that Taxpayer is not a "foreign person" as defined by Section 1445 of the Code and the regulations promulgated thereunder, and that the Taxpayer is not subject to backup withholding.

4. **<u>Identification of Replacement Property</u>.**

(a) On or before midnight of the date that is forty-five (45) days after the date of the transfer of the Relinquished Property (in the event there is more than one Relinquished Property, forty-five (45) days after the transfer of the <u>first</u> Relinquished Property) to or on behalf of LES (the "Identification Period"), Taxpayer shall identify the Replacement Property to be received by Taxpayer in exchange for the Relinquished Property. Such identification shall be effectuated by one or more Notices of Identification signed by Taxpayer. Notices of Identification shall be in writing and shall be hand delivered, mailed (certified, return receipt requested), or sent by facsimile to LES or to any other party involved in the exchange other than Taxpayer or a disqualified person before the end of the Identification Period. Taxpayer shall give LES prompt written notice of any changes, deletions, or additions and may revoke a Notice of Identification only by a written notice (a "Notice of Revocation") signed by the Taxpayer and hand delivered, mailed (certified, return receipt requested), or sent by facsimile to LES before the end of the Identification Period. To be effective, a Notice of Identification sent to LES by facsimile must be sent to the facsimile number shown in Paragraph 9.

(b) When LES receives the Notice of Identification, it will sign such Notice of Identification, indicating its proper receipt within the Identification Period. Taxpayer agrees that the Replacement Property shall be identified on the Notice of Identification in accordance with the following principles:

(i) Taxpayer shall unambiguously describe the Replacement Property using either its complete legal description, complete street address, Assessor's Parcel Number, or distinguishable name.

(ii) Taxpayer shall identify only that number of Replacement Properties which meets one of the following "rules": (x) three (3) properties without regard to the fair market value of the properties; (y) any number of properties so long as their aggregate fair market value as of the end of the Identification Period does not exceed two hundred percent (200%) of the aggregate fair market value of the Relinquished Property as of the date such Relinquished Property was transferred by Taxpayer; or (z) any number of properties without regard to their fair market value so long as Taxpayer receives identified Replacement Properties constituting at least ninety-five percent (95%) of the aggregate fair market value of all identified Replacement Properties before the end of the Exchange Period.

TAXPAYER HEREBY ACKNOWLEDGES THAT TAXPAYER HAS DISCUSSED THE REGULATION PROVISIONS RELATED TO IDENTIFICATION OF ONE OR MORE REPLACEMENT PROPERTIES WITH TAXPAYER'S TAX ADVISOR AND LES IS ACTING SOLELY AS THE INTERMEDIARY AND HAS NOT OFFERED OR PROVIDED ANY TAX ADVICE TO TAXPAYER.

5. Acquisition of Replacement Property.

(a) Taxpayer shall have the sole duty and obligation to identify Replacement Property and enter into such contracts and agreements as may be necessary or proper to permit LES to acquire such Replacement Property. At or before the Exchange Closing, Taxpayer shall assign its rights in but not its obligations under the Replacement Property Contract to LES. However, LES shall have no obligation to accept such an assignment unless (i) LES can terminate the Replacement Property Contract by the payment of liquidated damages in an amount not to exceed the Exchange Funds less any sum estimated in good faith by LES as being necessary to pay any fees then earned by LES for its services hereunder and to reimburse any expenses then or to be incurred by LES hereunder, (ii) the Seller of the Replacement Property agrees in writing to deed the Replacement Property as directed by LES, (iii) the Seller of the Replacement Property consents in writing to the assignment of Taxpayer's rights in the Replacement Property Contract to LES, and (iv) at the time of such assignment, the amount of the Exchange Funds is sufficient to satisfy the total costs and expenses to be incurred by LES in acquiring the Replacement Property and conveying it to Taxpayer (the "Replacement Cost"), including, without limitation, the aggregate amount of all deposits and expenditures by LES in respect to the purchase price, real estate commissions, prorations of income and expenses, closing costs, title insurance premiums, escrow fees, and any other amounts otherwise chargeable to LES in connection with the acquisition and conveyance of the Replacement Property to Taxpayer, but excluding any existing mortgage, trust deed or other secured loans which may be assumed or taken subject to by Taxpayer. The assignment shall be made using the form of assignment approved in form and substance by LES. Taxpayer shall give written notice of assignment provided in this Paragraph 5(a) to all parties to the Replacement Property Contract being assigned on or before the closing of the Replacement Property and shall obtain written acknowledgment from all such parties that the notice of assignment was received prior to such closing by having such parties execute the acknowledgment at the bottom of said assignment. Taxpayer shall provide LES at least three (3) business days prior notice of any scheduled closing of a Replacement Property. In order to provide timely wiring of Exchange Funds, unconditional and proper wiring instructions must be provided by Taxpayer to LES in writing no later than three business days before the day the wire is to be initiated, unless Taxpayer has made alternative arrangements with LES.

(b) LES shall acquire and transfer, or cause to be transferred, to Taxpayer, and Taxpayer agrees to accept the Replacement Property or properties identified by Taxpayer pursuant to Paragraph 4. In the event the Replacement Cost for any Replacement Property exceeds the Exchange Funds, Taxpayer shall deliver to LES just prior to any closing on a Replacement Property, the amount of the deficiency, as determined by LES in its sole discretion, in collected funds, or shall provide assurances acceptable to LES, in its sole discretion, that sufficient funds will be available at the Exchange Closing to satisfy the deficiency. LES shall not be required in connection with the acquisition of any property or properties to (i) assume any loan, mortgage, liability or other obligation, or (ii) pay any cash in excess of the Exchange Funds; or (iii) take legal title to any property or properties. All such matters shall be the sole duty and obligation of Taxpayer, and Taxpayer shall indemnify, hold harmless, and defend LES from any and all actions, claims, liabilities, costs, and expenses including costs of investigation, court costs and attorneys' fees and disbursements in connection with the transactions contemplated by this Exchange Agreement.

6. Duties of LES. It is understood and agreed by the parties to this Exchange Agreement that:

(a) LES has entered into this Exchange Agreement with the intention of being a "qualified intermediary" within the meaning of Section 1.1031(k)-1(g)(4)(iii) of the Regulations on the date hereof and shall use its best efforts to retain that status until all of the Exchange Funds have been disbursed in accordance with this Exchange Agreement. LES and Taxpayer acknowledge and agree that this Exchange Agreement is intended to satisfy the "safe harbor" provisions of Section 1.1031(k)-1(g) of the Regulations.

(b) LES IS ENTERING INTO THIS EXCHANGE AGREEMENT SOLELY FOR THE PURPOSE OF FACILITATING TAXPAYER'S EXCHANGE OF THE RELINQUISHED PROPERTY FOR THE REPLACEMENT PROPERTY. NONE OF LES' ACTIONS UNDER THIS EXCHANGE AGREEMENT SHALL CONSTITUTE LEGAL, TAX OR OTHER ADVICE OR REPRESENTATIONS TO TAXPAYER OR ANY OTHER PERSON OR ENTITY. LES MAKES NO REPRESENTATIONS REGARDING THE TAX CONSEQUENCES OF THE TRANSACTIONS CONTEMPLATED BY THIS EXCHANGE AGREEMENT, INCLUDING QUALIFICATION OF THE TRANSACTIONS SET FORTH HEREIN AS A LIKE-KIND EXCHANGE UNDER SECTION 1031 OF THE CODE OR ANY OTHER MATTER. TAXPAYER HEREBY REPRESENTS TO LES, AND ACKNOWLEDGES THAT LES IS RELYING ON SUCH REPRESENTATION IN EXECUTING THIS EXCHANGE AGREEMENT, THAT TAXPAYER HAS EXECUTED THIS EXCHANGE AGREEMENT BASED ON THE ADVICE OF TAXPAYER'S LEGAL AND TAX ADVISERS WITH RESPECT TO ALL ASPECTS OF THIS EXCHANGE AGREEMENT AND THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING BY WAY OF ILLUSTRATION, AND NOT LIMITATION, FEDERAL, STATE, AND LOCAL TAX CONSEQUENCES, AND EXPRESSLY RELEASES LES FROM AND COVENANTS NOT TO SUE LES FOR ANY LIABILITY WITH RESPECT THERETO, EXCEPT FOR LES' WILLFUL MISCONDUCT, GROSS NEGLIGENCE OR FRAUD.

(c) LES shall only be obligated to act as an intermediary in accordance with the terms and conditions of this Exchange Agreement and shall not be bound by any other contract or agreement, whether or not LES has knowledge of any such contract or agreement or of its terms or conditions. LES has undertaken to perform only such duties as are expressly set forth herein, and no additional duties or obligations shall be implied hereunder or by operation of law or otherwise.

(d). LES shall not be liable to Taxpayer or any person or entity for any damages, losses, costs, expenses, or taxes that it or they may incur as a result of any act or omission of LES under this Exchange Agreement unless such damages, losses, expenses, or taxes are caused by LES' willful misconduct, gross negligence or fraud. LES shall not incur any obligation or liability with respect to (i) any action taken or omitted in good faith upon the advice of its counsel or counsel for any other party hereto, given with respect to any questions relating to the duties and responsibilities of LES under this Exchange Agreement, or (ii) any action taken or omitted in reliance upon any instrument, including due execution thereof or the identity or authority of any person executing such instrument, its validity and effectiveness, but also as to the truth and accuracy of any information contained therein that LES shall, in good faith, believe to be genuine, to have been signed by a proper person or persons and to conform to the provisions of this Exchange Agreement.

(e) Except for damages, losses, or expenses caused by LES' willful misconduct, gross negligence or fraud, Taxpayer shall indemnify, hold harmless, and defend LES from and against any and all actions, suits, claims, charges, costs, losses, damages, liabilities, expenses, including costs of investigation, court costs, and attorneys' fees and disbursements that may be brought or imposed upon LES in connection with its actions hereunder, including any litigation arising in connection with this Exchange Agreement or involving the subject matter hereof as and when incurred. This obligation shall survive termination of this Exchange Agreement.

(f) Should any dispute arise with respect to the delivery or ownership or right of possession of any of the Exchange Funds, LES is authorized and directed to retain in its possession without liability to any person or entity, all or any part of the Exchange Funds until such dispute is settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction in the United States of America as to which time for appeal has expired and no appeal has been perfected, but LES shall be under no duty whatsoever to institute or defend any such proceedings.

(g). LES shall not, by act, delay, omission or otherwise, be deemed to have waived any right or remedy it may have either under this Exchange Agreement or generally, unless such waiver be in writing and signed by LES, and such waiver shall constitute a waiver only to the extent expressly set forth therein. A waiver by LES under the terms of this Exchange Agreement shall not be construed as a bar to, or a waiver of, the same or any other such right or remedy that it would otherwise have on any other occasion.

7. __Facilitation Fee__. Upon execution hereof, Taxpayer shall pay LES a __nonrefundable__ set-up fee of $750. In addition, Taxpayer shall reimburse LES for any and all costs paid or incurred by LES in connection with acting as an exchange facilitator pursuant to this Exchange Agreement. There will be closing fees of $250 to be paid for each additional Replacement Property to be due on the date of closing of such Replacement Property.

8. <u>Conditions Precedent</u>. LES' obligations under this Exchange Agreement shall be subject, to the extent not waived by LES, to (i) the Taxpayer and all other parties to the transactions contemplated herein performing all obligations and complying with all conditions required by or otherwise set forth in this Exchange Agreement; (ii) all proceedings to be taken by the parties with respect to the transactions contemplated herein being taken pursuant to valid authority, being duly authorized and approved and being evidenced in a manner reasonably satisfactory in form and substance to LES; (iii) no statute, rule, regulation, court order, administrative order, or regulation being proposed, enacted, or in effect, which would or might restrain or prohibit the transactions contemplated hereby or that would seek to prohibit, delay or challenge any such transactions.

9. <u>Notices</u>. Each notice, instruction or other certificate required or permitted by the terms hereof shall be in writing and shall be communicated by hand delivery, facsimile, Federal Express or another similar overnight document delivery service, or United States mail, postage prepaid (certified, return receipt requested), to the parties at the following addresses:

If to Taxpayer:	PO Box 7439 Tacoma, WA 98417 Phone: (253) 678-3530
If to LES:	**LandAmerica 1031 Exchange Services, Inc.** Michelle L. Waddell 3905 Martin Way E. Olympia, WA 98506 Phone: (866) 379-1031 Fax: (866) 623-1031

Any such notice, request or consent shall be deemed to have been given or made when delivered in person to the party to whom the communication is addressed, or when sent by facsimile to such party at the address indicated, or on the next business day after being sent by Federal Express or similar overnight document delivery service or on the third day after the postmark date of mailing when sent by certified mail. Any party may change the address at which it is to receive notices by so advising the other parties in writing. To be effective, any such notice, request or consent sent by facsimile must be sent to the facsimile number shown above.

10. <u>Taxpayer's Representations</u>. Taxpayer hereby represents to LES as follows:

(a) Taxpayer has held the Relinquished Property for the purposes of productive use in a trade or business or investment and has not held such property primarily for sale. Taxpayer intends to hold the Replacement Property for purposes of productive use in a trade or business or investment and will not hold such property primarily for sale.

(b) Taxpayer will not purchase any Replacement Property from a related person as such term is defined in Section 1031(f)(3) of the Code.

(c) Taxpayer acknowledges that for complete tax deferment under Section 1031 of the Code, Taxpayer must trade up or trade even in value, debt and equity. Any cash Taxpayer receives from the exchange transaction may be taxable.

(d) The aggregate fair market value of any incidental property being transferred with the Replacement Property does not exceed fifteen percent (15%) of the aggregate fair market value of the Replacement Property.

11. Miscellaneous. This Exchange Agreement may be modified, altered, or amended only by the written agreement of all the parties. This Exchange Agreement shall be governed by and construed in accordance with the applicable laws of the Commonwealth of Virginia without regard to the conflict of laws provisions thereof, (except with respect to matters of corporation law in which case the law of the state of domestication shall apply), and shall be binding upon and shall inure to the benefit of the parties and their respective successors in interest and permitted assigns. Each of the parties hereby consents and submits to personal jurisdiction in the Commonwealth of Virginia for all matters that may arise with respect to this Exchange Agreement, and waives any and all rights to object to jurisdiction within the Commonwealth of Virginia. The parties consent to venue in the Circuit Court of the City of Richmond, Virginia and, to the extent there is subject matter jurisdiction, in the Richmond Division of the United States District Court for the Eastern District of Virginia. No party hereto shall make or raise any claim of forum non conveniens with respect to any court located in the Commonwealth of Virginia as to any litigation regarding this Exchange Agreement. The paragraph headings and subheadings contained in this Exchange Agreement are for convenience and reference only, and shall not in any way affect the meaning or interpretation of this Exchange Agreement. This Exchange Agreement may be executed in any number of counterparts and each shall be considered an original and together they shall constitute one agreement. Facsimile signatures on this Exchange Agreement or any other document called for or contemplated in this Exchange Agreement shall be deemed original signatures. This Exchange Agreement contains the entire understanding between and among the parties hereto. Taxpayer may not assign this Exchange Agreement. Should a court of competent jurisdiction find any portion of this Exchange Agreement to be invalid or unenforceable, the remaining terms and provisions hereof shall not be affected and shall remain in full force and effect. Each party hereto and their legal counsel have reviewed this Exchange Agreement and have had an opportunity to revise (or request revision of) this Exchange Agreement and, therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Exchange Agreement. Should the language of any provision herein be deemed to negate a like-kind exchange within the meaning of Section 1031 as to Taxpayer, it shall be interpreted and applied in order to comply with Section 1031 of the Code, Regulations, case law, and administrative pronouncements interpreting the Code and Regulations.

12. Waiver of Jury Trial. THE PARTIES WAIVE TRIAL BY JURY OF ANY AND ALL DISPUTES ARISING HEREUNDER OR RELATED HERETO AND AGREE THAT ALL SUCH DISPUTES SHALL BE TRIED AND DECIDED SOLELY BY A JUDGE SITTING WITHOUT A JURY.

WITNESS the following signatures:

LANDAMERICA 1031 EXCHANGE SERVICES, INC.

By: ~~Michelle L. Waddell, Assistant~~ Vice President

Signature: A E McLaren Date: 9/30/08

Ann E. McLaren

TAXPAYER: Denise J. Wilson

Signature: [illegible] Date: 9/30/08

EXHIBIT A
Legal Description

Lot(s) 23, Block 1, Heitman's Second Addition, according to the Plat recorded in Book 17 of Plats, page(s) 39, in Pierce County, Washington.

LandAmerica
1031 Exchange Services

Fax: 503-553-5679

MICHELLE L. WADDELL
Assistant Vice President
Senior Exchange Coordinator

LandAmerica Financial Group, Inc.
1120 NW Couch Street, Suite 500, Portland, Oregon 97209
phone: 503 222-2808 toll free: 800 460-6467
fax: ~~503 633-1031~~ direct dial / ext. 503 553-5689
Order Processing: NW1031@landam.com
email: Mwaddell@landam.com

LES File No. PLS-08-007076-LT

LandAmerica
1031 Exchange Services

ACKNOWLEDGEMENT

It is hereby acknowledged that pursuant to Section 2(c) of the Exchange Agreement dated September 12, 2008 (the "Exchange Agreement"), by and between LandAmerica 1031 Exchange Services, Inc. ("LES") and Giuseppe Passantino and Rosanna Passantino (the "Taxpayer") and in accordance with the restrictions set forth below, LES is required to hold the Exchange Funds until the Termination Date. The Exchange Funds shall be released to the Taxpayer only in accordance with the provisions of the Exchange Agreement, this Acknowledgement and Section 1.1031(k)-1(g)(6) of the Treasury Regulations.

Once the Taxpayer elects to participate in a tax-deferred exchange, the Taxpayer is agreeing to certain restrictions on the use and release of the Exchange Funds under 26 CFR 1.1031(k)-1(g)(6). As a Qualified Intermediary, LES must adhere to these restrictions, which follow.

1. The Exchange Funds may be used to purchase "like-kind" Replacement Property at any time during the Exchange Period. In addition to other important restrictions on what constitutes "like-kind" property, Replacement Property is only "like-kind" property if it was identified by Taxpayer in the manner required by the Treasury Regulations [26 CFR 1.1031(k)-1(b) and (c)] during the 45 days following the transfer of the Relinquished Property.

2. Taxpayer cannot request, withdraw, pledge or borrow against the Exchange Funds until the Termination Date. The Termination Date, which will terminate the exchange and make the balance of the Exchange Funds available to Taxpayer, will occur on the earliest of the following events:

   a. On the 46th day after the sale of the Relinquished Property *if* Taxpayer does not identify any Replacement Property during the 45-day Identification Period [26 CFR 1.1031(k)-1(g)(6)(ii)];

   b. If the Taxpayer has identified Replacement Property *and* has received all of the Replacement Property identified *and* the 45-day Identification Period has ended [26 CFR 1.1031(k)-1(g)(6)(iii)(A)] (Taxpayer is urged to consult with its tax and/or legal advisors regarding the tax consequences of a partial exchange.);

   c. On the 181st day after the sale of the Relinquished Property [26 CFR 1.1031(k)-1(b)(2)(ii)];

d. On the day after Taxpayer's tax return is due (including all extensions) for the tax year in which the Relinquished Property was sold [26 CFR 1.1031(k)-1(b)(2)(ii)];

e. A writing signed by the taxpayer and delivered on or before the last date for identifying replacement property *may* contain a written provision that upon the occurrence of a specified material and substantial contingency that relates to the exchange and that is beyond the control of the Taxpayer and beyond the control of any disqualified person (other than a person obligated to transfer the Replacement Property to the Taxpayer), then the Taxpayer will have the immediate right to use the Exchange Funds; however, the money the Taxpayer receives may become "Cash Boot," taxable in the year of the sale of the Relinquished Property, and it is possible that the exchange will fail and that profits from the sale of the Relinquished Property will not have been sheltered. [26 CFR 1.1031(k)-1(g)(6)(iii)(B).] Taxpayer is urged to consult with its tax and/or legal advisors regarding the advisability of including such a contingency in this Agreement.

3. Except as provided for immediately above, if, after the 45th day, there is any property that Taxpayer has identified, but not acquired, then either the exchange must be completed and the Exchange Funds utilized to acquire like-kind Replacement Property, or the Exchange Funds must remain with LES until the Termination Date, as defined above. In most cases this will be on the 181st day after the sale of the Relinquished Property. This applies even if the Replacement Property that Taxpayer has identified is no longer available.

All terms used herein shall have the same meaning as such terms are defined in the Exchange Agreement.

LES urges Taxpayer to consult with its tax and legal advisors regarding these restrictions. Taxpayer has read and understands the limitations on access to Exchange Funds and acknowledges and agrees to the terms of this Acknowledgement.

TAXPAYER: Giuseppe Passantino

Signature: Giuseppe Passantino Date: 9/29/08

TAXPAYER: Rosanna Passantino

Signature: Rosanna Passantino Date: 9/29/08

FM 05

Exhibit 3

Exhibit 10.1

Execution Version

REVOLVING CREDIT AGREEMENT

dated as of July 28, 2006

among

LANDAMERICA FINANCIAL GROUP, INC.
as Borrower,

THE LENDERS FROM TIME TO TIME PARTY HERETO,

SUNTRUST BANK
as Administrative Agent

WACHOVIA BANK, NATIONAL ASSOCIATION
and ***UNION BANK OF CALIFORNIA, N.A.***
as Co−Syndication Agents

and

US BANK, NATIONAL ASSOCIATION
and
JPMORGAN CHASE BANK
as Co−Documentation Agents

==

SUNTRUST CAPITAL MARKETS, INC.,
as Lead Arranger and Book Manager

TABLE OF CONTENTS

Schedules

Exhibits

REVOLVING CREDIT AGREEMENT

THIS REVOLVING CREDIT AGREEMENT (this "Agreement") is made and entered into as of July 28, 2006, by and among LANDAMERICA FINANCIAL GROUP, INC., a Virginia corporation (the "Borrower"), the several banks and other financial institutions and lenders from time to time party hereto (the "Lend−ers") and SUNTRUST BANK, in its capacity as administrative agent for the Lenders (the "Administrative Agent"), as issuing bank (the "Issuing Bank") and as swingline lender (the "Swingline Lender").

W I T N E S S E T H:

WHEREAS, the Borrower has requested that the Lenders establish a $200,000,000 revolving credit facility in favor of the Borrower;

WHEREAS, subject to the terms and conditions of this Agreement, the Lenders, the Issuing Bank and the Swingline Lender to the extent of their respective Commitments as defined herein, are willing severally to establish the requested revolving credit facility, letter of credit subfacility and the swingline subfacility in favor of the Borrower;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Borrower, the Lenders, the Administrative Agent, the Issuing Bank and the Swingline Lender agree as follows:

ARTICLE I

DEFINITIONS; CONSTRUCTION

Section 1.1. Definitions. In addition to the other terms defined herein, the following terms used herein shall have the meanings herein specified (to be equally applicable to both the singular and plural forms of the terms defined):

"Acquisition" shall mean any transaction or a series of related transactions consummated after the Closing Date for the purpose of or resulting, directly or indirectly, in (a) the acquisition by the Borrower or any of its Subsidiaries of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of more than of 50% of the capital stock of any Person, or otherwise causing any Person to become a direct or indirect Subsidiary of the Borrower or (c) a merger or consolidation or any other combination by the Borrower or any of its Subsidiaries with another Person (other than a Person that, as of the date of such merger or consolidation is a direct or indirect Subsidiary of the Borrower) provided that the Borrower or such Subsidiary shall be the surviving Person.

"Additional Commitment Amount" shall have the meaning set forth in Section 2.24(a).

"Additional Lender" shall have the meaning set forth in Section 2.24(b).

"Adjusted LIBO Rate" shall mean, with respect to each Interest Period for a Eurodollar Borrowing, the rate per annum ob−tained by dividing (i) LIBOR for such Interest Period by (ii) a percentage equal to 1.00 *minus* the Eurodollar Reserve Percentage.

"Administrative Questionnaire" shall mean, with respect to each Lender, an administrative questionnaire in the form prepared by the Administrative Agent and submitted to the Administrative Agent duly completed by such Lender.

"Affiliate" shall mean, as to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person. For the purposes of this definition, "Control" shall mean the power, directly or indirectly, either to (i) vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of a Person or (ii) direct or cause the direction of the management and policies of a Person, whether through the ability to exercise voting power, by control or otherwise. The terms "Controlling", "Controlled by", and "under common Control with" have the meanings correlative thereto.

"Aggregate Revolving Commitment Amount" shall mean the aggregate principal amount of the Aggregate Revolving Commitments from time to time. On the Closing Date, the Aggregate Revolving Commitment Amount equals $200,000,000.

"Aggregate Revolving Commitments" shall mean, collectively, all Revolving Commitments of all Lenders at any time outstanding.

"Annual Statement" shall mean the annual statutory financial statement of any Insurance Subsidiary required to be filed with the insurance commissioner (or similar authority) of its jurisdiction of organization, which statement shall be in the form required by such Insurance Subsidiary's jurisdiction of organization or, if no specific form is so required, in the form of financial statements permitted by such insurance commissioner (or similar authority) to be used for filing annual statutory financial statements and shall contain the type of information permitted by such insurance commissioner (or similar authority) to be disclosed therein, together with all exhibits or schedules therewith.

"Applicable Lending Office" shall mean, for each Lender and for each Type of Loan, the "Lending Office" of such Lender (or an Affiliate of such Lender) designated for such Type of Loan in the Administrative Questionnaire submitted by such Lender or such other office of such Lender (or an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office by which its Loans of such Type are to be made and maintained.

"Applicable Margin" shall mean, as of any date, with respect to interest on all Loans outstanding on any date or the letter of credit fee referred to in Section 2.14(c), as the case may be, a percentage per annum determined by reference to the applicable Leverage Ratio from time to time in effect as set forth on Schedule I; provided, that a change in the Applicable Margin resulting from a change in the Leverage Ratio shall be effective on the second Business Day after which the Borrower delivers the financial statements required by Section 5.1(a) or (b) and the Compliance Certificate required by Section 5.1(c); provided further, that if at any time the

Borrower shall have failed to deliver such financial statements and such Compliance Certificate when so required, the Applicable Margin shall be at Level IV as set forth on Schedule I until such time as such financial statements and Compliance Certificate are delivered, at which time the Applicable Margin shall be determined as provided above. Notwithstanding the foregoing, the Applicable Margin from the Closing Date until the financial statements and Compliance Certificate for the Fiscal Quarter ending June 30, 2006 are required to be delivered shall be at Level III as set forth on Schedule I.

"Applicable Percentage" shall mean, with respect to the facility fee referred to in Section 2.14(b) as of any date, the percentage per annum determined by reference to the applicable Leverage Ratio in effect on such date as set forth on Schedule I; provided, that a change in the Applicable Percentage resulting from a change in the Leverage Ratio shall be effective on the second Business Day after which the Borrower delivers the financial statements required by Section 5.1(a) or (b) and the Compliance Certificate required by Section 5.1(c); provided further, that if at any time the Borrower shall have failed to deliver such financial statements and such Compliance Certificate, the Applicable Percentage shall be at Level IV as set forth on Schedule I until such time as such financial statements and Compliance Certificate are delivered, at which time the Applicable Percentage shall be determined as provided above. Notwithstanding the foregoing, the Applicable Percentage for the facility fee from the Closing Date until the financial statements and Compliance Certificate for the Fiscal Quarter ending June 30, 2006 are required to be delivered shall be at Level III as set forth on Schedule I.

"Approved Fund" shall mean any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arbitrage Liens" shall mean Liens securing Indebtedness of the Borrower and its Subsidiaries having a maturity of 92 days or less representing borrowings from a bank or banks in which the Borrower or such Subsidiary has at least a like amount of funds on deposit, which borrowings are incurred in the ordinary course of business in amounts and for purposes consistent with past business practices and are secured only by Permitted Investments purchased by the Borrower or such Subsidiary with the proceeds of such borrowings.

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.4(b)) and accepted by the Administrative Agent, in the form of Exhibit C attached hereto or any other form approved by the Administrative Agent.

"Availability Period" shall mean the period from the Closing Date to the Revolving Commitment Termination Date.

"Base Rate" shall mean the higher of (i) the per annum rate which the Administrative Agent publicly announces from time to time to be its prime lending rate, as in effect from time to time, and (ii) the Federal Funds Rate, as in effect from time to time, *plus* one−half of one percent (0.50%). The Administrative Agent's prime lending rate is a reference rate and does not necessarily represent the lowest or best rate charged to customers. The Administrative Agent may make commercial loans or other loans at rates of interest at, above or below the Administrative Agent's prime lend−ing rate. Each change in the Administrative Agent's prime lending rate shall be effective from and including the date such change is publicly announced as being effective.

"Borrowing" shall mean a borrowing consisting of (i) Loans of the same Class and Type, made, converted or continued on the same date and in the case of Eurodollar Loans, as to which a single Interest Period is in effect, or (ii) a Swingline Loan.

"Business Day" shall mean (i) any day other than a Saturday, Sunday or other day on which commercial banks in Atlanta, Georgia and New York, New York are authorized or required by law to close and (ii) if such day relates to a Borrowing of, a payment or prepayment of principal or interest on, a conversion of or into, or an Interest Period for, a Eurodollar Loan or a notice with respect to any of the foregoing, any day on which dealings in Dollars are carried on in the London interbank market.

"Capital Lease Obligations" of any Person shall mean all obligations of such Person to pay rent or other amounts under any lease (or other arrangement conveying the right to use) of real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Capital Stock" shall mean any capital stock (or in the case of a partnership or limited liability company, the partners' or members' equivalent equity interest) of the Borrower or any of its Subsidiaries (to the extent issued to a Person other than the Borrower), whether common or preferred.

"Capital Title" shall mean Capital Title Group, Inc.

"Capital Title Acquisition" shall mean the acquisition by the Borrower of all of the capital stock of Capital Title.

"Centennial Bank" shall mean Centennial Bank, a California industrial bank, whose principal place of business is located in Fountain Valley, California.

"Change in Control" shall mean the occurrence of one or more of the following events: (i) any sale, lease, exchange or other transfer (in a single transaction or a series of related transactions) of all or substantially all of the assets of the Borrower to any Person or "group" (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder in effect on the date hereof), (ii) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or "group" (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) of 25% or more of the outstanding shares of the voting stock of the Borrower, or (iii) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (a) nominated by the current board of directors nor (b) appointed by directors so nominated.

"Change in Law" shall mean (i) the adoption of any applicable law, rule or regulation after the date of this Agreement, (ii) any change in any applicable law, rule or regulation, or any change in the interpretation or application thereof, by any Governmental Authority after the date of this Agreement, or (iii) compliance by any Lender (or its Applicable Lending Office) or the Issuing Bank (or for purposes of Section 2.18(b), by such Lender's or the Issuing Bank's holding company, if applicable) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Swingline Loans and when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment or a Swingline Commitment.

"Closing Date" shall mean the date on which the conditions precedent set forth in Section 3.1 and Section 3.2 have been satisfied or waived in accordance with Section 10.2.

"Code" shall mean the Internal Revenue Code of 1986, as amended and in effect from time to time.

"Commitment" shall mean a Revolving Commitment or a Swingline Commitment or any combination thereof (as the context shall permit or require).

"Commonwealth" shall mean Commonwealth Land Title Insurance Company, a Pennsylvania corporation.

"Compliance Certificate" shall mean a certificate from the treasurer or the principal financial officer of the Borrower in the form of, and containing the certifications set forth in, the certificate attached hereto as Exhibit 5.1(c).

"Consolidated EBIT" shall mean, for the Borrower and its Subsidiaries for any period, an amount equal to the sum of (i) Consolidated Net Income for such period *plus* (ii) to the extent deducted in determining Consolidated Net Income for such period, (A) Consolidated Interest Expense for such period, and (B) income tax expense for such period, in each case determined on a consolidated basis in accordance with GAAP.

"Consolidated EBITDA" shall mean, for the Borrower and its Subsidiaries for any period, an amount equal to the sum of (a) Consolidated Net Income for such period *plus* (b) to the extent deducted in determining Consolidated Net Income for such period, (i) Consolidated Interest Expense for such period, (ii) income tax expense for such period, (iii) depreciation and amortization for such period and (iv) all other non−cash charges for such period, in each case determined on a consolidated basis in accordance with GAAP, *minus* (c) any cash expenditures or losses during such period to the extent a non−cash charge was taken for such expenditure or loss in an earlier period.

"Consolidated Interest Expense" shall mean, for the Borrower and its Subsidiaries for any period determined on a consolidated basis in accordance with GAAP, total interest expense, including without limitation the interest component of any payments in respect of capital lease obligations capitalized or expensed during such period (whether or not actually paid during such period), other than interest expense on certificates of deposit and interest on deposits of Centennial Bank.

"Consolidated Net Income" shall mean for any period for the Borrower and its Subsidiaries for any period, the net income (or loss) of the Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but excluding therefrom (to the extent otherwise included therein) (i) any extraordinary gains or losses, (ii) any gains attributable to write−ups of assets, (iii) any equity interest of the Borrower or any Subsidiary of the Borrower in the unremitted earnings of any Person that is not a Subsidiary, and (iv) any income (or loss) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any Subsidiary on the date that such Person's assets are acquired by the Borrower or any Subsidiary.

"Consolidated Net Worth" shall mean as of any date of determination, for the Borrower and its Subsidiaries, (i) the total assets of the Borrower and its Subsidiaries that would be reflected on the Borrower's consolidated balance sheet as of such date prepared in accordance with GAAP, after eliminating all amounts properly attributable to minority interests, if any, in the stock and surplus of its Subsidiaries, *minus* the (ii) sum of (x) the total liabilities of the Borrower and its Subsidiaries that would be reflected on the Borrower's consolidated balance sheet as of such date prepared in accordance with GAAP and (y) the amount of any write−up in the book value of any assets resulting from a revaluation thereof or any write−up in excess of the cost of such assets acquired reflected on the consolidated balance sheet of the Borrower as of such date prepared in accordance with GAAP.

"Consolidated Shareholders' Equity" shall mean, as of any date of determination, the aggregate shareholders' equity of the Borrower as of such date determined in accordance with GAAP.

"Consolidated Total Assets" shall mean, as of any date of determination, the total assets of the Borrower and its Subsidiaries as of such date, determined on a consolidated basis in accordance with GAAP.

"Consolidated Total Capital" shall mean, as of any date, the sum of (i) Consolidated Total Debt as of such date and (ii) Consolidated Shareholders' Equity as of such date.

"Consolidated Total Debt" shall mean, as of any date of determination, all Indebtedness of the Borrower and its Subsidiaries measured on a consolidated basis in accordance with GAAP as of such date, including, without limitation, all Indebtedness with respect to Federal Home Loan Bank Borrowings, but excluding (i) Indebtedness of the type described in clause (xi) of the definition thereof, (ii) Indebtedness incurred in connection with Arbitrage Liens, (iii) Specified Relocation Indebtedness permitted under Section 7.1(g) and (iv) intercompany Indebtedness.

"Contractual Obligation" of any Person shall mean any provision of any security issued by such Person or of any agreement, instrument or undertaking under which such Person is obligated or by which it or any of the property in which it has an interest is bound.

"Default" shall mean any condition or event that, with the giving of notice or the lapse of time or both, would constitute an Event of De−fault.

"Default Interest" shall have the meaning set forth in Section 2.13(c).

"Dollar(s)" and the sign "$" shall mean lawful money of the United States of America.

"Eligible Assignee" shall mean (i) a Lender; (ii) an Affiliate of a Lender; (iii) an Approved Fund; and (iv) any other Person (other than a natural Person) approved by the Administrative Agent, the Issuing Bank, and unless (x) such Person is taking delivery of an assignment in connection with physical settlement of a credit derivatives transaction or (y) an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed). If the consent of the Borrower to an assignment or to an Eligible Assignee is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified in paragraph (b)(i) of Section 10.4), the Borrower shall be deemed to have given its consent five Business Days after the date notice thereof has actually been delivered by the assigning Lender (through the Administrative Agent) to the Borrower, unless such consent is expressly refused by the Borrower prior to such fifth Business Day.

"Environmental Laws" shall mean all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters.

"Environmental Liability" shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental investigation and remediation, costs of administrative oversight, fines, natural resource damages, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (i) any actual or alleged violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (iii) any actual or alleged exposure to any Hazardous Materials, (iv) the Release or threatened Release of any Hazardous Materials or

(v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"ERISA" shall mean the Employee Retirement Income Secu−rity Act of 1974, as amended from time to time, and any successor statute.

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated), which, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for the purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" shall mean (i) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30−day notice period is waived); (ii) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (iii) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (iv) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (v) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator appointed by the PBGC of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (vi) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (vii) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Eurodollar" when used in reference to any Loan or Borrowing refers to whether such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.

"Eurodollar Reserve Percentage" shall mean the aggregate of the maximum reserve percentages (including, without limitation, any emergency, supplemental, special or other marginal reserves) expressed as a decimal (rounded upwards to the next 1/100th of 1%) in effect on any day to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate pursuant to regulations issued by the Board of Governors of the Federal Reserve System (or any Governmental Authority succeeding to any of its principal functions) with respect to eurocurrency funding (currently referred to as "eurocurrency liabilities" under Regulation D). Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D. The Eurodollar Reserve Percentage shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Event of Default" shall have the meaning provided in Article VIII.

"Excluded Taxes" shall mean with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (i) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (ii) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which any Lender is located and (iii) in the case of a Foreign Lender, any withholding tax that (x) is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement, (y) is imposed on amounts payable to such Foreign Lender at any time that such Foreign Lender designates a new lending office, other than taxes that have accrued prior to the designation of such lending office that are otherwise not Excluded Taxes, and (z) is attributable to such Foreign Lender's failure to comply with Section 2.20(e).

"Existing Credit Agreement" shall mean that certain Revolving Credit Agreement, dated as of November 6, 2003, by and among the Borrower, such lenders, and SunTrust Bank as administrative agent, as amended.

"Facultative Reinsurance Agreement" has the meaning set forth in Section 4.17.

"Federal Funds Rate" shall mean, for any day, the rate per annum (rounded upwards, if necessary, to the next 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with member banks of the Federal Reserve System arranged by Federal funds brokers, as published by the Federal Reserve Bank of New York on the next succeeding Business Day or if such rate is not so published for any Business Day, the Federal Funds Rate for such day shall be the average rounded upwards, if necessary, to the next 1/100th of 1% of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by the Administrative Agent.

"Federal Home Loan Bank Borrowings" shall mean all Indebtedness of Centennial Bank owing to the Federal Home Loan Bank.

"Fee Letter" shall mean that certain fee letter, dated as of June 13, 2006, executed by SunTrust Capital Markets, Inc. and SunTrust Bank and accepted by the Borrower.

"Fiscal Quarter" shall mean any fiscal quarter of the Borrower.

"Fiscal Year" shall mean any fiscal year of the Borrower.

"Foreign Lender" shall mean any Lender that is not a United States person under Section 7701(a)(3) of the Code.

"GAAP" shall mean generally accepted accounting prin−ciples in the United States applied on a consistent basis and subject to the terms of Section 1.3.

"Governmental Authority" shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including, without limitation, any board of insurance, insurance department or insurance commissioner.

"Hazardous Materials" shall mean all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Hedging Obligations" of any Person shall mean any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired under (i) any and all Hedging Transactions, (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Hedging Transactions and (iii) any and all renewals, extensions and modifications of any Hedging Transactions and any and all substitutions for any Hedging Transactions.

"Hedging Transaction" of any Person shall mean any transaction (including an agreement with respect thereto) now existing or hereafter entered into between such Person and any Lender or Affiliate of any Lender that is a rate swap, basis swap, forward rate transaction, commodity swap, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collateral transaction, forward transaction, currency swap transaction, cross−currency rate swap transaction, currency option, or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures, including, without limitation, the 2004 Convertible Debenture Hedges.

"Indebtedness" of any Person shall mean, without dupli−cation (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person in respect of the deferred purchase price of property or services (other than trade payables incurred in the ordinary course of business; provided, that for purposes of Section 8.1(f), trade payables overdue by more than 120 days shall be included in this definition except to the extent that any of such trade payables are being disputed in good faith and by appropriate measures), (iv) all obligations of such Person under any conditional sale or other title retention agreement(s) relating to property acquired by such Person, (v) all Capital Lease Obligations of such Person, (vi) all obligations, contingent or otherwise, of such Person in respect of letters of credit, acceptances or similar extensions of credit, (vii) all guarantees of such Person of the type of Indebtedness described in clauses (i) through (vi) above, (viii) all Indebtedness of a third party secured by any Lien on property owned by such Person, whether or not such Indebtedness has been assumed by such Person, (ix) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any common stock of such Person, (x) Off−Balance Sheet Liabilities and (xi) all Hedging Obligations. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer, except to the extent that the terms of such Indebtedness provide that such Person is not liable therefor. Notwithstanding the foregoing, Indebtedness shall not include amounts owing under insurance contracts issued by any Insurance Subsidiary or deposits of third parties held by any Subsidiary, in each case to the extent incurred in the ordinary course of business.

"Indemnified Taxes" shall mean Taxes other than Excluded Taxes.

"Information Memorandum" shall mean the Confidential Information Memorandum dated June, 2006 relating to the Borrower and the transactions contemplated by this Agreement and the other Loan Documents.

"Insurance Subsidiary" shall mean any Subsidiary which has a License as an insurance underwriter to engage in the insurance business.

"Interest Coverage Ratio" shall mean, as of any date, the ratio of (i) Consolidated EBITDA for the four consecutive Fiscal Quarters ending on or immediately prior to such date to (ii) Consolidated Interest Expense for the four consecutive Fiscal Quarters ending on or immediately prior to such date.

"Interest Period" shall mean with respect to any Eurodollar Borrowing, a period of one, two, three or six months; provided, that:

(i) the initial Interest Period for such Borrowing shall commence on the date of such Borrowing (including the date of any conversion from a Borrowing of another Type), and each Interest Period occurring thereafter in respect of such Borrowing shall commence on the day on which the next preceding Interest Period expires;

(ii) if any Interest Period would otherwise end on a day other than a Business Day, such Interest Pe−riod shall be extended to the next succeeding Business Day, unless such Business Day falls in another calendar month, in which case such Interest Period would end on the next preceding Business Day; and

(iii) any Interest Period which begins on the last Business Day of a calendar month or on a day for which there is no nu−merically corresponding day in the calendar month at the end of such Interest Period shall end on the last Business Day of such calendar month.

"Investments" shall have the meaning given to such term in Section 7.4.

"Issuing Bank" shall mean SunTrust Bank in its capacity as an issuer of Letters of Credit pursuant to Section 2.22.

"Joint Venture" shall mean a single purpose corporation, partnership, limited liability company, joint venture or other similar legal arrangement (whether created by contract or conducted through a separate legal entity) now or hereafter formed by the Borrower or any of its Subsidiaries with another Person in order to conduct a venture or enterprise with such Person.

"Lawyers Title Insurance" shall mean Lawyers Title Insurance Corporation, a Virginia corporation.

"LC Commitment" shall mean that portion of the Aggregate Revolving Commitment Amount that may be used by the Borrower for the issuance of Letters of Credit in an aggregate face amount not to exceed $25,000,000.

"LC Disbursement" shall mean a payment made by the Issuing Bank pursuant to a Letter of Credit.

"LC Documents" shall mean the Letters of Credit and all applications, agreements and instruments relating to the Letters of Credit.

"LC Exposure" shall mean, at any time, the sum of (i) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (ii) the aggregate amount of all LC Disbursements that have not been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender shall be its Pro Rata Share of the total LC Exposure at such time.

"Lenders" shall have the meaning assigned to such term in the opening paragraph of this Agreement and shall include, where appropriate, the Swingline Lender.

"Letter of Credit" shall mean any stand−by letter of credit issued pursuant to Section 2.22 by the Issuing Bank for the account of the Borrower pursuant to the LC Commitment.

"Leverage Ratio" shall mean, as of any date, the ratio of (i) Consolidated Total Debt as of such date to (ii) Consolidated Total Capital as of such date.

"LIBOR" shall mean, for any applicable Interest Period with respect to any Eurodollar Loan, the British Bankers' Association Interest Settlement Rate per annum for deposits in Dollars for a period equal to such Interest Period appearing on the display designated as Page 3750 on the Dow Jones Markets Service (or such other page on that service or such other service designated by the British Bankers' Association for the display of such Association's Interest Settlement Rates for Dollar deposits) as of 11:00 a.m. (London, England time) on the day that is two Business Days prior to the first day of the Interest Period or if such Page 3750 is un−available for any reason at such time, the rate which appears on the Reuters Screen ISDA Page as of such date and such time; provided, that if the Administrative Agent determines that the relevant foregoing sources are unavailable for the relevant Interest Period, LIBOR shall mean the rate of interest determined by the Administrative Agent to be the average (rounded upward, if necessary, to the nearest 1/100th of 1%) of the rates per annum at which deposits in Dollars are offered to the Administrative Agent two (2) Business Days preceding the first day of such Interest Period by leading banks in the London interbank market as of 10:00 a.m. for delivery on the first day of such Interest Period, for the number of days comprised therein and in an amount comparable to the amount of the Eurodollar Loan of the Administrative Agent.

"License" shall mean any license, certificate of authority, permit or other authorization which is required to be obtained from any Governmental Authority in connection with the operation, ownership or transaction of an insurance business.

"Lien" shall mean any mortgage, pledge, security inter−est, lien (statutory or otherwise), charge, encumbrance, hypothecation, assignment, deposit arrangement, or other arrangement having the practical effect of the foregoing or any preference, priority or other security agree−ment or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having the same economic effect as any of the foregoing).

"Loan Documents" shall mean, collectively, this Agree−ment, the Notes (if any), the LC Documents, all Notices of Borrowing, all Notices of Conversion/Continuation, all Compliance Certificates and any and all other instruments, agreements, documents and writings executed in connection with any of the foregoing.

"Loans" shall mean all Revolving Loans and Swingline Loans in the aggregate or any of them, as the context shall require.

"Material Adverse Effect" shall mean, with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, a material adverse change in, or a material adverse effect on, (i) the business, results of operations, finan−cial condition, assets, liabilities or prospects of the Borrower or of the Borrower and its Subsidiaries taken as a whole, (ii) the ability of Borrower to perform any of its obligations under the Loan Documents, (iii) the rights and remedies of the Administrative Agent, the Issuing Bank, Swingline Lender and the Lenders under any of the Loan Documents or (iv) the legality, validity or enforceability of any of the Loan Documents.

"Material Indebtedness" shall mean Indebtedness (other than the Loans and Letters of Credit), including, without limitation, Hedging Obligations, of any of the Borrower and its Subsidiaries, individually or in an aggregate principal amount exceeding $10,000,000. For purposes of determining the amount of attributed Indebtedness from Hedging Obligations, the "principal amount" of any Hedging Obligations at any time shall be the Net Mark−to−Market Exposure of such Hedging Obligations.

"Material Insurance Subsidiary" a Material Subsidiary which is an Insurance Subsidiary.

"Material Subsidiary" shall mean, as of any date of determination, any direct or indirect Subsidiary of the Borrower (a) having total assets aggregating in excess of 2.5% of Consolidated Total Assets as of such date, or (b) the portion of Consolidated Net Income which was contributed by such Subsidiary during the four Fiscal Quarters then most recently ended exceeds 5% of Consolidated Net Income for the four Fiscal Quarters then most recently ended or (c) has been identified by the Borrower as a Material Subsidiary on Schedule 7.16 or in any Compliance Certificate or has been designated by the Borrower as a Material Subsidiary pursuant to Section 7.16, in all cases under this clause (c) subject to the Borrower's right to de−designate pursuant to Section 7.16.

"Moody's" shall mean Moody's Investors Service, Inc.

"Multiemployer Plan" shall have the meaning set forth in Section 4001(a)(3) of ERISA.

"NAIC" shall mean the National Association of Insurance Commissioners or any successor thereto, or in the absence of the National Association of Insurance Commissioners or such successor, any other association, agency or other organization performing advisory, coordination or other like functions among insurance departments, insurance commissioners and similar Governmental Authorities of various states of the United States toward the promotion of uniformity in the practices of such Governmental Authorities.

"Net Mark−to−Market Exposure" of any Person shall mean, as of any date of determination with respect to any Hedging Obligation, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from such Hedging Obligation. "Unrealized losses" shall mean the fair market value of the cost to such Person of replacing the Hedging Transaction giving rise to such Hedging Obligation as of the date of determination (assuming the Hedging Transaction were to be terminated as of that date), and "unrealized profits" means the fair market value of the gain to such Person of replacing such Hedging Transaction as of the date of determination (assuming such Hedging Transaction were to be terminated as of that date).

"Notes" shall mean, collectively, the Revolving Credit Notes and the Swingline Note.

"Notices of Borrowing" shall mean, collectively, the Notices of Revolving Borrowing and the Notices of Swingline Borrowing.

"Notice of Conversion/Continuation" shall mean the notice given by the Borrower to the Administrative Agent in respect of the conversion or continuation of an outstanding Borrowing as provided in Section 2.7(b).

"Notice of Revolving Borrowing" shall have the meaning as set forth in Section 2.3.

"Notice of Swingline Borrowing" shall have the meaning as set forth in Section 2.5.

"Obligations" shall mean all amounts owing by the Borrower to the Administrative Agent, the Issuing Bank or any Lender (including the Swingline Lender) pursuant to or in connection with this Agreement or any other Loan Document, including without limitation, all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Borrower, whether or not a claim for post−filing or post−petition interest is allowed in such proceeding), all reimbursement obligations, fees, expenses, indemnification and reimbursement payments, costs and expenses (including all fees and expenses of counsel to the Administrative Agent, the Issuing Bank and any Lender (including the Swingline Lender) incurred pursuant to this Agreement or any other Loan Document), whether direct or indirect, absolute or contingent, liquidated or unliqui−dated, now existing or hereafter arising hereunder or thereunder, and all Hedging Obligations owing to the Administrative Agent, any Lender or any of their Affiliates, and all obligations and liabilities incurred pursuant to this Agreement or any other Loan Document in connection with collecting and enforcing the foregoing, together with all renew−als, extensions, modifications or refinancings thereof.

"Off−Balance Sheet Liabilities" of any Person shall mean (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (ii) any liability of such Person under any sale and leaseback transactions that do not create a liability on the balance sheet of such Person, (iii) any Synthetic Lease Obligation or (iv) any obligation arising with respect to any other similar transaction which is the functional equivalent of off−balance sheet financing of such Person. For purposes of this definition, the value of any sale and leaseback transaction referenced in clause (ii) above shall be equal to all rental and purchase price payment obligations of such Person under such sale and leaseback transaction assuming such Person exercises the option to purchase the leased property at the end of the lease term, discounted at the Treasury Rate plus 200 bps.

"OSHA" shall mean the Occupational Safety and Health Act of 1970, as amended from time to time, and any successor statute.

"Other Taxes" shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Participant" shall have the meaning set forth in Section 10.4(d).

"Payment Office" shall mean the office of the Administrative Agent located at 303 Peachtree Street, N.E., Atlanta, Georgia 30308, or such other location as to which the Administrative Agent shall have given written notice to the Borrower and the other Lenders.

"PBGC" shall mean the Pension Benefit Guaranty Corpora−tion referred to and defined in ERISA, and any successor entity performing similar functions.

"Permitted Encumbrances" shall mean:

(i) Liens imposed by law for taxes, fees, assessments or other governmental charges not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP;

(ii) statutory Liens of landlords, carriers, warehousemen, mechanics, materialmen and similar Liens arising by operation of law in the ordinary course of business for amounts not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP;

(iii) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(iv) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obli−gations of a like nature, in each case in the ordinary course of business;

(v) judgment and attachment liens not giving rise to an Event of Default or Liens created by or existing from any litigation or legal proceeding that are currently being contested in good faith by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP; and

(vi) easements, zoning restrictions, rights−of−way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Borrower and its Subsidiaries taken as a whole;

provided, that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Permitted Investments" shall mean:

(vii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States (or by any agency or instrumentality thereof to the extent such obligations are backed by the full faith and credit of the United States), in each case maturing within one year from the date of acquisition thereof;

(viii) commercial paper having the highest rating, at the time of acquisition thereof, of S&P or Moody's and in either case maturing within six months from the date of acquisition thereof;

(ix) certificates of de−posit, bankers' acceptances and time deposits issued or guaranteed by or placed with, any domestic office of any commercial bank organized under the laws of the United States or any state thereof which has a combined capital and surplus and undivided profits of not less than $500,000,000; and

(x) mutual funds investing solely in any one or more of the Permitted Investments described in clauses (i) through (iii) above.

"Person" shall mean any individual, partnership, firm, corporation, association, joint venture, limited liability company, trust or other entity, or any Governmental Authority.

"Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Pro Rata Share" shall mean (i) with respect to any Commitment of any Lender at any time, a percentage, the numerator of which shall be such Lender's Commitment (or if such Commitments have been terminated or expired or the Loans have been declared to be due and payable, such Lender's Loan funded under such Commitment), and the denominator of which shall be the sum of such Commitments of all Lenders (or if such Commitments have been terminated or expired or the Loans have been declared to be due and payable, all Loans of all

Lenders funded under such Commitments) and (ii) with respect to all Commitments of any Lender at any time, the numerator of which shall be the sum of such Lender's Revolving Commitment (or if such Revolving Commitments have been terminated or expired or the Loans have been declared to be due and payable, such Lender's outstanding Revolving Loans, Swingline Exposure and LC Exposure) and the denominator of which shall be the sum of all Lenders' Revolving Commitments (or if such Revolving Commitments have been terminated or expired or the Loans have been declared to be due and payable, all outstanding Revolving Loans, Swingline Loans and LC Exposure of all Lenders funded under such Commitments).

"Quarterly Statements" shall mean the quarterly financial statements of any Insurance Subsidiary required to be filed with the insurance commissioner (or similar authority) of its jurisdiction of organization, which statement shall be in the form required by such Insurance Subsidiary's jurisdiction of organization or, if no specific form is so required, in the form of financial statements permitted by such insurance commissioner (or similar authority) to be used for filing quarterly statutory financial statements and shall contain the type of information permitted by such insurance commissioner (or similar authority) to be disclosed therein, together with all exhibits or schedules therewith.

"Rabbi Trust" shall mean a non−qualified deferred compensation trust that qualifies as a "rabbi trust" under the Code.

"Regulation D" shall mean Regulation D of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Related Parties" shall mean, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Release" shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within any building, structure, facility or fixture.

"Relocation Subsidiary" shall mean, any Subsidiary of the Borrower engaged in providing relocations service of the general type previously provided by Relocation Services, LLC, a Michigan limited liability company, Agronaut Relocation Services, LLC, a Michigan limited liability company and Commonwealth Relocations Services, Inc., a Pennsylvania corporation.

"Required Lenders" shall mean, at any time, Lenders holding more than 50% of the aggregate outstanding Revolving Commitments at such time or if the Lenders have no Commitments outstanding, then Lenders holding more than 50% of the Loans.

"Requirement of Law" for any Person shall mean the articles or certificate of incorporation, bylaws, partnership certificate and agreement, or limited liability company certificate of organization and agreement, as the case may be, and other organizational and governing documents of such Person, and any law, treaty, rule or regulation, or determination of a Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Responsible Officer" shall mean any of the president, the chief executive officer, the chief operating officer, the chief financial officer, the treasurer or a vice president of the Borrower or such other representative of the Borrower as may be designated in writing by any one of the foregoing with the consent of the Administrative Agent; and, with respect to the financial covenants only, the chief financial officer or the treasurer of the Borrower.

"Revolving Commitment" shall mean, with respect to each Lender, the obligation of such Lender to make Revolving Loans to the Borrower and to participate in Letters of Credit and Swingline Loans in an aggregate principal amount not exceeding the amount set forth with respect to such Lender on Annex I, or in the case of a Person becoming a Lender after the Closing Date through an assignment of an existing Revolving Commitment, the amount of the assigned "Revolving Commitment" as provided in the Assignment and Acceptance executed by such Person as an assignee, as the same may be increased or deceased pursuant to terms hereof.

"Revolving Commitment Termination Date" shall mean the earliest of (i) July 28, 2011 (ii) the date on which the Revolving Commitments are terminated pursuant to Section 2.8 and (iii) the date on which all amounts outstanding under this Agreement have been declared or have automatically become due and payable (whether by acceleration or otherwise).

"Revolving Credit Exposure" shall mean, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans, LC Exposure and Swingline Exposure.

"Revolving Credit Note" shall mean a promissory note of the Borrower payable to the order of a requesting Lender in the principal amount of such Lender's Revolving Commitment, in substantially the form of Exhibit A.

"Revolving Loan" shall mean a loan made by a Lender (other than the Swingline Lender) to the Borrower under its Revolving Commitment, which may either be a Base Rate Loan or a Eurodollar Loan.

"SAP" shall mean, with respect to any Insurance Subsidiary, the statutory accounting practices prescribed or permitted by the insurance commissioner (or other similar authority) in the jurisdiction of such Insurance Subsidiary for the preparation of annual statements and other financial reports by insurance companies of the same type as such Insurance Subsidiary, which are applicable to the circumstances as of the date of determination.

"S&P" shall mean Standard & Poor's, a Division of the McGraw−Hill Companies.

"Specified Relocation Indebtedness" shall mean Indebtedness of the Relocation Subsidiaries incurred to acquire real estate in the ordinary course of the relocation services business of the Relocation Subsidiaries, the maturity of which Indebtedness shall not exceed one year from the original date of such Indebtedness and which Indebtedness is secured solely by such real estate and is otherwise non−recourse to the Borrower and its Subsidiaries.

"Statutory Surplus" shall mean, as of any date of determination, with respect to any Insurance Subsidiary, such Insurance Subsidiary's statutory capital and surplus at such date as determined in accordance with SAP ("Liabilities, Surplus and Other Funds Statement," page, 3 line 26 of the Annual Statement).

"Subsidiary" shall mean, with respect to any Person (the "parent"), any corporation, part−nership, joint venture, limited liability company, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, part−nership, joint venture, limited liability company, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power, or in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held. Unless otherwise indicated, all references to "Subsidiary" hereunder shall mean a Subsidiary of the Borrower.

"Surety Instruments" shall mean all letters of credit (including standby and commercial), banker's acceptances, bank guaranties, shipside bonds, surety bonds and similar instruments.

"Swingline Commitment" shall mean the commitment of the Swingline Lender to make Swingline Loans in an aggregate principal amount at any time outstanding not to exceed $10,000,000.

"Swingline Exposure" shall mean, with respect to each Lender, the principal amount of the Swingline Loans in which such Lender is legally obligated either to make a Base Rate Loan or to purchase a participation in accordance with Section 2.5, which shall equal such Lender's Pro Rata Share of all outstanding Swingline Loans.

"Swingline Lender" shall mean SunTrust Bank.

"Swingline Loan" shall mean a loan made to the Borrower by the Swingline Lender under the Swingline Commitment.

"Swingline Note" shall mean the promissory note of the Borrower payable to the order of the Swingline Lender in the principal amount of the Swingline Commitment, substantially the form of Exhibit B.

"Swingline Rate" shall mean, for any Interest Period, the rate as offered by the Administrative Agent and accepted by the Borrower. The Borrower is under no obligation to accept this rate and the Administrative Agent is under no obligation to provide it.

"Synthetic Lease" means a lease transaction under which the parties intend that (i) the lease will be treated as an "operating lease" by the lessee pursuant to Statement of Financial Accounting Standards No. 13, as amended and (ii) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

"Synthetic Lease Obligations" shall mean, with respect to any Person, the sum of (i) all remaining rental obligations of such Person as lessee under Synthetic Leases which are attributable to principal and, without duplication and (ii) all rental and purchase price payment obligations of such Person under such Synthetic Leases assuming such Person exercises the option to purchase the lease property at the end of the lease term, discounted at the Treasury Rate plus 200 bps.

"Taxes" shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"Transnation" shall mean Transnation Title Insurance Company, an Arizona corporation.

"Treasury Rate" means, as of any date, with respect to the determination with respect to any Synthetic Lease or sale and leaseback transaction, the rate of interest for U.S. Treasury Bills published by the Bloomberg Reporting System on the Business Day prior to such day, with a maturity equal to the remaining term of such lease.

"2004 Convertible Debenture" shall mean, collectively, senior unsecured convertible debentures of the Borrower, in an aggregate amount not to exceed One Hundred Twenty−Five Million Dollars ($125,000,000), as described on Schedule 7.1 attached hereto.

"2004 Convertible Debenture Hedges" shall mean hedging transactions in the Borrower's Common Stock entered into by the Borrower in connection with the offering of the 2004 Convertible Debenture concurrently with the pricing of such offering, including but not limited to the following: the purchase by the Borrower of a call option, the sale by the Borrower of a warrant option, and the Borrower entering into a dividend floor protection agreement, an indemnity side letter and other agreements relating to such hedging transactions.

"2006 Prudential Notes" shall mean, collectively, senior unsecured notes issued by the Borrower on the Closing Date, in an aggregate amount not to exceed One Hundred Fifty Million Dollars ($150,000,000) with an additional shelf facility in an aggregate amount not to exceed Seventy Five million Dollars ($75,000,000).

"Type", when used in reference to a Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Base Rate.

"Wholly Owned Subsidiary" shall mean any corporation or other entity into which (other than directors' qualifying shares required by law) 100% of the Capital Stock of each class having ordinary voting power, and 100% of the Capital Stock in every other class, in each case (or, in the case of Persons other than corporations, membership interests or other equity interests), at the time of which any determination is being made, is owned, beneficially and of record, by the Borrower, or by one or more of the other Wholly Owned Subsidiaries, or both.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

Section 1.2. Classifications of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g. a "Revolving Loan" or "Swingline Loan") or by Type (e.g. a "Eurodollar Loan" or "Base Rate Loan") or by Class and Type (e.g. "Revolving Eurodollar Loan"). Borrowings also may be classified and referred to by Class (e.g. "Revolving Borrowing") or by Type (e.g. "Eurodollar Borrowing") or by Class and Type (e.g. " Revolving Eurodollar Borrowing").

Section 1.3. Accounting Terms and Determination.. Un−less otherwise defined or specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP as in effect from time to time, applied on a basis consistent with the most recent audited consolidated financial statement of the Borrower delivered pursuant to Section 5.1(a); provided, that if the Borrower notifies the Administrative Agent that the Borrower wishes to amend any covenant in Article VI to eliminate the effect of any change in GAAP on the operation of such covenant (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend Article VI for such purpose), then the Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrower and the Required Lenders. References herein to particular columns, lines or sections of any Person's Annual Statement shall be deemed, where appropriate, to be references to the corresponding columns, lines or sections of such Person's Quarterly Statements, or if no such corresponding column, line or section exists or if any report form changes, then to the corresponding item referenced thereby. In the event the columns, lines or sections of the Annual Statement referenced herein are changed or renumbered, all such references shall be deemed references to such column, line or section as so renumbered or changed.

Section 1.4. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the word "to" means "to but excluding". Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as it was originally executed or as it may from time to time be amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (iii) the words "hereof", "herein" and "hereunder" and words of similar import shall be construed to refer to this Agreement as a whole and not to any particular provision hereof, (iv) all references to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles, Sections, Exhibits and Schedules to this Agreement and (v) all references to a specific time shall be construed to refer to the time in the city and state of the Administrative Agent's principal office, unless otherwise indicated.

ARTICLE II

AMOUNT AND TERMS OF THE COMMITMENTS

Section 2.1. General Description of Facilities. Subject to and upon the terms and conditions herein set forth, (i) the Lenders hereby establish in favor of the Borrower a revolving credit facility pursuant to which each Lender severally agrees (to the extent of such Lender's Revolving Commitment) to make Revolving Loans to the Borrower in accordance with Section 2.2, (ii) the Issuing Bank agrees to issue Letters of Credit in accordance with Section 2.22, (iii) the Swingline Lender agrees to make Swingline Loans in accordance with Section 2.4, and (iv) each Lender agrees to purchase a participation interest in the Letters of Credit and the Swingline Loans pursuant to the terms and conditions hereof; provided, that in no event shall the aggregate principal amount of all outstanding Revolving Loans, Swingline Loans and outstanding LC Exposure exceed at any time the Aggregate Revolving Commitment Amount from time to time in effect.

Section 2.2. Revolving Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make Revolving Loans, ratably in proportion to its Pro Rata Share, to the Borrower, from time to time during the Availability Period, in an aggregate principal amount outstanding at any time that will not result in (a) such Lender's Revolving Credit Exposure exceeding such Lender's Revolving Commitment or (b) the sum of the aggregate Revolving Credit Exposures of all Lenders exceeding the Aggregate Revolving Commitment Amount. During the Availability Period, the Borrower shall be entitled to borrow, prepay and reborrow Revolving Loans in accordance with the terms and conditions of this Agreement; pro−vided, that the Borrower may not borrow or reborrow should there exist a Default or Event of Default.

Section 2.3. Procedure for Revolving Borrowings. The Borrower shall give the Administrative Agent written notice (or telephonic notice promptly confirmed in writing) of each Revolving Borrowing substantially in the form of Exhibit 2.3 attached hereto (a "Notice of Revolving Borrowing") (x) prior to 11:00 a.m. (New York time) one (1) Business Day prior to the requested date of each Base Rate Borrowing and (y) prior to 11:00 a.m. (New York time) three (3) Business Days prior to the requested date of each Eurodollar Borrowing. Each Notice of Revolving Borrowing shall be irrevocable and shall specify: (i) the aggregate principal amount of such Borrowing, (ii) the date of such Borrowing (which shall be a Business Day), (iii) the Type of such Revolving Loan comprising such Borrowing and (iv) in the case of a

Section 2.4. ***Swingline Commitment***. Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrower, from time to time during the Availability Period, in an aggregate principal amount outstanding at any time not to exceed the lesser of (i) the Swingline Commitment then in effect and (ii) the difference between the Aggregate Revolving Commitment Amount and the aggregate Revolving Credit Exposures of all Lenders; provided, that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. The Borrower shall be entitled to borrow, repay and reborrow Swingline Loans in accordance with the terms and conditions of this Agreement.

Section 2.5. ***Procedure for Swingline Borrowing; Etc***. (a) The Borrower shall give the Administrative Agent written notice (or telephonic notice promptly confirmed in writing) of each Swingline Borrowing substantially in the form of Exhibit 2.5 attached hereto ("Notice of Swingline Borrowing") prior to 10:00 a.m. (New York time) on the requested date of each Swingline Borrowing. Each Notice of Swingline Borrowing shall be irrevocable and shall specify: (i) the principal amount of such Swingline Loan, (ii) the date of such Swingline Loan (which shall be a Business Day) and (iii) the account of the Borrower to which the proceeds of such Swingline Loan should be credited. The Administrative Agent will promptly advise the Swingline Lender of each Notice of Swingline Borrowing. Each Swingline Loan shall accrue interest at the Swingline Rate and shall have an Interest Period (subject to the definition thereof) as agreed between the Borrower and the Swingline Lender. The aggregate principal amount of each Swingline Loan shall be not less than $100,000 or a larger multiple of $50,000, or such other minimum amounts agreed to by the Swingline Lender and the Borrower. The Swingline Lender will make the proceeds of each Swingline Loan available to the Borrower in Dollars in immediately available funds at the account specified by the Borrower in the applicable Notice of Swingline Borrowing not later than 1:00 p.m. (New York time) on the requested date of such Swingline Loan.

(b) The Swingline Lender, at any time and from time to time in its sole discretion, may, on behalf of the Borrower (which hereby irrevocably authorizes and directs the Swingline Lender to act on its behalf), give a Notice of Revolving Borrowing to the

Administrative Agent requesting the Lenders (including the Swingline Lender) to make Base Rate Loans in an amount equal to the unpaid principal amount of any Swingline Loan. Each Lender will make the proceeds of its Base Rate Loan included in such Borrowing available to the Administrative Agent for the account of the Swingline Lender in accordance with Section 2.6, which will be used solely for the repayment of such Swingline Loan.

(c) If for any reason a Base Rate Borrowing may not be (as determined in the sole discretion of the Administrative Agent), or is not, made in accordance with the foregoing provisions, then each Lender (other than the Swingline Lender) shall purchase an undivided participating interest in such Swingline Loan in an amount equal to its Pro Rata Share thereof on the date that such Base Rate Borrowing should have occurred. On the date of such required purchase, each Lender shall promptly transfer, in immediately available funds, the amount of its participating interest to the Administrative Agent for the account of the Swingline Lender. If such Swingline Loan bears interest at a rate other than the Base Rate, such Swingline Loan shall automatically become a Base Rate Loan on the effective date of any such participation and interest shall become payable on demand.

(d) Each Lender's obligation to make a Base Rate Loan pursuant to Section 2.5(b) or to purchase the participating interests pursuant to Section 2.5(c) shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation (i) any setoff, counterclaim, recoupment, defense or other right that such Lender or any other Person may have or claim against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the existence of a Default or an Event of Default or the termination of any Lender's Revolving Commitment, (iii) the existence (or alleged existence) of any event or condition which has had or could reasonably be expected to have a Material Adverse Effect, (iv) any breach of this Agreement or any other Loan Document by the Borrower, the Administrative Agent or any Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If such amount is not in fact made available to the Swingline Lender by any Lender, the Swingline Lender shall be entitled to recover such amount on demand from such Lender, together with accrued interest thereon for each day from the date of demand thereof (i) at the Federal Funds Rate until the second Business Day after such demand and (ii) at the Base Rate at all times thereafter. Until such time as such Lender makes its required payment, the Swingline Lender shall be deemed to continue to have outstanding Swingline Loans in the amount of the unpaid participation for all purposes of the Loan Documents. In addition, such Lender shall be deemed to have assigned any and all payments made of principal and interest on its Loans and any other amounts due to it hereunder, to the Swingline Lender to fund the amount of such Lender's participation interest in such Swingline Loans that such Lender failed to fund pursuant to this Section, until such amount has been purchased in full.

Section 2.6. Funding of Borrowings.

(a) Each Lender will make available each Loan to be made by it hereunder on the proposed date thereof by wire transfer in immediately available funds by 11:00 a.m. (New York time) to the Administrative Agent at the Payment Office; provided, that the Swingline Loans will be made as set forth in Section 2.5. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts that it receives, in like funds by the close of business on such proposed date, to an account maintained by the Borrower with the

Administrative Agent or at the Borrower's option, by effecting a wire transfer of such amounts to an account designated by the Borrower to the Administrative Agent.

(b) Unless the Administrative Agent shall have been notified by any Lender prior to 5:00 p.m. (New York time) one (1) Business Day prior to the date of a Borrowing in which such Lender is to participate that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date, and the Administrative Agent, in reliance on such assumption, may make available to the Borrower on such date a cor−responding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender on the date of such Borrowing, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender to−gether with interest at the Federal Funds Rate until the second Business Day after such demand and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower, and the Borrower shall immediately pay such corresponding amount to the Administrative Agent together with interest at the rate specified for such Bor−rowing. Nothing in this subsec−tion shall be deemed to relieve any Lender from its obligation to fund its Pro Rata Share of any Borrowing hereunder or to preju−dice any rights which the Borrower may have against any Lender as a result of any de−fault by such Lender hereunder.

(c) All Revolving Borrowings shall be made by the Lenders on the basis of their respective Pro Rata Shares. No Lender shall be responsible for any default by any other Lender in its obligations hereunder, and each Lender shall be ob−ligated to make its Loans provided to be made by it hereunder, regardless of the failure of any other Lender to make its Loans hereunder.

Section 2.7. <u>Interest Elections</u>.

(a) Each Borrowing initially shall be of the Type specified in the applicable Notice of Borrowing, and in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Notice of Borrowing. Thereafter, the Borrower may elect to convert such Borrowing into a different Type or to continue such Borrowing, and in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall NOT apply to Swingline Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower shall give the Administrative Agent prior written notice (or telephonic notice promptly confirmed in writing) of each Borrowing substantially in the form of <u>Exhibit 2.7</u> attached hereto (a "<u>Notice of Conversion/Continuation</u>") that is to be converted or continued, as the case may be, (x) prior to 11:00 a.m. (New York time) one (1) Business Day prior to the requested date of a conversion into a Base Rate Borrowing and (y) prior to 11:00 a.m. (New York time) three (3) Business Days prior to a continuation of or conversion into a Eurodollar Borrowing. Each such Notice of Conversion/Continuation shall be irrevocable and shall specify (i) the Borrowing to which such Notice of

Continuation/Conversion applies and if different options are being elected with respect to different portions thereof, the portions thereof that are to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) shall be specified for each resulting Borrowing); (ii) the effective date of the election made pursuant to such Notice of Continuation/Conversion, which shall be a Business Day, (iii) whether the resulting Borrowing is to be a Base Rate Borrowing or a Eurodollar Borrowing; and (iv) if the resulting Borrowing is to be a Eurodollar Borrowing, the Interest Period applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of "Interest Period". If any such Notice of Continuation/Conversion requests a Eurodollar Borrowing but does not specify an Interest Period, the Borrower shall be deemed to have selected an Interest Period of one month. The principal amount of any resulting Borrowing shall satisfy the minimum borrowing amount for Eurodollar Borrowings and Base Rate Borrowings set forth in Section 2.3.

(c) If, on the expiration of any Interest Period in respect of any Eurodollar Borrowing, the Borrower shall have failed to deliver a Notice of Conversion/ Continuation, then, unless such Borrowing is repaid as provided herein, the Borrower shall be deemed to have elected to convert such Borrowing to a Base Rate Borrowing. No Borrowing may be converted into, or continued as, a Eurodollar Borrowing if a Default or an Event of Default exists, unless the Administrative Agent and each of the Lenders shall have otherwise consented in writing. No conversion of any Eurodollar Loans shall be permitted except on the last day of the Interest Period in respect thereof.

(d) Upon receipt of any Notice of Conversion/Continuation, the Administrative Agent shall promptly notify each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

Section 2.8. Optional Reduction and Termination of Commitments.

(a) Unless previously terminated, all Revolving Commitments (including the LC Commitments) shall terminate on the Revolving Commitment Termination Date.

(b) Upon at least three (3) Business Days' prior written notice (or telephonic notice promptly confirmed in writing) to the Administrative Agent (which notice shall be irrevocable), the Borrower may reduce the Aggregate Revolving Commitments in part or terminate the Aggregate Revolving Commitments in whole; provided, that (i) any partial reduction shall apply to reduce proportionately and permanently the Revolving Commitment of each Lender, (ii) any partial reduction pursuant to this Section 2.8 shall be in an amount of at least $5,000,000 and any larger multiple of $1,000,000, and (iii) no such reduction shall be permitted which would reduce the Aggregate Revolving Commitment Amount to an amount less than the outstanding Revolving Credit Exposures of all Lenders. Any such reduction in the Aggregate Revolving Commitment Amount shall result in a proportionate reduction (rounded to the next lowest integral multiple of $100,000) in the Swingline Commitment and the LC Commitment.

Section 2.9. Repayment of Loans.

(a) The outstanding principal amount of all Revolving Loans shall be due and payable (together with accrued and unpaid interest thereon) on the Revolving Commitment Termination Date.

(b) The principal amount of each Swingline Borrowing shall be due and payable (together with accrued interest thereon) on the earlier of (i) the last day of the Interest Period applicable to such Borrowing and (ii) the Revolving Commitment Termination Date.

Section 2.10. ***Evidence of Indebtedness***. (a) Each Lender shall maintain in accordance with its usual practice appropriate records evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable thereon and paid to such Lender from time to time under this Agreement. The Administrative Agent shall maintain appropriate records in which shall be recorded (i) the Revolving Commitment of each Lender, (ii) the amount of each Loan made hereunder by each Lender, the Class and Type thereof and the Interest Period applicable thereto, (iii) the date of each continuation thereof pursuant to Section 2.7, (iv) the date of each conversion of all or a portion thereof to another Type pursuant to Section 2.7, (v) the date and amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder in respect of such Loans and (vi) both the date and amount of any sum received by the Administrative Agent hereunder from the Borrower in respect of the Loans and each Lender's Pro Rata Share thereof. The entries made in such records shall be *prima facie* evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, that the failure or delay of any Lender or the Administrative Agent in maintaining or making entries into any such record or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans (both principal and unpaid accrued interest) of such Lender in accordance with the terms of this Agreement.

(b) At the request of any Lender (including the Swingline Lender) at any time, the Borrower agrees that it will execute and deliver to such Lender a Revolving Credit Note and, in the case of the Swingline Lender only, a Swingline Note, payable to the order of such Lender.

Section 2.11. ***Optional Prepayments.*** The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, without premium or penalty, by giving irrevocable written notice (or telephonic notice promptly confirmed in writing) to the Administrative Agent no later than (i) in the case of prepayment of any Eurodollar Borrowing, noon (New York time) not less than three (3) Business Days prior to any such prepayment, (ii) in the case of any prepayment of any Base Rate Borrowing, not less than one Business Day prior to the date of such prepayment, and (iii) in the case of Swingline Borrowings, prior to noon on the date of such prepayment. Each such notice shall be irrevocable and shall specify the proposed date of such prepayment and the principal amount of each Borrowing or portion thereof to be prepaid. Upon receipt of any such notice, the Administrative Agent shall promptly notify each affected Lender of the contents thereof and of such Lender's Pro Rata Share of any such prepayment. If such notice is given, the aggregate amount specified in such notice shall be due and payable on the date designated in such notice, together with accrued interest to such date on the amount so prepaid in accordance with Section 2.13(d); provided, that if a Eurodollar Borrowing is prepaid on a date other than the last day of an Interest Period applicable thereto, the Borrower shall also pay all amounts required pursuant to Section 2.19. Each partial prepayment of any Loan (other than a Swingline Loan) shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type pursuant to Section 2.3 or in the case of a Swingline Loan pursuant to Section 2.5. Each prepayment of a Borrowing shall be applied ratably to the Loans comprising such Borrowing.

Section 2.12. Mandatory Prepayments.

(a) Immediately upon receipt by the Borrower or any of its Subsidiaries of proceeds of any sale or disposition by the Borrower or such Subsidiary of any of its assets (excluding (i) up to $20,000,000 in any Fiscal Year of proceeds from the sale of assets permitted under Section 7.6(d) and (ii) sales of assets permitted by Section 7.6 other than pursuant to clause (d) thereof) the Borrower shall prepay the Loans in an amount equal to all such proceeds, net of commissions and other reasonable and customary transaction costs, fees and expenses properly attributable to such transaction and payable by such Borrower in connection therewith (in each case, paid to non−Affiliates). Any such prepayment shall be applied in accordance with Section 2.12(b).

(b) Any prepayments made by the Borrower pursuant to Section 2.12(a) above shall be applied as follows: first, to Administrative Agent's fees and reimbursable expenses then due and payable pursuant to any of the Loan Documents; second, to all other fees and reimbursable expenses of the Lenders and the Issuing Bank then due and payable pursuant to any of the Loan Documents, pro rata to the Lenders and the Issuing Bank based on their respective Pro Rata Shares of such fees and expenses; third, to interests then due and payable on the Loans made to Borrower, pro rata to the Lenders based on their respective Revolving Commitments; fourth, to the principal balance of the Swingline Loans, until the same shall have been paid in full, to the Swingline Lender; and fifth, to the principal balance of the Revolving Loans, until the same shall have been paid in full, pro rata to the Lenders based on their respective Revolving Commitments. The Revolving Commitments of the Lenders shall be permanently reduced by the amount of any prepayments made pursuant to clauses fourth and fifth above.

(c) If at any time the aggregate outstanding principal amount of Revolving Loans exceeds the Revolving Commitment, the Borrower shall immediately repay the Revolving Loans in an amount equal to such excess, together with all accrued and unpaid interest on such excess amount and any amounts due under Section 2.19.

Section 2.13. Interest on Loans.

(a) The Borrower shall pay interest on each Base Rate Loan at the Base Rate in effect from time to time and on each Eurodollar Loan at the Adjusted LIBO Rate for the applicable Interest Period in effect for such Loan *plus* the Applicable Margin in effect from time to time.

(b) The Borrower shall pay interest on each Swingline Loan at the Swingline Rate in effect from time to time.

(c) While an Event of Default exists or after acceleration, at the option of the Required Lenders, the Borrower shall pay interest ("Default Interest") with respect to all Eurodollar Loans at the rate otherwise applicable for the then−current Interest Pe−riod plus an additional 2% per annum until the last day of such Interest Period, and thereafter, and with respect to all Base Rate Loans and all Swingline Loans and all other Obligations hereunder (other than Loans), at an all−in rate in effect for Base Rate Loans, *plus* an additional 2% per annum.

(d) Interest on the principal amount of all Loans shall accrue from and includ−ing the date such Loans are made to but excluding the date of any repay−ment thereof. Interest on all outstanding Base Rate Loans and Swingline Loans shall be payable quarterly in arrears on the last day of each March, June, September and December and on the Revolving Commitment Termination Date. Interest on all outstanding Eurodollar Loans shall be payable on the last day of each Interest Period applicable thereto, and, in the case of any Eurodollar Loans having an Interest Period in excess of three months or 90 days, respectively, on each day which occurs every three months or 90 days, as the case may be, after the initial date of such Interest Period, and on the Revolving Commitment Termination Date. Interest on any Loan which is converted into a Loan of another Type or which is repaid or prepaid shall be payable on the date of such conversion or on the date of any such repayment or prepayment (on the amount repaid or prepaid) thereof. All Default Interest shall be payable on demand.

(e) The Administrative Agent shall determine each interest rate applicable to the Loans hereunder and shall promptly notify the Borrower and the Lenders of such rate in writing (or by telephone, promptly con−firmed in writing). Any such determination shall be conclusive and binding for all purposes, absent manifest error.

Section 2.14. Fees.

(a) The Borrower shall pay to the Administrative Agent for its own account fees in the amounts and at the times previously agreed upon in writing by the Borrower and the Administrative Agent.

(b) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a facility fee, which shall accrue at the Applicable Percentage per annum (determined daily in accordance with Schedule I) on the daily amount of the Revolving Commitment (whether used or unused) of such Lender during the Availability Period; provided, that if such Lender continues to have any Revolving Credit Exposure after the Revolving Commitment Termination Date, then the facility fee shall continue to accrue on the daily amount of such Revolving Credit Exposure from and after the Revolving Commitment Termination Date to the date that all of such Lender's Revolving Credit Exposure has been paid in full.

(c) The Borrower agrees to pay (i) to the Administrative Agent, for the account of each Lender, a letter of credit fee with respect to its participation in each Letter of Credit, which shall accrue at a rate per annum equal to the Applicable Margin for Eurodollar

Loans then in effect on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) attributable to such Letter of Credit during the period from and including the date of issuance of such Letter of Credit to but excluding the date on which such Letter of Credit expires or is drawn in full (including without limitation any LC Exposure that remains outstanding after the Revolving Commitment Termination Date) and (ii) to the Issuing Bank for its own account a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the Availability Period (or until the date that such Letter of Credit is irrevocably cancelled, whichever is later), as well as the Issuing Bank's standard fees with respect to issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder.

(d) The Borrower shall pay to the Administrative Agent, for the ratable benefit of each Lender, the upfront fee previously agreed upon by the Borrower and the Administrative Agent, which shall be due and payable on the Closing Date.

(e) Accrued fees (other than the upfront fee referenced in paragraph (d)) shall be payable quarterly in arrears on the last day of each March, June, September and December, commencing on September 30, 2006 and on the Revolving Commitment Termination Date (and if later, the date the Loans and LC Exposure shall be repaid in their entirety); provided further, that any such fees accruing after the Revolving Commitment Termination Date shall be payable on demand.

Section 2.15. Computation of Interest and Fees. All computations of interest and fees hereunder shall be made on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees are payable (to the extent computed on the basis of days elapsed). Each determination by the Administrative Agent of an interest amount or fee hereunder shall be made in good faith and, except for manifest error, shall be final, con−clusive and binding for all purposes.

Section 2.16. Inability to Determine Interest Rates. If prior to the commencement of any Interest Period for any Eurodollar Borrowing,

(i) the Administrative Agent shall have determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant interbank market, ad−equate means do not exist for ascertaining LIBOR for such Interest Period, or

(ii) the Administrative Agent shall have received notice from the Required Lenders that the Adjusted LIBO Rate does not adequately and fairly reflect the cost to such Lenders of making, funding or maintaining their Eurodollar Loans for such Interest Period,

the Administrative Agent shall give written notice (or telephonic notice, promptly confirmed in writing) to the Borrower and to the Lenders as soon as practicable thereafter. In the case of Eurodollar Loans, until the Administrative Agent shall notify the Borrower and the Lenders that the circumstances giv−ing rise to such notice no longer exist, (i) the obligations of the Lenders to make Eurodollar Revolving Loans or to continue or convert outstanding Loans as or into Eurodollar Loans shall be suspended and (ii) all such affected Loans shall be converted into Base Rate Loans on the last day of the then current Interest Period applicable thereto unless the Borrower prepays such Loans in accordance with this Agreement. Unless the Borrower notifies the Administrative Agent at least one Business Day before the date of any Eurodollar Revolving Borrowing for which a Notice of Revolving Borrowing has previously been given that it elects not to borrow on such date, then such Revolving Borrowing shall be made as a Base Rate Borrowing.

Section 2.17. Illegality. If any Change in Law shall make it unlawful or impossible for any Lender to make, maintain or fund any Eurodollar Loan and such Lender shall so notify the Administrative Agent, the Administrative Agent shall promptly give notice thereof to the Borrower and the other Lenders, whereupon until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender to make Eurodollar Revolving Loans, or to continue or convert outstanding Loans as or into Eurodollar Loans, shall be suspended. In the case of the making of a Eurodollar Revolving Borrowing, such Lender's Revolving Loan shall be made as a Base Rate Loan as part of the same Revolving Borrowing for the same Interest Period and if the affected Eurodollar Loan is then outstanding, such Loan shall be converted to a Base Rate Loan either (i) on the last day of the then current Interest Period applicable to such Eurodollar Loan if such Lender may lawfully continue to maintain such Loan to such date or (ii) immediately if such Lender shall determine that it may not lawfully continue to maintain such Eurodollar Loan to such date. Notwithstanding the foregoing, the affected Lender shall, prior to giving such notice to the Administrative Agent, designate a different Applicable Lending Office if such designation would avoid the need for giving such notice and if such designation would not otherwise be disadvantageous to such Lender in the good faith exercise of its discretion.

Section 2.18. Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement that is not otherwise included in the determination of the Adjusted LIBO Rate hereunder against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank; or

(ii) impose on any Lender or on the Issuing Bank or the eurodollar interbank market any other condition affecting this Agreement or any Eurodollar Loans made by such Lender or any Letter of Credit or any participation therein; and the result of either of the foregoing is to increase the cost to such Lender of making, converting into, continuing or maintaining a Eurodollar Loan or to increase the cost to such Lender or the Issuing Bank of participating in or issuing any Letter of Credit or to reduce the amount received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or any other amount), then the Borrower shall promptly pay, upon written notice from and demand by such Lender on the Borrower (with a copy of such notice and demand to the Administrative Agent), to the Administrative Agent for the account of such Lender, within five Business Days after the date of such notice and demand, additional amount or amounts sufficient to compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank shall have determined that on or after the date of this Agreement any Change in Law regarding capital requirements has or would have the ef−fect of reducing the rate of return on such Lender’s or the Issuing Bank’s capital (or on the capital of such Lender’s or the Issuing Bank’s parent corporation) as a consequence of its obligations here−under or under or in respect of any Letter of Credit to a level below that which such Lender or the Issuing Bank or such Lender’s or the Issuing Bank’s parent corporation could have achieved but for such Change in Law (taking into consideration such Lender’s or the Issuing Bank’s policies or the policies of such Lender’s or the Issuing Bank’s parent corporation with respect to capital adequacy) then, from time to time, within five (5) Business Days after receipt by the Borrower of written de−mand by such Lender (with a copy thereof to the Administrative Agent), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender or the Issuing Bank or such Lender’s or the Issuing Bank’s parent corporation for any such reduction suffered.

(c) A certifi−cate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or such Lender’s or the Issuing Bank’s parent corporation, as the case may be, specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower (with a copy to the Administrative Agent) and shall be con−clusive, absent manifest error. The Borrower shall pay any such Lender or the Issuing Bank, as the case may be, such amount or amounts within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender’s or the Issuing Bank’s right to demand such compensation.

Section 2.19. ***Funding Indemnity***. In the event of (a) the payment of any principal of a Eurodollar Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion or continuation of a Eurodollar Loan other than on the last day of the Interest Period applicable thereto or (c) the failure by the Borrower to borrow, prepay, convert or continue any Eurodollar Loan on the date specified in any applicable notice (regardless of whether such notice is withdrawn or revoked), then, in any such event, the Borrower shall compensate each Lender, within five (5) Business Days after written demand from such Lender, for any loss, cost or expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense shall be deemed to include an amount determined by such Lender to be the excess, if any, of (A) the amount of interest that would have accrued on the principal amount of such Eurodollar Loan if such event had not occurred at the Adjusted LIBO Rate applicable to such Eurodollar Loan for the period from the date of such event to the last day of the then current Interest Period therefor (or in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Eurodollar Loan) over (B) the amount of interest that would accrue on the principal amount of such Eurodollar Loan for the same period if the Adjusted LIBO Rate were set on the date such Eurodollar Loan was prepaid or converted or the date on which the Borrower failed to borrow, convert or continue such Eurodollar Loan. A certificate as to any additional amount payable under this Section 2.19 submitted to the Borrower by any Lender (with a copy to the Administrative Agent) shall be conclusive, absent manifest error.

Section 2.20. Taxes.

(a) Any and all payments by or on account of any obligation of the Borrower hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided, that if the Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, any Lender or the Issuing Bank (as the case may be) shall receive an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Bank, within five (5) Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or the Issuing Bank, or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the Code or any treaty to which the United States is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate.

Without limiting the generality of the foregoing, each Foreign Lender agrees that it will deliver to the Administrative Agent and the Borrower (or in the case of a Participant, to the Lender from which the related participation shall have been purchased), as appropriate, two (2) duly completed copies of (i) Internal Revenue Service Form W−8 ECI, or any successor form thereto, certifying that the payments received from the Borrower hereunder are effectively connected with such Foreign Lender's conduct of a trade or business in the United States; or (ii) Internal Revenue Service Form W−8 BEN, or any successor form thereto, certifying that such Foreign Lender is entitled to benefits under an income tax treaty to which the United States is a party which reduces the rate of withholding tax on payments of interest; or (iii) Internal Revenue Service Form W−8 BEN, or any successor form prescribed by the Internal Revenue Service, together with a certificate (A) establishing that the payment to the Foreign Lender qualifies as "portfolio interest" exempt from U.S. withholding tax under Code section 871(h) or 881(c), and (B) stating that (1) the Foreign Lender is not a bank for purposes of Code section 881(c)(3)(A), or the obligation of the Borrower hereunder is not, with respect to such Foreign Lender, a loan agreement entered into in the ordinary course of its trade or business, within the meaning of that section; (2) the Foreign Lender is not a 10% shareholder of the Borrower within the meaning of Code section 871(h)(3) or 881(c)(3)(B); and (3) the Foreign Lender is not a controlled foreign corporation that is related to the Borrower within the meaning of Code section 881(c)(3)(C); or (iv) such other Internal Revenue Service forms as may be applicable to the Foreign Lender, including Forms W−8 IMY or W−8 EXP. Each such Foreign Lender shall deliver to the Borrower and the Administrative Agent such forms on or before the date that it becomes a party to this Agreement (or in the case of a Participant, on or before the date such Participant purchases the related participation). In addition, each such Foreign Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Foreign Lender. Each such Foreign Lender shall promptly notify the Borrower and the Administrative Agent at any time that it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the Internal Revenue Service for such purpose).

Section 2.21. Payments Generally; Pro Rata Treatment; Sharing of Set−offs.

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.18, 2.19 or 2.20, or otherwise) prior to 12:00 noon (New York time), on the date when due, in immediately available funds, free and clear of any defenses, rights of set−off, counterclaim, or withholding or deduction of taxes. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at the Payment Office, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.18, 2.19 and 2.20 and 10.3 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be made payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of set−off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements or Swingline Loans that would result in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements and Swingline Loans; provided, that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements or Swingline Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set−off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount or amounts due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.5(c), 2.6(b), 2.21(d), 2.22(c) or (d), or 10.3(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.22. Letters of Credit.

(a) During the Availability Period, the Issuing Bank, in reliance upon the agreements of the other Lenders pursuant to Section 2.22(d), agrees to issue, at the request of the Borrower, Letters of Credit for the account of the Borrower on the terms and conditions hereinafter set forth; provided, that (i) each Letter of Credit shall expire on the earlier of (A) the date one year after the date of issuance of such Letter of Credit (or in the case of any renewal or extension thereof, one year after such renewal or extension) and (B) the date that is five (5) Business Days prior to the Revolving Commitment Termination Date; (ii) each Letter of Credit shall be in a stated amount of at least $50,000; and (iii) the Borrower may not request any Letter of Credit, if, after giving effect to such issuance (A) the aggregate LC Exposure would exceed the LC Commitment or (B) the aggregate LC Exposure, *plus* the aggregate outstanding Revolving Loans and Swingline Loans of all Lenders would exceed the Aggregate Revolving Commitment Amount. Upon the issuance of each Letter of Credit each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Issuing Bank without recourse a participation in such Letter of Credit equal to such Lender's Pro Rata Share of the aggregate amount available to be drawn under such Letter of Credit. Each issuance of a Letter of Credit shall be deemed to utilize the Revolving Commitment of each Lender by an amount equal to the amount of such participation.

(b) To request the issuance of a Letter of Credit (or any amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall give the Issuing Bank and the Administrative Agent irrevocable written notice at least three (3) Business Days prior to the requested date of such issuance specifying the date (which shall be a Business Day) such Letter of Credit is to be issued (or amended, extended or renewed, as the case may be), the expiration date of such Letter of Credit, the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. In addition to the satisfaction of the conditions in Article III, the issuance of such Letter of Credit (or any amendment which increases the amount of such Letter of Credit) will be subject to the further conditions that such Letter of Credit shall be in such form and contain such terms as the Issuing Bank shall approve and that the Borrower shall have executed and delivered any additional applications, agreements and instruments relating to such Letter of Credit as the Issuing Bank shall reasonably require; provided, that in the event of any conflict between such applications, agreements or instruments and this Agreement, the terms of this Agreement shall control.

(c) At least two Business Days prior to the issuance of any Letter of Credit, the Issuing Bank will confirm with the Administrative Agent (by telephone or in writing) that the

Administrative Agent has received such notice and if not, the Issuing Bank will provide the Administrative Agent with a copy thereof. Unless the Issuing Bank has received notice from the Administrative Agent on or before the Business Day immediately preceding the date the Issuing Bank is to issue the requested Letter of Credit directing the Issuing Bank not to issue the Letter of Credit because such issuance is not then permitted hereunder because of the limitations set forth in Section 2.22(a) or that one or more conditions specified in Article III are not then satisfied, then, subject to the terms and conditions hereof, the Issuing Bank shall, on the requested date, issue such Letter of Credit in accordance with the Issuing Bank's usual and customary business practices.

(d) The Issuing Bank shall examine all documents purporting to represent a demand for payment under a Letter of Credit promptly following its receipt thereof. The Issuing Bank shall notify the Borrower and the Administrative Agent of such demand for payment and whether the Issuing Bank has made or will make a LC Disbursement thereunder; provided, that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Lenders with respect to such LC Disbursement. The Borrower shall be irrevocably and unconditionally obligated to reimburse the Issuing Bank for any LC Disbursements paid by the Issuing Bank in respect of such drawing, without presentment, demand or other formalities of any kind. Unless the Borrower shall have notified the Issuing Bank and the Administrative Agent prior to 11:00 a.m. (New York time) on the Business Day immediately prior to the date on which such drawing is honored that the Borrower intends to reimburse the Issuing Bank for the amount of such drawing in funds other than from the proceeds of Revolving Loans, the Borrower shall be deemed to have timely given a Notice of Revolving Borrowing to the Administrative Agent requesting the Lenders to make a Base Rate Borrowing on the date on which such drawing is honored in an exact amount due to the Issuing Bank; provided, that for purposes solely of such Borrowing, the conditions precedents set forth in Section 3.2 hereof shall not be applicable. The Administrative Agent shall notify the Lenders of such Borrowing in accordance with Section 2.3, and each Lender shall make the proceeds of its Base Rate Loan included in such Borrowing available to the Administrative Agent for the account of the Issuing Bank in accordance with Section 2.6. The proceeds of such Borrowing shall be applied directly by the Administrative Agent to reimburse the Issuing Bank for such LC Disbursement.

(e) If for any reason a Base Rate Borrowing may not be (as determined in the sole discretion of the Administrative Agent), or is not, made in accordance with the foregoing provisions, then each Lender (other than the Issuing Bank) shall be obligated to fund the participation that such Lender purchased pursuant to subsection (a) in an amount equal to its Pro Rata Share of such LC Disbursement on and as of the date which such Base Rate Borrowing should have occurred. Each Lender's obligation to fund its participation shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation (i) any setoff, counterclaim, recoupment, defense or other right that such Lender or any other Person may have against the Issuing Bank or any other Person for any reason whatsoever, (ii) the existence of a Default or an Event of Default or the termination of the Aggregate Revolving Commitments, (iii) any adverse change in the condition (financial or otherwise) of the Borrower or any of its Subsidiaries, (iv) any breach of this Agreement by the Borrower or any other Lender, (v) any amendment, renewal or extension of any Letter of Credit or (vi) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. On the date that such participation is required to be funded, each Lender shall promptly transfer, in immediately available funds, the amount of its participation to the Administrative Agent for the account of the Issuing Bank. Whenever, at any time after the Issuing Bank has received from any such Lender the funds for its participation in a LC Disbursement, the Issuing Bank (or the Administrative Agent on its behalf) receives any payment on account thereof, the Administrative Agent or the Issuing Bank, as the case may be, will distribute to such Lender its Pro Rata Share of such payment; provided, that if such payment is required to be returned for any reason to the Borrower or to a trustee, receiver, liquidator, custodian or similar official in any bankruptcy proceeding, such Lender will return to the Administrative Agent or the Issuing Bank any portion thereof previously distributed by the Administrative Agent or the Issuing Bank to it.

(f) To the extent that any Lender shall fail to pay any amount required to be paid pursuant to paragraph (d) of this Section 2.22 on the due date therefor, such Lender shall pay interest to the Issuing Bank (through the Administrative Agent) on such amount from such due date to the date such payment is made at a rate per annum equal to the Federal Funds Rate; provided, that if such Lender shall fail to make such payment to the Issuing Bank within three (3) Business Days of such due date, then, retroactively to the due date, such Lender shall be obligated to pay interest on such amount at the Default Rate.

(g) If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Issuing Bank and the Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid fees thereon; provided, that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (g) or (h) of Section 8.1. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Borrower agrees to execute any documents and/or certificates to effectuate the intent of this paragraph. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower’s risk and expense, such deposits shall not bear interest. Interest and profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it had not been reimbursed and to the extent so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, with the consent of the Required Lenders, be applied to satisfy other obligations of the Borrower under this Agreement and the other Loan Documents. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not so applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(h) Promptly following the end of each Fiscal Quarter, the Issuing Bank shall deliver (through the Administrative Agent) to each Lender and the Borrower a report describing the aggregate Letters of Credit outstanding at the end of such Fiscal Quarter. Upon the request of any Lender from time to time, the Issuing Bank shall deliver to such Lender any other information reasonably requested by such Lender with respect to each Letter of Credit then outstanding.

(i) The Borrower's obligation to reimburse LC Disbursements hereunder shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under all circumstances whatsoever and irrespective of any of the following circumstances:

(i) Any lack of validity or enforceability of any Letter of Credit or this Agreement;

(ii) The existence of any claim, set−off, defense or other right which the Borrower or any Subsidiary or Affiliate of the Borrower may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons or entities for whom any such beneficiary or transferee may be acting), any Lender (including the Issuing Bank) or any other Person, whether in connection with this Agreement or the Letter of Credit or any document related hereto or thereto or any unrelated transaction;

(iii) Any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;

(iv) Payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document to the Issuing Bank that does not comply with the terms of such Letter of Credit;

(v) Any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder; or

(vi) The existence of a Default or an Event of Default.

Neither the Administrative Agent, the Issuing Bank, the Lenders nor any Related Party of any of the foregoing shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to above), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided, that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any actual direct damages (as opposed to special, indirect (including claims for lost profits or other consequential damages), or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise due care when determining whether drafts or other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree, that in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised due care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(j) Each Letter of Credit shall be subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500, as the same may be amended from time to time, and, to the extent not inconsistent therewith, the governing law of this Agreement set forth in Section 10.5.

Section 2.23. ***Mitigation of Obligations***. If any Lender requests compensation under Section 2.18, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.20, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the sole judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable under Section 2.18 or Section 2.20, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all costs and expenses incurred by any Lender in connection with such designation or assignment.

Section 2.24. ***Increase of Commitments; Additional Lenders.***

(a) So long as no Event of Default has occurred and is continuing, from time to time after the Closing Date, the Borrower may, upon at least 30 days' written notice to the Administrative Agent (who shall promptly provide a copy of such notice to each Lender), propose to increase the Aggregate Revolving Commitments by an amount not to exceed $100,000,000 (the amount of any such increase, the "Additional Commitment Amount"). Each Lender shall have the right for a period of 15 days following receipt of such notice, to elect by written notice to the Borrower and the Administrative Agent to increase its Revolving Commitment by a principal amount equal to its Pro Rata Share of the Additional Commitment Amount. No Lender (or any successor thereto) shall have any obligation to increase its Revolving Commitment or its other obligations under this Agreement and the other Loan Documents, and any decision by a Lender to increase its Revolving Commitment shall be made in its sole discretion independently from any other Lender.

(b) If any Lender shall not elect to increase its Revolving Commitment pursuant to subsection (a) of this Section 2.24, the Borrower may designate another bank or other financial institution (which may be, but need not be, one or more of the existing Lenders) which at the time agrees to, in the case of any such Person that is an existing Lender, increase its Revolving Commitment and in the case of any other such Person (an "Additional Lender"), become a party to this Agreement; provided, however, that any new bank or financial institution must be acceptable to the Administrative Agent, which acceptance will not be unreasonably withheld or delayed. The sum of the increases in the Revolving Commitments of the existing Lenders pursuant to this subsection (b) plus the Revolving Commitments of the Additional Lenders shall not in the aggregate exceed the unsubscribed amount of the Additional Commitment Amount.

(c) An increase in the aggregate amount of the Revolving Commitments pursuant to this Section 2.24 shall become effective upon the receipt by the Administrative Agent of a supplement or joinder in form and substance satisfactory to the Administrative Agent executed by the Borrower, by each Additional Lender and by each other Lender whose Revolving Commitment is to be increased, setting forth the new Revolving Commitments of such Lenders and setting forth the agreement of each Additional Lender to become a party to this Agreement and to be bound by all the terms and provisions hereof, together with Notes evidencing such increase in the Commitments, and such evidence of appropriate corporate authorization on the part of the Borrower with respect to the increase in the Revolving Commitments and such opinions of counsel for the Borrower with respect to the increase in the Revolving Commitments as the Administrative Agent may reasonably request.

(d) Upon the acceptance of any such supplement or joinder by the Administrative Agent, the Aggregate Revolving Commitment Amount shall automatically be increased by the amount of the Revolving Commitments added through such supplement or joinder and Annex I shall automatically be deemed amended to reflect the Revolving Commitments of all Lenders after giving effect to the addition of such Revolving Commitments.

(e) Upon any increase in the aggregate amount of the Revolving Commitments pursuant to this Section 2.24 that is not pro rata among all Lenders, (x) within five Business Days, in the case of any Base Rate Loans then outstanding, and at the end of the then current Interest Period with respect thereto, in the case of any Eurodollar Loans then outstanding, the Borrower shall prepay such Loans in their entirety and, to the extent the Borrower elects to do so and subject to the conditions specified in Article III, the Borrower shall reborrow Loans from the Lenders in proportion to their respective Revolving Commitments after giving effect to such increase, until such time as all outstanding Loans are held by the Lenders in proportion to their respective Commitments after giving effect to such increase and (y) effective upon such increase, the amount of the participations held by each Lender in each Letter of Credit then outstanding shall be adjusted automatically such that, after giving effect to such adjustments, the Lenders shall hold participations in each such Letter of Credit in proportion to their respective Revolving Commitments.

ARTICLE III

CONDITIONS PRECEDENT TO LOANS AND LETTERS OF CREDIT

Section 3.1. Conditions To Effectiveness. The obligations of the Lenders (including the Swingline Lender) to make Loans and the obligation of the Issuing Bank to issue any Letter of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 10.2).

(a) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Closing Date, including reimbursement or payment of all out−of−pocket expenses (including reasonable fees, charges and disbursements of counsel to the Administrative Agent) required to be reimbursed or paid by the Borrower hereunder, under any other Loan Document and under any agreement with the Administrative Agent or SunTrust Capital Markets, Inc., as Lead Arranger.

(b) The Administrative Agent (or its counsel) shall have received the following:

(i) a counterpart of this Agreement signed by or on behalf of each party hereto or written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement;

(ii) duly executed Revolving Credit Notes payable to such Lender and the Swingline Note payable to the Swingline Lender;

(iii) a certificate of the Secretary or Assistant Secre−tary of the Borrower, attaching and certifying copies of its bylaws and of the resolutions of its board of directors, authorizing the execution, delivery and performance of the Loan Documents to which it is a party and certifying the name, title and true signature of each officer of the Borrower executing the Loan Documents to which it is a party;

(iv) certified copies of the articles or certificate of incorporation of the Borrower, together with certificates of good standing or existence, as may be avail−able from the Secretary of State of its jurisdiction of organization and each other jurisdiction where the Borrower is required to be qualified to do business as a foreign corporation;

(v) a favorable written opinion of Williams Mullen, counsel to the Borrower, addressed to the Administrative Agent and each of the Lend−ers, and covering such matters relating to the Borrower, the Loan Documents and the transactions contemplated therein as the Administrative Agent or the Required Lenders shall reasonably request;

(vi) a certificate, dated the Closing Date and signed by a Responsible Officer, confirming compliance with the conditions set forth in paragraphs (a), (b) and (c) of Section 3.2;

(vii) a duly executed Notice of Borrowing;

(viii) a duly executed funds disbursement agreement;

(ix) certified copies of all consents, approvals, authorizations, registrations and filings and orders required or advisable to be made or obtained under any Requirement of Law, or by any Contractual Obligation of the Borrower or any of its Subsidiaries, in connection with the execution, delivery, performance, validity and enforceability of the Loan Documents or any of the transactions contemplated thereby, and such consents, approvals, authorizations, registrations, filings and orders shall be in full force and effect and all applicable waiting periods shall have expired;

(x) copies of (A) the internally prepared quarterly financial statements of Borrower and its Subsidiaries on a consolidated basis and of the Borrower only for the Fiscal Quarter ending on March 31, 2006, and (B) the audited consolidated financial statements for Borrower and its Subsidiaries for the Fiscal Years ending December 31, 2004 and December 31, 2005; and

(xi) a true and correct copy of that certain Note Purchase and Master Shelf Agreement, dated as of the date hereof, by and among the Borrower, Prudential Investment Management, Inc. and the purchasers from time to time party thereto governing the issuance of the 2006 Prudential Notes.

(c) All "Obligations" (as defined in the Existing Credit Agreement) (other than contingent obligations that by the terms of the Existing Credit Agreement survive the termination thereof) have been paid in full, or will be paid in full with the initial funding hereunder.

Upon the satisfaction of the foregoing conditions, the Existing Credit Agreement and all "Commitments" (as defined therein) shall be deemed terminated.

Section 3.2. ***Each Credit Event.*** The obligation of each Lender to make a Loan on the occasion of any Borrowing and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit is subject to the satisfaction of the following conditions:

(a) at the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall exist; and

(b) all representations and warranties of the Borrower set forth in the Loan Documents shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, extension or renewal of such Letter of Credit, in each case before and after giving effect thereto; and

(c) since the date of the financial statements of the Borrower described in Section 4.4, there shall have been no change which has had or could reasonably be expected to have a Material Adverse Effect; and

(d) the Borrower shall have delivered the required Notice of Borrowing; and

(e) the Administrative Agent shall have received such other docu−ments, certificates, information or legal opinions as the Administrative Agent or the Required Lenders may reasonably request, all in form and substance reasonably sat−isfactory to the Administrative Agent or the Required Lenders.

Each Borrowing and each issuance, amendment, extension or renewal of any Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a), (b) and (c) of this Section 3.2.

Section 3.3. Delivery of Documents. All of the Loan Documents, certificates, legal opinions and other documents and papers referred to in this Article III, unless otherwise specified, shall be delivered to the Administrative Agent for the account of each of the Lenders and, except for the Notes, in sufficient counterparts or copies for each of the Lenders and shall be in form and substance satisfactory in all respects to the Administrative Agent.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and each Lender as follows:

Section 4.1. Existence; Power. The Borrower and each of its Material Subsidiaries (i) is duly orga−nized, validly existing and in good standing as corporation, partnership or limited liability company under the laws of the jurisdiction of its organization, (ii) −has all requisite power and authority to carry on its business as now conducted, and (iii) is duly qualified to do business, and is in good standing, in each jurisdiction where such qualification is required, except where a failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect.

Section 4.2. Organizational Power; Authorization. The execution, delivery and performance by the Borrower of the Loan Documents to which it is a party are within the Borrower’s organizational powers and have been duly authorized by all necessary organizational, and if required, shareholder, partner or member, action. This Agreement has been duly executed and delivered by the Borrower, and constitutes, and each other Loan Document to which it is a party, when executed and delivered by the Borrower, will constitute, valid and binding obligations of the Borrower, en−forceable against it in accordance with their re−spective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors’ rights generally and by general principles of equity.

Section 4.3. Governmental Approvals; No Conflicts. The execution, delivery and performance by the Borrower of this Agreement or of the other Loan Documents to which it is a party (a) do not require any consent or approval of, registration or filing with, or any action by, any Governmental Authority, except those as have been obtained or made and are in full force and effect, (b) will not violate any Requirements of Law applicable to the Borrower or any of its Material Subsidiaries or any judgment, order or ruling of any Governmental Authority, (c) will not violate or result in a default under any indenture, material agreement or other material instrument binding on the Borrower or any of its Material Subsidiaries or any of its assets or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Material Subsidiaries and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Material Subsidiaries, except Liens (if any) created under the Loan Documents.

Section 4.4. ***Financial Statements***. The Borrower has furnished to each Lender (i) the audited con−solidated balance sheet of the Borrower and its Subsidiaries as of December 31, 2005 and the related consolidated statements of income, shareholders' equity and cash flows for the Fiscal Year then ended prepared by Ernst & Young LLP and (ii) the unaudited consolidated balance sheet of the Borrower and its Subsidiaries as of March 31, 2006, and the related unaudited consolidated statements of in−come and cash flows for the Fiscal Quarter and year−to−date period then ending, certified by a Responsible Officer. Such financial statements fairly present the consolidated financial condition of the Borrower and its Subsidiaries as of such dates and the consolidated results of op−erations for such periods in conformity with GAAP consistently applied, subject to year end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii). Since December 31, 2005, there have been no changes with respect to the Borrower and its Subsidiaries which have had or could reasonably be expected to have, singly or in the aggregate, a Material Adverse Effect.

Section 4.5. ***Litigation and Environmental Matters***.

(a) No litigation, investigation or proceeding of or before any arbitra−tors or Governmental Authorities is pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, except for those matters listed on Schedule 4.5(a) or (ii) which in any manner draws into question the validity or enforceability of this Agreement or any other Loan Document.

(b) Except for the matters set forth on Schedule 4.5(b), neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, in each case which could reasonably be expected to have a Material Adverse Effect.

Section 4.6. ***Compliance with Laws and Agreements***. The Borrower and each Subsidiary is in compliance with (a) all Requirements of Law and all judgments, decrees and orders of any Governmental Authority and (b) all indentures, agreements or other instruments binding upon it or its properties, except where non−compliance, either singly or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 4.7. ***Investment Company Act, Etc.*** Neither the Borrower nor any of its Subsidiaries is (a) an "investment company" or is "controlled" by an "investment company", as such terms are defined in, or subject to regulation under, the Investment Company Act of 1940, as amended, or (b) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935, as amended. The Borrower is not subject to any other regulatory scheme limiting its ability to incur debt or requiring any approval or consent from or registration or filing with, any Governmental Authority in connection therewith.

Section 4.8. ***Taxes***. The Borrower and its Subsidiaries and each other Person for whose taxes the Borrower or any Subsidiary could become liable have timely filed or caused to be filed all Federal income tax returns and all other material tax returns that are re−quired to be filed by them, and have paid all Federal and material taxes shown to be due and payable on such returns or on any assessments made against it or its property and all other material taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, except where the same are currently being contested in good faith by ap−propriate proceedings and for which the Borrower or such Subsidiary, as the case may be, has set aside on its books adequate reserves in accordance with SAP and GAAP. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of such taxes are adequate, and no tax liabilities that could be materially in excess of the amount so provided are anticipated.

Section 4.9. ***Margin Regulations***. None of the pro−ceeds of any of the Loans or Letters of Credit will be used, directly or indirectly, for "purchasing" or "carrying" any "margin stock" with the respective meanings of each of such terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect or for any purpose that violates the provisions of the Regulation U. Neither the Borrower nor its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying "margin stock."

Section 4.10. ***ERISA***. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans.

Section 4.11. ***Ownership of Property***.

(a) Each of the Borrower and its Subsidiaries has good title to, or valid leasehold interests in, all of its real and personal property material to the operation of its business, including all such properties reflected in the most recent audited consolidated balance sheet of the Borrower referred to in Section 4.4 or purported to have been acquired by the Borrower or any Subsidiary after said date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement. All leases that individually or in the aggregate are material to the business or operations of the Borrower and its Subsidiaries are valid and subsisting and are in full force.

(b) Each of the Borrower and its Subsidiaries owns, or is licensed, or otherwise has the right, to use, all patents, trademarks, service marks, trade names, copyrights and other intellectual property material to its business, and the use thereof by the Borrower and its Subsidiaries does not infringe in any material respect on the rights of any other Person.

(c) The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Borrower, in such amounts with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or any applicable Subsidiary operates.

Section 4.12. ***Disclosure***. The Borrower has disclosed to the Lenders all agreements, instruments, and corporate or other restrictions to which the Borrower or any of its Subsidiaries is subject, and all other matters known to any of them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither the Information Memorandum nor any of the reports (including without limitation all reports that the Borrower is required to file with the Securities and Exchange Commission), financial statements, certificates or other information furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation or syndication of this Agreement or any other Loan Document or delivered hereunder or thereunder (as modified or supplemented by any other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, taken as a whole, in light of the circumstances under which they were made, not misleading.

Section 4.13. ***Labor Relations***. There are no strikes, lockouts or other material labor disputes or grievances against the Borrower or any of its Subsidiaries, or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its Subsidiaries, and no significant unfair labor practice, charges or grievances are pending against the Borrower or any of its Subsidiaries, or to the Borrower's knowledge, threatened against any of them before any Governmental Authority which could reasonably be expected to have a Material Adverse Effect. All payments due from the Borrower or any of its Subsidiaries pursuant to the provisions of any collective bargaining agreement have been paid or accrued as a liability on the books of the Borrower or any such Subsidiary, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 4.14. ***Subsidiaries***. Schedule 4.14 sets forth the name of, the ownership interest of the Borrower in, the jurisdiction of incorporation or organization of, and the type of each Subsidiary as of the Closing Date.

Section 4.15. ***Insolvency***. After giving effect to the execution and delivery of the Loan Documents, the making of the Loans under this Agreement, neither the Borrower nor its Material Subsidiaries will be "insolvent," within the meaning of such term as defined in § 101 of Title 11 of the United States Code, as amended from time to time, or be unable to pay its debts generally as such debts become due, or have an unreasonably small capital to engage in any business or transaction, whether current or contemplated.

Section 4.16. ***Insurance Licenses***. Schedule 4.16 sets forth the jurisdiction of domicile of each Insurance Subsidiary, the line or lines of insurance in which such Insurance Subsidiary is engaged, the state or states in which such Insurance Subsidiary is licensed to engage in any line of insurance and, with respect to each Material Insurance Subsidiary, all of the jurisdictions in which such Material Insurance Subsidiary holds a License and is authorized to transact insurance business as of the Closing Date. No License, the loss of which could reasonably be expected to have a Material Adverse Effect, is the subject of any proceeding for suspension or revocation. To the Borrower's knowledge, there is no sustainable basis for such suspension or revocation, and no such suspension or revocation has been threatened by any Governmental Authority. To the Borrower's knowledge, no Insurance Subsidiary has received written notice from any Governmental Authority that is deemed to be "commercially domiciled" for insurance regulatory purposes in any jurisdiction other than that indicated on Schedule 4.16.

Section 4.17. ***Reinsurance***. The Insurance Subsidiaries, in the ordinary course of business, cede to other title insurance underwriters (and assume from other title insurance underwriters) reinsurance on specific title risks pursuant to one or more standard (American Land Title Association (ALTA)) facultative reinsurance agreements (each a "Facultative Reinsurance Agreement"). The Borrower does not have knowledge that any amount recoverable by any Insurance Subsidiary pursuant to any Facultative Reinsurance Agreement is not fully collectible in due course. To the knowledge of the Borrower, no Insurance Subsidiary is in default in any material respect under any Facultative Reinsurance Agreement. There are no claims in excess of $1,000,000 under any Facultative Reinsurance Agreement which are being disputed by any Insurance Subsidiary or any other party to any Facultative Reinsurance Agreement.

Section 4.18. ***Reserves***. Except as set forth on Schedule 4.18, each reserve and other material liability amount in respect of the insurance business, including, without limitation, material reserve and other material liability amounts in respect of insurance policies of each Insurance Subsidiary established or reflected in the Annual Statement for the year ended December 31, 2005 of such Insurance Subsidiary, was determined in accordance with usual and customary industry practice, was fairly stated in accordance with usual and customary industry practice and was in compliance with the requirement of the insurance laws, rules and regulations of its state of domicile as of the date thereof. Each Insurance Subsidiary owns assets that qualify as admitted assets under Applicable Law in an amount at least equal to the sum of all such reserves and liability amounts and its minimum statutory capital surplus as required by insurance laws, rules and regulations of its state of domicile.

Section 4.19. ***OFAC***. Neither the Borrower nor any of its Subsidiaries (i) is a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (iii) is a Person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order.

Section 4.20. ***Patriot Act***. Each of the Borrower and its Subsidiaries is in compliance, in all material respects, with the (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001). No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

ARTICLE V

AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that so long as any Lender has a Commitment hereunder or any Obligation remains unpaid or outstanding:

Section 5.1. ***Financial Statements and Other Information***. The Borrower will deliver to the Administrative Agent, with sufficient copies for each Lender:

(a) as soon as available and in any event within 90 days after the end of each Fiscal Year of Borrower, a copy of the annual audited report for such Fiscal Year for the Borrower and its Subsidiaries, containing a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows (together with all footnotes thereto) of the Borrower and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and reported on by Ernst & Young LLP or other independent public accountants of nationally recognized standing (without a "going concern" or like qualification, exception or explanation and without any qualification or exception as to scope of such audit) to the effect that such financial statements present fairly in all material respects the financial condition and the results of operations of the Borrower and its Subsidiaries for such Fiscal Year on a consolidated basis in accordance with GAAP and that the exami−nation by such accountants in connection with such consoli−dated financial statements has been made in accordance with generally accepted auditing standards;

(b) as soon as available and in any event within 60 days after the end of each Fiscal Quarter of the Borrower (other than the fourth Fiscal Quarter of any Fiscal Year), an unaudited consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Quarter and the related unaudited statements of income and cash flows of the Borrower and its Subsidiaries for such Fiscal Quarter and the then elapsed portion of such Fiscal Year, setting forth in each case in comparative form the figures for the corresponding quarter and the corresponding portion of the Borrower's previous Fiscal Year;

(c) concurrently with the delivery of the financial statements referred to in clauses (a) and (b) above, a Compliance Certificate signed by the treasurer or the principal financial officer of the Borrower;

(d) as soon as avail−able and in any event within 90 days after the end of each Fiscal Year of the Borrower, an unaudited Borrower only balance sheet as of the end of such Fiscal Year and the related unaudited statements of in−come and cash flows of the Borrower for such Fiscal Year, all certified by a Responsible Officer as having been developed and used in connection with the financial statements referred to in Section 5.1(a);

(e) as soon as avail−able and in any event within 60 days after the end of each Fiscal Quarter of the Borrower, (other than the fourth Fiscal Quarter of any Fiscal Year) an unaudited Borrower only balance sheet as of the end of such Fiscal Quarter and the related unaudited statements of in−come and cash flows of the Borrower for such Fiscal Quarter, all certified by a Responsible Officer as having been developed and used in connection with the financial statements referred to in Section 5.1(a);

(f) concurrently with the delivery of the financial statements referred to in clause (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained any knowledge during the course of their examination of such financial statements of any Default or Event of Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(g) as soon as available, and in any event within 30 days after the regulatory filing date for each such document, copies of the Annual Statement and financial statements relating thereto of each of the Material Insurance Subsidiaries, audited and certified by independent certified public accountants of nationally recognized standing, all such statements to be prepared in accordance with SAP consistently applied through the period reflected hereof;

(h) as soon as available, and in any event within 15 days after the regulatory filing date (other than the fourth Fiscal Quarter of any Fiscal Year), copies of the Quarterly Statement and financial statements relating thereto of each of the Material

Insurance Subsidiaries, certified by the chief financial officer or other appropriate officer of such Material Insurance Subsidiary having substantially the same authority and responsibility as the chief financial officer, all such statements to be prepared in accordance with SAP consistently applied through the period reflected hereof;

(i) promptly and in any event within ten (10) days after obtaining knowledge thereof, notification of any negative change in ratings given by any nationally recognized rating agency in respect of any Material Insurance Subsidiary and (i) upon receipt thereof, copies of ratings analysis by any such nationally recognized rating agency relating to any Material Insurance Subsidiary;

(j) promptly and in any event within five (5) days after obtaining knowledge thereof, notification of any changes after the Closing Date in the rating given by either S&P's or Moody's, implicitly or explicitly, in respect of the Borrower's senior unsecured Indebtedness;

(k) promptly after the filing of the same with any state insurance regulatory authority, a copy of any "Management Analysis and Discussion" filed by any Material Insurance Subsidiary with any such state insurance regulatory authority (other than as contained in an Annual Statement or a Quarterly Statement); and

(l) promptly following any request therefor, such other information regarding the results of operations, business affairs and financial condition of the Borrower or any Subsidiary as the Administrative Agent or any Lender may reasonably request.

Section 5.2. <u>Notices of Material Events</u>. The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

(a) the occurrence of any Default or Event of Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of the Borrower, affecting the Borrower or any Subsidiary which, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any event or any other development by which the Borrower or any of its Subsidiaries (i) fails to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) becomes subject to any Environmental Liability, (iii) receives notice of any claim with respect to any Environmental Liability, or (iv) becomes aware of any basis for any Environmental Liability and in each of the preceding clauses, which individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(d) the occurrence of any ERISA Event that alone, or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding $10,000,000;

(e) the occurrence of any default or event of default, or the receipt by Borrower or any of its Subsidiaries of any written notice of an alleged default or event of default, in respect of any Material Indebtedness of the Borrower or any of its Subsidiaries;

(f) the receipt of any notice from any Governmental Authority of the expiration without renewal, revocation or suspension of, or the institution of any proceedings to revoke or suspend, any License now or hereafter held by any Material Insurance Subsidiary which is required to conduct insurance business in compliance with all Applicable Laws and the expiration, revocation or suspension of which could reasonably be expected to have a Material Adverse Effect;

(g) the receipt of any notice from any Governmental Authority of the institution of any disciplinary proceedings against or in respect of any Insurance Subsidiary, or the issuance of any order, the taking of any action or any request for an extraordinary audit for cause by any Governmental Authority which if adversely determined could reasonably be expected to have a Material Adverse Effect;

(h) any judicial or administrative order limiting or controlling the insurance business of any Insurance Subsidiary (and not the insurance industry generally) which has been issued or adopted and which has had, or which could reasonably be expected to have, a Material Adverse Effect; and

(i) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a written statement of a Responsible Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 5.3. Existence; Conduct of Business. The Borrower will, and will cause each of its Material Subsidiaries to, do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence and its respective rights, licenses, permits, privileges, fran−chises, patents, copyrights, trademarks and trade names material to the conduct of its business and will continue to engage in substantially the same business as presently conducted or such other businesses that are reasonably related thereto, including any business in which a “financial holding company” (as defined in Section 4(k) of the Bank Holding Company Act (12 U.S.C. §1841)) may engage; provided, that nothing in this Section shall prohibit any merger, consolidation, liquidation or dissolution permitted under Section 7.3.

Section 5.4. Compliance with Laws, Etc. The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and requirements of any Governmental Authority applicable to its business and properties, including without limitation, all Environmental Laws, ERISA and OSHA, except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 5.5. Payment of Obligations. The Borrower will, and will cause each of its Subsidiaries to, pay and discharge at or before maturity, all of its obligations and liabilities (including without limitation all tax liabilities and claims that could result in a statutory Lien) before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

Section 5.6. ***Books and Records***. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities to the extent necessary to prepare the consolidated financial statements of Borrower in conformity with GAAP or SAP, as applicable.

Section 5.7. ***Visitation, Inspection, Etc.*** The Borrower will, and will cause each of its Subsidiaries to, permit any representative of the Administrative Agent or any Lender, to visit and inspect its properties, to examine its books and records and to make copies and take ex−tracts therefrom, and to discuss its affairs, finances and ac−counts with any of its officers and with its independent certified public accountants, all at such reasonable times and as of−ten as the Administrative Agent or any Lender may reasonably request after rea−sonable prior notice to the Borrower; provided, however, if an Event of Default has occurred and is continuing, no prior notice shall be required.

Section 5.8. ***Maintenance of Properties; Insurance***. The Borrower will, and will cause each of its Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies, insurance with respect to its prop−erties and business, and the properties and business of its Subsidiaries, against loss or damage of the kinds customarily insured against by companies in the same or similar businesses operating in the same or similar locations.

Section 5.9. ***Use of Proceeds and Letters of Credit***. The Borrower will use the proceeds of all Loans to fund a portion of the Capital Title Acquisition and other Acquisitions, to finance working capital needs, capital expenditures and for other general corporate purposes of the Borrower. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that would violate any rule or regulation of the Board of Governors of the Federal Reserve System, including Regulations T, U or X. All Letters of Credit will be used for general corporate purposes.

ARTICLE VI

FINANCIAL COVENANTS

The Borrower covenants and agrees that so long as any Lender has a Commitment hereunder or any Obligation remains unpaid or outstanding:

Section 6.1. ***Leverage Ratio***. The Borrower will maintain at all times, commencing with the Fiscal Quarter ending June 30, 2006, a Leverage Ratio of not greater than 0.375:1.0.

Section 6.2. ***Interest Coverage Ratio***. The Borrower will maintain, as of the end of each Fiscal Quarter, commencing with the Fiscal Quarter ending ***June 30, 2006***, an Interest Coverage Ratio of not less than 3.00:1.0.

Section 6.3. ***Consolidated Net Worth***. The Borrower will not permit its Consolidated Net Worth at any time to be less than an amount equal to the sum of (i) 85% of the Consolidated Net Worth as of December 31, 2005 *plus* (ii) 50% of Consolidated Net In−come on a cumulative basis for each succeeding Fiscal Quarter, commencing with the Fiscal Quarter ending March 31, 2006; provided, that if Consolidated Net Income is negative in any Fiscal Quarter the amount added for such Fiscal Quarter shall be zero and such negative Consolidated Net Income shall not reduce the amount of Consolidated Net Income added from any previous Fiscal Quarter; *plus* (iii) 100% of the amount by which the Borrower's "total stockholders' equity" is increased as a result of any public or private offering of common stock of the Borrower after the Closing Date (other than issuances of stock options to employees and issuances of restricted stock to employees). Promptly upon the consummation of such offering, the Borrower shall notify the Administrative Agent in writing of the amount of such increase in "total stockholders' equity".

ARTICLE VII

NEGATIVE COVENANTS

The Borrower covenants and agrees that so long as any Lender has a Commitment hereunder or any Obligation remains outstanding:

Section 7.1. ***Indebtedness***. The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness created pursuant to the Loan Documents;

(b) Intentionally Omitted;

(c) Indebtedness described on Schedule 7.1 and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof (immediately prior to giving effect to such extension, renewal or replacement) or shorten the maturity or the weighted average life thereof including the 2006 Prudential Notes;

(d) Indebtedness incurred in connection with leases permitted pursuant to Section 7.13;

(e) Indebtedness incurred in connection with Arbitrage Liens;

(f) Other Indebtedness incurred by the Borrower so long as (1) at the time of incurrence thereof and after giving pro forma effect thereto, no Default or Event of Default shall have occurred and be continuing and (2) such Indebtedness matures no earlier than 180 days after the Revolving Commitment Termination Date;

(g) Specified Relocation Indebtedness in an aggregate principal amount not to exceed $25,000,000 at any one time outstanding;

(h) Federal Home Loan Bank Borrowings;

(i) Indebtedness incurred in connection with Investments permitted by Section 7.4(c); and

(j) The 2004 Convertible Debenture.

Section 7.2. Negative Pledge. The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien on any of its assets or property now owned or hereafter acquired or, except:

(a) Liens, if any, created in favor of the Administrative Agent for the benefit of the Lenders pursuant to the Loan Documents;

(b) Permitted Encumbrances;

(c) any Liens on any property or asset of the Borrower or any Subsidiary existing on the Closing Date set forth on Schedule 7.2; provided, that such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary;

(d) Liens securing obligations in respect of Capital Lease Obligations; provided that such Capital Lease Obligations are otherwise permitted hereunder;

(e) any Lien (i) existing on any asset of any Person at the time such Person becomes a Subsidiary of the Borrower, (ii) existing on any asset of any Person at the time such Person is merged with or into the Borrower or any Subsidiary of the Borrower or (iii) existing on any asset prior to the acquisition thereof by the Borrower or any Subsidiary of the Borrower; provided, that any such Lien was not created in the contemplation of any of the foregoing and any such Lien secures only those obligations which it secures on the date that such Person becomes a Subsidiary or the date of such merger or the date of such acquisition; and

(f) extensions, renewals, or replacements of any Lien referred to in paragraphs (a) through (e) of this Section; provided, that the principal amount of the Indebtedness secured thereby is not increased and that any such extension, renewal or replacement is limited to the assets originally encumbered thereby;

(g) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set−off similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution, provided that (i) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Borrower in excess of those set forth by regulations promulgated by the Board of Governors of the Federal Reserve, and (ii) such deposit account is not intended by the Borrower or any Subsidiary to provide collateral to the depositary institution;

(h) Liens consisting of deposits made by any Insurance Subsidiary with the insurance regulatory authority in its jurisdiction of domicile or other statutory Liens or Liens or claims imposed or required by applicable insurance law or regulation against the assets of any Insurance Subsidiary, in each ease in favor of all policyholders of such Insurance Subsidiary and in the ordinary course of such Insurance Subsidiaries business;

(i) Liens upon Permitted Investments of the Borrower or any Subsidiary which are pledged as collateral for Arbitrage Liens of the Borrower or such Subsidiary, as applicable;

(j) Liens securing other Indebtedness of the Borrower and its Subsidiaries not to exceed $25,000,000 in the aggregate at any one time outstanding;

(k) Liens upon real estate owned by a Relocation Subsidiary and securing Indebtedness permitted by Section 7.1(g);

(l) Liens securing Indebtedness of a Subsidiary owing to the Borrower or to another Wholly−Owned Subsidiary;

(m) Liens securing leases or sub−leases entered into in the ordinary course of business pursuant to which the Borrower or a Subsidiary is lessee (excluding financing leases, synthetic leases and similar arrangements), including precautionary Uniform Commercial Code financing statements filed in connection with such leases; provided that the Lien shall attach solely to the property or assets leased; and

(n) Liens securing obligations in respect of Federal Home Loan Bank Borrowings permitted hereunder.

Section 7.3. Fundamental Changes. (a)The Borrower will not, and will not permit any Material Subsidiary to, merge into or consolidate into any other Person, or permit any other Person to merge into or consolidate with it, or sell, or lease, transfer or otherwise dispose of (in a single transaction or a series of transactions) all or substantially all of its assets (in each case, whether now owned or hereafter acquired) or all or substantially all of the stock of any of its Material Subsidiaries (in each case, whether now owned or hereafter acquired) or liquidate or dissolve; provided, that if at the time thereof and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing (a) any Material Subsidiary may merge or consolidate with the Borrower, provided that the Borrower shall be the continuing or surviving corporation, (b) any Material Subsidiary may merge or consolidate with any one or more Subsidiaries; provided, that if any transaction shall be between a Subsidiary which is not a Wholly−Owned Subsidiary and a Wholly−Owned Subsidiary, the Wholly−Owned Subsidiary shall be the continuing or surviving corporation; (c) and any Subsidiary may sell or transfer all or substantially all of its assets (upon voluntary liquidation or otherwise), to the Borrower or another Wholly−Owned Subsidiary; (d) any

Material Subsidiary which is a financial institution (excluding any Insurance Subsidiary) may consolidate with or be a party to a merger with another Person, and may dispose of all or substantially all of its assets, and the Borrower or another Subsidiary may sell, transfer or otherwise dispose of the Capital Stock of any such Material Subsidiary, in each case, pursuant to a divestiture of such Material Subsidiary which is specifically mandated by a regulatory authority having jurisdiction over the Borrower and its Subsidiaries, provided that (i) at the time of such divestiture and immediately after giving effect thereto, no Default or Event of Default shall exist and (ii) such divestiture could not reasonably be expected to have a Material Adverse Effect.

(b) The Borrower will not, and will not permit any of its Subsidiaries to, engage in any business other than businesses substantially the same as presently conducted or such other businesses that are reasonably related thereto, including any business in which a "financial holding company" (as defined in Section 4(k) of the Bank Holding Company Act (12 U.S.C. §1841)) may engage.

Section 7.4. Investments, Loans, Etc. The Borrower shall not purchase or acquire, or suffer or permit any Subsidiary to purchase or acquire, or make any commitment therefore, any Capital Stock, equity interest, or any obligations or other securities of, or any interest in, any Person, or make or commit to make any Acquisitions, or make or commit to make any advance, loan, extension of credit or capital contribution to or any other investment in, any Person including any Affiliate of the Borrower (together, "Investments"), except for:

(a) Investments held by the Borrower or any Subsidiary in the form of cash equivalents or marketable securities;

(b) extensions of credit in the nature of accounts receivable or notes receivable arising from the sale or lease of goods or services in the ordinary course of business;

(c) Investments (i) by the Borrower or any of its Subsidiaries in a Subsidiary or (ii) by any Subsidiary in the Borrower;

(d) Investments incurred in order to consummate Acquisitions (including, without limitation, the Capital Title Acquisition) of Persons in the title insurance business or related lines of business including any business in which a "financial holding company" (as defined in Section 4(k) of the Bank Holding Company Act (12 U.S.C. §1841)) may engage; provided that (i) no Default or Event of Default results therefrom; (ii) such Acquisitions are undertaken in accordance with all applicable Requirements of Law; and (iii) the prior, effective written consent or approval to such Acquisition of the board of directors or equivalent governing body of the acquiree is obtained;

(e) Hedging Transactions permitted by Section 7.10;

(f) loans to agents in an amount not to exceed $60,000,000 in the aggregate at any one time outstanding;

(g) Other Investments by Insurance Subsidiaries permitted by the applicable laws, rules or regulations governing such Insurance Subsidiaries;

(h) Investments by the Borrower or any Subsidiary which is not an Insurance Subsidiary (including LandAmerica Alliance Company) in joint ventures in the ordinary course of the business of the Insurance Subsidiaries; and

(i) Investments by the Borrower or any Subsidiary which is not an Insurance Subsidiary in joint ventures (other than those permitted by Sections 7.4 (g) and (h)) which total at any time not greater than $15,000,000.

Section 7.5. Restricted Payments. The Borrower shall not declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on any shares of any class of its capital stock, or purchase, redeem or otherwise acquire for value any shares of its capital stock or any warrants, rights or options to acquire such shares, now or hereafter outstanding, except that the Borrower may:

(a) declare and make dividend payments or other distributions payable solely in its common stock;

(b) purchase, redeem or otherwise acquire shares of its common stock or warrants or options to acquire any such shares with the proceeds received from the substantially concurrent issue of new shares of its common stock;

(c) declare or pay cash dividends to its stockholders and purchase, redeem or otherwise acquire shares of its capital stock or warrants, rights or options to acquire any such shares for cash; provided, that immediately after giving effect to such proposed action, no Default or Event of Default would exist;

(d) consummate, perform and settle the 2004 Convertible Debenture Hedges in cash or shares of the Borrower's common stock, as required thereunder; and

(e) purchase, redeem or otherwise acquire shares of its common stock pursuant to the terms of a Rabbi Trust.

The provisions of this Section 7.5 shall not be deemed to preclude any conversion of convertible debt issued by the Borrower, including but not limited to the purchase for cash by the Borrower pursuant to the terms thereof of all of the holders' rights thereunder and/or common stock into which such debt is convertible in lieu of or in conjunction with the conversion of such debt.

Section 7.6. Sale of Assets. The Borrower will not, and will not permit any of its Subsidiaries to, convey, sell, lease, assign, transfer or otherwise dispose of, any of its assets, business or property, whether now owned or hereafter acquired, or, in the case of any Subsidiary, issue or sell any shares of such Subsidiary's common stock to any Person other than the Borrower or any other Subsidiary (or to qualify directors if required by applicable law), except:

(a) dispositions of used, worn−out or surplus equipment in the ordinary course of business;

(b) the sale of equipment to the extent that such equipment is exchanged for credit against the purchase price of similar replacement equipment, or the proceeds of such sale are reasonably promptly applied to the purchase price of such replacement equipment;

(c) dispositions of Investments by any Insurance Subsidiary;

(d) dispositions (including by way of bulk reinsurance) not otherwise permitted hereunder which are made for fair market value; provided, that (i) at the time of any disposition, no Event of Default shall exist or shall result from such disposition and (ii) the aggregate value of all assets sold pursuant to this Section 7.6(d) by the Borrower and its Subsidiaries, together, shall not exceed $40,000,000 in any Fiscal Year;

(e) disposition of the real estate and improvements therein, for fair market value, of the Borrower's headquarters located at 101 Gateway Centre Parkway, Richmond, VA as previously disclosed in the Borrower's 10Q for the first quarter of 2006;

(f) ordinary course dispositions of real estate and related properties by Relocation Subsidiaries in the relocation business;

(g) dispositions of real property received by an Insurance Subsidiary as part of a settlement or claims resolution under a policy of insurance issued by such Insurance Subsidiary;

(h) sale of property permitted by Section 7.9;

(i) sale or other disposition of assets in the ordinary course of business;

(j) dispositions of tangible property as part of a like kind exchange under Section 1031 of the Code entered into in the ordinary course of business;

(k) the Borrower or any Subsidiary may sell, transfer or otherwise dispose of any Capital Stock of a Subsidiary in connection with a merger or consolidation permitted (including any merger or consolidation not prohibited) under Section 7.3;

(l) a Material Subsidiary may issue shares of its Capital Stock in connection with an issuance whereby the Borrower or a Subsidiary maintains its or their, as applicable, same proportionate interest in the issuing Subsidiary; and

(m) the Borrower or a Subsidiary may transfer assets (including the Capital Stock of a Subsidiary), and a Subsidiary may issue its Capital Stock, in connection with an Investment in a joint venture permitted by Sections 7.4(g), (h) or (i).

Section 7.7. ***Transactions with Affiliates***. The Borrower shall not, and shall not suffer or permit any Subsidiary to, enter into any transaction with any Affiliate of the Borrower (other than a Subsidiary), except upon fair and reasonable terms no less favorable to the Borrower or such Subsidiary than would be obtained in a comparable arm's−length transaction with a Person not an Affiliate of the Borrower or such Subsidiary.

Section 7.8. ***ERISA***. The Borrower shall not, and shall not suffer or permit any of its ERISA Affiliates to: (a) engage in a prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan which has resulted or could reasonably expected to result in liability of the Borrower in an aggregate amount in excess of $5,000,000***;*** or (b) engage in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

Section 7.9. ***Sale and Leaseback Transactions***. The Borrower will not, and will not permit any of the Subsidiaries to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereinafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred; provided, that the Borrower and its Subsidiaries may enter into such sale and leaseback transactions so long as the fair market value of the property transferred pursuant thereto in any calendar year shall not exceed $50,000,000**.**

Section 7.10. ***Hedging Transactions***. The Borrower will not, and will not permit any of the Subsidiaries to, enter into any Hedging Transaction, other than: (i) Hedging Transactions entered into in the ordinary course of business to hedge or mitigate risks to which the Borrower or any Subsidiary is exposed in the conduct of its business or the management of its liabilities, (ii) the 2004 Convertible Debenture Hedges and (iii) Hedging Transactions entered into with respect to the 2006 Prudential Notes. Solely for the avoidance of doubt, the Borrower acknowledges that a Hedging Transaction entered into for speculative purposes or of a speculative nature (which shall be deemed to include any Hedging Transaction under which the Borrower or any of the Subsidiaries is or may become obliged to make any payment (i) in connection with the purchase by any third party of any common stock or any Indebtedness or (ii) as a result of changes in the market value of any common stock or any Indebtedness) is not a Hedging Transaction entered into in the ordinary course of business to hedge or mitigate risks.

Section 7.11. ***Accounting Changes***. The Borrower will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required by GAAP or SAP, as applicable, or change the fiscal year of the Borrower or of any of its Subsidiaries, except to change the fiscal year of a Subsidiary to conform its fiscal year to that of the Borrower.

Section 7.12. ***Restrictive Agreements.*** The Borrower will not, and will not permit any Material Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement that directly or expressly prohibits, restricts or imposes any condition upon the ability of any Material Subsidiary to pay dividends or other distributions with respect to its common stock; provided, that (i) the foregoing shall be subject to, and shall not apply to restrictions or conditions imposed by, laws, rules, regulations, orders or other restrictions or agreements imposed by insurance regulators, bank regulators or similar agencies or by this Agreement or any other Loan Document, (ii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is sold and such sale is permitted hereunder; and (iii) the foregoing shall not apply to customary net worth, leverage, cash flow and similar financial ratios and covenants (including, but not limited to, financial ratios and covenants such as those contained herein other than those contained in Section 7.5) which may indirectly restrict or limit the ability of a Material Subsidiary to pay dividends or distributions with respect to its common stock.

Section 7.13. Lease Obligations. The Borrower shall not, and shall not suffer or permit any Subsidiary to, create or suffer to exist any obligations for the payment of rent for any property under lease or agreement to lease, except for;

(a) leases of the Borrower and of Subsidiaries in existence on the Closing Date and any renewal or extension thereof;

(b) operating leases entered into by the Borrower or any Subsidiary after the Closing Date in the ordinary course of business;

(c) leases entered into by the Borrower or any Subsidiary after the Closing Date pursuant to sale−leaseback transactions permitted under Section 7.9;

(d) capital leases other than those permitted under clauses (a) and (c) of this Section, entered into by the Borrower or any Subsidiary after the Closing Date in the ordinary course of business to finance the acquisition of equipment; and

(e) leases acquired or assumed by the Borrower or any Subsidiary pursuant to an Acquisition permitted hereunder and any renewal or extension thereof.

Section 7.14. Material Subsidiaries.

(a) The Borrower will not at any time, determined in accordance with the most recently available financial statements delivered by the Borrower pursuant to Section 5.1(a) or Section 5.1(b), permit all of the then existing Material Subsidiaries, together with the Borrower, to account for less than (i) 85% of Consolidated Total Assets as of the end of the immediately preceding Fiscal Quarter of the Borrower or (ii) 85% of Consolidated Net Income for the four Fiscal Quarters of the Borrower then most recently ended.

(b) If at any time, the Borrower or all of the existing Material Subsidiaries do not together account for 85% or more of such Consolidated Total Assets and 85% or more of Consolidated Net Income as provided in Section 7.14(a), the Borrower shall promptly designate, by written notice to the Lenders, such other Subsidiaries of the Borrower (which would not otherwise be Material Subsidiaries) to be deemed Material Subsidiaries hereunder so that such 85% threshold is satisfied.

(c) The Borrower may designate any Subsidiary as a Material Subsidiary and may de−designate any Material Subsidiary identified in Schedule 7.14 or in a Compliance Certificate or previously designated as a Material Subsidiary pursuant to the requirements of this Section 7.14; provided that:

(i) the Borrower shall have given not less than ten days' prior written notice to the Lenders of such designation or de−designation;

(ii) at the time of such designation or de−designation and immediately after giving effect thereto no Default or Event of Default shall exist (including, without limitation, under Section 7.14(a));

(iii) in the case of the designation of a Subsidiary as a Material Subsidiary, such Subsidiary shall not at any time after the date of this Agreement have previously been designated as a Material Subsidiary more than once; and

(iv) in the case of the de−designation of a Material Subsidiary, such Material Subsidiary shall not at any time after the date of this Agreement have previously been de−designated more than once.

ARTICLE VIII

EVENTS OF DEFAULT

Section 8.1. Events of Default. If any of the following events (each an "Event of Default") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or of any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment or otherwise; or

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount payable under clause (a) of this Section 8.1) pay−able under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days; or

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with this Agreement or any other Loan Document (including the Sched−ules attached thereto) and any amendments or modifications hereof or waivers hereunder, or in any certificate, report, financial statement or other document sub−mitted to the Administrative Agent or the Lenders by the Borrower or any representative of the Borrower pursuant to or in connection with this Agreement or any other Loan Document shall prove to be incorrect when made or deemed made or submitted; or

(d) (i) the Borrower shall fail to observe or perform any covenant or agreement contained in Sections 5.2, 5.3 (with respect to the Borrower's existence) or Articles VI or VII or (ii) the Borrower shall fail to observe or perform any covenant or agreement contained in Section 5.1 and such failure shall remain unremedied for 15 days ; or

(e) the Borrower shall fail to observe or perform any covenant or agreement contained in this Agreement (other than those referred to in clauses (a), (b) and (d) above) or any other Loan Document, and such failure shall remain unremedied for 30 days after the earlier of (i) any officer of the Borrower becomes aware of such failure, or (ii) notice thereof shall have been given to the Borrower by the Administrative Agent or any Lender; or

(f) the Borrower or any Material Subsidiary (whether as primary obligor or as guarantor or other surety) shall fail to pay any principal of, or premium or interest on, any Material Indebtedness that is outstanding, when and as the same shall become due and payable (whether at scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument evidencing or governing such Indebtedness; or any other event shall occur or condition shall exist under any agreement or instrument relating to such Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, and as a consequence the maturity of such Indebtedness is accelerated; or any such Indebtedness has become or has been declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or any offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case prior to the stated maturity thereof;

(g) the Borrower or any Material Subsidiary shall (i) commence a voluntary case or other proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official of it or any substantial part of its property, (ii) apply for or consent to the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or any such Material Subsidiary or for a substantial part of its assets, (iii) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (iv) make a general assignment for the benefit of creditors, or (v) take any action for the purpose of effecting any of the foregoing; or

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Material Subsidiary or its debts, or any substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or any Material Subsidiary or for a substantial part of its assets, and in any such case, such proceeding or petition shall remain undismissed for a period of 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or

(i) the Borrower or any Material Subsidiary shall become unable to pay, shall admit in writing its inability to pay, or shall fail to pay, its debts as they become due; or

(j) an ERISA Event (other than an ERISA Event that could reasonably be expected to result solely in a negative non−cash impact on goodwill and/or earnings) shall have occurred that, in the opinion of the Required Lenders, when taken together with other ERISA Events that have occurred, could reasonably be expected to result in liability to the Borrower and the Subsidiaries in an aggregate amount exceeding $25,000,000; or

(k) any judgment or order for the payment of money in excess of $25,000,000 in the aggregate shall be rendered against the Borrower or any Subsidiary, and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be a period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(l) any non−monetary judgment or order shall be rendered against the Borrower or any Subsidiary that could reasonably be expected to have a Material Adverse Effect, and there shall be a period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(m) a Change in Control shall occur or exist; or

(n) Any Insurance Subsidiary shall be the subject of a final nonappealable order imposing a fine in an amount in excess of $5,000,000 in a single instance or other such orders imposing fines in excess of $25,000,000 in the aggregate after the Closing Date by or at the request of any state insurance regulatory agency as a result of the violation by such Insurance Subsidiary of such state's applicable insurance laws or the regulations promulgated in connection therewith;

then, and in every such event (other than an event with respect to the Borrower described in clause (g) or (h) of this Section) and at any time thereafter during the continuance of such event, the Administrative Agent may, and upon the written request of the Required Lenders shall, by notice to the Borrower, take any or all of the follow−ing actions, at the same or different times: (i) terminate the Commitments, whereupon the Commitment of each Lender shall terminate immediately, (ii) declare the principal of and any accrued interest on the Loans, and all other Obligations owing hereunder, to be, whereupon the same shall become, due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, (iii) exercise all remedies contained in any other Loan Document, and (iv) exercise any other remedies available at law or in equity; and that, if an Event of Default specified in either clause (g) or (h) shall occur, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon, and all fees, and all other Obligations shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

ARTICLE IX

THE ADMINISTRATIVE AGENT

Section 9.1. Appointment of Administrative Agent.

(a) Each Lender irrevocably appoints SunTrust Bank as the Administrative Agent and authorizes it to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent under this Agreement and the other Loan Documents, together with all such actions and powers that are reasonably incidental thereto. The Administrative Agent may perform any of its duties hereunder or under the other Loan Documents by or through any one or more sub−agents or attorneys−in−fact appointed by the Administrative Agent. The Administrative Agent and any such sub−agent or attorney−in−fact may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions set forth in this Article shall apply to any such sub−agent or attorney−in−fact and the Related Parties of the Administrative Agent, any such sub−agent and any such attorney−in−fact and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

(b) The Issuing Bank shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith until such time and except for so long as the Administrative Agent may agree at the request of the Required Lenders to act for the Issuing Bank with respect thereto; provided, that the Issuing Bank shall have all the benefits and immunities (i) provided to the Administrative Agent in this Article IX with respect to any acts taken or omissions suffered by the Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and the application and agreements for letters of credit pertaining to the Letters of Credit as fully as if the term “Administrative Agent” as used in this Article IX included the Issuing Bank with respect to such acts or omissions and (ii) as additionally provided in this Agreement with respect to the Issuing Bank.

Section 9.2. Nature of Duties of Administrative Agent. The Administrative Agent shall not have any duties or obligations except those expressly set forth in this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except those discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.2), and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be li−able for any action taken or not taken by it, its sub−agents or attorneys−in−fact with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.2) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub−agents or attorneys−in−fact selected by it with reasonable care. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof (which notice shall include an express reference to such event being a "Default" or "Event of Default" hereunder) is given to the Administrative Agent by the Borrower or any Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements, or other terms and conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article III or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent. The Administrative Agent may consult with legal counsel (including counsel for the Borrower) concerning all matters pertaining to such duties.

Section 9.3. Lack of Reliance on the Administrative Agent. Each of the Lenders, the Swingline Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each of the Lenders, the Swingline Lender and the Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, continue to make its own decisions in taking or not taking of any action under or based on this Agreement, any related agreement or any document furnished hereunder or thereunder.

Section 9.4. Certain Rights of the Administrative Agent. If the Administrative Agent shall request instructions from the Required Lenders with re−spect to any action or ac−tions (including the failure to act) in connection with this Agreement, the Administrative Agent shall be entitled to refrain from such act or taking such act, unless and until it shall have received instructions from such Lend−ers; and the Administrative Agent shall not incur liability to any Person by rea−son of so refraining. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder in ac−cordance with the instructions of the Required Lenders where required by the terms of this Agreement.

Section 9.5. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed, sent or made by the proper

Person. The Administrative Agent may also rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (including counsel for the Borrower), indepen−dent public accountants and other experts selected by it and shall not be liable for any action taken or not taken by it in accordance with the advice of such counsel, accountants or experts.

Section 9.6. The Administrative Agent in its Individual Capacity. The bank serving as the Administrative Agent shall have the same rights and powers under this Agreement and any other Loan Document in its capacity as a Lender as any other Lender and may exercise or refrain from exercising the same as though it were not the Administrative Agent; and the terms "Lenders", "Required Lenders", "holders of Notes", or any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity. The bank acting as the Administrative Agent and its Affiliates may accept de−posits from, lend money to, and generally engage in any kind of business with the Borrower or any Subsidiary or Affiliate of the Borrower as if it were not the Administrative Agent hereunder.

Section 9.7. Successor Administrative Agent.

(a) The Administrative Agent may resign at any time by giving notice thereof to the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent, subject to the approval by the Borrower provided that no Default or Event of Default shall exist at such time. If no suc−cessor Administrative Agent shall have been so appointed, and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent, which shall be a commercial bank organized under the laws of the United States of America or any state thereof or a bank which maintains an office in the United States, having a combined capital and surplus of at least $500,000,000.

(b) Upon the acceptance of its appointment as the Administrative Agent hereunder by a successor, such successor Administrative Agent shall there−upon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. If within 45 days after written notice is given of the retiring Administrative Agent's resignation under this Section 9.7 no successor Administrative Agent shall have been appointed and shall have accepted such appointment, then on such 45th day (i) the retiring Administrative Agent's resignation shall become effective, (ii) the retiring Administrative Agent shall thereupon be discharged from its duties and obligations under the Loan Documents and (iii) the Required Lenders shall thereafter perform all duties of the retiring Administrative Agent under the Loan Documents until such time as the Required Lenders appoint a successor Administrative Agent as provided above. After any retir−ing Administrative Agent's resignation hereunder, the provi−sions of this Article IX shall continue in effect for the benefit of such retiring Administrative Agent and its representatives and agents in respect of any ac−tions taken or not taken by any of them while it was serving as the Administrative Agent.

Section 9.8. <u>Authorization to Execute other Loan Documents</u>. Each Lender hereby authorizes the Administrative Agent to execute on behalf of all Lenders all Loan Documents other than this Agreement.

Section 9.9. <u>Co−Documentation Agents; Co−Syndication Agents</u>. Each Lender hereby designates US Bank, National Association and JPMorgan Chase Bank as Co−Documentation Agents and agrees that the Co−Documentation Agents shall have no duties or obligations under any Loan Documents to any Lender or Borrower. Each Lender hereby designates Wachovia Bank, National Association and Union Bank of California, N.A. as Co−Syndication Agents and agrees that the Co−Syndication Agents shall have no duties or obligations under any Loan Documents to any Lender or Borrower.

ARTICLE X

<u>MISCELLANEOUS</u>

Section 10.1. <u>Notices</u>.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications to any party herein to be effective shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

To the Borrower: LandAmerica Financial Group, Inc.
101 Gateway Centre Parkway
Richmond, VA 23235
Attention: Ronald B. Ramos, Treasurer
Telecopy Number: (804) 236−8834

with a copy to: Williams Mullen
1021 E. Cary Street,
Richmond, VA 23219
Attention: G. Andrew Nea, Jr.
Telecopy Number: (804) 783−6507

To the Administrative Agent
or Swingline Lender: SunTrust Bank
919 East Main Street, 22nd Floor
Richmond, Virginia 23219
Attention: Mark Flatin
Telecopy Number: (804) 782−5818

With a copy to: SunTrust Bank
Agency Services
303 Peachtree Street, N. E./ 25th Floor
Atlanta, Georgia 30308
Attention: Ms. Dorris Folsom
Telecopy Number: (404) 658−4906

and

King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309
Attention: Carolyn Z. Alford
Telecopy Number: (404) 572−5100

To the Issuing Bank: SunTrust Bank
25 Park Place, N. E./Mail Code 3706
Atlanta, Georgia 30303
Attention: John Conley
Telecopy Number: (404) 588−8129

To the Swingline Lender: SunTrust Bank
Agency Services
303 Peachtree Street, N.E./25th Floor
Atlanta, Georgia 30308
Attention: Ms. Dorris Folsom
Telecopy Number: (404) 658−4906

To any other Lender: the address set forth in the Administrative Questionnaire

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All such notices and other communications shall, when transmitted by overnight delivery, or faxed, be effective when delivered for overnight (next−day) delivery, or transmitted in legible form by facsimile machine, respectively, or if mailed, upon the third Business Day after the date deposited into the mail or if delivered, upon delivery; provided, that notices delivered to the Administrative Agent, the Issuing Bank or the Swingline Bank shall not be effective until actually received by such Person at its address specified in this Section 10.1.

(b) Any agreement of the Administrative Agent and the Lenders herein to receive certain notices by telephone or facsimile is solely for the convenience and at the request of the Borrower. The Administrative Agent and the Lenders shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Borrower to give such notice and the Administrative Agent and Lenders shall not have any liability to the Borrower or other Person on account of any action taken or not taken by the Administrative Agent or the Lenders in reliance upon such telephonic or facsimile notice. The obligation of the Borrower to repay the

Loans and all other Obligations hereunder shall not be affected in any way or to any extent by any failure of the Administrative Agent and the Lenders to receive written confirmation of any telephonic or facsimile notice or the receipt by the Administrative Agent and the Lenders of a confirmation which is at variance with the terms understood by the Administrative Agent and the Lenders to be contained in any such telephonic or facsimile notice.

Section 10.2. Waiver; Amendments.

(a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or any other Loan Document, and no course of dealing between the Borrower and the Administrative Agent or any Lender**,** shall oper−ate as a waiver thereof, nor shall any single or partial exercise of any such right or power or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exer−cise of any other right or power hereunder or thereunder. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclu−sive of any rights or remedies provided by law. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or the issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default or Event of Default at the time.

(b) No amendment or waiver of any provision of this Agreement or the other Loan Documents, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrower and the Required Lenders or the Borrower and the Administrative Agent with the consent of the Required Lenders and then such waiver or consent shall be effective only in the specific instance and for the spe−cific purpose for which given; provided, that no amendment or waiver shall: (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the date fixed for any payment of any princi−pal of, or interest on, any Loan or LC Disbursement or interest thereon or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.21 (b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Lender; (vi) release any guarantor or limit the liability of any such guarantor under any guaranty agreement, without the written consent of each Lender; (vii) release all or substantially all collateral (if any) securing any of the Obligation, without the written consent of each Lender; provided further, that no such agreement shall amend, modify or otherwise affect the rights, duties or obligations of the

Administrative Agent, the Swingline Bank or the Issuing Bank without the prior written consent of such Person.

Section 10.3. Expenses; Indemnification.

(a) The Borrower shall pay (i) all reasonable, out−of−pocket costs and expenses of the Administrative Agent and its Affiliates**,** including the reasonable fees, charges and disbursements of counsel for the Administrative Agent and its Affiliates, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers thereof (whether or not the transactions contemplated in this Agreement or any other Loan Document shall be consummated), (ii) all reasonable out−of−pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out−of−pocket costs and expenses (including, without limitation, the reasonable fees, charges and disbursements of outside coun−sel and the allocated cost of inside counsel) incurred by the Administrative Agent, the Issuing Bank or any Lender in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section, or in connection with the Loans made or any Letters of Credit issued hereunder, including all such out−of−pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Borrower shall indemnify the Administrative Agent, the Issuing Bank and each Lender, and each Related Party of any of the foregoing (each, an "Indemnitee") against, and hold each of them harmless from, any and all costs, losses, liabilities, claims, damages and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, which may be incurred by or asserted against any Indemnitee arising out of, in connection with or as a result of (i) the execution or delivery of this Agreement or any other agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of any of the transactions contemplated hereby, (ii) any Loan or Letter of Credit or any actual or proposed use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned by the Borrower or any Subsidiary or any Environmental Liability related in any way to the Borrower or any Subsidiary or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided, that the Borrower shall not be obligated to indemnify any Indemnitee for any of the fore−going arising out of such Indemnitee's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and nonappealable judgment.

(c) The Borrower shall pay, and hold the Administrative Agent and each of the Lenders harmless from and against, any and all present and future stamp, documentary, and other similar taxes with re−spect to this Agreement and any other Loan Documents, any collateral described therein, or any payments due thereunder, and save the Administrative Agent and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay or omission to pay such taxes.

(d) To the extent that the Borrower fails to pay any amount required to be paid to the Administrative Agent, the Issuing Bank or the Swingline Lender under clauses (a), (b) or (c) hereof, each Lender severally agrees to pay to the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be, such Lender's Pro Rata Share (determined as of the time that the unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided, that the unreimbursed expense or indemnified payment, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Issuing Bank or the Swingline Lender in its capacity as such.

(e) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to actual or direct damages) arising out of, in connection with or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions contemplated therein, any Loan or any Letter of Credit or the use of proceeds thereof.

(f) All amounts due under this Section shall be payable promptly after written demand therefor.

Section 10.4. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $1,000,000, in the case of any assignment of a Revolving Loan or reimbursement obligation of outstanding Letters of Credit, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed), (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned and (iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500, and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. Upon (i) the execution and delivery of the Assignment and Acceptance by the assigning Lender and assignee Lender, (ii) acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, (iii) consent thereof from the Borrower to the extent required pursuant to this clause (b) and (iv) if such assignee Lender is a Foreign Lender, compliance by such Person with Section 2.20(e), from and after the effective date specified in each Assignment and Acceptance, the Eligible Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.18, 2.19, 2.20 and 10.3). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Atlanta, Georgia a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary.

(d) Any Lender may, without the consent of, or notice to, the Borrower, the Administrative Agent, the Swingline Bank or the Issuing Bank sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Swingline Bank, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver with respect to the following to the extent affecting such Participant: (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the date fixed for any payment of any principal of, or interest on, any Loan or LC Disbursement or interest thereon or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.21(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby , without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Lender; (vi) release any guarantor or limit the liability of any such guarantor under any guaranty agreement without the written consent of each Lender; or (vii) release all or substantially all collateral (if any) securing any of the Obligations. Subject to paragraph (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.18, 2.19, and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender, provided such Participant agrees to be subject to Section 10.7 as though it were a Lender.

(e) A Participant shall not be entitled to receive any greater payment under Section 2.18 and Section 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.20 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.20(e) as though it were a Lender.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 10.5. Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement and the other Loan Documents shall be construed in accordance with and be governed by the law (without giving effect to the conflict of law principles thereof) of the State of New York.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court of the Southern District of New York, and of any state court of the State of New York sitting in New York county and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document or the transactions contemplated hereby or thereby, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York state court or, to the extent permitted by applicable law, such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or its properties in the courts of any jurisdiction.

(c) The Borrower ir−−revocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in paragraph (b) of this Section and brought in any court referred to in paragraph (b) of this Section. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to the service of process in the manner provided for notices in Section 10.1. Nothing in this Agreement or in any other Loan Document will affect the right of any party hereto to serve process in any other manner permitted by law.

Section 10.6. ***WAIVER OF JURY TRIAL***. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.7. ***Right of Setoff***. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, each Lender and the Issuing Bank shall have the right, at any time or from time to time upon the occurrence and during the continuance of an Event of Default, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, to set off and apply against all deposits (general or special, time or demand, provisional or final) of the Borrower at any time held or other obligations at any time owing by such Lender and the Issuing Bank to or for the credit or the account of the Borrower against any and all Obligations held by such Lender or the Issuing Bank, as the case may be, irrespective of whether such Lender or the Issuing Bank shall have made demand hereunder and although such Obligations may be unmatured. Each Lender and the Issuing Bank agree promptly to notify the Administrative Agent and the Borrower after any such set−off and any application made by such Lender and the Issuing Bank, as the case may be; provided, that the failure to give such notice shall not affect the validity of such set−off and application.

Section 10.8. Counterparts; Integration. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement, the Fee Letter, the other Loan Documents, and any separate letter agreement(s) relating to any fees payable to the Administrative Agent constitute the entire agreement among the parties hereto and thereto regarding the subject matters hereof and thereof and supersede all prior agreements and understandings, oral or written, regarding such subject matters.

Section 10.9. Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.18, 2.19, 2.20, and 10.3 and Article IX shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. All representations and warranties made herein, in the cer−tifi−cates, reports, notices, and other documents delivered pursu−ant to this Agreement shall survive the execution and delivery of this Agreement and the other Loan Documents, and the making of the Loans and the issuance of the Letters of Credit.

Section 10.10. Severability. Any provision of this Agreement −or any other Loan Document held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions hereof or thereof; and the illegality, invalidity or unenforceability of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.11. Confidentiality. Each of the Administrative Agent, the Issuing Bank and each Lender agrees to take normal and reasonable precautions to maintain the confidentiality of any information designated in writing as confidential and provided to it by the Borrower or any Subsidiary, except that such information may be disclosed (i) to any Related Party of the Administrative Agent, the Issuing Bank or any such Lender, including without limitation accountants, legal counsel and other advisors,

(ii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iii) to the extent requested by any regulatory agency or authority, (iv) to the extent that such information becomes publicly available other than as a result of a breach of this Section, or which becomes available to the Administrative Agent, the Issuing Bank, any Lender or any Related Party of any of the foregoing on a non−confidential basis from a source other than the Borrower, (v) in connection with the exercise of any remedy hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, and (ix) subject to provisions substantially similar to this Section 10.11, to any actual or prospective assignee or Participant, or (vi) with the consent of the Borrower. Any Person required to maintain the confidentiality of any information as provided for in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such information as such Person would accord its own confidential information. Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure**.** However, any such information relating to the tax treatment or tax structure is required to be kept confidential to the extent necessary to comply with any applicable federal or state securities laws.

Section 10.12. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which may be treated as interest on such Loan under applicable law (collectively, the "Charges"), shall exceed the maximum lawful rate of interest (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by a Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment, shall have been received by such Lender.

Section 10.13. Waiver of Effect of Corporate Seal. The Borrower represents and warrants that it is not required to affix its corporate seal to this Agreement or any other Loan Document pursuant to any requirement of law or regulation, agrees that this Agreement is delivered by Borrower under seal and waives any shortening of the statute of limitations that may result from not affixing the corporate seal to this Agreement or such other Loan Documents.

Section 10.14. Location of Closing. Each Lender acknowledges and agrees that it has delivered, with the intent to be bound, its executed counterparts of this Agreement to Agent, c/o King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036. Borrower acknowledges and agrees that it has delivered, with the intent to be bound, its executed counterparts of this Agreement and each other Loan Document, together with all other documents, instruments, opinions, certificates and other items required under Section 3.1, to Agent, c/o King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036. All parties agree that closing of the transactions contemplated by this Credit Agreement has occurred in New York.

(remainder of page left intentionally blank)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

LANDAMERICA FINANCIAL GROUP, INC.

By /s/ Ronald B. Ramos

Name: Ronald B. Ramos
Title: Senior Vice President and Treasurer

[SIGNATURE PAGE TO REVOLVING CREDIT AGREEMENT]

SUNTRUST BANK, as Administrative Agent, as Issuing Bank, as Swingline Lender and as a Lender

By /s/ Mark A. Flatin

Name: Mark A. Flatin

Title: Managing Director

[SIGNATURE PAGE TO REVOLVING CREDIT AGREEMENT]

WACHOVIA BANK, National Association, as Co−Syndication Agent and a Lender

By /s/ Susan F. Owens

Name: Susan F. Owens
Title: Senior Vice President

[SIGNATURE PAGE TO REVOLVING CREDIT AGREEMENT]

UNION BANK OF CALIFORNIA, N.A., as Co−Syndication Agent and as a Lender

By /s/ Lyle Bower

Name: Lyle Bower
Title: Vice President

[SIGNATURE PAGE TO REVOLVING CREDIT AGREEMENT]

US BANK, NATIONAL ASSOCIATION, as Co−Documentation Agent and as a Lender

By /s/ David W. Johnson

Name: David W. Johnson
Title: AVP & Portfolio Manager

[SIGNATURE PAGE TO REVOLVING CREDIT AGREEMENT]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION as Co−Documentation Agent and as a Lender

By /s/ Lawrence Palumbo, Jr.

Name: Lawrence Palumbo, Jr.
Title: Vice President

[SIGNATURE PAGE TO REVOLVING CREDIT AGREEMENT]

COMERICA BANK, as a Lender

By /s/ Luis Garcia

Name: Luis Garcia
Title: Assistant Vice President

[SIGNATURE PAGE TO REVOLVING CREDIT AGREEMENT]

BANK OF AMERICA, N.A., as a Lender

By /s/ Mark Short

Name: Mark Short

Title: Vice President

[SIGNATURE PAGE TO REVOLVING CREDIT AGREEMENT]

PNC BANK, N.A., as a Lender

By /s/ Paul Devine

Name: Paul Devine

Title: Vice President & Credit Manager

WELLS FARGO BANK ARIZONA, N.A., as a Lender

By /s/ Dean Rennell

Name: Dean Rennell
Title: Executive Vice President

[SIGNATURE PAGE TO REVOLVING CREDIT AGREEMENT]

[SCHEDULES AND EXHIBITS OMITTED.]

Exhibit 4

Annex I

Commitments

SunTrust Bank	**$31,000,000**
Wachovia Bank, National Association	**$23,500,000**
Union Bank of California, N.A.	**$23,500,000**
US Bank, National Association	**$23,500,000**
JPMorgan Chase Bank, National Association	**$23,500,000**
Bank of America, N.A.	**$19,000,000**
PNC Bank, N.A.	**$19,000,000**
Wells Fargo Bank Arizona, N.A.	**$19,000,000**
Comerica Bank	**$18,000,000**
Totals	**$200,000,000**

Exhibit 5

B10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF VIRGINIA — PROOF OF CLAIM

Name of Debtor: LandAmerica Financial Group, Inc.

Case Number: 08-35994

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): SunTrust Bank, as Administrative Agent

Name and address where notices should be sent:
Jesse H. Austin, III, Esq.
Paul, Hastings, Janofsky & Walker LLP
600 Peachtree Street NE, Suite 2400
Atlanta, GA 30308
Telephone number: 404-815-2208

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: ______ *(If known)*

Filed on: ______

Name and address where payment should be sent (if different from above):
SunTrust Bank, as Administrative Agent
Mail Code NA-TN-1982
401 Commerce Street, Suite 2500
Nashville, TN 37219
Attn: Samuel Ballesteros
Telephone number: 615-748-4737

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 100,914,145.99

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☒ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges. **See Annex A

2. Basis for Claim: Loan - See attached Annex A
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: ______

3a. Debtor may have scheduled account as: ______
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☒ Other
Describe: Debtor is the beneficiary of amounts held in Lenders' accounts.

Value of Property: $ 11,949,855.57* **Annual Interest Rate** 0%

Amount of arrearage and other charges as of time case filed included in secured claim,

if any: $ ______ **Basis for perfection:** Right of setoff

Amount of Secured Claim: $ 11,949,855.57* **Amount Unsecured:** $ 88,964,290.42

* See Annex A

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____).

Amount entitled to priority:

$ ______

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The a… : purpose of making this proof of claim.
7. Documents: A… n, such as promissory notes, purchase orders, invoices, i… s, mortgages, and security agreements. You may also attach a… vidence of perfection of a security interest… inition of "redacted" on reverse side.)

Filed: USBC - Eastern District of Virginia
LandAmerica Financial Group, Inc., Et Al.
08-35994 (KRH) 0000001160

DO NOT SEND … MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:

Date: ______

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Samuel M. Ballesteros / Samuel M. Ballesteros / SVP

FOR COURT USE ONLY

FILED / RECEIVED
MAR 3 0 2009
EPIQ BANKRUPTCY SOLUTIONS, LLC

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

15-2

B 10 (Official Form 10) (12/08) – Cont.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. **Amount of Claim as of Date Case Filed:**
State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. **Basis for Claim:**
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

3. **Last Four Digits of Any Number by Which Creditor Identifies Debtor:**
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. **Secured Claim:**
Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. **Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).**
If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. **Credits:**
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. **Documents:**
Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:
The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10)

Claim
A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot ed the value of the property. Any amount owed to reditor in excess of the value of the property is an ecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

Annex A

Details on Claim Amount

Pursuant to that certain Revolving Credit Agreement entered into as of July 28, 2006 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), SunTrust Bank, on behalf of the Lenders party thereto, agreed to make certain advances to LandAmerica Financial Group, Inc. As of November 26, 2008 (the "Petition Date"), the amounts outstanding and accrued were as follows:

Principal outstanding:	$100,000,000.00
Interest due and payable:	$487,500.00
Fees and expenses due and payable :	$426,645.99
Total amount due as of Petition Date:	$100,914,145.99
Fees and expenses following the Petition Date:	$439,617.48[1]

Portion of Claim Secured by Setoff Rights

Pursuant to Section 10.7 of the Credit Agreement and 11 U.S.C. § 553, the following undisputed amounts held by certain Lenders party to the Credit Agreement are subject to the right to setoff:

Institution	**Amount**
SunTrust Bank	$4,466,264.53
Bank of America, N.A.	2,494,739.05
Union Bank of California, N.A.	574,727.36
Wells Fargo Bank, N.A.	302,798.79
Wachovia Bank, National Association	1,242,701.15
JP Morgan Chase Bank, National Association	920,269.81[2]
Comerica Bank	1,948,349.88
US Bank, National Association	5.00
Total	**$11,949,855.57**[3]

[1] SunTrust Bank recognizes that the ability of an undersecured creditor to recover postpetition fees and/or expenses of counsel may be limited in the 4th Circuit as illustrated by In re WCS Enterprises, Inc., 381 B.R. 206 (Bankr. E.D. Va. 2007). However, to the extent that such postpetition fees are allowable following the 9th Circuit Bankruptcy Appellate Panel's holding in In re SNTL Corp., 380 B.R. 204 (9th Cir. BAP 2007) (holding that unsecured creditors may claim attorneys' fees incurred postpetition but based on a prepetition contract with the debtor), SunTrust reserves the right to amend this proof of claim to include such fees incurred after the Petition Date. The amount of postpetition fees noted above is approximate and continues to accrue.

[2] The Debtor may be the beneficiary of a certificate deposit at JPMorgan Chase Bank totaling $216,368.22 (the "JP Morgan CD"), which would increase the total amount subject to setoff with respect to JP Morgan Chase Bank, National Association, to $1,135,368.20.

15-4

Annex B

Index of Documents Evidencing Claim

Revolving Credit Agreement, dated as of July 28, 2006.
First Amendment to Revolving Credit Agreement, dated as of December 6, 2007.
Second Amendment to Revolving Credit Agreement, dated as of June 30, 2008.
Revolving Credit Note in favor of SunTrust Bank in the maximum amount of $31,000,000, dated as of July 28, 2006.
Swingline Note in favor of SunTrust Bank in the maximum amount of $10,000,000 dated as of July 28, 2006.
Revolving Credit Note in favor of Wachovia Bank, National Association in the maximum amount of $23,500,000 dated as of July 28, 2006.
Revolving Credit Note in favor of Union Bank of California, N.A. in the maximum amount of $23,500,000 dated as of July 28, 2006.
Revolving Credit Note in favor of US Bank, National Association in the maximum amount of $23,500,000 dated as of July 28, 2006.
Revolving Credit Note in favor of JPMorgan Chase Bank, National Association in the maximum amount of $23,500,000 dated as of July 28, 2006.
Revolving Credit Note in favor of Comerica Bank in the maximum amount of $18,000,000 dated as of July 28, 2006.
Revolving Credit Note in favor of Bank of America, N.A. in the maximum amount of $19,000,000 dated as of July 28, 2006.
Revolving Credit Note in favor of PNC Bank, N.A. in the maximum amount of $19,000,000 dated as of July 28, 2006.
Revolving Credit Note in favor of Wells Fargo Bank Arizona, N.A. in the maximum amount of $19,000,000 dated as of July 28, 2006.

Note that, due to the volume of documents, documents which may evidence the claim are not attached to this proof of claim, but are available upon request. Any party seeking copies should submit a request to:

Jesse H. Austin, III, Esq.
Paul, Hastings, Janofsky & Walker LLP
600 Peachtree Street
Suite 2400
Atlanta, GA 30308
404-815-2424 (fax)

Adding the JP Morgan CD to the total amount subject to setoff would result in a total amount subject to setoff of $12,166,223.79.

15-5

Exhibit 6

Ex. 10.1

SECOND AMENDMENT TO
REVOLVING CREDIT AGREEMENT

THIS SECOND AMENDMENT TO REVOLVING CREDIT AGREEMENT (this “Amendment”), is made and entered into as of June 30, 2008, by and among LANDAMERICA FINANCIAL GROUP, INC., a Virginia corporation (the “Borrower”), the several banks and other financial institutions from time to time party hereto (collectively, the “Lenders”) and SUNTRUST BANK, in its capacity as Administrative Agent for the Lenders (the “Administrative Agent”), as Issuing Bank (the “Issuing Bank”), and as Swingline Lender (the “Swingline Lender”).

W I T N E S S E T H:

WHEREAS, the Borrower, the Lenders and the Administrative Agent are parties to that certain Revolving Credit Agreement, dated as of July 28, 2006, as amended by that certain First Amendment to Revolving Credit Agreement dated as of November 30, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”; capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement), pursuant to which the Lenders have made certain financial accommodations available to the Borrower;

WHEREAS, the Borrower has requested that the Lenders and the Administrative Agent amend certain provisions of the Credit Agreement, and subject to the terms and conditions hereof, the Administrative Agent and the Required Lenders are willing to do so; and

NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of all of which are acknowledged, the Borrower, the Lenders and the Administrative Agent agree as follows:

1. Amendments.

(a) Section 1.1 of the Credit Agreement is hereby amended adding the following definitions of “Additional Applicable Margin”, “Administrative Agent”, “Borrower”, “Consolidated Fixed Charges”, “Credit Rating”, “Fitch”, "Fixed Charge Coverage Ratio", “Investment Grade”, “OFAC” “Patriot Act”, “Regulation T”, “Regulation U”, “Regulation X”, “Sanctioned Country” and “Sanctioned Person”, in the appropriate alphabetical order and by replacing the definitions of “Aggregate Revolving Commitment Amount”, “Applicable Margin”, “Applicable Percentage”, “Fee Letter”, “Foreign Lender”, “Lenders”, “Material Adverse Effect”, “Obligations”, “Permitted Investments”, “Revolving Commitment”, “Revolving Credit Note” and “Swingline Note” with the following:

“Additional Applicable Margin” shall mean, on any date on which the Borrower’s Credit Rating is below Investment Grade, 0.50% per annum and on any date on which the Borrower's Credit Rating is Investment Grade or above, 0.00% per annum.

"Administrative Agent" shall have the meaning assigned to such term in the opening paragraph hereof.

"Aggregate Revolving Commitment Amount" shall mean the aggregate principal amount of the Aggregate Revolving Commitments from time to time. On the Closing Date, the Aggregate Revolving Commitment Amount equals $150,000,000.

"Applicable Margin" shall mean, as of any date, with respect to interest on all Loans outstanding on any date or the letter of credit fee referred to in Section 2.14(c), as the case may be, a percentage per annum determined by reference to the applicable Leverage Ratio in effect on such date as set forth on Schedule I; provided, that a change in the Applicable Margin resulting from a change in the Leverage Ratio shall be effective on the second Business Day after which the Borrower delivers the financial statements required by Section 5.1(a) or (b) and the Compliance Certificate required by Section 5.1(c); provided further, that if at any time the Borrower shall have failed to deliver such financial statements and such Compliance Certificate when so required, the Applicable Margin shall be at Level IV as set forth on Schedule I until such time as such financial statements and Compliance Certificate are delivered, at which time the Applicable Margin shall be determined as provided above. Notwithstanding the foregoing, the Applicable Margin from the Closing Date until the financial statements and Compliance Certificate for the Fiscal Quarter ending June 30, 2008 are required to be delivered shall be at Level IV as set forth on Schedule I. In the event that any financial statement or Compliance Certificate delivered hereunder is shown to be inaccurate (at any time when this Agreement or the Commitments are in effect), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin based upon the pricing grid set forth on Schedule I (the "Accurate Applicable Margin") for any period that such financial statement or Compliance Certificate covered, then (i) the Borrower shall immediately deliver to the Administrative Agent a correct financial statement or Compliance Certificate, as the case may be, for such period, (ii) the Applicable Margin shall be adjusted such that after giving effect to the corrected financial statements or Compliance Certificate, as the case may be, the Applicable Margin shall be reset to the Accurate Applicable Margin based upon the pricing grid set forth on Schedule I for such period and (iii) the Borrower shall immediately pay to the Administrative Agent, for the account of the Lenders, the accrued additional interest owing as a result of such Accurate Applicable Margin for such period. The provisions of this definition shall not limit the rights of the Administrative Agent and the Lenders with respect to Section 2.13(c) or Article VIII.

"Applicable Percentage" shall mean, with respect to the facility fee referred to in Section 2.14(b) as of any date, the percentage per annum determined by reference to the applicable Leverage Ratio in effect on such date as set forth on Schedule I; provided, that a change in the Applicable Percentage resulting from a change in the Leverage Ratio shall be effective on the second Business Day after which the Borrower delivers the financial statements required by Section 5.1(a) or (b) and the Compliance Certificate required by Section 5.1(c); provided further, that if at any time the Borrower shall have failed to deliver such financial statements and such Compliance Certificate, the Applicable Percentage shall be at Level IV as set forth on Schedule I until such time as such financial statements and Compliance Certificate are delivered, at which time the Applicable Percentage shall be determined as provided above. Notwithstanding the foregoing, the Applicable Percentage for the facility fee from the Closing Date until the financial statements and Compliance Certificate for the Fiscal Quarter ending June 30, 2008 are required to be delivered shall be at Level IV as set forth on Schedule I. In the event that any financial statement or Compliance Certificate delivered hereunder is shown to be inaccurate (at any time that this Agreement or the Commitments are in effect, and such inaccuracy, if corrected, would have led to the application of a higher Applicable Percentage based upon the pricing grid set forth on Schedule I (the "Accurate Applicable Percentage") for any period that such financial statement or Compliance Certificate covered, then (i) the Borrower shall immediately deliver to the Administrative Agent a correct Financial Statement or Compliance Certificate, as the case may be, for such period, (ii) the Applicable Percentage shall be adjusted such that after giving effect to the corrected financial statements or Compliance Certificate, as the case may be, the Applicable Percentage shall be reset to the Accurate Applicable Percentage based upon the pricing grid set forth on Schedule I for such period as set forth in the foregoing pricing grid for such period and (iii) the Borrower shall immediately pay to the Administrative Agent, for the account of the Lenders, the accrued additional facility fee owing as a result of such Accurate Applicable Percentage for such period. The provisions of this definition shall not limit the rights of the Administrative Agent and the Lenders with respect to Section 2.13(c) or Article VIII.

"Borrower" shall have the meaning in the introductory paragraph hereof.

"Consolidated Fixed Charges" shall mean, for the Borrower and its Subsidiaries for any period, the sum (without duplication) of (i) Consolidated Interest Expense for such period, (ii) scheduled principal payments made on Consolidated Total Debt during such period, (iii) income tax expense during such period, (iv) cash dividends to shareholders permitted by Section 7.5(c) paid during such period and (iv) capital expenditures made during such period.

“Credit Rating” shall mean the senior, unsecured long−term debt securities of the Borrower without third−party credit enhancement, whether or not any such debt securities are actually outstanding as reported by Fitch and/or S&P, and any rating assigned to any other debt security of the Borrower shall be disregarded. The Credit Rating in effect on any date is that in effect at the close of business on such date. If the rating system of Fitch or S&P shall change, or if either such rating agency shall cease to be in the business of rating corporate debt obligations, the Borrower, the Lenders and the Administrative Agent shall negotiate in good faith to amend this definition to reflect such changed rating system or the unavailability of ratings from such rating agency and, pending the effectiveness of any such amendment, the Credit Rating shall be determined by reference to the rating most recently in effect prior to any such change or cessation.

“Fee Letter” shall mean, collectively, (a) that certain fee letter, dated as of June 13, 2006, executed by SunTrust Robinson Humphrey, Inc., f/k/a as SunTrust Capital Markets, Inc. and SunTrust Bank and accepted by the Borrower and (b) that certain fee letter, dated as of May 27, 2008, executed by SunTrust Robinson Humphrey, Inc. and SunTrust Bank and accepted by the Borrower.

“Fitch” shall mean Fitch Ratings Ltd.

"Fixed Charge Coverage Ratio" shall mean, as of the end of any Fiscal Quarter, the ratio of (a) the sum of (i) Consolidated EBITDA for the four consecutive Fiscal Quarters then ending plus, (ii) without duplication, unrestricted cash on hand as of the last Business Day of such Fiscal Quarter, cash dividends declared and payable to Borrower by any of its Subsidiaries after the end of such Fiscal Quarter and prior to the delivery of the Compliance Certificate required by Section 5.1(c) for such Fiscal Quarter and Permitted Investments of the Borrower as of the last Business Day of such Fiscal Quarter plus (iii) the average Revolving Availability for the ninety (90) day period then ended to (b) Consolidated Fixed Charges for the four consecutive Fiscal Quarters then ending. Notwithstanding the foregoing, for purposes of calculating the Consolidated Fixed Charges for any period, cash dividends to shareholders permitted by Section 7.5(c) shall be the amount of cash dividends paid during such Fiscal Quarter multiplied by 4.

"Foreign Lender" shall mean any Lender that is not a United States person under Section 7701(a)(30) of the Code.

"Investment Grade" shall mean a Credit Rating of BBB− or higher with respect to S&P and Fitch. If the Borrower is split−rated and (1) the ratings differential is one category, the higher of the two ratings will apply or (2) the ratings differential is more than one category, the rate shall be determined by reference to the category next above that of the lower of the two ratings. If the Borrower is not rated by either Fitch or S&P, then the Borrower shall be presumed to be below Investment Grade.

"Lenders" shall have the meaning assigned to such term in the opening paragraph of this Agreement and shall include, where appropriate, the Swingline Lender and each Additional Lender that joins this Agreement pursuant to Section 2.24.

"Material Adverse Effect" shall mean, with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, resulting in a material adverse change in, or a material adverse effect on, (i) the business, results of operations, finan-cial condition, assets, liabilities or prospects of the Borrower or of the Borrower and its Subsidiaries taken as a whole, (ii) the ability of Borrower to perform any of its obligations under the Loan Documents, (iii) the rights and remedies of the Administrative Agent, the Issuing Bank, Swingline Lender and the Lenders under any of the Loan Documents or (iv) the legality, validity or enforceability of any of the Loan Documents.

"Obligations" shall mean all amounts owing by the Borrower to the Administrative Agent, the Issuing Bank, any Lender (including the Swingline Lender) or SunTrust Robinson Humphrey, Inc., as Lead Arranger pursuant to or in connection with this Agreement or any other Loan Document, including without limitation, all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Borrower, whether or not a claim for post−filing or post−petition interest is allowed in such proceeding), all reimbursement obligations, fees, expenses, indemnification and reimbursement payments, costs and expenses (including all fees and expenses of counsel to the Administrative Agent, the Issuing Bank and any Lender (including the Swingline Lender) incurred pursuant to this Agreement or any other Loan Document), whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, and all Hedging Obligations owing to the Administrative Agent, any Lender or any of their Affiliates, and all obligations and liabilities incurred pursuant to this Agreement or any other Loan Document in connection with collecting and enforcing the foregoing, together with all renew-als, extensions, modifications or refinancings thereof.

"OFAC" shall mean the U.S. Department of the Treasury's Office of Foreign Assets Control.

"Patriot Act" shall have the meaning set forth in Section 10.15.

"Permitted Investments" shall mean:

(i) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States (or by any agency or instrumentality thereof to the extent such obligations are backed by the full faith and credit of the United States), in each case maturing within one year from the date of acquisition thereof;

(ii) commercial paper having the highest rating, at the time of acquisition thereof, of S&P or Moody's and in either case maturing within six months from the date of acquisition thereof;

(iii) certificates of de-posit, bankers' acceptances and time deposits issued or guaranteed by or placed with, any domestic office of any commercial bank organized under the laws of the United States or any state thereof which has a combined capital and surplus and undivided profits of not less than $500,000,000; and

(iv) mutual funds investing solely in any one or more of the Permitted Investments described in clauses (i) through (iii) above.

"Regulation T" shall mean Regulation T of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Regulation U" shall mean Regulation U of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Regulation X" shall mean Regulation X of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Revolving Commitment" shall mean, with respect to each Lender, the obligation of such Lender to make Revolving Loans to the Borrower and to participate in Letters of Credit and Swingline Loans in an aggregate principal amount not exceeding the amount set forth with respect to such Lender on Annex I, as such annex may be amended pursuant to Section 2.23, or in the case of a Person becoming a Lender after the Closing Date through an assignment of an existing Revolving Commitment, the amount of the assigned "Revolving Commitment" as provided in the Assignment and Acceptance executed by such Person as an assignee, as the same may be increased or deceased pursuant to terms hereof.

"Revolving Credit Note" shall mean a promissory note of the Borrower payable to the order of a requesting Lender in the principal amount of such Lender's Revolving Commitment, in form and substance satisfactory to the Administrative Agent.

"Sanctioned Country" shall mean a country subject to a sanctions program identified on the list maintained by OFAC and available at http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html, or as otherwise published from time to time.

"Sanctioned Person" shall mean (i) a Person named on the list of "Specially Designated Nationals and Blocked Persons" maintained by OFAC available at http://www.treas.gov/offices/eotffc/ofac/sdn/index.html, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

"Swingline Note" shall mean the promissory note of the Borrower payable to the order of the Swingline Lender in the principal amount of the Swingline Commitment, in form and substance satisfactory to the Administrative Agent.

(b) Section 1.1 of the Credit Agreement is hereby amended by deleting the definitions for "Consolidated EBIT", "Consolidated Net Worth", "Eligible Assignee", and "Interest Coverage Ratio".

(c) Section 2.10 of the Credit Agreement is hereby amended by replacing subsection (b) of such section with the following:

(b) This Agreement evidences the obligation of the Borrower to repay the Loans and is being executed as a "noteless" credit agreement. However, at the request of any Lender (including the Swingline Lender) at any time, the Borrower agrees that it will execute and deliver to such Lender a Revolving Credit Note and, in the case of the Swingline Lender only, a Swingline Note, payable to the order of such Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment permitted hereunder) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

(d) Section 2.13 of the Credit Agreement is hereby amended by replacing subsection (a) of such section with the following:

(a) The Borrower shall pay interest on each Base Rate Loan at the Base Rate in effect from time to time and on each Eurodollar Loan at the Adjusted LIBO Rate for the applicable Interest Period in effect for such Loan plus the Applicable Margin in effect from time to time plus the Additional Applicable Margin in effect from time to time.

(e) Section 2.14 of the Credit Agreement is hereby amended by replacing subsections (c) and (e) of such section with the following:

(c) The Borrower agrees to pay (i) to the Administrative Agent, for the account of each Lender, a letter of credit fee with respect to its participation in each Letter of Credit, which shall accrue at a rate per annum equal to the Applicable Margin for Eurodollar Loans then in effect plus the Additional Applicable Margin then in effect on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) attributable to such Letter of Credit during the period from and including the date of issuance of such Letter of Credit to but excluding the date on which such Letter of Credit expires or is drawn in full (including without limitation any LC Exposure that remains outstanding after the Revolving Commitment Termination Date) and (ii) to the Issuing Bank for its own account a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the Availability Period (or until the date that such Letter of Credit is irrevocably cancelled, whichever is later), as well as the Issuing Bank's standard fees with respect to issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder.

(e) Accrued fees (other than the upfront fee referenced in paragraph (d)) shall be payable quarterly in arrears on the last day of each March, June, September and December, commencing on September 30, 2008 and on the Revolving Commitment Termination Date (and if later, the date the Loans and LC Exposure shall be repaid in their entirety); provided further, that any such fees accruing after the Revolving Commitment Termination Date shall be payable on demand.

(f) Section 2.22 of the Credit Agreement is hereby amended by replacing subsection (j) of such section with the following:

(j) Unless otherwise expressly agreed by the Issuing Bank and the Borrower when a Letter of Credit is issued and subject to applicable laws, performance under Letters of Credit by the Issuing Bank, its correspondents, and the beneficiaries thereof will be governed by (i) either (x) the rules of the "International Standby Practices 1998" (ISP98) (or such later revision as may be published by the Institute of International Banking Law & Practice on any date any Letter of Credit may be issued) or (y) the rules of the "Uniform Customs and Practices for Documentary Credits" (1993 Revision), International Chamber of Commerce Publication No. 500 (or such later revision as may be published by the International Chamber of Commerce on any date any Letter of Credit may be issued) and (ii) to the extent not inconsistent therewith, the governing law of this Agreement set forth in Section 10.5.

(g) Section 2.24 of the Credit Agreement is hereby amended by replacing subsection (c) of such section with the following:

(c) An increase in the aggregate amount of the Revolving Commitments pursuant to this Section 2.24 shall become effective upon the receipt by the Administrative Agent of a supplement or joinder in form and substance satisfactory to the Administrative Agent executed by the Borrower, by each Additional Lender and by each other Lender whose Revolving Commitment is to be increased, setting forth the new Revolving Commitments of such Lenders and setting forth the agreement of each Additional Lender to become a party to this Agreement and to be bound by all the terms and provisions hereof, and such evidence of appropriate corporate authorization on the part of the Borrower with respect to the increase in the Revolving Commitments and such opinions of counsel for the Borrower with respect to the increase in the Revolving Commitments as the Administrative Agent may reasonably request.

(h) Section 4.7 of the Credit Agreement is hereby amended by replacing such section with the following:

Section 4.7. Investment Company Act, Etc. Neither the Borrower nor any of its Subsidiaries is an "investment company" or is "controlled" by an "investment company", as such terms are defined in, or subject to regulation under, the Investment Company Act of 1940, as amended. The Borrower is not subject to any other regulatory scheme limiting its ability to incur debt or requiring any approval or consent from or registration or filing with, any Governmental Authority in connection therewith.

(i) Section 4.9 of the Credit Agreement is hereby amended by replacing such section with the following:

Section 4.9. Margin Regulations. None of the pro-ceeds of any of the Loans or Letters of Credit will be used, directly or indirectly, for "purchasing" or "carrying" any "margin stock" with the respective meanings of each of such terms under Regulation U or for any purpose that violates the provisions of the Regulation T, U or X. Neither the Borrower nor its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying “margin stock.”

(j) Section 4.19 of the Credit Agreement is hereby amended by replacing such section with the following:

SECTION 4.19. OFAC. None of the Borrower, any Subsidiary of the Borrower or any Affiliate of the Borrower or any Guarantor (i) is a Sanctioned Person, (ii) has more than 15% of its assets in Sanctioned Countries, or (iii) derives more than 15% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries. No part of the proceeds of any Loans hereunder will be used directly or indirectly to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country or for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(k) Section 4.20 of the Credit Agreement is hereby amended by replacing such section with the following:

SECTION 4.20. Patriot Act. Neither any Credit Party nor any of its Subsidiaries is an “enemy” or an “ally of the enemy” within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 et seq.), as amended or any enabling legislation or executive order relating thereto. Neither any Credit Party nor any or its Subsidiaries is in violation of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the Patriot Act. None of the Credit Parties (i) is a blocked person described in section 1 of the Anti−Terrorism Order or (ii) to the best of its knowledge, engages in any dealings or transactions, or is otherwise associated, with any such blocked person.

(l) Section 5.1 of the Credit Agreement is hereby amended by replacing subsection (j) of such section with the following:

(j) promptly and in any event within five (5) days after obtaining knowledge thereof, notification of any changes after the Closing Date in the rating given by either S&P’s or Fitch, implicitly or explicitly, in respect of the Borrower’s senior unsecured Indebtedness;

(m) Article VI of the Credit Agreement is hereby amended by replacing such Article with the following:

ARTICLE VI

FINANCIAL COVENANTS

The Borrower covenants and agrees that so long as any Lender has a Commitment hereunder or any Obligation remains unpaid or outstanding:

SECTION 6.1. Leverage Ratio. The Borrower will maintain at all times, commencing with the Fiscal Quarter ending June 30, 2008, a Leverage Ratio of not greater than 0.375:1.0.

SECTION 6.2. Fixed Charge Coverage Ratio. The Borrower will maintain, as of the end of each Fiscal Quarter, commencing with the Fiscal Quarter ending June 30, 2008, a Fixed Charge Coverage Ratio of not less than the following:

Fiscal Quarter	Fixed Charge Coverage Ratio
Each Fiscal Quarter ending on or prior to June 30, 2008	1.15:1.0
The Fiscal Quarter ending on September 30, 2008	1.20:1.0
Each Fiscal Quarter ending thereafter	1.50:1.0

(n) Section 8.1 of the Credit Agreement is hereby amended by replacing subsections (n) and (o) of such section with the following:

(n) Any Insurance Subsidiary shall be the subject of a final nonappealable order imposing a fine in an amount in excess of $5,000,000 in a single instance or other such orders imposing fines in excess of $25,000,000 in the aggregate after the Closing Date by or at the request of any state insurance regulatory agency as a result of the violation by such Insurance Subsidiary of such state's applicable insurance laws or the regulations promulgated in connection therewith; or

(o) Any Material Insurance Subsidiary shall, as a result of such Material Insurance Subsidiary's failure to meet minimum levels of statutory capital or surplus, become subject to a prohibition pursuant to a consent order, corrective order or similar binding document or agreement issued in writing by any state insurance regulatory agency that results in a loss of the Material Insurance Subsidiaries' collective ability to write or underwrite further business representing more than 10% of the Borrower's and its Subsidiaries' total annual revenue on a consolidated basis;

(o) Section 9.3 of the Credit Agreement is hereby amended by replacing such section with the following:

SECTION 9.3. Lack of Reliance on the Administrative Agent. Each of the Lenders, the Swingline Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent, any Issuing Bank or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each of the Lenders, the Swingline Lender and the Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Issuing Bank or any other Lender and based on such documents and information as it has deemed appropriate, continue to make its own decisions in taking or not taking of any action under or based on this Agreement, any related agreement or any document furnished hereunder or thereunder.

(p) Section 9.5 of the Credit Agreement is hereby amended by replacing such section with the following:

SECTION 9.5. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, posting or other distribution) believed by it to be genuine and to have been signed, sent or made by the proper Person. The Administrative Agent may also rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (including counsel for the Borrower), indepen-dent public accountants and other experts selected by it and shall not be liable for any action taken or not taken by it in accordance with the advice of such counsel, accountants or experts.

(q) The Credit Agreement is hereby amended by adding the following sections:

SECTION 9.10. Withholding Tax

. To the extent required by any applicable law, the Administrative Agent may withhold from any interest payment to any Lender an amount equivalent to any applicable withholding tax. If the Internal Revenue Service or any authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), such Lender shall indemnify the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses.

SECTION 9.11 Administrative Agent May File Proofs of Claim.

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or any Revolving Credit Exposure shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(b) To file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans or Revolving Credit Exposure and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, Issuing Bank and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, Issuing Bank and the Administrative Agent and its agents and counsel and all other amounts due the Lenders, Issuing Bank and the Administrative Agent under Section 10.3) allowed in such judicial proceeding; and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and

(d) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the Issuing Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Bank, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 10.3.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 10.1 of the Credit Agreement is hereby amended by replacing such section with the following:

SECTION 10.1 Notices.

(a) Written Notices.

(i) Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications to any party herein to be effective shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

To the Borrower: LandAmerica Financial Group, Inc.
101 Gateway Centre Parkway
Richmond, VA 23235
Attention: Ronald B. Ramos, Treasurer
Telecopy Number: (804) 236−8834

with a copy to: Williams Mullen
1021 E. Cary Street,
Richmond, VA 23219
Attention: Charles W. Kemp
Telecopy Number: (804) 783−6929

To the Administrative Agent
or Swingline Lender: SunTrust Bank
919 East Main Street, 22nd Floor
Richmond, Virginia 23219
Attention: Mark Flatin
Telecopy Number: (804) 782−5818

With a copy to: SunTrust Bank
Agency Services
303 Peachtree Street, N. E./ 25th Floor
Atlanta, Georgia 30308
Attention: Ms. Doris Folsom
Telecopy Number: (404) 658−4906

and

King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309
Attention: Angela L. Batterson
Telecopy Number: (404) 572−5100

To the Issuing Bank: SunTrust Bank
25 Park Place, N. E./Mail Code 3706
Atlanta, Georgia 30303
Attention: Standby Letter of Credit Department
Telecopy Number: (404) 588−8129

To the Swingline Lender: SunTrust Bank
Agency Services
303 Peachtree Street, N.E./25th Floor
Atlanta, Georgia 30308
Attention: Ms. Doris Folsom
Telecopy Number: (404) 658−4906

To any other Lender: the address set forth in the AdministrativeQuestionnaire or the Assignment and AcceptanceAgreement executed by such Lender

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All such notices and other communications shall, when transmitted by overnight delivery, or faxed, be effective when delivered for overnight (next−day) delivery, or transmitted in legible form by facsimile machine, respectively, or if mailed, upon the third Business Day after the date deposited into the mail or if delivered, upon delivery; provided, that notices delivered to the Administrative Agent, the Issuing Bank or the Swingline Lender shall not be effective until actually received by such Person at its address specified in this Section 10.1.

(ii) Any agreement of the Administrative Agent, the Issuing Bank and the Lenders herein to receive certain notices by telephone or facsimile is solely for the convenience and at the request of the Borrower. The Administrative Agent, the Issuing Bank and the Lenders shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Borrower to give such notice and the Administrative Agent, the Issuing Bank and the Lenders shall not have any liability to the Borrower or other Person on account of any action taken or not taken by the Administrative Agent, the Issuing Bank and the Lenders in reliance upon such telephonic or facsimile notice. The obligation of the Borrower to repay the Loans and all other Obligations hereunder shall not be affected in any way or to any extent by any failure of the Administrative Agent, the Issuing Bank and the Lenders to receive written confirmation of any telephonic or facsimile notice or the receipt by the Administrative Agent, the Issuing Bank and the Lenders of a confirmation which is at variance with the terms understood by the Administrative Agent, the Issuing Bank and the Lenders to be contained in any such telephonic or facsimile notice.

(b) Electronic Communications.

(i) Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e−mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Bank pursuant to Article 2 unless such Lender, the Issuing Bank, as applicable, and Administrative Agent have agreed to receive notices under such Section by electronic communication and have agreed to the procedures governing such communications. Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(ii) Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e−mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e−mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e−mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(r) Section 10.2 of the Credit Agreement is hereby amended by replacing subsection (b) of such section with the following:

(b) No amendment or waiver of any provision of this Agreement or the other Loan Documents, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrower and the Required Lenders or the Borrower and the Administrative Agent with the consent of the Required Lenders and then such waiver or consent shall be effective only in the specific instance and for the spe-cific purpose for which given; provided, that no amendment or waiver shall: (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the date fixed for any payment of any princi-pal of, or interest on, any Loan or LC Disbursement or interest thereon or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.21 (b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of "Required

Lenders" or any other provision hereof specifying the number or percentage of Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Lender; (vi) release any guarantor or limit the liability of any such guarantor under any guaranty agreement, without the written consent of each Lender; (vii) release all or substantially all collateral (if any) securing any of the Obligation, without the written consent of each Lender; provided further, that no such agreement shall amend, modify or otherwise affect the rights, duties or obligations of the Administrative Agent, the Swingline Bank or the Issuing Bank without the prior written consent of such Person. Notwithstanding anything contained herein to the contrary, this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Borrower and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated (but such Lender shall continue to be entitled to the benefits of Sections 2.18, 2.19, 2.20 and 10.3), such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

(s) Section 10.4 of the Credit Agreement is hereby amended by replacing such section with the following:

SECTION 10.4. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments, Loans, and other Revolving Credit Exposure at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments, Loans and other Revolving Credit Exposure at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans and Revolving Credit Exposure outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans and Revolving Credit Exposure of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Acceptance, as of such trade date) shall not be less than $1,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans, other Revolving Credit Exposure or the Commitments assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments to a Person that is not a Lender with a Commitment; and

(C) the consent of the Issuing Bank (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding), and the consent of the Swingline Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Commitments.

(iv) Assignment and Acceptance. The parties to each assignment shall deliver to the Administrative Agent (A) a duly executed Assignment and Acceptance, (B) a processing and recordation fee of $3,500, (C) an Administrative Questionnaire unless the assignee is already a Lender and (D) the documents required under Section 2.20 if such assignee is a Foreign Lender.

(v) No Assignment to Borrower. No such assignment shall be made to the Borrower or any of the Borrower's Affiliates or Subsidiaries.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section 10.4, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.18, 2.19, 2.20 and 10.3 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section 10.4. If the consent of the Borrower to an assignment is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified above), the Borrower shall be deemed to have given its consent five Business Days after the date notice thereof has actually been delivered by the assigning Lender (through the Administrative Agent) to the Borrower, unless such consent is expressly refused by the Borrower prior to such fifth Business Day.

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Atlanta, Georgia a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount of the Loans and Revolving Credit Exposure owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). Information contained in the Register with respect to any Lender shall be available for inspection by such Lender at any reasonable time and from time to time upon reasonable prior notice; information contained in the Register shall also be available for inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice. In establishing and maintaining the

Register, Administrative Agent shall serve as Company's agent solely for tax purposes and solely with respect to the actions described in this Section, and the Borrower hereby agrees that, to the extent SunTrust Bank serves in such capacity, SunTrust Bank and its officers, directors, employees, agents, sub−agents and affiliates shall constitute "Indemnitees."

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent, the Swingline Lender or the Issuing Bank sell participations to any Person (other than a natural person, the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders, the Issuing Bank and the Swingline Lender shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(e) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver with respect to the following to the extent affecting such Participant: (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the date fixed for any payment of any principal of, or interest on, any Loan or LC Disbursement or interest thereon or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.21(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section 10.4 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Lender; (vi) release any guarantor or limit the liability of any such guarantor under any guaranty agreement without the written consent of each Lender except to the extent such release is expressly provided under the terms of such guaranty agreement; or (vii) release all or substantially all collateral (if any) securing any of the Obligations. Subject to paragraph (e) of this Section 10.4, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.18, 2.19, and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 10.4. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender, provided such Participant agrees to be subject to Section 2.21 as though it were a Lender.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.18 and Section 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.20 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.20(e) as though it were a Lender.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(t) Section 10.8 of the Credit Agreement is hereby amended by replacing such section with the following:

SECTION 10.8. Counterparts; Integration. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement, the Fee Letter, the other Loan Documents, and any separate letter agreement(s) relating to any fees payable to the Administrative Agent constitute the entire agreement among the parties hereto and thereto regarding the subject matters hereof and thereof and supersede all prior agreements and understandings, oral or written, regarding such subject matters. Delivery of an executed counterpart to this Agreement or any other Loan Document by facsimile transmission or by electronic mail in pdf form shall be as effective as delivery of a manually executed counterpart hereof.

(u) The Credit Agreement is hereby amended by adding the following section:

SECTION 10.15. Patriot Act. The Administrative Agent and each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107−56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the Patriot Act.

(v) The Credit Agreement is hereby amended by replacing Annex I and Schedule I of the Credit Agreement with Annex I and Schedule I attached hereto.

2. Conditions to Effectiveness of this Amendment. Notwithstanding any other provision of this Amendment and without affecting in any manner the rights of the Lenders hereunder, it is understood and agreed that this Amendment shall not become effective, and the Borrower shall have no rights under this Amendment, until the Administrative Agent shall have received (i) executed counterparts to this Amendment from the Borrower, the Administrative Agent and the Required Lenders, and (ii) reimbursement or payment of its costs and expenses incurred in connection with this Amendment or the Credit Agreement (including reasonable fees, charges and disbursements of King & Spalding LLP, counsel to the Administrative Agent) and (iii) payment of all fees as set forth in the Fee Letter.

3. Representations and Warranties. To induce the Lenders and the Administrative Agent to enter into this Amendment, the Borrower hereby represents and warrants to the Lenders and the Administrative Agent that:

(a) The execution, delivery and performance by the Borrower of this Amendment (i) are within the Borrower's power and authority; (ii) have been duly authorized by all necessary corporate and shareholder action; (iii) are not in contravention of any provision of the Borrower's articles of incorporation or bylaws or other organizational documents; (iv) do not violate any law or regulation, or any order or decree of any Governmental Authority; (v) do not conflict with or result in the breach or termination of, constitute a default under or accelerate any performance required by, any indenture, mortgage, deed of trust, lease, agreement or other instrument to which the Borrower or any of its Material Subsidiaries is a party or by which the Borrower or any such Subsidiary or any of their respective property is bound; (vi) do not result in the creation or imposition of any Lien upon any of the property of the Borrower or any of its Material Subsidiaries; and (vii) do not require the consent or approval of any Governmental Authority or any other Person;

(b) This Amendment has been duly executed and delivered for the benefit of or on behalf of the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms except as the enforceability hereof may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights and remedies in general; and

(c) After giving effect to this Amendment, the representations and warranties contained in the Credit Agreement and the other Loan Documents are true and correct in all material respects, and no Default or Event of Default has occurred and is continuing as of the date hereof.

4. Effect of Amendment. Except as set forth expressly herein, all terms of the Credit Agreement, as amended hereby, and the other Loan Documents shall be and remain in full force and effect and shall constitute the legal, valid, binding and enforceable obligations of the Borrower to the Lenders and the Administrative Agent. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of the Administrative Agent and the Lenders under the Credit Agreement, nor constitute a waiver of any provision of the Credit Agreement. This Amendment shall constitute a Loan Document for all purposes of the Credit Agreement.

5. Governing Law. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York and all applicable federal laws of the United States of America.

6. No Novation. This Amendment is not intended by the parties to be, and shall not be construed to be, a novation of the Credit Agreement or an accord and satisfaction in regard thereto.

7. Costs and Expenses. The Borrower agrees to pay on demand all costs and expenses of the Administrative Agent in connection with the preparation, execution and delivery of this Amendment, including, without limitation, the reasonable fees and out−of−pocket expenses of outside counsel for the Administrative Agent with respect thereto.

8. Counterparts. This Amendment may be executed by one or more of the parties hereto in any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by facsimile transmission or by electronic mail in pdf form shall be as effective as delivery of a manually executed counterpart hereof.

9. Binding Nature. This Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective successors, successors−in−titles, and assigns.

10. Entire Understanding. This Amendment sets forth the entire understanding of the parties with respect to the matters set forth herein, and shall supersede any prior negotia-tions or agreements, whether written or oral, with respect thereto.

[Signature Pages To Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed, under seal in the case of the Borrower, by their respective authorized officers as of the day and year first above written.

BORROWER:

LANDAMERICA FINANCIAL GROUP,INC.

By: /s/ Ronald B. Ramos
Name: Ronald B. Ramos
Title: Senior Vice President and Treasurer

LENDERS:

SUNTRUST BANK, as Administrative Agent, as Issuing Bank, as Swingline Lender and as a Lender

By: /s/ Mark A. Flatin
Name: Mark A. Flatin
Title: Managing Director

WACHOVIA BANK, National Association, as Co−Syndication Agent and a Lender

By: /s/ Anthony J. Conte
Name: Anthony J. Conte
Title: Senior Vice President

UNION BANK OF CALIFORNIA, N.A.,as Co−Syndication Agent and as a Lender

By: /s/ Joseph M. Agrabrite
Name: Joseph M. Agrabrite
Title: Vice President/Manager

US BANK, NATIONAL ASSOCIATION, as Co−Documentation Agent and as a Lender

By: /s/ David W. Johnson
Name: David W. Johnson
Title: VP & Portfolio Manager

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION as Co−Documentation Agent and as a Lender

By: /s/ Mark M. Cisz
Name: Mark M. Cisz
Title: Executive Director

PNC BANK, N.A., as a Lender

By: /s/ Kirk Seagers
Name: Kirk Seagers
Title: Vice President

WELLS FARGO BANK ARIZONA, N.A., as a Lender

By: /s/ G. Paige Maki
Name: G. Paige Maki
Title: Vice President

Annex I
Commitments

SunTrust Bank	$23,250,000
Wachovia Bank, National Association	$17,625,000
Union Bank of California, N.A.	$17,625,000
US Bank, National Association	$17,625,000
JPMorgan Chase Bank, National Association	$17,625,000
Bank of America, N.A.	$14,250,000
PNC Bank, N.A.	$14,250,000
Wells Fargo Bank Arizona, N.A.	$14,250,000
Comerica Bank	$13,500,000
Totals	$150,000,000

Schedule I

APPLICABLE MARGIN AND APPLICABLE PERCENTAGE

Pricing Level	Leverage Ratio	Applicable Margin for Eurodollar Loans	Applicable Percentage for Facility Fee
I	Less than or equal to 0.20:1.00	0.775%	0.100%
II	Less than or equal to 0.25:1.00 but greater than 0.20:1.00	0.850%	0.150%
III	Less than or equal to 0.30:1.00 but greater than 0.25:1.00	0.925%	0.200%
IV	Greater than 0.30:1.0	1.000%	0.250%

Exhibit 7

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

2008 FORM 10-K

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2008
or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File Number 001-08918

SUNTRUST BANKS, INC.

(Exact name of registrant as specified in its charter)

Georgia (State or other jurisdiction of incorporation or organization)	**58-1575035** (I.R.S. Employer Identification No.)

303 Peachtree Street, N.E., Atlanta, Georgia 30308
(Address of principal executive offices) (Zip Code)

(404) 588-7711
(Registrant's telephone number, including area code)

Securities registered pursuant to section 12(b) of the Act:

Title of each class	Name of exchange on which provided
Common Stock	New York Stock Exchange
Depository Shares, Each Representing 1/4000th Interest in a Share of Perpetual Preferred Stock, Series A	New York Stock Exchange

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act.
Yes ☐ No ☒

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting Common Stock held by non-affiliates at June 30, 2008 was approximately $12.7 billion, based on the New York Stock Exchange closing price for such shares on that date. For purposes of this calculation, the Registrant has assumed that its directors and executive officers are affiliates.

At February 18, 2009, 356,681,867 shares of the Registrant's Common Stock, $1.00 par value, were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Part III information is incorporated herein by reference, pursuant to Instruction G of Form 10-K, to SunTrust's Definitive Proxy Statement for its 2008 Annual Shareholder's Meeting, which will be filed with the Commission no later than April 30, 2009 (the "Proxy Statement").

Table of Contents

TABLE OF CONTENTS

Table of Contents

PART I

Item 1. BUSINESS

General

SunTrust Banks, Inc. ("SunTrust", the "Company", "we", "us", or "our"), one of the nation's largest commercial banking organizations, is a diversified financial services holding company whose businesses provide a broad range of financial services to consumer and corporate clients. SunTrust was incorporated in 1984 under the laws of the State of Georgia. The principal executive offices of the Company are located in the SunTrust Plaza, Atlanta, Georgia 30308.

Additional information relating to our businesses and our subsidiaries is included in the information set forth in Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations (the "MD&A"), and Note 22, "Business Segment Reporting," to the Consolidated Financial Statements in Item 8 of this report.

Primary Market Areas

Through its flagship subsidiary SunTrust Bank, the Company provides deposit, credit, and trust and investment services. Additional subsidiaries provide mortgage banking, asset management, securities brokerage, capital market services and credit-related insurance. SunTrust enjoys strong market positions in some of the most attractive markets in the United States and operates primarily within Florida, Georgia, Maryland, North Carolina, South Carolina, Tennessee, Virginia, and the District of Columbia. Within the geographic footprint, SunTrust operated under four business segments during 2008. These business segments were: Retail & Commercial, Wholesale Banking, Mortgage, and Wealth and Investment Management. In addition, SunTrust provides clients with a selection of technology-based banking channels, including the Internet, automated teller machines, PC and twenty-four hour telebanking. SunTrust's client base encompasses a broad range of individuals and families, businesses, institutions, and governmental agencies.

Acquisition and Disposition Activity

As part of its operations, the Company regularly evaluates the potential acquisition of, and holds discussions with, various financial institutions and other businesses of a type eligible for financial holding company ownership or control. In addition, the Company regularly analyzes the values of, and may submit bids for, the acquisition of customer-based funds and other liabilities and assets of such financial institutions and other businesses. The Company may also consider the potential disposition of certain of its assets, branches, subsidiaries or lines of businesses.

We completed the sale of our minority interest in Lighthouse Investment Partners, LLC on January 2, 2008 and effective May 1, 2008, we acquired GB&T Bancshares, Inc. ("GB&T"). On May 30, 2008, we sold our interests in First Mercantile Trust Company ("First Mercantile"), a retirement plan services subsidiary. Moreover, on September 2, 2008, we sold our fuel card business, TransPlatinum to Fleet One Holdings LLC. Additional information on these and other acquisitions and dispositions is included in Note 2, "Acquisitions/Dispositions," to the Consolidated Financial Statements in Item 8, which are incorporated herein by reference.

Government Supervision and Regulation

As a bank holding company and a financial holding company, the Company is subject to the regulation and supervision of the Board of Governors of the Federal Reserve System (the "Federal Reserve") and, in limited circumstances described herein, the United States Department of the Treasury (the "Treasury"). The Company's principal banking subsidiary, SunTrust Bank, is a Georgia state chartered bank with branches in Georgia, Florida, the District of Columbia, Maryland, Virginia, North Carolina, South Carolina, Tennessee, Alabama, West Virginia, Mississippi and Arkansas. SunTrust Bank is a member of the Federal Reserve System, and is regulated by the Federal Reserve, the Federal Deposit Insurance Corporation (the "FDIC") and the Georgia Department of Banking and Finance.

The Company's banking subsidiary is subject to various requirements and restrictions under federal and state law, including requirements to maintain cash reserves against deposits, restrictions on the types and amounts of loans that may be made, and the interest that may be charged thereon, and limitations on the types of investments that may be made and the types of services that may be offered. Various consumer laws and regulations also affect the operations of the bank and its subsidiaries. In addition to the impact of regulation, commercial banks are affected significantly by the actions of the Federal Reserve as it attempts to control the money supply and credit availability in order to influence the economy.

Pursuant to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, bank holding companies from any state may acquire banks located in any other state, subject to certain conditions, including concentration limits. In addition, a bank may establish branches across state lines by merging with a bank in another state, subject to certain restrictions. A bank

Table of Contents

holding company may not directly or indirectly acquire ownership or control of more than 5% of the voting shares or substantially all of the assets of any bank or merge or consolidate with another bank holding company without the prior approval of the Federal Reserve. Moreover, a bank and its affiliates may not, after the acquisition of another bank, control more than 10% of the amount of deposits of insured depository institutions in the United States. In addition, certain states may have limitations on the amount of deposits any bank may hold within that state.

There are a number of obligations and restrictions imposed on bank holding companies and their depository institution subsidiaries by federal law and regulatory policy that are designed to reduce potential loss exposure to the depositors of such depository institutions and to the FDIC insurance fund in the event the depository institution becomes in danger of default or is in default. For example, under a policy of the Federal Reserve with respect to bank holding company operations, a bank holding company is required to serve as a source of financial strength to its subsidiary depository institutions and commit resources to support such institutions in circumstances where it might not do so absent such policy. In addition, the “cross-guarantee” provisions of federal law require insured depository institutions under common control to reimburse the FDIC for any loss suffered or reasonably anticipated as a result of the default of a commonly controlled insured depository institution or for any assistance provided by the FDIC to a commonly controlled insured depository institution in danger of default. The federal banking agencies have broad powers under current federal law to take prompt corrective action to resolve problems of insured depository institutions. The extent of these powers depends upon whether the institutions in question are “well capitalized,” “adequately capitalized,” “undercapitalized,” “significantly undercapitalized” or “critically undercapitalized” as such terms are defined under regulations issued by each of the federal banking agencies.

The Federal Reserve and the FDIC have issued substantially similar risk-based and leverage capital guidelines applicable to United States banking organizations. In addition, these regulatory agencies may from time to time require that a banking organization maintain capital above the minimum levels, whether because of its financial condition or actual or anticipated growth. The Federal Reserve risk-based guidelines define a tier-based capital framework. Tier 1 capital includes common shareholders’ equity, trust preferred securities, minority interests and qualifying preferred stock, less goodwill (net of any qualifying deferred tax liability) and other adjustments. Tier 2 capital consists of preferred stock not qualifying as Tier 1 capital, mandatorily convertible debt, limited amounts of subordinated debt, other qualifying term debt, the allowance for credit losses up to a certain amount and a portion of the unrealized gain on equity securities. The sum of Tier 1 and Tier 2 capital represents the Company’s qualifying total capital. Risk-based capital ratios are calculated by dividing Tier 1 and total capital by risk-weighted assets. Assets and off-balance sheet exposures are assigned to one of four categories of risk-weights, based primarily on relative credit risk. In addition, the Company, and any bank with significant trading activity, must incorporate a measure for market risk in their regulatory capital calculations. The leverage ratio is determined by dividing Tier 1 capital by adjusted average total assets.

The Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”), among other things, identifies five capital categories for insured depository institutions (“well capitalized”, “adequately capitalized”, “undercapitalized”, “significantly undercapitalized” and “critically undercapitalized”) and requires the respective federal regulatory agencies to implement systems for “prompt corrective action” for insured depository institutions that do not meet minimum capital requirements within such categories. FDICIA imposes progressively more restrictive constraints on operations, management and capital distributions, depending on the category in which an institution is classified. Failure to meet the capital guidelines could also subject a banking institution to capital raising requirements. An “undercapitalized” bank must develop a capital restoration plan and its parent holding company must guarantee that bank’s compliance with the plan. The liability of the parent holding company under any such guarantee is limited to the lesser of five percent of the bank’s assets at the time it became “undercapitalized” or the amount needed to comply with the plan. Furthermore, in the event of the bankruptcy of the parent holding company, such guarantee would take priority over the parent’s general unsecured creditors. In addition, FDICIA requires the various regulatory agencies to prescribe certain non-capital standards for safety and soundness relating generally to operations and management, asset quality, and executive compensation and permits regulatory action against a financial institution that does not meet such standards.

The various regulatory agencies have adopted substantially similar regulations that define the five capital categories identified by FDICIA, using the total risk-based capital, Tier 1 risk-based capital and leverage capital ratios as the relevant capital measures. Such regulations establish various degrees of corrective action to be taken when an institution is considered undercapitalized. Under the regulations, a “well capitalized” institution must have a Tier 1 risk-based capital ratio of at least six percent, a total risk-based capital ratio of at least ten percent and a leverage ratio of at least five percent and not be subject to a capital directive order.

Regulators also must take into consideration: (a) concentrations of credit risk; (b) interest rate risk (when the interest rate sensitivity of an institution’s assets does not match the sensitivity of its liabilities or its off-balance-sheet position); and (c) risks from non-traditional activities, as well as an institution’s ability to manage those risks, when determining the adequacy of an institution’s capital. This evaluation will be made as a part of the institution’s regular safety and soundness examination.

Table of Contents

There are various legal and regulatory limits on the extent to which the Company's subsidiary bank may pay dividends or otherwise supply funds to the Company. In addition, federal and state bank regulatory agencies also have the authority to prevent a bank or bank holding company from paying a dividend or engaging in any other activity that, in the opinion of the agency, would constitute an unsafe or unsound practice. The Federal Deposit Insurance Act provides that, in the event of the "liquidation or other resolution" of an insured depository institution, the claims of depositors of the institution (including the claims of the FDIC as subrogee of insured depositors) and certain claims for administrative expenses of the FDIC as a receiver will have priority over other general unsecured claims against the institution. If an insured depository institution fails, insured and uninsured depositors, along with the FDIC, will have priority in payment ahead of unsecured, nondeposit creditors, including the parent bank holding company, with respect to any extensions of credit they have made to such insured depository institution.

The FDIC merged the Bank Insurance Fund ("BIF") and the Savings Association Insurance Fund ("SAIF") to form the Deposit Insurance Fund ("DIF") on March 31, 2006 in accordance with the Federal Deposit Insurance Reform Act of 2005. The FDIC maintains the DIF by assessing depository institutions an insurance premium. The amount each institution is assessed is based upon statutory factors that include the balance of insured deposits as well as the degree of risk the institution poses to the insurance fund. The FDIC recently increased the amount of deposits it insures from $100,000 to $250,000. This increase is temporary and will continue through December 31, 2009. Additionally, under the temporary liquidity guarantee program (the "TLGP"), transactional accounts are fully insured, as described below. The Company's banking subsidiary pays an insurance premium into the DIF based on the total amount in each individual deposit account held at the Company's banking subsidiary, up to $250,000 for each account. The FDIC uses a risk-based premium system that assesses higher rates on those institutions that pose greater risks to the DIF. The FDIC places each institution in one of four risk categories using a two-step process based first on capital ratios (the capital group assignment) and then on other relevant information (the supervisory group assignment). Recently, the FDIC increased the amount assessed from financial institutions by increasing its risk-based deposit insurance assessment scale uniformly by seven (7) basis points for first quarter 2009. The assessment scale for first quarter 2009 will range from twelve (12) basis points of assessable deposits for the strongest institutions to fifty (50) basis points for the weakest.

On October 14, 2008, the FDIC announced the TLGP that guarantees certain debt issued and the transactional accounts of financial institutions. The Company has opted to participate in both the FDIC's debt guarantee and transaction account guarantee programs. The FDIC assesses insurance premiums from participating depository institutions to fund the FDIC's obligations under both the debt guarantee program and the transaction account guarantee program. With respect to the debt guarantee program, the FDIC insures all senior, unsecured debt with a maturity of 31 days or more until the earlier of (i) June 30, 2012 or (ii) the maturity of the debt. The FDIC assesses a fee, payable upon issuance, for participation in the debt guarantee program (a) for debt with a maturity of 180 days or less, an amount equal to the product of the total amount of the debt issued, the term of the debt expressed in years and 50 basis points; (b) for debt with a maturity of 181 days to 364 days, an amount equal to the product of the total amount of the debt issued, the term of the debt expressed in years and 75 basis points; and (c) for debt with a maturity of greater than 365 days, an amount equal to the product of the total amount of the debt issued, the term of the debt expressed in years and 100 basis points. With respect to the transaction account guarantee program, the FDIC insures the funds in all non-interest bearing transactional accounts greater than $250,000 until December 31, 2009. The FDIC assesses a quarterly annualized fee equal to the product of 10 basis points and the sum of the amount by which the non-interest bearing transactional accounts of the Company's banking subsidiary have funds greater than $250,000 in each account.

FDIC regulations require that management report annually on its responsibility for preparing its institution's financial statements, establishing and maintaining an internal control structure and procedures for financial reporting, and compliance with designated laws and regulations concerning safety and soundness.

On November 12, 1999, financial modernization legislation known as the Gramm-Leach-Bliley Act (the "GLB Act") was signed into law. Under the GLB Act, a bank holding company which elects to become a financial holding company may engage in expanded securities activities, insurance sales, and underwriting activities, and other financial activities, and may also acquire securities firms and insurance companies, subject in each case to certain conditions. The Company has elected to become a financial holding company under the GLB Act. If any of our banking subsidiaries ceases to be "well capitalized" or "well managed" under applicable regulatory standards, the Federal Reserve may, among other things, place limitations on our ability to conduct these broader financial activities or, if the deficiencies persist, require us to divest the banking subsidiary. In order to become and maintain its status as a financial holding company, the Company and all of its affiliated depository institutions must be "well-capitalized," "well-managed," and have at least a satisfactory Community Reinvestment Act of 1977 ("CRA") rating. Furthermore, if the Federal Reserve determines that a financial holding company has not maintained a satisfactory CRA rating, the Company will not be able to commence any new financial activities or acquire a company that engages in such activities, although the Company will still be allowed to engage in activities closely related to banking and make investments in the ordinary course of conducting merchant banking activities.

Table of Contents

The USA Patriot Act of 2001 ("Patriot Act") substantially broadens existing anti-money laundering legislation and the extraterritorial jurisdiction of the United States; imposes new compliance and due diligence obligations; creates new crimes and penalties; compels the production of documents located both inside and outside the United States, including those of non-U.S. institutions that have a correspondent relationship in the United States; and clarifies the safe harbor from civil liability to clients. The Treasury has issued a number of regulations that further clarify the Patriot Act's requirements or provide more specific guidance on their application. The Patriot Act requires all "financial institutions," as defined, to establish certain anti-money laundering compliance and due diligence programs. The Patriot Act requires financial institutions that maintain correspondent accounts for non-U.S. institutions, or persons that are involved in private banking for "non-United States persons" or their representatives, to establish, "appropriate, specific and, where necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts." Bank regulators are focusing their examinations on anti-money laundering compliance, and the Company continues to enhance its anti-money laundering compliance programs.

Federal banking regulators, as required under the GLB Act, have adopted rules limiting the ability of banks and other financial institutions to disclose nonpublic information about consumers to nonaffiliated third parties. The rules require disclosure of privacy policies to consumers and, in some circumstances, allow consumers to prevent disclosure of certain personal information to nonaffiliated third parties. The privacy provisions of the GLB Act affect how consumer information is transmitted through diversified financial services companies and conveyed to outside vendors.

The Company is subject to the rules and regulations promulgated under the Emergency Economic Stabilization Act of 2008 ("EESA") by virtue of the Company's sale of preferred stock to the Treasury. The statute and regulations include certain limitations on compensation for senior executives, dividend payments, and payments to senior executives upon termination of employment. Additional information relating to the restrictions on dividends and redemptions is included in the information set forth in Item 7 of this report under the caption, "Liquidity Risk." Furthermore, under rules and regulations of EESA to which the Company is subject, no dividends may be declared or paid on the Company's common stock and the Company may not repurchase or redeem any common stock unless dividends due with respect to Senior Preferred Shares have been paid in full. Moreover, the consent of the Treasury will be required for any increase in the per share dividends on the Company's common stock, beyond the per share dividend declared prior to October 14, 2008 ($0.77 per share per quarter) until the third anniversary of the date of Treasury's investment; unless prior to the third anniversary, the Senior Preferred Shares are redeemed in whole or the Treasury has transferred all of its shares to third parties. Under this provision the Company could reduce its dividend and subsequently restore it to no more than $0.77 per share per quarter at any time. Additionally, if the Company pays a dividend in excess of $0.54 per share before the tenth anniversary then the anti-dilution provisions of the U.S. Treasury's warrants will reduce its exercise price and increase the number of shares issuable upon exercise of the warrant.

Because of the Company's participation in EESA, the Treasury is permitted to determine whether the public disclosure required for the Company with respect to the Company's off-balance sheet transactions, derivative instruments, contingent liabilities and similar sources of exposure are adequate to provide the public sufficient information as to the true financial position of the Company. If the Treasury were to determine that such disclosure is not adequate for such purpose, the Treasury will make additional recommendations for additional disclosure requirements to the Federal Reserve, the Company's primary federal regulator.

Because of the Company's participation in EESA, the Company is subject to certain restrictions on its executive compensation practices, which are discussed in Item 11 of this report.

The Company's non-banking subsidiaries are regulated and supervised by various regulatory bodies. For example, SunTrust Robinson Humphrey, Inc. is a broker-dealer registered with the Securities and Exchange Commission ("SEC") and the Financial Industry Regulatory Authority, Inc. ("FINRA"). SunTrust Investment Services, Inc. is also a broker-dealer and investment adviser registered with the SEC and a member of the FINRA. RidgeWorth Capital Management, Inc. ("RidgeWorth;" formerly Trusco Capital Management, Inc.) and several of Ridgeworth's subsidiaries are investment advisers registered with the SEC.

In addition, there have been a number of legislative and regulatory proposals that would have an impact on the operation of bank/financial holding companies and their bank and non-bank subsidiaries. It is impossible to predict whether or in what form these proposals may be adopted in the future and, if adopted, what their effect will be on us.

Competition

SunTrust operates in a highly competitive industry that could become even more competitive as a result of legislative, regulatory, economic, and technological changes, as well as continued consolidation. The Company also faces aggressive competition from other domestic and foreign lending institutions and from numerous other providers of financial services. The ability of non-banking financial institutions to provide services previously limited to commercial banks has intensified

Table of Contents

competition. Because non-banking financial institutions are not subject to the same regulatory restrictions as banks and bank holding companies, they can often operate with greater flexibility and lower cost structures. Although non-banking financial institutions may not have the same access to government programs enacted under EESA or the TLGP, those non-banking financial institutions may elect to become financial holding companies and gain such access. Securities firms and insurance companies that elect to become financial holding companies may acquire banks and other financial institutions. This may significantly change the competitive environment in which the Company conducts business. Some of the Company's competitors have greater financial resources or face fewer regulatory constraints. As a result of these various sources of competition, the Company could lose business to competitors or be forced to price products and services on less advantageous terms to retain or attract clients, either of which would adversely affect the Company's profitability.

As a result of recent economic events, there has been an increase in the number of failures and acquisitions of commercial and investment banks, including large commercial and investment banks. This has allowed certain larger financial institutions to acquire a presence in our footprint. Additionally, certain large financial institutions that were formerly engaged primarily in investment banking activities have amended their charters to become regulated commercial banks, thereby increasing the direct competitors to the Company. Consequently, merger activity has increased within the banking industry.

The Company's ability to expand into additional states remains subject to various federal and state laws. See "Government Supervision and Regulation" for a more detailed discussion of interstate banking and branching legislation and certain state legislation.

Employees

As of December 31, 2008, there were 29,333 full-time equivalent employees within SunTrust. None of the domestic employees within the Company are subject to a collective bargaining agreement. Management considers its employee relations to be good.

Additional Information

See also the following additional information which is incorporated herein by reference: Business Segments (under the captions "Business Segments" in Item 7, the MD&A, and "Business Segment Reporting" in Note 22 to the Consolidated Financial Statements in Item 8, Financial Statements and Supplementary Data); Net Interest Income (under the captions "Net Interest Income/Margin" in the MD&A and "Selected Financial Data" in Item 6); Securities (under the caption "Securities Available for Sale" in the MD&A and Note 5 to the Consolidated Financial Statements); Outstanding Loans and Leases (under the caption "Loans" in the MD&A and Note 6 to the Consolidated Financial Statements); Deposits (under the caption "Deposits" in the MD&A); Short-Term Borrowings (under the captions "Liquidity Risk" and "Other Short-Term Borrowings and Long-Term Debt" in the MD&A and Note 10 "Other Short-Term Borrowings and Contractual Commitments" to the Consolidated Financial Statements); Trading Activities in the MD&A and Trading Assets and Liabilities (under the caption "Trading Assets and Liabilities" in the MD&A and "Trading Assets and Liabilities" and "Fair Value Election and Measurement" in Notes 4 and 20, respectively, to the Consolidated Financial Statements); Market Risk Management (under the caption "Market Risk Management" in the MD&A); Liquidity Risk Management (under the caption "Liquidity Risk" in the MD&A); and Operational Risk Management (under the caption "Operational Risk Management" in the MD&A).

SunTrust's Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 ("the Exchange Act") are available on the Company's website at www.suntrust.com under the Investor Relations Section as soon as reasonably practicable after the Company electronically files such material with, or furnishes it to the SEC. The public may read and copy any materials the Company files with the SEC at the SEC Public Reference Room at 100 F Street, NE, Washington, DC 20549. The public may also obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet site that contains reports, proxy, and information statements, and other information regarding issuers that file electronically with the SEC. The SEC's website address is www.sec.gov. In addition, SunTrust makes available on its website at www.suntrust.com under the heading Corporate Governance its: (i) Code of Ethics; (ii) Corporate Governance Guidelines; and (iii) the charters of SunTrust Board committees, and also intends to disclose any amendments to its Code of Ethics, or waivers of the Code of Ethics on behalf of its Chief Executive Officer, Chief Financial Officer and Principal Accounting Officer, on its website. These corporate governance materials are also available free of charge in print to shareholders who request them in writing to: SunTrust Banks, Inc., Attention: Investor Relations, P.O. Box 4418, Mail Code GA-ATL-634, Atlanta, Georgia 30302-4418.

The Company's Annual Report on Form 10-K is being distributed to shareholders in lieu of a separate annual report containing financial statements of the Company and its consolidated subsidiaries.

Table of Contents

Item 1A. RISK FACTORS

Possible Additional Risks

The risks listed here are not the only risks we face. Additional risks that are not presently known, or that we presently deem to be immaterial, also could have a material adverse effect on our financial condition, results of operations, business, and prospects.

Recent Market, Legislative, and Regulatory Events

Difficult market conditions have adversely affected our industry.
Dramatic declines in the housing market over the past two years, with falling home prices and increasing foreclosures, unemployment and under-employment, have negatively impacted the credit performance of real estate related loans and resulted in significant write-downs of asset values by financial institutions. These write-downs, initially of asset-backed securities ("ABS") but spreading to other securities and loans, have caused many financial institutions to seek additional capital, to reduce or eliminate dividends, to merge with larger and stronger institutions and, in some cases, to fail. Reflecting concern about the stability of the financial markets generally and the strength of counterparties, many lenders and institutional investors have reduced or ceased providing funding to borrowers, including to other financial institutions. This market turmoil and tightening of credit have led to an increased level of commercial and consumer delinquencies, lack of consumer confidence, increased market volatility and widespread reduction of business activity generally. The resulting economic pressure on consumers and lack of confidence in the financial markets has adversely affected our business, financial condition and results of operations. Market developments may affect consumer confidence levels and may cause adverse changes in payment patterns, causing increases in delinquencies and default rates, which may impact our charge-offs and provision for credit and fraud losses. A worsening of these conditions would likely exacerbate the adverse effects of these difficult market conditions on us and others in the financial institutions industry.

Current levels of market volatility are unprecedented.
The capital and credit markets have been experiencing volatility and disruption for more than 12 months. Recently, volatility and disruption have reached unprecedented levels. In some cases, the markets have produced downward pressure on stock prices and credit availability for certain issuers without regard to those issuers' underlying financial strength. If current levels of market disruption and volatility continue or worsen, there can be no assurance that we will not experience an adverse effect, which may be material, on our ability to access capital and on our business, financial condition and results of operations.

Numerous facts and circumstances are considered when evaluating the carrying value of our goodwill. One of those considerations is the market capitalization of the Company, evaluated over a reasonable period of time, in relation to the aggregate estimated fair value of the reporting units. While this comparison provides some relative market information regarding the estimated fair value of the reporting units, it is not determinative and needs to be evaluated in the context of the current economic and political environment. However, significant and/or sustained declines in the Company's market capitalization, especially in relation to the Company's book value, could be an indication of potential impairment of goodwill.

The soundness of other financial institutions could adversely affect us.
Our ability to engage in routine funding transactions could be adversely affected by the actions and commercial soundness of other financial institutions. Financial services institutions are interrelated as a result of trading, clearing, counterparty, or other relationships. We have exposure to many different industries and counterparties, and we routinely execute transactions with counterparties in the financial industry, including brokers and dealers, commercial banks, investment banks, mutual and hedge funds, and other institutional clients. As a result, defaults by, or even rumors or questions about, one or more financial services institutions, or the financial services industry generally, have led to market-wide liquidity problems and could lead to losses or defaults by us or by other institutions. Many of these transactions expose us to credit risk in the event of default of our counterparty or client. In addition, our credit risk may be exacerbated when the collateral held by us cannot be realized upon or is liquidated at prices not sufficient to recover the full amount of the financial instrument exposure due us. There is no assurance that any such losses would not materially and adversely affect our results of operations.

There can be no assurance that enacted legislation or any proposed federal programs will stabilize the U.S. financial system and such legislation and programs may adversely affect us.
On October 3, 2008, President George W. Bush signed into law the EESA. The legislation was the result of a proposal by Treasury Secretary Henry Paulson to the U.S. Congress in response to the financial crises affecting the banking system and financial markets and threats to investment banks and other financial institutions. Pursuant to the EESA, the Treasury will have the authority to, among other things, purchase up to $700 billion of mortgages, mortgage-backed securities ("MBS") and certain other financial instruments from financial institutions for the purpose of stabilizing and providing liquidity to the

Table of Contents

U.S. financial markets. Also on October 14, 2008, the Treasury announced a program under the EESA pursuant to which it would make senior preferred stock investments in participating financial institutions (the "Capital Purchase Program"). On October 14, 2008, the Federal Deposit Insurance Corporation announced the TLGP under the systemic risk exception to the Federal Deposit Act ("FDA") pursuant to which the FDIC would offer a guarantee of certain financial institution indebtedness in exchange for an insurance premium to be paid to the FDIC by issuing financial institutions.

We have participated in the Capital Purchase Program and issued debt under the TLGP. There can be no assurance, however, as to the actual impact that the EESA and its implementing regulations, the FDIC programs, or any other governmental program will have on the financial markets or our participation in either program on our results. The failure of the EESA, the FDIC, or the U.S. government to stabilize the financial markets and a continuation or worsening of current financial market conditions could materially and adversely affect our business, financial condition, results of operations, and access to credit or the trading price of our common stock.

Contemplated and proposed legislation, state and federal programs, and increased government control or influence may adversely affect us by increasing the uncertainty in our lending operations and expose us to increased losses, including legislation that would allow bankruptcy courts to permit modifications to mortgage loans on a debtor's primary residence, moratoriums on a mortgagor's right to foreclose on property, and requirements that fees be paid to register other real estate owned property. Statutes and regulations may be altered that may potentially increase our costs to service and underwrite mortgage loans. Additionally, federal intervention and operation of formerly private institutions may adversely affect our rights under contracts with such institutions and the way in which we conduct business in certain markets.

The impact on us of recently enacted legislation, in particular the EESA and its implementing regulations, and actions by the FDIC, cannot be predicted at this time.
The programs established or to be established under the EESA and Troubled Asset Relief Program may have adverse effects upon us. Because we participate in the Capital Purchase Program, we are subject to increased regulation, and we may face additional regulations or changes to regulations to which we are subject as a result of our participation. Compliance with such regulation may increase our costs and limit our ability to pursue business opportunities. For example, participation in the Capital Purchase Program limits (without the consent of the Treasury) our ability to increase our dividend or to repurchase our common stock for so long as any securities issued under such program remain outstanding. Also, the cumulative dividend payable under the preferred stock that we issued to the Treasury pursuant to the Capital Purchase Program increases from 5% to 9% after 5 years. Please also refer to our discussions of "Liquidity Risk" and "Capital Resources" in Item 7 of this report. Additionally, we may not deduct interest paid on our preferred stock for income tax purposes. Participating in the Capital Purchase Program also subjects us to additional executive compensation restrictions. We discuss these in greater detail in our proxy statement, which we incorporate by reference into Item 11 of this report.

Similarly, any program established by the FDIC under the systemic risk exception of the FDA, may adversely affect us whether we participate or not. Our participation in the TLGP requires we pay additional insurance premiums to the FDIC. Additionally, the FDIC has increased premiums on insured accounts because market developments, including the increase of failures in the banking industry, have significantly depleted the insurance fund of the FDIC and reduced the ratio of reserves to insured deposits.

Treasury "Stress Tests" and Other Actions may Adversely Affect Bank Operations and Value of Shares.
On February 10, 2009, the U.S. Treasury Secretary outlined a plan to restore stability to the financial system. This announcement included reference to a plan by the Treasury to conduct "stress tests" of banks which received funds under the Capital Purchase Program and similar Treasury programs. The methods and procedures to be used by the Treasury in conducting its "stress tests," how these methods and procedures will be applied, and the significance or consequence of such tests presently are not known. Any of these or their consequences could adversely affect us, our bank operations and the value of SunTrust shares, among other things.

Business Risks

Credit risk.
When we loan money, commit to loan money or enter into a letter of credit or other contract with a counterparty, we incur credit risk, or the risk of losses if our borrowers do not repay their loans or our counterparties fail to perform according to the terms of their contracts. A number of our products expose us to credit risk, including loans, leases and lending commitments, derivatives, trading account assets, insurance arrangements with respect to such products, and assets held for sale. As one of the nation's largest lenders, the credit quality of our portfolio can have a significant impact on our earnings. We estimate and establish reserves for credit risks and credit losses inherent in our credit exposure (including unfunded credit commitments). This process, which is critical to our financial results and condition, requires difficult, subjective and complex judgments, including forecasts of economic conditions and how these economic predictions might impair the ability of our borrowers to

Table of Contents

repay their loans. As is the case with any such assessments, there is always the chance that we will fail to identify the proper factors or that we will fail to accurately estimate the impacts of factors that we identify.

Weakness in the economy and in the real estate market, including specific weakness within our geographic footprint, has adversely affected us and may continue to adversely affect us.
If the strength of the U.S. economy in general and the strength of the local economies in which we conduct operations decline, or continue to decline, this could result in, among other things, a deterioration of credit quality or a reduced demand for credit, including a resultant effect on our loan portfolio and allowance for loan and lease losses. A significant portion of our residential mortgages and commercial real estate loan portfolios are composed of borrowers in the Southeastern and Mid-Atlantic regions of the United States, in which certain markets have been particularly adversely affected by declines in real estate value, declines in home sale volumes, and declines in new home building. These factors could result in higher delinquencies and greater charge-offs in future periods, which would materially adversely affect our financial condition and results of operations.

Weakness in the real estate market, including the secondary residential mortgage loan markets, has adversely affected us and may continue to adversely affect us.
Significant ongoing disruptions in the secondary market for residential mortgage loans have limited the market for and liquidity of many mortgage loans. The effects of ongoing mortgage market challenges, combined with the ongoing correction in residential real estate market prices and reduced levels of home sales, could result in further price reductions in single family home values, adversely affecting the value of collateral securing mortgage loans that we hold, mortgage loan originations and profits on sales of mortgage loans. Declining real estate prices have caused higher delinquencies and losses on certain mortgage loans, particularly Alt-A mortgages and home equity lines of credit and mortgage loans sourced from brokers that are outside our branch bank network. These trends could continue. These conditions have resulted in losses, write downs and impairment charges in our mortgage and other lines of business. Continued declines in real estate values, home sales volumes, financial stress on borrowers as a result of job losses, interest rate resets on adjustable rate mortgage loans or other factors could have further adverse effects on borrowers that could result in higher delinquencies and greater charge-offs in future periods, which adversely affect our financial condition or results of operations. Additionally, counterparties to insurance arrangements used to mitigate risk associated with increased foreclosures in the real estate market are stressed by weaknesses in the real estate market and a commensurate increase in the number of claims. Additionally, decreases in real estate values might adversely affect the creditworthiness of state and local governments, and this might result in decreased profitability or credit losses from loans made to such governments. A decline in home values or overall economic weakness could also have an adverse impact upon the value of real estate or other assets which we own upon foreclosing a loan and our ability to realize value on such assets.

Weakness in the real estate market may adversely affect our reinsurance subsidiary.
The Company has a subsidiary (Twin Rivers Insurance Company) which provides mortgage reinsurance on certain mortgage loans through contracts with several primary mortgage insurance companies. Under these contracts, Twin Rivers Insurance Company ("Twin Rivers") provides aggregate excess loss coverage in a mezzanine layer in exchange for a portion of the pool's mortgage insurance premiums. The reinsurance contracts are intended to place limits on Twin Rivers' maximum exposure to losses by defining the loss amounts ceded to Twin Rivers, as well as by establishing trust accounts for each contract. The trust accounts, which are comprised of funds contributed by Twin Rivers plus premiums earned under the reinsurance contracts, are maintained to fund claims made under the specific reinsurance contracts with individual primary mortgage insurers and are independent of each other. If claims exceed funds held in the trust accounts, Twin Rivers does not expect to make additional contributions beyond future premiums earned under the existing contracts. Twin Rivers maintains a reserve for estimated losses under its reinsurance contracts, which is an estimate of losses resulting from claims to be paid by the trusts. On an ongoing basis, Twin Rivers assesses the sufficiency of future revenues, including premiums and investment income on funds held in the trusts, to cover future claims.

Due to the deterioration of the real estate market and an increase in defaults under mortgage contracts, the funds in certain trusts may be less than the obligations created under such contracts. Twin Rivers does not believe it is required nor does it intend to make additional capital contributions to cover obligations in excess of funds held by the trusts; however, Twin Rivers' profitability could be adversely affected if the primary mortgage insurance companies pursue Twin Rivers for such shortfalls.

As a financial services company, adverse changes in general business or economic conditions could have a material adverse effect on our financial condition and results of operations.
A sustained weakness or weakening in business and economic conditions generally or specifically in the principal markets in which we do business could have one or more of the following adverse impacts on our business:
- A decrease in the demand for loans and other products and services offered by us;
- A decrease in the value of our loans held for sale or other assets secured by consumer or commercial real estate;
- An increase or decrease in the usage of unfunded commitments;

Table of Contents

- A loss of clients and/or reduced earnings could trigger an impairment of certain intangible assets, such as goodwill;
- An increase in the number of clients and counterparties who become delinquent, file for protection under bankruptcy laws or default on their loans or other obligations to us. An increase in the number of delinquencies, bankruptcies or defaults could result in a higher level of nonperforming assets, net charge-offs, provision for loan losses, and valuation adjustments on loans held for sale.

Changes in market interest rates or capital markets could adversely affect our revenue and expense, the value of assets and obligations, and the availability and cost of capital or liquidity.
Given our business mix, and the fact that most of the assets and liabilities are financial in nature, we tend to be sensitive to market interest rate movements and the performance of the financial markets. In addition to the impact of the general economy, changes in interest rates or in valuations in the debt or equity markets could directly impact us in one or more of the following ways:

- The yield on earning assets and rates paid on interest bearing liabilities may change in disproportionate ways;
- The value of certain balance sheet and off-balance sheet financial instruments or the value of equity investments that we hold could decline;
- The value of assets for which we provide processing services could decline; or
- To the extent we access capital markets to raise funds to support our business, such changes could affect the cost of such funds or the ability to raise such funds.

The fiscal and monetary policies of the federal government and its agencies could have a material adverse effect on our earnings.
The Board of Governors of the Federal Reserve System regulates the supply of money and credit in the United States. Its policies determine in large part the cost of funds for lending and investing and the return earned on those loans and investments, both of which affect the net interest margin. They can also materially decrease the value of financial assets we hold, such as debt securities and mortgage servicing rights ("MSRs"). Its policies can also adversely affect borrowers, potentially increasing the risk that they may fail to repay their loans. Changes in Federal Reserve Board policies are beyond our control and difficult to predict; consequently, the impact of these changes on our activities and results of operations is difficult to predict.

We may be required to repurchase mortgage loans or indemnify mortgage loan purchasers as a result of breaches of representations and warranties, borrower fraud, or certain borrower defaults, which could harm our liquidity, results of operations, and financial condition.
When we sell mortgage loans, whether as whole loans or pursuant to a securitization, we are required to make customary representations and warranties to the purchaser about the mortgage loans and the manner in which they were originated. Our whole loan sale agreements require us to repurchase or substitute mortgage loans in the event we breach any of these representations or warranties. In addition, we may be required to repurchase mortgage loans as a result of borrower fraud or in the event of early payment default of the borrower on a mortgage loan. Likewise, we are required to repurchase or substitute mortgage loans if we breach a representation or warranty in connection with our securitizations. The remedies available to us against the originating broker or correspondent may not be as broad as the remedies available to a purchaser of mortgage loans against us, and we face the further risk that the originating broker or correspondent may not have the financial capacity to perform remedies that otherwise may be available to us. Therefore, if a purchaser enforces its remedies against us, we may not be able to recover our losses from the originating broker or correspondent. Recently, we have received an increased number of repurchase and indemnity demands from purchasers as a result of borrower fraud. This increase in repurchase demands, combined with an increase in expected loss severity on repurchased loans due to deteriorating real estate values and liquidity for impaired loans, has resulted in a significant increase in the amount of accrued losses for repurchases as of December 31, 2008. While we have taken steps to enhance our underwriting policies and procedures, there can be no assurance that these steps will be effective or reduce risk associated with loans sold in the past. If repurchase and indemnity demands increase, our liquidity, results of operations and financial condition will be adversely affected.

Clients could pursue alternatives to bank deposits, causing us to lose a relatively inexpensive source of funding.
Checking and savings account balances and other forms of client deposits could decrease if clients perceive alternative investments, such as the stock market, as providing superior expected returns. When clients move money out of bank deposits in favor of alternative investments, we can lose a relatively inexpensive source of funds, increasing our funding costs.

Consumers may decide not to use banks to complete their financial transactions, which could affect net income.
Technology and other changes now allow parties to complete financial transactions without banks. For example, consumers can pay bills and transfer funds directly without banks. This process could result in the loss of fee income, as well as the loss of client deposits and the income generated from those deposits.

Table of Contents

We have businesses other than banking which subject us to a variety of risks.
We are a diversified financial services company. This diversity subjects earnings to a broader variety of risks and uncertainties.

Hurricanes and other natural disasters may adversely affect loan portfolios and operations and increase the cost of doing business.
Large scale natural disasters may significantly affect loan portfolios by damaging properties pledged as collateral and by impairing the ability of certain borrowers to repay their loans. The nature and level of natural disasters cannot be predicted and may be exacerbated by global climate change. The ultimate impact of a natural disaster on future financial results is difficult to predict and will be affected by a number of factors, including the extent of damage to the collateral, the extent to which damaged collateral is not covered by insurance, the extent to which unemployment and other economic conditions caused by the natural disaster adversely affect the ability of borrowers to repay their loans, and the cost of collection and foreclosure moratoriums, loan forbearances and other accommodations granted to borrowers and other clients.

Negative public opinion could damage our reputation and adversely impact business and revenues.
As a financial institution, our earnings and capital are subject to risks associated with negative public opinion. Negative public opinion could result from our actual or alleged conduct in any number of activities, including lending practices, the failure of any product or service sold by us to meet our clients' expectations or applicable regulatory requirements, corporate governance and acquisitions, or from actions taken by government regulators and community organizations in response to those activities. Negative public opinion can adversely affect our ability to keep and attract and/or retain clients and can expose us to litigation and regulatory action. Actual or alleged conduct by one of our businesses can result in negative public opinion about our other businesses. Negative public opinion could also affect our credit ratings, which are important to its access to unsecured wholesale borrowings. Significant changes in these ratings could change the cost and availability of these sources of funding.

We rely on other companies to provide key components of our business infrastructure.
Third parties provide key components of our business infrastructure such as banking services, processing, and Internet connections and network access. Any disruption in such services provided by these third parties or any failure of these third parties to handle current or higher volumes of use could adversely affect our ability to deliver products and services to clients and otherwise to conduct business. Technological or financial difficulties of a third party service provider could adversely affect our business to the extent those difficulties result in the interruption or discontinuation of services provided by that party. We may not be insured against all types of losses as a result of third party failures and our insurance coverage may be inadequate to cover all losses resulting from system failures or other disruptions. Failures in our business infrastructure could interrupt the operations or increase the costs of doing business.

We rely on our systems, employees, and certain counterparties, and certain failures could materially adversely affect our operations.
We are exposed to many types of operational risk, including the risk of fraud by employees and outsiders, clerical and record-keeping errors, and computer/telecommunications systems malfunctions. Our businesses are dependent on our ability to process a large number of increasingly complex transactions. If any of our financial, accounting, or other data processing systems fail or have other significant shortcomings, we could be materially adversely affected. We are similarly dependent on our employees. We could be materially adversely affected if one of our employees causes a significant operational break-down or failure, either as a result of human error or where an individual purposefully sabotages or fraudulently manipulates our operations or systems. Third parties with which we do business could also be sources of operational risk to us, including relating to break-downs or failures of such parties' own systems or employees. Any of these occurrences could result in a diminished ability of us to operate one or more of our businesses, potential liability to clients, reputational damage and regulatory intervention, which could materially adversely affect us.

We may also be subject to disruptions of our operating systems arising from events that are wholly or partially beyond our control, which may include, for example, computer viruses or electrical or telecommunications outages or natural disasters, or events arising from local or regional politics, including terrorist acts. Such disruptions may give rise to losses in service to clients and loss or liability to us. In addition there is the risk that our controls and procedures as well as business continuity and data security systems prove to be inadequate. Any such failure could affect our operations and could materially adversely affect our results of operations by requiring us to expend significant resources to correct the defect, as well as by exposing us to litigation or losses not covered by insurance.

We depend on the accuracy and completeness of information about clients and counterparties.
In deciding whether to extend credit or enter into other transactions with clients and counterparties, we may rely on information furnished by or on behalf of clients and counterparties, including financial statements and other financial information. We also may rely on representations of clients and counterparties as to the accuracy and completeness of that information and, with respect to financial statements, on reports of independent auditors.

Table of Contents

Industry Risks

Regulation by federal and state agencies could adversely affect the business, revenue, and profit margins.
We are heavily regulated by federal and state agencies. This regulation is to protect depositors, the federal deposit insurance fund and the banking system as a whole. Congress and state legislatures and federal and state regulatory agencies continually review banking laws, regulations, and policies for possible changes. Changes to statutes, regulations, or regulatory policies, including interpretation or implementation of statutes, regulations, or policies, could affect us adversely, including limiting the types of financial services and products we may offer and/or increasing the ability of nonbanks to offer competing financial services and products. Also, if we do not comply with laws, regulations, or policies, we could receive regulatory sanctions and damage to our reputation.

Competition in the financial services industry is intense and could result in losing business or reducing margins.
We operate in a highly competitive industry that could become even more competitive as a result of legislative, regulatory and technological changes, and continued consolidation. We face aggressive competition from other domestic and foreign lending institutions and from numerous other providers of financial services. The ability of non-banking financial institutions to provide services previously limited to commercial banks has intensified competition. Because non-banking financial institutions are not subject to the same regulatory restrictions as banks and bank holding companies, they can often operate with greater flexibility and lower cost structures. Securities firms and insurance companies that elect to become financial holding companies may acquire banks and other financial institutions. This may significantly change the competitive environment in which we conduct business. Some of our competitors have greater financial resources and/or face fewer regulatory constraints. As a result of these various sources of competition, we could lose business to competitors or be forced to price products and services on less advantageous terms to retain or attract clients, either of which would adversely affect our profitability.

Future legislation could harm our competitive position.
Federal, state, and local legislatures increasingly have been considering proposals to substantially change the financial institution regulatory system and to expand or contract the powers of banking institutions and bank holding companies. Various legislative bodies have also recently been considering altering the existing framework governing creditors' rights, including legislation that would result in or allow loan modifications of various sorts. Such legislation may change banking statutes and the operating environment in substantial and unpredictable ways. If enacted, such legislation could increase or decrease the cost of doing business, limit or expand permissible activities, or affect the competitive balance among banks, savings associations, credit unions, and other financial institutions. We cannot predict whether new legislation will be enacted and, if enacted, the effect that it, or any regulations, would have on our activities, financial condition, or results of operations.

Maintaining or increasing market share depends on market acceptance and regulatory approval of new products and services.
Our success depends, in part, on the ability to adapt products and services to evolving industry standards. There is increasing pressure to provide products and services at lower prices. This can reduce net interest income and noninterest income from fee-based products and services. In addition, the widespread adoption of new technologies could require us to make substantial capital expenditures to modify or adapt existing products and services or develop new products and services. We may not be successful in introducing new products and services in response to industry trends or development in technology, or those new products may not achieve market acceptance. As a result, we could lose business, be forced to price products and services on less advantageous terms to retain or attract clients, or be subject to cost increases.

We may not pay dividends on your common stock.
Holders of our common stock are only entitled to receive such dividends as our Board of Directors may declare out of funds legally available for such payments. Although we have historically declared cash dividends on our common stock, we are not required to do so and may reduce or eliminate our common stock dividend in the future. This could adversely affect the market price of our common stock. Also, our ability to increase our dividend or to make other distributions is restricted due to our participation in the Capital Purchase Program, which limits (without the consent of the Treasury) our ability to increase our dividend or to repurchase our common stock for so long as any securities issued under such program remain outstanding.

Our ability to receive dividends from our subsidiaries accounts for most of our revenue and could affect our liquidity and ability to pay dividends.
We are a separate and distinct legal entity from our subsidiaries, including SunTrust Bank. We receive substantially all of our revenue from dividends from our subsidiaries. These dividends are the principal source of funds to pay dividends on our common stock and interest and principal on our debt. Various federal and/or state laws and regulations limit the amount of dividends that our bank and certain of our nonbank subsidiaries may pay us. Also, our right to participate in a distribution of assets upon a subsidiary's liquidation or reorganization is subject to the prior claims of the subsidiary's creditors.

Table of Contents

Limitations on our ability to receive dividends from our subsidiaries could have a material adverse effect on our liquidity and on our ability to pay dividends on common stock. Additionally, if our subsidiaries' earnings are not sufficient to make dividend payments to us while maintaining adequate capital levels, we may not be able to make dividend payments to our common stockholders.

Significant legal actions could subject us to substantial uninsured liabilities.
We are from time to time subject to claims related to our operations. These claims and legal actions, including supervisory actions by our regulators, could involve large monetary claims and significant defense costs. Substantial legal liability or significant regulatory action against us could have material adverse financial effects or cause significant reputational harm to us, which in turn could seriously harm our business prospects. We may be exposed to substantial uninsured liabilities, which could adversely affect our results of operations and financial condition.

Company Risks

Recently declining values of real estate, increases in unemployment, and the related effects on local economies may increase our credit losses, which would negatively affect our financial results.
We offer a variety of secured loans, including commercial lines of credit, commercial term loans, real estate, construction, home equity, consumer and other loans. Many of our loans are secured by real estate (both residential and commercial) in our market area. A major change in the real estate market, such as deterioration in the value of this collateral, or in the local or national economy, could adversely affect our customer's ability to pay these loans, which in turn could adversely impact us. Additionally, increases in unemployment also may adversely affect the ability of certain clients to pay loans and the financial results of commercial clients in localities with higher unemployment, which may result in loan defaults and foreclosures and which may impair the value of our collateral. Risk of loan defaults and foreclosures are unavoidable in the banking industry, and we try to limit our exposure to this risk by monitoring our extensions of credit carefully. We cannot fully eliminate credit risk, and as a result credit losses may occur or increase in the future.

Deteriorating credit quality, particularly in real estate loans, has adversely impacted us and may continue to adversely impact us.
We have experienced a downturn in credit performance, which became significant in the third and fourth quarters of 2007 and continues. We expect credit conditions and the performance of our loan portfolio to continue to deteriorate in the near term.

This deterioration has resulted in an increase in our loan loss reserves throughout 2008, which increases were driven primarily by residential and commercial real estate and home equity portfolios. Additional increases in loan loss reserves may be necessary in the future. Deterioration in the quality of our credit portfolio can have a material adverse effect on our capital, financial condition, and results of operations.

Disruptions in our ability to access global capital markets may negatively affect our capital resources and liquidity.
In managing our consolidated balance sheet, we depend on access to global capital markets to provide us with sufficient capital resources and liquidity to meet our commitments and business needs, and to accommodate the transaction and cash management needs of our clients. Other sources of funding available to us, and upon which we rely as regular components of our liquidity risk management strategy, include inter-bank borrowings, repurchase agreements, and borrowings from the Federal Reserve discount window. Any occurrence that may limit our access to the capital markets, such as a decline in the confidence of debt purchasers, our depositors or counterparties participating in the capital markets, or a downgrade of our debt rating, may adversely affect our capital costs and our ability to raise capital and, in turn, our liquidity.

Any reduction in our credit rating could increase the cost of our funding from the capital markets.
Although our long-term debt is currently rated investment grade by the major rating agencies, the ratings of that debt was downgraded during 2009 by one of the major rating agencies. These rating agencies regularly evaluate us and their ratings of our long-term debt are based on a number of factors, including our financial strength as well as factors not entirely within our control, including conditions affecting the financial services industry generally. In light of the difficulties in the financial services industry and the housing and financial markets, there can be no assurance that we will maintain our current ratings. Our failure to maintain those ratings could adversely affect the cost and other terms upon which we are able to obtain funding and increase our cost of capital.

We have in the past and may in the future pursue acquisitions, which could affect costs and from which we may not be able to realize anticipated benefits.
We have historically pursued an acquisition strategy, and intend to continue to seek additional acquisition opportunities. We may not be able to successfully identify suitable candidates, negotiate appropriate acquisition terms, complete proposed acquisitions, successfully integrate acquired businesses into the existing operations, or expand into new markets. Once integrated, acquired operations may not achieve levels of revenues, profitability, or productivity comparable with those achieved by our existing operations, or otherwise perform as expected.

Table of Contents

Acquisitions involve numerous risks, including difficulties in the integration of the operations, technologies, services and products of the acquired companies, and the diversion of management's attention from other business concerns. We may not properly ascertain all such risks prior to an acquisition or prior to such a risk impacting us while integrating an acquired company. As a result, difficulties encountered with acquisitions could have a material adverse effect on the business, financial condition, and results of operations.

Furthermore, we must generally receive federal regulatory approval before we can acquire a bank or bank holding company. In determining whether to approve a proposed bank acquisition, federal bank regulators will consider, among other factors, the effect of the acquisition on competition, financial condition, future prospects, including current and projected capital levels, the competence, experience, and integrity of management, compliance with laws and regulations, the convenience and needs of the communities to be served, including the acquiring institution's record of compliance under the Community Reinvestment Act, and the effectiveness of the acquiring institution in combating money laundering activities. In addition, we cannot be certain when or if, or on what terms and conditions, any required regulatory approvals will be granted. Consequently, we might be required to sell portions of the acquired institution as a condition to receiving regulatory approval or we may not obtain regulatory approval for a proposed acquisition on acceptable terms or at all, in which case we would not be able to complete the acquisition despite the time and expenses invested in pursuing it.

We depend on the expertise of key personnel. If these individuals leave or change their roles without effective replacements, operations may suffer.
The success of our business has been, and the continuing success will be, dependent to a large degree on the continued services of executive officers, especially our Chairman and Chief Executive Officer, James M. Wells III, and other key personnel who have extensive experience in the industry. We do not carry key person life insurance on any of the executive officers or other key personnel. If we lose the services of any of these integral personnel and fail to manage a smooth transition to new personnel, the business could be impacted.

We may not be able to hire or retain additional qualified personnel and recruiting and compensation costs may increase as a result of turnover, both of which may increase costs and reduce profitability and may adversely impact our ability to implement our business strategy.
Our success depends upon the ability to attract and retain highly motivated, well-qualified personnel. We face significant competition in the recruitment of qualified employees. Our ability to execute the business strategy and provide high quality service may suffer if we are unable to recruit or retain a sufficient number of qualified employees or if the costs of employee compensation or benefits increase substantially.

Our accounting policies and processes are critical to how we report our financial condition and results of operations. They require management to make estimates about matters that are uncertain.
Accounting policies and processes are fundamental to how we record and report the financial condition and results of operations. Management must exercise judgment in selecting and applying many of these accounting policies and processes so they comply with Generally Accepted Accounting Principles in the United States ("U.S. GAAP").

Management has identified certain accounting policies as being critical because they require management's judgment to ascertain the valuations of assets, liabilities, commitments, and contingencies. A variety of factors could affect the ultimate value that is obtained either when earning income, recognizing an expense, recovering an asset, valuing an asset or liability, or reducing a liability. We have established detailed policies and control procedures that are intended to ensure these critical accounting estimates and judgments are well controlled and applied consistently. In addition, the policies and procedures are intended to ensure that the process for changing methodologies occurs in an appropriate manner. Because of the uncertainty surrounding our judgments and the estimates pertaining to these matters, we cannot guarantee that we will not be required to adjust accounting policies or restate prior period financial statements. See the "Critical Accounting Policies" in the MD&A and Note 1, "Accounting Policies," to the Consolidated Financial Statements, in our annual report on Form 10-K for the year ended December 31, 2008 for more information.

Changes in our accounting policies or in accounting standards could materially affect how we report our financial results and condition.
From time to time, the Financial Accounting Standards Board ("FASB") and SEC change the financial accounting and reporting standards that govern the preparation of our financial statements. These changes can be hard to predict and can materially impact how we record and report our financial condition and results of operations. In some cases, we could be required to apply a new or revised standard retroactively, resulting in us restating prior period financial statements.

Our stock price can be volatile.
Our stock price can fluctuate widely in response to a variety of factors including:
- variations in our quarterly operating results;
- changes in market valuations of companies in the financial services industry;

Table of Contents

- governmental and regulatory legislation or actions
- issuances of shares of common stock or other securities in the future;
- changes in dividends;
- the addition or departure of key personnel;
- cyclical fluctuations;
- changes in financial estimates or recommendations by securities analysts regarding us or shares of our common stock;
- announcements by us or our competitors of new services or technology, acquisitions, or joint ventures; and
- activity by short sellers and changing government restrictions on such activity.

General market fluctuations, industry factors, and general economic and political conditions and events, such as terrorist attacks, economic slowdowns or recessions, interest rate changes, credit loss trends, or currency fluctuations, also could cause our stock price to decrease regardless of operating results.

Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud.
Our disclosure controls and procedures are designed to reasonably assure that information required to be disclosed by us in reports we file or submit under the Exchange Act is accurately accumulated and communicated to management, and recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms. We believe that any disclosure controls and procedures or internal controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met.

These inherent limitations include the realities that judgments in decision-making can be faulty, that alternative reasoned judgments can be drawn, or that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements due to error or fraud may occur and not be detected.

Our financial instruments carried at fair value expose us to certain market risks.
We maintain an available for sale securities portfolio and trading assets which include various types of instruments and maturities. In addition, we elected to record selected fixed-rate debt, mortgage loans, securitization warehouses and other trading assets at fair value. The changes in fair value of the financial instruments elected to be carried at fair value pursuant to the provisions of Statement of Financial Accounting Standards ("SFAS") No. 159 are recognized in earnings. The financial instruments carried at fair value are exposed to market risks related to changes in interest rates, market liquidity, and our market-based credit spreads, as well as to the risk of default by specific borrowers. We manage the market risks associated with these instruments through active hedging arrangements or broader asset/liability management strategies. Changes in the market values of these financial instruments could have a material adverse impact on our financial condition or results of operations. We may classify additional financial assets or financial liabilities at fair value in the future.

Our revenues derived from our investment securities may be volatile and subject to a variety of risks.
We generally maintain investment securities and trading positions in the fixed income, currency, commodity, and equity markets. Unrealized gains and losses associated with our investment portfolio and mark to market gains and losses associated with our trading portfolio are affected by many factors, including our credit position, interest rate volatility, volatility in capital markets, and other economic factors. Our return on such investments and trading have in the past experienced, and will likely in the future experience, volatility and such volatility may materially adversely affect our financial condition and results of operations. Additionally, accounting regulations may require us to record a charge prior to the actual realization of a loss when market valuations of such securities are impaired and such impairment is considered to be other than temporary.

We may enter into transactions with off-balance sheet affiliates or our subsidiaries.
We engage in a variety of transactions with off-balance sheet entities with which we are affiliated. While we have no obligation, contractual or otherwise, to do so, under certain limited circumstances, these transactions may involve providing some form of financial support to these entities. Any such actions may cause us to recognize current or future gains or losses. Depending on the nature and magnitude of any transaction we enter into with off-balance sheet entities, accounting rules may require us to consolidate the financial results of these entities with our financial results.

We are subject to market risk associated with our asset management and commercial paper conduit businesses.
During 2007 and 2008, we recorded market valuation losses related to securities that we purchased from certain money market funds managed by our subsidiary RidgeWorth as well as Three Pillars Funding, LLC ("Three Pillars"), a multi-seller commercial paper conduit sponsored by us. At the time of purchase, these securities were predominantly AAA or AA-rated, residential MBS, structured investment vehicle ("SIVs") securities, and corporate and consumer collateralized debt obligations. We cannot provide assurance that we will not sustain additional losses in the future related to these securities or

Table of Contents

the purchase of similar securities. The value of such securities may be affected by, among other things, a lack of liquidity in the market for these securities, deterioration in the credit quality of the underlying collateral, risks associated with the financial guarantees insuring the securities, and/or the fact that the respective investment vehicle enters restructuring proceedings. Such occurrences may materially adversely affect our financial condition, capital adequacy, and results of operations.

Item 1B. UNRESOLVED STAFF COMMENTS

None.

Item 2. PROPERTIES

The Company's headquarters is located in Atlanta, Georgia. As of December 31, 2008, SunTrust Bank owned 578 of its 1,692 full-service banking offices and leased the remaining banking offices. (See Note 8, "Premises and Equipment," to the Consolidated Financial Statements.)

Item 3. LEGAL PROCEEDINGS

The Company and its subsidiaries are parties to numerous claims and lawsuits arising in the normal course of its business activities, some of which involve claims for substantial amounts. Although the ultimate outcome of these suits cannot be ascertained at this time, it is the opinion of management that none of these matters, when resolved, will have a material effect on the Company's consolidated results of operations or financial position.

Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

There were no matters submitted to a vote of shareholders during the quarter ended December 31, 2008.

Table of Contents

PART II

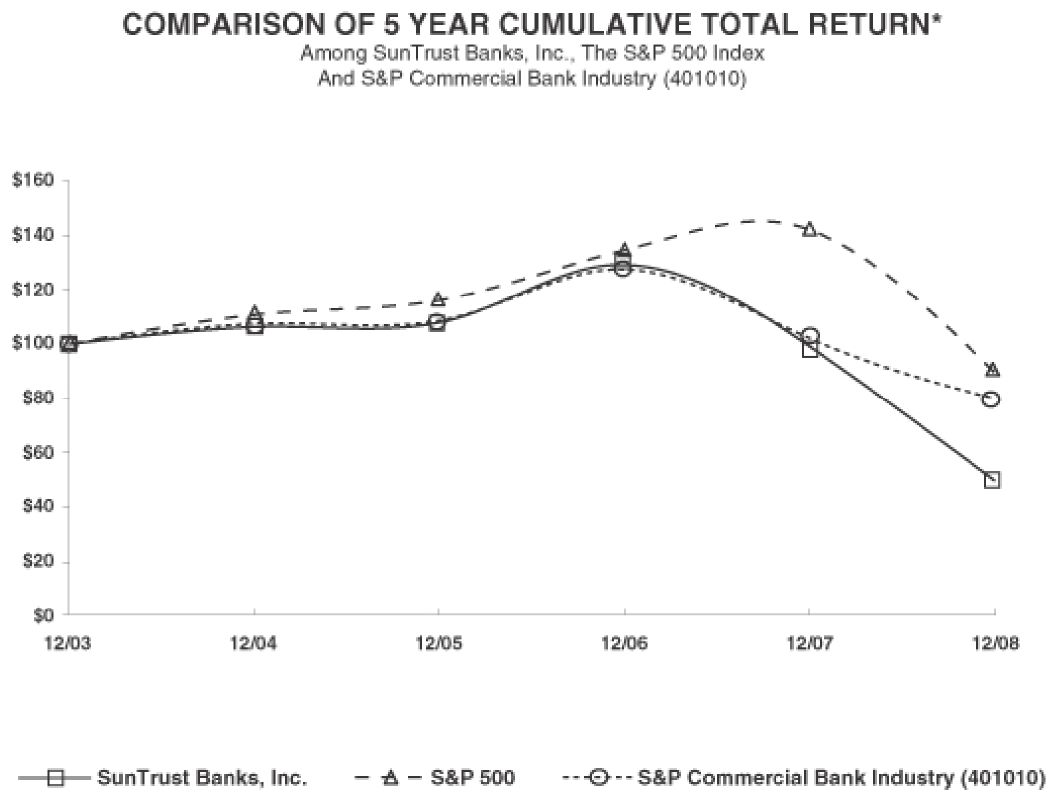
Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

The principal market in which the common stock of the Company is traded is the New York Stock Exchange ("NYSE"). See Item 6 and Table 18 in the MD&A for information on the high and the low sales prices of the SunTrust Banks, Inc. common stock on the NYSE, which is incorporated herein by reference. During the twelve months ended December 31, 2008 we paid a quarterly dividend on common stock of $0.77 for the first three quarters and $0.54 in the fourth quarter compared to $0.73 per common share during each quarter of 2007. Our common stock is held of record by approximately 38,125 holders as of December 31, 2008. See Table 24 in the MD&A for information on the monthly share repurchases activity, including total common shares repurchased and announced programs, weighted average per share price, and the remaining buy-back authority under the announced programs, which is incorporated herein by reference.

Please also refer to Item 1, "Business," for a discussion of legal restrictions which affect our ability to pay dividends; Item 1A, "Risk Factors," for a discussion of some risks related to our dividend, and Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operation—Capital Resources," for a discussion of the dividend payable in the first quarter of 2009 and factors that may affect the future level of dividends.

The information under the caption "Equity Compensation Plans" in our definitive proxy statement to be filed with the Commission is incorporated by reference into this Item 5.

Set forth below is a line graph comparing the yearly percentage change in the cumulative total shareholder return on our common stock against the cumulative total return of the S&P Composite-500 Stock Index, and the S&P Commercial Bank Industry Index for the five years commencing December 31, 2003 and ending December 31, 2008.



*$100 invested on 12/31/03 in stock or index, including reinvestment of dividends. Fiscal year ending December 31.

	12/03	12/04	12/05	12/06	12/07	12/08
SunTrust Banks, Inc.	**100.00**	**106.36**	**107.96**	**129.34**	**99.25**	**49.95**
S&P 500	**100.00**	**110.88**	**116.33**	**134.70**	**142.10**	**89.53**
S&P Commercial Bank Industry (401010)	**100.00**	**107.55**	**108.66**	**127.61**	**102.13**	**80.04**

Table of Contents

Item 6. SELECTED FINANCIAL DATA

(Dollars in millions, except per share and other data)	**2008**	2007	2006	2005	2004	2003
	Twelve Months Ended December 31					
Summary of Operations						
Interest, fees, and dividend income	**$8,327.4**	$10,035.9	$9,792.0	$7,731.3	$5,218.4	$4,768.8
Interest expense	**3,707.7**	5,316.4	5,131.6	3,152.3	1,533.2	1,448.5
Net interest income	**4,619.7**	4,719.5	4,660.4	4,579.0	3,685.2	3,320.3
Provision for loan losses	**2,474.2**	664.9	262.5	176.9	135.6	313.6
Net interest income after provision for loan losses	**2,145.5**	4,054.6	4,397.9	4,402.1	3,549.6	3,006.7
Noninterest income	**4,473.5**	3,428.7	3,468.4	3,155.0	2,604.4	2,303.0
Noninterest expense	**5,890.5**	5,233.8	4,879.9	4,690.7	3,897.0	3,400.6
Income before provision for income taxes	**728.5**	2,249.5	2,986.4	2,866.4	2,257.0	1,909.1
Provision (benefit) for income taxes	**(67.3)**	615.5	869.0	879.2	684.1	576.8
Net income	**795.8**	1,634.0	2,117.4	1,987.2	1,572.9	1,332.3
Series A preferred dividends	**22.3**	30.3	7.7	-	-	-
U.S. Treasury preferred dividends	**26.6**	-	-	-	-	-
Net income available to common shareholders	$746.9	$1,603.7	$2,109.7	$1,987.2	$1,572.9	$1,332.3
Net interest income - FTE [1]	**$4,737.2**	$4,822.2	$4,748.4	$4,654.5	$3,743.6	$3,365.3
Total revenue - FTE [1]	**9,210.7**	8,250.9	8,216.8	7,809.5	6,348.0	5,668.3
Total revenue - FTE excluding securities (gains)/losses, net	**8,137.4**	8,007.8	8,267.3	7,816.7	6,389.7	5,544.4
Net income per average common share						
Diluted	**$2.13**	$4.55	$5.82	$5.47	$5.19	$4.73
Diluted, excluding merger expense	**2.13**	4.55	5.82	5.64	5.25	4.73
Basic	**2.14**	4.59	5.87	5.53	5.25	4.79
Dividends paid per average common share	**2.85**	2.92	2.44	2.20	2.00	1.80
Selected Average Balances						
Total assets	**$175,848.3**	$177,795.5	$180,315.1	$168,088.8	$133,754.3	$122,325.4
Earning assets	**152,748.6**	155,204.4	158,428.7	146,639.8	117,968.8	108,094.9
Loans	**125,432.7**	120,080.6	119,645.2	108,742.0	86,214.5	76,137.9
Consumer and commercial deposits	**101,332.8**	98,020.2	97,175.3	93,355.0	77,091.5	69,443.7
Brokered and foreign deposits	**14,743.5**	21,856.4	26,490.2	17,051.5	10,041.4	10,595.3
Total shareholders' equity	**18,480.9**	17,808.0	17,546.7	16,526.3	11,469.5	9,083.0
As of December 31						
Total assets	**$189,138.0**	$179,573.9	$182,161.6	$179,712.8	$158,869.8	$125,250.5
Earning assets	**156,016.5**	154,397.2	159,063.8	156,640.9	137,813.4	111,266.5
Loans	**126,998.4**	122,319.0	121,454.3	114,554.9	101,426.2	80,732.3
Allowance for loan and lease losses	**2,351.0**	1,282.5	1,044.5	1,028.1	1,050.0	941.9
Consumer and commercial deposits	**105,275.7**	101,870.0	99,775.9	97,572.4	92,109.7	72,924.6
Brokered and foreign deposits	**8,052.7**	15,972.6	24,245.7	24,480.8	11,251.6	8,264.9
Long-term debt	**26,812.4**	22,956.5	18,992.9	20,779.2	22,127.2	15,313.9
Total shareholders' equity	**22,388.1**	18,052.5	17,813.6	16,887.4	15,986.9	9,731.2
Financial Ratios and Other Data						
Return on average total assets	**0.45 %**	0.92 %	1.17 %	1.18 %	1.18 %	1.09 %
Return on average total assets less net realized and unrealized securities gains and the Coca-Cola Company dividend [1]	**0.05**	0.81	1.17	1.17	1.19	1.01
Return on average common shareholders' equity	**4.26**	9.27	12.13	12.02	13.71	14.67
Return on average realized common shareholders' equity [1]	**0.19**	8.65	12.72	12.70	15.65	15.98
Net interest margin - FTE [1]	**3.10**	3.11	3.00	3.17	3.17	3.11
Efficiency ratio - FTE [1]	**63.95**	63.43	59.39	60.06	61.39	59.99
Efficiency ratio, excluding merger expense [1]	**63.95**	63.43	59.39	58.80	60.94	59.99
Tangible efficiency ratio [1]	**62.64**	62.26	58.13	58.54	60.17	58.86
Effective tax rate (benefit)	**(9.23)**	27.36	29.10	30.67	30.31	30.21
Allowance to year-end total loans	**1.86**	1.05	0.86	0.90	1.04	1.17
Nonperforming assets to total loans plus OREO and other repossessed assets	**3.49**	1.35	0.49	0.29	0.40	0.47
Common dividend payout ratio	**134.4**	64.0	41.7	40.0	38.4	37.9
Full-service banking offices	**1,692**	1,682	1,701	1,657	1,676	1,183
ATMs	**2,582**	2,507	2,569	2,782	2,804	2,225
Full-time equivalent employees	**29,333**	32,323	33,599	33,406	33,156	27,578
Tier 1 capital ratio	**10.87 %**	6.93 %	7.72 %	7.01 %	7.16 %	7.85 %
Total capital ratio	**14.04**	10.30	11.11	10.57	10.36	11.75
Tier 1 leverage ratio	**10.45**	6.90	7.23	6.65	6.64	7.37
Total average shareholders' equity to total average assets	**10.51**	10.02	9.73	9.83	8.58	7.43
Tangible equity to tangible assets [1]	**8.40**	6.31	6.03	5.56	5.68	6.82
Tangible common equity to tangible assets [1]	**5.53**	6.02	5.75	5.56	5.68	6.82
Book value per common share	**$48.42**	$50.38	$48.78	$46.65	$44.30	$34.52
Market price:						
High	**70.00**	94.18	85.64	75.77	76.65	71.73
Low	**19.75**	60.02	69.68	65.32	61.27	51.44
Close	**29.54**	62.49	84.45	72.76	73.88	71.50
Market capitalization	**10,472**	21,772	29,972	26,338	26,659	20,157
Average common shares outstanding (000s)						

Diluted	**350,183**	352,688	362,802	363,454	303,309	281,434
Basic	**348,919**	349,346	359,413	359,066	299,375	278,295

[1] See Non-GAAP reconcilements in Tables 22 and 23 of the Management's Discussion and Analysis of Financial Condition and Results of Operations.

Table of Contents

Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Important Cautionary Statement About Forward-Looking Statements

This report may contain forward-looking statements. Statements regarding future levels of charge-offs, provision expense, and income are forward-looking statements. Also, any statement that does not describe historical or current facts, including statements about beliefs and expectations, is a forward-looking statement. These statements often include the words "believes," "expects," "anticipates," "estimates," "intends," "plans," "targets," "initiatives," "potentially," "probably," "projects," "outlook" or similar expressions or future conditional verbs such as "may," "will," "should," "would," and "could." Such statements are based upon the current beliefs and expectations of management and on information currently available to management. Such statements speak as of the date hereof, and we do not assume any obligation to update the statements made herein or to update the reasons why actual results could differ from those contained in such statements in light of new information or future events.

Forward-looking statements are subject to significant risks and uncertainties. Investors are cautioned against placing undue reliance on such statements. Actual results may differ materially from those set forth in the forward-looking statements. Factors that could cause actual results to differ materially from those described in the forward-looking statements can be found in Item 1A of Part I of this report and include risks discussed in this MD&A and in other periodic reports that we file with the SEC. Those factors include: difficult market conditions have adversely affected our industry; current levels of market volatility are unprecedented; the soundness of other financial institutions could adversely affect us; there can be no assurance that recently enacted legislation ,or any proposed federal programs, will stabilize the U.S. financial system, and such legislation and programs may adversely affect us; the impact on us of recently enacted legislation, in particular the EESA and its implementing regulations, and actions by the FDIC, cannot be predicted at this time; credit risk; weakness in the economy and in the real estate market, including specific weakness within our geographic footprint, has adversely affected us and may continue to adversely affect us; weakness in the real estate market, including the secondary residential mortgage loan markets, has adversely affected us and may continue to adversely affect us; weakness in the real estate market may adversely affect our reinsurance subsidiary; as a financial services company, adverse changes in general business or economic conditions could have a material adverse effect on our financial condition and results of operations; changes in market interest rates or capital markets could adversely affect our revenue and expense, the value of assets and obligations, and the availability and cost of capital or liquidity; the fiscal and monetary policies of the federal government and its agencies could have a material adverse effect on our earnings; we may be required to repurchase mortgage loans or indemnify mortgage loan purchasers as a result of breaches of representations and warranties, borrower fraud, or certain borrower defaults, which could harm our liquidity, results of operations, and financial condition; clients could pursue alternatives to bank deposits, causing us to lose a relatively inexpensive source of funding; consumers may decide not to use banks to complete their financial transactions, which could affect net income; we have businesses other than banking which subject us to a variety of risks; hurricanes and other natural disasters may adversely affect loan portfolios and operations and increase the cost of doing business; negative public opinion could damage our reputation and adversely impact our business and revenues; we rely on other companies to provide key components of our business infrastructure; we rely on our systems, employees, and certain counterparties, and certain failures could materially adversely affect our operations; we depend on the accuracy and completeness of information about clients and counterparties; regulation by federal and state agencies could adversely affect our business, revenue, and profit margins; competition in the financial services industry is intense and could result in losing business or reducing margins; future legislation could harm our competitive position; maintaining or increasing market share depends on market acceptance and regulatory approval of new products and services; we may not pay dividends on our common stock; our ability to receive dividends from our subsidiaries accounts for most of our revenue and could affect our liquidity and ability to pay dividends; significant legal actions could subject us to substantial uninsured liabilities; recently declining values of residential real estate, increases in unemployment, and the related effects on local economics may increase our credit losses, which would negatively affect our financial results; deteriorating credit quality, particularly in real estate loans, has adversely impacted us and may continue to adversely impact us; disruptions in our ability to access global capital markets may negatively affect our capital resources and liquidity; any reduction in our credit rating could increase the cost of our funding from the capital markets; we have in the past and may in the future pursue acquisitions, which could affect costs and from which we may not be able to realize anticipated benefits; we depend on the expertise of key personnel. If these individuals leave or change their roles without effective replacements, operations may suffer; we may not be able to hire or retain additional qualified personnel and recruiting and compensation costs may increase as a result of turnover, both of which may increase costs and reduce profitability and may adversely impact our ability to implement our business strategy; our accounting policies and processes are critical to how we report our financial condition and results of operations, and these require us to make estimates about matters that are uncertain; changes in our accounting policies or in accounting standards could materially affect how we report our financial results and condition; our stock price can be volatile; our disclosure controls and procedures may not prevent or detect all errors or acts of fraud; our financial instruments carried at fair value expose us to certain market risks; our revenues derived from our investment securities may be volatile and subject to a variety of risks; we may enter into

Table of Contents

transactions with off-balance sheet affiliates or our subsidiaries; and we are subject to market risk associated with our asset management and commercial paper conduit businesses.

This narrative will assist readers in their analysis of the accompanying consolidated financial statements and supplemental financial information. It should be read in conjunction with the Consolidated Financial Statements and Notes.

When we refer to “SunTrust,” “the Company,” “we,” “our” and “us” in this narrative, we mean SunTrust Banks, Inc. and Subsidiaries (consolidated). Effective October 1, 2004, National Commerce Financial Corporation (“NCF”) merged with SunTrust. The results of operations for NCF were included with our results beginning October 1, 2004. Additionally, effective May 1, 2008, we acquired GB&T Bancshares, Inc. (“GB&T”) and the results of operations for GB&T were included with our results beginning on that date. Periods prior to the acquisition date do not reflect the impact of the merger.

In the MD&A, net interest income, net interest margin, and the efficiency ratio are presented on a fully taxable-equivalent (“FTE”) basis and the quarterly ratios are presented on an annualized basis. The FTE basis adjusts for the tax-favored status of income from certain loans and investments. We believe this measure to be the preferred industry measurement of net interest income and it enhances comparability of net interest income arising from taxable and tax-exempt sources. We also present diluted earnings per common share excluding merger expense and an efficiency ratio excluding merger charges related to the NCF acquisition. We believe the exclusion of the merger charges, which represent incremental costs to integrate NCF’s operations, is more reflective of normalized operations. The merger charges related to the acquisition of GB&T were insignificant. Additionally, we present a return on average realized common shareholders’ equity, as well as a return on average common shareholders’ equity (“ROE”). We also present a return on average assets less net realized and unrealized securities gains/losses and a return on average total assets (“ROA”). The return on average realized common shareholders’ equity and return on average assets less net realized and unrealized securities gains/losses exclude realized securities gains and losses and the Coca-Cola Company (“Coke”) dividend, from the numerator, and net unrealized securities gains from the denominator. We present a tangible efficiency ratio and a tangible equity to tangible assets ratio, which excludes the cost of and the other effects of intangible assets resulting from merger and acquisition (“M&A”) activity. We believe these measures are useful to investors because, by removing the effect of intangible asset costs and M&A activity (the level of which may vary from company to company), it allows investors to more easily compare our efficiency and capital adequacy to other companies in the industry. We also present a tangible common equity to tangible assets ratio which, in addition to the items described above, excludes the preferred stock. These measures are utilized by management to assess our financial performance and capital adequacy. We provide reconcilements in Tables 22 and 23 in the MD&A for all non-U.S. GAAP measures. Certain reclassifications may be made to prior period financial statements and related information to conform them to the 2008 presentation.

INTRODUCTION

We are one of the nation’s largest commercial banking organizations and our headquarters are located in Atlanta, Georgia. Our principal banking subsidiary, SunTrust Bank, offers a full line of financial services for consumers and businesses through its branches located primarily in Florida, Georgia, Maryland, North Carolina, South Carolina, Tennessee, Virginia, and the District of Columbia. Within our geographic footprint, we operate under four business segments: Retail and Commercial, Wholesale Banking, Wealth and Investment Management, and Mortgage. In addition to traditional deposit, credit, and trust and investment services offered by SunTrust Bank, our other subsidiaries provide mortgage banking, credit-related insurance, asset management, securities brokerage, and capital market services.

EXECUTIVE SUMMARY

During 2008, macro-economic conditions negatively impacted liquidity and credit quality across the financial markets, especially in the consumer sector, as the U.S. economy experienced a recession. The National Bureau of Economic Research published a report in December indicating that the U.S. has been in a recession since December 2007 as indicated most prominently, in their view, by the declining labor market since that time. Since December 2007, in addition to deterioration in the labor market, the recession has caused rising unemployment, volatile equity markets, and declining home values, all of which are weighing negatively on consumer sentiment as evidenced by weak spending throughout the year, especially during the fourth quarter. During the year, financial markets experienced unprecedented events, and the market exhibited extreme volatility and evaporating liquidity as credit quality concerns, sharp fluctuations in commodity prices, volatility in rate indices such as Prime and LIBOR, and illiquidity persisted. Concerns regarding increased credit losses from the weakening economy negatively affected the capital and earnings levels of most financial institutions. In addition, certain financial institutions failed or merged with stronger institutions and two government sponsored enterprises entered into conservatorship with the U.S. government. Liquidity in the debt markets was extremely low despite the Treasury and Federal Reserve efforts to inject capital and liquidity into financial institutions, and as a result, asset values continued to be under pressure.

Table of Contents

In October 2008, the United States government established the EESA in response to instability in the financial markets. The specific implications of the EESA include the authorization given to the Secretary of the Treasury to establish the Troubled Asset Relief Program to purchase troubled assets from financial institutions. The definition of troubled assets is broad but includes residential and commercial mortgages, as well as mortgage-related securities originated on or before March 14, 2008, if the Secretary determines the purchase promotes financial market stability. To date, the Treasury has not purchased troubled assets under its authority to do so under the EESA.

Alternatively, the Treasury has focused on providing assistance through the associated Capital Purchase Program "(CPP") and Targeted Investment Program by purchasing preferred equity interests in the country's largest financial institutions. In an attempt to revitalize the struggling economy and inject necessary liquidity and capital into the banking system, the government purchased $207.5 billion dollars in preferred stock in certain institutions during 2008. During the fourth quarter of 2008, we sold $4.9 billion in preferred stock and related warrants, the maximum amount allowed under the CPP, to the Treasury. Our decision to participate was made to enhance our already solid capital position and to allow us to further expand our business. We believe that our decision to sell the maximum shares was prudent in order to bolster capital as a result of increasingly adverse economic results. Upon receipt of the funds, we developed strategies and tactics to deploy the capital in a fashion that balances supporting economic stability, safety and soundness, and earnings. Specifically, the additional capital has been deployed thus far by increasing our agency MBS and loans, as well as by decreasing short-term borrowings. We recognize our responsibility to use proceeds from the CPP in a manner that is consistent with the public interest and are committed to providing timely public disclosure of our deployment of the CPP proceeds. See additional discussion in the "Capital Resources" and "Liquidity Risk" sections of this MD&A.

The degree of government intervention through the purchase of direct investments in private and public companies is unprecedented. As a result, the complete effect and impact from these actions is uncertain. In addition, several federal, state, and local legislative proposals are pending that may affect our business. It is unclear whether these will be enacted, and if so, the impact they will have on our industry. We remain active and vigilant in monitoring these developments and supporting the interests of our shareholders, while also supporting the broader economy.

In addition, during October 2008, the FDIC announced the TLGP, under which it would temporarily guarantee certain new debt issued by insured banks and qualifying bank holding companies and temporarily expand its insurance to cover all noninterest-bearing transaction accounts. It was also announced that the Federal Reserve would serve as a buyer of commercial paper. These actions, among others, were anticipated to stimulate consumer confidence in the economy and financial institutions, as well as encourage financial institutions to continue lending to businesses, consumers, and each other. We have issued $3.0 billion in debt under the TLGP, which provides us with a lower cost of funding due to narrower credit spreads realized in association with the FDIC guarantee. See additional discussion in the "Other Short-Term Borrowings and Long-Term Debt" section of this MD&A.

In December, the Federal Reserve ("Fed") took unprecedented action in lowering the federal funds rate by 75 basis points to a targeted range of zero to one-quarter percent. The Board of Governors also lowered the discount rate 75 basis points to one-half percent. This action was the seventh rate cut of the year causing the Prime rate to decline 400 basis points since January 1, 2008 to 3.25% at year end. Further, the Fed increased its Term Auction Facility ("TAF") program offerings during the year by $445 billion, which are similar borrowing instruments to term federal funds. In addition, due to the continuing strain on the financial markets, the Fed has offered numerous temporary liquidity facilities in an effort to stabilize credit markets and improve the access to credit of businesses and households. See the "Liquidity Risk" section in this MD&A for additional discussion of the Fed's actions.

While our most immediate priority is to maintain the fundamental financial strength of the organization, we continue to run a successful organization serving clients, making sound credit decisions, generating deposits, and operating as efficiently as possible. To this end, during the year we grew average loans and consumer and commercial deposits 4.5% and 3.4%, respectively, and improved our loan and deposit mix while maintaining our net interest income at levels comparable to the prior year. We also experienced growth in certain fee income associated with our core businesses. Further, we tightly managed growth of core operating expenses, which reflected the continuing success of our ongoing program to improve efficiency and productivity, although expenses continue to be pressured by increased credit-related costs. We solidified our capital position during the year through the preferred stock issuance discussed above and also completed three separate transactions to optimize our long-term holdings of Coke common stock. See "Investment in Common Shares of The Coca-Cola Company" in this MD&A for additional discussion. We are pursuing initiatives that will expand our revenue generation capacity, improve efficiency, increase profitability on a risk adjusted basis, and prudently manage credit. To that end, the most important factors upon which management has and will continue to focus include prudent lending practices, credit loss mitigation, expense management, growing customer relationships, and increasing brand awareness.

Successfully managing through the current credit cycle is of critical importance. Given the significant downturn in the economy during 2008, we expect this credit cycle to be protracted. Credit quality deteriorated significantly in 2008 due to the

Table of Contents

decline in the residential real estate markets and broader recessionary economic conditions. As such, we took steps to assure continued prudent lending practices were followed by extending credit to clients that met our underwriting standards as well as instituted certain loss mitigation steps. Furthering our already strong lending practices, in 2008, we evaluated our underwriting standards based on the current economic conditions, discontinued originating home equity lines through third party channels that tend to be riskier with higher loan-to-values at origination, and implemented revised loan-to-value guidelines in certain declining markets. As a result of the tumultuous economy during 2008, we took action to assist in mitigating potential losses that included reducing or closing high risk accounts, improving our on-going portfolio monitoring, and completing extensive loan workout programs. Our workout programs are designed to help clients stay in their homes by re-working residential mortgages and home equity loans to achieve payment structures that they could afford. Through this workout program we have helped over 18,000 clients who were at risk of foreclosure to stay in their homes. See additional discussion of our prudent lending initiatives and loss mitigation steps in the “Loans”, “Allowance for Loans and Lease Losses”, “Provision for Loan Losses”, and “Nonperforming Assets” sections of this MD&A.

As the economy worsened and credit-related losses increased in 2008, our continued vigilance over expenses became an important focus. Our Excellence in Execution Efficiency and Productivity Program (“E^2 Program”) began in 2007, well before the recession, to lower our cost structure and drive higher financial performance. This successful program allowed us to reduce expense run rates by $560 million in 2008 and is expected to provide total savings of $600 million in 2009. In addition, we have taken additional extraordinary steps to manage expenses including the elimination of annual merit based salary increases in 2009 for our senior management team, comprised of over 4,000 individuals, as well as paying no bonuses to selected members of the executive management team. We have also lowered the expected average wage increase for those receiving a merit increase by one-third, reduced the amount available for promotion increases, eliminated our annual sales conference and sales award trips for our top producers, and have placed further restriction on travel and meal related expenses.

The prevailing economic conditions and the resulting destabilization of many other financial institutions present an opportunity for us to establish new customer relationships and expand existing ones by increasing our brand awareness. As a result of these difficult economic times, we found that consumers are looking for a stable banking partner that mirrors their values of being cautious and prudent with their finances, which is the source of our new branding “Live Solid. Bank Solid.” Our focus is on providing that stability to our current and future clients with core business products. Our objectives include increasing core business revenues while obtaining lower funding costs through growth in customer deposits. The “Live Solid. Bank Solid.” brand compliments the “My Cause” deposit campaign, which ended in October 2008. During 2008, “My Cause” generated total household deposit growth of approximately 8%, with checking account households growing approximately 10%. Deposit growth continued during the fourth quarter of 2008, where we grew our average consumer and commercial deposits by 2.0% over the third quarter of 2008. In 2009, we will continue our focus on growing customer deposits.

We reported net income available to common shareholders at December 31, 2008 of $746.9 million, or $2.13 per average common diluted share, compared to $1.6 billion, or $4.55 per average common diluted share, at December 31, 2007. Fully taxable-equivalent net interest income was $4.7 billion for the year ended December 31, 2008, compared to $4.8 billion for the year ended December 31, 2007. Net interest margin in 2008 decreased only one basis point when compared to the prior year. Provision for loan losses was $2.5 billion for the year ended 2008, an increase of $1.8 billion from the prior year. The provision for loan losses was $909.9 million higher than net charge-offs of $1.6 billion for the year. The allowance for loan and lease losses increased $1.1 billion, or 83.3%, from December 31, 2007 and was 1.86% of total loans not carried at fair value compared to 1.05% as of December 31, 2007. Net charge-offs to average loans were 1.25% for the year ended 2008 compared to 0.35% for 2007. Nonperforming assets rose significantly during the year to $4.5 billion at year end compared to $1.6 billion at the end of last year. The Tier 1 Capital and total capital ratios improved from 6.93% and 10.30%, respectively, at December 31, 2007 to 10.87% and 14.04% at December 31, 2008. The tangible equity to tangible assets ratio improved from 6.31% at December 31, 2007 to 8.40% at December 31, 2008, while the tangible common equity to tangible assets ratio declined to 5.53% from 6.02% during this same time. See additional discussion of our financial performance in the “Consolidated Financial Results” section of this MD&A.

Table of Contents

CONSOLIDATED FINANCIAL RESULTS

Table 1- Consolidated Daily Average Balances, Income/Expense And Average Yields Earned And Rates Paid

(Dollars in millions; yields on taxable-equivalent basis)	2008 Average Balances	2008 Income/ Expense	2008 Yields/ Rates	2007 Average Balances	2007 Income/ Expense	2007 Yields/ Rates	2006 Average Balances	2006 Income/ Expense	2006 Yields/ Rates
Assets									
Loans:[1]									
Real estate 1-4 family	**$31,758.9**	**$2,004.8**	**6.31** %	$31,951.0	$2,036.5	6.37 %	$33,523.5	$2,022.6	6.03 %
Real estate construction	**10,828.5**	**575.8**	**5.32**	13,519.4	1,011.0	7.48	12,333.9	923.8	7.49
Real estate home equity lines	**15,204.9**	**796.9**	**5.24**	14,031.0	1,088.2	7.76	13,565.2	1,032.3	7.61
Real estate commercial	**13,968.9**	**789.7**	**5.65**	12,803.4	887.5	6.93	12,803.7	866.6	6.77
Commercial - FTE[2]	**38,131.9**	**2,089.6**	**5.48**	34,194.4	2,202.6	6.44	33,836.1	2,087.4	6.17
Credit card	**862.6**	**34.5**	**4.00**	495.9	17.7	3.57	315.3	19.1	6.09
Consumer - direct	**4,541.8**	**254.1**	**5.60**	4,221.0	304.9	7.22	4,460.8	313.6	7.03
Consumer - indirect	**7,262.5**	**459.8**	**6.33**	8,017.5	495.4	6.18	8,376.6	477.6	5.70
Nonaccrual and restructured	**2,872.7**	**25.4**	**0.89**	847.0	17.3	2.05	430.1	16.6	3.85
Total loans	**125,432.7**	**7,030.6**	**5.61**	120,080.6	8,061.1	6.71	119,645.2	7,759.6	6.49
Securities available for sale:									
Taxable	**12,219.5**	**731.0**	**5.98**	10,274.1	639.1	6.22	23,430.9	1,146.8	4.89
Tax-exempt - FTE[2]	**1,038.4**	**63.1**	**6.07**	1,043.8	62.2	5.96	954.5	55.8	5.85
Total securities available for sale - FTE[2]	**13,257.9**	**794.1**	**5.99**	11,317.9	701.3	6.20	24,385.4	1,202.6	4.93
Funds sold and securities under agreements to resell	**1,317.7**	**25.1**	**1.91**	995.6	48.8	4.91	1,158.6	57.0	4.92
Loans held for sale	**5,105.6**	**289.9**	**5.68**	10,786.7	668.9	6.20	11,082.8	728.0	6.57
Interest-bearing deposits	**25.6**	**0.8**	**3.18**	24.0	1.3	5.44	93.4	3.3	3.59
Interest earning trading assets	**7,609.1**	**304.4**	**4.00**	11,999.6	657.2	5.48	2,063.3	129.5	6.28
Total earning assets	**152,748.6**	**8,444.9**	**5.53**	155,204.4	10,138.6	6.53	158,428.7	9,880.0	6.24
Allowance for loan and lease losses	**(1,815.0)**			(1,065.7)			(1,061.3)		
Cash and due from banks	**3,093.2**			3,456.6			3,834.8		
Other assets	**17,270.4**			16,700.5			16,534.9		
Noninterest earning trading assets	**2,641.6**			1,198.9			957.5		
Unrealized net gains on securities available for sale, net	**1,909.5**			2,300.8			1,620.5		
Total assets	**$175,848.3**			$177,795.5			$180,315.1		
Liabilities and Shareholders' Equity									
Interest-bearing deposits:									
NOW accounts	**$21,080.7**	**$252.9**	**1.20** %	$20,042.8	$473.9	2.36 %	$17,214.4	$307.8	1.79 %
Money market accounts	**26,564.8**	**520.3**	**1.96**	22,676.7	622.5	2.75	24,507.9	634.5	2.59
Savings	**3,770.9**	**16.3**	**0.43**	4,608.7	55.5	1.20	5,371.1	79.1	1.47
Consumer time	**16,770.2**	**639.1**	**3.81**	16,941.3	764.2	4.51	15,622.7	614.6	3.93
Other time	**12,197.2**	**478.6**	**3.92**	12,073.5	586.3	4.86	11,146.9	492.9	4.42
Total interest-bearing consumer and commercial deposits	**80,383.8**	**1,907.2**	**2.37**	76,343.0	2,502.4	3.28	73,863.0	2,128.9	2.88
Brokered deposits	**10,493.2**	**391.5**	**3.73**	16,091.9	861.2	5.35	17,425.7	880.5	5.05
Foreign deposits	**4,250.3**	**78.8**	**1.85**	5,764.5	297.2	5.16	9,064.5	455.3	5.02
Total interest-bearing deposits	**95,127.3**	**2,377.5**	**2.50**	98,199.4	3,660.8	3.73	100,353.2	3,464.7	3.45
Funds purchased	**2,622.0**	**51.5**	**1.96**	3,266.2	166.5	5.10	4,439.5	222.9	5.02
Securities sold under agreements to repurchase	**4,961.0**	**79.1**	**1.59**	6,132.5	273.8	4.46	7,087.0	320.1	4.52
Interest-bearing trading liabilities	**785.7**	**27.1**	**3.46**	430.2	15.6	3.62	404.9	15.5	3.84
Other short-term borrowings	**3,057.2**	**55.1**	**1.80**	2,493.0	121.0	4.85	1,507.1	74.5	4.93
Long-term debt	**22,892.9**	**1,117.4**	**4.88**	20,692.9	1,078.7	5.21	18,600.7	1,033.9	5.56
Total interest-bearing liabilities	**129,446.1**	**3,707.7**	**2.86**	131,214.2	5,316.4	4.05	132,392.4	5,131.6	3.88
Noninterest-bearing deposits	**20,949.0**			21,677.2			23,312.3		
Other liabilities	**5,176.7**			5,783.1			5,895.2		
Noninterest-bearing trading liabilities	**1,795.6**			1,313.0			1,168.5		
Shareholders' equity	**18,480.9**			17,808.0			17,546.7		
Total liabilities and shareholders' equity	**$175,848.3**			$177,795.5			$180,315.1		
Interest Rate Spread			**2.67** %			2.48 %			2.36 %
Net Interest Income - FTE[3]		**$4,737.2**			$4,822.2			$4,748.4	
Net Interest Margin[4]			**3.10** %			3.11 %			3.00 %

[1] Beginning in 2008 and for each of the three years ended December 31, the interest income includes loan fees of $134.5 million, $119.8 million and $115.1 million, respectively. Nonaccrual loans are included in average balances and income on such loans, if recognized, is recorded on a cash basis.

[2] Interest income includes the effects of taxable-equivalent adjustments using a federal income tax rate of 35% for all years reported and, where applicable, state income taxes, to increase tax-exempt interest income to a taxable-equivalent basis. Beginning in 2008 and for each of the three years ended December 31, the net taxable-equivalent adjustment amounts included in the above table were $117.5 million, $102.7 million and $88.0 million, respectively.

[3] Derivative instruments used to help balance our interest-sensitivity position increased net interest income by $180.7 million in 2008 and decreased net interest income by $25.6 million in 2007 and $105.6 million in 2006.

[4] The net interest margin is calculated by dividing net interest income – FTE by average total earning assets.

Table of Contents

Table 2 - Analysis of Changes in Net Interest Income[1]

(Dollars in millions on a taxable-equivalent basis)	2008 Compared to 2007 Increase (Decrease) Due to Volume	Rate	Net	2007 Compared to 2006 Increase (Decrease) Due to Volume	Rate	Net
Interest Income						
Loans:						
Real estate 1-4 family	**($12.3)**	**($19.3)**	**($31.6)**	($97.2)	$111.1	$13.9
Real estate construction	**(177.6)**	**(257.6)**	**(435.2)**	88.4	(1.2)	87.2
Real estate home equity lines	**85.2**	**(376.5)**	**(291.3)**	35.5	20.4	55.9
Real estate commercial	**75.9**	**(173.8)**	**(97.9)**	-	20.9	20.9
Commercial - FTE[2]	**236.9**	**(349.9)**	**(113.0)**	22.4	92.8	115.2
Credit card	**14.5**	**2.4**	**16.9**	8.4	(9.8)	(1.4)
Consumer - direct	**21.8**	**(72.5)**	**(50.7)**	(17.1)	8.4	(8.7)
Consumer - indirect	**(47.5)**	**11.8**	**(35.7)**	(21.1)	38.9	17.8
Nonaccrual and restructured	**22.4**	**(14.3)**	**8.1**	10.9	(10.2)	0.7
Securities available for sale:						
Taxable	**117.3**	**(25.4)**	**91.9**	(761.9)	254.2	(507.7)
Tax-exempt [2]	**(0.3)**	**1.2**	**0.9**	5.3	1.1	6.4
Funds sold and securities purchased under agreements to resell	**12.5**	**(36.2)**	**(23.7)**	(8.1)	(0.1)	(8.2)
Loans held for sale	**(327.0)**	**(52.1)**	**(379.1)**	(19.0)	(40.1)	(59.1)
Interest-bearing deposits	**0.1**	**(0.6)**	**(0.5)**	(3.2)	1.2	(2.0)
Interest earning trading assets	**(203.0)**	**(149.8)**	**(352.8)**	546.3	(18.6)	527.7
Total interest income	**(181.1)**	**(1,512.6)**	**(1,693.7)**	(210.4)	469.0	258.6
Interest Expense						
NOW accounts	**23.3**	**(244.2)**	**(220.9)**	56.6	109.5	166.1
Money market accounts	**95.7**	**(197.9)**	**(102.2)**	(49.5)	37.5	(12.0)
Savings	**(8.7)**	**(30.6)**	**(39.3)**	(10.3)	(13.3)	(23.6)
Consumer time	**(7.6)**	**(117.5)**	**(125.1)**	54.4	95.2	149.6
Other time	**6.0**	**(113.7)**	**(107.7)**	42.4	51.0	93.4
Brokered deposits	**(251.1)**	**(218.6)**	**(469.7)**	(69.7)	50.4	(19.3)
Foreign deposits	**(63.5)**	**(155.0)**	**(218.5)**	(170.4)	12.3	(158.1)
Funds purchased	**(27.9)**	**(87.1)**	**(115.0)**	(60.0)	3.6	(56.4)
Securities sold under agreements to repurchase	**(44.6)**	**(150.1)**	**(194.7)**	(42.2)	(4.1)	(46.3)
Interest-bearing trading liabilities	**12.3**	**(0.7)**	**11.6**	1.0	(0.9)	0.1
Other short-term borrowings	**22.8**	**(88.7)**	**(65.9)**	47.9	(1.4)	46.5
Long-term debt	**109.8**	**(71.1)**	**38.7**	112.2	(67.4)	44.8
Total interest expense	**(133.5)**	**(1,475.2)**	**(1,608.7)**	(87.6)	272.4	184.8
Net change in net interest income	**($47.6)**	**($37.4)**	**($85.0)**	($122.8)	$196.6	$73.8

[1] Changes in net interest income are attributed to either changes in average balances (volume change) or changes in average rates (rate change) for earning assets and sources of funds on which interest is received or paid. Volume change is calculated as change in volume times the previous rate, while rate change is change in rate times the previous volume. The rate/volume change, change in rate times change in volume, is allocated between volume change and rate change at the ratio each component bears to the absolute value of their total.

[2] Interest income includes the effects of taxable-equivalent adjustments (reduced by the nondeductible portion of interest expense) using a federal income tax rate of 35% and, where applicable, state income taxes to increase tax-exempt interest income to a taxable-equivalent basis.

Net Interest Income/Margin

Fully-taxable net interest income for 2008 was $4,737.2 million, a decrease of $85.0 million, or 1.8%, from 2007. Net interest margin decreased 1 basis point from 3.11% in 2007 to 3.10% in 2008. Earning asset yields declined 100 basis points from 6.53% in 2007 to 5.53% in 2008, while the cost of interest-bearing liabilities over the same period decreased 119 basis points. The decrease in net interest income was due in part to a decline in market interest rates, the increase in nonperforming assets, a reduction in Coke and Federal Home Loan Bank ("FHLB") dividend income, and LIBOR rate volatility. Due to the adoption of SFAS No. 157 and SFAS No. 159, the net interest payments on $6.6 billion of receive fixed swaps are reflected in trading income versus net interest income. Prior to adoption, this reclassification would have contributed approximately 9 basis points to net interest margin based on the 2008 decline in LIBOR.

The net interest margin increased from 3.07% for the third quarter of 2008 to 3.14% for the fourth quarter of 2008. The effects of lower floating rate loan yields and an increase in nonaccrual loans were more than offset by an aggressive reduction in deposit pricing, lower wholesale funding costs, and the issuance of $4.9 billion of preferred securities to the Treasury. Proceeds from the preferred stock issuance have been invested in interest earning assets which positively impact the margin while the dividend payments on the preferred stock are not recorded in net interest income.

For 2008, average earning assets decreased $2.5 billion, or 1.6%, from 2007 while average interest-bearing liabilities decreased $1.8 billion, or 1.3%, compared to 2007. Total average loans increased $5.4 billion, or 4.5%, due largely to an increase of $5.1 billion, or 10.9%, in the commercial and commercial real estate loan portfolios and $1.2 billion, or 8.4%, in

Table of Contents

real estate home equity lines. The increase in commercial loan balances was driven by increased utilization of lines of credit by our larger corporate clients due to dislocation in commercial paper and bond markets during 2008. The increases in commercial, commercial real estate, and real estate home equity lines were partially offset by the decline in real estate construction loans of $2.7 billion, or 19.9%, due to our efforts to reduce our exposure to construction loans and transfers to nonaccrual status. Average loans held for sale were $5.1 billion, a decrease of $5.7 billion, or 52.7%, as mortgage loan originations declined 37.6%. Production shifted to predominantly agency products and efficiency improved in loan delivery. Average investment securities available for sale increased $1.9 billion, or 17.1%, while average interest earning trading assets declined by $4.4 billion, or 36.6%. Despite the decline in trading assets, we have continued to actively use this portfolio as part of our overall asset/liability management.

Average consumer and commercial deposits increased $3.3 billion, or 3.4%, year over year. This included increases of $3.9 billion, or 17.1%, in money market accounts and $1.0 billion, or 5.2%, in NOW accounts. These were partially offset by decreases of $0.8 billion, or 18.2%, in savings and $0.7 billion, or 3.4%, in demand deposits. The change in deposit mix represents a migration among clients from lower yielding accounts to higher yielding accounts in response to the decline in market rates. The growth in money market accounts was influenced by sales strategies in which money market products were used as a lead product to help retain a greater portion of maturing time deposits and other account balances. The overall growth in consumer and commercial deposits, coupled with the $2.2 billion, or 10.6%, increase in lower cost long-term debt, enabled a reduction in higher cost funding sources of $8.0 billion, or 23.4%. The decline in funding sources is primarily related to a $5.6 billion decrease in brokered deposits and a $1.5 billion decrease in average foreign deposits. We continue to pursue deposit growth initiatives utilizing product promotions to increase our presence in specific markets within our footprint. Overall, competition for deposits remains strong as our competitors attempt to satisfy funding needs in light of the liquidity issues prevailing in the market. As a result, we are facing significant deposit pricing pressure across our footprint. Despite these challenging market conditions, we have used a combination of regional and product-specific pricing initiatives to reduce our rates more aggressively than our peer banks, while still growing our average deposit balances.

The 2008 market environment began with a flat yield curve and steepened throughout the year. The Fed Funds target rate averaged 2.08% for 2008, a decrease of 297 basis points compared to 2007. One-month LIBOR decreased 257 basis points to 2.68%, three-month LIBOR decreased 237 basis points to 2.93%, five-year swaps decreased 132 basis points to 3.69% and ten-year swaps decreased 100 basis points to 4.24% compared to prior year. Deposit rates, our most significant funding source, tend to track movements in one-month LIBOR, while our fixed loan yields tend to track movements in the five-year swap rate.

Foregone interest income from nonperforming loans had a negative impact of 14 basis points on net interest margin in 2008 compared to four basis points of negative impact in 2007, as average nonaccrual loans increased $1.9 billion, or 228.4%, over 2007. Table 1 contains more detailed information concerning average loans, yields and rates paid.

Predicting the movement in net interest margin during 2009 would be difficult given the continued volatility in interest rates, the relatively low level of interest rates, and competitive dynamics for raising deposits. However, we believe the risks to the net interest margin in 2009 of deposit pricing, rate compression, nonperforming asset levels, and asset mix will outweigh the primary opportunity associated with deposit volume and mix.

Table 3 - Noninterest Income

	Year Ended December 31					
(Dollars in millions)	**2008**	2007	2006	2005	2004	2003
Service charges on deposit accounts	**$904.1**	$822.0	$763.7	$772.5	$700.0	$643.1
Trust and investment management income	**592.3**	685.0	686.9	673.7	586.8	502.4
Retail investment services	**289.1**	278.0	234.0	213.3	192.8	161.8
Other charges and fees	**510.8**	479.1	462.1	456.5	390.5	326.3
Card fees	**308.4**	280.7	247.6	210.8	153.4	119.6
Investment banking income	**236.5**	214.9	230.6	216.5	206.7	192.5
Trading account profits/(losses) and commissions	**38.2**	(361.7)	113.0	145.1	127.8	109.9
Mortgage production related income	**171.4**	91.0	217.4	144.9	57.8	150.1
Mortgage servicing related income/(expense)	**(211.8)**	195.4	121.7	41.9	11.1	(177.5)
Gain on sale of businesses	**198.1**	32.3	112.8	23.4	-	-
Gain on Visa IPO	**86.3**	-	-	-	-	-
Net gain on sale/leaseback of premises	**37.0**	118.8	-	-	-	-
Other income	**239.8**	350.1	329.1	263.6	219.2	150.9
Total noninterest income before net securities gains/(losses)	**3,400.2**	3,185.6	3,518.9	3,162.2	2,646.1	2,179.1
Net securities gains/(losses)	**1,073.3**	243.1	(50.5)	(7.2)	(41.7)	123.9
Total noninterest income	**$4,473.5**	$3,428.7	$3,468.4	$3,155.0	$2,604.4	$2,303.0

Table of Contents

Noninterest Income

Noninterest income increased by $1.0 billion, or 30.5%, in 2008, compared to 2007, driven largely by an increase in net securities gains, including a non-taxable gain on the contribution of a portion of our investment in Coke common stock, and mark to market gains on our public debt and related hedges along with gains from the sale of certain non-strategic businesses. These gains were partially offset by impairment of our MSRs portfolio, mark to market losses on illiquid trading securities and loan warehouses, losses related to our decision to purchase certain auction rate securities ("ARS") from our clients, and other-than-temporary impairment charges on securities recorded during the year. In the short-run, we do not foresee any catalysts that will materially improve the core level of fee income generation, with the exception of mortgage production related income, which may increase significantly along with loan volume in the first quarter of 2009 if the sharp reduction in interest rates on conforming mortgages continues during the quarter.

Transaction fee-related income, which includes service charges on deposit accounts, card fees, and other charges and fees, increased $141.5 million, or 8.9%, compared to 2007, driven by an increase in both consumer and business deposit account activity, primarily due to growth in the number of accounts, higher non-sufficient fund rates, and an increase in the occurrence of non-sufficient fund fees.

Trust and investment management income decreased $92.7 million, or 13.5%, compared to 2007, driven by lower market valuations on managed assets due to the decline in the equity markets, as well as a decline in revenue as a result of the sales of our remaining interest in Lighthouse Investment Partners on January 2, 2008 and First Mercantile on May 30, 2008.

Trading account profits/(losses) and commissions increased $399.9 million, or 110.6%, compared to 2007, primarily due to $431.7 million in mark to market gains on our public debt and related hedges during 2008 compared with gains of $140.9 million in 2007. These gains were related to the widening of credit spreads across the entire financial market as a result of the global credit crisis. When stability in the debt market returns, spreads are expected to tighten, and if this occurs then these valuation gains will reverse. The increase in trading income during 2008 was also due to strong performance in fixed income sales and trading, direct finance, and foreign exchange within our broker/dealer subsidiary offset by weaker performance in fixed income derivatives, structured leasing, and equity offerings due to volatile market conditions. The gains recorded during 2008 were partially offset by $255.9 million in mark to market losses on illiquid trading securities acquired during the fourth quarter of 2007 as a result of the continuing declines in home values and increasing consumer real estate delinquency levels, which affected liquidity and technical pricing in the broader market during the year related to ABS. Also offsetting these gains were $177.7 million in losses related to our decision to purchase certain ARS from our clients, along with associated fines, and a $63.8 million loss on a $70 million (par value) Lehman Brothers Holdings, Inc. ("Lehman Brothers") bond we purchased from an affiliated money market mutual fund. As of December 31, 2008, the fair value of this bond was $6.7 million. See additional discussion of this security that was purchased in the "Trading Assets and Liabilities" section of this MD&A. The fair value of the illiquid securities acquired in the fourth quarter of 2007 declined to approximately $250.0 million as of December 31, 2008, down from an acquisition cost of approximately $3.5 billion, primarily due to sales. During 2007, we recorded $527.7 million in negative mark to market valuations on collateralized debt obligations, MBS, SIV securities, and collateralized loan obligations, which were partially offset by $81.0 million in gains related to the adoption of fair value for certain trading assets and liabilities and related hedges.

During 2008, the $177.7 million loss in trading account profits and commissions related to ARS was recognized because we determined that we had a probable loss pursuant to the provisions of SFAS No. 5 that could be reasonably estimated as the difference between the par amount and the estimated fair value of ARS that we believe we will likely purchase from investors. As of December 31, 2008, we have completed the repurchase of roughly one-third of the approximately $743 million face value of the securities. Approximately $643 million of these securities are either government sponsored or where the issuer has indicated support of the underlying assets. The remaining $100 million of securities pertains to a senior tranche within a securitization of trust preferred securities. Our cash flow projections under even a stressed scenario indicate full collection of principal and interest on these securities. The volume of repurchase activity increased in early 2009, and through mid-February, we have completed approximately three-fourths of the expected repurchases.

Combined mortgage-related income decreased $326.8 million, or 114.1%, compared to 2007. Mortgage servicing related income decreased $407.2 million, or 208.4%, compared to 2007, primarily due to $370.0 million in impairment charges on our MSRs portfolio, all carried at amortized cost, that was caused by an increase in expected loan prepayments due to declining interest rates during the fourth quarter of 2008. The decrease in 2008 was also driven by higher amortization of MSRs driven by growth in the servicing portfolio from $114.6 billion as of December 31, 2007 to $130.5 billion as of December 31, 2008, and lower gains on the sale of mortgage servicing assets when compared to 2007. These declines were offset by higher servicing fee income driven by the aforementioned growth in the servicing portfolio.

Mortgage production related income increased $80.4 million, or 88.4%, compared to 2007, despite a 37.6% decline in loan production volume to $36.4 billion in 2008, due to lower valuation losses resulting from spread widening on loans held for

Table of Contents

sale, in part due to the elimination of Alt-A loans from the warehouse. The increase was also a result of lower valuation losses on illiquid and delinquent warehouse loans and the earlier recognition of servicing value and origination fees resulting from our election to record certain mortgage loans at fair value beginning in May 2007. The prior period also included $42.2 million of income reductions recorded in conjunction with our election to record certain loans held for sale at fair value. These increases in income when compared with 2007 were offset by an increase in our reserve for write-downs on mortgage loans that we anticipate we will have to repurchase from prior sales. This reserve is established at the time of the sale based on expectations for the volume of repurchases and the severity of losses upon ultimate disposition. In the current environment, higher customer default rates, heightened scrutiny of loan documentation by investors, and larger write-downs upon repurchase are all impacting the level of required reserves. In addition to this offset to mortgage production related income, we also incurred negative valuation adjustments on our portfolio loans and loans held for sale carried at fair value and lower fee income associated with lower production volume. While loan production is down, the percentage of agency eligible secondary market production increased to approximately 98% of secondary market production compared to approximately 85% in 2007. Agency eligible loans, also known as conforming loans, are defined as mortgage loans eligible for secondary market purchase by GNMA, FNMA, or FHLMC. To be considered eligible, loans must adhere to maximum loan amount guidelines, debt-to-income ratio limits, and stricter documentation requirements. In addition, dramatically lower mortgage rates near the end of 2008 drove a significant increase in application activity, which has continued into early 2009.

Investment banking income increased $21.6 million, or 10.1%, compared to 2007, due to increases in direct finance and bond underwriting fees. These increases were partially offset by a decrease in M&A fees.

Net gain on the sale of businesses consists of an $89.4 million gain on the sale of our remaining interest in Lighthouse Investment Partners during the first quarter of 2008, an $81.8 million gain on the sale of TransPlatinum, our former fuel card and fleet management subsidiary in the third quarter of 2008, a $29.6 million gain on the sale of First Mercantile, a retirement plan services subsidiary, during the second quarter of 2008, and a $2.7 million loss on the sale of a majority interest in Zevenbergen Capital Investments during the fourth quarter of 2008. A gain of $32.3 million was recognized in 2007 upon the merger of Lighthouse Partners.

During the first quarter of 2008, Visa completed its IPO and upon the closing, approximately 2 million of our Class B shares were mandatorily redeemed for $86.3 million, which was recorded as a gain in noninterest income.

Net securities gains of $1.1 billion for 2008 included a $732.2 million gain on the sale and contribution of a portion of our investment in Coke common stock in addition to a $413.1 million gain on the sale of MBS held in conjunction with our risk management strategies associated with economically hedging the value of MSRs. These gains were partially offset by the recognition through earnings of $83.8 million in charges related to certain ABS that were determined in 2008 to be other-than-temporarily impaired. The net securities gains of $243.1 million for 2007 included a $234.8 million gain on the sale of 4.5 million shares of Coke common stock. For additional information on transactions related to our holdings in Coke common stock, refer to “Investment in Common Shares of The Coca-Cola Company” within this MD&A.

During the fourth quarter of 2007, we completed multiple sale/leaseback transactions, consisting of over 300 of our branch properties and various individual office buildings. In total, we sold and concurrently leased back $545.9 million in land and buildings with associated accumulated depreciation of $285.7 million. For the year ended December 31, 2007, we recognized $118.8 million of the gain immediately while the remaining $385.4 million in gains were deferred and will be recognized ratably over the expected term of the respective leases, predominantly 10 years, as an offset to net occupancy expense. During 2008, we completed sale/leaseback transactions, consisting of 152 branch properties and various individual office buildings. In total, we sold and concurrently leased back $201.9 million in land and buildings with associated accumulated depreciation of $110.3 million. For the year ended December 31, 2008, we recognized $37.0 million of the gain immediately while the remaining $160.3 million in gains were deferred and will be recognized ratably over the expected term of the respective leases, predominantly as an offset to net occupancy expense.

Other income decreased $110.3 million, or 31.5%, compared to 2007. The decline was primarily due to gains in 2007 on private equity transactions that did not recur in 2008.

Table of Contents

Table 4 - Noninterest Expense

	Year Ended December 31					
(Dollars in millions)	**2008**	2007	2006	2005	2004	2003
Employee compensation	**$2,327.2**	$2,329.0	$2,253.5	$2,117.2	$1,804.9	$1,585.9
Employee benefits	**434.0**	441.2	471.9	417.1	363.4	358.6
Total personnel expense	**2,761.2**	2,770.2	2,725.4	2,534.3	2,168.3	1,944.5
Outside processing and software	**492.6**	410.9	393.6	357.4	286.3	246.7
Operating losses	**446.2**	134.0	44.6	40.3	42.8	35.5
Marketing and customer development	**372.2**	195.0	173.2	156.7	128.3	100.3
Net occupancy expense	**347.3**	351.2	334.2	312.1	268.2	237.3
Equipment expense	**203.2**	206.5	197.0	204.0	184.9	178.4
Mortgage reinsurance	**179.9**	-	-	-	-	-
Credit and collection services	**156.4**	112.5	101.6	84.9	66.7	70.3
Amortization/impairment of intangible assets	**121.3**	96.7	103.2	119.0	77.6	64.5
Other real estate expense/(income)	**104.7**	15.8	0.2	(1.2)	(1.8)	(2.0)
Postage and delivery	**90.1**	93.2	92.7	85.4	69.8	69.0
Other staff expense	**70.3**	132.5	92.5	90.1	66.0	60.4
Communications	**69.4**	79.0	72.9	79.2	67.2	61.3
Consulting and legal	**58.6**	101.2	113.0	112.6	81.0	57.4
Regulatory assessments	**54.9**	22.4	22.6	23.1	19.5	18.0
Operating supplies	**44.3**	48.7	54.0	53.2	46.8	39.8
Merger expense	**13.4**	-	-	98.6	28.4	-
Net loss on extinguishment of debt	**11.7**	9.8	11.7	-	-	-
Visa litigation	**(33.5)**	76.9	-	-	-	-
Other expense	**326.2**	377.3	347.5	341.0	297.0	219.2
Total noninterest expense	**$5,890.4**	$5,233.8	$4,879.9	$4,690.7	$3,897.0	$3,400.6

Noninterest Expense

Noninterest expense increased by $656.6 million, or 12.5%, in 2008 compared to 2007. This was primarily the result of increased costs of $624.9 million associated with the current credit cycle compared to 2007 along with a $183.4 million contribution of Coke common stock that we made to our charitable foundation in the third quarter of 2008. The remaining components of noninterest expense decreased on an overall basis because of the success achieved in reducing expenses through our E^2 Program.

Personnel expenses in 2008 decreased $9.0 million, or 0.3%, from the same period in 2007. The decrease in personnel expense is due primarily to the decline in salaries expense of $34.8 million from 2007 to 2008 reflecting a reduction of approximately 3,000 full time equivalent employees since December 31, 2007 to 29,333 as of December 31, 2008. Due primarily to our fair value election for certain mortgage loans held for sale beginning in May of 2007, we deferred $79.7 million less in loan origination costs in 2008 than 2007, which partially offset the decline in personnel expense. As a consequence of the current market conditions and the reduction in plan participants, expense related to incentive plans was also lower by $53.9 million. In addition, to mitigate increases in personnel expenses in 2009, the following initiatives have been employed: no merit increases for senior management, comprising over 4,000 people, the lowering of average raise targets for the remainder of the workforce by one-third, and a reduction in the amount of promotional salary increases.

Credit-related costs include operating losses, credit and collection services, other real estate expense, and mortgage reinsurance expense. These expenses increased $624.9 million, or 238.2%, over 2007. Operating losses increased $312.2 million, or 233.0%, compared to 2007. These increases include a $206.9 million reserve recorded during 2008 for borrower misrepresentations and insurance claim denials. Approximately $139 million of this reserve relates to insured prime second lien loans and home equity lines of credit. Other real estate expense increased $88.9 million, or 562.7%, in 2008 compared to 2007. This increase was due to a $316.7 million, or 172.4%, increase in other real estate holdings, coupled with additional valuation losses in 2008 on residential loan-related properties as a result of increased inventory of foreclosures and deteriorating home values. Credit and collection services expense increased $43.9 million, or 39.0%, in 2008 compared to 2007 due to increased collection and loss mitigation activity offset by decreased loan closing expenses.

Marketing and customer development expense increased $177.2 million, or 90.9%, in 2008, compared to the same period in 2007. The increase was due to our contribution of $183.4 million, in the form of 3.6 million shares of Coke common stock, to our charitable foundation in the third quarter of 2008. Additionally, media advertising increased during the fourth quarter of 2008, when compared to 2007, in relation to our “Live Solid. Bank Solid.” campaign.

Mortgage reinsurance expense increased $179.9 million in 2008 compared to 2007 due to an increase in the mortgage reinsurance reserve which pertains to our mortgage reinsurance guaranty subsidiary, Twin Rivers. This increase in reserves was due primarily to the declining credit performance of the underlying loans. Twin Rivers’ loss exposure arises from third

Table of Contents

party mortgage insurers transferring a portion of their first loss exposure when losses by mortgage origination year exceed certain thresholds. Effective January 1, 2009, Twin Rivers stopped reinsuring mortgage guaranty insurance on new loans originated or purchased in 2009 by its parent or affiliate companies. As a result, in the future the reinsurance premiums assumed by Twin Rivers will be lower than the level in 2008, and Twin Rivers will not experience any claims losses for the 2009 book year business.

Outside processing and software increased $81.7 million, or 19.9%, compared to 2007 due to higher processing costs associated with higher transaction volumes in addition to higher software amortization costs and the outsourcing of certain back-office operations during the third quarter of 2008, which was offset by the corresponding decrease in employee compensation and benefits.

Amortization/impairment of intangible assets increased $24.6 million, or 25.4%, in 2008. In the second quarter of 2008, we recorded an impairment charge of $45.0 million related to a customer relationship intangible asset. This change was partially offset by a decline in amortization of customer intangible assets.

Other staff expense decreased $62.2 million, or 46.9%, in 2008 compared to 2007 primarily related to our E^2 Program savings produced in 2008 versus a $45.0 million accrual related to severance costs recorded in the third quarter of 2007 related to the program. For the year ended December 31, 2008, we achieved gross run rate savings of approximately $560.0 million related to our efficiency and productivity initiatives. Further, with the progress obtained in 2008, we believe we are on target to attain $600 million of cumulative gross savings by the end of 2009. Key contributors to achieving the 2009 goal include supplier management, outsourcing, and process engineering. Additionally in connection with our E^2 Program, consulting and legal expense decreased by 42.1%, or $42.6 million, primarily within the consulting fees and data processing consulting fees accounts.

Regulatory assessments expense grew from $22.4 million in 2007 to $54.9 million in 2008 as FDIC insurance premiums increased due to the exhaustion of previously established premium credits and higher premiums. In an attempt by the FDIC to further strengthen its reserves, future regulatory assessment expense will increase significantly from the level recognized in 2008 due to an increase in the annual FDIC premium rate as well as a special FDIC assessment in 2009.

Visa litigation expense decreased by $110.4 million, or 143.6%, in 2008 compared to the same period in 2007. We increased reserves related to the Visa litigation $20.0 million in the third quarter of 2008. However, offsetting the Visa litigation accrual were reversals totaling $53.5 million related to our portion of the funding by Visa of the litigation escrow account.

Other noninterest expense decreased $51.1 million, or 13.5%, in 2008 compared to 2007. The decrease was due primarily to write-downs of $19.9 million related to Affordable Housing properties as compared to $63.4 million of related charges in 2007.

Provision for Income Taxes

The provision for income taxes includes both federal and state income taxes. In 2008, the provision for income taxes was a benefit of $67.3 million, compared to tax expense of $615.5 million in 2007. The provision represents a negative 9.2% effective tax rate for 2008 compared to a positive 27.4% for 2007. The decrease in the effective tax rate was primarily attributable to the lower level of earnings, a higher proportion of tax-exempt income, state tax benefits resulting from subsidiaries' net operating losses and tax credits for the year ended December 31, 2008. Additionally, in July 2008, we contributed 3.6 million shares of Coke common stock to our SunTrust Foundation. This contribution resulted in a release of the deferred tax liability of approximately $65.8 million (net of valuation allowance) and provided an additional decrease in the effective tax rate. For additional information on this and the other transactions related to our holdings in Coke, refer to "Investment in Common Shares of The Coca-Cola Company" within this MD&A.

As of December 31, 2008, our gross cumulative unrecognized tax benefits ("UTBs") amounted to $330.0 million, of which $266.7 million (net of federal tax benefit) would affect our effective tax rate, if recognized. As of December 31, 2007, our gross cumulative UTBs amounted to $325.4 million. Additionally, we recognized a gross liability of $70.9 million and $80.0 million for interest related to our UTBs as of December 31, 2008 and December 31, 2007, respectively. Interest expense related to UTBs was $22.4 million for the year ended December 31, 2008, compared to $27.7 million for the same period in 2007. We continually evaluate the UTBs associated with our uncertain tax positions. It is reasonably possible that the total UTBs could significantly increase or decrease during the next 12 months due to completion of tax authority examinations and the expiration of statutes of limitations. However, an estimate of the range of the reasonably possible change in the total amount of UTBs cannot currently be made.

We file consolidated and separate income tax returns in the United States federal jurisdiction and in various state jurisdictions. Our federal returns through 2004 have been examined by the Internal Revenue Service ("IRS") and issues for

Table of Contents

tax years 1997 through 2004 are still in dispute. We have paid the amounts assessed by the IRS in full for tax years 1997 and 1998 and have filed refund claims with the IRS related to the disputed issues for those two years. An IRS examination of our 2005 and 2006 federal income tax returns is currently in progress. Generally, the state jurisdictions in which we file income tax returns are subject to examination for a period from three to seven years after returns are filed.

Table 5 - Loan Portfolio by Types of Loans

	As of December 31					
(Dollars in millions)	**2008**	2007	2006	2005	2004	2003
Commercial	**$41,039.9**	$35,929.4	$34,613.9	$33,764.2	$31,823.8	$30,681.9
Real estate:						
Residential mortgages	**32,065.8**	32,779.7	33,830.1	29,877.3	24,553.5	17,208.1
Home equity lines	**16,454.4**	14,911.6	14,102.7	13,635.7	11,519.2	6,965.3
Construction	**9,864.0**	13,776.7	13,893.0	11,046.9	7,845.4	4,479.8
Commercial real estate	**14,957.1**	12,609.5	12,567.8	12,516.0	12,083.8	9,330.1
Consumer:						
Direct	**5,139.3**	3,963.9	4,160.1	5,060.8	6,622.3	3,539.6
Indirect	**6,507.6**	7,494.1	7,936.0	8,389.5	6,802.9	8,394.5
Credit card	**970.3**	854.1	350.7	264.5	175.3	133.0
Total loans	**$126,998.4**	$122,319.0	$121,454.3	$114,554.9	$101,426.2	$80,732.3
Loans held for sale	**$4,032.1**	$8,851.7	$11,790.1	$13,695.6	$6,580.2	$5,552.1

Table 6 - Funded Exposures by Selected Industries[1]

	As of December 31, 2008		As of December 31, 2007	
(Dollars in millions)	**Loans**	**% of Total Loans**	Loans	% of Total Loans
Real estate	**$ 9,291.1**	**7.3 %**	$ 8,338.5	6.8 %
Construction	**8,727.3**	**6.9**	8,615.8	7.0
Retail trade	**5,352.1**	**4.2**	5,445.9	4.5
Manufacturing	**4,366.0**	**3.4**	3,513.9	2.9
Wholesale trade	**3,767.0**	**3.0**	3,376.0	2.8
Health & social assistance	**3,557.9**	**2.8**	2,922.3	2.4
Finance & insurance	**3,352.0**	**2.6**	2,891.7	2.4
Professional, scientific & technical services	**2,297.5**	**1.8**	2,108.6	1.7
Information	**2,123.5**	**1.7**	1,456.6	1.2
Public administration	**2,012.7**	**1.6**	1,864.1	1.5
Nonprofits	**1,941.4**	**1.5**	1,829.8	1.5
Transportation & warehousing	**1,918.4**	**1.5**	1,674.1	1.4
Accomodation & food services	**1,739.0**	**1.4**	1,441.9	1.2
Mining	**1,359.1**	**1.1**	1,144.2	0.9
Arts, entertainment & recreation	**1,254.8**	**1.0**	1,145.1	0.9
Administrative and support	**1,107.2**	**0.9**	1,057.7	0.9

[1] Industry groupings are loans in aggregate greater than $1 billion as of December 31, 2008 based on the North American Industry Classification System.

Loans

Total loans as of December 31, 2008 were $127.0 billion, an increase of $4.7 billion, or 3.8%, from December 31, 2007. The increase was primarily driven by growth in commercial loans, commercial real estate, and home equity lines. These increases were partially offset by a decrease in real estate construction loans. We believe that our portfolio is well diversified by product, client, and geography throughout our footprint, and has relatively low exposure to unsecured consumer loan products. A portion of the increase, approximately $1.0 billion as of December 31, 2008, came as a result of the loans acquired in the GB&T purchase during the second quarter of 2008.

Commercial loans were $41.0 billion, an increase of $5.1 billion, or 14.2%, from December 31, 2007, and comprise 32.3% of the total loan portfolio at December 31, 2008. The commercial loan portfolio is well diversified by industry, collateral, and geography. The primary reason for the increase was the disruption in the short-term corporate funding markets during the second half of 2008, resulting in certain commercial and large corporate clients accessing bank lines for funding. As such, beginning in the third quarter of 2008 in particular, we experienced an increase in the utilization levels of our outstanding commercial loan facilities. Overall, the portfolio has performed well but, depending on the economy, losses could increase in future periods.

Table of Contents

Residential mortgages were $32.1 billion, or 25.2% of the total loan portfolio, as of December 31, 2008, down 2.2% from December 31, 2007. The residential mortgage portfolio is comprised of core mortgages (prime first liens), prime second lien mortgages, home equity loans, lot loans, and Alt-A first and second mortgages. There are minimal negative amortizing option adjustable rate mortgages ("ARMs") and virtually no subprime loans in the core portfolio. The residential portfolio is mainly dispersed over four states: Florida (29.9%), Georgia (15.2%), Virginia (10.5%), and California (8.0%). The core mortgage portfolio was $23.2 billion, or 18.2% of total loans, as of December 31, 2008 and deteriorated somewhat due to current market conditions. Delinquency levels of 60 days or more increased to 2.6% as of December 31, 2008. The core mortgage portfolio consists of two-thirds prime jumbo loans. The core first mortgage portfolio included $14.3 billion in interest-only ARMs. The weighted average combined loan to value ("LTV") at origination of the core portfolio was 73%, and the portfolio has a current weighted average FICO score of 721. Prime second mortgages were $3.9 billion, or 3.1%, of total loans as of December 31, 2008 and are comprised of purchase money second liens or combo loans with a current weighted average FICO of 708. Home equity loans comprise $2.5 billion, or 2.0%, of the total loan portfolio as of December 31, 2008 and have a current weighted average FICO score of 713 and a 75% weighted average combined LTV at origination. Thirty-two percent of the home equity loans are in a first lien position. Lot loans were $1.4 billion, or approximately 1.1% of total loans, as of December 31, 2008 and have a current weighted average FICO score of 700. Alt-A loans were $1.2 billion, or 1.0% of total loans, as of December 31, 2008. Of the Alt-A loans, $0.9 billion are first liens and well secured with a weighted average combined LTV of 75% at origination. The remaining $0.3 billion of Alt-A loans are second lien loans with a weighted average combined LTV of 97% at origination and a current weighted average FICO score of 601.

The home equity line portfolio was $16.5 billion, or 13.0% of total loans, as of December 31, 2008, an increase of 10.3% from December 31, 2007, and it has a 74% weighted average combined LTV at origination and current FICO score of 727. The growth in this portfolio is in the low risk segment and results from a slow down of payoff/paydown attrition and normal line utilization on lines originated in late 2007 and 2008 under more conservative underwriting guidelines. The growth was predominantly in the less than 90% LTV and higher than 720 FICO scores segments. The weighted average FICO score of our new production is 772 with a weighted average combined LTV of 60%. Third party originated home equity lines continue to perform poorly; however, only 11.3% of the home equity lines were originated through that channel. We have eliminated origination of home equity product through third party channels, eliminated greater than 85% LTV originations, implemented market specific LTV guidelines in certain declining markets, and have been aggressively reducing line commitments in higher risk situations. Approximately 23% of our home equity lines are in a first lien position. We continue to enhance our collections and default management processes and where possible, reduce outstanding line commitments; however, we expect the home equity line portfolio to continue to show elevated nonaccrual and charge-off levels in the near future.

The construction portfolio was $9.9 billion, or 7.8% of total loans, at December 31, 2008, down $3.9 billion, or 28.4%, from December 31, 2007. The construction portfolio consists of residential construction to perm loans ($1.7 billion), residential construction loans ($2.0 billion), commercial construction loans ($2.4 billion), acquisition and development loans ($2.5 billion), and raw land loans ($1.3 billion). Approximately one third of this portfolio is owner-occupied, which provides additional sources of repayment and helps mitigate risk of loss. We have reduced the level of risk in the construction portfolio by prudently managing our construction exposure. This is evident by the declines in outstanding balances since December 2007 in the construction to perm (down 52.0%), residential construction (down 27.7%), commercial construction (down 27.1%), and acquisition and development (down 14.0%) portfolios. Further, these net decreases include the addition of construction loans from the GB&T acquisition that occurred in the second quarter 2008. Commercial-related construction loans represent 24.3% of the total construction portfolio and continue to perform well. Overall performance of residential construction related loans has deteriorated since the fourth quarter of 2007 consistent with the general decline in the economy. We continue to be proactive in our credit monitoring and management processes to provide early warning for problem loans in the portfolio. For example, we use an expanded liquidity and contingency analysis to provide a thorough view of borrower capacity and their ability to service obligations in a steep market decline. We have strict limits and have exposure caps on specific projects and borrowers for risk diversification. In some cases, the maturity date of certain residential real estate related loans, namely construction to perm and lot loans, has been extended as a result of market delays in completing the build-out phase of the home. These borrowers continue to perform; consequently, the loans remain on accruing status. It is possible that these borrowers could experience varying degrees of financial difficulties, resulting potentially in more significant loan modifications.

The commercial real estate portfolio was $15.0 billion, or 11.8% of total loans, an increase of $2.3 billion, or 18.6%, from December 31, 2007. Of this increase, $603.4 million was due to the acquisition of GB&T. This portfolio includes both owner-occupied and income producing collateral, with approximately 60% being owner occupied properties. The primary source of loan repayment for owner-occupied properties is business income and not real estate operations, which diversifies the risk or sources of repayment. Although we have not seen a significant deterioration on the fundamentals in our income property or owner-occupied products, recent market conditions have presented some rising vacancies among retail, office, and industrial products.

Table of Contents

The indirect consumer portfolio was $6.5 billion, or 5.1% of total loans, at December 31, 2008, down $986.5 million, or 13.2%, from December 31, 2007. This portfolio primarily consists of automobile loans generated through dealerships and has a current weighted average FICO of 699. The decrease is largely attributable to the recent slowdown in automobile sales and our specific decision to reduce exposure in this portfolio. This portfolio is experiencing a higher level of net charge-offs compared to the fourth quarter of 2007, driven by declining auto auction prices, especially for SUVs and large pick-up trucks.

The direct consumer portfolio was $5.1 billion, or 4.0% of total loans, at December 31, 2008, up $1.2 billion, or 29.7% from December 31, 2007, almost entirely due to growth in student loans. Student loans, which are mostly government supported, made up $2.9 billion, or 55.4%, of the direct consumer portfolio. This portfolio also consists of loans and lines to individuals for personal or family uses.

The decrease in loans held for sale from December 31, 2007 to December 31, 2008 of $4.8 billion was due primarily to a decline in total loan production of $21.9 billion, or 37.6% from 2007 to 2008. During 2008 and 2007, we transferred $656.1 million and $837.4 million, respectively, in loans from held for sale to held for investment. The transfer included loans that we determined could not be sold due to underwriting defects or payment defaults, as well as non-agency residential loans for which deteriorating market conditions impacted our ability to sell these loans. The loans transferred included loans that are carried at fair value under SFAS No. 159 and continue to be reported at fair value while classified as held for investment, as well as loans transferred at the lower of cost or market value.

Table 7 - Allowance for Loan and Lease Losses

(Dollars in millions)	As of December 31					
Allocation by Loan Type	**2008 [1]**	2007 [1]	2006 [1]	2005 [1]	2004 [1]	2003 [2]
Commercial	**$631.2**	$422.6	$415.9	$439.6	$433.0	$369.3
Real estate	**1,523.2**	664.6	443.1	394.1	369.7	159.3
Consumer loans	**196.7**	110.3	95.5	109.4	159.6	344.3
Unallocated [3]	**-**	85.0	90.0	85.0	87.7	69.0
Total	**$2,351.1**	$1,282.5	$1,044.5	$1,028.1	$1,050.0	$941.9

	As of December 31					
Year-end Loan Types as a Percent of Total Loans	**2008**	2007	2006	2005	2004	2003
Commercial	**32.3** %	29.4 %	28.8 %	29.2 %	31.6 %	38.2 %
Real estate	**57.8**	60.6	61.2	58.7	55.2	47.0
Consumer loans	**9.9**	10.0	10.0	12.1	13.2	14.8
Total	**100.0** %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %

[1] The allocations in the years 2004 through 2008 reflect the implementation of an ALLL methodology that is more granular than in prior periods. This methodology segregates the portfolio and incorporates a weighted average of expected loss derived from an internal risk rating system. Beginning in 2004, the allocation also includes the acquired portfolio of NCF.

[2] Beginning in 2003, the allocation reflected an apportionment of the ALLL that had been categorized as “environmental factors,” which is now included in our homogeneous loan pool estimates.

[3] Beginning in 2008, the unallocated reserve is reflected in our homogeneous pool estimates.

Table of Contents

Table 8 - Summary of Loan and Lease Losses Experience

(Dollars in millions)	2008	2007	2006	2005	2004	2003
	Year Ended December 31					
Allowance for Loan and Lease Losses						
Balance - beginning of period	**$1,282.5**	$1,044.5	$1,028.1	$1,050.0	$941.9	$930.1
Allowance associated with loans at fair value [1]	**-**	(4.1)	-	-	-	-
Allowance from acquisitions and other activity - net	**158.7**	-	-	-	173.8	9.3
Provision for loan losses	**2,474.2**	664.9	262.5	176.9	135.5	313.6
Charge-offs:						
Commercial	**(218.7)**	(133.6)	(178.9)	(107.3)	(109.7)	(195.0)
Real estate:						
Home equity lines	**(449.6)**	(116.2)	(28.8)	(24.5)	(12.6)	(5.8)
Construction	**(194.5)**	(12.2)	(2.3)	(6.0)	(4.1)	(0.8)
Residential mortgages	**(525.1)**	(113.1)	(29.6)	(22.8)	(20.2)	(16.3)
Commercial real estate	**(24.7)**	(2.1)	(8.1)	(3.1)	(5.5)	(5.6)
Consumer loans:						
Direct	**(41.9)**	(23.4)	(22.0)	(37.2)	(25.1)	(28.6)
Indirect	**(192.9)**	(106.4)	(82.3)	(109.6)	(133.9)	(139.5)
Credit card	**(33.1)**	(7.3)	(4.6)	(4.7)	(4.9)	(2.7)
Total charge-offs	**(1,680.5)**	(514.3)	(356.6)	(315.2)	(316.0)	(394.3)
Recoveries:						
Commercial	**24.1**	23.3	28.6	35.1	48.7	39.3
Real estate:						
Home equity lines	**16.4**	7.8	6.9	6.2	3.3	1.4
Construction	**2.8**	1.2	2.0	0.8	0.1	0.4
Residential mortgages	**7.8**	5.5	7.9	8.1	6.4	3.6
Commercial real estate	**1.2**	1.9	6.2	2.6	1.4	1.4
Consumer loans:						
Direct	**8.2**	9.6	12.1	13.5	10.0	8.5
Indirect	**54.2**	41.3	45.4	48.9	43.7	28.1
Credit card	**1.5**	0.9	1.4	1.2	1.2	0.5
Total recoveries	**116.2**	91.5	110.5	116.4	114.8	83.2
Net charge-offs	**(1,564.3)**	(422.8)	(246.1)	(198.8)	(201.2)	(311.1)
Balance - end of period	**$2,351.1**	$1,282.5	$1,044.5	$1,028.1	$1,050.0	$941.9
Average loans	**$125,432.7**	$120,080.6	$119,645.2	$108,742.0	$86,214.5	$76,137.9
Year-end loans outstanding	**126,998.4**	122,319.0	121,454.3	114,554.9	101,426.2	80,732.3
Ratios:						
Allowance to year-end loans[2]	**1.86 %**	1.05 %	0.86 %	0.90 %	1.04 %	1.17 %
Allowance to nonperforming loans[3]	**61.7**	101.9	216.9	378.0	404.7	279.8
Allowance to net charge-offs	**1.50 x**	3.03 x	4.24 x	5.17 x	5.22 x	3.03 x
Net charge-offs to average loans	**1.25 %**	0.35 %	0.21 %	0.18 %	0.23 %	0.41 %
Provision to average loans	**1.97**	0.55	0.22	0.16	0.16	0.41
Recoveries to total charge-offs	**6.9**	17.8	31.0	36.9	36.3	21.1

1 Amount removed from the ALLL related to our election to record $4.1 billion of residential mortgages at fair value.

2 During the second quarter of 2008, the Company revised its method of calculating this ratio to include, within the period-end loan amount, only loans measured at amortized cost. Previously, period-end loans included loans measured at fair value or the lower of cost or market. The Company believes this is an improved method of calculation due to the fact that the allowance for loan losses relates solely to the loans measured at amortized cost. Loans measured at fair value or the lower of cost or market that have been excluded from the prior period calculation were $392.3 million, which did not change the calculation by more than one basis point as of December 31, 2007. Amounts excluded in years prior to 2007 were immaterial and resulted in no basis point change in the respective calculation.

3 During the second quarter of 2008, the Company revised its method of calculating this ratio to include, within the nonperforming loan amount, only loans measured at amortized cost. Previously, this calculation included nonperforming loans measured at fair value or the lower of cost or market. The Company believes this is an improved method of calculation due to the fact that the allowance for loan losses relates solely to the loans measured at amortized cost. Nonperforming loans measured at fair value or the lower of cost or market that have been excluded from the prior period calculation were $171.5 million, which increased the calculation approximately 12 basis points as of December 31, 2007. Amounts excluded in years prior to 2007 were immaterial and resulted in no basis point change in the respective calculation.

Allowance for Loan and Lease Losses

We continuously monitor the quality of our loan portfolio and maintain an allowance for loan and lease losses ("ALLL") sufficient to absorb probable estimable losses inherent in our loan portfolio. We are committed to the timely recognition of problem loans and maintaining an appropriate and adequate ALLL. In addition to the review of credit quality through ongoing credit review processes, we employ a variety of modeling and estimation techniques to measure credit risk and construct an appropriate ALLL. Numerous asset quality measures, both quantitative and qualitative, are considered in estimating the ALLL. Our ALLL Committee has the responsibility of affirming the allowance methodology and assessing significant risk elements in order to determine the appropriate level of allowance for the inherent losses in the loan portfolio at the point in time being reviewed. The multiple factors evaluated include net charge-off trends, collateral values and geographic location, borrower FICO scores, delinquency rates, nonperforming and restructured loans, origination channel, product mix, underwriting practices, and economic trends. These credit quality factors are incorporated into various loss estimation models and tools utilized in our ALLL process or are qualitatively considered in evaluating the overall reasonableness of the ALLL. The factors that have the greatest quantitative impact on the estimated ALLL tend to be recent net charge-off trends, delinquency rates, and loss severity levels (i.e., collateral values), as these factors tend to be contemporaneous in nature, as well as have a pervasive impact on the applicable loan pools, while factors such as

Table of Contents

nonperforming or restructured loans tend to have a more isolated impact on subsets of loans in the loan pools. Also impacting the ALLL is the estimated incurred loss period, which tends to be approximately one year for consumer-related loans and between one and one-half to three years for wholesale-related loans. The ALLL process excludes loans measured at fair value in accordance with SFAS No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115”, as subsequent mark to market adjustments related to loans measured at fair value include a credit risk component. At December 31, 2008, the ALLL was $2,351.1 million, which represented 1.86% of period-end loans not carried at fair value. This compares with an ALLL of $1,282.5 million, or 1.05% of period-end loans not carried at fair value, as of December 31, 2007. The increase in ALLL reflects decreasing home prices and the associated increasing level of delinquencies, nonperforming loans, and net charge-offs in the residential real estate-related portions of the loan portfolio. Also affecting the increase in the ALLL was $158.7 million added in conjunction with the GB&T acquisition.

Our ALLL framework has two basic elements: specific allowances for loans individually evaluated for impairment and a component for pools of homogeneous loans not individually evaluated. Beginning in 2008, the portion of the unallocated allowance for inherent imprecision and incomplete data is reflected within the component for pools of homogenous loans. The first element of the ALLL analysis involves the estimation of allowances specific to individual impaired loans. In this process, specific allowances are established for larger commercial impaired loans based on an analysis of the most probable sources of repayment, including discounted cash flows, liquidation of collateral, or the market value of the loan itself. As of December 31, 2008 and 2007, the specific allowance related to impaired loans that were individually evaluated totaled $148.7 million and $17.5 million, respectively. The increase in ALLL associated with impaired loans individually evaluated is primarily driven by deterioration in loans to residential builders and several large credits within the Wholesale line of business.

The second element of the ALLL, the general allowance for homogeneous loan pools not individually evaluated, is determined by applying allowance factors to pools of loans within the portfolio that have similar risk characteristics. The general allowance factors are determined using a baseline factor that is developed from an analysis of historical net charge-off experience and expected losses. Expected losses are based on estimated probabilities of default and loss given default derived from our internal risk rating process. These baseline factors are developed and applied to the various loan pools. Adjustments may be made to baseline reserves for some of the loan pools based on an assessment of internal and external influences on credit quality not fully reflected in the historical loss or risk-rating data. These influences may include elements such as changes in credit underwriting, concentration risk, and/or recent observable asset quality trends. We continually evaluate our ALLL methodology seeking to refine and enhance this process as appropriate, and it is likely that the methodology will continue to evolve over time. As of December 31, 2008 and 2007, the general allowance calculations totaled $2,202.4 million and $1,180.0 million, respectively. The increase was primarily due to declining home prices and the associated deterioration in credit quality of the residential mortgage and home equity portfolios.

Our charge-off policy meets or exceeds regulatory minimums. Losses on unsecured consumer loans are recognized at 90 days past-due compared to the regulatory loss criteria of 120 days. Secured consumer loans, including residential real estate, are typically charged-off between 120 and 180 days, depending on the collateral type, in compliance with Federal Financial Institution Examination Council guidelines. Commercial loans and real estate loans are typically placed on nonaccrual when principal or interest is past-due for 90 days or more unless the loan is both secured by collateral having realizable value sufficient to discharge the debt in-full and the loan is in the legal process of collection. Accordingly, secured loans may be charged-down to the estimated value of the collateral with previously accrued unpaid interest reversed. Subsequent charge-offs may be required as a result of changes in the market value of collateral or other repayment prospects.

The ALLL recorded for real estate loans was $1,523.2 million, or 2.1% of total real estate loans. The increase in ALLL is primarily associated with the residential mortgage, home equity, and residential construction portfolios and is primarily resulting from decreasing home prices and borrower credit deterioration. The ALLL recorded for commercial loans was $631.2 million, or 1.5% of the commercial loans, an increase of $208.6 million in 2008. The increase is primarily due to loan growth and credit deterioration of several large credits in the Wholesale line of business.

The ratio of the ALLL to total nonperforming loans decreased to 61.7% as of December 31, 2008 from 101.9% as of December 31, 2007. The decline in this ratio was due to a $2,509.6 million increase in nonperforming loans driven primarily by increases in residential mortgage and real estate construction nonperforming loans, partially offset by the increase in the ALLL. The increase in nonperforming loans was driven primarily by deteriorating economic conditions including increased mortgage delinquency rates and declining home values in most markets that we serve. The product type of nonperforming loans is a key determinant in evaluating the relationship between ALLL and nonperforming loans. We charge-off residential nonperforming loans to the expected net realizable value of the loans sixty days after they are classified as nonperforming. The charge-off is applied against the ALLL; therefore, the relationship between ALLL and nonperforming loans becomes unlinked since the carrying value of many of the nonperforming loans has already recognized losses that are estimated to be

Table of Contents

realized. Another factor that mitigates the increase in the ALLL is that most loans have some amount of realizable value; therefore, while the entire loan is classified as nonperforming, only the amount of estimated losses would have been captured in the ALLL.

The reserve for unfunded commitments was $27.5 million and $7.9 million as of December 31, 2008 and 2007, respectively. Lending commitments such as letters of credit and binding unfunded loan commitments are assessed similarly to unfunded wholesale loans except utilization assumptions are considered. The reserve for unfunded lending commitments is included in other liabilities on the Consolidated Balance Sheets with changes to the reserves recorded in other expense.

Net charge-offs for the year ended December 31, 2008 increased $1,141.5 million from the $422.8 million of net charge-offs recorded in the prior year. The increase in net charge-offs was largely due to higher net charge-offs in the residential mortgage, construction, and home equity portfolios. A downturn in residential real estate prices has negatively affected the entire industry. Despite our avoidance of the subprime consumer real estate lending markets in our loan portfolio, the lower residential real estate valuations and recessionary economic conditions have affected borrowers of higher credit quality as well.

Provision for Loan Losses

The provision for loan losses is the result of a detailed analysis estimating an appropriate and adequate ALLL. The analysis includes the evaluation of impaired loans as prescribed under SFAS No. 114 “Accounting by Creditors for Impairment of a Loan,” and SFAS No. 118 “Accounting by Creditors for Impairment of a Loan – Income Recognition and Disclosures,” and pooled loans and leases as prescribed under SFAS No. 5, “Accounting for Contingencies.” For the year ended December 31, 2008, the provision for loan losses was $2,474.2 million, an increase of $1,809.3 million, or 272.1%, from the year ended December 31, 2007. Early stage delinquencies (accruing loans past due 30-89 days) were $2.3 billion, or 1.8% of total loans at December 31, 2008, an increase of 28 basis points from December 31, 2007. Contributing to the increase in the provision for loan losses were sharp declines in home values during 2008 with some of our Florida markets declining 30% while many other markets declined 10% or less. Fourth quarter provision for loan losses increased $458.8 million from the third quarter primarily due to significant deterioration in the economy and resulting deterioration in credit quality and higher fourth quarter of 2008 net charge-offs. Fourth quarter credit quality deterioration was particularly evident in early stage delinquencies which were stable most of 2008 around 1.5% of total loans but increased to 1.8% by year end due to an intensification of recessionary conditions. The increase in early stage delinquencies was primarily in the residential mortgage related portfolios.

The provision for loan losses was $909.9 million more than net charge-offs of $1,564.3 million during 2008, reflecting the downturn in the residential real estate markets and the resulting deterioration in credit conditions of the residential mortgage, construction, and home equity portfolios. Net charge-offs for 2008 were $1,141.5 million higher than net charge-offs recorded in 2007. Net charge-offs to average loans were 1.25% in 2008 compared to 0.35% in 2007. The increase was largely due to higher net charge-offs in the residential mortgage, home equity, and construction portfolios. A downturn in residential real estate prices has negatively affected the entire industry, including higher credit quality products and borrowers. We anticipate declines in home values and rising unemployment will result in additional net charge-offs in future periods.

Table of Contents

Table 9 - Nonperforming Assets

(Dollars in millions)	As of December 31, 2008	2007	2006	2005	2004	2003
Nonperforming Assets						
Nonaccrual/nonperforming loans						
Commercial	**$322.0**	$74.5	$106.8	$70.9	$130.9	$165.9
Real estate						
Construction	**1,276.8**	295.3	38.6	24.4	32.8	4.4
Residential mortgages	**1,847.0**	841.4	266.0	95.7	104.1	83.7
Home equity lines	**272.6**	135.7	13.5	7.6	0.4	1.7
Commercial real estate	**176.6**	44.5	55.4	44.6	36.7	48.6
Consumer loans	**45.0**	39.0	23.5	28.7	49.3	32.2
Total nonaccrual/nonperforming loans	**3,940.0**	1,430.4	503.8	271.9	354.2	336.5
Other real estate owned (“OREO”)	**500.5**	183.7	55.4	30.7	28.6	16.5
Other repossessed assets	**15.9**	11.5	6.6	7.2	8.8	10.3
Total nonperforming assets	**$4,456.4**	$1,625.6	$565.8	$309.8	$391.6	$363.3
Ratios:						
Nonperforming loans to total loans[1]	**3.10** %	1.17 %	0.41 %	0.24 %	0.35 %	0.42 %
Nonperforming assets to total loans plus OREO and other repossessed assets[1]	**3.49**	1.33	0.47	0.27	0.39	0.45
Restructured loans (accruing)	**462.6**	29.9	28.0	24.4	19.1	14.8
Accruing loans past due 90 days or more	**$1,032.3**	$611.0	$351.5	$371.5	$214.3	$196.4

[1] During the third quarter of 2008, we revised our definition of nonperforming loans to exclude loans that have been restructured and remain on accruing status. These loans are not considered to be nonperforming because they are performing in accordance with the restructured terms. This change better aligns our definition of nonperforming loans and nonperforming assets with the one used by peer institutions and therefore improves comparability of this measure across the industry.

Nonperforming Assets

Nonperforming assets totaled $4.5 billion as of December 31, 2008, an increase of $2.8 billion, or 174.1%, from December 31, 2007. Nonperforming loans as of December 31, 2008 were $3.9 billion, an increase of $2.5 billion, or 175.4%, from December 31, 2007. Of this total increase, nonperforming residential mortgage loans represented $1,005.6 million, nonperforming real estate construction loans represented $981.5 million, nonperforming commercial loans represented $247.5 million, nonperforming home equity lines represented $136.9 million, nonperforming commercial real estate loans represented $132.1 million, and consumer loans represented $6.0 million.

Residential mortgages and home equity lines represent 53.8% of nonaccruals, and if residential related construction loans are included, then nonaccruals related to residential real estate represent 70.6% of total nonperforming loans. The second quarter 2008 GB&T acquisition accounted for $229.5 million of the increase in nonperforming assets. The increases in nonperforming assets is largely related to the housing correction and related decline in the values of residential real estate. As loans work through their migration process, we anticipate nonaccrual loans to continue increasing until we experience sustained improvement in the delinquency level of our loan portfolios. The nonperforming assets balance is also affected by the time it takes to complete the foreclosure process, especially in judicial jurisdictions.

Nonperforming residential real estate loans are collateralized by one-to-four family properties and a portion of the risk is mitigated by mortgage insurance. We apply rigorous loss mitigation processes to these nonperforming loans to ensure that the asset value is preserved to the greatest extent possible. Since early 2006, we have tightened the underwriting standards applicable to many of the residential loan products offered. We do not originate subprime loans or option ARMs for our balance sheet. The total Alt-A portfolio loans, which consist of loans with lower documentation standards, were approximately $1.2 billion as of December 31, 2008, down 27.3% from December 31, 2007. The Alt-A loans are 1.0% of the total loans and 3.9% of our residential mortgage portfolio. Approximately $254.0 million of this portfolio was nonperforming at December 31, 2008. The Alt-A portfolio was comprised of approximately 73% in first lien positions and approximately 27% in second lien positions at December 31, 2008. The weighted average original LTV of the first lien positions was 75%. For the Alt-A second lien positions, the weighted average original combined LTV was 97% and the weighted average original FICO score was 682. We discontinued originating first lien Alt-A loans to hold on the balance sheet during 2006 and until mid-2007 originated a small amount with more restrictive credit guidelines for placement in the secondary market. We have now eliminated Alt-A production entirely.

At the end of 2008, the prime second portfolio totaled $3.9 billion with $3.5 billion insured. During the second quarter of 2008, the insurance provider stopped providing mortgage insurance on newly originated prime second mortgages; however, existing policies remain in force. These policies provide insurance on a pool basis and generally cover 100% of the loss up to a maximum loss percentage (e.g., stop loss) for the entire pool. More specifically, the policies generally cover losses up to

Table of Contents

5% of the original pool balance; we cover the next 3% of losses and then the insurer covers the next 2% of losses to the final stop loss level of 10%. Frequently, these loss limits are segregated by “book years” where each book year has its own stop loss. Due to deterioration in the delinquency rates, the loss estimates for the prime second portfolio increased during the fourth quarter of 2008. Thus, we expect to breach the first stop loss level on our prime seconds and experience credit losses on these loans in 2009. Accordingly, the ALLL as of December 31, 2008 reflects our uninsured portion of the estimated losses.

Loans in these pool policies must be originated under parameters agreed to under the insurance policy. If a loan is either originated outside of agreed upon parameters, or found to contain a material misrepresentation on the loan application or appraisal, then the loan may not be insurable. Upon receipt of a claim, the mortgage insurer reviews the applicable loan file for proper documentation to verify that the loan met the documentation and underwriting terms of the mortgage insurance agreement. If the mortgage insurer denies the claim, we will review and verify the reason for the denied claim and independently determine if the claim denial was appropriate. If we disagree with the mortgage insurer’s decision to deny the claim, we will discuss the circumstances with the mortgage insurer in attempt to reach a common understanding and acceptable resolution. When a denied claim is under review, we will reserve for the loss contingency based on the guidance in SFAS No. 5, “Accounting for Contingencies”. As of December 31, 2008, we had reserved approximately $97.5 million related to potential claim denials, which were recorded in other liabilities in the consolidated financial statements. Total claims paid during 2008 and 2007 under the mortgage insurance arrangement were $31.4 million and $41.4 million, respectively.

Nonaccrual construction loans were $1.3 billion, an increase of $981.5 million, or 332.4%, from December 31, 2007. The increase in construction nonaccrual loans relates primarily to residential-related construction and development and is driven by the downturn in the housing market.

Nonaccrual home equity lines of credit (“HELOC”) were $272.6 million at December 31, 2008 compared with $135.7 million at December 31, 2007. Third-party originated had the highest nonaccrual ratio at 4.3% and accounted for 29.3% of nonperforming lines. Approximately 11% of the portfolio has combined LTVs greater than 90%, and more than 54% of the portfolio has a combined LTV of less than or equal to 80%. There are no HELOCs in the portfolio that were originated as subprime. The weighted average combined LTV of the total HELOC portfolio is approximately 74% and nearly 23% of the portfolio is in the first lien position.

We are proactively managing troubled and potentially-troubled mortgage and home equity loans as part of our extensive workout programs to help clients stay in their homes by reworking these loans to achieve an affordable payment structure. These modifications may include interest rate or repayment terms adjustments. Accruing loans with modifications that are deemed to be economic concessions are reported as restructured. Nonaccruing loans that are modified and demonstrate a history of repayment performance in accordance with their modified terms are reclassified to restructured. Accruing restructured loans were $462.6 million at December 31, 2008, an increase of $432.7 million from December 31, 2007.

Other real estate owned (“OREO”) as of December 31, 2008 was $500.5 million, an increase of $316.8 million, or 172.5%, from December 31, 2007. The increase was primarily due to the level of residential mortgage and residential construction loans acquired through foreclosure. As of year end, $335.9 million of OREO was comprised of single family residential properties. Upon foreclosure, these properties were written down to their estimated net realizable value, less selling costs. We are aggressively working these foreclosed assets to minimize losses; however, further declines in home prices could result in additional losses on these properties. The amount of net inflows into OREO has increased over the past several quarters as nonperforming loans are worked through the foreclosure process. Most of our OREO properties are located in Georgia, California and Florida.

Interest income on nonaccrual loans, if recognized, is recorded using the cash basis method of accounting. For the years ended 2008 and 2007, this amounted to $25.4 million and $17.3 million, respectively. For the years ended 2008 and 2007, estimated interest income of $233.3 million and $85.0 million, respectively, would have been recorded if all such loans had been accruing interest according to their original contract terms.

As of December 31, 2008, accruing loans past due ninety days or more increased by $421.3 million from December 31, 2007 to $1,032.3 million, primarily in residential mortgage related and commercial real estate portfolios. The increase was primarily driven by loans sold to Government National Mortgage Association that were ninety days or more past due, which increased $257.3 million from December 31, 2007.

When information about borrowers’ possible credit problems causes us to have serious doubts about their ability to repay under the contractual terms of the loan, we classify those loans as nonaccrual. We do, however, consider early stage delinquencies (accruing loans past due 30-89 days) to be an indicator of potential credit problems. During 2008, the related

Table of Contents

early stage delinquency balances have been increasing and are generally expected to continue to increase in 2009. Early stage delinquencies were $2.3 billion, or 1.8% of total loans, at December 31, 2008 which represents a 28 basis point increase from December 31, 2007.

SELECTED FINANCIAL INSTRUMENTS CARRIED AT FAIR VALUE

Adoption of Fair Value Accounting Standards

During the first quarter of 2007, we evaluated the provisions of SFAS Nos. 157 and 159. SFAS No. 157 clarifies how to measure fair value when such measurement is otherwise required by U.S. GAAP, and SFAS No. 159 provides companies with the option to elect to carry specific financial assets and financial liabilities at fair value. While the provisions of SFAS No. 157 establish clearer and more consistent criteria for measuring fair value, the primary objective of SFAS No. 159 is to expand the use of fair value in U.S. GAAP, with the focus on eligible financial assets and financial liabilities. As a means to expand the use of fair value, SFAS No. 159 allows companies to avoid some of the complexities of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," and more closely align the economics of their business with their results of operations without having to explain a mixed attribute accounting model. Based on our evaluation of these standards and our balance sheet management strategies and objectives, we early adopted these fair value standards as of January 1, 2007.

In conjunction with adopting SFAS No. 159, we elected to initially record specific financial assets and financial liabilities at fair value. These instruments included all, or a portion, of the following: debt, available for sale debt securities, adjustable rate residential mortgage portfolio loans, securitization warehouses, and trading loans. As a result of recording these financial assets and liabilities at fair value as of January 1, 2007, in accordance with SFAS No. 157 and SFAS No. 159, we began recording in earnings in the first quarter of 2007, changes in these instruments' fair values, as well as changes in fair value of any associated derivatives which would have otherwise been carried at fair value through earnings.

Upon electing to carry these assets and liabilities at fair value, we began to economically hedge and/or trade these assets or liabilities in order to manage the instrument's fair value volatility and economic value. Following is a discussion of all assets and liabilities that are currently carried at fair value on the consolidated balance sheets at December 31, 2008 and 2007, either due to our election under SFAS No. 159 or a requirement of U.S. GAAP, as is the case with securities available for sale.

Table 10 - Trading Assets and Liabilities

(Dollars in thousands)	As of December 31		
	2008	2007	2006
Trading Assets			
U.S. government and agency securities	**$788,166**	$758,129	$162,403
U.S. government-sponsored enterprises	**2,339,469**	3,375,361	675,898
Corporate and other debt securities	**1,538,010**	2,821,737	409,029
Equity securities	**116,788**	242,680	2,254
Mortgage-backed securities	**95,693**	938,930	140,531
Derivative contracts	**4,701,782**	1,977,401	1,064,263
Municipal securities	**159,135**	171,203	293,311
Commercial paper	**399,611**	2,368	29,940
Other securities and loans	**257,615**	230,570	-
Total trading assets	**$10,396,269**	$10,518,379	$2,777,629
Trading Liabilities			
U.S. government and agency securities	**$440,408**	$404,501	$382,819
Corporate and other debt securities	**146,805**	126,437	-
Equity securities	**13,263**	68	77
Mortgage-backed securities	**-**	61,672	-
Derivative contracts	**2,640,308**	1,567,707	1,251,201
Total trading liabilities	**$3,240,784**	$2,160,385	$1,634,097

Table of Contents

Trading Assets and Liabilities

Trading assets include loans, investment securities and derivatives that relate to capital markets trading activities by acting as broker/dealer on behalf of our clients, investment securities, and derivatives that are periodically acquired for corporate balance sheet management purposes. All trading assets and liabilities are carried at fair value as required under U.S. GAAP, or due to our election under SFAS No. 159 to carry certain assets at fair value. Trading accounts profits/(losses) and commissions on the Consolidated Statements of Income are primarily comprised of gains and losses on trading assets and liabilities. For additional information regarding trading account profits/(losses) and commissions, refer to "Noninterest Income" within this MD&A. Additionally, see Note 20, "Fair Value Election and Measurement," to the Consolidated Financial Statements for additional information regarding financial instruments carried at fair value.

We utilize trading assets such as fixed rate agency MBS and derivatives, primarily interest rate swaps, for balance sheet management purposes that are intended to provide an economic hedge to a portion of the changes in fair value of our publicly-traded debt that is measured at fair value pursuant to our election of the fair value option. As of December 31, 2008, the amount of trading securities outstanding for this purpose was approximately $166.1 million of fixed rate corporate bonds in financial services companies.

Derivative assets and liabilities increased during 2008 by $2.7 billion and $1.1 billion, respectively. This increase was driven by the movements in fair values of interest rate based derivatives as both current and projected future interest rates declined significantly during the fourth quarter of 2008. The higher increase in derivative assets relative to derivative liabilities during the year is due to gains in fair value from derivative positions that we use as risk management tools. See Note 17, "Derivative Financial Instruments", to the Consolidated Financial Statements for additional information regarding risk management strategies involving derivatives.

Certain ABS were purchased during the fourth quarter of 2007 from affiliates and certain ARS were purchased primarily in the fourth quarter of 2008. The securities acquired during the fourth quarter of 2007 included SIVs that are collateralized by various domestic and foreign assets, residential MBS, including Alt-A and subprime collateral, collateralized debt obligations ("CDO"), and commercial loans, as well as super-senior interests retained from Company-sponsored securitizations. During 2008, we recognized approximately $255.9 million in net market valuation losses related to these ABS. Through sales, maturities and write downs, we reduced our exposure to these distressed assets by approximately $3.2 billion since the acquisition of these in the fourth quarter of 2007, making the exposure at December 31, 2008 approximately $250.0 million. During the year, we sold over $1.5 billion in securities and received over $870 million in payments related to securities acquired during the fourth quarter of 2007.

We continue to actively evaluate our holdings of these securities with the objective of opportunistically lowering our exposure to them. In addition, we expect paydowns to continue on many of the residential MBS; however, more than half of the remaining acquired portfolio consists of SIVs undergoing enforcement proceedings, and therefore any significant reduction in the portfolio will largely depend on the status of those proceedings. While further losses are possible, our experience during the year reinforces our belief that we have appropriately written these assets down to fair value as of December 31, 2008. The estimated market value of these securities is based on market information, where available, along with significant, unobservable third party data. As a result of the high degree of judgment and estimates used to value these illiquid securities, the market values could vary significantly in future periods. See "Difficult to Value Financial Assets" included in this MD&A for more information.

The amount of ARS recorded in trading assets at fair value totaled $133.1 million at December 31, 2008. The majority of these ARS are preferred equity securities, and the remaining securities consist of ABS backed by trust preferred bank debt or student loans.

In September 2008, we purchased, at amortized cost plus accrued interest, a Lehman Brothers security from the RidgeWorth Prime Quality Money Market Fund (the "Fund"). The Fund received a cash payment for the accrued interest along with a $70 million note that we issued. RidgeWorth, one of our wholly-owned subsidiaries, is the investment adviser to the Fund. The Lehman Brothers security went into default when Lehman Brothers filed for bankruptcy in September 2008. We took this action in response to the unprecedented market events during the third quarter and to protect investors in the Fund from losses associated with this specific security. When purchased by the Fund, the Lehman Brothers security was rated A-1/P-1 and was a Tier 1 eligible security. Lehman Brothers is currently in liquidation and the ultimate timing and form of repayment on the security is not known at this time. During 2008, we recorded a pre-tax market valuation loss of $63.8 million as a result of the purchase. We evaluated this transaction under the applicable accounting guidance and concluded that we were not the primary beneficiary and therefore consolidation of the Fund was not appropriate.

In September 2008, the Federal Reserve Bank of Boston (the "Fed") instituted the ABCP MMMF Liquidity Facility program (the "Program") that allows eligible depository institutions, bank holding companies and affiliated broker/dealers to purchase

Table of Contents

certain asset-backed commercial paper ("ABCP") from certain money market mutual funds (the "MMMF"). These purchases will be made by the participating institution at a price equal to the MMMF's amortized cost. The Fed will then make a fixed rate non-recourse loan to the participating institution that will mature on the same date as the ABCP that was purchased with a specific draw. As of December 31, 2008, SunTrust Robinson Humphrey ("STRH") owned $400 million of eligible ABCP at a fair value of $399.6 million. At December 31, 2008, this ABCP had a weighted average maturity of 9 days and a risk weighting of 0% for regulatory capital purposes. Per the terms of the Program, STRH also had outstanding loans from the Fed in the amount of $399.6 million at fixed interest rates ($199.8 million at 2.25% and $199.8 million at 1.75%). Subsequent to December 31, 2008, all of this ABCP matured, STRH collected 100% of the par amount of this ABCP from the issuer and repaid the loan to the Fed. At December 31, 2008, this ABCP was classified within trading assets and carried at fair value, and the loans from the Fed were elected to be carried at fair value pursuant to the provisions of SFAS No. 159 and classified within other short-term borrowings. Because of the non-recourse nature of the loan, we did not recognize through earnings any differences in fair value between the loans and the ABCP.

Table 11 – Securities Available for Sale

	As of December 31			
(Dollars in millions)	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
U.S. Treasury securities				
2008	**$125.6**	**$1.5**	**$-**	**$127.1**
2007	139.2	1.6	-	140.8
2006	143.7	1.5	0.1	145.1
U.S. government-sponsored enterprises				
2008	**$339.0**	**$20.3**	**$0.3**	**$359.0**
2007	244.0	5.6	-	249.6
2006	1,464.3	7.1	16.0	1,455.4
States and political subdivisions				
2008	**$1,018.9**	**$24.6**	**$6.1**	**$1,037.4**
2007	1,052.6	16.2	1.5	1,067.3
2006	1,032.3	13.4	4.6	1,041.1
Asset-backed securities				
2008	**$54.1**	**$3.1**	**$7.6**	**$49.6**
2007	241.7	-	31.4	210.3
2006	1,128.0	1.9	17.6	1,112.3
Mortgage-backed securities				
2008	**$15,022.1**	**$142.2**	**$118.0**	**$15,046.3**
2007	10,085.8	71.7	16.3	10,141.2
2006	17,337.3	37.4	243.8	17,130.9
Corporate bonds				
2008	**$275.5**	**$3.3**	**$13.0**	**$265.8**
2007	232.2	0.7	1.6	231.3
2006	468.9	1.5	7.6	462.8
Other securities[1]				
2008	**$1,448.0**	**$1,363.3**	**$-**	**$2,811.3**
2007	1,544.0	2,679.6	-	4,223.6
2006	1,423.9	2,330.2	-	3,754.1
Total securities available for sale				
2008	**$18,283.2**	**$1,558.3**	**$145.0**	**$19,696.5**
2007	13,539.5	2,775.4	50.8	16,264.1
2006	22,998.4	2,393.0	289.7	25,101.7

[1] Includes our investment in 30.0 million, 43.6 million, and 48.2 million shares of common stock of The Coca-Cola Company, $493.2 million, $452.2 million, and $389.2 million of Federal Home Loan Bank of Cincinnati and Federal Home Loan Bank of Atlanta stock stated at par value, and $360.9 million, $340.2 million, and $340.2 million of Federal Reserve Bank stock stated at par value as of December 31, 2008, 2007, and 2006, respectively.

Table of Contents

Securities Available for Sale

The securities available for sale portfolio is managed as part of the overall asset and liability management process to optimize income and market performance over an entire interest rate cycle while mitigating risk. For much of 2008 the securities portfolio remained relatively constant with cash flow from maturities and prepayments primarily reinvested into longer duration agency MBS.

The size of the portfolio was $19.7 billion as of December 31, 2008, an increase of $3.4 billion, or 21.1%, from December 31, 2007, due primarily to the net purchases during the fourth quarter of 2008 of MBS issued by federal agencies, offset by the sale and contribution of a portion of our investment in Coke common stock along with a decline in the fair value of the remaining portion of the Coke common stock.

Net securities gains of $1.1 billion were realized during 2008, primarily due to the sale and contribution of a portion of our investment in Coke common stock from which a $732.2 million gain was realized. Additionally in the fourth quarter of 2008, $14.6 billion of MBS issued by federal agencies were purchased and $9.3 billion of primarily agency MBS were sold generating a $413.1 million realized gain. The securites sold were held in conjunction with our risk management strategies associated with economically hedging the value of MSRs. Net securities gains realized for the year ended December 31, 2007 were $243.1 million primarily related to the sale of Coke common stock, while we realized net securities losses of $50.5 million for the year ended December 31, 2006.

The portfolio's effective duration decreased to 2.8% as of December 31, 2008 from 3.9% as of December 31, 2007. The decline was caused by an increase in prepayment assumptions on our MBS portfolio. Effective duration is a measure of price sensitivity of a bond portfolio to an immediate change in market interest rates, taking into consideration embedded options. An effective duration of 2.8% suggests an expected price change of 2.8% from a one percent instantaneous change in market interest rates. The average yield for 2008 declined to 5.99% compared to 6.20% during 2007. The yield remained relatively constant during the first half of 2008 but began to decline significantly from 6.30% during the second quarter to 5.86% during the third quarter, and 5.65% during the fourth quarter. The decline in yield during the second half of 2008 was primarily driven by a decline in dividend income as a result of the sale and contribution of a portion of our investment in Coke common stock. The yield during the fourth quarter was also negatively impacted by the decision of the FHLB to delay the declaration of their quarterly dividend until the first quarter of 2009. We expect to see a further decline in the yield on available for sale securities in the first quarter of 2009 due to the timing of the net purchase of lower-yielding MBS issued by federal agencies in late December. In addition, should we experience an increase in prepayments on these newly acquired MBS during the first quarter of 2009, we would see an additional decrease in yield due to the immediate recognition of the unamortized premium on these securities.

The carrying value of available for sale securities reflected $1.5 billion in net unrealized gains as of December 31, 2008, comprised of a $1.4 billion unrealized gain from our remaining 30.0 million shares of Coke common stock and a less than $0.1 billion net unrealized gain on the remainder of the portfolio.

The credit quality of the securities portfolio was bolstered as a result of our purchase of agency MBS, with approximately 94% of the total securities available for sale portfolio rated "AAA," the highest possible rating by nationally recognized rating agencies. We review all of our securities with unrealized losses for other-than-temporary impairment at least quarterly. During 2008, we recorded $83.8 million in other-than-temporary impairment charges within securities gains/(losses), primarily related to $269.4 million in residential MBS and residual interests in which the default rates and loss severities of the underlying collateral, including subprime and Alt-A loans, increased significantly during the year. These securities were valued using either third party pricing data, including broker indicative bids, or expected cash flow models. There were no similar charges recorded in 2007.

There is a potential in the future that proposed bankruptcy legislation may lead to future other-than-temporary impairment charges associated primarily with super-senior private MBS, the amount of which is uncertain. The amortized cost of these securities was $619.2 million with associated net unrealized losses of approximately $108.9 million as of December 31, 2008.

We hold stock in the FHLB of Atlanta and FHLB of Cincinnati totaling $493.2 million as of December 31, 2008. We account for the stock based on the industry guidance in Statement of Position ("SOP") 01-6 "Accounting by Certain Entities (Including Entities With Trade Receivables) That Lend to or Finance the Activities of Others", which requires the investment be carried at cost and be evaluated for impairment based on the ultimate recoverability of the par value. We evaluated our holdings in FHLB stock at December 31, 2008 and believe our holdings in the stock are ultimately recoverable at par. In addition, we do not have operational or liquidity needs that would require a redemption of the stock in the foreseeable future and therefore determined that the stock was not other-than-temporarily impaired.

Table of Contents

Difficult to Value Financial Assets and Liabilities

The broad credit crisis that was triggered by the 2007 subprime loan melt-down intensified throughout 2008 and, as the broader economy continued to worsen, the credit and liquidity markets became dysfunctional. The second half of 2008 was marked by turmoil in the financial sector, with the failure or government induced acquisitions of several large banks and investment banks, increased unemployment, and further declines in real estate values. Additional liquidity adjustments were made on many securities, and wider spreads caused valuing our level 3 financial instruments to become even more difficult.

Fair value is the estimated price using market-based inputs or assumptions that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Current market conditions have led to diminished, and in some cases, non-existent trading in certain of the financial asset classes that we own. We are required to consider observable inputs, to the extent available, in the fair value estimation process, unless that data results from forced liquidations or distressed sales. When available, we will obtain third party broker quotes or observable market pricing data, as this level of evidence is the strongest support for the fair value of these instruments, absent current market activity in that specific security or a similar security. Despite our best efforts to maximize the use of relevant observable inputs, the current market environment has diminished the observability of trades and assumptions that have historically been available. As such, the degree to which significant unobservable inputs have been utilized in our valuation procedures has increased, largely with respect to certain types of loans, securities, and public debt. This decrease in observability of market data began in the third quarter of 2007 and persisted through 2008.

The lack of liquidity in the market during the third and fourth quarters of 2008 created additional challenges when estimating the fair value of certain financial instruments. Generally, the securities most affected by the lack of liquidity are those securities classified as level 3 in the fair value hierarchy. The lack of liquidity in specific types of securities caused us to evaluate the performance of the underlying collateral and use a discount rate commensurate with the rate a market participant would use to value the instrument in an orderly transaction and that also acknowledged illiquidity premiums and required investor rates of return that would be demanded in the market. The discount rate considered the capital structure of the instrument, market indices, and the relative yields of instruments for which third party pricing information and/or market activity was available. In certain instances, the interest rate and credit risk components of the valuation indicated a full return of expected principal and interest; however, the lack of liquidity resulted in discounts on the value of certain securities ranging from 5% to 40% or even higher in some cases. The current illiquid market is requiring discounts of this degree to drive a market competitive yield, as well as account for the extended duration risk from the repayment of the instrument. The discount rates selected derived reasonable prices when compared to (i) observable transactions, when available, (ii) other securities on a relative basis, or (iii) the bid/ask spread of non-binding broker indicative bids. For certain securities, particularly non-investment grade MBS, a reasonable market discount rate could not be determined using those methodologies, and therefore dollar prices were established based on market intelligence.

Pricing services and broker quotes were obtained when available to assist in estimating the fair value of level 3 instruments. The number of quotes we obtained varied based on the number of brokers following a particular security, but generally two to four quotes were obtained; however, the ability to obtain broker quotes or indications declined throughout the year and particularly during the fourth quarter. We gained an understanding of the information used by these third party pricing sources to develop these estimated values. The information obtained from third party pricing sources was evaluated and relied upon based on the degree of market transactions supporting the price indications and the firmness of the price indications. In most cases, the current market conditions caused the price indications to be non-binding and supported by very limited to no recent market activity. In those instances, we weighted the third party information according to our judgment of it being a reasonable indication of the instrument's fair value.

Generally, pricing services' values and broker quotes obtained on level 3 instruments were indications of value based on price indications, market intelligence, and proprietary cash flow modeling techniques but could not otherwise be supported by recent trades due to the illiquidity in the markets. These values were evaluated in relation to other securities, other broker indications, as well as our independent knowledge of the security's collateral. It is important to note that we believe that we evaluated all available information to estimate the value of level 3 assets. The decline in the amount of third party information available, particularly in the third and fourth quarters, necessitated the further use of internal models when valuing level 3 instruments. All of the techniques used and information obtained in the valuation process provides a range of estimated values, which were evaluated and compared in order to establish an estimated value that, based on management's judgment, represented a reasonable estimate of the instrument's fair value. It was not uncommon for the range of value of these instruments to vary widely; in such cases, we selected an estimated value that we believed was the best indication of value based on the yield a market participant in this current environment would expect. We evaluate the amount of realized gains or losses upon disposition of level 3 securities relative to our most recent mark to support the accuracy of the judgments made by management in estimating the value of illiquid securities.

Beginning in the first quarter of 2008, management established a level 3 valuation working group to evaluate the available information pertaining to certain securities and ultimately develop a consensus estimate of the instrument's fair value. The

Table of Contents

process involves the gathering of multiple sources of information, including broker quotes, values provided by pricing services, trading activity in other similar securities, market indices, and internal cash flow and pricing matrix estimates. Participation on this working group includes the business or functional area that manages the instrument, market risk, and finance, including the independent price verification function. Pricing estimates are derived on most illiquid instruments weekly and at a minimum monthly, and the working group formally reviews the pricing information at least quarterly. These reviews also include assessing an instrument's classification in the fair value hierarchy based on the significance of the unobservable assumptions used to estimate the fair value.

We used significant unobservable inputs (level 3) to fair value certain trading assets, securities available for sale, portfolio loans accounted for at fair value, interest rate lock commitments ("IRLCs"), loans held for sale, derivatives, and public debt. The table below discloses financial instruments that have been impacted by level 3 fair value determinations.

Table 12

	As of			
(Dollars in millions)	**December 31, 2008**		December 31, 2007	
Trading assets	**$1,391.4**		$2,950.1	
Securities available for sale	**1,489.6**		869.7	
Loans held for sale	**487.4**		481.3	
Loans	**270.3**		220.8	
IRLCs [1]	**73.6**		-	
Total level 3 assets	**$3,712.3**		$4,521.9	
Total assets	**$189,138.0**		$179,573.9	
Total assets measured at fair value	**$32,897.2**		$33,397.8	
Level 3 assets as a percent of total assets	**2.0**	%	2.5	%
Level 3 assets as a percent of total assets measured at fair value	**11.3**		13.5	
Long-term debt	**$3,496.3**		$-	
IRLCs [1]	**1.2**		19.6	
Total level 3 liabilities	**$3,497.5**		$19.6	
Total liabilities	**$166,749.9**		$161,521.4	
Total liabilities measured at fair value	**$11,456.5**		$9,897.9	
Level 3 liabilities as a percent of total liabilities	**2.1**	%	-	%
Level 3 liabilities as a percent of total liabilities measured at fair value	**30.5**		0.2	

[1] Beginning in the first quarter of 2008, we classified IRLCs on residential mortgage loans held for sale on a gross basis within other liabilities and other assets.

Securities Available for Sale and Trading Assets

Our level 3 securities available for sale include instruments totaling approximately $1.5 billion at December 31, 2008 including FHLB and Federal Reserve Bank stock, as well as certain municipal bond securities, which are only redeemable with the issuer at par and cannot be traded in the market; as such, no significant observable market data for these instruments is available. These nonmarketable securities total approximately $934 million at December 31, 2008. Level 3 trading assets total approximately $1.4 billion at December 31, 2008, which includes the Coke common stock forward sale derivative valued at approximately $249.5 million at December 31, 2008, as well as approximately $674 million of Small Business Administration ("SBA") loans and pooled securities whose payment is guaranteed by the U.S. government. The remaining level 3 securities, both trading assets and available for sale securities, totals approximately $1 billion at December 31, 2008 and are predominantly residual and other interests retained from Company-sponsored participations or securitizations of commercial loans and residential mortgage loans, investments in SIVs, and MBS and ABS collateralized by a variety of underlying assets including residential mortgages, corporate obligations, and commercial real estate for which little or no market activity exists or whose value of the underlying collateral is not market observable. We have also increased our exposure to bank trust preferred ABS, student loan ABS, and municipal securities as a result of our offer to purchase certain ARS as a result of failed auctions. While the majority of the collateral in the remaining level 3 securities continues to be residential mortgages, exposure is widely spread across prime first and second lien mortgages, as well as subprime first and second lien mortgages that were originated from 2003 through 2007.

Table of Contents

ARS purchased since the auction rate market began failing in February 2008 have all been considered level 3 securities. We classify ARS as securities available for sale or trading securities. ARS include municipal bonds, nonmarketable preferred equity securities, and ABS collateralized by student loans or trust preferred bank obligations. Under a functioning ARS market, ARS could be remarketed with tight interest rate caps to investors targeting short-term investment securities that repriced generally every 7 to 28 days. Unlike other short-term instruments, these ARS do not benefit from back-up liquidity lines or letters of credit, and therefore, as auctions began to fail, investors were left with securities that were more akin to longer-term, 20-30 year, illiquid bonds, with the anticipation that auctions will continue to fail in the foreseeable future. The combination of materially increased tenors, capped interest rates and general market illiquidity has had a significant impact on the risk profiles and market values of these securities and has resulted in the use of valuation techniques and models that rely on significant inputs that are largely unobservable.

At December 31, 2008, we hold SIV assets which are in receivership and are carried at a fair value of approximately $188 million. In addition, we hold corporate bond exposure to Lehman Brothers, which is undergoing bankruptcy proceedings, that is carried at a fair value of approximately $6.7 million. At December 31, 2008, 40 level 3 ABS and MBS that we own were downgraded during the year ended December 31, 2008 due to continued deterioration in the credit quality of the underlying collateral and in many cases, the downgrade of a monoline insurer of the security. The fair value of the downgraded securities totaled approximately $200 million at December 31, 2008 and includes $135 million of first lien mortgages, $14 million of second lien mortgages, $45 million of trust preferred bank obligations, $1 million of student loan ARS, and $5 million of special purpose vehicles (“SPV”) repackaged risk. We recognized additional unrealized losses of approximately $68 million for the year ended December 31, 2008 on these downgraded securities. There is also approximately $32 million of unrealized losses that have not been recognized in earnings related to two MBS available for sale that were downgraded in 2008, but continue to maintain an investment grade rating. We have evaluated these securities for impairment and believe all contractual principal and interest payments will be received timely for these securities, and therefore, have taken no impairment through earnings. If future performance in the underlying collateral of ABS and MBS further declines, we would anticipate additional downgrades and valuation reductions, as well as other-than-temporary impairment adjustments.

Residual and other retained interests classified as securities available for sale or trading securities are valued based on internal models which incorporate assumptions, such as prepayment speeds and estimated credit losses, which are not market observable. Generally, we attempt to obtain pricing for our securities from a third party pricing provider or third party brokers who have experience in valuing certain investments. This pricing may be used as either direct support for our valuation or used to validate outputs from our own proprietary models. Although third party price indications have been available for the majority of the securities, limited trading activity makes it difficult to support the observability of these quotations. Therefore, we evaluate third party pricing to determine the reasonableness of the information relative to changes in market data such as trades we executed during the quarter, market information received from outside market participants and analysts, or changes in the underlying collateral performance. When third party pricing is not available to corroborate pricing information received, we will use industry standard or proprietary models to estimate fair value, and will consider assumptions such as relevant market indices that correlate to the underlying collateral, prepayment speeds, default rates, loss severity rates, and discount rates.

The Asset-backed Securities Indices (“ABX Indices”) have a high correlation to subprime, second lien and certain Alt-A exposures, particularly for the direct residential MBS exposure where vintage and collateral type are more easily determined. As such, the dollar prices and corresponding discount margins from the ABX indices are a relevant market data point to consider when estimating the fair value of certain ABS. We will also consider premiums or discounts relative to an index based on information we have obtained from our trades of similar assets and other information made available to us. The use of ABX indices to value certain level 3 ABS was minimal at December 31, 2008 as the size of our exposure to these types of assets has decreased through sales and paydowns or as other market information becomes available to use in estimations of fair value. We also may use ABX indices, as well as other synthetic indices such as the Credit Derivatives Index (“CDX”) and Commercial Mortgage-backed Securities Index (“CMBX”), when valuing collateral underlying CDO and SIV assets as an input to assist in determining overall valuation of the CDO or SIV security owned. Pricing on these securities declined significantly due to the significant widening in these indices for year ended December 31, 2008.

Due to the continued illiquidity and credit risk of level 3 securities, these market values are highly sensitive to assumption changes and market volatility. In many instances, pricing assumptions for level 3 securities may fall within an acceptable range of values. In those cases, we attempt to consider all information to determine the most appropriate price within that range. Improvements may be made to our pricing methodologies on an ongoing basis as observable and relevant information becomes available to us, including a comparison of actual sales prices to the most recent value placed on the asset prior to sale to validate our pricing methodologies. During the year ended December 31, 2008, we sold approximately $1.6 billion of level 3 ABS, and received approximately $50.7 million through the settlement proceeding of one SIV under enforcement, providing us with relevant and timely market data to utilize in determining

Table of Contents

an appropriate value for similar ABS remaining in the portfolio. Sales, trading and settlement activity were scarce in the fourth quarter of 2008; however, we maintained consistency in our pricing methodology and processes, and incorporated any relevant changes to the valuation assumptions needed to ensure a supportable value for these illiquid securities at December 31, 2008.

During 2008, we recognized through earnings $481.6 million in net trading and securities losses related to trading assets and securities available for sale classified as level 3. While we believe we have utilized all pertinent market data in establishing an appropriate fair value for our securities, current market conditions result in wide price ranges used to evaluate market value. While it is difficult to accurately predict the ultimate cash value of these securities; we believe the amount that would be ultimately realized if the securities were held to settlement or maturity will generally be greater than the current fair value of the securities classified as level 3. This assessment is based on the current performance of the underlying collateral, which is experiencing elevated losses but not to the degree that correlates to current market values, which is pressured downward in this market due to liquidity issues and other broad macroeconomic conditions. It is reasonably likely that this market volatility will continue as a result of a variety of factors, including but not limited to economic conditions, the restructuring of SIVs, and third party sales of securities, some of which could be large-scale.

During the year ended December 31, 2008, we purchased $322.4 million of level 3 ABS, MBS, ARS and corporate debt, including the $70 million Lehman Brothers bond, of which $270.0 million of ABS, MBS, ARS, and corporate debt was classified as trading securities and $52.4 million of ARS was classified as securities available for sale. We also purchased stock in the FHLB and Federal Reserve Bank of approximately $140.6 million, which is classified as level 3 available for sale securities. In addition, $39.1 million of trading ABS, $879.2 million of available for sale ABS, $669.9 million of SBA trading loans and pools and $3.6 billion of the public debt at fair value were transferred into level 3 during the year ended December 31, 2008 due to the absence of significant observable pricing data. Since the transfer into level 3, we have purchased $145.0 million of SBA loans.

Loans and Loans Held for Sale

Level 3 loans are primarily non-agency residential mortgage loans held for investment or loans held for sale for which there is little to no observable trading in either the new issuance or secondary loan markets as either whole loans or as securities. Prior to the non-agency residential loan market disruption, which began during the third quarter of 2007 and continues, we were able to obtain certain observable pricing from either the new issuance or secondary loan market. However, as the markets deteriorated and certain loans were not actively trading as either whole loans or as securities, we began employing the same alternative valuation methodologies used to value level 3 residential mortgage securities, as described previously, to fair value the loans. We recognized $90.4 million and $15.6 million in net losses through earnings during the years ended December 31, 2008 and 2007, respectively, related to level 3 loans and loans held for sale, excluding IRLCs. During the years ended December 31, 2008 and 2007, we transferred $406.9 million and $716.0 million, respectively, of mortgage loans held for sale into level 3 due to the determination that there was no longer a liquid market for valuing certain loan types.

On May 1, 2008, we acquired 100% of the outstanding common shares of GB&T. We elected to account for $171.6 million of the acquired loans, which were classified as nonaccrual, at fair value in accordance with SFAS No. 159. Upon acquisition, the loans had a fair value of $111.1 million. These loans are primarily commercial real estate loans which do not trade in an active secondary market, and as such, are considered level 3 instruments. As these loans are all classified as nonperforming, cash proceeds from the sale of the underlying collateral is the expected source of repayment for the majority of these loans. In order to fair value these loans, we utilized market data, when available, as well as internal assumptions, to derive fair value estimates of the underlying collateral. During the year ended December 31, 2008, we recorded through earnings a loss of $4.2 million on these loans. On December 31, 2008, primarily as a result of paydowns, payoffs, and transfers to OREO, the loans had a fair value of $31.2 million.

Derivatives

Most derivative instruments are level 1 or level 2 instruments, except for the IRLCs discussed below. In addition, the equity forward agreements we entered into related to our investment in Coke common stock are level 3 instruments within the fair value hierarchy of SFAS No. 157, due to the unobservability of a significant assumption used to value these instruments. Because the value is primarily driven by the embedded equity collars on the Coke common shares, a Black-Scholes model is the appropriate valuation model. Most of the assumptions are directly observable from the market, such as the per share market price of Coke common stock, interest rates and the dividend rate on Coke common stock. Volatility is a significant assumption and is impacted both by the unusually large size of the trade and the long tenor until settlement. The derivatives carried scheduled terms of approximately six and a half and seven years from the effective date, and as such, the observable and active options market on Coke does not provide for any identical or

Table of Contents

similar instruments. As a result, we receive estimated market values from a market participant who is knowledgeable about Coke equity derivatives and is active in the market. Based on inquiries of the market participant as to their procedures as well as our own valuation assessment procedures, we have satisfied ourselves that the market participant is using methodologies and assumptions that other market participants would use in arriving at the fair value of the Agreements. At December 31, 2008, the Agreements were in an asset position to us of approximately $249.5 million.

The fair value of our IRLCs, while based on interest rates observable in the market, is highly dependent on the ultimate closing of the loans. These "pull-through" rates are based on our historical data and reflect an estimate of the likelihood that a commitment will ultimately result in a closed loan. As a result of the adoption of SEC Staff Accounting Bulletin ("SAB") No. 109, servicing value, beginning in the first quarter of 2008, was also included in the fair value of IRLCs. The fair value of MSRs is determined by projecting cash flows which are then discounted to estimate an expected fair value. The fair value of MSRs is impacted by a variety of factors, including prepayment assumptions, discount rates, delinquency rates, contractual specified servicing fees and underlying portfolio characteristics. Because these inputs are not transparent in market trades, MSRs are considered to be level 3 assets in the valuation hierarchy.

Long Term Debt

We have elected to carry at fair value $3.6 billion (par) of our publicly-issued, fixed rate debt. The debt consists of a number of different issuances that carry coupon rates ranging from 5.00% to 7.75%, resulting in a weighted-average rate of 5.93%, and maturities from May 1, 2010 through April 1, 2020, resulting in a weighted-average life of 5.9 years. During the years ended December 31, 2008 and 2007, we recognized net gains of $431.7 million and $140.9 million, respectively, in trading gains associated with the fair value changes in the debt and related derivatives and trading securities that provide an economic offset to the change in the value of the debt. Credit spreads widened throughout 2008 in connection with the continued deterioration of the broader financial markets and a number of failures in the financial services industry. Further fluctuations in our credit spreads are likely to occur in the future based on instrument specific and broader market conditions.

To mitigate the prospective impact of spread tightening, we completed the repurchase of a portion of our fair value debt of approximately $386.6 million during the year ended December 31, 2008. We also hold approximately $166.1 million of fixed rate corporate bonds referencing financial services companies to provide some level of offset to the changes in our credit spreads. We entered into pay fixed/receive float interest rate swaps to offset the changes in fair value of those corporate bonds due to interest rate movement. To mitigate the impact of fair value changes on our debt due to interest rate movement, we generally enter into interest rate swaps; however, at times, we may also purchase fixed rate agency MBS to achieve this offset in interest rates. There were no agency MBS held as of December 31, 2008 for this purpose. See the "Trading Assets and Liabilities" section included in the MD&A for more information. We value this debt by obtaining quotes from a third party pricing service and utilizing broker quotes to corroborate the reasonableness of those market values. In addition, information from market data of recent observable trades and indications from buy side investors, if available, are taken into consideration as additional support for the mark. During the third and fourth quarters of 2008, there were few trades to reference, and therefore, given the continued lack of liquidity for these types of instruments, both in the secondary markets and for primary issuances, this debt was transferred from a level 2 to a level 3 classification in the fair value hierarchy effective July 1, 2008.

Overall, the financial impact of the level 3 financial instruments did not have a significant impact on our liquidity or capital. We acquired certain ABS from affiliates during the fourth quarter of 2007 using our existing liquidity position, and since purchasing the securities, we have received approximately $2.4 billion in cash consideration from paydowns, settlements, sales and maturities of these securities. For the year ended December 31, 2008, we recognized $624.6 million in net losses through earnings due to the change in the fair value of level 3 assets and liabilities, excluding IRLCs. Some fair value assets are pledged for corporate borrowings or other liquidity purposes. Most of these arrangements provide for advances to be made based on the market value and not the principal balance of the assets, and therefore whether or not we have elected fair value accounting treatment does not impact our liquidity. If the fair value of assets posted as collateral declines, we will be required to post more collateral under our borrowing arrangements which could negatively impact our liquidity position on an overall basis. For purposes of computing regulatory capital, mark to market adjustments related to our own creditworthiness for debt accounted for at fair value are excluded from regulatory capital.

Table of Contents

INVESTMENT IN COMMON SHARES OF THE COCA-COLA COMPANY

Background

We have owned common shares of Coke since 1919, when one of our predecessor institutions participated in the underwriting of Coke's initial public offering and received common shares of Coke in lieu of underwriting fees. These shares have grown in value over the past 89 years and have been classified as available for sale securities, with unrealized gains, net of tax, recorded as a component of shareholders' equity. Because of the low accounting cost basis of these shares, we have accumulated significant unrealized gains in shareholders' equity. As of December 31, 2007, our total holdings of approximately 43.6 million Coke shares had an accounting cost basis of $100,000 and a fair value of approximately $2.7 billion. As of December 31, 2008, as a result of the transactions discussed herein, we owned 30 million Coke shares with an accounting cost basis of $69,295 and a fair market value of approximately $1.4 billion.

We established a target Tier 1 Capital ratio of 7.50% in 2006 and commenced a comprehensive balance sheet review initiative in early 2007 in an effort to improve liquidity and capital efficiency. As part of this initiative, we began to formally evaluate the capital efficiency of our holdings of Coke common shares, as we were prohibited from including the market value of our investment in Coke common shares in Tier 1 Capital in accordance with Federal Reserve capital adequacy rules.

Executed Multi-Step Strategy

As we reported in connection with our financial results for the quarter ended June 30, 2007, we sold 4.5 million Coke common shares, or approximately 9% of our holdings at that time, in an open market sale. At that time, we also announced publicly that we were evaluating various strategies to address our remaining Coke common shares.

In the second and third quarters of 2008, we completed the following three-part strategy with respect to our remaining 43.6 million common shares of Coke: (i) a market sale of 10 million shares, (ii) a charitable contribution of approximately 3.6 million shares to the SunTrust Foundation and (iii) the execution of equity forward agreements on 30 million shares. Our primary objective in executing these transactions was to optimize the benefits we obtained from our long-term holding of this asset, including the capital treatment by bank regulators.

I. Market Sale

During the second quarter of 2008, we sold 10 million Coke common shares in the market. These sales, which resulted in an increase of approximately $345 million, or approximately 20 basis points, to Tier 1 Capital, generated approximately $549 million in net cash proceeds and an after-tax gain of approximately $345 million that was recorded in our financial results for the quarter ended June 30, 2008. This transaction will result in foregone dividend income of approximately $0.04 per share in annual earnings per share and gave rise to a current tax liability with a marginal rate of just over 37%.

II. Contribution to the SunTrust Foundation

In July 2008, we contributed approximately 3.6 million Coke common shares to the SunTrust Foundation, which was reflected as a contribution expense of $183.4 million in our financial results for the quarter ended September 30, 2008. As the gain from this contribution is non-taxable, the only impact to our net income was the release of the deferred tax liability of approximately $65.8 million (net of valuation allowance). This contribution increased Tier 1 Capital in the third quarter by approximately $65.8 million, or approximately 4 basis points. This gain and resultant increase to Tier 1 Capital were reflected in our third quarter results, as we had not made any commitments or entered into any other transactions as of June 30, 2008 that would have required us to record this contribution in the second quarter. This contribution will result in foregone dividend income of approximately $0.01 per share in annual earnings per share. We expect this contribution to act as an endowment for the SunTrust Foundation to make grants to charities operating within our footprint for years to come and reduce our ongoing charitable contribution expense. This transaction was treated as a discrete item for income tax provision purposes and significantly lowered the effective tax rate for the third quarter of 2008.

III. Equity Forward Agreements

The final piece of the strategy related to the remaining 30 million Coke common shares and was executed in July 2008. We entered into two variable forward agreements and share forward agreements effective July 15, 2008 with a major, unaffiliated financial institution (the "Counterparty") collectively covering our 30 million Coke shares (the "Agreements"). Under the Agreements, we must deliver to the Counterparty at settlement of the variable forward agreements either a variable number of Coke common shares or a cash payment in lieu of such shares. The Counterparty is obligated to settle the Agreements for no less than approximately $38.67 per share, or approximately $1.16 billion in the aggregate (the "Minimum Proceeds"). The share forward agreements give us the

Table of Contents

right, but not the obligation, to sell to the Counterparty, at prevailing market prices at the time of settlement, any of the 30 million Coke common shares that are not delivered to the Counterparty in settlement of the variable forward agreements. The Agreements effectively ensure that we will be able to sell our 30 million Coke common shares at a price no less than approximately $38.67 per share, while permitting us to participate in future appreciation in the value of the Coke common shares up to approximately $66.02 per share and approximately $65.72 per share, under each of the respective Agreements.

During the terms of the Agreements, and until we sell the 30 million Coke common shares, we generally will continue to receive dividends as declared and paid by Coke and will have the right to vote such shares. However, the amounts payable to us under the Agreements will be adjusted if actual dividends are not equal to expected amounts.

Contemporaneously with entering into the Agreements, the Counterparty invested in senior unsecured promissory notes issued by SunTrust Bank and SunTrust Banks, Inc. (collectively, the “Notes”) in a private placement in an aggregate principal amount equal to the Minimum Proceeds. The Notes carry stated maturities of approximately ten years from the effective date and bear interest at one-month LIBOR plus a fixed spread. The Counterparty pledged the Notes to us and we pledged the 30 million Coke common shares to the Counterparty, securing each entity’s respective obligations under the Agreements. The pledged Coke common shares are held by an independent third party custodian and the Counterparty is prohibited under the Agreements from selling, pledging, assigning or otherwise using the pledged Coke common shares in its business.

We generally may not prepay the Notes. The interest rate on the Notes will be reset upon or after the settlement of the Agreements, either through a remarketing process or based upon dealer quotations. In the event of an unsuccessful remarketing of the Notes, we would be required to collateralize the Notes and the maturity of the Notes may accelerate to the first anniversary of the settlement of the Agreements. However, we presently believe that it is substantially certain that the Notes will be successfully remarketed.

The Agreements carry scheduled settlement terms of approximately seven years from the effective date. However, we have the option to terminate the Agreements earlier with the approval of the Federal Reserve. The Agreements may also terminate earlier upon certain events of default, extraordinary events regarding Coke and other typical termination events. Upon such early termination, there could be exit costs or gains, such as certain breakage fees including an interest rate make-whole amount, associated with both the Agreements and the Notes. Such costs or gains may be material but cannot be determined at the present time due to the unlikely occurrence of such events and the number of variables that are unknown. However, the payment of such costs, if any, will not result in us receiving less than the Minimum Proceeds from the Agreements. We expect to sell all of the Coke common shares upon settlement of the Agreements, either under the terms of the Agreements or in another market transaction. See Note 17, “Derivative Financial Instruments”, to the Consolidated Financial Statements for additional discussion of the transactions.

The Federal Reserve determined that we may include in Tier 1 Capital, as of the effective date of the Agreements, an amount equal to the Minimum Proceeds minus the deferred tax liability associated with the ultimate sale of the 30 million Coke common shares. Accordingly, the Agreements resulted in an increase in Tier 1 Capital during the third quarter of approximately $728 million or an estimated 43 basis points as of the transaction date.

DEPOSITS

Table 13 – Composition of Average Deposits

	Year Ended December 31			Percent of Total		
(Dollars in millions)	**2008**	2007	2006	**2008**	2007	2006
Noninterest-bearing	**$20,949.0**	$21,677.2	$23,312.3	**18.0 %**	18.1 %	18.9 %
NOW accounts	**21,080.7**	20,042.8	17,214.4	**18.2**	16.7	13.9
Money market accounts	**26,564.8**	22,676.7	24,507.9	**22.9**	18.9	19.8
Savings	**3,770.9**	4,608.7	5,371.1	**3.2**	3.8	4.3
Consumer time	**16,770.2**	16,941.3	15,622.7	**14.5**	14.2	12.7
Other time	**12,197.2**	12,073.5	11,146.9	**10.5**	10.1	9.0
Total consumer and commercial deposits	**101,332.8**	98,020.2	97,175.3	**87.3**	81.8	78.6
Brokered deposits	**10,493.2**	16,091.9	17,425.7	**9.0**	13.4	14.1
Foreign deposits	**4,250.3**	5,764.5	9,064.5	**3.7**	4.8	7.3
Total deposits	**$116,076.3**	$119,876.6	$123,665.5	**100.0 %**	100.0 %	100.0 %

Average consumer and commercial deposits increased during 2008 by $3.3 billion, or 3.4%, compared to 2007. The growth was in NOW, money market, and other time deposits which, in aggregate, increased $5.0 billion, or 9.2%. The increase was

Table of Contents

partially offset by declines in savings, noninterest bearing DDA, and consumer time account balances. Savings accounts declined $0.8 billion, or 18.2%, noninterest bearing DDA declined $0.7 billion, or 3.4%, and consumer time accounts declined $0.2 billion, or 1.0%. The decline in these products was the result of deposit migration to higher cost money market accounts reflecting consumer sentiment favoring liquidity, safety and soundness, and higher rates than traditional checking and savings products.

Average brokered and foreign deposits decreased by $7.1 billion, or 3.3%, during 2008 compared to 2007. The decrease was due to our efforts to reduce our reliance upon wholesale funding sources and may continue to decline in 2009 due to recent alternative funding sources. Consumer and commercial deposit growth is one of our key initiatives, as we focus on deposit gathering opportunities across all lines of business throughout the geographic footprint. Initiatives to attract deposits included the "My Cause" campaign which provides enrollment incentives to depositors, the modification of incentive plans to place greater emphasis on deposit and package account sales, enhancing online banking products, and partnering with other well known brands in deposit oriented promotions. We also significantly improved our pricing process and product structure in 2008, which provided us with enhanced capability to price our products differentially across different parts of our footprint. Despite the larger mix of higher cost deposit products, primarily driven by market dynamics, this enhancement was critical as we not only lowered our interest expense on deposits, but also grew customer deposits during 2008. The "My Cause" campaign, which generated over 1.1 million checking accounts during 2008, ended in the fourth quarter of 2008, and we launched the "Live Solid. Bank Solid." branding and marketing campaign to improve our visibility in the marketplace. It is designed to speak to what is important to clients in the current environment and to inspire customer loyalty and capitalize on some of the opportunities presented by the new banking landscape. As of December 31, 2008 securities pledged as collateral for deposits totaled $6.2 billion.

OTHER SHORT-TERM BORROWINGS AND LONG-TERM DEBT

Other short-term borrowings increased $2.1 billion, or 71.0%, from December 31, 2007 to $5.2 billion at December 31, 2008. The change in other short-term borrowings was primarily a result of our participation in the Federal Reserve's ("Fed") TAF in November and December of 2008. The Fed announced in October that it would offer expanded TAF funds availability during the fourth quarter of 2008. We purchased $2.5 billion in three-month funding under the TAF in support of the Fed's initiative.

Long-term debt increased $3.9 billion, or 16.8%, from December 31, 2007 to $26.8 billion at December 31, 2008. The change in long-term debt was primarily the result of our participation, in December, in the FDIC's TLGP under which we issued $3.0 billion in debt that was guaranteed by the FDIC under the terms of the program. Our decision to participate in the program was a result of being able to obtain a lower cost funding source than other borrowing channels available to us as a result of the guarantee provided on the issued debt by the U.S. government agency. We have approximately $1.0 billion in capacity remaining under this program and are reasonably likely to issue the additional $1.0 billion in long-term debt under the program during the first or second quarter of 2009.

CAPITAL RESOURCES

Table 14 – Capital Ratios

	As of December 31					
(Dollars in millions)	**2008**	2007	2006	2005	2004	2003
Tier 1 capital[1]	**$17,613.7**	$11,424.9	$12,524.7	$11,079.8	$9,783.7	$8,930.0
Total capital	**22,743.4**	16,994.1	18,024.9	16,713.6	14,152.6	13,365.9
Risk-weighted assets	**162,046.4**	164,931.9	162,236.7	158,132.3	136,642.8	113,711.3
Risk-based ratios:						
Tier 1 capital	**10.87 %**	6.93 %	7.72 %	7.01 %	7.16 %	7.85 %
Total capital	**14.04**	10.30	11.11	10.57	10.36	11.75
Tier 1 leverage ratio	**10.45**	6.90	7.23	6.65	6.64	7.37
Total shareholders' equity to assets	**11.84**	10.05	9.78	9.40	10.06	7.76

[1] Tier 1 capital includes trust preferred obligations of $2.8 billion at the end of 2008, $2.1 billion at the end of 2007, $2.4 billion at the end of 2006, $1.9 billion at the end of 2005 and 2004, and $1.7 billion at the end of 2003. Tier 1 capital also includes qualifying minority interests in consolidated subsidiaries of $102 million at the end of 2008, $105 million at the end of 2007, $455 million at the end of 2006, $467 million at the end of 2005, $451 million at the end of 2004 and 2003.

Our primary regulator, the Federal Reserve, measures capital adequacy within a framework that makes capital requirements sensitive to the risk profiles of individual banking companies. The guidelines weigh assets and off balance sheet risk exposures (risk weighted assets) according to predefined classifications, creating a base from which to compare capital levels. Tier 1 Capital primarily includes realized equity and qualified preferred instruments, less purchase accounting intangibles such as goodwill and core deposit intangibles. Total Capital consists of Tier 1 Capital and Tier 2 Capital, which includes qualifying portions of subordinated debt, allowance for loan losses up to a maximum of 1.25% of risk weighted assets, and 45% of the unrealized gain on equity securities.

Table of Contents

Both the Company and SunTrust Bank (the "Bank") are subject to a minimum Tier 1 Capital and Total Capital ratios of 4% and 8%, respectively, of risk weighted assets. To be considered "well-capitalized," ratios of 6% and 10%, respectively, are required. Additionally, the Company and the Bank are subject to Tier 1 Leverage ratio requirements, which measures Tier 1 Capital against average assets. The minimum and well-capitalized ratios are 3% and 5%, respectively.

In light of the current economic environment and the uncertainty with respect to the depth and duration of the recession, we believe that it is prudent to hold capital in excess of our target. As such, we steadily built our capital position throughout the year through several strategically planned actions which are detailed below.

- In the first quarter of 2008, we issued $685 million of trust preferred securities, which qualified as Tier 1 Capital, and $500 million of subordinated notes, which favorably impacted our Total Capital ratio.

- In the second quarter of 2008, we sold 10 million shares of Coke common stock, which increased Tier 1 Capital by $345 million as of the transaction date. See additional discussion in "Investment in Common Shares of the Coca-Cola Company" in this MD&A for further discussion.

- In the third quarter of 2008, we executed two transactions that included 33.6 million shares of Coke common stock that generated approximately $800 million, or 47 basis points, of additional Tier 1 Capital as of the transaction date. See additional discussion in "Investment in Common Shares of the Coca-Cola Company" in this MD&A for further discussion.

- In the fourth quarter of 2008, we participated in the Treasury's Capital Purchase Program by issuing $4.9 billion in preferred stock and related warrants to the Treasury under the EESA. Initially, we issued $3.5 billion in preferred stock to build up our capital position to what we believed to be prudent levels given the uncertainty in the economy. As a result of a significant deterioration in the economy in the fourth quarter, we chose to issue an additional $1.35 billion in preferred stock, which represented our remaining capacity under the Capital Purchase Program. Refer to our discussion in "Liquidity Risk" within this MD&A for additional information regarding the terms of these securities.

- In an effort to preserve capital, the Board voted to reduce the quarterly common stock dividend by 30% starting with the fourth quarter dividend which was $0.54 per common share.

In January 2009, we made the decision to further reduce our quarterly common stock dividend to $0.10 per common share due to the credit and earnings environment that has deteriorated further since the original reduction of the common stock dividend in the fourth quarter of 2008. Our decision to reduce the common stock dividend was not made lightly, but we ultimately believed it was the responsible action to take in light of the further deterioration of the economy. On an ongoing basis, we will reevaluate the common stock dividend, to balance prudence in our capital levels with the long-run view of the profitability of the Bank and our desire to return a portion of our earnings to the shareholders.

Our decision to issue the preferred stock to the Treasury was made to enhance our already solid capital position and to allow us to further expand our business. The decision was primarily made as a result of worsening economic indicators occurring in the fourth quarter suggesting a recession that will endure longer than originally anticipated causing us to believe it prudent to have the additional capital during the potentially challenging economic times ahead. As a result of the worsening economic environment, we decided to issue the additional $1.35 billion in preferred stock due to an internal analysis of capital and liquidity that considered several factors. As we were also evaluating acquisition activity and opportunities, we reached the conclusion that potential capital requirements were more significant than previously thought due to asset and loan values that had declined further. In addition, we wanted to ensure adequate capital would be readily available to meet the borrowing needs of clients and prospects in the coming months and noted that most of our regional banking competitors had issued the maximum amount of preferred stock under the program, potentially putting us at a competitive disadvantage had we not obtained the additional capital. We have developed strategies and tactics to deploy the capital in a fashion that balances supporting economic stability, safety and soundness, and earnings dilution. Specifically, we have deployed the additional capital thus far by increasing our loans and agency MBS holdings, as well as in decreasing short-term borrowings.

The Tier 1 Capital and Total Capital ratios improved from 6.93% and 10.30%, respectively, at December 31, 2007 to 10.87% and 14.04% at December 31, 2008. The primary drivers of the increase were several Coke common stock transactions executed during the second and third quarters, as well as our participation in the Capital Purchase Program in the fourth quarter, as mentioned above. The Tier 1 Capital ratio also benefited from an overall reduction in risk weighted assets. The reduction in risk weighted assets occurred, in part due to an ongoing effort to reduce illiquid trading securities, construction related loans and commitments, and more generally to ensure that unused commitments are efficiently utilized. Also, in the third quarter of 2008, the Tier 1 Capital ratio improved due to increasing the granularity of certain loan related data to identify assets eligible for a lower risk weighting under applicable regulations.

Table of Contents

Tangible equity to tangible assets increased to 8.40% as of December 31, 2008 from 6.31% last year. The increase was primarily due to the issuance of the preferred stock to the Treasury. Tangible common equity to tangible assets declined 49 basis points to 5.53% as of December 31, 2008. The decline is primarily the result of a $9.5 billion increase in tangible assets. This increase relates to cash and securities from the temporary deployment of proceeds received from the issuance of preferred stock and debt securities, as well as $6.4 billion of unsettled sales of securities available for sale that settled in January 2009, increasing tangible common equity to tangible assets approximately 20 basis points. We declared and paid common dividends totaling $1.0 billion in 2008, or $2.85 per common share, on net income available to common shareholders of $746.9 million. The dividend payout ratio was 134.4% for 2008 versus 64.0% for 2007. The increase in the payout ratio was the result of the decline in earnings caused largely by an increased provision for loan losses during 2008.

In connection with the issuances of the Series A Preferred Stock of SunTrust Banks, Inc., the Fixed to Floating Rate Normal Preferred Purchase Securities of SunTrust Preferred Capital I, the 6.10% Enhanced Trust Preferred Securities of SunTrust Capital VIII, and the 7.875% Trust Preferred securities of SunTrust Capital IX (collectively, the “Issued Securities”), we entered into Replacement Capital Covenants (“RCCs”). The RCCs limit our ability to repay, redeem or repurchase the Issued Securities (or certain related securities). We executed each RCCs in favor of the holders of certain debt securities, which are initially the holders of our 6% Subordinated Notes due 2026. The RCCs are more fully described in Current Reports on Form 8-K filed on September 12, 2006, November 6, 2006, December 6, 2006, and March 4, 2008.

In connection with the issuance of the Series C and D Preferred Stock of SunTrust Banks, Inc. we agreed to certain terms affecting repurchase, redemption, and repayment of the preferred stock and restriction on payment of common stock dividends, among other terms. Also included with the issuance of the preferred stock was issuance of ten-year warrants to the Treasury to purchase approximately 11.9 million and 6.0 million shares of our common stock at initial exercise prices of $44.15 and $33.70. The preferred stock and related warrants were issued at a total discount of approximately $132.0 million, which will be accreted into U.S. Treasury preferred dividend expense using the effective yield method over a five year period from each respective issuance date. The terms of the warrants as well as the restrictions related to the issuance of the preferred stock is more fully described in Current Reports on Form 8-K filed on November 17, 2008 and January 2, 2009.

ENTERPRISE RISK MANAGEMENT

In the normal course of business, we are exposed to various risks. To manage the major risks that we face and to provide reasonable assurance that key business objectives will be achieved, we have established an enterprise risk governance process and established the SunTrust Enterprise Risk Program (“SERP”). Moreover, we have policies and various risk management processes designed to effectively identify, monitor and manage risk.

We continually refine and enhance our risk management policies, processes and procedures to maintain effective risk management and governance, including identification, measurement, monitoring, control, mitigation and reporting of all material risks. Over the last several years, we have enhanced risk measurement applications and systems capabilities that provide management information on whether we are being appropriately compensated for the risk profile we have adopted. We balance our strategic goals, including revenue and profitability objectives, with the risks associated with achieving our goals. Effective risk management is an important element supporting our business decision making.

Corporate Risk Management’s focus is on synthesizing, assessing, reporting and mitigating the full set of risks at the enterprise level, and providing senior management with a holistic picture of the organization’s risk profile. We have implemented an enterprise risk management framework that has improved our ability to manage our aggregate risk profile. At the core of the framework is our risk vision and risk mission.

> *Risk Vision: To deliver sophisticated risk management capabilities that are consistent with those of top-tier financial institutions and that support the needs of SunTrust business units.*

> *Risk Mission: To measure, monitor and manage risk throughout the SunTrust footprint to ensure that risk at the transaction, portfolio and institution levels is viewed consistently in order to optimize risk-adjusted return decision making.*

The Board of Directors is wholly responsible for oversight of our corporate risk governance process. The Risk Committee of the Board assists the Board of Directors in executing this responsibility.

The Chief Risk Officer (“CRO”) reports to the Chief Executive Officer and is responsible for the oversight of the Corporate Risk Management organization as well as the risk governance processes. The CRO provides overall leadership, vision and direction for our enterprise risk management framework. In addition, the CRO provides regular risk assessments to the Risk Committee of the Board and to the full Board of Directors, and provides other information to Executive Management and the Board, as requested.

Table of Contents

The risk governance framework incorporates a variety of senior management risk-related committees. These committees are responsible for ensuring adequate risk measurement and management in their respective areas of authority. These committees include: Corporate Risk Committee ("CRC"), Asset/Liability Management Committee ("ALCO"), Corporate Product Risk Assessment Committee ("PRAC"), and the SERP Steering Committee. The CRC is chaired by the CRO and supports the CRO in measuring and managing our aggregate risk profile. The CRC consists of various senior executives and meets on a monthly basis.

Organizationally, we measure and manage risk according to the three traditional risk disciplines of credit risk, market risk (including liquidity risk) and operational risk (including compliance risk). Corporate risk programs are managed by the Chief Wholesale Credit Officer and Chief Retail Credit Officer for Credit Risk, the Chief Market Risk Officer for Market Risk, and the Chief Operational Risk Officer for Operational Risk. The three risk disciplines are managed on a consolidated basis under our enterprise risk management framework, which also takes into consideration legal and reputation risk factors.

Within each line of business and corporate function is a risk manager and support staff whose primary role is to drive effective risk management practices throughout the business organization. These risk managers, who report on a dotted line to the Chief Operational Risk Officer, facilitate communications with corporate risk functions and execute the requirements of the enterprise risk management framework and policies. Corporate Risk Management works in partnership with the risk managers to ensure alignment with sound risk management practices as well as industry best practices.

In 2008, we continued to make significant enhancements to our Corporate Risk Management function. The Model Validation and Performance Measurement groups continued to provide assurance that risks inherent in model development and usage are properly identified and managed to oversee the calculation of economic capital. Risk identification, assessment and mitigation planning were formally incorporated into the strategic planning process.

SERP continues to ensure that the approach and plans for risk management are aligned to the vision and mission of Corporate Risk Management in addition to managing regulatory compliance. In addition, the SERP goal is to ensure our future compliance with the Basel II Capital Accord. Key objectives of SERP include incorporating risk management principles that encompass our values and standards and are designed to guide risk-taking activity, maximizing performance through the balance of risk and reward and leveraging initiatives driven by regulatory requirements to deliver capabilities to better measure and manage risk.

Credit Risk Management

Credit risk refers to the potential for economic loss arising from the failure of clients to meet their contractual agreements on all credit instruments, including on-balance sheet exposures from loans and leases, contingent exposures from unfunded commitments, letters of credit, credit derivatives, and counterparty risk under derivative products. As credit risk is an essential component of many of the products and services we provide to our clients, the ability to accurately measure and manage credit risk is integral to maintain both the long-run profitability of our lines of business and our capital adequacy.

The Credit Risk Management group manages and monitors extensions of credit risk through initial underwriting processes and periodic reviews. They maintain underwriting standards in accordance with credit policies and procedures. The Corporate Risk Review unit conducts independent risk reviews to ensure active compliance with all policies and procedures. Credit Risk Management periodically reviews our lines of business to monitor asset quality trends and the appropriateness of credit policies. In addition, total borrower exposure limits are established and concentration risk is monitored. Credit risk is partially mitigated through purchase of credit loss protection via third party insurance and use of credit derivatives such as credit default swaps.

Borrower/counterparty (obligor) risk and facility risk are evaluated using our risk rating methodology, which has been implemented in all lines of business. We use various risk models in the estimation of expected and unexpected losses. These models incorporate both internal and external default and loss experience. To the extent possible, we collect internal data to ensure the validity, reliability, and accuracy of our risk models used in default and loss estimation.

We have made a commitment to maintain and enhance comprehensive credit systems in order to meet business requirements and comply with evolving regulatory standards. As part of a continuous improvement process, Credit Risk Management evaluates potential enhancements to our risk measurement and management tools, implementing them as appropriate along with amended credit policies and procedures.

Operational Risk Management

We face ongoing and emerging risks and regulations related to the activities that surround the delivery of banking and financial products. Coupled with external influences such as market conditions, fraudulent activities, disasters, security risks, country risk, and legal risk, the potential for operational and reputational loss has increased significantly.

Table of Contents

We believe that effective management of operational risk – defined as the risk of loss resulting from inadequate or failed internal processes, people and systems, or from external events – plays a major role in both the level and the stability of the profitability of the institution. Our Operational Risk Management function oversees an enterprise-wide framework intended to identify, assess, control, quantify, monitor, and report on operational risks company wide. These efforts support our goals in seeking to minimize operational losses and strengthen our performance by optimizing operational capital allocation.

Operational Risk Management is overseen by our Chief Operational Risk Officer, who reports directly to the Chief Risk Officer. The corporate governance structure also includes a risk manager and support staff embedded within each line of business and corporate function. These risk managers also report indirectly to the Chief Operational Risk Officer and are responsible for execution of the Operational Risk Management program within their areas.

Market Risk Management

Market risk refers to potential losses arising from changes in interest rates, foreign exchange rates, equity prices, commodity prices and other relevant market rates or prices. Interest rate risk, defined as the exposure of net interest income and Economic Value of Equity ("EVE") to adverse movements in interest rates, is our primary market risk, and mainly arises from the structure of the balance sheet. We are also exposed to market risk in our trading activities, MSRs, loan warehouse and pipeline, and debt carried at fair value. The ALCO meets regularly and is responsible for reviewing our open positions and establishing policies to monitor and limit exposure to market risk. The policies established by ALCO are reviewed and approved by our Board of Directors.

Market Risk from Non-Trading Activities

The primary goal of interest rate risk management is to control exposure to interest rate risk, both within policy limits approved by the Board and within narrower guidelines established by ALCO. These limits and guidelines reflect our tolerance for interest rate risk over both short-term and long-term horizons.

The major sources of our non-trading interest rate risk are timing differences in the maturity and repricing characteristics of assets and liabilities, changes in the shape of the yield curve, and the potential exercise of explicit or embedded options. We measure these risks and their impact by identifying and quantifying exposures through the use of sophisticated simulation and valuation models, as well as repricing gap analysis.

One of the primary methods that we use to quantify and manage interest rate risk is simulation analysis, which is used to model net interest income from assets, liabilities, and derivative positions over a specified time period under various interest rate scenarios and balance sheet structures. This analysis measures the sensitivity of net interest income over a two year time horizon. Key assumptions in the simulation analysis (and in the valuation analysis discussed below) relate to the behavior of interest rates and spreads, the changes in product balances and the behavior of loan and deposit clients in different rate environments. This analysis incorporates several assumptions, the most material of which relate to the repricing characteristics and balance fluctuations of deposits with indeterminate or non-contractual maturities.

As the future path of interest rates cannot be known in advance, we use simulation analysis to project net interest income under various interest rate scenarios including implied forward and deliberately extreme and perhaps unlikely scenarios. The analyses may include rapid and gradual ramping of interest rates, rate shocks, basis risk analysis, and yield curve twists. Each analysis incorporates what management believes to be the most appropriate assumptions about customer behavior in an interest rate scenario. Specific strategies are also analyzed to determine their impact on net interest income levels and sensitivities.

The sensitivity analysis included below is measured as a percentage change in net interest income due to an instantaneous 100 basis point move in benchmark interest rates. Estimated changes set forth below are dependent upon material assumptions such as those previously discussed. The net interest income profile reflects asset sensitivity with respect to an instantaneous 100 basis point change in rates.

Economic Perspective

Rate Change (Basis Points)	Estimated % Change in Net Interest Income Over 12 Months	
	December 31, 2008	December 31, 2007
+100	**3.5%**	(1.0%)
-100	**(0.1%)**	0.3%

[Table of Contents](#)

The December 31, 2008 net interest income sensitivity profiles include the impact from adopting SFAS No. 159. Specifically, the net interest payments from $6.6 billion of receive fixed swaps are now reflected in trading income versus net interest income. The benefit to net interest income due to a decline in short term interest rates will be recognized as a gain in the fair value of the swaps and will be recorded as an increase in trading account profits and commissions. The recognition of interest rate sensitivity from an economic perspective (above) is different from a financial reporting perspective (below) due to the use of fair value accounting for these interest rate swaps and related underlying debt. Hence, the above profile includes the recognition of the net interest payments from these swaps, while the profile below does not include the net interest payments.

Financial Reporting Perspective

Rate Change (Basis Points)	Estimated % Change in Net Interest Income Over 12 Months	
	December 31, 2008	December 31, 2007
+100	**4.2%**	0.1%
-100	**(1.3%)**	(0.8%)

The difference from December 31, 2007 to 2008 seen above in both the economic and financial reporting perspectives related to a 100 basis point increase is primarily due to the significant decline in interest rates year over year and the increase in fixed rate funding.

We also perform valuation analysis, which is used for discerning levels of risk present in the balance sheet and derivative positions that might not be taken into account in the net interest income simulation analysis. Whereas net interest income simulation highlights exposures over a relatively short time horizon, valuation analysis incorporates all cash flows over the estimated remaining life of all balance sheet and derivative positions. The valuation of the balance sheet, at a point in time, is defined as the discounted present value of asset cash flows and derivative cash flows minus the discounted value of liability cash flows, the net of which is referred to as EVE. The sensitivity of EVE to changes in the level of interest rates is a measure of the longer-term repricing risk and options risk embedded in the balance sheet. Similar to the net interest income simulation, EVE uses instantaneous changes in rates. EVE values only the current balance sheet and does not incorporate the growth assumptions that are used in the net interest income simulation model. As with the net interest income simulation model, assumptions about the timing and variability of balance sheet cash flows are critical in the EVE analysis. Particularly important are the assumptions driving prepayments and the expected changes in balances and pricing of the indeterminate deposit portfolios.

We have implemented a new vendor risk management model for analysis of residential mortgage loans and home equity loans and lines. Cash flows of these portfolios are particularly reliant on prepayment assumptions and we believe the new model offers a more robust and granular prepayment model relative to the previous model. Further, the new model is able to provide daily analysis using updated market information, thus enhancing the risk management process. For these reasons, cash flow sensitivity analysis of trading securities and securities available for sale, issued public debt securities, derivatives, residential mortgage loans, home equity lines, and MSRs has also been transitioned to the new model. Comparable EVE profiles as of December 31, 2008 using both models are provided, in addition to prior year information under the previous model.

New Model

Rate Shock (Basis Points)	Estimated % Change in EVE
	December 31, 2008
+100	**(4.2%)**
-100	**1.8%**

Previous Model

Rate Change (Basis Points)	Estimated % Change in EVE	
	December 31, 2008	December 31, 2007
+100	**1.4%**	(2.8%)
-100	**(0.7%)**	(1.2%)

Table of Contents

The change in the comparable EVE profile from December 31, 2007 to December 31, 2008 can be attributed to the net impact of lower interest rates, lower pricing sensitivity on indeterminate maturity deposit products and lower valuations of loans, deposits and MSRs. The difference between the two profiles at December 31, 2008 is as a result of slower prepayments in the aforementioned models. This change in prepayments caused the value sensitivity of assets to interest rates in the new model to be greater than that of liabilities, while the value sensitivity of assets to rates in the previous model remained lower than that of liabilities. While an instantaneous and severe shift in interest rates is used in this analysis to provide an estimate of exposure under an extremely adverse scenario, we believe that a gradual shift in interest rates would have a much more modest impact. Since EVE measures the discounted present value of cash flows over the estimated lives of instruments, the change in EVE does not directly correlate to the degree that earnings would be impacted over a shorter time horizon (i.e., the current fiscal year). Further, EVE does not take into account factors such as future balance sheet growth, changes in product mix, changes in yield curve relationships, and changing product spreads that could mitigate the adverse impact of changes in interest rates. The net interest income simulation and EVE analyses do not necessarily include certain actions that management may undertake to manage this risk in response to anticipated changes in interest rates.

Trading Activities

Beginning in 2007 and continuing into 2008, we expanded the use of trading securities as part of our overall balance sheet management strategies. The remainder of our actively traded securities, other than corporate treasury trading securities, are primarily held to support customer requirements through our broker/dealer subsidiary. Product offerings to clients include debt securities, loans traded in the secondary market, equity securities, derivatives and foreign exchange contracts and similar financial instruments. Other trading activities include acting as a market maker in certain debt and equity securities and related derivatives. Typically, we maintain a securities inventory to facilitate customer transactions. Also in the normal course of business, we assume a degree of market risk in proprietary trading, hedging, and other strategies, subject to specified limits.

We have developed policies and procedures to manage market risk associated with trading, capital markets and foreign exchange activities using a value-at-risk (“VaR”) approach that determines total exposure arising from interest rate risk, equity risk, foreign exchange risk, spread risk and volatility risk. For trading portfolios, VaR measures the estimated maximum loss from a trading position, given a specified confidence level and time horizon. VaR exposures and actual results are monitored daily for each trading portfolio. Our VaR calculation measures the potential losses using a 99% confidence level with a one day holding period. This means that, on average, losses are expected to exceed VaR two or three times per year. The following table displays high, low, and average VaR for 2008 and 2007.

(Dollars in millions)	**2008**	2007
Average VaR	**$28.5**	$14.2
High VaR	**$42.3**	$33.1
Low VaR	**$16.5**	$6.3

An increase in volatility in certain markets drove the increase in VaR during 2008. Trading assets net of trading liabilities averaged $7.7 billion for 2008 and $11.5 billion for 2007. Trading assets net of trading liabilities were $7.2 billion at December 31, 2008 and $8.4 billion at December 31, 2007.

Liquidity Risk

Liquidity risk is the risk of being unable to meet obligations as they come due at a reasonable funding cost. We mitigate this risk by attempting to structure our balance sheet prudently and by maintaining diverse borrowing resources to fund potential cash needs. For example, we attempt to structure our balance sheet so that less liquid assets, such as loans, are funded through stable funding sources, such as retail deposits, long-term debt, wholesale deposits, and capital. We assess liquidity needs arising from asset growth, maturing obligations, and deposit withdrawals, considering operations in both the normal course of business and times of unusual events. In addition, we consider our off-balance sheet arrangements and commitments that may drain liquidity in certain business environments.

Our ALCO measures liquidity risks, sets policies to manage these risks, and reviews adherence to those policies. For example, we manage reliance on short-term unsecured borrowings as well as total wholesale funding through policies established and reviewed by ALCO. In addition, the Risk Committee of our Board of Directors sets liquidity limits and reviews current and forecasted liquidity positions at each of its regularly scheduled meetings.

We have a contingency funding plan that assesses liquidity needs that may arise from certain stress events such as credit rating downgrades, rapid asset growth, and financial market disruptions. We believe we have sufficient funding capacity to meet the liquidity needs arising from these potential events. Our contingency plans also provide for continuous monitoring of net borrowed funds dependence and available sources of contingent liquidity. These sources of contingent liquidity include

Table of Contents

capacity to borrow at the Federal Reserve discount window and from the FHLB system and the ability to sell, pledge or borrow against unencumbered securities in the investment portfolio. As of December 31, 2008, the potential liquidity from these sources exceeded $23 billion. In addition, we may have the ability to raise funds by selling or securitizing loans, including single-family mortgage loans.

Uses and Sources of Funds. Our primary uses of funds include the extension of loans and credit, the purchase of investment securities, working capital, and debt and capital service. Our sources of funds include a large, stable retail deposit base; various forms of wholesale funding, including access to the capital markets and secured advances from the FHLB; and access to the Federal Reserve discount window. Wholesale funding, particularly the unsecured variety, comes from uncommitted sources and is subject to market conditions and various risks and uncertainties.

Our credit ratings are an important factor in our access to unsecured wholesale funds, and significant changes in these ratings could affect the cost and availability of these sources. Factors that affect our credit ratings include, but are not limited to, the credit risk profile of our assets, the adequacy of our loan loss reserves, the liquidity profile of both the Bank and the parent company, and the adequacy of our capital base. On January 27, 2009, Standard & Poor's Rating Services lowered, by one rating, its long-term counterparty credit ratings on SunTrust Banks, Inc. to 'A' and SunTrust Bank to 'A+', citing deterioration in the quality of our loan portfolio. Consistent with this view, we consider the primary risk of downgrade to our credit ratings is the potential for additional material credit losses in our loan portfolio if the U.S. economy does not begin to recover during 2009 from the current sharp, broad and sustained recession.

Core deposits, primarily gathered from our retail branch network, are our largest and most cost-effective source of funding. Core deposits comprised approximately 93% of total deposits at December 31, 2008. These deposits averaged $101.3 billion, or 67.4% of the funding base, during 2008, up from an average of 64.1% during 2007. Core deposits totaled $105 billion at year end 2008 and increased $3.5 billion during the fourth quarter. Growth in core deposits, along with an increase in term wholesale funding and balance sheet de-leveraging, has reduced the Bank's average daily overnight borrowing position materially over the past two years, resulting in a strong liquidity position. As of December 31, 2008, the daily overnight borrowing position was zero. Much of the growth in core deposits occurred amidst a period of some consolidation in the banking industry, giving us reason to expect these new deposits will be stable.

We maintain access to a diversified base of wholesale funding sources. These uncommitted sources include Fed Funds purchased from other banks, securities sold under agreements to repurchase, negotiable certificates of deposit, offshore deposits, FHLB advances, global bank notes, and commercial paper. Aggregate wholesale funding totaled $44.0 billion as of December 31, 2008 compared to $50.4 billion as of December 31, 2007. Net short-term unsecured borrowings, which includes wholesale domestic and foreign deposits and Fed Funds purchased, totaled $14.2 billion as of December 31, 2008, down from $21.9 billion as of December 31, 2007.

An additional source of wholesale liquidity is our access to the capital markets. SunTrust Banks, Inc. (the "parent company") maintains a registered debt shelf from which it may issue senior or subordinated notes, commercial paper and various capital securities such as common or preferred stock. SunTrust Bank (the "Bank") maintains a global notes program under which it may issue senior or subordinated debt with various terms. As of December 31, 2008, the parent company had authority to issue an additional $3.2 billion of securities under its shelf registration and the Bank had authority to issue an additional $30.1 billion of notes under the global bank note program. Borrowings under these programs are designed to appeal primarily to domestic and international institutional investors. Institutional investor demand for these securities is dependent upon numerous factors, including but not limited to our credit ratings and investor perception of financial market conditions and the health of the banking sector.

Parent Company Liquidity. We measure parent company liquidity by comparing sources of liquidity from short-term assets, such as unencumbered and other investment securities and cash, relative to short-term liabilities, which include overnight sweep funds, seasoned long-term debt and commercial paper. As of December 31, 2008, the parent company had $5.6 billion in such sources compared to short-term debt of $1.4 billion. We also manage the parent company's liquidity by structuring its maturity schedule to minimize the amount of debt maturing within a short period of time. A $350 million parent company note matured in October 2008 and the next parent company debt maturity is $300 million in October 2009. Much of the parent company's liabilities are long-term in nature, coming from the proceeds of our capital securities and long-term senior and subordinated notes.

The primary uses of parent company liquidity include debt service, dividends on capital, the periodic purchase of investment securities and loans to our subsidiaries. We believe the parent company holds cash adequate to satisfy these working capital needs. We fund corporate dividends primarily with dividends from our banking subsidiaries. We are subject to both state and federal regulations that limit our ability to pay common stock dividends in certain circumstances. In the context of an ongoing U.S. economic recession and credit market turmoil in 2008, we announced a reduction of our quarterly common stock dividend on October 27, 2008 from $0.77 per share to $0.54 per share and on January 22, 2009 to its current level of $0.l0 per share.

Table of Contents

Recent Market and Regulatory Developments. Recent financial market conditions have often made it difficult or uneconomical for banks and financial institutions to access the debt and equity capital markets. As a result, the United States Congress, the Treasury, the Federal Reserve, and the FDIC have announced various programs designed to enhance market liquidity and bank capital.

During the fourth quarter of 2008 the parent company received $4.9 billion of preferred stock proceeds from the Treasury's Capital Purchase Program ("CPP", as described below). By participating in the CPP we are prohibited from increasing our common stock dividend for three years unless (i) we have redeemed the Treasury's preferred stock, (ii) the Treasury has transferred all of such preferred stock, or (iii) the Treasury consents to such increase.

This sale of preferred stock subjects us to certain conditions and agreements. The preferred stock pays a 5% cumulative dividend for the first five years, after which the dividend rate increases to 9%. The preferred stock is accompanied by 10-year warrants to purchase up to $727 million of our common stock at market value, based on the 20-day average price prevailing at the time of issuance. The Treasury may transfer the preferred stock and warrants.

Separately during the fourth quarter, the FDIC implemented the TLGP under which banks and financial institutions can issue senior, unsecured debt guaranteed by the FDIC. In December 2008, we issued $3.0 billion of bank debt pursuant to the TLGP. As of December 31, 2008, we retained approximately $1.0 billion of capacity to issue additional debt under the TLGP rules then in force. We expect to utilize this remaining capacity by issuing approximately $1.0 billion before the TLGP has been announced to expire on October 31, 2009; however we note that at the time of drafting of this filing, the final regulations regarding TLGP have not yet been updated and is still scheduled to expire on June 30, 2009.

During the fourth quarter of 2008, we also participated in the Federal Reserve's TAF and maintained outstanding borrowings of $2.5 billion as of December 31, 2008. The TAF has provided banks with a source of relatively inexpensive funding with a term of 84 days or less. We expect to continue to utilize the TAF in the near term so long as the cost of funds remains attractive and/or financial market conditions remain volatile and uncertain.

Other Liquidity Considerations. As detailed in Table 16, we had an aggregate potential obligation of $86.4 billion to our clients in unused lines of credit at December 31, 2008. Commitments to extend credit are arrangements to lend to a customer who has complied with predetermined contractual obligations. We also had $13.9 billion in letters of credit as of December 31, 2008, most of which are standby letters of credit which require that we provide funding if certain future events occur. Approximately $8.7 billion of these letters support variable rate demand obligations ("VRDOs"), municipal securities remarketed by us and other agents on a regular basis (usually weekly). In the event that we or the other agents are unable to remarket these securities, we would provide funding under the letters of credit.

Certain provisions of long-term debt agreements and the lines of credit prevent us from creating liens on, disposing of, or issuing (except to related parties) voting stock of subsidiaries. Further, there are restrictions on mergers, consolidations, certain leases, sales or transfers of assets, and minimum shareholders' equity ratios. As of December 31, 2008, we were and expect to remain in compliance with all covenants and provisions of these debt agreements.

As of December 31, 2008, our cumulative UTBs amounted to $330.0 million. Interest related to UTBs was $70.9 million as of December 31, 2008. These UTBs represent the difference between tax positions taken or expected to be taken in our tax returns and the benefits recognized and measured in accordance with FIN 48. The UTBs are based on various tax positions in several jurisdictions and, if taxes related to these positions are ultimately paid, the payments would be made from our normal, operating cash flows, likely over multiple years.

Table of Contents

Hedging Activity

Table 15 – Risk Management Derivative Financial Instruments

We monitor our sensitivity to changes in interest rates and may use derivative instruments to limit the volatility of net interest income. Derivative instruments increased net interest income in 2008 by $180.7 million and decreased net interest income in 2007 by $25.6 million. The following tables summarize the derivative instruments into which we entered as hedges under SFAS No. 133. See Note 17, "Derivative Financial Instruments," to the Consolidated Financial Statements for a complete description of our derivative instruments and activities during 2008, 2007, and 2006.

	As of December 31, 2008[1]				
(Dollars in millions)	Notional Amount	Gross Unrealized Gains [4]	Gross Unrealized Losses [4]	Equity [7]	Average Maturity in Yrs
Asset Hedges					
Cash flow hedges					
Interest rate swaps [2]	**$11,100**	**$1,102**	**$-**	**$689**	**3.98**
Equity forward contracts [5]	**1,547**	**250**	**-**	**162**	**6.37**
Total asset hedges	**$12,647**	**$1,352**	**$-**	**$851**	**4.27**
Liability Hedges					
Cash flow hedges					
Interest rate swaps [3]	**$2,250**	**$-**	**($47)**	**($29)**	**0.47**
Total liability hedges	**$2,250**	**$-**	**($47)**	**($29)**	**0.47**
Terminated/Dedesignated Liability Hedges					
Cash flow hedges					
Interest rate swaps [6]	**$6,087**	**$-**	**$-**	**$26**	**1.20**
Total terminated/dedesignated hedges	**$6,087**	**$-**	**$-**	**$26**	**1.20**

[1] Includes only derivative financial instruments which are currently, or were previously designated as, and for which the Company continues to recognize the impacts of, qualifying hedges under SFAS No. 133. Certain other derivatives, which are effective for risk management purposes, but which are not in designated hedging relationships under SFAS No. 133, are not incorporated in this table. All interest rate swaps have resets of six months or less.

[2] Represents interest rate swaps designated as cash flow hedges of commercial loans.

[3] Represents interest rate swaps designated as cash flow hedges of floating rate certificates of deposit and FHLB advances.

[4] Represents the change in fair value of derivative financial instruments from inception to December 31, 2008 less any accrued interest receivable or payable from interest rate derivatives.

[5] Represents equity forward contracts designated as cash flow hedges of the probable forecasted sale of common shares of Coke.

[6] Represents interest rate swaps and options that have been terminated and/or dedesignated as derivatives that qualify for hedge accounting. The derivatives were designated as cash flow hedges of floating rate debt, certificates of deposit, commercial loans, and tax exempt bonds. The $25.9 million of net gains, net of tax, recorded in accumulated other comprehensive income will be reclassified into earnings as interest income or expense over the life of the respective hedged items.

[7] At December 31, 2008, the net unrealized gain on derivatives included in accumulated other comprehensive income, which is a component of stockholders' equity, was $847.1 million, net of tax. Of this net of tax amount, a $821.2 million gain represents the effective portion of the net gains on derivatives that currently qualify as cash flow hedges, and a $25.9 million gain relates to previous qualifying cash flow hedging relationships that have been terminated or dedesignated. Gains or losses on hedges of interest rate risk will be classified into interest income or expense as a yield adjustment of the hedged item in the same period that the hedged cash flows impact earnings. As of December 31, 2008, $225.0 million of net gains, net of tax, recorded in accumulated other comprehensive income are expected to be reclassified as interest income or interest expense during the next twelve months. Gains or losses on hedges of the risk of changes in overall cash flows on the probable forecasted sales of equity securities will be reclassified from accumulated other comprehensive income as an adjustment to the sales price of the equity shares when such shares are sold; no amounts are expected to be reclassified from accumulated other comprehensive income in the next twelve months.

Table of Contents

(Dollars in millions)	Notional Amount	Gross Unrealized Gains [4]	Gross Unrealized Losses [4]	Accumulated Other Comprehensive Income [6]	Average Maturity in Years
	As of December 31, 2007 [1]				
Asset Hedges					
Cash flow hedges					
Interest rate swaps [2]	$10,200	$246	($1)	$152	3.07
Total asset hedges	$10,200	$246	($1)	$152	3.07
Liability Hedges					
Cash flow hedges					
Interest rate swaps [3]	$3,865	$3	($47)	($27)	1.45
Total liability hedges	$3,865	$3	($47)	($27)	1.45
Terminated/Dedesignated Liability Hedges					
Cash flow hedges					
Interest rate swaps and options [5]	$5,737	$-	$-	$34	1.88
Total terminated/dedesignated hedges	$5,737	$-	$-	$34	1.88

[1] Includes only derivative financial instruments which are currently, or previously designated as, and for which the Company continues to recognize the impacts of, qualifying hedges under SFAS No. 133. Certain other derivatives which are effective for risk management purposes, but which are not in designated hedging relationships under SFAS No. 133, are not incorporated in this table. All interest rate swaps have resets of six months or less.

[2] Represents interest rate swaps designated as cash flow hedges of commercial loans.

[3] Represents interest rate swaps designated as cash flow hedges of floating rate certificates of deposit and FHLB advances.

[4] Represents the change in fair value of derivative financial instruments from inception to December 31, 2007 less accrued interest receivable or payable.

[5] Represents interest rate swaps and options that have been terminated and/or dedesignated as derivatives that qualify for hedge accounting. The derivatives were designated as cash flow hedges of floating rate debt, certificates of deposit, commercial loans, and tax exempt bonds. The $33.7 million of net gains, net of tax, recorded in accumulated other comprehensive income will be reclassified into earnings as interest income or expense over the life of the respective hedged items.

[6] At December 31, 2007, the net unrealized gain on derivatives included in accumulated other comprehensive income, which is a component of shareholders' equity, was $158.6 million, net of tax. Of this net of tax amount, a $124.9 million gain represents the effective portion of the net gains on derivatives that currently qualify as cash flow hedges, and a $33.7 million gain relates to previous qualifying cash flow hedging relationships that have been terminated or dedesignated. Gains or losses on hedges of interest rate risk will be classified into interest income or expense as a yield adjustment of the hedged item in the same period that the hedged cash flows impact earnings. As of December 31, 2007, $45.3 million of net gains, net of tax, recorded in accumulated other comprehensive income are expected to be reclassified into interest income or interest expense during the next twelve months.

Derivative hedging instrument activities are as follows:

Derivatives Hedging

(Dollars in millions)	Asset Hedges	Liability Hedges	Total
	Notional Values[1]		
Balance, January 1, 2007	$7,000	$6,088	$13,088
Additions	11,600	7,400	19,000
Maturities	(4,900)	(5,400)	(10,300)
Terminations	(3,500)	(400)	(3,900)
Dedesignations	-	(3,823)	(3,823)
Balance, December 31, 2007	$10,200	$3,865	$14,065
Additions	**4,047**	**-**	**4,047**
Maturities	**(600)**	**(1,115)**	**(1,715)**
Terminations	**(1,000)**	**(500)**	**(1,500)**
Balance, December 31, 2008	**$12,647**	**$2,250**	**$14,897**

[1] Includes only derivative financial instruments which are currently qualifying hedges under SFAS No. 133. Certain other derivatives that are effective for risk mananagement purposes, but which are not in designated hedging relationships under SFAS No. 133, are not incorporated in this table. The hedging activity for our mortgage loans held for sale is excluded from this table. The SFAS No. 133 hedging program was terminated for mortgage loans during 2007.

Table of Contents

The following tables present the expected maturities of interest rate swaps currently designated as hedging instruments under SFAS No. 133. Certain other derivatives that are effective for risk management purposes, but which are not in designated hedging relationships of interest rate risk under SFAS No. 133, are not incorporated in the tables.

	As of December 31, 2008					
(Dollars in millions)	1 Year or Less	1 - 2 Years	2 - 5 Years	5 - 7 Years	After 7 Years	Total
CASH FLOW ASSET HEDGES						
Notional amount - swaps	$1,100	$-	$6,000	$4,000	$-	$11,100
Net unrealized gain (loss)	5	-	575	522	-	1,102
Weighted average receive rate [1]	5.32 %	- %	4.73 %	4.52 %	- %	4.71 %
Weighted average pay rate [1]	1.90	-	1.90	1.90	-	1.90
CASH FLOW LIABILITY HEDGES						
Notional amount - swaps	$2,250	$-	$-	$-	$-	$2,250
Net unrealized gain (loss)	(47)	-	-	-	-	(47)
Weighted average receive rate [1]	0.91 %	- %	- %	- %	- %	0.91 %
Weighted average pay rate [1]	5.26	-	-	-	-	5.26

[1] The average pay and receive rates are those in effect at December 31, 2008 weighted on the notional of the corresponding interest rate swaps. The variable rates of all interest rate swaps reset within six months.

	As of December 31, 2007					
(Dollars in millions)	1 Year or Less	1 - 2 Years	2 - 5 Years	5 - 7 Years	After 7 Years	Total
CASH FLOW ASSET HEDGES						
Notional amount – swaps	$600	$2,100	$4,500	$3,000	$-	$10,200
Net unrealized gain (loss)	(1)	39	167	41	-	246
Weighted average receive rate [1]	3.95 %	5.13 %	5.08 %	4.64 %	- %	4.89 %
Weighted average pay rate [1]	5.23	5.23	5.23	5.09	-	5.18
CASH FLOW LIABILITY HEDGES						
Notional amount – swaps	$1,115	$2,750	$-	$-	$-	$3,865
Net unrealized gain (loss)	3	(47)	-	-	-	(44)
Weighted average receive rate [1]	5.04 %	4.87 %	- %	- %	- %	4.92 %
Weighted average pay rate [1]	3.85	5.05	-	-	-	4.70

[1] The average pay and receive rates are those in effect at December 31, 2007 weighted on the notional of the corresponding interest rate swaps. The variable rates of all interest rate swaps reset within six months.

Other Market Risk

Other sources of market risk include the risk associated with holding residential and commercial mortgage loans prior to selling them into the secondary market, commitments to clients to make mortgage loans that will be sold to the secondary market, and our investment in MSRs. We manage the risks associated with the residential and commercial mortgage loans classified as held for sale (i.e., the warehouse) and our IRLCs on residential loans intended for sale. The warehouses and IRLCs consist primarily of fixed and adjustable rate single family residential and commercial real estate loans. The risk associated with the warehouses and IRLCs is the potential change in interest rates between the time the customer locks in the rate on the anticipated loan and the time the loan is sold on the secondary market, which is typically 60-150 days.

We manage interest rate risk predominantly with interest rate swaps, futures, and forward sale agreements, where the changes in value of the instruments substantially offset the changes in value of the warehouse and the IRLCs. The IRLCs on residential mortgage loans intended for sale are classified as free standing derivative financial instruments in accordance with SFAS No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities," and are not designated in SFAS No. 133 hedge accounting relationships.

MSRs are the present value of future net cash flows that are expected to be received from the mortgage servicing portfolio. The value of MSRs is highly dependent upon the assumed prepayment speed of the mortgage servicing portfolio which is driven by the level of certain key interest rates, primarily the 30-year current coupon par mortgage rate known as the par mortgage rate. Future expected net cash flows from servicing a loan in the mortgage servicing portfolio would not be realized if the loan pays off earlier than anticipated.

We have not historically hedged MSRs, but have managed the market risk through our overall asset/liability management process with consideration to the natural counter-cyclicality of servicing and production that occurs as interest rates rise and fall over time with the economic cycle as well as with securities available for sale. The precipitous drop in mortgage rates as evidenced by the decline in the par mortgage rate, (down over 200 basis points) during the fourth quarter of 2008, generated

Table of Contents

significantly higher expected prepayment speeds that resulted in an impairment of $370.0 million of MSRs. This same decline in rates generated gains on MBS which were held in our available for sale securities portfolio. During December, $9.3 billion of MBS were sold generating $413.1 million of gains that were used to offset the MSRs impairment. As of January 1, 2009, ALCO designated the 2008 MSRs vintage and all future MSRs production as fair value under SFAS No. 156. The fair value determination, key economic assumptions and the sensitivity of the current fair value of the MSRs as of December 31, 2008 and December 31, 2007 is discussed in greater detail in Note 11, “Certain Transfers of Financial Assets, Mortgage Servicing Rights and Variable Interest Entities” to the Consolidated Financial Statements.

We also have market risk through capital stock we hold in the FHLB of Atlanta and Cincinnati. In order to be an FHLB member, we are required to purchase capital stock in the FHLB. In exchange, members take advantage of competitively priced advances as a wholesale funding source and access grants and low-cost loans for affordable housing and community-development projects, amongst other benefits. As of December 31, 2008, we held a total of $493.2 million of capital stock in the FHLB. In February 2009, we reduced our capital stock holdings in the FHLB by $150.3 million to $342.9 million.

For a detailed overview regarding actions taken to address the risk from changes in equity prices associated with our investment in Coke common stock, see “Investment in Common Shares of the Coca-Cola Company,” in this MD&A. We also hold a total of approximately $209 million of private equity investments that include direct investments and limited partnerships. We hold these investments as long-term investments and make additional contributions based on our contractual commitments but have decided to limit investments into new private equity investments.

In addition to MSRs impairment, other impairment charges could occur if deteriorating conditions in the market persist, including, but not limited to, goodwill and other intangibles impairment charges and increased charges with respect to OREO.

OFF-BALANCE SHEET ARRANGEMENTS

See discussion of off-balance sheet arrangements in Note 11, “Certain Transfers of Financial Assets, Mortgage Servicing Rights and Variable Interest Entities” and Note 18, “Reinsurance Arrangements and Guarantees”, to the Consolidated Financial Statements.

Table 16 – Unfunded Lending Commitments

(Dollars in millions)	**December 31 2008**	December 31 2007
Unused lines of credit		
Commercial	**$37,167.1**	$38,959.1
Mortgage commitments[1]	**17,010.4**	12,859.5
Home equity lines	**18,293.8**	20,424.9
Commercial real estate	**3,652.0**	6,228.2
Commercial paper conduit	**6,060.3**	7,877.5
Credit card	**4,167.8**	1,808.5
Total unused lines of credit	**$86,351.4**	$88,157.7
Letters of credit		
Financial standby	**$13,622.8**	$12,287.5
Performance standby	**220.2**	283.1
Commercial	**99.0**	132.3
Total letters of credit	**$13,942.0**	$12,702.9

[1] Includes $7.2 billion and $5.0 billion in IRLCs accounted for as derivatives as of December 31, 2008 and December 31, 2007, respectively.

Table of Contents

CONTRACTUAL COMMITMENTS

In the normal course of business, we enter into certain contractual obligations, including obligations to make future payments on debt and lease arrangements, contractual commitments for capital expenditures, and service contracts. Table 17 summarizes our significant contractual obligations at December 31, 2008, except for pension and other postretirement benefit plans, included in Note 16, "Employee Benefit Plans," to the Consolidated Financial Statements.

Table 17 – Contractual Commitments

	As of December 31, 2008				
(Dollars in millions)	1 year or less	1-3 years	3-5 years	After 5 years	Total
Time deposit maturities[1]	$29,059	$7,538	$1,721	$71	$38,389
Short-term borrowings[1]	9,480	-	-	-	9,480
Long-term debt [1]	1,536	10,078	7,311	7,871	26,796
Operating lease obligations	208	375	313	728	1,624
Capital lease obligations[1]	1	3	2	10	16
Purchase obligations[2]	104	282	226	640	1,252
Total	$40,388	$18,276	$9,573	$9,320	$77,557

[1] Amounts do not include accrued interest.

[2] Includes contracts with a minimum annual payment of $5 million.

As of December 31, 2008, our cumulative UTBs amounted to $330.0 million. Interest related to UTBs was $70.9 million as of December 31, 2008. We are under continuous examination by various tax authorities. We are unable to make a reasonable estimate of the periods of cash settlement because it is not possible to reasonably predict, with respect to periods for which the statutes of limitations are open, the amount of tax and interest (if any) that might be assessed by a tax authority or the timing of an assessment or payment. It is also not possible to reasonably predict whether or not the applicable statutes of limitations might expire without us being examined by any particular tax authority.

CRITICAL ACCOUNTING POLICIES

Our significant accounting policies are described in detail in Note 1, "Accounting Policies," to the Consolidated Financial Statements and are integral to understanding MD&A. We have identified certain accounting policies as being critical because (1) they require our judgment about matters that are highly uncertain and (2) different estimates that could be reasonably applied would result in materially different assessments with respect to ascertaining the valuation of assets, liabilities, commitments, and contingencies. A variety of factors could affect the ultimate value that is obtained either when earning income, recognizing an expense, recovering an asset, valuing an asset or liability, or reducing a liability. Our accounting and reporting policies are in accordance with U.S. GAAP, and they conform to general practices within the financial services industry. We have established detailed policies and control procedures that are intended to ensure these critical accounting estimates are well controlled and applied consistently from period to period. In addition, the policies and procedures are intended to ensure that the process for changing methodologies occurs in an appropriate manner. The following is a description of our current critical accounting policies.

Allowance for Loan and Lease Losses

The ALLL represents our estimate of probable losses inherent in the existing loan portfolio. The ALLL is increased by the provision for loan losses and reduced by loans charged off, net of recoveries. The ALLL is determined based on our review and evaluation of larger loans that meet our definition of impairment and the size and current risk characteristics of pools of homogeneous loans (i.e., loans having similar characteristics) within the loan portfolio and our assessment of internal and external influences on credit quality that are not fully reflected in the historical loss or risk-rating data.

Larger nonaccrual loans are individually evaluated to determine the amount of specific allowance required using the most probable source of repayment, including the present value of the loan's expected future cash flows, the fair value of the underlying collateral less costs of disposition, or the loan's estimated market value. In these measurements, we use assumptions and methodologies that are relevant to estimating the level of impaired and unrealized losses in the portfolio. To the extent that the data supporting such assumptions has limitations, our judgment and experience play a key role in enhancing the specific ALLL estimates.

Table of Contents

General allowances are established for loans and leases grouped into pools that have similar characteristics, including smaller balance homogeneous loans. The ALLL Committee estimates probable losses by evaluating quantitative and qualitative factors, including net charge-off trends, internal risk ratings, changes in internal risk ratings, loss forecasts, collateral values, geographic location, borrower FICO scores, delinquency rates, nonperforming and restructured loans, origination channel, product mix, underwriting practices, industry conditions, and economic trends.

Unallocated allowances relate to inherent losses that are not included elsewhere in the ALLL. The qualitative factors associated with unallocated allowances are subjective and require a high degree of management judgment. These factors include the inherent imprecision in mathematical models and credit quality statistics, recent economic uncertainty, losses incurred from recent events not reflected in general or specific allowances, and lagging or incomplete data. During 2008, additional analysis was performed to identify the loan pools most susceptible to the imprecision risk being captured by the unallocated allowance. As of December 31, 2008, all of the unallocated allowance was assigned to specific loan pools.

Our financial results are affected by the changes in and the absolute level of the ALLL. This process involves our analysis of complex internal and external variables, and it requires that we exercise judgment to estimate an appropriate ALLL. As a result of the uncertainty associated with this subjectivity, we cannot assure the precision of the amount reserved, should we experience sizeable loan or lease losses in any particular period. For example, changes in the financial condition of individual borrowers, economic conditions, or the condition of various markets in which collateral may be sold could require us to significantly decrease or increase the level of the ALLL. Such an adjustment could materially affect net income as a result of the change in provision for loan losses. During 2007 and 2008, we experienced increases in delinquencies and net charge-offs in residential real estate loans due to the deterioration of the housing market. During 2008, we began to identify and realize loan-related losses that were due to borrower misrepresentations and insurance claim denials. We classify these loans as operating losses instead of net charge-offs applied against the ALLL, since the circumstances leading to the loss were the result of reasons other than a decline in the borrower’s credit conditions. Reserves for this type of loss were estimated using recent historical loss experience data. The ALLL and operating loss reserve considered the current market conditions in deriving the estimated reserves; however, given the continued economic uncertainty, the ultimate amount of loss, as well as classification of loss, could vary from that estimate. For additional discussion of the ALLL see the “Provision for Loan Losses” and “Allowance for Loan and Lease Losses” section in this MD&A, and for additional discussion of operating losses see the “Noninterest Expense” section in this MD&A.

Estimates of Fair Value

We measure or monitor many of our assets and liabilities on a fair value basis. Fair value is used on a recurring basis for certain assets and liabilities in which fair value is the primary basis of accounting. The extent to which we use fair value on a recurring basis was significantly expanded upon the adoption of SFAS No. 159 during the first quarter of 2007. Examples of recurring uses of fair value include derivative instruments, available for sale and trading securities, certain investment portfolio and held for sale loans, certain issuances of long-term debt, and certain residual interests from Company-sponsored securitizations. Additionally, fair value is used on a non-recurring basis to evaluate assets or liabilities for impairment or for disclosure purposes in accordance with SFAS No. 107. Examples of these non-recurring uses of fair value include loans held for sale accounted for at the lower of cost or market, MSRs, OREO, goodwill, intangible assets, nonmarketable equity securities, and long-lived assets. Depending on the nature of the asset or liability, we use various valuation techniques and assumptions when estimating fair value. These valuation techniques and assumptions are in accordance with SFAS No. 157 and when applicable, FASB Staff Position (“FSP”) FAS 157-3.

Fair value is the price that could be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. Estimating fair value in accordance with SFAS No. 157 requires that we make a number of significant judgments. Where observable market prices for identical assets or liabilities are not available, SFAS No. 157 requires that we identify, what we believe to be, similar assets or liabilities. If observable market prices are unavailable or impracticable to obtain for any such similar assets or liabilities, then fair value is estimated using modeling techniques, such as discounted cash flow analyses. These modeling techniques incorporate our assessments regarding assumptions that market participants would use in pricing the asset or the liability, including market-based assumptions, such as interest rates, as well as assumptions about the risks inherent in a particular valuation technique, the effect of a restriction on the sale or use of an asset, and the risk of nonperformance. In certain cases, our assessments with respect to assumptions that market participants would make may be inherently difficult to determine and the use of different assumptions could result in material changes to these fair value measurements. The use of significant, unobservable inputs in our models is described in Note 20, “Fair Value Election and Measurement,” to the Consolidated Financial Statements.

In instances where required by U.S. GAAP, we use discount rates in our determination of the fair value of certain assets and liabilities such as retirement and other postretirement benefit obligations, loans carried at fair value, MSRs, and residual interests from Company-sponsored securitizations. Discount rates used are those considered to be commensurate with the risks involved. A change in these discount rates could increase or decrease the values of those assets and liabilities. The fair

Table of Contents

value of MSRs is based on discounted cash flow analyses. We provide disclosure of the key economic assumptions used to measure MSRs and residual interests and a sensitivity analysis to adverse changes to these assumptions in Note 11, "Certain Transfers of Financial Assets, Mortgage Servicing Rights and Variable Interest Entities," to the Consolidated Financial Statements. A detailed discussion of key variables, including the discount rate, used in the determination of retirement and other postretirement obligations is contained in the "Pension Accounting" section below.

In estimating the fair values for investment securities and most derivative financial instruments, we believe that independent, third-party market prices are the best evidence of exit price. If such third-party market prices are not available on the exact securities that we own, fair values are based on the market prices of similar instruments, third-party broker quotes or are estimated using industry-standard or proprietary models whose inputs may be unobservable. When market observable data is not available, the valuation of financial instruments becomes more subjective and involves substantial judgment. The need to use unobservable inputs generally results from the lack of market liquidity for certain types of loans and securities, which results in diminished observability of both actual trades and assumptions that would otherwise be available to value these instruments. The distressed market conditions, that began in the third quarter of 2007 and continued through 2008, have impacted our ability to obtain third-party pricing data for certain of our investments. Even when third-party pricing has been available, the reduced trading activity resulting from current market conditions has challenged the observability of these quotations. When fair values are estimated based on internal models, we will consider relevant market indices that correlate to the underlying collateral, along with assumptions such as liquidity discounts, interest rates, prepayment speeds, default rates, loss severity rates, and discount rates.

The fair values of loans held for investment recorded at fair value and loans held for sale are based on observable current market prices in the secondary loan market in which loans trade, as either whole loans or as ABS. When securities prices are obtained in the secondary loan market, we will translate these prices into whole loan prices by incorporating adjustments for estimated credit enhancement costs, loan servicing fees, and various other transformation costs, when material. The fair value of a loan is impacted by the nature of the asset and the market liquidity. When observable market prices are not available, for example as a result of the current illiquidity in the market for certain loan products, we will use judgment and estimate fair value using internal models. When estimating fair value, we will make assumptions about prepayment speeds, default rates, loss severity rates, and liquidity discounts. Absent comparable current market data, we believe that the fair value derived from these various approaches is a reasonable approximation of the prices that we would receive upon sale of the loans.

The fair values of OREO and other repossessed assets are typically determined based on recent appraisals by third parties, less estimated selling costs. Estimates of fair value are also required when performing an impairment analysis of goodwill, intangible assets and long-lived assets. For long-lived assets, including intangible assets subject to amortization, an impairment loss is recognized if the carrying amount of the asset is not recoverable and exceeds its fair value. In determining the fair value, management uses models which require assumptions about growth rates, the life of the asset, and/or the market value of the assets. We test long-lived assets for impairment whenever events or changes in circumstances indicate that our carrying amount may not be recoverable.

Goodwill

We review the goodwill of each reporting unit for impairment on an annual basis, or more often, if events or circumstances indicate that it is more likely than not that the fair value of the reporting unit is below the carrying value of its equity. In 2008, our reporting units were comprised of Retail, Commercial, Commercial Real Estate, Mortgage, Corporate and Investment Banking, Wealth and Investment Management, and Affordable Housing.

Valuation Techniques

In determining the fair value of our reporting units, we primarily use discounted cash flow analyses, which require assumptions about short and long-term net cash flow growth rates for each reporting unit, as well as discount rates. In addition, in 2008, we also applied guideline company and guideline transaction information, where available, to aid in the valuation of certain reporting units. The guideline information was based on publicly available information. A valuation multiple was selected based on a financial benchmarking analysis that compared the reporting unit's benchmark result with the guideline information. In addition to these financial considerations, qualitative factors such as asset quality, growth opportunities, and overall risk were considered in the ultimate selection of the multiple used to estimate a value on a minority basis. A control premium of 30% was applied to the minority basis value to arrive at the reporting unit's estimated fair value on a controlling basis. The values separately derived from each valuation technique (i.e., discounted cash flow, guideline company, and guideline transaction) were used to develop an overall estimate of a reporting unit's fair value. Generally, the discounted cash flow analysis was weighted 60% and the market based approaches were weighted 40% in the final estimated value. The selection and weighting of the various fair value techniques may result in a higher or lower fair value. Judgment is applied in determining the weightings that are most representative of fair value.

Table of Contents

Growth Assumptions
Multi-year financial forecasts were developed for each reporting unit by considering several key business drivers such as new business initiatives, client service and retention standards, market share changes, anticipated loan and deposit growth, forward interest rates, historical performance, and industry and economic trends, among other considerations. The long-term growth rate used in determining the terminal value of each reporting unit was estimated at 4% in 2008 based on management's assessment of the minimum expected terminal growth rate of each reporting unit, as well as broader economic considerations such as GDP and inflation. The sum of the reporting unit cash flow projections was compared to our market capitalization, on a control adjusted basis, in a discounted cash flow framework to calculate an overall implied internal rate of return. In connection with the 2008 annual goodwill impairment evaluation, the implied internal rate of return was 11%. This implied internal rate of return served as a baseline for estimating the specific discount rate for each reporting unit.

Discount Rate Assumptions
Discount rates are estimated based on the Capital Asset Pricing Model, which considers the risk-free interest rate, market risk premium, beta, and in some cases, unsystematic risk and size premium adjustments specific to a particular reporting unit. The discount rates are also calibrated based on the assessment of the risks related to the projected cash flows of each reporting unit. For the 2008 annual goodwill impairment evaluation, the discount rates used to develop the estimated fair value of the reporting units ranged from 10% to 14%.

Estimated Fair Value and Sensitivities
The estimated fair value of each reporting unit is derived from the valuation techniques described above, incorporating the related projections and assumptions. As of September 30, 2008, the estimated fair value of each reporting unit exceeded its carrying value. The estimated fair value of the reporting units is analyzed in relation to numerous market and historical factors, including current economic and market conditions, recent, historical, and implied stock price volatility, marketplace dynamics such as level of short selling, company-specific growth opportunities, and an implied control premium. The implied control premium is determined by comparing the aggregate fair value of the reporting units to our market capitalization, measured over a reasonable period of time. We compared the aggregate fair values of the reporting units as of September 30, 2008 and 2007 to our market capitalization and derived an implied control premium of approximately 60% and 40%, respectively. The implied control premium was calculated using an average market capitalization based on five days before and after September 30, 2008 and 2007. We assessed the reasonableness of the implied control premium in relation to the market and historical factors previously mentioned, as well as recognizing that the size of the implied control premium is not, independently, a determinative measure to assess the estimated fair values of the reporting units. In the current unprecedented market environment, the size of the implied control premium can vary significantly based on the economic and market conditions which may cause increased volatility in a company's stock price, resulting in a temporary decline in market capitalization; however, current market capitalization may not be an accurate indication of a market participant's estimate of entity-specific value measured over a more reasonable period of time.

The estimated fair value of the reporting unit is highly sensitive to changes in these projections and assumptions; therefore, in some instances minor changes in these assumptions could impact whether the fair value of a reporting unit is greater than its carrying value. For example, a 100 basis point increase in the discount rate and/or 20% decline in the cumulative cash flow projections of a reporting unit could cause the fair value of certain reporting units to be below its carrying value. We perform sensitivity analyses around these assumptions in order to assess the reasonableness of the assumptions and the resulting estimated fair values. Ultimately, future potential changes in these assumptions may impact the estimated fair value of a reporting unit and cause the fair value of the reporting unit to be below its carrying value.

An indication of possible impairment occurs when the estimated fair value of the reporting unit is below the carrying value of its equity. In the case of our fourth quarter of 2008 updated goodwill impairment evaluation, we determined that it was possible that the fair value of the Mortgage, Commercial Real Estate, and Corporate and Investment Banking reporting units was less than their respective carrying values as of December 31, 2008, due, in large part, to their exposure to residential real estate and capital markets, as well as the continued deterioration in the economy during the fourth quarter of 2008. In those situations where the carrying value of equity exceeds the estimated fair value, an additional goodwill impairment evaluation is performed which involves calculating the implied fair value of the reporting unit's goodwill. The implied fair value of goodwill is determined in the same manner as goodwill is recognized in a business combination. The fair value of the reporting unit's assets and liabilities, including previously unrecognized intangible assets, is individually determined. Significant judgment and estimates are involved in estimating the fair value of the assets and liabilities of the reporting unit. The excess fair value of the reporting unit over the fair value of the reporting unit's net assets is the implied goodwill.

The value of the implied goodwill is highly sensitive to the estimated fair value of the reporting unit's net assets. The fair value of the reporting unit's net assets is estimated using a variety of valuation techniques including the following:

- recent data observed in the market, including similar assets
- cash flow modeling based on projected cash flows and market discount rates
- market indices

Table of Contents

- estimated net realizable value of the underlying collateral
- price indications from independent third parties

Observable market information is utilized to the extent available and relevant. The estimated fair values reflect management's assumptions regarding how a market participant would value the net assets and includes appropriate credit, liquidity, and market risk premiums that are indicative of the current environment. Currently, estimated liquidity and market risk premiums on certain loan categories ranged from 5% to 20% due to the distressed nature of the market; however, those values may not be indicative of the ultimate economic value of those assets. For example, the fair value of the loans based on estimated future cash flows discounted at new origination rates for loans with similar terms and credit quality, (i.e. discount rates exclusive of the market risk premium and liquidity discount) derives an estimated fair value that approximates 95% of the loans' carrying value.

If the implied fair value of the goodwill for the reporting unit exceeds the carrying value of the goodwill for the respective reporting unit, no goodwill impairment is recorded. Changes in the estimated fair value of the individual assets and liabilities may result in a different amount of implied goodwill, and ultimately the amount of goodwill impairment, if any. Sensitivity analysis is performed to assess the potential ranges of implied goodwill. In the case of separately estimating the implied goodwill for our Mortgage, Commercial Real Estate, and Corporate and Investment Banking reporting units, the fair value of the reporting unit's assets and liabilities was estimated to be a net liability as of December 31, 2008, which caused the implied fair value of the reporting unit's goodwill to exceed its carrying value, resulting in no goodwill impairment. The size of the implied goodwill was significantly affected by the estimated fair value of the loans pertaining to these reporting units. The fair value estimate of these loan portfolios ranged from approximately 75% to 90%. The estimated fair value of these loan portfolios is based on an exit price, and the assumptions used are intended to approximate those that a market participant would use in valuing the loans in an orderly transaction, including a market liquidity discount. As previously mentioned, the significant market risk premium that is a consequence of the current distressed market conditions was a significant contributor to the valuation discounts associated with these loans. However, it is possible that future changes in the fair value of the reporting unit's net assets could result in future goodwill impairment. For example, to the extent that market liquidity returns and the fair value of the individual assets of a reporting unit increases at a faster rate than the fair value of the reporting unit as a whole, that may cause the implied goodwill of a reporting unit to be lower than the carrying value of goodwill, resulting in goodwill impairment.

Income Taxes

We are subject to the income tax laws of the various jurisdictions where we conduct business and estimate income tax expense based on amounts expected to be owed to these various tax jurisdictions. On a quarterly basis, we evaluate the reasonableness of our effective tax rate based upon a current estimate of net income, tax credits, non-taxable income and the applicable statutory tax rates expected for the full year. The estimated income tax expense is reported in the Consolidated Statements of Income.

Accrued taxes represent the net estimated amount due to or to be received from tax jurisdictions either currently or in the future and are reported in other liabilities on the Consolidated Balance Sheets. We assess the appropriate tax treatment of transactions and filing positions after considering statutes, regulations, judicial precedent and other pertinent information and maintain tax accruals consistent with our evaluation. Changes in the estimate of accrued taxes occur periodically due to changes in tax rates, interpretations of tax laws, the status of examinations by the tax authorities and newly enacted statutory, judicial and regulatory guidance that could impact the relative merits of tax positions. These changes, when they occur, impact accrued taxes and can materially affect our operating results.

We periodically evaluate our uncertain tax positions and estimate the appropriate level of tax reserves related to each of these positions. Additionally, we evaluate the realizability of deferred tax asset positions based on expectations of future taxable income. The evaluation pertaining to the tax expense and related tax asset and liability balances involves a high degree of judgment and subjectivity around the ultimate measurement and resolution of these matters.

Pension Accounting

Several variables affect the annual pension cost and the annual variability of cost for our retirement programs. The main variables are: (1) size and characteristics of the employee population, (2) discount rate, (3) expected long-term rate of return on plan assets, (4) recognition of actual asset returns, (5) other actuarial assumptions and (6) healthcare cost. Below is a brief description of these variables and the effect they have on our pension costs.

Size and Characteristics of the Employee Population
Pension cost is directly related to the number of employees covered by the plans, and other factors including salary, age, years of employment, and benefit terms. Effective January 1, 2008, retirement plan participants who were employed as of

Table of Contents

December 31, 2007 ceased to accrue additional benefits under the existing pension benefit formula and their accrued benefits were frozen. Beginning January 1, 2008, participants who had fewer than 20 years of service and future participants accrue future pension benefits under a cash balance formula that provides compensation and interest credits to a Personal Pension Account. Participants with 20 or more years of service as of December 31, 2007 were given the opportunity to choose between continuing a traditional pension benefit accrual under a reduced formula or participating in the new Personal Pension Account. The plan population decreased through 2008 due to the effects of a reorganization announced during 2007.

Discount Rate
The discount rate is used to determine the present value of future benefit obligations. The discount rate for each plan is determined by matching the expected cash flows of each plan to a yield curve based on long term, high quality fixed income debt instruments available as of the measurement date, December 31, 2008. The discount rate for each plan is reset annually on the measurement date to reflect current market conditions.

If we were to assume a 0.25% increase/decrease in the discount rate for all retirement and other postretirement plans, and keep all other assumptions constant, the benefit cost would decrease/ increase by approximately $11 million.

Expected Long-term Rate of Return on Plan Assets
Based on historical experience and market projection of the target asset allocation set forth in the investment policy for the Retirement Plans, the pre-tax expected rate of return on plan assets was 8.50% for 2007 and 8.25% for 2008. This expected rate of return is dependent upon the asset allocation decisions made with respect to plan assets. We modified the pre-tax expected rate of return on plan assets for 2009 to be 8.00% to reflect the reduction in pension trust equity exposure.

Annual differences, if any, between expected and actual returns are included in the unrecognized net actuarial gain or loss amount. We generally amortize any unrecognized net actuarial gain or loss in excess of a 10% corridor, as defined in SFAS No. 87, “Employers’ Accounting for Pensions,” in net periodic pension expense over the average future service of active employees, which is approximately seven years, or average future lifetime for plans with no active participants that are frozen. See Note 16, “Employee Benefit Plans,” to the Consolidated Financial Statements for details on changes in the pension benefit obligation and the fair value of plan assets.

If we were to assume a 0.25% increase/decrease in the expected long-term rate of return for the retirement and other postretirement plans, holding all other actuarial assumptions constant, the benefit cost would decrease/increase by approximately $5 million.

Recognition of Actual Asset Returns
SFAS No. 87 allows for the use of an asset value that smoothes investment gains and losses over a period up to five years. However, we have elected to use a preferable method in determining pension cost. This method uses the actual market value of the plan assets. Therefore, we will experience more variability in the annual pension cost, as the asset values will be more volatile than companies who elected to “smooth” their investment experience.

Other Actuarial Assumptions
To estimate the projected benefit obligation, actuarial assumptions are required about factors such as mortality rate, turnover rate, retirement rate, disability rate, and the rate of compensation increases. These factors do not tend to change significantly over time, so the range of assumptions, and their impact on pension cost, is generally limited. We periodically review the assumptions used based on historical and expected future experience. The interest crediting rate applied to each Personal Pension Account was 6.28% in 2008.

Healthcare Cost
Assumed healthcare cost trend rates also have an impact on the amounts reported for the postretirement plans. Due to changing medical inflation, it is important to understand the effect of a one percent change in assumed healthcare cost trend rates. If we were to assume a one percent increase in healthcare cost trend rates, the effect on the other postretirement benefit obligation and total interest and service cost would be a $12.8 million and $0.7 million increase, respectively. If we were to assume a one percent decrease in healthcare trend rates, the effect on the other postretirement benefit obligation and total interest and service cost would be a $11.2 million and $0.6 million decrease, respectively.

To estimate the projected benefit obligation as of December 31, 2008, we projected forward the benefit obligations from January 1, 2008 to December 31, 2008, adjusting for benefit payments, expected growth in the benefit obligations, changes in key assumptions and plan provisions, and any significant changes in the plan demographics that occurred during the year, including (where appropriate) subsidized early retirements, salary changes different from expectations, entrance of new participants, changes in per capita claims cost, Medicare Part D subsidy, and retiree contributions.

Table of Contents

Table 18 - Selected Quarterly Financial Data

	Three Months Ended							
	2008				2007			
(Dollars in millions, except per share and other data)	December 31	September 30	June 30	March 31	December 31	September 30	June 30	March 31
Summary of Operations								
Interest, fees, and dividend income	**$1,985.4**	**$2,017.3**	**$2,066.4**	**$2,258.3**	$2,448.7	$2,515.3	$2,543.9	$2,528.0
Interest expense	**808.5**	**871.1**	**909.7**	**1,118.5**	1,281.1	1,323.1	1,348.6	1,363.5
Net interest income	**1,176.9**	**1,146.2**	**1,156.7**	**1,139.8**	1,167.6	1,192.2	1,195.3	1,164.5
Provision for loan losses	**962.5**	**503.7**	**448.0**	**560.0**	356.8	147.0	104.7	56.4
Net interest income after provision for loan losses	**214.4**	**642.5**	**708.7**	**579.8**	810.8	1,045.2	1,090.6	1,108.1
Noninterest income [1]	**717.7**	**1,285.2**	**1,413.0**	**1,057.5**	576.0	819.1	1,154.6	878.9
Noninterest expense	**1,588.7**	**1,668.1**	**1,378.5**	**1,255.1**	1,455.4	1,291.2	1,251.2	1,236.0
Income/(loss) before provision (benefit) for income taxes	**(656.6)**	**259.6**	**743.2**	**382.2**	(68.6)	573.1	994.0	751.0
Provision (benefit) for income taxes	**(309.0)**	**(52.8)**	**202.8**	**91.6**	(79.7)	152.9	312.6	229.7
Net income/(loss)	**(347.6)**	**312.4**	**540.4**	**290.6**	11.1	420.2	681.4	521.3
Series A preferred stock dividends	**5.0**	**5.1**	**5.1**	**7.0**	7.8	7.6	7.5	7.4
U.S. Treasury preferred dividends	**26.6**	**-**	**-**	**-**	-	-	-	-
Net income available to common shareholders	**($379.2)**	**$307.3**	**$535.3**	**$283.6**	$3.3	$412.6	$673.9	$513.9
Net interest income-FTE	**$1,208.7**	**$1,175.7**	**$1,185.0**	**$1,167.8**	$1,194.8	$1,219.2	$1,220.0	$1,188.3
Total revenue-FTE	**1,926.5**	**2,460.9**	**2,598.0**	**2,225.3**	1,770.8	2,038.3	2,374.6	2,067.2
Net income per average common share								
Diluted	**($1.08)**	**$0.88**	**$1.53**	**$0.81**	$0.01	$1.18	$1.89	$1.44
Basic	**(1.08)**	**0.88**	**1.53**	**0.82**	0.01	1.19	1.91	1.45
Dividends paid per average common share	**0.54**	**0.77**	**0.77**	**0.77**	0.73	0.73	0.73	0.73
Selected Average Balances								
Total assets	**$177,047.3**	**$173,888.5**	**$175,548.8**	**$176,916.9**	$175,130.5	$174,653.4	$179,996.5	$181,506.4
Earning assets	**153,187.9**	**152,319.8**	**152,483.0**	**153,003.6**	151,541.0	152,327.6	157,594.2	159,473.6
Loans	**127,607.9**	**125,642.0**	**125,191.9**	**123,263.0**	121,094.3	119,558.6	118,164.6	121,514.9
Consumer and commercial deposits	**102,238.4**	**100,199.8**	**101,727.0**	**101,168.4**	99,648.5	96,707.6	97,926.3	97,792.3
Brokered and foreign deposits	**12,648.7**	**15,799.8**	**15,068.3**	**15,468.6**	15,717.0	21,139.9	23,983.4	26,714.1
Total shareholders' equity	**19,778.0**	**17,981.9**	**18,093.2**	**18,061.7**	18,032.8	17,550.2	17,928.1	17,720.4
Financial Ratios and Other Data (Annualized)								
Return on average total assets	**(0.78) %**	**0.71 %**	**1.24 %**	**0.66 %**	0.03 %	0.95 %	1.52 %	1.16 %
Return on average assets less net unrealized securities gains	**(1.39)**	**0.45**	**0.42**	**0.72**	(0.01)	0.93	1.18	1.15
Return on average common shareholders' equity	**(8.63)**	**6.99**	**12.24**	**6.49**	0.07	9.60	15.51	12.10
Return on average realized common shareholders' equity	**(15.54)**	**4.55**	**4.36**	**7.69**	(0.33)	9.86	12.71	12.54
Net interest margin- FTE	**3.14**	**3.07**	**3.13**	**3.07**	3.13	3.18	3.10	3.02
Efficiency ratio- FTE	**82.47**	**67.78**	**53.06**	**56.40**	82.19	63.35	52.69	59.79
Tangible efficiency ratio	**81.57**	**67.03**	**50.57**	**55.47**	80.86	62.13	51.64	58.65
Effective tax rate (benefit)	**(47.06)**	**(20.32)**	**27.29**	**23.98**	(116.22)	26.68	31.45	30.59
Allowance to period-end loans	**1.86**	**1.54**	**1.46**	**1.25**	1.05	0.91	0.88	0.88
Nonperforming assets to total loans plus OREO and other repossessed assets	**3.49**	**2.90**	**2.36**	**1.85**	1.35	0.97	0.73	0.64
Common dividend payout ratio	**(50.4)**	**88.6**	**50.8**	**94.8**	7,788.6	61.6	38.5	50.6
Full-service banking offices	**1,692**	**1,692**	**1,699**	**1,678**	1,682	1,683	1,685	1,691
ATMs	**2,582**	**2,506**	**2,506**	**2,509**	2,507	2,518	2,533	2,543
Full-time equivalent employees	**29,333**	**29,447**	**31,602**	**31,745**	32,323	32,903	33,241	33,397
Tier 1 capital ratio	**10.87 %**	**8.15 %**	**7.47 %**	**7.23 %**	6.93 %	7.44 %	7.49 %	7.60 %
Total capital ratio	**14.04**	**11.16**	**10.85**	**10.97**	10.30	10.72	10.67	10.94
Tier 1 leverage ratio	**10.45**	**7.98**	**7.54**	**7.22**	6.90	7.28	7.11	7.24
Total average shareholders' equity to average assets	**11.17**	**10.34**	**10.31**	**10.21**	10.30	10.05	9.96	9.76
Tangible equity to tangible assets	**8.40**	**6.40**	**6.27**	**6.56**	6.31	6.36	5.85	5.97
Tangible common equity to tangible assets	**5.53**	**6.10**	**5.97**	**6.27**	6.02	6.06	5.56	5.69
Book value per common share	**$48.42**	**$49.32**	**$49.24**	**$51.26**	$50.38	$50.01	$48.33	$49.00
Market Price:								
High	**57.75**	**64.00**	**60.80**	**70.00**	78.76	90.47	94.18	87.43
Low	**19.75**	**25.60**	**32.34**	**52.94**	60.02	73.61	78.16	80.76
Close	**29.54**	**44.99**	**36.22**	**55.14**	62.49	75.67	85.74	83.04
Market capitalization	**10,472**	**15,925**	**12,805**	**19,290**	21,772	26,339	29,928	29,604
Average common shares outstanding (000s)								
Diluted	**351,882**	**350,970**	**349,783**	**348,072**	348,072	349,592	356,008	357,214
Basic	**350,439**	**349,916**	**348,714**	**346,581**	345,917	346,150	351,987	353,448
[1] Includes net securities gains/(losses)	**$411.1**	**$173.0**	**$549.8**	**($60.6)**	$5.7	$1.0	$236.4	$-

Table of Contents

Table 19 - Consolidated Daily Average Balances, Income/Expense and Average Yields Earned and Rates Paid

(Dollars in millions; yields on taxable-equivalent basis)	Three Months Ended December 31, 2008 Average Balances	Income/ Expense	Yields/ Rates	December 31, 2007 Average Balances	Income/ Expense	Yields/ Rates
Assets						
Loans:[1]						
Real estate 1-4 family	**$31,006.9**	**$482.4**	**6.22 %**	$31,990.3	$517.4	6.47 %
Real estate construction	**8,914.8**	**106.5**	**4.75**	13,250.9	238.8	7.15
Real estate home equity lines	**15,803.1**	**173.8**	**4.38**	14,394.8	268.1	7.39
Real estate commercial	**14,736.8**	**202.2**	**5.46**	12,891.6	221.2	6.81
Commercial - FTE[2]	**40,463.8**	**540.5**	**5.31**	34,879.3	564.9	6.43
Credit card	**999.0**	**16.9**	**6.76**	690.1	2.1	1.23
Consumer - direct	**5,009.4**	**65.3**	**5.18**	3,949.3	70.7	7.10
Consumer - indirect	**6,820.9**	**109.6**	**6.39**	7,877.3	125.7	6.33
Nonaccrual and restructured	**3,853.2**	**5.1**	**0.53**	1,170.7	4.3	1.45
Total loans[1]	**127,607.9**	**1,702.3**	**5.31**	121,094.3	2,013.2	6.60
Securities available for sale:						
Taxable	**13,071.2**	**183.8**	**5.63**	11,814.6	182.9	6.19
Tax-exempt - FTE[2]	**1,007.9**	**15.2**	**6.04**	1,054.0	16.0	6.07
Total securities available for sale - FTE[2]	**14,079.1**	**199.0**	**5.65**	12,868.6	198.9	6.18
Funds sold and securities purchased under agreements to resell	**963.2**	**1.9**	**0.77**	1,066.1	11.6	4.25
Loans held for sale	**3,968.3**	**53.5**	**5.39**	8,777.6	139.2	6.34
Interest-bearing deposits	**30.9**	**0.2**	**2.14**	18.2	0.3	6.22
Interest earning trading assets	**6,538.5**	**60.3**	**3.67**	7,716.2	112.8	5.80
Total earning assets	**153,187.9**	**2,017.2**	**5.24**	151,541.0	2,476.0	6.48
Allowance for loan and lease losses	**(1,997.9)**			(1,114.9)		
Cash and due from banks	**3,218.6**			3,462.6		
Other assets	**17,695.3**			17,172.3		
Noninterest earning trading assets	**3,571.8**			1,660.9		
Unrealized gains on securities available for sale, net	**1,371.6**			2,408.6		
Total assets	**$177,047.3**			$175,130.5		
Liabilities and Shareholders' Equity						
Interest-bearing deposits:						
NOW accounts	**$20,095.0**	**$32.6**	**0.65 %**	$20,737.2	$121.0	2.32 %
Money market accounts	**27,968.7**	**126.3**	**1.80**	24,261.5	177.7	2.91
Savings	**3,460.0**	**2.8**	**0.32**	4,177.7	11.1	1.05
Consumer time	**17,043.5**	**141.9**	**3.31**	17,170.7	197.2	4.56
Other time	**12,716.6**	**112.0**	**3.50**	12,353.3	151.5	4.87
Total interest-bearing consumer and commercial deposits	**81,283.8**	**415.6**	**2.03**	78,700.4	658.5	3.32
Brokered deposits	**8,942.3**	**84.3**	**3.69**	12,771.1	168.2	5.15
Foreign deposits	**3,706.4**	**4.0**	**0.42**	2,945.9	32.6	4.33
Total interest-bearing deposits	**93,932.5**	**503.9**	**2.13**	94,417.4	859.3	3.61
Funds purchased	**2,156.1**	**3.8**	**0.69**	2,151.4	24.1	4.38
Securities sold under agreements to repurchase	**3,609.4**	**3.1**	**0.33**	5,706.7	55.2	3.78
Interest-bearing trading liabilities	**585.9**	**5.7**	**3.87**	504.2	3.5	2.75
Other short-term borrowings	**4,163.5**	**8.0**	**0.77**	3,202.8	37.4	4.63
Long-term debt	**24,037.8**	**284.0**	**4.70**	22,808.1	301.7	5.25
Total interest-bearing liabilities	**128,485.2**	**808.5**	**2.50**	128,790.6	1,281.2	3.95
Noninterest-bearing deposits	**20,954.6**			20,948.1		
Other liabilities	**5,237.7**			5,812.5		
Noninterest-bearing trading liabilities	**2,591.8**			1,546.5		
Shareholders' equity	**19,778.0**			18,032.8		
Total liabilities and shareholders' equity	**$177,047.3**			$175,130.5		
Interest Rate Spread			**2.74 %**			2.53 %
Net Interest Income - FTE [3]		**$1,208.7**			$1,194.8	
Net Interest Margin[4]			**3.14 %**			3.13 %

[1] Interest income includes loan fees of $34.8 million and $33.3 million in the quarters ended December 31, 2008 and December 31, 2007, respectively. Nonaccrual loans are included in average balances and income on such loans, if recognized, is recorded on a cash basis.

[2] Interest income includes the effects of taxable-equivalent adjustments using a federal income tax rate of 35% and, where applicable, state income taxes to increase tax-exempt interest income to a taxable-equivalent basis. The net taxable-equivalent adjustment amounts included in the above table aggregated $31.8 million and $27.3 million in the quarters ended December 31, 2008 and December 31, 2007, respectively.

[3] The Company obtained derivative instruments to manage the Company's interest-sensitivity position that increased net interest income $46.3 million and $6.6 million in the quarters ended December 31, 2008 and December 31, 2007, respectively.

[4] The net interest margin is calculated by dividing annualized net interest income – FTE by average total earning assets.

Table of Contents

FOURTH QUARTER RESULTS

We reported a net loss available to common shareholders of $379.2 million for the fourth quarter of 2008, a decrease of $382.5 million compared to the same period of the prior year. Diluted loss per average common share was $1.08 for the fourth quarter of 2008 compared to diluted income of $0.01 for the fourth quarter of 2007. The fourth quarter of 2008 results included net market valuation losses on illiquid financial instruments and our public debt and related hedges carried at fair value of approximately $144.6 million and a provision for loan losses of $962.5 million. The loan loss provision was increased due to higher residential mortgage and residential construction net charge-offs.

Net interest income—FTE was $1,208.7 million for the fourth quarter of 2008, an increase of $13.9 million, or 1.2%, from the fourth quarter of 2007. The increase was due to growth in average earning assets, an improved mix of loans and deposits, an increase in consumer and commercial deposits, and a decrease in wholesale funding during the fourth quarter. While net interest margin grew nominally from 3.13% in the fourth quarter of 2007 to 3.14% for the same period of 2008, we experienced an increase of 7 basis points from the third quarter of 2008.

Provision for loan losses was $962.5 million in the fourth quarter of 2008, an increase of $605.7 million from the fourth quarter of 2007. The provision for loan losses was $410.0 million more than net charge-offs for the fourth quarter of 2008 reflecting the dramatic decline in the state of the economy and, specifically, further deterioration in credit conditions of the residential mortgage and real estate construction portfolios.

Total noninterest income was $717.7 million for the fourth quarter of 2008, an increase of $141.7 million, or 24.6%, from the fourth quarter of 2007. This increase was primarily driven by the impact of the net market valuation losses of approximately $555 million recorded in 2007 that declined to approximately $145 million in 2008. Partially offsetting the benefit of lower mark to market losses was lower mortgage production income and trust and investment management revenue in 2008. The fourth quarter of 2008 included net mark to market valuation losses in trading income of $43.6 million related to illiquid trading securities and loans carried at fair value and losses of $44.3 million related to the tightening of credit spreads on our public debt and related hedges carried at fair value. The fourth quarter of 2007 included losses of approximately $475 million related to market value declines in ABS, net of valuation gains on our debt carried at fair value. Although we had a decrease in valuation losses on mortgage loans carried at fair value or held for sale, noninterest income was negatively impacted by a decline in mortgage-related income of $50.1 million in the fourth quarter as reserves for losses associated with repurchases of mortgage loans increased approximately $32 million and mortgage origination volume declined 44% compared to the fourth quarter of 2007. Offsetting the increase was a $118.8 million net gain from the sale/leaseback of branch and office properties recognized in the fourth quarter of 2007. Net securities gains/(losses) for the fourth quarter of 2008 also increased by $405.4 million compared to the same period of 2007 due to the sale of MBS held in conjunction with our risk management strategies associated with hedging the values of MSRs. Volatility in interest rates and increased loan prepayment speed estimates during the quarter resulted in a $370.0 million impairment of MSRs that were amortized at cost.

Total noninterest expense was $1,588.7 million during the fourth quarter of 2008, an increase of $133.3 million, or 9.2%, over the fourth quarter of 2007. The increase was primarily driven by growth in credit-related expenses of approximately $334 million which overshadowed the cost savings achieved from our efficiency and productivity initiatives. Included in the credit-related expenses were operating losses, growing from $42.8 million for fourth quarter of 2007 to $236.1 million for the same period of 2008, primarily related to increased reserves stemming from borrower misrepresentations and insurance claim denials, as well as $100 million related to mortgage reinsurance reserves. Positively impacting the fourth quarter of 2008 was a decrease compared to 2007 of $44.8 million in employee compensation expense and benefits. The fourth quarter also benefited from a $14.3 million expense reversal related to Visa litigation, resulting from the recognition of the funding by Visa of its litigation escrow account, compared to a $76.9 million expense accrual for Visa litigation in the same period of 2007. In the fourth quarter of 2008, we recorded write-downs of $15.7 million related to Affordable Housing properties as compared to $57.7 million of related charges in the fourth quarter of 2007. Outside processing increased $38.5 million, or 36.5%, due to the outsourcing of certain back-office operations in the third quarter of 2008, which was more than offset by the corresponding decrease in employee compensation and benefits.

The income tax benefit for the fourth quarter of 2008 was $309.0 million compared to the income tax benefit of $79.7 million for the fourth quarter of 2007. The decrease in the tax provision was primarily attributable to the lower level of earnings and a higher proportion of tax-exempt income, state tax benefits resulting from subsidiaries’ net operating losses and tax credits.

BUSINESS SEGMENTS

We have four business segments used to measure business activities: Retail and Commercial, Wholesale, Wealth and Investment Management, and Mortgage with the remainder in Corporate Other and Treasury.

In this section, we discuss the performance and financial results of our business segments. For more financial details on business segment disclosures, see Note 22, “Business Segment Reporting” to the Consolidated Financial Statements.

Table of Contents

Retail and Commercial

Retail and Commercial serves consumers, businesses with up to $100 million in annual revenue, government/not-for-profit enterprises, and provides services for the clients of our other businesses. Financial products and services offered to consumers include loans, deposits, and other fee-based services through an extensive network of traditional and in-store branches, ATMs, the Internet (www.suntrust.com) and the telephone (1-800-SUNTRUST). Financial products and services offered to business clients include commercial lending, financial risk management, insurance premium financing, and treasury and payment solutions including commercial card services. In addition to serving the retail market, Retail and Commercial serves as an entry point for other lines of business. When client needs change and expand, Retail and Commercial refers clients to our Wealth and Investment Management, Wholesale, and Mortgage lines of business.

Wholesale

Wholesale's primary businesses include Middle Market which serves commercial clients with $100 million to $750 million in annual revenue, Corporate Banking which serves clients with greater than $750 million in annual revenue, Commercial Real Estate which serves commercial and residential developers and investors, and STRH. Corporate Banking is focused on selected industry sectors: consumer and retail, financial services and technology, energy, healthcare, and diversified while Middle Market is more geographically focused. Through STRH, Wholesale offers a full range of capital markets services to its clients, including strategic advice, capital raising, and financial risk management. These capital markets services are also provided to Commercial and Wealth and Investment Management clients. In addition, Wholesale offers traditional lending, leasing, and treasury management services to its clients and also refers clients to Wealth and Investment Management. Commercial Real Estate also offers specialized investments delivered through SunTrust Community Capital, LLC.

Mortgage

Mortgage offers residential mortgage products nationally through our retail, broker, and correspondent channels. These products are either sold in the secondary market primarily with servicing rights retained or held as whole loans in our residential loan portfolio. The line of business services loans for its own residential mortgage portfolio as well as for others. Additionally, the line of business generates revenue through its tax service subsidiary (ValuTree Real Estate Services, LLC) and our captive reinsurance subsidiary (Twin Rivers).

Wealth and Investment Management

Wealth and Investment Management provides a full array of wealth management products and professional services to both individual and institutional clients. Wealth and Investment Management's primary businesses include Private Wealth Management ("PWM") (brokerage and individual wealth management), GenSpring Family Offices ("GenSpring"), Institutional Investment Solutions ("IIS"), and RidgeWorth.

The PWM group offers professional investment management and trust services to clients seeking active management of their financial resources. In addition, the Private Banking group is included in PWM, which enables the group to offer a full array of loan and deposit products to clients. PWM also includes SunTrust Investment Services which operates across our footprint and offers discount/online and full service brokerage services to individual clients. In addition, GenSpring provides family office solutions to ultra high net worth individuals and their families. Utilizing teams of multi-disciplinary specialists with expertise in investments, tax, accounting, estate planning and other wealth management disciplines, GenSpring helps families manage and sustain their wealth across multiple generations.

Institutional Investment Solutions is comprised of Employee Benefit Solutions, Foundations & Endowments Specialty Group, Institutional Asset Services ("IAS"), as well as SunTrust Institutional Asset Advisors ("STIAA"). Employee Benefit Solutions provides administration and custody services for defined benefit and defined contribution plans as well as administration services for non-qualified plans. The Foundations & Endowments Specialty Group provides bundled administrative and investment solutions (including planned giving, charitable trustee, and foundation grant administration services) for non-profit organizations. IAS provides custody, master custody, and various administrative services for both non-profit and for-profit organizations including colleges and universities, hospitals, foundations, endowments, insurance companies and government entities. Corporate Agency Services, a specialized group within IAS, targets corporations, governmental entities and attorneys requiring escrow services. STIAA provides portfolio construction and manager due diligence services to other units within IIS to facilitate the delivery of investment management services to their clients.

RidgeWorth, which serves as investment manager for the RidgeWorth Funds and individual clients, is an investment advisor registered with the SEC. RidgeWorth is also a holding company with ownership in other institutional asset management boutiques offering a wide array of equity, alternative, fixed income, and liquidity management capabilities. These boutiques include Alpha Equity Management, Ceredex Value Advisors, Certium Asset Management, IronOak Advisors, Seix Investment Advisors, Silvant Capital Management, StableRiver Capital Management, and Zevenbergen Capital Investments.

Table of Contents

Corporate Other and Treasury

Corporate Other and Treasury includes the investment securities portfolio, long-term debt, end user derivative instruments, short-term liquidity and funding activities, balance sheet risk management, and most real estate assets. The majority of the support, operational, and overhead costs associated with the Corporate Other and Treasury have been allocated to the functional segments with the cost recovery recognized in Corporate Other and Treasury. These components include Enterprise Information Services, which is the primary data processing and operations group; the Corporate Real Estate group, which manages our facilities; Marketing, which handles advertising, product management, customer information functions, and internet banking; SunTrust Online, which handles customer phone inquiries and phone sales and manages the Internet banking functions; Human Resources, which includes the recruiting, training and employee benefit administration functions; Finance, which includes accounting, planning, tax, and treasury. Other functions included in Corporate Other and Treasury are corporate risk management, legal and compliance, branch operations, corporate strategies, procurement, and the executive management group. Finally, Corporate Other and Treasury also includes Trustee Management, which provides treasury management and deposit services to bankruptcy trustees.

For business segment reporting purposes, the basis of presentation in the accompanying discussion includes the following:

- **Net interest income** – All net interest income is presented on an FTE basis. The revenue gross-up has been applied to tax-exempt loans and investments to make them comparable to other taxable products. The segments have also been matched maturity funds transfer priced, generating credits or charges based on the economic value or cost created by the assets and liabilities of each segment. The mismatch between funds credits and funds charges at the segment level resides in Reconciling Items. The change in the matched maturity funds mismatch is generally attributable to the corporate balance sheet management strategies.

- **Provision for loan losses** – Represents net charge-offs by segment. The difference between the total segment net charge-offs and the consolidated provision for loan losses is reported in Reconciling Items.

- **Provision for income taxes** – Calculated using a nominal income tax rate for each segment. This calculation includes the impact of various income adjustments, such as the reversal of the FTE gross up on tax-exempt assets, tax adjustments and credits that are unique to each business segment. The difference between the calculated provision for income taxes at the total segment level and the consolidated provision for income taxes is reported in Reconciling Items.

We continue to augment our internal management reporting methodologies. Currently, the segment’s financial performance is comprised of direct financial results as well as various allocations that for internal management reporting purposes provide an enhanced view of analyzing the segment’s financial performance. The internal allocations include the following:

- **Operational Costs** – Expenses are charged to the segments based on various statistical volumes multiplied by activity based cost rates. As a result of the activity based costing process, planned residual expenses are also allocated to the segments. The recoveries for the majority of these costs are in the Corporate Other and Treasury segment.

- **Support and Overhead Costs** – Expenses not directly attributable to a specific segment are allocated based on various drivers (e.g., number of full-time equivalent employees and volume of loans and deposits). The recoveries for these allocations are in Corporate Other and Treasury.

- **Sales and Referral Credits** – Segments may compensate another segment for referring or selling certain products. The majority of the revenue resides in the segment where the product is ultimately managed.

The application and development of management reporting methodologies is a dynamic process and is subject to periodic enhancements. The implementation of these enhancements to the internal management reporting methodology may materially affect the net income disclosed for each segment with no impact on consolidated results. Whenever significant changes to management reporting methodologies take place, the impact of these changes is quantified and prior period information is reclassified wherever practicable. We will reflect these changes in the current period and will update historical results. At the end of 2008, we announced certain management and organizational changes related to the lines of business. This reorganization will strengthen the alignment between strategy development and execution. Our reporting segments could change after the organizational transitions are completed in the first quarter of 2009.

Table of Contents

The following table for our reportable business segments compares net income for the twelve months ended December 31, 2008 to the same period in 2007 and 2006:

Table 20 – Net Income/(Loss) by Segment

	Year Ended December 31		
(Dollars in millions)	**2008**	2007	2006
Retail and Commercial	**$306.6**	$790.5	$929.9
Wholesale	**217.3**	196.1	376.4
Mortgage	**(561.8)**	5.4	242.8
Wealth and Investment Management	**186.9**	88.3	290.8
Corporate Other and Treasury	**830.6**	256.7	36.8
Reconciling Items	**(183.8)**	297.0	240.8

The following table for our reportable business segments compares average loans and average deposits for the year ended December 31, 2008 to the same period in 2007 and 2006:

Table 21 – Average Loans and Deposits by Segment

	Year Ended December 31					
	Average Loans			Average Deposits		
(Dollars in millions)	**2008**	2007	2006	**2008**	2007	2006
Retail and Commercial	**$51,148**	$51,199	$50,497	**$80,944**	$80,153	$80,273
Wholesale	**34,615**	29,790	29,512	**9,060**	5,553	5,080
Mortgage	**31,342**	30,805	31,233	**2,238**	2,137	1,811
Wealth and Investment Management	**8,109**	7,965	8,135	**9,563**	9,781	9,477
Corporate Other and Treasury	**236**	356	294	**14,370**	22,277	27,149

BUSINESS SEGMENT RESULTS

Retail and Commercial

Retail and Commercial net income for the twelve months ended December 31, 2008 was $306.6 million, a decrease of $483.9 million, or 61.2%, compared to the same period in 2007. This decrease was primarily the result of higher provision for loan losses due to home equity line, consumer, indirect, and commercial loan net charge-offs, lower net interest income related to deposit spreads and higher credit-related noninterest expense, partially offset by strong growth in service charges on deposits.

Net interest income decreased $217.9 million, or 7.7%, driven by a continued shift in deposit mix and decreased spreads, as deposit competition and the interest rate environment encouraged clients to migrate into higher yielding interest-bearing deposits. Average deposit balances increased $0.8 billion, or 1.0%, while deposit spreads decreased 26 basis points resulting in a $207.6 million decrease in net interest income. Low cost demand deposit and savings account average balances decreased a combined $1.6 billion, or 8.1%, primarily due to decreases in commercial demand and savings. Higher cost products such as NOW and money market increased a combined $2.3 billion, or 6.7%. Net interest income from loans decreased $14.3 million, or 1.4%, as average loan balances declined $0.1 billion, or 0.1%. Growth in commercial loans, equity lines, credit card, student loans, and loans acquired in conjunction with the GB&T transaction was offset by an approximately $1.8 billion decline in average loan balances related to the migration of middle market clients from Retail and Commercial to Wholesale.

Provision for loan losses increased $593.1 million over the same period in 2007. The provision increase was most pronounced in home equity lines reflecting deterioration in the residential real estate market, while provision for loan losses on consumer, indirect, and commercial loans, primarily to commercial clients with annual revenues of less than $5 million, also increased.

Total noninterest income increased $102.6 million, or 8.2%, over the same period in 2007. This increase was driven primarily by a $66.5 million, or 9.1%, increase in service charges on both consumer and business deposit accounts, primarily due to growth in the number of accounts, higher nonsufficient funds (“NSF”) rates, and an increase in occurrences of NSF fees. Interchange fees increased $24.5 million, or 12.1%, and ATM revenue increased $9.9 million, or 8.3%.

Table of Contents

Total noninterest expense increased $60.2 million, or 2.3%, from the same period in 2007. The continuing positive impact of expense savings initiatives and lower amortization of intangibles was offset by higher credit-related expenses including operating losses due to fraud, other real estate, and collections, as well as continued investments in the branch distribution network.

Wholesale

Wholesale's net income for the twelve months ended December 31, 2008 was $217.3 million, an increase of $21.2 million, or 10.8%, compared to the same period in 2007. Lower market valuation trading losses in structured products and affordable housing related noninterest expenses were partially offset by an increase in provision expense, lower merchant banking gains, and higher incentive-based compensation.

Net interest income was $564.7 million for the twelve months ended December 31, 2008, relatively unchanged from prior year. Average loan balances increased $4.8 billion, or 16.2%, while the corresponding net interest income declined $7.1 million, or 1.6%. The migration of middle market clients from Retail and Commercial to Wholesale accounted for approximately $1.8 billion of the increase in average loan balances and increased net interest income $25.8 million. The remainder of Wholesale's average loans increased $3.0 billion, or 10.4%, driven by increased corporate banking loans and lease financing, which was partially offset by reductions in the residential builder portfolio. The corresponding net interest income declined $32.9 million, or 7.3%, due to a shift in mix away from higher spread residential construction loans to lower spread commercial loans, as well as an increase in residential construction nonaccrual loans. Total average deposits increased $3.5 billion, or 63.2%, primarily in higher cost interest-bearing deposits. Deposit-related net interest income decreased $8.9 million, or 6.6%, driven by the lower credit for funds on demand deposits partially offset by the increased volumes in higher cost deposit products.

Provision for loan losses was $167.4 million, an increase of $120.5 million over the prior year, resulting from higher residential builder related charge-offs as well as increased charge-offs on middle market clients partially offset by lower charge-offs in corporate banking.

Noninterest income increased $168.2 million, or 35.0%, primarily due to lower market valuation trading losses in structured products. In addition, increases in direct finance, loan syndications, credit-related fees, and fixed income sales and trading were partially offset by a reduction in merchant banking gains and lower revenues in structured leasing, derivatives, and Affordable Housing.

Noninterest expense increased $6.4 million, or 0.8%, primarily due to the transfer of the middle market business from Retail and Commercial to Wholesale which accounted for approximately $24.9 million of the increase. The remainder of Wholesale's noninterest expense decreased $18.4 million, or 2.3%, primarily due to a decrease in write-downs related to Affordable Housing properties offset in part by higher incentive-based compensation.

Mortgage

Mortgage reported a net loss for the twelve months ended December 31, 2008 of $561.8 million, compared to $5.4 million in net income in 2007, a decrease of $567.2 million, principally due to higher credit-related costs.

Net interest income declined $67.0 million, or 12.8%. Average loans increased $0.5 billion, or 1.7%, while the resulting net interest income declined $78.7 million. Nonaccrual loans accounted for $46.0 million of the net interest income decline as average nonaccrual loans increased $1.1 billion. Accruing loans declined $0.5 billion, or 1.8%, while net interest income decreased $32.7 million, or 8.5%. The decline in net interest income was influenced by a change in product mix as declines in construction-perm and Alt-A balances were replaced with lower yielding prime first lien mortgages. Average mortgage loans held for sale declined $5.5 billion; however, due to widening spreads, net interest income increased $25.4 million. Average investment securities were up $0.8 billion while net interest income increased $21.5 million primarily due to improved spreads. Average deposits increased $0.1 billion, or 4.8%, although net interest income on deposits and other liabilities decreased $17.7 million primarily due to lower short-term interest rates.

Provision for loan losses increased $410.1 million to $491.3 million due to higher residential mortgage and residential construction net charge-offs.

Total noninterest income increased $70.2 million, or 19.2%, due to reduced net valuation losses, increased production fee income, and securities gains in excess of MSRs impairment, partially offset by higher repurchase reserves and lower gains from the sale of MSRs. Total production income increased $83.2 million, or 85.5%, driven by reduced valuation losses associated with secondary market loans and the recognition of loan origination fees resulting from our election to record

Table of Contents

certain mortgage loans at fair value beginning in May 2007. The increase in loan production income was partially offset by increased reserves for the repurchase of loans. Loan production of $36.4 billion was down $21.9 billion, or 37.6%. Mortgage servicing related income declined $426.3 million from $193.6 million in 2007, to a net loss of $232.7 million in 2008. The decline was driven by $370.0 million in impairment of MSRs that were carried at amortized cost, as well as lower gains from the sale of MSRs. The MSRs impairment was offset by $410.7 million of net gains from the sale of available for sale securities that were held in conjunction with our risk management strategies associated with economically hedging the value of MSRs.

Total noninterest expense increased $509.1 million, or 61.8%, driven by increased credit-related expenses. Operating losses were up $266.9 million driven by fraud losses and reserves primarily related to borrower misrepresentation and insurance claim denials. Reserves for mortgage reinsurance losses increased $179.8 million while other real estate expense and collection services expense increased $95.9 million. Additionally, the recognition of loan origination costs resulting from our election to record certain mortgage loans at fair value beginning in May 2007 increased noninterest expense compared with the prior year, offsetting significant reductions in staff and commissions expense related to lower loan production.

Wealth and Investment Management

Wealth and Investment Management’s net income for the twelve months ended December 31, 2008 was $186.9 million, an increase of $98.6 million compared to same period in 2007. The following transactions represented $141.7 million of the year-over-year increase:

- $39.4 million decrease due to the after-tax impact of the market valuation loss on Lehman Brothers bonds purchased from our RidgeWorth subsidiary in the third quarter of 2008.
- $18.4 million increase due to the after-tax gain on the sale of First Mercantile in the second quarter of 2008.
- $27.9 million decrease due to the after-tax impairment charge on a client-based intangible asset in the second quarter of 2008.
- $55.4 million increase due to the after-tax gain on sale of a minority interest in Lighthouse Investment Partners in the first quarter of 2008.
- $155.3 million increase due to the after-tax impact of the market valuation losses in the fourth quarter of 2007 on securities purchased from our RidgeWorth funds.
- $20.1 million decrease due to the after-tax gain resulting from the sale upon merger of Lighthouse Partners into Lighthouse Investment Partners in the first quarter of 2007.

Net interest income decreased $20.3 million, or 5.8%, primarily due to a decline in deposit-related net interest income. Average deposits were down $0.2 billion, or 2.2%, while net interest income on deposits declined $14.4 million, or 6.5%, due to the decreased average balance, as well as a lower credit for funds on demand deposits. Average loans increased $0.1 billion, or 1.8%, while net interest income declined $5.0 million driven by growth in commercial loans in the professional specialty lending units at compressed spreads.

Provision for loan losses increased $18.4 million driven by higher home equity lines, personal credit lines, and consumer mortgage net charge-offs.

Total noninterest income increased $138.6 million, or 17.1%, compared to the twelve months ended December 31, 2007 driven by a decrease in market valuation losses. Additionally, gains on the sale of non-strategic businesses were offset by the corresponding loss of revenue and lower market valuations on managed equity assets. Trading gains and losses increased $168.4 million primarily due to a $250.5 million market valuation loss in 2007 related to securities purchased from our RidgeWorth funds as compared to a $63.8 million market valuation loss in 2008 related to Lehman Brothers bonds purchased from our RidgeWorth funds. A $29.6 million gain on sale of First Mercantile in 2008 and $24.1 million of incremental noninterest income from the sale of our Lighthouse Partners investment also increased income. Retail investment income increased $6.8 million, or 2.5%, due to higher annuity sales and higher recurring managed account fees. Trust income decreased $91.1 million, or 13.4%, primarily due to the aforementioned sales of Lighthouse Partners and First Mercantile, which resulted in a $49.1 million decline in trust income as well as lower market valuations on managed equity assets.

As of December 31, 2008, assets under management were approximately $113.1 billion compared to $142.8 billion as of December 31, 2007. Assets under management include individually managed assets, the RidgeWorth Funds, managed institutional assets, and participant-directed retirement accounts. Our total assets under advisement were approximately $192.0 billion, which includes $113.1 billion in assets under management, $45.7 billion in non-managed trust assets, $31.2 billion in retail brokerage assets, and $2.0 billion in non-managed corporate trust assets.

Table of Contents

Total noninterest expense decreased $52.8 million, or 5.2%, despite a $45.0 million impairment charge on a client based intangible in the second quarter of 2008. Noninterest expense before intangible amortization declined $91.0 million, or 9.2%, driven by lower staff, discretionary, and indirect expenses, as well as lower structural expense resulting from the sales of Lighthouse Partners and First Mercantile.

Corporate Other and Treasury

Corporate Other and Treasury's net income for the twelve months ended December 31, 2008 was $830.6 million, an increase of $573.9 million from the same period in 2007.

Net interest income increased $312.8 million over the same period in 2007 mainly due to increased gains on interest rate swaps employed as part of an overall interest rate risk management strategy. Total average assets decreased $4.1 billion, or 17.1%, mainly due to the reduction in the size of the investment portfolio in 2007 as part of our overall balance sheet management strategy. Total average deposits decreased $7.9 billion, or 35.5%, mainly due to a decrease in brokered and foreign deposits as we reduced our reliance on wholesale funding sources.

Provision for loan losses decreased $0.6 million.

Total noninterest income increased $555.6 million compared to the same period in 2007 mainly due to increased gains on securities and the sale of non-strategic businesses. Securities gains increased $431.4 million primarily due to the sale of Coke common stock, partially offset by market value impairment related to certain ABS that were estimated to be other-than-temporarily impaired. Trading gains and losses increased $40.2 million as gains on our long-term debt carried at fair value were partially offset by losses on certain illiquid assets. Gains on our public debt carried at fair value, net of related hedges in 2008, were $431.7 million as compared to $140.9 million during 2007. The increase was also due to an $86.3 million gain on our holdings of Visa in connection with its initial public offering and an $81.8 million gain on sale of TransPlatinum subsidiary were offset by an $81.8 million decrease in gains on the sale/leaseback of real estate properties.

Total noninterest expense increased $124.1 million from the same period in 2007. The increase in expense was mainly due to a $183.4 million contribution of Coke common stock to our charitable foundation recognized in marketing and customer development expense.

EARNINGS AND BALANCE SHEET ANALYSIS 2007 vs. 2006

Consolidated Overview

Net income totaled $1.6 billion, or $4.55 per diluted share for 2007, down 22.8% and 21.8%, respectively, from 2006. The following are some of the key drivers of our 2007 financial performance as compared to 2006:

- Total revenue-FTE increased $34.1 million, or 0.4%, compared to 2006. Total revenue included approximately $712.6 million in net market valuation related losses, which were offset by growth in net interest income, the $234.8 million gain on sale of Coke common stock, fee-related noninterest income, and other gains, including real estate related gains from various sale/leaseback transactions executed during 2007.

- Net interest income-FTE increased $73.8 million, or 1.6%, and the net interest margin increased 11 basis points to 3.11% compared to 2006. The increase in net interest income and net interest margin was due to our balance sheet management initiatives that were implemented in 2006 and 2007.

- The average earning asset yield increased 29 basis points compared to 2006 while the average interest bearing liability cost increased 17 basis points, resulting in a 12 basis point increase in interest rate spread. Total average earning assets decreased $3.2 billion, or 2.0%, to $155.2 billion during 2007, while total average customer deposits increased $844.9 million, or 0.9%, to $98.0 billion during 2007. Additionally, there was a shift in the mix of deposits to higher cost products, with certificates of deposits increasing, while other deposit products, specifically demand deposit accounts, money market, and savings, declined.

- Noninterest income decreased $39.7 million, or 1.1%, compared to 2006. The decrease was driven by $527.7 million of mark to market valuation losses related to the purchase of securities from (1) an institutional private placement fund that we managed, (2) Three Pillars, a multi-seller commercial paper conduit that we sponsor and (3) certain money market funds that we manage. The acquired securities were predominantly AAA or AA-rated at the time originally purchased by these entities. In the fourth quarter of 2007, while certain securities were not downgraded, these securities experienced an increase in the loss severity expectations of the underlying collateral,

Table of Contents

which included Alt-A and subprime mortgages, resulting in a decline in market value of these securities. The decrease in noninterest income was further impacted by market value declines in the mortgage loan warehouse and securitization and trading assets. The impact of these valuation adjustments was substantially offset by the second quarter gain recognized on the sale of Coke common stock shares, the gain recognized on sale/leaseback transactions related to premises, and the market valuation gain on our public debt and related hedges carried at fair value.

- Noninterest expense increased $353.9 million, or 7.3%, compared to 2006. The increase was primarily driven by an increase in fraud losses, growth in compensation expense attributable to the election in 2007 to record certain newly originated mortgage loans held for sale at fair value, litigation expense related to our ownership in Visa, Inc., and severance expense incurred in association with the E^2 program.

- Provision for loan losses increased $402.4 million, or 153.3%, compared to 2006. The provision for loan losses exceeded net charge-offs for the year by $242.1 million, primarily related to higher delinquencies and increased net charge-offs associated with residential real estate and home equity portfolios.

- Net charge-offs as a percentage of average loans was 0.35% for 2007, up 14 basis points from 2006. The increase in net charge-offs was primarily related to residential real estate-related loans. Nonperforming assets increased $1.1 billion, compared to December 31, 2006, due primarily to the overall downturn in the housing market.

Retail and Commercial

Retail and Commercial net income for the twelve months ended December 31, 2007 was $790.5 million, a decrease of $139.4 million, or 15.0%, compared to the same period in 2006. This decrease was primarily the result of higher provision expense and lower net interest income primarily related to deposit spreads partially offset by higher noninterest income.

Net interest income decreased $94.7 million, or 3.2%, driven by a shift in deposit mix and compressed spreads as deposit competition and the interest rate environment encouraged clients to migrate into higher yielding interest bearing accounts. Average deposit balances decreased $120.5 million, or 0.2%, reducing net interest income by $3.2 million, while deposit spreads decreased 10 basis points driving an $81.2 million decrease in net interest income. Average loan balances increased $701.5 million, or 1.4%, increasing net interest income by $19.6 million, while loan spreads decreased 5 basis points causing a $28.5 million decline in net interest income.

Provision for loan losses increased $175.2 million over the same period in 2006. The provision increase was most pronounced in home equity lines, indirect auto and commercial loans (primarily commercial clients with annual revenue of less then $5 million), reflecting the negative impact from the deterioration in certain segments of the consumer portfolio, primarily related to the residential real estate market.

Total noninterest income increased $55.4 million, or 4.6%, over the same period in 2006. This increase was driven primarily by a $52.8 million, or 7.8%, increase in service charges on deposit accounts from both consumer and business deposit accounts primarily due to higher NSF fees. Interchange fees increased $21.4 million, or 11.8%. These increases were partially offset by a decrease in gains on sales of student loans.

Total noninterest expense increased $13.3 million, or 0.5%, from the same period in 2006. A 1.8% increase in personnel expense and other expenses related to investments in the branch distribution network and business banking were partially offset by decreases in amortization of core deposit intangibles and new loan production expense.

Wholesale

Wholesale's net income for the twelve months ended December 31, 2007 was $196.1 million, a decrease of $180.3 million, or 47.9%, from 2006. The decrease was driven by write-downs and losses primarily in structured products due to capital markets volatility created by turmoil in the mortgage industry, lack of loan liquidity, and widening credit spreads as well as increased Affordable Housing related noninterest expense, partially offset by lower provision expense.

Net interest income decreased $21.0 million, or 3.6%, year over year. Average loan balances increased $277.9 million, or 0.9%. The increase in loan balances was offset by compressing spreads, resulting in a $23.8 million, or 4.9%, decrease in loan related net interest income. The increase in balances was despite a $1.9 billion structured asset sale of corporate loans in the first quarter of 2007, which was partially offset by growth in construction loans, corporate banking loans, lease financing assets and the move of middle market clients from the Commercial line of business during the fourth quarter 2007. Average deposits increased $472.5 million, or 9.3%, driven by an increase in higher cost corporate money market accounts offset in part by a decline in demand deposits. Deposit related net interest income was down $1.1 million, or 0.8%, as the shift to higher cost money market accounts compressed deposit spreads.

Table of Contents

Provision for loan losses was $46.9 million, an improvement of $75.5 million, or 61.7%, from the same period of 2006 due to the charge-off a single large commercial loan in the fourth quarter of 2006.

Total noninterest income decreased $286.1 million, or 37.3%, compared to 2006. The decrease was primarily driven by write-downs and losses of approximately $316.1 million in collateralized debt obligations, MBS, and collateralized loan obligation securities most of which occurred during the third and fourth quarters of 2007. Additional weakness in fixed income trading, loan related fees, and M&A fee revenue was partially offset by strong performance in derivatives, structured leasing, merchant banking and equipment lease financing.

Total noninterest expense increased $53.3 million, or 7.0%, compared to 2006. The increase was primarily driven by increased write-downs related to Affordable Housing properties as well as higher outside processing, legal and consulting expenses offset in part by lower personnel expense related to lower incentive-based compensation expense tied to revenue, and lower shared corporate expenses.

Mortgage

Mortgage's net income for the twelve months ended December 31, 2007 was $5.4 million, a decrease of $237.4 million, or 97.8%. The decline resulted primarily from $165.4 million in net valuation losses on mortgage loans held for sale due to market volatility and mortgage spread widening in conjunction with increased credit-related losses on mortgage loans. These losses were partially offset by higher mortgage servicing revenue.

Net interest income in 2007 declined $75.2 million, or 12.6%, compared to 2006 principally due to lower income from portfolio loans and loans held for sale, as well as higher funding costs for MSRs, which was partially offset by higher net interest income on deposits and investments. Average portfolio loans, principally consumer mortgages and residential construction loans, declined $0.4 billion, or 1.4%. The volume decline combined with compressed spreads resulted in a reduction of net interest income from total loans of $53.1 million. Average loans held for sale increased $0.5 billion; however, compressed spreads more than offset the benefit of higher balances and reduced net interest income by $38.0 million. Funding costs on higher MSRs balances further reduced net interest income by $16.5 million. Net interest income from deposits increased $17.8 million, while net interest income from investments increased $13.1 million.

Provision for loan losses for the year 2007 increased $72.4 million driven by higher consumer mortgage and residential construction net charge-offs.

Total noninterest income declined $13.7 million, or 3.6%, due to lower production income, partially offset by higher servicing and insurance income. Production income declined $103.9 million on loans due to net valuation losses of $165.4 million on loans held for sale, primarily due to market volatility and mortgage spread widening. These declines were partially offset by the recognition of origination fees that were deferred prior to the May 2007 fair value election for certain loans. Loan production of $58.3 billion was up $3.0 billion, or 5.4%, for the year 2007. At December 31, 2007, total loans serviced were $149.9 billion, an increase of $19.9 billion, or 15.3%. Revenues from mortgage insurance increased $10.0 million due to new mortgage origination volume.

Total noninterest expense increased $222.3 million for the year 2007, or 36.9%, over 2006, principally due to increased operating losses of $84.3 million driven by fraud from customer misrepresentations on loan related documents, primarily on Alt-A products originated in prior periods, recognition of loan origination costs that were deferred prior to the May 2007 election to record certain loans at fair value, and increased credit and growth-related expenses.

Wealth and Investment Management

Wealth and Investment Management's net income for the year ended December 31, 2007, was $88.3 million, a decrease of $202.5 million, or 69.6%, compared to the year ended December 31, 2006. The decline was principally driven by a $250.5 million pre-tax mark to market loss on SIV securities and a $112.8 million pre-tax gain realized in 2006 on the sale of the Bond Trustee business, partially offset by a $32.3 million pre-tax gain on sale upon merger of Lighthouse Partners into Lighthouse Investment Partners and increased retail investment income in 2007.

For 2007, net interest income decreased $21.1 million, or 5.7%, as the continued shift in deposit mix to higher cost products compressed spreads. Average deposits increased $303.3 million, or 3.2%, as increases in higher-cost NOW account and time deposits were partially offset by declines in lower-cost demand deposit and money market account balances. This shift in deposit mix coupled with a decline in spreads driven by deposit competition was the primary driver of a $16.2 million decline in net interest income on deposits. Average loans declined $170.0 million, or 2.1%, resulting in a $5.3 million decline in net interest income on loans. The decline in loan balances resulted from lower consumer and commercial loans.

Table of Contents

Provision for loan losses increased $4.8 million over 2006 primarily due to higher home equity and consumer mortgage net charge-offs.

Total noninterest income decreased $287.6 million, or 26.1%, primarily due to a $250.5 million mark to market loss on SIV securities in the fourth quarter of 2007 and a $112.8 million gain realized in 2006 on the sale of the Bond Trustee business. Partially offsetting these items was a $32.3 million gain on sale upon merger of Lighthouse Partners, as well as strong growth in retail investment income, which increased $44.0 million, or 19.3%, due to strong annuity sales and higher recurring managed account fees. Trust income declined $5.1 million, or 0.7%, due to lost revenue from the Lighthouse Partners merger and sale of the Bond Trustee business.

As of December 31, 2007, assets under management were approximately $142.8 billion compared to $141.3 billion as of December 31, 2006. Approximately $5.3 billion in Lighthouse Partners assets were merged into Lighthouse Investment Partners are not included in the December 31, 2007 total. Assets under management include individually managed assets, the RidgeWorth (formally known as STI Classic) Funds, institutional assets managed by RidgeWorth (formally known as Trusco) and participant-directed retirement accounts. SunTrust's total assets under advisement were approximately $250.0 billion, which includes $142.8 billion in assets under management, $60.9 billion in non-managed corporate trust assets, $41.6 billion in retail brokerage assets, and $4.7 billion in non-managed corporate trust assets.

Total noninterest expense increased $6.2 million, or 0.6%, due to a $20.3 million, or 3.7%, increase in total personnel expense. Higher variable compensation primarily associated with strong retail investment income was partially offset by a $16.7 million, or 5.8%, decline in salary expense. Favorably impacting noninterest expense was lower Lighthouse Partners related expenses as a result of the sale upon merger.

Corporate Other and Treasury

Corporate Other and Treasury's net income for the twelve months ended December 31, 2007 was $256.7 million, an increase of $219.9 million compared to the same period in 2006. The increase was mainly driven by a $234.8 million pre-tax gain on sale of the Coke common stock, a gain of $118.8 million on the sale leaseback of real estate properties, net securities losses of $54.4 million resulting primarily from the securities portfolio repositioning in 2006, and a net market valuation gain of $64.3 million on trading assets and long-term corporate debt carried at fair value during 2007. These factors were partially offset by a $116.2 million market valuation write-down on securities consolidated in the third quarter of 2007 in anticipation of closing the Private Fund.

Net interest income decreased $23.4 million mainly due to a reduction in the size of the investment portfolio as a result of the balance sheet management strategies. Total average assets decreased $6.8 billion, or 22.3%, mainly due to the reduction in the size of the securities portfolio. Total average deposits decreased $4.9 billion, or 17.9% mainly due to decrease in brokered and foreign deposits.

Provision for loan losses decreased $0.2 million.

Total noninterest income increased $490.2 million. This was mainly driven by the $234.8 million pre-tax gain on sale of Coke common stock, net securities losses of $54.4 million in 2006, a gain of $118.8 million on sale leaseback of real estate properties, and $78.1 million increase in trading income due to net market valuation gains recorded on trading assets and our long-term corporate debt carried at fair value. Noninterest income was also impacted by a $132.5 million market valuation write-down on securities consolidated in the third quarter of 2007 in anticipation of closing of Private Fund.

Total noninterest expense increased $58.6 million compared to the same period in 2006. Included in the twelve months ended December 31, 2007, was a $76.9 million accrual for VISA litigation and $50.7 million in initial implementation cost associated with the E^2 Program, of which $45.0 million was severance. Positively impacting noninterest expense was a $33.6 million decrease in the accrued liability associated with a capital instrument that we called in the fourth quarter of 2007. Additionally, reflected in total noninterest expenses are reductions in total staff expense in support functions and consulting expenses.

Table of Contents

Table 22 – Reconcilement of Non-U.S. GAAP Measures – Annual

	Twelve Months Ended December 31					
(Dollars in millions, except per share and other data)	**2008**	2007	2006	2005	2004	2003
Net income	**$795.8**	$1,634.0	$2,117.4	$1,987.2	$1,572.9	$1,332.3
Securities losses/(gains), net of tax	**(665.4)**	(150.7)	31.3	4.4	27.1	(80.5)
Net income excluding net securities losses/(gains)	**130.4**	1,483.3	2,148.7	1,991.6	1,600.0	1,251.8
Coke stock dividend, net of tax	**(49.8)**	(54.2)	(53.3)	(48.1)	(43.0)	(37.8)
Net income excluding net securities losses/(gains) and the Coke stock dividend, net of tax	**80.6**	1,429.1	2,095.4	1,943.5	1,557.0	1,214.0
Less: Series A preferred dividends	**22.3**	30.3	7.7	-	-	-
Less: U.S. Treasury preferred dividends	**26.6**	-	-	-	-	-
Net income available to common shareholders excluding net securities losses/(gains) and the Coke stock dividend, net of tax	**$31.7**	$1,398.8	$2,087.7	$1,943.5	$1,557.0	$1,214.0
Net income	**$795.8**	$1,634.0	$2,117.4	$1,987.2	$1,572.9	$1,332.3
Merger expense, net of tax	**-**	-	-	61.1	18.5	-
Net income excluding merger expense	**$795.8**	$1,634.0	$2,117.4	$2,048.3	$1,591.4	$1,332.3
Noninterest expense	**$5,890.4**	$5,233.8	$4,879.9	$4,690.7	$3,897.0	$3,400.6
Merger expense	**-**	-	-	(98.6)	(28.4)	-
Noninterest expense excluding merger expense	**$5,890.4**	$5,233.8	$4,879.9	$4,592.1	$3,868.6	$3,400.6
Diluted earnings per common share	**$2.13**	$4.55	$5.82	$5.47	$5.19	$4.73
Impact of excluding merger expense	**-**	-	-	0.17	$0.06	-
Diluted earnings per common share excluding merger expense	**$2.13**	$4.55	$5.82	$5.64	$5.25	$4.73
Efficiency ratio[1]	**63.95 %**	63.43 %	59.39 %	60.06 %	61.39 %	59.99%
Impact of excluding merger expense	**-**	-	-	(1.26)	(0.45)	-
Efficiency ratio excluding merger expense	**63.95 %**	63.43 %	59.39 %	58.80 %	60.94 %	59.99%
Efficiency ratio[1]	**63.95 %**	63.43 %	59.39 %	60.06 %	61.39 %	59.99%
Impact of excluding amortization/impairment of intangible assets other than MSRs	**(1.31)**	(1.17)	(1.26)	(1.52)	(1.22)	(1.13)
Tangible efficiency ratio[2]	**62.64 %**	62.26 %	58.13 %	58.54 %	60.17 %	58.86
Total average assets	**$175,848.3**	$177,795.5	$180,315.1	$168,088.8	$133,754.3	$122,325.4
Average net unrealized securities gains	**(1,909.5)**	(2,300.8)	(1,620.5)	(1,949.4)	(2,372.2)	(2,343.0)
Average assets less net unrealized securities gains	**$173,938.8**	$175,494.7	$178,694.6	$166,139.4	$131,382.1	$119,982.4
Total average common shareholders' equity	**$17,530.7**	$17,308.0	$17,394.7	$16,526.3	$11,469.5	$9,083.0
Average accumulated other comprehensive income	**(1,220.9)**	(1,143.3)	(976.0)	(1,220.5)	(1,517.2)	(1,486.1)
Total average realized common shareholders' equity	**$16,309.8**	$16,164.7	$16,418.7	$15,305.8	$9,952.3	$7,596.9
Return on average total assets	**0.45 %**	0.92 %	1.17 %	1.18 %	1.18 %	1.09 %
Impact of excluding net realized and unrealized securities losses/(gains) and the Coke stock dividend	**(0.40)**	(0.11)	-	(0.01)	0.01	(0.08)
Return on average total assets less net realized and unrealized securities losses/(gains) and the Coke stock dividend[3]	**0.05 %**	0.81 %	1.17 %	1.17 %	1.19 %	1.01 %
Return on average common shareholders' equity	**4.26 %**	9.27 %	12.13 %	12.02 %	13.71 %	14.67 %
Impact of excluding net realized and unrealized securities losses/(gains) and the Coke stock dividend	**(4.07)**	(0.62)	0.59	0.68	1.94	1.31
Return on average realized common shareholders' equity[4]	**0.19 %**	8.65 %	12.72 %	12.70 %	15.65 %	15.98 %
Total shareholders' equity	**$22,388.1**	$18,052.5	$17,813.6	$16,887.4	$15,986.9	$9,731.2
Goodwill	**(6,941.1)**	(6,921.5)	(6,889.8)	(6,835.1)	(6,806.0)	(1,077.7)
Other intangible assets including mortgage servicing rights ("MSRs")	**(978.2)**	(1,308.6)	(1,182.0)	(1,123.0)	(1,061.5)	(639.6)
MSRs	**810.5**	1,049.4	810.5	657.6	482.4	449.3
Tangible equity	**15,279.3**	10,871.8	10,552.3	9,586.9	8,601.8	8,463.2
Preferred stock	**(5,221.7)**	(500.0)	(500.0)	-	-	-
Tangible common equity	**$10,057.6**	$10,371.8	$10,052.3	$9,586.9	$8,601.8	$8,463.2
Total assets	**$189,138.0**	$179,573.9	$182,161.6	$179,712.8	$158,869.8	$125,393.2
Goodwill	**(7,043.5)**	(6,921.5)	(6,889.8)	(6,835.1)	(6,806.0)	(1,077.7)
Other intangible assets including MSRs	**(1,035.4)**	(1,363.0)	(1,182.0)	(1,123.0)	(1,061.5)	(639.6)
MSRs	**810.5**	1,049.4	810.5	657.6	482.4	449.3
Tangible assets	**$181,869.6**	$172,338.8	$174,900.3	$172,412.3	$151,484.7	$124,125.2
Tangible equity to tangible assets[5]	**8.40 %**	6.31 %	6.03 %	5.56 %	5.68 %	6.82 %
Tangible common equity to tangible assets[6]	**5.53 %**	6.02 %	5.75 %	5.56 %	5.68 %	6.82 %
Net interest income	**$4,619.7**	$4,719.5	$4,660.4	$4,579.0	$3,685.2	$3,320.3
Taxable equivalent adjustment	**117.5**	102.7	88.0	75.5	58.4	45.0
Net interest income—FTE	**4,737.2**	4,822.2	4,748.4	4,654.5	3,743.6	3,365.3
Noninterest income	**4,473.5**	3,428.7	3,468.4	3,155.0	2,604.4	2,303.0
Total revenue—FTE	**9,210.7**	8,250.9	8,216.8	7,809.5	6,348.0	5,668.3
Securities losses/(gains), net	**(1,073.3)**	(243.1)	50.5	7.2	41.7	(123.9)
Total revenue—FTE excluding net securities losses/(gains)[7]	**$8,137.4**	$8,007.8	$8,267.3	$7,816.7	$6,389.7	$5,544.4

[1] Computed by dividing noninterest expense by total revenue - FTE. The efficiency ratios are presented on an FTE basis. The FTE basis adjusts for the tax-favored status of net interest income from certain loans and investments. We believe this measure to be the preferred industry measurement of net interest income and it enhances comparability of net interest income arising from taxable and tax-exempt sources.

[2] We present a tangible efficiency ratio which excludes the amortization/impairment of intangible assets other than MSRs. We believe this measure is useful to investors because, by removing the effect of these intangible asset costs (the level of which may vary from company to company), it allows investors to more easily compare our efficiency to other companies in the industry. This measure is utilized by us to assess our efficiency and that of our lines of business.

[3] We present a return on average assets less net unrealized gains on securities. The foregoing numbers primarily reflect adjustments to remove the effects of the securities portfolio which includes our ownership of common stock of The Coca-Cola Company. We use this information internally to gauge our actual performance in the industry. We believe that the return on average assets less the net unrealized securities gains is more indicative of our return on assets because it more accurately reflects the return on the assets that are related to our core businesses which are primarily customer relationship and customer transaction driven. The return on average assets less net unrealized gains on securities is computed by dividing annualized net income, excluding securities gains/losses and The Coca-Cola Company dividend, net of tax, by average assets less net unrealized securities gains.

[4] We believe that the return on average realized common shareholders’ equity is more indicative of our return on equity because the excluded equity relates primarily to the holding of a specific security. The return on average realized common shareholders’ equity is computed by dividing annualized net income available to common shareholders, excluding securities gains/losses and The Coca-Cola Company dividend, net of tax, by average realized common shareholders’ equity.

[5] We present a tangible equity to tangible assets ratio that excludes the after-tax impact of purchase accounting intangible assets. We believe this measure is useful to investors because, by removing the effect of intangible assets that result from merger and acquisition activity (the level of which may vary from company to company), it allows investors to more easily compare our capital adequacy to other companies in the industry. This measure is used by us to analyze capital adequacy.

[6] We present a tangible common equity to tangible assets ratio that excludes preferred stock from tangible equity. We believe this measure is useful to investors because, by removing the preferred stock (the level of which may vary from company to company), it allows investors to more easily compare our capital adequacy to other companies in the industry who also use this measure. This measure is also used by us to analyze capital adequacy.

[7] We present total revenue- FTE excluding realized securities losses/(gains), net. We believe noninterest income without net securities (gains)/losses is more indicative of our performance because it isolates income that is primarily customer relationship and customer transaction driven and is more indicative of normalized operations.

Table of Contents

Table 23 – Reconcilement of Non-U.S. GAAP Measures – Quarterly

	Three Months Ended							
	2008				2007			
(Dollars in millions, except per share and other data)	**December 31**	**September 30**	**June 30**	**March 31**	December 31	September 30	June 30	March 31
Net income/(loss)	**($347.6)**	**$312.4**	**$540.4**	**$290.6**	$11.1	$420.2	$681.4	$521.3
Securities losses/(gains), net of tax	**(254.9)**	**(107.3)**	**(345.9)**	**37.5**	(3.5)	(0.6)	(146.6)	-
Net income/(loss) excluding net securities losses/(gains)	**(602.5)**	**205.1**	**194.5**	**328.1**	7.6	419.6	534.8	521.3
Coke stock dividend, net of tax	**(10.1)**	**(10.1)**	**(14.7)**	**(14.7)**	(13.2)	(13.2)	(13.2)	(14.6)
Net income/(loss) excluding net securities losses/(gains) and the Coke stock dividend, net of tax	**(612.6)**	**195.0**	**179.8**	**313.4**	(5.6)	406.4	521.6	506.7
Less: Series A preferred dividends	**5.0**	**5.1**	**5.1**	**7.0**	7.9	7.6	7.5	7.4
Less: U.S. Treasury preferred dividends	**26.6**	**-**	**-**	**-**	-	-	-	-
Net income/(loss) available to common shareholders excluding net securities losses/(gains) and the Coke stock dividend, net of tax	**($644.2)**	**$189.9**	**$174.7**	**$306.4**	($13.5)	$398.8	$514.1	$499.3
Efficiency ratio[1]	**82.47 %**	**67.78 %**	**53.06 %**	**56.40 %**	82.19 %	63.35 %	52.69 %	59.79 %
Impact of excluding amortization/impairment of intangible assets other than MSRs	**(0.90)**	**(0.75)**	**(2.49)**	**(0.93)**	(1.33)	(1.22)	(1.05)	(1.14)
Tangible efficiency ratio[2]	**81.57 %**	**67.03 %**	**50.57 %**	**55.47 %**	80.86 %	62.13 %	51.64 %	58.65 %
Total average assets	**$177,047.3**	**$173,888.5**	**$175,548.8**	**$176,916.9**	$175,130.5	$174,653.4	$179,996.5	$181,506.4
Average net unrealized securities gains	**(1,371.6)**	**(1,526.4)**	**(2,296.0)**	**(2,454.0)**	(2,408.6)	(2,091.9)	(2,398.7)	(2,305.3)
Average assets less net unrealized securities gains	**$175,675.7**	**$172,362.1**	**$173,252.8**	**$174,462.9**	$172,721.9	$172,561.5	$177,597.8	$179,201.1
Total average common shareholders' equity	**$17,487.1**	**$17,481.9**	**$17,593.2**	**$17,561.7**	$17,532.8	$17,050.2	$17,428.1	$17,220.4
Average accumulated other comprehensive income	**(997.0)**	**(871.4)**	**(1,488.3)**	**(1,533.4)**	(1,292.8)	(998.6)	(1,206.5)	(1,074.5)
Total average realized common shareholders' equity	**$16,490.1**	**$16,610.5**	**$16,104.9**	**$16,028.3**	$16,240.0	$16,051.6	$16,221.6	$16,145.9
Return on average total assets	**(0.78) %**	**0.71 %**	**1.24 %**	**0.66 %**	0.03 %	0.95 %	1.52 %	1.16 %
Impact of excluding net realized and unrealized securities losses/(gains) and the Coke stock dividend	**(0.61)**	**(0.26)**	**(0.82)**	**0.06**	(0.04)	(0.02)	(0.34)	(0.01)
Return on average total assets less net realized and unrealized securities losses/(gains) and the Coke stock dividend[3]	**(1.39) %**	**0.45 %**	**0.42 %**	**0.72 %**	(0.01) %	0.93 %	1.18 %	1.15 %
Return on average common shareholders' equity	**(8.63) %**	**6.99 %**	**12.24 %**	**6.49 %**	0.07 %	9.60 %	15.51 %	12.10 %
Impact of excluding net realized and unrealized securities losses/(gains) and the Coke stock dividend	**(6.91)**	**(2.44)**	**(7.88)**	**1.20**	(0.40)	0.26	(2.80)	0.44
Return on average realized common shareholders' equity[4]	**(15.54) %**	**4.55 %**	**4.36 %**	**7.69 %**	(0.33) %	9.86 %	12.71 %	12.54 %
Total shareholders' equity	**$22,388.1**	**$17,956.0**	**$17,907.1**	**$18,431.4**	$18,052.5	$17,907.2	$17,368.9	$17,968.5
Goodwill	**(6,941.1)**	**(7,062.9)**	**(7,056.0)**	**(6,923.0)**	(6,921.5)	(6,912.1)	(6,897.1)	(6,896.7)
Other intangible assets including MSRs	**(978.2)**	**(1,328.0)**	**(1,394.9)**	**(1,379.5)**	(1,308.6)	(1,269.1)	(1,290.5)	(1,293.5)
MSRs	**810.5**	**1,150.0**	**1,193.5**	**1,143.4**	1,049.4	996.0	942.0	921.3
Tangible equity	**15,279.3**	**10,715.1**	**10,649.7**	**11,272.3**	10,871.8	10,722.0	10,123.3	10,699.6
Preferred stock	**(5,221.7)**	**(500.0)**	**(500.0)**	**(500.0)**	(500.0)	(500.0)	(500.0)	(500.0)
Tangible common equity	**$10,057.6**	**$10,215.1**	**$10,149.7**	**$10,772.3**	$10,371.8	$10,222.0	$9,623.3	$10,199.6
Total assets	**$189,138.0**	**$174,776.8**	**$177,232.7**	**$178,986.9**	$179,573.9	$175,857.2	$180,314.4	$186,384.8
Goodwill	**(7,043.5)**	**(7,062.9)**	**(7,056.0)**	**(6,923.0)**	(6,921.5)	(6,912.1)	(6,897.1)	(6,896.7)
Other intangible assets including MSRs	**(1,035.4)**	**(1,390.0)**	**(1,442.1)**	**(1,430.3)**	(1,363.0)	(1,327.1)	(1,290.5)	(1,293.5)
MSRs	**810.5**	**1,150.0**	**1,193.5**	**1,143.4**	1,049.4	996.0	942.0	921.3
Tangible assets	**$181,869.6**	**$167,473.9**	**$169,928.1**	**$171,777.0**	$172,338.8	$168,614.0	$173,068.8	$179,115.9
Tangible equity to tangible assets[5]	**8.40 %**	**6.40 %**	**6.27 %**	**6.56 %**	6.31 %	6.36 %	5.85 %	5.97 %
Tangible common equity to tangible assets[6]	**5.53 %**	**6.10 %**	**5.97 %**	**6.27 %**	6.02 %	6.06 %	5.56 %	5.69 %
Net interest income	**$1,176.9**	**$1,146.2**	**$1,156.7**	**$1,139.8**	$1,167.5	$1,192.2	$1,195.3	$1,164.6
Taxable - equivalent adjustment	**31.8**	**29.5**	**28.3**	**28.0**	27.3	27.0	24.7	23.7
Net interest income - FTE	**1,208.7**	**1,175.7**	**1,185.0**	**1,167.8**	1,194.8	1,219.2	1,220.0	1,188.3
Noninterest income	**717.8**	**1,285.2**	**1,413.0**	**1,057.5**	576.0	819.1	1,154.6	878.9
Total revenue - FTE	**1,926.5**	**2,460.9**	**2,598.0**	**2,225.3**	1,770.8	2,038.3	2,374.6	2,067.2
Securities losses/(gains), net	**(411.1)**	**(173.0)**	**(549.8)**	**60.6**	(5.7)	(1.0)	(236.4)	-
Total revenue - FTE excluding net securities losses/(gains)[7]	**$1,515.4**	**$2,287.9**	**$2,048.2**	**$2,285.9**	$1,765.1	$2,037.3	$2,138.2	$2,067.2

[1] Computed by dividing noninterest expense by total revenue—FTE. The efficiency ratios are presented on an FTE basis. The FTE basis adjusts for the tax-favored status of net interest income from certain loans and investments. We believe this measure to be the preferred industry measurement of net interest income and it enhances comparability of net interest income arising from

taxable and tax-exempt sources.

[2] We present a tangible efficiency ratio which excludes the amortization/impairment of intangible assets other than MSRs. We believe this measure is useful to investors because, by removing the effect of these intangible asset costs (the level of which may vary from company to company), it allows investors to more easily compare our efficiency to other companies in the industry. This measure is utilized by us to assess our efficiency and that of our lines of business.

[3] We present a return on average assets less net unrealized gains on securities. The foregoing numbers primarily reflect adjustments to remove the effects of the securities portfolio which includes our ownership of common stock of The Coca-Cola Company. We use this information internally to gauge our actual performance in the industry. We believe that the return on average assets less the net unrealized securities gains is more indicative of our return on assets because it more accurately reflects the return on the assets that are related to our core businesses which are primarily customer relationship and customer transaction driven. The return on average assets less net unrealized gains on securities is computed by dividing annualized net income, excluding securities gains/losses and The Coca-Cola Company dividend, net of tax, by average assets less net unrealized securities gains.

[4] We believe that the return on average realized common shareholders' equity is more indicative of our return on equity because the excluded equity relates primarily to the holding of a specific security. The return on average realized common shareholders' equity is computed by dividing annualized net income available to common shareholders, excluding securities gains/losses and The Coca -Cola Company dividend, net of tax, by average realized common shareholders' equity.

[5] We present a tangible equity to tangible assets ratio that excludes the after-tax impact of purchase accounting intangible assets. We believe this measure is useful to investors because, by removing the effect of intangible assets that result from merger and acquisition activity (the level of which may vary from company to company), it allows investors to more easily compare our capital adequacy to other companies in the industry. This measure is used by us to analyze capital adequacy.

[6] We present a tangible common equity to tangible assets ratio that excludes preferred stock from tangible equity. We believe this measure is useful to investors because, by removing the preferred stock (the level of which may vary from company to company), it allows investors to more easily compare our capital adequacy to other companies in the industry who also use this measure. This measure is also used by us to analyze capital adequacy.

[7] We present total revenue- FTE excluding realized securities losses/(gains), net. We believe noninterest income without net securities (gains)/losses is more indicative of our performance because it isolates income that is primarily customer relationship and customer transaction driven and is more indicative of normalized operations.

Table of Contents

Table 24 – Share Repurchases in 2008

	Common Stock				Series A Preferred Stock Depositary Shares[1]			
	Total number of shares purchased[2]	Average price paid per share	Number of shares purchased as part of publicly announced plans or programs	Maximum number of shares that may yet be purchased under the plans or programs[3]	Total number of shares purchased	Average price paid per share	Number of shares purchased as part of publicly announced plans or programs	Maximum number of shares that may yet be purchased under the plans or programs
January 1-31	1,952	$ 60.68	-	30,000,000	-	-	-	-
February 1-29	12,357	63.49	-	30,000,000	-	-	-	-
March 1-31	2,255	57.74	-	30,000,000	-	-	-	-
Total first quarter 2008	16,564	$ 62.38	-		-	-	-	-
April 1-30	1,657	$ 57.41	-	30,000,000	-	-	-	-
May 1-31	613	58.70	-	30,000,000	-	-	-	-
June 1-30	-	-	-	30,000,000	-	-	-	-
Total second quarter 2008	2,270	$ 57.76	-		-	-	-	-
July 1-31	-	-	-	30,000,000	-	-	-	-
August 1-31	-	-	-	30,000,000	-	-	-	-
September 1-30	-	-	-	30,000,000	-	-	-	-
Total third quarter 2008	-	-	-		-	-	-	-
October 1-31	-	-	-	30,000,000	-	-	-	-
November 1-30	-	-	-	30,000,000	-	-	-	-
December 1-31	-	-	-	30,000,000	-	-	-	-
Total fourth quarter 2008	-	-	-		-	-	-	-
Total year-to-date 2008	18,834	$ 61.82	-		-	-	-	-

[1] On September 12, 2006, SunTrust issued and registered under Section 12(b) of the Exchange Act 20 million Depositary Shares, each representing a 1/4,000th interest in a share of Perpetual Preferred Stock, Series A.

[2] This figure includes shares repurchased pursuant to SunTrust's employee stock option plans, pursuant to which participants may pay the exercise price upon exercise of SunTrust stock options by surrendering shares of SunTrust common stock which the participant already owns. SunTrust considers shares so surrendered by participants in SunTrust's employee stock option plans to be repurchased pursuant to the authority and terms of the applicable stock option plan rather than pursuant to publicly announced share repurchase programs. For the twelve months ended December 31, 2008, the following shares of SunTrust common stock were surrendered by participants in SunTrust's employee stock option plans: 1,952 shares in January 2008 at an average price per share of $60.68; 12,357 shares in February 2008 at an average price per share of $63.49; 2,255 shares in March 2008 at an average price per share of $57.74; 1,657 shares in April 2008 at an average price per share of $57.41; 613 shares in May 2008 at an average price per share of $58.70; and zero shares in June, July, August, September, October, November and December 2008.

[3] On August 14, 2007, the Board of Directors authorized the Company to repurchase up to 30 million shares of common stock and specified that such authorization replaced (terminated) existing unused authorizations.

Table 25 – Funds Purchased and Securities Sold Under Agreements to Repurchase[1]

	As of December 31		Daily Average		Maximum Outstanding at Any Month-end
(Dollars in millions)	Balance	Rate	Balance	Rate	
2008	**$4,313.4**	**0.22 %**	**$7,583.1**	**1.72 %**	**$11,820.4**
2007	9,179.5	3.69	9,398.7	4.68	13,285.1
2006	11,818.0	4.90	11,526.5	4.71	13,980.7

[1] Consists of federal funds purchased and securities sold under agreements to repurchase that mature overnight or at a fixed maturity generally not exceeding three months. Rates on overnight funds reflect current market rates. Rates on fixed maturity borrowings are set at the time of borrowings.

Table 26 – Maturity of Consumer Time and Other Time Deposits in Amounts of $100,000 or More

	At December 31, 2008				
(Dollars in millions)	Consumer Time	Brokered Time	Foreign Time	Other Time	Total
Months to maturity:					
3 or less	**$2,500.3**	**$1,420.5**	**$385.5**	**$105.0**	**$4,411.3**
Over 3 through 6	**2,405.1**	**2,587.9**	**-**	**-**	**4,993.0**
Over 6 through 12	**5,285.1**	**1,064.6**	**-**	**-**	**6,349.7**
Over 12	**2,808.8**	**2,594.1**	**-**	**-**	**5,402.9**
Total	**$12,999.3**	**$7,667.1**	**$385.5**	**$105.0**	**$21,156.9**

Table of Contents

Table 27 – Maturity Distribution of Securities Available for Sale

(Dollars in millions)	As of December 31, 2008 1 Year or Less	1-5 Years	5-10 Years	After 10 Years	Total
Distribution of Maturities: Amortized Cost					
U.S. Treasury securities	$1.1	$124.5	$-	$-	$125.6
U.S. government-sponsored enterprises	16.3	193.4	129.3	-	339.0
States and political subdivisions	174.0	461.5	200.3	183.1	1,018.9
Asset-backed securities[1]	21.5	30.5	2.1	-	54.1
Mortgage-backed securities[1]	56.4	2,078.5	2,710.1	10,177.1	15,022.1
Corporate bonds	0.4	17.3	222.7	35.1	275.5
Total debt securities	$269.7	$2,905.7	$3,264.5	$10,395.3	$16,835.2
Fair Value					
U.S. Treasury securities	$1.1	$126.0	$-	$-	$127.1
U.S. government-sponsored enterprises	16.4	202.2	140.4	-	359.0
States and political subdivisions	175.6	477.7	205.9	178.2	1,037.4
Asset-backed securities[1]	22.6	24.5	2.5	-	49.6
Mortgage-backed securities[1]	55.0	2,087.2	2,699.6	10,204.5	15,046.3
Corporate bonds	0.4	17.2	219.2	29.0	265.8
Total debt securities	$271.1	$2,934.8	$3,267.6	$10,411.7	$16,885.2
Weighted average yield (FTE):					
U.S. Treasury securities	1.98 %	1.46 %	- %	- %	1.47 %
U.S. government-sponsored enterprises	4.79	4.06	5.16	-	4.52
States and political subdivisions	6.05	6.24	6.00	5.93	6.11
Asset-backed securities[1]	2.69	39.99	19.60	-	24.36
Mortgage-backed securities[1]	4.92	5.74	5.22	4.84	5.04
Corporate bonds	2.46	5.39	6.00	2.85	5.83
Total debt securities	5.45 %	5.88 %	5.33 %	4.86 %	5.14 %

[1] Distribution of maturities is based on the expected average life of the asset and is based upon amortized cost.

Table 28 – Loan Maturity

(Dollars in millions)	As of December 31, 2008 Total	Remaining Maturities of Selected Loans Within 1 Year	1-5 Years	After 5 Years
Loan Maturity				
Commercial and commercial real estate [1]	$49,870.9	$20,242.6	$26,348.5	$3,279.8
Real estate—construction	9,864.0	7,372.7	2,121.1	370.2
Total	$59,734.9	$27,615.3	$28,469.6	$3,650.0
Interest Rate Sensitivity				
Selected loans with:				
Predetermined interest rates			$5,928.6	$1,138.5
Floating or adjustable interest rates			22,541.0	2,511.5
Total			$28,469.6	$3,650.0

[1]Excludes$6.1 billion in lease financing.

Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

See “Market Risk Management” in the MD&A which is incorporated herein by reference.

Table of Contents

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders of SunTrust Banks, Inc.

We have audited the accompanying consolidated balance sheets of SunTrust Banks, Inc. and subsidiaries (the Company) as of December 31, 2008 and 2007, and the related consolidated statements of income, shareholders' equity, and cash flows for each of the two years in the period ended December 31, 2008. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of SunTrust Banks, Inc. and subsidiaries at December 31, 2008 and 2007, and the consolidated results of their operations and their cash flows for each of the two years in the period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), SunTrust Banks, Inc.'s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 26, 2009 expressed an unqualified opinion thereon.

Ernst + Young LLP

Atlanta, Georgia
February 26, 2009

Table of Contents

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of SunTrust Banks, Inc.:

In our opinion, the accompanying consolidated statements of income, shareholders' equity and cash flows for the year ended December 31, 2006 present fairly, in all material respects, the results of operations and cash flows of SunTrust Banks, Inc. and its subsidiaries for the year ended December 31, 2006 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

PricewaterhouseCoopers LLP

Atlanta, Georgia
March 1, 2007

Table of Contents

Report of Independent Registered Public Accounting Firm on Internal Control over Financial Reporting

The Board of Directors and Shareholders of SunTrust Banks, Inc.

We have audited SunTrust Banks, Inc.'s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). SunTrust Banks, Inc.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in Management's Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, SunTrust Banks, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on the COSO criteria**.**

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of SunTrust Banks, Inc. and subsidiaries as of December 31, 2008 and 2007, and the related consolidated statements of income, shareholders' equity, and cash flows for each of the two years ended in the period December 31, 2008 and our report dated February 26, 2009 expressed an unqualified opinion thereon.

Ernst & Young LLP

Atlanta, Georgia
February 26, 2009

Table of Contents

SUNTRUST BANKS, INC.
Consolidated Statements of Income

(Dollars in thousands, except per share data)	For the Year Ended December 31 2008	2007	2006
Interest Income			
Interest and fees on loans	**$6,933,657**	$7,979,281	$7,688,689
Interest and fees on loans held for sale	**289,920**	668,939	727,991
Interest and dividends on securities available for sale			
Taxable interest	**628,006**	516,289	1,022,888
Tax-exempt interest	**44,088**	43,158	39,357
Dividends[1]	**103,005**	122,779	123,870
Interest on funds sold and securities purchased under agreements to resell	**25,112**	48,835	56,964
Interest on deposits in other banks	**812**	1,305	3,360
Trading account interest	**302,782**	655,334	128,901
Total interest income	**8,327,382**	10,035,920	9,792,020
Interest Expense			
Interest on deposits	**2,377,473**	3,660,766	3,464,700
Interest on funds purchased and securities sold under agreements to repurchase	**130,563**	440,260	543,057
Interest on trading liabilities	**27,160**	15,586	15,540
Interest on other short-term borrowings	**55,102**	121,011	74,326
Interest on long-term debt	**1,117,428**	1,078,753	1,033,932
Total interest expense	**3,707,726**	5,316,376	5,131,555
Net interest income	**4,619,656**	4,719,544	4,660,465
Provision for loan losses	**2,474,215**	664,922	262,536
Net interest income after provision for loan losses	**2,145,441**	4,054,622	4,397,929
Noninterest Income			
Service charges on deposit accounts	**904,127**	822,031	763,720
Trust and investment management income	**592,324**	685,034	686,865
Other charges and fees	**510,794**	479,074	462,063
Card fees	**308,374**	280,706	247,647
Retail investment services	**289,093**	278,042	233,974
Investment banking income	**236,533**	214,885	230,553
Mortgage production related income	**171,368**	90,983	217,428
Mortgage servicing related income/(loss)	**(211,829)**	195,436	121,738
Trading account profits/(losses) and commissions	**38,169**	(361,711)	113,047
Net gain on sale of businesses	**198,140**	32,340	112,759
Gain on Visa IPO	**86,305**	-	-
Net gain on sale/leaseback of premises	**37,039**	118,840	-
Other noninterest income	**239,726**	349,907	329,055
Net securities gains/(losses)	**1,073,300**	243,117	(50,477)
Total noninterest income	**4,473,463**	3,428,684	3,468,372
Noninterest Expense			
Employee compensation	**2,327,228**	2,329,034	2,253,527
Employee benefits	**434,036**	441,154	471,926
Outside processing and software	**492,611**	410,945	393,576
Operating losses	**446,178**	134,028	44,570
Marketing and customer development	**372,235**	195,043	173,205
Net occupancy expense	**347,289**	351,238	334,213
Equipment expense	**203,209**	206,498	197,038
Mortgage reinsurance	**179,927**	174	-
Amortization/impairment of intangible assets	**121,260**	96,680	103,226
Net loss on extinguishment of debt	**11,723**	9,800	11,665
Visa litigation	**(33,469)**	76,930	-
Other noninterest expense	**988,174**	982,253	896,914
Total noninterest expense	**5,890,401**	5,233,777	4,879,860
Income before provision for income taxes	**728,503**	2,249,529	2,986,441
Provision (benefit) for income taxes	**(67,271)**	615,514	868,970
Net income	**795,774**	1,634,015	2,117,471
Series A preferred dividends	**22,255**	30,275	7,729
U.S. Treasury preferred dividends	**26,579**	-	-
Net Income Available to Common Shareholders	**$746,940**	$1,603,740	$2,109,742
Net income per average common share			
Diluted	**$2.13**	$4.55	$5.82
Basic	**2.14**	4.59	5.87
Dividends declared per common share	**2.85**	2.92	2.44
Average common shares - diluted	**350,183**	352,688	362,802
Average common shares - basic	**348,919**	349,346	359,413
[1] Includes dividends on common stock of The Coca-Cola Company	**$55,920**	$60,915	$59,850

See Notes to Consolidated Financial Statements.

Table of Contents

SUNTRUST BANKS, INC.
Consolidated Balance Sheets

(Dollars in thousands)	As of December 31 2008	December 31 2007
Assets		
Cash and due from banks	**$5,622,789**	$4,270,917
Interest-bearing deposits in other banks	**23,999**	24,355
Funds sold and securities purchased under agreements to resell	**990,614**	1,347,329
Cash and cash equivalents	**6,637,402**	5,642,601
Trading assets	**10,396,269**	10,518,379
Securities available for sale[1]	**19,696,537**	16,264,107
Loans held for sale (loans at fair value: $2,424,432 as of December 31, 2008; $6,325,160 as of December 31, 2007)	**4,032,128**	8,851,695
Loans (loans at fair value: $270,342 as of December 31, 2008; $220,784 as of December 31, 2007)	**126,998,443**	122,318,994
Allowance for loan and lease losses	**(2,350,996)**	(1,282,504)
Net loans	**124,647,447**	121,036,490
Premises and equipment	**1,547,892**	1,595,691
Goodwill	**7,043,503**	6,921,493
Other intangible assets	**1,035,427**	1,362,995
Customers' acceptance liability	**5,294**	22,418
Other real estate owned	**500,481**	183,753
Unsettled sales of available for sale securities	**6,386,795**	-
Other assets	**7,208,786**	7,174,311
Total assets	**$189,137,961**	$179,573,933
Liabilities and Shareholders' Equity		
Noninterest-bearing consumer and commercial deposits	**$21,522,021**	$21,083,234
Interest-bearing consumer and commercial deposits	**83,753,686**	80,786,791
Total consumer and commercial deposits	**105,275,707**	101,870,025
Brokered deposits (CDs at fair value: $587,486 as of December 31, 2008; $234,345 as of December 31, 2007)	**7,667,167**	11,715,024
Foreign deposits	**385,510**	4,257,601
Total deposits	**113,328,384**	117,842,650
Funds purchased	**1,120,079**	3,431,185
Securities sold under agreements to repurchase	**3,193,311**	5,748,277
Other short-term borrowings (debt at fair value: $399,611 as of December 31, 2008, $0 as of December 31, 2007)	**5,166,360**	3,021,358
Long-term debt (debt at fair value: $7,155,684 as of December 31, 2008; $7,446,980 as of December 31, 2007)	**26,812,381**	22,956,508
Acceptances outstanding	**5,294**	22,418
Trading liabilities	**3,240,784**	2,160,385
Unsettled purchases of available for sale securities	**8,898,279**	-
Other liabilities	**4,984,980**	6,338,634
Total liabilities	**166,749,852**	161,521,415
Preferred stock	**5,221,703**	500,000
Common stock, $1.00 par value	**372,799**	370,578
Additional paid in capital	**6,904,644**	6,707,293
Retained earnings	**10,388,984**	10,646,640
Treasury stock, at cost, and other	**(1,481,146)**	(1,779,142)
Accumulated other comprehensive income, net of tax	**981,125**	1,607,149
Total shareholders' equity	**22,388,109**	18,052,518
Total liabilities and shareholders' equity	**$189,137,961**	$179,573,933
Common shares outstanding	**354,515,013**	348,411,163
Common shares authorized	**750,000,000**	750,000,000
Treasury shares of common stock	**18,284,356**	22,167,235
[1] Includes net unrealized gains on securities available for sale	**$1,413,330**	$2,724,643

See Notes to Consolidated Financial Statements.

Table of Contents

SUNTRUST BANKS, INC.
Consolidated Statements of Shareholders' Equity

(Dollars and shares in thousands)	Preferred Stock	Common Shares Outstanding	Common Stock	Additional Paid in Capital	Retained Earnings	Treasury Stock and Other[1]	Accumulated Other Comprehensive Income	Total
Balance, January 1, 2006	$-	361,984	$370,578	$6,761,684	$9,310,978	($493,936)	$938,091	$16,887,395
Net income	-	-	-	-	2,117,471	-	-	2,117,471
Other comprehensive income:								
Change in unrealized gains (losses) on derivatives, net of tax	-	-	-	-	-	-	36,235	36,235
Change in unrealized gains (losses) on securities, net of tax	-	-	-	-	-	-	330,771	330,771
Change related to employee benefit plans	-	-	-	-	-	-	5,879	5,879
Total comprehensive income	-	-	-	-	-	-		2,490,356
Adoption of SFAS No. 158	-	-	-	-	-	-	(385,027)	(385,027)
Common stock dividends, $2.44 per share	-	-	-	-	(879,568)	-	-	(879,568)
Preferred stock dividends, $1,548.78 per share	-	-	-	-	(7,729)	-	-	(7,729)
Issuance of preferred stock	500,000	-	-	(7,705)	-	-	-	492,295
Issuance of forward purchase contract for preferred stock	-	-	-	(9,416)	-	-	-	(9,416)
Exercise of stock options and stock compensation element expense	-	3,481	-	9,710	-	226,858	-	236,568
Acquisition of treasury stock	-	(13,102)	-	(98,877)	-	(1,006,166)	-	(1,105,043)
Performance and restricted stock activity	-	1,196	-	(24,503)	-	18,770	-	(5,733)
Amortization of compensation element of performance and restricted stock	-	-	-	-	-	18,340	-	18,340
Issuance of stock for employee benefit plans	-	1,141	-	(5,913)	-	72,081	-	66,168
Issuance of stock for BancMortgage contingent consideration	-	203	-	2,216	-	12,784	-	15,000
Balance, December 31, 2006	$500,000	354,903	$370,578	$6,627,196	$10,541,152	($1,151,269)	$925,949	$17,813,606
Net income	-	-	-	-	1,634,015	-	-	1,634,015
Other comprehensive income:								
Change in unrealized gains (losses) on derivatives, net of tax	-	-	-	-	-	-	139,732	139,732
Change in unrealized gains (losses) on securities, net of tax	-	-	-	-	-	-	243,986	243,986
Change related to employee benefit plans	-	-	-	-	-	-	70,401	70,401
Total comprehensive income								2,088,134
Common stock dividends, $2.92 per share	-	-	-	-	(1,026,594)	-	-	(1,026,594)
Preferred stock dividends, $6,055.02 per share	-	-	-	-	(30,275)	-	-	(30,275)
Exercise of stock options and stock compensation element expense	-	2,794	-	(1,471)	-	211,460	-	209,989
Acquisition of treasury stock	-	(10,758)	-	71,267	-	(924,652)	-	(853,385)
Performance and restricted stock activity	-	682	-	8,197	(3,535)	(10,507)	-	(5,845)
Amortization of compensation element of performance and restricted stock	-	-	-	-	-	34,820	-	34,820
Issuance of stock for employee benefit plans	-	785	-	2,046	-	60,594	-	62,640
Adoption of SFAS No. 159	-	-	-	-	(388,604)	-	147,374	(241,230)
Adoption of SFAS No. 157	-	-	-	-	(10,943)	-	-	(10,943)
Adoption of FIN 48	-	-	-	-	(41,844)	-	-	(41,844)
Adoption of FSP FAS 13-2	-	-	-	-	(26,273)	-	-	(26,273)
Pension plan changes and resulting remeasurement	-	-	-	-	-	-	79,707	79,707
Other activity	-	5	-	58	(459)	412	-	11
Balance, December 31, 2007	$500,000	348,411	$370,578	$6,707,293	$10,646,640	($1,779,142)	$1,607,149	$18,052,518
Net income	-	-	-	-	**795,774**	-	-	**795,774**
Other comprehensive income:								
Change in unrealized gains (losses) on derivatives, net of tax	-	-	-	-	-	-	**688,487**	**688,487**
Change in unrealized gains (losses) on securities, net of tax	-	-	-	-	-	-	**(806,586)**	**(806,586)**
Change related to employee benefit plans	-	-	-	-	-	-	**(507,925)**	**(507,925)**
Total comprehensive income								**169,750**
Issuance of common stock for GB&T acquisition	-	**2,221**	**2,221**	**152,292**	-	-	-	**154,513**
Common stock dividends, $2.85 per share	-	-	-	-	**(1,004,146)**	-	-	**(1,004,146)**
Series A preferred stock dividends, $4,451.05 per share	-	-	-	-	**(22,255)**	-	-	**(22,255)**
Issuance of U.S. Treasury preferred stock	**4,717,971**	-	-	**132,029**	-	-	-	**4,850,000**
Accretion of discount associated with U.S. Treasury preferred stock	**3,732**	-	-		**(3,732)**			-
U.S. Treasury preferred stock dividends, $471.07 per share	-	-	-	-	**(22,847)**	-	-	**(22,847)**
Exercise of stock options and stock compensation element expense	-	**495**	-	**16,160**	-	**39,766**	-	**55,926**
Performance and restricted stock activity	-	**1,693**	-	**(46,797)**	**(450)**	**46,712**	-	**(535)**
Amortization of compensation element of performance and restricted stock	-	-	-	-	-	**76,656**	-	**76,656**
Issuance of stock for employee benefit plans	-	**1,695**	-	**(56,834)**	-	**134,862**	-	**78,028**
Other activity	-	-	-	**501**	-	-	-	**501**
Balance, December 31, 2008	**$5,221,703**	**354,515**	**$372,799**	**$6,904,644**	**$10,388,984**	**($1,481,146)**	**$981,125**	**$22,388,109**

[1] Balance at December 31, 2008 includes $1,367,752 for treasury stock and $113,394 for compensation element of restricted stock.
Balance at December 31, 2007 includes $1,688,521 for treasury stock and $90,622 for compensation element of restricted stock.
Balance at December 31, 2006 includes $1,090,782 for treasury stock and $60,487 for compensation element of restricted stock.

See Notes to Consolidated Financial Statements.

Table of Contents

SUNTRUST BANKS, INC.
Consolidated Statements of Cash Flows

(Dollars in thousands)	For the Year Ended December 31 2008	2007	2006
Cash Flows from Operating Activities:			
Net income	**$795,774**	$1,634,015	$2,117,471
Adjustments to reconcile net income to net cash provided by operating activities:			
Net gain on sale of businesses	**(198,140)**	(32,340)	(112,759)
Visa litigation	**(33,469)**	76,930	-
Expense recognized on contribution of common stock of The Coca-Cola Company	**183,418**	-	-
Depreciation, amortization and accretion	**824,263**	802,342	810,881
Customer relationship intangible impairment	**45,000**	-	-
Impairment of mortgage servicing rights	**370,000**	-	-
Gain on sale of mortgage servicing rights	**(16,931)**	(51,236)	(66,283)
Origination of mortgage servicing rights	**(485,597)**	(639,158)	(503,801)
Provisions for loan losses and foreclosed property	**2,551,574**	683,114	265,609
Deferred income tax (benefit) provision	**(221,235)**	(147,758)	107,966
Amortization of compensation element of performance and restricted stock	**76,656**	34,820	18,340
Stock option compensation	**20,185**	24,275	25,969
Excess tax benefits from stock-based compensation	**(4,580)**	(11,259)	(33,258)
Net loss on extinguishment of debt	**11,723**	9,800	11,665
Net securities (gains) losses	**(1,073,300)**	(243,117)	50,477
Net gain on sale/leaseback of premises	**(37,039)**	(118,840)	-
Net gain on sale of assets	**(60,311)**	(30,569)	(49,285)
Originated and purchased loans held for sale net of principal collected	**(32,839,219)**	(52,762,349)	(47,374,700)
Sales and securitizations of loans held for sale	**37,031,057**	55,241,777	49,308,909
Contributions to retirement plans	**(386,535)**	(11,185)	(197,106)
Net increase in other assets	**(2,680,321)**	(1,950,167)	(385,878)
Net (decrease) increase in other liabilities	**(173,223)**	1,213,338	(208,276)
Net cash provided by operating activities	**3,699,750**	3,722,433	3,785,941
Cash Flows from Investing Activities:			
Proceeds from maturities, calls and repayments of securities available for sale	**1,292,065**	1,073,340	3,914,243
Proceeds from sales of securities available for sale	**5,737,627**	1,199,231	4,945,870
Purchases of securities available for sale	**(8,170,824)**	(7,640,289)	(6,931,905)
Proceeds from maturities, calls and repayments of trading securities	**4,329,198**	11,896,617	-
Proceeds from sales of trading securities	**3,046,185**	19,240,250	-
Purchases of trading securities	**(3,687,561)**	(22,717,152)	-
Loan originations net of principal collected	**(5,807,828)**	(7,158,570)	(9,490,800)
Proceeds from sale of loans	**881,410**	5,721,662	2,235,011
Proceeds from sale of mortgage servicing rights	**148,387**	270,215	211,157
Capital expenditures	**(221,602)**	(186,431)	(334,254)
Net cash and cash equivalents received for sales of businesses	**301,604**	-	113,750
Net cash and cash equivalents paid for acquisitions	**(23,931)**	(32,200)	-
Seix contingent consideration payout	**-**	(42,287)	-
Proceeds from the sale/leaseback of premises	**288,851**	764,368	-
Proceeds from the sale of other assets	**318,910**	145,871	45,203
Net cash (used in) provided by investing activities	**(1,567,509)**	2,534,625	(5,291,725)
Cash Flows from Financing Activities:			
Net increase in consumer and commercial deposits	**1,767,908**	2,100,134	2,214,246
Net decrease in foreign and brokered deposits	**(7,917,898)**	(8,273,116)	(235,055)
Assumption of First Priority Bank deposits, net	**160,517**	-	-
Net (decrease) increase in funds purchased, securities sold under agreements to repurchase, and other short-term borrowings	**(2,796,359)**	(1,679,833)	1,568,496
Proceeds from the issuance of long-term debt	**7,834,388**	5,197,020	2,925,024
Repayment of long-term debt	**(4,024,675)**	(1,553,412)	(4,713,948)
Proceeds from the issuance of preferred stock	**4,850,000**	-	492,295
Proceeds from the exercise of stock options	**25,569**	186,000	215,947
Acquisition of treasury stock	**-**	(853,385)	(1,105,043)
Excess tax benefits from stock-based compensation	**4,580**	11,259	33,258
Common and preferred dividends paid	**(1,041,470)**	(1,056,869)	(887,297)
Net cash (used in) provided by financing activities	**(1,137,440)**	(5,922,202)	507,923
Net increase (decrease) in cash and cash equivalents	**994,801**	334,856	(997,861)
Cash and cash equivalents at beginning of period	**5,642,601**	5,307,745	6,305,606
Cash and cash equivalents at end of period	**$6,637,402**	$5,642,601	$5,307,745
Supplemental Disclosures:			
Interest paid	**$3,868,034**	$5,277,639	$5,088,403
Income taxes paid	**341,396**	724,351	709,168
Income taxes refunded	**(4,275)**	(13,859)	(14,762)
Securities transferred from available for sale to trading	**-**	15,143,109	-
Loans transferred from loans to loans held for sale	**-**	4,054,246	-
Loans transferred from loans held for sale to loans	**656,134**	837,401	-
Issuance of common stock for acquisition of GB&T	**154,513**	-	-
Noncash gain on contribution of common stock of the Coca-Cola Company	**183,418**	-	-
Unsettled purchases of securities available for sale as of year-end	**8,898,279**	-	-
Unsettled sales of securities available for sale as of year-end	**6,386,795**	-	-
Amortization of deferred gain on sale/leaseback of premises	**55,616**	5,301	-
U.S. Treasury preferred dividend accrued but unpaid	**7,778**	-	-
Accretion on U.S. Treasury preferred stock	**3,732**	-	-

See Notes to Consolidated Financial Statements.

Table of Contents

SUNTRUST BANKS, INC.
Notes to Consolidated Financial Statements

Note 1 – Significant Accounting Policies

General

SunTrust Banks, Inc. ("SunTrust" or the "Company") one of the nation's largest commercial banking organizations, is a financial services holding company with its headquarters in Atlanta, Georgia. SunTrust's principal banking subsidiary, SunTrust Bank, offers a full line of financial services for consumers and businesses through its branches located primarily in Florida, Georgia, Maryland, North Carolina, South Carolina, Tennessee, Virginia, and the District of Columbia. Within its geographic footprint, the Company operated under four business segments during 2008. These business segments are: Retail & Commercial, Wholesale, Wealth and Investment Management, and Mortgage. In addition to traditional deposit, credit, and trust and investment services offered by SunTrust Bank, other SunTrust subsidiaries provide mortgage banking, credit-related insurance, asset management, securities brokerage, and capital markets services.

Principles of Consolidation and Basis of Presentation

The consolidated financial statements include the accounts of the Company, its majority-owned subsidiaries, and variable interest entities ("VIEs") where the Company is the primary beneficiary. All significant intercompany accounts and transactions have been eliminated. Results of operations of companies purchased are included from the date of acquisition. Results of operations associated with companies or net assets sold are included through the date of disposition. Assets and liabilities of purchased companies are stated at estimated fair values at the date of acquisition. Investments in companies which are not VIEs, or where SunTrust is not the primary beneficiary in a VIE, that the Company owns a voting interest of 20% to 50%, and for which it may have significant influence over operating and financing decisions, are accounted for using the equity method of accounting. These investments are included in other assets, and the Company's proportionate share of income or loss is included in other noninterest income in the Consolidated Statements of Income.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States ("U.S. GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could vary from these estimates. Certain reclassifications have been made to prior period amounts to conform to the current period presentation.

Cash and Cash Equivalents

Cash and cash equivalents include cash and due from banks, interest-bearing deposits in other banks, federal funds sold, and securities purchased under agreements to resell. Generally, cash and cash equivalents have maturities of three months or less, and accordingly, the carrying amount of these instruments is deemed to be a reasonable estimate of fair value.

Securities and Trading Activities

Securities are classified at trade date as trading or available for sale securities. Securities available for sale are used as part of the overall asset and liability management process to optimize income and market performance over an entire interest rate cycle. Interest income and dividends on securities are recognized in interest income on an accrual basis. Premiums and discounts on debt securities are amortized as an adjustment to yield over the life of the security. Securities available for sale are carried at fair value with unrealized gains and losses, net of any tax effect, included in accumulated other comprehensive income as a component of shareholders' equity. Realized gains and losses on securities are determined using the specific identification method and are recognized currently in the Consolidated Statements of Income. The Company reviews available for sale securities for impairment on a quarterly basis. The Company determines whether a decline in fair value below the amortized cost basis is other-than-temporary. An available for sale security that has been other-than-temporarily impaired is written down to fair value, and the amount of the write down is accounted for as a realized loss in the Consolidated Statements of Income. Trading account assets and liabilities are carried at fair value. Realized and unrealized gains and losses are determined using the specific identification method and are recognized as a component of noninterest income in the Consolidated Statements of Income.

Securities that are purchased beneficial interests or beneficial interests that continue to be held in securitized financial assets (other than those of high credit quality or sufficiently collateralized to ensure the possibility of credit loss is remote) are accounted for under EITF 99-20, "Recognition of Interest Income and Impairment on Purchased Beneficial Interests and Beneficial Interests that Continue to Be Held by a Transferor in Securitized Financial Assets". The Company evaluates

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

whether or not a security is within the scope of EITF 99-20 at the time the security is acquired. The Company evaluates whether there has been an adverse change in the present value of estimated cash flows from the present value of cash flows previously projected, in order to determine if an other-than-temporary impairment exists. In January 2009, the Financial Accounting Standards Board ("FASB") issued FSP EITF 99-20-1 "Amendments to the Impairment and Interest Income Measurement Guidance of EITF Issue No. 99-20." This FSP amends EITF 99-20 to be consistent with the impairment model under Statement of Financial Accounting Standards ("SFAS") No. 115, "Accounting for Certain Investments in Debt and Equity Securities," which requires entities to assess whether it is probable that the holder of debt and equity securities will be unable to collect all amounts due according to the contractual terms. While the FSP changes the impairment model that was followed for impairment recognition for the interim periods during 2008, retrospective application to a prior interim reporting period is not permitted. The Company adopted the FSP effective December 31, 2008, and it did not have an impact to the Company's financial position and results of operations as the company's securities that are within the scope of EITF 99-20 had already been impaired in prior interim periods.

Nonmarketable equity securities include venture capital equity and certain mezzanine securities that are not publicly traded as well as equity investments acquired for various purposes. These securities are accounted for under the cost or equity method and are included in other assets. The Company reviews nonmarketable securities accounted for under the cost method on a quarterly basis and reduces the asset value when declines in value are considered to be other-than-temporary. Equity method investments are recorded at cost adjusted to reflect the Company's portion of income, loss or dividends of the investee. Realized income, realized losses and estimated other-than-temporary unrealized losses on cost and equity method investments are recognized in noninterest income in the Consolidated Statements of Income.

Loans Held for Sale

Loans held for sale are recorded at either the lower of cost or fair value, applied on a loan-by-loan basis, or fair value if elected to be accounted for under Statement of Financial Accounting Standards ("SFAS") No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities." Origination fees and costs for loans held for sale recorded at the lower of cost or fair value are capitalized in the basis of the loan and are included in the calculation of realized gains and losses upon sale. Origination fees and costs are recognized in earnings at the time of origination for newly-originated loans held for sale that are recorded at fair value. Fair value is derived from observable current market prices, when available, and includes loan servicing value. When observable market prices are not available, the Company will use judgment and estimate fair value using internal models, in which the Company uses its best estimates of assumptions it believes would be used by market participants in estimating fair value. Adjustments to reflect unrealized gains and losses resulting from changes in fair value and realized gains and losses upon ultimate sale of the loans are classified as noninterest income in the Consolidated Statements of Income.

The Company transfers certain residential mortgage loans, commercial loans, and student loans to a held for sale classification at the lower of cost or fair value. At the time of transfer, any credit losses are recorded as a reduction in the allowance for loan losses with subsequent losses as well as other interest rate related valuations recorded as a component of noninterest income in the Consolidated Statements of Income. The Company may also transfer loans from held for sale to held for investment. At the time of transfer, any difference between the carrying amount of the loan and its outstanding principal balance is recognized as an adjustment to yield using the interest method, unless the loan was elected upon origination to be accounted for at fair value under SFAS No. 159. If a held for sale loan is transferred to held for investment for which fair value accounting was elected, it will continue to be accounted for at fair value in the held for investment portfolio.

Loans

Loans that management has the intent and ability to hold for the foreseeable future or until maturity or pay-off are considered held for investment. The Company's loan balance is comprised of loans held in portfolio, including commercial loans, consumer loans, real estate loans and lines, credit card receivables, nonaccrual and restructured loans, direct financing leases, and leveraged leases. Interest income on all types of loans is accrued based upon the outstanding principal amounts, except those classified as nonaccrual loans. The Company typically classifies commercial and commercial real estate loans as nonaccrual when one of the following events occurs: (i) interest or principal has been in default 90 days or more, unless the loan is secured by collateral having realizable value sufficient to discharge the debt in full and the loan is in the legal process of collection; (ii) collection of recorded interest or principal is not anticipated; or (iii) income for the loan is recognized on a cash basis due to the deterioration in the financial condition of the debtor. Consumer and residential mortgage loans are typically placed on nonaccrual when payments have been in default for 90 and 120 days or more, respectively.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

When a loan is placed on nonaccrual, unpaid interest is reversed against interest income. Interest income on nonaccrual loans, if recognized, is either recorded using the cash basis method of accounting or recognized at the end of the loan after the principal has been reduced to zero, depending on the type of loan. If and when borrowers demonstrate the ability to repay a loan in accordance with the contractual terms of a loan classified as nonaccrual, the loan may be returned to accrual status. If a nonaccrual loan is returned to accruing status, the accrued interest, at the date the loan is placed on nonaccrual status, and foregone interest during the nonaccrual period are recorded as interest income only after all principal has been collected for commercial loans. For consumer loans and residential mortgage loans, the accrued interest, at the date the loan is placed on nonaccrual status, and forgone interest during the nonaccrual period are recorded as interest income as of the date the loan no longer meets the applicable criteria. (See “Allowance for Loan and Lease Losses” section of this Note for further discussion of impaired loans.)

Troubled debt restructured (“TDR”) loans are loans in which the Company has granted a concession to the borrower due to the borrower’s deteriorating financial condition, which would not otherwise be considered. TDR loans are accounted for in accordance with SFAS No. 15 “Accounting by Debtor and Creditors for Troubled Debt Restructurings” and SFAS No. 114, “Accounting by Creditors for Impairment of a Loan – an amendment of FASB Statements No. 5 and 15”. When the Company modifies the terms of an existing loan that is not considered a TDR, the Company follows the provisions of EITF No. 01-7, “Creditor’s Accounting for a Modification or Exchange of Debt Instruments.” EITF No. 01-7 requires that a creditor account for a loan modification as a new loan if the terms of the new loan resulting from a loan refinancing or restructuring, other than a TDR, are at least as favorable to the lender as the terms for comparable loans to other customers with similar risk who are not undergoing a refinancing or restructuring and the modifications are more than minor.

For loans accounted for at amortized cost, fees and incremental direct costs associated with the loan origination and pricing process, as well as premiums and discounts, are deferred and amortized as level yield adjustments over the respective loan terms. Premiums for purchased credit cards are amortized on a straight-line basis over one to seven years. Fees received for providing loan commitments that result in loans are deferred and then recognized over the term of the loan as an adjustment of the yield. Origination fees and costs are recognized in noninterest income and expense at the time of origination for newly originated loans that are accounted for at fair value.

Allowance for Loan and Lease Losses

The Company’s allowance for loan and lease losses is the amount considered adequate to absorb probable losses within the portfolio based on management’s evaluation of the size and current risk characteristics of the loan portfolio. Such evaluation considers numerous factors, including, but not limited to net charge-off trends, internal risk ratings, changes in internal risk ratings, loss forecasts, collateral values, geographic location, borrower FICO scores, delinquency rates, nonperforming and restructured loans, origination channel, product mix, underwriting practices, industry conditions and economic trends. Specific allowances for loan and lease losses are established for large commercial, corporate, and commercial real estate impaired loans that are evaluated on an individual basis. The specific allowance established for these loans and leases is based on a thorough analysis of the most probable source of repayment, including the present value of the loan’s expected future cash flows, the loan’s estimated market value, or the estimated fair value of the underlying collateral depending on the most likely source of repayment. General allowances are established for loans and leases grouped into pools based on similar characteristics. In this process, general allowance factors established are based on an analysis of historical charge-off experience and expected loss given default derived from the Company’s internal risk rating process. Other adjustments may be made to the allowance for the pools after an assessment of internal and external influences on credit quality that are not fully reflected in the historical loss or risk rating data.

The Company’s charge-off policy meets or is more stringent than regulatory minimums. Losses on unsecured consumer loans are recognized at 90-days past-due compared to the regulatory loss criteria of 120 days. Secured consumer loans, including residential real estate, are typically charged-off between 120 and 180 days, depending on the collateral type, in compliance with the Federal Financial Institutions Examination Council (“FFIEC”) guidelines. Accordingly, secured loans may be charged-down to the estimated value of the collateral with previously accrued unpaid interest reversed. Subsequent charge-offs may be required as a result of changes in the market value of collateral or other repayment prospects.

Premises and Equipment

Premises and equipment are carried at cost less accumulated depreciation and amortization. Depreciation is calculated primarily using the straight-line method over the assets’ estimated useful lives. Certain leases are capitalized as assets for financial reporting purposes. Such capitalized assets are amortized, using the straight-line method, over the terms of the

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

leases. Construction and software in process primarily includes in-process branch expansion, branch renovation, and software development projects. Upon completion, branch related projects are maintained in premises and equipment while completed software projects are reclassified to other assets. Maintenance and repairs are charged to expense, and improvements are capitalized.

Goodwill and Other Intangibles Assets

Goodwill represents the excess of purchase price over the fair value of identifiable net assets of acquired companies. Goodwill is assigned to reporting units, which are operating segments or one level below an operating segment, as of the acquisition date. Goodwill is assigned to the Company's reporting units that are expected to benefit from the synergies of the business combination.

Goodwill is not amortized and instead is tested for impairment, at least annually, at the reporting unit level. The goodwill impairment test is performed in two steps. The first step is used to identify potential impairment and the second step, if required, identifies the amount of impairment by comparing the carrying amount of goodwill to its implied fair value. If the implied fair value of the goodwill exceeds the carrying amount, there is no impairment. If the goodwill assigned to a reporting unit exceeds the implied fair value of the goodwill, an impairment charge is recorded for the excess.

Identified intangible assets that have a finite life are amortized over their useful lives and are evaluated for impairment whenever events or changes in circumstances indicate the carrying amount of the assets may not be recoverable.

Mortgage Servicing Rights ("MSRs")

The Company recognizes as assets the rights to service mortgage loans based on the estimated fair value of the MSRs when loans are sold and the associated servicing rights are retained. Fair value is determined using models which depend on estimates of prepayment rates, discount rate and other valuation assumptions that are supported by market and economic data collected from various outside sources.

Currently, the Company maintains one class of MSR asset and has elected to account for that class using the amortized cost method. Amortization of MSRs is based on estimated future net servicing cash flows. The projected future cash flows are derived from the same model and assumptions used to estimate the fair value of MSRs.

Impairment of MSRs is recognized when the fair value is less than the amortized cost basis of the MSRs. For purposes of measuring impairment, MSRs are stratified based on interest rate and type of related loan. When fair value is less than amortized cost for an individual stratum and the impairment is believed to be temporary, the impairment is recorded to a valuation allowance through mortgage servicing income in the Consolidated Statement of Income; the impairment is recorded as a write-down of the amortized cost basis of the MSRs when the impairment is deemed other-than-temporary. The carrying value of MSRs is maintained on the Consolidated Balance Sheets in other intangible assets.

The Company has not historically hedged MSRs but has managed the economic risk through the Company's overall asset/liability management process with consideration to the natural counter-cyclicality of servicing and mortgage originations. Effective January 1, 2009, the Company elected to create a second class of MSR asset that will be reported at fair value and will be actively hedged. The new MSR class will include MSRs recognized on loans sold after December 31, 2008, as well as MSRs related to loans originated and sold in 2008. The portion of existing MSRs being transferred to fair value reflects management's desire to actively hedge this portion of the existing MSR and also considers the availability of market inputs used to determine fair value. MSRs associated with loans sold prior to 2008 will continue to be accounted for using the amortized cost method and managed through the Company's overall asset/liability management process.

Other Real Estate Owned

Assets acquired through, or in lieu of, loan foreclosure are held for sale and are initially recorded at the lower of the loan balance or fair value at the date of foreclosure, less estimated costs to sell, establishing a new cost basis. Subsequent to foreclosure, valuations are periodically performed by management, and the assets are carried at the lower of carrying amount or fair value, less estimated costs to sell.

Table of Contents

SUNTRUST BANKS, INC.
Notes to Consolidated Financial Statements (Continued)

Loan Sales and Securitizations

The Company sells and at times may securitize loans and other financial assets. When the Company securitizes assets, it may hold a portion of the securities issued, including senior interests, subordinated and other residual interests, interest-only strips, and principal-only strips, all of which are considered interests in the transferred assets that continue to be held by the Company. Interests in securitized assets that continue to be held by the Company, excluding servicing assets, if any, are typically classified as either securities available for sale or trading assets and are recorded at their allocated carrying amounts based on the relative fair value of the assets sold and interests that continue to be held by the Company. These interests are subsequently carried at fair value, which is based on independent, third-party market prices, market prices for similar assets, or discounted cash flow analyses. If market prices are not available, fair value is calculated using management’s best estimates of key assumptions, including credit losses, loan repayment speeds and discount rates commensurate with the risks involved.

Unrealized gains and losses on retained interests classified as available for sale are shown, net of any tax effect, in accumulated other comprehensive income as a component of shareholders’ equity. Realized gains and losses on available for sale or trading securities and unrealized gains and losses on trading securities are recorded in noninterest income in the Consolidated Statements of Income.

Income Taxes

The provision for income taxes is based on income and expense reported for financial statement purposes after adjustment for permanent differences such as tax-exempt income. Deferred income tax assets and liabilities result from temporary differences between assets and liabilities measured for financial reporting purposes and for income tax return purposes. These assets and liabilities are measured using the enacted tax rates and laws that are currently in effect. A valuation allowance is recognized for a deferred tax asset if, based on the weight of available evidence, it is more likely than not that some portion or all of the deferred tax asset will not be realized. Subsequent changes in the tax laws require adjustment to these assets and liabilities with the cumulative effect included in income from continuing operations for the period in which the change was enacted. In computing the income tax provision, the Company evaluates the technical merits of its income tax positions based on current legislative, judicial and regulatory guidance. The Company classifies interest and penalties related to its tax positions as a component of income tax expense.

Earnings per Share

Basic earnings per share are computed by dividing net income available to common shareholders by the weighted average number of common shares outstanding during each period. Diluted earnings per share are based on the weighted average number of common shares outstanding during each period, plus common share equivalents calculated for stock options and performance restricted stock outstanding using the treasury stock method.

Guarantees

The Company accounts for guarantee arrangements in which it is the guarantor in accordance with FASB Interpretation No. (“FIN”) 45, “Guarantor’s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others.” FIN 45 establishes accounting and disclosure requirements for guarantees requiring that a guarantor recognize, at the inception of a guarantee, a liability equal to the fair value of the obligation. FIN 45 defines a guarantee as a contract that contingently requires the guarantor to pay a guaranteed party upon changes in an underlying asset, liability or equity security of the guaranteed party, or upon failure of a third-party to perform under a specified agreement. FIN 45 also requires specific disclosures about a guarantor’s obligations under guarantees including the nature of the guarantee as well as the current status of any payment/performance risk of the guarantee, the maximum potential amount of future payments the guarantor could be required to make under the guarantee, and the nature of any recourse provisions or assets held as collateral that would allow the guarantor to recover any of the amounts paid under the guarantee. For additional information on the Company’s guarantor obligations, refer to Note 18, “Reinsurance Arrangements and Guarantees.”

Derivative Financial Instruments

It is the policy of the Company to record all contracts that satisfy the definition of a derivative financial instrument (“derivative”) and are within the scope of SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities,” at fair value in the financial statements. The Company enters into various derivatives in a dealer capacity to facilitate client transactions and as a risk management tool.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Derivatives entered into in a dealer capacity and those that either do not qualify for, or for which the Company has elected not to apply, hedge accounting are accounted for as freestanding derivatives. Where derivatives have been used in client transactions, the Company generally manages the risk associated with these contracts within the framework of its value-at-risk ("VaR") approach that monitors total exposure daily and seeks to manage the exposure on an overall basis. In addition, as a normal part of its operations, the Company enters into certain interest rate lock commitments ("IRLCs") on mortgage loans that are accounted for as freestanding derivatives under SFAS No. 133. Freestanding derivatives are carried at fair value on the balance sheet, with changes in fair value recorded in noninterest income.

Derivatives are used as a risk management tool to hedge the Company's exposure to changes in interest rates or other identified market risks, either economically or in accordance with the hedge accounting provisions of SFAS No. 133. When a derivative is entered into for the purpose of hedge accounting pursuant to the provisions of SFAS No. 133, the Company prepares written hedge documentation and has, to date, designated the derivative as (1) a hedge of the fair value of a recognized asset or liability (fair value hedge) or (2) a hedge of a forecasted transaction, such as, the variability of cash flows to be received or paid related to a recognized asset or liability (cash flow hedge). The written hedge documentation is completed in accordance with SFAS No. 133 and includes identification of, among other items, the risk management objective, hedging instrument, hedged item and methodologies for assessing and measuring hedge effectiveness and ineffectiveness, along with support for management's assertion that the hedge will be highly effective. Methodologies related to hedge effectiveness and ineffectiveness are consistent between similar types of hedge transactions and have included (i) statistical regression analysis of changes in the cash flows of the actual derivative and a perfectly effective hypothetical derivative, (ii) statistical regression analysis of changes in the fair values of the actual derivative and the hedged item and (iii) comparison of the critical terms of the hedged item and the hedging derivative. For designated hedging relationships, the Company performs retrospective and prospective effectiveness testing using quantitative methods and generally does not assume perfect effectiveness through the matching of critical terms. Changes in the fair value of a derivative that is highly effective and that has been designated and qualifies as a fair value hedge are recorded in current period earnings, along with the changes in the fair value of the hedged item that are attributable to the hedged risk. Changes in the fair value of a derivative that is highly effective and that has been designated and qualifies as a cash flow hedge are initially recorded in accumulated other comprehensive income and reclassified to earnings in the same period that the hedged item impacts earnings; and any ineffective portion is recorded in current period earnings. Assessments of hedge effectiveness and measurements of hedge ineffectiveness are performed at least quarterly for ongoing effectiveness. Hedge accounting ceases on transactions that are no longer deemed effective, or for which the derivative has been terminated or de-designated. For discontinued fair value hedges where the hedged item remains outstanding, the hedged item would cease to be remeasured at fair value attributable to changes in the hedged risk and any existing basis adjustment would be recognized as a yield adjustment over the remaining life of the hedged item. For discontinued cash flow hedges where the hedged transaction remains probable to occur as originally designated, the unrealized gains and losses recorded in accumulated other comprehensive income would be reclassified to earnings in the period when the previously designated hedged cash flows occur. If the previously designated transaction were no longer probable of occurring, any unrealized gains and losses in accumulated other comprehensive income would be immediately reclassified to earnings.

In addition to freestanding derivative instruments, the Company evaluates contracts to determine whether any embedded derivatives exist and whether any of those embedded derivatives are required to be bifurcated and separately accounted for as freestanding derivatives in accordance with the provisions of SFAS No. 133. The Company adopted the provisions of SFAS No. 155, "Accounting for Certain Hybrid Financial Instruments, an amendment of FASB Statements No. 133 and 140," as of January 1, 2006 and SFAS No. 159, as of January 1, 2007, which both permit an election to carry certain financial instruments at fair value. The Company has bifurcated embedded derivatives from certain of its brokered deposits and short-term debt in accordance with the provisions of SFAS No. 133. The Company has elected to fair value certain other brokered deposits and short-term debt under either SFAS No. 155 or SFAS No. 159.

Effective January 1, 2008, the Company adopted Staff Accounting Bulletin ("SAB") 109, and began including the value associated with servicing of loans in the measurement of all written loan commitments issued after that date. The adoption, net of other changes in the valuation of IRLCs, resulted in the acceleration of $18.3 million in mortgage-related income during the first quarter of 2008.

The Company adopted FSP FIN 39-1, "Amendment of FASB Interpretation No. 39," on January 1, 2008 and has elected not to offset fair value amounts related to collateral arrangements recognized for derivative instruments under master netting arrangements. Under master netting arrangements, the Company is obligated to return collateral of $1.1 billion and has the right to reclaim collateral of $1.6 billion as of December 31, 2008. For additional information on the Company's derivative

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

activities, refer to Note 17, "Derivative Financial Instruments," to the Consolidated Financial Statements, which includes specific disclosures about credit derivatives per FSP FAS 133-1 and FIN 45-4 "Disclosures about Credit Derivatives and Certain Guarantees".

Stock-Based Compensation

The Company sponsors stock plans under which incentive and nonqualified stock options, restricted stock, and performance based restricted stock may be granted periodically to certain employees. The Company accounts for stock-based compensation under the fair value recognition provisions of SFAS No. 123(R), "Share-Based Payment". Effective January 1, 2006, the Company adopted SFAS No. 123(R), using the modified prospective application method. The modified prospective application method was applied to new awards, to any outstanding liability awards, and to awards modified, repurchased, or cancelled after January 1, 2006. For all awards granted prior to January 1, 2006, compensation cost has been recognized on the portion of awards for which service has been rendered. Additionally, the Company estimates the number of awards for which it is probable that service will be rendered and adjusts compensation cost accordingly. Estimated forfeitures are subsequently adjusted to reflect actual forfeitures. The required disclosures related to the Company's stock-based employee compensation plan are included in Note 16, "Employee Benefit Plans," to the Consolidated Financial Statements.

Employee Benefits

Employee benefits expense includes the net periodic benefit costs associated with the pension, supplemental retirement, and other postretirement benefit plans, as well as contributions under the defined contribution plan, the amortization of performance and restricted stock, stock option awards, and costs of other employee benefits.

Foreign Currency Transactions

Foreign denominated assets and liabilities resulting from foreign currency transactions are valued using period end foreign exchange rates and the associated interest income or expense is determined using approximate weighted average exchange rates for the period. The Company may elect to enter into foreign currency derivatives to mitigate its exposure to changes in foreign exchange rates. The derivative contracts are accounted for at fair value. Gains and losses resulting from such valuations are included as noninterest income in the Consolidated Statements of Income.

Fair Value

The Company measures or monitors many of its assets and liabilities on a fair value basis. Fair value is used on a recurring basis for assets and liabilities that are elected to be accounted for under SFAS No. 159 as well as for certain assets and liabilities in which fair value is the primary basis of accounting. Examples of these include derivative instruments, available for sale and trading securities, loans held for sale, long-term debt, and certain residual interests from Company-sponsored securitizations. Additionally, fair value is used on a non-recurring basis to evaluate assets for impairment or for disclosure purposes. Examples of these non-recurring uses of fair value include certain loans held for sale accounted for on a lower of cost or market basis, MSRs, goodwill, and long-lived assets. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Depending on the nature of the asset or liability, the Company uses various valuation techniques and assumptions when -estimating fair value, which are in accordance with SFAS No. 157 and FSP FAS 157-3, "Determining the Fair Value of a Financial Asset When the Market for that Asset is Not Active," when applicable.

In accordance with SFAS No. 157, the Company applied the following fair value hierarchy:

Level 1 – Assets or liabilities for which the identical item is traded on an active exchange, such as publicly-traded instruments or futures contracts.

Level 2 – Assets and liabilities valued based on observable market data for similar instruments.

Level 3 – Assets or liabilities for which significant valuation assumptions are not readily observable in the market; instruments valued based on the best available data, some of which is internally developed, and considers risk premiums that a market participant would require.

Table of Contents

SUNTRUST BANKS, INC.
Notes to Consolidated Financial Statements (Continued)

When determining the fair value measurement for assets and liabilities required or permitted to be recorded at fair value, the Company considers the principal or most advantageous market in which it would transact and considers assumptions that market participants would use when pricing the asset or liability. When possible, the Company looks to active and observable markets to price identical assets or liabilities. When identical assets and liabilities are not traded in active markets, the Company looks to market observable data for similar assets and liabilities. Nevertheless, certain assets and liabilities are not actively traded in observable markets and the Company must use alternative valuation techniques to derive a fair value measurement.

Recently Issued Accounting Pronouncements

In December 2007, the FASB issued SFAS No. 141R, "Business Combinations," which revises SFAS No. 141 and changes multiple aspects of the accounting for business combinations. Under the guidance in SFAS No. 141R, the acquisition method must be used, which requires the acquirer to recognize most identifiable assets acquired, liabilities assumed, and noncontrolling interests in the acquiree at their fair value on the acquisition date. Goodwill is to be recognized as the excess of the consideration transferred plus the fair value of the noncontrolling interest over the fair values of the identifiable net assets acquired. Subsequent changes in the fair value of contingent consideration classified as a liability are to be recognized in earnings, while contingent consideration classified as equity is not to be remeasured. The release of valuation allowances and adjustments to tax uncertainties that do not qualify as measurement period adjustments are to be reflected in income tax expense. Costs such as transaction costs are to be excluded from acquisition accounting, generally leading to expense recognition. Additionally, restructuring costs that do not meet certain criteria at the acquisition date are to be subsequently recognized as post-acquisition costs. SFAS No. 141R is effective for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. As a result of the measurement period amendment for tax uncertainties, the Company has a maximum amount of $28.6 million in net tax liabilities that may be reversed to income in future periods as examinations by tax authorities are closed and/or statutes of limitations expire. The adoption of the standard on January 1, 2009, did not impact the Company's financial statements; however, the Company anticipates that the standard will lead to more volatility in the results of operations during the periods subsequent to an acquisition.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interest in Consolidated Financial Statements – an amendment of ARB No. 51." SFAS No. 160 requires that a noncontrolling interest in a subsidiary (i.e. minority interest) be reported in the equity section of the balance sheet instead of being reported as a liability or in the mezzanine section between debt and equity. It also requires that the consolidated income statement include consolidated net income attributable to both the parent and noncontrolling interest of a consolidated subsidiary. A disclosure must be made on the face of the consolidated income statement of the net income attributable to the parent and to the noncontrolling interest. Also, regardless of whether the parent purchases additional ownership interest, sells a portion of its ownership interest in a subsidiary or the subsidiary participates in a transaction that changes the parent's ownership interest, as long as the parent retains the controlling interest, the transaction is considered an equity transaction. SFAS No. 160 is effective for annual periods beginning after December 15, 2008. The Company adopted this standard effective January 1, 2009. The adoption did not have a material impact on the Company's financial position and results of operations.

In February 2008, the FASB issued FSP FAS 140-3, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities." The objective of the FSP is to provide guidance on accounting for a transfer of a financial asset and repurchase financing. The FSP presumes that an initial transfer of a financial asset and a repurchase financing are considered part of the same arrangement (linked transaction) under SFAS No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities." However, if certain criteria are met, the initial transfer and repurchase financing shall not be evaluated as a linked transaction and shall be evaluated separately under SFAS No. 140. FSP FAS 140-3 is effective for annual and interim periods beginning after November 15, 2008 and early adoption is not permitted. The Company has evaluated the provisions of this standard and, based on its current business, does not expect the adoption of the standard to have a material impact on its financial position and results of operations.

In March 2008, the FASB issued SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities," which amends SFAS No. 133 and expands the derivative-related disclosure requirements. SFAS No. 161 requires qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures of the fair values of derivative instruments and their gains and losses, and disclosures about credit-risk related contingent features in derivative agreements. The standard also amended SFAS No. 107, "Disclosures about Fair Value of Financial Instruments," to clarify the disclosure requirements with respect to derivative counterparty credit risk. SFAS No. 161 is effective for annual and interim periods beginning after November 15, 2008. The Company is in the process of evaluating SFAS No. 161 and evaluating the necessary process and technology changes, if any, in order to accumulate the requisite information.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

In June 2008, the FASB issued FSP No. EITF 03-6-1, "Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities." The FSP concludes that unvested share-based payment awards that contain nonforfeitable rights to dividends or dividend equivalents are participating securities that should be included in the earnings allocation in computing earnings per share under the two-class method. The FSP is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those years. All prior period earnings per share data presented must be adjusted retrospectively. The Company does not expect the adoption of this standard to have a material impact on the Company's financial position and results of operation.

In September 2008, the FASB issued two separate but related exposure drafts for proposed amendments to SFAS No. 140, and proposed amendments to FASB Interpretation No. ("FIN") 46(R), "Consolidation of Variable Interest Entities". The proposed amendments to SFAS No. 140, among other amendments to the sale criteria on SFAS No. 140, eliminate the concept of a qualifying special-purpose entity ("QSPE") and would require an existing QSPE to be analyzed for consolidation according to FIN 46R. In addition, the proposed amendments introduce the concept of a "participating interest", which establishes specific conditions for reporting the transfer of a portion of a financial asset as a sale. The proposed amendments to FIN 46(R) are intended to change the consolidation model for determining which enterprise should consolidate a VIE from primarily an economic focus to a control and economic focus. Under the proposed amendment, companies must first make a qualitative assessment to determine the primary beneficiary, if any, of a VIE and a quantitative analysis is only required if the qualitative assessment fails to conclusively identify whether the reporting entity is the primary beneficiary. The amended statement, if finalized, would be effective for the first interim reporting period of 2010. The Company is currently assessing the impact that these proposed amendments will have on its financial statements. As part of its project to amend SFAS No. 140 and FIN 46R, the FASB issued FSP FAS No. 140-4 and FIN 46(R)–8 in December 2008, which requires enhanced disclosures regarding the extent of a transferor's continuing involvement with transferred financial assets and the Company's involvement with VIEs. The required disclosures are included in Note 11, "Certain Transfers of Financial Assets, Mortgage Servicing Rights, and Variable Interest Entities".

In December 2008, the FASB issued FSP FAS 132(R) – 1 "Employers' Disclosures about Postretirement Benefit Plan Assets". The FSP requires that entities disclose the fair value of each major category of plan assets of a defined benefit pension or other postretirement plan. The asset categories should be based on the nature and risks of assets in an employer's plan. Entities are also required to disclose information that enables users of financial statements to assess the inputs and valuation techniques used to develop fair value measurements of plan assets at the reporting date. The disclosure requirements of this FSP are effective for fiscal year ends after December 15, 2009.

Table of Contents

SUNTRUST BANKS, INC.

Notes to consolidated financial statements (Continued)

Note 2 - Acquisitions/Dispositions

During the three year period ended December 31, 2008, SunTrust consummated the following acquisitions and dispositions:

(in millions)	Date	Cash or other consideration (paid)/received	Goodwill	Other Intangibles	Gain/ (Loss)	Comments
2008						
Acquisition of assets of Cymric Family Office Services [2]	12/31/08	($2.9)	$1.4	$1.4	$-	Goodwill and intangibles recorded are tax-deductible.
Sale of majority interest in Zevenbergen Capital Investments, LLC ("ZCI")	10/1/08	7.9	(15.4)	0.9	(2.7)	Goodwill and intangibles recorded are tax-deductible.
Purchase of remaining interest in ZCI	9/30/08	(22.6)	20.7	-	-	Goodwill recorded is tax-deductible.
Sale of TransPlatinum Service Corp.	9/2/08	100.0	(10.5)	-	81.8	
Sale of First Mercantile Trust Company	5/30/08	59.1	(11.7)	(3.0)	29.6	
Acquisition of GB&T Bancshares, Inc [1]	5/1/08	(154.6)	143.0	29.5	-	Goodwill and intangibles recorded are non tax-deductible.
Sale of 24.9% interest in Lighthouse Investment Partners, LLC ("Lighthouse Investment Partners")	1/2/08	155.0	-	(6.0)	89.4	SunTrust will continue to earn a revenue share based upon client referrals to the funds.
2007						
Acquisition of Inlign Wealth Management, LLC[2]	12/31/07	(13.0)	7.3	4.1	-	Goodwill and intangibles recorded are non tax-deductible.
Acquisition of TBK Investments, Inc.[2]	8/31/07	(19.2)	10.6	6.5	-	Goodwill and intangibles recorded are non tax-deductible.
Lighthouse Partners, LLC, a wholly owned subsidiary, was merged with and by GenSpring Holdings, Inc., a wholly owned subsidiary of SunTrust into Lighthouse Investment Partners	3/30/07	-	(48.5)	24.1	32.3	SunTrust received a 24.9% interest in Lighthouse Investment Partners.
GenSpring Holdings, Inc. (formerly "AMA Holdings, Inc.") called minority member owned interests in GenSpring Family Offices, LLC (formerly "Asset Management Advisors, LLC") [3]	Various	(12.4)	10.2	2.2	-	
Contingent consideration paid to the former owners of Prime Performance , Inc. ("Prime Performance"), a company formerly acquired by National Commerce Financial Corporation ("NCF")	3/12/07	(7.0)	7.0	-	-	Obligations to the former owners of Prime Performance were fully discharged.
Contingent consideration paid to the former owners of Seix Investment Advisors, Inc. ("Seix")	2/23/07	(42.3)	42.3	-	-	Goodwill recorded is tax-deductible.
Contingent consideration paid to the former owners of Sun America Mortgage ("SunAmerica")	2/13/07	(1.4)	1.4	-	-	Goodwill recorded is tax-deductible.
2006						
Sale of Bond Trustee Business to U.S. Bank, N.A. ("U.S. Bank")	9/29/06	113.8	-	-	112.8	Transferred $21 billion in non-managed corporate trust assets to U.S. Bank.
AMA Holdings Inc., called minority member owned interests in AMA, LLC	Various	(14.6)	9.5	5.1	-	Goodwill and intangibles recorded are both tax-deductible.
Contingent consideration paid to the former owners of Prime Performance	4/4/06	(1.3)	1.3	-	-	Goodwill recorded is tax-deductible.
Sale of minority interest in First Market Bank, FSB	3/31/06	82.6	-	-	3.6	
Contingent consideration paid to the former owners of BancMortgage Financial Corporation (a company formerly acquired by NCF)	3/30/06	(22.5)	22.5	-	-	Consideration included $15 million in SunTrust common stock (202,866 shares) and $7.5 million in cash. Goodwill recorded is non tax-deductible.
Acquisition of 11 Florida Wal-Mart banking branches from Community Bank of Florida	3/17/06	51.3	-	1.1	-	Acquired $5.1 million in assets and $56.4 million in deposits and related liabilities. Other intangibles recorded are tax-deductible.
Contingent consideration paid to the former owners of SunAmerica	3/10/06	(3.9)	3.9	-	-	Goodwill recorded is tax-deductible.

[1] On May 1, 2008, SunTrust acquired GB&T Bancshares, Inc. ("GB&T"), a North Georgia-based financial institution serving commercial and retail customers, for $154.6 million, including cash paid for fractional shares, via the merger of GB&T with and into SunTrust. In connection therewith, GB&T shareholders received 0.1562 shares of the Company's common stock for each share of GB&T's common stock, resulting in the issuance of approximately 2.2 million shares of SunTrust common stock. As a result of the acquisition, SunTrust acquired approximately $1.4 billion of loans, primarily commercial real estate loans, and assumed approximately $1.4 billion of deposit liabilities. SunTrust elected to account for $171.6 million of the acquired loans at fair value in accordance with SFAS No. 159. The remaining loans are accounted for at amortized cost and had a carryover reserve for loan and lease losses of $158.7 million. The acquisition was accounted for under the purchase method of accounting with the results of operations for GB&T included in SunTrust's results beginning May 1, 2008.

[2] Acquisition by GenSpring Family Offices, LLC a majority owned subsidiary of SunTrust.

[3] As of December 31, 2008, GenSpring Holdings, Inc. owned 65% of the member interests of GenSpring Family Offices, LLC, while 35% were owned by employees. The employee interests

are subject to certain vesting requirements. If an employee's interests vest, they may be called by GenSpring Holdings, Inc. (and some of the interests may be put to GenSpring Holdings, Inc. by the employees) at certain dates in the future in accordance with the applicable plan or agreement pursuant to which their interests were granted.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Note 3 - Funds Sold and Securities Purchased Under Agreements to Resell

Funds sold and securities purchased under agreements to resell at December 31 were as follows:

(Dollars in thousands)	**2008**	2007
Federal funds	**$134,000**	$400,300
Resell agreements	**856,614**	947,029
Total funds sold and securities purchased under agreements to resell	**$990,614**	$1,347,329

Securities purchased under agreements to resell are collateralized by U.S. government or agency securities and are carried at the amounts at which securities will be subsequently resold. The Company takes possession of all securities under agreements to resell and performs the appropriate margin evaluation on the acquisition date based on market volatility, as necessary. The Company requires collateral between 100% and 106% of the underlying securities. The total market value of the collateral held was $866.7 million and $999.0 million at December 31, 2008 and 2007, of which $246.3 million and $527.8 million was repledged, respectively.

Note 4 - Trading Assets and Liabilities

The fair values of the components of trading assets and liabilities at December 31 were as follows:

(Dollars in thousands)	**2008**	2007
Trading Assets		
U.S. government and agency securities	**$788,166**	$758,129
U.S. government-sponsored enterprises	**2,339,469**	3,375,361
Corporate and other debt securities	**1,538,010**	2,821,737
Equity securities	**116,788**	242,680
Mortgage-backed securities	**95,693**	938,930
Derivative contracts[1]	**4,701,782**	1,977,401
Municipal securities	**159,135**	171,203
Commercial paper	**399,611**	2,368
Other securities and loans	**257,615**	230,570
Total trading assets	**$10,396,269**	$10,518,379
Trading Liabilities		
U.S. government and agency securities	**$440,408**	$404,501
Corporate and other debt securities	**146,805**	126,437
Equity securities	**13,263**	68
Mortgage-backed securities	**-**	61,672
Derivative contracts[1]	**2,640,308**	1,567,707
Total trading liabilities	**$3,240,784**	$2,160,385

[1] Excludes IRLCs accounted for as derivatives, as well as derivatives economically hedging loans held for sale and loans reported at fair value. The fair value of these derivatives is included in other assets and liabilities.

The Company purchased certain trading securities, classified primarily within corporate and other debt securities, during the latter half of 2007 from (i) an institutional private placement fund managed by RidgeWorth Capital Management, Inc. ("RidgeWorth"), a subsidiary of the Company, (ii) Three Pillars Funding LLC, a multi-seller commercial paper conduit sponsored by the Company, and (iii) certain money market funds managed by RidgeWorth. The acquired securities were predominantly AAA or AA-rated at the time they were originally purchased by these entities, but the majority of the securities have been downgraded during 2008 and the issuers of the SIV securities are also undergoing enforcement proceedings. In addition, in the fourth quarter of 2007, the Company retained the super senior interest in a securitization of commercial leveraged loans. Total valuation losses recorded with respect to these instruments during 2008 and 2007 were $255.9 million and $527.7 million, respectively. The outstanding balance of these securities was approximately $250.0 million and $2.9 billion at December 31, 2008 and 2007, respectively. These securities had an acquisition cost of $3.5 billion in 2007.

Table of Contents

SUNTRUST BANKS, INC.
Notes to Consolidated Financial Statements (Continued)

See Note 21, "Contingencies," to the Consolidated Financial Statements for information concerning auction rate securities ("ARS") added to trading assets in 2008.

The Company utilized trading securities for balance sheet management purposes and manages the potential market volatility of these securities with appropriate duration and/or hedging strategies. The size, volume and nature of the trading securities can vary based on economic and Company specific asset liability conditions. During 2007, the Company replaced $4.6 billion of trading securities that were pledged as collateral with letters of credit issued by the Federal Home Loan Bank ("FHLB"). The Company elected to record these letters of credit at fair value pursuant to the provisions of SFAS No. 159. As of December 31, 2008, $1.8 billion of these letters of credit remained outstanding.

Note 5 - Securities Available for Sale

Securities available for sale at December 31 were as follows:

	2008			
(Dollars in thousands)	**Amortized Cost**	**Unrealized Gains**	**Unrealized Losses**	**Fair Value**
U.S. Treasury securities	**$125,585**	**$1,539**	**$1**	**$127,123**
U.S. government-sponsored enterprises	**338,981**	**20,350**	**301**	**359,030**
States and political subdivisions	**1,018,906**	**24,621**	**6,098**	**1,037,429**
Asset-backed securities	**54,139**	**3,062**	**7,633**	**49,568**
Mortgage-backed securities	**15,022,074**	**142,215**	**117,989**	**15,046,300**
Corporate bonds	**275,492**	**3,274**	**12,994**	**265,772**
Common stock of The Coca-Cola Company	**69**	**1,358,031**	**-**	**1,358,100**
Other securities[1]	**1,447,961**	**5,254**	**-**	**1,453,215**
Total securities available for sale	**$18,283,207**	**$1,558,346**	**$145,016**	**$19,696,537**

	2007			
(Dollars in thousands)	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
U.S. Treasury securities	$139,159	$1,557	$-	$140,716
U.S. government-sponsored enterprises	244,000	5,597	1	249,596
States and political subdivisions	1,052,621	16,142	1,453	1,067,310
Asset-backed securities	241,700	33	31,383	210,350
Mortgage-backed securities	10,085,802	71,727	16,327	10,141,202
Corporate bonds	232,230	708	1,649	231,289
Common stock of The Coca-Cola Company	100	2,674,305	-	2,674,405
Other securities[1]	1,543,852	5,387	-	1,549,239
Total securities available for sale	$13,539,464	$2,775,456	$50,813	$16,264,107

[1] Includes $493.2 million and $452.2 million of Federal Home Loan Bank of Cincinnati and Federal Home Loan Bank of Atlanta stock stated at par value and $360.9 and $340.2 million of Federal Reserve Bank stock stated at par value as of December 31, 2008 and December 31, 2007, respectively.

In June 2008, the Company sold 10 million shares of its holdings in The Coca-Cola Company ("Coke"). The sale of these shares generated $548.8 million in net cash proceeds and before-tax gains, and an after-tax gain of approximately $345 million that was recorded in the Company's financial results. In addition, these sales resulted in an increase of approximately $345 million, or approximately 20 basis points, to Tier 1 Capital as of the transaction date.

In July 2008, the Company contributed 3.6 million shares of its holdings in Coke to a charitable foundation. The contribution resulted in a $183.4 million non-taxable gain that was recorded in the Company's financial results. In addition, the contribution increased Tier 1 Capital by approximately 4 basis points as of the transaction date, and will reduce ongoing charitable contribution expense.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

See Note 21, “Contingencies”, to the Consolidated Financial Statements for information concerning ARS added to securities available for sale in 2008.

The amortized cost and fair value of investments in debt securities at December 31, 2008 by estimated average life are shown below. Actual cash flows will differ from estimated average lives and contractual maturities because borrowers may have the right to call or prepay obligations with or without call or prepayment penalties.

(Dollars in thousands)	Amortized Cost	Fair Value
Due in one year or less	$269,667	$271,189
Due in one year through five years	2,905,715	2,934,752
Due after five years through ten years	3,264,544	3,267,576
After ten years	10,395,251	10,411,705
Total	$16,835,177	$16,885,222

Proceeds from the sale of available for sale securities were $5.7 billion, $1.2 billion, and $4.9 billion in 2008, 2007 and 2006, respectively. Gross realized gains were $1.2 billion, $251.1 million and $69.4 million and gross realized losses on such sales were $1.3 million, $8.0 million and $119.9 million in 2008, 2007, and 2006, respectively. The gross realized gains of $1.2 billion during 2008 included $732.2 million in gains on the sale and non-taxable gain on the contribution of a portion of the Company’s investment in Coke stock and $413.1 million in gains related to agency MBS that were sold in conjunction with the Company’s risk management strategies associated with hedging the value of MSRs. Securities available for sale that were pledged to secure public deposits, trusts, and other funds had fair values of $6.2 billion and $6.9 billion at December 31, 2008 and 2007, respectively.

Securities with unrealized losses at December 31 were as follows:

	2008					
	Less than twelve months		**Twelve months or longer**		**Total**	
(Dollars in thousands)	**Fair Value**	**Unrealized Losses**	**Fair Value**	**Unrealized Losses**	**Fair Value**	**Unrealized Losses**
U.S. Treasury securities	**$367**	**$1**	**$23**	**$-**	**$390**	**$1**
U.S. government-sponsored enterprises	**43,217**	**301**	**-**	**-**	**43,217**	**301**
States and political subdivisions	**169,693**	**4,980**	**14,879**	**1,118**	**184,572**	**6,098**
Asset-backed securities	**3,153**	**65**	**16,029**	**7,568**	**19,182**	**7,633**
Mortgage-backed securities	**3,804,972**	**108,919**	**24,712**	**9,070**	**3,829,684**	**117,989**
Corporate bonds	**140,513**	**6,836**	**28,944**	**6,158**	**169,457**	**12,994**
Total securities with unrealized losses	**$4,161,915**	**$121,102**	**$84,587**	**$23,914**	**$4,246,502**	**$145,016**

	2007					
	Less than twelve months		Twelve months or longer		Total	
(Dollars in thousands)	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
U.S. Treasury securities	$-	$-	$1,726	$-	$1,726	$-
U.S. government-sponsored enterprises	41	-	8,242	1	8,283	1
States and political subdivisions	47,666	264	102,888	1,189	150,554	1,453
Asset-backed securities	202,766	31,380	1,344	3	204,110	31,383
Mortgage-backed securities	683,475	5,104	808,551	11,223	1,492,026	16,327
Corporate bonds	43,954	1,370	32,001	279	75,955	1,649
Total securities with unrealized losses	$977,902	$38,118	$954,752	$12,695	$1,932,654	$50,813

On December 31, 2008, the Company held certain investment securities having unrealized loss positions. Market changes in interest rates and credit spreads will result in temporary unrealized losses as the market price of securities fluctuates. The turmoil and illiquidity in the financial markets during 2008 increased market yields on securities as a result of credit spreads widening. This shift in market yields resulted in unrealized losses on certain securities within the Company’s portfolio. The unrealized loss of $118.0 million in MBS as of December 31, 2008 included approximately $107.8 million of unrealized losses related to private MBS with the remaining $10.2 million in unrealized losses predominantly guaranteed by either the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Government National Mortgage Association. The unrealized loss of $7.6 million related to ABS was primarily attributable to one security within the portfolio that is a home equity issuance. Based on an analysis of the underlying cash flows of these securities, the unrealized loss is reflective of the current illiquidity and risk premiums reflected in the market. This cash flow analysis indicated no expectation of credit impairment. The Company has the intent and ability to hold these securities until recovery and has

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

reviewed them for other-than-temporary impairment in accordance with the accounting policies outlined in Note 1, "Significant Accounting Policies," to the Consolidated Financial Statements and does not consider them to be other-than-temporarily impaired. As of December 31, 2008, approximately 94% of the total securities available for sale portfolio are rated "AAA," the highest possible rating by nationally recognized rating agencies.

Management evaluates securities for other-than-temporary impairment on a quarterly basis, and more frequently when conditions warrant such evaluation. Factors considered in determining whether an impairment is other-than-temporary include (1) the length of time and the extent to which the fair value has been less than cost, (2) the financial condition and near-term prospects of the underlying collateral, including expected default and loss severity estimates, and (3) the intent and ability of the Company to hold the investment for a period of time sufficient to allow for any anticipated recovery in fair value.

During 2008, the Company recorded $83.8 million in other-than-temporary impairment within securities gains/(losses), primarily related to $269.4 million in residential MBS and residual interests in mortgage securitizations in which the default rates and loss severities of the underlying collateral, including subprime and Alt-A loans, increased significantly during the year. Impairment was recorded on securities for which there had been an adverse change in estimated cash flows for purposes of determining fair value. These securities were valued using either third party pricing data, including broker indicative bids, or expected cash flow models. There were no similar charges recorded in 2007.

The Company holds stock in the FHLB of Atlanta and FHLB of Cincinnati totaling $493.2 million as of December 31, 2008. The Company accounts for the stock based on the industry guidance in SOP 01-6 "Accounting by Certain Entities (Including Entities With Trade Receivables) That Lend to or Finance the Activities of Others", which requires the investment be carried at cost and be evaluated for impairment based on the ultimate recoverability of the par value. The Company evaluated its holdings in FHLB stock at December 31, 2008 and believes its holdings in the stock are ultimately recoverable at par. In addition, the Company does not have operational or liquidity needs that would require a redemption of the stock in the foreseeable future and therefore determined that the stock was not other-than-temporarily impaired. In February 2009, the Company repaid all of the FHLB advances outstanding and closed out its exposures on the interest rate swaps. Approximately $150.3 million of FHLB stock was redeemed in conjunction with the repayment of the advances.

Note 6 - Loans

The composition of the Company's loan portfolio at December 31 is shown in the following table:

(Dollars in millions)	**2008**	2007
Commercial	**$41,039.9**	$35,929.4
Real estate:		
Home equity lines	**16,454.4**	14,911.6
Construction	**9,864.0**	13,776.7
Residential mortgages	**32,065.8**	32,779.7
Commercial real estate	**14,957.1**	12,609.5
Consumer:		
Direct	**5,139.3**	3,963.9
Indirect	**6,507.6**	7,494.1
Credit card	**970.3**	854.1
Total loans	**$126,998.4**	$122,319.0

All nonaccrual loans at December 31, 2008 and December 31, 2007 were considered impaired. Total nonaccrual loans at December 31, 2008 and 2007 were $3,940.0 million and $1,430.4 million, respectively. The gross amounts of interest income that would have been recorded in 2008, 2007, and 2006 on nonaccrual loans at December 31 of each year, if all such loans had been accruing interest at their contractual rates, were $233.3 million, $85.0 million, and $41.6 million, respectively. At December 31, 2008, and 2007, accruing loans past due 90 days or more were $1,032.3 million and $611.0 million, respectively, and increased primarily related to loans sold to Government National Mortgage Association that we have repurchased or have the right to repurchase which are guaranteed by U.S. government agencies.

Loans individually evaluated in accordance with SFAS No. 114 and restructured loans (accruing and nonaccruing) at December 31, 2008, and 2007 were $1,595.8 million and $177.5 million, respectively, and the related allowance for loan and lease losses was $201.8 million and $17.5 million, respectively. At December 31, 2008 and 2007, certain impaired loans requiring an allowance for loan losses were $1,522.3 million and $145.2 million, respectively.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

The average recorded investment in certain impaired loans for the years ended December 31, 2008, 2007, and 2006 was $1,021.7 million, $130.4 million, and $131.7 million, respectively. For 2008, 2007, and 2006, interest income recognized on certain impaired loans totaled $23.1 million, $8.6 million, and $10.6 million, respectively.

During 2008 and 2007, the Company transferred $656.1 million and $837.4 million, respectively, in loans held for sale to loans held for investment in response to liquidity issues in the market with respect to these loans. The loans transferred included loans carried at fair value under SFAS No. 159 which continue to be reported at fair value while classified as held for investment, as well as loans transferred at the lower of cost or market which had associated write-downs of $35.4 million and $27.2 million during 2008 and 2007, respectively. At December 31, 2008 and 2007, $33.6 billion and $36.1 billion, respectively, of loans were pledged as collateral for borrowings.

Note 7 - Allowance for Loan and Lease Losses

Activity in the allowance for loan and lease losses for the year ended December 31 is summarized in the table below:

(Dollars in thousands)	2008	2007	2006
Balance at beginning of year	**$1,282,504**	$1,044,521	$1,028,128
Allowance associated with loans at fair value [1]	**-**	(4,100)	-
Allowance from GB&T acquisition	**158,705**	-	-
Provision for loan losses	**2,474,215**	664,922	262,536
Loan charge-offs	**(1,680,552)**	(514,348)	(356,569)
Loan recoveries	**116,124**	91,509	110,426
Balance at end of year	**$2,350,996**	$1,282,504	$1,044,521

[1] Amount removed from the allowance for loan losses related to the Company's election to record $4.1 billion of residential mortgages at fair value.

Note 8 - Premises and Equipment

Premises and equipment at December 31 were as follows:

(Dollars in thousands)	Useful Life	2008	2007
Land	Indefinite	**$399,657**	$382,066
Buildings and improvements	2 -40 years	**894,534**	1,002,105
Leasehold improvements	1 -30 years	**509,736**	481,877
Furniture and equipment	1 -20 years	**1,376,403**	1,381,130
Construction in progress		**164,968**	163,119
		3,345,298	3,410,297
Less accumulated depreciation and amortization		**1,797,406**	1,814,606
Total premises and equipment		**$1,547,892**	$1,595,691

During 2007, the Company completed multiple sale/leaseback transactions, consisting of over 300 of the Company's branch properties and various individual office buildings. In total, the Company sold and concurrently leased back $545.9 million in land and buildings with associated accumulated depreciation of $285.7 million. Net proceeds were $764.4 million, resulting in a gain, net of transaction costs, of $504.2 million. For the year ended December 31, 2007, the Company recognized $118.8 million of the gain immediately. The remaining $385.4 million in gains were deferred and are being recognized ratably over the expected term of the respective leases, predominantly 10 years, as an offset to net occupancy expense.

During 2008, the Company completed sale/leaseback transactions, consisting of 152 branch properties and various individual office buildings. In total, the Company sold and concurrently leased back $201.9 million in land and buildings with associated accumulated depreciation of $110.3 million. Net proceeds were $288.9 million, resulting in a gross gain, net of transaction costs, of $197.3 million. For the year ended December 31, 2008, the Company recognized $37.0 million of the gain immediately. The remaining $160.3 million in gains were deferred and are being recognized ratably over the expected term of the respective leases, predominantly 10 years, as an offset to net occupancy expense.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

The carrying amounts of premises and equipment subject to mortgage indebtedness (included in long-term debt) were not significant at December 31, 2008 and 2007.

Various Company facilities are leased under both capital and noncancelable operating leases with initial remaining terms in excess of one year. Minimum payments, by year and in aggregate, as of December 31, 2008 were as follows:

(Dollars in thousands)	Operating Leases	Capital Leases
2009	$208,014	$2,375
2010	195,966	2,487
2011	179,305	2,536
2012	163,190	1,903
2013	150,251	1,947
Thereafter	727,665	12,793
Total minimum lease payments	$1,624,391	24,041
Amounts representing interest		7,980
Present value of net minimum lease payments		$16,061

Net premises and equipment included $9.4 million and $10.5 million at December 31, 2008 and 2007, respectively, related to capital leases. Aggregate rent expense (principally for offices), including contingent rent expense, amounted to $213.2 million, $182.8 million, and $169.5 million for 2008, 2007, and 2006, respectively. Depreciation/amortization expense for the years ended December 31, 2008, 2007, and 2006 totaled $195.8 million, $216.2 million, and $209.4 million, respectively.

The Company manages certain community development projects that generate tax credits and help it meet the requirements of the Community Reinvestment Act. The related interests in these projects are recorded within the other assets line item on the Consolidated Balance Sheets. During 2007, the Company completed a strategic review of these properties and determined that the sale of certain properties was possible, which resulted in the Company recording a $57.7 million impairment charge in other noninterest expense within the Retail and Commercial line of business. Total impairment charges recorded in 2008 totaled $19.9 million.

Note 9 – Goodwill and Other Intangible Assets

Under U.S. GAAP, goodwill is required to be tested for impairment on an annual basis or as events occur or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. In 2008, the Company's reporting units were comprised of Retail, Commercial, Commercial Real Estate, Mortgage, Corporate and Investment Banking, Wealth and Investment Management, and Affordable Housing. The Company completed its 2008 annual review based on information that was as of September 30, 2008. The review utilized discounted cash flow analysis, as well as guideline company and guideline transaction information, where available, to estimate the fair value of each reporting unit. The estimates, specific to each reporting unit, that were incorporated in the valuations included projections of future cash flows, discount rates, and applicable valuation multiples based on the guideline information. The assumptions considered the current market conditions in developing short and long-term growth expectations and discount rates. The estimated fair value of each reporting unit as of September 30, 2008 exceeded its respective carrying value; therefore, the Company determined there was no impairment of goodwill as of that date. The degree by which the fair value of the reporting unit exceeded its carrying value varied by reporting unit and ranged between approximately 10% and 300%, with the Mortgage and Commercial Real Estate reporting units having the least amount of excess fair value.

As a result of continued deterioration in the economy during the fourth quarter of 2008, the Company determined that it was more likely than not that the fair value of the Mortgage, Commercial Real Estate, and Corporate and Investment Banking reporting units was less than their respective carrying value as of December 31, 2008, due to their exposure to residential real estate and capital markets. As a result, the Company performed the second step of the goodwill impairment evaluation, which involved calculating the implied fair value of the goodwill for those reporting units. The implied fair value of goodwill is determined in the same manner as the amount of goodwill recognized in a business combination. The fair value of the reporting unit's assets and liabilities, including unrecognized intangible assets, is individually evaluated. The excess of the fair value of the reporting unit over the fair value of the reporting unit's net assets is the implied fair value of goodwill. The Company estimated the fair value of each reporting unit's assets and liabilities, including previously unrecognized intangible

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

assets, through a variety of valuation techniques that incorporated interest rates, credit or nonperformance risk, as well as market risk premiums that are indicative of the current economic environment. The estimated values are based on an exit price and reflect management's expectations regarding how a market participant would value the assets and liabilities. Based on this analysis, the Company determined that the implied fair value of the goodwill for the reporting units evaluated was in excess of the carrying value of the goodwill for those reporting units; therefore, no goodwill impairment was recorded as of December 31, 2008. This evaluation and resulting conclusion was significantly affected by the estimated fair value of the loans pertaining to the reporting units that were evaluated, particularly the market risk premium that is a consequence of the current distressed market conditions.

The changes in the carrying amount of goodwill by reportable segment for the years ended December 31, 2008 and 2007 are as follows:

(Dollars in thousands)	Retail	Commercial	Retail & Commercial	Wholesale	Corporate and Investment	Mortgage	Wealth and Investment Management	Corporate Other and Treasury	Total
Balance, January 1, 2007	$4,891,473	$1,262,174	$-	$-	$147,469	$274,524	$307,390	$6,830	$6,889,860
NCF purchase adjustments [1]	(7,579)	9,469	-	-	(54)	(190)	2,418	(6,837)	(2,773)
Purchase of GenSpring Holdings, Inc. minority shares	-	-	-	-	-	-	10,148	-	10,148
SunAmerica contingent consideration	-	-	-	-	-	1,368	-	-	1,368
Prime Performance contingent consideration	7,034	-	-	-	-	-	-	-	7,034
Seix contingent consideration	-	-	-	-	-	-	42,287	-	42,287
Sale upon merger of Lighthouse Partners	-	-	-	-	-	-	(48,474)	-	(48,474)
FIN 48 adoption adjustment	3,042	840	-	-	39	138	69	7	4,135
Acquisition of Inlign Wealth Management Investments,	-	-	-	-	-	-	7,332	-	7,332
GenSpring's acquisition of TBK Investments, Inc.	-	-	-	-	-	-	10,576	-	10,576
Balance, December 31, 2007	$4,893,970	$1,272,483	$-	$-	$147,454	$275,840	$331,746	$-	$6,921,493
Intersegment transfers	**(4,893,970)**	**(1,272,483)**	**5,780,742**	**522,667**	**(147,454)**	**-**	**-**	**10,498**	**-**
NCF purchase adjustments [1]	**-**	**-**	**(11,782)**	**(119)**	**-**	**(416)**	**1,502**	**-**	**(10,815)**
Inlign Wealth Management Investments, LLC purchase price adjustments[1]	**-**	**-**	**-**	**-**	**-**	**-**	**1,540**	**-**	**1,540**
TBK Investments, Inc. purchase price adjustments[1]	**-**	**-**	**-**	**-**	**-**	**-**	**1,000**	**-**	**1,000**
Sale of First Mercantile Trust Company	**-**	**-**	**-**	**-**	**-**	**-**	**(11,734)**	**-**	**(11,734)**
Acquisition of GB&T	**-**	**-**	**143,030**	**-**	**-**	**-**	**-**	**-**	**143,030**
Sale of TransPlatinum Service Corp.	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**(10,498)**	**(10,498)**
Purchase of remaining interest in ZCI	**-**	**-**	**-**	**-**	**-**	**-**	**20,712**	**-**	**20,712**
Sale of majority interest in ZCI	**-**	**-**	**-**	**-**	**-**	**-**	**(15,433)**	**-**	**(15,433)**
Acquisition of Cymric Family Office Service	**-**	**-**	**-**	**-**	**-**	**-**	**1,378**	**-**	**1,378**
SunAmerica contingent consideration	**-**	**-**	**-**	**-**	**-**	**2,830**	**-**	**-**	**2,830**
Balance, December 31, 2008	**$-**	**$-**	**$5,911,990**	**$522,548**	**$-**	**$278,254**	**$330,711**	**$-**	**$7,043,503**

[1] SFAS No. 141 requires net assets acquired in a business combination to be recorded at their estimated fair value. Adjustments to the estimated fair value of acquired assets and liabilities generally occur within one year of the acquisition. However, tax related adjustments are permitted to extend beyond one year due to the degree of estimation and complexity. The purchase adjustments in the above table represent adjustments to the estimated fair value of the acquired net assets within the guidelines under US GAAP. See Note 1 "Significant Accounting Policies," to the Consolidated Financial Statements for changes to be implemented upon adoption of SFAS No. 141(R).

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

The changes in carrying amounts of other intangible assets for the years ended December 31 are as follows:

(Dollars in thousands)	Core Deposit Intangible	Mortgage Servicing Rights	Other	Total
Balance, January 1, 2007	$241,614	$810,509	$129,861	$1,181,984
Amortization	(68,959)	(181,263)	(27,721)	(277,943)
MSRs originated	-	639,158	-	639,158
Intangible assets obtained from sale upon merger of Lighthouse Partners, net [1]	-	-	24,142	24,142
Client relationship intangible obtained from acquisition of TBK Investments, Inc.	-	-	6,520	6,520
Purchase of GenSpring (formerly AMA, LLC) minority shares	-	-	2,205	2,205
Client relationship intangible obtained from acquisition of Inlign Wealth Management	-	-	4,120	4,120
Intangible assets obtained from acquisition of minority interest in Alpha Equity Management	-	-	1,788	1,788
Sale of MSRs	-	(218,979)	-	(218,979)
Balance, December 31, 2007	$172,655	$1,049,425	$140,915	$1,362,995
Amortization	**(56,854)**	**(223,092)**	**(19,406)**	**(299,352)**
MSRs originated	**-**	**485,597**	**-**	**485,597**
MSRs impairment reserve	**-**	**(371,881)**	**-**	**(371,881)**
MSRs impairment recovery	**-**	**1,881**	**-**	**1,881**
Sale of interest in Lighthouse Partners	**-**	**-**	**(5,992)**	**(5,992)**
Sale of MSRs	**-**	**(131,456)**	**-**	**(131,456)**
Customer intangible impairment charge	**-**	**-**	**(45,000)**	**(45,000)**
Purchased credit card relationships [2]	**-**	**-**	**9,898**	**9,898**
Acquisition of GB&T [3]	**29,510**	**-**	**-**	**29,510**
Sale of First Mercantile Trust	**-**	**-**	**(3,033)**	**(3,033)**
Other	**-**	**-**	**2,260**	**2,260**
Balance, December 31, 2008	**$145,311**	**$810,474**	**$79,642**	**$1,035,427**

[1] During the first quarter of 2007 SunTrust merged its wholly-owned subsidiary, Lighthouse Partners, into Lighthouse Investment Partners, LLC in exchange for a minority interest in Lighthouse Investment Partners, LLC and a revenue-sharing agreement. This transaction resulted in a $7.9 million decrease in existing intangible assets and a new intangible asset of $32.0 million.

[2] During the third quarter of 2008, SunTrust purchased a credit card portfolio of loans including the cardholder relationships from another financial institution representing an outstanding balance of $82.4 million at the time of acquisition. A majority of the premium paid was attributed to the cardholder relationships and is being amortized over seven years.

[3] During the second quarter of 2008, SunTrust acquired 100% of the outstanding shares of GB&T. As a result of the acquisition, SunTrust assumed $1.4 billion of deposit liabilities and recorded core deposit intangibles that are being amortized over an eight year period.

Intangible assets subject to amortization must be tested for impairment whenever events or changes in circumstances indicate that their carrying amounts may not be recoverable. The Company experienced a triggering event with respect to certain Wealth and Investment Management customer relationship intangibles during the second quarter of 2008 and performed impairment testing which resulted in an impairment charge of $45.0 million. The fair value of the customer relationship intangibles was determined using the residual income method and was compared to the carrying value to determine the amount of impairment. The impairment charge was recorded in noninterest expense and pertains to the client relationships that were recorded in 2004 in connection with an acquisition. While the overall acquired business was performing satisfactorily, the attrition level of the legacy clients had increased resulting in the impairment of this intangible asset.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

See Note 11, "Certain Transfers of Financial Assets, Mortgage Servicing Rights and Variable Interest Entities," to the Consolidated Financial Statements for discussion of the impairment reserve recorded with respect to MSRs during 2008.

The estimated amortization expense for intangible assets, excluding amortization of MSRs, is as follows:

(Dollars in thousands)	Core Deposit Intangible	Other	Total
2009	$41,081	$15,372	$56,453
2010	33,059	11,400	44,459
2011	26,533	8,493	35,026
2012	20,016	8,074	28,090
2013	13,617	6,917	20,534
Thereafter	11,005	29,386	40,390
Total	$145,311	$79,642	$224,953

Note 10 - Other Short-Term Borrowings and Contractual Commitments

Other short-term borrowings as of December 31 include:

	2008			2007		
(Dollars in thousands)	**Balance**	**Rates**		Balance	Rates	
Term Auction Facility	**$2,500,000**	**.49**	**%**	$-	-	%
Dealer collateral	**1,055,606**	**various**		445,836	various	
Master notes	**1,034,555**	**.25**		1,683,387	3.45	
Short-term promissory notes	**70,000**	**1.50**		678,000	various	
U.S. Treasury demand notes	**39,200**	**-**		123,000	3.55	
Other	**466,999**	**various**		91,135	various	
Total other short-term borrowings	**$5,166,360**			$3,021,358		

The average balances of other short-term borrowings for the years ended December 31, 2008, 2007, and 2006 were $3.1 billion, $2.5 billion, and $1.5 billion, respectively, while the maximum amounts outstanding at any month-end during the years ended December 31, 2008, 2007, and 2006 were $5.2 billion, $3.8 billion, and $2.4 billion, respectively. As of December 31, 2008, the Company had collateral pledged to the Federal Reserve discount window to support $10.7 billion of available borrowing capacity.

In the normal course of business, the Company enters into certain contractual obligations. Such obligations include obligations to make future payments on debt and lease arrangements, contractual commitments for capital expenditures, and service contracts. As of December 31, 2008, the Company had the following in unconditional obligations:

	As of December 31, 2008				
(Dollars in millions)	**1 year or less**	**1-3 years**	**3-5 years**	**After 5 years**	**Total**
Operating lease obligations	$208	$375	$313	$728	$1,624
Capital lease obligations [1]	1	3	2	10	16
Purchase obligations [2]	104	282	226	640	1,252
Total	$313	$660	$541	$1,378	$2,892

[1] Amounts do not include accrued interest.

[2] Includes contracts with a minimum annual payment of $5 million.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Note 11 - Certain Transfers of Financial Assets, Mortgage Servicing Rights and Variable Interest Entities

Certain Transfers of Financial Assets

The Company has transferred residential and commercial mortgage loans, student loans, commercial and corporate loans and collateralized debt obligation ("CDO") securities in a sale or securitization in which the Company has continuing involvement. All such transfers have been accounted for as sales by the Company. The Company's continuing involvement in such transfers has been limited to owning certain beneficial interests, such as securitized debt instruments, and certain servicing or collateral manager responsibilities. Except as specifically noted herein, the Company is not required to provide additional financial support to any of these entities, nor has the Company provided any support it was not obligated to provide. Generally, the Company's forms of continuing involvement under SFAS No. 140 also constituted variable interests ("VIs") under FIN 46(R). Interests that continue to be held by the Company in transferred financial assets, excluding servicing and collateral management rights, are generally recorded as securities available for sale or trading assets at their allocated carrying amounts based on their relative fair values at the time of transfer and are subsequently remeasured at fair value. For such interests, when quoted market prices are not available, fair value is generally estimated based on the present value of expected cash flows, calculated using management's best estimates of key assumptions, including credit losses, loan repayment speeds, and discount rates commensurate with the risks involved, based on how management believes market participants would determine such assumptions. See Note 20, "Fair Value Election and Measurement," to the Consolidated Financial Statements for further discussion of the Company's fair value methodologies. Servicing rights may give rise to servicing assets, which are initially recognized at fair value, subsequently amortized, and tested for impairment. Gains or losses upon sale, in addition to servicing fees and collateral management fees, are recorded in noninterest income. Changes in the fair value of interests that continue to be held by the Company that are accounted for as trading assets or securities available for sale are recorded in trading account profits and commissions or as a component of accumulated other comprehensive income, respectively. In the event any decreases in the fair value of such interests that are recorded as securities available for sale are deemed to be other-than-temporary, such losses are recorded in securities gains/losses. See Note 5, "Securities Available for Sale," to the Consolidated Financial Statements for a discussion of the Company's evaluation of other-than-temporary impairment charges on its available for sale securities portfolio.

Residential Mortgage Loans

SunTrust typically transfers first lien residential mortgage loans in securitization transactions involving qualifying special purpose entities ("QSPEs") sponsored by Ginnie Mae, Fannie Mae and Freddie Mac. These loans are exchanged for cash proceeds and servicing rights, which generate servicing assets for the Company. The servicing assets are recorded initially at fair value and subsequently amortized. See Mortgage Servicing Rights herein for further discussion of these servicing rights. In a limited number of securitization transactions, the Company has transferred loans to QSPEs sponsored by the Company. In these transactions, the Company has received securities representing retained interests in the transferred loans in addition to cash and servicing rights in exchange for the transferred loans. The securities are carried at fair value as either trading assets or securities available for sale. The Company accounts for all transfers of residential mortgage loans to QSPEs as sales and, because the transferees are QSPEs, the Company does not consolidate any of these entities.

In addition to transfers of first-lien residential mortgage loans, the Company executed one securitization transaction that involved Alt-A and other closed-end second lien residential mortgage loans. This transfer was executed with a special purpose entity that was a QSPE. The Company did not retain the servicing in this securitization, but retained certain subordinate interests. These interests were carried as trading assets, with changes in fair value recorded in current period income. Because this transferee was a QSPE, the Company did not consolidate it.

As seller, the Company has made certain representations and warranties with respect to the originally transferred loans, which are discussed in Note 18, "Reinsurance Arrangements and Guarantees," to the Consolidated Financial Statements. Repurchase of loans from QSPEs sponsored by the Company totaled approximately $17 million in 2008, including approximately $13 million of second lien loans that were substituted with new loans. Other than servicing responsibilities and repurchase contingencies under representations and warrantees, the Company has not provided any other support to the QSPE, including any support that the Company was not obligated to provide.

Commercial Mortgage Loans

Certain transfers of commercial mortgage loans were executed with third party special purpose entities, which the Company deemed to be QSPEs and did not consolidate. The Company's continuing involvement in these commercial loan transactions was limited to certain servicing activities, but not including any special servicing or decision making

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

capabilities. The Company's servicing activities were *de minimis* in the context of the overall transaction, such that the qualification of these entities as QSPEs was not relevant to the Company's ultimate accounting conclusions as the Company would not have consolidated these entities even if they were not QSPEs. The nature of the Company's servicing rights did not result in a servicing asset or a servicing liability for the Company, as the servicing fees were deemed adequate compensation for the servicing costs and are, therefore, recognized as earned. During 2008, the Company sold all of the related servicing rights, which are not financial assets subject to SFAS No. 140, in exchange for cash proceeds of approximately $6.6 million.

Commercial and Corporate Loans

In 2007, the Company completed a structured sale of corporate loans to multi-seller commercial paper conduits administered by unrelated third parties, from which it retained a 3% residual interest in the pool of loans transferred. The fair value of the residual at December 31, 2008 and December 31, 2007 was $16.2 million and $45.7 million, respectively. This interest relates to the unparticipated portion of the loans and does not constitute a variable interest in the third party conduits. The Company receives ongoing fees for servicing the loans and for providing off-balance sheet commitments in the form of liquidity facilities to these conduits. The sum of these commitments, which represents the Company's maximum exposure to loss under the facilities, totaled $500.7 million and $626.5 million as of December 31, 2008 and December 31, 2007, respectively. Under these facilities, the conduits' administrator, at its discretion, may obtain funding from the Company in the form of a 49% undivided interest in the pool of loans, excluding any currently defaulted loans, previously transferred to the conduits. The Company evaluates its loss exposure under these commitments pursuant to SFAS No. 5. These conduits are VIEs, but because the amount of the Company's commitment provided to each of these third party conduits is less than 50% of each conduit's total assets and the Company does not have any other variable interests in the conduits as a whole, the Company does not hold a variable interest in any of these conduits.

The Company has also transferred commercial leveraged loans and bonds to securitization vehicles that are considered VIEs. In addition to retaining certain securities issued by the VIEs, the Company also acts as manager or servicer for these VIEs as well as other VIEs that are funds of commercial leveraged loans and high yield bonds. In order to manage the risk to the debt and equity holders and maximize potential returns, the manager of certain of these entities, which is the Company, may buy and sell loans and other qualified assets on a limited basis as prescribed in the governing legal documents of each entity. As manager, the Company receives market-based senior fees, subordinate fees and, at times, performance fees for services provided, all of which are recognized as earned. The securities the Company owns and the manager fees it receives are considered variable interests. Upon formation of these entities, the Company evaluated the rights and obligations allocable to the variable interests of each entity and determined that the majority of the expected losses and residual returns of the VIEs are held by the preference shareholders as that class of interest holders is the first to absorb any credit losses and is also exposed and entitled to the majority of any compression and widening in each entity's net interest margin. They are also the holders who would benefit from any trading gains and losses incurred by the entity. The Company does not hold more than 20% of the preference shares in any of these entities and, as a result, is not considered the primary beneficiary who would be required to consolidate the entities. The Company has not had any reconsideration events, as defined in FIN 46(R), during the year ended December 31, 2008, that would change the Company's conclusion that it is not the primary beneficiary of these entities. At December 31, 2008, total assets of these entities not included on the Company's Consolidated Balance Sheets were approximately $2.7 billion compared to $2.6 billion at December 31, 2007. At December 31, 2008, the Company's direct exposure to loss related to these VIEs was approximately $16.7 million, which represents the Company's interests in preference shares of the entities compared to direct exposure of $386.1 million, as of December 31, 2007, which represents the Company's investment in senior interests of $358.8 million and interests in preference shares of $27.3 million. All interests held by the Company are classified as trading securities in the Consolidated Balance Sheets. No arrangements exist that could require the Company to provide any financial support to the VIEs, other than servicing advances that may be made in the normal course of its servicing activities.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Student Loans

In 2006, the Company completed one securitization of student loans through a transfer of loans to a QSPE and retained the corresponding residual interest in the QSPE trust. Because the entity is a QSPE, the Company does not consolidate it. The Company is the master servicer for the securitized student loans and subservices its servicing responsibilities to a third party. The Company's servicing responsibilities did not result in a servicing asset or servicing liability for the Company, as the servicing fees were deemed to be adequate compensation for the servicing costs and, therefore, are recognized as earned. No arrangements exist that could require the Company to provide any financial support to the QSPE, other than servicing advances that may be made in the normal course of its servicing activities.

CDO Securities

The Company has historically transferred bank trust preferred and subordinated debt securities in securitization transactions. The majority of these transfers occurred between 2002 and 2005 with one transaction completed in 2007. These securitization entities are considered VIEs under FIN 46(R). The Company retains an indirect equity interest in certain of the entities, which has generally been limited to 26% of the equity or less, as well as a nominal cost method investment in the collateral manager of certain of the entities. The Company does not directly serve as manager of the entities and does not hold a majority of the expected losses in any of the entities. As such, the Company does not consolidate the entities. The Company believes the majority of the expected loss of each entity is held by the equity holders at the time the transaction closes, as credit losses are the most significant contributor to the variability of the entity. As reconsideration events occur, a variable interest holder will have to reassess whether the losses in each entity have increased to such an extent that subordinate note holders and other debt holders now hold a majority of the expected losses. During 2008, the Company recognized impairment losses, net of distributions received, of $15.9 million related to the ownership of its equity interests in these VIEs. As of December 31, 2008, these equity interests have all been written down to a fair value of zero due to increased losses in the underlying collateral. During 2007 and 2008, the Company acquired additional interests in certain of these entities in conjunction with its acquisition of assets from Three Pillars Funding, LLC and the pending ARS issue discussed in Note 21, "Contingencies," to the Consolidated Financial Statements. The classes that have been, or are expected to be, purchased are the senior, non-deferrable notes that have priority in the waterfall of payments commensurate with their initial public ratings and, therefore, are protected from credit losses by the subordinate note holders. The Company reconsidered its involvement with the VIEs in conjunction with each of these purchases and continues to show that the interests acquired do not result in the Company being exposed to a majority of the expected losses in any of the VIEs. The total assets of the trust preferred CDO entities in which the Company has continuing involvement is approximately $2.0 billion at December 31, 2008. The Company is not obligated to provide any support to these entities and its maximum exposure to loss at December 31, 2008 is limited to (1) the current positions held in trading securities with a fair value of $45.0 million and (2) the remaining securities expected to be purchased in conjunction with the ARS issue, which have a total fair value of $9.7 million.

In 2006, the Company received $472.6 million in proceeds from the transfer of debt securities into a securitization of CDO securities of ABS and residential MBS. The securitization entity was considered a VIE under FIN 46(R). The Company retained 20% of the preference shares as well as other subordinated interests in the transaction and collateral manager responsibilities over the collateral, all of which are variable interests for the Company. However, a third party held the majority of the expected losses and, therefore, the Company did not consolidate the entity. All of the interests the Company retained from the securitization were classified as trading securities and were written down to a fair value of zero in 2007, resulting in a loss of $9.3 million during the year ended 2007. The securitization entity had total assets of $606.5 million at December 31, 2007 and was liquidated in 2008. The Company did not incur any additional losses related to the liquidation, nor did it receive any liquidating distributions.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

The following tables present certain information related to the Company's asset transfers in which it has continuing involvement for each of the years ended December 31, 2008, 2007, and 2006:

	Year Ended December 31, 2008					
(Dollars in thousands)	Residential Mortgage Loans	Commercial Mortgage Loans	Commercial and Corporate Loans	Student Loans	CDO Securities	Consolidated
Total proceeds	**$-**	**$-**	**$-**	**$-**	**$-**	**$-**
Gain/(loss)	**-**	**-**	**-**	**-**	**-**	**-**
Cash flows on interests held	**40,703**	**-**	**24,282**	**7,971**	**4,134**	**77,090**
Servicing or management fees	**5,483**	**182**	**14,216**	**833**	**-**	**20,714**

	Year Ended December 31, 2007					
(Dollars in thousands)	Residential Mortgage Loans	Commercial Mortgage Loans	Commercial and Corporate Loans	Student Loans	CDO Securities	Consolidated
Total proceeds	$1,892,819	$416,321	$2,186,367	$-	$-	$4,495,507
Gain/(loss)	(15,669)	(4,041)	4,949	-	-	(14,761)
Cash flows on interests held	6,427	-	22,194	-	3,198	31,819
Servicing or management fees	3,411	207	10,309	854	389	15,170

	Year Ended December 31, 2006					
(Dollars in thousands)	Residential Mortgage Loans	Commercial Mortgage Loans	Commercial and Corporate Loans	Student Loans	CDO Securities	Consolidated
Total proceeds	$496,500	$491,391	$1,054,933	$750,060	$472,580	$3,265,464
Gain	1,100	14,806	29,767	2,610	2,902	51,185
Cash flows on interests held	148	-	854	-	3,105	4,107
Servicing or management fees	1,579	124	2,057	700	-	4,460

As transferor, the Company typically provides standard representations and warranties in relation to assets transferred. However, other than the loan substitution discussed herein, purchases of assets previously transferred in securitization transactions were insignificant across all categories for all periods presented.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

The following tables present key assumptions and inputs, along with the impacts on the fair values of two unfavorable variations from the expected amounts, related to the fair values of the Company's retained and residual interests, excluding MSRs, which are separately addressed herein. Retained interests in residential mortgage securitization transactions include senior and subordinated securities. To estimate the market value of these securities, consideration was given to dealer indications of market value as well as the results of discounted cash flow models using market assumptions for prepayment rates, credit losses and discount rates due to illiquidity in the market for non-agency residential MBS. Fair value for senior retained interest was based on modeled valuations. For subordinated retained interests, the Company valued the retained interests using dealer indicated prices since these prices more accurately reflected the severe disruption in the market for these securities. The fair value of subordinated interest totaled $4.4 million as of December 31, 2008 based on a weighted average price of 12.3% of par.

	Year Ended December 31, 2008			
(Dollars in millions)	Residential Mortgage Senior Interests	Commercial and Corporate Loans	Student Loans	CDO Securities
Fair Value	$135.2	$23.0	$13.4	$45.0
Prepayment Rate	14%	10%	7%	0%
Decline in fair value from 10% adverse change	1.9	-	0.3	-
Decline in fair value from 20% adverse change	4.0	0.1	0.6	-
Expected Credit Losses	1.51% - 2.78%	1.21% -5.0%	N/A	22.81% -30.58%
Decline in fair value from 10% adverse change	- [1]	2.3	N/A	- [1]
Decline in fair value from 20% adverse change	- [1]	4.3	N/A	- [1]
Annual Discount Rate	11.5% - 16.0%	40%	25%	L + 6% to 8%
Decline in fair value from 10% adverse change	4.9	1.2	0.9	2.7
Decline in fair value from 20% adverse change	9.9	2.3	1.8	8.6
Weighted Average Life (in years)	5.69	2.69	5.83	24.97
Expected Static Pool Losses	2.31	1.21% - 5.0%	N/A	22.81% -30.58%

[1] Due to the seniority of these interests and the credit support in each transaction, the expected credit losses would need to experience an adverse change greater than 20% before the expected credit loss assumption would result in additional fair value changes.

	As of December 31, 2007				
(Dollars in millions)	Fair Value	Weighted Average Life (in years)	Prepayment Rate	Expected Credit Losses	Annual Discount Rate
Commercial and Corporate Loans [1]					
Residual	$90.9	4.37	7% -20%	0.35% - 2%	13% - 22%
As of December 31, 2007					
Decline in fair value from 10% adverse change			$1.0	$1.0	$3.2
Decline in fair value from 20% adverse change			1.8	1.7	6.2

[1] Includes residual interests held in association with student loan securitization activity, which are separately presented in 2008.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Portfolio balances, delinquency balances based on 90 days or more past due, and net charge-offs related to managed portfolio loans as of and for the years ending December 31, 2008 and 2007 are as follows:

	Principal Balance		Past Due		Net Charge-offs	
(Dollars in millions)	**2008**	2007	**2008**	2007	**2008**	2007
Type of loan:						
Commercial	**$41,039.9**	$35,929.4	**$340.9**	$100.7	**$194.6**	$110.3
Residential mortgage and home equity	**48,520.2**	47,691.3	**2,727.6**	1,324.2	**950.5**	216.0
Commercial real estate and construction	**24,821.1**	26,386.2	**1,492.6**	373.7	**215.2**	11.2
Consumer	**11,646.9**	11,458.0	**411.1**	242.8	**172.4**	79.0
Credit card	**970.3**	854.1	**-**	-	**31.6**	6.3
Total loan portfolio	**$126,998.4**	$122,319.0	**$4,972.2**	$2,041.4	**$1,564.3**	$422.8
Managed securitized loans						
Commercial	**$3,766.8**	$4,416.6	**$30.2**	$-	**$-**	$-
Residential mortgage	**1,723.2**	2,069.1	**128.2**	77.4	**24.3**	3.3
Commercial real estate and construction	**-**	420.4	**-**	-	**-**	-
Other	**565.2**	595.8	**61.6**	62.1	**0.3**	0.3
Total managed loans	**$133,053.6**	$129,820.9	**$5,192.2**	$2,180.9	**$1,588.9**	$426.4

Residential mortgage loans securitized through Ginnie Mae, Fannie Mae, and Freddie Mac have been excluded from the tables above since the Company does not retain any beneficial interests or other continuing involvement in the loans other than servicing responsibilities and repurchase contingencies under standard representations and warrantees made with respect to the transferred mortgage loans. The total amount of loans serviced by the Company as a result of such securitization transactions totaled $106.6 billion and $90.3 billion at December 31, 2008 and 2007, respectively. Related servicing fees received by the Company during 2008, 2007, and 2006 were $293.9 million, $263.2 million, and $209.5 million, respectively.

Mortgage Servicing Rights

In addition to other interests that continue to be held by the Company in the form of securities, the Company also retains MSRs from certain of its sales or securitizations of residential mortgage loans. MSRs on residential mortgage loans are the Company's only class of servicing assets and are reported at amortized cost, net of any allowance for impairment losses. As of December 31, 2008, the Company had not elected to carry any of its MSRs at fair value, although the Company did create a new MSRs class on January 1, 2009 that will be reported at fair value as discussed in Note 1, "Significant Accounting Policies", to the Consolidated Financial Statements.

The following table provides a rollforward of the activity of MSRs, which are included in intangible assets in the Consolidated Balance Sheets, as of December 31. Any impacts of this activity are reflected in the Company's Consolidated Statements of Income in mortgage servicing related income.

(Dollars in thousands)	**2008**	2007	2006
Balance at beginning of year	**$1,049,425**	$810,509	$657,604
Amortization	**(223,092)**	(181,263)	(195,627)
Servicing rights originated	**485,597**	639,158	503,801
MSRs impairment reserve	**(371,881)**	-	-
MSRs impairment recovery	**1,881**	-	-
Sale/securitization of MSRs	**(131,456)**	(218,979)	(155,269)
Balance at end of year	**$810,474**	$1,049,425	$810,509

Income earned by the Company on its MSRs is derived from contractually specified mortgage servicing fees and late fees. Such income earned for the twelve months ended December 31, 2008 and 2007 was $354.3 million and $337.7 million, respectively. These amounts are reported in mortgage servicing related income in the Consolidated Statements of Income.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

As of December 31, 2008, 2007, and 2006, the total unpaid principal balance of mortgage loans serviced was $162.0 billion, $149.9 billion, and $130.0 billion, respectively. Included in these amounts were $130.5 billion, $114.6 billion, and $91.5 billion as of December 31, 2008, 2007, and 2006, respectively, of loans serviced for third parties. No valuation allowances were required at December 31, 2007 and 2006, for the Company's MSRs. As of December 31, 2008, the Company had established a valuation allowance of $370.0 million. No permanent impairment losses were written-off against the allowance during the year ended December 31, 2008.

Prepayment risk subjects the MSRs to impairment risk. Impairment of MSRs is recognized when the fair value is less than the amortized cost basis of the MSRs. For purposes of measuring impairment, MSRs are stratified based on interest rate and type of related loan. When fair value is less than amortized cost for an individual stratum and the impairment is believed to be temporary, the impairment is recorded to a valuation allowance; the impairment is recorded as a write-down of the amortized cost basis of the MSRs when the impairment is deemed other-than-temporary. The Company has not historically specifically hedged MSRs but has managed the potential impairment risk through the Company's overall asset/liability management process with consideration to the natural counter-cyclicality of servicing and mortgage originations, as well as available for sale securities. See further discussion in Note 5, "Securities Available for Sale", to the Consolidated Financial Statements.

A summary of the key characteristics, inputs, and economic assumptions used to estimate the fair value of the Company's MSRs and the sensitivity of the December 31, 2008 and 2007 fair values to immediate 10% and 20% adverse changes in those assumptions follows.

(Dollars in millions)	**2008**	2007
Fair value of retained MSRs	**$815.6**	$1,407.1
Prepayment rate assumption (annual)	**32.8%**	16.5%
Decline in fair value of 10% adverse change	**$61.2**	$60.5
Decline in fair value of 20% adverse change	**113.8**	115.4
Discount rate (annual)	**9.3%**	9.9%
Decline in fair value of 10% adverse change	**$17.9**	$45.8
Decline in fair value of 20% adverse change	**35.0**	88.7
Weighted-average life (in years)	**2.50**	5.30
Weighted-average coupon	**6.15**	6.21

The above sensitivities are hypothetical and should be used with caution. As the amounts indicate, changes in fair value based on variations in assumptions generally cannot be extrapolated because the relationship of the change in assumption to the change in fair value may not be linear. Also, in this table, the effect of a variation in a particular assumption on the fair value of the retained interest is calculated without changing any other assumption. In reality, changes in one factor may result in changes in another, which might magnify or counteract the sensitivities.

Variable Interest Entities ("VIEs")

In addition to the Company's involvement with VIEs that has arisen due to certain transfers of financial assets, which is discussed herein under "Certain Transfers of Financial Assets", the Company also has involvement with VIEs from other business activities.

Three Pillars Funding, LLC

SunTrust assists in providing liquidity to select corporate clients by directing them to a multi-seller commercial paper conduit, Three Pillars Funding, LLC ("Three Pillars"). Three Pillars provides financing for direct purchases of financial assets originated and serviced by SunTrust's corporate clients. Three Pillars finances this activity by issuing A-1/P-1 rated commercial paper ("CP"). The result is a favorable funding arrangement for these clients. Three Pillars had no other form of funding outstanding as of December 31, 2008 or 2007.

The Company's involvement with Three Pillars includes the following activities: services related to the administration of Three Pillars' activities and client referrals to Three Pillars; the issuing of letters of credit, which provide partial credit protection to the commercial paper holders; and providing the majority of the liquidity arrangements that would

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

provide funding to Three Pillars in the event it can no longer issue commercial paper or in certain other circumstances. The Company's activities with Three Pillars generated total fee revenue for the Company, net of direct salary and administrative costs incurred by the Company, of approximately $48.2 million, $28.7 million, and $31.0 million for the years ended December 31, 2008, 2007, and 2006, respectively.

Three Pillars has issued a subordinated note to a third party, which matures in March 2015; however, the note holder may declare the note due and payable upon an event of default, which includes any loss drawn on the note funding account that remains unreimbursed for 90 days. The subordinated note holder absorbs the first dollar of loss in the event of nonpayment of any of Three Pillars' assets. Only the remaining balance of the first loss note, after any incurred losses, will be due. If the first loss note holder declared its loss note due under such circumstances and a new first loss note or other first loss protection was not obtained, the Company would likely consolidate Three Pillars on a prospective basis. The outstanding and committed amounts of the subordinated note were $20.0 million at December 31, 2008 and 2007.

The Company has determined that Three Pillars is a VIE, as Three Pillars has not issued sufficient equity at risk, as defined by FIN 46(R), that would otherwise control Three Pillars. The Company and the holder of the subordinated note are the two significant VIE holders in Three Pillars. The Company and this holder are not related parties or de facto agents of one another. As such, the Company has developed a mathematical model that calculates the expected losses and expected residual returns of Three Pillar's assets and operations, based on a Monte Carlo simulation, and allocates each to the Company and the holder of the subordinated note. The results of this model, which the Company evaluates monthly, have shown that the holder of the subordinated note absorbs the majority of Three Pillars' expected losses. The Company believes the subordinated note is sized in an amount sufficient to absorb the expected loss of Three Pillars based on current commitment levels as well as on the forecasted growth in Three Pillars' assets and, therefore, has concluded it is not Three Pillars' primary beneficiary and is not required to consolidate Three Pillars. Should future losses reduce the subordinated note funding account below its required level or if the note is reduced to a size deemed insufficient to support the growth of the assets in Three Pillars, the Company would likely be required to consolidate Three Pillars, if an amendment of the current subordinate note or a new subordinate note could not be obtained. The Company currently believes events resulting in consolidation are unlikely to occur.

As of December 31, 2008 and December 31, 2007, Three Pillars had assets not included on the Company's Consolidated Balance Sheets of approximately $3.5 billion and $5.3 billion, respectively, consisting primarily of secured loans. Funding commitments and outstanding receivables extended by Three Pillars to its customers totaled $5.9 billion and $3.5 billion, respectively, as of December 31, 2008, almost all of which renew annually. Funding commitments and outstanding receivables extended by Three Pillars to its customers totaled $7.7 billion and $4.6 billion, respectively, as of December 31, 2007. The majority of the commitments are backed by trade receivables and commercial loans that have been originated by companies operating across a number of industries. Assets supporting those commitments have a weighted average life of 1.52 years. The majority of the commitments are backed by trade receivables and commercial loans, which collateralize 47% and 20%, respectively, of the outstanding commitments, as of December 31, 2008. Each transaction added to Three Pillars is typically structured to an implied 'A/A2' rating according to established credit and underwriting policies as approved by Credit Risk Management and monitored on a regular basis to ensure compliance with each transaction's terms and conditions. Typically, transactions contain dynamic credit enhancement structures that provide increased credit protection in the event asset performance deteriorates. If asset performance deteriorates beyond predetermined covenant levels, the transaction could become ineligible for continued funding by Three Pillars. This could result in the transaction being amended with the approval of Credit Risk Management or Three Pillars could terminate the transaction and enforce any rights or remedies available; including amortization of the transaction or liquidation of the collateral. In addition, Three Pillars has the option to fund under the liquidity facility provided by the Company in connection with the transaction and may be required to fund under the liquidity facility if the transaction remains in breach. In addition, each commitment renewal requires Credit Risk Management approval. The Company is not aware of unfavorable trends within Three Pillars for which the Company expects to suffer material losses. During the years ended December 31, 2008 and 2007, there were no write-downs of Three Pillars' assets.

At December 31, 2008, Three Pillars' outstanding CP used to fund the above assets totaled $3.5 billion, with remaining weighted-average lives of 13.5 days and maturities through March 19, 2009. Three Pillars was generally able to fund itself by issuing CP on behalf of commercial clients, despite the lack of market liquidity. However, during the month of September 2008, the illiquid markets put a significant strain on the CP market and, as a result of this temporary disruption, the Company purchased approximately $275.4 million par amount of Three Pillars overnight CP, none of

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

which was outstanding at December 31, 2008. Separate from the temporary disruption in the CP markets in September, the Company held outstanding Three Pillars' CP with a par amount of $400 million, all of which matured on January 9, 2009. At December 31, 2008, this CP is recorded on the Company's Consolidated Balance Sheet as a trading asset, carried at fair value. The Company held no amounts as of December 31, 2007.

During the third quarter of 2007, the Company, in its sole discretion, elected to purchase a limited amount of Three Pillars' CP due to the attractive market yield, limited credit risk, and liquidity of these securities and was under no obligation, contractual or otherwise, to do so. The aggregate face amount of Three Pillars' issued commercial paper purchased in the third quarter totaled $775.1 million and was purchased at market rates ranging from 5.27% to 6.29%, with maturities ranging from 7 days to 27 days. This amount represented less than 1% of Three Pillars' total issuance for the year ended December 31, 2007. None of the Company's purchases of CP during 2008 and 2007 altered the Company's conclusion that it is not the primary beneficiary of Three Pillars.

The Company has off-balance sheet commitments in the form of liquidity facilities and other credit enhancements that it has provided to Three Pillars. These commitments are accounted for as financial guarantees by the Company in accordance with the provisions of FIN 45. The liquidity commitments are revolving facilities that are sized based on the current commitments provided by Three Pillars to its customers. The liquidity facilities are generally used if new commercial paper cannot be issued by Three Pillars to repay maturing commercial paper. However, the liquidity facilities are available in all circumstances, except certain bankruptcy-related events with respect to Three Pillars. Draws on the facilities are subject to the purchase price (or borrowing base) formula that, in many cases, excludes defaulted assets to the extent that they exceed available over-collateralization in the form of non-defaulted assets, and may also provide the liquidity banks with loss protection equal to a portion of the loss protection provided for in the related securitization agreement. Additionally, there are transaction specific covenants and triggers that are tied either to the performance of the assets of the relevant seller/servicer that may result in a transaction termination event, which , if continuing, would require funding through the related liquidity facility. Finally, in a termination event of Three Pillars, such as if its tangible net worth falls below $5,000 for a period in excess of 15 days, Three Pillars would be unable to issue CP which would likely result in funding through the liquidity facilities.

Draws under the credit enhancement are also available in all circumstances, but are generally used to the extent required to make payment on any maturing commercial paper if there are insufficient funds from collections of receivables or the use of liquidity facilities. The required amount of credit enhancement at Three Pillars will vary from time to time as new receivable pools are purchased or removed from its asset portfolio, but is generally equal to 10% of the aggregate commitments of Three Pillars.

The Company manages the credit risk associated with these commitments by subjecting them and the underlying collateral assets of Three Pillars to the Company's normal credit approval and monitoring processes. Any losses on the commitments provided to Three Pillars by the Company resulting from a loss due to nonpayment on the underlying assets would be reimbursed to the Company from the subordinated note reserve account, which is the amount outstanding on the subordinated note agreement. The total notional amounts of the liquidity facilities and other credit enhancements represent the Company's maximum exposure to potential loss, which was $6.1 billion and $597.5 million, respectively, as of December 31, 2008, compared to $7.9 billion and $763.4 million, respectively, as of December 31, 2007. The Company did not have any liability recognized on its Consolidated Balance Sheets related to these liquidity facilities and other credit enhancements as of December 31, 2008 or 2007, as no amounts had been drawn, nor were any draws probable to occur, such that a loss should have been accrued. In addition, no losses were recognized by the Company in connection with these off-balance sheet commitments during the years ended December 31, 2008 and 2007, respectively. There are no other contractual arrangements that the Company plans to enter into with Three Pillars to provide it additional support.

Prior to January 1, 2008, the Company had provided a separate liquidity facility to Three Pillars that supported Three Pillars' qualified ABS. During the year ended December 31, 2007, Three Pillars decided to exit those types of investments due to continued deterioration in the performance of the underlying collateral and market illiquidity, which resulted in a material decrease in the market value of those securities. In order to exit this business, Three Pillars drew on this separate liquidity facility with the Company, under which the Company purchased the qualified ABS at amortized cost plus the related unpaid CP interest used to fund that investment, which totaled $725.0 million. Subsequent to this funding, Three Pillars and the Company canceled this separate liquidity agreement, as Three Pillars had exited this business. Of the investments included in the purchase, only one security in the amount of $62 million had experienced a decline in credit to such an extent that management believed a future principal loss on the ABS was

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

likely to occur. As a result of the purchase of the qualified ABS, the Company recorded a trading loss of $144.8 million during the fourth quarter of 2007. Since the purchase, the Company has sold all but one of the ABS positions, which has a fair value of $10.8 million at December 31, 2008. For the year ended December 31, 2008, the Company received $406.6 million in proceeds from the sales of these ABS, $14.1 million of paydowns, and recognized $144.8 million in net trading losses.

Total Return Swaps ("TRS")

The Company has had involvement with various VIEs that purchase portfolios of loans at the direction of third parties. These third parties are not related parties to the Company, nor are they and the Company de facto agents of each other. In order for the VIEs to purchase the loans, the Company provides senior financing to these VIEs; at December 31, 2008 and 2007, the Company had $603.4 million and $38.0 million, respectively, in such financing outstanding, which is classified within trading assets on the Consolidated Balance Sheets. In addition, the Company also enters into TRS transactions with the VIEs that the Company mirrors with a TRS with the third party who controls the loans owned by the VIE. The TRS transactions pass through all interest and other cash flows on the loans to the third party, along with exposing the third parties to any depreciation on the loans and providing them with the rights to all appreciation on the loans. The terms of the TRS transactions require the third parties to post initial margin, in addition to ongoing margin as the fair values of the underlying loans decrease. The Company has concluded that it is not the primary beneficiary of these VIEs. The VIEs are designed for the benefit of the third parties, and the third parties have implicit variable interests in the VIEs via their TRS transactions with the Company, whereby these third parties absorb the majority of the expected losses and are entitled to the majority of the expected residual returns of the VIEs. At December 31, 2008 and 2007, these VIEs had entered into TRS with the Company that had outstanding notional amounts of $602.1 million and $38.0 million, respectively. The Company has not provided any support that it was not contractually obligated to for the years ended December 31, 2008 and 2007. As of December 31, 2008, the Company has decided to exit this TRS business and is in the process of terminating the transactions. For additional information on the Company's TRS with these VIEs, see Note 18, "Reinsurance Arrangements and Guarantees," to the Consolidated Financial Statements.

Community Development Investments

As part of its community reinvestment initiatives, the Company invests almost exclusively throughout its footprint in multi-family affordable housing developments and other community development entities as a limited and/or general partner and/or a debt provider. The Company receives tax credits for its partnership investments. The Company has determined that these partnerships are VIEs when SunTrust does not own 100% of the entity because the holders of the equity investment at risk do not have the direct or indirect ability to make decisions that have a significant impact on the business. Accordingly, the Company's general partner, limited partner and/or debt interests are variable interests that the Company evaluates for purposes of determining whether the Company is the primary beneficiary. During 2008, SunTrust did not provide any financial or other support to its consolidated or unconsolidated investments that it was not previously contractually required to provide.

For some partnerships, SunTrust operates strictly as a general partner or the indemnifying party and as such is exposed to a majority of the partnerships' expected losses. Accordingly, SunTrust consolidates these partnerships on its Consolidated Balance Sheet. As the general partner or indemnifying party, SunTrust typically guarantees the tax credits due to the limited partner and is responsible for funding construction and operating deficits. As of December 31, 2008 and 2007, total assets, which consists primarily of fixed assets and cash, attributable to the consolidated partnerships was $20.5 million and $21.5 million, respectively, and total liabilities, excluding intercompany liabilities, primarily representing the minority interest liability for the limited partner investments, was $14.6 million and $15.8 million, respectively. Security deposits from the tenants are recorded as liabilities on SunTrust's Consolidated Balance Sheet. The Company maintains separate cash accounts to fund these liabilities and these assets are considered restricted. The tenant liabilities and corresponding restricted cash assets were $0.1 million and $0.1 million as of December 31, 2008 and 2007, respectively. While the obligations of the general partner or indemnifying entity are generally non-recourse to SunTrust, the Company, as the general partner or the indemnifying entity, may from time to time step in when needed to fund deficits. During 2008 and 2007, SunTrust did not provide any significant amount of funding as the general partner or the indemnifying entity to fund any deficits they may have had.

For other partnerships, the Company acts only in a limited partnership capacity. The Company has determined that it is not the primary beneficiary of these partnerships because it will not absorb a majority of the expected losses of the partnership. Typically, the general partner or an affiliate of the general partner provide guarantees to the limited partner

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

which protect the Company from losses attributable to operating deficits, construction deficits, and tax credit allocation deficits. The Company accounts for its limited partner interests in accordance with the provisions of EITF No. 94-1, "Accounting for Tax Benefits Resulting from Investments in Affordable Housing Projects". Partnership assets of approximately $1,045.3 million and $819.5 million in these partnerships were not included in the Consolidated Balance Sheets at December 31, 2008 and 2007, respectively. These limited partner interests had carrying values of $188.9 million and $148.4 million at December 31, 2008 and 2007, respectively, and are recorded in other assets on the Company's Consolidated Balance Sheets. The Company's maximum exposure to loss for these limited partner investments totaled $473.2 million and $333.8 million at December 31, 2008 and 2007, respectively. The Company's maximum exposure to loss at December 31, 2008 would be borne by the loss of the limited partnership equity investments along with $202.7 million of loans issued by the Company to the limited partnerships. The difference between the maximum exposure to loss and the investment and loan balances is primarily attributable to the unfunded equity commitments. Unfunded equity commitments are amounts that SunTrust has committed to the partnerships upon the partnerships meeting certain conditions. When these conditions are met, the Company will invest these additional amounts in the partnerships.

When SunTrust owns both the limited partner and general partner or indemnifying party, SunTrust consolidates the partnerships and does not consider these partnerships VIEs because as owner of the partnerships the Company has the ability to directly and indirectly make decisions that have a significant impact on the business. As of December 31, 2008 and 2007, total assets, which consists primarily of fixed assets and cash, attributable to the consolidated, non-VIE partnerships was $493.5 million and $531.1 million, respectively, and total liabilities, excluding intercompany liabilities, primarily representing third-party borrowings, were $327.2 million and $333.8 million, respectively.

RidgeWorth Family of Mutual Funds

RidgeWorth Capital Management, Inc., ("RidgeWorth"), formerly known as Trusco Capital Management, Inc., a registered investment advisor and wholly-owned subsidiary of the Company, serves as the investment advisor for various private placement and publicly registered investment funds (collectively the "Funds"). The Company evaluates these Funds to determine if the Funds are voting interest entities or VIEs, as well as monitors the nature of its interests in each Fund to determine if the Company is required to consolidate any of the Funds.

The Company has concluded that some of the Funds are VIEs because the equity investors lack decision making rights. However, the Company has concluded that it is not the primary beneficiary of these funds as the Company does not absorb a majority of the expected losses or expected returns of the funds. As the Company does not invest in these funds, its exposure to loss is limited to the investment advisor and other administrative fees it earns. Payment on these fees is received from the individual investor accounts. The total unconsolidated assets of these funds as of December 31, 2008 and 2007 were $3.6 billion and $4.3 billion, respectively.

While the Company does not have any contractual obligation to provide monetary support to any of the Funds, the Company did elect to provide support for specific securities on one occasion in 2008 and two occasions in 2007.

In September 2008, the Company purchased, at amortized cost plus accrued interest, a Lehman Brothers Holdings, Inc. ("Lehman Brothers") security from the RidgeWorth Prime Quality Money Market Fund. This fund received a cash payment for the accrued interest and a $70 million SunTrust-issued note which will mature on September 30, 2009. The Lehman Brothers security went into default when Lehman Brothers filed for bankruptcy in September. The Company took this action in response to the unprecedented market events during the third quarter in order to protect investors in the fund from losses associated with this specific security. When purchased by the fund, the Lehman Brothers security was rated A-1/P-1 and was a Tier 1 eligible security. Lehman Brothers is currently in liquidation and the ultimate timing and form of repayment on the security is not known at this time. During the third quarter, the Company recorded a pre-tax market valuation loss of $63.8 million as a result of the purchase. Prior to the purchase of the Lehman Brothers security, the Company had concluded that this fund was a voting interest entity as the equity investors in the fund have the ability to control the fund. In connection with the purchase, the Company re-evaluated its involvement with this fund, including consideration of whether or not the Company had an implicit variable interest in the fund as a result of the action it took currently as well as the action it took in December 2007. As SunTrust has no contractual obligation to provide any current or future support to the fund, the size of the financial support provided, and the unique circumstances that caused the Company to intervene both in September 2008 and December 2007, SunTrust concluded that the fund was still a voting interest entity and that, even if the fund were deemed a VIE, the Company would not be the primary beneficiary. As of December 31, 2008, the security had a carrying value of $6.7 million.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

In December 2007, the Company purchased, through a combination of cash and SunTrust-issued notes, approximately $1.4 billion in SIV securities from the RidgeWorth Prime Quality Money Market Fund and the RidgeWorth Institutional Cash Management Money Market Fund at amortized cost plus accrued interest. The SunTrust-issued notes matured on June 30, 2008. RidgeWorth is the investment adviser to these funds. The Company took this action to protect investors in these funds from possible losses associated with these securities. The SIV assets were originally rated A-1/P-1 and were Tier 1 eligible securities when purchased and were collateralized by various domestic and foreign assets, residential MBS, including Alt-A and subprime collateral, CDO securities, and commercial loans. Prior to the purchase of the SIV securities, the Company had concluded that these funds were voting interest entities as the equity investors in the funds have the ability to control the funds. In connection with the purchase, the Company re-evaluated its involvement with these funds, including consideration of whether or not the Company had an implicit variable interest in the funds as a result of the action it took. As SunTrust has no contractual obligation to provide any current or future support to the funds, the size of the financial support provided, and the unique circumstances that caused the Company to intervene, SunTrust concluded that the funds were still voting interest entities and that, even if the funds were deemed VIEs, the Company would not be the primary beneficiary of the funds. The Company recorded a pre-tax mark to market valuation loss of $250.5 million in the fourth quarter of 2007 as a result of purchasing these securities. During 2008, the Company recorded $40.4 million of net market valuation losses, sold approximately $359.0 million in securities, and received over $613.8 million in payments from paydowns, settlements, and maturities from these securities.

During the third quarter of 2007, the Company provided support for specific securities within an institutional private placement fund (the “Private Fund”). This action led the Company to conclude that it was the primary beneficiary of the Private Fund as it was likely to absorb a majority of the expected losses of the Private Fund. Accordingly, as of September 30, 2007, SunTrust consolidated the Private Fund, recorded approximately $967 million in trading securities and a similar amount of other liabilities that represented the minority interest obligations of the Private Fund. After a thorough evaluation of the Private Fund within the current market conditions, the Company further elected to close the Private Fund in November 2007, which resulted in the termination of the VIE. As a result, the Company purchased the securities of the Private Fund at the securities’ amortized cost plus accrued interest and Private Fund shareholders received their full principal and interest due in cash. The Company has been managing the trading securities that were received from the Private Fund as part of its actively managed trading portfolio. Due to increased losses within the collateral underlying these securities, market valuation write-downs of $132.4 million were recorded during 2007. During 2008, the Company recorded $40.0 million of net market valuation losses, sold over $409.1 million in securities, and received over $242.9 million in payments related to these securities. At December 31, 2008, the Company still owned securities with a fair value of $51.3 million in trading assets.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Note 12 - Long-Term Debt

Long term debt at December 31 consisted of the following:

(Dollars in thousands)	**2008**	2007
Parent Company Only		
Senior		
6.25% notes due 2008[3]	**$-**	$295,032
4.00% notes due 2008	**-**	349,827
4.25% notes due 2009	**299,781**	299,535
5.25% notes due 2012[3]	**427,718**	503,802
Floating rate notes due 2015 based on one month LIBOR + 1.25%	**885,227**	-
6.00% notes due 2017	**500,000**	499,962
Floating rate notes due 2019 based on three month LIBOR + .15%	**50,563**	50,563
6.00% notes due 2028[2]	**8,829**	221,688
Total senior debt - Parent	**2,172,118**	2,220,409
Subordinated		
7.75% notes due 2010[3]	**303,630**	320,140
6.00% notes due 2026	**199,903**	199,900
Total subordinated debt - Parent	**503,533**	520,040
Junior Subordinated		
Floating rate notes due 2027 based on three month LIBOR + .67%[1]	**349,740**	349,740
Floating rate notes due 2027 based on three month LIBOR + .98%[1]	**34,030**	34,030
Floating rate notes due 2028 based on three month LIBOR + .65%[1]	**249,743**	249,736
Floating rate notes due 2032 based on three month LIBOR + 3.40%[1]	**12,411**	-
Floating rate notes due 2033 based on three month LIBOR + 3.10%[1]	**2,369**	-
Floating rate notes due 2034 based on three month LIBOR + 2.65%[1]	**7,571**	-
6.10% notes due 2036[1]	**999,833**	999,831
5.588% notes due 2042[1]	**500,000**	500,000
7.7875% notes due 2068[1]	**685,000**	-
Total junior subordinated debt - Parent	**2,840,697**	2,133,337
Total Parent Company (excluding intercompany of $160,000 in 2008 and $189,835 in 2007)	**5,516,348**	4,873,786
Subsidiaries		
Senior		
Floating rate notes due 2008 based on three month LIBOR + .08%	**-**	500,000
Floating rate notes due 2009 based on three month LIBOR + .10%	**400,000**	400,000
4.55% notes due 2009	**-**	199,946
Floating rate notes due 2010 based on three month LIBOR + .65% [4]	**750,000**	-
3.0% notes due 2011 [4]	**2,243,257**	-
Floating rate euro notes due 2011 based on three month EURIBOR + .11%	**1,395,150**	1,458,400
Floating rate sterling notes due 2012 based on GBP LIBOR + .12%	**582,880**	793,120
Floating rate notes due 2012 based on three month LIBOR + .11%	**1,000,000**	1,000,000
Floating rate notes due 2014 based on one month LIBOR + 1.25%	**274,837**	-
Capital lease obligations	**16,061**	17,124
FHLB advances (0.00% - 8.79%; advances at fair value 3,659,423 at December 31, 2008 and $3,665,928 at December 31, 2007)	**10,739,956**	9,687,173
Direct finance lease obligations	**153,569**	260,760
Other	**475,409**	463,674
Total senior debt - subsidiaries	**18,031,119**	14,780,197
Subordinated		
6.375% notes due 2011[3]	**862,096**	1,042,133
5.00% notes due 2015[3]	**494,886**	526,860
Floating rate notes due 2015 based on three month LIBOR + .30%	**200,000**	200,000
Floating rate notes due 2015 based on three month LIBOR + .29%	**300,000**	300,000
5.45% notes due 2017[3]	**441,188**	478,428
5.20% notes due 2017[3]	**312,676**	332,221
7.25% notes due 2018[3]	**394,184**	-
6.50% notes due 2018[2]	**-**	140,447
5.40% notes due 2020[3]	**259,884**	282,436
Total subordinated debt - subsidiaries	**3,264,914**	3,302,525
Total subsidiaries	**21,296,033**	18,082,722
Total long-term debt	**$26,812,381**	$22,956,508

[1] Notes payable to trusts formed to issue Trust Preferred Securities totaled $2.8 billion and $2.1 billion at December 31, 2008 and 2007, respectively.

[2] Debt was extinguished in 2008 prior to the contractual repayment date. The Company recognized a net loss of $11.7 million as a result of the prepayment.

[3] Debt recorded at fair value.

[4] Government guaranteed debt issued under the FDIC's Temporary Liquidity Guarantee Program.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Maturities of long-term debt are: 2009 – $1,536.5 million; 2010 – $3,637.5 million; 2011 – $6,442.8 million; 2012 – $7,185.5 million; 2013 – $126.7 million; and thereafter—$7,883.4 million. Restrictive provisions of several long-term debt agreements prevent the Company from creating liens on, disposing of, or issuing (except to related parties) voting stock of subsidiaries.

Further, there are restrictions on mergers, consolidations, certain leases, sales or transfers of assets, minimum shareholders' equity, and maximum borrowings by the Company. As of December 31, 2008, the Company was in compliance with all covenants and provisions of long-term debt agreements. As currently defined by federal bank regulators, long-term debt of $2,847.3 million and $2,133.3 million as of December 31, 2008 and 2007, respectively, qualified as Tier 1 capital and long-term debt of $3,008.3 million and $3,073.2 million as of December 31, 2008 and 2007, respectively, qualified as Tier 2 capital. As of December 31, 2008, the Company had collateral pledged to the FHLB of Atlanta to support $4.5 billion of available borrowing capacity.

In connection with FIN 46(R), the Company does not consolidate certain wholly-owned trusts which had been formed for the sole purpose of issuing trust preferred securities. The proceeds from the trust preferred securities issuances were invested in junior subordinated debentures of the Parent Company and Bank Parent Company. The obligations of these debentures constitute a full and unconditional guarantee by the Parent Company and Bank Parent Company of the trust preferred securities.

Note 13 - Earnings Per Share

Net income is the same in the calculation of basic and diluted EPS. Equivalent shares of 33.5 million and 9.1 million related to common stock options and common stock warrants for the years ended December 31, 2008 and 2007, respectively, were excluded from the computations of diluted EPS because they would have been antidilutive. There were no antidilutive shares for the year ending December 31, 2006. A reconciliation of the difference between average basic common shares outstanding and average diluted common shares outstanding for the twelve months ended December 31 is included in the following table:

(In thousands, except per share data)	**2008**	2007	2006
Net income	**$795,774**	$1,634,015	$2,117,471
Series A preferred dividends	**22,255**	30,275	7,729
U.S. Treasury preferred dividends	**26,579**	-	-
Net income available to common shareholders	**$746,940**	$1,603,740	$2,109,742
Average basic common shares	**348,919**	349,346	359,413
Effect of dilutive securities:			
Stock options	**190**	2,396	2,261
Performance and restricted stock	**1,074**	946	1,128
Average diluted common shares	**350,183**	352,688	362,802
Earnings per average common share - diluted	**$2.13**	$4.55	$5.82
Earnings per average common share - basic	**$2.14**	$4.59	$5.87

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Note 14 – Capital

The Company is subject to various regulatory capital requirements which involve quantitative measures of the Company's assets.

	As of December 31,					
	2008			2007		
(Dollars in millions)	Amount	Ratio		Amount	Ratio	
SunTrust Banks, Inc.						
Tier 1 capital	**$ 17,614**	**10.87**	**%**	$ 11,425	6.93	%
Total capital	**22,743**	**14.04**		16,994	10.30	
Tier 1 leverage		**10.45**			6.90	
SunTrust Bank						
Tier 1 capital	**12,565**	**7.88**		12,338	7.60	
Total capital	**17,331**	**10.87**		16,944	10.44	
Tier 1 leverage		**7.60**			7.56	

Substantially all of the Company's retained earnings are undistributed earnings of SunTrust Bank, which are restricted by various regulations administered by federal and state bank regulatory authorities. Retained earnings of SunTrust Bank available for payment of cash dividends to the parent company under these regulations totaled approximately $0.6 billion at December 31, 2007. There was no capacity for payment of cash dividends to the parent company under these regulations at December 31, 2008. The Company also has amounts of cash reserves required by the Federal Reserve. As of December 31, 2008 and 2007, these reserve requirements totaled $914.8 million and $882.0 million, respectively.

Preferred Stock

The following provides detail of the Company's preferred stock balances:

	As of December 31,	
(Dollars in thousands)	2008	2007
Series A (5,000 shares outstanding)	**$500,000**	$500,000
Series C (35,000 shares outstanding)	**3,404,841**	-
Series D (13,500 shares outstanding)	**1,316,862**	-
	$5,221,703	$500,000

On September 12, 2006, the Company issued depositary shares representing ownership interests in 5,000 shares of Perpetual Preferred Stock, Series A, no par value and $100,000 liquidation preference per share (the "Series A Preferred Stock"). The Company is authorized to issue 50,000 shares. The Series A Preferred Stock has no stated maturity and will not be subject to any sinking fund or other obligation of the Company. Dividends on the Series A Preferred Stock, if declared, will accrue and be payable quarterly at a rate per annum equal to the greater of three-month LIBOR plus 0.53 percent, or 4.00 percent. Dividends on the shares are non-cumulative. Shares of the Series A Preferred Stock have priority over the Company's common stock with regard to the payment of dividends. As such, the Company may not pay dividends on or repurchase, redeem, or otherwise acquire for consideration shares of its common stock unless dividends for the Series A Preferred Stock have been declared for that period, and sufficient funds have been set aside to make payment. On or after September 15, 2011, the Series A Preferred Stock will be redeemable at the Company's option at a redemption price equal to $100,000 per share, plus any declared and unpaid dividends. Except in certain limited circumstances, the Series A Preferred Stock does not have any voting rights.

On November 14, 2008, as part of the Capital Purchase Program established by the U.S. Department of the Treasury ("Treasury") under the Emergency Economic Stabilization Act of 2008 (the "EESA"), the Company entered into a Purchase Agreement with Treasury pursuant to which the Company issued and sold to Treasury 35,000 shares of the Company's Fixed Rate Cumulative Perpetual Preferred Stock, Series C, having a liquidation preference of $100,000 per share (the "Series C Preferred Stock"), and a ten-year warrant to purchase up to 11,891,280 shares of the Company's common stock, par value $1.00 per share, at an initial exercise price of $44.15 per share, for an aggregate purchase price of $3.5 billion in cash.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Cumulative dividends on the Series C Preferred Stock will accrue on the liquidation preference at a rate of 5% per annum for the first five years, and at a rate of 9% per annum thereafter, but will be paid only if, as, and when declared by the Company's Board of Directors ("the Board"). The Series C Preferred Stock has no maturity date and ranks senior to the Company's common stock (and *pari passu* with the Company's other authorized series of preferred stock) with respect to the payment of dividends and distributions and amounts payable upon liquidation, dissolution, and winding up of the Company. The Series C Preferred Stock generally is non-voting.

The Company may redeem the Series C Preferred Stock at par on or after December 15, 2011. Prior to this date, the Company may redeem the Series C Preferred Stock at par if the Company has raised aggregate gross proceeds in one or more Qualified Equity Offerings, as defined in the Company's articles of incorporation and in the purchase agreement, in excess of $875 million, and the aggregate redemption price does not exceed the aggregate net proceeds from such Qualified Equity Offerings. Any redemption is subject to the consent of the Board of Governors of the Federal Reserve.

On December 31, 2008, as part of the Capital Purchase Program established by the Treasury under the EESA, the Company entered into a Purchase Agreement with Treasury dated December 31, 2008 pursuant to which the Company issued and sold to Treasury 13,500 shares of the Company's Fixed Rate Cumulative Perpetual Preferred Stock, Series D, having a liquidation preference of $100,000 per share (the "Series D Preferred Stock"), and a ten-year warrant to purchase up to 6,008,902 shares of the Company's common stock, par value $1.00 per share, at an initial exercise price of $33.70 per share, for an aggregate purchase price of $1.35 billion in cash.

Cumulative dividends on the Series D Preferred Stock will accrue on the liquidation preference at a rate of 5% per annum for the first five years, and at a rate of 9% per annum thereafter, but will be paid only if, as, and when declared by the Company's Board. The Series D Preferred Stock has no maturity date and ranks senior to the Company's common stock (and *pari passu* with the Company's other authorized series of preferred stock) with respect to the payment of dividends and distributions and amounts payable upon liquidation, dissolution, and winding up of the Company. The Series D Preferred Stock generally is non-voting.

The Company may redeem the Series D Preferred Stock at par on or after March 15, 2012, but only after it has redeemed the Series C Preferred Stock. Prior to such time, the Company may redeem the Series D Preferred Stock at par if the Company has redeemed all of the Series C Preferred Stock, the Company has raised aggregate gross proceeds in one or more Qualified Equity Offerings, as defined in the Company's articles of incorporation and in the purchase agreement, in excess of $337.5 million, and the aggregate redemption price does not exceed the aggregate net proceeds from such Qualified Equity Offerings. Any redemption is subject to the consent of the Board of Governors of the Federal Reserve.

The American Reinvestment and Recovery Act of 2009 ("ARRA") amends certain provisions of EESA and includes a provision that, subject to consultation with the appropriate Federal banking agency, directs the Treasury to permit financial institutions from whom the Treasury purchased preferred stock to redeem such preferred stock without regard to whether such financial institution has replaced such funds and not subject to any waiting period. The statute also directs the Treasury to enact regulations to implement the directives set forth in ARRA; however, these regulations have not yet been published. The Company anticipates this could mean that, subject to the consent of the Federal Reserve, it may be able to redeem the Series C Preferred Stock or Series D Preferred Stock issued to the Treasury without regard to any waiting period or certain requirements to raise capital.

Upon issuance, the fair values of the Series C and Series D Preferred stock and the associated warrants were computed as if the instruments were issued on a stand alone basis. The fair values of the Series C and Series D Preferred stock were estimated based on observable trading levels of similar securities, resulting in a combined stand alone fair value estimate of approximately $3.9 billion. The Company used an options pricing model (Bjerksund-Stensland) to estimate the fair value of the warrants as of the two issuance dates, resulting in a combined stand alone fair value at each respective issuance date of approximately $110 million. The most significant and unobservable assumption in this valuation was volatility. The Company evaluated current listed market activity for its options, which is approximately two years, and historical data in arriving at an estimate of ten year volatility that the Company believed would be similar to an approach used by market participants. The individual fair values were then used to record the Preferred stock and associated warrants on a relative fair value basis, with the warrants being recorded in Additional Paid in Capital as permanent equity and the Preferred stock being recorded at a discount of approximately $132 million. Accretion of the discount associated with the preferred stock is recognized as an increase to preferred stock dividends in determining net income available to common shareholders. The discount is being amortized over a five-year period from each respective issuance date using the effective yield method and totaled $3.7 million during 2008.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

The Company is subject to certain restrictions on its ability to increase the dividend as a result of participating in the Capital Purchase Program. Prior to November 14, 2011, unless the Company has redeemed the Series C and Series D Preferred Stock or the Treasury has transferred the Series C and Series D Preferred Stock to a third party, the consent of Treasury will be required for the Company to declare or pay any dividend or make any distribution on its common stock (other than regular quarterly cash dividends of not more than $0.77 per share of common stock) or redeem, purchase or acquire any shares of its common stock or other equity or capital securities, other than in connection with benefit plans consistent with past practice and certain other circumstances specified in the Purchase Agreement. Prior to December 31, 2011, unless the Company has redeemed the Series D Preferred Stock or the Treasury has transferred the Series D Preferred Stock to a third party, the consent of the Treasury will be required for the Company to declare or pay any dividend or make any distribution on its common stock (other than regular quarterly cash dividends of not more than $0.77 per share of common stock) or redeem, purchase or acquire any shares of its common stock or other equity or capital securities, other than in connection with benefit plans consistent with past practice and certain other circumstances specified in the Purchase Agreement. In addition, if the Company increases its dividend above $0.54 per share per quarter prior to the tenth anniversary of its participation in the Capital Purchase Program, then the anti-dilution warrants issued in connection with the Company's participation in the Capital Purchase Program will require the exercise price and number of shares to be issued upon exercise to be proportionately adjusted. The amount of such adjustment is determined by a formula and depends in part on the extent to which the Company raises its dividend. The formulas are contained in the warrant agreements which are filed as exhibits to this report.

During the years ended December 31, 2008 and 2007, the SunTrust Board of Directors declared and paid cash dividends on perpetual preferred stock totaling $48.8 million and $30.3 million, respectively.

Accelerated Share Repurchase Agreement

On May 31, 2007, SunTrust entered into an accelerated share repurchase ("ASR") agreement with a global investment bank to purchase $800 million (gross of settlement costs) of SunTrust's common stock. On June 7, 2007, the global investment bank delivered to SunTrust 8,022,254 shares of SunTrust common stock, in exchange for the aforementioned consideration. During the third quarter of 2007, SunTrust completed this ASR when the Company received, without additional payment, an additional 1,462,091 shares.

Note 15 - Income Taxes

The components of income tax expense (benefit) included in the Consolidated Statements of Income were as follows:

(Dollars in thousands)	Years ended December 31,		
Current income tax expense (benefit)	**2008**	2007	2006
Federal	**$140,484**	$697,628	$753,523
State	**13,480**	65,644	7,481
Total	**$153,964**	$763,272	$761,004
Deferred income tax expense (benefit)			
Federal	**($93,895)**	($110,760)	$105,906
State	**(127,340)**	(36,998)	2,060
Total	**($221,235)**	($147,758)	$107,966
Total income tax expense (benefit)	**($67,271)**	$615,514	$868,970

The Company's income from international operations, before provision for income taxes, was not significant. Additionally, the tax effects of unrealized gains and losses on securities available for sale, unrealized gains and losses on certain derivative financial instruments, and other comprehensive income related to certain retirement plans were recorded in other comprehensive income and had no effect on income tax expense (see Note 23, "Accumulated Other Comprehensive Income," to the Consolidated Financial Statements).

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

A reconciliation of the expected income tax expense at the statutory federal income tax rate of 35% to the Company's actual income tax expense (benefit) and effective tax rate for the past three years is as follows:

(Dollars in thousands)	2008 Amount	2008 Percent of Pre-Tax Income		2007 Amount	2007 Percent of Pre-Tax Income		2006 Amount	2006 Percent of Pre-Tax Income	
Income tax expense at federal statutory rate	**$254,976**	**35.0**	**%**	$787,335	35.0	%	$1,045,254	35.0	%
Increase (decrease) resulting from:									
Tax-exempt interest	**(74,921)**	**(10.2)**		(74,183)	(3.3)		(62,113)	(2.1)	
Dividends received deduction	**(13,766)**	**(1.9)**		(14,949)	(0.6)		(14,859)	(0.6)	
Dividends paid on employee stock ownership plan shares	**(13,173)**	**(1.8)**		(13,437)	(0.6)		(12,240)	(0.4)	
Charitable contribution	**(64,196)**	**(8.8)**		(2,168)	(0.1)		(1,429)	-	
Income tax credits, net	**(75,164)**	**(10.3)**		(75,480)	(3.4)		(68,646)	(2.3)	
State income taxes, net	**(74,009)**	**(10.2)**		18,578	0.8		6,201	0.2	
Dividends on subsidiary preferred stock	**-**	**-**		(23,884)	(1.0)		(21,779)	(0.7)	
Other	**(7,018)**	**(1.0)**		13,702	0.6		(1,419)	-	
Total income tax expense (benefit) and rate	**($67,271)**	**(9.2)**	**%**	$615,514	27.4	%	$868,970	29.1	%

Deferred income tax liabilities and assets result from temporary differences between assets and liabilities measured for financial reporting purposes and for income tax return purposes. These assets and liabilities are measured using the enacted tax rates and laws that are currently in effect. The significant components of the net deferred tax liability at December 31 were as follows:

(Dollars in thousands)	December 31, 2008	December 31, 2007
Deferred Tax Assets		
Allowance for loan losses	**$887,401**	$474,252
Accrued expenses	**344,103**	286,912
Other real estate owned	**33,428**	6,481
State NOL/valuation allowance (net of federal benefit)	**96,524**	57,499
Other	**170,510**	105,887
Gross deferred tax asset	**$1,531,966**	$931,031
Deferred Tax Liabilities		
Net unrealized gains in accumulated other comprehensive income	**$541,981**	$929,048
Leasing	**917,921**	852,254
Employee benefits	**164,053**	148,529
Mortgage	**485,045**	484,459
Securities	**143,096**	(165,944)
Intangible assets	**62,617**	43,373
Fixed assets	**67,908**	33,800
Loans	**44,207**	87,616
Undistributed dividends	**42,053**	128,835
Other	**64,374**	97,164
Gross deferred tax liability	**$2,533,255**	$2,639,134
Net deferred tax liability	**$1,001,289**	$1,708,103

SunTrust and its subsidiaries file consolidated income tax returns where permissible or required. Each subsidiary generally remits current taxes to or receives current refunds from the parent company based on what would be required had the subsidiary filed an income tax return as a separate entity. Deferred tax assets resulting from state net operating loss ("NOL") carryforwards consisted of $148.5 million (net of a valuation allowance of $40.5 million) for 2008 and $88.5 million (net of a valuation allowance of $37.1 million) for 2007. The state net operating losses expire, if not utilized, in varying amounts from 2009 to 2028.

As of December 31, 2008, the Company's gross cumulative unrecognized tax benefits ("UTBs") amounted to $330.0 million, of which $266.7 million (net of federal tax benefit) would affect the Company's effective tax rate, if recognized. As of December 31, 2007, the Company's gross cumulative UTBs amounted to $325.4 million. Additionally, the Company recognized a gross liability of $70.9 million and $80.0 million for interest related to its UTBs as of December 31, 2008 and

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, respectively. Interest expense related to UTBs was $22.4 million for the year ended December 31, 2008, compared to $27.7 million, for the same period in 2007. The Company continually evaluates the UTBs associated with its uncertain tax positions. It is reasonably possible that the total UTBs could significantly increase or decrease during the next 12 months due to completion of tax authority examinations and the expiration of statutes of limitations. However, an estimate of the range of the reasonably possible change in the total amount of UTBs cannot currently be made.

The Company files consolidated and separate income tax returns in the United States federal jurisdiction and in various state jurisdictions. The Company's federal returns through 2004 have been examined by the Internal Revenue Service ("IRS") and issues for tax years 1997 through 2004 are still in dispute. The Company has paid the amounts assessed by the IRS in full for tax years 1997 and 1998 and has filed refund claims with the IRS related to the disputed issues for those two years. An IRS examination of the Company's 2005 and 2006 federal income tax returns is currently in progress. Generally, the state jurisdictions in which the Company files income tax returns are subject to examination for a period from three to seven years after returns are filed.

The following table provides a rollforward of the Company's UTBs from January 1 to December 31:

(Dollars in thousands)	**2008** **Federal and State UTBs**	2007 Federal and State UTBs
Balance at January 1	**$325,401**	$288,146
Increases in UTBs related to prior years	**12,295**	9,197
Decreases in UTBs related to prior years	**(24,622)**	(17,577)
Increases in UTBs related to the current year	**47,521**	54,696
Decreases in UTBs related to settlements	**(17,258)**	-
Decreases in UTBs related to lapse of the applicable statutes of limitations	**(2,752)**	(1,635)
Decreases in UTBs related to acquired entities in prior years, offset to goodwill	**(10,565)**	(7,426)
Balance at December 31	**$330,020**	$325,401

Note 16 - Employee Benefit Plans

SunTrust sponsors various short and long-term incentive plans for eligible employees. The Management Incentive Plan ("MIP") is the Company's short-term cash incentive plan for key employees that provides for potential annual cash awards based on the attainment of the Company's earnings and/or the achievement of business unit and individual performance objectives. The Company delivers long-term incentives through various incentive programs, including stock options, restricted stock, and long-term incentive cash. Prior to 2008, some long-term incentives were delivered through the Performance Unit Plan ("PUP"), a cash long-term incentive plan with a three year time horizon. Effective January 1, 2008, the PUP was terminated, and outstanding performance units under the PUP were replaced with a one-time grant of restricted stock. The Long-Term Incentive ("LTI") Cash Plan became effective in 2008, and awards under the LTI Cash Plan cliff vest over a period of three years from the date of the award and are paid in cash. Compensation expense related to programs that have cash payouts for the years ended December 31, 2008, 2007 and 2006 totaled $47.5 million, $48.5 million and $72.6 million, respectively.

Stock Based Compensation

The Company provides stock-based awards through the SunTrust Banks, Inc. 2004 Stock Plan ("Stock Plan") under which the Committee has the authority to grant stock options, restricted stock, and performance-based restricted stock ("performance stock") to key employees of the Company. Under the 2004 Stock Plan, a total of 19 million shares of common stock is authorized and reserved for issuance, of which no more than 7.8 million shares may be issued as restricted stock. Stock options are granted at a price which is no less than the fair market value of a share of SunTrust common stock on the grant date and may be either tax-qualified incentive stock options or non-qualified stock options. Stock options typically vest after three years and generally have a maximum contractual life of ten years and upon option exercise, shares are issued to employees from treasury stock.

Shares of restricted stock may be granted to employees and directors and typically cliff vest after three years. Restricted stock grants may be subject to one or more objective employment, performance or other grant conditions as established by the Committee at the time of grant. Any shares of restricted stock that are forfeited will again become available for issuance

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

under the Stock Plan. An employee or director has the right to vote the shares of restricted stock after grant unless and until they are forfeited. Compensation cost for restricted stock is equal to the fair market value of the shares at the date of the award and is amortized to compensation expense over the vesting period. Dividends are paid on awarded but unvested restricted stock.

With respect to currently outstanding performance stock, shares must be granted, awarded and vested before participants take full title. After performance stock is granted by the Committee, specified portions are awarded based on increases in the average price of SunTrust common stock above the initial price specified by the Committee. Awards are distributed, subject to continued employment, on the earliest of (i) fifteen years after the date shares are awarded to participants; (ii) the participant attaining age 64; (iii) death or disability of a participant; or (iv) a change in control of the Company as defined in the Stock Plan. Dividends are paid on awarded but unvested performance stock, and participants may exercise voting privileges on such shares.

The compensation element for performance stock is equal to the fair market value of the shares at the date of the award and is amortized to compensation expense over the period from the award date to the participant attaining age 64 or the 15th anniversary of the award date, whichever comes first. Approximately 40% of performance stock awarded became fully vested on February 10, 2000 and is no longer subject to the forfeiture condition set forth in the original agreements. This early-vested performance stock was converted into an equal number of "Phantom Stock Units" as of that date. Payment of Phantom Stock Units will be made to participants in shares of SunTrust common stock upon the earlier to occur of (1) the date on which the participant would have vested in his or her performance stock or (2) the date of a change in control. Dividend equivalents will be paid at the same rate as the shares of performance stock; however, these units will not carry voting privileges.

The fair value of each stock option award is estimated on the date of grant using a Black-Scholes valuation model. Expected volatility is based on the historical volatility of the Company's stock, using daily price observations over the expected term of the stock options. The expected term represents the period of time that stock options granted are expected to be outstanding and is derived from historical data which is used to evaluate patterns such as stock option exercise and employee termination. The expected dividend yield is based on recent dividend history. The risk-free interest rate is derived from the U.S. Treasury yield curve in effect at the time of grant based on the expected life of the option.

The weighted average fair values of options granted during 2008, 2007, and 2006 were $7.63, $16.72 and $16.41, respectively. The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model with the following assumptions:

	2008	2007	2006
Expected dividend yield	**5.62 %**	3.01 %	3.18 %
Expected stock price volatility	**25.73**	20.07	25.64
Risk-free interest rate (weighted average)	**2.63**	4.70	4.51
Expected life of options	**6 years**	6 years	6 years

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

The following table presents a summary of stock option and performance and restricted stock activity:

	Stock Options			Performance and Restricted Stock		
(Dollars in thousands except per share data)	Shares	Price Range	Weighted Average Exercise Price	Shares	Deferred Compensation	Weighted Average Grant Price
Balance, January 1, 2006	21,790,455	$14.18 -$76.50	$62.46	2,326,969	$26,222	$34.58
Granted	956,106	71.03 - 83.74	71.17	860,959	62,355	72.42
Exercised/vested	(3,594,131)	14.18 - 74.89	53.63	(1,157,148)	-	22.68
Cancelled/expired/forfeited	(471,720)	14.18 - 73.40	70.81	(160,176)	(9,750)	60.87
Amortization of compensation for performance and restricted stock	-	-	-	-	(18,340)	-
Balance, December 31, 2006	18,680,710	14.56 - 83.74	64.39	1,870,604	60,487	57.12
Granted	717,494	77.75 - 85.06	85.04	1,054,837	88,892	84.27
Exercised/vested	(2,887,293)	14.56 - 78.39	60.50	(339,437)	-	50.21
Cancelled/expired/forfeited	(452,765)	14.56 - 85.06	72.36	(315,660)	(20,612)	65.30
Amortization of compensation element for performance and restricted stock	-	-	-	-	(35,299)	-
Repurchase of AMA member interests	-	-	-	-	(2,846)	-
Balance, December 31, 2007	16,058,146	17.06 - 85.06	65.79	2,270,344	90,622	69.63
Granted	**1,473,284**	**29.54 - 64.58**	**57.43**	**2,021,564**	**117,039**	**57.90**
Exercised/vested	**(514,149)**	**18.77 - 65.33**	**49.16**	**(213,431)**	**-**	**55.16**
Cancelled/expired/forfeited	**(1,476,358)**	**31.80 -154.61**	**69.30**	**(275,065)**	**(17,611)**	**64.04**
Acquisition of GB&T	**100,949**	**46.39 -154.61**	**76.82**	**-**	**-**	**-**
Amortization of compensation element for performance and restricted stock	**-**	**-**	**-**	**-**	**(76,656)**	**-**
Balance, December 31, 2008	**15,641,872**	**$17.06 -$150.45**	**$65.29**	**3,803,412**	**$113,394**	**$64.61**
Exercisable, December 31, 2008	**12,827,330**		**$64.90**			
Available for Additional Grant, December 31, 2008 [1]	**10,914,555**					

[1] Includes 4,108,204 shares available to be issued as restricted stock.

The following table presents information on stock options by ranges of exercise price:

(Dollars in thousands, except per share data)

	Options Outstanding				Options Exercisable			
Range of Exercise Prices	Number Outstanding at December 31, 2008	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Total Aggregate Intrinsic Value	Number Exercisable at December 31, 2008	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Total Aggregate Intrinsic Value
$17.06 to 49.46	861,071	$ 39.34	5.47	$ 61	561,071	$ 44.58	3.04	$ 61
$49.47 to 64.57	5,314,741	56.51	3.25	-	5,304,157	56.50	3.25	-
$64.58 to 150.45	9,466,060	72.58	5.56	-	6,962,102	72.93	4.57	-
	15,641,872	$ 65.29	4.77	$ 61	12,827,330	$ 64.90	3.96	$ 61

The aggregate intrinsic value in the table above represents the total pre-tax intrinsic value (the difference between the Company’s closing stock price on the last trading day of 2008 and the exercise price, multiplied by the number of in-the-money options) that would have been received by the option holders had all option holders exercised their options on December 31, 2008. This amount changes based on the fair market value of the Company’s stock. Total intrinsic value of options exercised for the twelve months ended December 31, 2008, 2007, and 2006 was $4.5 million, $68.2 million, and $85.7 million, respectively. Total fair value of performance and restricted shares vested was $11.8 million, $17.0 million, and $26.2 million, for the twelve months ended December 31, 2008, 2007 and 2006, respectively.

As of December 31, 2008 and 2007, there was $126.7 million and $105.3 million unrecognized stock-based compensation expense related to nonvested stock options and performance and restricted stock. The amount recorded as of December 31, 2008 is expected to be recognized over a weighted average period of 1.79 years.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Stock-based compensation expense recognized in noninterest expense as of December 31 was as follows:

(Dollars in thousands)	**2008**	2007	2006
Stock-based compensation expense:			
Stock options	**$12,407**	$16,908	$23,329
Performance and restricted stock	**76,656**	35,299	18,340
Total stock-based compensation expense	**$89,063**	$52,207	$41,669

The recognized tax benefit amounted to $33.8 million, $19.8 million and $15.8 million for the years ended December 31, 2008, 2007 and 2006, respectively.

Retirement Plans

Defined Contribution Plan

SunTrust maintains a defined contribution plan that offers a dollar for dollar match on the first 5% of eligible pay that a participant, including executive participants, elects to defer to the 401(k) plan. Compensation expense related to this plan for the years ended December 31, 2008, 2007 and 2006 totaled $79.6 million, $69.6 million and $66.4 million, respectively.

On December 31, 2007, SunTrust Banks, Inc. adopted written amendments to SunTrust Banks, Inc. 401(k) Excess Plan. Effective January 1, 2007, the Company matching contribution under the SunTrust Banks, Inc. 401(k) Excess Plan will provide for a year-end true up to include deferrals to the deferred compensation plan that could have been deferred under the 401(k) Excess Plan. Without further amendment, the matching contribution to the 401(k) Excess Plan will be automatically increased, effective January 1, 2008, in accordance with the terms of the plan to be the same percentage of match as provided in the qualified 401(k) Plan, which is 100% of the first 5% of eligible pay that a participant, including an executive participant, elects to defer to the applicable plan, subject to such limitations as may be imposed by such plan provisions and applicable laws and regulations.

Noncontributory Pension Plans

SunTrust maintains a funded, noncontributory qualified retirement plan covering employees meeting certain service requirements. The plan provides benefits based on salary and years of service. Effective January 1, 2008, Retirement Plan participants who were Company employees as of December 31, 2007 (“Affected Participants”) ceased to accrue additional benefits under the existing pension benefit formula after that date and all their accrued benefits were frozen. Beginning January 1, 2008, Affected Participants who have fewer than 20 years of service and future participants will accrue future pension benefits under a cash balance formula that provides compensation and interest credits to a Personal Pension Account. Affected Participants with 20 or more years of service as of December 31, 2007 were given the opportunity to choose between continuing a traditional pension benefit accrual under a reduced formula or participating in the new Personal Pension Account. Effective January 1, 2008, the vesting schedule was changed from the current 5-year cliff to a 3-year cliff for participants employed by the Company on and after that date. SunTrust monitors the funded status of the plan closely and following a significant decline in plan assets during 2008, SunTrust decided to make a contribution to the SunTrust Retirement Plan at the end of 2008 in order to improve the plan’s funded status as of December 31, 2008.

On October 1, 2004, SunTrust acquired NCF. Prior to the acquisition, NCF sponsored a funded qualified retirement plan, an unfunded nonqualified retirement plan for some of its participants, and certain other postretirement health benefits for its employees. Effective December 31, 2004, participants no longer earned future service in the NCF Retirement Plan (qualified plan), and participants’ benefits were frozen with the exception of adjustments for pay increases after 2004. All former NCF employees who met the service requirements began to earn benefits in the SunTrust Retirement Plan effective January 1, 2005. On February 13, 2007, the NCF Retirement Plan was amended to completely freeze benefits for those Affected Participants who do not elect, or are not eligible to elect, the traditional pension benefit formula in the SunTrust Retirement Plan. The effective date for changes impacting the NCF Retirement Plan is January 1, 2008. Similar to the SunTrust Retirement Plan, due to significant declines in the value of plan assets experienced in 2008, SunTrust contributed to the NCF Retirement Plan at the end of 2008 in order to improve the plan’s funded status as of December 31, 2008.

Table of Contents

SUNTRUST BANKS, INC.
Notes to Consolidated Financial Statements (Continued)

SunTrust also maintains unfunded, noncontributory non-qualified supplemental defined benefit pension plans that cover key executives of the Company. The plans provide defined benefits based on years of service and final average salary. SunTrust's obligations for these non-qualified supplemental defined benefit pension plans are included with the qualified Retirement Plans in the tables presented in this section under "Pension Benefits".

On February 13, 2007, the Supplemental Executive Retirement Plan ("SERP") was amended to reduce the benefit formula for future service accruals. Current participants in the SunTrust SERP will continue to earn future accruals under a reduced final average earnings formula. All future participants and ERISA Excess Plan participants will accrue benefits under benefit formulas that mirror the revised benefit formulas in the SunTrust Retirement Plan. The effective date for changes impacting the SERP is January 1, 2008. After January 1, 2008, a new SERP cash balance formula was implemented for existing and new participants with no limit on pay for SERP Tier 2 participants and a minimum preserved benefit for SERP participants at December 31, 2007. On December 31, 2007, SunTrust Banks, Inc. also adopted an additional written amendment to the SunTrust Banks, Inc. ERISA Excess Plan. This amendment implements changes to mirror the cash balance changes in the qualified Retirement Plan, but with an earnings limit of two times the qualified plan's eligible earnings.

Other Postretirement Benefits

Although not under contractual obligation, SunTrust provides certain health care and life insurance benefits to retired employees ("Other Postretirement Benefits" in the tables). At the option of SunTrust, retirees may continue certain health and life insurance benefits if they meet age and service requirements for Other Postretirement Benefits while working for the Company. The health care plans are contributory with participant contributions adjusted annually, and the life insurance plans are noncontributory. Employees who have retired or will retire after December 31, 2003 are not eligible for retiree life insurance or subsidized post-65 medical benefits. Effective January 1, 2008, the pre-65 employer subsidy for medical benefits was discontinued for participants who will not be age 55 with at least 10 years of service before January 1, 2010. As indicated under the table, "Net Periodic Cost," the charge to Other in 2007 reflects a curtailment charge of $11.6 million to Other Postretirement Benefits. Certain retiree health benefits are funded in a Retiree Health Trust. In addition, certain retiree life insurance benefits are funded in a Voluntary Employees' Beneficiary Association ("VEBA"). SunTrust reserves the right to amend or terminate any of the benefits at any time.

The SunTrust Benefits Plan Committee reviews and approves the assumptions for end-of-year measurement calculations. For 2008, the discount rate, salary scale, and health care cost trend rate were revised from the prior year and are discussed further below.

A discount rate is used to determine the present value of future benefit obligations. The discount rate for each plan is determined by matching the expected cash flows of each plan to a yield curve based on long term, high quality fixed income debt instruments available as of the measurement date. A string of benefit payments projected to be paid by the plan for the next 100 years is developed based on most recent census data, plan provisions and assumptions. The benefit payments at each future maturity are discounted by the year-appropriate spot interest rates (which are developed from a yield curve of approximately 315 Aa quality bonds with similar maturities as the benefit payments). The model then solves for the discount rate that produces the same present value of the projected benefit payments as generated by discounting each year's payments by the spot rate. This assumption is reviewed by the SunTrust Benefits Plan Committee and updated every year for each plan. A rate of compensation growth is used to determine future benefit obligations for those plans whose benefits vary by pay. Based on 2008 salary analysis and projections of real inflation, wage growth, and merit increases, SunTrust modified its compensation increase assumption from 4.0% for base salary and 4.5% for total salary for the 2007 year end measurement calculations to 2.0% for all pay in 2009 (0% for nonqualified plans for 2009), 3.0% for all pay in 2010 and 4.0% for base pay and 4.5% for total pay in 2011 and beyond for the 2008 year end measurement calculations.

Actuarial gains and losses are created when actual experience deviates from assumptions. The actuarial gains on obligations generated in 2008 resulted from lower salary increases for the retirement plans and higher lump sum rates, offset by lower discount rates and participant data changes for all plans.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

The change in benefit obligations for the years ended December 31 was as follows:

(Dollars in thousands)	Pension Benefits 2008	Pension Benefits 2007	Other Postretirement Benefits 2008	Other Postretirement Benefits 2007
Benefit obligation, beginning of year	**$1,841,153**	$1,934,967	**$200,723**	$209,617
Service cost	**77,872**	68,322	**618**	1,241
Interest cost	**117,090**	111,920	**11,811**	11,337
Plan participants' contributions	**-**	-	**21,632**	20,487
Amendments	**-**	(105,987)	**-**	(6,930)
Actuarial (gain)/loss	**(7,646)**	(48,140)	**1,360**	(6,297)
Benefits paid	**(106,217)**	(119,929)	**(34,902)**	(32,032)
Less federal Medicare drug subsidy	**-**	-	**3,500**	3,300
Benefit obligation, end of year	**$1,922,252**	$1,841,153	**$204,742**	$200,723

The accumulated benefit obligation for the Retirement Benefits at December 31, 2008 and 2007 was $1.7 billion and $1.6 billion, respectively. For the Supplemental Retirement Benefits, the accumulated benefit obligation at December 31, 2008 and 2007 was $104.6 million and $107.2 million, respectively.

(Weighted average assumptions used to determine benefit obligations, end of year)	Pension Benefits 2008	Pension Benefits 2007	Other Post-retirement Benefits 2008	Other Post-retirement Benefits 2007
Discount rate	**6.14 %**	6.28 %	**5.95 %**	5.95 %
Rate of compensation increase	**4.00/4.50** [1]	4.50	**N/A**	N/A

[1] At year-end 2008, all salaries were expected to increase by 2.00% for 2009 (0% for nonqualified plans for 2009), 3.00% for 2010, and total salaries were assumed to increase at 4.50% while base salaries were assumed to increase at 4.00% for 2011 and beyond.

The change in plan assets for the years ended December 31 was as follows:

(Dollars in thousands)	Pension Benefits 2008	Pension Benefits 2007	Other Postretirement Benefits 2008	Other Postretirement Benefits 2007
Fair value of plan assets, beginning of year	**$2,287,322**	$2,216,179	**$162,881**	$162,973
Actual return on plan assets	**(617,770)**	180,467	**(32,965)**	10,873
Employer contributions	**356,014**	10,605	**30,521**	580
Plan participants' contributions	**-**	-	**21,632**	20,487
Benefits paid	**(106,217)**	(119,929)	**(34,902)**	(32,032)
Fair value of plan assets, end of year	**$1,919,349**	$2,287,322	**$147,167**	$162,881

Employer contributions and benefits paid in the above table include only those amounts contributed to pay participants' plan benefits or added to plan assets in 2008 and 2007, respectively. Supplemental Retirement Plans are not funded through plan assets.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

The fair value of plan assets (in thousands) for the retirement plans is $1,919,349 and $2,287,322 at the end of 2008 and 2007, respectively. The expected long-term rate of return on these plan assets was 8.25% and 8.50% in 2008 and 2007, respectively. The expected long-term rate of return is 8.00% for 2009, based on a ten-year capital market projection of the current target asset allocation. The asset allocation for the Retirement Plans and the target allocation, by asset category, are as follows:

	Target Allocation[1]		Percentage of Plan Assets at December 31[2]			
Asset Category	**2009**		**2008**		2007	
Equity securities	**65**	**%**	62	%	75	%
Debt securities	**35**		35		24	
Cash equivalents	**-**		3		1	
Total	**100**	**%**	100	%	100	%

[1] SunTrust Retirement Plan only.

[2] SunTrust and NCF Retirement Plans.

The SunTrust Benefits Plan Committee, which includes several members of senior management, establishes investment policies and strategies and formally monitors the performance of the funds on a quarterly basis. The Company's investment strategy with respect to pension assets is to invest the assets in accordance with the Employee Retirement Income Security Act and fiduciary standards. The long-term primary objectives for the Retirement Plans are to provide for a reasonable amount of long-term growth of capital (both principal and income), without undue exposure to risk and to enable the plans to provide their specific benefits to participants thereof. Rebalancing occurs on a periodic basis to maintain the target allocation, but normal market activity may result in deviations. At December 31, 2008 and 2007, there was no SunTrust common stock held in the Retirement Plans.

The investment strategy for the Other Postretirement Benefit Plans is maintained separately from the strategy for the Retirement Plans. The Company's investment strategy is to create a stream of investment return sufficient to provide for current and future liabilities at a reasonable level of risk. The pre-tax expected long-term rate of return on these plan assets was 7.5% in 2008 and in 2007. The 2009 pre-tax expected long-term rate of return is 7.25%.

The asset allocation for Other Postretirement Benefit Plans and the target allocation, by asset category, are as follows:

	Target Allocation		Percentage of Plan Assets at December 31			
Asset Category	**2009**		**2008**		2007	
Equity securities	**35-50**	**%**	**41**	**%**	50	%
Debt securities	**50-65**		**44**		50	
Cash equivalents	**-**		**15**		-	
Total			**100**	**%**	100	%

Equity securities do not include SunTrust common stock for the Other Postretirement Benefit Plans.

Funded Status

The funded status of the plans, as of December 31, was as follows:

	Pension Benefits		Other Postretirement Benefits	
(Dollars in thousands)	**2008**	2007	**2008**	**2007**
Fair value of plan assets	**$1,919,349**	$2,287,322	**$147,167**	$162,881
Benefit obligations	**(1,922,252)**	(1,841,153)	**(204,742)**	(200,723)
Funded status	**($2,903)**	$446,169	**($57,575)**	($37,842)

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

At December 31, 2008, the total outstanding unrecognized net loss to be recognized in future years for all retirement and postretirement benefits was $1.3 billion, compared to $468 million as of December 31, 2007. The key sources of the cumulative net losses are attributable to (1) lower discount rates for the past several years, (2) compensation increases have exceeded expectations, and (3) lower return on assets in 2008. As discussed previously, SunTrust reviews its assumptions annually to ensure they represent best estimates for the future and will, therefore, minimize future gains and losses.

As of December 31, amounts recognized in accumulated other comprehensive income are as follows:

	Pension Benefits		Other Postretirement Benefits	
(Dollars in thousands)	**2008**	2007	**2008**	2007
Net actuarial loss	**$1,170,780**	$400,690	**$97,526**	$67,558
Prior service credit	**(67,483)**	(78,649)	**(1,938)**	(3,496)
Total Accumulated Other Comprehensive Income, pre-tax	**$1,103,297**	$322,041	**$95,588**	$64,062

Pension plans with a projected benefit obligation, in excess of plan assets at December 31 were as follows:

(Dollars in thousands)	**2008**	2007
Projected benefit obligation	**$109,751**	$114,587
Accumulated benefit obligation	**104,594**	107,161

Expected Cash Flows

Information about the expected cash flows for the Pension Benefit and Other Postretirement Benefit plans is as follows:

(Dollars in thousands)	Pension Benefits[1,2]	Other Postretirement Benefits (excluding Medicare Subsidy)[3]	Value to Company of Expected Medicare Subsidy
Employer Contributions			
2009 (expected) to plan trusts	$-	$-	($3,500)
2009 (expected) to plan participants	26,076	-	-
Expected Benefit Payments			
2009	112,892	22,817	(3,500)
2010	104,529	21,165	(1,226)
2011	113,205	21,579	(1,253)
2012	117,038	21,410	(1,270)
2013	127,924	21,089	(1,270)
2014 – 2018	768,640	93,475	(6,017)

1 At this time, SunTrust anticipates contributions to the Retirement Plan will be permitted (but not required) during 2009 based on the funded status of the Plan and contribution limitations under the Employee Retirement Income Security Act of 1974 (ERISA).

2 The expected benefit payments for the Supplemental Retirement Plan will be paid directly from SunTrust corporate assets.

3 The 2009 expected contribution for the Other Postretirement Benefits Plans represents the Medicare Part D subsidy only. Note that expected benefits under Other Postretirement Benefits Plans are shown net of participant contributions.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Net Periodic Cost

Components of net periodic benefit cost for the years ended December 31 were as follows:

	Pension Benefits			Other Postretirement Benefits		
(Dollars in thousands)	**2008**	2007	2006	**2008**	2007	2006
Service cost	**$77,872**	$68,322	$74,920	**$618**	$1,241	$3,118
Interest cost	**117,090**	111,920	110,189	**11,811**	11,337	10,913
Expected return on plan assets	**(185,653)**	(186,356)	(165,441)	**(8,186)**	(8,194)	(8,126)
Amortization of prior service cost	**(11,166)**	(10,159)	3,050	**(1,558)**	(1,370)	-
Recognized net actuarial loss	**22,223**	34,849	55,063	**12,750**	14,286	9,912
Amortization of initial transition obligation	**-**	-	-	**-**	280	2,322
Other	**3,465** [1]	1,811	559	**-**	11,586	-
Net periodic benefit cost	**$23,831**	$20,387	$78,340	**$15,435**	$29,166	$18,139
Weighted average assumptions used to determine net cost						
Discount rate[2]	**6.28** % [2]	5.93 % [3]	5.68 % [3]	**5.95 %**	5.75 % [3]	5.45 % [3]
Expected return on plan assets	**8.25**	8.50	8.50	**5.30** [4]	5.30 [4]	5.30 [4]
Rate of compensation increase	**4.00/4.50**	4.50	4.50	**N/A**	N/A	N/A

[1] The charge to Other reflects a settlement charge of $3.5 million to Retirement Benefits in 2008.

[2] The weighted average shown for 2008 is the weighted average discount rates for the pension benefits as of the beginning of the fiscal year.

[3] Interim remeasurement was required on September 1, 2006, for the SunTrust Retirement Plan due to the passage of the Pension Protection Act. The discount rate as of the remeasurement date was selected based on the economic environment as of that date. Interim remeasurement was also required on February 13, 2007 for all plans due to plan changes adopted at that time.

[4] The weighted average shown for the other postretirement benefit plan is determined on an after-tax basis.

Other changes in plan assets and benefit obligations recognized in other comprehensive income during 2008 are as follows:

(Dollars in thousands)	**Pension Benefits**	**Other Postretirement Benefits**
Settlements	**($3,465)**	**$-**
Current year actuarial loss	**795,778**	**42,718**
Amortization of actuarial loss	**(22,223)**	**(12,750)**
Amortization of prior service credit	**11,166**	**1,558**
Total recognized in other comprehensive income, pre-tax	**$781,256**	**$31,526**
Total recognized in net periodic benefit cost and other comprehensive income, pre-tax	**$805,087**	**$46,961**

The estimated amounts that will be amortized from accumulated other comprehensive income into net periodic benefit cost in 2009 are as follows:

(Dollars in thousands)	**Pension Benefits**	**Other Postretirement Benefits**
Actuarial loss	**$132,284**	**$21,589**
Prior service credit	**(10,886)**	**(1,558)**
Total	**$121,398**	**$20,031**

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

In addition, SunTrust sets pension asset values equal to their market value, in contrast to the use of a smoothed asset value that incorporates gains and losses over a period of years. Utilization of market value of assets provides a more realistic economic measure of the plan's funded status and cost. Assumed discount rates and expected returns on plan assets affect the amounts of net periodic benefit cost. A 25 basis point decrease in the discount rate or expected long-term return on plan assets would increase the Retirement Benefits net periodic benefit cost approximately $11 million and $5 million, respectively.

Assumed healthcare cost trend rates have a significant effect on the amounts reported for the other postretirement plans. As of December 31, 2008, SunTrust assumed that retiree health care costs will increase at an initial rate of 8.50% per year. SunTrust assumed a healthcare cost trend that recognizes expected medical inflation, technology advancements, rising cost of prescription drugs, regulatory requirements and Medicare cost shifting. SunTrust expects this annual cost increase to decrease over a 6-year period to 5.25% per year. Due to changing medical inflation, it is important to understand the effect of a one-percent point change in assumed healthcare cost trend rates. These amounts are shown below:

(Dollars in thousands)	1% Increase	1% Decrease
Effect on other postretirement benefit obligation	$12,844	($11,202)
Effect on total service and interest cost	730	(630)

Note 17 – Derivative Financial Instruments

The Company enters into various derivatives both in a dealer capacity to facilitate client transactions and as an end user as a risk management tool. Where contracts have been entered into with clients, the Company generally manages the risk associated with these contracts within the framework of its VaR approach that monitors total exposure daily and seeks to manage the exposure on an overall basis. Derivatives are used as a risk management tool to hedge the Company's exposure to changes in interest rates or other identified market risks, either economically or in accordance with the hedge accounting provisions of SFAS No. 133. The Company may also enter into derivative positions, on a limited basis, to capitalize upon arbitrage opportunities in the market. In addition, as a normal part of its operations, the Company enters into IRLCs on mortgage loans that are accounted for as freestanding derivatives under SFAS No. 133 and has certain contracts containing embedded derivatives that are carried, in their entirety, at fair value under SFAS No. 155 or SFAS No. 159. All derivatives are carried at fair value in the Consolidated Balance Sheets in trading assets, other assets, trading liabilities, or other liabilities. The gains and losses associated with these instruments are either recorded in other comprehensive income, net of tax, or within the Consolidated Statements of Income depending upon the use and designation of the derivatives.

Derivatives offered to clients include interest rate, credit, equity, commodity, and foreign exchange contracts. The Company's risk management derivatives are based on underlying risks primarily related to interest rates, equity valuations, foreign exchange rates, or credit, and include swaps, options, swaptions, credit default swaps, currency swaps, and futures and forwards. Swaps are contracts in which a series of net cash flows, based on a specific notional amount that is related to an underlying risk, are exchanged over a prescribed period. Options, generally in the form of caps and floors, are contracts that transfer, modify, or reduce an identified risk in exchange for the payment of a premium when the contract is issued. Swaptions are contracts that provide the option to enter into a specified swap agreement with the issuer on a specified future date. Credit default swaps provide credit protection for the buyer of the contract through a guarantee, by the seller of the contract, of the creditworthiness of the underlying fixed income product. Currency swaps involve the exchange of principal and interest in one currency for another. Futures and forwards are contracts for the delayed delivery or net settlement of an underlying, such as a security or interest rate index, in which the seller agrees to deliver on a specified future date, either a specified instrument at a specified price or yield or the net cash equivalent of an underlying.

Credit and Market Risk Associated with Derivatives

Derivatives expose the Company to credit risk. If the counterparty fails to perform, the credit risk at that time would be equal to the net derivative asset position, if any, for that counterparty. The Company minimizes the credit or repayment risk in derivative instruments by entering into transactions with high quality counterparties that are reviewed periodically by the Company's Credit Risk Management division. The Company's derivatives may also be governed by an International Swaps and Derivatives Associations Master Agreement ("ISDA"); depending on the nature of the derivative transactions, bilateral collateral agreements may be in place as well. When the Company has more than one outstanding derivative transaction with a single counterparty and there exists a legally enforceable master netting agreement with the counterparty, the Company considers its exposure to the counterparty to be the net market value of all positions with that counterparty if such net value is

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

an asset to the Company and zero if such net value is a liability to the Company. As of December 31, 2008, net derivative asset positions to which the Company was exposed to risk of its counterparties were $3.5 billion, representing the net of $4.6 billion in net derivative gains by counterparty, netted by counterparty where formal netting arrangements exist, adjusted for collateral of $1.1 billion that the Company holds in relation to these gain positions. As of December 31, 2007, net derivative asset positions to which the Company was exposed to risk of its counterparties were $1.4 billion, representing the net of $1.9 billion in derivative gains, netted by counterparty where formal netting arrangements exist, adjusted for collateral of $0.5 billion that the Company holds in relation to these gain positions. The Company adjusted the net fair value of its derivative contracts based on the estimated credit risk of $23.1 million and $6.9 million as of December 31, 2008 and 2007, respectively. See Note 20, “Fair Value Election and Measurement,” to the Consolidated Financial Statements for more information on how these credit risk adjustments are determined. Many derivative financial instruments contain credit risk related contingent features that may require the posting of additional collateral in association with, or even immediate settlement of, outstanding positions when certain triggering events occur.

Derivatives also expose the Company to market risk. Market risk is the adverse effect that a change in interest rates, currency rates, equity prices or implied volatility has on the value of a derivative. The Company manages the market risk associated with its derivatives by establishing and monitoring limits on the types and degree of risk that may be undertaken. The Company continually measures this risk by using a VaR methodology.

The Company’s derivative positions as of December 31 were as follows:

	2008		2007	
	Contract or Notional Amount		Contract or Notional Amount	
(Dollars in millions)	End User	For Clients	End User	For Clients
Derivatives contracts				
Interest rate contracts				
Swaps	**$20,193**	**$126,913**	$23,068	$89,379
Futures and forwards	**10,089**	**40,057**	24,330	23,802
Options	**1,500**	**28,098**	1,800	16,936
Total interest rate contracts	**31,782**	**195,068**	49,198	130,117
Interest rate lock commitments	**7,161**	**-**	4,993	-
Equity contracts	**3,094**	**11,214**	-	10,293
Foreign exchange contracts	**2,009**	**5,659**	2,293	4,763
Other derivative contracts	**345**	**1,671**	1,101	77
Total derivatives contracts	**$44,391**	**$213,612**	$57,585	$145,250
Credit-related arrangements				
Commitments to extend credit	**$79,191**		$83,165	
Standby letters of credit and similar arrangements	**13,942**		12,703	
Total credit-related arrangements	**$93,133**		$95,868	

Fair Value and Cash Flow Hedges

The Company utilizes a comprehensive risk management strategy to monitor sensitivity of earnings to movements in interest rates. Specific types of funding and principal amounts hedged are determined based on prevailing market conditions and the shape of the yield curve. In conjunction with this strategy, the Company employs various interest rate derivatives as risk management tools to hedge interest rate risk from recognized assets and liabilities or from forecasted transactions. The terms and notional amounts of derivatives are determined based on management’s assessment of future interest rates, as well as other factors. The Company establishes parameters for derivative usage, including identification of assets and liabilities to hedge, derivative instruments to be utilized, and notional amounts of hedging relationships.

Fair Value Hedges

Prior to the adoption of SFAS No. 159 in 2007, the Company had designated interest rate swaps as fair value hedges of changes in the fair value of recognized liabilities due to changes in the benchmark interest rate pursuant to the provisions of SFAS No. 133. For the year ended December 31, 2006, the Company recognized $64.7 million of interest

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

expense related to net settlements on interest rate swaps accounted for as fair value hedges. This hedging strategy resulted in trading losses from hedge ineffectiveness of $5.0 million for the year ended December 31, 2006. No gains and losses of swaps designated as fair value hedges were excluded from the assessment of effectiveness. Upon the adoption of SFAS No. 159 effective January 1, 2007, the Company elected to carry at fair value all recognized liabilities that had previously been designated in qualifying fair value hedges. In conjunction with this election, all fair value hedges were dedesignated and opening retained earnings was reduced by $197.2 million, thus no discount or premium on the debt resulting from hedge accounting remained to be amortized. See Note 20, “Fair Value Election and Measurement,” to the Consolidated Financial Statements for more information.

The Company maintains a risk management program to manage interest rate risk and pricing risk associated with its mortgage lending activities. The risk management program includes the use of forward contracts and other derivatives that are recorded in the financial statements at fair value and are used to offset changes in value of the mortgage inventory due to changes in market interest rates. A portion of these derivative instruments were documented as fair value hedges of specific pools of loans that met the similar assets test. The pools of loans were matched with a certain portion of the derivative instruments so that the expected changes in market value would inversely offset within a range of 80% to 125%. The qualifying pools of hedged loans were recorded in the financial statements at their fair value. This hedging strategy resulted in ineffectiveness that reduced earnings by $0.3 million and $21.1 million for the years ended December 31, 2007 and 2006, respectively. This hedge accounting designation was terminated in 2007 as a result of the Company’s adoption of SFAS No. 159 and its decision to elect fair value accounting for a substantial portion of the loans held for sale.

Cash Flow Hedges

The Company has designated interest rate swaps and options as cash flow hedges of probable forecasted transactions related to recognized assets and liabilities. Specifically, these derivatives have been designated as hedging the exposure to the benchmark interest rate risk associated with floating rate loans, certificates of deposit, and floating rate debt. The maximum range of hedge maturities for asset hedges is approximately five to seven years, with the weighted average being approximately four years; such maximum range for liability hedges is less than one year, with the weighted average being approximately 0.5 years. The Company recognized net interest income of $180.7 million for the year ended December 31, 2008 and net interest expense of $25.6 million and $40.9 million for the years ended December 31, 2007 and 2006, respectively, related to the effective portion of interest rate swaps and options that were designated as cash flow hedges. During the years ended December 31, 2008, 2007, and 2006, $0.0 million, $0.4 million, and $2.2 million, respectively, were recognized as trading losses from hedge ineffectiveness of swaps and options and amounts excluded from the assessment of effectiveness of option hedges. As of December 31, 2008, $225.0 million, net of tax, of the deferred net gains on derivatives that are recorded in accumulated other comprehensive income are expected to be reclassified to net interest income in the next twelve months in connection with the recognition of interest income or interest expense on the hedged item.

During the third quarter of 2008, the Company executed equity forward agreements (the “Agreements”) on 30 million shares of Coke. A consolidated subsidiary of SunTrust Banks, Inc. owns approximately 22.9 million Coke shares and a consolidated subsidiary of SunTrust Bank owns approximately 7.1 million Coke shares. These two subsidiaries entered into separate Agreements on their respective holdings of Coke common shares with a large, unaffiliated financial institution (the “Counterparty”). Execution of the Agreements (including the pledges of the Coke shares pursuant to the terms of the Agreements) did not constitute a sale of the Coke shares under U.S. GAAP for several reasons, including that ownership of the shares was not legally transferred to the Counterparty. The Agreements, in their entirety, are derivatives based on the criteria in SFAS No. 133. The Agreements resulted in zero cost equity collars pursuant to the provisions of SFAS No. 133. In accordance with the provisions of SFAS No. 133, the Company has designated the Agreements as cash flow hedges of the Company’s probable forecasted sales of its Coke shares, which are expected to occur in approximately six to six and a half years, for overall price volatility below the strike prices on the floor (purchased put) and above the strike prices on the ceiling (written call). Although the Company is not required to deliver its Coke shares under the Agreements, the Company has asserted that it is probable, as defined by SFAS No. 133, that it will sell all of its Coke shares at or around the settlement date of the Agreements. The Federal Reserve’s approval for Tier 1 Capital was significantly based on this expected disposition of the Coke shares under the Agreements or in another market transaction. Both the sale and the timing of such sale remain probable to occur as designated. At least quarterly, the Company assesses hedge effectiveness and measures hedge ineffectiveness with the effective portion of the changes in fair value of the Agreements generally recorded in accumulated other comprehensive income and any ineffective portions generally recorded in trading gains and losses. None of the components of the Agreements’ fair

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

values are excluded from the Company's assessments of hedge effectiveness. Potential sources of ineffectiveness include changes in market dividends and certain early termination provisions. The Company did not recognize any ineffectiveness during 2008. Other than potential measured hedge ineffectiveness, no amounts will be reclassified from accumulated other comprehensive income over the next twelve months and any remaining amounts recorded in accumulated other comprehensive income will be reclassified to earnings when the probable forecasted sales of the Coke shares occur.

Economic Hedging Activities

Outside of its normal derivatives trading activities for its clients, the Company enters into derivative contracts as end user to economically hedge risks associated with certain non-derivative instruments. These risks include interest rate risk, foreign exchange risk, credit risk, and overall price risk associated with certain mortgage assets as discussed below:

- The Company is subject to interest rate risk in connection with its fixed rate debt. When market interest rates move, the market value of the Company's debt is affected. To protect against this risk on certain debt issuances that the Company has elected to carry at fair value, the Company has entered into pay variable-receive fixed interest rate swaps (in addition to entering into certain non-derivative instruments) that decrease in value in a rising rate environment and increase in value in a declining rate environment. The Company is also exposed to interest rate risk associated with MSRs that the Company hedges at times with certain derivative financial instruments such as swaptions.

- The Company is exposed to foreign exchange rate risk associated with certain senior notes denominated in euros and pound sterling. This risk is economically hedged by entering into cross currency swaps which are received as either euros or pound sterling/pay U.S. dollars. The foreign exchange rate impacts interest expense on the Consolidated Statement of Income while the impact of the economic hedging activity is included within trading account profits and commissions.

- The Company enters into credit derivatives, primarily credit default swaps, to hedge credit risk associated with certain loans held within its Wholesale Banking and Wealth and Investment Management segments, which provide income in cases of default.

- The Company also hedges overall price risk related to IRLCs, mortgage loans held for sale, and mortgage loans held for investment designated at fair value under SFAS No. 159. Fair value changes occur as a result of interest rate movements as well as changes in the value of the associated servicing. Derivative instruments used include MBS options and forward sale agreements. The Company also entered into interest rate swaps, futures contracts, and eurodollar options to mitigate interest rate risk associated with IRLCs, mortgage loans held for sale, and mortgage loans held for investment designated at fair value under SFAS No. 159.

Trading Activities on Behalf of Clients

The Company also enters into various derivative contracts with its clients and generally manages the risk associated with these contracts within the framework of its value-at-risk ("VaR") approach that monitors total exposure daily and seeks to manage the exposure on an overall basis. These trading positions primarily include interest rate swaps, equity derivatives, credit default swaps, TRS, futures, options, and foreign currency contracts. Derivatives entered into on behalf of clients are accounted for as trading assets or liabilities and any gain or loss in market value is recorded in trading account profits and commissions. See Note 18, "Reinsurance Arrangements and Guarantees," to the Consolidated Financial Statements for specific discussion related to credit derivatives.

Note 18 – Reinsurance Arrangements and Guarantees

Reinsurance

The Company provides mortgage reinsurance on certain mortgage loans through contracts with several primary mortgage insurance companies. Under these contracts, the Company provides aggregate excess loss coverage in a mezzanine layer in exchange for a portion of the pool's mortgage insurance premium. As of December 31, 2008, approximately $17.9 billion of mortgage loans were covered by such mortgage reinsurance contracts. The reinsurance contracts are intended to place limits

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

on the Company's maximum exposure to losses by defining the loss amounts ceded to the Company as well as by establishing trust accounts for each contract. The trust accounts, which are comprised of funds contributed by the Company plus premiums earned under the reinsurance contracts, are maintained to fund claims made under the reinsurance contracts. If claims exceed funds held in the trust accounts, the Company does not intend to make additional contributions beyond future premiums earned under the existing contracts.

At December 31, 2008, the total loss exposure ceded to the Company was approximately $690 million; however, the maximum amount of loss exposure based on funds held in each separate trust account was limited to $246.4 million. Of this amount, $180.0 million of losses have been reserved for as of December 31, 2008, reducing our net loss exposure to $66.4 million. Future reported losses may exceed $66.4 million since future premium income will increase the amount of funds held in the trust; however, future cash losses, net of premium income, are not expected to exceed $66.4 million. The amount of future premium income is limited to the population of loans currently outstanding since additional loans are not being added to the reinsurance contracts beginning in 2009, and future premium income could be significantly curtailed to the extent we agree to relinquish control of individual trusts to the mortgage insurance companies. Premium income, which totaled $58.8 million, $37.7 million and $27.5 million for each of the years ended December 31, 2008, 2007 and 2006, respectively, are reported as part of noninterest income. The related provision for losses, which total $180.0 million and $0.2 million for each of the years ended December 31, 2008 and 2007, respectively, is reported as part of noninterest expense. No losses were recorded in 2006.

As noted above, the reserve for estimated losses incurred under its reinsurance contracts totaled $180.0 million at December 31, 2008. Our evaluation of the required reserve amount includes an estimate of claims to be paid by the trust related to loans in default and as assessment of the sufficiency of future revenues, including premiums and investment income on funds held in the trusts, to cover future claims.

Guarantees

The Company has undertaken certain guarantee obligations in the ordinary course of business. In following the provisions of FIN 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others," the Company must consider guarantees that have any of the following four characteristics: (i) contracts that contingently require the guarantor to make payments to a guaranteed party based on changes in an underlying factor that is related to an asset, a liability, or an equity security of the guaranteed party; (ii) contracts that contingently require the guarantor to make payments to a guaranteed party based on another entity's failure to perform under an obligating agreement; (iii) indemnification agreements that contingently require the indemnifying party to make payments to an indemnified party based on changes in an underlying factor that is related to an asset, a liability, or an equity security of the indemnified party; and (iv) indirect guarantees of the indebtedness of others. The issuance of a guarantee imposes an obligation for the Company to stand ready to perform, and should certain triggering events occur, it also imposes an obligation to make future payments. Payments may be in the form of cash, financial instruments, other assets, shares of stock, or provisions of the Company's services. The following is a discussion of the guarantees that the Company has issued as of December 31, 2008, which have characteristics as specified by FIN 45.

Visa

The Company issues and acquires credit and debit card transactions through the Visa, U.S.A. Inc. card association or its affiliates (collectively "Visa"). On October 3, 2007, Visa completed a restructuring and issued shares of Class B Visa Inc. common stock to its financial institution members, including the Company, in contemplation of an initial public offering ("IPO"). In March 2008, Visa completed its IPO and upon the closing, approximately 2 million of SunTrust's Class B shares were mandatorily redeemed. The Company received cash of $86.3 million in conjunction with the redemption, which was recorded as a gain in noninterest income. As of December 31, 2008, SunTrust had 3.2 million Class B shares remaining, the equivalent to 2.0 million Class A shares of Visa Inc. based on the current conversion factor, which is subject to adjustment depending on the outcome of certain specifically defined litigation. The Class B shares are not transferable until the latter of the third anniversary of the IPO closing, or the date which certain specifically defined litigation has been resolved; therefore, the Class B shares are classified in other assets and accounted for at their carryover basis, which is $0 as of December 31, 2008.

The Company is a defendant, along with Visa U.S.A. Inc. and MasterCard International (the "Card Associations"), as well as several other banks, in one of several antitrust lawsuits challenging the practices of the Card Associations (the "Litigation"). The Company has entered into judgment and loss sharing agreements with Visa and certain other banks in

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

order to apportion financial responsibilities arising from any potential adverse judgment or negotiated settlements related to the Litigation. Additionally, in connection with the restructuring, a provision of the original Visa By-Laws, Section 2.05j, was restated in Visa's certificate of incorporation. Section 2.05j contains a general indemnification provision between a Visa member and Visa, and explicitly provides that after the closing of the restructuring, each member's indemnification obligation is limited to losses arising from its own conduct and the specifically defined Litigation. The maximum potential amount of future payments that the Company could be required to make under this indemnification provision cannot be determined as there is no limitation provided under the By-Laws and the amount of exposure is dependent on the outcome of the Litigation. As a result of the indemnification provision in Section 2.05j of the Visa By-Laws and/or the indemnification provided through the judgment or loss sharing agreements, the Company estimated the fair value of the net guarantee to be $76.9 million as of December 31, 2007 and $43.5 million as of December 31, 2008. Upon Visa's IPO in March 2008, Visa funded $3.0 billion into an escrow account, established for the purposes of funding judgments in, or settlements of, the Litigation. In October 2008, Visa reached a settlement with Discover Financial Services related to a case within the covered Litigation and as a result, the Company estimated that the settlement incrementally added $20.0 million to the fair value of its guarantee liability. Following the Discover settlement, Visa funded an additional $1.1 billion to the escrow account during December. While the Company could be required to separately fund its proportionate share of the Litigation losses, it is expected that the escrow account will be used to pay all or a substantial amount of the losses. Therefore, for the year ending December 31, 2008, SunTrust recorded $53.4 million, its expected economic benefit associated with the $4.1 billion in escrow funding, as an offset to the guarantee liability and as a reduction to Visa litigation expense. A high degree of subjectivity was used in estimating the fair value of the guarantee obligation and the ultimate cost to the Company could be significantly higher or lower than the liability recorded as of December 31, 2008.

Letters of Credit

Letters of credit are conditional commitments issued by the Company generally to guarantee the performance of a client to a third party in borrowing arrangements, such as commercial paper, bond financing, and similar transactions. The credit risk involved in issuing letters of credit is essentially the same as that involved in extending loan facilities to clients and may be reduced by selling participations to third parties. The Company issues letters of credit that are classified as financial standby, performance standby, or commercial letters of credit. Commercial letters of credit are specifically excluded from the disclosure and recognition requirements of FIN 45.

As of December 31, 2008 and December 31, 2007, the maximum potential amount of the Company's obligation was $13.8 billion and $12.6 billion, respectively, for financial and performance standby letters of credit. The Company has recorded $141.9 million and $112.4 million in other liabilities for unearned fees related to these letters of credit as of December 31, 2008 and December 31, 2007, respectively. The Company's outstanding letters of credit generally have a term of less than one year but may extend longer than one year. If a letter of credit is drawn upon, the Company may seek recourse through the client's underlying obligation. If the client's line of credit is also in default, the Company may take possession of the collateral securing the line of credit, where applicable. The Company monitors its credit exposure under standby letters of credit in the same manner as it monitors other extensions of credit in accordance with credit policies. Some standby letters of credit are designed to be drawn upon and others are drawn upon only under circumstances of dispute or default in the underlying transaction to which the bank is not a party. In all cases, the bank holds the right to reimbursement from the applicant and may or may not also hold collateral to secure that right. An internal assessment of the probability of default and loss severity in the event of default is assessed consistent with the methodologies used for all commercial borrowers and the management of risk regarding letters of credit leverages the risk rating process to focus higher visibility on the higher risk and higher dollar letters of credit.

Loan Sales

SunTrust Mortgage, Inc. ("STM"), a consolidated subsidiary of SunTrust, originates and purchases consumer residential mortgage loans, a portion of which are sold to outside investors in the normal course of business. When mortgage loans or MSRs are sold, representations and warranties regarding certain attributes of the loans sold are made to the third party purchaser. These representations and warranties may extend through the life of the mortgage loan, generally 25 to 30 years. Subsequent to the sale, if inadvertent underwriting deficiencies or documentation defects are discovered in individual mortgage loans, STM will be obligated to repurchase the respective mortgage loan or MSRs and absorb the loss if such deficiencies or defects cannot be cured by STM within the specified period following discovery. STM also maintains a liability for estimated losses on mortgage loans and MSRs that may be repurchased due to breach of general representations and warranties or purchasers' rights under early payment default provisions. STM's risk of repurchasing

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

loans under these guarantees is largely driven by borrower payment performance under the terms of the mortgage loans. As of December 31, 2008 and December 31, 2007, $100.5 million and $49.9 million, respectively, were accrued for these repurchases.

Contingent Consideration

The Company has contingent payment obligations related to certain business combination transactions. Payments are calculated using certain post-acquisition performance criteria. The potential liability associated with these arrangements was approximately $31.8 million and $37.7 million as of December 31, 2008 and December 31, 2007, respectively. As contingent consideration in a business combination is not subject to the recognition and measurement provisions of FIN 45, the Company currently has no amounts recorded for these guarantees as of December 31, 2008. If required, these contingent payments will be payable at various times over the next five years.

Public Deposits

The Company holds public deposits of various states in which it does business. Individual state laws require banks to collateralize public deposits, typically as a percentage of their public deposit balance in excess of FDIC insurance and may also require a cross-guarantee among all banks holding public deposits of the individual state. The amount of collateral required varies by state and may also vary by institution within each state, depending on the individual state's risk assessment of depository institutions. Certain of the states in which the Company holds public deposits use a pooled collateral method, whereby in the event of default of a bank holding public deposits, the collateral of the defaulting bank is liquidated to the extent necessary to recover the loss of public deposits of the defaulting bank. To the extent the collateral is insufficient, the remaining public deposit balances of the defaulting bank are recovered through an assessment, from the other banks holding public deposits in that state. The maximum potential amount of future payments the Company could be required to make is dependent on a variety of factors, including the amount of public funds held by banks in the states in which the Company also holds public deposits and the amount of collateral coverage associated with any defaulting bank. Individual states appear to be monitoring risk relative to the current economic environment and evaluating collateral requirements and therefore, the likelihood that the Company would have to perform under this guarantee is dependent on whether any banks holding public funds default as well as the adequacy of collateral coverage.

Credit Derivatives

As part of its trading businesses, the Company enters into contracts that are, in form or substance, written guarantees: specifically, credit default swaps ("CDS"), swap participations, and TRS. The Company accounts for these contracts as derivative instruments in accordance with the provisions of SFAS No. 133 and, accordingly, records these contracts at fair value, with changes in fair value recorded in trading account profits and commissions.

The Company writes CDS, which are agreements under which the Company receives premium payments from its counterparty for protection against an event of default of a reference asset. In the event of default under the CDS, the Company would either net cash settle or make a cash payment to its counterparty and take delivery of the defaulted reference asset, from which the Company may recover all, a portion or none of the credit loss, depending on the performance of the reference asset. Events of default, as defined in the CDS agreements, are generally triggered upon the failure to pay and similar events related to the issuer(s) of the reference asset. As of December 31, 2008, all written CDS contracts reference single name corporate credits or corporate credit indices. When the Company has written CDS, it has generally entered into offsetting CDS for the underlying reference asset, under which the Company paid a premium to its counterparty for protection against an event of default on the reference asset. The counterparties to these purchased CDS are of high creditworthiness and have ISDA agreements in place that subject the CDS to master netting provisions, thereby mitigating the risk of non-payment to the Company. As such, at December 31, 2008, the Company does not have any significant risk of making a non-recoverable payment on any written CDS. During 2008 and 2007, the only instances of default on written CDS were driven by credit indices with constituent credit default. In all cases where the Company made resulting cash payments to settle, the Company collected like amounts from the counterparties to the offsetting purchased CDS. At December 31, 2008, the written CDS had remaining terms of approximately one to seven years. The maximum guarantees outstanding at December 31, 2008 and 2007, as measured by the gross notional amounts of written CDS, were $190.8 million and $313.4 million, respectively. At December 31, 2008 and 2007, the gross notional amounts of purchased CDS contracts, which represent benefits to, rather than

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

obligations of, the Company, were $245.2 million and $401.4 million, respectively. The fair values of the written CDS were $34.7 million and $11.6 million at December 31, 2008 and 2007, respectively, and the fair values of the purchased CDS were $45.8 million and $16.2 million at December 31, 2008 and 2007, respectively.

The Company writes swap participations, which are credit derivatives whereby the Company has guaranteed payment to a dealer counterparty in the event that the counterparty experiences a loss on a derivative instrument, such as an interest rate swap, due to a failure to pay by the counterparty's customer (the "obligor") on that derivative instrument. The Company monitors its payment risk on its swap participations by monitoring the creditworthiness of the obligors, which is based on the normal credit review process the Company would have performed had it entered into the derivative instruments directly with the obligors. The obligors are all corporations or partnerships. At December 31, 2008, the average credit risk of the overall portfolio of obligors approximated investment grade, such that the Company does not believe that it is likely that it will be required to make payments on the swap participations. However, the Company continues to monitor the creditworthiness of its obligors and the likelihood of payment could change at any time due to unforeseen circumstances. Further, during 2008 and 2007, the Company did not make any payments under its written swap participations. At December 31, 2008, the remaining terms on these swap participations generally ranged from one to ten years, with a weighted average on the maximum estimated exposure of 3.8 years. The Company's maximum estimated exposure to written swap participations, as measured by projecting a maximum value of the guaranteed derivative instruments based on interest rate curve simulations and assuming 100% default by all obligors on the maximum values, was approximately $125.7 million and $18.3 million at December 31, 2008 and 2007, respectively. The fair values of the written swap participations were *de minimis* at December 31, 2008 and 2007. As part of its trading activities, the Company may enter into purchased swap participations, but such activity is not matched, as discussed herein related to CDS or TRS.

The Company has also entered into TRS contracts on loans. In certain of these contracts, the Company would be required to pay the depreciated value, if any, of an underlying reference asset upon termination of the TRS; in this manner, a TRS functions similar to a guarantee. However, the terms of the TRS would also entitle the Company to receive the appreciated value, if any, of the underlying reference asset, which is different from traditional guarantees. The Company's TRS business consists of matched trades, such that when the Company pays depreciation on one TRS, it receives the same depreciation on the matched TRS. As such, the Company does not have any long or short exposure, other than credit risk of its counterparty, which is managed through collateralization. The Company typically receives initial cash collateral from the counterparty upon entering into the TRS and is entitled to additional collateral as the fair value of the underlying reference assets deteriorate. At December 31, 2008 and 2007, the Company had $602.1 million and $38.0 million, respectively, of outstanding and offsetting TRS notional. The fair values of the TRS derivative liabilities were $166.6 million and $0.1 million at December 31, 2008 and 2007, respectively. The fair values of the offsetting TRS derivative assets at December 31, 2008 and 2007 were $171.0 million and $0.1 million, respectively, and related collateral held at December 31, 2008 and 2007 was $296.8 million and $77.7 million, respectively. As of December 31, 2008, the Company had decided to exit its TRS business, which will result in the underlying reference assets being sold and the outstanding TRS notional amounts being terminated. The Company has not incurred any losses on these unwinds to date and does not expect to incur any, as the TRS trades have been appropriately collateralized and payables and receivables resulting from depreciation or appreciation of the referenced assets will offset.

Other

In the normal course of business, the Company enters into indemnification agreements and provides standard representations and warranties in connection with numerous transactions. These transactions include those arising from securitization activities, underwriting agreements, merger and acquisition agreements, loan sales, contractual commitments, payment processing sponsorship agreements, and various other business transactions or arrangements. The extent of the Company's obligations under these indemnification agreements depends upon the occurrence of future events; therefore, the Company's potential future liability under these arrangements is not determinable.

SunTrust Investment Services, Inc. ("STIS") and SunTrust Robinson Humphrey, Inc. ("STRH"), broker-dealer affiliates of SunTrust, use a common third party clearing broker to clear and execute their customers' securities transactions and to hold customer accounts. Under their respective agreements, STIS and STRH agree to indemnify the clearing broker for losses that result from a customer's failure to fulfill its contractual obligations. As the clearing broker's rights to charge STIS and STRH have no maximum amount, the Company believes that the maximum potential obligation cannot be estimated. However, to mitigate exposure, the affiliate may seek recourse from the customer through cash or securities held in the defaulting customers' account. For the year ended ended December 31, 2008 and December 31,

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

2007, STIS and STRH experienced minimal net losses as a result of the indemnity. The clearing agreements expire in May 2010 for both STIS and STRH. See Note 21, "Contingencies," to the Consolidated Financial Statements for a discussion regarding the offer to purchase ARS.

SunTrust Community Capital, LLC ("SunTrust Community Capital"), a SunTrust subsidiary, previously obtained state and federal tax credits through the construction and development of affordable housing properties and continues to obtain state and federal tax credits through investments as a limited partner in affordable housing developments. SunTrust Community Capital or its subsidiaries are limited and/or general partners in various partnerships established for the properties. If the partnerships generate tax credits, those credits may be sold to outside investors. As of December 31, 2008, SunTrust Community Capital has completed six tax credit sales containing guarantee provisions stating that SunTrust Community Capital will make payment to the outside investors if the tax credits become ineligible. SunTrust Community Capital also guarantees that the general partner under the transaction will perform on the delivery of the credits. The guarantees are expected to expire within a ten year period. As of December 31, 2008, the maximum potential amount that SunTrust Community Capital could be obligated to pay under these guarantees is $38.6 million; however, SunTrust Community Capital can seek recourse against the general partner. Additionally, SunTrust Community Capital can seek reimbursement from cash flow and residual values of the underlying affordable housing properties provided that the properties retain value. As of December 31, 2008 and December 31, 2007, $11.5 million and $14.4 million, respectively, were accrued representing the remainder of tax credits to be delivered, and were recorded in other liabilities on the Consolidated Balance Sheets.

Note 19 - Concentrations of Credit Risk

Credit risk represents the maximum accounting loss that would be recognized at the reporting date if borrowers failed to perform as contracted and any collateral or security proved to be of no value. Concentrations of credit risk (whether on- or off-balance sheet) arising from financial instruments can exist in relation to individual borrowers or groups of borrowers, certain types of collateral, certain types of industries, certain loan products, or certain regions of the country.

Credit risk associated with these concentrations could arise when a significant amount of loans, related by similar characteristics, are simultaneously impacted by changes in economic or other conditions that cause their probability of repayment to be adversely affected. The Company does not have a significant concentration of risk to any individual client except for the U.S. government and its agencies. The major concentrations of credit risk for the Company arise by collateral type in relation to loans and credit commitments. The only significant concentration that exists is in loans secured by residential real estate. At December 31, 2008, the Company owned $48.5 billion in residential mortgage loans and home equity lines, representing 38.2% of total loans, and an additional $18.3 billion in commitments to extend credit on home equity loans and $17.0 billion in mortgage loan commitments. At December 31, 2007, the Company had $47.7 billion in residential mortgage loans and home equity lines, representing 39.0% of total loans, and an additional $20.4 billion in commitments to extend credit on home equity loans and $12.9 billion in mortgage loan commitments. The Company originates and retains certain residential mortgage loan products that include features such as interest only loans, high loan to value loans, and low initial interest rate loans. As of December 31, 2008, the Company owned $16.8 billion of interest only loans, primarily with a 10 year interest only period. Approximately $1.9 billion of those loans had combined original loan to value ratios in excess of 80% with no mortgage insurance. Additionally, the Company owned approximately $2.4 billion of amortizing loans with combined loan to value ratios in excess of 80% with no mortgage insurance. The Company attempts to mitigate and control the risk in each loan type through private mortgage insurance and underwriting guidelines and practices. A geographic concentration arises because the Company operates primarily in the Southeastern and Mid-Atlantic regions of the United States.

SunTrust engages in limited international banking activities. The Company's total cross-border outstanding loans were $945.8 million and $591.6 million as of December 31, 2008 and December 31, 2007, respectively.

Note 20 – Fair Value Election and Measurement

As discussed in Note 1, "Significant Accounting Policies," to the Consolidated Financial Statements, SunTrust early adopted the fair value financial accounting standards SFAS Nos. 157 and 159 as of January 1, 2007. In certain circumstances, fair value enables a company to more accurately align its financial performance with the economic value of actively traded or hedged assets or liabilities. Fair value enables a company to mitigate the non-economic earnings volatility caused from financial assets and financial liabilities being carried at different bases of accounting, as well as to more accurately portray the active and dynamic management of a company's balance sheet.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

In accordance with SFAS No. 159, the Company has elected to record specific financial assets and financial liabilities at fair value. These instruments include all, or a portion, of the following: fixed rate debt, loans and loans held for sale, brokered deposits, and trading loans. The following is a description of each financial asset and liability class as of December 31, 2008 for which fair value has been elected, including the specific reasons for electing fair value and the strategies for managing the financial assets and liabilities on a fair value basis.

Fixed Rate Debt

The debt that the Company initially elected to carry at fair value was all of its fixed rate debt that had previously been designated in qualifying fair value hedges using receive fixed/pay floating interest rate swaps, pursuant to the provisions of SFAS No. 133. As of December 31, 2008, the fair value of such fixed rate debt was comprised of $3.7 billion of fixed rate Federal Home Loan Bank advances and $3.5 billion of publicly-issued debt. The Company elected to record this debt at fair value in order to align the accounting for the debt with the accounting for the derivative without having to account for the debt under hedge accounting, thus avoiding the complex and time consuming fair value hedge accounting requirements of SFAS No. 133. This move to fair value introduced earnings volatility due to changes in the Company's credit spread that was not required to be valued under the SFAS No. 133 hedge designation. Most of the debt, along with certain of the interest rate swaps previously designated as hedges under SFAS No. 133, continues to remain outstanding; however, in February 2009, the Company repaid all of the FHLB advances outstanding and closed out its exposures on the interest rate swaps. Approximately $150.3 million of FHLB stock was redeemed in conjunction with the repayment of the advances.

During the year ended December 31, 2007, the Company consummated two fixed rate debt issuances. On September 10, 2007, the Company issued $500 million of Senior Notes, which carried a fixed coupon rate of 6.00% and had a term of 10 years. The Company did not enter into any derivatives to hedge this debt and, therefore, did not elect to carry the debt at fair value. On November 5, 2007, the Company issued $500 million of Senior Notes, which carried a fixed coupon rate of 5.25% and had a term of 5 years. The Company entered into interest rate swaps in connection with this debt issuance and, as a result, elected to carry this debt at fair value.

During the year ended December 31, 2008, the Company consummated two fixed rate debt issuances and repurchased certain debt carried at fair value. On March 4, 2008, the Company issued $685 million of trust preferred securities, which carried a fixed coupon rate of 7.875% and had a term of 60 years. The Company did not enter into any derivatives to hedge this debt and, therefore, did not elect to carry the debt at fair value. On March 17, 2008, the Company issued $500 million of subordinated notes, which carried a fixed coupon rate of 7.25% and had a term of 10 years. The Company entered into interest rate swaps in connection with this debt issuance and, as a result, elected to carry this debt at fair value. During the year ended December 31, 2008, $294.2 million of the Company's fair value debt matured, and the Company repurchased principal amounts of approximately $384 million of debt carried at fair value to mitigate volatility from credit spread changes.

In September 2008, the Federal Reserve Bank of Boston (the "Fed") instituted the ABCP MMMF Liquidity Facility program (the "Program") that allows eligible depository institutions, bank holding companies and affiliated broker/dealers to purchase certain asset-backed commercial paper ("ABCP") from certain money market mutual funds (the "MMMF"). These purchases will be made by the participating institution at a price equal to the MMMF's amortized cost. The Fed will then make a fixed rate non-recourse loan to the participating institution that will mature on the same date as the ABCP that was purchased with a specific draw. As of December 31, 2008, SunTrust Robinson Humphrey ("STRH") owned $400 million of eligible ABCP at a price of $399.6 million. At December 31, 2008, this ABCP had a weighted average maturity of 9 days and a risk weighting of 0% for regulatory capital purposes. Per the terms of the Program, STRH also had outstanding loans from the Fed in the amount of $399.6 million. Subsequent to December 31, 2008 all of this ABCP matured, STRH collected 100% of the par amount of this ABCP from the issuer and repaid the loan to the Fed. At December 31, 2008, this ABCP was classified within trading assets and carried at fair value, and the loans from the Fed were elected to be carried at fair value pursuant to the provisions of SFAS No. 159 and classified within other short-term borrowings. Because of the non-recourse nature of the loan, the Company did not recognize through earnings any differences in fair value between the loans and the ABCP.

Brokered Deposits

Prior to adopting SFAS No. 159, the Company had adopted the provisions of SFAS No. 155 and elected to carry certain certificates of deposit at fair value. These debt instruments include embedded derivatives that are generally based on underlying equity securities or equity indices, but may be based on other underlyings that are generally not clearly and

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

closely related to the host debt instrument. The Company elected to carry these instruments at fair value in order to remove the mixed attribute accounting model required by SFAS No. 133. The provisions of that statement require bifurcation of a single instrument into a debt component, which would be carried at amortized cost, and a derivative component, which would be carried at fair value, with such bifurcation being based on the fair value of the derivative component and an allocation of any remaining proceeds to the host debt instrument. Since the adoption of SFAS No. 155, the Company has elected to carry substantially all newly-issued certificates of deposit at fair value. In cases where the embedded derivative would not require bifurcation under SFAS No. 133, the instrument may be carried at fair value under SFAS No. 159 to allow the Company to economically hedge the embedded features.

Loans and Loans Held for Sale

In the second quarter of 2007, the Company began recording at fair value certain newly-originated mortgage loans held for sale based upon defined product criteria. SunTrust chose to fair value these mortgage loans held for sale in order to eliminate the complexities and inherent difficulties of achieving hedge accounting and to better align reported results with the underlying economic changes in value of the loans and related hedge instruments. This election impacts the timing and recognition of origination fees and costs, as well as servicing value. Specifically, origination fees and costs, which had been appropriately deferred under SFAS No. 91 and recognized as part of the gain/loss on sale of the loan, are now recognized in earnings at the time of origination. For the year ended December 31, 2008, approximately $112.1 million of loan origination fees were recognized in noninterest income and approximately $110.7 million of loan origination costs were recognized in noninterest expense due to this fair value election. For the year ended December 31, 2007, approximately $79.4 million of loan origination fees were recognized in noninterest income and approximately $78.4 million of loan origination costs were recognized in noninterest expense due to this fair value election. The servicing value, which had been recorded as MSRs at the time the loan was sold, is now included in the fair value of the loan and initially recognized at the time the Company enters into IRLCs with borrowers. The Company began using derivatives to economically hedge changes in servicing value as a result of including the servicing value in the fair value of the loan. The mark to market adjustments related to loans held for sale and the associated economic hedges is captured in mortgage production income.

In the normal course of business, the Company may elect to transfer certain fair valued mortgage loans held for sale to mortgage loans held for investment. During the year ended December 31, 2008, $83.9 million of such loans were transferred from mortgage loans held for sale to mortgage loans held for investment due to a change in management’s intent with respect to these loans based on the limited marketability of these loans given the lack of liquidity for certain loan types.

On May 1, 2008, SunTrust acquired 100% of the outstanding common shares of GB&T. As a result of the acquisition, SunTrust acquired approximately $1.4 billion of loans, primarily commercial real estate loans. SunTrust elected to account for at fair value, in accordance with SFAS No. 159, $171.6 million of the acquired loans, which were classified as nonaccrual, in order to eliminate the complexities of accounting for the loans under Statement of Position 03-3, “Accounting for Certain Loans or Debt Securities Acquired in a Transfer.” Upon acquisition, the loans had a fair value of $111.1 million. On December 31, 2008, primarily as a result of paydowns, payoffs and transfers to OREO, the loans had a fair value of $31.2 million.

Trading Loans

The Company often maintains a portfolio of loans that it trades in the secondary market. Pursuant to the provisions of SFAS No. 159, the Company elected to carry certain trading loans at fair value in order to reflect the active management of these positions. Subsequent to the initial adoption, additional loans were purchased and recorded at fair value as part of the Company’s normal loan trading activities. As of December 31, 2008, approximately $248.9 million of trading loans were outstanding.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

In addition to loans carried at fair value in connection with the Company's loan trading business, the Company has also elected to carry short-term loans made in connection with its total return swap business at fair value. At December 31, 2008, the Company had approximately $603.4 million of such short-term loans carried at fair value, which are included in trading assets.

Valuation Methodologies and Fair Value Hierarchy

The primary financial instruments that the Company carries at fair value include securities, derivative instruments, fixed rate debt, loans and loans held for sale. Classification in the fair value hierarchy of financial instruments is based on the criteria set forth in SFAS No. 157. Financial instruments that have significant unobservable trading activity (i.e., inactive markets) or where indicative third party prices contain wide bid/ask spreads were classified as level 3 instruments due to the significance of the unobservable inputs, namely credit and liquidity risk, in estimating the fair value. The values provided by third party sources were generally based on proprietary models or non-binding broker price indications that estimated the credit and liquidity risk.

A market is considered inactive based on an evaluation of the frequency and size of transactions occurring in a certain financial instrument or similar class of financial instruments. Determining an inactive market requires a judgmental evaluation that includes comparing the recent trading activities to historical experience. If limited trading activity existed and few market participants were willing to transact, as evidenced by wide bid/ask spreads, non-binding indicative bids, or the nature of the market participants, the market was considered to be inactive. Inactive markets necessitate the use of additional judgment when valuing financial instruments, such as pricing matrices, cash flow modeling, and the selection of an appropriate discount rate. The assumptions used to estimate the value of an instrument where the market was inactive were based on the Company's assessment of the assumptions a market participant would use to value the instrument in an orderly transaction, and included considerations of illiquidity in the current market environment.

Level 3 Instruments

SunTrust used significant unobservable inputs (level 3) to fair value certain financial and non-financial instruments as of December 31, 2008. The need to use unobservable inputs generally results from the lack of market liquidity, which has resulted in diminished observability of both actual trades and assumptions that would otherwise be available to value these instruments. More specifically, the ABS market, certain residential loan markets, and debt markets have experienced significant dislocation and illiquidity in both new issues and secondary trading. It is reasonably likely that this market volatility will continue as a result of a variety of factors, including but not limited to economic conditions, the restructuring of structured investment vehicles ("SIVs"), and third party sales of securities, some of which could be large-scale.

The Company's level 3 securities available for sale totals approximately $1.5 billion at December 31, 2008 and include certain municipal bond securities and Federal Home Loan Bank and Federal Reserve Bank stock, which are only redeemable with the issuer at par and cannot be traded in the market; as such, no significant observable market data for these instruments is available. These nonmarketable securities total approximately $934 million at December 31, 2008. Level 3 trading assets also include the Coke common stock forward sale derivative valued at approximately $249.5 million at December 31, 2008, as well as approximately $674 million of SBA loans and pooled securities whose payment is guaranteed by the U.S. government. The Company's remaining level 3 securities, both trading assets and available for sale securities, totals approximately $1 billion at December 31, 2008 and are predominantly residual and other interests retained from Company-sponsored participations or securitizations of commercial loans and residential mortgage loans, investments in SIVs, ARS, MBS and ABS collateralized by a variety of underlying assets including residential mortgages, corporate obligations, and commercial real estate for which little or no market activity exists or whose value of the underlying collateral is not market observable.

ARS purchased since the auction rate market began failing in February 2008 have all been considered level 3 securities. The Company classifies ARS as either available for sale or trading securities. ARS include municipal bonds, nonmarketable preferred equity securities, and ABS collateralized by student loans or trust preferred bank obligations. Under a functioning ARS market, ARS could be remarketed with tight interest rate caps to investors targeting short-term investment securities that repriced generally every 7 to 28 days. Unlike other short-term instruments, however, these ARS do not benefit from back-up liquidity lines or letters of credit, and therefore, as auctions began to fail, investors were left with securities that were more akin to longer-term, 20-30 year, illiquid bonds, with the anticipation that auctions will continue to fail in the foreseeable future. The combination of materially increased tenors, capped interest rates, and general market illiquidity has had a significant impact on the risk profiles and market values of these securities, and has resulted in the use of valuation techniques and models that rely on significant inputs that are largely unobservable.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Residual interests and other retained interests classified as securities available for sale or trading securities, are valued based on internal models which incorporate assumptions, such as prepayment speeds and estimated credit losses, which are not market observable. Generally, the Company attempts to obtain pricing for its securities from a third party pricing provider or third party brokers who have experience in valuing certain investments, as this level of evidence is the strongest support for the fair value of these instruments, absent current security specific market activity. This pricing may be used as either direct support for the Company's valuation or used to validate outputs from the Company's own proprietary models. However, the distressed market conditions have impacted the Company's ability to obtain third party pricing data for many of its financial instruments. Even when third party pricing has been available, the limited trading activity and illiquidity resulting from current market conditions has challenged the observability of these quotations. When observable market data for these instruments is not available, SunTrust will use industry-standard or proprietary models to estimate fair value and will consider assumptions such as relevant market indices that correlate to the underlying collateral, prepayment speeds, default rates, loss severity rates, and discount rates. Due to the continued illiquidity and credit risk of certain securities, the market value of these securities is highly sensitive to assumption changes and market volatility.

As disclosed in the tabular level 3 rollforwards, during the year ended December 31, 2008, the Company transferred certain trading assets and available for sale securities into level 3 due to the illiquidity of these securities and lack of market observable information to value these securities. Transfers into level 3 included the majority of its ABS and private MBS as market illiquidity continued to move up the capital structures from the subordinate positions to the senior positions in these transactions, virtually making the entire capital structure illiquid and increasing the Company's reliance on unobservable inputs to value the positions. The transfers into level 3 were not the result of using an alternative valuation approach to estimate fair value that otherwise would have impacted earnings, although the factors necessitating the transfer may lead to modifications in the valuation approach. Transfers into level 3 are generally assumed to be as of the beginning of the quarter in which the transfer occurred while transfers out of level 3 are generally assumed to occur as of the end of the quarter in which the transfer occurred.

Level 3 loans are primarily non-agency residential mortgage loans held for investment or loans held for sale for which there is little to no observable trading activity in either the new issuance or secondary loan markets as either whole loans or as securities. Prior to the non-agency residential loan market disruption, which began during the third quarter of 2007 and continues, the Company was able to obtain certain observable pricing from either the new issuance or secondary loan market. However, as the markets deteriorated and certain loans were not actively trading as either whole loans or as securities, the Company began employing alternative valuation methodologies to determine the fair value of the loans. Even if limited market data is available, the characteristics of the underlying loan collateral are critical to arriving at an appropriate fair value in the current markets, such that any similarities that may otherwise be drawn are questionable. The alternative valuation methodologies include modeling of the underlying cash flows and/or obtaining certain levels of broker pricing, when available, and extrapolating this data across the larger loan population. This extrapolation includes recording additional liquidity adjustments, when necessary, and valuation estimates of underlying collateral to accurately reflect the price the Company believes it would receive if the loans were sold.

As disclosed in the tabular level 3 rollforwards, during the year ended December 31, 2008, the Company transferred certain mortgage loans held for sale into level 3 based on secondary market illiquidity and the resulting reduction of observable market data for certain non-agency loans requiring increased reliance on unobservable inputs. The transfers into level 3 were not the result of using an alternative valuation approach to estimate fair value that otherwise would have impacted earnings.

Additionally, level 3 loans include some of the loans acquired through the acquisition of GB&T. The loans the Company elected to account for at fair value are primarily nonperforming commercial real estate loans, which do not trade in an active secondary market. As these loans are classified as nonperforming, cash proceeds from the sale of the underlying collateral is the expected source of repayment for a majority of these loans. Accordingly, the fair value of these loans is derived from internal estimates, incorporating market data when available, of the value of the underlying collateral.

The publicly-issued, fixed rate debt that the Company has elected to carry at fair value is valued by obtaining quotes from a third party pricing service and utilizing broker quotes to corroborate the reasonableness of those marks. In addition, information from market data of recent observable trades and indications from buy side investors, if available, are taken into consideration as additional support for the mark. During the third and fourth quarters of 2008, there were few trades to reference, and therefore, given the continued decline in liquidity for these types of instruments, both in the

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

secondary markets and for primary issuances, this debt was transferred from a level 2 to a level 3 classification in the fair value hierarchy effective July 1, 2008. The transfer into level 3 was not the result of using an alternative valuation approach to estimate fair value that otherwise would have impacted earnings.

Beginning in the first quarter of 2008, the Company classified IRLCs on residential mortgage loans held for sale, which are derivatives under SFAS No. 133, on a gross basis within other liabilities or other assets. The fair value of these commitments, while based on interest rates observable in the market, is highly dependent on the ultimate closing of the loans. These “pull-through” rates are based on the Company’s historical data and reflect the Company’s best estimate of the likelihood that a commitment will ultimately result in a closed loan. As a result of the adoption of SAB No. 109, beginning in the first quarter of 2008, servicing value was also included in the fair value of IRLCs.

The fair value of MSRs is determined by projecting cash flows which are then discounted to estimate an expected fair value. The fair value of MSRs is impacted by a variety of factors, including prepayment assumptions, discount rates, delinquency rates, contractually specified servicing fees, and underlying portfolio characteristics. The underlying assumptions and estimated values are corroborated by values received from independent third parties based on their review of the servicing portfolio. Because these inputs are not transparent in market trades, MSRs are considered to be level 3 assets in the valuation hierarchy. As of December 31, 2008, the Company recognized an MSR valuation allowance in the amount of $370.0 million as a result of impairment. As of December 31, 2007, no MSR valuation allowance was recognized as a result of impairment.

Derivative instruments are primarily transacted in the institutional dealer market and priced with observable market assumptions at a mid-market valuation point, with appropriate valuation adjustments for liquidity and credit risk. For purposes of valuation adjustments to its derivative positions under SFAS No. 157, the Company has evaluated liquidity premiums that may be demanded by market participants, as well as the credit risk of its counterparties and its own credit. The Company has considered factors such as the likelihood of default by itself and its counterparties, its net exposures, and remaining maturities in determining the appropriate fair value adjustments to record. Generally, the expected loss of each counterparty is estimated using the Company’s proprietary internal risk rating system. The risk rating systems utilize counterparty specific probabilities of default and loss given default estimates to derive the expected loss. For counterparties that are rated by national rating agencies, those ratings are also considered in estimating the credit risk. In addition, counterparty exposure is evaluated by netting positions that are subject to master netting arrangements, as well as considering the amount of marketable collateral securing the position. Specifically approved counterparties and exposure limits are defined. The approved counterparties are regularly reviewed, and appropriate business action is taken to adjust the exposure to certain counterparties, as necessary. This approach used to estimate impacted exposures to counterparties is also used by the Company to estimate its own credit risk on derivative liability positions. To date, no material losses due to a counterparty’s inability to pay any net uncollateralized position has been incurred. The Company adjusted the net fair value of its derivative contracts for estimates of net counterparty credit risk by approximately $23.1 million and $6.9 million as of December 31, 2008 and 2007, respectively.

Most derivative instruments are level 1 or level 2 instruments, except for the IRLCs discussed herein. In addition, the equity forward agreements (the “Agreements”) the Company entered into related to its Coke stock are level 3 instruments within the fair value hierarchy of SFAS No. 157, due to the unobservability of a significant assumption used to value these instruments. Because the value is primarily driven by the embedded equity collars on the Coke shares, a Black-Scholes model is the appropriate valuation model. Most of the assumptions are directly observable from the market, such as the per share market price of Coke, interest rates, and the dividend rate on Coke. Volatility is a significant assumption and is impacted both by the unusually large size of the trade and the long tenor until settlement. Because the derivatives carry initial terms of approximately six and a half and seven years and are on a significant number of Coke shares, the observable and active options market on Coke does not provide for any identical or similar instruments. As such, the Company receives estimated market values from a market participant who is knowledgeable about Coke equity derivatives and is active in the market. Based on inquiries of the market participant as to their procedures as well as the Company’s own valuation assessment procedures, the Company has satisfied itself that the market participant is using methodologies and assumptions that other market participants would use in arriving at the fair value of the Agreements. At December 31, 2008, the Agreements’ fair value represented an asset position for the Company of approximately $249.5 million.

Certain level 3 assets include non-financial assets such as affordable housing properties, private equity investments, and intangible assets that are measured on a non-recurring basis based on third party price indications or the estimated expected remaining cash flows to be received from these assets discounted at a market rate that is commensurate with their risk profile.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Credit Risk

The credit risk associated with the underlying cash flows of an instrument carried at fair value was a consideration in estimating the fair value of certain financial instruments. Credit risk was considered in the valuation through a variety of inputs, as applicable, including, the actual default and loss severity of the collateral, the instrument's spread in relation to U.S. Treasury rates, the capital structure of the security and level of subordination, or the rating on a security/obligor as defined by nationally recognized rating agencies. The assumptions used to estimate credit risk applied relevant information that a market participant would likely use in valuing an instrument.

For loan products that the Company has elected to carry at fair value, the Company has considered the component of the fair value changes due to instrument-specific credit risk, which is intended to be an approximation of the fair value change attributable to changes in borrower-specific credit risk. For the year ended December 31, 2008, SunTrust recognized a loss on loans accounted for at fair value of approximately $46.6 million, due to changes in fair value attributable to borrower-specific credit risk. Due to the fact that an insignificant percentage of the loans carried at fair value during the year ended December 31, 2007 were on nonaccrual status or past due or had other characteristics generating borrower-specific credit risk, the Company did not ascribe any significant fair value changes to borrower-specific credit risk during that period. In addition to borrower-specific credit risk, there are other, more significant variables that will drive changes in the fair value of the loans, including changes in interest rates and general conditions in the principal markets for the loans.

For the publicly-traded fixed rate debt carried at fair value, the Company estimated credit spreads above U.S. Treasury rates, based on credit spreads from actual or estimated trading levels of the debt. Prior to the second quarter of 2008, the Company had estimated the impacts of its own credit spreads over LIBOR; however, given the volatility in the interest rate markets during 2008, the Company analyzed the difference between using U.S. Treasury rates and LIBOR. While the historical analysis indicated only minor differences, the Company believes that beginning in the second quarter of 2008 a more accurate depiction of the impacts of changes in its own credit spreads is to base such estimation on the U.S. Treasury rate, which reflects a risk-free interest rate. Further supporting this decision, LIBOR has recently exhibited extreme volatility and remained at elevated levels due to the global credit crisis. A reason the Company had selected LIBOR in the past was due to the presence of LIBOR-based interest rate swap contracts that the Company had historically used to hedge its interest rate exposure on these debt instruments under SFAS No. 133. The Company may, however, also purchase fixed rate trading securities in an effort to hedge its fair value exposure to its fixed rate debt. The Company may also continue to use interest rate swap contracts to hedge interest exposure on future fixed rate debt issuances pursuant to the provisions of SFAS No. 133. The Company recognized a gain of approximately $398.1 million for the year ended December 31, 2008, and a gain of approximately $157.5 million for the year ended December 31, 2007, due to changes in its own credit spread on its public debt as well as its brokered deposits. Credit spreads widened throughout 2008 in connection with the continued deterioration of the broader financial markets and in the financial services industry, in particular.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

The following tables present financial assets and financial liabilities measured at fair value on a recurring basis and the change in fair value for those specific financial instruments in which fair value has been elected. The tables do not reflect the change in fair value attributable to the related economic hedges the Company used to mitigate the interest rate risk associated with the financial instruments. The changes in the fair value of economic hedges were also recorded in trading account profits and commissions or mortgage production related income, as appropriate, and are designed to partially offset the change in fair value of the financial instruments referenced in the tables below. The Company's economic hedging activities are deployed at both the instrument and portfolio level.

		Fair Value Measurements at December 31, 2008, Using			Fair Value Gain/(Loss) for the Year Ended December 31, 2008, for Items Measured at Fair Value Pursuant to Election of the Fair Value Option		
(Dollars in thousands)	Assets/Liabilities Measured at Fair Value December 31, 2008	Quoted Prices In Active Markets for Identical Assets/Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Trading Account Profits and Commissions	Mortgage Production Related Income	Total Changes in Fair Values Included in Current-Period Earnings[2]
Assets							
Trading assets	**$10,396,269**	**$149,321**	**$8,855,563**	**$1,391,385**	**($6,598)**	**$-**	**($6,598)**
Securities available for sale	**19,696,537**	**1,485,364**	**16,721,569**	**1,489,604**	**-**	**-**	**-**
Loans held for sale	**2,424,432**	**-**	**1,936,987**	**487,445**	**-**	**268,386[3]**	**268,386**
Loans	**270,342**	**-**	**-**	**270,342**	**(4,195)**	**(26,066)**	**(30,261)**
Other assets [1]	**109,600**	**775**	**35,231**	**73,594**	**-**	**-**	**-**
Liabilities							
Brokered deposits	**587,486**	**-**	**587,486**	**-**	**46,007**	**-**	**46,007**
Trading liabilities	**3,240,784**	**440,436**	**2,800,348**	**-**	**-**	**-**	**-**
Other short-term borrowings	**399,611**	**-**	**399,611**	**-**	**-**	**-**	**-**
Long-term debt	**7,155,684**	**-**	**3,659,423**	**3,496,261**	**(65,322)**	**-**	**(65,322)**
Other liabilities [1]	**72,911**	**-**	**71,738**	**1,173**	**-**	**-**	**-**

[1] This amount includes IRLCs and derivative financial instruments entered into by the Mortgage line of business to hedge its interest rate risk. Beginning in 2008, IRLCs were recorded gross, instead of net, in other assets or liabilities.

[2] Changes in fair value for the year ended December 31, 2008 exclude accrued interest for the period then ended. Interest income or interest expense on trading assets, loans, loans held for sale, brokered deposits and long-term debt that have been elected to be carried at fair value under the provisions of SFAS No. 159 or SFAS No. 155 are recorded in interest income or interest expense in the Consolidated Statements of Income based on their contractual coupons. Certain trading assets do not have a contractually stated coupon and, for these securities, the Company records interest income based on the effective yield calculated upon acquisition of those securities. For the year ended December 31, 2008, the changes in fair value related to accrued interest income on loans and loans held for sale were a decrease of $0.1 million and $3.0 million, respectively. For the year ended December 31, 2008, the changes in fair value related to accrued interest expense on brokered deposits and long-term debt were an increase of approximately $18.7 million and $0.4 million, respectively.

[3] For the year ended December 31, 2008, these amounts include $464.6 million related to MSR assets recognized upon the sale of the loans.

		Fair Value Measurements at December 31, 2007, Using			Fair Value Gain/(Loss) for the Year Ended December 31, 2007, for Items Measured at Fair Value Pursuant to Election of the Fair Value Option		
(Dollars in thousands)	Assets/Liabilities Measured at Fair Value December 31, 2007	Quoted Prices In Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Trading Account Profits and Commissions	Mortgage Production Related Income	Total Changes in Fair Values Included in Current-Period Earnings[1]
Assets							
Trading assets	$10,518,379	$294,412	$7,273,822	$2,950,145	($151,695)	$-	($151,695)
Securities available for sale	16,264,107	2,815,488	12,578,912	869,707	-	-	-
Loans held for sale	6,325,160	-	5,843,833	481,327	-	81,561[2]	81,561
Loans	220,784	-	-	220,784	-	(1,712)	(1,712)
Other assets[3]	69,405	2,781	66,624	-	-	-	-
Liabilities							
Brokered deposits	234,345	-	234,345	-	7,686	-	7,686
Trading liabilities	2,160,385	592,678	1,567,707	-	-	-	-
Long-term debt	7,446,980	-	7,446,980	-	(70,927)	-	(70,927)
Other liabilities[3]	56,189	73	36,513	19,603	-	-	-

[1] Changes in fair value for the twelve months ended December 31, 2007 exclude accrued interest for the period then ended. Interest income or interest expense on trading assets, loans held for sale, brokered deposits and long-term debt that have been elected to be carried at fair value under the provisions of SFAS No. 159 or SFAS No. 155 are recorded in interest income or interest expense in the Consolidated Statements of Income based on their contractual coupons. Certain trading assets do not have a contractually stated coupon and, for these securities, the Company

records interest income based on the effective yield calculated upon acquisition of those securities. For the twelve months ended December 31, 2007, the change in fair value related to accrued interest income on loans held for sale was an increase of $11.1 million and the change in fair value related to accrued interest expense on brokered deposits and long-term debt was an increase of $8.7 million and an increase of $4.2 million, respectively.

[2] This amount includes $214.6 million related to MSR assets recognized upon the sale of the loans.

[3] This amount includes interest rate lock commitments and derivative financial instruments entered into by the Mortgage line of business to hedge its interest rate risk. Beginning in 2008, interest rate lock commitments were recorded gross, instead of net, in other assets or other liabilities. Had SunTrust recorded interest rate lock commitments gross as of year end, the Company would have recorded an asset of $6.8 million and a liability of $26.4 million.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

The following table presents the change in carrying value of those assets measured at fair value on a non-recurring basis, for which impairment was recognized in the current period. The table does not reflect the change in fair value attributable to any related economic hedges the Company may have used to mitigate the interest rate risk associated with loans held for sale or MSRs. With respect to loans held for sale, the changes in fair value of the economic hedges were also recorded in mortgage production related income and substantially offset the change in fair value of the financial assets referenced in the table below. The Company's economic hedging activities for loans held for sale are deployed at the portfolio level.

		Fair Value Measurement at December 31, 2008, Using			
(Dollars in thousands)	Net Carrying Value	Quoted Prices In Active Markets for Identical Assets/Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Valuation Allowance
Loans Held for Sale [1]	**$839,758**	**-**	**$738,068**	**$101,690**	**($68,154)**
MSRs [2]	**794,783**	**-**	**-**	**794,783**	**(370,000)**
OREO [3]	**500,481**	**-**	**500,481**	**-**	**(54,450)**
Affordable Housing [3]	**471,156**	**-**	**-**	**471,156**	**-**
Loans [4]	**178,692**	**-**	**178,692**	**-**	**(34,105)**
Other Assets [5]	**45,724**	**-**	**-**	**45,724**	**-**
Other Intangible Assets [6]	**17,298**	**-**	**-**	**17,298**	**-**

[1] These balances are measured at the lower of cost or market in accordance with SFAS No. 65 and SOP 01-6.

[2] These balances are measured at fair value on a non-recurring basis in accordance with SFAS No. 140, as amended. MSRs are stratified for the purpose of impairment testing.

[3] These balances are measured at fair value on a non-recurring basis in accordance with SFAS No. 144. Affordable housing was impacted by a $19.9 million impairment charge recorded during the year ended December 31, 2008.

[4] These balances are measured at fair value on a non-recurring basis using the fair value of the underlying collateral as described in SFAS No. 114 and were impacted by a $34.1 million impairment charge recorded during the year ended December 31, 2008.

[5] These balances are measured at fair value on a non-recurring basis in accordance with APB No. 18 and were impacted by a $27.2 million impairment charge recorded during the year ended December 31, 2008.

[6] These balances are measured at fair value on a non-recurring basis in accordance with SFAS No. 142 and SFAS No. 144 and were impacted by a $45.0 million impairment charge recorded during the second quarter of 2008.

		Fair Value Measurement at December 31, 2007, Using			
(Dollars in thousands)	Net Carrying Value	Quoted Prices In Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Valuation Allowance
Loans Held for Sale [1]	$1,476,425	$-	$1,155,347	$321,078	($81,054)
OREO[2]	183,753	-	183,753	-	(12,393)
Affordable Housing [2]	544,160	-	-	544,160	-

[1] These balances are measured at fair value on a non-recurring basis in accordance with SFAS No. 65.

[2] These balances are measured at fair value on a non-recurring basis in accordance with SFAS No. 144. There was a $63.4 million impairment recorded on Affordable Housing during the year ended December 31, 2007.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

As of December 31, 2008 and 2007, approximately $48.5 million and $105.7 million, respectively, of leases held for sale were included in loans held for sale in the Consolidated Balance Sheets and were not eligible for fair value election under SFAS No. 159.

The following tables show a reconciliation of the beginning and ending balances for fair valued assets measured on a recurring basis using significant unobservable inputs:

(Dollars in thousands)	Fair Value Measurements Using Significant Unobservable Inputs: Trading Assets	Securities Available for Sale	Loans Held for Sale	Loans	Long-term Debt
Beginning balance January 1, 2008	**$2,950,145**	**$869,707**	**$481,327**	**$220,784**	**$-**
Total gains/(losses) (realized/unrealized):					
Included in earnings	**(401,347)**[1, 5]	**(80,251)** [2,5]	**(60,114)** [3]	**(30,261)** [4]	**(52,600)** [1]
Included in other comprehensive income	**249,547**[6]	**(20,708)**	**-**	**-**	**-**
Purchase accounting adjustments	**-**	**-**	**-**	**5,141**	**-**
Purchases and issuances	**414,936**	**193,054**	**-**	**112,153**	**-**
Settlements	**(50,682)**	**(70,643)**	**-**	**-**	**-**
Sales	**(1,628,149)**	**(116,555)**	**(34,049)**	**-**	**-**
Repurchase of debt	**-**	**-**	**-**	**-**	**151,966**
Paydowns and maturities	**(852,052)**	**(164,230)**	**(216,861)**	**(57,537)**	**-**
Transfers from loans held for sale to loans held in portfolio	**-**	**-**	**(83,894)**	**(83,894)**	**-**
Loan foreclosures transferred to other real estate owned	**-**	**-**	**(5,884)**	**(63,832)**	**-**
Level 3 transfers, net	**708,987**	**879,230**	**406,920**	**-**	**(3,595,627)**
Ending balance December 31, 2008	**$1,391,385**	**$1,489,604**	**$487,445**	**$270,342**	**($3,496,261)**
The amount of total losses for the year ended December 31, 2008 included in earnings attributable to the change in unrealized gains/(losses) relating to instruments still held at December 31, 2008	**($208,377)** [1]	**($45,098)** [2]	**($70,975)** [3]	**($26,804)** [4]	**($52,699)** [1]

[1] Amounts included in earnings are recorded in trading account profits and commissions.

[2] Amounts included in earnings are recorded in net securities gains/(losses).

[3] Amounts included in earnings are recorded in mortgage production related income.

[4] Amounts are generally included in mortgage production income except $4.2 million in the year ended December 31, 2008, related to loans acquired in the GB&T acquisition. The mark on the loans is included in trading account profits and commissions.

[5] Amounts included in earnings do not include losses accrued as a result of the ARS settlement discussed in Note 21 “Contingencies,” to the Consolidated Financial Statements.

[6] Amount recorded in other comprehensive income is the effective portion of the Cash Flow hedges related to the Company’s forward sale of its shares of the Coca-Cola Company stock as discussed in Note 17 “Derivative Financial Instruments,” to the Consolidated Financial Statements.

(Dollars in thousands)	Fair Value Measurements Using Significant Unobservable Inputs: Trading Assets	Securities Available for Sale	Loans Held for Sale	Loans
Beginning balance January 1, 2007	$24,393	$734,633	$-	$-
Total gains/losses (realized/unrealized):				
Included in earnings	(518,242) [1]	-	(15,528) [2]	(60) [2]
Included in other comprehensive income	-	416	-	-
Purchases and issuances	2,586,901	90,605	2,786	-
Settlements	(11,149)	(27,604)	-	-
Sales	(49,550)	-	-	-
Paydowns and maturities	(66,361)	(34,152)	(2,498)	-
Transfers from loans held for sale to loans held in portfolio	-	-	(219,461)	219,461
Transfers into Level 3	984,153	105,809	716,028	1,383
Ending balance December 31, 2007	$2,950,145	$869,707	$481,327	$220,784
The amount of total gains/(losses) for the twelve months ended December 31, 2007 included in earnings attributable to the change in unrealized gains/(losses) relating to instruments still held at December 31, 2007	($518,242) [1]	$-	($15,528) [2]	($60) [2]

[1] Amounts included in earnings are recorded in trading account profits and commissions.

[2] Amounts included in earnings are recorded in mortgage production related income.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

The following tables show a reconciliation of the beginning and ending balances for fair valued other assets/(liabilities), which are IRLCs on residential mortgage loans held for sale, measured using significant unobservable inputs:

(Dollars in thousands)	Other Assets/ (Liabilities), net
Beginning balance January 1, 2008	($19,603)
Included in earnings: [1]	
Issuances (inception value)	491,170
Fair value changes	(71,127)
Expirations	(143,701)
Settlements of IRLCs and transfers into closed loans	(184,318)
Ending balance December 31, 2008 [2]	**$72,421**

[1] Amounts included in earnings are recorded in mortgage production related income.

[2] The amount of total gains/(losses) for the period included in earnings attributable to the change in unrealized gains or losses relating to IRLCs still held at December 31, 2008.

(Dollars in thousands)	Other Assets/ (Liabilities), net
Beginning balance January 1, 2007	($29,633)
Included in earnings: [1]	
Issuances (inception value)	(183,336)
Fair value changes	(115,563)
Expirations	91,458
Settlements of IRLCs and transfers into closed loans	217,471
Ending balance December 31, 2007 [2]	($19,603)

[1] Amounts included in earnings are recorded in mortgage production related income.

[2] The amount of total gains/(losses) for the period included in earnings attributable to the change in unrealized gains or losses relating to IRLCs still held at December 31, 2007.

The following tables present the difference between the aggregate fair value and the aggregate unpaid principal balance of trading assets, loans, loans held for sale, brokered deposits, and long-term debt instruments for which the fair value option has been elected. For loans and loans held for sale for which the fair value option has been elected, the tables also includes the difference between aggregate fair value and the aggregate unpaid principal balance of loans that are 90 days or more past due, as well as loans in nonaccrual status.

(Dollars in thousands)	Aggregate Fair Value December 31, 2008	Aggregate Unpaid Principal Balance under FVO December 31, 2008	Fair value over/(under) unpaid principal
Trading assets	**$852,300**	**$861,239**	**($8,939)**
Loans	**222,221**	**247,098**	**(24,877)**
Past due loans of 90 days or more	**2,018**	**2,906**	**(888)**
Nonaccrual loans	**46,103**	**81,618**	**(35,515)**
Loans held for sale	**2,392,286**	**2,408,392**	**(16,106)**
Past due loans of 90 days or more	**4,663**	**7,222**	**(2,559)**
Nonaccrual loans	**27,483**	**47,228**	**(19,745)**
Brokered deposits	**587,486**	**627,737**	**(40,251)**
Long-term debt	**7,155,684**	**6,963,085**	**192,599**

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

(Dollars in thousands)	Aggregate Fair Value December 31, 2007	Aggregate Unpaid Principal Balance under FVO December 31, 2007	Fair value over/(under) unpaid principal
Trading assets	$444,774	$442,624	$2,150
Loans	220,784	229,473	(8,689)
Loans held for sale	6,314,106	6,248,541	65,565
Past due loans of 90 days or more	5,213	6,140	(927)
Nonaccrual loans	5,841	7,316	(1,475)
Brokered deposits	234,345	237,205	(2,860)
Long-term debt	7,446,980	7,316,750	130,230

Fair Value of Financial Instruments

The carrying amounts and fair values of the Company's financial instruments at December 31 were as follows:

	2008			2007		
(Dollars in thousands)	**Carrying Amount**	**Fair Value**		Carrying Amount	Fair Value	
Financial assets						
Cash and cash equivalents	**$6,637,402**	**$6,637,402**	(a)	$5,642,601	$5,642,601	(a)
Trading assets	**10,396,269**	**10,396,269**	(b)	10,518,379	10,518,379	(b)
Securities available for sale	**19,696,537**	**19,696,537**	(b)	16,264,107	16,264,107	(b)
Loans held for sale	**4,032,128**	**4,032,128**	(c)	8,851,695	8,853,694	(c)
Total loans	**126,998,443**	**126,998,443**		122,318,994	122,318,994	
Interest/credit adjustment	**(2,350,996)**	**(4,369,121)**		(1,282,504)	(1,050,039)	
Subtotal	**124,647,447**	**122,629,322**	(d)	121,036,490	121,268,955	(d)
Market risk/liquidity adjustment	**-**	**(11,731,290)**		-	-	
Loans, net	**$124,647,447**	**$110,898,032**	(d)	$121,036,490	$121,268,955	(d)
Financial liabilities						
Consumer and commercial deposits	**$105,275,707**	**$105,770,657**	(e)	$101,870,025	$101,889,709	(e)
Brokered deposits	**7,667,167**	**7,586,427**	(f)	11,715,024	11,693,673	(f)
Foreign deposits	**385,510**	**385,510**	(f)	4,257,601	4,257,738	(f)
Short-term borrowings	**9,479,750**	**9,479,750**	(f)	12,200,820	12,200,820	(f)
Long-term debt	**26,812,381**	**25,878,644**	(f)	22,956,508	22,733,420	(f)
Trading liabilities	**3,240,784**	**3,240,784**	(b)	2,160,385	2,160,385	(b)

The following methods and assumptions were used by the Company in estimating the fair value of financial instruments. See "Level 3 Instruments" in this footnote for a more detailed discussion of the methods and assumptions used to value the Company's Level 3 instruments:

(a) Cash and cash equivalents are valued at their carrying amounts reported in the balance sheet, which are reasonable estimates of fair value due to the relatively short period to maturity of the instruments.

(b) Securities available for sale, trading assets and trading liabilities are valued based on quoted market prices or, if quoted market prices are not available, on quoted market prices of comparable instruments. In instances when significant valuation assumptions are not readily observable in the market, instruments are valued based on the best available data in order to approximate fair value. This data may be internally-developed and considers risk premiums that a market participant would require.

(c) Loans held for sale are valued based on observable current market prices or, if quoted market prices are not available, on quoted market prices of comparable instruments. In instances when significant valuation assumptions are not readily observable in the market, instruments are valued based on the best available data in order to approximate fair value. This data may be internally-developed and considers risk premiums that a market participant would require.

(d) Loan fair values are based on a hypothetical exit price, which does not represent the estimated intrinsic value of the loan if held for investment. The assumptions used are expected to approximate those that a market participant purchasing the loans would use to value the loans, including a market risk premium and liquidity discount.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Estimating the fair value of the loan portfolio when loan sales and trading markets are illiquid, or for certain loan types, nonexistent, requires significant judgment. Therefore, the estimated fair value can vary significantly depending on a market participant's ultimate considerations and assumptions. The final value yields a market participant's expected return on investment that is indicative of the current distressed market conditions, but it does not take into consideration the Company's estimated value from continuing to hold these loans or its lack of willingness to transact at these estimated values.

The Company estimated fair value based on estimated future cash flows discounted, initially, at current origination rates for loans with similar terms and credit quality, which derived an estimated value of approximately 98% on the loan portfolio's net carrying value. The initial estimated value in 2008 is a function of higher credit spreads, partially offset by lower risk-free interest rates. However, the value derived from origination rates at the end of 2008 likely does not represent an exit price due to the current distressed market conditions; therefore, an incremental market risk and liquidity discount ranging from 3% to 20%, depending on the nature of the loan, was subtracted from the initial value in 2008 to reflect the illiquid and distressed market conditions as of December 31, 2008. The discounted value is a function of a market participant's required yield in the current environment and is not a reflection of the expected cumulative losses on the loans. Loan prepayments are used to adjust future cash flows based on historical experience and prepayment model forecasts. The carrying amount of accrued interest approximates its fair value. The value of long-term customer relationships is not permitted under U.S. GAAP to be included in the estimated fair value.

(e) Deposit liabilities with no defined maturity such as demand deposits, NOW/money market accounts, and savings accounts have a fair value equal to the amount payable on demand at the reporting date, i.e., their carrying amounts. Fair values for certificates of deposit are estimated using a discounted cash flow calculation that applies current interest rates to a schedule of aggregated expected maturities. The assumptions used in the discounted cash flow analysis are expected to approximate those that market participants would use in valuing deposits. The value of long-term relationships with depositors is not taken into account in estimating fair values.

(f) Fair values for foreign deposits, brokered deposits, short-term borrowings, and long-term debt are based on quoted market prices for similar instruments or estimated using discounted cash flow analysis and the Company's current incremental borrowing rates for similar types of instruments.

Note 21 – Contingencies

The Company and its subsidiaries are parties to numerous claims and lawsuits arising in the course of their normal business activities, some of which involve claims for substantial amounts. The Company's experience has shown that the damages often alleged by plaintiffs or claimants are grossly overstated, unsubstantiated by legal theory, and bear no relation to the ultimate award that a court might grant. In addition, valid legal defenses, such as statutes of limitations, frequently result in judicial findings of no liability by the Company. Because of these factors, the Company cannot provide a meaningful estimate of the range of reasonably possible outcomes of claims in the aggregate or by individual claim. However, it is the opinion of management that liabilities arising from these claims in excess of the amounts currently accrued, if any, will not have a material impact to the Company's financial condition or results of operations.

In September 2008, STRH and STIS entered into an "agreement in principle" with the Financial Industry Regulatory Authority ("FINRA") related to the sales and brokering of ARS by STRH and STIS regardless whether any claims have been asserted by the investor. This agreement is non-binding and is subject to the negotiation of a final settlement. At this time there is no final settlement with FINRA. Notwithstanding that fact, the Company announced in November that it will move forward with ARS repurchases from essentially the same categories of investors who would have been covered by the original term sheet with FINRA. Additionally, the Company has elected to purchase ARS from certain other investors not addressed by the agreement. The Company expects the majority of the purchases will be completed by the end of the first quarter of 2009, and it is possible that the purchases may be complete prior to any final settlement with FINRA. The total par amount of ARS the Company expects to purchase is approximately $743 million, although the Company expects that calls or redemptions of certain of the ARS could occur before or shortly after purchase by the Company which would reduce this amount slightly. The fair value of ARS purchased pursuant to the pending settlement, net of calls and any fair value changes is approximately $133.1 million and $48.2 million in trading securities and available for sale securities, respectively, at December 31, 2008. The Company has determined that it has a probable loss pursuant to the provisions of SFAS No. 5 that could be reasonably estimated at December 31, 2008 as the difference between the par amount and the estimated fair value of ARS that the Company believes it will likely purchase from investors. This amount may change by the movement in fair

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

market value of the underlying investment and therefore, can be impacted by changes in the performances of the underlying obligor or collateral as well as general market conditions. The total loss recognized as of December 31, 2008 was approximately $177.7 million, which is comprised of losses on probable future purchases, losses on ARS classified as trading securities that were purchased from investors through December 31, 2008 and estimated fines levied against STRH and STIS by various federal and state agencies. This loss is classified in trading account profits/(losses) and commissions on the Consolidated Statement of Income. Due to the pass-through nature of these security purchases, the economic loss has been included in the Corporate Other and Treasury segment.

Note 22 - Business Segment Reporting

The Company has four business segments used to measure business activities: Retail and Commercial, Wholesale, Wealth and Investment Management, and Mortgage with the remainder in Corporate Other and Treasury.

Retail and Commercial serves consumers, businesses with up to $100 million in annual revenue, government/not-for-profit enterprises, and provides services for the clients of the Company's other businesses. Clients are serviced through an extensive network of traditional and in-store branches, ATMs, the Internet and the telephone.

Wholesale's primary businesses include Middle Market, which serves commercial clients with $100 million to $750 million in annual revenue, Corporate Banking, which serves clients with greater than $750 million in annual revenue, Commercial Real Estate, which serves commercial and residential developers and investors, and SunTrust Robinson Humphrey, which offers capital market products and services to its clients.

Mortgage offers residential mortgage products nationally through its retail, broker, and correspondent channels. These products are either sold in the secondary market, primarily with servicing rights retained, or held as whole loans in the Company's residential loan portfolio. The line of business services loans for its own residential mortgage portfolio as well as for others. Additionally, the line of business generates revenue through its tax service subsidiary (ValuTree Real Estate Services, LLC) and the Company's captive reinsurance subsidiary (Twin Rivers Insurance Company).

Wealth and Investment Management provides a full array of wealth management products and professional services to both individual and institutional clients. Wealth and Investment Management's primary businesses include Private Wealth Management ("PWM") (brokerage and individual wealth management), GenSpring Family Offices LLC, Institutional Investment Solutions, and RidgeWorth Capital Management.

In addition, the Company reports Corporate Other and Treasury, which includes the investment securities portfolio, long-term debt, end user derivative instruments, short-term liquidity and funding activities, balance sheet risk management, and most real estate assets. Other components include Enterprise Information Services, which is the primary data processing and operations group, the Corporate Real Estate group, Marketing, SunTrust Online, Human Resources, Finance, Corporate Risk Management, Legal and Compliance, Branch Operations, Corporate Strategies, Procurement, and Executive Management. Finally, Corporate Other and Treasury also includes Trustee Management, which provides treasury management and deposit services to bankruptcy trustees.

Because the business segment results are presented based on management accounting practices, the transition to the consolidated results, which are prepared under U.S. GAAP, creates certain differences, which are reflected in Reconciling Items.

For business segment reporting purposes, the basis of presentation in the accompanying discussion includes the following:

- **Net interest income** - All net interest income is presented on a fully taxable-equivalent basis. The revenue gross-up has been applied to tax-exempt loans and investments to make them comparable to other taxable products. The segments have also been matched maturity funds transfer priced, generating credits or charges based on the economic value or cost created by the assets and liabilities of each segment. The mismatch between funds credits and funds charges at the segment level resides in Reconciling Items. The change in the matched maturity funds mismatch is generally attributable to the corporate balance sheet management strategies.

- **Provision for loan losses** - Represents net charge-offs by segment. The difference between the total segment net charge-offs and the consolidated provision for loan losses is reported in Reconciling Items.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

- **Provision for income taxes** - Calculated using a nominal income tax rate for each segment. This calculation includes the impact of various income adjustments, such as the reversal of the fully taxable-equivalent gross up on tax-exempt assets, tax adjustments and credits that are unique to each business segment. The difference between the calculated provision for income taxes at the total segment level and the consolidated provision for income taxes is reported in Reconciling Items.

The Company continues to augment its internal management reporting methodologies. Currently, the segment's financial performance is comprised of direct financial results as well as various allocations that for internal management reporting purposes provide an enhanced view of analyzing the segment's financial performance. The internal allocations include the following:

- **Operational Costs** – Expenses are charged to the segments based on various statistical volumes multiplied by activity based cost rates. As a result of the activity based costing process, planned residual expenses are also allocated to the segments. The recoveries for the majority of these costs are in the Corporate Other and Treasury segment.

- **Support and Overhead Costs** – Expenses not directly attributable to a specific segment are allocated based on various drivers (e.g., number of full-time equivalent employees and volume of loans and deposits). The recoveries for these allocations are in Corporate Other and Treasury.

- **Sales and Referral Credits** – Segments may compensate another segment for referring or selling certain products. The majority of the revenue resides in the segment where the product is ultimately managed.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

The application and development of management reporting methodologies is a dynamic process and is subject to periodic enhancements. The implementation of these enhancements to the internal management reporting methodology may materially affect the net income disclosed for each segment with no impact on consolidated results. Whenever significant changes to management reporting methodologies take place, the impact of these changes is quantified and prior period information is reclassified wherever practicable. The Company will reflect these changes in the current period and will update historical results.

	Twelve Months Ended December 31, 2008						
(Dollars in thousands)	Retail and Commercial	Wholesale	Mortgage	Wealth and Investment Management	Corporate Other and Treasury	Reconciling Items	Consolidated
Average total assets	**$58,603,247**	**$46,454,855**	**$41,980,502**	**$8,943,745**	**$19,696,253**	**$169,663**	**$175,848,265**
Average total liabilities	**84,460,577**	**17,261,054**	**2,767,244**	**10,040,018**	**42,905,700**	**(67,239)**	**157,367,354**
Average total equity	**-**	**-**	**-**	**-**	**-**	**18,480,911**	**18,480,911**
Net interest income	**$2,582,613**	**$499,898**	**$456,268**	**$331,919**	**$143,363**	**$605,595**	**$4,619,656**
Fully taxable-equivalent adjustment (FTE)	**34,404**	**64,825**	**-**	**31**	**18,227**	**-**	**117,487**
Net interest income (FTE)[1]	**2,617,017**	**564,723**	**456,268**	**331,950**	**161,590**	**605,595**	**4,737,143**
Provision for loan losses[2]	**878,983**	**167,429**	**491,280**	**26,895**	**(160)**	**909,788**	**2,474,215**
Net interest income after provision for loan losses	**1,738,034**	**397,294**	**(35,012)**	**305,055**	**161,750**	**(304,193)**	**2,262,928**
Noninterest income	**1,352,665**	**649,193**	**435,954**	**951,466**	**1,098,433**	**(14,248)**	**4,473,463**
Noninterest expense	**2,623,157**	**818,870**	**1,333,082**	**960,735**	**168,782**	**(14,225)**	**5,890,401**
Net income/(loss) before taxes	**467,542**	**227,617**	**(932,140)**	**295,786**	**1,091,401**	**(304,216)**	**845,990**
Provision (benefit) for income taxes[3]	**160,917**	**10,322**	**(370,360)**	**108,921**	**260,799**	**(120,382)**	**50,216**
Net income/(loss)	**$306,625**	**$217,295**	**($561,780)**	**$186,865**	**$830,602**	**($183,834)**	**$795,774**

	Twelve Months Ended December 31, 2007						
(Dollars in thousands)	Retail and Commercial	Wholesale	Mortgage	Wealth and Investment Management	Corporate Other and Treasury	Reconciling Items	Consolidated
Average total assets	$58,591,299	$39,421,580	$45,554,067	$8,898,787	$23,747,010	$1,582,775	$177,795,518
Average total liabilities	84,525,396	12,391,317	2,718,817	10,434,414	49,821,210	96,351	159,987,505
Average total equity	-	-	-	-	-	17,808,013	17,808,013
Net interest income	$2,798,040	$517,752	$523,253	$352,198	($169,026)	$697,327	$4,719,544
Fully taxable-equivalent adjustment (FTE)	36,910	47,851	-	54	17,837	28	102,680
Net interest income (FTE)[1]	2,834,950	565,603	523,253	352,252	(151,189)	697,355	4,822,224
Provision for loan losses[2]	285,840	46,923	81,157	8,519	404	242,079	664,922
Net interest income after provision for loan losses	2,549,110	518,680	442,096	343,733	(151,593)	455,276	4,157,302
Noninterest income	1,250,027	480,964	365,752	812,874	542,863	(23,796)	3,428,684
Noninterest expense	2,562,938	812,434	823,946	1,013,500	44,673	(23,714)	5,233,777
Net income/(loss) before taxes	1,236,199	187,210	(16,098)	143,107	346,597	455,194	2,352,209
Provision (benefit) for income taxes[3]	445,705	(8,876)	(21,539)	54,816	89,918	158,170	718,194
Net income	$790,494	$196,086	$5,441	$88,291	$256,679	$297,024	$1,634,015

	Twelve Months Ended December 31, 2006						
(Dollars in thousands)	Retail and Commercial	Wholesale	Mortgage	Wealth and Investment Management	Corporate Other and Treasury	Reconciling Items	Consolidated
Average total assets	$58,519,264	$38,268,531	$42,014,600	$8,927,391	$30,553,856	$2,031,504	$180,315,146
Average total liabilities	84,394,130	12,007,649	2,151,683	10,021,909	54,267,154	(74,119)	162,768,406
Average total equity	-	-	-	-	-	17,546,740	17,546,740
Net interest income	$2,889,337	$554,326	$598,491	$373,306	($143,225)	$388,230	$4,660,465
Fully taxable-equivalent adjustment (FTE)	40,278	32,229	-	71	15,437	(49)	87,966
Net interest income (FTE)[1]	2,929,615	586,555	598,491	373,377	(127,788)	388,181	4,748,431
Provision for loan losses[2]	110,595	122,412	8,748	3,697	641	16,443	262,536
Net interest income after provision for loan losses	2,819,020	464,143	589,743	369,680	(128,429)	371,738	4,485,895
Noninterest income	1,194,605	767,087	379,425	1,100,467	52,692	(25,904)	3,468,372
Noninterest expense	2,549,641	759,148	601,671	1,007,310	(13,950)	(23,960)	4,879,860
Net income/(loss) before taxes	1,463,984	472,082	367,497	462,837	(61,787)	369,794	3,074,407
Provision (benefit) for income taxes[3]	534,055	95,652	124,681	172,064	(98,575)	129,059	956,936
Net income	$929,929	$376,430	$242,816	$290,773	$36,788	$240,735	$2,117,471

[1] Net interest income is fully taxable-equivalent and is presented on a matched maturity funds transfer price basis for the line of business.

[2] Provision for loan losses represents net charge-offs for the segments.

[3] Includes regular income tax provision and taxable-equivalent income adjustment reversal.

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Note 23 - Accumulated Other Comprehensive Income

(Dollars in thousands)	Pre-tax Amount	Income Tax (Expense) Benefit	After-tax Amount
Accumulated Other Comprehensive Income			
Accumulated other comprehensive income, January 1, 2006	$1,417,992	($479,901)	$938,091
Unrealized net gain on securities	474,003	(180,121)	293,882
Unrealized net gain on derivatives	52,674	(20,016)	32,658
Change related to employee benefit plans	9,482	(3,603)	5,879
Adoption of SFAS No. 158	(621,011)	235,984	(385,027)
Reclassification adjustment for realized gains and losses on securities	59,499	(22,610)	36,889
Reclassification adjustment for realized gains and losses on derivatives	5,770	(2,193)	3,577
Accumulated other comprehensive income, December 31, 2006	1,398,409	(472,460)	925,949
Unrealized net gain on securities	666,387	(253,227)	413,160
Unrealized net gain on derivatives	240,816	(91,510)	149,306
Change related to employee benefit plans	113,550	(43,149)	70,401
Adoption of SFAS No. 159	231,211	(83,837)	147,374
Pension plan changes and resulting remeasurement	128,560	(48,853)	79,707
Reclassification adjustment for realized gains and losses on securities	(272,861)	103,687	(169,174)
Reclassification adjustment for realized gains and losses on derivatives	(15,442)	5,868	(9,574)
Accumulated other comprehensive income, December 31, 2007	2,490,630	(883,481)	1,607,149
Unrealized net gain on securities	**(238,013)**	**186,343**	**(51,670)**
Unrealized net gain on derivatives	**1,337,260**	**(535,772)**	**801,488**
Change related to employee benefit plans	**(812,782)**	**304,857**	**(507,925)**
Reclassification adjustment for realized gains and losses on securities	**(1,073,300)**	**318,384**	**(754,916)**
Reclassification adjustment for realized gains and losses on derivatives	**(180,689)**	**67,688**	**(113,001)**
Accumulated other comprehensive income, December 31, 2008	**$1,523,106**	**($541,981)**	**$981,125**

The components of accumulated other comprehensive income at December 31 were as follows:

(Dollars in thousands)	**2008**	2007	2006
Unrealized net gain on available for sale securities	**$887,361**	$1,693,947	$1,302,588
Unrealized net gain on derivative financial instruments	**847,115**	158,628	18,896
Employee benefit plans	**(753,351)**	(245,426)	(395,535)
Total accumulated other comprehensive income	**$981,125**	$1,607,149	$925,949

Note 24 - Other Noninterest Expense

Other noninterest expense in the Consolidated Statements of Income includes:

	Twelve Months Ended December 31		
(Dollars in thousands)	**2008**	2007	2006
Credit and collection services	**$156,445**	$112,547	$101,610
Other real estate expense	**104,684**	15,797	170
Postage and delivery	**90,055**	93,182	92,731
Other staff expense	**70,313**	132,496	92,513
Communications	**69,417**	79,028	72,882
Consulting and legal	**58,639**	101,223	112,983
Regulatory assessments	**54,876**	22,425	22,569
Operating supplies	**44,257**	48,745	54,034
Other expense	**339,488**	376,810	347,422
Total other noninterest expense	**$988,174**	$982,253	$896,914

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Note 25 - SunTrust Banks, Inc. (Parent Company Only) Financial Information

Statements of Income - Parent Company Only

	Twelve Months Ended December 31		
(Dollars in thousands)	**2008**	2007	2006
Income			
From subsidiaries:			
Dividends—substantially all from SunTrust Bank	**$1,068,001**	$1,896,976	$1,102,627
Interest on loans	**25,754**	33,699	26,800
Trading account losses and commissions	**(71,648)**	(242,780)	(3,396)
Other income	**270,631**	135,251	134,293
Total income	**1,292,738**	1,823,146	1,260,324
Expense			
Interest on short-term borrowings	**33,840**	67,013	23,798
Interest on long-term debt	**308,560**	273,993	268,120
Employee compensation and benefits	**(3,099)**	4,116	32,851
Service fees to subsidiaries	**12,382**	18,880	25,446
Other expense	**5,252**	22,051	61,641
Total expense	**356,935**	386,053	411,856
Income before income taxes and equity in undistributed income/(loss) of subsidiaries	**935,803**	1,437,093	848,468
Income tax benefit	**39,984**	131,494	52,805
Income before equity in undistributed income/(loss) of subsidiaries	**975,787**	1,568,587	901,273
Equity in undistributed income/(loss) of subsidiaries	**(180,013)**	65,428	1,216,198
Net income	**795,774**	1,634,015	2,117,471
Series A preferred dividends	**22,255**	30,275	7,729
U.S. Treasury preferred dividends	**26,579**	-	-
Net income available to common shareholders	**$746,940**	$1,603,740	$2,109,742

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Balance Sheets - Parent Company Only

(Dollars in thousands)	December 31 2008	2007
Assets		
Cash in subsidiary banks	**$769**	$5,160
Interest-bearing deposits in other banks	**6,311,919**	1,432,205
Cash and cash equivalents	**6,312,688**	1,437,365
Trading assets	**337,499**	1,195,605
Securities available for sale	**246,850**	210,420
Loans to subsidiaries	**984,303**	1,031,877
Investment in capital stock of subsidiaries stated on the basis of the Company's equity in subsidiaries' capital accounts:		
Banking subsidiaries	**20,469,508**	20,668,687
Nonbanking subsidiaries	**929,726**	1,111,618
Premises and equipment	**1,356**	1,739
Goodwill	**98,905**	128,819
Other assets	**460,310**	504,705
Total assets	**$29,841,145**	$26,290,835
Liabilities and Shareholders' Equity		
Short-term borrowings from:		
Subsidiaries	**$86,161**	$71,605
Non-affiliated companies	**1,104,555**	2,361,387
Long-term debt	**5,676,349**	5,063,620
Trading liabilities	**-**	3,364
Other liabilities	**585,971**	738,341
Total liabilities	**7,453,036**	8,238,317
Preferred stock	**5,221,703**	500,000
Common stock	**372,799**	370,578
Additional paid in capital	**6,904,644**	6,707,293
Retained earnings	**10,388,984**	10,646,640
Treasury stock, at cost, and other	**(1,481,146)**	(1,779,142)
Accumulated other comprehensive income	**981,125**	1,607,149
Total shareholders' equity	**22,388,109**	18,052,518
Total liabilities and shareholders' equity	**$29,841,145**	$26,290,835

Table of Contents

SUNTRUST BANKS, INC.

Notes to Consolidated Financial Statements (Continued)

Statements of Cash Flow – Parent Company Only

	Twelve Months Ended December 31		
(Dollars in thousands)	**2008**	2007	2006
Cash Flows from Operating Activities:			
Net income	**$795,774**	$1,634,015	$2,117,471
Adjustments to reconcile net income to net cash provided by operating activities:			
Net gain on sale of businesses	**(200,851)**	-	-
Equity in undistributed losses/(earnings) of subsidiaries	**180,013**	(65,428)	(1,216,198)
Depreciation, amortization and accretion	**4,410**	1,028	1,907
Stock based compensation	**20,185**	24,275	25,969
Deferred income tax (benefit) provision	**(32,725)**	17,701	19,378
Excess tax benefits from stock-based compensation	**(4,580)**	(11,259)	(33,258)
Amortization of compensation element of performance and restricted stock	**76,656**	34,820	18,340
Net securities gains	**(448)**	-	(15,065)
Contributions to retirement plans	**(64,016)**	(11,185)	(33,306)
Net decrease/(increase) in other assets	**241,423**	27,145	(116,324)
Net (decrease)/increase in other liabilities	**(95,978)**	(272,472)	86,417
Net cash provided by operating activities	**919,863**	$1,378,640	$855,331
Cash Flows from Investing Activities:			
Proceeds from sale of businesses	**314,146**	-	-
Net cash equivalents acquired in acquisitions	**1,707**	-	-
Proceeds from maturities, calls and repayments of securities available for sale	**16,713**	37,355	307,801
Purchases of securities available for sale	**(47,237)**	(214,005)	(121,836)
Proceeds from maturities, calls and repayments of trading securities	**518,600**	195,235	-
Proceeds from sales of trading securities	**402,020**	211	-
Purchases of trading securities	**(214,693)**	(1,205,136)	-
Net change in loans to subsidiaries	**47,574**	(241,583)	123,372
Net change in premises and equipment	**(39)**	-	12,823
Capital contributions (to)/from subsidiaries	**(268,245)**	(9,812)	2,105
Other, net	**883**	904	1,014
Net cash provided by/(used in) investing activities	**771,429**	(1,436,831)	325,279
Cash Flows from Financing Activities:			
Net (decrease)/increase in other short-term borrowings	**(1,245,076)**	1,594,733	351,149
Redemption of real estate investment trust security	**-**	(424,923)	-
Proceeds from the issuance of long-term debt	**1,549,800**	1,000,000	1,499,700
Repayment of long-term debt	**(959,372)**	(900,572)	(1,012,563)
Proceeds from the issuance of preferred stock	**4,850,000**	-	492,295
Proceeds from the exercise of stock options	**25,569**	186,000	215,947
Acquisition of treasury stock	**-**	(853,385)	(1,105,043)
Excess tax benefits from stock-based compensation	**4,580**	11,259	33,258
Dividends paid	**(1,041,470)**	(1,056,869)	(887,297)
Net cash provided by/(used in) financing activities	**3,184,031**	(443,757)	(412,554)
Net increase in cash and cash equivalents	**4,875,323**	(501,948)	768,056
Cash and cash equivalents at beginning of period	**1,437,365**	1,939,313	1,171,257
Cash and cash equivalents at end of period	**$6,312,688**	1,437,365	$1,939,313
Supplemental Disclosures:			
Income taxes received from subsidiaries	**$332,802**	$734,078	$615,131
Income taxes paid by Parent Company	**(313,647)**	(703,653)	(548,570)
Net income taxes received by Parent Company	**$19,155**	$30,425	$66,561
Interest paid	**$332,481**	$344,691	$291,267
Issuance of common stock for acquisition of GB&T	**154,513**	-	-
U.S. Treasury preferred dividends accrued but unpaid	**7,778**	-	-
Accretion of U.S. Treasury preferred stock discount	**3,732**	-	-

Table of Contents

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

Item 9A. CONTROLS AND PROCEDURES

Management's Report on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting for the Company. The Company's internal control over financial reporting is a process designed under the supervision of the Company's Chief Executive Officer and Chief Financial Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external purposes in accordance with U.S. generally accepted accounting principles.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management has made a comprehensive review, evaluation, and assessment of the Company's internal control over financial reporting as of December 31, 2008. In making its assessment of internal control over financial reporting, management used the criteria issued by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control-Integrated Framework.* Based on that assessment, management concluded that, as of December 31, 2008, the Company's internal control over financial reporting is effective.

Management's assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2008, has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report appearing in Item 8 of this report, which expresses an unqualified opinion on the effectiveness of the Company's internal control over financial reporting as of December 31, 2008.

Evaluation of Disclosure Controls and Procedures

The Company conducted an evaluation, with the participation of its Chief Executive Officer and Chief Financial Officer, of the effectiveness of the Company's disclosure controls and procedures as of December 31, 2008. The Company's disclosure controls and procedures are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized, and reported on a timely basis.

Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded, as of December 31, 2008, that the Company's disclosure controls and procedures were effective in recording, processing, summarizing, and reporting information required to be disclosed by the Company, within the time periods specified in the SEC's rules and forms, and such information is accumulated and communicated to management to allow timely decisions regarding required disclosures.

Changes in Internal Control over Financial Reporting

Management of the Company has evaluated, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, changes in the Company's internal control over financial reporting (as defined in rules 13a-15(f) and 15d-15(f) of the Exchange Act) during the quarter ended December 31, 2008. Based upon that evaluation, Management has determined that there have been no changes to the Company's internal control over financial reporting that occurred since the beginning of the Company's fourth quarter of 2008 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

CEO and CFO Certifications

The Company's Chief Executive Officer and Chief Financial Officer have filed with the Securities and Exchange Commission the certifications required by Section 302 of the Sarbanes-Oxley Act of 2002 as Exhibits 31.1 and 31.2 to the Company's 2008 Form 10-K. In addition, on May 28, 2008 the Company's Chief Executive Officer certified to the New York Stock Exchange that he was not aware of any violation by the Company of the NYSE corporate governance listing standards as in effect on May 28, 2008. The foregoing certification was unqualified.

Table of Contents

Item 9B. OTHER INFORMATION

None.

Part III

Item 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information at the captions “Nominees for Directorship,” “Nominees for Terms Expiring in 2010,” “Directors,” “Directors Whose Terms Expire in 2010,” “Executive Officers,” “Section 16(a) Beneficial Ownership Reporting Compliance,” “Corporate Governance and Director Independence,” “Shareholder Nominations for Election to the Board,” and “Board Committees” in the Registrant’s definitive proxy statement for its annual meeting of shareholders to be held on April 28, 2009 and to be filed with the Commission is incorporated by reference into this Item 10.

Item 11. EXECUTIVE COMPENSATION

The information at the captions “Executive Compensation” (“Compensation Discussion and Analysis,” “Summary of Cash and Certain Other Compensation and Other Payments to the Named Executive Officers,” “2008 Summary Compensation Table,” “2008 Grants and Plan-Based Awards,” “Option Exercises and Stock Vested in 2008,” “Outstanding Equity Awards at December 31, 2008,” “2008 Pension Benefits,” “2008 Nonqualified Deferred Compensation,” “2008 Potential Payments Upon Termination of Change in Control”), “2008 Director Compensation,” “Compensation Committee Report,” and “Compensation Committee Interlocks and Insider Participation” in the Registrant’s definitive proxy statement for its annual meeting of shareholders to be held on April 28, 2009 and to be filed with the Commission is incorporated by reference into this Item 11.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information at the captions “Equity Compensation Plans,” “Stock Ownership of Certain Persons, – Stock Ownership of Directors and Management and of Principal Shareholder” in the Registrant’s definitive proxy statement for its annual meeting of shareholders to be held on April 28, 2009 and to be filed with the Commission is incorporated by reference into this Item 12.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information at the captions “Policies and Procedures for Approval of Related Party Transactions,” “Director Compensation,” “Transactions with Related Persons, Promoters, and Certain Control Persons,” and “Corporate Governance and Director Independence” in the Registrant’s definitive proxy statement for its annual meeting of shareholders to be held on April 28, 2009 and to be filed with the Commission is incorporated by reference into this Item 13.

Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information at the captions “Audit Fees and Related Matters” “Audit and Non-Audit Fees” and “Audit Committee Policy for Pre-approval of Independent Auditor Services” in the Registrant’s definitive proxy statement for its annual meeting of shareholders to be held on April 28, 2009 and to be filed with the Commission is incorporated by reference into this Item 14.

Table of Contents

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a)(1) Financial Statements of SunTrust Banks, Inc. included in this report:

Consolidated Statements of Income for the year ended December 31, 2008, 2007, and 2006; Consolidated Balance Sheets as of December 31, 2008, and 2007;
Consolidated Statements of Shareholders' Equity as of December 31, 2008, 2007, and 2006; and
Consolidated Statements of Cash Flows for the year ended December 31, 2008, 2007, and 2006.

(a)(2) Financial Statement Schedules

All financial statement schedules for the Company have been included in the Consolidated Financial Statements on the related footnotes, or are either inapplicable or not required.

(a)(3) Exhibits

The following documents are filed as part of this report:

Exhibit	Description	
3.1	**Amended and Restated Articles of Incorporation** of the Registrant, restated effective January 16, 2009, incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed January 22, 2009.	*
3.2	**Bylaws** of the Registrant, as amended and restated on November 11, 2008, incorporated by reference to Exhibit 3.2 of the Registrant's Current Report on Form 8-K filed November 13, 2008.	*
4.1	**Indenture** between Registrant and PNC, N.A., as Trustee, incorporated by reference to Exhibit 4(a) to Registration Statement No. 33-62162.	*
4.2	**Indenture** between Registrant and The First National Bank of Chicago, as Trustee, incorporated by reference to Exhibit 4(b) to Registration Statement No. 33-62162.	*
4.3	**Form of Indenture** to be used in connection with the issuance of Subordinated Debt Securities, incorporated by reference to Exhibit 4.4 to Registration Statement No. 333-25381.	*
4.4	**Second Supplemental Indenture** by and among National Commerce Financial Corporation, SunTrust Banks, Inc. and The Bank of New York, as Trustee, dated September 22, 2004, incorporated by reference to Exhibit 4.9 to Registrant's 2004 Annual Report on Form 10-K.	*
4.5	**First Supplemental Indenture** between National Commerce Financial Corporation and the Bank of New York, as Trustee, dated as of March 27, 1997, incorporated by reference to Exhibit 4.2 to the Registration Statement on Form S-4 of National Commerce Bancorporation (File No. 333-29251).	*
4.6	**Indenture** between National Commerce Financial Corporation and The Bank of New York, as Trustee, dated as of March 27, 1997, incorporated by reference to Exhibit 4.1 to the Registration Statement on Form S-4 of National Commerce Bancorporation (File No. 333-29251).	*
4.7	**Form of Guarantee Agreement** entered into by National Commerce Financial Corporation and The Bank of New York, as Guarantee Trustee, incorporated by reference to Exhibit 4.4 of the Registration Statement on Form S-4 of National Commerce Bancorporation (File No. 333-29251).	*
4.8	**Amended and Restated Declaration of Trust** among National Commerce Financial Corporation, National Commerce Capital Trust I, The Bank of New York, as Institutional Trustee, The Bank of New York (Delaware), as Delaware Trustee, and the Administrators named therein, dated as of March 27, 1997, incorporated by reference to Exhibit 4.3 of the Registration Statement on Form S-4 of National Commerce Bancorporation (File No. 333- 29251).	*
4.9	**Assignment and Assumption Agreement** between National Commerce Financial Corporation and SunTrust Banks, Inc., dated September 22, 2004, relating to Guarantee Agreement dated March 27, 1997, incorporated by reference to Exhibit 4.14 to Registrant's 2004 Annual Report on Form 10-K.	*

Table of Contents

Exhibit	Description	
4.10	**Assignment and Assumption Agreement** dated September 22, 2004 between National Commerce Financial Corporation and SunTrust Banks, Inc. relating to Trust Agreement dated March 27, 1997, incorporated by reference to Exhibit 4.15 to Registrant's 2004 Annual Report on Form 10-K.	*
4.11	**Indenture**, dated as of October 25, 2006, between SunTrust Banks, Inc. and U.S. Bank National Association, as Trustee, incorporated by reference to Exhibit 4.3 to the Registrant's Registration Statement on Form 8-A filed on December 5, 2006.	*
4.12	**Form of First Supplemental Indenture** (to Indenture dated as of October 25, 2006) between SunTrust Banks, Inc. and U.S. Bank National Association, as Trustee, incorporated by reference to Exhibit 4.5 to the Registrant's Registration Statement on Form 8-A filed on October 24, 2006.	*
4.13	**Form of Second Supplemental Indenture** (to Indenture dated as of October 25, 2006) between SunTrust Banks, Inc. and U.S. Bank National Association, as Trustee, incorporated by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form 8-A filed on December 5, 2006.	*
4.14	**Form of Amended and Restated Declaration of Trust**, among SunTrust Banks, Inc. as Sponsor, U.S. Bank National Association as Property Trustee, U.S. Bank Trust National Association as Delaware Trustee, the Administrative Trustees, incorporated by reference to Exhibit 4.3.2 to Registration Statement No. 333-137101.	*
4.15	**Form of Second Amended and Restated Declaration of Trust** among SunTrust Banks, Inc., as Sponsor, U.S. Bank National Association, as Property Trustee, U.S. Bank Trust National Association, as Delaware Trustee and the Administrative Trustees, incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form 8-A filed on December 5, 2006.	*
4.16	**Form of Guarantee Agreement** between SunTrust Banks, Inc. and U.S. Bank National Association, incorporated by reference to Exhibit 4.3.2 to Registration Statement No. 333-137101.	*
4.17	**Form of Guarantee Agreement** between SunTrust Banks, Inc. and U.S. Bank National Association, incorporated by reference to Exhibit 4.2 to the Registrant's Registration Statement on Form 8-A filed on December 5, 2006.	*
4.18	**Form of Stock Purchase Contract Agreement** between SunTrust Banks, Inc. and SunTrust Preferred Capital I, incorporated by reference to Exhibit 4.6 to the Registrant's Registration Statement on Form 8-A filed on October 24, 2006.	*
4.19	**Senior Indenture** dated as of September 10, 2007 by and between SunTrust Banks, Inc. and U.S. Bank National Association, as Trustee, incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on September 10, 2007.	*
4.20	**Form of Junior Subordinate Indenture** between SunTrust Banks, Inc. and U.S. Bank National Association, as Trustee, incorporated by reference to Exhibit 4.4.3 to Registration Statement No. 333-137101, filed on September 5, 2006.	*
4.21	**Form of Third Supplemental Indenture to the Junior Subordinated Notes Indenture** between SunTrust Banks, Inc. and U.S. Bank National Association, as Trustee, incorporated by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form 8-A filed on March 3, 2008.	*
4.22	**Form of the Second Amended and Restated Declaration of Trust** among SunTrust Banks, Inc., U.S. Bank National Association, as Trustee, and U.S. Bank Trust National Association, as Delaware Trustee and Administrative Trustee, incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form 8-A filed on March 3, 2008.	*
4.23	**Form of Guarantee Agreement between SunTrust Banks, Inc. and U.S. Bank National Association,** incorporated by reference to Exhibit 4.2 to the Registrant's Registration Statement on Form 8-A12B filed on March 3, 2008.	*
4.24	**Warrant to Purchase up to 11,891,280 shares of Common Stock** dated as of November 14, 2008, incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K/A filed January 5, 2009.	*

Table of Contents

Exhibit	Description	
4.25	**Warrant to Purchase up to 6,008,902 shares of Common Stock** dated as of December 31, 2008, incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed January 2, 2009.	*
4.26	**Form of Series A Preferred Stock Certificate,** incorporated by reference to Exhibit 4.2 to Registrant's Current Report on Form 8-K filed September 12, 2006.	*
4.27	**Form of Series C Preferred Stock Certificate,** incorporated by reference to Exhibit 4.2 to Registrant's Current Report on Form 8-K filed November 17, 2008.	*
4.28	**Form of Series D Preferred Stock Certificate,** incorporated by reference to Exhibit 4.2 to Registrant's Current Report on Form 8-K filed January 2, 2009.	*
10.1	**SunTrust Banks, Inc. Management Incentive Plan,** restated to reflect amendments through December 31, 2008.	(filed herewith)
10.2	**SunTrust Banks, Inc. 2004 Stock Plan** effective April 20, 2004, as amended and restated February 12, 2008, incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed February 15, 2008, as further amended effective January 1, 2009, incorporated by reference to Exhibit 10.14 to the Registrant's Current Report on Form 8-K filed January 7, 2009, together with (i) Form of Non-Qualified Stock Option Agreement, (ii) Form of Restricted Stock Agreement, (iii) Form of Director Restricted Stock Agreement, and (iv) Form of Director Restricted Stock Unit Agreement, incorporated by reference to (i) Exhibit 10.70 of the Registrant's Quarterly Report on Form 10-Q filed May 8, 2006, (ii) Exhibit 10.71 of the Registrant's Quarterly Report on Form 10-Q filed May 8, 2006, (iii) Exhibit 10.72 of the Registrant's Quarterly Report on Form 10-Q filed May 8, 2006, and (iv) Exhibit 10.74 of the Registrant's Quarterly Report on Form 10-Q filed May 8, 2006.	*
10.3	**SunTrust Banks, Inc. 2000 Stock Plan,** effective February 8, 2000, and amendments effective January 1, 2005, November 14, 2006, and January 1, 2009, incorporated by reference to Exhibit A to Registrant's 2000 Proxy Statement on Form 14A (File No. 001-08918), to Exhibits 10.1 and 10.2 to the Registrant's Current Report on Form 8-K filed February 16, 2007, and to Exhibit 10.12 to the Registrant's Current Report on Form 8-K filed January 7, 2009.	*
10.4	**SunTrust Banks, Inc. 1995 Executive Stock Plan,** and amendments effective as of August 11, 1998 and January 1, 2009, incorporated by reference to Exhibit 10.16 to Registrant's 1999 Annual Report on Form 10-K (File No. 001-08918), Exhibit 10.20 to Registrant's 1998 Annual Report on Form 10-K (File No. 001-08918), and to Exhibit 10.12 to the Registrant's Current Report on Form 8-K filed January 7, 2009.	*
10.5	**SunTrust Banks, Inc. Performance Stock Agreement,** effective February 11, 1992, and amendment effective February 10, 1998, incorporated by reference to Exhibit 10.10 to Registrant's 2003 Annual Report on Form 10-K (File No. 001-08918).	*
10.6	**2003 Stock Incentive Plan of National Commerce Financial Corporation,** and amendments, incorporated by reference to Exhibit 4.3 to Registration Statement No. 333-118963 and Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed November 16, 2006, and to Exhibit 10.12 to the Registrant's Current Report on Form 8-K filed January 7, 2009.	*
10.7	**National Commerce Financial Corporation Amended and Restated Long Term Incentive Plan,** and amendment effective November 13, 2006, incorporated by reference to Exhibit 4.7 to Registration Statement No. 333- 118963 and Exhibit 10.2 of the Registrant's Current Report on Form 8-K filed November 16, 2006.	*
10.8	**SunTrust Banks, Inc. Supplemental Executive Retirement Plan** effective as of January 1, 2001, and amendments effective January 1, 2001, January 1, 2005, November 14, 2006, January 1, 2001 (dated February 10, 2005, and September 15, 2005), and January 1, 2008, incorporated by reference to Exhibit 10.1 to Registrant's 2002 Annual Report on Form 10-K (File No. 001- 08918), Exhibit 10.2 to Registrant's 2004 Annual Report on Form 10-K, Exhibits 10.1 and 10.2 to the Registrant's Current Report on Form 8-K filed February 16, 2007, Exhibit 10.1 to Registrant's Current Report on Form 8-K filed February 11, 2005, Exhibit 10.4 to Registrant's 2005 Annual Report on Form 10-K, and Exhibit 10.2 to the Registrant's Current Report on Form 8- K/A filed January 7, 2008.	*

Table of Contents

Exhibit	Description	
10.9	**Crestar Financial Corporation Supplemental Executive Retirement Plan**, effective January 1, 1995, and amendments effective December 20, 1996, December 17, 1997, December 29, 1998, January 1, 2005 and November 14, 2006, incorporated by reference to Exhibit 10.37 to Registrant's 2000 Annual Report on Form 10-K (File No. 001-08918), Exhibit 10.43 to Registrant's 2003 Annual Report on Form 10-K (File No. 001-08918), Exhibit 10.44 to Registrant's 2003 Annual Report on Form 10-K (File No. 001-08918), Exhibit 10.42 to Registrant's 1998 Annual Report on Form 10-K (File No. 001-08918), and Exhibits 10.1 and 10.2 to the Registrant's Current Report on Form 8-K filed February 16, 2007	*
10.10	**National Commerce Financial Corporation Supplemental Executive Retirement Plan**, and amendments effective December 31, 2004, January 1, 2005 and November 14, 2006, incorporated by reference to Exhibit 10.3 to National Commerce Financial Corporation's 2001 Annual Report on Form 10- K (File No. 001-16607), Exhibit 10.2 of Registrant's Current Report on Form 8-K filed February 11, 2005, and Exhibits 10.1 and 10.2 to the Registrant's Current Report on Form 8-K filed February 16, 2007.	*
10.11	**SunTrust Banks, Inc. ERISA Excess Retirement Plan**, effective as of August 13, 1996, and amendments effective as of November 10, 1998, July 1, 1999 (dated December 30, 2005), January 1, 2005, November 14, 2006, and December 31, 2007, incorporated by reference to Exhibit 10.10 to Registrant's 1998 Annual Report on Form 10-K (File No. 001-08918), Exhibit 10.1 of Registrant's Current Report on Form 8-K/A filed January 12, 2006, and Exhibits 10.1 and 10.2 to the Registrant's Current Report on Form 8-K filed February 16, 2007, and Exhibit 10.3 to the Registrant's Current Report on Form 8-K/A filed January 7, 2008	*
10.12	**Crestar Financial Corporation Excess Benefit Plan**, amended and restated effective December 26, 1990, and amendments effective December 18, 1992, March 30, 1998 and December 30, 1998, incorporated by reference to Exhibit 10.29 to Registrant's 1998 Annual Report on Form 10-K (File No. 001-08918).	*
10.13	**SunTrust Banks, Inc. Deferred Compensation Plan**, effective October 1, 1999, and amendments effective October 31, 1999, January 1, 2000, January 1, 2004, January 1, 2005, November 14, 2006, and July 1, 2007, incorporated by reference to Exhibit 10.19 to Registrant's 1999 Annual Report on Form 10-K (File No. 001-08918), Exhibit 10.21 of Registrant's 2000 Annual Report on Form 10-K (File No. 001-08918), Exhibit 10.16 to Registrant's 2003 Annual Report on Form 10-K (File No. 001-08918), Exhibits 10.1 and 10.2 to the Registrant's Current Report on Form 8-K filed February 16, 2007, and Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed August 22, 2007	*
10.14	**Crestar Financial Corporation Deferred Compensation Program** under Incentive Compensation Plan of Crestar Financial Corporation and Affiliated Corporations, and amendments effective January 1, 1994 and effective September 21, 1995, incorporated by reference to Exhibit 10.30 to Registrant's 2000 Annual Report on Form 10-K (File No. 001-08918) and Exhibit 10.34 to Registrant's 1998 Annual Report on Form 10-K (File No. 001-08918).	*
10.15	**National Commerce Financial Bancorporation Deferred Compensation Plan**, effective January 1, 1999, and amendments effective January 1, 2005 and November 14, 2006, incorporated by reference to Exhibit 10.19 to National Commerce Financial Corporation's 1998 Annual Report on Form 10-K (File No. 000-06094), and Exhibits 10.1 and 10.2 to the Registrant's Current Report on Form 8-K filed February 16, 2007.	*
10.16	**SunTrust Banks, Inc. 401(k) Excess Plan**, amended and restated as of July 1, 1999, and amendments effective December 1, 2001, December 31, 2002, December 30, 2005, January 1, 2005, November 14, 2006, and January 1, 2007, incorporated by reference to Exhibit 10.12 to Registrant's 1999 Annual Report on Form 10-K (File No. 001-08918), Exhibit 10.8 of Registrant's 2001 Annual Report on Form 10-K, Exhibit 10.7 to Registrant's 2002 Annual Report on Form 10-K, Exhibit 10.2 to Registrant's Current Report on Form 8- K/A filed January 12, 2006, and Exhibits 10.1 and 10.2 to the Registrant's Current Report on Form 8-K filed February 16, 2007, and Exhibit 10.1 to the Registrant's Current Report on Form 8-K/A filed January 7, 2008.	*

Table of Contents

Exhibit	Description	
10.17	**Crestar Financial Corporation Additional Nonqualified Executive Plan**, amended and restated effective December 26, 1990, and amendments effective December 18, 1992, March 30, 1998 and December 30, 1998, incorporated by reference to Exhibit 10.36 to Registrant's 1998 Annual Report on Form 10-K (File No. 001-08918).	*
10.18	**National Commerce Financial Corporation Equity Investment Plan**, as amended and restated effective January 1, 2009.	(filed herewith)
10.19	**Change in Control Agreements** between Registrant and James M. Wells III, William H. Rogers, Jr., Raymond D. Fortin, Mark A. Chancy, William R. Reed, Jr., Timothy E. Sullivan, Thomas E. Panther, and Thomas E. Freeman, incorporated by reference to Exhibits 10.5, 10.6, and 10.8 of the Registrant's Quarterly Report on Form 10-Q and Form 10-Q/A filed May 14, 2001 (File No. 001-08918); Exhibit-10.2 to Registrant's Quarterly Report on Form 10-Q filed November 12, 2004; Exhibit 10.1 to Registrant's Current Report on Form 8-K filed October 20, 2004; Exhibit 10.2 to Registrant's Quarterly Report on Form 10-Q filed May 9, 2003 (File No. 001-08918); Exhibit 10.1 of Registrant's Current Report on Form 8-K filed November 30, 2005; and Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed February 17 2006	*
10.20	**SunTrust Banks, Inc. Directors Deferred Compensation Plan** effective as of January 1, 1994, and amendments effective January 1, 2005 and November 14, 2006, incorporated by reference to Exhibit 10.21 to Registrant's 1998 Annual Report on Form 10-K (File No. 001-08918), and Exhibits 10.1 and 10.2 to the Registrant's Current Report on Form 8-K filed February 16, 2007.	*
10.21	**Crestar Financial Corporation Deferred Compensation Plan for Outside Directors of Crestar Financial Corporation and Crestar Bank,** as restated with amendments through January 1, 2009.	(filed herewith)
10.22	**Crestar Financial Corporation Directors' Equity Program**, effective January 1, 1996, and amendments effective December 20, 1996, September 26, 1997, October 23, 1998, and October 23, 1998, incorporated by reference to Exhibit 10.36 of Registrant's 2001 Annual Report on Form 10-K (File No. 001-08918), Exhibit 10.37 of Registrant's 2001 Annual Report on Form 10- K (File No. 001- 08918), Exhibit 10.48 to Registrant's 2003 Annual Report on Form 10-K (File No. 001-08918), Exhibit-10.47 to Registrant's 1998 Annual Report on Form 10-K (File No. 001-08918), and Exhibit 10.44 to Registrant's 1999 Annual Report on Form 10-K (File No. 001-08918).	*
10.23	**National Commerce Financial Corporation Directors' Fees Deferral Plan and First Amendment,** effective January 1, 2002, and amendments effective January 1, 2005 and November 14, 2006, incorporated by reference to Exhibit 10.64 to Registrant's 2004 Annual Report on Form 10-K, and Exhibits 10.1 and 10.2 to the Registrant's Current Report on Form 8-K filed February 16, 2007.	*
10.24	**Letter Agreement dated August 10, 2004 from Registrant to James M. Wells III**, regarding split dollar life insurance, incorporated by reference to Exhibit 10.1 to Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2004.	*
10.25	**Letter Agreement with U.S. Treasury Department** dated as of November 14, 2008 (including the Securities Purchase Agreement – Standard Terms), incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K/A filed January 5, 2009.	*
10.26	**Letter Agreement with U.S. Treasury Department** dated as of December 31, 2008 (including the Securities Purchase Agreement – Standard Terms), incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed January 2, 2009.	*
10.27	**Form of Waiver,** executed by each of Messrs. James M. Wells III, Mark A. Chancy, William R. Reed, Jr., William H. Rogers, Jr., and Timothy E. Sullivan (incorporated by reference to Ex. 10.2 to the Registrant's Current Report on Form 8-K filed November 17, 2008).	*
10.28	**Form of Letter Agreement**, executed by each of Messrs. James M. Wells III, Mark A. Chancy, William R. Reed, Jr., William H. Rogers, Jr., and Timothy E. Sullivan with the Company (incorporated by reference to Ex. 10.3 to the Registrant's Current Report on Form 8-K filed November 17, 2008).	*
10.29	**GB&T Bancshares, Inc. Stock Option Plan of 1997**, incorporated by reference to Exhibit 10.6 to the annual report on Form 10-K of GB&T Bancshares Inc. filed March 31, 2003 (File No. 005-82430).	*

Table of Contents

Exhibit	Description	
10.30	**GB&T Bancshares, Inc. 2007 Omnibus Long-Term Incentive Plan**, incorporated by reference to Appendix A to the definitive proxy statement of GB&T Bancshares Inc. filed April 18, 2007 (File No. 005-82430).	*
10.31	**AMA/Lighthouse, Inc. 2002 Stock Option Plan.**	(filed herewith)
12.1	**Ratio of Earnings to Fixed Charges and Preferred Stock Dividends**.	(filed herewith)
21.1	**Registrant's Subsidiaries**.	(filed herewith)
23.1	**Consent of Independent Registered Public Accounting Firm.**	(filed herewith)
23.2	**Consent of Independent Registered Public Accounting Firm.**	(filed herewith)
31.1	**Certification of Chairman and Chief Executive Officer** pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	(filed herewith)
31.2	**Certification of Chief Financial Officer and Corporate Executive Vice President** pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	(filed herewith)
32.1	**Certification of Chairman and Chief Executive Officer** pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	(filed herewith)
32.2	**Certification of Chief Financial Officer and Corporate Executive Vice President** pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	(filed herewith)

Certain instruments defining rights of holders of long-term debt of the Registrant and its subsidiaries are not filed herewith pursuant to Item 601 (b)(4)(iii) of Regulation S-K. At the Commission's request, the Registrant agrees to give the Commission a copy of any instrument with respect to long-term debt of the Registrant and its consolidated subsidiaries and any of its unconsolidated subsidiaries for which financial statements are required to be filed under which the total amount of debt securities authorized does not exceed ten percent of the total assets of the Registrant and its subsidiaries on a consolidated basis.

* incorporated by reference

Table of Contents

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities and Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

SUNTRUST BANKS, INC.

By: /s/ James M. Wells III
James M. Wells III
Chairman and Chief Executive Officer

Dated: March 2, 2009

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Raymond D. Fortin and Mark A. Chancy and each of them acting individually, as his attorneys-in-fact, each with full power of substitution, for him in any and all capacities, to sign any and all amendments to this Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorney to any and all amendments said Form 10-K.

Pursuant to the requirements of the Securities Act, this Form 10-K has been signed by the following persons in the capacities and on the dates indicated:

Signatures		Title
Principal Executive Officer:		
/s/ James M. Wells III James M. Wells III	3/2/2009 Date	Chairman and Chief Executive Officer; Director
Principal Financial Officer:		
/s/ Mark A. Chancy Mark A. Chancy	3/2/2009 Date	Corporate Executive Vice President and Chief Financial Officer
Principal Accounting Officer:		
/s/ Thomas E. Panther Thomas E. Panther	3/2/2009 Date	Senior Vice President, Controller and Chief Accounting Officer
Directors:		
/s/ Robert M. Beall, II Robert M. Beall, II	2/10/2009 Date	Director
/s/ Alston D. Correll Alston D. Correll	2/10/2009 Date	Director

Table of Contents

Signatures		Title
/s/ Jeffrey C. Crowe Jeffrey C. Crowe	2/10/2009 Date	Director
/s/ Patricia C. Frist Patricia C. Frist	2/10/2009 Date	Director
/s/ Blake P. Garrett, Jr. Blake P. Garrett, Jr.	2/10/2009 Date	Director
/s/ David H. Hughes David H. Hughes	2/10/2009 Date	Director
/s/ M. Douglas Ivester M. Douglas Ivester	2/10/2009 Date	Director
/s/ J. Hicks Lanier J. Hicks Lanier	2/10/2009 Date	Director
/s/ G. Gilmer Minor, III G. Gilmer Minor, III	2/10/2009 Date	Director
/s/ Larry L. Prince Larry L. Prince	2/10/2009 Date	Director
/s/ Frank S. Royal, M.D. Frank S. Royal, M.D.	2/10/2009 Date	Director
/s/ Karen Hastie Williams Karen Hastie Williams	2/10/2009 Date	Director
/s/ Dr. Phail Wynn, Jr. Dr. Phail Wynn, Jr.	2/10/2009 Date	Director

Exhibit 8

Only the Westlaw citation is currently available.

United States District Court,
D. South Carolina,
Charleston Division.
Thomas J. HARRIS, Wanda O. Harris, Individually and, Their Representative Capacities, Plaintiffs,
v.
OPTION ONE MORTGAGE CORPORATION, H & R Block, Inc., and American Home Mortgage Servicing, Inc., Defendants.
Civil Action No. 2:08-CV-3692-PMD.

July 17, 2009.

Mary Leigh Arnold, Mary L. Arnold Law Office, Mt. Pleasant, SC, for Plaintiffs.

Bryson M. Geer, Michael Tucker Cole, Elizabeth Scott Moise, Nelson Mullins Riley and Scarborough, Charleston, SC, for Defendants.

ORDER

PATRICK MICHAEL DUFFY, District Judge.

***1** This action arises out of the adjustable rate mortgage Plaintiffs Thomas J. Harris and Wanda O. Harris received from Defendant Sand Canyon Corporation f/k/a Option One Mortgage Corporation after refinancing their primary residence. Plaintiffs commenced this proposed class action lawsuit against H & R Block, Inc., Sand Canyon Corporation, and American Home Mortgage Servicing, Inc. based on their alleged violations of certain consumer protection laws, and they seek "redress for the unfair and deceptive origination and servicing of adjustable rate loans secured by mortgages in South Carolina and for declaratory and injunctive relief to end those practices and prevent further losses to the Class and future borrowers." (Compl.¶ 1.) Defendant H & R Block, Inc. now moves the court to dismiss it from this suit based on the court's lack of jurisdiction over its person, and American Home Mortgage Servicing, Inc. moves the court to dismiss them from this suit based on Plaintiffs' failure to state a claim showing they are entitled to relief from it. If the court does not dismiss Plaintiffs' complaints against American Home Mortgage, it also moves the court to amend its answer to assert a compulsory counterclaim and add three affirmative defenses. In an effort to avoid dismissal, Plaintiffs move the court to allow them to amend their Complaint.

ANALYSIS

I. *Plaintiffs' Motion to Amend Complaint to Join Wells Fargo as a Defendant*

Plaintiffs also moved to amend their Complaint to add a defendant to this suit, since it recently discovered from American Home Mortgage's Motion to Amend Answer that Wells Fargo served as trustee for Option One Mortgage. Since Wells Fargo "may have an interest in the subject Notes and Mortgages," Plaintiffs move the court to join it as a "necessary" defendant. Defendants argue that, since Plaintiffs seek to amend their Complaint after the Scheduling Order's deadline for taking such action has expired, Plaintiffs have the burden of showing not only "good cause" to allow amendment under Federal Rule of Civil Procedure 16(b), but also they must demonstrate good faith, no prejudice to the Defendants, and absence of futility under Rule 15(a). Defendants contend that Plaintiffs have failed to satisfy this burden.

Although Rule 15(a) provides that leave to amend "shall be freely given when justice so requires," Rule 16(b) mandates that a court's scheduling order "may be modified only for good cause and with the judge's consent." To be sure, the court's Conference and Scheduling Order listed January 12, 2009 as the deadline for the litigants to join other parties and amend the pleadings, (Docket Entry # 12), and Plaintiffs' moved to amend their Complaint on February 13, 2009. In these instances, the Fourth Circuit has reasoned:

> Given their heavy case loads, district courts require the effective case management tools provided by Rule 16. Therefore, after the deadlines provided by a scheduling order have passed, the good cause standard must be satisfied to justify leave to amend the pleadings.

***2** *Nourison Rug Corp. v. Parvizian*, 535 F.3d 295, 298 (4th Cir.2008). Although Plaintiffs contend that they learned "for the first time" that Wells Fargo served as trustee for Option One through American Home Mortgage's Motion to Amend Answer, the evidence indicates that, if such is the case, it is no fault of Defendants. Plaintiffs base their Complaint on a loan agreement they entered into with Sand Canyon Corporation f/k/a/ Option One Mortgage on June 5, 2006. Plaintiffs modified this original agreement by entering into a Loan Modification Agreement with Wells Fargo Bank on or about August 21, 2007, and the modification agreement specifically states that Wells Fargo Bank contracted with Plaintiffs in its capacity as "TRUSTEE FOR OPTION ONE MORTGAGE." (Def. Opp. to Mot. to Amend Compl. Ex. 1.) Therefore, it was apparent from the commencement of this litigation that Wells Fargo Bank participated in the transactions in question.

Plaintiffs also attempt to show good cause for joining Wells Fargo Bank to this action by designating it a "necessary party" under Rule 19. Plaintiffs contend that "complete relief cannot be accorded among those already parties without the addition of Wells Fargo as Trustee of Option One because it may claim to have or does have an interest in the subject notes and mortgages." (Mot. to Amend Compl. at 5.) Wells Fargo has not claimed an interest relating to Plaintiffs' adjustable rate mortgage, and Plaintiffs have not articulated a reason as to why they could not recoup complete relief without Wells Fargo joined as a defendant. Therefore, without addressing the issue of whether or not Wells Fargo even constitutes a necessary party, the court denies Plaintiffs' request to join Wells Fargo Bank as a defendant to this suit, as they have not shown good cause to permit such action. *See* *Northeast Drilling v. Inner Space Servs.*, 243 F.3d 25, 37 (1st Cir.2001) (affirming a district court's decision to deny a party's motion to join a necessary party after the scheduling order's deadline to amend pleadings had passed and the court found that the moving party did not show good cause).

II. *Plaintiffs' Motion to Amend Complaint to Supplement Allegations Against American Home Mortgage Servicing, Inc.*

Defendant American Home Mortgage Servicing, Inc. moved the court to dismiss Plaintiffs' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and 12(c) because it does not state a viable claim against it. In response to American Home Mortgage's Motion to Dismiss, Plaintiffs moved to amend their Complaint, in an effort "to include additional allegations against American Home Mortgage Servicing, Inc.... which will merely supplemental [sic] the allegations contained in the existing causes of action." (Mot. to Amend Compl. at 1.) [FN1] As discussed in the preceding section, Plaintiff must show good cause to justify leave to amend their pleadings, since the court's deadline to do so has passed. *Nourison Rug Corp. v. Parvizian*, 535 F.3d 295, 298 (4th Cir.2008). Plaintiffs seek to amend their Complaint "to supplement certain allegations to include newly learned facts and to correct alleged deficiencies asserted by American [Home Mortgage]."

> FN1. American Home Mortgage brings to the court's attention that a close reading of Plaintiffs' proposed First Amended Class Action Complaint shows that Plaintiffs do not limit the amendments to allegations against American Home Mortgage and the joinder of Wells Fargo Bank, as Plaintiffs discussed in their Motion to Amend; rather, the proposed First Amended Class Action Complaint also includes amendments to the allegations asserted against H & R Block, Inc., amendments to the allegations against Sand Canyon Corporation, and a request for additional relief in the form of reformation of the loan contract. Since Plaintiffs did not address these amendments in their Motion to Amend Complaint, the court disregards those proposed amendments in its discussion and denies their addition to the Complaint.

***3** The newly learned fact that Plaintiffs base their motion is that American Home Mortgage is the holder or owner of Plaintiffs' note and mortgage as opposed to just a servicer of the loan as American Home Mortgage contends. [FN2] It claims that American Home Mortgage is a holder or owner of its loan based on its answer to one of Plaintiffs' interrogatories, in which it identified itself as a "holder" of Plaintiffs' adjustable rate mortgage, as well as the fact that American Home Mortgage moved the court to amend its Answer to add a compulsory counterclaim to bring a foreclosure action against Plaintiffs. According to Plaintiffs, American Home Mortgage could not assert a claim for foreclosure unless it is the owner or holder of Plaintiffs' note and mortgage. American Home Mortgage contends that it has never been the owner or holder of Plaintiffs' loan, and as such, it would prove futile to allow Plaintiffs' to amend their Complaint based on this erroneous fact.

> FN2. Paragraph 5 of Plaintiffs' Complaint acknowledges that American Home Mortgage is the "loan serving business of Option One," but the same paragraph in their proposed amended complaint lists it as the "holder and/or assignee of certain Notes(s) and Mortgage(s) which are the subject matter of the within action."

American Home Mortgage explained that its identification of itself as the holder of Plaintiffs' note and mortgage "was an inadvertent error that clearly contradicted every statement made by American Home concerning its status in this loan transaction. Immediately upon learning of the error, American Home notified Plaintiffs' counsel of the error and served a corrected response." (Def. Reply to Mot. to Dismiss at 1 n. 1.) In addition to this explanation, American Home Mortgage provided the Declaration of Joyce Banner, the Senior High Risk Specialist of American Home Mortgage, to support its position that it is merely a loan servicer, rather than the owner, holder, or assignee of Plaintiffs' note and mortgage. Ms. Banner declared that American Home Mortgage did not originate the Plaintiffs' loan or any loan in South Carolina; has never been the owner or holder of Plaintiffs' note and mortgage or of any note and mortgage in South Carolina; and did not communicate with or have any involvement with Plaintiffs' mortgage brokers involved in originating their loan. (Def. Opp. to Mot. to Amend Compl. Ex. 8 ¶¶ 4-5, 9.) According to Ms. Banner, American Home Mortgage's principal duties include, among other things, collecting, monitoring, and reporting loan payments; overseeing and instituting foreclosures on defaulted loans, and handling late payments and other delinquency issues. (*Id.* at p. 10.)

Finally, American Home Mortgage refutes that it is the holder of Plaintiffs' loan merely because it seeks to institute a foreclosure action. Although a dispositive case under South Carolina law does not appear to exist, American Home Mortgage did direct the court's attention to a decision from the United States Bankruptcy Court for the District of South Carolina, where the court adopted the view that "a loan servicer, with a contractual duty to collect payments and foreclose mortgages in the event of default, has standing to move for relief from stay in the Bankruptcy Court." *In re Woodberry*, 383 B.R. 373, 379 (Bankr.D.S.C.2008) ("[I]t appears that foreclosures and motions for relief from the stay are frequently brought by parties other than the beneficial owner [of the mortgage debt]."); *see also* *Bankers Trust v. 236 Beltway Inv.*, 865 F.Supp. 1186, 1191 (E.D.Va.1994) (recognizing that both the lender and servicer of a mortgage have standing to foreclose, even if the loan servicer is not the holder of the mortgage).

***4** Since the evidence and arguments provided by American Home Mortgage indicates it never was an owner, holder, or assignee of Plaintiffs' note and mortgage, and Plaintiffs' have not rebutted this argument with any of its own proof other than an inadvertent and erroneous answer to an interrogatory, [FN3] the court concludes that any amendments based on Plaintiffs' belief that American Home Mortgage is the owner, holder, or assignee of their mortgage would be futile. As such, Plaintiff has not shown good cause to amend its Complaint, and the court denies Plaintiffs' motion.

> FN3. Paragraph 29 of Plaintiffs' proposed amended complaint even states that "Plaintiffs were notified effective July 1, 2008, the *servicing* of their loan would transfer from Option One to American Home."

III. *American Home Mortgage Servicing, Inc.'s Motion to Dismiss Pursuant to Rule 12(b)(6) and 12(c)*

Defendant American Home Mortgage Servicing Inc. moves the court to dismiss Plaintiffs' Complaint against it for failure to state a claim showing they are entitled to relief from it.[FN4] Plaintiffs' Complaint states six claims: (1) declaratory judgment and injunctive relief; (2) violations of the Truth in Lending Act and the Real Estate Settlement Procedures Act; (3) violation of the South Carolina Unfair Trade Practices Act; (4) negligent misrepresentation; (5) civil conspiracy; and (6) unconscionability.

> FN4. Since the court denied Plaintiffs' Motion to Amend Complaint to assert claims

against American Home Mortgage as a holder, owner, or assignee of Plaintiffs' note or mortgage, the court analyzes American Home Mortgage's motion using Plaintiffs original Complaint, which recognizes American Home Mortgage as a loan servicer.

When considering a 12(b)(6) motion to dismiss, the court must accept as true the facts alleged in the complaint and view them in a light most favorable to the plaintiff. *Ostrzenski v. Seigel*, 177 F.3d 245, 251 (4th Cir.1999). The United States Supreme Court recently stated that "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, --- U.S. ----, ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Although "a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations," a pleading that merely offers "labels and conclusions," or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Likewise, "a complaint [will not] suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancements.' " *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 557).

A review of Plaintiffs' Complaint reveals that, although they have asserted numerous specific factual allegations against Option One Mortgage, they have asserted very little specific factual allegations to support their causes of action against American Home Mortgage. Regarding American Home Mortgage, Plaintiffs merely allege the following: (1) that all Defendants engaged in the "unfair deceptive origination and servicing of adjustable rate loans secured by mortgages in South Carolina," (Comp.¶ 1); (2) that American Home "is a Delaware corporation doing business in the State of South Carolina and that purchaser from H & R of the mortgage loan servicing business of Option One," (*Id.* ¶ 5); that "[t]hrough an undated letter with both Option One and [American Home Mortgage] logos at the top, Plaintiffs were notified effective July 1, 2008 the servicing of their loan would transfer from Option One to American Home," (*Id.* ¶ 28); and that "[o]n a monthly billing statement dated July 16, 2008, [American Home Mortgage] has indicated that Plaintiffs monthly payment was $1,750.62." (*Id.* ¶ 29.) From these allegations, American Home Mortgage is alleged to have been the servicer of Plaintiffs' loan,[FN5] and the court briefly discusses why American Mortgage is entitled to dismissal on each of Plaintiffs' claims.

FN5. The court discussed above whey Plaintiffs' attempt to amend their Complaint to allege that American Home Mortgage constituted the holder or assignee of their note and mortgage would be futile.

a. *Violation of Truth in Lending Act*

***5** The Truth in Lending Act requires creditors to disclose certain information about the terms of the loan to the prospective borrower. *See, e.g.,* 15 U.S.C. §§ 1631-32; 15 U.S.C. § 1638; 12 C.F.R. § 226.17. "Only 'creditors' are liable under TILA and Reg[ulation] Z." *Mincey v. World Sav. Bank, FSB*, No. 2:07-3762-PMD, 2008 U.S. Dist. LEXIS 73898, at *38, 2008 WL 3845438 (D.S.C. Aug. 15, 2008); *Moore v. Flagstar Bank*, 6 F.Supp.2d 496, 500 (E.D.Va.1997) (citations omitted). The TILA specifically defines the term "creditor":

> The term "creditor" refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. 15 U.S.C. § 1602(f). Regulation Z contains a similar provision:

> Creditor means: (i) A person (A) who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than 4 installments (not including a downpayment), and (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

12 C.F.R. § 226.2(a)(17). The definition of the term "creditor" requires both prongs to be met, and the allegations in Plaintiffs' Complaint indicate that American Home Mortgage does not qualify as a creditor under TILA. *Mincey,* 2008 U.S. Dist. LEXIS 73898, at *40; 2008 WL 3845438 *see also Moore,* 6 F.Supp.2d at 503 ("Since the debt is not payable to Crossstate, it was not a creditor subject to liability under TILA and Reg Z at the time of closing."). There is no allegation that Plaintiffs' obligation under the loan was initially payable to American Home Mortgage. In fact, Plaintiffs' Complaint alleges that it entered into the loan transaction with Option One on June 5, 2006, (Compl.¶ 23), and did not receive notice that American Home Mortgage would be servicing its loan until July 1, 2008, approximately two years later. (*Id.* ¶ 29.) Plaintiffs argue that American Home Mortgage does not have to be involved with the origination of a loan to be subject to liability under TILA, since TILA subjects assignees of creditors to liability as well. 15 U.S.C § 1641. Nevertheless, Plaintiffs have not stated sufficient factual allegations to seek relief against American Home Mortgage as an assignee. See 15 U.S.C. § 1641(f)(1) ("A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section *unless the servicer is or was the owner of the obligation."*). The court therefore grants the Motion to Dismiss filed by American Home Mortgage with respect to the TILA claim.

b. *RESPA claim*

***6** Congress enacted the Real Estate Settlement Procedures Act in an effort to insure home buyers received more effective advance disclosures of settlement costs and to decrease the amount of kickbacks or referral fees that have increased the costs of settlement services. *See* 12 U.S.C. § 2601(b). Plaintiffs reference §§ 2602 and 2607 of RESPA in their Complaint, which create a private cause of action in instances where a person gives or accepts "any fee, kickback, or thing of value" for a referral involving business incident to a real estate settlement service. American Home Mortgage contends that Plaintiffs have not made any factual allegations to support a claim that American Home Mortgage received any kickbacks or unearned fees when servicing their note and mortgage. Moreover, they argue that Plaintiffs only complain of failing to receive accurate and timely disclosures concerning their loan, but that Plaintiffs have not alleged any facts that would support a finding that American Home Mortgage was involved with Plaintiffs' loan at the time the disclosures were due. Plaintiffs did not address American Home Mortgage's argument in its response.

Plaintiffs do base their claim on all of the Defendants' failure to deliver all material disclosures required by RESPA, all of which "should have been delivered to the Plaintiffs ... in a form they could keep prior to consummation of the loan transaction" or "in writing upon application for the loan or, at the least, three (3) days subsequent to the lenders receipt of the loan application." The court can dismiss this claim against American Home Mortgage by simply applying the facts as alleged in Plaintiffs' Complaint to these assertions. All of the material information that "Defendants" allegedly failed to disclose to Plaintiffs should have been disclosed, under Plaintiffs' own contentions, before the loan transaction was even entered into. Since Plaintiffs' allege that American Home Mortgage did not become involved with the servicing of their note and mortgage until approximately two years after they entered into the loan agreement with Option One, Plaintiffs have failed to allege a RESPA claim against American Home Mortgage that is plausible on its face. Thus, the court dismisses this claim as against American Home Mortgage.

c. *Violations of the South Carolina Unfair Trade Practices Act*

In order to recover pursuant to the South Carolina Unfair Trade Practices Act, Plaintiffs must prove: (1) a violation of the Act by the commission of an unfair or deceptive act in trade or commerce, (2) proximate cause, and (3) damages. *Schnellmann v. Roettger,* 368 S.C. 17, 23, 627 S.E.2d 742, 745-46 (Ct.App.2006). Plaintiffs allege that "Defendants," collectively, violated the South Carolina Unfair Trade Practices Act by "failing to properly disclose the terms of the loan transaction; steering Plaintiffs ... into higher interest rate loans to increase their profits; steering Plaintiffs ... into loans they knew or should have known they could not afford to make the payments; making loans without consideration of the consumers' ability to repay the loan or mortgage; and placing consumer into loans with grossly unfavorable terms." (Compl.¶ 59.) American Home Mortgage argues that Plaintiffs have failed to allege any facts to support the assertion that it violated SCUTPA, either in its involvement with the loan two years after its origination or derivatively. In response, Plaintiffs contend that the allegedly unconscionable loan issued to Plaintiffs applies to all Defendants and that American Home Mortgage has a relationship with Plaintiffs because it interacted with Plaintiffs regarding their loan transaction.

***7** While Plaintiffs may have interacted with American Home Mortgage, as the servicer of their loan, Plaintiffs did not make any factual allegation to show that it was American Home Mortgage that failed to disclose the terms of the loan, steered Plaintiffs into higher interest rates that they could not afford, or made loans without considering consumers' ability to repay. Nor have they alleged that American Home Mortgage had any part in creating the allegedly unconscionable loan at issue. Again, Plaintiffs' Complaint fails to assert any specific factual allegations against American Home Mortgage. Plaintiffs' merely allege that American Home Mortgage did not become involved with Plaintiffs' note and mortgage approximately two years after they entered into their loan transaction with Option One, and it appears that it simply serviced the loan pursuant to its terms. As noted above, Plaintiffs must "state a claim to relief that is plausible on its face" to survive a motion to dismiss, *Ashcroft v. Iqbal*, --- U.S. ----, ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009), and "[a] claim has facial plausibility when the plaintiff *pleads factual content* that allows the court to draw the reasonable inference that *the defendant is liable for the misconduct alleged." Id.* (emphasis added). Under the facts as alleged, the court finds that Plaintiffs have not stated a plausible claim under SCUTPA as against American Home Mortgage.

d. *Negligent Misrepresentation*

To state a claim for negligent misrepresentation Plaintiffs must show: (1) American Home Mortgage made a false representation to the plaintiff; (2) American Home Mortgage had a pecuniary interest in making the statement; (3) American Home Mortgage owed a duty of care to communicate truthful information to them; (4) American Home Mortgage breached that duty; (5) they justifiably relied on the representation; and (6) they suffered a pecuniary loss as a result of such reliance. *Schnellmann v. Roettger*, 368 S.C. 17, 20-21, 627 S.E.2d 742, 744 (Ct.App.2006) (citation omitted). Plaintiffs argue that it alleged all of the essential elements of negligent misrepresentation; therefore, this claim should survive American Home Mortgage's Motion to Dismiss. Contrary to Plaintiffs' assertion, however, the United States Supreme Court has made it clear that, while "the pleading standard Rule 8 announces does not require detailed factual allegations, it demands more than ... labels and conclusions or a formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, --- U.S. ----, ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (internal quotations omitted). Plaintiffs offered no factual assertion which shows it relied on a false representation made by American Home Mortgage that misled Plaintiffs with regard to the impact of the adjustable interest rate. Again, Plaintiffs' Complaint asserts that American Home Mortgage did not become involved with Plaintiffs' note and mortgage until approximately two years after they completed the loan transaction with Option One and that all American Home Mortgage did was send Plaintiffs a billing statement pursuant to the terms of loan agreement. Therefore, the court dismisses Plaintiffs negligent misrepresentation claim against American Home Mortgage.

e. *Civil Conspiracy*

***8** In South Carolina, a civil conspiracy exists when there is (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damage. *State Farm Fire & Cas. Co. v. Weaver*, 585 F.Supp.2d 722, 728 (D.S.C.2008) (citing *Future Group, II v. Nationsbank*, 324 S.C. 89, 100, 478 S.E.2d 45, 50 (1996)). "To properly plead a cause of action for civil conspiracy, Plaintiffs must allege certain acts carried out pursuant to the conspiracy." *BCD, LLC v. BMW Mfg. Co ., LLC*, No. 6:05-2152, 2008 U.S. Dist. LEXIS 7410, at *76-77, 2008 WL 304878 (D.S.C. Jan. 31, 2008) (citing *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 344 S.E.2d 379, 382 (S.C.Ct.App.1986)). "The acts alleged to constitute the conspiracy cannot be identical to the acts alleged in support of other causes of action." *Id.* at *77, 344 S.E.2d 379 (citing *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 538 S.E.2d 15, 31 (S.C.Ct.App.2000)).

In their Complaint, Plaintiffs only allege that, [o]n information and belief, Defendants along with mortgage brokers they affiliated with combined together to cover up and misrepresent the terms of the consumer loan products for the purpose of injuring the Plaintiffs. (Compl.¶ 74.) American Home Mortgage believes this claim should be dismissed as against it because Plaintiffs' Complaint alleges, as already discussed numerous times, that its first involvement with Plaintiffs' loan came in July 2008; whereas, Plaintiffs have also alleged that the "mortgage broker steered [them] into a transaction with Option One" in May and June 2006. (*Id.* ¶¶ 20-22, 538 S.E.2d 15.) Therefore, it contends that it could not have been a part of any alleged conspiracy to cover up the terms of the loan when it originated. Furthermore, American Home Mortgage contends that Plaintiffs have improperly based this claim on the same basic fact that support their other causes of action. *Kuznik*, 342 S.C. at 610, 538 S.E.2d at 31 ("An action for civil conspiracy will not lie if a plaintiff has obtained relief through other avenues."). To accept Plaintiffs' allegations as true, the court would have to infer that American Home Mortgage conspired with the other Defendants and mortgage brokers to "cover up and misrepresent" the terms of the loan to Plaintiffs and then waited two years before becoming involved with the allegedly unlawful scheme. Such an inference is unreasonable; therefore, the court dismisses this claim as against American Home Mortgage.

f. *Unconscionability*

Plaintiffs Complaint alleges that "Defendants, through their agents, servants, and employees, financed numerous loans brokered by mortgage brokers," (Compl.¶ 78), and that the terms and conditions pertaining to these loans are unconscionable because "(1) they were not entered into with consideration to the consumers ability to repay based on the initial rate or the adjusted rate; (2) they failed to clearly and conspicuously disclose how much and how soon the interest rate ... would increase after the teaser rate expired; (3) they failed to clearly and conspicuously disclose [whether] monthly payments included amounts due for insurance and taxes ...; (4) they failed to clearly and conspicuously disclose closing costs and fees; [and] (5) they failed to disclose the true costs and risks associated with the false promise that refinancing would be available as an exit strategy when the loans became unaffordable after the interest rate adjusted." (Compl.¶ 81.) Based on these assertions, Plaintiffs Complaint finally alleges that "the subject transactions were unconscionable at the time they were made." (*Id.* at ¶ 82, 538 S.E.2d 15.) Since the factual allegations of Plaintiffs' Complaint identify American Home Mortgage as merely the servicer of their loan, and does not allege that it employed mortgage brokers that worked with Plaintiffs, that it authored the loan agreements, or that it was involved with Plaintiffs' loan transaction at the time it was made, the court dismisses Plaintiffs' claim that the terms were unconscionable at the time the loan transaction was entered into as against American Home Mortgage. *See Short v. Wells Fargo Bank Minn., N.A.*, 401 F.Supp.2d 549, 563 (S.D.W.Va.2005) (dismissing TILA and unconscionability claims against a mortgage servicer that merely provided administrative functions).

g. *Declaratory Judgment/Injunctive Relief*

***9** Since the court has found that Plaintiffs have not alleged factual allegations sufficient to establish a plausible theory of liability against American Home, as servicer of their loan, the court dismisses Plaintiffs' claim for injunctive relief and declaratory judgment as against American Home Mortgage as well. To the extent Plaintiffs argue that American Home Mortgage cannot be dismissed because, as the servicer of the loan, it is a necessary party, courts have rejected this argument. In *Walker v. Gateway Financial Corp.*, a district court dismissed the servicer of a loan from a suit and rejected the plaintiff's argument that the servicer of the loan constituted a necessary party with an interest in the suit. 286 F.Supp.2d 965, 969 (N.D.Ill.2003). The court reasoned:

> When the matter is looked at realistically, if any loan is indeed rescinded [the loan servicer] will automatically cease to have any collection or other function in connection with that loan. Any concern that it may thereafter engage in improper reporting to credit agencies is totally speculative (really not a current case or controversy) and does not warrant its retention as a defendant. [The loan servicer] claims no independent stake in the matter, and its presence in the litigation is really unnecessary.

Id.

This reasoning compels this court to reach the same conclusion. Plaintiffs' Complaint predominately asserts allegations based on the loan agreement it entered into with Option One Mortgage, and the court is not convinced that Plaintiffs will likely suffer irreparably by American Home Mortgage's dismissal from this suit. Based on the allegations in their Complaint, Plaintiffs fail to state a claim plausible on its face as against American Home Mortgage; therefore, the court grants its Motion to Dismiss in its entirety.

IV. *H & R Block, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction*

a. *Legal Standard for Motion to Dismiss Pursuant to Rule 12(b)(2)*

When a court's personal jurisdiction is properly challenged by motion under Federal Rule of Civil Procedure 12(b)(2), the jurisdictional question thereby raised is one for the judge, with the burden on the plaintiff ultimately to prove grounds for jurisdiction by a preponderance of the evidence. *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir.1989). Yet when, as here, the district court decides a pretrial personal jurisdiction dismissal motion without an evidentiary hearing, the plaintiff need prove only a prima facie case of personal jurisdiction. *Id.* at 676. In deciding whether the plaintiff has proved a prima facie case of personal jurisdiction, the district court must draw all reasonable inferences arising from the proof, and resolve all factual disputes, in favor of the plaintiff. *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 61 (4th Cir.1993). While Plaintiffs are entitled to have all reasonable inferences from the proof drawn in their favor, the court must also consider any other evidence provided by H & R Block in support of its motion. *Id.* at 62.

b. *Personal Jurisdiction Over H & R Block*

***10** Determining whether jurisdiction is proper is normally a two-step process: (1) determining if the state's long-arm statute confers jurisdiction and (2) whether the exercise of jurisdiction, if authorized, is consistent with the Due Process requirements of the Fourteenth Amendment. *Base Metal Trading v. Ojsc Novokuznetsky Aluminum Factory*, 283 F.3d 208, 213 (4th Cir.2002). Because South Carolina's long-arm statute is coextensive with the full reach of due process, *Federal Ins. Co. v. Lake Shore Inc.*, 886 F.2d 654, 657 n. 2 (4th Cir.1989), it is unnecessary to go through the normal two-step formula for determining the existence of personal jurisdiction. *In re Celotex Corp.*, 124 F.3d 619, 627-28 (4th Cir.1997) (citations omitted). "Rather, the statutory inquiry necessarily merges with the constitutional inquiry." *Id.* As such, in this case, the court's inquiry centers on whether exercising personal jurisdiction over H & R Block is consistent with the Due Process of the United States Constitution. *See id.*

A court's exercise of jurisdiction over a nonresident defendant comports with due process if the defendant has "minimum contacts" with the forum, such that to require the defendant to defend its interests in that state "does not offend traditional notions of fair play and substantial justice." *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 397 (4th Cir.2003). To meet this burden, Plaintiffs must demonstrate that H & R Block is subject to either specific or general jurisdiction in South Carolina. *Dtex, LLC v. BBVA Bancomer, S.A.*, 405 F.Supp.2d 639, 644 (D.S.C.2005), *aff'd*, 214 F. App'x 286 (4th Cir.2007). Specific jurisdiction exists where a defendant's contacts with the forum state provide the basis for the suit. *Mitrano v. Hawes*, 377 F.3d 402, 407 (4th Cir.2004). To decide whether specific jurisdiction exists, the court examines (1) the extent to which H & R Block purposefully availed itself of the privilege of conducting activities in South Carolina; (2) whether Plaintiffs' claims arise out of those activities directed at South Carolina; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable. *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 712 (4th Cir.2002). To establish general jurisdiction over H & R Block, its activities in South Carolina must have been "continuous and systematic," a more demanding standard than is necessary for establishing specific jurisdiction. *Id.*

Plaintiffs do not specify whether they seek to establish personal jurisdiction over H & R Block based on specific or general jurisdiction. In their Complaint, Plaintiffs merely allege that "H & R Block, Inc.... is a Missouri corporation doing business in the State of South Carolina and the parent company of Option One." (Compl. at ¶ 4.) Besides this statement, Plaintiffs do not make any other allegations in their Complaint that relate to this court's jurisdiction over H & R Block. H & R Block contends that Plaintiffs have not satisfied their burden to establish that it is subject to personal jurisdiction in this court.

***11** To establish that general personal jurisdiction does not exist over it, H & R Block provided the affidavit of Bret G. Wilson, the Vice President and Secretary of H & R Block, Inc, in which he attested that it is a corporation organized under the laws of Missouri with its principal place of business in Kansas City Missouri. Mr. Wilson further attested that H & R Block is not authorized to do business in South Carolina, and in fact, it is a holding company that conducts no business with consumers directly. Finally, Mr. Wilson declared that H & R Block does not have any officers, assets, facilities, or employees in South Carolina. To establish that specific personal jurisdiction does not exist, Mr. Wilson attested that H & R Block did not have any part in the loan transactions involving Plaintiffs, as it does not enter into contracts to supply services or products, or any other contracts requiring performance in South Carolina. According to Mr. Wilson, H & R Block does not set financing rates and terms for the origination of mortgages or finance transactions and did not set financing rates or the terms for the origination of any mortgage with Plaintiffs. Furthermore, H & R Block did not author any forms for the origination of any mortgage with Plaintiffs, nor does it own or manage Plaintiff's loan accounts or the accounts of any members of the proposed class.

Based on the record before it, the court finds that Plaintiffs have not made a prima facie case of personal jurisdiction over H & R Block. According to its Vice President, it has not had sufficient minimum contacts with South Carolina that would cause it to anticipate being subject to suit here, and Plaintiffs have not shown or even alleged that it had any involvement with H & R Block during the loan transactions at issue. *See Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 63 (4th Cir.1993) (finding that a district court did not err in holding that the parent-subsidiary relationship between two companies was insufficient to justify the exercise of personal jurisdiction over the parent company in a forum with which it did not have sufficient minimum contacts). In the alternative to establishing personal jurisdiction over H & R Block directly, Plaintiffs appear to assert that the court may be able to exercise personal jurisdiction over H & R Block through Sand Canyon Corporation, as its "fifth-tier subsidiary." [FN6] As the parent corporation of Sand Canyon, Plaintiffs contend that they should be allowed to conduct jurisdictional discovery to determine the extent by which H & R Block asserted control over Sand Canyon, as well as the profits it earned from the adjustable rate mortgages originated by its subsidiary in South Carolina, because these facts, if proven, would establish sufficient contacts with the state to warrant a finding of personal jurisdiction.

FN6. H & R Block explained in its memorandum that "Sand Canyon Corporation f/k/a Option One Mortgage Corporation is a wholly owned subsidiary of OOMC Holdings LLC, which is a wholly owned subsidiary of Block Financial LLC ..., which is a wholly owned subsidiary of H & R Block Group, Inc., which is a wholly owned subsidiary of H & R Block, Inc." (H & R Block's Reply at 5.)

To show that Sand Canyon is not its "alter ego," Mr. Wilson attested that Sand Canyon is separate from and legally independent of H & R Block, as the corporate formalities between the companies are observed, the companies have separate officers and board of directors, and the companies maintain separate books, records, and financial accounts. Moreover, Mr. Wilson testified that H & R Block does not control the day-to-day management or operational activities of Sand Canyon Corporation, nor does it obtain direct revenue derived from services rendered in South Carolina. Lastly, H & R Block asserts that it does not own or manage Plaintiff's loan accounts or the accounts of any members of the proposed class. Based on this evidence, the court finds that Plaintiffs have not alleged an adequate basis to pierce the corporate veil between H & R Block and Sand Canyon. Their assertions that H & R Block controlled Sand Canyon prove speculative in light of the evidence presented by H & R Block, and "[w]hen a plaintiff offers only speculation or conclusory assertions about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery." *Carefirst of Md. ., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 402 (4th Cir.2003); *see also Rich v. KIS Cal., Inc.*, 121 F.R.D. 254, 259 (M.D.N.C.1988) ("[W]here a plaintiff's claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials made by defendants, the Court need not permit even limited discovery confined to issues of personal jurisdiction should it conclude that such discovery will be a fishing expedition.") (citation omitted). Therefore, the court grants H & R Block's Motion to Dismiss.

V. *Motion to Bifurcate Discovery*

***12** Sand Canyon Corporation f/k/a Option One Mortgage Corporation, the remaining Defendant, moves the court for an order bifurcating discovery and limiting the first phase of discovery to issues relevant to class certification, and if the court certifies the class, then permitting discovery on the merits in the second phase of discovery. Sand Canyon urges the court to bifurcate discovery because it will balance the rights of all the parties and will avoid prejudice to it. By allowing merits discovery to occur with class certification discovery, Sand Canyon contends that it will take months of legal work and cost it hundreds of thousands of dollars, all for a purported class that may not be certified. To support this assertion, Sand Canyon provided the affidavit of Dale M. Sugimoto, its President, in which he attested that "there are at least 8,115 loans made in South Carolina within the definition implicated by the Plaintiffs' proposed class." (Sugimoto Aff. ¶ 4 .)

Plaintiffs argue that the only prejudice that will result if the court does not permit discovery to proceed in its normal course will be to them and the putative class members who risk losing their home to foreclosure because reaching the merits of this suit will be delayed. Plaintiffs further contend that bifurcated discovery would not allow them to prove violations of the South Carolina Unfair Trade Practices Act because the Act requires a showing that the acts of the Defendants are subject to repetition. This argument that the putative class members will not be able to prove a SCUTPA claim is without merit. A class action is one in which "[o]ne or more members of a class may sue or be sued as representative parties on behalf of all members." Fed.R.Civ.P. 23(a). The relevant portion of SCUTPA provides:

> Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by § 39-5-20 may bring an action individually, *but not in a representative capacity,* to recover actual damages.

S.C.Code Ann. § 39-5-140(a) (1976) (emphasis added). It seems clear from the language of SCUTPA that class action suits are forbidden under the Act, and the Fourth Circuit has acknowledged this rule in *Gunnells v. Healthplan Services, Inc.*, 348 F.3d 417, 423 (4th Cir.2003).

The Federal Rules of Civil Procedure require that "[a]t an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action." Fed.R.Civ.P. 23(c)(1)(A). To make early class determination practicable and to best serve the ends of fairness and efficiency, "courts may allow classwide discovery on the certification issue and postpone classwide discovery on the merits." *Washington v. Brown & Williamson Tobacco Corp.*, 959 F.2d 1566, 1570-71 (11th Cir.1992) (citing *Stewart v. Winter*, 669 F.2d 328, 331 (5th Cir.1982)). Therefore, the court grants Sand Canyon Corporation's Motion to Bifurcate Discovery, as it finds that proceeding in such fashion will promote the interests of fairness and efficiency.

CONCLUSION

***13** Based on the foregoing, it is **ORDERED** that Plaintiffs Thomas J. Harris and Wanda O. Harris's Motion to Amend Complaint is **DENIED** and that Defendant American Home Mortgage Servicing, Inc.'s Motion to Dismiss is **GRANTED,** which renders **MOOT** its Motion to Amend Answer. It is further **ORDERED** that Defendant H & R Block, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction is **GRANTED,** and Plaintiffs' Complaint against it is dismissed, without prejudice. Finally, it is **ORDERED** that Defendant Option One Mortgage Corporation's Motion to Bifurcate Discovery is **GRANTED.**

AND IT IS SO ORDERED.

D.S.C.,2009.
Harris v. Option One Mortg. Corp.
--- F.R.D. ----, 2009 WL 2168882 (D.S.C.)

END OF DOCUMENT

ENTERED
CLERK, U.S. DISTRICT COURT
JUN 20 2006
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

FILED - SOUTHERN DIVISION
CLERK, U.S. DISTRICT COURT
JUN 20 2006
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Priority Send
Enter JS6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

IMPAC WAREHOUSE LENDING GROUP, Plaintiff, v. CREDIT SUISSE FIRST BOSTON CORPORATION, et al., Defendants.	SA CV 04-1234 AHS (CWx) ORDER GRANTING DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT AND DISMISSING THE ACTION

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

I.

INTRODUCTION

After four years of doing business with nonparty General Mortgage Corporation of America ("GMA"), plaintiff Impac Warehouse Lending Group found itself with $5.3 million worth of forged loan documents submitted by GMA. The named defendants are third-party mortgage companies who paid GMA for the funds used to sell mortgages to home buyers. GMA is not a party. Plaintiff is unable to plead claims that reach these defendants, and, accordingly, its Second Amended Complaint, and the action, must be dismissed.

43

II.

PROCEDURAL HISTORY

On September 21, 2004, plaintiff Impac Warehouse Lending Group ("plaintiff") filed the complaint in this action in Orange County Superior Court. On March 21, 2005, plaintiff filed the First Amended Complaint ("FAC"). The Court granted defendants' motion to dismiss the FAC on June 16, 2005. On July 11, 2005, plaintiff filed the Second Amended Complaint ("SAC"). On August 18, 2005, defendants Credit Suisse First Boston LLC[1] ("CSFB") and DLJ Mortgage Capital, Inc. ("DLJ") filed a motion to dismiss the SAC.[2] Plaintiff filed opposition on September 22, 2005. Defendants filed a reply thereto on October 13, 2005. The Court took the matter under submission on November 2, 2005.

III.

SUMMARY OF SECOND AMENDED COMPLAINT

Plaintiff is a warehouse lender providing credit lines to mortgage brokers. (SAC ¶ 8.) Plaintiff alleges seven claims against CSFB and DLJ arising from an alleged fraud perpetrated by GMA against plaintiff in contravention of a Master Repurchase Agreement ("Master Agreement") entered into in June 2000 between GMA and plaintiff. (SAC ¶ 9.) Defendants are not signatories to the Master Agreement.

Under the terms of the Master Agreement, GMA would originate mortgage loans, which were closed with funds advanced by

---

[1] Credit Suisse First Boston LLC is the successor by merger to, and was erroneously sued as, Credit Suisse First Boston Corporation.

[2] The Court grants defendants' request for judicial notice filed therewith.

plaintiff. (SAC ¶ 10.) When the loan closed, GMA would "sell" the loan to plaintiff. (Id.) GMA would then repurchase the loan by paying plaintiff the amount of the advance, along with interest and certain fees when a third-party investor agreed to purchase the loan from GMA. (Id.) Defendants were third-party investors who purchased loans from GMA.[3] Plaintiff was supposed to receive the original note and the mortgage instrument from each transaction, and, when an agreement was made to sell the mortgage to a third-party investor, plaintiff would send the original loan documents to the identified third party under cover of a bailee letter identifying plaintiff as having an interest in the loan. (Id.) Once the third party wired the investment proceeds, plaintiff's interest in the loans would be released, and GMA and plaintiff would allocate their respective shares in the proceeds. (Id.)

From June 2000 to January 2004, plaintiff and GMA operated under the Master Agreement as intended. (SAC ¶ 11.) In July 2004, however, plaintiff learned that GMA had delivered forged loan documents to plaintiff and later sold the original loan documents directly to the secondary investor markets without disclosing plaintiff's interest therein. (SAC ¶¶ 15, 16.) To maintain the scheme, GMA made periodic interest payments to plaintiff using the very funds plaintiff had advanced. (SAC ¶ 16.)

Plaintiff alleges that, as of July 26, 2004, at least

---

[3] Plaintiff alleges that the defendants, CSFB and DLJ, are "agents, servants, employees, partners, principals, representatives, and/or alter egos of each other," with the defendants' unity of interest reflected in CSFB documents that are sent to mortgage lenders doing business with CSFB. (SAC ¶ 6, Ex. 1.)

thirty-seven loan transactions involving advances from plaintiff to GMA remained outstanding with a principal balance of $5.3 million ("Fraudulent Loans"). (SAC ¶ 18.) Prior to July 28, 2004, DLJ purchased at least sixteen of the Fraudulent Loans from GMA ("First Loan Set"). (SAC ¶ 21.) On July 26, 2004, plaintiff became aware that GMA had committed to sell the remaining Fraudulent Loans to defendants ("Second Loan Set"). (SAC ¶ 26.) DLJ purchased these loans sometime on or after July 28, 2004. (SAC ¶ 29.)

Plaintiff alleges that defendants aided GMA in perpetrating the fraudulent conduct by ignoring their own internal policies and providing a ready, willing, and eager market for the mortgage instruments. These policies would have required a review of the loans to determine whether they complied with certain underwriting guidelines and program matrices, through which defendants would have discovered that GMA did not have the financial ability to fund the loans unless drawing on a warehouse credit line provided by plaintiff. (SAC ¶ 20.) Thus, plaintiff alleges that defendants knew at the time they purchased the loans that GMA was operating a fraudulent scheme. (SAC ¶¶ 20, 22-24, 30.) Plaintiff further alleges that plaintiff informed defendants on July 28, 2004 that GMA had been operating a fraudulent scheme and that the sale of loans to DLJ was part of the scheme. (SAC ¶ 27.) Even after receiving notice that at least eight of the loans in the process of being sold to defendants were in fact funded and owned by plaintiff and not GMA, DLJ purchased more of the Fraudulent Loans from GMA and claimed to have purchased them free and clear of plaintiff's interest. (SAC ¶ 29.)

//

IV.

SUMMARY OF PARTIES' CONTENTIONS

A. Defendants' Motion to Dismiss

Defendants contend that plaintiff's SAC fails to correct the deficiencies identified by the Court when it dismissed plaintiff's FAC. More specifically, the SAC contravenes the standards of Fed. R. Civ. P. 9(b) that require fraud to be pled with particularity. Plaintiff fails to provide specific facts concerning the circumstances giving rise to defendants' alleged aiding and abetting of the fraud committed by GMA or conspiracy to commit fraud with GMA. Further, plaintiff fails to identify what substantial assistance each defendant individually provided that would make each defendant liable for aiding and abetting fraud. In fact, CSFB is barely mentioned in the SAC. Plaintiff also alleges core facts on information and belief without adducing specific facts supporting a strong inference of fraud, an improper technique given that such facts are not matters peculiarly within defendants' knowledge.

Moreover, defendants maintain that the SAC still does not properly state claims for any of plaintiff's seven causes of action. As to the claims for aiding and abetting fraud, plaintiff provides a few additional details about some loan transactions, but does not identify who participated in the underlying fraud, at what times, and the means employed. Plaintiff also does not provide facts to support its conclusory allegations that defendants knew of GMA's fraud; plaintiff has offered four bailee letters it sent to DLJ regarding loans that are not at issue here, which letters could not give rise to an inference that defendants knew GMA was sending fraudulent documents to plaintiff. Plaintiff's allegations on information and belief that defendants were not following their own internal procedures and policies are similarly unsupported with facts. The allegations of the SAC also do not support the substantial assistance requirement for aiding and abetting fraud, and as the Court noted in its Order dismissing the FAC on June 16, 2005 ("Dismissal Order"), plaintiff's allegations indicate that defendants were, at best, passive bystanders to the fraud.

As to the claims for conspiracy to commit fraud, besides failing to plead the underlying tort of fraud, defendants contend that plaintiff has not pled the elements of a conspiracy. Plaintiff still has not pled facts supporting a knowing agreement to commit a tort, nor has it alleged that defendants engaged in any unlawful act in furtherance of the agreement. The lawful business relationship between GMA and defendants alleged in the SAC is wholly insufficient to show that defendants acted in furtherance of an agreement to commit fraud.

Defendants assert that plaintiff's claims for aiding and abetting conversion fail because plaintiff concedes that it has no right, title, or interest in the mortgage loans purchased by DLJ. In addition, plaintiff fails to plead facts showing that defendants had knowledge of any conversions, much less provided substantial assistance to GMA in the conversion.

As to the negligence claims, defendants argue that plaintiff does not allege facts showing that defendants owed plaintiff a duty of care. The alleged course of conduct between the parties established by plaintiff's bailee letters does not give rise to a duty. Additionally, plaintiff has not pled proximate causation because its injury was caused by GMA's sending forged documents to plaintiff, not by defendants' purchase of original, authentic mortgages from GMA.

Defendants contend that plaintiff's claim for constructive trust fails because plaintiff has not alleged that it has a superior right to the mortgages or that defendants acquired them wrongfully. Defendants purchased the property for value in good faith. Because plaintiff has not shown an actual controversy exists concerning the rightful owner of the mortgages, its claim for declaratory relief also fails.

Finally, defendants maintain that plaintiff's request for special damages in its prayer for relief must be dismissed because it has not stated specifically what items of special damages it is seeking pursuant to Fed. R. Civ. P. 9(g).

B. Plaintiff's Opposition

Plaintiff contends that its fraud claims are pled with the specificity required by Rule 9(b), as the SAC provides specific facts about how GMA's scheme operated, when GMA operated the scheme, and the role that defendants played in the scheme. Further, plaintiff's allegations made on information and belief are sufficient to satisfy Rule 9(b). For matters within a defendant's knowledge, such as in cases of corporate fraud, plaintiffs may not have personal knowledge of all the underlying facts and may simply state the facts on which their beliefs are founded. Plaintiff's allegations also sufficiently enlighten each defendant as to its part in the fraud, stating that CSFB had an agreement to purchase the Fraudulent Loans from GMA, and DLJ actually purchased the the Fraudulent Loans.

Plaintiff asserts that it has properly pled liability for aiding and abetting fraud. The primary wrong underlying the aiding and abetting claims is the fraudulent scheme by GMA detailed in the SAC. Defendants' actual knowledge may be averred generally according to Rule 9(b), and plaintiff has met this requirement. Plaintiff's allegations support the reasonable inference that defendants sought to accommodate GMA's fraud by altering their normal way of doing business. Especially as to the Second Loan Set, plaintiff's allegations are more than sufficient; plaintiff has alleged that it directly notified representatives of defendants of the fraudulent scheme, and defendants still purchased the loans thereafter. Plaintiff has alleged substantial assistance in detail by explaining how defendants purchased Fraudulent Loans from GMA and wired the funds to a GMA bank account.

Plaintiff contends that it has properly pled claims for conspiracy to commit fraud. It has alleged facts from which an agreement to commit fraud can be inferred, stating that defendants ignored their own policies and procedures and continued to purchase loans from GMA even though they knew that plaintiff actually owned the loans. These same acts were taken in the furtherance of the agreement to commit fraud.

As to the claims for aiding and abetting conversion, conspiracy to convert property, and negligence, plaintiff maintains that these claims are not subject to the heightened pleading standards of Rule 9(b). Fraud is not an essential element of these claims, and, thus, allegations related to these claims need only satisfy the ordinary notice pleading standards of Rule 8(a).

Plaintiff contends that the claim for aiding and abetting conversion is alleged properly. The independent underlying wrong is GMA's conversion of funds wire-transferred by plaintiff to close loans that GMA later sold to defendants, and as noted above, defendants willfully disregarded the fact that plaintiff actually owned the loans and substantially assisted GMA by purchasing the loans.

Plaintiff argues that the claim for conspiracy to convert property similarly is alleged properly because it has set forth facts sufficient to support an inference of an agreement to convert property. The fact that defendants knew GMA was converting funds from plaintiff and purchased the loans anyway was a wrongful act in furtherance of the conspiracy.

As to the negligence claim, plaintiff asserts that it has alleged properly a duty of care based on industry standards and the business relationship between the parties. Plaintiff further alleges that defendants purchased loans from GMA and wired the purchase monies to a GMA bank account, acts that were a necessary and indispensable part of GMA's scheme and proximately caused the damages to plaintiff.

Plaintiff notes that its constructive trust claim is premised on the same facts as its conversion claim, and, therefore, it is properly pled for the same reasons. Further, plaintiff argues that its declaratory relief claim adequately pleads a controversy because it states that a dispute exists between the parties over who is the rightful owner of the Fraudulent Loans defendants purchased from GMA.

Finally, plaintiff contends that if the Court is inclined to grant any part of defendants' motion, leave to amend the SAC should be given.

C. **Defendants' Reply**

Defendants contend that the problems inherent in the SAC are fundamental and fatal. The only support for the bald assertion that defendants knew about GMA's fraudulent scheme is a series of speculative allegations that are made solely on information and belief. DLJ engaged in a perfectly normal, lawful purchase of loans governed by the Seller's Agreement in place between GMA and DLJ. Plaintiff now seeks to make wrongful DLJ's fulfillment of preexisting contractual obligations.

Defendants contend that plaintiff fails to plead knowledge properly as a matter of law. Plaintiff's allegations remain wholly conclusory, which the Court found was insufficient in its Dismissal Order. The only specific allegation concerns plaintiff allegedly notifying defendants of GMA's fraud on July 28, 2004. The SAC, however, does not allege who notified which defendant, what information about the fraud was conveyed, or any other particulars. Plaintiff still fails to provide specific facts about what internal policies and procedures defendants violated, how and when they were violated, and why such deviation would permit an inference that defendants knew of GMA's fraud.

Defendants also maintain that plaintiff has not, as a matter of law, properly alleged substantial assistance by the defendants in committing any tort. Plaintiff continues to ignore that the alleged wrongdoing involved the delivery of fraudulent mortgage documents to plaintiff *by GMA*. At no point does the SAC allege that either defendant had anything to do with delivering fraudulent documents to plaintiff. Indeed, GMA's scheme (delivering forged mortgage documents and retaining funds advanced by plaintiff) could have continued without GMA selling the original loans to anyone. Defendants' purchase of the loans was not a substantial factor in causing the harm suffered by plaintiff.

On the conspiracy claims, defendants assert that plaintiff does not allege an agreement or common plan to participate in an unlawful act. Plaintiff merely asks the Court to make the unreasonable inference that because DLJ purchased loans from GMA, defendants must have been participants in a scheme to defraud plaintiff. The only reasonable inference here, however, is that DLJ sought to fulfill its contractual obligations to GMA when it purchased the loans.

As to the negligence claim, defendants assert that plaintiff has not cited authority to support a duty of care based on industry standards and the business relationship between the parties. The bailee letters attached to the SAC, relating to loans not at issue in this case, do not create a course of conduct that would govern other loans or give rise to a duty of care. Plaintiff also fails to allege proximate cause properly. Simply because plaintiff uses the words "proximate cause" in the SAC does not mean that it has been properly alleged. There is an absence of facts to support this legal conclusion.

Defendants contend that plaintiff's conversion claim cannot overcome the Court's ruling in its Dismissal Order that neither the loans nor the funds advanced by plaintiff are the proper subject of an action for conversion. Even if GMA did convert the funds advanced by plaintiff, the SAC still does not plead sufficiently that defendants had knowledge of the conversion.

Likewise, defendants argue that the Court has already found that plaintiff cannot sustain its constructive trust claim or declaratory relief claim because plaintiff has no right, title, or interest in the mortgage loans. The only documents in plaintiff's possession are forgeries that convey nothing.

Finally, defendants urge that no further amendment be permitted. Any amendment will be an exercise in futility because the problems inherent in plaintiff's claims are insurmountable.

V.

DISCUSSION

A. Legal Standard

1. Motion to Dismiss

On a motion to dismiss, the Court must accept all well-pleaded allegations in the complaint as true. Cahill v. Liberty Mutual Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). All factual allegations pleaded in the complaint and all reasonable inferences that can be drawn therefrom must be construed in the light most favorable to the nonmoving party. Id. Conclusory allegations of law and unwarranted inferences, however, will not defeat a motion to dismiss for failure to state a claim. Rosenbaum v. Syntex Corp. (In re Syntex Corp. Sec. Litig.), 95 F.3d 922, 926 (9th Cir. 1996).

In ruling on a motion to dismiss, the Court may consider documents the authenticity of which is not contested and upon which the plaintiff's complaint necessarily relies. Parrino v. FHP, Inc., 146 F.3d 699, 706 (9th Cir. 1998). The Court is not bound to accept as true allegations that are contradicted by such documents. Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1295-96 (9th Cir. 1998). A court may also consider "certain materials – documents attached to the complaint . . . or matters of judicial notice – without converting the motion to dismiss into a motion for summary judgment." United States v. Ritchie, 342 F.3d 903, 907 (9th Cir. 2003).

2. Leave to Amend

Plaintiff has again requested leave to amend any claims that are dismissed pursuant to defendants' motion. Under Fed. R. Civ. P. 15(a), leave to amend should be freely granted "when justice so requires." On a motion to dismiss, the Court must grant leave to amend unless it "determines that the pleading could not possibly be cured by the allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000); Steckman, 143 F.3d at 1298 (noting that leave to amend should be granted unless it would be an "exercise in futility"). As before, the Court has applied the foregoing standard in determining whether plaintiff's claims should be dismissed with or without prejudice, but, given plaintiff's numerous attempts to state its claims, the Court now agrees with defendants that attempts to amend would be futile.

3. Rule 9(b) Heightened Pleading Requirements for Claims Grounded in Fraud

Where a claim is grounded in fraud, all averments are subject to the heightened pleading requirements of Fed. R. Civ. P. 9(b). Vess v. CIBA-GEIGY Corp., USA, 317 F.3d 1097, 1105 (9th Cir. 2003). Because plaintiff's first four claims are all based on the alleged fraud perpetrated by GMA's forgery of loan documents, plaintiff's claims for (1) aiding and abetting fraud and (2) conspiracy to commit fraud are subject to the heightened pleading requirements of Rule 9(b).

The existence of multiple defendants makes application of the particularity requirements essential. Even under the relaxed pleading standing of Rule 8(a), a plaintiff must particularize its allegations against each defendant so as to put each defendant on notice of the allegations against it. See McHenry v. Renne, 84 F.3d 1172, 1176 (9th Cir. 1996). Rule 9(b) further requires that the complaint allege facts specifying each defendant's contribution to the fraud. See Lancaster Comm. Hosp. v. Antelope Valley Hosp. Dist., 940 F.2d 397, 405 (9th Cir. 1991). Although scienter need not be alleged with great specificity under Rule 9(b), plaintiffs must still plead facts giving rise to a "strong inference" of fraudulent intent. Wexner v. First Manhattan Co., 902 F.2d 169, 172 (2d Cir. 1990).

While pleading is permitted on information and belief, a complaint must adduce specific facts supporting a strong inference of fraud, or it will not satisfy even a relaxed pleading standard. Id. This exception for allegations on information and belief should not be mistaken for a license to base claims of fraud on conclusory allegations and speculation. Id. Further, a complaint for fraud based on information and belief is permitted only as to matters within the corporate defendant's own knowledge. See Moore v. Kayport Package Express, Inc., 885 F.2d 531, 540 (9th Cir. 1989). In this latter case, a plaintiff may satisfy the pleading requirements if the allegations are accompanied by a statement of the facts on which the belief is founded. Id. But, statements to the effect that the information and belief is based on "investigation made by plaintiff by and through their attorneys" are not sufficient because they do not provide adequate detail either to apprise the different defendants of the basis of their potential liability or to show that the complaint is grounded in fact. In re Worlds of Wonder Sec. Litig., 694 F. Supp. 1427, 1433 (N.D. Cal. 1988).

B. Defendants' Motion to Dismiss the SAC Should be Granted

While plaintiff has added some new allegations to the SAC, fundamental defects remain. The Court grants defendants' motion to dismiss because of these defects, detailed below.

1. Claims One and Three for Aiding and Abetting Fraud

A claim for aiding and abetting requires (1) the existence of an independent primary wrong, (2) actual knowledge by the alleged aider and abettor of the wrong and a role in furthering it, and (3) substantial assistance in the wrong. Harmsen v. Smith, 693 F.2d 932, 943 (9th Cir. 1982); Neilson v. Union Bank of California, N.A., 290 F. Supp. 2d. 1101, 1118 (C.D. Cal. 2003). Here, plaintiff explains how it claims to have been defrauded by GMA and corrects defects identified in the Dismissal Order by alleging the amount of each Fraudulent Loan and the date it closed. Plaintiff still fails, however, to plead facts showing that defendants had actual knowledge of GMA's fraudulent scheme or that they rendered substantial assistance.

a. Actual Knowledge of GMA's Fraud

Under California law, an aider and abettor to a fraud must have actual and not merely constructive knowledge of the fraud at the time the alleged assistance is rendered. Gerard v. Ross, 204 Cal. App. 3d 968, 983 (Ct. App. 1988). Under Rule 9(b), "[m]alice, intent, knowledge, and other condition of mind of a person may be averred generally," Fed. R. Civ. P. 9(b), but as noted above, plaintiffs must still plead facts giving rise to a "strong inference" of fraudulent intent. Wexner, 902 F.2d at 172.

Here, as to the First Loan Set, the loans purchased prior to July 28, 2004, plaintiff has added facts on information and belief to support defendants' knowledge. But, the allegations remain speculative and conclusory and do not support a "strong" inference of knowledge. Plaintiff alleges that it

> is informed and believes and thereon alleges that at all times relevant, Defendants were investors on the secondary market. . . . It is the custom and practice in the mortgage industry that investors purchasing loans on the secondary market make certain that the mortgage banker from whom they are purchasing loans meet [sic] certain financial conditions before any loan can be or is purchased from that mortgage banker. Impac is informed and believes and thereon alleges that this custom and practice was recognized and adopted as the policy of the Defendants in their internal written policies and procedures. Impac is further informed and believes and thereon alleges that prior to purchasing loans from General Mortgage on the secondary market, Defendants actually investigated the financial condition of General Mortgage, and thereby learned and thus knew that General Mortgage did not have the financial ability to fund loans absent drawing

on a warehouse line and that by drawing on such a warehouse line the warehouse lender owned an interest in every loan General Mortgage offered for sale.

(SAC ¶ 12.) These facts, alleged on information and belief, are speculative; plaintiff does not present facts underlying its beliefs that defendants followed such policies or that such policies resulted in defendants discovering that plaintiff owned an interest in the purchased loans. Moreover, the facts underlying plaintiff's belief that defendants violated internal policies and procedures are DLJ's purchase of the loans from GMA and its subsequent wire transfer of monies to a GMA bank account. (SAC ¶¶ 21, 25.) These underlying facts do not point to a reasonable inference that defendants knew of GMA's fraud. Instead, the reasonable inference arising from these facts is that defendants were fulfilling their obligations under a valid business contract to purchase loans from GMA. Plaintiff also relies on the fact that it sent defendants bailee letters in the past when defendants purchased other loans not at issue here. (SAC Ex. 2.) These bailee letters are insufficient to support a strong inference that defendants knew of GMA's fraud. As defendants rightly note in their papers, there was no reason for them to believe that plaintiff was GMA's warehouse lender for all loans or that GMA required a warehouse lender on all loans. Even if there was reason for defendants to believe such, defendants' purchase of the loans from GMA without having received bailee letters does not give rise to a strong inference of knowledge of fraud.

As to the Second Loan Set, those purchased after July 28, 2004, plaintiff pleads defendants' knowledge with greater detail. (SAC ¶¶ 27, 28.) Ultimately, however, plaintiff does not state a claim for aiding and abetting fraud because it does not adequately allege substantial assistance with respect to either the First or Second Loan Set.

b. Substantial Assistance

Substantial assistance requires "a significant and active, as well as a knowing participation in the wrong." Alfus v. Pyramid Tech. Corp., 745 F. Supp. 1511, 1520 (N.D. Cal. 1990). The requirement has been interpreted to mean that (1) the substantial assistance is a substantial factor in causing the plaintiff's harm, and (2) the failure to act generally does not constitute substantial assistance in the absence of a duty to act unless scienter of the "'high conscious intent variety'" can be proven. See In re American Continental Corp., 794 F. Supp. 1424, 1435 (D. Ariz. 1992) (citations omitted). A defendant provides substantial assistance when it "'affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables the fraud to proceed.'" Cromer Finance Ltd. v. Berger, 137 F. Supp. 2d 452, 470 (S.D.N.Y. 2001) (citations omitted).

Here, plaintiff does not allege facts showing that defendants affirmatively participated in GMA's fraudulent scheme or that any of defendants' acts were a substantial factor in causing the harm to plaintiff. As noted in the Dismissal Order, defendants' actions in providing a "ready, willing, and eager market" for the First and Second Loan Sets can, at best, be characterized as a passive endorsement of GMA's fraud. (SAC ¶¶ 35, 44.) Furthermore, defendants did not owe plaintiff a duty that required them to act and prevent GMA's fraud by paying their purchase monies to plaintiff instead of GMA. In fact, DLJ was under a contractual obligation to purchase the loans from GMA and pay GMA monies, not plaintiff. (See Req. for Jud. Not. Ex. E.) Additionally, DLJ's purchase of the loans was not a substantial factor in causing plaintiff's harm. The harm to plaintiff consisted of GMA's alleged retention of money advanced by plaintiff while GMA turned over to plaintiff forged loan documents. GMA could have kept plaintiff's money and forged loan documents with or without defendants' participation in GMA's scheme.

In sum, plaintiff fails to sufficiently plead knowledge for the First Loan Set and substantial assistance for both Loan Sets, and as such, the claims for aiding and abetting must be dismissed.

2. Claims Two and Four for Conspiracy to Commit Fraud

Conspiracy to commit fraud requires that plaintiffs plead the elements of conspiracy along with the requisite underlying claim of fraud. See Kidron v. Movie Acquisition Corp., 40 Cal. App. 4th 1571, 1581 (Ct. App. 1996).

"'To state a claim for conspiracy, plaintiffs must plead (1) an agreement to participate in an unlawful overt act (2) performed in furtherance of the agreement.'" In re 3Com Sec. Litig., 761 F. Supp. 1411, 1418 (N.D. Cal. 1990) (quoting Roberts v. Heim, 670 F. Supp. 1466, 1484 (N.D. Cal. 1987)). Plaintiff must allege "with sufficient factual particularity that a defendant reached some explicit or tacit understanding or agreement." Alfus 745 F. Supp. at 1521. Thus, plaintiff must allege that defendants entered into an agreement with actual knowledge that a tort is being planned and with the intent to further the commission of that tort.

In this case, plaintiff's conspiracy to commit fraud claims fail because plaintiff does not allege with particularity an explicit or tacit agreement between defendants and GMA. Plaintiff alleges that defendants "knowingly and willfully agreed and conspired" with GMA to commit fraud. (SAC ¶¶ 39, 49.) Such conclusory allegations unsupported by any particular facts showing an agreement are insufficient to defeat a motion to dismiss. Accordingly, plaintiff's claims for conspiracy to commit fraud are dismissed.

3. Claims Five and Seven for Aiding and Abetting Conversion

To state a claim for aiding and abetting conversion, plaintiff must allege (1) the existence of wrongful conduct by the primary wrongdoer, (2) defendant's knowledge of the wrongful conduct, and (3) defendant's substantial assistance in achieving the wrongdoing. See Perfect 10, Inc. v. Cybernet Ventures, Inc., 213 F. Supp. 2d 1146, 1183 (C.D. Cal. 2002). Aiding and abetting conversion is a derivative claim such that plaintiff must also plead the primary tort of conversion. Conversion requires (1) that the plaintiff have title to the converted property or a right to possession of that property, (2) an act of conversion by the defendant, and (3) damages caused by the conversion. Burlesci v. Petersen, 68 Cal. App. 4th 1062, 1065 (Ct. App. 1998).

Plaintiff pleads the underlying conversion of the funds advanced to GMA, identifying the specific sums involved, alleging a right to the funds, alleging wrongful conversion by GMA, and alleging damages as a result. (SAC ¶¶ 55, 56, 59, 65, 66, 69.)

Nonetheless, plaintiff does not state a claim for aiding and abetting conversion because it cannot allege that defendants rendered substantial assistance in converting the funds. As noted above, GMA was the party that retained plaintiff's advanced funds; the "ready, willing, and eager market" for the First and Second Loan Sets that defendants allegedly provided can, at best, be characterized as a passive endorsement of GMA's conversion. GMA could have retained the advanced funds and sent plaintiff forged documents with or without DLJ's purchase, or any party's purchase, of the loans. That is, defendants' actions were not a substantial factor in the loss to plaintiff. GMA did not require defendants' assistance at all to perpetrate the fraud on plaintiff. Accordingly, plaintiff's claims for aiding and abetting conversion are dismissed.

4. Claims Six and Eight for Conspiracy to Convert Property

Conspiracy to commit conversion requires that plaintiffs plead the elements of conspiracy along with the requisite underlying claim of conversion. "'To state a claim for conspiracy, plaintiffs must plead (1) an agreement to participate in an unlawful overt act (2) performed in furtherance of the agreement.'" <u>In re 3Com Sec. Litig.</u>, 761 F. Supp. at 1418 (<u>quoting</u> <u>Roberts v. Heim</u>, 670 F. Supp. 1466, 1484 (N.D. Cal. 1987)). Although plaintiff sets forth conversion of funds by GMA, it fails to allege a conspiracy.

Plaintiff's conspiracy to convert property claims fail because plaintiff does not provide more than a conclusory allegation that defendants and GMA had an agreement. Plaintiff alleges that defendants "knowingly and willfully agreed and conspired" with GMA to convert the funds advanced by plaintiff. (SAC ¶¶ 61, 71.) Such conclusory allegations unsupported by any facts showing an agreement are insufficient to defeat a motion to dismiss. Plaintiff points to facts, such as DLJ's agreement to purchase the First and Second Loan Sets from GMA and the wiring of purchase monies to a GMA account, but to conclude that there was an agreement to commit a tort from these facts is an unjustified inference. These facts show simply that the parties engaged in a typical transaction in the mortgage industry. Therefore, the claims for conspiracy to convert property are dismissed.

5. Claims Nine and Ten for Negligence

The elements of negligence consist of (1) a duty of care, (2) a breach of that duty, (3) causation, and (4) damages. See Nymark v. Heart Fed. Sav. & Loan Ass'n, 231 Cal. App. 3d 1089, 1097 (Ct. App. 1991) (holding that a defendant lender owes a duty of care to a borrower only where the lender actively participates in the financed enterprise beyond the domain of the usual money lender).

a. Duty of Care

In the absence of a legally cognizable duty of care, there is no liability for negligence. Nymark, 231 Cal. App. 3d at 1095. Generally, there is no duty of care to third party strangers. See Software Design & Application, Ltd. v. Hoefer & Arnett, Inc., 49 Cal. App. 4th 472, 482 (Ct. App. 1996) (explaining that a bank did not owe a duty to third parties who were not party to the contractual relationship). "Recognition of a duty to manage business affairs so as to prevent purely economic loss to third parties in their financial transactions is the exception, not the rule, in negligence law." Quelimane Co. v. Stewart Title Guar. Co., 19 Cal. 4th 26, 58 (1998). As a business entity generally does not have a duty to prevent financial losses to others with whom it deals directly, "*[a] fortiori*, it has no greater duty to prevent financial losses to third parties who may be affected by operations." Id. at 59.

In Quelimane, the Court applied the following factors in determining whether a defendant has a duty to avoid business decisions that may affect the financial interests of third parties or to use due care in deciding whether to enter into contractual relations with another: (1) the extent to which the transaction was intended to affect the plaintiff; (2) the foreseeability of harm to the plaintiff; (3) the degree of certainty that the plaintiff will suffer injury; (4) the closeness of connection between the defendant's conduct and the injury suffered; (5) the moral blame attached to the defendant's conduct; and (6) the policy of preventing future harm. Id. at 58. Further, "'[a]s a matter of economic and social policy, third parties should be encouraged to rely on their own prudence, diligence, and contracting power, as well as other informational tools.'" Id. (quoting Bily v. Arthur Young & Co., 3 Cal. 4th 370, 403 (1992)).

Here, plaintiff asserts that defendants owed it a duty of care based on industry standards and the business relationship existing between the parties, but case law does not support this assertion. As previously found in the Dismissal Order, the Quelimane factors do not weigh in favor of finding a duty of care.

The transaction was a standard business affair, plaintiff was not a party to the contractual relationship between GMA and defendants, defendants' conduct has not been shown to have a close connection to the injury suffered, and defendants, who advanced apparently legitimate funds for legitimate notes, do not appear to be morally blameworthy. Plaintiff should be encouraged to rely on its own prudence and diligence. The four bailee letters for unrelated loans attached as Exhibit 2 to the SAC do not create a course of conduct between the parties such that defendants would have to verify that GMA owned every loan defendants purchased from GMA. Thus, the SAC fails to allege a duty of care.

b. Proximate Causation

Proximate cause means that there is a reasonable connection between the act or omission of a defendant and the injury that a plaintiff has suffered. Frantz v. San Luis Med. Clinic, 81 Cal. App. 3d 34, 39 (Ct. App. 1978). In this case, plaintiff's conclusory allegations that defendants' conduct was the proximate cause of plaintiff's injury are unsupported by the facts. See SAC ¶¶ 77, 82. The fact that defendants may have provided a "ready, willing, and eager market" (SAC ¶¶ 35, 44) for the First and Second Loan Sets does not mean that DLJ's purchase of the loans was the proximate cause of plaintiff's injury. GMA retained the funds advanced by plaintiff and delivered the forged loan documents to plaintiff, a fraud that GMA could have perpetrated even if defendants did not purchase the loans. DLJ's purchase of the loans cannot be found to be either a substantial factor in causing plaintiff's injury or a necessary factor in causing the injury.

As such, plaintiff's negligence claims fail because it has not adequately alleged a duty of care or proximate causation. These claims should be dismissed.

6. Claim Eleven for Imposition of Constructive Trust

In California, a constructive trust may be imposed when a plaintiff demonstrates "'(1) the existence of a *res* (property or some interest in property); (2) the *right* of a complaining party to that res; and (3) some *wrongful* acquisition or detention of the res by another party who is not entitled to it.'" Burlesci, 68 Cal. App. 4th at 1070 (quoting Communist Party v. 522 Valencia, Inc., 35 Cal. App. 4th 980, 990 (Ct. App. 1995)) (emphasis in original).

Here, plaintiff's claim for constructive trust fails because plaintiff does not sufficiently allege wrongful conduct by defendants. As noted above, defendants' actions in providing a "ready, willing, and eager market" for the First and Second Loan Sets can, at best, be characterized as a passive endorsement of GMA's fraud. (SAC ¶¶ 35, 44.) Plaintiff does not allege facts giving rise to a warranted inference that defendants cooperated in GMA's fraud. Accordingly, this claim should be dismissed.

7. Claim Twelve for Declaratory Relief

Plaintiff's claim for declaratory relief is premised on the allegations contained in the first eleven causes of action and the specific claim that plaintiff is the "rightful owner of the Fraudulent Loans and is entitled to all profits and proceeds realized by defendants on the wrongfully acquired loans." (SAC ¶ 87.) The Court has already ruled that plaintiff cannot assert a valid claim of title to the loans through forged documents as a matter of law, and, thus, plaintiff cannot establish an entitlement to the mortgage loans. (Dismissal Order at 17-18.) Accordingly, plaintiff's claim for declaratory relief is dismissed.

VI.

CONCLUSION

For the foregoing reasons, the Court dismisses plaintiff's Second Amended Complaint. There is nothing suggested in plaintiff's opposition to this motion that it has more to add or that new facts have come to light. Thus it appears that further attempts to amend would be futile. Accordingly, the action is dismissed with prejudice.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order on counsel for all parties in this action.

DATED: June 20, 2006.

Alicemarie H. Stotler

ALICEMARIE H. STOTLER
CHIEF U.S. DISTRICT JUDGE

H

United States Bankruptcy Court, E.D. Virginia,
Richmond Division.
In re LANDAMERICA FINANCIAL GROUP, INC., et al., Debtors.
Millard Refrigerated Services, Inc., Plaintiff,
v.
Landamerica 1031 Exchange Services, Inc., Defendant.
Bankruptcy No. 08-35994-KRH.
Adversary No. 08-03147-KRH.

April 15, 2009.

Background: Real estate transaction service provider and its subsidiary that acted as qualified intermediary for like-kind exchanges filed Chapter 11 petition. Customer commenced adversary proceeding asserting that money deposited into subsidiary's bank accounts to facilitate like-kind exchanges was held in trust for its benefit and should be returned to it. Committees of unsecured creditors intervened. Customer and intervenors filed cross-motions for partial summary judgment.

Holdings: The Bankruptcy Court, Kevin R. Huennekens, J., held that:
(1) funds held in bank accounts by intermediary were not held in trust for customer, and
(2) no resulting trust was created in exchange transactions.

Committees' motions granted.

West Headnotes

[1] Bankruptcy 51 2547

51 Bankruptcy
51V The Estate
51V(C) Property of Estate in General
51V(C)2 Particular Items and Interests
51k2547 k. Property Held in Trust or Custody for Debtor; Deposits. Most Cited Cases
Money held in bank account in debtor's name is presumed to be property of bankruptcy estate. 11 U.S.C.A. § 541.

[2] Bankruptcy 51 2534

51 Bankruptcy
51V The Estate
51V(C) Property of Estate in General
51V(C)1 In General
51k2534 k. Effect of State Law in General. Most Cited Cases
Any right to funds held in debtor's bank account must be established as interest in property recognized under state law. 11 U.S.C.A. § 541.

[3] Bankruptcy 51 2534

51 Bankruptcy
51V The Estate
51V(C) Property of Estate in General
51V(C)1 In General
51k2534 k. Effect of State Law in General. Most Cited Cases
While federal law creates bankruptcy estate, state law defines scope and existence of debtor's interest in property. 11 U.S.C.A. § 541.

[4] Bankruptcy 51 2547

51 Bankruptcy
51V The Estate
51V(C) Property of Estate in General
51V(C)2 Particular Items and Interests
51k2547 k. Property Held in Trust or Custody for Debtor; Deposits. Most Cited Cases
When property of bankruptcy estate is alleged to be held in trust, burden of establishing trust's existence rests with claimants. 11 U.S.C.A. § 541(d).

[5] Trusts 390 1

390 Trusts
390I Creation, Existence, and Validity
390I(A) Express Trusts
390k1 k. Nature and Essentials of Trusts. Most Cited Cases
Under Virginia law, express trust is created only where there is affirmative intention to create it.

[6] Trusts 390 ⚷21(2)

390 Trusts
390I Creation, Existence, and Validity
390I(A) Express Trusts
390k19 Written Instruments Creating or Declaring Trusts
390k21 Form and Contents
390k21(2) k. Certainty. Most Cited Cases

Trusts 390 ⚷25(1)

390 Trusts
390I Creation, Existence, and Validity
390I(A) Express Trusts
390k24 Sufficiency of Language Used
390k25 In General
390k25(1) k. In General. Most Cited Cases

Under Virginia law, affirmative intention to create trust may be established by either express language to that effect or circumstances that show with reasonable certainty that trust was intended to be created.

[7] Bankruptcy 51 ⚷2543

51 Bankruptcy
51V The Estate
51V(C) Property of Estate in General
51V(C)2 Particular Items and Interests
51k2543 k. Property Held by Debtor as Trustee, Agent, or Bailee. Most Cited Cases

Trusts 390 ⚷34(1)

390 Trusts
390I Creation, Existence, and Validity
390I(A) Express Trusts
390k34 Deposit of Money in Bank
390k34(1) k. In General. Most Cited Cases

Under Virginia law, funds held in bank accounts by qualified intermediary for like-kind exchanges were not held in trust for intermediary's customer, and thus funds became part of intermediary's bankruptcy estate, even though intermediary was temporarily holding funds solely for purpose of facilitating exchange of relinquished properties for replacement properties acquired by customer, and funds were held in segregated sub-accounts, where there was no express language in exchange agreements that parties intended to create trust, customer conveyed exclusive possession, dominion, control and use of funds to intermediary, agreement stated that customer had no interest, including any equitable interest, in or to funds, parties agreed to limit intermediary's duties to those expressly contained in exchange agreements, and customer elected not to utilize qualified trust option to effectuate like-kind exchange transactions under federal tax code. 11 U.S.C.A. § 541(d); 26 U.S.C.A. § 1031.

[8] Trusts 390 ⚷134

390 Trusts
390II Construction and Operation
390II(B) Estate or Interest of Trustee and of Cestui Que Trust
390k133 Extent of Estate or Interest of Trustee
390k134 k. In General. Most Cited Cases

Trusts 390 ⚷140(1)

390 Trusts
390II Construction and Operation
390II(B) Estate or Interest of Trustee and of Cestui Que Trust
390k139 Extent of Estate or Interest of Cestui Que Trust
390k140 Express Trusts in General
390k140(1) k. In General. Most Cited Cases

Under Virginia law, in trustee-beneficiary relationship, trustee holds legal title in trust property and beneficiary holds equitable interest in trust property.

[9] Trusts 390 ⚷173

390 Trusts
390IV Management and Disposal of Trust Property
390k173 k. Representation of Cestui Que Trust by Trustee. Most Cited Cases

Under Virginia law, trust necessarily requires establishment of fiduciary duties.

[10] Trusts 390 ⚷173

390 Trusts
390IV Management and Disposal of Trust Property
390k173 k. Representation of Cestui Que Trust by Trustee. Most Cited Cases
Under Virginia law, trustee has fiduciary obligation to act for benefit of trust beneficiary.

[11] Trusts 390 ⚷334

390 Trusts
390VII Establishment and Enforcement of Trust
390VII(A) Rights of Cestui Que Trust as Against Trustee
390k334 k. Establishment of Existence of Trust. Most Cited Cases

Trusts 390 ⚷358(1)

390 Trusts
390VII Establishment and Enforcement of Trust
390VII(B) Right to Follow Trust Property or Proceeds Thereof
390k358 Identification of Property
390k358(1) k. In General. Most Cited Cases
Under Virginia law, in order to establish right as trust beneficiary, claimant must: (1) demonstrate existence and legal source of trust relationship; and (2) identify trust fund or property and, where trust fund has been commingled with general property, sufficiently trace property or funds.

[12] Trusts 390 ⚷62

390 Trusts
390I Creation, Existence, and Validity
390I(B) Resulting Trusts
390k62 k. Nature of Resulting Trust. Most Cited Cases
Under Virginia law, "resulting trust" is indirect trust that arises from parties' intent or from nature of transaction, and does not require express declaration of trust.

[13] Trusts 390 ⚷89(5)

390 Trusts
390I Creation, Existence, and Validity
390I(B) Resulting Trusts
390k85 Evidence to Establish Trust
390k89 Weight and Sufficiency
390k89(5) k. Degree of Proof Required. Most Cited Cases
Under Virginia law, party seeking to establish resulting trust must do so by clear and convincing evidence.

[14] Trusts 390 ⚷72

390 Trusts
390I Creation, Existence, and Validity
390I(B) Resulting Trusts
390k71 Payment of Consideration for Conveyance to Another
390k72 k. In General. Most Cited Cases

Trusts 390 ⚷77

390 Trusts
390I Creation, Existence, and Validity
390I(B) Resulting Trusts
390k71 Payment of Consideration for Conveyance to Another
390k77 k. Time of Payment. Most Cited Cases
For resulting trust to arise under Virginia law, alleged beneficiary must pay for property, or assume payment of all or part of purchase money before or at time of purchase, and have legal title conveyed to another without any mention of trust in conveyance.

[15] Bankruptcy 51 ⚷2543

51 Bankruptcy
51V The Estate
51V(C) Property of Estate in General
51V(C)2 Particular Items and Interests
51k2543 k. Property Held by Debtor as Trustee, Agent, or Bailee. Most Cited Cases

Trusts 390 ⚷72

390 Trusts
390I Creation, Existence, and Validity
390I(B) Resulting Trusts
390k71 Payment of Consideration for Conveyance to Another

390k72 k. In General. Most Cited Cases
Under Virginia law, no resulting trust was created in exchange transactions effected by customer and qualified intermediary for like-kind exchanges, and thus funds held in intermediary's bank account became part of its bankruptcy estate, even though intermediary was temporarily holding funds solely for purpose of facilitating exchange of relinquished properties for replacement properties acquired by customer, where intermediary and customer were experienced, sophisticated parties represented by counsel, and parties entered into integrated exchange agreements that clearly demonstrated no intent to create trust.

Craig A. Wolfe, Kelley Drye & Warren LLP, New York, NY, David J. Ervin, Kelley, Drye & Warren, LLP, Washington, DC, for Plaintiff.

Dion W. Hayes, John H. Maddock III, Richard Francis Blair, McGuireWoods LLP, Richmond, VA, for Defendant.

MEMORANDUM OPINION

KEVIN R. HUENNEKENS, Bankruptcy Judge.

***1** Before the Court are the cross-motions for partial summary judgment of Plaintiff Millard Refrigerated Services, Inc. ("Millard"), and of Interveners The Official Committee of Unsecured Creditors of LandAmerica Financial Group, Inc. (the "LFG Committee") and The Official Committee of Unsecured Creditors of LandAmerica 1031 Exchange Services, Inc. (the "LES Committee;" together with the LFG Committee, the "Committees"). The question presented by the cross motions is whether certain exchange funds deposited into a bank account of Defendant LandAmerica 1031 Exchange Services, Inc. ("LES" or the "Debtor") for the purpose of facilitating three like-kind exchange transactions constitute property of the bankruptcy estate of LES.[FN1] For the reasons set forth below, the Court answers this question in the affirmative.

This case is one of over 85 adversary proceedings that have been brought, so far, by former customers of LES in connection with its Chapter 11 bankruptcy case. Each of these former customers asserts that money deposited into the bank accounts of LES to facilitate like-kind exchanges was held in trust for its benefit and should be returned to it. As of the Petition Date, the Debtor had approximately 450 uncompleted exchange transactions. Each of these uncompleted exchange transactions was governed by a separate exchange agreement executed by LES and its former customer.

The Debtor identified two primary types of exchange agreements that LES utilized in the course of its operations: (a) agreements that included language contemplating that the applicable exchange funds would be placed into an account or sub-account associated with the relevant customer's name (the "Segregated Account Agreements"); and (b) agreements that did not include this "segregation" language (the "Commingled Account Agreements"). Approximately 50 of the uncompleted exchange transactions involved Segregated Account Agreements while the remaining approximately 400 of the uncompleted exchange transactions involved Commingled Account Agreements.

The Court entered a protocol order on January 16, 2009, wherein the Court stayed the litigation in all but five of the over 85 adversary proceedings (the "Protocol Order"). Each of the five select cases, which were allowed to proceed on an expedited basis, presented legal and factual issues that were common to certain of the other adversary proceedings. Three of the select cases were representative of customers who had Commingled Account Agreements: those with type A agreements, those with type B agreements, and customers with hybrid agreements under which both cash and non-cash proceeds were transferred to LES. [FN2] Two of the select cases were representative of customers who had Segregated Account Agreements: customers with escrow account agreements and customers with segregated exchange agreements. The Millard adversary proceeding currently before the Court is the adversary proceeding selected to be the representative case for customers with segregated exchange agreements.

***2** By Order entered February 10, 2009, the Court divided the litigation involving the five select cases into phases and limited the scope of the first phase to tracing of exchange funds, contractual interpretation of the exchange agreements, the existence of an express trust and the existence of a resulting trust. In the Millard adversary proceeding, the case presently before the Court, hearing was conducted on the cross motions for partial summary judgment on April 7, 2009, at which counsel for Millard, counsel for the LFG Committee, counsel for the LES Committee, and counsel for the Debtor all presented argument. Pursuant to the terms of the Court's Protocol Order, all of the parties to the stayed adversary proceedings were permitted to file amicus briefs advocating their respective positions in this case.

This Memorandum Opinion sets forth the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.[FN3] The Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(a) and 1334 and the General Order of Reference from the United States District Court for the Eastern District of Virginia dated August 15, 1984. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (M) and (O), in which final orders or judgments may be entered by a bankruptcy judge. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1409(a).

Issues Presented

Millard contends that it is entitled to partial summary judgment with respect to Count I (Declaratory Relief) and Count II (Injunctive Relief) of its Complaint against LES because its exchange funds were held in three segregated sub-accounts of LES established and maintained for the benefit of Millard. Millard contends that the exchange funds held in the segregated accounts are held in trust and, therefore, are not property of the Debtor pursuant to 11 U.S.C. § 541(d). Thus, it argues that the exchange funds should be turned over to Millard in their entirety, outside of the bankruptcy pro rata distribution system.

The Committees and the Debtor counter that the exchange funds were held by LES pursuant to the terms of exchange agreements executed by Millard and LES. The three exchange agreements at issue here, they argue, set forth the complete agreement and understanding of the parties plainly and unambiguously. The Committees point out that under the terms and provisions of the exchange agreements, Millard disclaimed all “right, title and interest” in and to the exchange funds and provided LES with exclusive rights of “dominion, control and use” with respect to the exchange funds. From this they argue that it was the clear intention of the parties not to create a trust arrangement. The Committees and the Debtor assert that Millard vested LES with full authority over the exchange funds and, in so doing, Millard transferred clearly more than bare legal title to the exchange funds. They conclude that the contractual relationship established between Millard and LES was not one of trustee and beneficiary; rather, they assert that the relationship was, and continues to be, one of debtor and creditor. Thus, they argue that while the Debtor may be contractually obligated to perform the exchange transactions on Millard's behalf, its failure to do so would render it liable only for the breach of its contract and under no other theory of liability. They argue that Millard should receive the same pro rata treatment as all of the other former exchange customers of LES.[FN4]

Undisputed Facts

***3** The material facts are not in dispute. Millard is a Georgia corporation engaged in the refrigerated warehouse and distribution business. It maintains 35 locations throughout the country. LES is a wholly owned subsidiary of LandAmerica Financial Group, Inc. (“LFG”). On November 24, 2008, LES ceased doing business as a qualified intermediary for like-kind exchanges. On November 26, 2008 (the “Petition Date”), LES filed, along with LFG, a petition for relief under Chapter 11 of the United States Bankruptcy Code in this Court. The LES Committee and the LFG Committee both are statutory committees appointed in the respective bankruptcy cases of LES and LFG. The Committees were each granted leave to intervene in this action.[FN5]

Prior to the Petition Date, LES was a qualified intermediary for like-kind exchanges consummated by taxpayers pursuant to § 1031 of the Internal Revenue Code, 26 U.S.C. § 1031 (“1031 Exchange”). A 1031 Exchange allows a taxpayer to defer the payment of tax that otherwise would be due upon the realization of a gain on the disposition of business or investment property. *Id.* In the typical transaction, an exchanger such as Millard assigns its rights as seller under a purchase agreement for the disposition of business or investment property to a qualified intermediary such as LES. The purchaser of the relinquished property transfers the net sales proceeds directly to the qualified intermediary.

Under § 1031, the exchanger must identify like-kind replacement property within 45 days. The exchanger has 180 days to close on the replacement property. *Id.* The qualified intermediary purchases the replacement property and then transfers the replacement property to the exchanger. In the event that the replacement property is not identified or the closing is not completed within the specified time periods, then the qualified intermediary pays an amount equal to the net sales proceeds it realized from the sale of the relinquished property to the exchanger. This series of transactions is governed by a written exchange agreement executed by the exchanger and the qualified intermediary.[FN6]

Beginning in 1992, LES maintained a general, multi-purpose checking account at SunTrust Bank, Inc. ("SunTrust"). This checking account was titled in LES' own name, bearing an account number with the last four digits "3318." LES used this account as its general operating account. The SunTrust account received cash (i) in the form of certain customers' exchange funds, (ii) in the form of service fees charged to customers, (iii) in the form of interest, and (iv) in the form of returns on LES' investment of the cash it received. LES disbursed funds from the SunTrust account to pay its expenses, to pay dividends to LFG, to make investments in other investment vehicles, and to purchase replacement property for customers who had not insisted that their exchange funds be deposited in segregated accounts.

LES used funds in the SunTrust account to invest in a variety of short-term investments, including money market mutual funds, short-term bonds, certificates of deposit, floating rate notes, and auction rate securities. [FN7] The auction rate securities were held in a brokerage investment account at SmithBarney and SunTrust Robinson Humphrey. Each evening, the aggregate cash balance in the SunTrust account was swept out into an LES overnight investment account and then returned to the SunTrust account the following morning. The SunTrust account is referred to as the commingled account of LES (the "Commingled Account").

***4** Treasury Regulation Section 1.468B-6, 26 C.F.R. § 1.468B-6, [FN8] establishes rules concerning the taxation of exchange funds held by exchange facilitators. The default rule established by the treasury regulation is that where the exchange funds exceed $2 million, they will be treated for tax purposes as a loan from the taxpayer to the qualified intermediary. Treas. Reg. § 1.468B-6(c)(1); Treas. Reg. § 1.7872-5(b)(16). There are, however, four safe harbor exceptions to this default rule. One of those safe harbors provides that if a qualified intermediary holds the exchange funds in a segregated account established under the taxpayer's name and identification number, then the qualified intermediary need not take into account items of income, deduction, and credit attributable to the exchange funds. Treas. Reg. § 1.468B-6(c)(2)(i)-(ii).[FN9] Under this exception exchange funds held in sub-accounts are treated as separate accounts even though they may be linked to a master account. Treas. Reg. § 1.468B-6(c)(2)(ii).

LES entered into an exchange management control account agreement with Citibank, N.A. ("Citibank") in August 2008. This management control account agreement permitted LES to open segregated client sub-accounts (the "Segregated Accounts") under one or more control accounts. Millard and LES entered into three substantially identical exchange agreements on October 21, 2008 (the "Exchange Agreements"), with LES acting as qualified intermediary. Previously, prior to 2006, Millard had successfully completed two 1031 Exchange transactions with a different qualified intermediary known as Apex Property Exchange, Inc. In connection with those earlier exchange transactions, Millard had specifically negotiated for the exchange funds to be held in segregated sub-accounts associated with Millard's name and taxpayer identification number. Consistent with those previous transactions, Millard discussed with LES the use of the Segregated Accounts for the 2008 1031 Exchange transactions; and ultimately, the parties agreed that the proceeds of the sales of Millard's Relinquished Properties would be placed in the Segregated Accounts maintained by LES at Citibank.[FN10]

Pursuant to the three Exchange Agreements dated October 21, 2008, Millard assigned to LES its rights as seller under purchase agreements for three separate properties (the "Relinquished Properties"). The net sale proceeds from the sale of Millard's Relinquished Properties (the "Exchange Funds") were transferred by the closing agents directly to the LES master account at Citibank. The Exchange Funds were then moved from the master account into the separate sub-accounts, i.e. the Segregated Accounts, associated with Millard's name and Millard's taxpayer identification number. The Exchange Funds were never held in the Commingled Account. The Segregated Accounts were in the name of and were controlled by LES. Only LES had the ability to direct the disbursement or withdrawal of the Exchange Funds. LES was the only signatory on the Segregated Accounts. Only LES had direct control of movement within or between the master account and the sub-accounts. The parties agreed in the Exchange Agreements that LES could earn interest or other fees on the Exchange Funds through its maintenance of the master account and the Segregated Accounts.

***5** Section 2 of each of the Exchange Agreements provides in pertinent part:

(c) Subject to the investment protocol described in Paragraph 3 below, LES shall have sole and exclusive possession, dominion, control and use of all Exchange Funds, including interest, if any, earned on the Exchange Funds.... This agreement i) expressly limits the Taxpayer's [FN11] rights to receive, pledge, borrow or otherwise obtain the benefits of money or other property held by the qualified intermediary.... Taxpayer shall have no right, title, or interest in or to the Exchange Funds or any earnings thereon and Taxpayer shall have no right, power, or option to demand, call for, receive, pledge, borrow or otherwise obtain the benefits of any of the Exchange Funds....

Section 3 of each of the Exchange Agreements (to which Section 2 was expressly subject) requires LES to place the Exchange Funds in Segregated Accounts. It further provides that all earnings on the Exchange Funds were payable to Millard.[FN12] Section 3 does not restrict the ability of LES to pledge, encumber, borrow, or otherwise receive the benefits of the Exchange Funds placed in the Segregated Accounts. Section 4 of each of the Exchange Agreements sets forth the procedures for Millard to identify the Replacement Property. Section 5 of each of the Exchange Agreements sets forth the terms under which LES will acquire the Replacement Property and transfer it to Millard. Section 6 of each of the Exchange Agreements makes clear that the sole purpose of the Exchange Agreements is to facilitate Millard's exchange of the Relinquished Properties for the Replacement Properties. Section 6(c) of each of the Exchange Agreements expressly limits the duties and obligations of LES. That section provides:

LES shall only be obligated to act as an intermediary in accordance with the terms and conditions of this Exchange Agreement and shall not be bound by any other contract or agreement, whether or not LES has knowledge of any such contract or agreement or of its terms or conditions. LES has undertaken to perform only such duties as are expressly set forth herein, and no additional duties or obligations shall be implied hereunder or by operation of law or otherwise.

Each of the Exchange Agreements contains an integration (or merger) clause in Section 11 providing that "[t]his Exchange Agreement contains the entire understanding between and among the parties hereto."

Standard for Entry of Summary Judgment

Rule 56 of the Federal Rules of Civil Procedure, made applicable to these proceedings by Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides that summary judgment should be granted "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317, 327, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). In determining whether this showing has been made, the court must assess the evidence in the light most favorable to the party opposing the motion. *See, e.g., Charbonnages de France v. Smith,* 597 F.2d 406, 414 (4th Cir.1979).

***6** The United States Supreme Court has made clear that summary judgment is not a disfavored procedural shortcut, but rather an integral part of the Federal Rules, which are designed "to secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett,* 477 U.S. at 327, 106 S.Ct. 2548. (quoting Fed.R.Civ.P. 1); *see also Thompson Everett, Inc. v. Nat'l Cable Adver., L.P.,* 57 F.3d 1317, 1322-23 (4th Cir.1995); *Sibley v. Lutheran Hosp. of Md., Inc.,* 871 F.2d 479, 483 n. 9 (4th Cir.1989); *Schultz v. Wills (In re Wills),* 126 B.R. 489, 494 (Bankr.E.D.Va.1991).

A party moving for summary judgment bears the initial burden of demonstrating that there is no genuine issue of material fact. *See Celotex Corp. v. Catrett,* 477 U.S. at 322, 106 S.Ct. 2548. Summary judgment is appropriate only where there are no "disputes over facts that might affect the outcome of the suit;" disputes over mere peripheral or irrelevant facts are not sufficient. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

If the moving party demonstrates that there is no genuine issue of material fact, the burden shifts to the nonmoving party to produce evidence to demonstrate that there is indeed a genuine issue for trial. Fed.R.Civ.P. 56(e)(2) ("When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must-by affidavits or as otherwise provided in this rule-set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party."); *see also* *Celotex Corp. v. Catrett*, 477 U.S. at 325, 106 S.Ct. 2548; *RGI, Inc. v. Unified Indus., Inc.*, 963 F.2d 658 (4th Cir.1992).

The parties all assert that summary judgment is appropriate in this case because there is no dispute as to any material fact regarding the subject transactions. Resolution of the matters in dispute involves the interpretation of three substantially similar contracts, none of which is ambiguous.[FN13] Furthermore, as all of the parties have filed motions for summary judgment, no party can be heard to complain that it will be deprived of a right to trial if summary judgment is entered.

Discussion

Section 541 of the Bankruptcy Code provides for the creation of a bankruptcy estate upon the filing of a bankruptcy petition.[FN14] Property included within that estate is defined very broadly to include every interest that a debtor has in property as of the commencement of the bankruptcy case, wherever located and by whomever held. *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204-05, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983) ("The House and Senate Reports on the Bankruptcy Code indicate that § 541(a)(1)'s scope is broad."); *Grochal v. Ocean Tech. Servs. Corp. (In re Baltimore Marine Indus.)*, 476 F.3d 238, 240 (4th Cir.2007) ("Section 541 of the Bankruptcy Code governs the composition of the bankruptcy estate and provides a broad definition of 'property of the estate.' ").

***7** [1] In line with the broad definition of "property of the estate," money held in a bank account in the name of a debtor is presumed to be property of the bankruptcy estate. *See, e.g.*, *In re Amdura Corp.*, 75 F.3d 1447, 1451 (10th Cir.1996) ("We presume that deposits in a bank to the credit of a bankruptcy debtor belong to the entity in whose name the account is established."); *Boyer v. Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A. (In re U.S.A. Diversified Prods., Inc.)*, 100 F.3d 53, 55 (7th Cir.1996) ("Property of the debtor is defined to include all legal or equitable interests of the debtor ... and obviously that includes the interest that a depositor has in the money in his account, more precisely the money owed him by the bank by virtue of the account.") (internal quotations omitted); *Asurion Ins. Servs., Inc. v. Amp'd Mobile, Inc. (In re Amp'd Mobile, Inc.)*, 377 B.R. 478, 483 (Bankr.D.Del.2007) ("Property held by a debtor is presumed to be property of the estate."); *Sousa v. Bank of Newport*, 170 B.R. 492, 494 (D.R.I.1994) (the bankruptcy estate "includes funds held in a checking or savings account"); *Stratton v. Equitable Bank, N.A.*, 104 B.R. 713, 726 (D.Md.1989) (funds deposited in an account owned and controlled by the debtor become the debtor's property).[FN15]

In this case, the facts mandate a presumption that the Exchange Funds are the property of the LES bankruptcy estate. The Exchange Funds were derived from the proceeds of the sale of the Relinquished Properties that Millard had assigned to LES. The Exchange Funds were transferred from the third party purchasers of these Relinquished Properties directly into the bank account of LES by the closing agents. The transferred funds remained in the bank accounts of LES through the Petition Date. Millard never had any ability to withdraw the funds. The accounts were under the complete control of LES. Only LES had the ability to disburse or withdraw the funds. As LES maintained the exchange funds in bank accounts in its name and under its control, the money is presumably property of the LES bankruptcy estate. *Boyer v. Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A. (In re USA Diversified Products, Inc.)*, 100 F.3d 53, 55 (7th Cir.1996) (estate property "includes the interest that a depositor has in the money in its account"); *Elsaesser v. Gale (In re Salt Lake City R.V., Inc.)*, No. 95-03264-7, 1999 WL

33486709, at *4 (Bankr.D.Idaho, March 17, 1999) ("[m]oney in a bank account under the debtor's control presumptively constitutes property of the debtor's estate....").

[2] To rebut this presumption that the funds are property of the bankruptcy estate of LES, Millard must show that it retained some right to the funds. Any such right to the funds must be established as an interest in property recognized under state law.[FN16] *Butner v. United States*, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979). Millard contends that LES was temporarily holding the Exchange Funds on its behalf solely for the purpose of facilitating the exchange of the Relinquished Properties for the Replacement Properties. Millard maintains that it never parted with its equitable interest in the ownership of the Exchange Funds [FN17] and that LES was holding the Exchange Funds in trust for Millard's benefit. Therefore, it asserts, although the Exchange Funds may have been held in the bank accounts of LES, they did not become property of the LES bankruptcy estate. 11 U.S.C. § 541(d).[FN18] Millard points to the fact that under the Exchange Agreements LES was required to place the Exchange Funds in segregated sub-accounts associated with Millard's name and taxpayer identification number.[FN19] Millard also points to the fact that nothing in the Exchange Agreements imposes on LES any risk of loss commonly associated with ownership. These facts, together with the fact that Millard retained the benefits of accrued interest, are strong indicia, Millard argues, that it never parted with its equitable ownership interest in the Exchange Funds. Millard concludes, therefore, that LES holds the funds in trust for its benefit.

***8** [3] Whether property in the possession of the Debtor is held in trust for Millard is a question of state law. *Butner*, 440 U.S. at 55, 99 S.Ct. 914. While federal law creates the bankruptcy estate, state law defines the scope and existence of the debtor's interest in property. *Raleigh v. Ill. Dept. of Revenue*, 530 U.S. 15, 20, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000) ("The 'basic federal rule' in bankruptcy is that state law governs the substance of claims, Congress having 'generally left the determination of property rights in the assets of the bankrupt's estate to state law.' ") (quoting *Butner*, 440 U.S. at 57, 99 S.Ct. 914). LES and Millard agreed that the Exchange Agreements would be governed by Virginia law.[FN20] That contractual choice of law provision is determinative of the law to be applied in this case. *See* *Holmes Envtl., Inc. v. Suntrust Banks, Inc. (In re Holmes Envtl., Inc.)*, 287 B.R. 363, 374 (Bankr.E.D.Va.2002) (*citing* *Tate v. Hain*, 181 Va. 402, 410, 25 S.E.2d 321, 324 (1943)).

[4] Under the terms of the Court's February 10, 2009, order, the question to be resolved at this stage of the litigation is whether the Exchange Funds are excluded from property of LES' bankruptcy estate because of the existence of either an express trust or a resulting trust. The Court will look to the law of the Commonwealth of Virginia for its analysis of these two issues. Millard bears the burden of proving the existence of a trust. *See* *Page v. Page*, 132 Va. 63, 110 S.E. 370, 372 (1922) (party seeking to establish a trust has the burden of proving its existence); *Chiasson v. J. Louis Matherne & Assocs. (In re Oxford Mgmt., Inc.)*, 4 F.3d 1329, 1335 (5th Cir.1993) ("When the property of an estate is alleged to be held in trust, the burden of establishing the trust's existence rests with the claimants.").

[5][6] Under Virginia law, an express trust is created only where there is "an affirmative intention to create it." *Peal v. Luther*, 199 Va. 35, 37, 97 S.E.2d 668, 669 (1957); *Leonard v. Counts*, 221 Va. 582, 588, 272 S.E.2d 190, 194 (1980) (an express trust is "based on the declared intention of the trustor."). The affirmative intention to create a trust may be established by "either express language to that effect or circumstances which show with reasonable certainty that a trust was intended to be created." *Woods v. Stull*, 182 Va. 888, 902, 30 S.E.2d 675, 682 (1944); *Rivera v. Nedrich*, 259 Va. 1, 6, 529 S.E.2d 310, 312 (1999).

[7] There is no express language in the Exchange Agreements that creates a trust. The words "trust," "trustee," or "beneficiary" do not appear anywhere in the Exchange Agreements. Given the omission of any language normally associated with the creation of a trust, Millard must demonstrate with "reasonable certainty" circumstances that show both parties to the Exchange Agreement nevertheless intended to create a trust. *Woods v. Stull*, 182 Va. at 902, 30 S.E.2d at 682.

[8] The Court thus turns to an examination of whether Millard has demonstrated the parties' intent to create a trust despite the absence of express lan-

guage to do so. Although formal or technical words are not necessary to create a trust, the fact that the Exchange Agreements make no mention of a "trust" is significant in determining whether a trust was intended. *See* *In re Estate of Vallery*, 883 P.2d 24, 27 (Colo.App.1993). Here, not only is there an absence of any language that the parties intended to create a trust, but there is language in the Exchange Agreements that actually evidences an intent *not* to do so. Millard, in the Exchange Agreements, conveyed exclusive possession, dominion,[FN21] control and use of the Exchange Funds to LES. It also disclaimed any right, title or interest in and to the Exchange Funds. That conveyance combined with that disclaimer is inconsistent with the establishment of a trust. Under a trustee-beneficiary relationship, the trustee holds legal title in the trust property and the beneficiary holds an equitable interest in the trust property. *Kubota Tractor Corp. v. Strack*, Case No. 4:06cv145, 2007 WL 517492, at *4 (E.D.Va. Feb.6, 2007) (citing *Broaddus v. Gresham*, 181 Va. 725, 731, 26 S.E.2d 33, 35 (1943)) (reversed on other grounds, *Kubota Tractor Corp. v. Strack (In re Strack)*, 524 F.3d 493 (4th Cir.2008)). However, Millard relinquished *any and all* interests in the property, including the equitable interest that a beneficiary of a trust would retain in trust property. Millard expressly disclaimed the equitable interest that it now asks this Court to find that it otherwise somehow retained.

***9** [9][10] Further evidence that the parties did not intend the Exchange Agreements to create a trust can be found in the parties' agreement to limit the duties of LES to those expressly contained in the Exchange Agreements. A trust necessarily requires the establishment of fiduciary duties. *See* *Restatement (3d) of Trusts § 2* (2003) (stating that a trust is a fiduciary relationship with respect to property); *In re Nova Real Estate Inv. Trust*, 23 B.R. 62, 66 (Bankr.E.D.Va.1982) ("A trust involves a duty of the fiduciary to deal with particular property for the benefit of another."). [FN22] Fiduciary duties create a special relationship of trust and good faith that goes beyond the duties set forth in an ordinary contract between commercial parties. *See* *Balbir Brar Associates v. Consol. Trading Servs. Corp.*, At Law No. 137795, 1996 WL 1065615 at *5 (Va.Cir.Ct. October 1, 1996) (distinguishing between contract duties and fiduciary duties).

The parties to the Exchange Agreements acknowledged that LES was not undertaking any duties not expressly set forth in the Exchange Agreements (i.e. the contract duties) including any implied duties or any duties imposed by operation of law. This limitation on the scope of LES' duties eliminates any argument that LES had a duty to act as a fiduciary for Millard. *Metric Constructors, Inc. v. Bank of Tokyo-Mitsubishi, Ltd.*, Case No. 99-2330, 2000 WL 1288317, at *4 (4th Cir. Sept.13, 2000) (holding that no fiduciary duties existed where the plaintiff "expressly consented (in the Consent Agreement) to the [defendants'] disclaimer of any fiduciary relationship toward it"). The Exchange Agreements provide that LES was acting in the narrow capacity as an exchange facilitator. The parties agreed that LES assumed no duties not expressly set forth in the Exchange Agreements including fiduciary duties and none can be implied or imposed by operation of law. LES merely had the contractual duty to effect the exchanges. The unambiguous language of the Exchange Agreements makes clear that the parties intended their relationship to be one of contract obligor and obligee.

The Exchange Agreements were integrated contracts. *See* *Robinette v. Robinette*, 4 Va.App. 123, 354 S.E.2d 808, 810 (1987); *see also* *Lisk v. Criswell (In re Criswell)*, 52 B.R. 184, 197 (Bankr.E.D.Va.1985) (holding that an integrated agreement containing a merger clause precluded parties from claiming any reliance on "terms, conditions, statements, warranties, or representations not contained [in the integrated agreement]"). Millard cannot utilize extrinsic evidence to modify or alter the contracts' plain statements (i) that Millard had no interest, including any equitable interest, in or to the Exchange Funds and (ii) that LES owed to Millard no duty, including any fiduciary duty, not expressly set forth in the Exchange Agreements. *Robinette v. Robinette*, 4 Va.App. at 128, 354 S.E.2d at 810 (holding that a party cannot introduce parol evidence to show the existence of a trust if it would defeat or contradict the terms of an express agreement). The objective language of the Exchange Agreements precludes consideration of any subjective belief that the parties may have had regarding the relationship between them. *Boone v. U.S. Attorney*, Case No. 7:06VA00006, 2006 WL 1075010, at *3 (W.D.Va. Apr.21, 2006) ("Boone may have had a subjective intent to the contrary, but it is the objective manifestation of intent, as shown by the words used in the agreement, that governs.").[FN23]

***10** [11] Millard argues that the intent of the parties to create a trust can be gleaned from the requirement set forth in the Exchange Agreements that the Exchange Funds were required to be held in segregated sub-accounts, but this argument fails. The requirement of Segregated Accounts may provide evidence on the traceability of the funds, but that alone does not create a trust.

> In order to establish such a right as trust beneficiary, a claimant must make two showings: first the claimant must prove the existence and legal source of a trust relationship; second, the claimant must identify the trust fund or property and, where the trust fund has been commingled with general property of the bankrupt, sufficiently trace the property or funds-the res.

Conn. Gen. Life Ins. Co. v. Universal Ins. Co., 838 F.2d 612, 618 (1st Cir.1988). *See also* *Southwest State Bank v. Ellis,* 310 B.R. 762, 764 (Bankr.W.D.Okla.2004) (holding that agreement to segregate and not commingle proceeds from the sale of borrower's collateral cannot create a trust in lender's favor under "fiduciary capacity" exception to discharge under § 523(a)(4)); *Barclay's Amer./ Bus. Credit, Inc. v. Long (In re Long),* 44 B.R. 300, 305 (Bankr.D.Minn.1983) (holding that "existence of a collateral account, into which proceeds from receivables were to be deposited in order to segregate the money" did not "create a fiduciary relationship where the substance of the relationship between the parties was that of creditor/debtor"); *cf.* *Kubota Tractor Corp. v. Strack (In re Strack),* 524 F.3d 493 (4th Cir.2008) (holding that proceeds from the sale of collateral were held in trust where the agreement between the parties created an express trust in the sales proceeds). [FN24] The fact that the Exchange Funds were required to be placed in segregated sub-accounts provides only half of the equation. Segregation alone is insufficient to prove the parties' affirmative intention to create an express trust.[FN25]

Finally, the intention of the parties not to create an express trust can be gleaned from their decision to use the qualified intermediary option from among the four safe harbor options available within the Treasury Regulations. Qualified intermediaries are not the only means for effectuating like-kind exchange transactions under § 1031. Treasury Regulation § 1.1031(k) 1(g), which addresses the delivery of funds to third-parties in connection with a 1031 Exchange, provides, in pertinent part, as follows:

> Safe harbors-(1) In general. Paragraphs (g)(2) through (g)(5) of this section set forth four safe harbors the use of which will result in a determination that the taxpayer is not in actual or constructive receipt of money or other property for purposes of section 1031 and this section....

(2) Security or guarantee arrangements.

....

(3) Qualified escrow accounts and qualified trusts

....

(4) Qualified Intermediaries

....

(5) Interest and Growth Factors

***11** Treas. Reg. § 1.1031(k)-1(g). These safe harbors are not mutually exclusive. *See* 26 Treas. Reg. § 1.1031(k)-1(g)(1) ("More than one safe harbor can be used in the same deferred exchange, but the terms and conditions of each must be separately satisfied."). Millard and LES had the option to utilize a "qualified escrow" or to establish a "qualified trust" pursuant to subsection (g)(3) of the Treasury Regulation. The qualified trust option requires a written trust agreement. 26 C.F.R. § 1.1031(k)-1(g)(iii)(B). Instead of using either of these available options, the parties chose the "qualified intermediary" safe harbor. The Exchange Agreements specifically state that: "LES and Taxpayer acknowledge and agree that this Exchange Agreement is intended to satisfy the safe harbor provisions of Section 1.1031(k)-1(g)(4) of the Regulations." Exchange Agreement at ¶ 6(a). The parties did not in addition separately satisfy the terms and conditions of the Treasury Regulations for the creation of either a qualified escrow or a qualified trust. As the LES Committee points out in its brief, the parties' decision to eschew the escrow and trust provisions of the tax code in favor of a different safe harbor evidences that there was no intention to create a trust relationship. The Court thus finds that no express trust was created in any of the three 1031 Exchange transactions at issue.

[12][13] As the Court has found that the parties to the Exchange Agreements did not intend to create an express trust, Millard is not now entitled to the imposition of a resulting trust. In Virginia a resulting trust is "an indirect trust that arises from the parties' intent or from the nature of the transaction and does not require an express declaration of trust." *1924 Leonard Rd., L.L.C. v. Van Roekel*, 272 Va. 543, 552, 636 S.E.2d 378, 383 (2006) (citing *Tiller v. Owen*, 243 Va. 176, 180, 413 S.E.2d 51, 53 (1992); *Salyer v. Salyer*, 216 Va. 521, 525, 219 S.E.2d 889, 893 (1975)). The party seeking to establish such a trust must do so by clear and convincing evidence. *Id.* (citing *Leonard v. Counts*, 221 Va. 582, 589, 272 S.E.2d 190, 195 (1980)).

[14] "For a resulting trust to arise, the alleged beneficiary must pay for the property, or assume payment of all or part of the purchase money before or at the time of purchase, and have legal title conveyed to another without any mention of a trust in the conveyance." *1924 Leonard Rd.*, 272 Va. at 552, 636 S.E.2d at 383 (citing *Morris v. Morris*, 248 Va. 590, 593, 449 S.E.2d 816, 818 (1994)). *See also Tiller*, 243 Va. at 180, 413 S.E.2d at 53; *Leonard*, 221 Va. at 588, 272 S.E.2d at 194 (1980). In *Morris,* the Supreme Court of Virginia quoted its prior opinion in *Kellow v. Bumgardner*, 196 Va. 247, 83 S.E.2d 391 (1954):

> The existence of a resulting trust thus depends upon an equitable presumption of intention, based upon the natural precept that one who advances the purchase money for real property is entitled to its benefits. Therefore, after it has been shown that payment of all or a part of the purchase price for property has been paid by one person and title thereto has been placed in the name of another, the factor which will determine whether the title is to be impressed with a trust in favor of the payor is the intention of the party providing the purchase money. If no evidence of intention is available, then the presumed intention will stand; *but if there is evidence that the person who provided the money had some intention other than to secure the benefits for himself, the presumed intention fails and no resulting trust will be recognized.*

***12** *Morris*, 248 Va. at 593, 449 S.E.2d at 818 (quoting *Kellow*, 196 Va. at 255, 83 S.E.2d at 396) (emphasis added).

[15] Millard argues that a trust was found to exist in each of the few reported cases that dealt with like-kind exchange transactions utilizing segregated accounts.[FN26] In those cases, the courts were compelled to discern the intent of the parties from the circumstances surrounding their conduct, and the courts imposed resulting trusts.[FN27] In none of those cases was it found, however, that the parties had entered into a fully integrated agreement that evidenced an intention not to create a trust. In this case, the parties' intentions are readily discernible from the Exchange Agreements themselves. The Court need not divine the intent of the parties from the surrounding circumstances. Millard and LES were each experienced, sophisticated parties to complex documented commercial transactions. They were separately represented by capable counsel and experienced financial professionals.[FN28] If the parties had wanted to create a trust, they certainly were capable of doing so. They did not. A resulting trust cannot be imposed in the face of Exchange Agreements that demonstrate clearly a contrary intent. The Court thus finds that no resulting trust was created in any of the three 1031 Exchange transactions at issue. This result obtains without regard to the considerable hurdle that Millard would otherwise have to overcome that a resulting trust must be established through clear and convincing evidence.

Conclusion

The Exchange Funds are not excluded from property of the estate pursuant to 11 U.S.C. § 541(d) because of the existence of an express trust or as a result of the imposition of a resulting trust. The plain, unambiguous language of the Exchange Agreements clearly establishes that it was not the intent of LES or Millard to create an express trust. As the Exchange Agreements were integrated contracts, Millard cannot use parol evidence to prove the existence of an express trust. Given the parties' clear intent in the Exchange Agreements not to create an express trust, it is inappropriate for the court to impose a resulting trust upon them. This is especially the case where the parties are sophisticated, as they are here, and where the parties have included a merger clause in their agreement. Therefore, the Court will deny Millard's motion for partial summary judgment and grant partial summary judgment in favor of the Committees against Millard. The Court will dismiss Millard's requested relief for declaratory judgment and injunctive relief as set forth in Counts I and II of its Complaint. A separate order shall issue.

FN1. LES has joined in the cross motions filed by the Committees.

FN2. As defined by the parties, Commingled Type A Cases generally involve the wire transfer of exchange funds to a general LES account at SunTrust Bank; Commingled Type B Cases generally involve the deposit by LES of exchange funds into a LES account at SunTrust Bank. (Joint Motion of Debtor and LES Committee for Order Establishing Scheduling Protocol, ¶ 8.) Another distinction between Type A and Type B Cases can be found in Section 3(a) of the respective Exchange Agreements. The Type A agreements state that interest will be computed from the first business day following LES' receipt of funds in the account "it maintains at SunTrust Bank for the purpose of collecting taxpayers' exchange funds." The use of the plural possessive "taxpayers' " suggests that the funds of multiple customers are being deposited into the same SunTrust account. The Type B agreements state that interest will be computed after receipt "in an account maintained at SunTrust Bank" without reference to other "taxpayers." The hybrid agreements are otherwise Type B agreements.

FN3. Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr.P. 7052.

FN4. In the ordinary course of its business, LES invested certain of the exchange funds it received from its former customers. Some of the invested exchange funds received by LES are now held in the form of illiquid auction rate securities as a result of the unprecedented, rapid economic decline experienced in the latter part of 2008 that left the credit markets frozen. As a consequence, LES does not have the ability from a liquidity standpoint to fund all of the exchanges it is contractually obligated to complete within the time parameters that § 1031 of the Internal Revenue Code requires. To permit one group of exchangers to recover their exchange funds under a trust theory necessarily reduces the amount of liquid funds available for distribution to other exchange creditors and impacts all of the other exchange creditors adversely, whether similarly situated or otherwise.

FN5. *See* the January 6, 2009, Order granting the LES Committee's Motion to Intervene and the January 16, 2009, Notice of Intervention filed by the LFG Committee.

FN6. The treasury regulations governing 1031 Exchanges make clear that the taxpayer must abrogate all control over the exchange funds until the exchange is completed. "If the taxpayer actually or constructively receives money or property in the full amount of the consideration for the relinquished property before the taxpayer actually receives like-kind replacement property, the transaction will constitute a sale and not a deferred exchange, even though the taxpayer may ultimately receive like-kind replacement property." Treas. Reg. § 1.1031(k)-1(f). However, the abrogation of control required by the treasury regulations does not require the taxpayer to relinquish all right, title and interest to the exchange funds as the parties to these Exchange Agreements (as hereinafter defined) contracted for Millard to do. *See* *DeGroot v. Exchanged Titles, Inc. (In re Exchanged Titles, Inc.)*, 159 B.R. 303, 306 (Bankr.C.D.Cal. March 27, 1993) ("for the purpose of the exchange ... there was no need for [the accommodator] to acquire 'real' interest in the ... property ... to make the exchange qualify under the statute ....' ") (citation omitted); *Cook v. Garcia*, No. 96-55285, 1997 WL 143827, at *1 (9th Cir.1997) ("A taxpayer need not abandon all equitable interests in the proceeds ... for a transaction to qualify as a non-taxable event under section 1031."). This negates Millard's argument that the disclaimers contained in

Section 2 of the Exchange Agreements were included only because the treasury regulations required them to be included.

FN7. See note 4 *infra* regarding LES' investments in auction rate securities.

FN8. All subsequent references to Treasury Regulations may be found in Title 26 of the Code of Federal Regulations in correspondingly numbered sections.

FN9. Treas. Reg. § 1.468B-6(c)(2)(i)-(ii) provides:

> (2) Exchange funds not treated as loaned to an exchange facilitator-
>
> (i) Scope.
>
> This paragraph (c)(2) applies if, in accordance with an escrow agreement, trust agreement or exchange agreement, as applicable, all the earnings attributable to a taxpayer's exchange funds are paid to the taxpayer.
>
> (ii) Earnings attributable to the taxpayer's exchange funds-
>
> (A) Separately identified account. If an exchange facilitator holds all of the taxpayer's exchange funds in a separately identified account, the earnings credited to that account are deemed to be all the earnings attributable to the taxpayer's exchange funds for purposes of paragraph (c)(2)(i) of this section. In general, a separately identified account is an account established under the taxpayer's name and taxpayer identification number with a depository institution. For purposes of paragraph (c)(2)(i) of this section, a sub-account will be treated as a separately identified account if the master account under which the sub-account is created is established with a depository institution, the depository institution identifies the sub-account by the taxpayer's name and taxpayer identification number, and the depository institution specifically credits earnings to the sub-account.

FN10. *See* Treas. Reg. § 1.1031(k)1 (g)(4)(i). The language of this section says that the "determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives like-kind replacement property is made as if the qualified intermediary is not the agent of the taxpayer." This suggests that the intent of the Internal Revenue Service is to treat the funds as NOT those of the taxpayer.

FN11. Under the terms of the Exchange Agreements, Millard is defined as "Taxpayer."

FN12. Millard argues that the use of an apostrophe "s" in the phrase "Taxpayer's Exchange Funds," as that phrase is used in Section 3 of the Exchange Agreements, connotes that the funds in the Segregated Accounts belong to Millard, the taxpayer. But this forced interpretation of Section 3 proves too much. If the Court were to adopt this interpretation, then more than just the beneficial interest in the Exchange Funds would remain with the taxpayer and the transaction would not pass IRS regulatory scrutiny for a 1031 Exchange. This forced interpretation would also require the Court to ignore completely the unambiguous language in Section 2 that LES shall have sole and exclusive possession, dominion, control and use of the Exchange Funds and that Millard shall have no right, title, or interest in or to the Exchange Funds. If the alternate interpretation that Millard now advances was truly what the parties intended, there were better ways to evidence that intent than through the use of an apostrophe "s" in an isolated phrase contained in Section 3 of the parties' Exchange Agreement.

FN13. It is important to determine whether the contracts are ambiguous, since "[i]f a court properly determines that the contract is unambiguous on the dispositive issue, it may then properly interpret the contract as a matter of law and grant summary judgment because no interpretive facts are in genuine issue." *Washington Metro. Area Transit Auth. v. Potomac Inv. Props., Inc.*, 476 F.3d 231, 235 (4th Cir.2007).

FN14. Section 541 of the Bankruptcy Code provides in pertinent part:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

FN15. *See Collier on Bankruptcy* ¶ 541.09 (Alan N. Resnick & Henry J. Sommer, eds., 15th ed. Rev.2008) ("deposits in the debtor's bank account become property of the estate under § 541(a)(1)").

FN16. One of Millard's alternative arguments is that LES was acting as a mere conduit for its Exchange Funds; and, as such, the funds are excluded from the LES bankruptcy estate pursuant to § 541(d) of the Bankruptcy Code as a matter of federal common law. In support, it cites *City of Springfield, Mass. v. Ostrander (In re LAN Tamers)*, 329 F.3d 204 (1st Cir.2003); *T & B Scottdale Contractors, Inc. v. United States*, 866 F.2d 1372 (11th Cir.1989). In those cases cited by Millard in support of this position, the funds originated from a Federal program and were earmarked for a specific statutory purpose. That is not the case here where the Exchange Funds represent the net proceeds of third party purchasers' acquisitions of Relinquished Properties.

FN17. Legal title to property and the equitable interest in property are separate property interests. *See, e.g.*, *In re Halabi*, 184 F.3d 1335, 1337 (11th Cir.1999).

FN18. Section 541(d) of the Bankruptcy Code creates a limitation on the otherwise broad definition of property of the estate. That section provides in pertinent part that:

"property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest ... becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold."

FN19. Nothing in the Exchange Agreements, however, prohibited LES from investing the Exchange Funds that were placed into the Segregated Accounts (indeed LES was indemnified in the event it chose not to do so), from transferring the Exchange Funds out of the Segregated Accounts, from encumbering or pledging the Segregated Accounts for its own use, or from otherwise obtaining the benefits of the Exchange Funds. In fact, the funds in the Segregated Accounts were entirely and completely vulnerable to attachment and levy by third party creditors of LES.

FN20. Section 11 of the Exchange Agreements provides that "[t]his Exchange Agreement shall be governed by and construed in accordance with the applicable laws of the Commonwealth of Virginia without regard to the conflict of laws provisions thereof...."

FN21. "Dominion" has been defined by one court as "perfect control in right of ownership, and indicates that it was the intention to make the instrument as effectual as a conveyance as it was possible for the parties to make it." *Baker v. Westcott*, 73 Tex. 129, 11 S.W. 157, 159 (1889).

FN22. A trustee has a fiduciary obligation to act for the benefit of the trust beneficiary. *See* *Continental Cas. Co. v. Powell*, 83 F.2d 652, 654 (4th Cir.1936) ("There is a fiduciary relation between trustee and beneficiary;

there is not a fiduciary relation between debtor and creditor.") (internal citations omitted); *Caldwell v. Hanes (In re Hanes),* 214 B.R. 786, 812 (Bankr.E.D.Va.1997) ("The trustee ... is a fiduciary of the trust beneficiaries.") (internal citations omitted).

FN23. Millard argues that post-contractual conduct is competent to alter or contradict the express terms of an integrated contract. However, the cases cited by Millard apply to subsequent parol *agreements* between the parties-not just the parties' conduct. *See Piedmont Mt. Airy Guano Co. v. Buchanan,* 146 Va. 617, 131 S.E. 793 (1926); *Centex Constr. v. Acstar Ins. Co.,* 448 F.Supp.2d 697, 712 (E.D.Va., 2006). No post-execution agreements between LES and Millard have been alleged in this case. Furthermore, whether a trust was created is to be determined at the time of the transfer of the property.

FN24. Millard argues that *Strack* stands for the proposition that a segregation provision in an agreement demonstrates with reasonable certainty the intent to establish an express trust. However, the plain language of the agreement in *Strack* required the debtor to "hold the same in trust." *In re Strack,* 524 F.3d, at 495-96.

FN25. The requirement for segregated accounts in the Exchange Agreements reflects the desire of the parties to satisfy one of the safe harbors offered by the Treasury Regulations in order to obtain favorable tax treatment. It does not, without more, evidence an intention to establish an express trust. Treasury Regulation section 1.468B-6 requires that any exchange funds exceeding $2 million must be maintained by a qualified intermediary in a separately identified account with all earnings on the account going to the exchanger or in a commingled account with earnings on the account disbursed pro rata to the commingled exchangers. See Treas. Reg. § 1.468B-6 (2008). Failure to do so results in treatment of the exchange funds as a loan to the qualified intermediary for tax purposes. *See id.* The Exchange Agreements' Segregated Accounts were set up as required in the Treasury Regulations, thus contradicting Millard's argument that the Segregated Accounts were indicative necessarily of an intention to create a trust relationship.

FN26. *See Taxel v. Surnow (In re San Diego Realty Exchange, Inc.),* No. 92-56526, 1994 WL 161646 (9th Cir. May 2, 1994); *Siegel v. Boston (In re Sale Guaranty Corp.),* 220 B.R. 660 (9th Cir. BAP 1998).

FN27. In *Cook v. 1031 Exch. Corp.,* No. 116304, 1992 WL 885015 (Va.Cir.Ct. Nov.12, 1992), another case upon which Millard relies, the court found that the parties stipulated that the funds were held in trust.

FN28. Consistent therewith, Section 11 of the Exchange Agreements provides that: "Each party hereto and their legal counsel have reviewed this Exchange Agreement and have had an opportunity to revise (or request revision of) this Exchange Agreement and, therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Exchange Agreement."

Bkrtcy.E.D.Va.,2009.
In re LandAmerica Financial Group, Inc.
--- B.R. ----, 2009 WL 1011647 (Bkrtcy.E.D.Va.), 51 Bankr.Ct.Dec. 148

END OF DOCUMENT

Only the Westlaw citation is currently available.

United States District Court, S.D. New York.
NIGERIAN NATIONAL PETROLEUM CORPORATION, Plaintiff,
v.
CITIBANK, N.A., Citibank, Federal Savings Bank; Citicorp Banking Corporation; Citicorp; Citibank (New York State); and John Does Inc. 1 to 100, Defendants.
No. 98 Civ. 4960(MBM).

July 30, 1999.

Robert D. Owen, Henry G. Burnett, Owen & Davis, New York, NY, for Plaintiff.

Mark G. Hanchet, Noelle M. Kurtin, Zeichner Ellman & Krause, New York, NY, for Defendants.

OPINION AND ORDER

MUKASEY, J.

***1** Nigerian National Petroleum Corporation ("NNPC"), a Nigerian corporation that sells crude oil on behalf of the Nigerian government (Compl.¶ 6),[FN1] sues Citibank, N.A.; Citibank, Federal Savings Bank; Citicorp Banking Corp.; Citicorp; Citibank (New York State) (collectively, "Citibank"); and John Does, 1 to 100, seeking to recover approximately $15.1 million that it lost as a result of fraud by a third-party named Alberto Vadra, who used Citibank accounts. Citibank moves to dismiss plaintiff's amended complaint pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim. For the reasons stated below, Citibank's motion is granted, and the amended complaint is dismissed with respect to Citibank.

> FN1. "Compl." refers to the amended complaint dated September 14, 1998.

I.

The following relevant facts are assumed to be true for the purposes of this motion. In 1993, Alberto Vadra, a United States citizen who was born in Argentina, formed two corporations under the laws of Nevada, one called Ministry of Petroleum Resources ("MPR"), the other National Petroleum Resources ("National Petroleum"). (Compl.¶¶ 15, 19) Vadra registered both corporations using his home address in Las Vegas, Nevada, and, at least as to MPR, named as directors two persons with addresses in Lagos, Nigeria. (*Id.* ¶ ¶ 15, 18-19) In subsequent filings, however, Vadra replaced these directors with directors from Miami, Florida, and changed his own address to one in Miami. (*Id.* ¶¶ 16-18)

In August 1993, Vadra opened three bank accounts at Citibank: (1) account number 71118209, in the name of MPR (the "First MPR Account"); (2) account number 71118233, in the name of National Petroleum (the "National Petroleum Account"); and (3) account number 3200106121, also in the name of MPR (the "Second MPR Account"). (*Id.* ¶¶ 21, 23-24) In July 1994, Vadra opened an additional Citibank account in the name of MPR, numbered 46816814 (the "Third MPR Account"). (*Id.* ¶ 25) For nine months, there was minimal activity in the three Citibank accounts opened in 1993. (*Id.* ¶ 26) However, in June 1994, Vadra induced Bank Indosuez, banker for one of NNPC's customers, to wire transfer $15,144,307.75 intended for NNPC to the First MPR Account instead (the "First Fraudulent Transfer"). (*Id.* ¶¶ 27, 35) [FN2] Although the documents submitted to Citibank to verify the transfer were allegedly "riddled with inconsistencies and other badges of fraud," such as typographical errors and incomplete addresses (*id* . ¶¶ 31-34), on June 28, 1994, Citibank "swiftly processed" the transfer. (*Id.* ¶ 28)

> FN2. The amended complaint is ambiguous with respect to whether the money was diverted from NNPC's account at the Central Bank of Nigeria or from the Nigerian government's account at the Federal Reserve Bank in New York. (*Compare id.* ¶ 27, *with id* . ¶ 35) This ambiguity is immaterial for present purposes.
>
> The amended complaint is ambiguous also with respect to the precise amount that was diverted from NNPC. (*Compare*

Compl. ¶ 37 ($15,144,325.25), *with id.* ¶ 51 ($15,144,309), *and id.* at p. 24 ($15,144,307.75)) I have accepted the figure in NNPC's prayer for relief, although the precise figure is immaterial for present purposes.

The next day, Vadra faxed a letter, on letterhead from an entity called Transportes Aereos Internacionales S.R.L. ("TAI"), to Donna Harrington, an employee of Citibank in New York City. (*Id.* ¶ 39) The letter, which provided the same address for TAI as Vadra earlier had provided Citibank for MPR, instructed Harrington in typescript to wire transfer the following sums from the First MPR Account: (1) $1 million to Key Biscayne Bank; (2) $3 million to Bank of America; and (3) $11 million to a Citibank account in Vadra's name, numbered 3100170206 ("Vadra's Personal Account"). (*Id.* ¶ 39) In handwriting, the first and third amounts were changed to $2 million and $5 million, respectively. (*Id.*)

***2** On the same day, Vadra faxed Harrington another letter-this one on letterhead of an entity called Alneva Enterprises Inc., albeit at the same address as TAI-providing an address for MPR, National Petroleum and an entity called National Maritime Authority ("NMA"). (*Id.* ¶ 40) That address, in Miami, Florida, was Vadra's home address, and above each listing "c/o Alberto Vadra" was written by hand. (*Id.*)

On July 1, 1994, presumably pursuant to Vadra's instructions, Citibank wire transferred the following amounts from the First MPR Account: (1) $2 million to an account at Towerbank in the name of NMA; (2) approximately $3 million to an account at Bank of America in the name of NMA; (3) $5 million to the Third MPR Account; and (4) $5 million to Vadra's Personal Account. (*Id.* ¶ 41) [FN3] In turn, on July 6, 1994, $5 million was wire transferred from Vadra's Personal Account to two banks in Lagos, Nigeria (*id.* ¶ 43); on July 7, 1994, $4 million was wire transferred from the Third MPR Account to the Second MPR Account (*id.* ¶ 48); and between July 11 and 15, 1994, that money was transferred again from the Second MPR Account to four other accounts, including $600,000 to Vadra's Personal Account and $1.9 million to an account in MPR's name at Barnett Bank of South Florida. (*Id.* ¶ 50)

FN3. The discrepancies between Citibank's transfers on July 1, 1994 and Vadra's instructions on June 29, 1994, are unexplained in the amended complaint.

In the meantime, on July 6, 1994 also, Towerbank returned to Citibank the $2 million that had been wire transferred to NMA's account on July 1, 1994, apparently because NMA had not informed Towerbank that it was expecting to receive a large transfer, as required by the bank's rules. (*Id.* ¶ 45) However, Citibank did not redeposit the $2 million into the First MPR Account from which it had been transferred. (*Id.* ¶ 47) Instead, on July 11, 1994, Thomas A. Gallo, Assistant Vice President of Citibank, ordered the money deposited into the National Petroleum Account. (*Id.*) Later the same day, Gallo ordered the money transferred again to Vadra's Personal Account. (*Id.*)

On July 12, 1994, only days after the First Fraudulent Transfer, Vadra effected a second fraudulent transfer at NNPC's expense, diverting $15,543,710 intended for the Nigerian government's account at the Federal Reserve Bank in New York to the First MPR Account (the "Second Fraudulent Transfer"). (*Id.* ¶ 52) However, this time, the fraudulent transfer did not escape NNPC's or the transferring bank's notice. Thus, on July 19 and 20, 1994, respectively, NNPC and the transferring bank notified Gallo, the Assistant Vice President of Citibank, about the fraud. (*Id.* ¶¶ 53-55) On July 27, 1994, having traced some of the Second Fraudulent Transfer to the Third MPR Account, where it had been re-transferred, Citibank remitted $15,543,710 to NNPC's account at the Federal Reserve Bank. (*Id.* ¶ 56)

Notwithstanding discovery of the Second Fraudulent Transfer, however, Citibank did not freeze the First MPR Account. Instead, on July 29, 1994, the bank permitted transfer to the First MPR Account of approximately $1 million from the Third MPR Account. (*Id.* ¶ 60) On the same day, Citibank permitted another $1.1 million to be withdrawn from the Third MPR Account, money which was deposited in an account bearing NMA's name at Bank of America. (*Id.*)

***3** Whether, or to what extent, Citibank investigated the First MPR Account after these events is not apparent. (*Id.* ¶ 58) According to the amended complaint, Citibank "failed to conduct any further inquiry into the [First MPR Account], or if it did conduct an inquiry, recklessly failed to take notice that $15.1 million had been received just two weeks earlier." (*Id.*) Whatever Citibank's knowledge, however, NNPC did not learn of the First Fraudulent Transfer until May 1995, when it finally discovered that the $15,144,307.75 due from Bank Indosuez was never received. (*Id.* ¶ 61-62) NNPC "immediately advised Gallo at Citibank ... by letter dated June 1, 1995 of the newly discovered fraud, and demanded repayment." (*Id.* ¶ 63) Nevertheless, "[n]either Gallo [n]or anyone else at Citibank ... ever replied to NNPC's letter or repaid the $15.1 million in fraudulently transferred funds ." (*Id.* ¶ 64)

Moreover, according to the complaint, Citibank "stonewalled and otherwise impeded subsequent attempts by NNPC to investigate the [First Fraudulent Transfer]." (*Id.; see id.* ¶ 5) Specifically, Citibank refused to release signature cards and photographs of the holders of the First MPR Account, refused to disclose the names or numbers of the accounts to which the First Fraudulent Transfer had been disbursed and refused to disclose the name of the "operator" of the First MPR Account. (*Id.* ¶ 65) After receiving pressure from the U.S. Department of Justice, Citibank did finally release "some relevant documentation." (*Id.* ¶ 66) Allegedly, however, "even this production was plainly inadequate." (*Id.*) According to the complaint, "it was only in May 1998 that NNPC received certain documents revealing Citibank's role in ... permitting Vadra to perpetrate his fraudulent activities." (*Id.*)

On July 10, 1998, NNPC commenced this action. NNPC's amended complaint states five claims: (1) that Citibank was "negligent in permitting and/or failing to prevent the fraud perpetrated by Vadra" (*id.* ¶ 70); (2) that citibank "acted in a commercially unreasonable manner," in violation of the New York Uniform Commercial Code ("NYUCC") (*id.* ¶ 72); (3) that Citibank "negligently and/or recklessly failed to disclose and therefore concealed Vadra's fraudulent and criminal activities" (*id.* ¶ 74); (4) that Citibank "aided and abetted Vadra in the fraud" (*id.* ¶ 76); and (5) that Citibank "acted in commercial bad faith." (*Id.* ¶ 78) NNPC seeks "an amount not to exceed the sum of $15,144,307.75 plus interest from June 1994, compensatory and punitive damages in an amount to be determined, and such other and further relief as the Court deems proper." (*Id.* at p. 24)

II.

On a motion to dismiss for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6), the court should dismiss the complaint if it appears " 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." ' *Northrop v. Hoffman of Simsbury, Inc.*, 134 F.3d 41, 44 (2d Cir.1997) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). It is not the court's function to weigh the evidence that might be presented at trial; instead, the court must merely determine whether the complaint itself is legally sufficient. *See Goldman v. Belden*, 754 F.2d 1059, 1067 (2d Cir.1985). In doing so, the court must accept the material facts alleged in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. *See Gant v. Wallingford Bd. of Educ.*, 69 F.3d 669, 673 (2d Cir.1995). The issue before the court on a Rule 12(b)(6) motion "is not whether a plaintiff is likely to prevail ultimately, 'but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleading that a recovery is very remote and unlikely but that is not the test." ' *Id.* (quoting *Weisman v. LeLandais*, 532 F.2d 308, 311 (2d Cir.1976) (per curiam)).

III.

***4** Citibank argues that NNPC's first, second, third and fifth claims are time barred. Because the relevant issues vary to some extent depending on the particular claim, I will consider each claim more or less individually.

Under New York law, which applies in this diversity case, NNPC's first and third claims-for negligence and/or recklessness-are governed by a three-year statute of limitations. *See* N.Y. C.P.L.R. ("CPLR") § 214(4) (McKinney 1990). Because the First Fraudulent Transfer occurred in June 1994, and NNPC did not commence this action until July 10, 1998, it would appear that these claims are barred.

Read liberally, NNPC's memorandum of law makes two arguments to the contrary, neither of which has merit. First, NNPC contends that although the First Fraudulent Transfer occurred in June 1994, its claims against Citibank did not accrue until May 1998, when it finally "received certain documents revealing Citibank's role." (Compl.¶ 67) However, under New York law, the statute of limitations for negligence and/or recklessness "begins to run when the injury first occurs." *Iacobelli Constr., Inc. v. County of Monroe*, 32 F.3d 19, 27 (2d Cir.1994); *see Triangle Underwriters, Inc. v. Honeywell, Inc.*, 604 F.2d 737, 744 (2d Cir.1979) ("A cause of action accrues when acts or omissions constituting negligence produce injury."); *Snyder v. Town Insulation, Inc.*, 81 N.Y.2d 429, 432-33, 599 N.Y.S.2d 515, 516-17 (1993) ("[A]ccrual occurs when the claim becomes enforceable, i.e., when all elements of the tort can be truthfully alleged in a complaint."). Indeed, " 'the statutory period of limitations begins to run from the time when liability for wrong has arisen *even though the injured party may be ignorant of the existence of the wrong or injury.*" ' *Evans v. Visual Tech. Inc.*, 953 F.Supp. 453, 456 (N.D.N.Y.1997) (emphasis added) (quoting *Schmidt v. Merchants Despatch Transp. Co.*, 270 N.Y. 287, 300 (1936)); *see Kronos, Inc. v. AVX Corp.*, 81 N.Y.2d 90, 94, 595 N.Y.S.2d 931, 934 (1993) (stating that the date of injury, "rather than the wrongful act of defendant or discovery of the injury by plaintiff, is the relevant date for marking accrual"). Thus, even accepting as true NNPC's assertion that it remained ignorant of Citibank's alleged complicity until 1998-an assertion that is hard to believe in light of the fact that NNPC wrote to Citibank as early as June 1, 1995 demanding repayment of the money (Compl.¶ 63)-its argument fails.

Second, NNPC contends that the statute of limitations should be equitably tolled because "Citibank itself stymied NNPC's investigation of its role in the fraud for almost four years." (Pl. Mem. in Opp'n at 18) Under New York law, a defendant "may be estopped to plead the Statute of Limitations where [the] plaintiff was induced by fraud, misrepresentations or deception to refrain from filing a timely action." *Simcuski v. Saeli*, 44 N.Y.2d 442, 448-49, 406 N.Y.S.2d 259, 262 (1978); *see also Farkas v. Farkas*, 168 F.3d 638, 642 (2d Cir.1999).[FN4] However, unless the defendant and the plaintiff were in a fiduciary relationship-which Citibank and NNPC were not-the doctrine of equitable estoppel does not apply without "actual misrepresentation" by the defendant. *Gleason v. Spota*, 194 A.D.2d 764, 765, 599 N.Y.S.2d 297, 299 (2d Dep't 1993) (citing cases); *see General Stencils, Inc. v. Chiappa*, 18 N.Y.2d 125, 128, 272 N.Y.S.2d 337, 340 (1966) (noting that courts may bar assertion of a statute of limitations defense when the defendant's "affirmative wrongdoing" produced the plaintiff's delay). In the present case, NNPC alleges no such misrepresentation.

> FN4. Strictly speaking, NNPC invokes the federal doctrine of equitable tolling. However, equitable tolling applies only to federal claims. *See, e.g., Department of Econ. Dev. v. Arthur Andersen & Co.*, 747 F.Supp. 922, 943 (S.D.N.Y.1990). Equitable estoppel is the comparable doctrine under New York law.

***5** Further, equitable estoppel does not apply when a plaintiff "possesse [d] 'timely knowledge' sufficient to place him or her under a duty to make inquiry and ascertain all the relevant facts prior to expiration of the applicable Statute of Limitations." *Gleason*, 194 A.D.2d at 765, 599 N.Y.S.2d at 299 (internal quotation marks and citation omitted). Here, whatever knowledge NNPC had on June 1, 1995-when it wrote to Citibank demanding repayment of the lost money (Compl.¶ 63)-was more than sufficient to place it under such a duty. Accordingly, Citibank is not estopped to raise its statute of limitations defense. NNPC's first and third claims therefore are barred.

IV.

The principal dispute with respect to NNPC's second claim-for violation of the NYUCC-pertains to the relevant limitations period. Article 4A of the NYUCC, which governs wire transfers, *see* NYUCC § 4-A-102, off. cmt. (McKinney 1991), does not provide an express statute of limitations. Citibank argues, therefore, that the claim is governed by CPLR § 214(2), which establishes a three-year limitations period for an action "to recover upon a liability ... created or imposed by statute." NNPC counters that its claim has a common law antecedent and, thus, is not one "created or imposed by statute." *See, e.g., Aetna Life & Cas. Co. v. Nelson*, 67 N.Y.2d 169, 174, 501 N.Y.S.2d 313, 315 (1986) ("[CPLR § 214(2)] only governs liabilities which would not exist but for a statute. It does not apply to liabilities existing at common law which have been recognized or implemented by statute. Thus, if the [statute imposing liability] merely codifies or implements an existing liability, the three-year statute would be inapplicable." (citations omitted)). Instead, NNPC contends, the claim is governed by CPLR § 213(1), which provides a six-year statute of limitations for any action "for which no limitation is specifically prescribed by law." Following the Second Circuit's recent decision in *Banca Commerciale Italiana v. Northern Trust International Banking Corp.*, 160 F.3d 90 (2d Cir.1998), I agree with Citibank.

In *Banca Commerciale*, the plaintiff sued for return of funds involved in a wire transfer under NYUCC § 4-A-211(6), which provides in relevant part that if a receiving bank, "after accepting a payment order, agrees to cancellation or amendment of the order by the sender ..., the sender ... is liable to the bank for any loss and expenses ... incurred by the bank as a result." *See* *Banca Commerciale*, 160 F.3d at 93. As here, the defendant argued that the claim was "created or imposed by statute," and therefore governed by the three-year statute of limitations in CPLR § 214(2); the plaintiff contended that its claim had a common law antecedent and, thus, was governed by the six-year limitations period in CPLR § 213(1). *See id.* at 93-94.

The Second Circuit agreed with the defendant, concluding that imposition of liability under § 4-A-211(6) "does not require any showing of the elements required to establish common law fraud or unjust enrichment." *Id.* at 94. More significant for present purposes, the Court stated further:

> ***6** [I]t is widely recognized that Article 4-A was enacted to correct the perceived inadequacy of " 'attempt[ing] to define rights and obligations in funds transfers by general principles [of common law] or by analogy to rights and obligations in negotiable instruments law or the law of check collection." ' *Bangue Worms [v. BankAmerica Int'l*, 77 N.Y.2d 362, 369, 568 N.Y.S.2d 541, 545 (1991) (quoting N.Y.U.C.C. § 4-A-102, cmt.)].... The Official Comment to Article 4-A states that the drafters made "a deliberate decision ... to write on a clean slate and to treat a funds transfer as a unique method of payment to be governed by unique rules that address the particular issues raised by this method of payment." N.Y.U.C.C. § 4-A-102, cmt. *This lends powerful support to the application of CPLR § 214(2) to claims brought under Article 4-A.*
>
> Finally, any lingering doubts we might have about imposing a three-year statute of limitations are removed by the New York Court of Appeals' observation in *Bangue Worms* that "[e]stablishing *finality* in electronic fund wire transactions was considered a singularly important policy goal" to be served by Article 4-A. 77 N .Y.2d at 372, 568 N.Y.S.2d [at 547] (emphasis added). This goal is better served by requiring claimants to assert their claims concerning electronic funds transfers within a limitations period of three years rather than six years.

Id. at 95 (emphasis added).

Although NNPC fails to identify the NYUCC provision on which its second claim is based, that provision plainly is not § 4-A-211(6).[FN5] Nevertheless, NNPC has not identified any particular common law antecedent to its claim. Further, the Second Circuit's reasoning in *Banca Commerciale* was not limited to § 4-A-211(6). To the contrary, the Court declared broadly that CPLR § 214(2) should be applied to all "claims brought under Article 4A." Accordingly, the three-year statute of limitations from CPLR § 214(2) applies, and NNPC's second claim is barred for the same reasons that its first and third claims were barred.

> FN5. NNPC's second claim states in full: "The defendants acted in a commercially unreasonable manner, in violation of the N.Y.U.C.C. and their duty to provide commercially reasonable security, in permitting and/or failing to prevent the fraud perpetrated by Vadra on NNPC." (Compl.¶ 72) NYUCC § 4-A-202, pertaining to "authorized and verified payment orders," utilizes the phrase "commercially reasonable method of providing security," although it is otherwise not apparent that NNPC's third claim is based on that provision.

V.

The parties disagree also about the statute of limitations applicable to NNPC's fifth claim, for commercial bad faith. Citibank argues that, in its "essence," the claim is for negligence, so the three-year limitations period from CPLR § 214 applies. NNPC contends that the claim is "based upon fraud," CPLR § 213(2), which would make the limitations period six years. Although New York courts have not addressed which limitations period applies to claims of commercial bad faith, either way NNPC's claim fails.

Under New York law, a claim for commercial bad faith "requires allegations of a scheme or acts of wrongdoing, together with allegations of the bank's actual knowledge of the scheme or wrongdoing that amounts to bad faith or allegations of complicity by bank principals in alleged confederation with the wrongdoers." *Peck* v. *Chase Manhattan Bank, N.A.,* 190 A.D.2d 547, 548-49, 593 N.Y.S.2d 509, 510-11 (1st Dep't 1993) (citing *Prudential-Bache Sec., Inc.* v. *Citibank, N.A.,* 73 N.Y.2d 263, 275-77, 539 N.Y.S .2d 699, 705-07 (1989)); *accord Williams* v. *Bank Leumi Trust Co.,* No. 96 Civ. 6695(LMM), 1998 WL 397887, at *9 (S.D.N .Y. July 15, 1998). Therefore, a bank is liable for commercial bad faith only where it "acts dishonestly-where it has actual knowledge of facts and circumstances that amount to bad faith, thus itself becoming a participant in a fraudulent scheme." *Prudential-Bache,* 73 N.Y.2d at 275, 539 N.Y.S.2d at 706. Allegations charging a bank with a "lapse of wary vigilance," with "disregard of suspicious circumstances which might have well induced a prudent banker to investigate," even with "gross negligence," are insufficient to state a claim. *Getty Petroleum Corp.* v. *American Express Travel Related Servs. Co.,* 90 N.Y.2d 322, 331, 660 N.Y.S.2d 689, 694-95 (1997); *accord Prudential-Bache,* 73 N.Y.2d at 276, 539 N.Y.S.2d at 706-07; *Retail Shoe Health Comm'n* v. *Manufacturers Hanover Trust Co.,* 160 A.D.2d 47, 51, 558 N.Y.S.2d 949, 952 (1st Dep't 1990); *Calisch Assocs., Inc.* v. *Manufacturers Hanover Trust Co.,* 151 A.D.2d 446, 448, 542 N.Y.S.2d 644, 646 (1st Dep't 1989).

***7** A commercial bad faith claim is subject to the requirement of Fed.R.Civ.P. 9(b) that the circumstances of an alleged fraud be alleged with particularity. *See Williams,* 1998 WL 397887, at *9. However, Rule 9(b) allows knowledge to be averred generally. Nevertheless, the Second Circuit has cautioned that this relaxation of the rule's specificity requirement "must not be mistaken for license to base claims of fraud on speculation and conclusory allegations." *Shields* v. *Citytrust Bancorp, Inc.,* 25 F.3d 1124, 1128 (2d Cir.1994) (internal quotation marks and citations omitted). Thus, a plaintiff is required "to allege facts that give rise to a strong inference of fraudulent intent." *Id.; accord Powers* v. *British Vita, P.L.C.,* 57 F.3d 176, 184 (2d Cir.1995) (stating that a plaintiff must "provide some minimal factual basis for conclusory allegations of scienter that give rise to a strong inference of fraudulent intent" (internal quotation marks and citation omitted)). This may be accomplished in either of two ways. First, the plaintiff may allege a motive for committing fraud and a clear opportunity for doing so. *See Powers,* 57 F .3d at 184; *Shields,* 25 F.3d at 1128. Second, "[w]here motive is not apparent," the plaintiff may "identify[ ] circumstances indicating conscious behavior by the defendant, though the strength of the circumstantial allegations must be correspondingly greater." *Powers,* 57 F.3d at 184 (quoting *Beck* v. *Manufacturers Hanover Trust Co.,* 820 F.2d 46, 50 (2d Cir.1987), *overruled in part on other grounds, United States* v. *Indelicato,* 865 F.2d 1370, 1383-84 (2d Cir.1989) (en banc) (citations omitted)).

In the present case, NNPC does not allege that Citibank had any motive to assist Vadra in perpetrating fraud. Instead, NNPC argues that the circumstances indicate "conscious behavior" by Citibank. Thus, for example, NNPC alleges that Citibank knowingly or recklessly disregarded several "badges of fraud," including irregularities in the opening of Vadra's accounts and in the documents he submitted to verify the wire transfers; that the assistant bank manager who approved Vadra's application for the First MPR Account in New York had lived on the same street in Miami as one of Vadra's companies, and returned to that address after opening the account; and that the rejection by Towerbank of the $2 million wire transfer "alerted, or ought to have alerted, Citibank to the probability of fraud." (*Id.* ¶ 46) However, none of these allegations, or any other allegation in NNPC's amended complaint, gives rise to an inference, let alone a "strong inference," that Citibank actually knew of, and participated in, Vadra's fraud. *See Retail Shoe Health Comm'n,* 160 A.D.2d at 51, 558 N.Y.S.2d at 951 (stating that a claim for commercial bad faith can survive a motion to dismiss "only if the plaintiff has alleged facts inculpating the principals of the bank as *actual participants* in unlawful activity" (emphasis added)). In fact, NNPC's amended complaint leads inexorably to the exact opposite conclusion: that Citibank knew nothing about Vadra's fraud. (*See, e.g.,* Compl. ¶ 58 ("Citibank NA *failed to conduct any further inquiry* into the [First MPR Account], or if it did conduct an inquiry, recklessly *failed to take notice* that $15.1 million had been received just two weeks earlier ...." (emphasis added)).

***8** To be sure, NNPC might be correct in contending that there were several red flags that should have alerted Citibank to Vadra's fraud or at least prompted it to investigate, and that Citibank acted negligently in allowing Vadra to make additional wire transfers even after the Second Fraudulent Transfer was uncovered. However, allegations that a bank "disregard[ed] ... suspicious circumstances which might have well induced a prudent banker to investigate" do not suffice to state a claim for commercial bad faith. *Getty Petroleum*, 90 N.Y.2d at 331, 660 N.Y.S.2d at 694-95. Citibank's actions may well have been "lamentable, ... even grossly negligent." *Id.* at 332, 660 N.Y.S.2d at 695. But the amended complaint falls short of alleging that Citibank "had actual knowledge of [the] wrongdoing or was somehow a participant in [the] fraudulent scheme." *Id.* Thus, NNPC's commercial bad faith claim fails.

VI.

NNPC's final claim-technically, its fourth-is for aiding and abetting Vadra's fraud. To state a claim for aiding and abetting under New York law, a plaintiff must allege: (1) the existence of an underlying fraud; (2) "knowledge" of this fraud on the part of the aider and abettor; and (3) "substantial assistance" by the aider and abettor in achievement of the fraud. *See Oei v. Citibank, N.A.*, 957 F.Supp. 492, 520 (S.D.N.Y.1997) (citing *Morin* v. *Trupin*, 711 F.Supp. 97, 112 (S.D.N.Y.1989)); *cf* . *Kolbeck* v. *Lit America, Inc.*, 939 F.Supp. 240, 245-47 (S .D.N.Y.1996) (discussing the elements, under New York law, of aiding and abetting a breach of fiduciary duty), *aff'd without opinion*, 152 F.3d 918 (2d Cir.1998). Thus, as with a claim for commercial bad faith, liability for aiding and abetting "require[s] actual knowledge of the primary wrong" by the defendant. *Williams*, 1998 WL 397887, at *8; *accord Kolbeck*, 939 F.Supp. at 246; *cf. Wight* v. *BankAmerica Corp.*, No. 98 CIV.2010(RPP), 1999 WL 199021, at *7 (S.D.N.Y. Apr. 8, 1999) (noting that the elements of commercial bad faith and aiding and abetting are "similar"). Accordingly, for the reasons stated in the previous section, NNPC's aiding and abetting claim fails.

Further, even if Citibank had known of Vadra's fraud, NNPC's aiding and abetting claim would still fail because Citibank did not provide "substantial assistance" in the achievement of the fraud, within the meaning of aiding and abetting jurisprudence. A defendant provides substantial assistance only if it "affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables [the fraud] to proceed." *Diduck* v. *Kaszycki & Sons Contractors, Inc.*, 974 F.2d 270, 284 (2d Cir.1992); *see Kolbeck*, 939 F.Supp. at 247. The mere fact that participants in a fraudulent scheme "use accounts at [a bank] to perpetrate it, without more, does not rise to the level of substantial assistance necessary to state a claim for aiding and abetting liability." *Williams* v. *Bank Leumi Trust Co.*, No. 96 CIV. 6695(LMM), 1997 WL 289865, at *5 (S.D.N.Y. May 30, 1997) (citing *DePinto* v. *Ashley Scott, Inc.*, 222 A.D.2d 288, 290, 635 N.Y.S.2d 215, 217 (1st Dep't 1995)).

***9** For the reasons stated above, Citibank's motion to dismiss is granted, and plaintiff's amended complaint is dismissed with respect to Citibank.

S.D.N.Y.,1999.
Nigerian Nat. Petroleum Corp. v. Citibank, N.A.
Not Reported in F.Supp.2d, 1999 WL 558141 (S.D.N.Y.)

END OF DOCUMENT

H

United States District Court,
S.D. New York.
Gary B. FILLER and Lawrence Perlman, Trustees of the Tra Rights Trust Plaintiffs,
v.
HANVIT BANK, Shinhan Bank, and Chohung Bank Defendants.
Janet BAKER and James Baker, Jkbaker LLC and Jmbaker LLC, Plaintiffs,
v.
HANVIT BANK, Shinhan Bank, and Chohung Bank Defendants.
No. 01 Civ. 9510(MGC), 02 Civ. 8251(MGC).

Sept. 12, 2003.

Investors brought actions alleging that banks engaged in scheme to defraud them. On banks' motions to dismiss, the District Court, Cedarbaum, J., held that: (1) investors failed to identity person who allegedly made misrepresentation on part of banks, and (2) investors failed to plead their fraud claims with requisite specificity.

Motions granted.

West Headnotes

[1] Banks and Banking 52 100

52 Banks and Banking
52III Functions and Dealings
52III(A) Banking Franchises and Powers, and Their Exercise in General
52k100 k. Torts. Most Cited Cases

Under New York law, banks' alleged false confirmation to auditors that banks' loans to company were without recourse did not constitute common law fraud on investors, absent identification of person who purportedly made statement.

[2] Conspiracy 91 18

91 Conspiracy
91I Civil Liability
91I(B) Actions
91k18 k. Pleading. Most Cited Cases

Federal Civil Procedure 170A 636

170A Federal Civil Procedure
170AVII Pleadings and Motions
170AVII(A) Pleadings in General
170Ak633 Certainty, Definiteness and Particularity
170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases

Investors failed to plead claims against parent bank and its subsidiary for aiding and abetting common law fraud and conspiracy with requisite specificity, where investors failed to indicate which party made which statements at what time, and did not explain connection between investors' agreements with subsidiary and issuance of false financial statements by parent. Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

Gregory P. Joseph Law Offices LLC, New York, NY, By: Gregory P. Joseph, Pamela Jarvis, Honey L. Kober, Sandra M. Lipsman, Susan M. Davies, Douglas J. Pepe, for the Filler Plaintiffs.

Boies, Schiller & Flexner, LLP, New York, NY, By: Steven Ian Froot, Karen C. Dyer, George R. Coe, Gregory S. Slemp, for the Baker Plaintiffs.

Squire, Sanders & Dempsey LLP, New York, NY, By: Daniel L. Brockett, Mark C. Dosker, for Defendant Chohung Bank.

Sidley, Austin, Brown & Wood LLP, New York, NY, By: Steven M. Bierman, Alan M. Unger, Elizabeth Storch, Allen C. Kim, for Defendant Hanvit Bank, of counsel.

Kelley Drye & Warren LLP, New York, NY, By: Thomas B. Kinzler, William A. Escobar, for Defendant Shinhan Bank.

OPINION

CEDARBAUM, J.

***1** Defendants move to dismiss the complaints in these two related actions under Fed.R.Civ.P. 12(b), Fed.R.Civ.P. 9(b) and on the ground of *forum non conveniens.* For the reasons that follow, the motions to dismiss are granted.

Plaintiffs Filler and Perlman are trustees of the TRA Trust, the sole successor in interest to Seagate Technology, Inc. ("Seagate"). Seagate owned approximately $170 million worth of shares in Dragon Systems, Inc. Plaintiffs Janet and James Baker, JKBaker LLC and JMBaker LLC ("the Bakers") collectively owned a majority of the shares of Dragon Systems, Inc. These actions arise out of the transfers by Seagate and the Bakers of their shares in Dragon Systems to Lernout & Hauspie Speech Products NV ("L & H Belgium"), in exchange for shares in L & H Belgium. Both transactions took place on June 7, 2000. Defendants are three Korean banks which plaintiffs allege engaged in a scheme to defraud investors in the shares of L & H Belgium by entering into sham agreements with L & H Belgium's Korean subsidiary, Lernout & Hauspie Korea ("L & H Korea"). L & H Belgium issues consolidated financial statements that incorporate financial data of its subsidiaries. The complaints allege that sham agreements between defendant banks and L & H Korea enabled L & H Belgium to issue consolidated financial statements containing falsely inflated revenue figures.

The Filler plaintiffs assert six claims: (1) securities fraud in violation of Section 10(b) of the Securities Exchange Act and SEC Rule 10b-5; (2) racketeering in violation of the Racketter Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c); (3) conspiracy to engage in racketeering in violation of RICO, 18 U.S.C. § 1962(d); (4) common law fraud; (5) aiding and abetting common law fraud; and (6) conspiracy to defraud.

The Baker plaintiffs assert only state law claims: (1) common law fraud; (2) aiding and abetting common law fraud; (3) conspiracy to defraud; and (4) negligent misrepresentation.

On February 27, 2003 I granted the defendants' motion to dismiss the first amended complaint in the Filler action because the Filler plaintiffs failed to plead their claims with the particularity required by Fed. R. Civ. P 9(b). The Filler plaintiffs have filed a second amended complaint.

Primary Fraud and RICO Claims

On a motion to dismiss, a federal court must accept as true all factual allegations of the complaint, and draw all reasonable inferences in favor of the plaintiffs. *King v. Simpson,* 189 F.3d 284, 287 (2d Cir.1999). A complaint may be dismissed under Fed.R.Civ.P. 12(b)(6) "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations" of the complaint. *Olkey v. Hyperion 1999 Term Trust, Inc.,* 98 F.3d 2, 5 (2d Cir.1996) (internal quotes omitted).

In open court on June 26, 2003, I dismissed the Filler plaintiffs' RICO and 10(b) claims. The 10(b) claims were dismissed because the Filler plaintiffs failed to identify a representation made to them by any defendant or a representation made to the them and attributed to any defendant. For the same reason, the Filler and Baker common law fraud claims are dismissed.

***2** Although defendants assert that Korean law applies, the Filler plaintiffs assert that California law applies and the Baker plaintiffs assert that Massachusetts law applies, no party has argued that the laws of any of these jurisdictions differs from the law of New York with respect to the claims at issue. Furthermore, all of the parties have focused on New York law in their briefs.

In order to state a fraud claim under New York law, a plaintiff must allege: "(1) the defendant made a material false representation; (2) the defendant intended to defraud the plaintiff thereby; (3) the plaintiff reasonably relied upon the representation; and (4) the plaintiff suffered damage as a result of such reliance." *Boule v. Hutton,* 138 F.Supp.2d 491 (S.D.N.Y.2001).

[1] Like the Filler 10(b) claim, the Filler and Baker common law fraud claims fail because the complaints do not allege that any defendant bank made a representation to any plaintiff or that a representation was made to any plaintiff and attributed to any defendant. Plaintiffs rely upon "false confirmations" made by defendants in Korea to L & H Belgium's auditors that certain loans to L & H Korea were without recourse, when in fact they were with recourse. However, it is not alleged that the auditors identified any defendant as the source of such information. The connection between plaintiffs' acquisition of stock in L & H Bel-

gium and the representations by defendants to auditors in Korea is too attenuated to support a claim of common law fraud. Therefore the motions to dismiss the common law fraud claims are granted.

Aiding and Abetting Common Law Fraud and Conspiracy to Defraud

The essential elements of aiding and abetting fraud under New York law are: (1) the existence of a fraud; (2) a defendant's knowledge of the fraud; and (3) that the defendant provided substantial assistance to advance the fraud's commission. *Wight v. Bankamerica Corp.*, 219 F.3d 79, 91 (2d Cir.2000). "In alleging the requisite 'substantial assistance' by the aider and abettor, the complaint must allege that the acts of the aider and abettor proximately caused the harm to the [plaintiff] on which the primary liability is predicated." *Bloor v. Carro, Spanbock, Londin, Rodman & Fass*, 754 F.2d 57, 62 (2d Cir.1985). "Allegations of a 'but for' causal relationship are insufficient." *Id.* at 63. Aider and abettor liability will not attach where the injury was not a direct or reasonably foreseeable result of the defendant's conduct. *Id.*

Conspiracy to defraud requires: "(1) an agreement among two or more parties, (2) a common objective, (3) acts in furtherance of the objective and (4) knowledge." *Diamond State Ins. Co. v. Worldwide Weather Trading LLC*, 2002 WL 31819217 (S.D.N.Y.2002).

Rule 9(b) requires a party averring fraud or mistake to state with particularity "the circumstances constituting [the] fraud or mistake." Fed.R.Civ.P. 9(b). The "particularity requirement" contained in Rule 9(b) is substantial. *Rich v. Maidstone Financial, Inc.*, 2002 WL 31867724, (S.D.N.Y.2002). "[A] complaint must adequately specify the statements it claims were false or misleading, give particulars as to the respect in which plaintiff contends the statements were fraudulent, state when and where the statements were made, and identify those responsible for the statements." *Cosmas v. Hassett*, 886 F.2d 8, 11 (2d Cir.1989)); see also *DiVittorio v. Equidyne Extractive Indus., Inc.*, 822 F.2d 1242, 1247 (2d Cir.1987) Additionally, when fraud is alleged against multiple defendants, a plaintiff must set forth separately the acts complained of as to each defendant. *Rich*, 2002 WL 31867724 at *10 (internal quotations omitted). To meet the pleading requirements of Rule 9(b), a complaint may not simply "clump[ ] defendants together in vague allegations." *Id.* (quoting *In re Blech Securities Litigation*, 928 F.Supp. 1279, 1294 (S.D.N.Y.1996). Rule 9(b) also requires a plaintiff to adequately allege that the defendant's statements were the proximate cause of the plaintiff's injuries. *Spencer Trask Software and Information Services LLC v. RPost Intern. Ltd.*, 2003 WL 169801, *21 (S.D.N.Y.2003).

***3** Plaintiffs' claims of aiding and abetting common law fraud and conspiracy to defraud are subject to the same pleading requirements under Rule 9(b) as their claims of common law fraud. *See* *Spira v. Curtin*, 2001 WL 611386, *4 (S.D.N.Y.2001); *Renner v. Chase Manhattan Bank*, 2000 WL 781081, *5 (S.D.N.Y.2000).

[2] Both complaints fail to plead aiding and abetting common law fraud and conspiracy with the specificity required by Rule 9(b). First, the complaints do not make allegations with respect to each defendant, but instead refer only generally to the defendants as "the Banks" or "the Korean Banks." For example, the strongest allegations of aiding and abetting fraud in the Filler Complaint are as follows:

"The Korean Banks falsely confirmed the existence of phony receivables that L & H supposedly factored to the Korean Banks *without* recourse. Contrary to the Banks' lies to [the auditors], those funds were held by the Banks *with recourse*, in restricted time deposits, and in fact reverted to the Banks when L & H collapsed." Second Amended Filler Complaint, ¶ 5.

"The data below ... reveals ... certain transactions commencing in September 1999 that were the subject of false confirmations by the Korean Banks to [the auditors]. Those misrepresentations to [the auditors] were communicated by [the auditors] orally to Seagate prior to execution of the Merger Agreement, and in L & H public statements, reviewed by [the auditors], both prior to execution of the Merger Agreement, and during the period between execution of the Merger Agreement and consummation of the Merger...." Second Amended Filler Complaint, ¶ 39.

"Absent the Korean Banks' deception ... [the auditors] never would have approved the false financial figures contained and disseminated in L & H's press releases of February 9, 2000 and May 9, 2000, and accompanying SEC filings." Second Amended Filler Complaint, ¶ 5.

"The Korean Banks' knowing participation in the fraud in Korea was essential to the success of the fraud that harmed the plaintiffs ." *Id.*

These allegations specify the "what," but not the "who, where and when" required for Rule 9(b). Additionally, it is still impossible to decipher the connection between defendants' agreements with L & H Korea, and the issuance of false financial statements by L & H Belgium. Rhetoric is not a substitute for specificity.

The complaints are full of conclusory allegations that the Korean entity acted through the Belgian parent. The complaints assume that these two corporations constitute a single entity. However, the complaints lack any explanation of why these distinct corporations should be regarded as one. It is impossible to tell from these complaints whether the Korean Banks intended to aid the Belgian company or to mislead it; and whether the Belgian company intended to mislead investors or was itself misled.

If the Korean subsidiary intentionally misrepresented its revenue to the Belgian company, these complaints might state actionable claims by L & H Belgium for aiding and abetting *that* fraud. But that is not the fraud sued on here and is not one of which the plaintiffs can complain.

***4** The Baker complaint makes allegations substantially similar to the Filler complaint. Therefore, the motions to dismiss are granted as to aiding and abetting common law fraud and conspiracy. The Baker plaintiffs are given leave to amend to plead these claims with greater specificity, as are the Filler plaintiffs, for the second time.

Negligent Misrepresentation

The Baker plaintiffs also assert a claim of negligent misrepresentation. "Under *New York law*, the elements for a negligent misrepresentation claim are that (1) the defendant had a duty, as a result of a special relationship, to give correct information; (2) the defendant made a false representation that he or she should have known was incorrect; (3) the information supplied in the representation was known by the defendant to be desired by the plaintiff for a serious purpose; (4) the plaintiff intended to rely and act upon it; and (5) the plaintiff reasonably relied on it to his or her detriment." *Hydro Investors, Inc. v. Trafalgar Power Inc.*, 227 F.3d 8, 20. The defendant banks had no special relationship of trust with the plaintiffs. Moreover, as discussed in connection with plaintiffs' 10(b) and common law fraud claims, defendants made no representation to the Baker plaintiffs that could serve as the basis of a negligent misrepresentation claim. Therefore, the negligent misrepresentation claim is dismissed.

Conclusion

The Filler and Baker common law fraud claims are dismissed, as is the Baker negligent misrepresentation claim. The Filler and Baker aiding and abetting common law fraud and conspiracy to defraud claims are also dismissed, with leave to replead only those claims with the requisite specificity. In view of this disposition, it is not necessary to reach the issue of *forum non conveniens. See e.g. Marra v. Papandreou*, 59 F.Supp.2d 65, 67 (D.D.C.1999) (declining to reach issue of *forum non conveniens* because court granted summary judgment); *Zeidenberg v. Polly Peck Int'l PLC*, 1992 WL 178626, *4 (S.D.N.Y.1992) (declining to reach issue of *forum non conveniens* because court granted motion to dismiss).

SO ORDERED.

S.D.N.Y.,2003.
Filler v. Hanvit Bank
Not Reported in F.Supp.2d, 2003 WL 22110773 (S.D.N.Y.), RICO Bus.Disp.Guide 10,539

END OF DOCUMENT

Only the Westlaw citation is currently available.

United States District Court, S.D. California.
In re AMERICAN PRINCIPALS HOLDINGS, INC. SECURITIES LITIGATION.
M.D.L. No. 653.

July 9, 1987.

Michael J. Aguirre, James C. Krause, Reniche & Krause, San Diego, Cal. for class action plaintiffs'.

Donald L. Salem, Sallie A. Estep, Luce Forward Hamilton & Scripps, Michael L. Kirby, Thomas Bettles, Post Kirby Noonan & Sweat, San Diego, Cal., for defendants' liaison.

OPINION AND ORDER

GORDON THOMPSON, JR., Chief Judge.

I. *INTRODUCTION*

***1** The tripartite complaint in this case is brought pursuant to the Securities Act of 1933, 15 U.S.C. §§ 77l(2), 77o, and 77q(a); the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) and 78t; the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 to 1968; and state law.

Division One of the complaint is brought on behalf of the class of investors who purchased real estate limited partnership interests and related securities issued by American Principals Corporation (APC), American Partners, Inc. (API), American Motel Corporation (AMC), and Motel Advisory Corporation (MAC) during the period from January 1, 1979 through April 9, 1984. Division One is divided into eight groups and fifty-three subgroups. Each subgroup is comprised of those investors who purchased securities in a particular real estate offering.

Division Two of the complaint is brought on behalf of the class of investors who purchased equipment leasing limited partnership interests and related securities issued by American Principals Leasing Corporation (APLC) and APC during the period from January 1, 1979 through April 9, 1984. Division Two is divided into four groups and twenty-seven subgroups. Each subgroup is comprised of those investors who purchased securities in a particular equipment leasing offering.

Division Three of the complaint is brought on behalf of the class of investors who purchased research and development limited partnership interests and related securities issued by American Windpower, Inc. (AWI), APC, and API during the period from January 1, 1979 through April 9, 1984. Division Three is divided into twelve subgroups. Each subgroup is comprised of those investors who purchased securities in a particular research and development offering.

On December 4, 1986, the plaintiffs' motion for certification of the case as a class action was granted. The class action is being maintained on behalf of all those who purchased securities in one or more of the ninety-two limited partnerships and related offerings identified as subgroups in the complaint. Seventy-five investors have been designated class representatives. Each representative invested in one or more of the offerings. For all but nine subgroups, the complaint identifies a representative who invested in the particular offering.

The complaint divides the defendants into five groups. The American Principals Individual Insider Defendants Group includes W. Carl Zimmerman, Margaret P. Zimmerman, Hugh F. Sackett, Gregory Fitzpatrick, Orren Gilbert, Vernon Christenson, Thomas Scheuneman, Alfred E. Monahan, James Biddle, Stanley Brooks, Phillips Montross, and Richard Campbell.

The American Principals Corporate Insider Defendants Group includes APC, APLC, API, AWI, AMC, MAC, American Financial Marketing (AFM), American Principals Financial Corporation (APFC), American Principals Holdings, Inc. (APHI), Private Ledger Financial Services (PLFS), First Nationwide Bank (FNB), and Crown Life Insurance Company (CROWN).

***2** The Accountant Defendants Group includes Coopers & Lybrand, William A. Fates, and Edwin G. Hubert.

The Attorney Defendants Group includes William Bannasch, Leslie Crouch, Crouch & Bannasch, William Dale, Dale & Lloyd, Edwin G. Hubert, Donald Augustine, Norman Nouskajian, and Rogers & Wells.

The Bank Defendants Group includes La Jolla Bank & Trust (LJB) and Imperial Bank (IMPERIAL).

The remaining defendants are Finalco, Inc. (FINALCO) and Softpro, Inc. (SOFTPRO).

II. *HISTORY AND ORGANIZATION OF THE AMERICAN PRINCIPALS CORPORATE ENTITIES*

Between 1977 and July 12, 1982, Mr. Zimmerman and Ms. Zimmerman organized and incorporated AFM, APC, APLC, and API. In 1980, the Zimmermans, Mr. Crouch, and Mr. Bannasch organized and incorporated AWI. In 1982, the Zimmermans, Mr. Crouch, and Mr. Bannasch organized and incorporated MAC.[FN1]

On July 12, 1982, APFC and APHI were organized and incorporated. AFM, APC, APLC, and API became wholly-owned subsidiaries of APFC. APFC became a wholly-owned subsidiary of APHI. AWI and MAC became subsidiaries of APFC. Mr. Crouch and Mr. Bannasch retained their combined twenty percent interest in AWI and their combined thirty-three and one-third percent interest in MAC.

Between October 29, 1982 and July 26, 1984, APHI also owned PLFS, a licensed securities broker dealer.

At all times relevant since their formation, AFM, APC, APLC, API, AWI, APFC, and APHI have shared common office space, a common accounting staff, a common bank for corporate and investors funds, common signatories for bank accounts, common and commingled files for documents and records, common accountants, common legal counsel, a common payroll account, and common employees. The American Principals Corporate entities have also shared a common chairman of the board, a common corporate secretary, and a common chief financial officer and controller.

Mr. Zimmerman, Ms. Zimmerman, Mr. Sackett, Mr. Crouch, Mr. Bannasch, FNB, and CROWN have each held an ownership interest in one or more of the American Principals Corporate entities during the relevant period.

On June 26, 1984, at the request of the Securities Exchange Commission, the Honorable Leland C. Nielsen appointed Ashley S. Orr to be the Receiver for each of the American Principals Corporate entities with the exception of PLFS. Order Appointing Permanent Receiver, *SEC v. American Principals Holdings, Inc.*, Civil No. 84-1383(N)(M)(S.D.Cal. June 26, 1984).

III. *OVERVIEW OF THE ALLEGED SECURITIES FRAUD*

The allegations in the complaint portray a comprehensive scheme to defraud investors in connection with the purchase of limited partnership interests and related securities. The factual details contained in those allegations evidence an extremely complex operation. In order for it to succeed, the cooperation of numerous parties was required. What follows is a skeletal summary.

AFM was formed in 1977 to act as a wholesaler of securities. AFM would market the securities, usually interests in limited partnerships, to registered broker-dealer firms. Representatives from these firms would then offer the interests to the investing public.

***3** With the formation of APC, APLC, API, AWI, and MAC, the American Principals operation was expanded to include the creation of new business ventures. APC, APLC, API, AWI, and MAC would issue their own securities pursuant to “private offering circulars” which purported to describe the business venture of the underlying partnership. APC, APLC, API, AWI, or MAC would then serve as general partner of the partnership formed.

The plaintiffs allege that the individual insider defendants were actually engaged in the substantial commingling and diversion of investor funds. To prevent the collapse of the earlier business ventures, the insiders applied funds from new investors to the obligations of old partnerships. By continuing to offer new investment products, the individual insiders managed to conceal the true nature of their operation, a classic pyramid scheme.

Each and every defendant is alleged to have joined the conspiracy to defraud investors and each and every defendant is alleged to have substantially assisted in furthering the wrong.

Each of the individual insider defendants is a former officer and/or director of one or more of the corporate insider defendants. Mr. Scheuneman performed legal services for APHI and APFC. He also served as general counsel to APHI during the relevant period. He is alleged to have conducted a legal audit of the American Principals Corporate entities in October of 1982. He is also alleged to have participated in the preparation of offering materials.

The roles assumed by APC, APLC, API, AWI, MAC, APFC, and APHI are described above. FNB provided APHI with a four million dollar loan to purchase PLFS.

Coopers & Lybrand prepared combined statements of the financial condition of the American Principals Corporate entities for the years 1982 and 1983. The plaintiffs allege that the reports do not accurately reflect the true financial condition of the companies. Coopers & Lybrand also prepared tax returns for certain limited partnerships.

Mr. Crouch, Mr. Bannasch, and Crouch & Bannasch served as tax attorneys for the American Principals Corporate entities. They also reviewed certain offering circulars and were held out to be general counsel for certain general partners. Mr. Augustine, Mr. Nouskajian, and Rogers & Wells provided legal services to certain American Principals Corporate entities and assisted in the formation of certain limited partnerships.

LJB and IMPERIAL entered into numerous escrow agreements in connection with the formation of the various limited partnerships. The plaintiffs allege that LJB and IMPERIAL improperly disbursed funds from the escrow accounts without ensuring that the escrow conditions were satisfied. The plaintiffs also allege that LJB and IMPERIAL allowed the accounts of the American Principals Corporate entities to be improperly commingled with the accounts of the limited partnerships.

IV. *DISCUSSION*

Currently pending are the motions of Mr. Christenson, Mr. Scheuneman, FNB, Coopers & Lybrand, Mr. Crouch, Mr. Bannasch, Crouch & Bannasch, Mr. Augustine, Mr. Nouskajian, Rogers & Wells, LJB, and IMPERIAL to dismiss each of the claims for relief in each division of the complaint. The motions are brought pursuant to Rule 12(b)6 of the Federal Rules of Civil Procedure.[FN2]

***4** A. *Rule 12(b)6 Generally*

When a party brings a motion to dismiss for failure to state a claim upon which relief can be granted, the court is obliged to liberally construe the complaint in the plaintiff's favor. In general, this entails taking as true all material facts alleged in the complaint and drawing all reasonable inferences in the plaintiff's favor. *Mosher v. Kane*, 784 F.2d 1385, 1387 (9th Cir.1986). A complaint should not be dismissed under Rule 12(b)6 " 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " *Id.* (citations omitted).

1. *Section 12(2) Claims*

The second claim for relief in each division of the complaint alleges violations of 15 U.S.C. §§ 771(2) and 77o (Sections 12(2) and 15 of the Securities Act of 1933). The moving defendants seek dismissal of these claims contending that the complaint fails to adequately allege "seller" status within the meaning of Section 12(2) and "controlling person" status within the meaning of Section 15.

Pursuant to Section 12(2), any person who "offers or sells a security ... by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact ... shall be liable to the person purchasing the security from him." 15 U.S.C. § 771(2). Liability extends only to those persons who were "substantial participants" in the particular sales transaction. *Anderson v. Aurotek*, 774 F.2d 927, 930 (9th Cir.1985); *Admiralty Fund v. Jones*, 677 F.2d 1289, 1294 (9th Cir.1982).

While strict privity is not a requirement, a person cannot be considered a substantial participant unless he or she actively engaged in the solicitation of the sale, actively participated in the negotiations leading to the sale, or actually arranged the sale. *In re Activision Securities Litigation*, 621 F.Supp. 415, 421 (N.D.Cal.1985); *In re Fortune Systems Securities Litigation*, 604 F.Supp. 150, 161 (N.D.Cal.1984). The substantial participant test is not a theory of secondary liability, it is a means by which it is determined whether a particular person is a seller within the meaning of Section 12(2). *See Hokama v. E.F. Hutton & Co., Inc.*, 566 F.Supp. 636, 641 (C.D.Cal.1983). At a minimum, seller status must "be predicated upon actual participation in the selling process." *Activision*, 621 F.Supp. at 421 (citing *Hudson v. Capital Management International, Inc.*, [1982-1983 Transfer Binder] Fed.Sec.L.Rep. (CCH) ¶ 99,22 (N.D.Cal. Aug. 24, 1982) at 95,904).

Pursuant to Section 15, every person who "controls any person liable under ... [Section 12(2)], shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable." 15 U.S.C. § 77o. Liability extends only to those persons who had actual power or influence over the controlled person's decision making process at the time of the sale and exercised that power through culpable participation in the illegal activity. *Buhler v. Audio Leasing Corporation*, 807 F.2d 833, 835 (9th Cir.1987); *Kersh v. General Council of Assemblies of God*, 804 F.2d 546, 548-49 (9th Cir.1986). No person may be held liable for transactions consummated prior to the time that he or she took control. *Mendelsohn v. Capital Underwriters, Inc.*, 490 F.Supp. 1069, 1088 (N.D.Cal.1979).[FN3]

***5** With respect to FNB, Mr. Augustine, Mr. Nouskajian, Rogers & Wells, Coopers & Lybrand, LJB, and IMPERIAL, the complaint fails to adequately allege status as a seller under Section 12(2) or status as a controlling person under Section 15. The second claim for relief in each division of the complaint is dismissed as against FNB, Mr. Augustine, Mr. Nouskajian, Rogers & Wells, Coopers & Lybrand, LJB, and IMPERIAL without leave to amend.

With respect to Mr. Crouch, Mr. Bannasch, and Crouch & Bannasch, the complaint adequately alleges status as controlling persons under Section 15 for each subgroup consisting of investors in a limited partnership for which AWI or MAC served as general partner or for which Crouch & Bannasch is named in the offering circular. The second claim for relief in each division of the complaint is dismissed as against Mr. Crouch, Mr. Bannasch, and Crouch & Bannasch with respect to each subgroup consisting of investors in a limited partnership which does not satisfy either condition without leave to amend.

With respect to Mr. Scheuneman, the complaint adequately alleges status as a controlling person under Section 15 for each subgroup consisting of investors who purchased their securities pursuant to an offering circular which identified Mr. Scheuneman as an officer or director. The second claim for relief in each division of the complaint is dismissed as against Mr. Scheuneman with respect to each subgroup consisting of investors who purchased their securities pursuant to an offering circular which did not identify Mr. Scheuneman as an officer or director without leave to amend.

With respect to Mr. Christenson, the complaint adequately alleges seller status under Section 12(2) and controlling person status under Section 15. His motion to dismiss the second claim for relief in each division of the complaint for failure to state a claim upon which relief can be granted is denied.

2. *Section 17(a) Claims*

The third claim for relief in each division of the complaint alleges violations of 15 U.S.C. § 77q(a) (Section 17(a) of the Securities Act of 1933). The moving defendants seek dismissal of these claims contending that Section 17(a) neither expressly nor impliedly creates a private cause of action. The resolution of the motion is a matter of statutory construction. The question presented is: did Congress intend to create the private cause of action alleged by the plaintiffs? *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 15-16; 100 S.Ct. 242, 245; 62 L.Ed.2d 146 (1979); *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568, 99 S.Ct. 2479, 2485; 61 L.Ed.2d 82 (1978).

Pursuant to Section 17(a), it is unlawful

for any person in the offer or sale of any securities ...

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact ..., or

***6** (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

15 U.S.C. § 77q(a).

The Securities Act of 1933 does not expressly provide a private civil remedy under Section 17(a). The legislative history is also silent on this question. Virtually every court that has applied the reasoning of *Transamerica* and *Redington* has determined that there is no implied private cause of action under Section 17(a). *E.g. Landry v. All American Assurance Co.,* 688 F.2d 381 (5th Cir.1982); *David K. Lindemuth Co. v. Shannon Financial Corporation,* 637 F.Supp. 991 (N.D.Cal.1986); *Riley v. Brazeau,* 612 F.Supp. 674 (D.Or.1985); *In re Fortune Systems Securities Litigation,* 604 F.Supp. 150 (N.D.Cal.1984). The analysis contained in each of these opinions is compelling.

The plaintiffs contend that this Court is bound by the decisions in two cases decided by the United States Court of Appeals for the Ninth Circuit: *Mosher v. Kane,* 784 F.2d 1385 (9th Cir.1986); *Stephenson v. Calpine Coniters II, Ltd.,* 652 F.2d 808 (9th Cir.1981). Each of these decisions held, without discussion of the factors mandated by the Supreme Court, that there is an implied private cause of action under Section 17(a). *Mosher*, 784 F.2d 1390-91, note 9; *Stephenson*, 652 F.2d at 815. For the reasons set forth in *In re Washington Public Power Supply Systems Securities Litigation,* 623 F.Supp. 1466, 1474-76 (W.D.Wa.1985), reversed, No. 86-3594, slip op. (9th Cir. Sept. 26, 1986), *reh'g en banc* granted, No. 86-3594, slip op. (9th Cir. January 27, 1987), the Court declines to follow *Mosher* and *Stephenson.* The third claim for relief in each division of the complaint is dismissed without leave to amend.

3. *Section 10(b) Claims*

The fourth claim for relief in each division of the complaint alleges violations of 15 U.S.C. §§ 78j(b) and 78t(a) (Sections 10(b) and 20(a) of the Securities Exchange Act of 1934) and 17 C.F.R. § 240.10b-5 (SEC Rule 10b-5). The moving defendants seek dismissal of these claims on a number of alternative grounds.

Pursuant to Section 10(b), it is unlawful "for any person ... [t]o use or employ, in connection with the purchase or sale of any security ... any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe ..." 15 U.S.C. § 78j(b).

Pursuant to SEC Rule 10b-5, it is unlawful for any person

(a) To employ any device, scheme or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact ...; or

(c) To engage in any act, practice or course of business which operates as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5 (1981). The defendants do not contest the existence of a private civil remedy under Rule 10b-5. *Blue Chip Stamps v. Manor Drug Stores,* 421 U.S. 723, 730; 95 S.Ct. 1917, 1923; 44 L.Ed.2d 539 (1974).

***7** (a) *Primary Liability*

To establish primary liability in a Rule 10b-5 action, the plaintiff must plead and prove four basic elements: (1) conduct proscribed by the rule; (2) in connection with; (3) the purchase or sale of a security; (4) resulting in harm.

(1) *Conduct proscribed by the rule-*

The first element subsumes three distinct factors. First, the actor must have the requisite mental state. Intentional, knowing, or reckless conduct will suffice.

Admiralty Fund v. Tabor, 677 F.2d 1297, 1299 n. 1 (9th Cir.1982). Second, the actor must commit a fraudulent act or course of acts. The scope of Rule 10b-5 would encompass the assertion of untrue statements, the omission of necessary facts,[FN4] or the operation of a comprehensive scheme to defraud. *Kafton v. Baptist Park Nursing Center, Inc.,* 617 F.Supp. 349, 350 (D.Ariz.1985); *Hudson v. Capital Management International, Inc.,* [1982-1983 Transfer Binder] Fed.Sec.L.Rep. (CCH) ¶ 99,222 (August 24, 1982) at 95,902. And third, any assertion of untrue statements or omissions must be of "material" facts. In general, a fact is material if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision. *Harris v. Union Electric Co.,* 787 F.2d 355, 366 (8th Cir.1986) (citation omitted).

(2) *In connection with-*

The second element is designed to ensure that there is a transactional nexus between the conduct proscribed by the rule and the purchase or sale of a security. *In re Financial Corporation of America Shareholder Litigation,* 796 F.2d 1126, 1129-30 (9th Cir.1986). The requisite "transaction causation" is established when the plaintiff shows that the defendant's fraudulent acts caused or induced the plaintiff to engage in the purchase or sale transaction. [FN5] *Harris,* 787 F.2d at 366; *Hatrock v. Edward D. Jones & Co.,* 750 F.2d 767, 773 (9th Cir.1984). Transaction causation is nothing more than "but for" causation and subsumes both objective and subjective reliance. *Harris,* 787 F.2d at 366. Objective reliance is established when the plaintiff shows materiality. *Blackie v. Barrack,* 524 F.2d 891, 905-07 (9th Cir.1975). Subjective reliance is established if the plaintiff would not have engaged in the transaction but for the fraud.[FN6] *Id.*

3. *The purchase or sale of a security-*

The third element requires that the plaintiff be an actual purchaser or seller of a security. *Blue Chip Stamps.* The third element is not the subject of serious dispute in this case.

4. *Resulting in harm-*

The fourth element is designed to ensure that there is a nexus between the conduct proscribed by the rule and the plaintiff's economic loss. *In re Financial Corporation,* 796 F.2d at 1130. The requisite "loss causation" is established when the plaintiff shows that the defendant's fraudulent acts caused the plaintiff's economic harm. *Id.; Kafton,* 617 F.Supp. at 350.

***8** (b) *Secondary Liability*

(1) *Controlling Persons-*

Pursuant to Section 20, every person who "controls any person liable under ... [Section 10(b)] shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable." 15 U.S.C. § 78t(a). Section 20 is the analogue of Section 15 of the Securities Act of 1933 (15 U.S.C. § 77o). The two provisions are given the same interpretation.[FN7] *Buhler,* 807 F.2d at 835.

(2) *Aiders and Abetters*

To establish that a defendant is liable as an aider and abettor, the plaintiff must show that: (i) a securities law violation had been committed by some other party; (ii) the accused had knowledge of the violation and of his or her role in furthering it; and (iii) the accused provided substantial assistance. *Harmsen v. Smith,* 693 F.2d 923, 943 (9th Cir.1982); *Admiralty Fund v. Hugh Johnson & Co.,* 677 F.2d 1301, 1311 (9th Cir.1982). The requisite substantial assistance is established when the plaintiff shows a "substantial causal connection between the culpable conduct of the alleged aider and abettor" and the plaintiff's economic harm. *Mendelson,* 490 F.Supp. at 1084.

Where the allegations portray a comprehensive scheme to defraud, the plaintiff's injury does not stem solely from the misrepresentations or omissions, but from all the interacting elements of the scheme. *Kafton,* 617 F.Supp. 350; *Hudson,* ¶ 99,222 at 95,902. A person, who knowingly provides substantial assistance to a comprehensive scheme to defraud investors, is liable for all of the damages that he or she proximately causes.[FN8]

Certain defendants contend that liability as an aider and abettor cannot extend to them absent a showing that they were under a duty to disclose. This contention blurs the distinction between primary and secondary liability. While it is true that primary liability for omissions cannot attach absent a showing that the defendant was under a duty to disclose, secondary liability arises from knowingly providing substantial assistance to the fraudulent scheme. *Harmsen*, 693 F.2d at 944; *Hugh Johnson & Co.*, 677 F.2d at 1312.

(3) *Co-conspirators*

While liability as an aider and abettor is determined by whether a defendant knowingly provided substantial assistance to the wrong, liability as a co-conspirator is premised on an agreement between two or more persons to participate in the wrong.[FN9] W. Prosser and W. Keeton, *Prosser and Keeton on the Law of Torts*, Concerted Action, § 46 (5th Ed.1984) at 323-24. A person who agrees to join in the conspiracy, with knowledge of its unlawful purpose, is liable for all the acts committed by his co-conspirators in furtherance of the common scheme. *See e.g. Chemetron Corporation v. Business Funds, Inc.*, 682 F.2d 1149, 1180 (5th Cir.1982); *Industrial Building Materiak, Inc. v. Interchemical Corporation*, 437 F.2d 1336, 1343 (9th Cir.1970); *Devries v. Brumback*, 53 Cal.2d 643, 645; 2 Cal.Rptr. 764, 767; 349 P.2d 532 (1960); 15A C.J.S. Conspiracy § 19 at 659 (1967). [FN10]

***9** With respect to FNB, LJB, and IMPERIAL, the complaint does not adequately allege facts sufficient to support a finding of primary liability under Rule 10b-5. To the extent that the fourth claim for relief in each division of the complaint purports to state a claim for primary liability under Rule 10b-5 as against FNB, LJB, and IMPERIAL, they are dismissed without leave to amend.

With respect to Coopers & Lybrand, Mr. Christenson, Mr. Scheuneman, Mr. Crouch, Mr. Bannasch, Crouch & Bannasch, Mr. Augustine, Mr. Nouskajian, and Rogers & Wells, the complaint adequately alleges a basis for the imposition of primary liability under Rule 10b-5.[FN11] Their motions to dismiss the fourth claim for relief in each division of the complaint on the grounds that the claims fail to allege a basis for primary liability are denied.

To the extent that the fourth claim for relief in each division of the complaint purports to state claims on the basis of status as a controlling person, they are dismissed as against the same defendants and to the same extent as that portion of the Section 12(2) claims that is premised on controlling person liability.

With respect to FNB, LJB, IMPERIAL, Coopers & Lybrand, Mr. Christenson, Mr. Scheuneman, Mr. Crouch, Mr. Bannasch, Crouch & Bannasch, Mr. Augustine, Mr. Nouskajian, and Rogers & Wells, the complaint adequately alleges status as an aider and abettor and status as a co-conspirator.[FN12] Their motions to dismiss the fourth claim for relief in each division of the complaint on the grounds that the claims fail to allege a basis for liability as an aider and abettor or as a co-conspirator are denied.

4. *RICO Claims*

The fifth claim for relief in each division of the complaint and the sixth claim for relief in Division Two and Division Three allege violations of 18 U.S.C. §§ 1961-1968 (the Racketeer Influenced Corrupt Organizations Act). The plaintiffs have indicated to the Court that only the following defendants are subject to the claims: APC, APLC, API, AWI, PLFS, Mr. Zimmerman, Mr. Sackett, Mr. Fitzpatrick, and Mr. Gilbert. None of the named defendants have moved to dismiss the RICO claims.

5. *Special Master Claims*

The seventeenth claim for relief in Division One and the eighteenth claim for relief in Division Two and Division Three request the appointment of a special master pursuant to Rule 53(b) of the Federal Rules of Civil Procedure. The moving defendants seek dismissal of these claims contending that the request is not properly made a part of the complaint.

The request for the appointment of a special master is properly made to the Court by petition or motion of a party. 5A J. Moore, *Moore's Federal Practice*, §§ 53.05[2] and 53.05[3] (2d Ed.1986) at 53-47 to 53-48, 53-68. The defendants are correct in their connection that such a request is not properly made a claim for relief in the complaint. The claims are dismissed without leave to amend. [FN13][FN*]

6. *Cal.Corp. Code Claims*

***10** (a) *Section 25504 Claims*

The first claim for relief in each division of the complaint alleges violations of Cal.Corp.Code §§ 25503, 25504, 25504.1. [FN14] The moving defendants seek dismissal of these claims on a number of alternative grounds.

Pursuant to Section 25503, "[a]ny person who violates Section 25110 ... shall be liable to any person acquiring from him the security sold in violation of such section." Cal.Corp.Code § 25503. [FN15] Liability extends only to those persons who were actual sellers. Strict privity is required. *Koehler v. Pulvers,* 614 F.Supp. 829, 845 (S.D.Cal.1985); *See also* *Admiralty Fund v. Jones,* 677 F.2d at 1296 (strict privity required under Cal.Corp.Code § 25501).

Pursuant to Section 25504,

[e]very person who directly or indirectly controls a person liable under Section ... 25503, every partner in a firm so liable, every principal executive officer or director of a corporation so liable, and ... every broker-dealer or agent who materially aids in the act or transaction ... are also liable jointly and severally with and to the same extent as such person ..."

Cal.Corp.Code § 25504: Liability extends to controlling persons and substantial participants in the sale. *In re Diasonics Securities Litigation,* 599 F.Supp. 447, 459 (N.D.Cal.1984); *Hudson,* 565 F.Supp. at 627-28.

Pursuant to Section 25504.1, "[a]ny person who materially assists in any violation of Section 25110 ..., with intent to deceive or defraud, is jointly and severally liable with any other person liable ... for such violation." Cal.Corp.Code § 25504.1. Liability extends to aiders and abettors of the underlying violation. *Hudson,* 565 F.Supp. at 627-28.

To the extent that the first claim for relief in each division of the complaint purports to state claims on the basis of status as an actual seller, substantial participant, or controlling person pursuant to Sections 25503 and 25504, they are dismissed without leave to amend as against the same defendants and to the same extent as the claims alleging violations of Section 12(2).

To the extent that the first claim for relief in each division of the complaint purports to state claims on the basis of status as an aider and abettor pursuant to Section 25504.1, they are dismissed as against the same defendants and to the same extent as that portion of the Rule 10b-5 claims that is premised on aider and abettor liability. [FN16]

(b) *Section 25501 Claims*

The twelfth claim for relief in Division One and the thirteenth claim for relief in Division Two and Division Three allege violations of Cal.Corp.Code §§ 25501, 25504, 25504.1, 25504.2. The moving defendants seek dismissal of these claims on a number of alternative grounds.

Pursuant to Section 25501, "[a]ny person who violates Section 25401 ... [is] liable to the person who purchases a security from him ..." Cal.Corp.Code § 25501. [FN17] Liability extends only to actual sellers. Strict privity is required. *Admiralty Fund v. Jones,* 677 F.2d at 1296.

***11** Sections 25504 and 25504.1 are also applicable to violations of Sections 25401 and 25501. The provisions are given the same interpretation as described above. *Diasonics,* 599 F.Supp. at 459; *Hudson,* 565 F.Supp. at 627-28.

Section 25504.2 extends liability to certain professionals who supply material for, and consent to be named (and are named) in an offering circular or prospectus that is issued in violation of Sections 25401 and 25501. [FN18] The Court is hardpressed to decipher, from the face of the complaint, which professionals the plaintiffs intend to pursue under the provisions of Section 25504.2.

To the extent that the twelfth claim for relief in Division One and the thirteenth claim for relief in Division Two and Division Three purport to state claims pursuant to Sections 25501 and 25504, they are dismissed as against the same defendants and to the same extent as the claims alleging violations of Section 12(2).

To the extent that the twelfth claim for relief in Division One and the thirteenth claim for relief in Division Two and Division Three purport to state claims pursuant to Section 25504.1, they are dismissed as against the same defendants and to the same extent as that portion of the Rule 10b-5 claims that is premised on aider and abettor liability. [FN19]

To the extent tht the twelfth claim for relief in Division One and the thirteenth claim for relief in Division Two and Division Three purport to state claims pursuant to Section 25504.2, they are dismissed without prejudice.

7. *Conspiracy Claims*

The sixth claim for relief in Division One and the seventh claim for relief in Division Two and Division Three allege claims for relief for a civil conspiracy. The moving defendants seek dismissal of these claims contending that there is no separate cause of action for a civil conspiracy or for aiding and abetting a civil conspiracy.

It is well settled that an agreement alone does not ordinarily give rise to liability as a co-conspirator. The complaint must allege both the formation and operation of a conspiracy and an underlying civil wrong resulting in damage to the plaintiff. *Halberstam v. Welch,* 705 F.2d 472, 477 (D.C.Cir.1983); *Unruh v. Truck Insurance Exchange,* 7 Cal.3d 616, 631; 498 P.2d 1063 (1972); *Prosser and Keeton,* § 46 at 324.

The allegations of a civil conspiracy, standing alone, add nothing substantive to the complaint. Instead, they permit the joinder, as defendants, of all persons who agreed to the underlying wrong. *Wyatt v. Union Mortgage Co.,* 24 Cal.3d 773, 792; 598 P.2d 4, 5 (1979) (Richardson, J. concurring in part and dissenting in part). *Prosser and Keeton,* § 46, at 322-24. Proof that a person is a co-conspirator would render that person jointly and severally liable for the underlying wrong. *Michael R. v. Jeffrey B.,* 158 Cal.App.3d 1059, 1069; 205 Cal.Rptr. 312, 319-20 (1984). It follows that the better practice is not to plead a separate cause of action for a civil conspiracy but to make the allegations of a civil conspiracy a part of the cause of action for the underlying wrong. *Del E. Webb Corporation v Structural Materials Co.,* 123 Cal.App.3d 593, 602 n. 4; 176 Cal.Rptr. 824, 829 n. 4 (1981); 5 B. Witkin, California Procedure, Pleading § 869 (3d Ed.1985) at 310-12.

***12** (a) *Sufficiency of the Conspiracy Allegations*

To establish liability for a civil conspiracy, the plaintiff must plead and prove four elements: (1) an agreement between two or more persons; (2) to participate in a civil wrong; and (3) an overt act in furtherance of the scheme; (4) resulting in harm to the plaintiff. *Halberstam,* 705 F.2d at 477; *Wyatt,* 24 Cal.3d at 792. Knowledge of the existence of the conspiracy, acquiescence to its stated aims, or even a favorable opinion of its goals are not sufficient to establish liability. *Michael R.,* 158 Cal.App.3d at 1069. It is necessary for the plaintiff to show that each alleged co-conspirator agreed to participate in the wrong. *Wyatt,* 24 Cal.3d at 784-85.

The requisite concurrence " 'may be inferred from the acts done, the relation of the parties, the interests of the alleged conspirators, and other circumstances.... Tacit consent as well as express approval will suffice'." *Id.* at 785.

To the extent that the sixth claim for relief in Division One and the seventh claim for relief in Division Two and Division Three purport to state separate claims for a "civil conspiracy" or for "aiding and abetting a civil conspiracy" they are dismissed without leave to amend.

To the extent that the allegations in the claims supplement the allegations of a conspiracy to commit separate underlying wrongs, the Court is convinced that the allegations contained in the complaint adequately allege co-conspirator status with respect to each of the moving defendants.

8. *Fraud and Deceit Claims*

The seventh claim for relief in Division One and the eighth claim for relief in Division Two and Division Three allege claims for fraud and deceit. The moving defendants seek dismissal of these claims on a number of alternative grounds.

The elements of actual fraud, whether they form the basis of the remedy in contract [FN20] or in tort [FN21] are: (1) a false representation or a concealment of a material fact; (2) made recklessly or with knowledge of its falsity; (3) with the intent to induce the peson to whom it is made to act upon it; (4) and the person acts in reliance upon it; and (5) suffers harm. *Pulver* *v. Avco Financial Services*, 182 Cal.App.3d 622, 640; 227 Cal.Rptr. 491, 500 (1986); 4 B. Witkin, *Summary of California Law*, Torts § 445 (8th Ed.1975) at 2711. Plaintiff's allegations seek relief exclusively in tort.

To the extent that the seventh claim for relief in Division One and the eighth claim for relief in Division Two and Division Three purport to state claims of primary liability for fraud and deceit, they are dismissed as against the same defendants and to the same extent as that portion of the Rule 10b-5 claims that is premised on primary liability.

To the extent that the seventh claim for relief in Division One and the eighth claim for relief in Division Two and Division Three purport to state claims on the basis of status as an aider and abettor or status as a co-conspirator, they are dismissed as against the same defendants and to the same extent as those portions of the Rule 10b-5 claims that are premised on status as an aider and abettor or status as a co-conspirator.

***13** 9. *Negligent Misrepresentation Claims*

The eighth claim for relief in Division One and the ninth claim for relief in Division Two and Division Three allege claims for negligent misrepresentation. The moving defendants seek dismissal of these claims contending that a person cannot be liable for a negligent misrepresentation absent a showing that the person made a representation.

Negligent misrepresentation is classified as a form of deceit. [FN22] In order to state a claim, the plaintiff must allege the following elements: (1) the defendant asserted or represented as a fact; (2) that which is untrue; (3) with no reasonable ground for believing it to be true; (4) with the intent to induce the person to whom it is made to act upon it; (5) and the person acts upon it; and (6) suffers harm. *Fox v. Pollack*, 181 Cal.App.3d 954, 963; 226 Cal.Rptr. 532, 537 (1986); *Walters v. Marler*, 83 Cal.App.3d 1, 17; 147 Cal.Rptr. 655, 666 (1978).

The misrepresentations upon which the claims are based are those allegedly contained within the various offering circulars for the securities which the plaintiffs purchased. Those defendants who did not participate in the preparation of the documents or in the preparation of information to be contained in the documents cannot be liable for negligent misrepresentation. [FN23]

With respect to FNB, LJB, and IMPERIAL, the complaint does not adequately allege facts sufficient to support a finding that any of these defendants made any representations contained in the offering circulars. To the extent that the claims are brought against FNB, LJB, and IMPERIAL, they are dismissed without leave to amend.

With respect to Coopers & Lybrand, Mr. Christenson, Mr. Scheuneman, Mr. Crouch, Mr. Bannasch, Crouch & Bannasch, Mr. Augustine, Mr. Nouskajian, and Rogers & Wells, the complaint does not adequately identify the specific representations attributable to the particular defendants. To the extent the claims are brought against Coopers & Lybrand, Mr. Christenson, Mr. Scheuneman, Mr. Crouch, Mr. Bannasch, Crouch & Bannasch, Mr. Augustine, Mr. Nouskajian, and Rogers & Wells, they are dismissed without prejudice.

10. *Conversion Claims*

The ninth claim for relief in Division One and the tenth claim for relief in Division Two and Division Three allege claims for the conversion of the plaintiffs' property. The moving defendants seek dismissal of these claims contending that the action of conversion is proper only if specific, identifiable property is involved. The question presented is: have the plaintiffs identified any property, either tangible or intangible, that can properly be the subject of the action of conversion? *Weiss v. Marcus*, 51 Cal.App.3d 590, 599; 124 Cal.Rptr. 297, 302 (1975); 4 B. Witkin, *Summary of California Law*, Torts §§ 354-73 (8th Ed.1973).

The tort of conversion is committed when a person wrongfully asserts dominion over another person's personal property in denial of or inconsistent with the latter's property rights. *George v. Bekins Van & Storage Co.*, 33 Cal.2d 834, 837; 205 P.2d 1037 (1949); *Weiss*, 51 Cal.App.3d at 599. Historically, the tort action for conversion was limited to cases involving tangible personal property. In more recent times, the scope of the action has been expanded to include intangible property such as notes, stocks, and bonds. 4 B. Witkin, *Summary of California Law*, Torts §§ 356-57 (8th Ed.1973) at pp. 2615-16. Money cannot ordinarily be the subject of the action of conversion unless a specific sum capable of identification is involved. *Weiss*, 51 Cal.App.3d at 599. *See* *Lawrence v. Bank of America*, 163 Cal.App.3d 431, 437 n. 2; 209 Cal.Rptr. 541, 545 (1985) ("Money on deposit with a bank may not be the subject of conversion").

***14** The complaint fails to identify any specific tangible property that was the subject of conversion by the defendants. The court must assume that the plaintiffs' contention is that the funds they invested are the specific property involved.

The plaintiffs cannot allege that they had title, possession, or the right to immediate possession of the funds invested. They also cannot allege that a specific, identifiable sum was the subject of conversion while a distinct portion of the funds invested was not. The allegations contained in the claims of conversion merely restate the allegations that there is a sum due and owing to the plaintiffs as a result of the defendants' alleged fraud. The claims for relief based on the tort of conversion are dismissed without leave to amend.

11. *Breach of Fiduciary Duty Claims*

The tenth claim for relief in Division One and the eleventh claim for relief in Division Two and Division Three allege claims for breach of fiduciary duties against the American Principals Insider Defendants. Mr. Christenson, Mr. Scheuneman, and FNB seek dismissal of these claims contending that the complaint does not adequately allege the basis of the fiduciary relationship between the plaintiffs and the named defendants.

In order to state a claim for the breach of a fiduciary duty, the complaint must "identify the basis for a fiduciary relationship between each defendant and each plaintiff." *Arndt v. Prudential Bache Securities, Inc.*, 603 F.Supp. 674, 676 (S.D.Cal.1984).

With respect to FNB, the complaint does not adequately allege the basis of the fiduciary relationship. The tenth claim for relief in Division One and the eleventh claim for relief in Division Two and Division Three are dismissed without leave to amend as against FNB.

With respect to Mr. Christenson and Mr. Scheuneman, the claims are dismissed to the same extent as the claims alleging violations of Section 12(2).

12. *Aiding and Abetting the Breach of Fiduciary Duties*

The eleventh claim for relief in Division One and the twelfth claim for relief in Division Two and Division Three allege claims for aiding and abetting the breach of fiduciary duties. The moving defendants seek dismissal of these claims on a number of alternative grounds.

In California, liability may be imposed against a person who aids and abets a breach of a fiduciary duty. The standard for the imposition of such secondary liability is analogous to the standard for the imposition of aider and abettor liability under Rule 10b-5. *Heckmann v. Ahmanson*, 168 Cal.App.3d 119, 127, 214 Cal.Rptr. 177, 183 (1985); *Certified Grocers of California, Ltd. v. San Gabriel Valley Bank*, 150 Cal.App.3d 281, 289, 197 Cal.Rptr. 710, 716 (1983).

The claims are dismissed as against the same defendants and to the same extent as that portion of the Rule 10b-5 claims that is premised on aider and abettor liability. [FN24]

13. *Waste Claims*

The thirteenth claim for relief in Division One and the fourteenth claim for relief in Division Two and Division Three allege claims for the waste of plaintiffs' property. The moving defendants seek dismissal of these claims contending that an action for waste is proper only if a defendant's acts of commission or omission caused physical damage to real property.

***15** The tort of waste has been defined as:

conduct (including in this word both acts of commission or omission) on the part of the person in possession of land which is actionable at the behest of, and for the protection of the reasonable expectations of, another owner of an interest in the same land.

Cornelison v. Kornbluth, 15 Cal.3d 590, 597-98; 125 Cal.Rptr. 557, 562; 542 P.2d 981 (1975). Waste will ordinarily be found only where the plaintiff can establish that the market value of real property has been permanently diminished. *Smith v. Cap Concrete, Inc.,* 133 Cal.App.3d 769, 777; 184 Cal.Rptr. 308, 311 (1982); 3 B. Witkin, *Summary of California Law,* Real Property §§ 327-28 (8th Ed. 1973) at 2033.

The complaint does not identify any real property that has been permanently damaged by misuse, alteration, or neglect. Plaintiffs instead rely upon a novel theory that the "waste" of assets and funds controlled by the defendants is actionable. The theory is dubious at best. *See Miller v. Citizens Savings & Loan Association,* 248 Cal.App.2d 655, 665; 56 Cal.Rptr. 844, 852 (1967). The claims for relief for waste are dismissed without leave to amend.

14. *Unfair Business Practices Claims*

The fourteenth claim for relief in Division One and the fifteenth claim for relief in Division Two and Division Three allege claims pursuant to Sections 17203 [FN25] and 17535 [FN26] of the California Business and Professions Code. The claims are brought against the American Principals Insider Defendants. Mr. Christenson, Mr. Scheuneman, and FNB seek dismissal of these claims on a number of alternative grounds.

It is well settled that private persons may not recover damages under the provisions of the unfair competition and false advertising statutes (Cal.Bus. & Prof. Code §§ 17203, 17535). *Kates v. Crocker National Bank,* 776 F.2d 1396 (9th Cir.1985); *Chern v. Bank of America,* 15 Cal.3d 866, 875; 127 Cal.Rptr. 110, 115; 555 P.2d 1310 (1976). Instead, plaintiffs' remedies are limited to injunctive relief and restitution ancillary to such relief. *Fletcher v. Security Pacific National Bank,* 23 Cal.3d 442, 453-54; 153 Cal.Rptr. 28, 35; 591 P.2d 51 91979). The remedies provided are not available to "enjoin an event which has already transpired ... a showing of threatened future harm or continuing violation is required." *People v. Toomey,* 157 Cal.App.3d 1, 20; 203 Cal.Rptr. 642, 654-55 (1984).

To state a claim for relief under Section 17203 or 17535, the plaintiff must allege that "members of the public are likely to be deceived." *Committee on Children's Television, Inc. v. General Foods Corporation,* 35 Cal.3d 197, 211; 197 Cal.Rptr. 783, 791; 673 P.2d 660 (1983) (citing *Chern,* 15 Cal.3d at 876). Restitution may be ordered if the Court "determines that such a remedy is necessary to prevent the use or employment of the unfair practice ..." *General Foods,* 35 Cal.3d at 211 (citing *Fletcher,* 23 Cal.3d at 453).

***16** The Court is convinced that there is little or no likelihood that any named defendant will engage in any act or practice constituting a violation of Section 17200 or Section 17500. The complaint alleges only that defendants committed violations through April 9, 1984. There are no allegations of violations occurring after that date. The claims for injunctive relief consist of speculation at best.

To the extent that the claims seek injunctive relief, they are dismissed without leave to amend. In the absence of claims for injunctive relief, there is no authority to grant restitutionary relief. To the extent that the claims seek restitution, they are also dismissed without leave to amend. [FN27]

15. *Constructive Trust Claims*

The fifteenth claim for relief in Division One and the sixteenth claim for relief in Division Two and Division Three allege an entitlement to the imposition of a constructive trust. The moving defendants seek dismissal of these claims contending that the imposition of a constructive trust is proper only if specific property to be restored to the plaintiffs is identified.

A constructive trust is an equitable remedy available in any case where there has been a wrongful acquisition or detention of property to which another is entitled. *Weiss v. Marcus,* 51 Cal.App.3d at 600 (1975); 5 B. Witkin, *California Procedure,* Pleading § 791 (3d Ed.1985) at 234. In California, a constructive trust is also "a species of involuntary trust created by operation of law." *Calistoga Civic Club v. City of Calistoga,* 143 Cal.App.3d 111, 116; 191 Cal.Rptr. 571, 575 (1983). Pursuant to Section 2224 of the California Civil Code:

one who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

Cal.Civ.Code § 2224.

In order for the Court to impose a constructive trust, the plaintiff must identify specific property to which he is entitled which was wrongfully acquired by the defendant. *Calistoga*, 143 Cal.App.3d at 116; *Cramer v. Biddison*, 257 Cal.App.2d 720, 724,; 65 Cal.Rptr. 624, 626 (1968).

The complaint fails to identify any specific property to which the plaintiffs would be entitled to a constructive trust. The Court must assume that the plaintiffs' contention is that the funds invested are the specific property involved.

The plaintiffs cannot allege that they had title, possession, or the right to immediate possession of the funds invested. They also cannot allege a right or entitlement to a specific, identifiable portion of the funds invested. Only where the plaintiffs can demonstrate that money can be traced into a particular fund or deposit, where it remains, though commingled with other money, may the plaintiffs seek to trace the sum and enforce the trust. *Cramer*, 257 Cal.App.2d at 724. The allegations contained in the claims merely restate the allegations that there is sum due and owing to the plaintiffs as a result of the defendants' alleged fraud. The claims for relief for a constructive trust are dismissed without leave to amend.

***17** 16. *Fraudulent Conveyance Claims*

The sixteenth claim for relief in Division One and the seventeenth claim for relief in Division Two and Division Three allege claims for the fraudulent conveyance of the capital stock of PLFS. The claims are brought against the American Principals Insider Defendants. The moving defendants seek dismissal of these claims contending that the capital stock of PLFS was transferred with Court approval and could not be the basis for claims of fraudulent conveyance.

In California,

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor ... if the debtor made the transfer or incurred the obligation ...

(a) with actual intent to hinder, delay or defraud any creditor of the debtor ... [or]

(b) without receiving a reasonably equivalent value in exchange for the transfer or obligation....

Cal.Civ.Code § 3439.04. FN28

The plaintiffs allege that the transfer of the capital stock of PLFS to CROWN was made with actual intent to hinder, delay, or defraud them out of the recovery in this action. The plaintiffs also allege that the transfer was not in exchange for a fair consideration.

The Court takes judicial notice of the fact that the transfer of the capital stock of PLFS to CROWN was made pursuant to an order of the Honorable Leland C. Nielsen. Order Directing Sale on Terms Recommended By Magistrate. *SEC v. American Principals Holdings, Inc.*, Civil No. 84-1383(N)(M) (S.D.Cal. July 19, 1984). The records of the SEC proceeding indicate that the sale was recommended by Ashley S. Orr, the receiver for the American Principals Corporate entities, and by the Honorable Harry R. McCue, United States Magistrate. After a noticed hearing and an independent review of the Magistrate's recommendation, the sale was approved.

If the plaintiffs had objections to the proposed sale, those objections should have been raised at the time of the sale. The Court declines to review the terms and conditions of a transfer made under the supervision of another judge of this district. The claims for relief for fraudulent conveyance are dismissed without leave to amend.

17. *Legal Malpractice Claims*

The eighteenth claim for relief in Division One and the nineteenth claim for relief in Division Two and Division Three allege claims for legal malpractice against the Attorney Defendants. Mr. Augustine, Mr. Nouskajian, and Rogers & Wells seek dismissal of these claims contending that they did not owe to the plaintiffs a duty of care.

With certain exceptions, an attorney does not owe to a non-client a duty of care. The imposition of such a duty is confined to those situations where the non-client is an intended beneficiary of the attorneys services (*See* *Lucas v. Hamm*, 56 Cal.2d 583; 15

Cal.Rptr. 821; 364 P.2d 161 (1969) (beneficiaries under a will)) or “where it was reasonably foreseeable that negligent service or advice to or on behalf of the client could cause harm to others.” *Fox v. Pollack*, 181 Cal.App.3d 954, 960; 226 Cal.Rptr. 532, 535 (1986) (“ ‘The determination whether in a specific case the defendant will be held liable to a third person not in privity is a matter of policy and involves the balancing of various factors, among which are the extent to which the transaction was intended to affect the plaintiff, the foreseeability of harm to him, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, and the policy of preventing future harm’ ”) (citing *Goodman v. Kennedy*, 18 Cal.3d 335, 343; 134 Cal.Rptr. 379, 380; 556 P.2d 737 (1976)).

***18** The Court is satisfied that the complaint adequately alleges a basis for the imposition of a duty of care owed to the plaintiffs by the moving defendants. The motions to dismiss the legal malpractice claims are denied.

18. *Professional Malpractice Claims*

The nineteenth claim for relief in Division One and the twentieth claim for relief in Division Two and Division Three allege claims for professional malpractice against the Accountant Defendants. Coopers & Lybrand seeks dismissal of these claims contending that it did not owe to the plaintiffs a duty of care and the complaint does not adequately allege reliance.

Accountants have long enjoyed special protection from liability to non-clients. Traditionally, liability extended only to those in strict privity with the accountant. The modern trend, and the better view, is to treat accountants in the same manner as other professionals. *International Mortgage Co. v. John P. Butler Accountancy Corp.*, 177 Cal.App.3d 806, 820; 223 Cal.Rptr. 218, 227 (1986). (It is only reasonable that the same judicial criteria govern the imposition of negligence liability, regardless of the defendant's profession.)

In addition to the factors first enunciated in *Biankaja v. Irving*, 49 Cal.2d 647, 650; 320 P.2d 16 (1958), [FN30] Coopers & Lybrand contends that direct reliance upon the work product of the accountant is a necessary element of a claim for professional malpractice. The “reliance” to which Coopers & Lybrand refers is apparently something beyond a showing of foreseeability of the harm and the requisite degree of proximate causation. The contention appears to be that each plaintiff must directly rely upon the accountant's work product in order to recover. This argument proves too much.

If, by resort to the *Biankaja* factors, the plaintiffs establish that Coopers & Lybrand owed to them a duty of care, that Coopers & Lybrand breached that duty of care, and that the breach proximately caused them harm, then Coopers & Lybrand is liable for that harm. Direct reliance is merely one means by which the plaintiffs may establish proximate causation. [FN31] The Court is satisfied that the complaint adequately alleges a basis for the imposition of negligence including a basis for the requisite showing of proximate causation. The motion to dismiss the professional malpractice claims is denied.

19. *Breach of Contract Claims*

The twentieth claim for relief in Division One and the twenty-first claim for relief in Division Two and Division Three allege claims for breach of contract against the American Principals Insider Defendants. The claims are premised on the alleged breach of the investment agreements entered into by each of the plaintiffs. Mr. Scheuneman, Mr. Christenson, and FNB seek dismissal of these claims contending that they were not parties to the investment agreements. The plaintiffs do not rebut this contention but asserts that the moving defendants received the benefits of the contracts and are, therefore, bound by them and that the moving defendants are the alter egos of the parties to the contract.

***19** The facts as alleged in the complaint do not adequately support the plaintiffs' assertions. The breach of contract claims are dismissed without prejudice as against each defendant named in the complaint with the exception of APC, APLC, MAC, API, and AWI.

20. *Accounting Claims*

The twenty-first claim for relief in Division One requests an accounting from the American Principals Insider Defendants. The moving defendants seek dismissal of this claim contending that the plaintiffs have alleged an adequate remedy at law.

The common law action for an accounting is equitable in nature. In order to state a claim for relief, the plaintiffs must allege:

(a) the fiduciary relationship or other circumstances appropriate to the remedy,

(b) a balance due from the defendant ... which can only be ascertained by an accounting. Thus a complaint does not state a cause of action for an accounting where it shows on its face that none is necessary, i.e., where the plaintiff alleges his right to recover a sum certain or a sum which can be made certain by calculation.

5 B. Witkin, *California Procedure*, Pleading § 769 (3d Ed.1985) at 215. Thus, an action for an accounting is not proper where it appears from the face of the complaint that an accounting is not necessary or that there is an adequate remedy at law. *Civic Western Corp. v. Zila Industries, Inc.*, 66 Cal.App.3d 1, 14; 135 Cal.Rptr. 915, 923 (1977). [FN32]

The Court is satisfied that the complaint sufficiently alleges an adequate remedy at law and the extent of damages can be made certain by calculation. The action for an accounting is thus unnecessary. The twenty-first claim for relief is dismissed without leave to amend.

IT IS SO ORDERED.

FN1. MAC and AMC appear to be the same entity.

FN2. The moving defendants also seek dismissal of the complaint pursuant to Rules 4(j), 9(b), and 12(e) of the Federal Rules of Civil Procedure and pursuant to the applicable statutes of limitations. The Court's ruling with respect to these motions will be issued in a separate order.

FN3. The plaintiffs also allege liability on the basis of status as an aider and abettor and status as a co-conspirator. The better view is to reject plaintiffs' invitation to expand Section 12(2) liability beyond the limited confines of the substantial participant and controlling person tests. *Activision*, 621 F.Supp. at 421; *Hokama*, 566 F.Supp at 642.

FN4. Primary liability for omissions extends only to those defendants under a duty to disclose. In the Ninth Circuit, the scope of a defendant's duty to disclose is determined by reference to five factors:

> (1) the relationship of the defendant to the plaintiff; (2) the defendant's access to information, compared to the plaintiff; (3) the benefit the defendant derived from the relationship; (4) the awareness by the defendant of the plaintiff's reliance on him or her; and (5) the defendants activity in initiating the securities transaction in question.

Stephenson, 652 F.2d at 813 (citing *White v. Abrams*, 495 F.2d F.2d 724, 735-36 (9th Cir.1974)). The analysis is not a rigid mechanical formula. "Rather, it posits a broad continuum ranging from fiduciaries, whose affirmative duty of disclosure is unparalleled, to complete strangers, who need only refrain from intentional misrepresentations." *Stephenson*, 652 F.2d at 813.

FN5. It follows that the fraudulent acts must occur prior to or contemporaneously with the purchase or sale. *Mendelsohn*, 490 F.Supp. at 1088.

FN6. For example, subjective reliance is not established if the plaintiff had actual knowledge of the true facts prior to the purchase or sale or if the plaintiff would still have engaged in the transaction had the fraud not occurred. *Blackie*, 524 F.2d at 906.

The moving defendants contend that the complaint does not adequately allege reliance. In the context of a Rule 10b-5 action, reliance is a species of causation. Objective reliance must be pleaded in all cases. It is sufficient if the alleged misrepresentations or omissions of fact meet the standard of materiality. In a case involving primarily omissions, materiality also establishes that subjective reliance exists more likely than not. *Affiliated Ute*, 406 U.S. 128, 153-54; 92 S.Ct. 1456, 1472; 31 L.Ed.2d 741 (1972); *Harmsen,* 693 F.2d at 946, n. 11; *Blackie*, 524 F.2d at 905, 906 n. 22; *Hudson,* ¶ 992,222 at 95,904.

FN7. See the discussion with respect to the Section 12(2) claims.

FN8. The defendants contend that liability as an aider and abettor can extend only to the damages proximately caused to those investors who purchased securities on a date after an aider and abettor first provided substantial assistance. In essence, defendants would require a showing of transaction causation as a discrete element of liability as an aider and abettor under Rule 10b-5.

Such a rule tends to ignore the first and third subparagraphs of Rule 10b-5. Where the activities of the defendants evidence a "course of business" or "device, scheme, or artifice" that operates as a fraud, the Rule 10b-5 violation to which the aider and abettor provides substantial assistance is not the discrete purchase or sale transaction but the course of business as a whole. *Cf., Affiliated Ute Citizens v. United States*, 406 U.S. 128, 153; 92 S.Ct. 1456, 1472; 31 L.Ed.2d 741 (1972). In such cases, the extent of the aider and abettor's liability should be determined by resort to notions of proximate cause.

FN9. See the discussion with respect to the conspiracy claims.

FN10. The defendants contend that liability as a co-conspirator can extend only to the damages proximately caused to those investors who purchased securities on a date after the co-conspirator agreed to join in the common scheme. In essence, defendants would require a showing of transaction causation between the agreement and the purchase or sale of the security. *See e.g. Kaliski v. Hunt International Resources Corporation*, 609 F.Supp. 649, 653 (D.C.Ill.1985); *In re Investors Funding Corporation of New York Securities Litigation*, 523 F.Supp. 550, 557 (S.D.N.Y.1980).

Such a rule tends to ignore the nature of liability as a co-conspirator. Once the requisite agreement is established, it is the acts of one's co-conspirators for which each co-conspirator is vicariously liable. Where there is an underlying civil wrong, in this case a Rule 10b-5 violation, the timing of the agreement is irrelevant. *See e.g. Industrial Building Materials*, 437 F.2d at 1343 ("One who enters a conspiracy late, with knowledge of what has gone before, and with the intent to pursue the same objective, may be charged with preceding acts in furtherance of the conspiracy"); *Chemetron*, 682 F.2d at 1180 (" 'one who knowingly joins a conspiracy even at a later date takes the conspiracy as he finds it.' ") (citing *Myzel v. Fields*, 386 F.2d 718, 738 n. 12 (8th Cir.1967), *cert. denied*, 390 U.S. 951; 88 S.Ct. 1043; 19 L.Ed.2d 1143 (1968).

FN11. With respect to Coopers & Lybrand, Mr. Augustine, Mr. Nouskajian, Rogers & Wells, and Mr. Scheuneman, primary liability may extend only to those investors to whom the defendant was under a duty to disclose. See footnote 4. As it now reads, the complaint is vague as to the identity of such investors. For this reason, the plaintiffs will be required to clarify their allegations. See the Court's Order with respect to the defendants' motions to dismiss pursuant to Rule 4(j), 9(b), and 12(e) filed concurrently herewith.

FN12. One prerequisite of liability as an aider and abettor is knowledge of the civil wrong committed by the primary party. One prerequisite of liability as a co-conspirator is knowledge of the unlawful purpose of the scheme. With respect to FNB, the Court could not find that the plaintiffs could prove no set of facts to support a finding of knowledge, however, the necessary inferences are tenuous at best. No single question presented by the parties proved more difficult to resolve.

FNB contends that the mere act of extending financing to APHI cannot form the basis for the implication of substantial assistance to the scheme. *Schlifke v. Seafirst Corporation*, [current] Fed.Sec.L.Rep. (CCH) ¶ 93,107, 95,439 (January 26, 1987) at 95,443. This argument proves too much. If the plaintiffs can establish that a securities law violation was committed by some other party; that FNB had knowledge of the violation and of its role in furthering it; and that the loan provided substantial assistance, liability as an aider and abettor may be found. The fact that the alleged assistance was financing tends, however, to undermine the inference of knowledge. The better rule is to require a greater showing of scienter with respect to a bank that merely engages in its normal business activity. *Cf.* *Metge v. Baehler*, 762 F.2d 621, 624 (8th Cir.1985). The thin thread upon which the liability of FNB hangs in this case is the fact that FNB managed to recover its funds at a time when the American Principals Corporate entities were otherwise strapped for cash.

FN* Editor's Note: Footnotes 13-32 were missing from opinion; FN 29 was not marked in text.

S.D.Cal.,1987.
In re American Principals Holdings, Inc. Securities Litigation
Not Reported in F.Supp., 1987 WL 39746 (S.D.Cal.)

END OF DOCUMENT

Only the Westlaw citation is currently available.

United States District Court, E.D. New York.
Peter F. RYAN, PRD Corp., Dale W. Ryan, PDR Holdings, Inc., PDR Corp. Defined Benefit Plan & Trust, Ryan Realty Trust, Loperena Trust, Jaquith Holdings, Inc., Peter F. Ryan Irrevocable Trust, Research & Finance Corp., Glen Guillet, DOIT Corp., Zayin Investments, Ltd., Beny Primm, RPE Management, Inc., Daniel Langer, Jay Sicklen, Mykerinus Holdings, Inc., and Charles Schmidt, Plaintiffs,
v.
HUNTON & WILLIAMS, Scott J. McKay Wolas, Franklin H. Stone, Christopher M. Mason, Kathy McClesky Robb, Jerry E. Whitson, Tardino & Tardino, Victor J. Tardino, Jr., Victor J. Tardino, Sr., Crystal Waters, N.V., Crystal Distributors, L.P., Crystal Distributors, L.P. II, Chase Manhattan Bank f/k/a Chemical Bank, Fleet Bank f/k/a National Westminster Bank, and Gregory Wolas, Defendants.
No. 99-CV-5938 (JG).

Sept. 20, 2000.

Sigmund S. Wissner-Gross, Esq., Heller, Horowitz & Feit, P.C., New York, for Plaintiffs.

Andrew R. Kosloff, Esq., The Chase Manhattan Bank Legal Department, New York, for Defendant Chase Manhattan Bank.

MEMORANDUM AND ORDER

GLEESON, District J.

***1** The plaintiffs initiated this action to recover for injuries they sustained as a result of their investment in a "Ponzi" scheme operated by Scott J. McCay Wolas ("Wolas"), a partner at the New York office of Hunton & Williams ("H & W"). Defendant Chase Manhattan Bank ("Chase") has moved to dismiss the claims against it for failure to state a claim upon which relief can be granted and for failure to plead fraud with particularity pursuant to Rules 12(b)(6) and Rule 9(b) of the Federal Rules of Civil Procedure. For the following reasons, the motion is granted.

BACKGROUND

The following factual background is based on the allegations contained in the plaintiffs' complaint, which are assumed to be true for the purposes of this motion.

From 1989 to 1995, Wolas ran a "Ponzi" scheme. He induced the plaintiffs and others to invest with him by misrepresenting that their investments would be used to purchase large shipments of Scotch whiskey in Scotland for resale in the Orient. In fact, there were no such purchases; instead, Wolas used the funds to pay prior "investors" and for other unknown purposes. In 1995, Wolas absconded, and his whereabouts are still unknown. (*See* Compl. ¶ 1.)

In 1994 Chemical Bank [FN1] ("Chemical") was on notice of various of "red flags" that indicated fraudulent conduct by Wolas and/or those with whom he was associated. For example, in May 1994, John Dolan, a cohort of Wolas, tried to open an account at Chemical in the name of SEV Enterprises, Inc. ("SEV"). Chemical, however, declined to open the account because Patrick J. Connor, of Chemical's in-house fraud investigative unit, suspected that SEV was probably running an "advance fee scam." (*Id.* ¶¶ 111-12.) Then, on June 29, 1994, a lawyer representing a former associate at H & W contacted Mark E. Segal, Assistant General Counsel of Chemical, and informed him that Wolas fraudulently overbilled Manufacturers Hanover Trust, Chemical's predecessor, for work done on a litigation matter. Later that year, Chemical shut down accounts maintained by Wolas and Albert H. Wolas, Inc., a family business owned by Wolas's father and brother, after a $950,000 check to Wolas, drawn on one of the business accounts, bounced. (*See id.* ¶¶ 113-14.)

FN1. Chemical Bank has since merged with Defendant Chase Manhattan Bank.

On March 16, 1995, just three months before the "Ponzi" scheme collapsed, Dolan opened a primary account in the name of SEV and Wolas opened a sub-account (to the SEV account) at a Chemical branch on Third Avenue in Manhattan. Although the sub-account was an attorney escrow account, Wolas authorized Dolan, a non-lawyer, to have signing authority over the sub-account. Wolas and/or Dolan further informed Chemical in-house counsel Manuel Gottlieb that the sub-account was an attorney escrow account and that all of the money passing through the sub-account was escrow money. (*See id.* ¶¶ 110, 115-16.)

From the accounts' inception, branch officer Kevin O'Dea suspected that they were a vehicle for fraudulent activity and immediately referred them to Chemical's in-house fraud investigative unit. On May 2, 1995, an employee of the fraud unit notified O'Dea and Gottlieb of the unit's concerns one year earlier when Dolan tried to open an account in the name of SEV, and urged that Chemical immediately shut down the primary and subaccounts. Then, on May 5, 1995, O'Dea notified Dolan and SEV that the accounts had to be closed by June 5, 1995, one month later.[FN2] (*See id.* ¶¶ 115, 117-18.)

FN2. On May 30, 1995, a grand jury in the Southern District of Texas issued a subpoena, in part, to one of the two SEV sub-accounts. This subpoena was faxed to in-house counsel Gottlieb on June 1, 1995. (*See* Compl. ¶ 124.)

A. *The Account Activity*

***2** In April and May of 1995, O'Dea and his assistant signed or approved bank checks and transfers out of Wolas's sub-account and into the SEV primary account. Specifically, O'Dea effected the following transactions:

(i) Beginning on April 27, 1995, O'Dea personally signed bank checks drawn on the Wolas sub-account;

(ii) On April 25, 1995, O'Dea personally approved the internal transfer of $1 million of investor funds from the sub-account to the SEV primary account, and such transfer occurred on April 27, 1995; and

(iii) On May 2, 1995, O'Dea's assistant approved the transfer of $1.6 million from the sub-account to the SEV primary account.

(*See* Compl. ¶ 119.)

Then, on April 27, 1995, O'Dea personally approved the issuance of two Chemical checks drawn on the SEV primary account, each in the amount of $100,000, and certified another SEV primary account check, in the amount of $28,459. Several days later, O'Dea approved a May 2, 1995, certified check for $200,000 drawn on the SEV primary account. This check was immediately altered to indicate that it was drawn on the sub-account. By no later than May 10, 1995, O'Dea knew that this certified check had been altered, and relied on this information in insisting that the accounts be closed. (*See id.* ¶ 120.)

By May 2, 1995, O'Dea was also aware that $10 million was to be wired into another SEV sub-account at Chemical. (*See id.* ¶ 121 .) O'Dea (and/or another Chemical employee or officer) specifically approved multiple wire transfers that resulted in the theft of investor funds. For example, O'Dea approved the following transactions:

(i) the May 2, 1995, wire transfer of $50,000 from the SEV primary account to Kehle & Co., Inc. in Florida;

(ii) the May 4, 1995, wire transfer of $40,000 to a "Keeco" entity in Washington;

(iii) the May 4, 1995, wire transfer of $50,000 for credit to Warley, Inc.;

(iv) the May 4, 1995, wire transfer of $7,500 to Jim Roma in Washington, with "special instructions" from "F. Kelly," which O'Dea knew was false and fraudulent since the funds did not come from F. Kelly;

(v) the May 12, 1995, wire transfer of $10,000 to "David J. Friednbach" in Oregon; and

(vi) the May 12, 1995, wire transfer of $500,000 to "Jack Vita, Esq. Client Trust Account," with "special instructions" from "Warley, Inc.," which O'Dea knew was false and fraudulent since the funds did not come from Warley, Inc.

(*See id.* ¶ 122.)

B. *The Relevant Plaintiffs*

1. *DOIT Corp.*

O'Dea was aware that several million dollars had been wired from the Florida Cordova Law Center ("Cordova"), in April and May 1995, to the Wolas sub-account at Chemical. However, neither O'Dea nor anyone else at Chemical contacted Cordova regarding the purpose of those transfers or alerted it of Chemical's concerns. On May 16, 1995, Plaintiff DOIT Corp. ("DOIT") deposited $500,000 in escrow with the Cordova, with the expectation that the funds would then be transferred to the Wolas sub-account at Chemical. DOIT was never advised that Chemical had already taken steps to shut down the sub-account. (*See id.* ¶ 125.)

2. *Research & Finance Corp.*

***3** In late May 1995, the Chairman of the Research & Finance Corp. ("RFIN"), who maintained personal accounts at Chemical, contacted Chemical's Private Banking Group to confirm the status of what he believed was an H & W Client Funds account before he transferred $500,000 out of his personal account on behalf of RFIN to that account. The Chairman was advised that the H & W Client Funds account was in good standing, but was not told, among other things, (i) that the escrow account was a sub-account of SEV; (ii) that the sub-account was Wolas's and that H & W did not maintain the firm's principal attorney escrow account at Chemical; (iii) that Chemical had notified Wolas and SEV in early May 1995 to close the primary and subaccounts; and (iv) that Chemical believed that primary and subaccounts were being used for fraudulent purposes. (*See id.* ¶ 126.)

On June 29, 1995, pursuant to H & W's instructions, RFIN's accountant attempted to transfer $500,000 on RFIN's behalf to the Wolas sub-account at Chemical, believing it to be an escrow account maintained by H & W. As the SEV account and Wolas sub-account had already been closed at that point, the transfer did not go through. Chemical did not disclose to RFIN, however, why the Wolas sub-account had been closed. Believing it to be an administrative matter and that H & W had moved its escrow account to another bank, RFIN transferred the funds on July 13, 1995, to an account at National Westminster Bank ("Nat West"), now known as Fleet Bank, maintained by Wolas. (*See id.* ¶ 127.)

C. *This Action*

On September 24, 1999, various investors in Wolas's "Ponzi" scheme commenced this action for damages against H & W, Wolas, and other defendants for violations of the Securities Exchange Act of 1934, the Racketeering Influenced and Corrupt Organization Act, and New York common law. Relevant to the motion before me now are the claims by DOIT and RFIC against Chase (formerly Chemical) for fraud, aiding and abetting fraud, and commercial bad faith.[FN3] Chase has moved to dismiss these claims for failure to state a claim upon which relief can be granted and for failure to plead fraud with particularity, pursuant to Rules 12(b)(6) and Rule 9(b) of the Federal Rules of Civil Procedure.

FN3. Although Plaintiff Glen Guillet originally asserted these claims against Chase as well, I was informed at oral argument on May 26, 2000, that Guillet's claims had been settled.

DISCUSSION

A. *The Rule 12(b)(6) Standard*

In a 12(b)(6) motion, a federal court's task in determining the sufficiency of a complaint is "necessarily a limited one." *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974). The inquiry focuses not on whether a plaintiff might ultimately prevail on her claim, but on whether she is entitled to offer evidence in support of the allegations in the complaint. *See id.* "Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test." *Id.* Rule 12(b)(6) warrants a dismissal only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957); *see also Hamilton Chapter of Alpha Delta Phi, Inc. v. Hamilton College,* 128 F.3d 59 (2d Cir.1997). In considering a defendant's motion, the Court must accept as true all the factual allegations in the complaint and must draw all reasonable inferences in favor of the plaintiff. *See Hamilton,* 128 F.3d at 59 (citing *Hospital Bldg. Co. v. Trustees of Rex Hosp.,* 425 U.S. 738, 740 (1976)).

B. *Common Law Fraud*

***4** Chase contends that RFIN's fraud or fraudulent concealment claims must be dismissed because it has failed to allege the elements of the claims and sufficient facts to give rise to a strong inference of fraudulent intent under Rule 9(b).[FN4]

> FN4. DOIT has abandoned its fraud claim against Chase. (*See* Pls.' Mem. of Law in Opp'n at 3 n. 2.)

To state a claim of common law fraud under New York law, plaintiff must establish, by clear and convincing evidence, that (i) the defendant made a material misrepresentation; (ii) with knowledge of its falsity; (iii) with the intent to defraud the plaintiff; (iv) on which the plaintiff reasonably relied; and (v) that caused damage to the plaintiff as a result. *See* *Schlaifer Nance & Co. v. Estate of Andy Warhol,* 119 F.3d 91, 98 (2d Cir.1997); *Banque Arabe et Internationale D'Investissement v. Maryland National Bank,* 57 F.3d 146, 153 (2d Cir.1995).

1. *Proximate Cause*

RFIN alleges that Chemical made a material false misrepresentation when it represented to RFIN's Chairman that the Wolas sub-account was in good standing. It further alleges that it reasonably relied on this representation and suffered at least $500,000 in damages when its investment was later misappropriated by Wolas from his account at NatWest. In response, Chase contends that RFIN has failed to establish that Chemical's statement was the proximate cause of RFIN's injury. I agree.

“The absence of adequate causation is ... fatal to a common law fraud claim under New York law.” *Bennett v. United States Trust Co.,* 770 F.2d 308, 316 (2d Cir.1985). A plaintiff may establish proximate cause if an injury “is the natural and probable consequence of the defrauder's misrepresentation or if the defrauder ought reasonably to have foreseen that the injury was a probable consequence of his fraud.” ' *Citibank, N.A. v. K-H Corp.,* 968 F.2d 1489, 1496 (2d Cir.1992) (quoting *Cumberland Oil Corp. v. Thropp,* 791 F.2d 1037, 1044 (2d Cir.1986)). “The requisite causation is established only where the loss complained of is a direct result of the defendant's wrongful actions and independent of other causes.” *Revak v. SEC Realty Corp.,* 18 F.3d 81, 89-90 (2d Cir.1994) (citing *Bennett,* 770 F.2d at 316).

In *Bennett*, the plaintiffs used the proceeds of a series of loans from the defendant bank to purchase public utility stock and then deposited the stock with the bank as collateral for the loans. *See* 770 F.2d at 310. In negotiating the loans, the bank misrepresented to the plaintiffs that the Federal Reserve's margin rules do not apply when public utility stock is deposited as collateral. The stock subsequently generated insufficient dividends to cover the interest, and its market value decreased. Thus, in addition to the plaintiffs' loss of the equity itself, they owed the bank the outstanding interest and principal in excess of the stock's depreciated value. *See id.* The district court dismissed the plaintiffs' common law fraud claim for lack of causation and the Second Circuit affirmed, concluding that the plaintiffs had only alleged “but for” causation, *i.e.*, that they would not have purchased the stock if the bank had denied the loans. *See id.* at 314-16. Noting that the plaintiffs' common law fraud and securities fraud claims were equally flawed, the court stated that there was “simply no direct or proximate relationship between the loss and the misrepresentation.” *Id.* at 314, 316. The court emphasized that the plaintiffs approached the bank for a loan with the plan to purchase the public utility stock; the bank recommended neither public utility stock in general, that stock in particular, nor the investment value of any such stock. *See* *id.* at 313-14. Accordingly, the court concluded that the “loss at issue was caused by the [plaintiffs'] own unwise investment decisions, not by [the bank's] misrepresentation.” *Id.* at 314.

***5** RFIN's fraud claim fails for precisely the same reasons. RFIN approached Chemical with the intention of investing in Wolas's whiskey scheme. Indeed, RFIN's Chairman contacted Chemical's Private Banking Group only to confirm the status of Wolas's account at Chemical prior to directing the transfer of $500,000 into the account. (*See* Compl. ¶ 126.) At that time, the Chairman was told that Wolas's account was in good standing. (*See id.*) Although RFIN insists that it would not have invested with Wolas (by depositing $500,000 in his account at Nat West after learning that the Chemical account was closed) if the Chemical officer had not made that representation or had told RFIN's Chairman of Chemical's concerns about the Wolas sub-account, these allegations at most establish “but for” causation. Simply put, the direct and proximate cause of RFIN's loss was

Wolas's fraud, not Chemical's representation about the status of the Wolas sub-account.

2. *Duty to Disclose*

In addition, RFIN asserts that it has a claim of fraudulent concealment based on Chemical's failure to disclose to RFIN's Chairman that (i) Chemical had notified Wolas and SEV that it would close the accounts as of June 5, 1995; (ii) Chemical suspected fraudulent activity in the accounts; (iii) H & W did not maintain an escrow account at Chemical; and (iv) Wolas's escrow account was a sub-account of the SEV account.

To establish a claim of fraudulent concealment under New York law, the plaintiff must prove the aforementioned elements of common law fraud *and* that "the defendant had a duty to disclose the material information." *Banque Arabe*, 57 F.3d at 153. A duty to disclose may arise in two circumstances: (i) "where the parties enjoy a fiduciary relationship" and (ii) "where one party possesses superior knowledge, not readily available to the other, and knows that the other is acting on the basis of mistaken knowledge." *Aaron Ferer & Sons Ltd. v. Chase Manhattan Bank, N.A.*, 731 F.2d 112, 123 (2d Cir.1984).

RFIN claims that Chemical's duty to disclose arose from its superior information about the status of the Wolas sub-account. It argues that such information was not readily available to RFIN, and that Chemical knew that RFIN was acting, or attempting to act, on the basis of mistaken knowledge when RFIN attempted to transfer $500,000 to the account after it was closed.

As an initial matter, I question whether RFIN may bring a fraudulent concealment claim against Chase since such a claim "ordinarily arises only in the context of business negotiations where parties are entering a contract." *Ray Larsen Assocs., Inc. v. Nikko Am., Inc.*, No. 89 Civ. 2809(BSJ), 1996 WL 442799, at *5 (S.D.N.Y. Aug. 6, 1996); *see also Renner v. Chase Manhattan Bank*, No. 98 Civ. 926(CSH), 2000 WL 781081, at *9 n. 5 (S.D.N.Y. June 14, 2000) (questioning in *dicta* whether defendant bank had duty to disclose where plaintiff neither conducted business nor negotiated contracts with bank or bank employee); *Williams v. Bank Leumi Trust Co.*, No. 96 Civ. 6695(LMM), 1998 WL 397887, at *8 (S.D .N.Y. July 15, 1998) (questioning in *dicta* whether insurance company receiver had standing to bring fraudulent concealment claim where defendant bank and insurance company "never stood on opposite sides of the same transaction").

***6** However, even if RFIN can state a fraudulent concealment claim in these circumstances, it has not done so. Chase cannot properly be held accountable for failing to disclose information about the Wolas's sub-account to RFIN. "[A] bank should keep its own customers' affairs confidential." *Aaron Ferer*, 731 F.2d at 123 (citing *Graney Dev. Corp. v. Taksen*, 400 N.Y.S.2d 717, 719 (Sup.Ct.), *aff'd*, 411 N.Y.S.2d 756 (4th Dep't 1978)); *see also Graney*, 400 N.Y.S.2d at 719 ("It is implicit in the contract of the bank with its customer or depositor that no information may be disclosed by the bank or its employees concerning the customer's or depositor's account.") (internal quotation marks and citations omitted); *Renner*, 2000 WL 781081, at *9 (citing *Aaron Ferer* and *Graney* and noting that bank officer had no duty to respond to plaintiff's letters inquiring about bank customers); *cf. Young v. United States Dep't of Justice*, 882 F.2d 633, 640-43 (2d Cir.1989) (encouraging New York courts to recognize duty of confidentiality between bank and customer). Thus, Chemical had no duty to volunteer to RFIN additional information about the alleged suspicious activity in the Wolas sub-account.

Finally, even if Chemical was obligated to disclose this additional information, there is no indication that Chemical knew that RFIN was acting on the basis of mistaken knowledge concerning the financial transaction between Wolas and RFIN. According to the plaintiff's allegations, Chemical knew only that RFIN inquired about the sub-account and attempted to transfer funds to the account after it had been closed. This attempted transfer does not support an inference that RFIN was acting on its mistaken information that Wolas was not engaging in fraud. For all Chemical knew, assuming Chemical knew of the scheme at all, RFIN was a cohort of Wolas, not a potential defrauded investor. Accordingly, RFIN has not stated claim for fraudulent concealment.[FN5]

FN5. RFIN's fraudulent concealment claim also fails due to the absence of proximate cause. *See supra.*

3. *Intent to Defraud Under* Rule 9(b)

Lastly, RFIN's fraud claim must also be dismissed for the failure to plead Chemical's intent to defraud with the requisite particularity to satisfy Rule 9(b) of the Federal Rules of Civil Procedure. Rule 9(b) provides, in pertinent part, that "[i]n all averments of fraud ..., the circumstances constituting fraud ... shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally." Fed.R.Civ.P. 9(b). The rule is designed to "provide a defendant with fair notice of a plaintiff's claim, to safeguard a defendant's reputation from improvident charges of wrongdoing, and to protect a defendant against the institution of a strike suit." *Acito v. Imcera Group, Inc.*, 47 F.3d 47, 52 (2d Cir.1995) (quoting *O'Brien v. National Property Analysts Partners*, 936 F.2d 674, 676 (2d Cir.1991)) (internal quotation marks omitted). Allegations of fraud, therefore, must be specific enough to provide a defendant with "a reasonable opportunity to answer the complaint and ... adequate information to frame a response." *Ross v. A.H. Robins Co.*, 607 F.2d 545, 557-58 (2d Cir.1979).

***7** Four essential requirements comprise Rule 9(b). A plaintiff must (i) " 'specify the statements that the plaintiff contends were fraudulent" '; (ii) " 'identify the speaker" '; (iii) " 'state where and when the statements were made" '; and (iv) " 'explain why the statements were fraudulent." ' *Acito*, 47 F.3d at 51 (quoting *Mills v. Polar Molecular Corp.*, 12 F.3d 1170, 1175 (2d Cir.1993)). Although a plaintiff need not plead detailed evidentiary matters, *see Credit & Fin. Corp. v. Warner & Swasey Co.*, 638 F.2d 563, 566 (2d Cir.1981), it must plead "facts that give rise to a strong inference of fraudulent intent," *see Shields v. Citytrust Bancorp, Inc.*, 25 F.3d 1124, 1128 (2d Cir.1994). This inference may be established either (i) "by alleging facts to show that defendants had both motive and opportunity to commit fraud," or (ii) "by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness." *Id.*

RFIN concedes that it does not rely on evidence of motive and opportunity to commit fraud to satisfy its burden under Rule 9(b). Accordingly, I will restrict my analysis to whether RFIN's allegations establish circumstantial evidence of recklessness to give rise to the requisite inference of fraudulent intent.

Recklessness is established by conduct which is " 'highly unreasonable and which represents an extreme departure from the standard of ordinary care ... to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it." ' *Chill v. General Elec. Co.*, 101 F.3d 263, 269 (2d Cir.1996) (quoting *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir.1978)) (alteration in *Rolf*). In some instances, an inference of recklessness may be raised by " '[a]n egregious refusal to see the obvious, or to investigate the doubtful." ' *Id.* (quoting *Goldman v. McMahan, Brafman, Morgan & Co.*, 706 F.Supp. 256, 259 (S.D.N.Y.1989)). Nonetheless, the plaintiff bears a "significant burden ... in stating a fraud claim based on recklessness." *Id.* at 270.

Here, RFIN has failed to allege facts that constitute strong circumstantial evidence of recklessness. First, in March 1995, when the accounts were opened, Chemical had no actual knowledge that Dolan and Wolas had previously engaged in fraudulent activity. Rather, Chemical's officer, Bruce Whitcomb, had been "suspicious" of fraud in 1994, and had referred the matter to the fraud unit, which had concluded that it was "probably an advance fee scam." (Compl.¶ 112.) Likewise, neither the anonymous report to Chemical's Assistant General Counsel, Mark Segall, that Wolas had fraudulently overbilled Chemical's predecessor on a litigation matter nor the allegation that Chemical closed down a Wolas family business account due to a bounced check (both of which occurred in 1994) establishes that Chemical knew Wolas was engaged in fraud in 1995. (*See* Com pl. ¶¶ 113-14.) Thus, these allegations do not give rise to any inference of Chemical's fraudulent intent.

***8** Second, the allegations that Chemical's branch officer, Kevin O'Dea, approved various internal transfers between the SEV account and the sub-account, (*see* Compl. ¶¶ 119-20), similarly do not satisfy Rule 9(b)'s requirement. *See Williams v. Bank Leumi Trust Co.*, No. 96 Civ. 6695(LMM), 1997 WL 289865, at *3 (S.D.N.Y. May 30, 1997) (mere transfer of funds between accounts was insufficient to raise inference of knowledge of check-kiting scheme to satisfy Rule 9(b) or Rule 12(b)(6) for claim of fraudulent concealment).

Third, as soon as Chemical's fraud investigative unit alerted O'Dea of the prior suspected advance fee scam and urged that Chemical shut down the accounts, O'Dea notified Dolan that the SEV account and the Wolas sub-account would be closed in one month. (*See* Compl. ¶¶ 117-18.) Although Chemical may have shown greater vigilance by closing the accounts immediately, rather than continuing to approve transfers and bank checks until the accounts were closed one month later, this failing does not establish recklessness sufficient to raise a strong inference of Chemical's intent to defraud RFIN. *See Chill*, 101 F.3d at 269; *see also Renner*, 2000 WL 781081, at *14 (bank's failure to detect fraud sooner insufficient to satisfy Rule 9(b) burden of pleading fraudulent intent for aiding and abetting fraud claim); *Nigerian Nat'l Petroleum Corp. v. Citibank, N.A.*, No. 98 Civ. 4960(MBM), 1999 WL 558141, at *7-*8 (S.D.N.Y. July 30, 1999) (bank's negligent failure to investigate several red flags and to prevent additional wire transfers after second fraudulent transfer uncovered by transferring bank did not give rise to strong inference of fraudulent intent to satisfy Rule 9(b) for claims of commercial bad faith and aiding and abetting fraud).

Finally, in light of the aforementioned case law concerning the confidential nature of bank customer information, Chemical's failure to provide information to RFIN about Wolas's sub-account beyond the representation that it was in good standing cannot give rise to an inference of an intent to defraud.

In sum, RFIN has failed its significant pleading burden. Its allegations do not raise any inference, let alone a strong inference, of an intent to defraud. Accordingly, RFIN's fraud and fraudulent concealment claims must be dismissed.

C. *Aiding and Abetting Fraud*

To establish a claim of aiding and abetting fraud under New York law, a plaintiff must establish (i) the existence of a violation by the primary wrongdoer; (ii) knowledge of this violation by the aider and abettor; and (iii) proof that the aider and abettor substantially assisted in the primary wrong. *See Armstrong v. McAlpin*, 699 F.2d 79, 91 (2d Cir.1983). Chase contends, and I agree, that RFIN and DOIT have failed to allege either Chemical's knowledge of Wolas's fraud or that Chemical substantially assisted in the commission of the fraud.

1. *Actual Knowledge*

New York law requires a plaintiff to establish that the alleged aider and abettor had " 'actual knowledge" ' of the primary wrong. *Renner*, 2000 WL 781081, at *6 (quoting *Kolbeck v. LIT Am., Inc* ., 939 F.Supp. 240, 246 (S.D.N.Y.1996)); *see also Wight v. Bankamerica Corp.*, 219 F.3d 79, 91 (2d Cir.2000) (stating that "knowledge of the underlying wrong" is "required element" under New York law).

***9** Here, the plaintiffs have failed to allege that Chemical had actual knowledge of Wolas's fraud. As explained *supra*, the allegations that Chemical suspected that Dolan and SEV were running an advance fee scam in 1994, (*see* Compl. ¶ 112), that Wolas allegedly overbilled Chemical's predecessor in connection with litigation, (*see id.* ¶ 113), and that Chemical shut down a Wolas family account in 1994 due to a bounced check, (*see id.* ¶ 114), do not establish that Chemical had actual knowledge of Wolas's fraudulent scheme in 1995.

Turning to the allegations in 1995, O'Dea requested Chemical's fraud investigation unit to review the SEV account and the Wolas sub-account based on suspicions-not actual knowledge-of fraudulent activity. (*See id.* ¶ 115, 117.) Subsequently, upon receiving the recommendation of the fraud unit that the accounts be closed, O'Dea informed Dolan that Chemical would close the accounts in one month. (*See id.* ¶ 117-18.) Allegations that Chemical suspected fraudulent activity, however, do not raise an inference of actual knowledge of Wolas's fraud.[FN6]

FN6. This case is closely analogous to Judge Haight's opinion in *Renner*, 2000 WL 781081. In that case, the plaintiff alleged that Chase aided and abetted a prime bank guarantee scam. The allegation of actual knowledge on the part of Chase was based on, *inter alia*, its officials' rejection of a letter of credit proposal based on their suspicion that the letters were potential vehicles for fraud. *See id.* at *12. The court rejected this argument, however, and concluded that there was "no factual basis for the assertion that Chase officials actually knew the fraud [they suspected] was, in fact, occurring." *Id.*

Finally, O'Dea's authorization of transfers between the SEV account and the sub-account, (*see id.* ¶ 119), and his approval of multiple wire transfers, (*see id.* ¶ 122), do not create an inference of knowledge of the scheme. In *Williams,* 1997 WL 289865, a statutory receiver for an insurance company brought an action for, *inter alia,* aiding and abetting fraud, and alleged that the defendant bank had actual knowledge of a check-kiting scheme where the bank had approved various bank transfers. *See id.* at *4. The court rejected this argument, concluding that the account transfers and other allegations established only constructive knowledge on the part of the bank, which is insufficient to state a claim for aiding and abetting fraud. *See id.* Similarly, in this case, the plaintiffs have failed to establish that Chemical had any actual knowledge of Wolas's fraud, and thus, their aiding and abetting fraud claim must be dismissed.[FN7]

FN7. The plaintiffs' remaining allegations, that Chemical improperly permitted Dolan, a non-lawyer, to be a signatory on the Wolas's attorney escrow account, (*see* Compl. ¶ 116), that Chemical knew that a check drawn on the SEV account had been altered to reflect that it was issued from the Wolas sub-account, (*see id.* ¶ 120), and that Chemical knew that H & W did not maintain a firm escrow account at Chemical, (*see id.* ¶ 123), do not establish that Chemical knew of Wolas's fraud. These allegations only support a finding that Chemical had constructive notice of the fraud.

2. *Substantial Assistance*

The second element of an aiding and abetting fraud claim is substantial assistance. "A defendant provides substantial assistance only if it 'affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables [the fraud] to proceed.' " *Nigerian Nat'l,* 1999 WL 558141, at *8 (quoting *Diduck v. Kaszycki & Sons Contractors, Inc.,* 974 F.2d 270, 284 (2d Cir.1992)) (alteration in *Nigerian Nat'l*).

Again, the plaintiffs have failed to allege that Chemical substantially assisted Wolas's fraud. The affirmative acts of opening the accounts, approving various transfers, and then closing the accounts on the basis of suspected fraud, without more, do not constitute substantial assistance. In *Williams,* the court considered whether the use of bank accounts by the participants in the fraudulent scheme constituted substantial assistance by the bank in the participants' fraud. *See* 1997 WL 289865, at *4. Rejecting the claim, the court held that "the mere fact that all the participants in the alleged scheme used accounts at [the bank] to perpetrate it, without more, does not rise to the level of substantial assistance necessary to state a claim for aiding and abetting liability." *Id.; see also Nigerian Nat'l,* 1999 WL 558141, at *8 (bank's execution of repeated wire transfers for millions of dollars did not constitute substantial assistance for an aiding and abetting fraud claim); *Renner,* 2000 WL 781081, at *12 (Chase did not give substantial assistance to participants of prime bank guarantee scam simply because participants used accounts at Chase).

***10** Turning to the plaintiffs' allegations of Chemical's inaction, *e.g.,* failing to shut down the accounts sooner or to inform the plaintiffs about the suspected fraud, these omissions likewise do not rise to the level of substantial assistance. As previously stated, a defendant may provide substantial assistance by failing to act only when it was required to act. *See Nigerian Nat'l,* 1999 WL 558141, at *8. Absent a confidential or fiduciary relationship between the plaintiff and the aider and abettor, the inaction of the latter does not constitute substantial assistance warranting aider and abettor liability. *See King v. George Schonberg & Co.,* 650 N .Y.S.2d 107, 108 (1st Dep't 1996); *see also Renner,* 2000 WL 781081, at *12 ("[A]bsent a fiduciary duty, inaction does not constitute substantial assistance."). Here, the plaintiffs and Chemical do not have a fiduciary relationship. The relationship between a bank and its depositor is not a fiduciary one, but only that of a debtor and creditor. *See Aaron Ferer & Sons, Ltd. v. Chase Manhattan Bank, N.A.,* 731 F.2d 112, 122 (2d Cir.1984). Thus, RFIN or RFIN's Chairman, who had an account at Chemical's Private Banking Group, did not have a fiduciary relationship with Chemical. DOIT is not even a client of Chemical. Moreover, even assuming that RFIN had a confidential relationship with Chemical by virtue of its status as a customer, *see id.* at 123 ("[A] bank should keep its own customers' affairs confidential." (citing *Graney Dev. Corp. v. Taksen,* 400 N.Y.S.2d 717, 719 (Sup.Ct.), *aff'd,* 411 N.Y.S.2d 756 (4th Dep't 1978))), Chemical was under no obligation to disclose confidential information about Wolas, another customer. The plaintiffs, therefore, have failed to establish that Chemical substantially assisted in Wolas's fraud. Accordingly, their aiding and abetting fraud claim must be dismissed.

D. *Commercial Bad Faith*

A claim for commercial bad faith against a depository bank will lie if the "bank acts dishonestly-where it has actual knowledge of facts and circumstances that amount to bad faith, thus itself becoming a participant in the fraudulent scheme." *Prudential-Bache Sec., Inc. v. Citibank, N.A.,* 73 N.Y.2d 263, 275 (1989). Thus, "knowledge of the underlying wrong" is a "required element" of commercial bad faith under New York law. *Wight v. Bankamerica Corp.,* 219 F.3d 79, 91 (2d Cir.2000).

As I have already concluded that the complaint fails adequately to allege that Chemical had actual knowledge of Wolas's fraud, the plaintiffs' claim for commercial bad faith must also be dismissed. At most, the plaintiffs have alleged that Chemical negligently failed to monitor the accounts adequately and close them promptly. However, pleading " 'merely a lapse of wary vigilance or even suspicious circumstances which might well have induced a prudent banker to investigate" ' is insufficient to state a claim of commercial bad faith. *Renner,* 2000 WL 781081, at *17 (quoting *Prudential-Bache,* 73 N.Y.2d at 275); *see also* *Nigerian Nat'l,* 1999 WL 558141, at *8 (bank's alleged failure to investigate "red flags" and negligent approval of additional wire transfers, even after bank was alerted to fraudulent transfer, insufficient to state commercial bad faith claim).

***11** The plaintiffs' reliance on *Prudential-Bache,* 73 N.Y. 263, and *Peck v. Chase Manhattan Bank, N.A.,* 593 N.Y.S. 509 (1st Dep't 1993), to support their contention that Chemical had actual knowledge of Wolas's fraud is unpersuasive. Indeed, these cases support Chase's position. In *Prudential-Bache,* two bank officers were convicted of accepting bribes in connection with participation in a fraudulent scheme. The bank officers set up accounts without proper opening records and corporate resolutions, and with fictitious corporate officers, and also agreed not to prepare certain records required to be filed with the Internal Revenue Service. *See* 73 N.Y.2d at 267. To implement the embezzlement scheme, one of the co-conspirators cashed several checks on a single day and often left the branch with large quantities of cash or cashiers' checks. Furthermore, other bank employees, including managers, were also allegedly aware of the fraud due to a co-conspirator's frequent visits to the bank, his repeated large cash withdrawals at teller windows, and his conversations with other bank employees. *See* *id.* at 268. Although the bank argued that the conduct of its agents, the convicted officers, could not be imputed to it under the adverse agent doctrine, the New York Court of Appeals declined to decide that issue and held that the plaintiff had stated a commercial bad faith claim against the bank. *See* *id.* at 276-77. In *Peck,* the plaintiff alleged that an internal bank memorandum reflected that bank employees actually knew that checks payable to third parties were being deposited into the thief's account, but no action was taken. 593 N.Y.S.2d at 511. The trial court granted the bank's motion to dismiss, but the Appellate Division reversed, holding that the allegations of actual knowledge adequately stated a claim for commercial bad faith. *See id.*

Here, the plaintiffs' allegations fall short of these cases, which involved either active participation in the fraud by bank officials or actual knowledge on their part of the ongoing fraud, as they have failed to allege either on the part of Chemical. Accordingly, their commercial bad faith claim must be dismissed.

E. *Leave to Amend*

The plaintiffs argue, in the alternative, that if I grant Chase's motion I should give them leave to replead. I decline to do so.

A district court may deny leave to amend a complaint if the amendment would be futile. *See* *Foman v. Davis,* 371 U.S. 178, 182 (1962). As the plaintiffs drafted their complaint well after discovery had been taken in a related case, *see Accousti v. Wolas,* 95-CV-5267 (JG) (E.D.N.Y. filed Dec. 20, 1995), an opportunity to amend would be futile. *See* *Billard v. Rockwell Int'l Corp.,* 683 F.2d 51, 57 (2d Cir.1982) (denial of leave to amend not abuse of discretion where plaintiff had "access to full discovery" in a related case).

CONCLUSION

For the aforementioned reasons, Chase's motion to dismiss is granted.

***12** So Ordered.

E.D.N.Y.,2000.
Ryan v. Hunton & Williams
Not Reported in F.Supp.2d, 2000 WL 1375265 (E.D.N.Y.)

END OF DOCUMENT

United States District Court, S.D. New York.
Klaus RENNER, Plaintiff
v.
CHASE MANHATTAN BANK, Michelino Morelli, Townsend Financial Services Corp., Townsend Investment Fund, LLC, Gerald Townsend, and Rabon Wolford, Defendants.
No. 98 Civ. 926(CSH).

Feb. 3, 1999.

MEMORANDUM OPINION AND ORDER

HAIGHT, Senior J.

***1** Plaintiff Klaus Renner, according to the allegations of his complaint, is a citizen and resident of Switzerland, an engineer, and the inventor of a snow-removing device. Renner alleges that during the course of his efforts to fund the manufacture and sale of that device, the defendants defrauded him out of $3 million. As against all or certain defendants, his complaint alleges claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.;* claims under Section 17(a) of the Securities Exchange Act of 1933, 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.10b-5 promulgated thereunder; and common law claims for fraud, negligence, breach of contract, breach of fiduciary duty, and breach of the covenant of good faith. Subject matter jurisdiction in this Court does not depend upon the viability of plaintiff's federal claims, since it appears that complete diversity of citizenship exists between the parties.

The first two named defendants are the Chase Manhattan Bank ("Chase") and Michelino Morelli, identified in the complaint at ¶ 8 as at the relevant times "a senior vice-president of Chase and the manager of its Mount Vernon, New York office." [FN1] Chase now moves for an order dismissing the complaint as to it [FN2] pursuant to Rule 12(b)(6), Fed.R.Civ.P., for failure to state a claim upon which relief may be granted; and to dismiss the fraud-based claims pursuant to Rule 9(b) for failure to plead fraud with the requisite particularity.

> FN1. ¶ 16 of the complaint refers to "Chase's Mount Vernon *branch,"* a word that appears to be the more accurate term in banking parlance.

> FN2. The Chase Legal Department, counsel of record in the case, does not represent Morelli.

I. *Background*

Plaintiff alleges the following facts.[FN3] In or about December 1994, an international confidence man named Dr. Gustav Susse, not a party to this action, opened an account at Chase through Morelli on behalf of Hampstead Trust Ltd., an entity he controlled with defendant Rabon Wolford. Wolford, Morelli, and Susse all were members of a sham New York "Order" of a group called the "Knights of Malta," which purported to enjoy close connections with the Vatican and to perform "good deeds" around the world, but which actually served as a front for complicated fraudulent transactions. As a result of its concern with certain questionable practices, Chase closed Hampstead's account within months after it was opened. Through the assistance of Morelli, Susse then arranged to transact business at Chase through an entity called PTI and through defendant Townsend Financial, which also had set up its accounts at Chase's Mount Vernon branch.[FN4] This arrangement permitted Susse and Hampstead to continue their schemes. In or around November 1995, Hampstead swindled a "Belgian group" out of $5 million, promising to fund a purported $25 million documentary letter of credit through Chase, but instead diverting the funds to Wolford, the Knights of Malta, Susse's brother, and Townsend.

> FN3. For the purposes of Chase's Rule 12(b)(6) motion, I must take "the well-pleaded factual allegations in the complaint as true." *Papasan v. Allain,* 478 U.S. 265, 283 (1986). The requirement does not apply to allegations that are incomprehensibly

vague or entirely conclusory. See additional cases cited *infra.*

FN4. The complaint at times refers to this account as the "Townsend Financial" account (referring to defendant Townsend Financial Services Corp.) and at other times as the "Townsend Fund" account (referring to defendant Townsend Investment Fund, LLC). Similarly, the complaint also refers at times just to "Townsend," leaving it unclear whether plaintiff means to refer to Townsend Financial, the Townsend Fund, or individual defendant Gerald Townsend. Accordingly, for the purpose of clarity, I will simply use "Townsend" to refer to any and all of the Townsend defendants.

In early February 1996, Renner was introduced to Hampstead as a result of his efforts to raise the necessary funds to manufacture and sell his snow-removing invention. Specifically, Hampstead, through Susse and another non-party director, Alexander Penly, represented to Renner that Hampstead engaged in transactions in "medium term bank debentures" with leading banks. Susse and Penly assured him that Hampstead would invest the money Renner needed to manufacture his invention by using its connections with these major banks to engage in trades of these debentures, guaranteeing an annual return rate of 120%. They advised Renner that Hampstead had purchased Townsend, which they said was its own securities house in the United States. They did not inform him that Townsend only had been established on January 22, 1996, presumably to facilitate the diversion of customer funds.

***2** Penly and Susse stressed to Renner that the funds which he invested would be kept in a sub-account at Chase, and that Hampstead had worked with Morelli for several years on transactions with other investors. He was advised that his funds were secure because no money would leave the Chase account unless a bank note or treasury bill of higher value was substituted as collateral. They further emphasized Hampstead's and Morelli's connections with the Knights of Malta and their investment of millions of dollars of Vatican money in humanitarian projects.

On February 8, 1996, Renner signed a contract with Hampstead in which he agreed to invest $3 million with it, which funds were then transferred to Morelli's attention at Chase and specifically designated for the promised Renner sub-account to Townsend's account.

On or about February 12 and 13, 1996, before the Renner money even had arrived at Chase, Morelli and Townsend specifically discussed that Renner was a client of Hampstead; that Hampstead intended to use Renner's money for a purpose not permitted under Renner's agreement with Hampstead; that Renner believed that his money was to be held in a sub-account and that he expected a custody receipt confirmation from Chase; that the defendants wished to deal only with Morelli; that Morelli's personal involvement was important to defendants; and that Chase, Morelli, and Townsend "could be held accountable" in the event of a problem.

On or about February 13, 1996, Chase received Renner's money and issued two Wire Transfer Advances to Townsend, confirming receipt. Morelli confirmed on Chase letterhead that Renner's money had been credited to the Townsend account and that the funds "were received from Swiss Bank Corp., New York via Fed by Order of Klaus Renner." Plaintiff does not state how, where, or to whom Morelli sent this confirmation. On or about February 20, 1996, with Morelli silently on the line, two Chase officers told Townsend by telephone that they were concerned about Townsend's proposed transaction with investor money and asked to see authorization for its use of investor funds. Three days later, Townsend wrote directly to Morelli instructing him to wire almost all of Renner's money to Susse's common-law wife in Monaco, which instruction Chase duly followed. Shortly thereafter, upon Townsend's request, Chase wired the balance of the money to Penly's Geneva bank account. Thus, although questions had been raised at Chase as to the Hampstead and Townsend entities, the funds were transferred and Renner was told neither of the activity in the accounts nor of Chase's concerns.

On or about April 9, 1996, Morelli wrote to Townsend to advise it that Chase would be closing the account as a result of its concerns with Townsend's practices. Susse then informed plaintiff that the Townsend account had been closed; he also falsely told him that the Securities and Exchange Commission had frozen the Townsend funds, but that he intended to continue with the investment program.

Having heard nothing further, plaintiff wrote to Susse on June 27, 1996, with a copy to Morelli, confirming Susse's repeated promise to return his investment and questioning why it could not be returned immediately. Plaintiff's agents also contacted Morelli by telephone, but he disclaimed any knowledge of Renner's funds.

***3** Over a year and a half after plaintiff failed to obtain the return of his money, he brought the present action.

Renner's complaint alleges eleven claims for relief, as follows:

Claim 1 (against all defendants): Substantive violation of the RICO statute, 18 U.S.C. § 1962(c).

Claim 2 (against all defendants): RICO conspiracy, in violation of 18 U.S.C. § 1962(d).

Claim 3 (against all defendants): Securities fraud, in violation of the 1933 and 1934 Acts and accompanying regulations, in connection with the conspirators' promise to trade with Renner's funds in "securities," namely, the "medium term bank debentures."

Claim 4 (against all defendants): Common law fraud.

Claim 5 (against Chase only): Negligence, in respect of its failure to "safeguard" Renner's funds on deposit with Chase.

Claim 6 (against Chase only): Breach of contractual duty to "make sure that Townsend/Hampstead was using the Renner money for authorized purposes."

Claim 7 (against Chase and Morelli only): Breach of "a covenant of good faith and fair dealing inherent in every contract."

Claim 8 (against Gerald Townsend and the two Townsend corporate entities only): Breach of contract.

Claim 9 (against Townsend defendants only): Breach of the covenant of good faith and fair dealing.

Claim 10 (against Townsend defendants only): Breach of fiduciary duty.

Claim 11 (against Townsend defendants only): Negligence.

Chase's motion under Rule 12(b)(6) and Rule 9(b) challenges only the claims plaintiff asserts against Chase. No other defendant has made a motion at this time or sought to adopt that of Chase.

II. *Standard of Review*

A. *Rule 12(b)(6)*

On a motion to dismiss under Rule 12(b)(6), the trial court's function "is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." *Geisler v. Petrocelli*, 616 F.2d 636, 639 (2d Cir.1980); *see* *Ricciuti v. N.Y.C. Transit Authority*, 941 F.2d 119, 124 (2d Cir.1991). "[T]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). The district court should grant a Rule 12(b)(6) motion "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Except in certain circumstances, consideration of a motion to dismiss the complaint must focus on the allegations contained on the face of the complaint. *See* *Cortec Industries, Inc. v. Sum Holdings, L.P.*, 949 F.2d 42, 47 (2d Cir.1991); *Kramer v. Time Warner, Inc.*, 937 F.2d 767, 773 (2d Cir.1991). On a motion to dismiss, a district court must accept plaintiff's well-pleaded factual allegations as true, *Papasan v. Allain*, 478 U.S. 265, 283 (1986), and the allegations must be "construed favorably to the plaintiff." *LaBounty v. Adler*, 933 F.2d 121, 123 (2d Cir.1991).

B. *Rule 9(b)*

***4** In addition, Rule 9(b) requires that in all allegations of fraud, including actions under § 10(b) and Rule 10b-5, the circumstances constituting the fraud must be stated with particularity. *See* *Shields v. Citytrust Bancorp, Inc.*, 25 F.3d 1124, 1127-28 (2d Cir.1994). The pleading must be particular enough to satisfy the three goals of Rule 9(b): (1) to provide a defendant with fair notice of the claims against it; (2) to protect a defendant from harm to its reputation or goodwill by unfounded allegations of fraud; and (3) to reduce the number of strike suits. *See* *DiVittorio v. Equidyne Extractive Indus., Inc.*, 822 F.2d 1242, 1247 (2d Cir.1987).

"[C]onclusory allegations that defendant's conduct was fraudulent or deceptive are not enough." *Decker v. Massey-Ferguson, Ltd.*, 681 F.2d 111, 114 (2d Cir.1982). A complaint alleging fraud must (1) specify the statements, oral or written, that the plaintiff contends were fraudulent, either as misrepresentations or containing fraudulent omissions; (2) identify the speaker or the writer; state where, when, and to whom the statements were made; and (3) explain why the statements were fraudulent. *Acito v. Imcera Group, Inc.*, 47 F.3d 47, 51 (2d Cir.1995). Thus Rule 9(b) requires a plaintiff to identify which defendant caused each allegedly fraudulent communication to be spoken, written, wired or mailed, and to whom; when the communication was made; and how it furthered the fraudulent scheme. *McLaughlin v. Anderson*, 962 F.2d 187, 191 (2d Cir.1992). In cases with multiple defendants, Rule (9b) requires that the complaint allege facts specifying each defendant's contribution to the fraud. Although the rule does not require a plaintiff to allege scienter with great specificity, it does require plaintiff to plead a factual basis which gives rise to a strong inference of fraudulent intent. *Wexner v. First Manhattan Co.*, 902 F.2d 169, 172 (2d Cir.1990). "Where pleading is permitted on information and belief, a complaint must adduce specific facts supporting a strong inference of fraud or it will not satisfy even a relaxed pleading standard." *Id.* Rule 9(b)'s particularity requirements have "even greater urgency" in civil RICO actions. *Morin v. Trupin*, 778 F.Supp. 711, 716 (S.D.N.Y.1991).

III. *Discussion*

A. *The RICO Claim*

The Private Securities Litigation Reform Act

In his complaint, plaintiff alleged violations both of RICO and of the securities laws. Chase, moving to dismiss the RICO claim against it, argues that plaintiff's RICO claim is barred under the recently enacted Private Securities Litigation Reform Act ("Reform Act"), Pub.L. No. 104-67, 109 Stat. 737 (1995).

The Reform Act amends the RICO statute, 18 U.S.C. § 1964(c), to provide that "no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962." The Reform Act's legislative history shows that Congress intended to eliminate securities fraud as a RICO predicate offense, along with other offenses, such as mail or wire fraud, "if such offenses are based on conduct that would have been actionable as securities fraud." Senate Report No. 104-98, 2 U.S.C.C.A.N. 679, 698 (1995). Case law interpreting the statute has established that "where allegations of mail and wire fraud derive from conduct otherwise actionable as securities fraud, no RICO claim will lie." *ABF Capital Management v. Askin Capital Management, L.P.*, 957 F.Supp. 1308, 1319 (S.D.N.Y.1997).

***5** Thus the preclusive effect of the Reform Act does not depend upon whether a plaintiff has specifically alleged securities fraud as a predicate act for his RICO claims. The question turns upon the defendant's conduct, as alleged in the complaint. If that conduct "would have been actionable as securities fraud," the Reform Act bars a RICO claim, even if the pleader eschews reference to the securities laws in describing the predicate acts and dresses his claim in other clothing (as the Reform Act undoubtedly will inspire RICO-minded pleaders to do). The Senate Report, cited *supra*, makes Congress's purpose plain enough:

> The Committee intends this amendment to eliminate securities fraud as a predicate act of racketeering in a civil RICO action. In addition, a plaintiff may not plead other specified offenses, such as mail or wire fraud, as predicate acts of racketeering under civil RICO if such offenses are based on conduct that would have been actionable as securities fraud.

In the case at bar, plaintiff alleges as predicate acts mail fraud, wire fraud, money laundering, and Travel Act violations, Complaint at ¶ 56, a list he repeats in his RICO Statement at ¶ 5a. There is no reference to securities fraud as a predicate act. Nonetheless, the pleading implicates the Reform Act, because the Third Claim for Relief, captioned "Securities Fraud," alleges that the "medium term bank debentures" the conspirators promised to trade with Renner's funds are "securities" within the 1933 and 1934 Acts. Complaint, ¶ 66. The Townsend defendants are identified as the architects and principal actors in the fraudulent scheme, *id.*, ¶¶ 68, 69. Paragraph 70 alleges: "Chase, Morelli and Wolford, knowing that such representations were false, *aided and abetted the securities fraud* by participating in inducing Renner to enter the transaction and then diverting the money to the conspirators." (emphasis added).

Implicitly acknowledging the preclusive effect of the Reform Act, and seeking to preserve his RICO claim, plaintiff argues in his opposing papers that the scheme he alleges "is not 'core' securities fraud that Congress aimed to prohibit from RICO," brief at 29, and then goes so far as to purport to "withdraw[ ] the securities claim in order to avoid unnecessary litigation on collateral issues," *id.* at 48 n. 11.

Those defensive maneuvers will not suffice to salvage a RICO claim if Chase's alleged conduct, whatever the label affixed to it, is "actionable as securities fraud," a question whose answer depends upon the substantive law of securities fraud.

A threshold question arises as to whether "securities" are involved at all. The complaint alleges fraudulent promises to trade in "medium term bank debentures." Such instruments certainly sound like "securities," particularly given the broad definitions of that word in the 1933 Act, 15 U.S.C. § 77b(a)(1) ("The term 'security' means any ... debenture, ... or, in general, any interest or instrument commonly known as a 'security' '); and the 1934 Act, 15 U.S.C. § 78c(a)(10) (same).

***6** However, the case is complicated by the fact that, on plaintiff's theory, the bank debentures did not exist and never had. In a criminal case, *United States v. Jones*, 648 F.Supp. 225, 231-32 (S.D.N.Y.1986), this Court dismissed securities fraud charges from an indictment involving a hoary "pigeon drop" scam because "[n]o actual securities existed in this case. No genuine transactions in securities occurred or were contemplated. References to securities simply formed a part of the talker's patter," *aff'd in part, rev'd in part on other grounds*, 839 F.2d 900 (2d Cir.1988).[FN5] *Cf. United States v. Schlei*, 122 F.3d 944, 972-73 (11th Cir.1997) ("The fraud provisions are not defeated by the fact that a security purportedly traded is nonexistent or fictitious ... A contrary result would encourage rather than curb fraud."), *cert. denied*, 118 S.Ct. 1523 (1998).

> FN5. The government did not cross-appeal from the trial court's dismissal of the securities charges in *Jones*, and so the Second Circuit had no occasion to consider the question.

But I need not pursue this question further because the application of the Reform Act turns upon whether Chase's alleged conduct is "actionable" under the securities laws; and, assuming without deciding that the case falls within those laws, Chase's conduct is not actionable under them.

As noted, the complaint asserts that Chase, Morelli, and Wolford "aided and abetted" the fraudulent acts of others.[FN6] That allegation is legally insufficient because secondary liability for aiding and abetting is not a valid basis for a securities fraud claim.

> FN6. Morelli is the only Chase employee named in the complaint. Chase's vicarious liability for Morelli's acts is considered *infra*.

The Supreme Court's decision in *Central Bank v. First Interstate Bank*, 511 U.S. 164 (1994) holds that a claim under § 10(b) must allege that a defendant has personally and directly committed fraud. "[T]he statute prohibits only the making of a material misstatement (or omission) or the commission of a manipulative act ... The proscription does not include giving aid to a person who commits a manipulative or deceptive act. We cannot amend the statute to create liability for acts that are not themselves manipulative or deceptive within the meaning of the statute." 511 U.S. at 177-78. Under *Central Bank*, secondary liability for "aiding and abetting" no longer is a basis for a § 10(b) claim. *Id.* at 191 ("Because the text of § 10(b) does not prohibit aiding and abetting, we hold that a private plaintiff may not maintain an aiding and abetting suit under § 10(b)."). *See also Shapiro v. Cantor*, 123 F.3d 717, 721 (2d Cir.1997) (affirming dismissal and holding that an "assertion of aiding and abetting does not support a claim under § 10(b) as interpreted by the *Central Bank* Court"); *In re JWP Inc. Sec. Litigation*, 928 F.Supp. 1239, 1255-56 (S.D.N.Y.1996) (dismissing misrepresentation claim against audit committee defendants where those defendants did not actually make the alleged misrepresentations).

Here, plaintiff does not allege that defendants Chase, Morelli, or Wolford made any material misstatements or omissions in connection with the purchase or sale of any securities; rather, plaintiff alleges that they merely "aided or abetted" the Townsend defendants and Susse in carrying out the securities fraud. *Central Bank* instructs us that Chase, Morelli, and Wolford may not be held liable for such secondary actions. Accordingly, plaintiff's claim under the securities laws would fail in any event as against these defendants.

***7** Because plaintiff's claim would not have been "actionable" against Chase under the securities law, the mere fact that plaintiff baselessly asserted it in his complaint would not bar a RICO claim against under the Reform Act. However, plaintiff's RICO claim fails on other grounds.

Pattern of Continuous Activity

To state a claim under RICO, a plaintiff must allege (1) a violation of the RICO statute, 18 U.S.C. § 1962; (2) an injury to business or property; and (3) that the injury was caused by the violation of § 1962. *Pinnacle Consultants, Ltd. v. Leucadia Nat'l Corp.,* 101 F.3d 900, 903-04 (2d Cir.1996). Section 1962 prohibits: a) the use of income "derived ... from a pattern of racketeering activity" to acquire an interest in, establish, or operate an enterprise engaged in or whose activities affect interstate commerce; b) the acquisition of any interest in or control of such an enterprise "through a pattern of racketeering activity"; c) the conduct or participation in the conduct of such an enterprise's affairs "through a pattern of racketeering activity"; and (d) conspiring to do any of the above. 18 U.S.C. § 1962; *see also GICC Capital Corp. v. Technology Finance Group, Inc .,* 67 F.3d 463, 465 (2d Cir.1995), *cert. denied,* 518 U.S. 1017 (1996). The existence of a "pattern of racketeering activity" is therefore a requirement under any prong of § 1962. *See GICC Capital Corp.,* 67 F.3d at 465.[FN7] To establish such a pattern, "a plaintiff must plead at least two predicate acts, show that the acts are related and that they amount to, or pose a threat of, continuing criminal activity." *Id.; see also H.J. Inc. v. Northwestern Bell Telephone Co.,* 492 U.S. 229, 240 (1989) ("To establish a RICO pattern it must also be shown that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.").

FN7. Plaintiff at bar alleges violations of §§ 1962(c) and 1962(d).

In *H.J. Inc.*, the Supreme Court parsed out the two components of the continuity requirement: " 'Continuity' is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition." 492 U.S. at 241-42. *See also GICC Capital Corp.,* 67 F.3d at 466 ("a plaintiff in a RICO action must allege either an 'open-ended' pattern of racketeering activity (i.e., past criminal conduct coupled with a threat of future criminal conduct) or a 'closed-ended' pattern of racketeering activity (i.e., past criminal conduct 'extending over a substantial period of time')"); *Batra v. Pace University,* 1998 WL 684621, at *5 (S.D.N.Y.1998). Plaintiff asserts that he has pleaded both an open-ended and a close-ended pattern of criminal activity. "Racketeering activity includes the commission of specified state-law crimes, conduct indictable under various provisions within Title 18 of the United States Code, and certain other federal offenses." *Pinnacle Consultants,* 101 F.3d at 904 (citing 18 U.S.C. § 1961(1)).

***8** To determine whether a threat of "open-ended" continuity exists, a court must examine the nature of either: (1) the predicate acts alleged; or (2) the enterprise at whose behest the predicate acts were performed. *Schlaifer Nance & Co. v. Estate of Warhol,* 119 F.3d 91, 97 (2d Cir.1997). In this case, the moving defendants are not engaged in inherently illegal enterprises. *See Giannacopolous v. Credit Suisse,* 965 F.Supp. 549, 552 (S.D.N.Y.1997); *Shamis v. Ambassadors Factors Corp.,* 1997 WL 473577, at *13-14 (S.D.N.Y.1997). Here, as in *Shamis,* where "all the specific acts of racketeering ... arose out of the master agreement" between the parties, "the nature of the predicate acts and the enterprise alone do not support a finding of an 'open-ended' pattern of racketeering activity," and the Court must then "look to more general factors to determine whether the threat of continuing activity exists." *Id.* at *14 (citations omitted). However, where, as here, the alleged scheme had as its goal the fraudulent one-time inducement of one victim to part with his money, the allegations are insufficient to state a claim of open-ended continuity. *See* Schlaifer Nance, 119 F.3d at 97-98 ("the allegedly fraudulent acts, although they spanned over three years, were not continuous for RICO purposes because they were acts related to a single contract and single scheme to defraud"); *China Trust Bank of New York v. Standard Chartered Bank, PLC,* 981 F.Supp. 282, 287 (S.D.N.Y.1997) ("The Court cannot infer a threat of repeated fraud from the alleged single scheme"). There is no threat that the fraud alleged in the complaint will continue. Renner, understandably enough, is having nothing further to do with Susse and his confederates, Chase has closed the Townsend account, and Morelli and Wolford seem to have disappeared; they have not been served with process, and plaintiff's counsel noted in the Clerk's Cover Sheet that he has not been able to locate those defendants by the exercise of diligence.

In these circumstances, plaintiff cannot demonstrate RICO "open-ended" continuity.

A party demonstrates "close-ended" continuity by proving a series of related predicate acts extending over a substantial period of time. *H.J. Inc.,* 492 U.S. at 242, "Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct." *Id.*

To determine whether closed-ended continuity exists, courts consider a number of factors, including: "the length of time over which the alleged predicate acts took place, the number and variety of acts, the number of participants, the number of victims, and the presence of separate schemes." *GICC,* 67 F.3d at 467 (citations omitted); *see also* *Skylon Corp. v. Guilford Mills, Inc.,* 1997 WL 88894, at *5 (S.D.N.Y.1997). Plaintiff has failed to allege a close-ended pattern of RICO activity under the foregoing factors.

Length of Time:

***9** All of the racketeering acts that victimized plaintiff, as alleged in the complaint, occurred in February and March of 1996. A two-month period of time is insufficient for the purposes of the RICO statute. *See* *H.J., Inc.,* 492 U.S. at 242 ("predicate acts extending over a few weeks or months ... do not satisfy [the continuity] requirement"). In *GICC*, the Second Circuit concluded that closed-ended continuity is not satisfied where the RICO pattern alleges a one-victim scheme to defraud over a period of less than two years. 67 F.3d at 463, 467; *see also* *North American Development, Inc, v. Shahbazi,* 1996 WL 306538, at *6 (S.D.N.Y.1996) (collecting cases).

Number, Nature, and Variety of Predicate Acts:

Where the predicate acts alleged are not inherently unlawful acts, such as murder or obstruction of justice, courts normally require a longer span of time to satisfy the continuity requirement. *See, e.g.,* *Skylon Corp.,* 1997 WL 88894, at *6. Accordingly, none of these factors are of any assistance to plaintiff, who alleges several predicate acts (none of them inherently unlawful) typical of a garden-variety fraud.

Number of Participants:

This factor similarly is unhelpful to plaintiff, as he does not allege a far-reaching scheme perpetrated by a host of conspirators. Instead, he implicates Chase, an officer of Chase, an officer of Hampstead, and the various Townsend defendants, who may be considered as one entity. *See* *R.C.M. Exec. Gallery Corp. v. Rols Capital Co.,* 901 F.Supp. 630, 640-41 (S.D.N.Y.1995).

Presence of Separate Schemes:

Courts typically dismiss RICO claims, such as the one at bar, based upon the limited nature of the scheme alleged. *See* *Skylon Corp.,* 1997 WL 88894, at *7 (collecting cases). A court may consider allegations of a "complex, multi-faceted conspiracy," in determining whether the complaint satisfies the continuity requirement, *GICC,* 67 F.3d at 468-69; however, where, as here, the allegedly criminal acts were "narrowly directed toward a single fraudulent end with a limited goal," the claim typically will fail. *Skylon Corp.,* 1997 WL 88894, at *7 (internal citation omitted). The simple fraud alleged here, fraudulently bilking plaintiff and diverting his money, simply does not constitute the long-term criminal conduct prohibited under RICO.

Plaintiff attempts to demonstrate that the scheme to defraud him was part of a larger venture that stretched from late 1994 until August 1996. In support of that effort, plaintiff alleges that Hampstead opened a Chase account in December 1994, which Chase closed several months later when Hampstead "presented documentary letters of credit that were fraudulent," Complaint, ¶¶ 13-15; and that, in or around November 1995, Hampstead "induced a Belgian group to provide it with $5 million so that Hampstead would fund a purported $25 million documentary letter of credit through Chase," which Hampstead then diverted to various co-conspirators, *id.,* ¶ 17.

***10** Plaintiff may intend by these allegations of other fraudulent acts to demonstrate either open-ended continuity (by showing the threat of ongoing fraud by the enterprise) or closed-end continuity (by enlarging the relevant period of time). But these allegations are insufficient to make either showing.

First, these other acts, to the extent that they can be understood on the basis of plaintiff's barebones allegations, are unrelated in purpose or methodology to the conduct that injured plaintiff. That is significant because "acts ... [that] are unrelated to the predicate acts which allegedly injured plaintiff ... cannot be considered as part of the activity to extend the scope of the pattern." *Shamis,* 1997 WL 473577 at *15 (citation and internal quotations omitted) *See Burdick v. American Express Co.,* 865 F.2d 527, 529 (2d Cir.1989) (where plaintiff employee sued defendant bank employer for termination as a result of his complaints about fraud on customers, plaintiff could not assert RICO violation because harm to defendant's customers resulting from defendant's fraudulent practices was "too remotely related" to predicate acts alleged); *Vild v. Visconsi,* 956 F.2d 560, 566 (6th Cir.1992) (finding different types of conduct alleged to be unrelated); *Committee to Defend the United States Constitution v. Moon,* 776 F.Supp. 568, 572 (D.D.C.1991); *Shamis,* 1997 WL 473577 at *15.

Second, these allegations of other fraudulent acts fail entirely to comply with the pleading requirements of Rule 9(b), discussed *supra.* As there noted, the law of this circuit requires that allegations of fraud specify the statements made that were false or misleading, give particulars as to the respect in which it is contended that the statements were fraudulent, and state the time and place the statements were made and the identity of the persons who made them. These pleading requirements apply with full force to the allegations in a RICO complaint intended to demonstrate continuity, *Shamis,* 1997 WL 88894, at *15; and the allegations in the case at bar are wholly insufficient to support an inference that the defendants engaged in ongoing and repeated racketeering activity over a term of years, or that they are likely to do so in the future.

For the foregoing reasons, plaintiff has failed to allege a viable RICO claim against any defendant. But there is an additional reason why the RICO claim fails as against Chase.

The only Chase employee named in the complaint is Morelli, the seemingly faithless manager of Chase's Mount Vernon branch (if plaintiff's descriptions of his conduct are accurate). This Court and other district courts in the circuit have held that "corporations may not be held vicariously liable for the actions of their employees in violation of the RICO statute where the plaintiff has not alleged any facts which portray the company as an active perpetrator of the fraud or a central figure in the criminal scheme." *Oatar National Navigation & Transportation Co., Ltd. v. Citibank, N.A.,* 1992 WL 276565, at *7 (S.D.N.Y.1992) (citations and internal quotation marks omitted); *see also Schmidt v. Fleet Bank,* 1998 WL 47827, at *12 (S.D.N.Y.1998) ("Although the Second Circuit has not addressed the issue, district courts within this circuit have been reluctant to impose vicarious liability under RICO"; *held,* defendant Fleet Bank not liable under RICO for acts of its vice-president and branch manager, one Patnoi, where "the complaints do not sufficiently allege that Fleet was a central figure in the criminal scheme or that it benefitted from Patnoi's alleged participation in the scheme.").

***11** In the case at bar, plaintiff's complaint is entirely lacking in well-pleaded factual allegations that Chase (as opposed to its branch manager Morelli) was a central figure in the scheme or stood to benefit from it. On the contrary: plaintiff's allegations in ¶ 31 of the Complaint that two unidentified Chase officers "told Townsend by phone on February 20, 1996 that they were concerned about the Townsend Fund's proposed transactions with investor money" and demanded to see an authorization "that the money in the Townsend account could be used in that way" convincingly depict Chase as an honest bank, trying to prevent, not promote, a possibly fraudulent transfer of funds by Townsend-an effort that Morelli (silently listening to the conversation) was able to circumvent three days later. Nor is there, or could there logically be, any allegation in the complaint that Chase as an institution stood to benefit from the scheme.[FN8]

FN8. Notwithstanding the failure of the complaint to allege any benefit to Chase, plaintiff's brief asks the reader to infer it, apparently on the theory that Chase would receive "commissions and fees" from the fraudulent transaction. Brief at 40. Quite apart from the requirement that allegations of fact should appear in the pleadings, not briefs of counsel, this requested inference makes no sense, since the Renner funds, after a brief pause in the Townsend account at Chase, were dispatched to the fraudsmen in Monaco. It is fanciful to infer that Chase profited so much from this particular transaction that it was willing to become a partner in fraud to effect it.

For the foregoing reasons, the RICO claims against Chase will be dismissed. [FN9]

FN9. I have not found it necessary to discuss all of the grounds which Chase argues for dismissing the RICO claims against it.

B. *Securities Fraud:*

Plaintiff's claim for securities fraud is not viable, for the reasons previously stated, *supra.*

Plaintiff also alleges several common law claims. Because one of the bases for this Court's jurisdiction is diversity of citizenship under 28 U.S.C. § 1332, I must address each in turn.

C. *Common Law Fraud*

The complaint alleges at ¶ 72 that "Susse and Penly, aided and abetted by Chase, Morelli, Townsend, Townsend Financial and Townsend Fund, made knowing and intentional misrepresentations to Renner ... ".

Thus plaintiff's claim against Chase is limited to one of aiding and abetting the fraud of others. That is understandable, since the first of four elements that a plaintiff must prove by clear and convincing evidence to sustain a claim of fraud is that the defendant in question made a material false representation to the plaintiff.[FN10] *See Banque Arabe v. Maryland National Bank,* 57 F.3d 146, 153 (2d Cir.1995). The complaint contains no allegation that Morelli or anyone else at Chase made any representation to Renner which induced Renner to hand over his money to others. The only communication from anyone at Chase to plaintiff referred to in the complaint appears at ¶ 50, where it is alleged that in a telephone conversation on June 27, 1996, between Felix Renner, plaintiff's brother, and Morelli, "Morelli disclaimed knowledge about the Renner transaction and claimed to know nothing about Townsend, Hampstead or Susse." Even if that disclaimer was false, it did not induce any action on the part of plaintiff, nor did it cause him to suffer damage; according to the complaint, his money was by that time long gone.[FN11]

FN10. The other three elements are that the defendant intended to defraud the plaintiff thereby; that the plaintiff reasonably relied upon the representation; and that the plaintiff suffered damage as the result of such reliance. *Banque Arabe,* 57 F.3d at 153.1995).

FN11. In dealing with communications between Morelli and plaintiff, I do not lose sight of the allegation in ¶ 29 of the complaint that on or about February 15, 1996, "Morelli confirmed on Chase Mount Vernon branch letterhead that the Renner money had been credited to the Townsend Fund account and that the funds 'were received from Swiss Bank Corp., New York via Fed by Order of Klaus Renner." ' Plaintiff does not allege that this letter was sent to him; and a careful reading of the complaint suggests that Morelli sent it to Chase's customer, Townsend, which on the same day sent a "Custody Receipt Confirmation" in quite different terms to Renner. Complaint, ¶ 27.

I turn, then, to whether the complaint adequately alleges a claim against Chase for aiding and abetting the fraud of Susse and Penly.

To establish aiding and abetting under New York law, plaintiff must show (1) the existence of a violation by the primary wrongdoer; (2) knowledge of this violation on the part of the aider and abettor; an (3) substantial assistance by the aider and abettor in the achievement of the primary violation. *See* *Williams v. Bank Leumi Trust Co.,* 1997 WL 289865, at *4 (S.D.N.Y.1997) (collecting cases); *Moll v. U.S. Life Title Insurance Co. of New York,* 710 F.Supp. 476, 479 (S.D.N.Y.1989) (citing elements in context of aiding and abetting fraud).

***12** The pleading requirements of Rule 9(b), previously discussed, apply to a claim for aiding and abetting fraud. *See,* *Williams,* 1997 WL 289865, at *5; *ABF Capital Management v. Askin Capital Management, L.P.,* 957 F.Supp. at 1328 ("claim of aiding and abetting fraud must meet the pleading requirements of Rule 9(b)"); *Frota v. Prudential Bache Securities, Inc.,* 639 F.Supp. 1186, 1193 (S.D.N.Y.1986) (applying Rule 9(b) to breach of fiduciary duty claims based on allegations of fraudulent conduct).

The complaint at bar fails to conform to the relevant pleading requirements in several respects.

First, the complaint fails adequately to allege knowledge on the part of Chase of the fraudulent scheme that Susse and others intended to perpetrate, and did perpetrate, upon Renner. That is so even if, assuming without deciding, the knowledge of Morelli should be imputed in law to his employer, Chase.

New York law requires that an aider and abettor have actual knowledge of the primary wrong; constructive knowledge is not sufficient. *See* *Kolbeck v. LIT America, Inc.,* 939 F.Supp. 240, 246 (S.D.N.Y.1996) (collecting cases); *Williams,* 1997 WL 289865, at *5 ("The only apparent basis for Bank Leumi's alleged knowledge of the check-kiting scheme was the sequence of the account transfers, and the contention that Bank Leumi was informed that the purpose of the $4 million check was for the purchase of LifeCo stock. At most, these facts raise the issue of constructive knowledge which is insufficient to state a claim for aiding and abetting").

Morelli, the Mt. Vernon branch manager, is the only Chase employee identified in the complaint. If there were other Chase officers or employees involved in this transaction, the complaint fails to identify or describe them, in violation of Rule 9(b).

As for Morelli, only two paragraphs of the complaint contain allegations which could be read as evidencing some degree of troublesome knowledge on Morelli's part. The first of these is ¶ 25. That paragraph alleges that on or about February 12 and 13 1996, before the Renner money had been transferred to Chase, Morelli and Townsend had a discussion about how Hampstead would use Renner's money, and how the account to which the Renner money would be paid could be structured. At the very most, these allegations raise the possibility of constructive knowledge on Morelli's part, namely, that Townsend might not be dealing with Renner in a wholly forthright manner, consistent with Renner's instructions and expectations. But the allegations fall well short of imparting to Morelli actual knowledge that, as soon as the Renner funds were received, they would be diverted to conspirators in Monaco, as the complaint alleges did occur.

Furthermore, although plaintiff does not characterize the allegations of ¶ 25 as having been made "upon information and belief," it is difficult to see how it could be otherwise; the paragraph purports to summarize the contents of a conversation between Morelli and Townsend. This is significant, since it is well settled that "allegations made on information and belief are insufficient unless the facts are peculiarly within the knowledge of the defendants, in which case the complaint must alleges facts demonstrating the basis for the information and belief." *National Council of Young Israel v. Wolf,* 963 F.Supp. 276, 281 (S.D.N.Y.1997) (citations and internal quotation marks omitted). The complaint nowhere alleges the basis for plaintiff's information and belief.

***13** The same considerations apply to ¶ 31 of the complaint, which alleges that on or about February 20, 1996, Morelli "listened silently on the line" to a telephone conversation between two unidentified Chase officers and Townsend. The officers told Townsend, according to these allegations, that they were concerned "about the Townsend fund's proposed transactions [unspecified] with investor money [also unspecified]" and asked to see an authorization "that the money in the Townsend account could be used in that way" (there being no further description of what "that way" referred to). Again, these allegations establish nothing more than constructive knowledge of possible concerns, rather than actual knowledge of the fraud eventually perpetrated. And, since it is equally clear that plaintiff bases this allegation "upon information and belief," it is deficient in its failure to allege facts demonstrating the basis for that information and belief.

Thus it is apparent that the complaint does not sufficiently allege the second element of the claim for aiding and abetting fraud, that of actual knowledge on the part of the alleged aider and abettor.

D. *Negligence*

Plaintiff's fifth claim alleges negligence against Chase. Plaintiff alleges that by accepting Renner's funds, Chase owed a duty to Renner in connection with the funds, which Chase negligently breached by failing to protect the funds from fraudulent diversion. Complaint, ¶ 76-78.

To establish a claim for negligence under New York Law, "a plaintiff must show that the defendant owed the plaintiff a cognizable duty of care, that the defendant breached that duty, and that the plaintiff suffered damages as a proximate result of that breach." *King v. Crossland Savings Bank,* 111 F.3d 251, 259 (2d Cir.1997); *see also* *Stagl v. Delta Airlines, Inc.,* 52 F .3d 463, 467 (2d Cir.1995); *Solomon v. City of New York,* 66 N.Y.2d 1026, 1027 (N.Y.1985).

Plaintiff's negligence claim against Chase fails because Chase did not owe plaintiff a cognizable duty of care. Whatever duty of care banks owe to their customers, *see* *King,* 111 F.3d at 259, Renner was not a customer of Chase. The Chase customer involved in this case was the Townsend fund, into which Chase (acting through Morelli) paid Renner's funds when they were received through Renner's Swiss Bank.

These circumstances reduce Renner to the necessity of arguing that Chase owed him a duty to prevent Chase's customer, Townsend, from defrauding Renner. But it is well settled that a bank owes no such duty to a non-customer third-party. *See* *Guidry v. Bank of LaPlace,* 740 F.Supp. 1208 (E.D.La.1990) (as a matter of law, bank does not owe duty of care to non-customer defrauded by bank customer), *aff'd as modified,* 954 F.2d 278 (5 th Cir.1992); *E.F. Hutton Mortgage Corp. v. Equitable Bank, N.A.,* 678 F.Supp. 567 (D.Md.1988) (even if bank knew of or suspected customer's fraudulent scheme, it owed no duty to third-party, non-customer plaintiff and thus was not liable for negligence); *see also* *Century Business Credit Corp. v. North Fork Bank,* 246 A.D.2d 395, 396, 668 N.Y.S.2d 18, 19 (N.Y.App. Div. 1 st Dep't 1998) (holding that bank is not liable for negligence to customer's creditors, and stating that requiring a bank to monitor its customer's account would "unreasonably expand banks' orbit of duty."); *Stuart v. Tomasino,* 148 A.D.2d 370, 539 N.Y.S.2d 327 (N.Y.App. Div. 1 st Dep't 1989) (no duty of care owed by mortgagee bank to mortgagors in action by mortgagors against individuals who had defrauded them, resulting in default on mortgage); *Regency House, Inc. v. Citibank, N.A.,* 202 A.D.2d 655, 657, 610 N.Y.S.2d 535, 536 (N.Y.App. Div.2d Dep't 1994) (shareholders of foreclosed property failed to establish any duty owed to them by bank for negligence arising from foreclosure); *Cohen v. Standard Bank Investment Corp., Ltd.,* 1998 WL 782024, at *7 (S.D.N.Y.1998) (no duty of care owed by bank to investor in allegedly fraudulent scheme perpetrated by bank borrower).

***14** The cases cited by plaintiff relate only to instances in which the bank has a fiduciary duty to the plaintiff. As a general rule, a bank has no duty to monitor even a fiduciary account under New York law. *See, e.g.,* *Home Savings of America, FSB v. Amoros,* 233 A.D.2d 35, 38, 661 N.Y.S.2d 635, 637 (N.Y.App. Div. 1 st Dep't.1997) ("Ordinarily, of course, a depositary bank has no duty to monitor fiduciary accounts maintained at its branches to safeguard the funds in those accounts from fiduciary misappropriation."). However, plaintiff notes that this rule is altered where "there are facts ... indicating misappropriation." *In re Knox,* 64 N.Y.2d 434, 438 (N.Y.1985). Plaintiff asserts that because Chase had knowledge of Hampstead and Townsend before the Renner funds were deposited, it was negligent in its failure to question their motives and practices in connection with the Renner deposit.

In order for a bank to be liable for the diversion of fiduciary funds, plaintiff must show that the bank either itself benefitted from the transaction or that it had notice or knowledge that a diversion was intended or was in progress. *Knox,* 64 N.Y.2d 438; *see also* *Diller v. Schick,* 1998 WL 635539, at *2 (S.D.N.Y.1998) (citing *Home Savings of America,* 661 N.Y.S.2d at 637). The test is that "[f]acts sufficient to cause a reasonably prudent person to suspect that trust funds are being misappropriated will trigger a duty of inquiry on the part of a depositary bank, and a bank's failure to conduct a reasonable inquiry when the obligation to do so arises will result in the bank being charged with such knowledge as inquiry would have disclosed." *Home Savings of America,* N.Y.S.2d at 637 (internal citations omitted).

In the case at bar, these principles avail plaintiff nothing. First, the Townsend Fund account with Chase was not a *fiduciary* account; accordingly, there is no reason to depart from the general rule that a bank cannot be held accountable for the ways in which its customers manage their accounts. Further, even if one assumes a fiduciary relationship, plaintiff has not pleaded facts sufficient to establish negligence. In those instances in which the New York courts have found that a bank has received adequate notice of a fraud, either the bank has accepted money from a fiduciary account in order to satisfy the fiduciary's personal debt to the bank, *see* *Bischoff v. Yorkville Bank,* 218 N.Y. 106, 112 N.E. 759 (N.Y.1916); *In re Knox,* 64 N.Y.2d 434, or there is a history of overdrafts in the fiduciary account. *Home Savings of America,* N.Y.S.2d at 637. Here, there is no allegation that any payment was made to Chase; nor is there any allegation that the Townsend account ever was overdrawn. Accordingly, plaintiff has not shown that Chase had notice of an impending or ongoing misappropriation.

E. *Breach of Contract and Breach of Covenant*

I will discuss plaintiff's last two claims against Chase together.

***15** Plaintiff's sixth claim alleges that in the circumstances alleged, "Chase assumed a contractual duty to make sure that Townsend/Hampstead was using the Renner money for authorized purposes." Complaint, ¶ 82.

The seventh claim alleges that plaintiff was "relying on Chase's integrity in making the investment with the belief that the funds would be safeguarded," and that by receiving Renner's funds and depositing them in the Townsend Fund account, Chase (acting through Morelli) "undertook a covenant of good faith and fair dealing inherent in every contract," which Chase broke by issuing a misleading "custody receipt confirmation" and "failing to advise Renner that the funds entrusted to Chase were being looted, or even to inquire whether Renner was aware of, and had authorized, the questionable transactions Chase detected." *Id.,* ¶¶ 86-89.

The sixth claim need not detain us. In order to form a contract under New York law, there must be an offer, acceptance, and consideration, and a showing of "a meeting of the minds, demonstrating the parties' mutual assent and mutual intent to be bound." *Oscar Productions, Inc. v. Zacharius,* 893 F.Supp. 250, 255 (S.D.N.Y.1995). The complaint at bar contains no allegation that plaintiff and Chase entered into an express contract, either written or oral; in the latter instance, the burden on a plaintiff is heavier because "a primary concern for courts in such disputes is to avoid trapping parties in surprise contractual obligations that they never intended." *Arcadian Phosphates, Inc. v. Arcadian Corp.,* 884 F.2d 69, 72 (2d Cir.1989) (citation and internal quotation marks omitted). Nor, given the principles of banking law discussed *supra,* may a contract binding Chase to plaintiff be implied.

The most that can be said for plaintiff's seventh claim against Chase is that it is an inartful effort to plead a claim for "commercial bad faith." This is a cause of action against banks, sounding more in tort than in contract, that New York law recognizes in certain special circumstances. *See* *Prudential-Bache Securities, Inc. v. Citibank, N.A.,* 73 N.Y.2d 263, 275-77, 536 N.E .2d 1118 (N.Y.1989); *Peck v. Chase Manhattan Bank, N.A.,* 190 A.D .2d 547, 593 N.Y.S.2d 509 (N.Y.App.Div. 1st Dept.1993). The plaintiff need not be a customer of the defendant bank, nor related to the bank by contract. Plaintiff need only be a foreseeable victim of a fraudulent scheme executed by lower echelon bank employees; bank liability attaches if "managerial employees of the bank knew of and thus participated in the scheme." *Prudential-Bache,* 73 N .Y.2d at 277. In that regard, allegations charging managerial employees with "merely a lapse of wary vigilance" or "even suspicious circumstances which might well have induced a prudent banker to investigate" are insufficient, *id.* at 276. Individuals more exalted in the bank hierarchy than a branch assistant manager (the fraudsman in *Prudential-Bache, see* 73 N.Y.2d at 267, and the analogue to Morelli in the case at bar) [FN12] must have had actual knowledge of the particular scheme and, by their silence and inaction, participated in it.

FN12. This parenthetical observation assumes without deciding that Morelli was a knowing participant in the fraud plaintiff charges, a circumstance which, as discussed *supra*, plaintiff has not adequately alleged.

***16** There are no allegations sufficient to make that showing in the complaint at bar; it may be contrasted in that regard with the allegations in *Prudential-Bache*, summarized at 73 N.Y.2d 276-77.

It follows that plaintiff's sixth and seventh claims against Chase must also be dismissed.

All the claims against Chase being deficient for the reasons stated, the Clerk of the Court is directed to dismiss the complaint as against defendant Chase Manhattan Bank in its entirety.

Since the Court's decision as to certain claims depends in part upon the inadequacies of the pleading, plaintiff is given leave, if he is so advised and in a position to do so consistent with Rule 11, Fed.R.Civ.P., to file and serve an amended complaint as to the first, second, and fourth claims against Chase, within forty-five (45) days of the date of this Opinion and Order. Leave to amend is denied as to plaintiff's other claims against Chase.

Counsel for all parties are directed to attend a status conference in Room 17C, 500 Pearl Street, at 2:00 p.m. on April 9, 1999.

It is SO ORDERED.

S.D.N.Y.,1999.
Renner v. Chase Manhattan Bank
Not Reported in F.Supp.2d, 1999 WL 47239 (S.D.N.Y.), Fed. Sec. L. Rep. P 90,438, RICO Bus.Disp.Guide 9679

END OF DOCUMENT

C

United States District Court,
S.D. New York.
Christos TZARAS, Plaintiff,
v.
EVERGREEN INTERNATIONAL SPOT TRADING, INC., a/k/a Evergreen International Trading, Inc., First Equity Enterprises, Inc., Andrei Koudachev, Gary Farberov, Polina Sirotina, Justin C. Fauci, Ryan Swanson, Peter J. Papaemanuel, Gary Gelman, Forex Intrnational, Ltd., Chase Manhattan Bank, N.A., and John Does Nos. 1-100, Defendants.
No. 01 Civ. 10726(LAP).

Feb. 25, 2003.

Investor who had invested $1.7 million in a spot trading company filed amended complaint against the company and others, including the bank in which the trading company pooled the investor's money, and alleged that the bank violated provisions of the New York Uniform Commercial Code (UCC) relating to misdescription of beneficiary and was negligent under New York Law. On bank's motion to dismiss the amended complaint, the District Court, Preska, J., held that: (1) bank had properly credited money to beneficiary's account as mentioned in the wire transfer and there was no "misdescription of beneficiary," and (2) bank owed no duty of care to investor who was not customer of bank.

Motion to dismiss granted.

West Headnotes

[1] Banks and Banking 52 ⚷188.5

52 Banks and Banking
52III Functions and Dealings
52III(F) Exchange, Money, Securities, and Investments
52k188.5 k. Transmission of Money or Credit in General. Most Cited Cases
Payment orders did not contain misdescription of beneficiary so as to trigger provision of New York Uniform Commercial Code (UCC) requiring bank to refuse acceptance of payment order, despite wire transfer instructions for further credit to bogus subaccounts, where payment orders also identified one proper account name and number at bank, thus indicating identifiable beneficiary. McKinney's Uniform Commercial Code § 4-A-207.

[2] Banks and Banking 52 ⚷100

52 Banks and Banking
52III Functions and Dealings
52III(A) Banking Franchises and Powers, and Their Exercise in General
52k100 k. Torts. Most Cited Cases

Banks and Banking 52 ⚷188.5

52 Banks and Banking
52III Functions and Dealings
52III(F) Exchange, Money, Securities, and Investments
52k188.5 k. Transmission of Money or Credit in General. Most Cited Cases
Bank that accepted wire transfers from non-customer for deposit into customer's account and that ignored non-customer's additional wire transfer instructions to credit funds to sub-accounts with the words "for further credit," owed no duty of care to non-customer and no duty to prevent its customer from defrauding non-customer, which thus precluded non-customer's negligence claim under New York law.

MEMORANDUM AND ORDER

PRESKA, J.

***1** Plaintiff Christos Tzaras ("Tzaras") brings this amended complaint ("Complaint" or "Compl.") against defendants Evergreen International Spot Trading, Inc., a/k/a Evergreen International Trading, Inc., First Equity Enterprises, Inc., Andrei Koudachev, Gary Farberov, Polina Sirotina, Justin C. Fauci, Ryan Swanson, Peter J. Papaemanuel, Gary Gelman, Forex International, Ltd., Chase Manhattan Bank, N.A., and John Does Nos. 1-100 for damages arising out of Tzaras' investment of over $1.7 million in foreign currency exchange transactions on the "spot market." (Compl.¶ 1). Counts Seven and Nine of the Complaint charge Chase Manhattan Bank, N.A. (now known as JP Morgan Chase Bank, hereafter referred to as "Chase") with violations of N.Y.U.C.C. § 4-A-207 and with common law negligence, respectively.[FN1] (Compl.¶¶ 100-106, 112-118). Chase now moves, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss Counts Seven and Nine, the only counts in which it is named as a defendant, for failure to state a claim upon which relief can be granted. For the reasons stated herein, Chase's motion is granted, and the claim is dismissed.

> FN1. Count Eight of plaintiff's Complaint also charged Chase with violation of N.Y.U.C.C. § 4-A-303. (Compl.¶¶ 107-111). However, plaintiff withdrew this charge in his May 22, 2002 Memorandum of Law in Opposition to Defendant JP Morgan Chase Bank's Motion to Dismiss ("Pl's Opp. Br."). (Pl's Opp. Br. at 2, fn. 1).

BACKGROUND

The pertinent facts with regard to this motion, as alleged by plaintiff, are as follows. From June 1999 through and including September 2001, plaintiff Christos Tzaras, a Greek shipping executive, invested more than $1.7 million with defendant Evergreen International Spot Trading, Inc. ("Evergreen"), a company that claimed to be engaged in foreign currency exchange transactions on the "spot market," a forum for currency trading in which foreign currency is purchased for immediate (as compared to future) delivery. (Compl.¶¶ 1, 18).

Tzaras first learned of Evergreen in or about May 1999, when he began receiving unsolicited telephone calls from Justin C. Fauci and Ryan Swanson, two employees of Evergreen, at his home in Monaco. (Compl.¶ 27). During the course of these conversations, which continued through June 1999, Fauci and Swanson represented to Tzaras that Evergreen was a large, well-established company with a highly successful track record of currency trading on the spot market; that Evergreen was, at the time of those conversations, actively managing over $200 million in investor assets; that Evergreen "guaranteed" a return on investment of between 20-30% per year; that none of the monies invested with Evergreen would be used for currency trading but rather would be used solely as collateral for certain loans that Evergreen would later secure; that the monies sent to Evergreen would be pooled with other monies and that the gains, commissions and clearing expenses associated with Evergreen's trades would be apportioned pro rata to each investor's account; and that although Tzaras' investment would be placed in a bank account maintained by First Equity at Chase, these monies would be immediately segregated into separate sub-accounts that bore his name. (Compl.¶ 27). These representations were later confirmed in correspondence sent by Evergreen, including letters to Tzaras dated June 2, 1999, May 19, 2000, and July 25, 2000.(Id.). As the complaint alleges, such representations were particularly important to Tzaras since, as Fauci and Swanson explained, Chase's role as a depository bank was intended to provide potential investors with "peace of mind." (Id.).

***2** Based upon and in reliance on the above-mentioned representations, Tzaras agreed to allow Evergreen to act as his currency trader and fiduciary. (Compl.¶ 28). Thereafter, Evergreen purported to create two sub-accounts for Tzaras at Chase: the first, which bore Account No. 62643, was to hold Tzaras' investments in United States dollars; the second, which bore Account No. 64128, was to hold Tzaras' investments in Euros. (Id.).

From June 1999 through May 2001, Tzaras caused approximately $1.7 million of his monies to be wired to the two above-referenced accounts at Chase. (Compl.¶ 29). Tzaras transferred these monies using funds from one of three sources: from an account with Compagnie Monegasque de Banque, a Monaco-based bank; from an account with Credit Agricole, a Nice-based bank; or from a securities account maintained with Prudential Securities. (Compl.¶ 30). Following Evergreen's instructions, Tzaras made each transfer with the express direction that these monies were to be deposited in First Equity's account with Chase "for further credit to" Tzaras. (Id.). In many cases, these directions specifically identified Tzaras as having "Account No. 62643" or "Account No. 64128." (Id .). From June 1999 through September 2001, Tzaras made repeated inquiries of Evergreen employees into the status of his accounts, who assured him that his funds were securely held in his Chase sub-accounts and that his investments were performing well above expectations. (Compl.¶ 36, 37).

Following the events of September 11, 2001, Tzaras learned, through a series of press accounts and disclosures, that Evergreen was merely a sham entity created in order to facilitate the theft of investor assets. (Compl.¶ 38). As set forth in plaintiff's complaint, many of the monies stolen as part of the Evergreen scheme have been transferred to secret bank accounts in Switzerland and elsewhere. (Compl.¶ 39).

According to plaintiff's complaint, upon information and belief, in September 2000, Chase directed the closure of two bank accounts maintained in the name of Evergreen. (Compl.¶ 48). Again upon information and belief, plaintiff alleges that Chase took this action because, among other things, it was concerned about certain suspicious transactions in these accounts, the same kind of transactions that were also taking place in First Equity's account. (Id.). As plaintiff alleges, “Notwithstanding its knowledge of the activities in the Evergreen accounts, Chase took no such similar action with respect to First Equity's account. Under the ‘Know Your Customer’ procedures and suspicious activity reporting requirements implemented in the Bank Secrecy Act ... Chase was required to monitor and report such suspicious activities.” (Compl.¶ 49).

On November 28, 2001, plaintiff filed an original complaint. On December 20, 2001, plaintiff filed an amended complaint, which is the subject of the instant motion. In Count Seven of that Complaint, plaintiff alleges that Chase knew that the sub-accounts in Tzaras' name never existed. (Compl.¶ 103). According to plaintiff, Chase also knew that a conflict existed between Tzaras' wire transfer instructions, which made specific reference to such sub-accounts, and the actual accounts in existence at Chase during this period. (Id.). Therefore, plaintiff asserts in Count Seven, Chase violated N .Y.U.C.C. § 4-A-207, which requires a banking institution to refuse acceptance of payment orders where the person or account to whom a payment is to be credited is either nonexistent or unidentifiable, by accepting the payments that Tzaras made to First Equity's accounts at Chase. (Compl.¶¶ 104, 105).

***3** In Count Nine of the Complaint, plaintiff alleges a claim for common law negligence against Chase for breaching its duty to exercise ordinary and reasonable care. (Compl.¶¶ 113, 115). According to plaintiff, Chase was negligent in accepting wire transfers when precluded from doing so under § 4-A-207 and in ignoring suspicious activities taking place in First Equity's account. (Id.). Chase's failure to detect these activities, plaintiff contends, enabled other of the named defendants in this case to undertake their acts of conversion and theft. (Compl.¶ 116).

On March 8, 2002, Chase moved to dismiss Counts Seven, Eight and Nine of the Complaint pursuant to Rule 12(b)(6).[FN2] Chase asserts that Count Seven should be dismissed because Chase properly credited the bank account of First Equity, whose account number appeared on the wire instructions as the beneficiary, and that any additional notation information that plaintiff included is simply extraneous as to Chase's legal obligations. (Memorandum of Law in Support of JPMorgan Chase Bank's Motion to Dismiss Plaintiff's Amended Complaint, cited herein as “Def's Br.,” at 2). Furthermore, Chase moves to dismiss Count Nine because: (a) the bank does not owe a duty of care to non-customers; (b) N.Y.U.C.C. Article 4A cannot be circumvented by alleging negligence claims; and (c) any obligation which Chase may have had relative to First Equity's account under applicable banking law governing a bank's duty to report “suspicious transactions” is not actionable by private parties. (Def's Br. at 3).

FN2. As noted above, the motion to dismiss Count Eight is now moot in light of plaintiff's withdrawal of that claim in plaintiff's Opposition Brief. See n. 1, supra.

DISCUSSION

I. Standard for Rule 12(b)(6)

When deciding a motion to dismiss under Rule 12(b)(6), I must accept as true all well-pleaded factual allegations of the complaint and draw all inferences in favor of the pleader. *See* *City of Los Angeles v. Preferred Communications, Inc.*, 476 U.S. 488, 493, 106 S.Ct. 2034, 90 L.Ed.2d 480 (1986); *Miree v. DeKalb County*, 433 U.S. 25, 27 n. 2, 97 S.Ct. 2490, 53 L.Ed.2d 557 (1977) (referring to “well-pleaded allegations”); *Mills v. Polar Molecular Corp.*, 12 F.3d 1170, 1174 (2d Cir.1993). In order to avoid dismissal, plaintiff must do more than plead mere “[c]onclusory allegations or legal conclusions masquerading as factual conclusions.” *Gebhardt v. Allspect, Inc.*, 96 F.Supp.2d 331, 333 (S.D.N.Y.2000) (quoting 2 James Wm. Moore, Moore's Federal Practice ¶ 12.34[a][b] (3d ed.1997)). Dismissal is proper only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); accord *Cohen v. Koenig*, 25 F.3d 1168, 1172 (2d Cir.1994).

II. Motion to Dismiss the N.Y.U.C.C. § 4-A-207 Claim

[1] In its motion to dismiss, Chase asserts that the Complaint fails to state a claim under N.Y.U.C.C. § 4-A-207 because, among other reasons, there was no "Misdescription of Beneficiary" to trigger the provisions of Article 4A. Whereas plaintiff claims that the wire transfer instructions of "for further credit" to his "sub-accounts" at Chase rendered the beneficiary unidentifiable or non-existent under § 4-A-207, Chase contends that because plaintiff's wire instructions clearly identified an account number at Chase and properly named First Equity as the beneficiary, the provisions of § 4-A-207 do not apply. (Def's Br. at 12; Pl's Opp. Br. at 6). According to Chase, since Tzaras' payment orders set forth First Equity's account number as well as the correct title associated with that account number, any other information provided by Tzaras was mere surplusage and is irrelevant to the issue of Chase's liability.

***4** N.Y.U.C.C. § 4-A-207(1) (entitled "Misdescription of Beneficiary") provides:

Subject to subsection (2), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

Subsection (2) then addresses instances where the beneficiary's name and account number do not match but, under certain conditions, the funds transfer can still go forward based on the beneficiary's account number alone.FN3

FN3. N.Y.U.C.C. § 4-A-207(2)(a) provides, in pertinent part:

"... [I]f the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person."

Subsection (2) does not, however, apply in the instant case, because that subsection applies only when a beneficiary's bank identifies the beneficiary both by name and account number but the name and number refer to *different* persons. Here, the name and account number refer to the same entity-First Equity. Moreover, subsection (2) modifies situations where subsection (1) applies. As this Court now holds, the provisions of subsection (1) are inapplicable to the instant case.

Chase asserts that because Tzaras' payment orders provided First Equity's account number and title of the account, the electronic processing system that Chase uses to process funds transfers properly credited First Equity's accounts as a matter of law, regardless of the further information that Tzaras provided in his orders. Plaintiff, quite obviously, disagrees, insisting that the "for further credit" instructions bring the instant case under the "or other identification" clause of § 4-A-207(1), thereby rendering the beneficiary misdescribed as defined under § 4-A-207(1).

In *Donmar Enters., Inc. v. Southern Nat'l Bank of North Carolina*, 828 F.Supp. 1230, 1239-40 (W.D.N.C.1993), the court found that § 4-A-207 "straightforwardly requires banks to reject funds transfers received through the FedWire system which do not come to them bearing at least one identifiable beneficiary." The *Donmar* court, in finding that the beneficiary in question was clearly identified, declared:

The Court finds that § 4A-207 only requires a bank to refuse a payment order when the beneficiary is unidentifiable. A beneficiary can be identified in any number of ways including the plain wording of the transfer order or the circumstances of the transfer.... There was admittedly at least one identifiable beneficiary, and since § 4A-207 requires no more, the Defendant was not required to refuse the transfer under § 4A-207.

Id. at 1240.

Here, plaintiff does not dispute that each of his nine wire transfer payment orders set forth the account number and name of First Equity. Instead, plaintiff maintains that the language of "for further credit to" Tzaras constitutes "other identification of the beneficiary" that refers to a non-existent or unidentifiable person or account. (Pl's Opp. Br. at 6). Plaintiff focuses on the disjunctive "or" in the language of § 4-A-207(1), arguing that if even one of the methods of identification (account number, account name, or "other identification of the beneficiary") refers to a non-existent account, § 4-A-207(1) applies. (Pl's Opp. Br. at 8-10). Plaintiff cites to the Hawkland treatise, in which the author warns that despite the likely intention of the drafters to the contrary, § 4-A-207(1) might apply even where a beneficiary's name and account number are the same but "other identification" is different. 6A Hawkland UCC Series § 4A-207:1 (2001).

***5** In *New South Fed. Sav. Bank v. Flatbush Fed. Savs. & Loan Ass'n,* 01 Civ. 9024, 2002 U.S. Dist. LEXIS 20512, at *6 (S.D.N.Y. Oct. 25, 2002), Magistrate Judge Eaton, addressing § 4-A-207(1), noted that the main purpose of the Hawkland treatise is to caution senders of payment orders to avoid including two names in order to avoid the possibility of confusion under Article 4A. Judge Eaton then proceeded to adopt instead the reasoning of Judge Potter in *Donmar,* finding that because there was admittedly one identifiable beneficiary, the requirements of § 4-A-207(1) are met, and there is no "misdescription of beneficiary." *New South,* 2002 U.S. Dist. LEXIS 20512, at *5-6.

Like Judge Eaton, I adopt the analysis of Judge Potter in *Donmar.*[FN4] Section 4-A-207(1) requires that there be at least one identifiable beneficiary. *See also* N.Y.U.C.C. § 4-A-207 Official Comment 1. Here, the name and the account number referred to First Equity. Therefore, I find that there was an identifiable beneficiary, that § 4-A-207(1) requires no more, that there was no "misdescription of beneficiary," and that Chase was not required to refuse plaintiff's transfer under § 4-A-207(1). Accordingly, Chase's motion to dismiss Count Seven of the Complaint is hereby GRANTED.

FN4. Even were I not persuaded by Judge Potter's analysis, I would find that the "for further credit" language included in plaintiff's wire transfers was legally insufficient to constitute "other identification of the beneficiary" under § 4-A-207(1). Construing the pleadings in the light most favorable to plaintiff, which I am required to do on a motion to dismiss, the language of "for further credit" to Tzaras' bogus account number does not serve to identify the beneficiary. Rather, it serves to instruct the beneficiary-First Equity-how to allocate the funds among its various "subaccounts." Section 4-A-103(b) defines the beneficiary as "the person to be paid by the beneficiary's bank [here, Chase]." The "beneficiary" here, as defined by § 4-A-103(b), was First Equity, because First Equity's account would, at the very least, initially receive the funds from plaintiff's wire transfer. If plaintiff's analysis were accepted, a beneficiary would never be able to include any internal information, i.e., information recognizable to the beneficiary's internal systems but not to the receiving bank, without risking non-completion of the transfer.

III. Motion to Dismiss the Negligence Claim

[2] In its motion to dismiss, Chase also asserts that Tzaras has failed to state a claim under New York common law for negligence because Chase owed Tzaras, a non-customer, no duty of care, because Article 4A preempts the field of misdirected wire transfers and because Chase's duty to report suspicious activities does not give rise to a private cause of action. (Def's Br. at 18; Pl's Opp. Br. at 17).

To establish a prima facie case of negligence under New York law, plaintiff here must establish "(1) the defendant owed the plaintiff a cognizable duty of care as a matter of law; (2) the defendant breached that duty; and (3) plaintiff suffered damage as a proximate result of that breach." *Curley v. AMR Corp.,* 153 F.3d 5, 13 (2d Cir.1998).

As an initial matter, the issue of whether, under New York common law, a duty of care is owed to plaintiff is a question of law that is properly before this Court on a motion to dismiss. *See* *Purdy v. Public Adm'r of Westchester,* 72 N.Y.2d 1, 8, 530 N.Y.S.2d 513, 526 N.E.2d 4 (1988) ("whether a member or group owes a duty of care to reasonably avoid injury to another is of course a question of law for the courts"). In the instant case, Tzaras maintains that by accepting the wire transfers to First Equity's account, Chase breached its duty to Tzaras to exercise ordinary and reasonable care. (Compl.¶ 113). Chase, in turn, counters by arguing that a bank does not owe a duty of care to a non-customer. (Def's Br. at 17).

On the issue of a bank's duty of care to non-customers, I find the opinion in *Renner v. Chase Manhattan Bank,* 98 Civ. 926(CSH), 1999 U.S. Dist. LEXIS 978 (S.D.N.Y. Feb. 3, 1999), instructive. In *Renner,* the plaintiff sued Chase for, among other claims, negligence under New York common law arising out of Chase's failure to prevent Chase's customer, Townsend, from defrauding the plaintiff. *Id.* at *40. In dismissing the negligence claim against Chase, Judge Haight declared:

***6** Plaintiff's negligence claim against Chase fails because Chase did not owe plaintiff a cognizable duty of care. Whatever duty of care banks owe to their customers, Renner was not a customer of Chase. The Chase customer involved in this case was the Townsend fund, into which Chase ... paid Renner's funds when they were received through Renner's Swiss Bank.

These circumstances reduce Renner to the necessity of arguing that Chase owed him a duty to prevent Chase's customer, Townsend, from defrauding Renner. But it is well settled that a bank owes no such duty to a non-customer third-party.

Id. at *39-40 (internal citations omitted).

The facts in the instant case are similar to those in *Renner.* Here, Tzaras contends that Chase owed him a duty to prevent First Equity from defrauding him. However, like in *Renner*, and as Tzaras concedes, Tzaras was not a customer of Chase. Chase's involvement extended only insofar as it allowed the wire transfer from Tzaras to First Equity, Chase's customer, to be completed. Therefore, I reach the same conclusion here that Judge Haight did in *Renner* that, under New York common law, Chase owed no duty of care to Tzaras. *Id.* at *39-40; *see also* *Guidry v. Bank of LaPlace,* 740 F.Supp. 1208, 1218-19 (E.D.La.1990) (as a matter of law, bank owes no duty of care to non-customer defrauded by bank customer); *Century Bus. Credit Corp. v. North Fork Bank,* 246 A.D.2d 395, 396, 668 N.Y.S.2d 18, 19 (1st Dept.1998) ("to hold that banks owe a duty to their depositors' creditors to monitor the depositors' financial activities ... would be to unreasonably expand banks' orbit of duty"); *Johnson v. Chase Manhattan Bank,* 98 Civ. 8173(RMB)(RLE), 2000 U.S. Dist. LEXIS 5587, at *15 (S.D.N.Y. April 27, 2000) ("The general rule is that a bank does not owe a duty to a non-customer third-party.").

Plaintiff, in his opposition papers, attempts to manufacture a fiduciary duty arising out of Chase's alleged knowledge that the funds were to be deposited in the sub-account referenced in the "for further credit" language. However, there is no authority to support the assertion that "for further credit" language suffices to create a fiduciary duty, and I decline to adopt such a broad reading of fiduciary duty as would encompass the activities alleged by Tzaras here. Moreover, even were I to find that a fiduciary account existed, "[a]s a general rule, a bank has no duty to monitor even a fiduciary account under New York law." *Renner,* 1999 U.S. Dist. LEXIS 978, at *41.

Because Chase owed no duty of care to plaintiff, plaintiff cannot, as a matter of New York common law, make out a cognizable claim for negligence. Even if all of the facts that plaintiff alleges were proved at trial, plaintiff would still fail to make out an essential element of negligence required under New York law. Accordingly, Chase's motion to dismiss Count Nine of the Complaint is also GRANTED.[FN5]

> FN5. Because Chase has prevailed on its motion to dismiss Count Nine on the duty of care issue, I do not address the alternative grounds argued by Chase on Count Nine, *viz.*, field preemption under Article 4A and the unavailability of a private cause of action under "suspicious activity" reporting requirements.

CONCLUSION

***7** Chase's motion to dismiss Counts Seven and Nine of the Amended Complaint without leave to amend

(Docket no. 12) is GRANTED.

SO ORDERED:

S.D.N.Y.,2003.
Tzaras v. Evergreen Intern. Spot Trading, Inc.
Not Reported in F.Supp.2d, 2003 WL 470611 (S.D.N.Y.), Comm. Fut. L. Rep. P 29,406

END OF DOCUMENT

C

Circuit Court of Virginia, City of Richmond.
Charles K. Johnson
v.
George E. Kaugars
CASE NO. LM-152-3.

October 31, 1988.

***1** Based on plaintiff's allegations, this case arises from a hearing by the State Board of Dentistry initiated when the defendant furnished investigators of the Board with false information which related to alleged billing improprieties of plaintiff dentist, Dr. Johnson. The defendant, Kaugars, is alleged to have testified at the hearing and to have provided to the Board certain documents and information concerning patient services that were allegedly paid for by Medicaid but never actually rendered.
T. J. Markow, Judge.

After the Board hearing ended with no unfavorable result to Dr. Johnson, he initiated this two-count suit against Kaugars alleging that defendant's role in the investigation constituted malicious prosecution (Count I) and a conspiracy to injure plaintiff in his trade or business in violation of Va. Code Ann. ' 18.2-499 and ' 18.2-500 (Count II).

The demurrer claims that Count I is defective in that plaintiff fails to allege that the defendant instituted a prosecution of plaintiff, arrested him, seized his property or caused him any "special injury".

Count II which is brought under Virginia's Conspiracy to Injure Another In Trade, Business, or Profession statute, Va. Code Ann. ' 18.2-499 and ' 18.2-500 , is claimed to be defective in that it fails to allege an agreement between co-conspirators.

For the following reasons, the court concludes that the demurrer is well taken on both counts and should be sustained.

Actions for malicious prosecution are generally not favored in law. Recovery is allowed only when the restrictions on such actions have been fully overcome. Wiggs v. Farmer, 205 Va. 149, 135 S.E.2d 829 (1964). The stringent requirements imposed upon actions for malicious prosecution are designed to encourage persons to bring criminal actions in appropriate cases without fear of reprisal by civil actions, criminal prosecutions being essential to the maintenance of society. Ayyildiz v. Kidd, 220 Va. 1080, 266 S.E.2d 108 (1980). The same principle applies to administrative or disciplinary hearings before state investigatory boards which are entrusted to protect the public interest and to preserve the integrity of particular professions. Carver v. Lykes, 262 N.C. 345, 137 S.E.2d 139 (1964).

Regardless of the nature of the underlying proceeding, be it criminal, civil or a hybrid, a plaintiff in a malicious prosecution is required to allege and prove: (1) the prosecution was set on foot by the defendant and was terminated in a manner not unfavorable to the plaintiff; (2) it was instituted or procured by the cooperation of the defendant; (3) it was without probable cause; and (4) it was malicious. Ayyildiz, 220 Va. 1082.

Here the demurrer contends that from the motion for judgment Dr. Kaugar's role in the Board of Dentistry proceedings was that of a witness and that statements made by a witness to prosecutors and law enforcement officials will not be grounds for an action for malicious prosecution even though the prosecution was commenced as a result of the statement. The overt conduct complained of was Dr. Kaugars' release of certain incriminating materials to an investigator from the Board of Dentistry.

***2** During oral argument, plaintiff's counsel made clear that Kaugars' alleged "active cooperation in the institution of charges and investigation of charges" consisted of permitting false information to be communicated to the Board. In other words, plaintiff contends that Dr. Kaugars' suppression of truthful statements regarding alleged billing improprieties constituted sufficient "institution, instigation or subsequent adoption of steps already taken and instigated by others" so as to satisfy the rule of Clinchfield Coal Corp. v. Redd, 123 Va. 420, 96 S.E. 836 (1918). The court agrees. In Clarke v. Montgomery Ward & Company, 298 F.2d 346 (4th Cir. 1962) the Fourth Circuit applying Virginia law, ruled that "a person who places before a prosecuting officer information upon which criminal proceedings are begun, and who later acquired additional information casting doubt upon the accused's guilt, should be under an obligation to disclose his discovery to the prosecutor." Clarke at 348. Assuming that Kaugars' role in the investigation was as a silent and knowing purveyor of false information, such conduct would be sufficient "ratification" so as to survive defendant's demurrer on this point.

Notwithstanding plaintiff's ability to satisfy the requirement of "instigation, initiation or ratification," plaintiff has failed to allege arrest, seizure of property or "special injury". Both parties agree that Ayyildiz vs. Kidd, stands for the proposition that in malicious prosecution actions stemming from a civil proceeding, a plaintiff must allege and prove arrest of his person, seizure of his property or special injury incurred. The motion for judgment fails to allege arrest of Johnson's person, seizure of his property or any special injury incurred by Johnson. It merely speaks of "actual monetary damages, personal distress and damage to his personal and professional reputation."

Plaintiff relies, in this matter, on the hybrid, guasi-criminal nature of a state investigatory board hearing and the language of National Surety Co. v. Page, 58 F. 2d 145 (4th Cir. 1932), which cites business losses as sufficient "special injury" in an action for malicious prosecution. The court does not consider administrative hearings as criminal proceedings, but rather civil in nature and, therefore, the plaintiff must allege and prove the "special injury" required in Ayyildiz vs. Kidd, 220 Va. 1082 (1980).

As defendant's memorandum in support of demurrer persuasively argues, Ayyildiz makes clear such a claim of damages does not constitute special injury. The plaintiff in Ayyildiz was a physician who had been sued for malpractice. After the malpractice action had been terminated in his favor, the physician sued the attorney who had filed the malpractice action. The plaintiff physician claimed that his damages were essentially the same as claimed by plaintiff here - damages to reputation and loss of earnings and profits. The Supreme Court of Virginia affirmed the trial court's sustaining of the demurrer because the alleged damages did not constitute special injury. The Supreme Court of Virginia stated:

***3** The plaintiff here has suffered no injury that would not stem normally from a medical malpractice suit. A defendant in such a suit usually pays his costs and attorney's fees. The damage to the professional reputation of a physician who prevails in malpractice litigation is debatable; but in any event such damages as may result are common to all malpractice actions. Moreover, plaintiff's allegations of injury to his professional reputation and good name are conclusory with no facts being alleged to support a special injury. The other "special injury" alleged, concerning loss of present and future income, we have observed would fall upon the defending physician in any medical malpractice action.

220 Va. 1084-85.

So too, the damages alleged by Johnson are of a class which would normally be expected to flow from disciplinary proceedings. Johnson has failed to aver special injury. Accordingly, his motion for judgment fails to state a claim against Kaugars for malicious prosecution as asserted in Count I of the motion for judgment.

This court declines to find, as plaintiff urges, that the Supreme Court of Virginia erred when it "ignored" the language of National Surety which listed "injury to business" as sufficient "special injury." A better explanation is that our Supreme Court has concluded that the English rule, concededly a minority rule, is the better rule of law as applied to civil proceedings such as the hearing involved in the instant case.

Count II of the motion for judgment alleges a conspiracy by Kaugars and others to injure Johnson in his reputation, trade, business and profession as contemplated in ' 18.2-500 of Code of Virginia. To recover for statutory conspiracy, a plaintiff must prove: (1) a combination of two or more persons for the purpose of willfully and maliciously injuring plaintiff in his business; and (2) resulting damage to plaintiff. Allen Realty Corp. v. Holbert, 227 Va. 441 (1984).

Mere conclusory language devoid of factual allegations is insufficient to state a cause of action for civil conspiracy. Bowman v. State Bank of Keysville, 229 Va. 534, 541, 331 S.E. 797 (1985). In pleading conspiracy the plaintiff must inform the opposing party of the nature of the conspiracy charged. Picking v. State Finance Corp., 332 F.Supp. 1399, 1403 (D.Md.

1971) citing 2A J. Moore, Federal Practice, P. 8.17(5). Due to the nature of conspiracy, all details may not be known at the time of pleading. Still, it is not enough merely to state that a conspiracy took place. There should be some details of time and place and the alleged effect of the conspiracy. In Connor v. Real Title Corp., 165 F.2d 291, 294 (4th Cir. 1947), conclusory allegations of "a vicious conspiracy and collaboration" between three named defendants to prevent the plaintiff from collecting rentals from properties were insufficient.

***4** Although it is alleged that Kaugars and others made, allowed and participated in the transmittal of information and documents to the State Board of Dentistry, the motion for judgment fails to allege any agreement between Kaugars and others to take such action for the purpose of injuring the plaintiff in his reputation, trade, business and profession. Indeed, the plaintiff concedes that there is no allegation that the co-conspirators formally or actually met or verbally agreed to engage in such conduct. From the pleadings, the court cannot even infer an agreement.

No conspiracy can exist without an agreement. F. P. Heacock v. Commonwealth, 228 Va. 397, 407, 323 S.E.2d 90 (1984). It is the concerted activity by parties who combine their resources and efforts which creates the special harm that the law of conspiracy seeks to suppress.

The court is mindful of the fact that conspiracies may be proved circumstantially and that parallel conduct by co-conspirators may furnish evidence by which a trier of fact may reasonably infer the existence of an agreement. However, plaintiff confuses the issue of proving a case, which may be done circumstantially, with the necessity of pleading a case, which must allege facts that, when considered by a court of law, establish that there existed between the parties an agreement, a meeting of minds, for that is what this statute providing for both punitive relief and treble damages seeks to prohibit.

It is not enough for plaintiff merely to track the language of the conspiracy statute without alleging the fact that the alleged co-conspirators did, in fact, agree to do something the statute forbids. No such agreement is pled or alleged by Johnson. The claim of Johnson for damages based upon ' 18.2-500 is, therefore, fatally defective.

In light of the foregoing, defendant's demurrer will be sustained. A copy of the order entered this date is enclosed.

Va.Cir.Ct. 1988.
Johnson v. Kaugars
Not Reported in S.E.2d, 14 Va. Cir. 172, 1988 WL 619378 (Va.Cir.Ct.)

END OF DOCUMENT

Only the Westlaw citation is currently available.

United States District Court,
E.D. California.
Elena YULAEVA, Plaintiff,
v.
GREENPOINT MORTGAGE FUNDING, INC.; Mortgage Electronic Registration Systems, Inc.; EMC Mortgage Corporation; and Does 1 through 10, inclusive, Defendants.
No. CIV. S-09-1504 LKK/KJM.

Sept. 3, 2009.

Oxana Victorovna Kozlov, Law Offices of Oxana Kozlov, Sunnyvale, CA, for Plaintiff.

S. Christopher Yoo, Adorno Yoss Alvarado and Smith, Santa Ana, CA, for Defendants.

ORDER

LAWRENCE K. KARLTON, Senior District Judge.

***1** The core of this action is a loan plaintiff Elena Yulaeva received from defendant Greenpoint Mortgage Funding, Inc. ("Greenpoint") in order to finance the purchase of her home. Plaintiff filed a complaint against Greenpoint, Mortgage Electronic Registration Systems, Inc. ("MERS"), and EMC Mortgage Corporation ("EMC") enumerating twelve state and federal causes of action arising out of the loan transaction and subsequent foreclosure on her home. Pending before the court is a motion by defendants MERS and EMC to dismiss all claims against them. Defendant Greenpoint has not stated an appearance and is not party to the present motion. For the reasons stated below, defendants' motion to dismiss is granted in part and denied in part.[FN1]

FN1. The only motion on the docket is a motion to dismiss. However, plaintiff's complaint, filed in state court on April 20, 2009 requested a preliminary injunction and temporary restraining order under Cal.Code Civ. Pro. § 527. Nothing indicates whether any proceedings on this matter were conducted prior to removal on June 1, 2009. Plaintiff's opposition to the pending motion to dismiss again requests a preliminary injunction and various other relief. Because of the unsettled status of the pleadings and a failure of all parties to brief the issue, the request for injunction is not further considered.

I. BACKGROUND[FN2]

FN2. The allegations described herein are taken from the complaint and are taken as true for the purpose of the pending motions only.

This case shares features common to the many other home loan cases currently working their way through the federal district courts. In October 2005, plaintiff acquired an adjustable rate mortgage from defendant Greenpoint. Compl. ¶ 13, Defs.' RFJN Ex. 2 (Adjustable Rate Rider, p. 2-3). Plaintiff borrowed $420,000 from defendant Greenpoint to purchase a home, the loan being secured by plaintiff's property through a deed of trust. Compl. ¶ 3, Defs.' RFJN Ex. 2 (Deed of Trust, p. 1). The loan provided for an initial period of low fixed payments, after which payments would increase. The fixed rate period ended at some unspecified point, and plaintiff has been unable to make the higher subsequent payments. Since then, one or more defendants have initiated foreclosure proceedings on her home. Having provided this general background, the court turns to plaintiff's detailed allegations.

A. Identity and Roles of The Parties

1. The Deed of Trust, and The Parties' Roles Therein

California law recognizes two formally distinct ways in which a loan may be secured by real property, either by a mortgage or a deed of trust. A mortgage involves two parties, the borrower/mortgagor provides a lien on the real property to the lender/mortgagee. A deed of trust ordinarily involves three parties, the borrower/trustor conveys the right to sell the property to a trustee, for the benefit of the lender/beneficiary. The "practical effect" of this transfer of the right of sale is the creation of a lien on the subject property. *Monterey S.P. P'ship v. W.L. Bangham*, 49 Cal.3d 454, 460, 261 Cal.Rptr. 587, 777 P.2d 623 (1989). Notwithstanding the fact that the right of sale is formally lodged with the trustee, both the beneficiary and the trustee may commence the nonjudicial foreclosure process. *Id.* (citing Cal.Code Civ. Proc. § 725a), *Kachlon v. Markowitz,* 168 Cal.App.4th 316, 340, 85 Cal.Rptr.3d 532 (2008) (citing Cal. Civ.Code § 2924). "Indeed, the beneficiary may act as trustee and enforce the trustee's authority under a deed of trust, including the power of sale." *Kalchon*, 168 Cal.App.4th at 340, 85 Cal.Rptr.3d 532. Thus, although mortgages and deeds of trust are formally distinct, under California law, " 'there is little practical difference' " between the two. 4 Witkin Summary of California Law Ch. VIII, § 5 (quoting *Domarad v. Fisher & Burke*, 270 Cal.App.2d 543, 553, 76 Cal.Rptr. 529 (1969)); *see also Monterey S.P. P'ship*, 49 Cal.3d at 460, 261 Cal.Rptr. 587, 777 P.2d 623.

***2** Here, plaintiffs' loan is secured by a deed of trust. This deed deviates from the norm by including a fourth party. Defs.' RFJN Ex. 2. As is typical, the trustor is the borrower (the plaintiff here), and the trustee is a third party not otherwise involved in the loan. *Id.* (Deed of Trust, p. 1). However, whereas the beneficiary of the trust is normally the lender (Greenpoint), the deed of trust here provides that "MERS is the beneficiary." *Id.* The deed of trust further explains that MERS "is acting solely as a nominee for Lender [Greenpoint] and Lender's successors and assigns." *Id* . The deed provides that "MERS (as nominee for Lender and Lender's successors and assigns) has the right ... to foreclose and sell the property." *Id.* (Deed of Trust, p. 3).

Plaintiff's complaint alleges that "MERS is the beneficiary for the promissory note and mortgage at issue," i.e., the deed of trust. Compl. ¶ 7. However, plaintiff's other allegations, as well as plaintiff's arguments raised in opposition to the present motion, dispute whether MERS is the "true current beneficiary" of the deed of trust. *See, e.g.*, Opp'n at 10:4. Yet another party appears related to this transaction. After the loan was made and the deed of trust was recorded, defendant EMC became the servicer of the loan. Compl. ¶¶ 4-5.[FN3]

FN3. The multiplication of parties and elaboration of what is essentially a simple transaction appears to raise questions about whether the transaction is as straightforward as it ordinarily is.

2. Subsequent Roles of The Parties

Plaintiff contends that after the initial transaction the identities of some of the parties changed. First, plaintiff alleges that the beneficiary under both the promissory note and the deed of trust has changed, although plaintiff offers alternative allegations as to who the present beneficiaries are. At several points, plaintiff alleges that "promissory note and mortgage" have been assigned to EMC. Compl. ¶ 5, *see also* Compl. ¶ 19. Plaintiff bases this allegation on the Notice of Default, which identifies MERS "as Nominee for EMC" under the deed of trust. Compl. Ex. A. Plaintiff alternatively alleges that none of the three named defendants is "the holder[ ] of the [promissory] note identified in" the deed of trust, and that she was unable to acquire proof of the current owner of the promissory note. Compl. ¶¶ 20-21. In her opposition memorandum, plaintiff elaborates by alleging that Greenpoint "securitized" the promissory note, thereby assigning it to multiple unknown parties.[FN4] Opp'n at 2:9.

FN4. "Securitize, vb. To convert (assets) into negotiable securities for resale in the financial market, allowing the issuing financial institution to remove assets from its books and thereby improve its capital ratio and liquidity while making new loans with the security proceeds." Black's Law Dictionary, 8th Ed.2004

Defendants dispute the allegation that the loan has been assigned to EMC, stating that "EMC has no recorded interest under the Loan" or the deeds of trust, citing the deed granting the property to plaintiff, the two deeds of trust, and the Notice of Default. The Notice of Default indicates that EMC is the actual (contra nominal) beneficiary under the deed of trust. Interpreting this document in favor of plaintiff, this document indicates that EMC has taken assignment of the loan. None of the remaining exhibits provide evidence regarding the alleged subsequent assignment, and no exhibit directly addresses who is the current holder of the promissory note-i.e., the creditor.

***3** The court notes that exhibits provided by the parties raise further confusion with respect to any assignment of the promissory note or deed of trust. Notably, EMC prepared the declaration of compliance with Cal. Civ.Code § 2923.5(b), and attached this declaration to the Notice of Default. This declaration states that the beneficiary under the deed of trust is Wells Fargo Bank, N.A. No party has addressed Wells Fargo's role, if any, in this dispute.

A second change since the loan was initiated is that the trustee has changed. The original deed of trust named Marin Conveyancing Corp. as the trustee. The notice of default recorded on February 11, 2009, identified Aztec Foreclosure Corp. as the trustee. Three months later, on May 18, 2009, a document substituting Aztec for Marin as trustee was recorded. Pl.'s RFJN Ex. 1. [FN5]

> FN5. This seemingly preposterous set of "facts" and parties once again suggests that the court must act cautiously and with deliberation unless and until the real facts and parties emerge.

B. Plaintiff's Further Allegations

Plaintiff alleges that defendants failed to make certain required disclosures at the time the loan was entered, that defendants engaged in various other misconduct at that time, and that defendants have subsequently engaged in other misconduct, primarily in connection with their attempted foreclosure of the property. In her opposition to the motion to dismiss, plaintiff clarified that many of these allegations pertain solely to Greenpoint.[FN6] Opp'n at 1:19-2:6.

> FN6. While the exhibits appear clear on this point, given the remarkable complexity of this case plaintiff's confidence is, itself, questionable. Perhaps, given all the parties that have apparently come and gone in this transaction, it may be that Greenpoint itself was fronting for some other party.

1. Failure to Make Required Disclosures

Plaintiff's first cluster of allegations concerns omissions at the time the loan was entered. Plaintiff alleges that Greenpoint "failed to disclose to Plaintiff that her income would be insufficient to repay the loan, and further failed to provide Plaintiff with information with respect to reasonable alternatives and/or more conventional loan terms." Compl. ¶ 37. Plaintiff further alleges that Greenpoint failed to make certain timely "disclosures with respect to calculation of interest." *Id.* at ¶ 36, 261 Cal.Rptr. 587, 777 P.2d 623. Plaintiff argues that these omissions support claims against all defendants for fraud or misrepresentation and a claim against Greenpoint and EMC under TILA. *Id.* at ¶¶ 36-38, 48, 261 Cal.Rptr. 587, 777 P.2d 623.

2. Other Misconduct at Origination

Plaintiff also alleges a variety of other misconduct at origination. Greenpoint allegedly made affirmative misrepresentations regarding a fixed interest rate period, whether plaintiff "would be able to refinance her loan before higher payments kick in," and regarding "mortgage terms that [defendants] had no intention of providing." *Id.* at ¶ 43, 261 Cal.Rptr. 587, 777 P.2d 623. In addition, "the purchase price of the property and the loan amount were based on [an] inflated appraisal, ... and not based on a good faith assessment and confirmation of plaintiff's ability to pay." *Id.* at ¶ 37, 261 Cal.Rptr. 587, 777 P.2d 623. Instead, Greenpoint allegedly "inflat[ed] plaintiff's income to qualify her for a loan that she could not in reality afford," *Id.* at ¶ 43, 261 Cal.Rptr. 587, 777 P.2d 623, and otherwise "originate[d] the loan by lowering [its] own loan and statutor[ily] required underwriting standards." *Id.* at ¶ 38, 261 Cal.Rptr. 587, 777 P.2d 623. More generally, defendants allegedly used their superior knowledge and bargaining power to conceal and misrepresent certain material facts, "depriving plaintiff of an opportunity to properly review, analyze, and negotiate loan terms." *Id.* at ¶ 77, 261 Cal.Rptr. 587, 777 P.2d 623. Plaintiff contends that these allegations support claims for fraud, for a violation of TILA, and for a breach of the implied covenant of good faith and fair dealing.

***4** Separate from the above, defendants allegedly accepted fees or kickbacks in exchange for referrals from other defendants, violating RESPA. *Id.* at ¶ 41, 261 Cal.Rptr. 587, 777 P.2d 623.

3. Defendants' Alleged Subsequent Acts

Plaintiff alleges that defendants have caused "significant damage to Plaintiff's credit history[ ] by reporting past due payments even though Plaintiff has been working in good faith to reasonably modify loan payment terms in accordance with the received instructions." *Id.* at ¶ 65, 261 Cal.Rptr. 587, 777 P.2d 623. Plaintiff also alleges that defendants "intentionally forc[ed] Plaintiff into default and eventually into foreclosure proceedings." *Id.* at ¶ 77, 261 Cal.Rptr. 587, 777 P.2d 623. This allegation apparently refers to defendants' refusal to renegotiate the loan.

Plaintiff alleges that defendants then initiated foreclosure without first attempting to contact plaintiff to discuss renegotiation of the terms of the loan, violating Cal. Civ.Code § 2923.5. Compl. ¶ 69.

Plaintiff's opposition memo alleges that she made a "Qualified Written Request," which defendants were required to respond to under RESPA, and that defendants violated this obligation. Opp'n at 2:19-22. This allegation does not appear in the complaint, and is not further discussed here.

C. The Instant Suit

On April 20, 2009, plaintiff filed a complaint in Sacramento County Superior Court. On June 1, 2009, defendants removed the action to federal court under 28 U.S.C. §§ 1441 *et seq.* On June 8, 2009, defendants MERS and EMC together filed the instant motion to dismiss.

II. STANDARD FOR A FED. R. CIV. P. 12(B)(6) MOTION TO DISMISS

In order to survive a motion to dismiss for failure to state a claim, plaintiffs must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 569, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). While a complaint need not plead "detailed factual allegations," the factual allegations it does include "must be enough to raise a right to relief above the speculative level." *Id.* at 555.

The Supreme Court recently held that Federal Rule of Civil Procedure 8(a)(2) requires a "showing" that the plaintiff is entitled to relief, "rather than a blanket assertion" of entitlement to relief. *Id.* at 555 n. 3. Though such assertions may provide a defendant with the requisite "fair notice" of the nature of a plaintiff's claim, the Court opined that only factual allegations can clarify the "grounds" on which that claim rests. *Id.* "The pleading must contain something more ... than ... a statement of facts that merely creates a suspicion [of] a legally cognizable right of action." *Id.* at 555, quoting 5 Wright & Miller, Federal Practice and Procedure, § 1216, pp. 235-36 (3d ed.2004).[FN7]

> FN7. The holding in *Twombly* explicitly abrogates the well established holding in *Conley v. Gibson* that, "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); *Twombly*, 550 U.S. at 560. Indeed, however, given the apparent rigamarole the defendants have engaged in, it is not clear to this court how plaintiff could know who the responsible parties are, or which of them engaged in unlawful conduct, if anyone did.

On a motion to dismiss, the allegations of the complaint must be accepted as true. *See Cruz v. Beto*, 405 U.S. 319, 322, 92 S.Ct. 1079, 31 L.Ed.2d 263 (1972). The court is bound to give the plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. *See Retail Clerks Int'l Ass'n v. Schermerhorn*, 373 U.S. 746, 753 n. 6, 83 S.Ct. 1461, 10 L.Ed.2d 678 (1963). In general, the complaint is construed favorably to the pleader. *See Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974), *overruled on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Nevertheless, the court does not accept as true unreasonable inferences or conclusory legal allegations cast in the form of factual allegations. *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.1981).

III. ANALYSIS

***5** Plaintiff enumerates twelve claims. These claims seek three separate remedies: (1) they seek rescission of the loan under California law (plaintiff concedes that rescission is not available under TILA); (2) they challenge defendants' authority to foreclose on the property (quiet title, declaratory judgment, unfair debt collection and Cal. Civ.Code § 2923.5(b) claims); and (3) they seek civil damages (unfair debt collection and all remaining claims).

The court's analysis begins with plaintiff's claim for civil conspiracy. Under California law, civil conspiracy, unlike criminal conspiracy, "is not an independent tort." *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal.4th 503, 510-511, 28 Cal.Rptr.2d 475, 869 P.2d 454 (2004); *see also* *Doctors' Co. v. Superior Court*, 49 Cal.3d 39, 44, 260 Cal.Rptr. 183, 775 P.2d 508 (1989). "Though [civil] conspiracy may render additional parties liable for the wrong, the conspiracy itself is not actionable without a wrong." *Okun v. Superior Court*, 29 Cal.3d 442, 454, 175 Cal.Rptr. 157, 629 P.2d 1369 (1981); *see also* *Sebastian Intern., Inc. V. Russolillo*, 162 F.Supp.2d 1198, 1207 (2001). Accordingly, in *Okun,* the California Supreme Court dismissed a claim for civil conspiracy to commit various torts when the plaintiff had failed to state a claim for the underlying tort. *Okun*, 29 Cal.3d at 454, 175 Cal.Rptr. 157, 629 P.2d 1369. Thus, the court dismisses plaintiff's separately enumerated claim for civil conspiracy. This is not to conclude that plaintiff may not recover on a civil conspiracy theory. Instead, plaintiff's civil conspiracy allegations are discussed, as is relevant, in the context of plaintiffs' other tort claims.

In the following sections, the court analyzes defendants' arguments for dismissal of the remaining claims. The court first addresses plaintiff's three claims for misrepresentation. The court then turns to plaintiff's non-fraud claims for injunctive relief, and finally addresses her non-fraud claims for damages.

A. Misrepresentation and Fraud Claims

Plaintiff's fourth, fifth, and sixth claims are for fraud, negligent misrepresentation, and "rescission based on fraud" under California Civil Code section 1689, respectively. Insofar as these claims allege affirmative misrepresentations, MERS and EMC argue that plaintiff has failed to plead these claims with the particularity required by Fed.R.Civ.P. 9(b). Insofar as plaintiff's claims are based on omission or concealment rather than affirmative misrepresentation, MERS and EMC argue that neither of them had a duty to disclose information to plaintiff. As I explain, the claims will be dismissed with leave to amend.

1. Affirmative Representations

Plaintiff alleges that defendants affirmatively misrepresented

> specific terms of the mortgage transaction such as a fixed interest rate period and a lower mortgage payment and that she would be able to refinance her loan before higher payments kick in, promising plaintiff mortgage terms that they had no intention of providing, and inflating Plaintiff's income to qualify her for a loan that she could not in reality afford. Plaintiff was further misled by representations made to her in her attempts to modify the terms of the loan when they became too burdensome for her.

***6** Compl. ¶ 43. These allegations are incorporated into all three fraud/misrepresentation claims.

Fed.R.Civ.P. 9(b) requires that a claim for fraud or misrepresentation allege with particularity "the circumstances constituting fraud or mistake." The pleading party must "detail with particularity the time, place, and manner of each act of fraud, plus the role of each defendant in each scheme." *Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 405 (9th Cir.1991). These requirements apply to all claims averring fraud. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103-04 (9th Cir.2003).

Plaintiff's allegations do not satisfy this requirement. Nothing indicates when the alleged representations were made, how they were made, or the individual making the representations.[FN8] Plaintiff argues that this Rule 9(b) standard nonetheless should not apply, because she "cannot provide the names of those involved on the lender and servicing side of the transaction. That is information only those parties would know." Opp'n, 18-19. Even if this argument is accepted, it does not excuse plaintiff's failure to specify how the alleged affirmative misrepresentations were made (e.g., orally or in writing), or when they were made. Federal cases relaxing the requirements of Rule 9(b) for claims alleging misrepresentation by omission or concealment do not apply to affirmative representations. Accordingly, insofar as plaintiff's fourth, fifth, and sixth claims are based on affirmative representations, these claims are dismissed with leave to amend.

FN8. Plaintiff's complaint also failed to identify which defendant made the representations. "Rule 9(b) does not allow a complaint to merely lump multiple defendants together[,] but requires plaintiffs to differentiate their allegations when suing more than one defendant." *Swartz v. KMPG LLP*, 476 F.3d 756, 764-65 (9th Cir.2007). This defect is likely to be at least partially cured by amendment, as plaintiff's opposition attributes these allegations to defendant Greenpoint.

Of course, given the way the closing papers were executed, it may be that plaintiff can do no more than allege that agents of Greenpoint committed the acts complained of. If so, she can allege the same, setting for the circumstances limiting her ability to plead more in an amended complaint. [FN9]

FN9. Because the court concludes that plaintiff has failed to adequately allege a claim for intentional or negligent affirmative misrepresentation against any party, the court does not address plaintiff's allegations of civil conspiracy to commit such misrepresentation. *Okun*, 29 Cal.3d at 454, 175 Cal.Rptr. 157, 629 P.2d 1369. Plaintiff's argument that MERS and EMC aided or abetted an affirmative misrepresentation-an argument raised in opposition to this motion but not in the complaint-is similarly predicated on plaintiff having successfully stated a claim for misrepresentation as to at least one party owing the plaintiff a duty. *See also Henry v. Lehman Commer. Paper, Inc.*, 471 F.3d 977, 993 (9th Cir.2006).

2. Misrepresentation by Omission or Concealment

Plaintiff also alleges omission as a basis for her three misrepresentation claims. Greenpoint allegedly "withheld from Plaintiff other information necessary to make [its] [affirmative] representations not misleading, in particular by not providing proper and timely disclosures under TILA." Compl. ¶ ¶ 48, 56, 60. In support of plaintiff's TILA claim, plaintiff alleges that Greenpoint "failed to disclose to Plaintiff that her income would be insufficient to repay the loan, and further failed to provide Plaintiff with information with respect to reasonable alternatives and/or more conventional loan terms." *Id.* at ¶ 37. Plaintiff further alleges that Greenpoint failed to make certain timely "disclosures with respect to calculation of interest." *Id.* at ¶ 36. All of these allegations pertain to conduct at the time the loan was negotiated and entered.[FN10]

FN10. Although the complaint makes the above allegations as to "defendants," plaintiff's opposition memorandum states that these allegations pertain to defendant Greenpoint.

To prevail on a claim for fraudulent concealment or omission under California law, plaintiff must show, inter alia, that defendants failed to disclose information that they had a specific duty to disclose. Cal. Civ.Code §§ 1709-1710, *Lingsch v. Savage*, 213 Cal.App.2d 729, 735, 29 Cal.Rptr. 201 (1963). Here, defendants EMC and MERS argue that they owed no such duty to plaintiff. Plaintiff's opposition does not address this argument, and plaintiff's complaint does not contain allegations supporting the inference of such a duty at the time the omissions allegedly occurred.

***7** Nor has plaintiff alleged facts sufficient to support a claim for civil conspiracy to commit fraudulent concealment or omission. I begin by noting that the California Supreme Court has explained that allegations of conspiracy "cannot create a duty.... It allows tort recovery only against a party who already owes a duty" to the aggrieved party. *Applied Equipment Corp.* 7 Cal.4th at 514, 28 Cal.Rptr.2d 475, 869 P.2d 454. Thus, "tort liability arising from conspiracy presupposes that the coconspirator is legally capable of committing the tort, i.e., that he or she owes a duty to plaintiff recognized by law and is potentially subject to liability for breach of that duty." *Id.* at 511, 28 Cal.Rptr.2d 475, 869 P.2d 454. California courts have applied this rule in multiple contexts. *See id.* (dismissing claim for civil conspiracy for tortious interference with contract brought against contracting party), *Doctors' Co. v. Superior Court*, 49 Cal.3d 39, 44, 260 Cal.Rptr. 183, 775 P.2d 508 (1989) (insurance bad faith claim against non-insurer), *Gruenberg v. Aetna Ins. Co.*, 9 Cal.3d 566, 576, 108 Cal.Rptr. 480, 510 P.2d 1032 (1973) (same), *Klistoff v. Supe-*

rior Court, 157 Cal.App.4th 469, 68 Cal.Rptr.3d 704 (2007) (when statute imposes duties on certain parties, other parties cannot be liable in civil conspiracy for violation of the statute), *Brown v. Professional Community Management, Inc.*, 127 Cal.App.4th 532, 25 Cal.Rptr.3d 617 (2005) (same), *Everest Investors 8 v. Whitehall Real Estate Ltd. Partnership XI*, 100 Cal.App.4th 1102, 123 Cal.Rptr.2d 297 (2002) (claim for civil conspiracy to breach fiduciary duty only available against parties who owe a fiduciary duty), *Khajavi v. Feather River Anesthesia Med. Group*, 84 Cal.App.4th 32, 100 Cal.Rptr.2d 627 (2000) (non-employer could not be liable for civil conspiracy to wrongfully discharge employee in violation of public policy).

Whatever the extent of the *Allied Equipment* rule, it cannot mean that a conspiracy in which some members do not owe the primary duty but are *necessary* for the success of the conspiracy are nonetheless free of liability or alternatively, perhaps, that the duty possessing tort feasor has engaged others to conceal or obfuscate his responsibility. Whether that is the case here is uncertain under the present pleadings. What is certain is that the plaintiff has not pled such a relationship or necessity. Accordingly, it follows that the allegations regarding fraud in the making of the loan must be dismissed against EMC and MERS, although with leave to amend. Moreover, the court's conclusion that no civil conspiracy liability will lie under fraud by omission claim as currently pled does not determine the applicability of civil conspiracy liability as to plaintiff's remaining claims.

3. Rescission: Remaining Issues

The above arguments do not dispose of plaintiff's claims for fraud or misrepresentation based on omissions against defendant Greenpoint. Insofar as plaintiff's claim for rescission may be based on this remaining claim for fraud, the court adopts MERS and EMC's alternate argument for dismissal of the rescission claim.

***8** To rescind a contract on the basis of fraud under Cal. Civ.Code § 1689(b)(2), a rescinding party must "[r]estore to the other party everything of value which he has received from him under the contract or offer to restore the same upon condition that the other party do likewise, unless the latter is unable or positively refuses to do so." [FN11] Plaintiff has not alleged that she has offered to return the loan, and apparently concedes that she is currently unable to do so. Instead, plaintiff argues that the court may modify the rescission procedures to allow plaintiff to make payments over time. However, all the cases cited by plaintiff which have accepted such delayed return of the consideration have concerned rescission under TILA, rather than rescission under California law. Courts interpreting the California statute have held that a party seeking rescission must credibly offer to return everything to the other party. *See* *Rodriguez v. Litton Loan Servicing LP*, No. 2:09-cv-00029, 2009 U.S. Dist. LEXIS 43143, *9-*10, 2009 WL 1326339 (E.D.Cal. May 11, 2009) (J. England), *Lopez v. Chase Home Financial, LLC*, No. 09-cv-0449, 2009 WL 981676, (E.D.Cal., April 9, 2009) (J. O'Neill) (quoting *Fleming v. Kagan*, 189 Cal.App.2d 791, 796, 11 Cal.Rptr. 737 (1961)), again with leave to amend. Accordingly, plaintiff's sixth cause of action, for rescission of the loan, is dismissed as to MERS and EMC.

FN11. Because of the confusion regarding the identity and roles of the parties in this case, it is not clear which party is the proper defendant in the rescission action, i.e., to which party this offer should have been made or whether any party's able or willing to restore the property to plaintiff free of the indebtedness in issue. Because the court resolves the rescission claim on other grounds, the court does not address this issue.

B. Non-misrepresentation Claims for Equitable Relief

Plaintiff further seeks injunctive relief in her claims for quiet title, unfair debt collection, violation of California Civil Code § 2923.5, unfair competition, and declaratory judgment.

1. Quiet Title

Plaintiff's first cause of action is for quiet title against all defendants. MERS and EMC seek dismissal of this claim on two grounds. First, defendants argue that plaintiff has not satisfied the pleading requirements for a claim to quiet title under California law. Second, defendants argue that exhibits which this court may consider demonstrate that the quiet title claim lacks merit. The court rejects both arguments for dismissal of this claim.

a. Pleading Requirements for California Quiet Title Claims

Under California law, a claim for quiet title must include a) a description of the property, including both its legal description and its street address, b) the title of the plaintiff and the basis of the title, c) the adverse claims to the title of the plaintiff, d) the dates as of which the determination is sought, e) and a prayer for the determination of the title of the plaintiff. Cal.Code Civ. Pro. § 761.020. Defendants argue that plaintiffs have not satisfied any of these requirements.[FN12]

> FN12. Defendants also argue plaintiff has not complied with the requirement in Cal. Civ.Code § 761.020 that the complaint in a quiet title action be verified. A party ordinarily verifies a pleading by swearing to the truth of the matters alleged in a pleading. 4 Witkin, California Procedure (4th ed.), Pleading § 420. Plaintiff has included a verification page in the original complaint swearing to the truth of the facts alleged. Compl. at p. 17. The court finds the complaint is sufficiently verified.

Plaintiff has satisfied the requirements of sections 761.020(a), (b), (d) and (e). The complaint adequately identifies the property by address. Compl. ¶ 1. Plaintiff alleges that she is the owner of the record of the property as her basis for title. *Id.* ¶ 23, 11 Cal.Rptr. 737. Plaintiff identifies the date of the filing of the complaint as the date for which determination is sought. *Id.* ¶ 34, 11 Cal.Rptr. 737. Plaintiff seeks a judicial declaration that the title to the property is vested in plaintiff alone and that defendants have no right to the property and should be forever enjoined from asserting a right to the property. *Id.*

***9** As to subsection (c), identification of the adverse claims, MERS and EMC argue that they do not have an adverse claim to the title, and that plaintiff has failed to identify such an adverse claim, because there has not been a trustee's sale and plaintiff is still the holder of the legal title. However, the right of sale provided by the deed of trust is an interest in the property. In addition, while the right of sale is formally lodged with the trustee, the beneficiaries have the power to direct the trustee to exercise this right. *South Bay Building Enterprises, Inc. v. Riviera Lend-Lease, Inc.*, 72 Cal.App.4th 1111, 1120, 85 Cal.Rptr.2d 647 (1999) ("When a debtor defaults on a secured real property loan, the lender-beneficiary may institute nonjudicial foreclosure proceedings to trigger a trustee's sale of the property to satisfy the obligation."), *Moeller v. Lien*, 25 Cal.App.4th 822, 830, 30 Cal.Rptr.2d 777 (1994) ("Upon default by the trustor [under a deed of trust containing a power of sale], the beneficiary may declare a default and proceed with a nonjudicial foreclosure sale."). This interest, the beneficiaries' power to cause a sale of the property, is effectively a lien on the property. *Monterey S.P. P'ship v. W.L. Bangham*, 49 Cal.3d 454, 460, 261 Cal.Rptr. 587, 777 P.2d 623 (1989). Cal.Code Civ. Pro. § 760.010(a) provides that a lien may properly be the subject of a quiet title action. Plaintiff has therefore alleged each of the elements of a quiet title claim.

b. Merits of Plaintiff's Quiet Title Claim

Having clarified the interest challenged by plaintiff's quiet title claim, the court turns to defendants' challenge to the merits of that claim. Plaintiff bases her claim on two theories.

First, plaintiff argues that no one other than plaintiff has a right to cause the subject property to be sold because the loan and associated deed of trust should be rescinded. However, plaintiff's only claim for which rescission is an available remedy is the claim under Cal. Civ.Code § 1689(b)(2). Because Greenpoint has not attacked the pleadings, the claim for rescission is presently undisputed as to that party.

Second, plaintiff argues that even if some person has the right to cause the property to be sold, defendants in this suit are not that person, because "they are not the holders of the note in due course or true beneficiaries under the deed of trust." Opp'n 6:15-16. Plaintiff alleges that the obligation under the promissory note has been assigned to a person not a party to this suit. None of the exhibits in this case speak directly to the promissory note-all concern the deed of trust-and defendants have not made any statement regarding who is the current creditor. Under California Civil Code section 2936, "The assignment of a debt secured by mortgage carries with it the security." Similarly, under California Civil Code section

2932.5:

> Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of the security and vests in any person who by assignment becomes entitled to payment of the money secured by the instrument.

***10** Thus, plaintiff contends when the alleged transfer of the promissory note occurred, as a matter of law the beneficiary's rights under the deed of trust were transferred as well, regardless of whether the latter transfer was intended or recorded. Opp'n, 11.

Greenpoint's status as a creditor is key to defendants' arguments that they do have the right to initiate a nonjudicial foreclosure. However, EMC and MERS have not addressed plaintiff's allegation that an assignment of the promissory note has occurred, such that Greenpoint is no longer the creditor. Although it is not clear to the court that plaintiff's theory has merit, MERS and EMC have not met their burden of showing that plaintiff cannot succeed on this theory.

2. Unfair Debt Collection

Plaintiff's seventh cause of action is brought against all defendants, for violation of California's Rosenthal Fair Debt Collection Practices Act, Cal. Civ.Code § 1788 *et seq.*, and the Federal Fair Debt Collection Act, 15 U.S.C. § 1692 *et seq.* Plaintiff alleges that "defendants caused significant damage to plaintiff's credit history, by reporting past due payments even though Plaintiff has been working in good faith to reasonably modify loan payment terms in accordance with the received instructions." Compl. ¶ 65. MERS and EMC argue for dismissal of this claim on the ground that they are not "debt collectors" subject to liability under either act, and on the ground that foreclosure on the property is not a collection of debt.

As to the first argument, defendants offer no discussion what it means to be a debt collector under either statute, or of whether plaintiff's factual allegations fail to support the inference that MERS and EMC are debt collectors. Accordingly, this argument does not meet defendants' burden of showing that plaintiff has failed to state a claim for relief.

Defendants separately argue that their alleged reporting of plaintiff's past-due status to credit reporting agencies is an action undertaken in furtherance of foreclosure, and thereby not debt collection activity. Defendants rely on two cases. The first is *Heinemann v. Jim Walter Homes, Inc.*, 47 F.Supp.2d 716, 722 (N.D.W.Va.1998), which held that "publication of the notice of sale and the final trustees sale" of a mortgaged property was not collection of a debt, and thus not within the scope of the FDCPA. Second is *Hulse v. Ocwen Fed. Bank, FSB*, 195 F.Supp.2d 1188, 1204 (D.Or.2002), which followed *Heinemann* to conclude that "Foreclosing on a trust deed is distinct from the collection of the obligation to pay money," such that "any actions taken ... in pursuit of the actual foreclosure may not be challenged as FDCPA violations." *Hulse* then held that the act of causing a trustee's notice of sale to be filed could not support an FDCPA claim. *Id.* at 1203-04. The conduct alleged here is factually distinct from that at issue in these cases. The purported debt collection activity in those cases was the posting of a notice of sale and other activity solely connected with foreclosure, whereas plaintiff's claim here is based on reporting of default to credit reporting agencies, an activity that might have some incidental connection to foreclosure, but that is also squarely connected to debt collection. While *Hulse* and *Heineman* held that an action's connection with foreclosure is not sufficient to demonstrate that the act is debt collection activity, defendants here argue that a connection to foreclosure demonstrates that an act is not debt collection activity. These cases simply do not stand for that proposition.

3. Violation of California Civil Code § 2923.5

***11** Plaintiff's eighth claim alleges that defendants violated California Civil Code section 2923.5 by not attempting to contact and negotiate a loan with plaintiff prior to filing the notice of default. Compl. ¶ 69. SB 1137 has been codified as California Civil Code sections 2923.5 and 2923.6. [FN13]

> FN13. Plaintiff's complaint also alleges that defendants violated Senate Bill 1137, which has been codified as Cal. Civ.Code §§ 2923.5 and 2923.6, although plaintiff's complaint contains no allegations pertaining to § 2923.6. In her opposition to the present motion, plaintiff alleges that defendants also

violated § 2923.6 by failing to reach an agreement with plaintiff renegotiating the loan. However, § 2923.6 only imposes a duty on members of the loan pool to each other. *Fuentes v. Duetsche Bank*, No. 09 CV 502 JM(PCL), 2009 WL 1971610, *2 (S.D.Cal. July 8, 2009).

Section 2923.5(a)(2) provides that as a prerequisite to the filing of a notice of default, a "mortgagee, beneficiary or authorized agent" must "contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure." Cal. Civ.Code § 2923.5(a)(2). EMC prepared a notice of compliance with section 2923.5 which was attached to the notice of default, and which states that EMC attempted to contact plaintiff. Defs.' RFJN Ex. 4. However, plaintiff specifically alleges that this notice of compliance is untruthful, and that no effort to contact plaintiff was made. Compl. ¶ 11. For purposes of the present motion, the court must credit plaintiff's allegation.

Defendants also argue that section 2923.5 does not provide for a private right of action. Section 2923.5 does not explicitly provide such a right. Under California law, an implied right of action exists only when the legislature so intended. *Moradi-Shalal v. Fireman's Fund Ins. Companies*, 46 Cal.3d 287, 305, 250 Cal.Rptr. 116, 758 P.2d 58 (1988). Plaintiff in this case has not attempted to show that the legislature had this intention. Instead, plaintiff concedes that no private right of action exists, and attempts to enforce section 2923 .5 through her claim brought under California's unfair competition law. That claim is discussed below. In light of plaintiff's concession, this court will not independently evaluate the legislature's intent. The court assumes for purposes of this case that section 2923.5 does not provide a private right of action.

4. California's Unfair Competition Law

Plaintiff's eleventh claim is for unfair competition in violation of Cal. Bus. & Prof.Code section 17200. This statute proscribes "unlawful, unfair, or fraudulent business acts." *Id.* Here, plaintiff alleges that defendants acted unlawfully, as specified in plaintiff's other claims; plaintiff does not otherwise allege that defendants' acts were unfair or fraudulent. Compl. ¶¶ 81-82, *see also* Opp'n at 28.

Defendants raise two challenges to this claim. First, they argue that plaintiff does not satisfy the statutory standing requirements. The UCL provides a private right of action to "any person who has suffered injury in fact and has lost money or property as a result of ... unfair competition." Cal. Bus. & Prof.Code § 17204. *See also Californians for Disability Rights v. Mervyn's, LLC*, 39 Cal.4th 223, 228, 46 Cal.Rptr.3d 57, 138 P.3d 207 (2006). At least one claim, her unfair debt collection claim, alleges that plaintiff has suffered financial loss as a result of damage to her credit history. The parties have not addressed whether plaintiff's other alleged injuries satisfy section 17204, or whether in an unfair competition claim for which standing is provided by the unfair debt collection injury plaintiff may attain the full range of remedies she seeks on this claim, and the court need not address these issues in disposing of this motion.

***12** Defendants also argue that plaintiff's unfair competition claim fails because plaintiff has not alleged a "pattern of behavior" or a "course of conduct" constituting a business practice. This argument relies on a prior version of the unfair competition statute. In 1992, the Legislature amended section 17200 to expand the definition of unfair competition to include "any unlawful, unfair, or fraudulent business *act* or practice." (emphasis added). The 1992 amendments thereby overruled the cases defendants rely upon that limited the statute's application to a "pattern of conduct". *See Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 17 Cal.4th 553, 570, 71 Cal.Rptr.2d 731, 950 P.2d 1086 (1998) (quoting *State of California ex rel. Van De Kamp v. Texaco, Inc.*, 46 Cal.3d 1147, 1169-170, 252 Cal.Rptr. 221, 762 P.2d 385 (1988)). The California Supreme Court has interpreted the 1992 amendment as overruling that part of *Van De Kamp* that interpreted the statute to require more than a single "act." *United Farm Workers of America, AFL-CIO v. Dutra Farms*, 83 Cal.App.4th 1146, 1163, 100 Cal.Rptr.2d 251 (2000) (citing *Stop Youth Addiction, Inc.*, 17 Cal.4th at 570, 71 Cal.Rptr.2d 731, 950 P.2d 1086). Accordingly, under the current version of the statute, even a single act may create liability. *United Farm Workers of America, AFL-CIO*, 83 Cal.App.4th at 1163, 100 Cal.Rptr.2d 251 (*see CRST Van Expedited, Inc. v. Werner Enterprises, Inc.*, 479 F.3d 1099, 1107 (2007) ("a business act or practice need not be an ongoing pattern of conduct").

Accordingly, defendants' motion to dismiss is denied as to plaintiff's unfair competition claim.

5. Declaratory Relief

Plaintiff's twelfth cause of action is for declaratory and injunctive relief. Plaintiff seeks "a declaration as to the validity of the purchase money loan agreement, loan transaction, and Defendants' right to proceed with the non-judicial foreclosure of the Premises." Compl. ¶ 90. Plaintiff bases her claim to declaratory and injunctive relief on her other eleven causes of action, and specifically on the grounds that the loan and deed of trust are void, and that defendants "might not be actual holder[s] of the original note of the Premises." Compl. ¶¶ 88-89. Defendants argue that because all of plaintiff's other claims should be dismissed, plaintiff is not entitled to declaratory relief. Because the court has not dismissed various causes of action, defendants' motion to dismiss is denied as to plaintiff's claim for declaratory relief.[FN14]

> FN14. In opposing the present motion, plaintiff additionally argued that the Notice of Default, Notice of Sale and Substitution of Trustee filed by defendants violated statutory procedural requirements, namely California Civil Code sections 2924, 2924f(b) (1), and 2934a, by failing to provide specific required information. Although plaintiff did not explain how these allegations pertain to any of plaintiff's other claims, these allegations, if included in an amended complaint, may provide an independent ground for declaratory judgment.

C. Non-misrepresentation Claims for Damages

1. Truth in Lending Act (TILA)

Plaintiff's second claim is for a violation of the Truth in Lending Act, 15 U.S.C. § 1639. This claim is alleged against Greenpoint and EMC but not MERS. EMC argues that this claim should be dismissed against EMC for two reasons.

a. Whether EMC Is An Assignee under TILA

TILA imposes liability for failure to make initial disclosures only on the original creditor and that creditor's assignees. 15 U.S .C. §§ 1640, 1641. EMC argues that it is only a servicer and not an assignee subject to such liability. TILA explicitly excludes most servicers in the position EMC contends it occupies from the definition of "assignees." 15 U.S.C. § 1641(f). To be liable as an assignee, the servicer must own the obligation, and the servicer's ownership must not be based on assignment from another creditor made solely for administrative convenience in servicing the obligation. §§ 1641(f)(1)-(2); *see also* *Hubbard v. Ameriquest Mortg. Co.*, No. 05-CV-389, 2008 U.S. Dist. LEXIS 75799, *9-*10, 2008 WL 4449888 (N.D.Ill. Sept. 30, 2008). Here, plaintiff alleges that the loan has been assigned to EMC. Compl. ¶ 19. Rather than arguing that any assignment was made solely for the purposes of administrative convenience, EMC argues that contrary to plaintiff's allegation, EMC has not taken assignment of the loan.

***13** Given that the Notice of Default prepared by defendants appears to identify EMC as the actual beneficiary under the deed of trust, the judicially noticeable evidence is ambiguous, and must be interpreted in favor of plaintiff. Accordingly, this argument for dismissal fails.

b. Statute of Limitations under TILA

EMC argues that plaintiff's TILA claim was filed after the expiration of TILA's one-year statute of limitations for claims for civil damages. 15 U.S.C. § 1640(e). Plaintiff's TILA claim is based on a failure to disclose the method that would be used to calculate interest, Compl. ¶ 36, failure to disclose that interest was added to principal during the initial period of fixed payments, *Id.* at ¶ 13, basing the loan on an inflated appraisal, *Id.* at ¶ 37, failure to disclose that plaintiff's income would be insufficient to pay the loan, *Id.* at ¶ 37, failure to provide plaintiff with information regarding alternative possible loan terms, *Id.* at ¶ 37, and originating the loan in violation of their unspecified underwriting standards, *Id.* at ¶ 38. All of these allegations pertain to conduct at the time the loan was originated, in late 2005. Plaintiff's complaint was filed on April 20, 2009, over three years after the alleged conduct.

Plaintiff responds that her TILA claim is not barred by TILA's one-year statute of limitations because plaintiff is entitled to either equitable tolling or equitable estoppel.[FN15] The Ninth Circuit has held that TILA's limitations period may be tolled:

> FN15. Although plaintiff's memorandum refers only to equitable tolling, her arguments also implicate equitable estoppel.

the limitations period in Section 1640(e) runs from the date of consummation of the transaction but that the doctrine of equitable tolling may, in the appropriate circumstances, suspend the limitations period until the borrower discovers or had reasonable opportunity to discover the fraud or nondisclosures that form the basis of the TILA action.

King v. California, 784 F.2d 910, 915 (9th Cir.1986). District courts applying *King* have held that the related doctrine of equitable estoppel is also available for TILA claims. *See, e.g., Ayala v. World Sav. Bank, FSB*, 616 F.Supp.2d 1007 (C.D.Cal.2009). " '[E]quitable estoppel applies when a plaintiff who knows of his cause of action reasonably relies on the defendant's statements or conduct in failing to bring suit.' " *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1184 (9th Cir.2001) (*en banc*) (quoting *Stitt v. Williams*, 919 F.2d 516, 522 (9th Cir.1990)).

A finding of equitable estoppel rests on the consideration of a non-exhaustive list of factors, including: (1) the plaintiff's actual and reasonable reliance on the defendant's conduct or representations, (2) evidence of improper purpose on the part of the defendant, or of the defendant's actual or constructive knowledge of the deceptive nature of its conduct, and (3) the extent to which the purposes of the limitations period have been satisfied.

Santa Maria v. Pacific Bell, 202 F.3d 1170, 1176 (9th Cir.2000), *overruled on other grounds by Socop-Gonzales*, 272 F.3d 1176. While a plaintiff need not specifically allege equitable tolling or estoppel in a complaint, the complaint must provide a factual basis to support either theory. *Cervantes v. City of San Diego*, 5 F.3d 1273, 1277 (9th Cir.1993).

***14** Plaintiff's complaint alleges that she discovered that the interest rate was not fixed and that interest had been added to the principal during the period of initial payments "at the time when her fixed payment period expired," although plaintiff does not allege when that time occurred. Compl. ¶ 13. However, plaintiff has made no allegations concerning whether she had "reasonable opportunity" to discover the basis of her TILA claim at an earlier point, *King*, 784 F.2d at 915, i.e., whether the basis for these claims could have been discovered through the exercise of reasonable diligence, *Socop-Gonzales*, 272 F.3d at 1184-85.

Plaintiff also argues that the statute of limitations should not bar her TILA claim because of defendants' misconduct. An argument for equitable estoppel requires "some active conduct by the defendant 'above and beyond the wrongdoing upon which the plaintiff's claim is filed, to prevent the plaintiff from suing in time.' " *Lukovsky v. City & County of San Francisco*, 535 F.3d 1044, 1052 (9th Cir.2008) (quoting *Guerrero v. Gates*, 442 F.3d 697, 706 (9th Cir.2006)). The complaint does not identify any separate misconduct that would have this effect. The complaint contains no allegations of such separate misconduct.

Accordingly, plaintiff's TILA claim is dismissed with leave to amend.

2. Real Estate Settlement Procedures Act (RESPA)

Plaintiff's third claim is that all defendants violated the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.* Defendants allegedly violated RESPA by "accepting fees, kickbacks, or other things of value from the other Defendants" as compensation for referrals. Compl. ¶ 41.

RESPA also imposes a one-year statute of limitations. 12 U.S.C. § 2614. Like plaintiff's TILA claim, this cause of action also accrued at the time the loan was entered, in late 2005. Compl. ¶ 41. Plaintiff again argues that her claim is timely because of equitable tolling.

While the Ninth Circuit has not decided whether the RESPA statute of limitations is jurisdictional, and thus whether equitable tolling or estoppel are available under RESPA, district courts in this circuit have held that tolling is available. *See Brewer v. IndyMac Bank*, 609 F.Supp.2d 1104, 1118 (E.D.Cal.2009) (following *Lawyers Title Ins. Corporation v. Dearborn Title Corp.*, 118 F.3d 1157, 1166-67 (7th Cir.1997)), *Kay v. Wells Fargo & Co., N.A.*, No. 07-

01351, 2007 WL 2141292 (N.D.Cal. July 24, 2007), *Blaylock v. First Am. Title Ins. Co.*, 504 F.Supp.2d 1091, 1106 (W.D.Wash.2007); *but see* *Hardin v. City Title & Escrow Co.*, 797 F.2d 1037, 1040-41 (D.C.Cir.1986) (holding that the RESPA statute of limitations is jurisdictional and not subject to equitable tolling). *Brewer* held that the *King* test for equitable tolling under TILA also governed equitable tolling under RESPA. 609 F.Supp.2d. at 1118 (citing *King*, 784 F.2d at 915).[FN16]

FN16. The court notes that the *King* phrasing of the test for equitable tolling mirrors the tests used by the Ninth Circuit in in other contexts. *See, e.g.*, *Santa Maria*, 202 F.3d at 1178 (ADA claim), *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir.1999) (Title VII).

Plaintiff argues that the RESPA statute of limitations should be tolled for the same reasons provided for tolling of the TILA limitations period, and plaintiff provides no further allegations or argument on this issue. As explained above, plaintiff has not provided factual allegations supporting such tolling.

***15** Defendants alternatively argue that plaintiff's RESPA claim fails because plaintiff has failed to plead certain other elements of a RESPA claim. First, defendants contend that plaintiff failed to allege that any fees paid were not for services actually rendered. While plaintiff disputes that such an allegation is required, the complaint specifically alleges that fees, kickbacks, etc. were made in exchange for referrals, and by implication, not for services. Second, defendants contend that plaintiff must specifically allege pecuniary loss, under 12 U.S.C. § 2605. As the cases cited by defendants demonstrate, courts have interpreted this requirement liberally. *See* *Hutchinson v. Del. Sav. Bank FSB*, 410 F.Supp.2d 374, 383 (D.N.J.2006), *Cortez v. Keystone Bank, Inc.*, No. 98-2457, 2000 WL 536666, 2000 U.S. Dist. LEXIS 5705, *38-40 (E.D.Pa. May 2, 2000). Here, where plaintiff alleges that she was required to pay a referral fee that was prohibited under RESPA, plaintiff has adequately alleged pecuniary loss.

Accordingly, plaintiff's RESPA claim is dismissed with leave to amend with facts supporting equitable tolling.

3. Duty of Good Faith and Fair Dealing

Plaintiff's tenth claim is for breach of the implied covenant of good faith and fair dealing. Plaintiff alleges that defendants breached this covenant by intentionally forcing plaintiff into default and foreclosure by “depriving Plaintiff of an opportunity to properly review, analyze and negotiate the loan terms, and ultimately loan modification terms intentionally forcing Plaintiff into default and eventually foreclosure proceedings.” [sic] Compl. ¶ 77.

A claim for breach of the implied covenant depends upon the existence of an underlying contract. Insofar as this claim is predicated on conduct that occurred prior to completion of the contract, it therefore fails as to all defendants, because no contract existed at that point.

Nonetheless, plaintiff's complaint explicitly states that this claim is also predicated on conduct occurring after the loan was closed, i.e., once a contract existed. Compl. ¶ 77. The only conduct enumerated in this claim that could have occurred after this point is the deprivation of an opportunity to review loan modification terms and the act of intentionally forcing plaintiff into default. *Id.*

EMC and MERS argue that even insofar as this claim is predicated on activity occurring after the initial contract was entered, plaintiff has not alleged the existence of a contract between plaintiff and EMC or MERS. However, plaintiff has alleged that the promissory note has been assigned to EMC, and that MERS is a party to the deed of trust. EMC and MERS have not explained why these instruments do not constitute contracts.

Although plaintiff's allegations regarding loan modification and intentionally forcing plaintiff into foreclosure provide few details, these allegations suffice to state a claim for breach of the covenant of good faith and fair dealing that informs defendants of its basis. Contrary to defendants' argument, plaintiff does not merely allege the legal conclusion that a breach of the covenant occurred. Instead, plaintiff identifies the type of acts that constituted the breach.

***16** Therefore, defendant's motion to dismiss plaintiff's claim for breach of implied covenant of good faith and fair dealing is denied.

IV. CONCLUSION

For the reasons stated above, defendants' motion to dismiss is GRANTED IN PART.

1. The motion is GRANTED as to the following claims as to defendants MERS and EMC, which are DISMISSED WITHOUT PREJUDICE:

a. The second claim, for violation of TILA,

b. The third claim, for violation of RESPA,

c. The fourth claim, for fraud,

d. The fifth claim, for negligent misrepresentation,

e. The sixth claim, for rescission based on fraud,

f. The eighth claim, for violation of Cal. Civ.Code § 2923.5,

g. The ninth claim, for civil conspiracy.

2. The motion is DENIED as to the following claims:

a. The first claim, for quiet title,

b. The seventh claim, for unfair debt collection,

c. The tenth claim, for breach of the implied covenant of good faith and fair dealing,

d. The eleventh claim, for unfair competition,

e. The twelfth claim, for declaratory and injunctive relief.

Plaintiff is GRANTED twenty days to file an amended complaint.

IT IS SO ORDERED.

E.D.Cal.,2009.
Yulaeva v. Greenpoint Mortg. Funding, Inc.
Slip Copy, 2009 WL 2880393 (E.D.Cal.)

END OF DOCUMENT

C

Circuit Court of Virginia, Fauquier County.
Citizens for Fauquier County
v.
SPR Corporation, Stefano Parlagreco, and Thomas A. Greenland
AT LAW NO. CL 94-40.

March 27, 1995.

***1** This case is before the Court on a demurrer to the Plaintiff's single count motion for judgment alleging a civil conspiracy by the Defendants. It suggests that they conspired to maliciously file and prosecute federal and state claims against the Plaintiff, knowing that such actions lacked a factual predicate. The following allegations of fact are contained in the Motion for Judgment and, under familiar principles, must be taken as true on demurrer.
Thomas D. Horne, Judge.

Both the Plaintiff and the Defendant, SPR are Virginia corporations. Messrs. Parlagreco and Greenland are residents of Fauquier County and shareholders of SPR.

The Plaintiff alleges that the Defendants unlawfully conspired to file against it both federal and state law suits. These actions were commenced in December, 1990, with the filing of claims against both the instant Plaintiff Citizens for Fauquier County (CFFC) as well as others. CFFC is an entity whose purpose is to make known its views on matters of public interest in Fauquier County. Earlier in that year, CFFC had undertaken to oppose a venture between SPR and the County of Fauquier.

The undertaking by SPR and the County of Fauquier involved the development and rental of office space by SPR for use by the County. Defendants alleged in their federal and state claims that CFFC and others had, in the course of pursuing their objectives, conspired to interfere with contractual relations, conspired to harm business, and otherwise hindered SPR, Parlagreco, and Greenland in their venture, thereby causing them injury.

On February 1, 1991, the United States District Court dismissed with prejudice all claims filed by SPR, Parlagreco, and Greenland then pending in that court. A notice of appeal was subsequently filed and ultimately dismissed voluntarily. On September 24, 1992, SPR, Parlagreco, and Greenland nonsuited the state court action.

In a prior action before this Court, the instant Plaintiff sought relief against these Defendants for having filed the federal and state court suits. It alleged in Law No. CL92-362, filed December 11, 1992, that the instant Defendants had maliciously prosecuted both the federal and state court actions, conspired to injure the Plaintiff by such malicious prosecutions, and had conspired to injure the Plaintiff in its business and reputation under Virginia Code ” 18.2-499 and 18.2-500.

Defendants' demurrers to the first, second, and fourth counts of the Motion for Judgment in Law No. CL92-362 were sustained, although the Plaintiff was granted leave to replead. The Court overruled the demurrer to the civil conspiracy count as to each of the Defendants. Although the Defendants' demurrers to an Amended Motion for Judgment were again sustained as to the first, second, and fourth counts, the demurrers to the civil conspiracy count against each of the Defendants in the present case were again overruled.

On August 9, 1993, the Court entered an order of nonsuit as to the remaining civil conspiracy count alleged against SPR, Parlagreco, and Greenland in Law No. CL92-362. Plaintiff appealed the adverse ruling of the trial Court as to the three counts to which a demurrer was sustained. Finding no error, the Supreme Court denied review of the action of the trial court. Thus, for purposes of determining the merits of the instant demurrer, the Court will treat as final the rulings adverse to the Plaintiff as to its claims of malicious prosecution of the federal and state lawsuits and of statutory conspiracy. The Plaintiff filed the Motion for Judgment in the instant action on February 8, 1994.

***2** In this case, Law No. CL94-40, the Plaintiff, in a single count motion for judgment alleging civil conspiracy by the Defendants, seeks a judgment, jointly and severally, in the amount of $400,000.00 in compensatory damages and $1,000,000.00 in punitive damages.

On June 13, 1994, the Defendants filed a demurrer to the motion for judgment, asserting that the suit does not state a cause of action against the Defendants. A fair reading of the pleadings and memoranda evidences the following theories in support of the defendants' demurrer: 1) that Plaintiff has failed to state a claim for civil conspiracy against them because Parlagreco and Greenland pursued the law suits as shareholders of SPR and not in their individual capacities; 2) that as officers, directors, and shareholders of SPR Corporation, Parlagreco and Greenland cannot as a matter of law conspire with the corporation; 3) that the Circuit Court of Fauquier County, in Law No. CL92-362, ruled that, as a matter of law, the filing of the law suits by these Defendants were not acts of malicious prosecution, and consequently, res judicata would serve as a bar to the present claims; 4) that the Plaintiff does not allege an unlawful act or unlawful means to perform a lawful act as a conspiratorial goal which would support a claim of for civil conspiracy under Virginia law; and 5) that ' 8.01-271.1 of the Code of Virginia is not an actionable "wrong" that would support a claim of civil conspiracy.

After consideration of the memoranda of law filed with the Court and the argument of counsel, and for the reasons hereinafter stated, the Court finds that Plaintiff has not sufficiently stated a cause of action for civil conspiracy and will sustain the demurrer.

In ruling on a demurrer, the Court may consider facts expressly alleged, facts fairly inferred from facts alleged, and facts impliedly alleged. Rosillo v. Winters, 235 Va. 268 (1988). A review of the pleadings would suggest there are factual issues raised by the first two grounds stated above which cannot be resolved on demurrer.

The Defendants contend that the doctrine of res judicata is applicable to the instant claim as a result of the ruling of the trial court on the instant Plaintiff's prior claims. The doctrine of res judicata only applies if the judgment in the first claim goes to the merits of the case. Hosier v. Hosier, 221 Va. 827 (1981). A decision on an issue of law on a demurrer, is a decision on the merits and constitutes res judicata as to any other proceedings where the same parties and the same issues are involved. Gimbert v. Norfolk Southern R. Co., 152 Va. 684 (1929). In order for res judicata to apply, however, the same parties (or parties in privity) must be involved in the same cause of action in both claims, in addition to the requirement that the first claim must have been finally adjudicated. See, e.g., Dotson v. Harman, 232 Va. 402 (1986); K & L Trucking Co. v. Thurber, 1 Va. App. 213 (1985); Allstar Towing, Inc. v. City of Alexandria, 231 Va. 421 (1986); Faison v. Hudson, 243 Va. 413 (1992).

***3** In determining whether two claims constitute the same cause of action, the Supreme Court of Virginia has looked to two factors: the nature of relief sought and the elements of proof. See, e.g., Wright v. Castles, 232 Va. 218 (1986); Bernau v. Nealon, 219 Va. 1039 (1979).

In the present case, the Court is of the opinion that the causes of action alleged in the first claim and the second claim are substantially different. The prior claim for malicious prosecution failed to state a claim of special injury. This failure to plead special injury was fatal to Plaintiff's earlier action for malicious prosecution.

The instant claim for conspiracy is not dependent upon malicious prosection as the actionable wrong through which the conspiracy acted and caused damage to the Plaintiff. Plaintiff alleges a civil conspiracy based on the "unlawful" filing of a lawsuit under Virginia Code ' 8.01-271.1, Code of Virginia.

A civil conspiracy is an agreement or understanding between two or more persons to do an unlawful act, or to use unlawful means to do an act which is lawful. Hechler Chevrolet, Inc. v. General Motors Corp., 230 Va. 396, 402 (1985). Said another way, a civil conspiracy is a combination of two or more persons to accomplish by concerted action an unlawful or oppressive object, or a lawful object by unlawful or oppressive means. Bull v. Logetronics, Inc., 323 F. Supp. 115 (E.D. Va. 1971).

Virginia Code ' 8.01-271.1 provides that sanctions shall be imposed by the Court upon attorneys and/or parties who file with the court a pleading, motion, or other paper which, after reasonable inquiry is not well-grounded in fact, or is not interposed for improper purpose, such as to harass or cause unnecessary cost in litigation.

In determining whether the allegations, on their face, constitute a cause of action for civil conspiracy in Virginia, two questions must be asked: 1) Has the Plaintiff alleged an unlawful act or unlawful means to perform a lawful act as a conspiratorial goal supporting a claim of civil conspiracy as a cause of action under Virginia law?; and 2) May an action for civil conspiracy be maintained where ' 8.01-271.1, Code of Virginia is the basis of the alleged wrong?

As stated above, a civil conspiracy is an agreement or understanding between two or more persons to do an unlawful act, or to use unlawful means to do an act which is lawful. Hechler at 402. Thus, the Court must determine whether allegations based on a violation of Virginia Code ' 8.01-271.1 describe an “unlawful act” or the “use of unlawful means to do an act which is lawful.”

The Court finds, as logic dictates, that violating ' 8.01-271.1 is unauthorized by Virginia law, and that such a violation can fairly be construed as “unlawful.” The Court finds that the Plaintiff accordingly has not failed to allege an “unlawful act” or the “use of unlawful means to do an act which is lawful.” The Court will not sustain a demurrer on this basis.

***4** In determining whether or not the allegations state a cause of action for civil conspiracy, the Court must look to the allegations of the underlying wrong. As the Supreme Court has observed,

“The gist of the civil action of conspiracy is the damage caused by the acts committed in pursuance of the formed conspiracy and not the mere combination of two or more persons to accomplish an unlawful purpose or use unlawful means. In other words, the basis of the action is the wrong which is done under the conspiracy and which results in damage to the plaintiff.” Gallop v. Sharp, 179 Va. 335, (1942).

Accordingly, the Court must rule whether or not an alleged violation of Virginia Code ' 8.01-271.1 is a proper foundation upon which to base a claim of civil conspiracy.

The Supreme Court of Virginia has not set a standard setting forth the requirements for the underlying alleged wrong in a case of civil conspiracy. This Court has reviewed case law in other jurisdictions for guidance.

Courts have in some instances employed an analysis based on the culpability level of the underlying wrong in a civil conspiracy. In at least one jurisdiction, the underlying wrong in a civil conspiracy action must be an intentional tort or a crime. “To establish an underlying unlawful act in Pennsylvania, plaintiff must prove that the parties came together for the express purpose of committing either a criminal act or an intentional tort.” Advanced Power Systems v. Hi-Tech Systems, 801 F.Supp. 1450, 1458 (E.D.Pa. 1992).

Other courts have ruled that a tort must have been committed as a result of a civil conspiracy for the conspiracy to be actionable. “Because no separate and distinct civil conspiracy tort exists, liability attaches only if one of the conspirators is liable for an underlying tort.” Riley v. Dow Corning Corp., 767 F.Supp. 735, 740 (M.D.N.C. 1991). “A claimant must plead specific wrongful acts which constitute an independent tort.” John's Insulation v. Siska Const. Co., 774 F.Supp. 156, 161 (S.D.N.Y. 1991). “Because [the plaintiff] has failed to state any tortious action, its conspiracy action must also fail.” Admiral Ins. v. Columbia Ins., 486 N.W.2d 351, 359 (Mich.App. 1992).

A less stringent standard, allowing for an underlying nontortious “wrong,” has been established in some jurisdictions. “To establish the •wrongful act' element of civil conspiracy, [third-party plaintiff] must satisfy all the elements of a cause of action for some other tort or wrong.” General Life Ins. Co. v. Rana, 769 F.Supp. 1121, 1125 (N.D. Calif). “[A] cause of action for civil conspiracy cannot stand by itself, but must rest upon the successful allegation of an underlying wrong.” Barney v. Aetna Cas. & Sur. Co., 230 Cal.App.3d 981 (1986). “[Defendants] interpret the...elements of civil conspiracy to require allegations of an unlawful, overt act which must itself be independently actionable in tort. We disagree. Quoting American Jurisprudence 2d, this court in Illinois Traffic Court Driver Improvement Educational Foundation v. Peoria Journal Star, Inc., 494 N.E.2d 939, 944 (Ill.App.3 Dist. 1986), noted that ••in a civil action based on a conspiracy, no cause of action can exist in the absence of an overt, tortious, or unlawful act committed in the furtherance of the conspiracy.' (16 Am.Jur.2d, Conspiracy ' 51.' The conjunctive •or' in this passage indicates alternatives in a series and not, as defendants argue, cumulative requirements of the tort. Therefore, we hold that an alleged overt or unlawful act need not be tortious or otherwise actionable in tort to support a cause of action for civil conspiracy." Vance v. Chandler, 597 N.E.2d 233, 235 (Ill.App.3 Dist. 1992). "Conspiracy is not itself actionable in the absence of an underlying wrongful act or tort." Williams v. Mercantile Bank of St. Louis, 845 S.W.2d 78, 85 (Mo.App. E.D. 1993).

***5** An alternative dichotomy to that analysis is one based on the actionability of an underlying claim. "An act which does not constitute a basis for an action cannot serve as the basis for a conspiracy claim." Czarnecki v. Roller, 726 F.Supp. 832, 840 (S.D.Fla. 1989). "[T]he act (or means) need only be •of such a character as to create an actionable wrong'." Alexander v. Evander, 596 A.2d 687, 700 (Md.App. 1991) (quoting Knoche v. Standard Oil Co., 138 Md. 278, 113 A. 754 (1921)). "To be actionable a civil conspiracy must embody an underlying wrong which would be actionable in the absence of a conspiracy." Connolly v. Labowitz, 519 A.2d 138, 143 (Del.Super. 1986). "A conspiracy cannot be made the subject of a civil action unless something is done which, without the conspiracy would give a right of action." Palmer v. Westmeyer, 549 N.E.2d 1202, 1207 (Ohio App. 1988). "Where damage results from an act which, if done by one alone, would not afford ground of action, the like act would not be rendered actionable because done...in pursuance of a conspiracy." Id. "Under Florida law, actionable civil conspiracy must be based on an existing independent wrong or tort that would constitute a valid cause of action if committed by one actor." Williams Elec. Co. Inc. v. Honeywell, Inc., 772 F.Supp. 1225, 1239 (N.D.Fla. 1991).

In Virginia, the dividing line has not been drawn expressly. Under the first analysis, which sets a standard according to the type of wrong, Virginia case law seems to indicate that a wrong, even though not a common law tort action, would form a proper underpinning in a claim of civil conspiracy. In Hechler, a civil conspiracy was defined as "an agreement or understanding between two or more persons to do an unlawful act, or to use unlawful means to do an act which is lawful." Hechler at 402. The language in Logetronics does not indicate that "unlawful" might not include acts "unauthorized by law" which are not common law torts or crimes. Logetronics at 134. There is no Virginia authority which would preclude a civil conspiracy claim under '8.01-271.1 under this analysis.

Under the actionability analysis, however, Virginia law indicates that a claim of civil conspiracy may not be maintained using ' 8.01-271.1. It is well-established Virginia law under Gallop v. Sharp that "the gist of the civil action of conspiracy is the damage caused by the acts committed in pursuance of the formed conspiracy," that "the basis of the action is the wrong which is done under the conspiracy and which results in damage to the plaintiff." Gallop, 179 Va. at 335, 19 S.E.2d at 84. This statement of the law is consistent with the actionability standard in that it requires focus on the underlying alleged wrong. Where there is no actionable claim for the underlying alleged wrong, there can be no action for civil conspiracy based on that wrong. For this reason, an action for conspiracy based upon malicious prosection must failed, as any harm to the Plaintiff caused by such prosecution is barred by the actions of the trial court in the prior proceeding.

***6** Prosser and Keeton also emphasize that the injury caused by the acts comprising the underlying wrong, not the mere combination of the actors in a conspiracy, is the heart of a civil conspiracy claim. "[S]ome act must be committed by one of the parties in pursuance of the agreement." Prosser and Keeton on Torts, Fifth Edition, Joint Tortfeasors ' 46 Concerted Action. "The gist of the action is not the conspiracy charged, but the tort working damage to the plaintiff." Id. (quoting James v. Evans, 149 F. 136, 140 (3rd Cir. 1906).)

A motion made under ' 8.01-271.1 is not itself an actionable claim in Virginia. It is a collateral proceeding to a substantive cause of action. Federal jurisprudence regarding Rule 11 of the Federal Rules of Civil Procedure supports this position. Rule 11 is an analogous federal provision materially similar to Virginia's ' 8.01-271.1. See, Oxenham v. Johnson, 241 Va. 281 , 286 (1991). The Supreme Court of the United States has noted the collateral nature of the relief granted pursuant to Rule 11. Cooter & Gell v. Hartmax Corp., 496 U.S. 384 (1990).

A Virginia court has incorporated Rule 11 analysis in ruling on ' 8.01-271.1 . In Covington v. Haboush, 28 Va. Cir. 360 (1992), the Circuit Court of the City of Richmond was presented with the issue of whether Virginia Code '8.01-271.1 can constitute a cognizable claim by itself. That Court ruled that the code section "is not a substantive right and cannot form the basis for a cause of action. Sanctions under ' 8.01-271.1 have to be sought by motion in a pending action. Id. at 363. That Court cited Cohen v. Lupo, 927 F.2d 363 (9th Cir. 1991), wherein the Court of Appeals for the Ninth Circuit stated that Rule 11 is a rule of court and not a separately actionable substantive right and that there can be "no independent cause of action instituted for Rule 11 sanctions.""

There being no cause of action for a claim under ' 8.01-271.1, the Court rules that it may not be the foundation of a claim for civil conspiracy. A party seeking relief under ' 8.01-271.1 may not bring a separate claim under that code section. Simply alleging a conspiracy to violate ' 8.01-271.1 does not create an actionable claim. "Since the underlying...counts do not state a cause of action, the allegations that the acts constituting [the underlying wrong] were the result of the conspiracy cannot •breathe life into a cause of action which was otherwise nonexistent'." Williams v. Mercantile Bank of St. Louis, 845 S.W.2d 78, 85 (Mo.App. E.D. 1993) (quoting Bockover v. Stemmerman, 708 S.W.2d 179, 182 (Mo.App. 1986). The Court sustains the defendants' demurrer on this basis.

***7** Mr. Miller shall draw an Order consistent with this opinion to which counsel may note their exceptions.

Va.Cir.Ct. 1995.
Citizens for Fauquier County v. SPR Corp.
Not Reported in S.E.2d, 37 Va. Cir. 44, 1995 WL 1055819 (Va.Cir.Ct.)

END OF DOCUMENT