Mastering Merger & Acquisitions for Today’s Community Bank

Presented by:
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Presented at:
Community Bank Mergers & Acquisitions
Independent Community Bankers of America
May 4 – 5, 2017
Loews Chicago Hotel
Chicago, IL
About The ICBA

The Independent Community Bankers of America, the nation’s voice for community banks, represents community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers they serve.

With nearly 5,000 members, representing more than 24,000 locations nationwide and employing over 300,000 Americans, ICBA members hold more than $1.2 trillion in assets, $1 trillion in deposits, and more than $750 billion in loans to consumers, small businesses and the agricultural community.

ICBA is the only national trade association that tailors its educational programs exclusively to meet the needs of directors and staff members of community banks. The ICBA Education Department is committed to developing and providing educational products and services that exceed the ever-changing needs of today’s community bank.

To that end, seminars and workshops are scheduled annually across the country to help community bank directors and employees develop effective strategies and keep abreast of current issues, new technologies, changing regulations and the latest in client services. Members of the ICBA Bank Education Committee review regularly the course content for each of the seminars and workshops to ensure a quality educational solution. In addition, instructor selection is based upon his or her past and current experience with community bank needs. We feel that this constant concern for maintaining relevant course material, combined with expert instructional staff, assures you of the best community bank training available today.

The ICBA representative(s) or workshop instructor(s) on site at each of ICBA’s seminars and workshops are always available to answer your questions and ensure that you are receiving the highest quality education available. If you have any additional questions or comments, or would like more information on ICBA’s educational products and services, please call the ICBA Education Department at 800/422-7285 or visit the ICBA website at www.icba.org/education.

Thank you for your continuing support of ICBA’s educational products and services.
Jeffrey C. Gerrish

Mr. Gerrish is Chairman of the Board of Gerrish Smith Tuck Consultants, LLC and Gerrish Smith Tuck, PC, Attorneys. The two firms have assisted over 2,000 community banks in all 50 states across the nation. Mr. Gerrish’s consulting and legal practice places special emphasis on strategic planning for boards of directors and officers, community bank mergers and acquisitions, bank holding company formation and use, acquisition and ownership planning for boards of directors, regulatory matters, including problem banks, memoranda of understanding, cease and desist and consent orders, and compliance issues, defending directors in failed bank situations, capital raising and securities law concerns, ESOPs and other matters of importance to community banks. He formerly served as Regional Counsel for the Memphis Regional Office of the FDIC with responsibility for all legal matters, including all enforcement actions. Before coming to Memphis, Mr. Gerrish was with the FDIC Liquidation Division in Washington, D.C. where he had nationwide responsibility for litigation against directors of failed banks. He has been directly involved in fair lending, equal credit and fair housing matters, in raising capital for problem financial institutions and in numerous bank merger transactions.

Mr. Gerrish is an accomplished author, lecturer and participates in various banking-related seminars. In addition to numerous articles, Mr. Gerrish is also the author of the books Commandments for Community Bank Directors and Gerrish’s Glossary for Bank Directors. He is a Contributing Editor for Banking Exchange and produces an every two week complimentary newsletter, Gerrish’s Musings. He also is or has been a member of the faculty of the Independent Community Bankers of America Community Bank Ownership and Bank Holding Company Workshop, The Southwestern Graduate School of Banking Foundation, the Wisconsin Graduate School of Banking, the Pacific Coast Banking School, the Colorado Graduate School of Banking and has taught at the FDIC School for Commissioned Examiners and School for Liquidators. He is a member of the Executive Committee and the Board of Regents of the Paul W. Barret, Jr. School of Banking. He is a Phi Beta Kappa graduate of the University of Maryland and received his law degree from George Washington University's National Law Center. He is a member of the Maryland, Tennessee and American Bar Associations, was selected as one of “The Best Lawyers in America” 2005 through 2015 and as the Banking Lawyer of the Year, Best Lawyers Memphis, 2009. Mr. Gerrish can be contacted at jgerrish@gerrish.com.
Mr. Smith is the President and a member of the Board of Directors of the Memphis-based law firm of Gerrish Smith Tuck, PC, and its affiliated bank consulting firm, Gerrish Smith Tuck Consultants, LLC. Mr. Smith's legal and consulting practice places special emphasis on bank mergers and acquisitions, financial analysis, acquisition and ownership planning for boards of directors, strategic planning for boards of directors, regulatory matters, bank holding company formations and use, securities law concerns, new bank formations, S corporations, going private transactions, and other matters of importance to banks and financial institutions.

Mr. Smith is a frequent speaker to boards of directors and a presenter at numerous banking seminars. He received his undergraduate business degree and Masters of Business Administration degree from the Fogelman School of Business and Economics at The University of Memphis and his law degree from the Cecil C. Humphreys School of Law at The University of Memphis. He is authoring a monthly electronic newsletter, The Chairman’s Forum Newsletter, which discusses key topics impacting financial institutions and, specifically, the role of the Chairman. Mr. Smith is a Summa Cum Laude graduate of the Barret School of Banking where he has been a member of the faculty. He has also served as a member of the faculty of the Pacific Coast Banking School, the Colorado Graduate School of Banking, the Southwestern Graduate School of Banking and the Wisconsin Graduate School of Banking. Mr. Smith can be contacted at psmith@gerrish.com.
Mr. Tuck is a member of the Board of Directors of both the Memphis based law firm of Gerrish Smith Tuck, PC, Attorneys and Gerrish Smith Tuck, Consultants, LLC. These two firms have assisted numerous community banks in virtually every state across the nation. Mr. Tuck’s legal and consulting practice places special emphasis on community bank holding company formation and use, community bank mergers and acquisitions, regulatory matters, corporate reorganizations, corporate taxation, general corporate law and community bank strategic planning.

Mr. Tuck comes from a community banking family. He is a graduate of the University of Tennessee, where he majored in Accounting and Finance, and received his law degree from the University of Memphis Cecil C. Humphreys School of Law, where he was a Herff Scholar. Mr. Tuck is a graduate of the Paul W. Barret, Jr. School of Banking and currently serves as a faculty member at a number of banking schools across the country. He is a frequent presenter at national and state bank association conferences and has authored a number of articles of interest to financial institutions. Mr. Tuck is a member of the Tennessee Bar Association and an active participant in the Memphis Bar Association. Mr. Tuck can be contacted at gtuck@gerrish.com.
| Consulting ♦ Financial Advisory ♦ Legal |

| **Mergers & Acquisitions** |
| Analysis of Business and Financial Issues |
| Target Identification and Potential Buyer Evaluation |
| Preparation and Negotiation of Definitive Agreements |
| Preparation of Regulatory Applications |
| Due Diligence Reviews |
| Tax Analysis |
| Securities Law Compliance |
| Leveraged Buyouts |
| Anti-Takeover Planning |
| Financial Modeling and Analysis |
| Transaction Pricing Analysis |
| Fairness Opinions |
| **Subchapter S Conversions and Elections** |
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| Reorganization Analysis and Restructuring |
| Cash-Out Mergers |
| Stockholders Agreements |
| Financial Modeling and Analysis |

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| Customized Director and Officer Retreats |
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| Assistance and Advice in Implementing Strategic Plans |
| Business and Strategic Plan Preparation and Analysis |
| Director Education |

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| New Product and Service Advice |
| Preparation of Regulatory Applications |
| Consulting Advice on Best Uses and Practices |
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| Financial Analysis, Capital Plans and Policies |
| Going Public / Private Transactions |

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| Subchapter S Election Financial Modeling and Analysis |
| Stock Repurchase Financial Modeling and Analysis |
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| Stock Valuation Analysis |
| Fairness Opinions |
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| Recapitalization and Reorganization Analysis and Implementation |
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| Management Studies, Evaluations and Succession Planning |
| Corporate Governance Studies |
| Unique Family Bank Planning Issues |

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| Examination Planning and Preparation |
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| Tax Controversy Negotiation and Advice |
| M&A Tax Advice and Planning |

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| Negotiation of All Formal and Informal Enforcement Actions |
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| Failed Institution Acquisitions |
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| Expert Witness and Litigation Support Services |
| **Estate Planning for Community Bank Executives** |
| Wills, Trusts, and Other Estate Planning Documents |
| Estate Tax Savings Techniques |
| Probate |

| **Other** |
| Public Speaking Engagements for Banking Industry Groups (i.e., Conventions, Schools, Seminars, and Workshops) |
| Publisher of Books and Newsletters Regarding Banking and Financial Services Issues |
| Expert Witness and Litigation Support Services |
# Mastering Merger & Acquisitions for Today’s Community Bank

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Overview
Day 1

- A review of the current M&A environment
- Establish your strategy
  - Deciding whether to buy another bank or branch or to sell
  - Capital and ownership considerations
  - Dealing with an unsolicited offer
- Pricing and negotiation issues
- In-depth discussion of the acquisition process
- Private consultations
Overview
Day 2

- Accounting, tax, securities and regulatory overview
- Common mistakes of buyers and sellers
- Questions and answers, wrap up
- Private consultations

The Current Mergers and Acquisitions Environment
Industry Consolidation

Change in Number of Institutions since 2007

* Through December 31, 2016
** Source: FDIC and SNL Financial
The Consolidation Environment in 2017

• Uncertainty Abounds
  – Political and Economic Uncertainty
  – Regulatory Uncertainty / Potential Regulatory Relief
  – Interest Rates and Taxes
• Profitability Improved
• Safety and Soundness Better
• Compliance Still Extremely Difficult
• More Available Capital

Consolidation Drivers

• Troubled bank
• Lack of succession
  – Management
  – Board
  – Ownership
• Shareholders that have had all the “fun” they can stand
• Improved currencies from larger banks / price
Consolidation Inhibitors

- Expectation of Regulatory Relief
- Optimistic Economic Outlook
- Rising Interest Rates
- Greater Profitability
  - Potential Corporate Tax Cuts

* Source: SNL Financial
Through April 17, 2017.

* Source: SNL Financial

### Acquisition Pricing:
**All Bank and Thrift Transactions**

<table>
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<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
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<tbody>
<tr>
<td>Number of Deals</td>
<td>292</td>
<td>250</td>
<td>64</td>
</tr>
<tr>
<td>Average Price/Book (%)</td>
<td>136.88</td>
<td>131.12</td>
<td>156.74</td>
</tr>
<tr>
<td>Average Price/Tangible Book (%)</td>
<td>141.26</td>
<td>136.73</td>
<td>167.67</td>
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<tr>
<td>Median Price/Earnings (x)</td>
<td>24.5</td>
<td>21.3</td>
<td>22.9</td>
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<tr>
<td>Average Price/Assets (%)</td>
<td>14.11</td>
<td>13.34</td>
<td>20.01</td>
</tr>
<tr>
<td>Average Price/Deposits (%)</td>
<td>16.94</td>
<td>16.72</td>
<td>20.86</td>
</tr>
<tr>
<td>Median Premium/Core Deposits (%)</td>
<td>5.52</td>
<td>5.13</td>
<td>7.16</td>
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* Through April 17, 2017.
** Source: SNL Financial

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### Establishing Your Bank’s M&A Strategy
The Dilemma

- I want to buy another bank
- I want to position my bank to sell
- I want to remain independent
- I want to do something
- I don’t want to do anything
- I have no idea what I want to do

Asking the Right Strategic Questions

- When are we going to sell the bank?
- Will we be required to sell the bank?
- How do we ensure that we don’t have to sell the bank?
- What is our antitakeover plan?
- Is buying another bank the best alternative?
- What are my options in lieu of buying another bank?
- How much can we afford and what should we pay?
Survival…

- Can I? Will I have to sell?
- As a buyer, can I be opportunistic?
- How do I maximize value?
- How do I stay independent?

Directors’ and Officers’ Real Job

- Allocate managerial (human) capital and financial capital to enhance shareholder value
  - Earnings per share
  - Return on Equity
  - Share Liquidity
  - Cash flow (Dividends or “Dividend Equivalent” Distributions)
  - Satisfactory Regulatory Relations
The Fundamental Focus

- Enhancing shareholder value
- Can we do a better job in the future?
- Can we grow effectively?
- Can we maintain efficiency?
- How would we view a target and how would we be viewed as a target?

Making the Decision

- Can you remain independent and profitable?
- Should you buy another bank? Another branch?
- Should you market yourselves or simply consider offers?

Don’t Make These Decisions Without a Plan!

Develop a Framework (a Strategic Plan) and Know Where You Are Going!
Strategic Planning for Acquisitions

• Capital is King
  – Stock Offerings
  – Holding Company Leverage
  – Must Find Most Productive Uses

• Internal Growth
  – Greater Volume
  – New Products and Services
  – New Locations

Strategic Planning for Acquisitions (cont’d)

• External Growth (Geographic Expansion)
  – Proactive or Reactive?
  – What should the footprint look like?
  – Buy another Bank?
  – Buy a Branch?
  – Buy a Non-Bank Company?

• Controlling your own destiny
  – Strategy for addressing unsolicited offers
  – Creative Options
Planning Considerations:
Dealing with an Unsolicited Offer

• Reject Offer
  – Based on Detailed Financial and Legal Analysis

• Accept Offer
  – Breach of Fiduciary Duty if No Negotiation

• Negotiate Offer
  – Puts Bank in Play, Only if You Are Serious

• Shop Around
  – Only Way to Determine Best Price, But Time Considerations

Planning Considerations:
The “Buy” Strategy

• Identify the Goals of an Acquisition
  – Advantages
  – Disadvantages

• Define the Characteristics of the Perfect Market

• Consider Capacity
  – Capital
  – Management
  – Board
Planning Considerations:
The “Buy” Strategy

• Scope Out Desirable Markets
  – Competition
  – Market Concentration

• Find Target Institutions within Those Markets
  – Obtain Financials (Asset Quality is Important)
  – Check out Management and Ownership (Subtly)
  – Selling Attributes and Fit (Products and Services, IT, etc.)
  – Create Pro Forma Scenarios

Planning Considerations:
The “Buy” Strategy

• Social Issues
  – Integration of Employees
  – Compensation of Management and Directors
  – Community
  – Location and Name
  – Values versus Culture

• Ascertain Realistic Currency
• Initiate Relationship with Desirable Targets
Planning Considerations: The “Buy” Strategy

• Analyze Alternative Uses of Capital
  – Share Redemptions
  – Dividends / Distributions
• Branching vs. Acquisitions
• Will Your Existing Shareholders be Better Off?
  – Short Run?
  – Long Run?

Planning Considerations: The “Sell” Strategy

• Identify the Reason for a Sale
  – Age of shareholder base and management
  – Management succession
  – Troubled bank status
  – Competition
  – Change in constituents
  – Enhance shareholder value
  – All the fun you can stand
  – Market timing
Planning Considerations: The “Sell” Strategy

• Prepare your bank for sale
  – Clean up loan and investment portfolio
  – Settle litigation
  – Keep contracts short
  – Lock in key personnel
  – Maximize earnings

Planning Considerations: Capital Allocation

• Capital comfort level
• Excess capital calculation
• Asset quality
• Leveraging ability of holding company (debt capital)
• Board’s appetite for risk
**Planning Considerations:**
*Current Ownership Issues*

- Are shareholders aging?
- Do they want out?
- Is this the time to buy or sell?
- Is there management succession?
- Stock, cash, notes or a combination?

**Planning Considerations:**
*Current Ownership Status*

- Closely held (family and controllable friends)
- Publicly held (greater than 2,000 shareholders)
- Not closely held (less than 2,000 shareholders)
Pricing, Negotiation and Structural Considerations

Acquisition Secrets

• Understanding Currency Issues
• Pricing
• Fairness Opinion
• Due Diligence
• Negotiation Considerations
• Documentation
• Professional Assistance
Basic Currency Considerations

- Cash
- Stock
  - Number of Shares
  - Investment Quality
  - Liquidity
  - Tax Treatment
- Cash and Stock Mix

Basic Pricing Considerations

- Earnings Driven (Acquiror’s Dilution)
- Book Value Reliance
- Due Diligence
- Dividends
  - Extraordinary?
  - Timing of Payment
Pricing a Stock Acquisition for Non-Public Companies

- Difficult to Determine Value of Lightly Traded Stocks
- Question of Relative Value
- Determined by Contribution Analysis
  - Income
  - Assets
  - Equity

Pricing a Cash Acquisition

- Target’s After Tax Earnings
  - + or - the After Tax Benefit or Acquisition Cost
    - Lost Opportunity Income
    - Loan Interest, if any
    - Intangible Asset Amortization, if any
    - Cost Savings
    - Revenue Enhancements

- Net After Tax Post-Acquisition Earnings Accretion
Pricing a Stock Acquisition with Public Acquiror

- Who Bears Market Risk?
  - Fixed Price (Number of Shares Varies)
  - Fixed Number of Shares (Deal Value Varies)
  - Collar and Cuff (Both Vary)
- Maximum Number of Shares Acquiror Will Pay
  - Secret
- Can You Pay Current Dividends?

Maximum Acquisition Price
Stock for Stock Transaction

\[
\frac{\text{Target's Net (AT) Income}}{\text{Acquiror's Projected Earnings Per Share}} = \frac{\text{Maximum Number of Acquiror's Shares}}{\text{Maximum Number of Acquiror's Shares}} \times \frac{\text{Acquiror's Market Price Per Share}}{\text{Maximum, Non-Dilutive Acquisition Price}}
\]
Negotiation Considerations

• Approach
• Process
  – Avoid “false” deadlines
  – Control all aspects
  – Lead the way
  – Obtain commitments
  – Document the “deals”

Negotiation Considerations

• Foot in the door
• Win/win strategy
• Seller/buyer representation
• CEO negotiator
Negotiation Considerations: 
Buyer

- Know financing limits
- Study target’s motives
- Delay price discussions
- Try to negotiate with management
- Designate one negotiator

Negotiation Considerations: 
Seller

- Conceal reasons to sell
- Limit eagerness
- Use third party negotiator
- Discuss integration issues
- Due diligence
### Transaction Structure: Opportunity for Creativity

- Healthy bank/branch acquisitions
- Troubled bank acquisitions
- Risk mitigation
- Escrow/holdbacks
- Failed bank acquisitions

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### Transaction Structure: Consider Buying a Branch

- Geographic expansion
- Deposit growth
- Elimination of competition
- Enhanced image and reputation
- Other considerations
Other Considerations: Deposit Runoff

• Attrition rate is a factor in valuation
• Premium paid on lost deposits is wasted money
• Personnel issue
• “Sell the deal” to depositors

Other Considerations

• Social integration
  – Employment agreements
  – Noncompetes
  – Clear responsibility
  – Voting commitments (board and key stockholders)
• Due diligence
Other Considerations

- Pre-closing oversight
- Earnings before closing
- Survival of reps and warranties
- Indemnification
- Stock valuation if a stock deal
- Regulatory issues
- Standard agreement clauses

Documentation Issues
Leave It to the Attorneys

- Letter of Intent / Term Sheet
- Due Diligence Report
- Definitive Agreement
- Fairness Opinion
- Proxy Material and Prospectus
- Tax Opinion
- Side Agreements?
The Acquisition Process

Acquisition Process Overview

- Marketing of Institution
- Acquisition Analysis
- Analyze Offers
- Execution of Term Sheet
- Due Diligence
Acquisition Process Overview

- Execution of Definitive Agreement
- Regulatory Approval Process
- Shareholder Approval Process
- Closing

Marketing of Selling Institution

- “Typical” marketing process overview
- Process often unique
- General Steps
  - Identification of Potential Acquirors
  - Execution of Confidentiality Agreement
  - Provision of Confidential Marketing Materials
Acquisition Analysis

• Potential acquirors complete preliminary acquisition analysis

• “Run the numbers” to determine viable transaction price
  – EPS accretion analysis
  – Discounted cash flow analysis
  – Similar transaction analysis

• HHI Analysis (anti-competitive issues)

Term Sheet

• Non-binding Term Sheet executed by each party

• Summarizes material terms of transaction
  – Transaction structure
  – Price
  – Due diligence requirements
  – Confidentiality requirements
  – Handling of Target employees
Term Sheet “Secrets”

- Address responsibility for contract termination, change in control, deconversion and other fees
- Include provision related to target director and officer liability “tail coverage”
- Limit your indemnification of counter party (to the extent possible)
- Address all issues of importance to avoid late surprises

Offer Analysis

- Seller’s Board of Directors completes offer analysis with outside professionals
- Analysis considerations:
  - Amount of consideration
  - Type of consideration
  - Taxation
  - Specific offer details
Due Diligence

• Buyer’s due diligence
  – Financial due diligence focuses on earnings, asset quality and similar issues
  – Legal due diligence focuses on potential liabilities, regulatory condition of Target and similar issues
  – Compliance due diligence focuses on regulatory compliance issues and potential compliance problems

• Seller’s due diligence if a stock deal

Definitive Merger Agreement

• Contract for purchase drafted by Acquiror’s counsel
• Includes all terms of transaction
• Standard representations and warranties, conditions to closing, termination provisions
• If it is not in the contract, it did not happen
Negotiate Merger Agreement

• Seller and Seller’s counsel will review proposed Merger Agreement

• Negotiation of terms to eventually arrive at Agreement acceptable to both parties

Execute Merger Agreement

• Board of Directors of both Buyer and Seller should conduct detailed review of Merger Agreement

• Boards typically provided detailed analysis by Board counsel

• Board vote to execute Merger Agreement

• Legally binding contract once executed by both parties (first time either party is legally bound to the deal)
Fairness Opinion

• Determines whether transaction (price) is “fair” to shareholders from a financial perspective
  – Conducted by independent professional
  – Insurance policy for the Board
• Often involves appraisal (secret) of stock and comparable transaction analysis
• Each party bears cost of its own opinion

Regulatory Approval Process

• Acquiror drafts and submits all required regulatory applications
• Federal and State application requirements
• HHI Analysis
• Regulatory application process timeframe typically 60 – 120 days plus
Shareholder Approval Process

- Shareholder approval typically sought following submission of regulatory applications
  - All cash transaction – Seller’s shareholders approve transaction
  - Stock consideration – Potential requirement for Acquiror shareholder approval
    - Depends on number of shares being issues and applicable State law
- Distribution of detailed proxy materials
- Annual or special meeting of shareholders

Closing the Deal

- Deal closed after receipt of all required regulatory and shareholder approvals
- Expiration of mandatory waiting periods
- Filing of Articles of Merger or other appropriate documents
- Exchange of purchase consideration
Acquisition ("Fair Value") Accounting (FASB 141(R))

- Determine the Acquiror and Acquisition Date
- Value Target Assets and Liabilities at “Fair Value” on the Acquisition Date
- Determine Target Institution Equity
- Value Purchase Consideration
- Determine Intangible Assets or Income from Bargain Purchase
Valuing Target Assets

• Cash Value Equals Cash Value
• Loan Value is Uncertain
  – Not Equal to Amount Paid to Acquire Loan or Principal Outstanding
• Valued by Acquirer Management in Consultation with Accountants Following the Transaction
• Adds Uncertainty and Expense

Valuing Target Loans

• Several Factors Impact the Fair Value of a Loan
  – Interest Rate and Term of the Loan
  – Loan Type
  – Collateral
  – Borrower Credit Ratings
  – Adjusted vs. Fixed Rate
  – Premium/Discount on Interest Rate Variances
Valuing Target Loans (cont’d)

- FASB 141(R) Allows Some Similar Loans to be Valued on Aggregate Basis
- More Complicated Commercials Loans Must be Valued Individually

Ongoing Fair Value Monitoring

- Following Fair Value Determination, the Acquiror Must Record, Adjust and Track the “Difference” Between the Face Value and Fair Value of Each Loan or Loan Pool
- These Adjustments Result in Income or Expense Based on the Initial Valuation
**Equity Determination**

- Transferred “Equity” is the Net Difference Between the Fair Value of the Assets and the Liabilities
- Not Subject to Adjustment Following the Transaction

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**Valuing Purchase Consideration**

- Two Separate Components to Consideration
  - Fair Value of the Consideration Offered on the Date of Purchase Plus
  - Fair Value of any Non-Controlling Interest the Acquiror May Hold in the Acquiree
- Consideration Valued as of the Acquisition Date
Determining Intangible Assets

- Purchase Premium (Purchase Price Minus Equity) Split Between Core Deposit Intangible and Goodwill

- Core Deposit Intangible Represents Value of Deposit Relationships Acquired
  - Generally Up to 3% of Deposits Assumed
  - Amortized Over Useful Life of Asset (7-10 Years)
  - 15 Year Amortization for Tax Purposes

- Goodwill Equals the Amount of Purchase Premium Not Attributed to Core Deposit Intangible
  - Not Amortized – Tested for Impairment
  - 15 Year Amortization for Tax Purposes
Bargain Purchase

• Bargain Purchase Occurs When Purchase Price is Less Than Equity
• If Present, Fair Value of Assets and Liabilities Must Be Reevaluated
• If Still Present, Acquiror Recognizes Difference As Income on Income Statement

Tax Considerations

• Significant Factor in Determining Deal Structure
• Often Impacts the Overall Economics of the Deal
• Buyer and Seller Interests are NOT Aligned (Significant Negotiation)
Tax Considerations

• Seller Prefers to Eliminate Taxes as Much as Possible at Entity and Shareholder Levels
  – Depends on Deal Structure, Amount of Consideration, and Seller’s Corporate Status

• Buyer Wants Taxable Sale and Basis “Step Up”
  – Larger Tax Deductions for Depreciation after Closing
  – Only Possible if Transaction Results in Tax to Both Selling Entity and Selling Shareholders

Taxable Transactions

• Taxable Asset Sale
  – Seller recognizes gain on sale of assets and stockholders recognize gain on distributors – results in “Double Tax”
  – For S Corporations, any income or gain is passed through to the stockholders, avoiding the corporate level tax
  – Buyer receives a step up in bases of the assets acquired, which allows greater depreciation expenses
  – Net operating losses may make this an attractive transaction structure
**Taxable Transactions**

- **Taxable Stock Purchase**
  - Individual shareholders recognize gain realized on the sale of shares
  - Seller does not realize tax unless a 338(h)(10) election is made (transaction treated as an assets sale)
  - This election is only allowed if the seller is an S Corporation
  - Buyer does not get step up in basis (unless 338(h)(10) election is made)

**Securities Issues**

- **SEC Reporting Requirements Begin at 2,000 Shareholders**
- **Exchange of Common Stock in Acquisition Transaction is an “Offering”**
  - Offering Must be Registered with SEC or Exempt under Federal and State Securities Laws
- **SEC and State Disclosure Requirements**
Regulatory Issues

- Primary Regulator Approval
  - HHI Analysis
  - Financial History and Condition
- Capital
- Management
- Earnings
- Insider Transactions
- Adequacy of Disclosures

Final Thoughts
Common Mistakes of Buyers

Not Being Proactive

• Target what you want and go after it
• Opportunistic may not be enough
• Some sellers need a nudge (not a push)
• Make personal contact early
Not Paying for Value

• If it adds value, it’s worth paying for
• Find the relevant cost savings
• Give the seller the small things they want

Not Taking “Measured” Risks

• You can’t eliminate all risk in the acquisition agreement
• Don’t become the regulator in the evaluation process
• Avoid immediate dilution
Not Considering Alternatives

- Is a branch better?
- Is a loan production office better?
- Why buy it if you can steal it?
- Buy your own bank?

Structuring Mistakes

- Not considering tax ramifications
- Using the wrong form of consideration
- Getting the board ahead of the numbers
- Not conducting adequate due diligence
Soft Mistakes

- Failure to lock up key individuals
- Not considering social issues

Common Mistakes of Sellers
Not Having Something of Value to Sell

- Clean up problems
- Eliminate regulatory concerns
- Maximize earnings performance

Unrealistic Pricing Expectations

- We have a unique story to tell
  (no, you don’t)
- The bank down the street got more
  (so what?)
- That’s not what we were told when we bought the shares
  (we were wrong)
Not Selling on Your Own Terms

- Avoid the pushy buyer
- Not on regulators’ terms
- Not because an advisor told you to
- Ask for what you want

Buying the Condo Before Closing

- It’s harder to get deals done
- Deal values change over time
- The buyer will find something they don’t like
Structuring Mistakes

- Structuring a merger of equals
- Not understanding various consideration options for stock or cash
- Not considering the debt
- Trying to do it yourself

Conclusion

- Your Real Job is to Enhance Shareholder Value
- Participating in a Merger or Acquisition Transaction Requires Planning
- Price and Negotiate with Your Shareholders in Mind
- Buyer and Seller Interests are NOT Aligned Throughout Acquisition Process
- Be Mindful of Regulatory, Accounting, Tax, and Securities Issues
- Don’t Make Common Mistakes
Contact

Please contact us if we can be of service to you or your organization, or if you simply have further questions where we may be of assistance.

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Mastering Mergers & Acquisitions for Today’s Community Bank

Jeffrey C. Gerrish, Chairman
Philip K. Smith, President
Greyson E. Tuck, Director
Gerrish Smith Tuck, Consultants & Attorneys

Community Bank Mergers & Acquisitions
Independent Community Bankers of America
May 4 – 5, 2017
Loews Chicago Hotel
Chicago, Illinois
Mastering Merger & Acquisitions for Today’s Community Bank

Presented by:
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About The ICBA

The Independent Community Bankers of America, the nation’s voice for community banks, represents community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers they serve.

With nearly 5,000 members, representing more than 24,000 locations nationwide and employing over 300,000 Americans, ICBA members hold more than $1.2 trillion in assets, $1 trillion in deposits, and more than $750 billion in loans to consumers, small businesses and the agricultural community.

ICBA is the only national trade association that tailors its educational programs exclusively to meet the needs of directors and staff members of community banks. The ICBA Education Department is committed to developing and providing educational products and services that exceed the ever-changing needs of today’s community bank.

To that end, seminars and workshops are scheduled annually across the country to help community bank directors and employees develop effective strategies and keep abreast of current issues, new technologies, changing regulations and the latest in client services. Members of the ICBA Bank Education Committee review regularly the course content for each of the seminars and workshops to ensure a quality educational solution. In addition, instructor selection is based upon his or her past and current experience with community bank needs. We feel that this constant concern for maintaining relevant course material, combined with expert instructional staff, assures you of the best community bank training available today.

The ICBA representative(s) or workshop instructor(s) on site at each of ICBA’s seminars and workshops are always available to answer your questions and ensure that you are receiving the highest quality education available. If you have any additional questions or comments, or would like more information on ICBA’s educational products and services, please call the ICBA Education Department at 800/422-7285 or visit the ICBA website at www.icba.org/education.

Thank you for your continuing support of ICBA’s educational products and services.
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Estate Planning for Community Bank Executives
- Wills, Trusts, and Other Estate Planning Documents
- Estate Tax Savings Techniques
- Probate

Other
- Public Speaking Engagements for Banking Industry Groups (i.e., Conventions, Schools, Seminars, and Workshops)
- Publisher of Books and Newsletters Regarding Banking and Financial Services Issues
- Expert Witness and Litigation Support Services
# Mastering Merger & Acquisitions for Today’s Community Bank

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Mastering Merger & Acquisitions for Today’s Community Bank
I. INTRODUCTION AND CURRENT ENVIRONMENT

In 1980, there were 14,870 independently chartered banks in the United States. At the end of the first quarter 2017, there were approximately 5,860.

The Great Recession left community bankers to face a banking industry environment that is substantially different than it was seven years ago. The artificially low interest rate environment, in addition to an ever-growing list of regulations and new legislation, has caused community banks to go back to the basics in order to increase efficiency, reduce costs, and improve overall profitability. All the while, industry analysts and “experts” are constantly blowing smoke about how smaller institutions will be unable to survive independently and must seek out a merger acquisition to achieve economies of scale and compete in the “new normal.”

In light of all of these issues, more and more Boards of Directors of community banks, even those that desire for their bank to remain independent, are faced with tough acquisition choices. Has the Board and ownership had all the fun they can stand? Does older management without succession, an older shareholder base, a dying franchise or being behind the curve on technology dictate selling now? Does a younger and aggressive management, a younger or closely held shareholder base and expanding market dictate an acquisition is in order? Should the community bank simply follow the philosophy that “If it ain’t broke, don’t fix it” and remain independent while enhancing shareholder value? Each of these strategic decisions requires a well thought out plan.

Any strategy—buy, sell, or independent—can be viable in the current environment if appropriate planning occurs. The following material should assist the Board in identifying the issues and common concerns in either buying or selling a community bank or implementing a decision to remain independent and simply keep your shareholders happy by enhancing shareholder value.
II. BUYING OR SELLING SECRETS

A. ESTABLISH YOUR BANK’S STRATEGY EARLY ON

It is important that a community bank have an acquisition strategy that it addresses and determines annually. However, before establishing that strategy, whether it is to buy, sell, or simply remain independent and enhance value, the Board must recognize the issues associated with each alternative. In doing so, it must balance the various stakeholders’ interest, including shareholders, directors, management, employees, depositors, and customers, as well as consider the market environment in which it is operating.

In addition, the Board must consider the management and capital with which it has to work. If embarking on an acquisition, how much can the institution pay and who will manage? If looking to sell, what does the institution have to offer?

1. Stakeholders’ Interest

It is incumbent upon the directors to consider each of the stakeholders’ interests. Clearly, the shareholders’ interests are of paramount importance. The shareholders’ desire for liquidity and increase in market value, combined with a change in the stage of life and general aging of the shareholder population, may drive the Board’s decision in one direction or the other.

In addition to the shareholders, however, the desires of top management, middle management, employees, the customer base and the community must be considered. As a practical matter, it is very difficult to have a successful sale without, at least, the acquiescence of senior management.

Even a sale which the shareholders support can be scuttled by senior management’s discussions with the potential purchaser with respect to the condition of the bank and the valuation of contingent liabilities. As a result, senior management and the other parties’ “needs” must be identified and met.

In addition, if ownership is fragmented, it is in the best interests of the Seller and Buyer to organize and consolidate the “control group” as early as possible. Any possibility of having factions develop among members of the control group should be eliminated, if feasible.

2. Market Environment

In connection with enhancing shareholder value without sale, the typical community bank is faced with a number of environmental forces, including aging of the shareholder base and lack of management succession, technology considerations, increased competition and regulatory concerns, all of which may drive the bank toward the strategy of buying additional institutions or branches to
enhance value or selling their own institution to enhance value. In addition to the regulatory burden currently imposed on banks, the inception of the new Consumer Financial Protection Bureau seems intent on increasing that burden significantly, as well as the costs associated with compliance.

3. **Capital**

The Board’s determination of its alternatives must include how best to allocate its capital. The Board of Directors must first determine how much capital is available. This includes not only the consolidated equity of the bank and the holding company, but also the leveraging ability of the holding company. Once that number is determined, how the capital pie is “sliced” must be considered. The new reality is that community banks will be required to maintain higher capital levels than they have historically. What used to be an over capitalized community bank, with 9% Tier 1 and 12% total risk based capital, will become the norm and practical regulatory minimums. Does the Board use a significant portion of its capital to repurchase its own stock or does the bank use the capital to offset losses? Does it use some of that capital to buy another bank or branch? Does it use the capital for natural growth? Does it dividend that capital to its shareholders? Or, does it exchange that capital for an equity interest in another institution through sale?

Particularly in light of Basel III, the new reality with regard to minimum capital means that, across the Board, community banks will suffer a lower return on equity and possibly lower pricing multiples. The Board needs to make a conscious decision, particularly in an over capitalized community bank, as to whether to return some of that capital to its shareholders. The issue is not one of receiving “capital gains” treatment versus “ordinary income” treatment on that “extraordinary dividend” capital. The issue is getting some “value” for that excess capital through a dividend versus limited or no value through a sale which is priced based on the company’s earnings stream. That’s not to say tax considerations are irrelevant.

4. **Management**

Most transactions will result in existing management being retained by the acquiring institution (at least for some period of time). This is simply due to the combination of facts that (a) most acquiring institutions do not have excess management, and (b) most Sellers will not be acquired if management is not assured of a position after the acquisition or otherwise financially compensated. Non-management owners should never forget that there is an inherent conflict of interest in allowing managers to negotiate with a potential purchaser when the management will be staying on after the sale. Obviously, management is then negotiating with its future boss.

5. **Consideration of Potential Acquirors**

If a community bank’s Board of Directors has made the decision to sell the company at some point in the future - no matter how distant - so that the question is not “if” to sell the company but “when,” the Board of Directors must consider which acquirors may be available at the time it finally decides to sell. A community
Board should consciously identify its potential acquirors. It should then analyze, as best it can, what may occur with those acquirors. A potential acquiror that is interested in moving into the community where the community bank operates its franchise may do one of several things:

a. It may be acquired itself and thereby be eliminated as a player.

b. If it desires entrance in the market, it may use another entry vehicle, i.e. another institution or a de novo branch and be eliminated as a player.

c. It may simply lose interest and allocate its resources to another strategic direction and eliminate itself as a player.

Unfortunately, if “selling” is in the community bank’s current thought process, i.e. a strategy other than an adamant one for independence, sooner is probably better than later. “Sooner” will provide the maximum number of potential purchasers.

B. CREATION OF THE PLAN

Whether the Board of Directors’ decision is to buy, sell or remain independent and simply enhance value, it must plan for the ultimate outcome it desires.

1. Implementing an Acquisition Strategy
   a. Needs of the Buyer. Before finding a bank, bank holding company or thrift to buy, a Buyer must first define the kind of financial institution it desires and is, from a financial and management standpoint, able to buy. The Buyer must develop an acquisition strategy describing an overall plan and identifying acquisition candidates. Buyers must consider, in advance, the advantages that the Buyer wishes to obtain as a result of combining with the selling institution. These benefits generally fit within the following categories:

   (1) Financial
       * Earnings per share appreciation
       * Utilization of excess capital and increased return on equity
       * Increased market value and liquidity
       * Increasing regulatory burden offset by enhanced earning power and asset upgrades.

   (2) Managerial or Operational
       * Obtain new management expertise
       * Additional systems and operational expertise
       * Use of excess competent management

   (3) Strategic
       * Diversification
* New market entrance
* Growth potential
* Economies of scale and/or scope
* Enhanced image and reputation
* Elimination of competition
* Obtain additional technology expertise

b. **Formation of the Acquisition Team and Assignment of Responsibility**

(1) **The Players: The Buyer and the Seller**

The typical Buyer in this environment will probably be a small to mid-sized holding company desiring entry into the market to expand its franchise, or a community bank slightly larger than the target, looking to gain critical mass to cover the cost of doing business.

The typical Seller will be a community bank of any size in a good market with acceptable performance, and in all likelihood, with a Board that has “had all the fun it could stand”. From the Seller’s perspective, the decision to sell an institution will generally fall into one of four scenarios:

(a) The controlling stockholders make a decision to sell after a substantial period of consideration due to the pressures of personal financial factors, estate planning needs, age, technology, competitive factors, regulatory actions, exposure to directors’ liability and so forth.

(b) The institution is in trouble and needs additional capital and/or new management.

(c) The institution has no management succession and an older management and shareholder base.

(d) The Board is concerned about missing the upcoming “window.”

(2) **The Players: Financial Consultants, Special Counsel and the Accountants**

With the status of current regulations and the growing complexity of mergers and acquisitions, few institutions are capable of closing a successful deal without outside assistance. From a technical standpoint, there is a greater need than ever before to secure the services of specialized financial consultants, legal counsel, and experienced auditors. The costs may be high, but it is a misguided chief executive who thinks he or she can economize by doing his or her own legal, accounting or even financial work in an acquisition transaction.
The primary goals of any outside advisor should be to close the deal and to protect his client’s interests. To achieve these objectives, the advisor(s) must have a number of attributes and qualifications, some of which differentiate him or her from many other professionals.

First and foremost, the advisor must have the requisite knowledge and experience in business combinations and reorganizations. This not only includes a solid understanding of the intricacies of acquisition contracts and regulatory issues, but more importantly, also a high degree of familiarity with the business and financial issues that arise in community bank acquisitions.

Second and equally important, it is essential that the advisor understands the tax implications of the acquisition and provides structuring advice early on in the negotiations.

Aside from the technical skills, the advisor(s) must seek to find solutions to problems which may arise rather than simply identifying them. Instead of finding reasons for “killing a deal,” which comes quite naturally to some, the talented advisor is oriented to “making the deal,” unless it would result in insufficient protection for his client.

The experienced advisor knows what must happen and when it should take place. Along with the principal parties, he must maintain the momentum for the deal. Experienced professionals will prepare and work from a transaction timetable, outlining the various tasks that must be accomplished, the person(s) responsible, and target dates.

An early decision which must be made is who will actually handle the negotiations. A general rule to follow when using outside “experts” for negotiations is as follows. If representing the Buyer, the experts should become involved early, but stay behind the scenes to avoid intimidating an unsophisticated Seller. If the experts are representing the Seller, they should become involved early in the negotiations and be visible to avoid a sophisticated Buyer trying to negotiate an unrealistic or unfair deal with an inexperienced Seller.

(3) Assignment of Responsibilities

Once the bank’s team and advisors are in place, it is critical to specifically assign responsibilities to each member of the team. It is helpful to have one coordinator for these tasks. That coordinator is often the outside counsel or financial consultant who has experience with transactions of this type.
The assignments of responsibilities should be formalized and documented so that significant matters are not overlooked in the excitement of the acquisition process.

(4) Preparation of Candidate List

Typically, Buyers find that the most difficult, frustrating and time-consuming step in buying another institution is finding an institution to buy - one that “fits”. This is especially true for the first-time Buyer who frequently underestimates the time and effort necessary to plan and locate viable acquisition candidates. Unfortunately, many such Buyers start a search for acquisition candidates without being fully prepared. The result is early disappointment with the whole idea. Following a well-constructed plan will assist a Buyer in pinpointing “buyable” Sellers and reduce unproductive time.

The Buyer needs to be aware that there is an inherent inclination toward acquisition. Well thought out and well planned acquisitions create value and minimize risks. Unplanned acquisitions maximize risks and limit future flexibility. Certain studies suggest that bank mergers do not guarantee major cost savings benefits. With planned acquisitions, many of the anticipated benefits will result. With unplanned or poorly planned acquisitions, they rarely do. In any event, as a Buyer, be careful valuing synergies.

2. Implementation of the Sale Strategy

Some institutions will simply decide it is the time to sell. This may be simply because, with the multi-year recession, the Board and ownership have had all the fun they can stand, or it may be due to an aging shareholder base, lack of management succession, technology issues, a troubled institution or a combination of several of these issues. Once the institution makes the decision to sell, the Board of Directors needs to be certain that it has in place a “process” designed to obtain the highest and best price for the bank shareholders in the best currency. Some institutions attempt to do this by having an appraisal conducted of their bank before they engage in negotiations. Unfortunately, an appraisal will not tell the Board what the bank is worth on the market. It will only indicate what other banks have sold for and what the bank may possibly be worth.

The only way for a Board of Directors to assure itself that it is obtaining the highest and best price in the best currency for its bank is to put the bank on the market on either a limited or extensive basis. Over the past several years, our firm has marketed and sold a number of community banks on a turnkey basis. The process involves:

a. The identification of prospective purchasers.

b. The preparation of confidential evaluation material describing in detail the condition of the bank.
c. The distribution of that material, subject to a confidentiality agreement, to a list of potential acquirors as approved by the Board of Directors.

d. The submission by those potential acquirors of expressions of interest based on the material submitted to them and subject to due diligence indicating the price they would pay for the bank, the currency, i.e. stock, cash or a combination, the structure, i.e. branch or separate bank and any other relevant issues.

e. A review by the Board of Directors of the offers and a determination as to which, if any, of the bidders receive an opportunity to conduct on-site due diligence.

f. The negotiation of the transaction and legal services in connection with closing the transaction.

Once an offer or offers are selected by the Board, only then do the potential acquirors conduct a due diligence of the bank in order to reconfirm or increase their offer and eliminate the due diligence contingency.

Once the decision to sell has been made, the best way for the Board of Directors to assure itself that it has met its fiduciary duty and obtained the highest and best price for the bank is to market the institution. The second line of defense for the Board of Directors is the fact that the consummation of the acquisition will also be conditioned upon receipt of a fairness opinion shortly prior to the closing of the acquisition.

C. ANTI-TAKEOVER PLANNING AND DEALING WITH UNSOLICITED OFFERS

During the Great Recession, and continuing through the years immediately following it, unsolicited expressions of interest in community banks were fairly uncommon. Banks were failing in large numbers, and healthy institutions were hunkering down to weather the storm. In other words, acquisitions were not at the top of the list of strategic alternatives.

Today, however, the industry is in a different position. Overall profitability and safety and soundness have improved considerably from five to ten years ago. The banks that could not survive have either failed or merged out of existence. The community banks that weathered the storm are now, for the most part, focusing on long-term independence and how to improve profitability and operations in their communities. This means that as the economy continues to improve—and potential buyers’ stock becomes more valuable in the market—community banks and their holding companies are once again becoming the recipient of unsolicited offers.

Although such offers are unsolicited, that does not mean they are “hostile” by nature. Although our firm has handled one of the few community bank hostile tender offers to occur in recent memory (representing the target), today’s offers do not generally take the route of an “unsolicited tender offer” or “hostile offer.” These are simply more aggressive expressions of interest than the industry saw pre-recession. Many institutions recognize that they will only be able to carry out one, maybe two, acquisitions over a three to five year time horizon, depending
on their size and capabilities. This means that potential acquirers are thinking strategically regarding whom they approach. They are identifying potential targets and pursuing the top candidate with an unsolicited offer. If that offer does not pan out, they will move down the list.

Regardless of the circumstances, these offers nevertheless cause the target bank or bank holding company a certain degree of trepidation. However, when a Board of Directors receives an unsolicited offer to acquire the institution, the Board’s primary job remains the same—to enhance value for the organization’s shareholders. For most, carrying out this responsibility while also maintaining a long-term goal of independence results in what we refer to as “anti-takeover planning.”

1. Avoiding Unwanted Attempts to Change Control

The implementation of a well thought out and strategically minded anti-takeover plan will give the community bank holding company greater mastery over its own destiny when presented with a potential unsolicited or hostile offer. The anti-takeover plan will not prevent the bank holding company from being sold if its Board of Directors believes it is in the best interest of the shareholders for such a transaction to take place. An appropriate anti-takeover plan will, however, present the Board with the luxury of time to consider an offer or shop the institution. The anti-takeover framework may also deter unwanted investors from initially seeking a control or ownership position in the institution altogether, especially if there exist provisions providing for specific defenses or required pricing considerations in the event a tender offer or other similar maneuver is commenced. At minimum, it will likely drive any potential acquirer into the boardroom instead of out to the individual shareholders directly.

The first step in anti-takeover planning is to have qualified counsel review the holding company’s charter and bylaws to determine what, if any, anti-takeover provisions already exist. Additional anti-takeover provisions should be added to the governing documents by amendment at the next regular annual shareholders meeting after full disclosure to shareholders. The purpose of this step is to ensure strategies for handling a takeover attempt are considered before the situation is confronted. Numerous courts have rendered significant opinions on anti-takeover and defensive strategies, and one of the main reasons for favorable court decisions upholding those defenses is the timing of their implementation. More specifically, corporations amending their charters and bylaws to include such protective provisions as part of advance planning have generally had their defenses upheld in court. On the other hand, in many cases, corporations with strategies implemented in response to a specific bid have had such provisions invalidated on the basis they were put in place only to protect existing management and were not in the best interests of shareholders. Bottom line: last minute, reactionary planning is usually ineffective.

For corporate purposes, most holding companies can utilize numerous types of “structural” anti-takeover techniques. Of the available alternatives, some are more commonly utilized than others.
One common alternative is for the holding company to amend its governing documents to require “supermajority” approval of certain acquisition transactions. Supermajority provisions typically require an approval vote in the range of two-thirds to 80% of the outstanding shares, but only if the Board of Directors does not recommend approval of the transaction. In order to amend the Company’s governing documents to require a supermajority, a percentage of shares equal to the supermajority requirement would need to vote in favor of the provision. In other words, if the Board adopted an 80% supermajority requirement, at least 80% of the outstanding shares would need to approve the provision.

The holding company could also work into its governing documents “non-financial considerations” for unsolicited offers—parameters for the Board of Directors to take into account when considering a potential acquisition transaction. Often times a deal that looks good by the numbers is not truly best for the organization and its shareholders for some cultural, social, or leadership reason, to name a few. By allowing the Board to consider non-financial factors of a transaction, the Board could build in protection against a hostile, but otherwise “attractive,” transaction. The Board would still be required to do what is in the best interest of the shareholders, but it would have a little bit more flexibility to do so on the basis of something other than the financials alone.

The holding company could further amend its Bylaws to provide for a staggered election of directors. State statutory schemes usually allow a company to stagger the Board into two or three groups. This would prevent a hostile party from taking over the Board of Directors in one fell swoop. The Board of Directors would have at least one, possibly two, years to mitigate the hostile party’s influence.

A fourth common strategy is for the holding company to amend its Articles of Incorporation to increase the number of authorized shares available for issuance. For example, if the holding company currently has the authority to issue 1,000,000 shares of stock, an amendment could increase the number of authorized shares to 10,000,000, adding an additional 9,000,000 shares of authorized but unissued stock. The purpose of this amendment would be to provide cushion in the event of a hostile takeover or a disgruntled shareholder vying for control. The Board would simply authorize the issuance of stock to friendly investors and/or current shareholders to effectively diminish the ownership and voting power of the hostile shareholder.

Again, these are some of the more common anti-takeover defenses, but there are more, such as the following:

• Limit shareholder written consent to approve certain actions
• Limit the size of Board
• Permit special Board meetings on “best efforts” notice basis
• Eliminate shareholder cumulative voting rights
• Allow director removal only “for cause”
• Limit shareholder ability to replace directors
• Eliminate shareholder preemptive rights
• Implement director qualification requirements
- Limit director affiliations with other institutions
- Require fair price provisions in potential takeover offers
- Require non-management director nominations to meet certain requirements
- Amend shareholder voting rights under certain circumstances
- Limit shareholder called special meetings

If you would like any additional information on any of these strategies, please let us know.

In addition to these structural anti-takeover techniques, there are certain general defensive strategies or “black book” procedures that should be followed by all companies. First, the Board and management should have list of key personnel, including special legal counsel, financial and public relations personnel, that can be accessed at any time remotely and includes information about how to locate and contact all those key individuals on short notice. It is also a good idea to review the shareholder list in order to identify key shareholders that might assist in solicitation efforts and be able to gauge shareholder loyalty.

Second, the company should identify a team of three or four directors and three to four senior managers to deal with any unsolicited offer on a daily basis. The Board should generally instruct all directors and personnel to decline comment to the press with respect to offers, but only individuals on the strategic team should be directly involved with the unsolicited offer.

Third, the company should monitor the daily trading of its stock. With today’s technology, all companies, regardless of reporting status, have the ability to monitor any significant transaction information and implement safe keeping practices for the company’s shareholder list.

Fourth, it is a good idea to establish a line of credit with a correspondent bank for a defensive stock repurchase program.

Fifth, consider entering into employment contracts with key officers at the holding company level that contain “Golden Parachute,” “Golden Handcuff,” or “Retention Bonus” provisions. Although such contracts must comply with IRS Code Section 409A, these contracts provide substantial monetary benefits to such officers if control changes involuntarily. The contracts may serve as a deterrent to “raiders” because of the cost they add to an acquisition. Most importantly, if structured properly, the contracts will help guarantee objective advice by management during a takeover attempt. Without such arrangements, management’s objectivity may be influenced by negotiating with a raider who could be their future boss.

With all of these considerations in mind, it is important to remember that a valid anti-takeover plan and a mission statement certifying that the bank desires to remain independent do not always prevent the institution from receiving an unsolicited acquisition offer. In order to understand how to deal with an unsolicited offer, a banker must understand the difference between an unsolicited offer and an “inquiry.” An inquiry is simply an overture by another institution asking whether the institution
is for sale or would sell out for something in the neighborhood of X times book value or X times earnings. It is informal and can generally be dealt with informally. An unsolicited offer, on the other hand, is more formal and generally involves the receipt of a written offer by another institution for a merger or acquisition of the stock of the selling institution. As such, an unsolicited offer should be dealt with in a formal manner.

2. **Dealing with Unsolicited Offers**

Upon the receipt of an unsolicited offer from another institution, the first step that the banker should take is to consult with specialized merger and acquisition professionals and the bank’s Board of Directors. Many unsolicited offers contain very short fuses. It is generally not necessary to strictly comply with the deadline set forth in the offer, but it is advisable to have counsel consult with the offeror and let them know that the Board is currently considering its options.

In short, the Board of Directors has four basic options when faced with an unsolicited offer:

- Reject the offer.
- Accept the offer.
- Negotiate the offer.
- Shop around to see if there is a better offer.

Rejecting the offer out of hand is dangerous for both the individual who has actually received the offer and the Board of Directors. The offer may ultimately be rejected, but the rejection should be based upon a detailed financial and legal analysis of the inadequacy of the offer in view of the criteria considered by the Board of Directors. This would include relying on charter and bylaw provisions dealing with the analysis of offers as discussed above.

A Board of Directors’ acceptance of an “unsolicited first offer” constitutes a breach of fiduciary duty on its face. Many acquirers will generally make unsolicited offers based on public information regarding anticipated earnings-per-share impact on the larger holding company. If the holding company is interested in the franchise and interested in the bank, it will generally increase its offer through negotiation.

The third alternative is to negotiate the offer. Once a community bank begins to negotiate or consider the offer, the bank is clearly in play. It will be sold. Many Boards of Directors of banks desiring to remain independent have found that independence disappears once they decide to try and “negotiate” an unsolicited offer.

The fourth alternative is to see what other offers are available. In any event, when an unsolicited offer is received, the general advice is to test the waters once the bank is put into play and see what other offers are available. It is only through this mechanism that the Board can determine that it has received the highest and best price.
Because numerous issues beyond the scope of this brief outline are present when dealing with an unsolicited offer, each of these options must be considered in view of the Board’s extensive fiduciary duties to shareholders. The above options do, however, provide an outline of the Board’s options.

If you would like any additional information regarding anti-takeover planning or dealing with unsolicited offers, please contact Gerrish Smith Tuck for additional materials.

D. CONTACT AND NEGOTIATION FOR COMMUNITY BANK ACQUISITIONS

1. The Approach

An acquisition by a regional holding company or another community bank may be one in a series of acquisitions for that institution. It is likely, however, that the sale by the Seller will be a sale by an inexperienced Seller and will be that Seller’s first and often last sale.

a. Preliminary Approach through the CEO or Principal Shareholder. Many different approaches are used by potential acquirors, be they bank holding companies or other community banks, toward target community institutions. In virtually every case, however, the approach will be to the chief executive officer of the Selling Bank or its principal shareholder. Often, the CEO or other high ranking officer of the acquiror will simply call the CEO of the target and ask if he would be willing to discuss the possibility of “affiliating” or associating with it. Inevitably, the potential acquiror’s representative will avoid the use of terms such as “acquisition”, “sale”, or “being acquired” and use the euphemisms of “affiliation,” “association” and “marriage” when talking about the acquisition.

b. Getting Serious. Although potential acquirors have made various approaches in the past with respect to acquisition of community institutions in particular, virtually all potential Buyers have now learned that in order to have any serious discussions with the community bank, the chief executive or chairman of the Board of the Buyer needs to engage directly in discussions with the chief executive of the Selling Bank or its principal shareholder. To be effective, this needs to happen very early in the exploratory stages.

Experience has shown that the Buyers that have tried to acquire banks by sending officers other than the CEO or chairman to conduct any serious discussions have generally not been as successful as those represented directly by one of them. Most community bankers understandably take the position that when they are about to make the most important decision that they will ever make for their bank, they want to directly “eyeball” the CEO of the Buyer. Many understandably resent it if the bank holding company chairman or CEO does not give them at least some reasonable amount of attention.
c. **The Sales Pitch.** Buyers and Sellers have varying interests and reasons for wanting to engage in a transaction. Usually the acquiring institution, although it is technically a “Buyer,” must “sell” itself to the target. This is particularly true where stock of the Buyer is to be used as the currency for the transaction. The sales pitch varies with the perceived “needs” of the community bank which the Buyer intends to meet as a result of the acquisition. Many times, the needs of the Selling Bank will depend primarily upon the financial condition of the Seller. If the Selling Bank needs additional capital for growth or otherwise, the approach by the Buyer usually emphasizes that an affiliation with the Buyer will provide a source of additional capital so that the bank may continue to grow and serve its community.

If the Selling Bank is already well capitalized and satisfactorily performing, the approach usually involves an appeal to the stockholders of the community bank with respect to the liquidity of the stock of the Buyer and the lack of marketability and illiquidity of the community bank’s stock. The Buyer will also always emphasize the tax free nature of most transactions and the existing market for its stock.

In banks in which the chief executive officer is near retirement age and does not have a capable successor on board, the Buyer generally emphasizes its management depth and its ability to attract successor management who will have a career opportunity with a larger organization.

In summary, the Buyer will generally emphasize that it can bring to the table capital, management, liquidity for the investment, future earnings potential, appreciation, and career opportunities for employees. The specific needs of the Seller will determine which of these particular benefits will be emphasized.

2. **General Negotiation Considerations**

In all bank acquisitions, there are some advantages that inherently go to those who are selling and others that accrue to the Buyer. No matter which side you are on, two primary goals should be recognized: first, improve your bargaining position, and, second, understand the other side’s position.

a. **Stages of Negotiations:**

1. Preliminary negotiations leading up to determination of price and other social issues - usually represented by a letter of intent or term sheet.

2. Negotiations leading up to execution of definitive documentation.

3. Additional negotiations at or immediately before closing regarding last minute price adjustments and/or potential problems.
Acquisition negotiations can take a long time. It is important that both parties be patient. Although the Buyer may have made several acquisitions, it is likely that the Seller is taking the most important step in its history.

b. General Negotiation Suggestions for Both Parties:

(1) No premature negotiations - ignore deadlines. Make concessions late and always get something in return. The opposite is also true - take concessions and attempt to move on without giving up anything.

(2) Plan and attempt to control all aspects of negotiations including place, time and mood. The Buyer usually has an advantage in this regard.

(3) Throughout negotiations, be courteous but firm and attempt to lead the negotiations. Within the general rule that the “Buyer gets to draft”, try to have your professionals retain control over drafting and revisions of definitive documentation.

(4) Use the “foot in the door” negotiating approach to get to higher levels of commitment. As the costs and expenses mount, a party will be more reluctant to terminate the deal since his institution will have to bear the expenses. (These expenses are usually a larger share of the Seller’s operating income.)

(5) Consider using letters of intent or term sheets because they:

-  clear up any ambiguity or confusion over the terms of the deal,
-  cause a psychological “commitment,”
-  take the institution off the market and discourage other bidders, include confidentiality provisions, and
-  set forth the timing of the deal.

(6) Keep communications open with shareholders. Make sure all parties in interest understand the delays associated with a bank acquisition.

(7) Always be careful of unreasonable time demands. Is the acquisition so unique that the risk of speeding up the process is justified? Are there other bidders or alternatives for the other party? Where is the pressure coming from to expedite the transaction? How will the faster pace affect the acquisition? Are there “hidden agendas” existing with advisors? Is the potential reward commensurate with the risks?

(8) Be absolutely certain that you receive competent legal advice on exactly what public disclosures should be made regarding negotia-
tions and the timing of such disclosures. Substantial liability can occur for misleading or late disclosures.

(9) Throughout negotiations, be certain everyone understands the importance of the “due diligence” examination since so often these examinations identify major problems. Try to make certain that by the time you get to the closing documents there are no more surprises.

(10) Always attempt to use a win/win strategy. It is almost impossible to make a totally unfair and overpowering deal “stick.” Regardless of the legal consequences, most people will not honor a contract if they realize they have been “taken.”

c. Specific Seller Negotiation Considerations

(1) The Seller should not reveal the reasons his group is interested in selling.

(2) A Seller should always show a limited desire to sell. This will have the effect of forcing the Buyer to sell itself rather than requiring the Seller to “sell” his institution.

(3) Consider using a representative for negotiations so that the representative can use the strategy of saying, “I can only make recommendations to my client. I cannot commit for him.”

(4) Due diligence examinations are integral parts of any acquisition. The Seller should usually try to force “due diligence” examinations before any definitive document is signed or as early as possible. This avoids premature press releases which can be embarrassing later. Also it removes the major contingency early. Termination of an acquisition, regardless of the reasons given in a press release, will nearly always damage the reputation of the Seller more than the Buyer. It will be automatically assumed that there is something wrong with the institution being sold.

(5) Remember the “foot in the door” negotiating approach used by many purchasers. A Seller should always realize that negotiations are never over until the cash or stock is received.

(6) Bring up integration issues early in the negotiations if the post-acquisition operation of the bank is important to the Seller’s management and directors.

(7) Don’t forget the social issues.

d. Specific Buyer’s Negotiation Considerations
(1) Avoid discussion of price in the initial meetings. It is too sensitive a subject to raise until some personal rapport has been developed. In determining the pricing, always consider what incentive plans must be given to management.

(2) Consider the “social issues” early on.

(3) Make no proposal until you have arrived at a clear understanding of the Seller’s desires and expectations.

(4) With a “cash” transaction, determine in the beginning the “financing” of the deal. Keep in mind that often a Buyer, a lender and the regulators must approve the deal from a cash flow and financial point of view.

(5) If the Seller is unsophisticated enough to allow its existing senior management to negotiate, the Buyer should take advantage of the natural reluctance of management to negotiate “too hard” with its future boss.

(6) It is always important that there is no uncertainty about who is speaking for the Buyer. Also, always make certain the person speaking for the Seller controls the Seller or has authority from the Seller.

(7) Meetings of more than five or six people are less likely to be fruitful.

(8) Be careful of valuing synergies. They rarely exist.

(9) Identify all of the true costs of the acquisition, including the termination/deconversion fees associated with the target’s data processing contract, change-in-control payments to the target’s senior executives, etc. Such payments can be high, to say the least, and can have a significant impact on pricing. Identify them sooner rather than later.

Fair, honest, and straightforward negotiations will produce productive agreements. Any transaction that is “too good” for either side will generate ill will and run the risk of an aborted closing. In order for a transaction to work, it must be viewed as fair to both parties.

E. **Price, Currency, Structure, and Other Important Issues**

1. **Pricing and Currency Issues**

If pricing of an acquisition transaction is not the most important issue, then it runs a very close second to whatever is. Granted, although “social issues” play a large
role in acquisition transactions and have derailed many through the years, pricing and an understanding of pricing are critical.

a. **Stock or Cash as the Currency.** When considering an acquisition transaction as either Buyer or Seller, it is imperative to make a decision up front as to whether stock or cash will be the currency. The currency will generally be dictated by the desires of the selling company. If the Seller wants a tax free stock transaction, then a cash transaction will only be acceptable generally if it is “grosse up” for tax purposes, which will often make it prohibitively expensive. Particularly with the post-election “bump” many larger, regional bank’s stocks have experience in early 2017, stock as currency is increasing in attractiveness for many institutions. With that said, numerous questions arise which should be considered in connection with taking the stock of a holding company or other Buyer. Primary concerns should be as follows:

(i) The number of shares selling stockholders will receive in relation to the perceived value of the community bank’s stock. Is the price acceptable based on the market value of the holding company stock being received?

(ii) The investment quality of the holding company stock at that price. Is the holding company stock a good investment at that price and is it likely to increase in value or is it already overpriced and is more likely to drop?

(iii) The liquidity in the holding company stock to be received. Is the market thin or is there a ready market available for the stock? Although a number of holding company stocks are listed on an exchange and often there are many “market makers” through regional brokerage houses in these stocks, the true market for the stock may be extremely thin.

(iv) Who bears the market risk during the length of time that will transpire between the time an agreement in principle is reached and the time the stock is actually issued to the community bank stockholder so it can be sold?

(v) The taxable nature of the transaction. Will the stock be received in a tax free transaction so there will be no taxable event unless and until the community bank shareholders sell their new holding company stock?

b. **Determining Relative Value of Illiquid Shares.** When two community banks are combining for stock and neither bank has a “liquid” currency, then the acquiror and the target must determine the relative value of the two banks and their contribution to the resulting entity. In other words, the banks must determine how large a stake in the new combined company the target represents, which will dictate the value of a share of target stock in terms of
stock of the acquiror. This determination is generally based on a “Contribution Analysis”.

To arrive at a relative value of the two institutions and their resulting share in the resulting institution, each bank’s relative contribution of earnings, assets, and equity to the combined resulting holding company should be considered. Because the contribution of a large earnings stream is generally more valuable than the contribution of equity, which is, in turn, more valuable than the contribution of assets, these three criteria should be weighted accordingly. By considering the relative value of each bank’s contribution to the combined entity, and by understanding which category, earnings, equity, assets, contributes more to the long-term value of the combined organization, the two combining banks can determine the relative values of the stock to each other.

c. Pricing

(i) Current Environment of Reduced Price

Once upon a time, in the middle part of this decade, banks were consistently selling for two times book value. As it was not that long ago, it is logical that a potential target bank, whose business has not materially changed, could claim that the value of his bank has not changed either. The fact of the matter, however, is that community banks are operating in a vastly different economic environment, and are selling for significantly lower multiples of book value. Prices are rising, but they are still not up to pre-recession levels. Simply put, prices across the board have fallen, and healthy banks are selling for significantly less than what they did five years ago.

(ii) Historical Pricing

“Historical Pricing” is a method of pricing a bank deal by reference to similar deals. A bank will determine its own value by looking at prices paid for banks of similar size and profitability that serve similar markets. The fallacy of this reasoning is that a bank is “worth” only what a willing buyer will pay for it. Valuing a bank by reference to others is rarely, if ever, an effective way at arriving at an accurate value. That is why historical pricing is not considered to be an accurate indicator of a bank’s potential selling price. Historical pricing can be used to see if an offer is in the correct ballpark, but that is near the extent of its value.

(iii) Price Based on Earnings Stream

As noted, although pricing in bank acquisition transactions is often reported as a multiple of book value, bank acquisition transactions are always priced based on the target’s potential earnings stream and whether it will be accretive or dilutive after the acquisition to the potential acquiror. Whether or not the acquisition will be accretive or dilutive to the acquiror from an
earnings per share standpoint is going to depend on the earnings stream that can be generated from the target post-acquisition. This means that cost savings obtained by the acquiror as a result of the acquisition, i.e. general personnel cuts, and revenue enhancements which will be obtained as a result of the target being part of the acquiror’s organization must be considered. Generally, when considering the resulting pro forma reflecting the post-acquisition earnings stream for purposes of pricing the acquisition, the target should be given a significant credit on the purchase price calculation toward cost savings to be obtained by the acquiror. The target generally gets no credit for revenue enhancements, which are items that the acquiror brings to the table, i.e. the ability to push more product that the acquiror already has through the distribution network of the target.

Because most transactions are initially “priced” before obtaining detailed nonpublic information about the target, the potential acquiror generally needs to determine an estimate of cost savings for purposes of running its own model. The general rule of thumb with respect to savings of noninterest expense of the target is as follows:

<table>
<thead>
<tr>
<th>Type of Acquisition</th>
<th>Range</th>
</tr>
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<tbody>
<tr>
<td>Out of Market Acquisition</td>
<td>15 to 20%</td>
</tr>
<tr>
<td>Adjacent Market Acquisition</td>
<td>20 to 30%</td>
</tr>
<tr>
<td>In Market Acquisition</td>
<td>25 to 40%</td>
</tr>
</tbody>
</table>

Once the pro forma earnings stream for the target after the acquisition by the acquiror has been determined, it is fairly easy to determine how many shares or dollars the acquiror could give to the target shareholders without diluting the earnings of its own shareholders. Most acquirors of community banks will not engage in transactions that are earnings per share dilutive, at least that are earnings per share dilutive for very long.

d. **Critical Contract Considerations With Respect to Pricing a Stock-for-Stock Transaction.**
The single most important provision in the acquisition agreement relates to how the price is determined, i.e. at what time will the number of shares to be received by the community bank shareholders actually be determined. This is important since the value of the stock, particularly if a larger, public holding company is involved, typically fluctuates day to day in the market.

Competing interests between the Selling Bank and the Buyer are clearly present. The community bank’s interest is to structure the price so that the dollar value of the transaction is determined in the contract, but that the number of shares to be received by the community bank increases proportionately as the market value of the holding company stock decreases up to the date of closing.

Conversely, the Buyer’s interest is to structure the transaction so that the value is fixed in the agreement and the number of shares or value of the transaction decreases as the price of the holding company stock increases in the market. These competing desires are usually resolved in one of several ways.
- A fixed exchange ratio that does not change no matter what the stock price is, i.e., a fixed number of shares to the Seller's shareholders.

- An exchange ratio that fluctuates both up and down but has a collar and a cuff on it so that the amount of fluctuation in the exchange ratio is fixed. If there is a variation in the stock price that goes beyond the collar or cuff, the number of shares does not adjust any further.

Bank stock indices are also often being used as part of the pricing mechanism.

It is also important to obtain a “walk” provision which is utilized in the event the value of the Buyer’s stock drops below a specified dollar amount at a specified time or times. In that event, the Seller’s Board has the right to terminate the agreement without any obligation to proceed further.

As a practical matter, the “walk” provision is generally extremely effective from the Seller’s standpoint. In the unanticipated event that the stock of the Buyer falls below the “walk” price, the community bank always has the opportunity to renegotiate the exchange ratio and thereby retain its flexibility.

The key to the “walk” provision is to determine in advance at what date the holding company stock will be valued. Many acquisition agreements provide for an average value for a twenty-day trading period which ends five days prior to the effective date of the merger. Such a provision, however, may create unnecessary problems in implementation.

It is preferable to have a “walk” provision that has a twenty day period run both from the date of approval by the shareholders of the Selling Bank and from the date of approval of the Buyer’s application by the Federal Reserve Board or other agency. Using these dates gives the community bank two shots at the “walk” provision. This also gives the advantage to the community bank so that if the federal regulatory approval, i.e. the “first walk date,” is obtained prior to the shareholders’ meeting, and the community bank determines to terminate the transaction, a proxy and prospectus need not be delivered and shareholder vote may never need to be taken.

2. **Social Issues**

Although pricing and pricing considerations are of paramount importance, many transactions stand or fall on social issues. As a result, oftentimes, particularly for a Seller, the negotiation of social issues first makes sense. If the social issues cannot be adequately addressed, then there is generally no need to move on to price discussions. Social issues include the following:
- Who is going to run the bank or company post acquisition?
- What will the company’s or bank’s name be?
- Who will sit on the Board of Directors?
- What will be the compensation of the directors and/or officers remaining?
- What will be the severance provisions for officers and employees who are terminated?
- Will the institution be turned into a branch or remain as an independent charter?
- Will employee benefits change?
- How much autonomy will the Board or advisory board and management have post acquisition?
- How much bureaucracy will be involved post acquisition?

Even an adequately priced acquisition may never close if the social issues cannot be addressed to the satisfaction of principal players. Address social issues early on.

3. **Merger of Equals**

It is not uncommon for community banks to consider a “merger of equals”. In other words, neither bank considers itself the target. In such situations, banks should be aware that under purchase accounting rules one bank must be designated as the acquiror when accounting for the transaction. Numerous issues are presented in what are purported to be mergers of equals. Often these are referred to as “unequal mergers of equals” not only because one institution must technically be the acquiror for accounting purposes, but generally one institution deems itself to be the acquiror. As many issues as can possibly be resolved ahead of time should be. Mergers of equals are difficult to consummate and integrate.

4. **Intangible Considerations Associated with the Price and Autonomy**

When a Selling Bank considers selling, major concerns on the chief executive’s mind are generally related to price of the acquisition and autonomy after the acquisition. It is generally possible to satisfactorily quantify the price provisions and build in certain protections from market value fluctuations of the holding company stock. It is not as easy, however, to get a grasp on the issue of autonomy.

The community bank executive must understand, however, that while the acquiring holding company stresses the substantial autonomy that will be given to its subsidiaries, in reality, the autonomy dissolves rather quickly as more and more authority is assumed by the acquiring holding company’s main office.
It is generally true that within two or three years after the acquisition by a larger holding company, the chief executive officer of the community bank leaves and is replaced with someone chosen by the holding company. Although there are many reasons for this, the major one is that a CEO, accustomed to operating his or her own bank subject only to his Board of Directors, is simply unable or unwilling to adjust to having to respond to directions from so many people in so many areas in a larger holding company setting. For this reason, the CEO who is ready, willing and able to retire within a few years of the acquisition is in the best possible position to negotiate a good deal for his shareholders. He does not have to be so concerned about his own future at the holding company and can aggressively negotiate against the people who will be his future bosses if he stays with the bank after its acquisition.

In general, however, there is an inherent conflict between the desire for autonomy by the CEO and the best interest of the shareholders. In the usual case, the shareholders’ sole concern is getting the best price in the best currency. If it is not cash, it should be in a stock that is readily marketable and is expected to at least retain its value. The CEO must be careful that there is not a trade-off on price to obtain a better deal or more autonomy for the local Board and management at the expense of the consideration received by shareholders. Usually the shareholders are not concerned about autonomy - particularly if it is at their expense.

5. Dividends / Subchapter S Distributions

The payment of dividends or Sub S distributions must be considered in any acquisition transaction. Often, the community bank’s dividend payment history may provide significantly less cash flow than the dividends that will be received by the community bank shareholders after application of the exchange ratio in a stock-for-stock transaction. If this is the case, then acceleration of the closing of the transaction to ensure that the community bank shareholders are shareholders of record at the time of the dividend declaration by the acquiring company should be a priority. The worst possible case is that the community bank does not pay its dividend and misses the acquiring company’s dividend. This is generally avoided by providing that the community bank can continue to pay its regular dividend up until the date of closing and that the community bank will be entitled to its pro rata portion of its regular dividend shortly prior to closing if the community bank shareholders will have missed the record date of the acquiring company as a result of the timing of the closing. In other words, the community bank would get its own dividend or the acquiring company’s dividend, but not both.

The acquisition of Subchapter S institutions provides an additional consideration. Subchapter S organizations make (or at least should make) “tax equivalent” distributions to their shareholders for the purpose of covering the shareholders’ increased tax liability as a result of pass-through income. If a Subchapter S institution is acquired prior to making any tax equivalent distributions for the current tax year, then the target shareholders could be left with a tax liability from partial year income without any corresponding distribution.
Related, the potential for an extraordinary dividend must be considered. Since the replacement of the pooling of interest method of accounting, there are no adverse consequences to the payment of an extraordinary dividend. Indeed, in today’s environment, many community banks use the extraordinary dividend to reduce their capital account to approximately 8% immediately prior to closing. The payment of an extraordinary dividend in a cash transaction will often have no adverse impact as a result of the purchase price often being tied to “core” capital, rather than including excess capital in the calculation.

6. **Due Diligence Review**

No matter how large the Buyer or whether it is an SEC reporting company, before a Seller’s shareholders accept stock in an acquiring bank or holding company, a due diligence review of that bank or holding company should take place. This is similar to the due diligence review which the Buyer will conduct of the Seller prior to executing the definitive agreement. It is generally best to have disinterested and objective personnel conduct the due diligence review of the acquiror. Several difficulties are generally encountered in connection with this review, not the least of which often times is simply the sheer size of the Buyer whose condition is being evaluated and whose stock is being issued.

An additional and recurrent difficulty involved in the due diligence review is obtaining access to the Buyer’s regulatory examination reports. Although these reports are intended for the use of the Buyer’s company and bank only, it is virtually impossible to justify recommending to the Seller’s Board of Directors and its stockholders that they sell to the Buyer in a stock-for-stock transaction if the due diligence team is denied the right to review the regulatory reports to determine if there are any material considerations that would affect the decision to sell.

It is generally most efficient for the Selling Bank to retain outside experts to either completely conduct the due diligence examination or at least assist and direct the examination with the assistance of key people from the Seller. Individuals who are experienced in doing this type of work will quickly know the areas to focus on, the information necessary to obtain, and can generally facilitate a rapid due diligence review that is of minimum disruption to the Buyer and maximum benefit to the Seller. Most of the experienced and sophisticated Buyers are used to having these reviews performed in their offices and generally they will be cooperative with respect to the process.

Even in a cash deal, prudent Sellers will conduct due diligence on the acquiror to verify that the company has or has access to the cash to execute the deal, and can obtain regulatory approval. In addition, conducting due diligence on a Seller can uncover problems at the front end that would later derail the deal. Spending valuable time and untold thousands of dollars pursuing a deal with no chance of success is an immense waste of time and resources. Due diligence can uncover a host of “under the radar” issues that are imminently important, even to a Seller in a cash deal.
7. **Fairness Opinion**

Another issue that is extremely important to the Selling Bank is that the definitive agreement contain, as a condition to closing, the rendering of a fairness opinion. The fairness opinion is an opinion from a financial advisor that the transaction, as structured, is fair to the shareholders of the Seller from a financial point of view. The fairness opinion will help to protect the directors from later shareholder complaints with respect to the fairness of the transaction or that the directors did not do their job. The fairness opinion should be updated and delivered to the Seller bank as a condition of the Seller bank's obligation to close the transaction.

Conditioning the closing on the receipt of an updated fairness opinion will also protect the Seller further by permitting it to terminate the transaction in the event of material adverse changes between the time the contract is signed and the closing, which precludes the delivery of the fairness opinion.

8. **Structuring**

A good number of acquisitions, whether large or small, are structured as tax free exchanges of stock. It is imperative that the Seller, its Board of Directors, and shareholders understand the tax ramifications of the transaction as well as the Buyer’s tax considerations in order to fully understand the Buyer’s position in the negotiations.

Any acquisition transaction will be a taxable transaction to the Seller’s shareholders unless it qualifies as a tax free transaction pursuant to the Internal Revenue Code. Although a detailed discussion of the structuring of the transaction and tax considerations is beyond the scope of this outline, it should be noted that often community banks are offered a tax free exchange of stock in the acquiring institution. This will be the result of either a phantom merger transaction or an exchange of shares under state “Plan of Exchange” laws. Under certain circumstance, a transaction can still be tax free for shareholders receiving stock of the Buyer, even though up to 50 percent of the consideration of the transaction is cash.

It is critical that the Seller use a firm that has counsel qualified to review the structure of the transaction. If a transaction is improperly structured, the result may be double taxation to selling shareholders.

It is anticipated that cash transactions will become much more frequent in the near future. From the Seller’s perspective, the obvious advantage to a cash deal involves a “bird in the hand”. Sellers who accept cash are subject to none of the risk associated with taking an equity position in an acquiring bank and have received consideration for their shares that is totally liquid – a big advantage. On the other hand, Sellers for cash are not afforded the upside potential of holding an equity interest. They will not be entitled to dividends or any subsequent appreciation in the value of the acquiror. For better or for worse, Sellers in a cash deal are frequently totally divorced from the bank following the acquisition. In addition, the sale of a bank for cash will be a taxable transaction. The shareholders will be
subject to income tax at capital gains rates to the extent their shares had appreciated in their hands.

There is also a unique structuring consideration when the target organization is a Subchapter S corporation. Acquisition transactions can either be structured as a sale of the target’s equity (stock) or a sale of the target’s assets. For tax purposes, an sale of the target’s equity results in a “carry over” basis. In other words, the target company’s assets have the same depreciable tax basis as they had pre-acquisition. A sale of assets, on the other hand, results in the acquired assets having a tax basis equal to each asset’s fair market value. This is called a “step up” in basis, meaning that the acquirer is able to re-depreciate the assets. While this represents a significant benefit to the acquiror, a sale of assets often results in an increased tax liability for the seller.

In transactions involving the sale of an S corporation, Internal Revenue Code Section 338(h)(10) allows the acquiror to treat the acquisition of S corporation equity as a purchase of S corporation assets, thus gaining the tax benefits noted above. Because this results in increased tax liability for the sellers, however, the shareholders of the seller have to consent to the 338(h)(10) election. Selling shareholders are unlikely to bestow a benefit on the acquiror while increasing their own taxes without being compensated in some way. Thus, this structural element is ripe for negotiation.

9. Documentation and Conditions to Closing

Every Buyer or Seller needs to be aware of the basic documentation in acquisition transactions as well as conditions to closing. The basic documentation often used includes:

- Term Sheet
- Definitive Agreement
- Proxy Statement and Prospectus
- Tax and Accounting Opinions
- Due Diligence Report on Buyer
- Fairness Opinion
- Miscellaneous Closing Documents

It is advisable to use some kind of term sheet in a merger or acquisition. A term sheet not only provides a moral commitment, but more importantly, it evidences that there has been a meeting of the minds with respect to the basic terms of the transaction. The definitive agreement is the “big agreement”. The definitive agreement generally runs from 40 to 60 pages and is full of legalese, including significant representations and warranties as well as pricing provisions, covenants that must be obeyed by the selling institution from the time of the signing of the agreement until the closing, and conditions to closing. The conditions to closing generally include financing in a cash transaction, regulatory and shareholder approval in all transactions (since they are generally structured as mergers), the receipt of a fairness opinion and the fact that there has been no material adverse
change from the date of the agreement to the date of closing in the target (in a cash transaction) or in either company (in a stock-for-stock transaction).

10. **Dissenting Stockholders**

   Since virtually all transactions will be structured as mergers to enable the acquiror to acquire 100% of the target's stock, the target's shareholders will generally have dissenters' rights. In a transaction structured as a merger, the vote of the target shareholders of either 2/3rds or 50%, depending on the applicable law, will require 100% of the shareholders of the target to tender their stock to the acquiror in exchange for either the cash or stock being offered unless such shareholders perfect their dissenters' rights. The perfection of dissenters' rights by a shareholder does not permit the shareholder to stop the transaction or keep his stock. It only entitles the shareholder to the fair value of his or her shares in cash. In very few transactions are dissenters' rights actually exercised for the simple fact that in a stock-for-stock transaction with a listed security, the dissenters can generally sell the stock received and obtain their cash very quickly. In a cash transaction or a stock transaction for a less liquid security, most dissenters do not have a large enough position to make it economically feasible to exercise their rights and pursue the appraisal and other remedies available. Historically, most transactions were conditioned upon no dissent in excess of 10%. This was due to some requirements for pooling of interest accounting. Even with the disappearance of pooling of interests accounting, it is likely that most transactions will retain a 10% or less dissent limitation in order to give the Buyer some certainty as to the price that will be paid and the support of the shareholder base for the transaction.

   It should be noted that by exercising its dissenters' rights, a shareholder is committing to accepting the value of the shares as determined by a Court. This can be a gamble. If the Court determines that the stock is worth less than what is being offered by the acquiring bank, the shareholder receives less.

11. **Aspects of Securities Law Issues**

   Although a thorough discussion of securities law issues is beyond the scope of this outline, virtually any acquisition, including a stock exchange by Selling Bank shareholders for a Buyer's security, will need to be approved by the Selling Bank shareholders. This will require the preparation of a prospectus (for the issuance of the stock) and a proxy statement (to obtain the vote of the shareholders). There is often a temptation from the Selling Bank to allow the Buyer, particularly if it is a larger holding company, to totally handle the disclosure process for the prospectus-proxy statement. The Seller must remember that to the extent the document is a proxy statement for a special meeting of the Seller's shareholders, it is also a securities disclosure statement of the Selling Bank and must contain all material and proper disclosures about the Selling Bank. As a result, it is imperative that counsel, accountants, and management of the Selling Bank be actively involved in the disclosure process.

   Of more practical importance than the preparation of the disclosure material to the Board of Directors and shareholders of a target company in a stock-for-stock
acquisition is whether their stock will be restricted from immediate sale once received. As a practical matter, in most stock-for-stock acquisitions with larger holding companies that are listed on an Exchange, a condition of the transaction is that the stock be registered by appropriate filings with the Securities and Exchange Commission. Registered stock, once received by shareholders of the target company who are not “affiliates” (insiders) of the target, can be sold immediately. Affiliates of the target, defined as directors, executive officers or shareholders holding in excess of 5% of the target's stock, are restricted from sale under the Securities and Exchange Commission Rules 144 and 145. Although these Rules are lengthy and complicated, as a practical matter, an affiliate receiving restricted shares in connection with an acquisition only can dispose of those shares under the following basic conditions:

- The sale must occur through a broker.
- The affiliate cannot sell more than 1% of the stock of the acquiring company in any three-month period (this is usually not a problem since typically, no shareholder in a community bank receives more than 1% of the acquiring company’s stock as part of the transaction).
- An affiliate is subject to a holding period of six months, during which, sale of the securities is disallowed.

F. DIRECTORS’ AND OFFICERS’ LIABILITY CONSIDERATIONS

Directors of a corporation (a bank and/or its holding company) are elected by shareholders and owe those shareholders the fiduciary responsibility to look out for the shareholders’ best interest. Directors fulfill this fiduciary responsibility by exercising to the best of their ability their duties of loyalty and care. A director’s duty of loyalty is fulfilled when that director makes a decision that is not in his or her own self-interest but rather in the best interest of all shareholders. A director’s duty of care is fulfilled by making sure that decisions reached are reasonably sound and that the director is well-informed in reaching those decisions. In traditional settings, courts will rarely second-guess a Board of Directors’ decision unless a complaining shareholder can clearly prove self-dealing on the part of the Board of Directors or that the Board of Directors behaved recklessly or in a willfully or grossly negligent manner. The burden is on a complaining shareholder to show that the Board did not act properly in fulfilling its fiduciary duties.

In sale transactions (sale of business, merger, combination, etc.), Boards of Directors are subject to “enhanced scrutiny” in reaching important decisions regarding the sale of the business. Boards of Directors must be able to demonstrate (1) the adequacy of their decision-making process, including documenting the information on which the Board relied on reaching its decision, and (2) the reasonableness of the decision reached by the directors in light of the circumstances surrounding the decision. In a sale of business setting, the burden shifts to the directors to prove that they reasonably fulfilled their fiduciary duties. The following is a partial list of actions that would be appropriate for a Board of Directors to take in reviewing or in making a decision whether to merge and/or be acquired or accept a tender offer in most situations:
The Board should inquire as to how the transaction will be structured and how the price of the transaction has been determined.

2. The Board should be informed of all terms within the merger agreement, acquisition agreement or tender offer.

3. The Board should be given written documentation regarding the combination, including the merger agreement and its terms.

4. The Board should request and receive advice regarding the value of the company which is to be bought and/or sold.

5. The Board should obtain a fairness opinion in regard to the merger.

6. The Board should obtain and review all documents prepared in connection with the proposed merger, acquisition or tender offer.

7. The Board should seek out information about national, regional and local trends on pricing a merger or acquisition.

8. Finally, the Board members should be careful not to put their own interests above the interests of the shareholders. If directors’ deferred compensation or other agreements exist between the corporation, they must be negotiated but not serve as a block to a transaction that would otherwise be in the best interests of shareholders.

The whole concept of “enhanced scrutiny” has arisen from (and, for that matter, is still being developed) by a number of Delaware Supreme Court decisions relating to hostile and/or competitive acquisition transactions. A great amount of material has been written attempting to explain the impact of these Delaware Supreme Court decisions. Not everyone agrees on exactly what these decisions mean, and lawyers and Boards of Directors continue to grapple with exactly what Boards must do to survive the “enhanced scrutiny” that courts will place on Boards of Directors in a sale of business transaction. Despite the lack of absolutely clear guidance on what Boards must do to survive the test of enhanced scrutiny, a number of general rules are becoming apparent. These include the following:

1. In a sale of business transaction, the Board of Directors must assure itself that it has obtained the highest price reasonably available for the shareholders, but this does not necessarily mean that the Board of Directors must conduct an “auction” to obtain that price.

2. The Board of Directors is obligated to “auction” the business if there is a “change in control.” For example, if the selling shareholders will trade their shares of stock for shares of the acquiror and the acquiror has a dominant, control shareholder, then an auction is required to assure that the selling shareholders receive the highest price and the best type of consideration.
3. In the absence of a large control shareholder, an auction is not necessarily required if the selling shareholders receive stock of the acquirer and that stock is freely tradable on an established market.

4. If the shareholders are to receive cash in exchange for their shares, an auction may be required. At a minimum, the directors must determine that they have agreed to the best available transaction for shareholders. Directors may be able to rely on publicly available pricing data for comparable transactions in reaching this conclusion.

5. In any case, directors should obtain a fairness opinion from a qualified valuation expert as to the fairness of the transaction to shareholders from a financial point of view. Directors can use this fairness opinion as a major component in satisfying their duty of care to the shareholders and surviving the “enhanced scrutiny” that the courts will impose.

Boards of Directors involved in any type of sale process or sale evaluation must take extra steps to assure that they are fulfilling their enhanced fiduciary responsibilities to the shareholders. Using board committees, specialized counsel and consultants to help the Board structure the “process” of evaluating a sale is absolutely critical to fulfilling the Board’s responsibilities.
III. MARKETING YOUR BANK

What do you do when you finally decide that it is time to sell your bank? Maybe you are tired of the hassles with the regulators. Maybe you are ready to retire. Maybe you have no management succession. Maybe your shareholders have become diversified through estate and gift distributions. For whatever reason, what do you do when you finally determine that it is an appropriate time to sell?

There are three basic alternative methods to go about selling your bank.

1. Deal with one other party as an interested prospective purchaser,
2. Select one or two potential purchasers, or
3. Market the bank widely to solicit offers and then select among the offers.

A. UNSOLICITED OFFERS OR DEALING WITH ONLY ONE OFFEROR

When you decide to sell your bank, your goal should be to obtain the best price in the best currency available. That currency may be cash or the stock of another institution. Some institutions are sold after being approached, unsolicited, by one potential acquiror who gives some kind of an “ultimatum” with respect to its offer and the community institution then sells for fear of “losing the deal”.

Some of the larger holding companies who are very active in the acquisition game are famous for this technique. Representatives of the holding company come to your bank, meet with your board of directors, put a letter of intent on the table with what appears to be a reasonably good or high offer and give you five days to respond.

Not only is this unfair to your board of directors, but it is also unfair to your shareholders since it clearly does not give the board time to conduct an appropriate analysis of the purchase or other alternatives. In these types of situations, we uniformly request additional time from the potential acquiror or refuse the offer due to the inability to analyze it in the time provided. In none of the transactions in which we have been involved has that offer ever “gone away”. The single acquiror in that case is attempting to intimidate the board or give them the fear that if they do not accept the offer, there may never be another one as good. That is rarely the case.

B. DEALING WITH SELECTED ACQUIRORS

Some institutions, particularly when the Board knows that they want to engage in a stock-for-stock exchange for tax reasons, will pick out only one or two potential acquirors who have listed securities and whose operating philosophy is compatible with theirs. These institutions will then begin to negotiate with each of those acquirors in an attempt (a) to get to know them better and (b) to understand the currency, i.e., the stock, that they are offering.
As noted elsewhere in this material, all listed securities are not the same. The key is whether the security provides liquidity and is likely to increase in value over the holding period rather than decrease. The target institution in this case negotiates with the two acquirors and decides between the two which acquiror will be the winning suitor.

C. MARKETING THE INSTITUTION

Do either of the above alternatives assure the target institution of receiving the best price in the best currency? The simple answer is no. That is not to say that offers obtained either through one-on-one negotiations or negotiations with selected but multiple acquirors cannot be supported by a fairness opinion as being fair to the shareholders. But “fair” to the shareholders may encompass a wide range of prices. The only way a community institution can determine the highest and best price in the best currency for their institution is to market it broadly. This is not a concept that comes from great revelation. This is a concept that comes from the fact that the sale of any item which would have broad appeal is more likely to occur at a higher price when more individuals have knowledge of the opportunity to purchase it. Some community institutions are adverse to putting their institutions “on the market” for a lot of reasons, most clearly with perceived public relations issues. If you own 100 percent of the stock of your institution or its holding company, this position does not present a problem. If the institution has shareholders in addition to you or your family, however, those shareholders are likely to want to receive the highest price and be less concerned about some of the perceived public relations issues associated with the marketing process.

This brings us to the third alternative, widely marketing the bank for sale. We have marketed a number of community banks. Almost without fail, each time, on behalf of the bank, we have received multiple bids and virtually assured the bank of receiving the highest and best price in the highest quality currency. Certain of these institutions sold for cash, certain sold for stock, and certain sold for a combination of the two. But each time, the board of directors of the bank had alternatives to consider.

Clearly, the marketing process protects the board of directors in that it will have received the highest price in the best currency based on what a number of willing purchasers would be willing to pay for the institution. The board has clearly done its job in this regard.

How many banks are sold through active marketing efforts? A great number. Although this type of a marketing and sale transaction may be distasteful to some, now at least 25% of the banks sold will have elected to take this route in order to assure that if the directors are also the principal owners, they obtain the highest price for themselves and if they are not, that they get the highest price in the best currency for their shareholders.

Are there any downsides to engaging in the marketing process? The only caution is that before entering into the marketing process, it is important that the board determines that it is time to sell the institution. Once entering the marketing process, the institution will become “in play” and will likely sell. It is difficult to put an institution on the market more than once and have any credibility with potential acquirors. Although the marketing process has been designed so that neither the selling bank nor the purchasing bank has to go through a great deal of time or expense until the purchase price is struck, the acquirors still do not like to
deal with institutions that they do not think are truly on the market. Make sure the board is ready to go ahead with a sale of the institution, assuming the price is reasonable, before it is put on the market.
IV. ACQUISITION ACCOUNTING UNDER ASC 805, BUSINESS COMBINATIONS

Prior to 2002, Accounting for bank transactions used the pooling of interests method. This was a fairly simple method where the acquiror basically combined the balance sheets for the two institutions and went on their way.

In 2002, the pooling of interests method was replaced by the Purchase Method of accounting. That method was used until the end of 2008, when it was replaced by the “Acquisition Method” beginning in January 2009. The Acquisition Method and the Purchase Method are very similar, with some minor differences.

The first step in acquisition accounting is determining the acquiror. Each and every bank transaction (even a “combination” between two mutuals) must have an identified acquiror and an identified target.

After the acquiror has been identified, the second step is determining the acquisition date. This is typically the day the Articles of Merger are filed, or the date specified in the Articles of Merger as the transaction effective date. This date is important because everything in the transaction is tied to the acquisition date.

The third step in accounting for a bank transaction is valuing each of the target’s assets and liabilities. ASC 805, Business Combinations, the accounting pronouncement that implemented the Acquisition Method of accounting, requires that the target’s assets and liabilities be transferred to the acquiror at their “fair value” on the acquisition date.

One of the difficulties in accounting for a bank merger is determining the fair value of the assets acquired as of the date of the transaction. Certainly cash is not hard, but this task can be difficult when acquiring securities or, more importantly, loans.

The fair value of loans is not necessarily what the target bank paid to acquire the loan or the face value or ledger balance of the amount outstanding. Instead, the loan’s fair value is determined by an accountant following the transaction, and is dependent on a number of factors, including, but not limited to:

- Interest rate of the loan;
- Term of the loan;
- Loan type;
- Collateral;
- Borrower credit ratings;
- Adjusted vs. fixed rate; and
- Premium/discount on interest rate variances.
The rules for purchase accounting allow some homogeneous loan pools to be valued on an aggregate basis. However, ASC 805 requires the more complicated commercial loans to be individually valued. This will certainly drive up acquisition costs because it will require more professional labor.

After the initial valuation of the loans, the bank is required to record, adjust and track the “difference” between the face value and fair value of each loan or loan pool. These periodic adjustments result in income or expense based on the initial valuation, and whether the loans were valued at less or more than the outstanding balance at the time of the acquisition.

Generally, a bank’s liabilities are easier to value. The fair value of a deposit liability is generally thought to be the amount owed on the account. There may be some variation for other liabilities, but for the most part, the liabilities are what they are as presented on the balance sheet.

Once an acquiror has determined the fair value for a target’s assets and liabilities, it can determine the equity and whether any goodwill will be recognized. The equity in a bank transaction is the net difference between the fair value of the assets and the fair value of the liabilities. For example, where the fair value of the target’s assets is determined to be $88 million and the fair value of the liabilities is determined to be $80 million, the equity would be $8 million, the difference between the two.

Once the amount of equity has been identified, the next step is valuing the purchase consideration. According to ASC 805, there are two separate components to total consideration. These include (1) the fair value of the consideration offered on the date of purchase (cash, acquiror stock or something else) plus (2) the fair value of any non-controlling interest the acquiror may hold in the acquiree (for example, if a bank holding company owned 25% of a bank and bought the other 75%, the fair value of the 25% ownership would be included in the purchase price). ASC 805 requires that the consideration be valued as of the acquisition date.

The requirement that the consideration be valued as of the acquisition date is a departure from the old accounting rules. Formerly, acquirors could choose a “convenience date” somewhere close to the date of acquisition or could use an average of some time period close to the acquisition to value the consideration. This was especially helpful when stock was used as consideration. ASC 805 did away with such “convenience accounting” and now requires that the stock consideration (or other consideration) be valued as of the date of closing.

After establishing the target’s equity and the value of the consideration, the final step in the acquisition accounting method is to determine whether the transaction results in negative goodwill or goodwill. A transaction results in negative goodwill if the purchase consideration is less than the equity. The negative goodwill is equal to the difference between the two. For example, an acquiror would recognize $500,000 in negative goodwill if they completed a purchase of a target with $9 million in equity for $8.5 million. ASC 805 requires the negative goodwill to be recognized as income immediately.
As a practical note, if a bank determines that a transaction will result in negative goodwill, ASC 805 requires that the bank go back and reestablish fair values for the assets and liabilities before the negative goodwill is recognized as income. This requirement serves as a “double check” to make sure the assets and liabilities have been valued properly.

Most transactions will typically not result in negative goodwill. Instead, it is more likely that the purchase price will exceed the target’s equity. In this situation, the excess of the purchase price over the equity (which is referred to as the “purchase premium”) will be split between two intangibles: a core deposit intangible and goodwill.

The core deposit intangible represents the amount a bank may be willing to pay for the opportunity to acquire core deposits. This asset is amortized over the useful life of the asset for book purposes (generally seven to 10 years), and is amortized over a 15-year period for tax purposes.

The amount of goodwill an acquiror must recognize is equal to the purchase price premium minus the amount allocated to the core deposit intangible. Goodwill is not amortized, but is rather tested periodically for impairment.

It is impossible to determine exactly what amount of a purchase premium is attributed to the core deposit intangible and what amount will be attributed to goodwill using some mathematical formula. Instead, the accounting firm handling the transaction will perform a core deposit intangible study to determine the value of the intangible. These values are generally based on the cost to acquire the deposits, as well as the income that may be attributable to them.
Buying or selling a branch of a bank may initially appear to be a relatively simple and straightforward task. However, because of the unique circumstances presented from selling or buying only a single unit of a bank, the process can contain as many, or more, stumbling blocks as would an acquisition of the entire bank. Yet, the acquisition or sale of a single branch or a limited number of branches rather than merging or acquiring an entire bank can prove to be a very profitable venture for your bank. Community banks, especially, may find that the acquisition of a branch of another bank is the best strategic alternative for expanding its geographic reach without engaging in a merger with some other entity and without the consideration of interstate banking or branching. Likewise, larger banks and regional banks often find it helpful to spin off less profitable branches or branches from a recent acquisition in order to streamline operations and concentrate the bank’s focus on more limited areas.

Whatever the circumstances, the initial step in any decision to purchase or sale a branch bank is an analysis of all the relevant factors which help determine whether the branch acquisition or sale will be profitable. Moreover, as part of the decision making process, significant consideration should also be given to the premium (if any) to be paid, the regulatory application and approval process, accounting considerations and operational issues. Each of these issues is discussed further in the material that follows.

A. ANALYSIS

The analysis for buying or selling a branch generally focuses on financial issues, strategic issues and managerial or operational issues.

1. **Financial Issues.**

   From a financial standpoint, a potential buyer should, obviously, seek transactions which provide advantages for earnings per share appreciation, increases in the bank’s price/earnings ratio and which provide appropriate utilization of excess capital. Likewise, potential sellers, by analyzing these factors, can quickly ascertain those candidates which are likely to provide the seller with the best offer.

2. **Strategic Issues.**

   Strategic issues are also a key in analyzing any potential purchase or sale of a branch. The decision to purchase a branch may provide advantages for new market entrance and growth potential, economies of scale, elimination of competition and enhanced image and reputation.

   a. **New Market Entrance/Growth Potential.** New market entrance is often the key factor motivating a decision to acquire a branch. Such an acquisition allows your bank to extend its market reach into new areas without engaging in a costly construction and chartering process for a new bank and facility.
Often, banks will look for branch acquisition candidates in markets from which the bank is already drawing some limited loan or other type of business. In this manner, your bank can be seen as trying to improve customer relations by bringing the bank to the customer rather than asking the customer to come to the bank. Thus, your bank is able to become an active competitor in an area where, perhaps, the bank has had only limited access in the past. Most targeted branches are those in which management of the acquiring bank anticipates growth potential to be significant. As an initial branch acquisition strategy, your bank might want to consider the acquisition of branch banks in communities where members of management or directors have their residence. This often provides the bank with an instant marketing tool by having someone with an established reputation in the community who can bring immediate credibility, name recognition and business to the branch and its lead bank.

b. **Economies of Scale.** Economies of scale may be another key advantage that a potential acquiror should analyze in making a branch acquisition. The ability to minimize per unit operating costs and other overhead items while increasing profitability could be of significance with large branch acquisitions or multiple branch acquisitions. This factor may not play as prominent a role, though, with small branch acquisitions.

c. **Elimination of Competition.** One of the most common reasons for branch acquisitions is the simple elimination of competition. Assuming a transaction does not run afoul of regulatory anti-trust concerns, the elimination of competition may be one of the best ways for the bank to increase its profitability.

d. **Enhanced Image and Reputation.** The one intangible advantage that may be gained through branch acquisition and which should be considered in the initial analysis, is the potential for enhanced image and reputation. The acquisition of a branch gives the acquiring bank an image of stability, success and profitability. Unlike merger transactions in which it often may appear that each party is losing something or, at best, that each party benefits equally, a branch purchase by your bank only improves your bank’s image as growing, successful and profitable.

From a seller's standpoint, each of these areas can, conversely, be reasons for disposing of a branch. For example, selling a potentially unsuccessful branch or a branch that is constantly a drain on earnings may free up additional capital and sources of funds in order to allow the bank to make entrance into other new markets. Likewise, a selling bank may have a need to acquiesce as a competitor in one geographic area through the sale of its branch in order to more effectively compete in other areas in an attempt to limit competition there. The sale of a branch may also help a bank enhance its image and reputation, if handled appropriately, especially if the branch had become a drain on the bank’s earnings. The elimination of unprofitable ventures is always a sign that management is in the business of maximizing shareholder value.
3. Managerial and Operational Issues.

Managerial and operational issues should not be overlooked in analyzing a decision to buy or sell a branch. In making an acquisition, one of the things you may or may not be buying is personnel. It is often beneficial for an acquiring bank to retain one or more employees of a branch in order to provide continuity in the office and the community by having someone who is knowledgeable of the market area and who will provide customers with a recognizable face. Maintaining such personnel often helps an acquiring bank maintain many of the elements which made the branch an attractive candidate in the first place, e.g. strong loan demand, established deposit base, healthy fee income. However, an acquiring bank should also be aware that the selling institution may be unwilling to sacrifice key personnel in an acquisition or the employees may be unwilling to change their employer. Accordingly, an acquiring bank should anticipate at least a small runoff in the loan demand and deposit base as a result of an acquisition.

Each of these areas of analysis should help banks frame the issues of concern in choosing acquisition targets or potential buyers, formulating an acquisition or sale strategy and in proceeding to the next step of reaching an offer or sale price.

B. PREMIUM (PURCHASE PRICE)

The acquisition or sale of a branch, unlike a merger, is structured as a purchase of assets and assumption of liabilities or “P&A” transaction. A purchase and assumption transaction implies that the transaction will be accomplished through a purchase of the branch’s assets (primarily loans and other earning and non-earning assets, including fixed assets) and, in turn, an assumption of the branch’s liabilities (primarily deposit accounts). The amount which an acquiring bank pays over and above the differential of the assets purchased as offset by the liabilities assumed is known as the premium. The premium to be paid is a negotiated amount which is often subject to adjustment based on the purchaser’s due diligence review of the branch.

In conducting a due diligence review, the most obvious, but primary, questions to ask are: What assets do I want to purchase? What liabilities do I want to assume? Which employees do I want to retain? Are there any regulatory concerns specific to this branch?

1. Assets Purchased.

Because the purchase price may be adjusted by the number and volume of loans purchased and/or the number and volume of problem loans retained by the selling bank, an acquiring institution should carefully scrutinize the branch’s assets. In a purchase and assumption transaction, it is not mandatory that all assets be purchased or that all liabilities be assumed. Commonly, though, all deposit liabilities are assumed and all non-problem loan and earning assets are purchased. Thus, a purchase and assumption transaction should be structured with specific provisions relating to the quality of assets which requires the selling institution to buy back loans which, within a designated time frame, are considered to be problem loans
and/or uncollectible loans. Any due diligence review of assets, therefore, should also include a review of the selling bank’s past due list, watch list and nonaccrual list. If the acquiring bank “puts back” any problem loans or if the seller agrees to retain certain loans or other assets, an appropriate adjustment will be made to the purchase price.

Additionally, an acquiring and selling bank must decide which fixed assets will remain with the branch in order to reach an appropriate purchase price. A branch acquisition may (but need not) include the acquisition of the actual building, real estate, equipment and furniture of the branch.

2. Liabilities Assumed.

As stated above, in most circumstances, all deposit liabilities are assumed along with other specifically enumerated liabilities, and accordingly, there is limited due diligence review relating to this area. However, lease contracts, service contracts and other similar obligations should be reviewed in light of the premium to be paid. Also, the failure to assume all deposit liabilities in a transaction will often prompt heightened regulatory scrutiny.

3. Regulatory Concerns.

Regulatory concerns should be the other primary focus of a due diligence review and in consideration of an offering or selling price. A purchaser should specifically review the selling bank’s CRA Statement as it relates to the branch and the seller’s CRA file. As a purchaser, if you detect CRA problems, this should affect the proposed purchase price for the branch. On the other hand, if the selling bank has an excellent CRA record and, especially if the branch is in a low to moderate income neighborhood or has a high degree of CRA loans, the purchase and assumption transaction will face further regulatory scrutiny to insure that the acquiring bank can continue to meet the needs of the community. Accordingly, the purchase price may need to be adjusted to account for the purchaser’s increased liability and regulatory burden.

C. REGULATORY APPROVALS AND APPLICATIONS

Depending on the nature of the purchaser and seller in a branch acquisition, the transaction could be subject to regulatory scrutiny by one or more of the Federal Reserve, the FDIC, the OCC and state banking departments. The table below sets forth the regulatory agencies which would typically be involved in a branch purchase and assumption transaction, depending on the nature of the parties involved.

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<td>Thrift</td>
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As you can see from the table above, completing the regulatory process appears, at first blush, to be a daunting task. However, the most prominent agency in the regulatory process will be the acquiring bank’s primary regulator. In most instances, the other regulators will simply request a copy of the primary regulator’s application form and will give the application a cursory review. In these circumstances, the secondary regulators will generally defer to the review of the acquiring bank’s primary regulator, unless some extraordinary reason not to approve the transaction is discovered.

Submitting copies of the applications to the secondary regulators simply notifies them of the transaction. For example, if a state non-member bank is acquiring a national bank branch, the FDIC and the acquiring bank’s state banking department are its primary regulators. The OCC, as the primary regulator of the selling institution, may request a copy of the State and FDIC applications, but because the OCC has no actual authority to approve or deny the application, the OCC will defer to the judgment of the State and FDIC. The OCC simply needs to be notified that a national bank branch will no longer be in existence. Likewise, if a national bank is acquiring a branch of another national bank, although the OCC is the primary regulator of both entities, the state banking departments...
will often request a copy of the OCC application in order that they may keep track of the number of bank branches in their state, even though they have no actual review authority over the transaction.

The Federal Reserve becomes an active participant in the regulatory process whenever the purchasing bank is a member of the Federal Reserve System. Although the Federal Reserve will, again, simply request a copy of the application of the acquiring bank’s primary regulator, the Federal Reserve will perform an independent review of the application and provide its own comments on the transaction.

The total time to obtain regulatory approval, regardless of the regulatory agencies involved, is generally between 60 and 120 days. During this review period, two primary concerns of the regulators will be the financial impact of the transaction on the acquiring bank and any anti-competitive anticipated effects that may result.

1. **Financial Impact.**

   One of the primary regulatory concerns for a branch acquisition relates to the financial impact on the acquiring bank as a result of the transaction. The regulatory agencies will closely scrutinize the ability of the acquiring bank to appropriately fund the acquisition and maintain its capital adequacy. Each regulatory agency will require the entities involved in a purchase and assumption transaction to provide specific data regarding the pro forma financial results of purchasing the branch assets and assuming the branch liabilities. The regulatory process will also require the purchasing entity to provide projections as to any anticipated increase in income and operating expenses resulting from the branch acquisition.

2. **Anti-Competitive Effect.**

   Secondly, and perhaps equally as important, the regulatory agencies will scrutinize the transaction to determine whether there will be any resulting anti-competitive effects. As a result, the regulatory applications will often require the purchasing institution to provide an analysis of the deposit base in the market area of the branch to be acquired, detailed statistical information regarding local economic activity and information regarding the proposed lending activities, interest rates and fee charges the acquiring bank intends to implement. The focus of this element of the regulatory review process is to determine whether the acquisition will tend to lessen competition in the area to such a degree that the acquiring institution would have too much of a concentration of the market deposits, assets and the like.

   In order to accurately assess the anti-competitive effects of such a branch transaction, the applicant will be required to complete a Herfindahl-Hirschman Index (HHI). The HHI worksheet provides the regulators with a thumbnail sketch of the total market share of deposits of the acquiring institution as a result of the transaction. If the bank, as a result of the acquisition of the branch, will have a market share of deposits in the relevant market area in excess of 20 percent, the acquiring institution must then follow other technical steps in the Herfindahl-Hirschman worksheet to determine whether the acquisition will result in a concentration of deposits such that anti-competitive effects would be presumed to
occur. If the market share is less than 20 percent, the acquiring institution will automatically “pass” the test and, subject to other regulatory scrutiny, can proceed with the acquisition. Accordingly, the more rural the area for the proposed acquisition and the fewer number of banks there are, the more likely it is that an acquisition will cause anti-competitive effects by allowing one institution to have a dominant share of market deposits. The efforts by the regulators are an attempt to allow relevant market areas to remain unconcentrated in terms of deposits and the number of banks.

D. OPERATIONAL ISSUES

Some of the key operational issues that are confronted in buying or selling a branch have been previously discussed in these materials. Other issues include the sensitive issues of trying to determine which employees of the branch will be retained and how to adjust their compensation and any retirement benefits into the purchasing bank’s system. Likewise, the due diligence review may turn up difficulties in adapting the branch’s loan files, operating systems and other functions into the purchasing institution’s systems. Oftentimes, the conversion process can be one of the more difficult aspects of the transaction.

Another key operational issue which is often overlooked is the relationship among the purchaser and seller following the transaction. Of primary concern will be the ability of the seller to reestablish a branch or similar facility in the area in which the branch has been sold. In order to alleviate concerns in this area, it is most beneficial to have the parties execute a non-compete agreement.

Generally, such an agreement would prohibit the selling institution from opening a branch office, loan production office or any other banking facility within a designated geographic area for a specified period of time. The legality and enforceability of such non-compete agreements will depend upon the reasonableness of the geographic scope and time limitations in the agreement.
VI. MERGER TRANSACTIONS INVOLVING MUTUAL INSTITUTIONS

A number of financial institutions in the United States are structured as mutual financial institutions. Mutuals operate substantially similar to their stock counterparts, with one major exception: Mutual institutions do not have stockholders. Instead, mutuals have “members” that have a membership interest in the mutual bank or mutual holding company that owns the bank.

A mutual’s members are generally the bank’s depositors and borrowers. These members act much like stockholders by voting to elect directors, approve mergers, amend the Charter or take other similar actions. The number of votes given to each member is typically based on the amount of each member’s deposits and borrowings.

Mutual institutions, like stock banks, can either be stand-alone institutions or can be in a holding company structure. Mutual institutions owned by a holding company are not technically mutual institutions at the bank level. Instead, mutuals in a holding company structure are stock institutions at the bank level that are owned by a mutual holding company. Organizations using this corporate structure can be in either a two-tier or three-tier holding company structure, as is more fully described below.

The members of a mutual holding company are the bank’s depositors and borrowers. This results in the bank’s depositors and borrowers being members of a mutual company that owns a bank and allows the bank to maintain its mutuality while also taking advantage of the benefits offered by a holding company structure.

Like stock banks, mutuals are either federally chartered or state chartered. Federally chartered mutual institutions and mutual holding companies are currently regulated by the Office of Thrift Supervision. According to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, on July 21, 2011 the Office of Thrift Supervision was merged with and into the Office of the Comptroller of the Currency. After that date, federally chartered mutual banks are regulated by the OCC and federally chartered mutual holding companies are regulated by the Federal Reserve.

State chartered mutual institutions are regulated by the FDIC and the state regulatory authority for the state in which they are chartered. Mutual holding companies for state chartered mutuals were formerly regulated either by the OTS or the Federal Reserve. After July 21, 2011 all mutual holding companies were regulated by the Federal Reserve.

The purchase or sale of a mutual institution is much like the purchase or sale of a stock institution, with the exception that the mutual has no stockholders who have ownership of the company.
A. Merger of Two Mutuals

The merger of two mutual institutions is substantially similar to the merger of two stock banks. In a merger of two mutuals, the Acquisition Accounting rules require one of the institutions to be the “acquiror” and the other institution the “seller”. In these types of transactions, the acquiror acquires the target and gives the target’s members membership interests in the acquiror’s institution (either the bank or holding company). This results in the target institution’s members becoming members of either the bank as a combined entity or members of a holding company that owns the combined bank.

The merger of two mutuals does not involve stock or cash consideration because the acquiring mutual does not have stock to offer and the target institution does not have shareholders that receive stock or cash in connection with the sale.

In a merger of two mutuals, the “purchase price” for the Acquisition Accounting rules is determined by the target mutual’s appraised value. This is different than accounting for the purchase of two stock banks, where the purchase price is determined by the economic value of the consideration given to the seller. The purchase price for a mutual is determined by an outside stock valuation expert, and is typically based on recent comparable sales transactions in the banking industry. The valuation expert can also use other valuation techniques, such as discounting future cash flows, valuing the net assets of the organization and other appropriate valuation techniques for banking institutions.

When considering the merger of two mutuals, there are a number of negotiation considerations other than price. The “social issues,” which are similar to those for a merger between stock institutions, form the basis for the deal and often include:

- The combined entity’s executive officers;
- The combined entity’s board of directors;
- The name of the combined entity;
- The treatment of employees and employee benefits; and
- Commitment to retain locations.

In addition, like the merger of stock banks, there are a number of “technical requirements” for the merger of mutuals. These technical requirements include:

- Approval of each institution’s Board of Directors;
- Approval of each institution’s mutual members;
- OCC, State or Federal Reserve regulatory approval;
• FDIC approval (if subsidiary banks are merged);
• Public notice requirements; and
• Regulatory issues:
  o Community Reinvestment Act;
  o Protection of depositors;
  o Convenience and needs of community; and
  o Competitive factors – antitrust and market concentration issues.

B. PURCHASE OF STOCK BANK BY A MUTUAL INSTITUTION

It is possible for a mutual institution to purchase a stock financial institution. In this type of deal, the mutual typically purchases the target institution for cash. This allows the target’s shareholders to receive cash for their stock, which represents ownership of the company. To complete this type of transaction, the mutual institution would either need to be in a mutual holding company structure (so the holding company could own the stock of the target) or the stock bank target would need to be merged into the mutual, which would cancel the target’s stock.

Mutual institutions that are in a mutual holding company structure can choose either a two-tier or three-tier mutual holding company structure. The organizational chart for a two-tier mutual holding company structure is:
The advantage of a mutual holding company structure is that the stock of the bank or the mid-tier holding company (which is a stock corporation) is not required to be 100% owned by the mutual holding company. Instead, the Federal Regulations allow a holding company in this structure to engage in a “step and a half” transaction, and issue up to 49.99% of the bank or mid-tier holding company’s stock to the public. This type of offering, known as minority stock issuance, allows a mutual holding company to maintain control of the former mutual bank, while also raising the bank’s capital by selling the bank or mid-tier stock to outside investors and investing the proceeds from the sale into the bank.

A mutual holding company could offer the bank or mid-tier holding company’s stock as consideration for the purchase of a stock institution. This would allow the mutual acquiror to own 100% of the stock of the target, which could be held as a separate institution or merged with the acquiring bank. The former stockholders of the target would then be stockholders of the bank or mid-tier holding company. As noted, the only requirement is that the bank or mid-tier holding company always own more than 50% of the stock of the bank or the mutual holding company, unless the organization chose to engage in a “second step” transaction and convert to a 100% stock company.
In a merger between a stock and a mutual institution where the mutual survives the transaction, the stock institution is typically merged with and into the mutual bank. This, in effect, cancels the stock of the stock institution and allows the mutual institution to continue its existence as a combination of the two entities. However, it is not absolutely necessary that a stock bank be merged with and into a mutual institution. It is possible the mutual could reorganize into a mutual holding company structure, if it is not so already, and maintain the stock institution as a separately chartered subsidiary. This would allow the mutual holding company to own 100% of both separately chartered banks, which would make the holding company a two-bank mutual holding company.

Finally, although rare, it is possible a mutual institution could purchase a stock bank without using cash or stock as consideration. In this type of transaction, the target bank’s stockholders would exchange their common stock for membership interests in the mutual holding company. This would certainly be an unusual situation because the target institution’s shareholders paid cash or gave other valuable consideration for their stock, and the receipt of a membership interest in a mutual holding company does not provide a tangible economic benefit. In essence, the selling stockholders would be literally “giving away the farm” if they were to accept non-economic consideration for stock they purchased with cash. This type of transaction would likely occur only if the target institution was in very bad shape and had no appreciable market value.

C. Purchase of Mutual Institution by Stock Company

It is possible for a mutual institution to sell itself to a stock company. When a mutual bank not owned by a holding company is involved, these types of transactions are structured as a purchase of assets and assumption of liabilities transaction, since there technically are no shares of stock that can be sold that represent ownership of the mutual. However, if the bank were owned by a mutual holding company, the holding company, which owns at least 50% of the stock of the former mutual bank and the other outside shareholders, if applicable, could sell the stock to an acquiror.

A mutual institution’s Charter typically allows the mutual’s members the right to their share of the pro rata assets of the mutual company in a solvent liquidation. This grants the members the right to participate in the distribution of cash following a purchase of assets and assumption of liabilities transaction. This allows the selling mutual to distribute the sales price to the mutual’s members on a pro rata basis, and treat its members much the same as shareholders, because it allows the members to receive cash for their “ownership interest” in the selling institution.

Instead of mutual institutions “selling” to stock institutions, the more common situation is for a mutual institution to complete a second step conversion and convert to a stock institution before selling itself. Under this scenario, the mutual institution converts to a full stock institution and sells shares of its common stock to its members and the public at large. Those that participated in the offering would become shareholders of the stock company, who could then choose to sell the company for either cash or stock.
The OTS had a number of regulations that restricted the ability to sell a mutual institution after a mutual to stock conversion for at least three years. OCC Regulations Section 192.525 continues this restriction by providing as follows:

For three years after you convert, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of your equity securities without the appropriate Federal banking agency's prior written approval. If a person violates this prohibition, you may not permit the person to vote shares in excess of ten percent, and may not count the shares in excess of ten percent in any shareholder vote.

D. ACCOUNTING ISSUES

As noted above, the merger of two mutual institutions or a mutual and a stock institution is subject to ASC 805, Business Combinations, and the Acquisition Accounting rules. As is discussed elsewhere in these materials, these rules require one of the parties to be designated as the acquiror and one of the parties to be designated as the seller. The rules also require each of the target’s assets and liabilities to be transferred at their “fair value” on the date of the acquisition. The fact that either one or two mutual institutions are involved in the acquisition does not change the accounting treatment for the transaction, except, as noted above, the purchase price for the merger of two mutual institutions is based on the target’s appraised value instead of the economic value of the consideration.
VII. BUYING A TROUBLED INSTITUTIONS OR FAILED BANK FROM THE FDIC

A. INTRODUCTION

Buying a troubled institution in the open market or buying failed bank from the FDIC is a unique opportunity that presents a unique set of challenges. Although these type of transactions are not near as common as they were at the height of the Great Recession, the opportunities that remain require careful consideration and planning long before the actual acquisition takes place. That being said, when done properly, the purchase of a troubled or failed bank may prove to be a sound and profitable long-term investment. The key to winding up on the right side of the fence is, not surprisingly, all in the details.

B. PLANNING FOR A TROUBLED BANK PURCHASE

As noted above, acquiring a troubled institution presents a unique set of challenges. To overcome these challenges, a bank must properly plan for the acquisition.


The first decision to be made regarding the acquisition of a troubled institution is whether the acquisition fits within the bank’s long-term strategic plan. Some banks’ strategic plans are conducive to acquisitions while, for others, an acquisition of a troubled bank does not make sense no matter what the situation or how “cheap” it may seem initially. A Board of Directors should decide whether a troubled bank acquisition fits within the bank’s long term strategic plan long before an opportunity to make a troubled bank acquisition presents itself. Making this decision early allows the board to fully understand, debate and plan for the issues associated with a troubled bank acquisition. More importantly, it allows a board the benefit of being free from the pressure of time constraints under which troubled institutions normally operate.

In addition to determining whether a troubled bank acquisition fits within the bank’s long-term strategic plan, a board should consider whether its “appetite for risk” is conducive to a successful troubled bank acquisition. Some boards, no matter what the terms of the deal or condition of the target, simply do not have the appetite for risk necessary to complete a troubled bank acquisition. The board should determine whether it has the ability to withstand the ups and downs and the uncertainty of a troubled bank acquisition.

2. Identify The Ideal Target Institution.

If a Board of Directors has decided acquiring a troubled financial institution fits within the bank’s long-term strategic plan, the board should next identify the bank’s “ideal” target. Identifying an ideal target does not mean pinpointing a specific institution and waiting for it to become a troubled acquisition candidate. Instead, identifying the ideal
target institution requires a board to identify the general attributes of the ideal troubled institution.

A board should compile a list of the troubled bank’s characteristics that will give the highest probability of a successful and profitable troubled bank acquisition. The geographic location and size of an ideal target, the severity of the target’s problems and other important characteristics should all be considered.

It is unlikely a troubled bank acquisition opportunity will meet exactly each one of the ideal characteristics. However, identifying the ideal characteristics before an opportunity presents itself will allow a board to quickly gauge whether an opportunity is worthy of further consideration.

3. **Use Outside Assistance to Determine the Structure of the Acquisition.**

During the height of the Great Recession, troubled bank transactions came in all shapes and sizes. Some troubled bank acquisitions were structured as whole bank purchases. Others were structured as a purchase of assets and assumption of liabilities. Some troubled bank acquisitions were not acquisitions at all, but were more properly characterized as equity injections. In today’s environment, most troubled bank deals are taking the form of a purchase of all assets and assumption of all liabilities of the troubled bank. Although much of the “creativity” with respect to structuring has dissipated, there may, depending on the particular circumstances, still be an array of options available to troubled bank purchasers. Thus, it is important for the acquiror and their consultants or attorneys to identify exactly what acquisition structure would yield the greatest likelihood of a successful troubled bank acquisition.

4. **Be Vigilant In the Performance of Due Diligence.**

Troubled institutions are troubled for a reason. The majority of today’s troubled institutions have earned their status as such because of poor or declining asset quality. However, this is not the sole reason for the increase in the number of troubled banks. A number of institutions have become troubled institutions because of securities losses, fraud or embezzlement, or some other reason. There are two critically important aspects of due diligence when acquiring a troubled institution. First, the acquiring institution must determine exactly what is being purchased and what led the troubled institution to its current condition. Second, the acquiring institution must determine how the acquisition of the troubled institution will return a profit.

In addition to determining what is being purchased and how it will yield a profit, a healthy institution should devote time in due diligence to pricing issues. A troubled institution, no matter how troubled it may be, could be a great deal if it is priced correctly. On the other hand, a slightly troubled institution can turn out to be a bad deal if the price is not right. A buyer should spend time during due diligence to determine a purchase price that adequately reflects risk and expected returns.

**C. EXECUTING A TROUBLED BANK PURCHASE**
Planning for the acquisition of a troubled institution in a non-FDIC-assisted transaction, or the acquisition of a failed bank in a FDIC-assisted transaction, although important, is only half the battle. The other half of the battle, successfully executing the acquisition, is of equal importance.

The process for executing a successful troubled bank acquisition is not a “one size fits all” process. These acquisitions are often “opportunities” that present themselves without much warning. As such, the process for completing these deals is often dictated by the opportunity itself. In other words, there is no specific method to follow when pursuing a troubled bank acquisition. These acquisition opportunities often present themselves quickly and without management or a member of the board of directors of the acquiror actively seeking them. The opportunity to acquire a troubled bank is often the product of personal relationships, marketing by the troubled institutions, or, in some instances, being in the right place at the right time.

D. EXECUTING A FAILED BANK PURCHASE

1. Acquiring a Failed Bank from the FDIC.

Acquiring a failed institution from the FDIC occurs after following a specific acquisition process. Acquiring a troubled institution in the open market is often a difficult task requiring regulatory input, but the transaction is not structured through the FDIC or any other regulator. For the opportunity to acquire a failed bank in a FDIC-assisted transaction, however, a bank must follow a specific process or it will not have the opportunity to be a failed bank acquiror.

Any institution hoping to acquire a failed bank must first register itself as a failed bank acquiror with the FDIC. This registration is done through the FDICconnect portion of the FDIC website. As part of the registration process, the hopeful acquiror will submit certain characteristics of the failed bank they would be interested in purchasing. For example, the registering bank will select the state and asset size of the failed bank they would be interested in acquiring.

2. The FDIC’s Sale of a Failed Bank.

The sale of a failed institution by the FDIC occurs through a rigorous “underground marketing” of the failed bank. The FDIC must balance the competing interests of protecting the identity of the failed bank against marketing the bank to a sufficient number of potential acquirors so the loss to the Deposit Insurance Fund is minimized through the receipt of the best possible sales price.

The sale of a failed bank occurs through several specific steps, each of which is briefly described below.

- Once it has been determined there is a significant probability a bank may fail, the FDIC generates a list of potential acquirors by matching the characteristics of the failed bank to the specified characteristics of those institutions registered under FDICconnect as potential failed bank acquirors.
− After aggregating a potential acquiror list, the FDIC sends out an email to the contact person for each potential acquiror generally describing the characteristics of the failing institution. At this point, the FDIC does not reveal any specific characteristics that would allow the failing institution to be identified.

− The potential acquiror is then required to make a decision as to whether they would like to execute a confidentiality agreement and learn the name and important aspects of the failing bank. If the decision is made to pursue the acquisition, the hopeful acquiror must electronically execute a confidentiality agreement relating to the acquisition.

− After receiving the executed electronic confidentiality agreement, the FDIC sends the hopeful acquiror an email with a link to a secure website that contains all of the important information about the failing institution. This website also contains the deadline for the submission of bids.

− The potential acquiror (preferably with the assistance of outside consultants or counsel) evaluates the potential transaction and determines whether to submit a bid on the failing institution. A potential acquiror is allowed to submit multiple bids for the same institution.

− On the date of the deadline, the FDIC reviews all submitted bids. If one of the submitted bids is the least costly alternative to the Federal Deposit Insurance Fund, then the FDIC will chooses that acquirer for the failed institution. If based on the bids, however, it is cheaper to simply pay off the depositors of the failed bank, then the FDIC will reject each of these bids and pay the depositors directly instead of selling the failed institution.

3. Valuing the Transaction.

In preparing a bid for a troubled or failed bank, a potential acquiror must pay special attention when pricing the transaction. When determining a bid price, an acquiror should make sure to price the transaction to properly account for risk and provide an acceptable return on investment. The failure to properly account for either of these two pricing aspects in pricing the transaction jeopardizes the transaction’s chances of success.

The key to properly pricing a troubled or failed bank acquisition for risk is due diligence. A potential acquiror should “scrub” the troubled or failed bank’s assets to reveal as many potential problems as possible. Once identified, these potential problems should be aggregated to find a total estimated loss remaining in the assets to be acquired. The transaction should then be priced based on the estimated losses by reducing the seller’s assets and capital by that amount.

The second component to pricing a troubled or failed bank acquisition requires the potential acquiror to set a price that will provide an acceptable return on investment. Generally, a troubled bank acquiror should look to recover their initial investment in 24 to 36 months. Recovering the investment price over a shorter period probably equates
to an unrealistically low purchase price. On the other hand, recovering the investment over a longer period provides too much time for other problems and is likely the product of over paying for the troubled or failed institution.

Projecting the repayment period for a given purchase price is a simple task. All that is required is the construction of a pro forma income statement for the acquired institution. The potential acquiror should look at the troubled or failed bank’s income statement and make certain assumptions as to how it would change following the acquisition. For example, a potential acquiror may determine it can reduce the troubled bank’s non-interest expense by 30% following an acquisition. Once each of the proper assumptions has been made, the acquiror should project the troubled or failed bank’s income statement over a 5 to 10 year period. These projections will allow the potential acquiror to determine whether the acquisition provides an acceptable return on investment. If it does, the acquisition should be pursued. If it does not, the acquisition should be abandoned.

4. Resource Allocation Following the Acquisition.

Troubled bank acquirors will devote a substantial portion of their time and resources to “fixing” their recent acquisition. While this is expected in a troubled bank acquisition, over allocating financial or managerial resources to the recently purchased institution can lead to a new set of problems. An acquiror with too much focus on a recent acquisition can neglect their original, healthy institution and jeopardize its safety and soundness.

Troubled bank acquirors should be vigilant in their oversight of both the original and the acquired institution. Particular attention should be paid to striking the right balance of resources allocated to both. A healthy institution can quickly turn into a troubled institution if too much time and resources are spent fixing the troubled institution and not enough time and resources are spent maintaining the healthy institution.

5. FDIC Loss Sharing Arrangements.

In 2009, the FDIC began using a tool it has at its disposal to sell failed banks that it has not used with frequency since the savings and loan crisis of the late 1980s: Loss Sharing Arrangements. Loss Sharing Arrangements allow the FDIC to entice potential acquirors to purchase a failed institution from the FDIC by allowing the FDIC to carry the burden for a certain portion of potential losses.

The FDIC has specific rules it must follow when using Loss Sharing Arrangements. These rules require the FDIC to establish that the sale plus assistance is the least costly to the Federal Deposit Insurance Fund of all possible methods for resolving the failing institution. The FDIC may deviate from the least costly requirement only to avoid “serious adverse affects on the economic conditions or financial stability” or “systemic risk” to the banking system, and it still must comply with the least costly alternative requirement. Also, the FDIC or other appropriate federal banking agency must determine the institution’s management is competent, has complied with all applicable laws, rules and supervisory directives and orders, and has never engaged in any insider dealings, speculative practices, or other abusive activity.
Although Loss Sharing Arrangements have not been used with much frequency over the past 20 years, they were part of every FDIC-assisted failed bank deal at the beginning of the Great Recession. Toward the end of the crisis, the FDIC once again ceased using Loss Sharing Arrangements. However, they are clearly a tool the FDIC may use in disposing of failed banks.

6. Special Rules for Private Equity.

In 2009, the FDIC released new rules regarding the acquisition of failed banks by private equity groups. These rules require a failed bank purchased by a private equity group to maintain a 10% Tier 1 leverage ratio for at least three years following the acquisition, and to remain “well capitalized” thereafter. Failure to meet these heightened capital requirements will result in the institution being treated as “undercapitalized” for prompt corrective action purposes.

In addition to heightened capital requirements, the FDIC’s Policy Statement imposes on private equity groups a number of other restrictions, including:

− Requiring investors that own 80% or more of two or more banks or thrifts to pledge their stock in each institution to the FDIC to cover losses to the deposit insurance fund caused by the other;
− Prohibiting the investors from selling any portion of their shares in the institution or its holding company for three years without FDIC approval;
− Prohibiting all extensions of credit to investors, their investment funds and any affiliates; and
− Prohibiting any existing 10% shareholder of a bank or thrift from joining an investment group seeking to acquire the assets and/or liabilities of that institution upon its failure.
With the Great Recession behind us, those community banks that remain must continue to seek out new growth, new products and services, and new profitability. For some institutions, that requires seeking out acquisition targets or marketing the bank for sale. For others, that requires actively and intentionally operating to ensure long-term independence.

Regardless of your community bank’s acquisition strategy, it is imperative that your Board of Directors plan appropriately and focus its efforts on its fundamental obligation, which is to appropriately enhance the value for the shareholders. We hope this material helps!
Jeffrey C. Gerrish

Mr. Gerrish is Chairman of the Board of Gerrish Smith Tuck Consultants, LLC and Gerrish Smith Tuck, PC, Attorneys. The two firms have assisted over 2,000 community banks in all 50 states across the nation. Mr. Gerrish's consulting and legal practice places special emphasis on strategic planning for boards of directors and officers, community bank mergers and acquisitions, bank holding company formation and use, acquisition and ownership planning for boards of directors, regulatory matters, including problem banks, memoranda of understanding, cease and desist and consent orders, and compliance issues, defending directors in failed bank situations, capital raising and securities law concerns, ESOPs and other matters of importance to community banks. He formerly served as Regional Counsel for the Memphis Regional Office of the FDIC with responsibility for all legal matters, including all enforcement actions. Before coming to Memphis, Mr. Gerrish was with the FDIC Liquidation Division in Washington, D.C. where he had nationwide responsibility for litigation against directors of failed banks. He has been directly involved in fair lending, equal credit and fair housing matters, in raising capital for problem financial institutions and in numerous bank merger transactions.

Mr. Gerrish is an accomplished author, lecturer and participates in various banking-related seminars. In addition to numerous articles, Mr. Gerrish is also the author of the books Commandments for Community Bank Directors and Gerrish’s Glossary for Bank Directors. He is a Contributing Editor for Banking Exchange and produces an every two week complimentary newsletter, Gerrish’s Musings. He also is or has been a member of the faculty of the Independent Community Bankers of America Community Bank Ownership and Bank Holding Company Workshop, The Southwestern Graduate School of Banking Foundation, the Wisconsin Graduate School of Banking, the Pacific Coast Banking School, the Colorado Graduate School of Banking and has taught at the FDIC School for Commissioned Examiners and School for Liquidators. He is a member of the Executive Committee and the Board of Regents of the Paul W. Barret, Jr. School of Banking. He is a Phi Beta Kappa graduate of the University of Maryland and received his law degree from George Washington University's National Law Center. He is a member of the Maryland, Tennessee and American Bar Associations, was selected as one of “The Best Lawyers in America” 2005 through 2015 and as the Banking Lawyer of the Year, Best Lawyers Memphis, 2009. Mr. Gerrish can be contacted at jgerrish@gerrish.com.
Mr. Smith is the President and a member of the Board of Directors of the Memphis-based law firm of Gerrish Smith Tuck, PC, and its affiliated bank consulting firm, Gerrish Smith Tuck Consultants, LLC. Mr. Smith’s legal and consulting practice places special emphasis on bank mergers and acquisitions, financial analysis, acquisition and ownership planning for boards of directors, strategic planning for boards of directors, regulatory matters, bank holding company formations and use, securities law concerns, new bank formations, S corporations, going private transactions, and other matters of importance to banks and financial institutions.

Mr. Smith is a frequent speaker to boards of directors and a presenter at numerous banking seminars. He received his undergraduate business degree and Masters of Business Administration degree from the Fogelman School of Business and Economics at The University of Memphis and his law degree from the Cecil C. Humphreys School of Law at The University of Memphis. He is authoring a monthly electronic newsletter, The Chairman’s Forum Newsletter, which discusses key topics impacting financial institutions and, specifically, the role of the Chairman. Mr. Smith is a Summa Cum Laude graduate of the Barret School of Banking where he has been a member of the faculty. He has also served as a member of the faculty of the Pacific Coast Banking School, the Colorado Graduate School of Banking, the Southwestern Graduate School of Banking and the Wisconsin Graduate School of Banking. Mr. Smith can be contacted at psmith@gerrish.com.
Mr. Tuck is a member of the Board of Directors of both the Memphis based law firm of Gerrish Smith Tuck, PC, Attorneys and Gerrish Smith Tuck, Consultants, LLC. These two firms have assisted numerous community banks in virtually every state across the nation. Mr. Tuck’s legal and consulting practice places special emphasis on community bank holding company formation and use, community bank mergers and acquisitions, regulatory matters, corporate reorganizations, corporate taxation, general corporate law and community bank strategic planning.

Mr. Tuck comes from a community banking family. He is a graduate of the University of Tennessee, where he majored in Accounting and Finance, and received his law degree from the University of Memphis Cecil C. Humphreys School of Law, where he was a Herff Scholar. Mr. Tuck is a graduate of the Paul W. Barret, Jr. School of Banking and currently serves as a faculty member at a number of banking schools across the country. He is a frequent presenter at national and state bank association conferences and has authored a number of articles of interest to financial institutions. Mr. Tuck is a member of the Tennessee Bar Association and an active participant in the Memphis Bar Association. Mr. Tuck can be contacted at gtuck@gerrish.com.
**Mergers & Acquisitions**
- Analysis of Business and Financial Issues
- Target Identification and Potential Buyer Evaluation
- Preparation and Negotiation of Definitive Agreements
- Preparation of Regulatory Applications
- Due Diligence Reviews
- Tax Analysis
- Securities Law Compliance
- Leveraged Buyouts
- Anti-Takeover Planning
- Financial Modeling and Analysis
- Transaction Pricing Analysis
- Fairness Opinions

**Bank and Thrift Holding Company Formations**
- Structure and Formation
- Ownership and Control Planning
- New Product and Service Advice
- Preparation of Regulatory Applications
- Consulting Advice on Best Uses and Practices

**New Bank and Thrift Organizations**
- Organizational and Regulatory Advice
- Business Plan Creation
- Preparation of Financial Statement Projections
- Preparations of the Interagency Charter and Federal Deposit Insurance Application
- Private Placements and Public Stock Offerings
- Development of Bank Policies

**Financial Modeling and Analysis**
- Mergers and Acquisitions Financial Modeling and Analysis
- Subchapter S Election Financial Modeling and Analysis
- Stock Repurchase Financial Modeling and Analysis
- Financial Statement Projections
- Business and Strategic Plans
- Ability to Pay Analysis
- Net Present Value and Internal Rate of Return Analysis
- Stock Valuation Analysis
- Fairness Opinions

**Bank Regulatory Guidance and Examination Preparation**
- Preparation of Regulatory Applications
- Examination Planning and Preparation
- Regulatory Compliance Matters
- Charter Conversions

**Problem Banks and Thrifts Issues**
- Examiner Dispute Resolution
- Negotiation of All Formal and Informal Enforcement Actions
- Defense of Directors/Officers in Failed Bank Litigation
- Failed Institution Acquisitions
- New Capital Raising and Capital Plans
- Appeals of Material Supervisory Determinations
- Expert Witness and Litigation Support Services

**Subchapter S Conversions and Elections**
- Financial and Tax Analysis and Advice
- Reorganization Analysis and Restructuring
- Cash-Out Mergers
- Stockholders Agreements
- Financial Modeling and Analysis

**Customized Facilitation of Director and Officer Retreats**
- Customized Director and Officer Retreats
- Long-Term Business Planning
- Assistance and Advice in Implementing Strategic Plans
- Business and Strategic Plan Preparation and Analysis
- Director Education

**Capital Planning and Raising**
- Private Placements and Public Offerings of Securities
- Bank Stock Loans and Document Review
- Financial Analysis, Capital Plans and Policies
- Going Public / Private Transactions

**Executive Compensation and Employee Benefit Plans**
- Employee Stock Ownership Plans
- 401(k) Plans
- Leveraged ESOP Transactions
- Incentive Compensation and Stock Option Plans
- Employment Agreements-Golden Parachutes
- Profit Sharing and Pension Plans
- Compensation Studies and Analysis

**General Corporate Matters**
- Corporate Governance Planning and Advice
- Recapitalization and Reorganization Analysis and Implementation
- Customized Board and Officer Training and Education Sessions
- Management Studies, Evaluations and Succession Planning
- Corporate Governance Studies
- Unique Family Bank Planning Issues

**Taxation**
- Tax Planning
- Tax Controversy Negotiation and Advice
- M&A Tax Advice and Planning

**Estate Planning for Community Bank Executives**
- Wills, Trusts, and Other Estate Planning Documents
- Estate Tax Savings Techniques
- Probate

**Other**
- Public Speaking Engagements for Banking Industry Groups (i.e., Conventions, Schools, Seminars, and Workshops)
- Publisher of Books and Newsletters Regarding Banking and Financial Services Issues
- Expert Witness and Litigation Support Services
Tab 6
Tab 3
Confidential Information Memorandum

Strong Bancshares, Inc.
Strong National Bank
Solid State, USA

April 2017

ADVISORS:
GERRISH SMITH TUCK
MEMPHIS, TENNESSEE
Strong Bancshares, Inc.
Confidential Information Memorandum

The Board of Directors of Strong Bancshares, Inc., Solid State, USA ("Strong Bancshares"), the 100% owner and one bank holding company for The Strong National Bank, Solid State, USA ("Strong Bank") has retained Gerrish Smith Tuck, Memphis, Tennessee and authorized the preparation of this Confidential Information Memorandum ("Memorandum") to assist in determining whether a financial institution or other investor would be interested in acquiring 100% of Strong Bancshares’s outstanding common stock.

This Memorandum is being provided to a select few financial organizations subject to a Confidentiality Agreement for the purpose of evaluating Strong Bancshares and Strong Bank.

This Memorandum contains selected information regarding the business and operations of Strong Bancshares and Strong Bank. Gerrish Smith Tuck prepared this Memorandum primarily from information supplied by Strong Bancshares and has not independently verified the accuracy of the information supplied. The Memorandum contains information that is non-public, confidential, and proprietary in nature, and may not be copied, reproduced, or distributed, nor may any of its contents be disclosed to any party other than the parties to whom it is submitted. The Memorandum is not all-inclusive and may not contain all information necessary to analyze Strong Bancshares or Strong Bank. Gerrish Smith Tuck, Strong Bancshares, and Strong Bank, and their respective officers, directors, agents, advisors, and other representatives, do not make any representation or warranty, express or implied, as to the accuracy or completeness of the Memorandum or any of its contents. However, Strong Bancshares, Strong Bank and Gerrish Smith Tuck have made a good faith effort to present all information contained in this Memorandum accurately and to the fullest extent possible.

This Memorandum is the property of Strong Bancshares, Strong Bank and Gerrish Smith Tuck. It has been prepared to assist your organization in analyzing an acquisition of Strong Bancshares or Strong Bank. If your organization elects not to proceed, please immediately return the Memorandum to Gerrish Smith Tuck or certify its destruction, and do not retain any photocopies or other records of information contained in the Memorandum. Strong Bancshares, Strong Bank and Gerrish Smith Tuck do not undertake any obligation to provide the recipient with access to any additional information.

Recipients of this material must not visit the offices of Strong Bancshares or Strong Bank, nor shall they contact any personnel of either organization under any circumstances without prior written authorization of Gerrish Smith Tuck.

The acceptance of this Memorandum does not constitute an agreement in principal nor a letter of intent with respect to the terms of any possible transaction between the recipient and Strong Bancshares and/or Strong Bank. Gerrish Smith Tuck, Strong Bancshares and Strong Bank reserve the right to request the return of this Memorandum at any time.
Gerrish Smith Tuck Consultants, LLC and Gerrish Smith Tuck, PC, Attorneys offer consulting, financial advisory and legal services to community banks nationwide in the following areas: strategic planning; mergers and acquisitions, both financial analysis and legal services; dealing with the regulators, particularly involving troubled banks, memoranda of understanding, consent orders and compliance; structuring and formation of bank holding companies; capital planning; employee stock ownership plans, leveraged ESOPs, KSOPs, and incentive compensation packages; directors and officers liability; new bank formations; S corporation formations; going-private transactions; and public and private securities offerings.
### Confidential Information Memorandum
April 2017

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<td>Bank and Holding Company Profile</td>
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Tab 1
Summary Information
Summary Information
Strong Bancshares, Inc.
The Strong National Bank
Solid State, USA

Strong Bancshares, Inc.

- Chartered in 1976 as a bank holding company
- 100% owner of The Strong National Bank in Solid State, USA
- As of December 31, 2016, Strong Bancshares, Inc. had consolidated shareholder equity of $55,593,074
- Taxed as a Subchapter S corporation

The Strong National Bank:

- Chartered in 1956 as a national bank
- Nine Office Locations in Solid State, USA and the surrounding area
- As of December 31, 2016, The Strong National Bank had approximately $571,736,000 in assets
- A wholly owned subsidiary of Strong Bancshares, Inc.

Ownership:

- As of December 31, 2016 had 127,525 shares of common stock issued and outstanding held by approximately 83 shareholders

Bank Financial Ratios:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Earning Assets to Average Assets</td>
<td>94.11%</td>
<td>95.22%</td>
<td>95.79%</td>
<td>98.32%</td>
</tr>
<tr>
<td>Loans to Deposits</td>
<td>86.05%</td>
<td>86.48%</td>
<td>88.92%</td>
<td>90.21%</td>
</tr>
<tr>
<td>Equity to Assets</td>
<td>10.43%</td>
<td>9.49%</td>
<td>7.94%</td>
<td>6.71%</td>
</tr>
<tr>
<td>Net Interest Margin (Tax Equivalent)</td>
<td>4.01%</td>
<td>3.88%</td>
<td>3.63%</td>
<td>3.71%</td>
</tr>
<tr>
<td>ROAA</td>
<td>1.29%</td>
<td>1.11%</td>
<td>.70%</td>
<td>1.25%</td>
</tr>
<tr>
<td>ROAA (Adjusted for Sub S Status)</td>
<td>.88%</td>
<td>.76%</td>
<td>.49%</td>
<td>.86%</td>
</tr>
<tr>
<td>Tier 1 Leverage Ratio</td>
<td>8.40%</td>
<td>8.54%</td>
<td>8.40%</td>
<td>9.08%</td>
</tr>
</tbody>
</table>

Bank Financial Information (as of 12/31/2016):

- Net Income: $7,256,000
- Net Interest Margin: 4.01%
- Assets: $571,736,000
- Deposits: $407,930,000
- Loans (Net of ALLL): $351,032,000
- Equity Capital: $55,470,000
- Loan Loss Reserve: $2,410,000
- Investment Securities: $166,210,000
Tab 2

Bank and Holding Company Profile
Bank and Holding Company Profile

Strong Bancshares, Inc.

Strong Bancshares, Inc. (sometimes referred to herein as the “Company”) is a state chartered corporation and registered bank holding company with the Federal Reserve. The Company was chartered in 1976 and is the 100% owner of The Strong National Bank, a national bank headquartered in Solid State, USA. The Company is supervised by the Federal Reserve.

As of December 31, 2016, Strong Bancshares, Inc. had, on a parent company only basis, total assets of $55,593,074, which includes $27,580 cash, $47,847,800 investment in subsidiary companies, $10,705,818 in unrealized gains on securities (at The Strong National Bank), and other assets of ($2,988,124).

As of December 31, 2016, Strong Bancshares, Inc. had no parent company liabilities.

As of December 31, 2016, Strong Bancshares, Inc. had total shareholders’ equity of $55,593,074, which includes $5,840,832 in common stock and surplus, $41,208,144 in retained earnings, $10,705,818 in unrealized gains in securities (at The Strong National Bank), $2,266,352 in net income and ($4,428,072) in Treasury stock and equity pension plan adjustments.

The Strong National Bank

The Strong National Bank (“Bank”) is a national bank chartered by the Office of the Comptroller of the Currency (“OCC”) headquartered in Solid State, USA, that was chartered on April 18, 1956. The Bank is a wholly owned subsidiary of Strong Bancshares, Inc. The Bank’s deposits are insured by the Federal Deposit Insurance Corporation (“FDIC”). The Bank is supervised by the OCC.

The Bank offers interest bearing and non-interest bearing demand deposit accounts, money market deposit accounts, savings accounts, fixed interest rate certificates of deposit with varying maturities, and Individual Retirement Accounts. In addition, the Bank makes real estate, commercial, and consumer loans to individuals and small businesses in its primary lending market. Bank revenues are primarily derived from interest income earned on loans and securities, fee income associated with loans originated, and service charges on deposits.

Ownership

Strong Bancshares, Inc.’s common stock is not quoted or sold through any established market or exchange. The Company’s Articles of Incorporation authorize 500,000 shares of common stock, with a par value of $2.00 per share. The Company has 127,525 shares of common stock outstanding held by 83 shareholders. The Bank’s Board of Directors and their related interests collectively own approximately 46% of the outstanding Strong Bancshares, Inc. common stock shares.

Regulatory Condition

Strong Bancshares, Inc. is supervised by the Federal Reserve. The Company is not currently subject to any informal or formal regulatory enforcement action. The Company is in good standing in all respects with the Federal Reserve.
The Bank is supervised by the OCC. The Bank was last examined in April, 2016. The Bank is not currently under any formal or informal enforcement action with the OCC. The Bank’s most recent Bank Secrecy Act and Information Technology examinations show the bank to be satisfactory in these areas.

Markets

The Bank currently operates nine banking offices located in and around Solid State, USA.

Assets

The Bank, as of December 31, 2016, had total assets of $571,736,000, comprised of the following:

Bank Assets

<table>
<thead>
<tr>
<th>Type of Asset</th>
<th>Amount 12/31/2016 (in thousands)</th>
<th>Percent of Total Assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Loans</td>
<td>$351,032</td>
<td>61.40%</td>
</tr>
<tr>
<td>Loans Held for Sale</td>
<td>178</td>
<td>.03%</td>
</tr>
<tr>
<td>Investment Securities</td>
<td>166,210</td>
<td>29.07%</td>
</tr>
<tr>
<td>Cash and Due from Bank Balances</td>
<td>25,302</td>
<td>4.43%</td>
</tr>
<tr>
<td>Federal Funds Sold</td>
<td>3,714</td>
<td>.65%</td>
</tr>
<tr>
<td>Bank Premises and Fixed Assets</td>
<td>5,294</td>
<td>.93%</td>
</tr>
<tr>
<td>Other Assets</td>
<td>14,496</td>
<td>2.54%</td>
</tr>
<tr>
<td>Other Real Estate Owned</td>
<td>5,510</td>
<td>.96%</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td><strong>$571,736</strong></td>
<td></td>
</tr>
</tbody>
</table>

Bank Asset Composition

- Net Loans: 61.40%
- Loans Held for Sale: .03%
- Investment Securities: 29.07%
- Cash and Due from Bank Balances: 4.43%
- Federal Funds Sold: .65%
- Bank Premises and Fixed Assets: .93%
- Other Assets: 2.54%
- Other Real Estate Owned: .96%
Loan Portfolio

The Bank provides commercial and residential real estate loans, business loans, and personal loans to individuals and small businesses in the Bank’s primary trade area. As of December 31, 2016, the Bank had $353,620,000 in gross loans, with $178,000 as loans held for sale. The loan portfolio is comprised of the following types of loans:

Loan Portfolio

<table>
<thead>
<tr>
<th>Type of Loan</th>
<th>Amount 12/31/2016 (in thousands)</th>
<th>Percent of Gross Loans</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Real Estate Loans</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction and Land Development</td>
<td>$29,120</td>
<td>8.23%</td>
</tr>
<tr>
<td>Farmland</td>
<td>87,690</td>
<td>24.80%</td>
</tr>
<tr>
<td>1-4 Family Residential Properties</td>
<td>80,266</td>
<td>22.70%</td>
</tr>
<tr>
<td>Multifamily Residential Properties</td>
<td>114</td>
<td>.03%</td>
</tr>
<tr>
<td>Non-farm, Non-residential Properties</td>
<td>13,974</td>
<td>3.95%</td>
</tr>
<tr>
<td><strong>Agricultural Loans</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>48,600</td>
<td>13.74%</td>
</tr>
<tr>
<td><strong>Commercial and Industrial Loans</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>89,724</td>
<td>25.37%</td>
</tr>
<tr>
<td><strong>Consumer Loans</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2,736</td>
<td>.77%</td>
</tr>
<tr>
<td><strong>Other Loans</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1,396</td>
<td>.39%</td>
</tr>
<tr>
<td><strong>Total Loan Portfolio</strong></td>
<td>$353,620</td>
<td></td>
</tr>
</tbody>
</table>

As of December 31, 2016, the Bank had no nonaccrual loans or loans delinquent 90 days or more and still accruing interest. As of the same date, the Bank had $36,000 in loans 30 days to 89 days delinquent, which represent .01% of total loans outstanding. In addition, the Bank had other real estate owned of $5,510,000.

The Bank realized total charge-offs of $868,000 for the year ended December 31, 2016 compared to recoveries of $163,000 for the year. The Bank’s allowance for loan and lease losses was $2,410,000 or .68% of total loans as of December 31, 2016.
Investment Securities Portfolio

As of December 31, 2016, the Bank’s investment securities portfolio was $166,210,000 with 100% designated as available-for-sale securities. The Bank’s investment securities portfolio consisted of:

### Investment Securities Portfolio

<table>
<thead>
<tr>
<th>Type of Investment Security</th>
<th>Amount 12/31/2016 (in thousands)</th>
<th>Percent of Investment Securities</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States Treasury Securities</td>
<td>$10,000</td>
<td>6.02%</td>
</tr>
<tr>
<td>State and Municipal Securities</td>
<td>13,374</td>
<td>8.05%</td>
</tr>
<tr>
<td>United States Agency Securities</td>
<td>1,140</td>
<td>0.69%</td>
</tr>
<tr>
<td>Mortgage Backed Securities</td>
<td>130,990</td>
<td>78.61%</td>
</tr>
<tr>
<td>Subtotal</td>
<td>155,504</td>
<td></td>
</tr>
<tr>
<td>Unrealized Gain on Available-for-Sale Securities</td>
<td>10,706</td>
<td>6.44%</td>
</tr>
<tr>
<td><strong>Total Investment Securities Portfolio</strong></td>
<td><strong>$166,210</strong></td>
<td></td>
</tr>
</tbody>
</table>

The Bank does not purchase securities for trading purposes. Approximately 22.42% of the Bank’s investment securities are pledged to secure public deposits or repurchase agreements.

Banking Premises and Offices

The Bank operates nine full-service offices. The Bank owns the property and building for each of the nine locations.

Liabilities and Equity Capital

The Bank, as of December 31, 2016, had liabilities and equity capital comprised of the following:

### Bank Liabilities and Equity Capital

<table>
<thead>
<tr>
<th>Type of Liability or Equity</th>
<th>Balance 12/31/2016 (in thousands)</th>
<th>Percent of Total Liabilities and Equity Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Deposits</td>
<td>$407,930</td>
<td>71.35%</td>
</tr>
<tr>
<td>Securities Sold Under Agreements to Repurchase</td>
<td>28,362</td>
<td>4.96%</td>
</tr>
<tr>
<td>Other Borrowed Money</td>
<td>79,000</td>
<td>13.82%</td>
</tr>
<tr>
<td>Other Liabilities</td>
<td>55,470</td>
<td>1.17%</td>
</tr>
<tr>
<td>Equity Capital</td>
<td>974</td>
<td>9.77%</td>
</tr>
<tr>
<td><strong>Total Liabilities and Equity Capital</strong></td>
<td><strong>$571,736</strong></td>
<td></td>
</tr>
</tbody>
</table>
At December 31, 2016, the Bank’s Other Liabilities were comprised of $448,000 in unpaid accrued interest on deposits, $348,000 of other accrued but unpaid expenses, including accrued income taxes payable, and $178,000 of other liabilities.

**Deposits**

Deposits are the primary source of the Bank’s funds for lending and other investment purposes. The Bank attracts both short-term and long-term deposits by offering an assortment of accounts and rates including interest bearing and non-interest bearing demand deposit accounts, money market deposit accounts, savings accounts, fixed interest rate certificates of deposit with varying maturities, and Individual Retirement Accounts.

As of December 31, 2016, the Bank’s deposit liabilities totaled $407,930,000, which consisted of the following:

**Deposit Liabilities**

<table>
<thead>
<tr>
<th>Type of Account</th>
<th>Balance 12/31/2016 (in thousands)</th>
<th>Percent of Total Deposits</th>
<th>Deposit Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Transaction Accounts</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Interest Bearing Demand Deposits</td>
<td>$59,124</td>
<td>14.49%</td>
<td>0%</td>
</tr>
<tr>
<td>Interest Bearing Demand Deposits</td>
<td>70,102</td>
<td>17.18%</td>
<td>.46%</td>
</tr>
<tr>
<td><strong>Other Savings Accounts</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Savings Deposits</td>
<td>16,440</td>
<td>4.03%</td>
<td>.72%</td>
</tr>
<tr>
<td>Money Market Deposits</td>
<td>56,144</td>
<td>13.76%</td>
<td>.72%</td>
</tr>
<tr>
<td><strong>Time Deposits Less than $100,000</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time Deposits of $100,000 through $250,000</td>
<td>98,100</td>
<td>24.05%</td>
<td>1.47%</td>
</tr>
<tr>
<td>Time Deposits $250,000 and Over</td>
<td>34,078</td>
<td>8.35%</td>
<td>1.47%</td>
</tr>
<tr>
<td><strong>Total Deposits</strong></td>
<td>$407,930</td>
<td>1.27%</td>
<td></td>
</tr>
</tbody>
</table>
As of December 31, 2016, the Bank enjoyed a 33.27% deposit market share for Solid County, USA, the county in which Solid State is located. As of that date, the Bank ranked first in total deposits, with total deposits inside the market of $271,634,000. There are a total of eight FDIC-insured financial institutions operating within Solid County, USA.

**Capital**

As of December 31, 2016, the Bank’s equity capital accounts totaled $55,470,000 and consisted of the following:

**Equity Capital**

<table>
<thead>
<tr>
<th>Type of Account</th>
<th>Balance 12/31/2016 (in thousands)</th>
<th>Percent of Equity Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Stock</td>
<td>$ 2,000</td>
<td>3.61%</td>
</tr>
<tr>
<td>Surplus</td>
<td>2,000</td>
<td>3.61%</td>
</tr>
<tr>
<td>Retained Earnings</td>
<td>43,816</td>
<td>78.99%</td>
</tr>
<tr>
<td>Other Comprehensive Income</td>
<td>7,654</td>
<td>13.8%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$55,470</strong></td>
<td></td>
</tr>
</tbody>
</table>
Equity Accounts

In addition, the Bank’s allowance for loan and lease losses as of December 31, 2016, totaled $2,410,000 or 1.60% of total loans. 100% of this amount is included in the Bank’s Tier 2 capital. As of December 31, 2016, the Bank’s capital ratios were as follows:

**Capital Ratios**

<table>
<thead>
<tr>
<th>Type of Capital</th>
<th>Capital Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1 Leverage Capital</td>
<td>8.40%</td>
</tr>
<tr>
<td>Tier 1 Risk-Based Capital</td>
<td>20.76%</td>
</tr>
<tr>
<td>Total Risk-Based Capital</td>
<td>21.81%</td>
</tr>
</tbody>
</table>

**Earnings**

**Bank Earnings**

<table>
<thead>
<tr>
<th>Type of Asset</th>
<th>Year-ended 12/31/2016 (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Income</td>
<td>$26,116</td>
</tr>
<tr>
<td>Interest Expense</td>
<td>7,668</td>
</tr>
<tr>
<td>Net Interest Income</td>
<td>18,448</td>
</tr>
<tr>
<td>Non-Interest Income</td>
<td>2,188</td>
</tr>
<tr>
<td>Non-Interest Expense</td>
<td>11,802</td>
</tr>
<tr>
<td>Provision for Loan Losses</td>
<td>1,800</td>
</tr>
<tr>
<td>Pre-Tax Operating Income</td>
<td>7,034</td>
</tr>
<tr>
<td>Realized Gain/Losses on Securities</td>
<td>222</td>
</tr>
<tr>
<td>Pre-Tax Net Operating Income</td>
<td>7,256</td>
</tr>
<tr>
<td>Estimated Income Taxes*</td>
<td>0</td>
</tr>
<tr>
<td>Net Income</td>
<td>$7,256</td>
</tr>
</tbody>
</table>

*The Company is taxed as a Subchapter S Corporation*
Interest Income

The Bank’s primary source of income is from interest and fees earned on loans. For the year ended December 31, 2016, the Bank’s interest income consisted of the following:

Interest Income

<table>
<thead>
<tr>
<th>Type of Income</th>
<th>Amount 12/31/2016 (in thousands)</th>
<th>Percent of Total Interest Income</th>
<th>Average Yields</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loan Interest and Fee Income</td>
<td>$7,044</td>
<td>35.96%</td>
<td>5.97%</td>
</tr>
<tr>
<td>Interest Income on Investment Securities</td>
<td>12,329</td>
<td>62.94%</td>
<td>4.66%</td>
</tr>
<tr>
<td>Interest Income on Due from Banks</td>
<td>81</td>
<td>.41%</td>
<td>3.21%</td>
</tr>
<tr>
<td>Interest Income on Federal Funds Sold and Securities Purchased Under Agreement to Resell</td>
<td>8</td>
<td>.04%</td>
<td>.21%</td>
</tr>
<tr>
<td>Other Interest Income</td>
<td>126</td>
<td>.64%</td>
<td></td>
</tr>
<tr>
<td><strong>Total Interest Income</strong></td>
<td><strong>$19,588</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Loan Interest and Fee Income

The Bank’s loan interest and fee income is derived predominantly by loans secured by real estate and consumer loans. This is reflected in the following table:
Loan Interest and Fee Income

<table>
<thead>
<tr>
<th>Type of Account</th>
<th>Amount 12/31/2016 (in thousands)</th>
<th>Percent of Total Loan Interest Income</th>
<th>Average Yields</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real Estate Loans</td>
<td>$4,179</td>
<td>59.33%</td>
<td>5.73%</td>
</tr>
<tr>
<td>Consumer Loans</td>
<td>219</td>
<td>3.11%</td>
<td>10.73%</td>
</tr>
<tr>
<td>Commercial and Industrial Loans</td>
<td>1,767</td>
<td>25.09%</td>
<td>6.58%</td>
</tr>
<tr>
<td>Other Loans</td>
<td>879</td>
<td>12.48%</td>
<td></td>
</tr>
<tr>
<td><strong>Total Loan Interest Income</strong></td>
<td><strong>$7,044</strong></td>
<td><strong>5.97%</strong></td>
<td><strong>5.97%</strong></td>
</tr>
</tbody>
</table>

Loan Interest Composition

- Real Estate Loans: 59.33%
- Consumer Loans: 3.11%
- Commercial and Industrial Loans: 25.09%
- Other Loans: 12.48%

Average Loan Yields

<table>
<thead>
<tr>
<th>Type of Account</th>
<th>12/31/2016</th>
<th>12/31/2015</th>
<th>12/31/2014</th>
<th>12/31/2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real Estate Loans</td>
<td>5.73%</td>
<td>6.27%</td>
<td>6.98%</td>
<td>7.47%</td>
</tr>
<tr>
<td>Commercial &amp; Industrials</td>
<td>6.58%</td>
<td>6.42%</td>
<td>6.61%</td>
<td>7.57%</td>
</tr>
<tr>
<td>Consumer Loans</td>
<td>10.73%</td>
<td>9.26%</td>
<td>11.72%</td>
<td>10.97%</td>
</tr>
<tr>
<td>Agricultural Loans</td>
<td>5.46%</td>
<td>5.07%</td>
<td>6.22%</td>
<td>8.77%</td>
</tr>
<tr>
<td><strong>Total Loans</strong></td>
<td><strong>5.97%</strong></td>
<td><strong>6.20%</strong></td>
<td><strong>6.93%</strong></td>
<td><strong>7.94%</strong></td>
</tr>
</tbody>
</table>

Interest Expense

For the year ended December 31, 2016, the Bank’s interest expenses were incurred as follows:
### Interest Expense

<table>
<thead>
<tr>
<th>Type of Account</th>
<th>Amount 12/31/2016 (in thousands)</th>
<th>Percent of Total Interest Expense</th>
<th>Average Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time Deposits Less Than $100,000</td>
<td>$1,239</td>
<td>21.54%</td>
<td>2.00%</td>
</tr>
<tr>
<td>Time Deposits $100,000 or More</td>
<td>1,362</td>
<td>23.68%</td>
<td>1.47%</td>
</tr>
<tr>
<td>Transaction Deposits</td>
<td>216</td>
<td>3.76%</td>
<td></td>
</tr>
<tr>
<td>Non-Transaction Deposits</td>
<td>348</td>
<td>6.05%</td>
<td></td>
</tr>
<tr>
<td>Federal Funds Purchased and Securities Sold Under Agreements to Repurchase</td>
<td>71</td>
<td>1.23%</td>
<td>.69%</td>
</tr>
<tr>
<td>Other Borrowed Money</td>
<td>2,515</td>
<td>43.74%</td>
<td>3.25%</td>
</tr>
<tr>
<td><strong>Total Interest Expense</strong></td>
<td><strong>$5,751</strong></td>
<td><strong>43.74%</strong></td>
<td><strong>1.70%</strong></td>
</tr>
</tbody>
</table>

### Interest Expense Composition

- **Time Deposits Less Than $100,000**
- **Time Deposits $100,000 or More**
- **Transaction Accounts**
- **Non-Transaction Accounts**
- **Federal Funds Purchased and Securities Sold Under Repo Agreements**
- **Other Borrowed Money**

### Non-Interest Income and Expense

The Bank, for the year ended December 31, 2016, realized non-interest income of $1,641,000, consisting primarily of service charges on deposit accounts of $671,000, net servicing fees of $219,000 and other non-interest income of $751,000. For the year ended December 31, 2016, the Bank’s non-interest expense totaled $8,851,500 and consisted of salaries and employee benefits of $5,704,000; occupancy expenses of $1,300,000, and other non-interest expenses of $1,847,500.
Tab 4
Pro Forma Financial Analysis

Prospective purchase of

ABC Bancshares, Inc.

by

Gerrish Bancorp, Inc.

completed by:

Gerrish Smith Tuck, Consultants and Attorneys
Memphis, Tennessee
### Acquisition Analysis - Summary Information

**Gerrish Bancorp, Inc.**

*acquiring*

**ABC Bancshares, Inc.**

*(All Numbers in 000's except Per Share Data)*

| Acquirer Information | | Target Information | | |
|----------------------|----------------------|----------------------|----------------------|
| **Consolidated Assets:** | $793,600 | **Consolidated Assets:** | $223,947 (1) |
| **Consolidated Liabilities:** | $726,629 | **Consolidated Liabilities:** | $210,660 (1) |
| **Parent Company Equity:** | $66,971 | **Parent Company Equity:** | $13,287 (1) |
| **Parent Shares Outstanding:** | 418,276 | **Parent Shares Outstanding:** | 1,658,956 |
| **Book Value per Share:** | $160.11 | **Book Value per Share:** | $8.01 |
| **Market Value per Share:** | $256.00 | **Market Value per Share:** | $9.16 |

*As provided in Y-6 as of Dec. 31, 2016
**Estimated

| Deal Assumptions: | | |
|-------------------|------------------|
| **Purchase Consideration:** | $15,280 | **Total Consideration:** | |
| **Consideration Type:** | 100% Cash | **Per Target Share:** | $11.32 |
| **Target Noninterest Exp. Savings:** | $1,701 | **To Book Value:** | 111.87% |
| **Acquirer Expenses:** | $125 | **To Tax Adj. Earnings:** | 60.19 |
| **Target Expenses:** | $75 | **Purchase Premium/Deposits:** | 1.05% |

*As provided in Y-6 as of Dec. 31, 2016

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net Income:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquirer Stand Alone Basis</td>
<td>$9,352.46</td>
<td>$10,247.24</td>
<td>$11,208.12</td>
<td>$12,239.46</td>
<td>$13,345.91</td>
</tr>
<tr>
<td>Pro Forma Combined</td>
<td>$10,904.99</td>
<td>$12,237.80</td>
<td>$13,670.22</td>
<td>$15,214.26</td>
<td>$16,883.32</td>
</tr>
<tr>
<td>Increase in Net Income following Acquisition</td>
<td>$1,552.53</td>
<td>$1,990.56</td>
<td>$2,462.10</td>
<td>$2,974.80</td>
<td>$3,537.42</td>
</tr>
<tr>
<td><strong>Acquirer Shares Outstanding:</strong></td>
<td>418,276</td>
<td>418,276</td>
<td>418,276</td>
<td>418,276</td>
<td>418,276</td>
</tr>
<tr>
<td>Shares Issued to Fund Acquisition</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Acquirer Shares Outstanding Post Acq.</td>
<td>418,276</td>
<td>418,276</td>
<td>418,276</td>
<td>418,276</td>
<td>418,276</td>
</tr>
<tr>
<td><strong>Earnings per Share:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assuming No Acquisition</td>
<td>$22.36</td>
<td>$24.50</td>
<td>$26.80</td>
<td>$29.26</td>
<td>$31.91</td>
</tr>
<tr>
<td>Assuming Acquisition</td>
<td>$26.07</td>
<td>$29.26</td>
<td>$32.68</td>
<td>$36.37</td>
<td>$40.36</td>
</tr>
<tr>
<td>Acquirer EPS Accretion (Dilution)</td>
<td>16.59%</td>
<td>19.43%</td>
<td>21.94%</td>
<td>24.30%</td>
<td>26.48%</td>
</tr>
</tbody>
</table>

(1) The projections assume the Target makes a special dividend to its shareholders in the amount of $3,500,000 immediately prior to the transaction in order to reduce excess capital.
### Acquisition Analysis - Income Statement

#### Income Statement Reconciliation as of December 31, 2016

<table>
<thead>
<tr>
<th></th>
<th>Gerrish Bank</th>
<th>ABC Bank</th>
<th>Change Due to Acquisition</th>
<th>Pro Forma Consolidated Earnings</th>
<th>Accretion / Dilution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Income</td>
<td>$27,804.00</td>
<td>$9,535.00</td>
<td>0</td>
<td></td>
<td>$37,339.00</td>
</tr>
<tr>
<td>Interest Expense</td>
<td>3,575.00</td>
<td>911.00</td>
<td>0</td>
<td></td>
<td>4,486.00</td>
</tr>
<tr>
<td>Net Interest Income</td>
<td>24,229.00</td>
<td>8,624.00</td>
<td>0</td>
<td></td>
<td>32,853.00</td>
</tr>
<tr>
<td>Provision Expense</td>
<td>1,546.00</td>
<td>1,979.00</td>
<td>(1,500.00) (1)</td>
<td>2,025.00</td>
<td></td>
</tr>
<tr>
<td>Noninterest Income</td>
<td>6,052.00</td>
<td>2,314.00</td>
<td>0</td>
<td></td>
<td>8,366.00</td>
</tr>
<tr>
<td>NonInterest Expense</td>
<td>17,295.00</td>
<td>8,505.00</td>
<td>(1,701.00) (2)</td>
<td>24,099.00</td>
<td></td>
</tr>
<tr>
<td>CDI Amortization</td>
<td>0</td>
<td>0</td>
<td>284.72 (3)</td>
<td></td>
<td>804.00</td>
</tr>
<tr>
<td>Interest Expense</td>
<td>0</td>
<td>100.00</td>
<td>700.00 (4)</td>
<td></td>
<td>800.00</td>
</tr>
<tr>
<td>Other Parent Expenses</td>
<td>3.00</td>
<td>139.00</td>
<td>(120.00) (5)</td>
<td>22.00</td>
<td></td>
</tr>
<tr>
<td>Income before Taxes</td>
<td>11,437.00</td>
<td>215.00</td>
<td>2,216.28 (6)</td>
<td>13,988.28</td>
<td>22.31%</td>
</tr>
<tr>
<td>Taxes</td>
<td>2,669</td>
<td>(97.00)</td>
<td>664.38 (7)</td>
<td></td>
<td>3,264</td>
</tr>
<tr>
<td>Net Income</td>
<td>$8,768.00</td>
<td>$312.00</td>
<td>$1,551.90 (8)</td>
<td>$10,723.90</td>
<td>22.31%</td>
</tr>
</tbody>
</table>

#### Estimated Earnings Per Share

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Estimated Earnings Per Share</td>
<td>Estimated Earnings Per Share Adding Back CDI Amortization</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$20.96</td>
<td>$0.19</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$25.64</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Shares Issued to Fund Acquisition

| Shares Issued to Fund Acquisition | 0 |

#### Pro Forma Shares Outstanding

| Pro Forma Shares Outstanding | 418,276 |

---

(1) The projections assume the Target's provision expenses on an ongoing basis are significantly less than its provision expense in 2016, which was largely due to losses on one large loan.

(2) The projections assume the Acquiror is able to reduce the Target's non-interest expense by $1,701,000 (approximately 20%) annually.

(3) According to ASC 805, the purchase price premium, if any, is allocated between Goodwill and the Core Deposit Intangible. Any CDI is amortized over the "useful life" of the asset, which is assumed to be seven years. Goodwill is not amortized for GAAP purposes, but is tested for impairment. For these purposes, the projections assume any CDI created in association with the transaction is equal to up to 3% of the Target's deposits. Accordingly, the projections assume there is a CDI of $1,993,050 and no Goodwill created in association with the transaction as a result of the purchase price exceeding the Target's book value.

(4) The projections assume the consideration paid to the Target's shareholders is 100% cash from existing balances at the Bank and new holding company debt in the amount of $14,000,000 with a 5.00% interest rate and a 10 year maturity and amortization. The projections further assume the Acquiror assumes the Target's Trust Preferred Securities in the amount of $5,155,000 as a result of the transaction.

(5) The projections assume the Acquiror is able to reduce the Target Holding Company's non-interest expenses by $120,000 as a result of the transaction.

(6) Presents assumed annual net income for the year ended December 31, 2016. Any realized gains or losses on securities have been disregarded, as these are non-recurring earnings items.

(7) The projections assume a combined effective income tax rate of 30%.
## Acquisition Analysis - Income Statement

### Pro Forma Annual Income

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquirer Net Income</td>
<td>$9,352.46</td>
<td>$10,247.24</td>
<td>$11,208.12</td>
<td>$12,239.46</td>
<td>$13,345.91</td>
</tr>
<tr>
<td>Target Pre-Tax Net Income</td>
<td>1,136.53</td>
<td>1,525.56</td>
<td>1,948.11</td>
<td>2,411.81</td>
<td>2,925.42</td>
</tr>
<tr>
<td>Combined Net Income</td>
<td>10,488.99</td>
<td>11,772.80</td>
<td>13,156.23</td>
<td>14,651.27</td>
<td>16,271.33</td>
</tr>
<tr>
<td>Additional Income as a Result of Merger</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Cost Savings</td>
<td>1,701.00</td>
<td>1,701.00</td>
<td>1,701.00</td>
<td>1,701.00</td>
<td>1,701.00</td>
</tr>
<tr>
<td>CDI Amortization</td>
<td>(284.72)</td>
<td>(284.72)</td>
<td>(284.72)</td>
<td>(284.72)</td>
<td>(284.72)</td>
</tr>
<tr>
<td>Holding Company Interest and Other Expense</td>
<td>(822.00)</td>
<td>(752.00)</td>
<td>(682.00)</td>
<td>(612.00)</td>
<td>(542.00)</td>
</tr>
<tr>
<td>Net Taxes on Target Earnings and Adjustments</td>
<td>(178.28)</td>
<td>(199.28)</td>
<td>(220.28)</td>
<td>(241.28)</td>
<td>(262.28)</td>
</tr>
</tbody>
</table>

**Pro Forma Net Income**

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$10,904.99</td>
<td>$12,237.80</td>
<td>$13,670.22</td>
<td>$15,214.26</td>
<td>$16,883.32</td>
</tr>
</tbody>
</table>

| Pro Forma Shares Outstanding | 418,276 | 418,276 | 418,276 | 418,276 | 418,276 |

| Acquirer Stand Alone EPS | $22.36 | $24.50 | $26.80 | $29.26 | $31.91 |
| EPS from Acquisition     | $3.71  | $4.76  | $5.88  | $7.11  | $8.45  |

**Pro Forma EPS**

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$26.07</td>
<td>$29.26</td>
<td>$32.68</td>
<td>$36.37</td>
<td>$40.36</td>
</tr>
</tbody>
</table>

| Acquirer EPS Accretion (Dilution) | 16.59% | 19.43% | 21.94% | 24.30% | 26.48% |

### Profitability and Asset Growth Rate Assumptions

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquirer ROA</td>
<td>1.15%</td>
<td>1.20%</td>
<td>1.25%</td>
<td>1.30%</td>
<td>1.35%</td>
</tr>
<tr>
<td>Acquirer Asset Growth</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>Target ROA</td>
<td>0.50%</td>
<td>0.65%</td>
<td>0.80%</td>
<td>0.95%</td>
<td>1.10%</td>
</tr>
<tr>
<td>Target Asset Growth</td>
<td>3.00%</td>
<td>3.50%</td>
<td>4.00%</td>
<td>4.50%</td>
<td>5.00%</td>
</tr>
</tbody>
</table>
### Acquisition Analysis - Pro Forma Balance Sheet

#### Bank Balance Sheet Reconciliation as of December 31, 2016

<table>
<thead>
<tr>
<th>Assets</th>
<th>Gerrish Bank</th>
<th>ABC Bank</th>
<th>Acquisition Adjustments</th>
<th>Pro Forma Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and Cash Equivalents</td>
<td>34,886</td>
<td>9,032</td>
<td>(1) (1,480) (2)</td>
<td>42,438</td>
</tr>
<tr>
<td>Investment Securities</td>
<td>329,088</td>
<td>22,211</td>
<td>0</td>
<td>351,299</td>
</tr>
<tr>
<td>Loans Held for Sale</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Gross Loans</td>
<td>401,077</td>
<td>171,225</td>
<td>(2,380) (3)</td>
<td>569,922</td>
</tr>
<tr>
<td>Allowance for Losses</td>
<td>7,273</td>
<td>2,380</td>
<td>(2,380) (3)</td>
<td>7,273</td>
</tr>
<tr>
<td>Net Loans</td>
<td>393,804</td>
<td>168,845</td>
<td></td>
<td>562,649</td>
</tr>
<tr>
<td>Goodwill</td>
<td>0</td>
<td>0</td>
<td>0 (4)</td>
<td>0</td>
</tr>
<tr>
<td>Core Deposit Intangible</td>
<td>0</td>
<td>0</td>
<td>1,993 (4)</td>
<td>1,993</td>
</tr>
<tr>
<td>Other Intangibles</td>
<td>229</td>
<td>0</td>
<td></td>
<td>229</td>
</tr>
<tr>
<td>OREO</td>
<td>332</td>
<td>1,683</td>
<td></td>
<td>2,015</td>
</tr>
<tr>
<td>Inv. in Un-Consolidated Subs.</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Other Assets</td>
<td>35,260</td>
<td>21,821</td>
<td></td>
<td>57,081</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td><strong>$793,599</strong></td>
<td><strong>$223,592</strong></td>
<td><strong>$513</strong></td>
<td><strong>$1,017,704</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Gerrish Bank</th>
<th>ABC Bank</th>
<th>Acquisition Adjustments</th>
<th>Pro Forma Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deposits</td>
<td>720,825</td>
<td>189,388</td>
<td></td>
<td>910,213</td>
</tr>
<tr>
<td>Borrowings</td>
<td>3,688</td>
<td>9,551</td>
<td></td>
<td>13,239</td>
</tr>
<tr>
<td>Other Liabilities</td>
<td>2,196</td>
<td>3,019</td>
<td></td>
<td>5,215</td>
</tr>
<tr>
<td><strong>TOTAL LIABILITIES</strong></td>
<td><strong>726,709</strong></td>
<td><strong>201,958</strong></td>
<td></td>
<td><strong>928,667</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Equity</th>
<th>Gerrish Bank</th>
<th>ABC Bank</th>
<th>Acquisition Adjustments</th>
<th>Pro Forma Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preferred Stock</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Common Stock</td>
<td>500</td>
<td>5,625</td>
<td></td>
<td>6,125</td>
</tr>
<tr>
<td>Surplus</td>
<td>63,250</td>
<td>16,825</td>
<td></td>
<td>80,075</td>
</tr>
<tr>
<td>Retained Earnings</td>
<td>790</td>
<td>(767)</td>
<td>513 (5)</td>
<td>536</td>
</tr>
<tr>
<td>Acc. Other Comp. Income</td>
<td>2,350</td>
<td>(49)</td>
<td>2,301</td>
<td></td>
</tr>
<tr>
<td>Other Equity Comp.</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td><strong>TOTAL EQUITY</strong></td>
<td><strong>66,890</strong></td>
<td><strong>21,634</strong></td>
<td><strong>513</strong></td>
<td><strong>89,037</strong></td>
</tr>
</tbody>
</table>

**TOTAL LIABILITIES PLUS EQUITY** | **$793,599** | **$223,592** | **$513** | **$1,017,704**

---

1. The projections assume the Target makes a special dividend to its shareholders in the amount of $3,500,000 immediately prior to the transaction in order to reduce excess capital.

2. The projections assume a reduction in cash equal to the amount of the special dividend to fund a portion of the purchase price ($1,280,050) plus the assumed transaction expenses ($200,000).

3. ASC 805 requires that an acquirer transfer the target's assets and liabilities to the acquirer's balance sheet at their "fair value" as of the date of acquisition. This requires the elimination of the target's ALLL, since any expected loss should be reflected in the fair value numbers.

4. The projections assume there is a CDI of $1,993,050 and no Goodwill created in association with the transaction as a result of the purchase price exceeding the Target's book value.

5. The combined bank's equity is increased by $513,000, which is the sum of the transaction expenses, increase in intangible assets, and a portion of the purchase price associated with the transaction.
Acquisition Analysis - Pro Forma Balance Sheet

Parent Company Balance Sheet Reconciliation as of December 31, 2016

<table>
<thead>
<tr>
<th></th>
<th>Gerrish Bancorp, Inc.</th>
<th>Acquisition Adjustments</th>
<th>Pro Forma Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash &amp; Cash Equivalents</td>
<td>126</td>
<td></td>
<td>126</td>
</tr>
<tr>
<td>Securities</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Loans</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Equity Investment in Bank Subs</td>
<td>66,890</td>
<td>22,147</td>
<td>(1) 89,037</td>
</tr>
<tr>
<td>Equity Investment in Non-Bank Subs</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Other Assets</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td>$67,017</td>
<td>$22,147</td>
<td>$89,164</td>
</tr>
<tr>
<td><strong>Liabilities</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Short Term Borrowings</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Long Term Borrowings</td>
<td>0</td>
<td>14,000</td>
<td>(2) 14,000</td>
</tr>
<tr>
<td>Trust Preferred Securities</td>
<td>0</td>
<td>5,155</td>
<td>(3) 5,155</td>
</tr>
<tr>
<td>Other Liabilities</td>
<td>46</td>
<td></td>
<td>46</td>
</tr>
<tr>
<td><strong>TOTAL LIABILITIES</strong></td>
<td>46</td>
<td>19,155</td>
<td>19,201</td>
</tr>
<tr>
<td><strong>Equity</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferred Stock</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Common Stock (Incl. Surplus)</td>
<td>7,625</td>
<td></td>
<td>7,625</td>
</tr>
<tr>
<td>Retained Earnings</td>
<td>56,996</td>
<td>2,992</td>
<td>(4) 59,988</td>
</tr>
<tr>
<td>Acc. Other Comp. Income</td>
<td>2,350</td>
<td></td>
<td>2,350</td>
</tr>
<tr>
<td>Other Equity Comp.</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td><strong>TOTAL EQUITY</strong></td>
<td>66,971</td>
<td>2,992</td>
<td>69,963</td>
</tr>
<tr>
<td><strong>TOTAL LIABILITIES PLUS EQUITY</strong></td>
<td>$67,017</td>
<td>$22,147</td>
<td>$89,164</td>
</tr>
<tr>
<td><strong>BOOK VALUE PER SHARE</strong></td>
<td>$160.11</td>
<td>$7.15</td>
<td>$167.27</td>
</tr>
</tbody>
</table>

(1) The Holding Company's Investment in the combined Bank Subsidiary would increase a net of $22,147,000.

(2) The projections assume a portion of the purchase price is funded by new holding company debt in the amount of $14,000,000 million with a 5.00% interest rate and a 10 year maturity and amortization.

(3) The projections assume the Acquiror assumes the Target's Trust Preferred Securities in the amount of $5,155,000 as a result of the transaction.

(4) The net effect of the increase to assets and liabilities is an increase to the combined organization's equity of $2,992,000.
Loan Portfolio Reconciliation as of December 31, 2016

Gerrish Bank

<table>
<thead>
<tr>
<th>Loans</th>
<th>Amount</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction and Land</td>
<td>16,317</td>
<td>4.07%</td>
</tr>
<tr>
<td>1-4 Family Real Estate</td>
<td>139,629</td>
<td>34.81%</td>
</tr>
<tr>
<td>Multi-family Real Estate</td>
<td>10,804</td>
<td>2.69%</td>
</tr>
<tr>
<td>Commercial Real Estate</td>
<td>62,764</td>
<td>15.65%</td>
</tr>
<tr>
<td>Commercial and Industrial</td>
<td>82,947</td>
<td>20.68%</td>
</tr>
<tr>
<td>Farm and Agricultural</td>
<td>56,553</td>
<td>14.10%</td>
</tr>
<tr>
<td>Consumer</td>
<td>28,788</td>
<td>7.18%</td>
</tr>
<tr>
<td>Other</td>
<td>3,275</td>
<td>0.82%</td>
</tr>
<tr>
<td><strong>Total Loans</strong></td>
<td><strong>$401,077</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

ABC Bank

<table>
<thead>
<tr>
<th>Loans</th>
<th>Amount</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction and Land</td>
<td>13,516</td>
<td>7.89%</td>
</tr>
<tr>
<td>1-4 Family Real Estate</td>
<td>34,903</td>
<td>20.38%</td>
</tr>
<tr>
<td>Multi-family Real Estate</td>
<td>3,233</td>
<td>1.89%</td>
</tr>
<tr>
<td>Commercial Real Estate</td>
<td>49,365</td>
<td>28.83%</td>
</tr>
<tr>
<td>Commercial and Industrial</td>
<td>39,227</td>
<td>22.91%</td>
</tr>
<tr>
<td>Farm and Agricultural</td>
<td>22,885</td>
<td>13.37%</td>
</tr>
<tr>
<td>Consumer</td>
<td>6,423</td>
<td>3.75%</td>
</tr>
<tr>
<td>Other</td>
<td>1,673</td>
<td>0.98%</td>
</tr>
<tr>
<td><strong>Total Loans</strong></td>
<td><strong>$171,225</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Pro Forma Combined

<table>
<thead>
<tr>
<th>Loans</th>
<th>Amount</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction and Land</td>
<td>29,833</td>
<td>5.21%</td>
</tr>
<tr>
<td>1-4 Family Real Estate</td>
<td>174,532</td>
<td>30.50%</td>
</tr>
<tr>
<td>Multi-family Real Estate</td>
<td>14,037</td>
<td>2.45%</td>
</tr>
<tr>
<td>Commercial Real Estate</td>
<td>112,129</td>
<td>19.59%</td>
</tr>
<tr>
<td>Commercial and Industrial</td>
<td>122,174</td>
<td>21.35%</td>
</tr>
<tr>
<td>Farm and Agricultural</td>
<td>79,438</td>
<td>13.88%</td>
</tr>
<tr>
<td>Consumer</td>
<td>6,423</td>
<td>1.15%</td>
</tr>
<tr>
<td>Other</td>
<td>1,673</td>
<td>0.28%</td>
</tr>
<tr>
<td><strong>Total Loans</strong></td>
<td><strong>$572,302</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>
### Deposit Reconciliation as of December 31, 2016

#### Gerrish Bank

<table>
<thead>
<tr>
<th>Deposits</th>
<th>Amount</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demand Deposits</td>
<td>25,399</td>
<td>3.52%</td>
</tr>
<tr>
<td>NOW / Other Transaction</td>
<td>54,098</td>
<td>7.51%</td>
</tr>
<tr>
<td>Money Market</td>
<td>340,774</td>
<td>47.28%</td>
</tr>
<tr>
<td>Other Savings</td>
<td>36,276</td>
<td>5.03%</td>
</tr>
<tr>
<td>Retail Time</td>
<td>196,530</td>
<td>27.26%</td>
</tr>
<tr>
<td>Jumbo Time</td>
<td>67,748</td>
<td>9.39%</td>
</tr>
<tr>
<td><strong>Total Deposits</strong></td>
<td><strong>$720,825</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

#### ABC Bank

<table>
<thead>
<tr>
<th>Deposits</th>
<th>Amount</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demand Deposits</td>
<td>57,004</td>
<td>30.10%</td>
</tr>
<tr>
<td>NOW / Other Transaction</td>
<td>49,085</td>
<td>25.92%</td>
</tr>
<tr>
<td>Money Market</td>
<td>20,778</td>
<td>10.97%</td>
</tr>
<tr>
<td>Other Savings</td>
<td>5,931</td>
<td>3.13%</td>
</tr>
<tr>
<td>Retail Time</td>
<td>52,457</td>
<td>27.70%</td>
</tr>
<tr>
<td>Jumbo Time</td>
<td>4,133</td>
<td>2.18%</td>
</tr>
<tr>
<td><strong>Total Deposits</strong></td>
<td><strong>$189,388</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

#### Pro Forma Combined

<table>
<thead>
<tr>
<th>Deposits</th>
<th>Amount</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demand Deposits</td>
<td>82,403</td>
<td>9.05%</td>
</tr>
<tr>
<td>NOW / Other Transaction</td>
<td>103,183</td>
<td>11.34%</td>
</tr>
<tr>
<td>Money Market</td>
<td>361,552</td>
<td>39.72%</td>
</tr>
<tr>
<td>Other Savings</td>
<td>42,207</td>
<td>4.64%</td>
</tr>
<tr>
<td>Retail Time</td>
<td>248,987</td>
<td>27.35%</td>
</tr>
<tr>
<td>Jumbo Time</td>
<td>71,881</td>
<td>7.89%</td>
</tr>
<tr>
<td><strong>Total Deposits</strong></td>
<td><strong>$910,213</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>
# Acquisition Analysis - Pro Forma Capital Ratios

## Bank Capital Ratio Reconciliation as of December 31, 2016

<table>
<thead>
<tr>
<th></th>
<th>Gerrish Bank</th>
<th>ABC Bank</th>
<th>Acquisition Adjustment</th>
<th>Pro Forma Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TIER 1 CAPITAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Equity</td>
<td>66,890</td>
<td>21,634</td>
<td>513 (1)</td>
<td>89,037</td>
</tr>
<tr>
<td>LESS: Net Unrealized Gain (Loss) on AFS Securities and Cash Flow Hedges</td>
<td>2,350 (49)</td>
<td>(49) 2,350</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nonqualifying Perp. Pref. Stock</td>
<td>0</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qualifying Minority Interest in Sub.</td>
<td>0</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LESS: Disallowed Goodwill and Other Intangibles</td>
<td>229</td>
<td>0</td>
<td>1,993 (2)</td>
<td>2,222</td>
</tr>
<tr>
<td>Subtotal</td>
<td>64,311</td>
<td>21,683</td>
<td>(1,529)</td>
<td>84,465</td>
</tr>
<tr>
<td>Other Disallowed Assets</td>
<td>0</td>
<td>2718</td>
<td></td>
<td>2,718</td>
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<tr>
<td>Other Additions/Deductions to Tier 1</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td><strong>TIER 1 CAPITAL</strong></td>
<td>64,311</td>
<td>18,965</td>
<td>(1,529)</td>
<td>81,747</td>
</tr>
<tr>
<td><strong>TIER 2 CAPITAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qualifying Sub. Debt and Redeemable Pref. Stock</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Cum. Prep. Pref. Stock</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>ALLL Includible as Tier 2</td>
<td>5,880</td>
<td>2,380</td>
<td></td>
<td>7,273</td>
</tr>
<tr>
<td>Other Tier 2 Capital Components</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
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<tr>
<td><strong>TIER 2 CAPITAL</strong></td>
<td>5,880</td>
<td>2,380</td>
<td></td>
<td>7,273</td>
</tr>
<tr>
<td><strong>TOTAL RISK BASED CAPITAL</strong></td>
<td>70,191</td>
<td>21,345</td>
<td></td>
<td>89,020</td>
</tr>
</tbody>
</table>

| Average Total Assets | 787,876 | 230,678 | 1,017,704 |
| Est. Risk-Weighted Assets | 468,976 | 193,935 | 662,911 |

<table>
<thead>
<tr>
<th><strong>TIER 1 LEVERAGE RATIO</strong></th>
<th>8.16%</th>
<th>8.22%</th>
<th>8.03%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TIER 1 RISK-BASED RATIO</strong></td>
<td>13.71%</td>
<td>9.78%</td>
<td>12.33%</td>
</tr>
<tr>
<td><strong>TOTAL RISK-BASED RATIO</strong></td>
<td>14.97%</td>
<td>N/A</td>
<td>13.43%</td>
</tr>
<tr>
<td><strong>CONSOLIDATED LEVERAGE RATIO</strong></td>
<td>8.17%</td>
<td>N/A</td>
<td>6.87%</td>
</tr>
</tbody>
</table>

(1) The equity of the combined bank is decreased by $513,000, which is the net effect of the changes to the balance sheet as a result of the transaction.
(2) The Target's Securities will be recorded at their "Fair Value" as of the date of acquisition.
(3) Regulatory capital guidelines allow an institution to include in its Tier 2 Capital ALLL up to 1.25% of the Bank's Total Risk-Weighted assets.
(4) Estimated
### Acquisition Analysis - Pro Forma Capital Ratios

#### Bank Pro Forma Capital Projections

(All Numbers in 000's except Shares Outstanding and Per Share Data)

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beginning Tier 1 Capital</td>
<td>81,747</td>
<td>85,869</td>
<td>90,123</td>
<td>94,592</td>
</tr>
<tr>
<td>Bank Net Income</td>
<td>11,480.39</td>
<td>12,764.20</td>
<td>14,147.62</td>
<td>15,642.66</td>
</tr>
<tr>
<td>Dividends to Holding Company</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Holding Company Debt Service)</td>
<td>(1,960.00)</td>
<td>(2,401.00)</td>
<td>(2,842.00)</td>
<td>(2,303.00)</td>
</tr>
<tr>
<td>(Other Holding Company Expenses)</td>
<td>(15.40)</td>
<td>(15.40)</td>
<td>(15.40)</td>
<td>(15.40)</td>
</tr>
<tr>
<td>(Shareholder Dividends)</td>
<td>(5,382.49)</td>
<td>(6,094.40)</td>
<td>(6,821.11)</td>
<td>(7,603.63)</td>
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<tr>
<td>Bank Retained Earnings</td>
<td>4,122.49</td>
<td>4,253.40</td>
<td>4,469.11</td>
<td>5,720.63</td>
</tr>
<tr>
<td>Ending Tier 1 Capital</td>
<td>85,869</td>
<td>90,123</td>
<td>94,592</td>
<td>100,313</td>
</tr>
<tr>
<td>Estimated Total Risk Based Capital</td>
<td>93,509</td>
<td>98,141</td>
<td>103,008</td>
<td>109,237</td>
</tr>
<tr>
<td>Beginning Total Assets</td>
<td>1,017,704</td>
<td>1,064,518</td>
<td>1,114,551</td>
<td>1,168,050</td>
</tr>
<tr>
<td>Asset Growth</td>
<td>46,814</td>
<td>50,033</td>
<td>53,498</td>
<td>57,234</td>
</tr>
<tr>
<td>Ending Total Assets</td>
<td>1,064,518</td>
<td>1,114,551</td>
<td>1,168,050</td>
<td>1,225,285</td>
</tr>
<tr>
<td>Estimated Risk Weighted Assets</td>
<td>693,405</td>
<td>725,995</td>
<td>760,843</td>
<td>798,125</td>
</tr>
<tr>
<td>Tier 1 Leverage Ratio</td>
<td>8.07%</td>
<td>8.09%</td>
<td>8.10%</td>
<td>8.19%</td>
</tr>
<tr>
<td>Tier 1 Risk Based Ratio</td>
<td>12.38%</td>
<td>12.41%</td>
<td>12.43%</td>
<td>12.57%</td>
</tr>
<tr>
<td>Total Risk Based Ratio</td>
<td>13.49%</td>
<td>13.52%</td>
<td>13.54%</td>
<td>13.69%</td>
</tr>
<tr>
<td>Pro Forma Return on Average Assets</td>
<td>1.10%</td>
<td>1.17%</td>
<td>1.24%</td>
<td>1.31%</td>
</tr>
<tr>
<td>Pro Forma Return on Average Equity</td>
<td>12.54%</td>
<td>13.30%</td>
<td>14.05%</td>
<td>14.73%</td>
</tr>
<tr>
<td>Book Value per Share</td>
<td>(3) $180.11</td>
<td>$192.94</td>
<td>$206.29</td>
<td>$222.63</td>
</tr>
</tbody>
</table>

(1) The projections assume Beginning Tier 1 Capital is as of December 31, 2016.
(2) The projections assume the organization dividends to its shareholders 50% of consolidated net income per year.
(3) Estimated
### Discounted Net Income Pricing Analysis

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<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$1,837,247</td>
<td>7.50%</td>
<td>$1,709,067</td>
<td>$40,731,784</td>
<td>($15,280,050)</td>
<td>$25,451,734</td>
</tr>
<tr>
<td>2018</td>
<td>$2,275,280</td>
<td>7.50%</td>
<td>$1,968,874</td>
<td>$103,106</td>
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<td></td>
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<tr>
<td>2019</td>
<td>$2,746,824</td>
<td>7.50%</td>
<td>$2,211,085</td>
<td>$116,204</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2020</td>
<td>$3,259,526</td>
<td>7.50%</td>
<td>$2,440,735</td>
<td>$129,808</td>
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<td></td>
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<tr>
<td>2021</td>
<td>$3,822,136</td>
<td>7.50%</td>
<td>$2,662,342</td>
<td>$143,412</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2022</td>
<td>$45,897,295</td>
<td>7.50%</td>
<td>$29,739,681</td>
<td>$157,126</td>
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<td></td>
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</tbody>
</table>

### Required Return on Investment: 10.00%

<table>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$1,837,247</td>
<td>10.00%</td>
<td>$1,670,225</td>
<td>$30,011,585</td>
<td>($15,280,050)</td>
<td>$14,731,535</td>
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<tr>
<td>2018</td>
<td>$2,275,280</td>
<td>10.00%</td>
<td>$1,880,397</td>
<td>$102,118</td>
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<tr>
<td>2019</td>
<td>$2,746,824</td>
<td>10.00%</td>
<td>$2,063,730</td>
<td>$115,126</td>
<td></td>
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<tr>
<td>2020</td>
<td>$3,259,526</td>
<td>10.00%</td>
<td>$2,226,300</td>
<td>$128,131</td>
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</tr>
<tr>
<td>2021</td>
<td>$3,822,136</td>
<td>10.00%</td>
<td>$2,373,246</td>
<td>$141,138</td>
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<tr>
<td>2022</td>
<td>$35,072,812</td>
<td>10.00%</td>
<td>$19,797,688</td>
<td>$155,153</td>
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<td></td>
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</tbody>
</table>

### Required Return on Investment: 12.50%

<table>
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<tr>
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<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$1,837,247</td>
<td>12.50%</td>
<td>$1,633,109</td>
<td>$23,457,464</td>
<td>($15,280,050)</td>
<td>$8,177,414</td>
</tr>
<tr>
<td>2018</td>
<td>$2,275,280</td>
<td>12.50%</td>
<td>$1,797,752</td>
<td>$104,361</td>
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</tr>
<tr>
<td>2019</td>
<td>$2,746,824</td>
<td>12.50%</td>
<td>$1,929,182</td>
<td>$117,366</td>
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<tr>
<td>2020</td>
<td>$3,259,526</td>
<td>12.50%</td>
<td>$2,034,906</td>
<td>$130,371</td>
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<td></td>
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<tr>
<td>2021</td>
<td>$3,822,136</td>
<td>12.50%</td>
<td>$2,121,014</td>
<td>$143,376</td>
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<td></td>
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<tr>
<td>2022</td>
<td>$28,263,415</td>
<td>12.50%</td>
<td>$13,941,500</td>
<td>$157,391</td>
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<td></td>
</tr>
</tbody>
</table>
Pro Forma Financial Analysis

Prospective purchase of

ABC Bancshares, Inc.

by

Gerrish Bancorp, Inc.

completed by:

Gerrish Smith Tuck, Consultants and Attorneys
Memphis, Tennessee
## Consolidated Contribution Analysis as of December 31, 2016

**Gerrish Bancorp, Inc.**

*acquiring*

**ABC Bancshares, Inc.**

<table>
<thead>
<tr>
<th>Share Data:</th>
<th>Gerrish Bancorp, Inc.</th>
<th>ABC Bancshares, Inc.</th>
<th>Pro Forma Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shares Outstanding</td>
<td>418,276</td>
<td>1,658,956</td>
<td>477,964</td>
</tr>
<tr>
<td>E.P.S.</td>
<td>$20.96</td>
<td>$0.19</td>
<td>$23.56</td>
</tr>
<tr>
<td>Book Value/Share</td>
<td>$160.11</td>
<td>$8.01</td>
<td>$178.35</td>
</tr>
<tr>
<td>Market Value/Share</td>
<td>$256.00</td>
<td>$9.16</td>
<td>--</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contributions:</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Earnings (000)</td>
<td>$8,768</td>
<td>$312</td>
<td>$9,080</td>
</tr>
<tr>
<td>% of Total</td>
<td>96.6%</td>
<td>3.4%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Equity (000)</td>
<td>$66,971</td>
<td>$16,787</td>
<td>$83,758</td>
</tr>
<tr>
<td>% of Total</td>
<td>80.0%</td>
<td>20.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Total Assets (000)</td>
<td>$793,600</td>
<td>$227,447</td>
<td>$1,021,047</td>
</tr>
<tr>
<td>% of Total</td>
<td>77.7%</td>
<td>22.3%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Weighted % Entitlement:</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Weightings:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Earnings</td>
<td>50%</td>
<td>48.3%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Equity</td>
<td>30%</td>
<td>24.0%</td>
<td>6.0%</td>
</tr>
<tr>
<td>Assets</td>
<td>20%</td>
<td>15.5%</td>
<td>4.5%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>87.81%</td>
<td>12.19%</td>
</tr>
</tbody>
</table>

| Pro Forma Shares                      | 418,276               | 58,044               | 476,320            |

<table>
<thead>
<tr>
<th>Transaction Consideration Adjustment</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash Consideration Mix</td>
<td>0.00%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stock Consideration Mix</td>
<td>100.00%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Required Shares to be Issued</td>
<td>58,044</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Number of Shares to be Issued to Target Shareholders | 59,688 |
| Excess of Required Shares to be Issued            | 1,644 |
| Market value of Excess Shares Issued               | $420,803 |
# Acquisition Analysis - Summary Information

## Gerrish Bancorp, Inc.

*acquiring*

**ABC Bancshares, Inc.**

*(All Numbers in 000’s except Per Share Data)*

### Acquirer Information

<p>| | | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Consolidated Assets:</strong></td>
<td>$793,600</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Consolidated Liabilities:</strong></td>
<td>$726,629</td>
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</tr>
<tr>
<td><strong>Parent Company Equity:</strong></td>
<td>$66,971</td>
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</tr>
<tr>
<td><strong>Parent Shares Outstanding:</strong></td>
<td>418,276</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Book Value per Share:</strong></td>
<td>$160.11</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Market Value per Share:</strong></td>
<td>$256.00</td>
<td></td>
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</tr>
</tbody>
</table>

### Target Information

<p>| | | | | | | |</p>
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<tr>
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<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Consolidated Assets:</strong></td>
<td>$223,947</td>
<td>(1)</td>
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<tr>
<td><strong>Consolidated Liabilities:</strong></td>
<td>$210,660</td>
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<tr>
<td><strong>Parent Company Equity:</strong></td>
<td>$13,287</td>
<td>(1)</td>
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</tr>
<tr>
<td><strong>Parent Shares Outstanding:</strong></td>
<td>1,658,956</td>
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</tr>
<tr>
<td><strong>Book Value per Share:</strong></td>
<td>$8.01</td>
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</tr>
<tr>
<td><strong>Market Value per Share:</strong></td>
<td>$9.16</td>
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### Deal Assumptions:

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<tbody>
<tr>
<td><strong>Purchase Consideration:</strong></td>
<td>$15,280</td>
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<tr>
<td><strong>Consideration Type:</strong></td>
<td>100% Stock</td>
<td></td>
<td></td>
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<tr>
<td><strong>Target Noninterest Exp. Savings:</strong></td>
<td>$1,701</td>
<td></td>
<td></td>
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<tr>
<td><strong>Acquirer Expenses:</strong></td>
<td>$125</td>
<td></td>
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<tr>
<td><strong>Target Expenses:</strong></td>
<td>$75</td>
<td></td>
<td></td>
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</tbody>
</table>

*As provided in Y-6 as of Dec. 31, 2016
** Estimated

### Summary Deal Statistics:

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net Income:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquirer Stand Alone Basis</td>
<td>$9,352.46</td>
<td>$10,247.24</td>
<td>$11,208.12</td>
<td>$12,239.46</td>
<td>$13,345.91</td>
</tr>
<tr>
<td>Pro Forma Combined</td>
<td>$11,394.99</td>
<td>$12,678.80</td>
<td>$14,062.22</td>
<td>$15,557.26</td>
<td>$17,177.32</td>
</tr>
<tr>
<td>Increase in Net Income following Acquisition</td>
<td>$2,042.53</td>
<td>$2,431.56</td>
<td>$2,854.10</td>
<td>$3,317.80</td>
<td>$3,831.42</td>
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<td>Acquirer Shares Outstanding</td>
<td>418,276</td>
<td>418,276</td>
<td>418,276</td>
<td>418,276</td>
<td>418,276</td>
</tr>
<tr>
<td>Shares Issued to Fund Acquisition</td>
<td>59,688</td>
<td>59,688</td>
<td>59,688</td>
<td>59,688</td>
<td>59,688</td>
</tr>
<tr>
<td>Acquirer Shares Outstanding Post Acq.</td>
<td>477,964</td>
<td>477,964</td>
<td>477,964</td>
<td>477,964</td>
<td>477,964</td>
</tr>
<tr>
<td>Earnings per Share:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assuming No Acquisition</td>
<td>$22.36</td>
<td>$24.50</td>
<td>$26.80</td>
<td>$29.26</td>
<td>$31.94</td>
</tr>
<tr>
<td>Assuming Acquisition</td>
<td>$23.84</td>
<td>$26.53</td>
<td>$29.42</td>
<td>$32.55</td>
<td>$35.94</td>
</tr>
<tr>
<td>Acquirer EPS Accretion (Dilution)</td>
<td>6.62%</td>
<td>8.29%</td>
<td>9.78%</td>
<td>11.24%</td>
<td>12.63%</td>
</tr>
</tbody>
</table>

*(1) The projections assume the Target makes a special dividend to its shareholders in the amount of $3,500,000 immediately prior to the transaction in order to reduce excess capital.*
## Acquisition Analysis - Income Statement

### Income Statement Reconciliation as of December 31, 2016

<table>
<thead>
<tr>
<th></th>
<th>Gerrish Bank</th>
<th>ABC Bank</th>
<th>Change Due to Acquisition</th>
<th>Pro Forma Consolidated Earnings</th>
<th>Accretion / Dilution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Income</td>
<td>$27,804.00</td>
<td>$9,535.00</td>
<td>0</td>
<td>$37,339.00</td>
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</tr>
<tr>
<td>Interest Expense</td>
<td>3,575.00</td>
<td>911.00</td>
<td>0</td>
<td>4,486.00</td>
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</tr>
<tr>
<td>Net Interest Income</td>
<td>24,229.00</td>
<td>8,624.00</td>
<td>0</td>
<td>32,853.00</td>
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</tr>
<tr>
<td>Provision Expense</td>
<td>1,346.00</td>
<td>1,979.00</td>
<td>(1,500.00) (1)</td>
<td>2,025.00</td>
<td></td>
</tr>
<tr>
<td>Noninterest Income</td>
<td>6,052.00</td>
<td>2,314.00</td>
<td>0</td>
<td>8,366.00</td>
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</tr>
<tr>
<td>Noninterest Expense</td>
<td>17,295.00</td>
<td>8,505.00</td>
<td>(1,701.00) (2)</td>
<td>24,099.00</td>
<td></td>
</tr>
<tr>
<td>CDI Amortization</td>
<td>0</td>
<td>0</td>
<td>284.72 (3)</td>
<td>284.72</td>
<td></td>
</tr>
<tr>
<td>Interest Expense</td>
<td>0</td>
<td>100.00</td>
<td>0</td>
<td>100.00</td>
<td></td>
</tr>
<tr>
<td>Other Parent Expenses</td>
<td>3.00</td>
<td>139.00</td>
<td>(120.00) (5)</td>
<td>22.00</td>
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</tr>
<tr>
<td>Income before Taxes</td>
<td>11,437.00</td>
<td>215.00</td>
<td>2,916.28</td>
<td>14,688.28</td>
<td>28.43%</td>
</tr>
<tr>
<td>Taxes</td>
<td>2,669</td>
<td>573.00</td>
<td>827.73 (7)</td>
<td>3,428</td>
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</tr>
<tr>
<td><strong>Net Income</strong></td>
<td><strong>$8,768.00</strong></td>
<td><strong>$312.00</strong></td>
<td><strong>$2,088.55</strong></td>
<td><strong>$11,260.54</strong></td>
<td><strong>28.43%</strong></td>
</tr>
<tr>
<td>Estimated Earnings Per Share</td>
<td></td>
<td></td>
<td></td>
<td>$23.56</td>
<td>12.40%</td>
</tr>
<tr>
<td>Estimated Earnings Per Share Adding back CDI Amortization</td>
<td></td>
<td></td>
<td></td>
<td>$24.16</td>
<td>15.27%</td>
</tr>
</tbody>
</table>

### Notes:

1. The projections assume the Target's provision expenses on an ongoing basis are significantly less than its provision expense in 2016, which was largely do to losses on one large loan.
2. The projections assume the Acquiror is able to reduce the Target's non-interest expense by $1,701,000 (approximately 20%) annually.
3. According to ASC 805, the purchase price premium, if any, is allocated between Goodwill and the Core Deposit Intangible. Any CDI is amortized over the "useful life" of the asset, which is assumed to be seven years. Goodwill is not amortized for GAAP purposes, but is tested for impairment. For these purposes, the projections assume any CDI created in association with the transaction is equal to up to 3% of the Target's deposits. Accordingly, the projections assume there is a CDI of $1,993,050 and no Goodwill created in association with the transaction as a result of the purchase price exceeding the Target's book value.
4. The projections assume the consideration paid to the Target's shareholders is 100% stock, resulting in no new holding company debt in association with the transaction. The projections further assume the Acquiror assumes the Target's Trust Preferred Securities in the amount of $5,155,000 as a result of the transaction.
5. The projections assume the Acquiror is able to reduce the Target Holding Company's non-interest expenses by $120,000 as a result of the transaction.
6. Presents assumed annual net income for the year ended December 31, 2016. Any realized gains or losses on securities have been disregarded, as these are non-recurring earnings items.
7. The projections assume a combined effective income tax rate of 30%.
8. The projections assume 100% of the purchase price consideration is 59,688 newly issued shares of Acquiror stock with an assumed aggregate market value of $15,280,050.
## Profitability and Asset Growth Rate Assumptions

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquirer ROA</td>
<td>1.15%</td>
<td>1.20%</td>
<td>1.25%</td>
<td>1.30%</td>
<td>1.35%</td>
</tr>
<tr>
<td>Acquirer Asset Growth</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>Target ROA</td>
<td>0.50%</td>
<td>0.65%</td>
<td>0.80%</td>
<td>0.95%</td>
<td>1.10%</td>
</tr>
<tr>
<td>Target Asset Growth</td>
<td>3.00%</td>
<td>3.50%</td>
<td>4.00%</td>
<td>4.50%</td>
<td>5.00%</td>
</tr>
</tbody>
</table>

## Pro Forma Annual Income

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquirer Net Income</td>
<td>$9,352.46</td>
<td>$10,247.24</td>
<td>$11,208.12</td>
<td>$12,239.46</td>
<td>$13,345.91</td>
</tr>
<tr>
<td>Target Pre-Tax Net Income</td>
<td>1,136.53</td>
<td>1,525.56</td>
<td>1,948.11</td>
<td>2,411.81</td>
<td>2,925.42</td>
</tr>
<tr>
<td>Combined Net Income</td>
<td>10,488.99</td>
<td>11,772.80</td>
<td>13,156.23</td>
<td>14,651.27</td>
<td>16,271.33</td>
</tr>
<tr>
<td>Additional Income as a Result of Merger</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Cost Savings</td>
<td>1,701.00</td>
<td>1,701.00</td>
<td>1,701.00</td>
<td>1,701.00</td>
<td>1,701.00</td>
</tr>
<tr>
<td>CDI Amortization</td>
<td>(284.72)</td>
<td>(284.72)</td>
<td>(284.72)</td>
<td>(284.72)</td>
<td>(284.72)</td>
</tr>
<tr>
<td>Holding Company Interest and Other Expense</td>
<td>(122.00)</td>
<td>(122.00)</td>
<td>(122.00)</td>
<td>(122.00)</td>
<td>(122.00)</td>
</tr>
<tr>
<td>Net Taxes on Target Earnings and Adjustments</td>
<td>(388.28)</td>
<td>(388.28)</td>
<td>(388.28)</td>
<td>(388.28)</td>
<td>(388.28)</td>
</tr>
<tr>
<td>Pro Forma Net Income</td>
<td>$11,394.99</td>
<td>$12,678.80</td>
<td>$14,062.22</td>
<td>$15,557.26</td>
<td>$17,177.32</td>
</tr>
<tr>
<td>Pro Forma Shares Outstanding</td>
<td>477,964</td>
<td>477,964</td>
<td>477,964</td>
<td>477,964</td>
<td>477,964</td>
</tr>
<tr>
<td>Acquirer Stand Alone EPS</td>
<td>$22.36</td>
<td>$24.50</td>
<td>$26.80</td>
<td>$29.26</td>
<td>$31.91</td>
</tr>
<tr>
<td>EPS from Acquisition</td>
<td>$1.48</td>
<td>$2.03</td>
<td>$2.62</td>
<td>$3.29</td>
<td>$4.03</td>
</tr>
<tr>
<td>Pro Forma EPS</td>
<td>$23.84</td>
<td>$26.53</td>
<td>$29.42</td>
<td>$32.55</td>
<td>$35.94</td>
</tr>
<tr>
<td>Acquirer EPS Accretion (Dilution)</td>
<td>6.62%</td>
<td>8.29%</td>
<td>9.78%</td>
<td>11.24%</td>
<td>12.63%</td>
</tr>
</tbody>
</table>
### Bank Balance Sheet Reconciliation as of December 31, 2016

<table>
<thead>
<tr>
<th>Assets</th>
<th>Gerrish Bank</th>
<th>ABC Bank</th>
<th>Acquisition Adjustments</th>
<th>Pro Forma Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and Cash Equivalents</td>
<td>34,886</td>
<td>9,032</td>
<td>(1)</td>
<td>43,718</td>
</tr>
<tr>
<td>Investment Securities</td>
<td>329,088</td>
<td>22,211</td>
<td>0</td>
<td>351,299</td>
</tr>
<tr>
<td>Loans Held for Sale</td>
<td>0</td>
<td>0</td>
<td>(2)</td>
<td>0</td>
</tr>
<tr>
<td>Gross Loans</td>
<td>401,077</td>
<td>171,225</td>
<td>(2,380)</td>
<td>569,922</td>
</tr>
<tr>
<td>Allowance for Losses</td>
<td>7,273</td>
<td>2,380</td>
<td>(3)</td>
<td>7,273</td>
</tr>
<tr>
<td>Net Loans</td>
<td>393,804</td>
<td>168,845</td>
<td>(3)</td>
<td>562,649</td>
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<tr>
<td>Goodwill</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Core Deposit Intangible</td>
<td>0</td>
<td>0</td>
<td>(4)</td>
<td>0</td>
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<td>Other Intangibles</td>
<td>229</td>
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<td>229</td>
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<tr>
<td>OREO</td>
<td>332</td>
<td>1,683</td>
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<td>2,015</td>
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<td>Inv. in Un-Consolidated Subs.</td>
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<td>0</td>
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<tr>
<td>Other Assets</td>
<td>35,260</td>
<td>21,821</td>
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<td>57,081</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td><strong>$793,599</strong></td>
<td><strong>$223,592</strong></td>
<td><strong>$1,793</strong></td>
<td><strong>$1,018,984</strong></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Liabilities</th>
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</thead>
<tbody>
<tr>
<td>Deposits</td>
<td>720,825</td>
<td>189,388</td>
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<td>910,213</td>
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<td>Borrowings</td>
<td>3,688</td>
<td>9,551</td>
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<td>13,239</td>
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<tr>
<td>Other Liabilities</td>
<td>2,196</td>
<td>3,019</td>
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<td>5,215</td>
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<tr>
<td><strong>TOTAL LIABILITIES</strong></td>
<td><strong>726,709</strong></td>
<td><strong>201,958</strong></td>
<td></td>
<td><strong>928,667</strong></td>
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<table>
<thead>
<tr>
<th>Equity</th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Preferred Stock</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Common Stock</td>
<td>500</td>
<td>5,625</td>
<td></td>
<td>6,125</td>
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<tr>
<td>Surplus</td>
<td>63,250</td>
<td>16,825</td>
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<td>80,075</td>
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<tr>
<td>Retained Earnings</td>
<td>790</td>
<td>(767)</td>
<td>1,793</td>
<td>(5) 1,816</td>
</tr>
<tr>
<td>Acc. Other Comp. Income</td>
<td>2,350</td>
<td>(49)</td>
<td></td>
<td>2,301</td>
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<tr>
<td>Other Equity Comp.</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td><strong>TOTAL EQUITY</strong></td>
<td><strong>66,890</strong></td>
<td><strong>21,634</strong></td>
<td>1,793</td>
<td><strong>90,317</strong></td>
</tr>
</tbody>
</table>

**TOTAL LIABILITIES PLUS EQUITY**

|                | **$793,599** | **$223,592** | **$1,793** | **$1,018,984** |

(1) The projections assume the Target makes a special dividend to its shareholders in the amount of $3,500,000 immediately prior to the transaction in order to reduce excess capital.

(2) The projections assume a reduction in cash equal to the amount of the assumed transaction expenses ($200,000).

(3) ASC 805 requires that an acquirer transfer the target's assets and liabilities to the acquirer's balance sheet at their "fair value" as of the date of acquisition. This requires the elimination of the target's ALLL, since any expected loss should be reflected in the fair value numbers.

(4) The projections assume there is a CDI of $1,993,050 and no Goodwill created in association with the transaction as a result of the purchase price exceeding the Target's book value.

(5) The combined bank's equity is increased by $1,793,050, which is the sum of the transaction expenses and increase in intangible assets associated with the transaction.
## Acquisition Analysis - Pro Forma Balance Sheet

### Parent Company Balance Sheet Reconciliation as of December 31, 2016

<table>
<thead>
<tr>
<th></th>
<th>Gerrish Bancorp, Inc.</th>
<th>Acquisition Adjustments</th>
<th>Pro Forma Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash &amp; Cash Equivalents</td>
<td>126</td>
<td></td>
<td>126</td>
</tr>
<tr>
<td>Securities</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Loans</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Equity Investment in Bank Subsidiary</td>
<td>66,890</td>
<td>23,427</td>
<td>90,317</td>
</tr>
<tr>
<td>Equity Investment in Non-Bank Subs</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Other Assets</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td>$67,017</td>
<td>$23,427</td>
<td>$90,444</td>
</tr>
<tr>
<td><strong>Liabilities</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Short Term Borrowings</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Long Term Borrowings</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Trust Preferred Securities</td>
<td>0</td>
<td>5,155</td>
<td>5,155</td>
</tr>
<tr>
<td>Other Liabilities</td>
<td>46</td>
<td></td>
<td>46</td>
</tr>
<tr>
<td><strong>TOTAL LIABILITIES</strong></td>
<td>46</td>
<td>5,155</td>
<td>5,201</td>
</tr>
<tr>
<td><strong>Equity</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferred Stock</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Common Stock (Incl. Surplus)</td>
<td>7,625</td>
<td>15,280</td>
<td>22,905</td>
</tr>
<tr>
<td>Retained Earnings</td>
<td>56,996</td>
<td>2,992</td>
<td>59,988</td>
</tr>
<tr>
<td>Acc. Other Comp. Income</td>
<td>2,350</td>
<td></td>
<td>2,350</td>
</tr>
<tr>
<td>Other Equity Comp.</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td><strong>TOTAL EQUITY</strong></td>
<td>66,971</td>
<td>18,272</td>
<td>85,243</td>
</tr>
<tr>
<td><strong>TOTAL LIABILITIES PLUS EQUITY</strong></td>
<td>$67,017</td>
<td>$23,427</td>
<td>$90,444</td>
</tr>
<tr>
<td><strong>BOOK VALUE PER SHARE</strong></td>
<td>$160.11</td>
<td>$18.23</td>
<td>$178.35</td>
</tr>
</tbody>
</table>

(1) The Holding Company's Investment in the combined Bank Subsidiary would increase a net of $23,427,050.

(2) The projections assume the Acquiror assumes the Target's Trust Preferred Securities in the amount of $5,155,000 as a result of the transaction.

(3) The projections assume 100% of the purchase price consideration is 59,688 newly issued shares of Acquiror stock with an assumed aggregate market value of $15,280,050.

(4) The net effect of the increase to assets and liabilities is an increase to the combined organization's equity of $2,992,000.
### Acquisition Analysis - Pro Forma Balance Sheet

#### Loan Portfolio Reconciliation as of December 31, 2016

#### Gerrish Bank

<table>
<thead>
<tr>
<th>Loans</th>
<th>Amount</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction and Land</td>
<td>16,317</td>
<td>4.07%</td>
</tr>
<tr>
<td>1-4 Family Real Estate</td>
<td>139,629</td>
<td>34.81%</td>
</tr>
<tr>
<td>Multi-family Real Estate</td>
<td>10,804</td>
<td>2.69%</td>
</tr>
<tr>
<td>Commercial Real Estate</td>
<td>62,764</td>
<td>15.65%</td>
</tr>
<tr>
<td>Commercial and Industrial</td>
<td>82,947</td>
<td>20.68%</td>
</tr>
<tr>
<td>Farm and Agricultural</td>
<td>56,553</td>
<td>14.10%</td>
</tr>
<tr>
<td>Consumer</td>
<td>28,788</td>
<td>7.18%</td>
</tr>
<tr>
<td>Other</td>
<td>3,275</td>
<td>0.82%</td>
</tr>
<tr>
<td><strong>Total Loans</strong></td>
<td><strong>$401,077</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

#### ABC Bank

<table>
<thead>
<tr>
<th>Loans</th>
<th>Amount</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction and Land</td>
<td>13,516</td>
<td>7.89%</td>
</tr>
<tr>
<td>1-4 Family Real Estate</td>
<td>34,903</td>
<td>20.38%</td>
</tr>
<tr>
<td>Multi-family Real Estate</td>
<td>3,233</td>
<td>1.89%</td>
</tr>
<tr>
<td>Commercial Real Estate</td>
<td>49,365</td>
<td>28.83%</td>
</tr>
<tr>
<td>Commercial and Industrial</td>
<td>39,227</td>
<td>22.91%</td>
</tr>
<tr>
<td>Farm and Agricultural</td>
<td>22,885</td>
<td>13.37%</td>
</tr>
<tr>
<td>Consumer</td>
<td>6,423</td>
<td>3.75%</td>
</tr>
<tr>
<td>Other</td>
<td>1,673</td>
<td>0.98%</td>
</tr>
<tr>
<td><strong>Total Loans</strong></td>
<td><strong>$171,225</strong></td>
<td><strong>100%</strong></td>
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</table>

#### Pro Forma Combined

<table>
<thead>
<tr>
<th>Loans</th>
<th>Amount</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction and Land</td>
<td>29,833</td>
<td>5.21%</td>
</tr>
<tr>
<td>1-4 Family Real Estate</td>
<td>174,532</td>
<td>30.50%</td>
</tr>
<tr>
<td>Multi-family Real Estate</td>
<td>14,037</td>
<td>2.45%</td>
</tr>
<tr>
<td>Commercial Real Estate</td>
<td>112,129</td>
<td>19.59%</td>
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<tr>
<td>Commercial and Industrial</td>
<td>122,174</td>
<td>21.35%</td>
</tr>
<tr>
<td>Farm and Agricultural</td>
<td>79,438</td>
<td>13.88%</td>
</tr>
<tr>
<td>Consumer</td>
<td>35,211</td>
<td>6.15%</td>
</tr>
<tr>
<td>Other</td>
<td>4,948</td>
<td>0.88%</td>
</tr>
<tr>
<td><strong>Total Loans</strong></td>
<td><strong>$572,302</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>
# Acquisition Analysis - Pro Forma Balance Sheet

## Deposit Reconciliation as of December 31, 2016

### Gerrish Bank

<table>
<thead>
<tr>
<th>Deposits</th>
<th>Amount</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demand Deposits</td>
<td>25,399</td>
<td>3.52%</td>
</tr>
<tr>
<td>NOW / Other Transaction</td>
<td>54,098</td>
<td>7.51%</td>
</tr>
<tr>
<td>Money Market</td>
<td>340,774</td>
<td>47.28%</td>
</tr>
<tr>
<td>Other Savings</td>
<td>36,276</td>
<td>5.03%</td>
</tr>
<tr>
<td>Retail Time</td>
<td>196,530</td>
<td>27.26%</td>
</tr>
<tr>
<td>Jumbo Time</td>
<td>67,748</td>
<td>9.39%</td>
</tr>
<tr>
<td><strong>Total Deposits</strong></td>
<td><strong>$720,825</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

![Gerrish Bank Pie Chart]

### ABC Bank

<table>
<thead>
<tr>
<th>Deposits</th>
<th>Amount</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demand Deposits</td>
<td>57,004</td>
<td>30.10%</td>
</tr>
<tr>
<td>NOW / Other Transaction</td>
<td>49,085</td>
<td>25.92%</td>
</tr>
<tr>
<td>Money Market</td>
<td>20,778</td>
<td>10.97%</td>
</tr>
<tr>
<td>Other Savings</td>
<td>5,931</td>
<td>3.13%</td>
</tr>
<tr>
<td>Retail Time</td>
<td>52,457</td>
<td>27.70%</td>
</tr>
<tr>
<td>Jumbo Time</td>
<td>4,133</td>
<td>2.18%</td>
</tr>
<tr>
<td><strong>Total Deposits</strong></td>
<td><strong>$189,388</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

![ABC Bank Pie Chart]

### Pro Forma Combined

<table>
<thead>
<tr>
<th>Deposits</th>
<th>Amount</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demand Deposits</td>
<td>82,403</td>
<td>9.05%</td>
</tr>
<tr>
<td>NOW / Other Transaction</td>
<td>103,183</td>
<td>11.34%</td>
</tr>
<tr>
<td>Money Market</td>
<td>361,552</td>
<td>39.72%</td>
</tr>
<tr>
<td>Other Savings</td>
<td>42,207</td>
<td>4.64%</td>
</tr>
<tr>
<td>Retail Time</td>
<td>248,987</td>
<td>27.35%</td>
</tr>
<tr>
<td>Jumbo Time</td>
<td>71,881</td>
<td>7.89%</td>
</tr>
<tr>
<td><strong>Total Deposits</strong></td>
<td><strong>$910,213</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

![Pro Forma Combined Pie Chart]
### Bank Capital Ratio Reconciliation as of December 31, 2016

<table>
<thead>
<tr>
<th></th>
<th>Gerrish Bank</th>
<th>ABC Bank</th>
<th>Acquisition Adjustment</th>
<th>Pro Forma Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TIER 1 CAPITAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Equity</td>
<td>66,890</td>
<td>21,634</td>
<td>1,793</td>
<td>90,317</td>
</tr>
<tr>
<td>LESS: Net Unrealized Gain (Loss) on AFS Securities and Cash Flow Hedges</td>
<td>2,350</td>
<td>(49)</td>
<td>49</td>
<td>2,350</td>
</tr>
<tr>
<td>Nonqualifying Perp. Pref. Stock</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Qualifying Minority Interest in Sub. Intangibles</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>LESS: Disallowed Goodwill and Other Intangibles</td>
<td>229</td>
<td>0</td>
<td>1,993</td>
<td>2,222</td>
</tr>
<tr>
<td>Subtotal</td>
<td>64,311</td>
<td>21,683</td>
<td>(249)</td>
<td>85,745</td>
</tr>
<tr>
<td>Other Disallowed Assets</td>
<td>0</td>
<td>2718</td>
<td></td>
<td>2,718</td>
</tr>
<tr>
<td>Other Additions/Deductions to Tier 1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>TIER 1 CAPITAL</strong></td>
<td>64,311</td>
<td>18,965</td>
<td>(249)</td>
<td>83,027</td>
</tr>
<tr>
<td><strong>TIER 2 CAPITAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qualifying Sub. Debt and Redeemable Pref. Stock</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Cum. Prep. Pref. Stock</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>ALLL Includible as Tier 2</td>
<td>5,880</td>
<td>2,380</td>
<td></td>
<td>7,273</td>
</tr>
<tr>
<td>Other Tier 2 Capital Components</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>TIER 2 CAPITAL</strong></td>
<td>5,880</td>
<td>2,380</td>
<td></td>
<td>7,273</td>
</tr>
<tr>
<td><strong>TOTAL RISK BASED CAPITAL</strong></td>
<td>70,191</td>
<td>21,345</td>
<td></td>
<td>90,300</td>
</tr>
<tr>
<td>Average Total Assets</td>
<td>787,876</td>
<td>230,678</td>
<td></td>
<td>1,018,984</td>
</tr>
<tr>
<td>Est. Risk-Weighted Assets</td>
<td>468,976</td>
<td>193,935</td>
<td></td>
<td>662,911</td>
</tr>
</tbody>
</table>

| **TIER 1 LEVERAGE RATIO** |              |          |                        | 8.15%             |
| **TIER 1 RISK-BASED RATIO** | 8.16%       | 8.22%    |                        | 12.52%            |
| **TOTAL RISK-BASED RATIO** | 14.97%       | N/A      |                        | 13.62%            |
| **CONSOLIDATED LEVERAGE RATIO** | 8.17%       | N/A      |                        | 8.37%             |

(1) The equity of the combined bank is decreased by $1,793,050, which is the net effect of the changes to the balance sheet as a result of the transaction.
(2) The Target's Securities will be recorded at their "Fair Value" as of the date of acquisition.
(3) Regulatory capital guidelines allow an institution to include in its Tier 2 Capital ALLL up to 1.25% of the Bank's Total Risk-Weighted assets.
(4) Estimated
### Bank Pro Forma Capital Projections

(All Numbers in 000's except Shares Outstanding and Per Share Data)

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Beginning Tier 1 Capital</strong></td>
<td>83,027</td>
<td>87,871</td>
<td>93,266</td>
<td>99,254</td>
</tr>
<tr>
<td><strong>Bank Net Income</strong></td>
<td>11,480.39</td>
<td>12,764.20</td>
<td>14,147.62</td>
<td>15,642.66</td>
</tr>
<tr>
<td><strong>Dividends to Holding Company</strong></td>
<td>(Holding Company Debt Service)</td>
<td>(70.00)</td>
<td>(70.00)</td>
<td>(70.00)</td>
</tr>
<tr>
<td></td>
<td>(Other Holding Company Expenses)</td>
<td>(15.40)</td>
<td>(15.40)</td>
<td>(15.40)</td>
</tr>
<tr>
<td></td>
<td>(Shareholder Dividends)</td>
<td>(6,550.52)</td>
<td>(7,284.02)</td>
<td>(8,074.44)</td>
</tr>
<tr>
<td><strong>Bank Retained Earnings</strong></td>
<td>4,844.47</td>
<td>5,394.78</td>
<td>5,987.78</td>
<td>6,628.63</td>
</tr>
<tr>
<td><strong>Ending Tier 1 Capital</strong></td>
<td>87,871</td>
<td>93,266</td>
<td>99,254</td>
<td>105,883</td>
</tr>
<tr>
<td><strong>Estimated Total Risk Based Capital</strong></td>
<td>95,569</td>
<td>101,436</td>
<td>107,948</td>
<td>115,158</td>
</tr>
<tr>
<td><strong>Beginning Total Assets</strong></td>
<td>1,018,984</td>
<td>1,065,857</td>
<td>1,115,953</td>
<td>1,169,519</td>
</tr>
<tr>
<td><strong>Asset Growth</strong></td>
<td>46,873</td>
<td>50,096</td>
<td>53,566</td>
<td>57,306</td>
</tr>
<tr>
<td><strong>Ending Total Assets</strong></td>
<td>1,065,857</td>
<td>1,115,953</td>
<td>1,169,519</td>
<td>1,226,826</td>
</tr>
<tr>
<td><strong>Estimated Risk Weighted Assets</strong></td>
<td>693,405</td>
<td>725,995</td>
<td>760,843</td>
<td>798,125</td>
</tr>
<tr>
<td><strong>Tier 1 Leverage Ratio</strong></td>
<td>8.24%</td>
<td>8.36%</td>
<td>8.49%</td>
<td>8.63%</td>
</tr>
<tr>
<td><strong>Tier 1 Risk Based Ratio</strong></td>
<td>12.67%</td>
<td>12.85%</td>
<td>13.05%</td>
<td>13.27%</td>
</tr>
<tr>
<td><strong>Total Risk Based Ratio</strong></td>
<td>13.78%</td>
<td>13.97%</td>
<td>14.19%</td>
<td>14.43%</td>
</tr>
<tr>
<td><strong>Pro Forma Return on Average Assets</strong></td>
<td>1.10%</td>
<td>1.17%</td>
<td>1.24%</td>
<td>1.30%</td>
</tr>
<tr>
<td><strong>Pro Forma Return on Average Equity</strong></td>
<td>12.31%</td>
<td>12.94%</td>
<td>13.50%</td>
<td>14.01%</td>
</tr>
<tr>
<td><strong>Book Value per Share</strong></td>
<td>(3) $188.16</td>
<td>$198.86</td>
<td>$210.79</td>
<td>$224.06</td>
</tr>
</tbody>
</table>

(1) The projections assume Beginning Tier 1 Capital is as of December 31, 2016.

(2) The projections assume the organization dividends to its shareholders 57% of consolidated net income per year to account for the increase in the number of outstanding shares post-transaction.

(3) Estimated
## Acquisition Analysis - Discounted Cash Flow Pricing Analysis

### Discounted Net Income Pricing Analysis

<table>
<thead>
<tr>
<th>Year</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>Continuous Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required Return on Investment</td>
<td>7.50%</td>
<td>7.50%</td>
<td>7.50%</td>
<td>7.50%</td>
<td>7.50%</td>
<td>7.50%</td>
</tr>
<tr>
<td>Present Value of Future Cash Flow</td>
<td>$2,164,881</td>
<td>$2,350,485</td>
<td>$2,526,630</td>
<td>$2,697,574</td>
<td>$2,867,130</td>
<td>$32,211,391</td>
</tr>
<tr>
<td>Present Value of Future Cash Flows</td>
<td>$44,818,092</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Present Value of Consideration</td>
<td>$(15,280,050)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net Present Benefit of Transaction</strong></td>
<td>$29,538,042</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Required Return on Investment: 10.00%

<table>
<thead>
<tr>
<th>Year</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>Continuous Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required Return on Investment</td>
<td>10.00%</td>
<td>10.00%</td>
<td>10.00%</td>
<td>10.00%</td>
<td>10.00%</td>
<td>10.00%</td>
</tr>
<tr>
<td>Present Value of Future Cash Flow</td>
<td>$2,115,680</td>
<td>$2,244,859</td>
<td>$2,358,245</td>
<td>$2,460,574</td>
<td>$2,555,797</td>
<td>$21,443,104</td>
</tr>
<tr>
<td>Present Value of Future Cash Flows</td>
<td>$33,178,259</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Present Value of Consideration</td>
<td>$(15,280,050)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net Present Benefit of Transaction</strong></td>
<td>$17,898,209</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Required Return on Investment: 12.50%

<table>
<thead>
<tr>
<th>Year</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>Continuous Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required Return on Investment</td>
<td>12.50%</td>
<td>12.50%</td>
<td>12.50%</td>
<td>12.50%</td>
<td>12.50%</td>
<td>12.50%</td>
</tr>
<tr>
<td>Present Value of Future Cash Flow</td>
<td>$2,068,664</td>
<td>$2,146,196</td>
<td>$2,204,497</td>
<td>$2,249,039</td>
<td>$2,284,163</td>
<td>$15,100,200</td>
</tr>
<tr>
<td>Present Value of Future Cash Flows</td>
<td>$26,052,760</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Present Value of Consideration</td>
<td>$(15,280,050)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net Present Benefit of Transaction</strong></td>
<td>$10,772,710</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
PROPOSED TERM SHEET FOR PREPARATION OF DEFINITIVE AGREEMENT FOR MERGER TRANSACTION

PARTIES: _______________________ ("Acquiror")
_______________________ ("Target")

Key Terms

Structure: The merger of Target with and into Acquiror (the “Transaction”).

Pricing/Exchange Ratio: Each shareholder of Target will have the opportunity to elect whether to receive, for each share of Target common stock held by such shareholder:

- $72.00 in cash; or
- 1.714 shares of Acquiror common stock; or
- A combination of cash and Acquiror common stock.

Under certain circumstances, the merger consideration that would be paid in the Transaction may differ from the form of consideration elected by Target shareholders. To the extent (if at all) that the aggregate number of shares of Acquiror common stock that would otherwise be issuable to shareholders electing to receive Acquiror common stock exceeds 250,000 shares, then the number of shares of Acquiror common stock to be issued in the Transaction to Target shareholders electing to receive Acquiror common stock would be reduced pro rata and such shareholders would receive the cash value of the number of shares not issued to them as a result of such pro rata reduction. To the extent (if at all) that the aggregate number of shares of Acquiror common stock that would otherwise be issuable to shareholders electing to receive Acquiror common stock is less than 250,000 shares, then the number of shares of Acquiror common stock to be issued in the Transaction to Target shareholders electing to receive Acquiror common stock would be increased pro rata and such shareholders would receive proportionately less cash.

Issued and Outstanding Stock Options: Director, management, and employee stock options with respect to 20,000 shares of Target common stock will convert into options for Acquiror common stock at the Exchange Ratio. Director stock options must be exercised within 90 days following termination of status as a director.

Corporate Structure:

- Target will initially operate as an independent subsidiary of Acquiror, retaining its name and the majority of its directors, and core officers and staff.
- ____________________________, Chief Executive Officer and President of Target, will retain those titles with the bank.
• Acquiror will designate up to two representatives to serve on Target’s board of directors.

• Target shareholders will benefit from the Transaction by receiving a material premium and immediate liquidity for their stock and, if they elect to receive shares of Acquiror common stock, further potential appreciation in their investment.

• Target’s subsidiary bank will benefit from various Acquiror services, such as, but not limited to:
  * Capital resources
  * Financial/investment expertise
  * Marketing team
  * Human resources management
  * Information/technology commitment

Management of Target: To express their mutual commitment to the success of the combined entity, Mr. ___________ and Mrs. ______________ will be asked to enter into employment agreements. The specifics of such agreements will be determined on mutually acceptable terms and conditions, which will include at least the following:

  • Prior to expiration of Mr. ___________’s employment agreement, Acquiror and Mr. ___________ will explore opportunities for Mr. ___________’s continued employment following the term of his employment agreement. In the event that Mr. ___________’s employment does not continue beyond the end of such term, Acquiror would pay him a severance amount equal to one year’s salary.

  • Mrs. ______________ will be employed with a term commencing on the closing of the Transaction and ending on December 31, 2016. Upon expiration of her employment agreement, Mrs. __________ will be entitled to receive periodic severance payments in an aggregate amount of $350,000 (subject to application “golden parachute” restrictions). The severance payments will be paid out over a period of time on mutually acceptable dates (or will be paid to Mrs. __________’s spouse in the event of her death). Prior to the expiration of Mrs. __________’s employment agreement, Acquiror and Mrs. __________ will explore opportunities for her continued employment following the term of her employment agreement.

Employee Benefits: Target employees will have available to them benefit plans that are comparable in the aggregate to current Target plans. Acquiror will continue to fund the key-man life insurance policy covering Mrs. ___________. In the event of Mrs. __________’s death, Acquiror and Mrs. __________’s spouse will share equally the proceeds of such insurance. Acquiror will use its best efforts to ensure Mrs. __________’s access to health insurance during the term of her employment and the applicable COBRA period.

Directors: All directors of Target will be expected to agree to vote their shares in favor of the Transaction and to execute standard non-compete and affiliate agreements.
Due Diligence: Subject to acceptable due diligence by Acquiror and Target.

Indemnification: Directors and officers of Target will be indemnified by Acquiror for prior acts to the same extent they are presently entitled under Target’s Articles and state law.

No Shop Provision/Break-Up Fee/Lock-Up Option: Subject to appropriate fiduciary standards, Target will not initiate, solicit or encourage acquisition proposals from any third party. To protect the Transaction from uninvited third parties, Target will grant to Acquiror a “lock-up” option for 19.9% of its currently outstanding shares at an option price to be mutually determined. The lock-up option would not become operative until Acquiror and Target execute a definitive acquisition agreement.

Target Operations Prior to Closing:

- Standard and otherwise appropriate restrictions on “normal” operations
- No dividends by Target
- Minimum capital and 1% loan loss reserve at closing and appropriate “basket” of professional expenses

Anti-Dilution Provision: The definitive acquisition agreement will contain standard anti-dilution protection.

Representations and Warranties: Target and Acquiror will make standard representations and warranties.

Tax Opinions: Favorable tax opinions. Transaction to be structured as a tax-free reorganization (to the extent the number of shares of Acquiror common stock are issued in the Transaction) and accounted for as a Business Combination under ASC 805 and all other applicable accounting rules.

Opinions of Counsel: Scope to be determined.

Press Releases: Neither Acquiror nor Target will, without the prior approval of the other party, issue any press release or written statement for general circulation, or make any other public comments, relating to the Transaction, except as otherwise required by applicable law or rules and regulations of the NASD.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]
Closing: The parties will use their best efforts to close the Transaction by September 15, 2016. If the closing of the Transaction does not occur on or before December 31, 2016, the Transaction may be abandoned by either Acquiror or Target.

Mutually accepted this ____ day of July, 2016.

Buyer

______________________________

By: __________________________

Target

______________________________

By: __________________________
Due Diligence Checklist

The following, at a minimum, should be reviewed during a due diligence review of a community bank and its one-bank holding company:

1. Corporate Records
   _____ a. Bank holding company Articles of Incorporation and Bylaws.
   _____ b. Bank Articles of Incorporation and Bylaws.
   _____ c. Articles of Incorporation and Bylaws for other subsidiaries, including the insurance agency subsidiary.
   _____ d. Correspondence, including proxy materials, with stockholders for the last two years.
   _____ e. List of stockholders.
   _____ f. List of directors and executive officers.
   _____ g. List of outstanding stock options and warrants, if any, showing the name of the holder, number of shares, exercise price, and expiration date.
   _____ h. Board, committee, and shareholder minutes for the last two years for all corporate entities.
   _____ i. Legal entity and management organization charts.

2. Financial information
   _____ a. Year-end 2015 and 2016, as well as current year-to-date 2017, financial statements for the bank holding company, the bank, the insurance agency subsidiary, and any other subsidiaries on an individual basis and a consolidated basis. The financial statements should include the Statements of Income, Condition, and Cash Flow, as well as the Reconciliation of Equity Capital Schedule.
   _____ c. Uniform Bank Performance Report and Call Reports for past two years.
   _____ d. Bank budget for 2017 (and 2018, if available).
   _____ e. Reports comparing budgeted performance with actual performance for past two years.
   _____ g. Copies of, and responses to, management letters from independent accountants and auditors for the last two years.
h. Description of accounting policy changes and impact on reported earnings for the last two years.

i. Internal audit reports, including management response letters for the last two years.

3. Loan Portfolio

a. All lending policies, including underwriting criteria, risk management standards, loan review requirements, and allowance methodology.

b. Board and Officer Loan Committee minutes and reports for the last two years.

c. Compact disc that contains the current loan trial balance.

d. Loan portfolio summary that lists the major types of loans, and the number of loans, dollar volume, and average annual yield by type, including delinquency status, past due histories, and risk ratings for the last four quarters.

e. Independent external loan review reports for the last three years.

f. Most recent in-house loan review reports.

g. Analysis of the Allowance for Loan and Lease Losses and methodology used to determine adequacy.

h. Problem loan list.

i. Nonaccrual loan report.

j. Delinquent loan report.

k. Concentrations of credit report.

l. List of restructured loans.

m. List of impaired loans.

n. Trend report for delinquencies, charge-offs, and originations for the last two years.

o. List of Other Real Estate Owned and repossessions.

p. List of existing lending relationships that exceed the legal lending limit.

q. List of loans to insiders, including employees.

r. List of loan participations purchased and sold.

s. Schedule of loans sold with recourse and related reserve computation.
4. Investment Portfolio
   _____ a. Investment Policy.
   _____ b. Board Investment Committee minutes for the last two years as well
           as current reports normally provided to the Committee.
   _____ d. List of classified investment securities.

5. Deposits and Other Funding Sources
   _____ a. Funding and Liquidity Policies.
   _____ b. Relevant Board Committee minutes for the last two years as well as
           current reports normally provided to the Committee.
   _____ c. Compact disc that contains the current deposit trial balance.
   _____ d. Summary of the deposit accounts that list major types by the number
           of accounts, dollar value, and average cost.
   _____ e. List of brokered, out-of-territory, and public deposits.
   _____ f. Detailed breakdown of deposits by banking office.

6. Interest Rate Risk Management
   _____ a. Asset/Liability Management and Interest Rate Risk Policies.
   _____ b. Relevant Board Committee minutes for the last two years as well as
           current reports normally provided to the Committee.
   _____ c. Interest rate sensitivity analysis reports.
   _____ d. Interest rate shock analysis reports.

7. Fixed Assets
   _____ a. Brief description of all the Bank's locations, including branches,
           ATMs, and other remote service units (physical address, when
           constructed or purchased, last renovation, key features, square
           footage, leased or owned, loans and deposits generated by each
           branch; number of teller stations and drive-through lanes at each
           branch, etc.).
   _____ b. Deeds covering real estate owned, including financing documents, tax
           payments, easements, and restrictive covenants.
   _____ c. Real estate leases.
_____ d. Title certificates, reports or insurance policies in connection with real estate owned or leased.
_____ e. Environmental studies, audits, or reports in connection with any real estate owned, leased, or financed (last two years).
_____ f. Pending branch (facility) applications.
_____ g. List and description of any material binding commitments to acquire or lease personal property.
_____ h. Maintenance contracts.
_____ i. All leases, subleases, and amendments.
_____ j. Fixed asset listing and depreciation schedule on tax and book basis (as of last year-end and most recent month-end).

8. Legal

_____ a. Summary of any threatened or pending litigation (please provide a letter from local counsel for any material litigation matters).
_____ b. Summary of hazardous waste and environmental matters affecting branches or other real estate owned.
_____ c. Suspicious Activity Reports filed in the last 12 months.
_____ d. Community Reinvestment Act Public File.
_____ e. List of all corporate and trade names used by company or any predecessor-in-interest.
_____ f. Standard or base forms (whether typed or pre-printed) prepared for use and documentation of ordinary course transaction – e.g. loans, leases, agreements, promissory notes, guaranties, collateral, security documents, reimbursement agreements, insurance certificates, loss payable endorsements, and other documents relating to all transactions).
_____ g. Completed or proposed business transactions or mergers/divestitures.
_____ h. Sales or purchases of assets or other material financing agreements.
_____ i. Reorganization or other material transactions outside the ordinary course of business.
_____ j. Files relating to any past or current investigations or proceedings by any governmental agencies.
_____ k. Information regarding any material contingent liabilities or material unasserted claims.
l. Non-disclosure, non-competition, non-solicitation, and non-hire agreements or any other agreements containing any of these provisions.

m. Agreements and indentures relating to borrowing of money or to mortgaging, pledging, or otherwise placing a lien, encumbrance, restriction, charges, or option on any assets or stock of bank holding company or subsidiaries.

n. Guarantees of any obligation or any other similar type of agreement affecting business or any assets.

o. Any joint venture agreements relating to business.

p. List of all government approvals, permits, certificates, registrations, concessions, or expectations required for a company to conduct its business in each jurisdiction where it does business.

q. List of all financing agreements with respect to which any interest or participation, lending, or escrow has been assigned to any third party.

r. Compliance Policies and Reports.

9. Supervisory Matters

a. Reports of Examination for the Federal Deposit Insurance Corporation and the State Financial Institutions Division for the last two years.

b. Reports of Inspection of the holding company by the Federal Reserve for the last two years.

c. Any regulatory administrative action for the last two years, if any, and its disposition.

10. Human Resources

a. Compensation summary for executive officers.

b. Any other director or executive officer compensation, including:
   (1) Deferred compensation plans.
   (2) Split dollar life insurance.
   (3) Management contracts.
   (4) Incentive stock option plans.
   (5) Severance plans.
   (6) Other material compensation programs.

c. List of related party transactions.
d. Details on all benefit plans, including pension, employee stock ownership plan, insurance, health and welfare, and qualified and non-qualified plans.

e. Salary schedule.


g. All management/employee contracts and guarantees.

h. All severance agreements and/or communications.

i. Details on all compensation plans/structures, including bonus/incentive, long-term, merit, and sales compensation plans

j. Details on any special compensation or executive to employees tied to a company sale.

k. Please complete attached schedule.

11. Material agreements

a. Voting trust, buy/sell, or shareholder agreements.

b. Any agreements between the holding company and any of its subsidiaries, including tax sharing, cost allocation, and dividend arrangements.

c. Other material agreements and contracts.

12. Branches and Electronic Banking

a. List of branches owned or leased (include street address and business hours).

b. Individual branch leases, covenants, business terms.

c. List of ATMs owned, including their locations (separated by walk-up and drive-through ATMs).

d. Report of transactions generated by each ATM owned (most-recent).

e. Electronic services disclosures (e.g. ATM, ACH, and Bill Pay).

f. Name of ATM system processor or driver.

g. Summary of contract terms and costs on ATM system processor or driver.

h. Transactions set capability (e.g. withdrawal, deposit, inquiry, transfer, loan payments, and others).

i. List of agreements with shared ATM networks.
13. Taxes

_____ a. Calculations supporting provision for income taxes for last three years.
_____ b. Federal and State tax returns for last three years and IRS adjustment reports.
_____ c. Federal audit information for last three years.
_____ d. State audit information for the last three years.
_____ e. Schedule of upcoming audits, if any.
_____ f. Tax positions taken where outside tax opinions were issued.
_____ g. Outside tax opinions, if any.
_____ h. Details of any tax losses available for carry forward.

14. Insurance

_____ a. Summary of all corporate insurance programs, including list of all insurance policies and brokers.
_____ b. Insurance policies (including property, casualty, liability, automobile, directors and officers, fiduciary liability, and professional liability).
_____ c. List of all insured locations, including addresses in real and personal property values, if applicable, dates of last appraisals should be noted.
_____ d. Workers’ compensation policies.
_____ e. Details of successor liability exposure under current policies.
_____ f. Automobile policies and list of all insured vehicles by state, including year, make, serial number, and whether owned or leased.
_____ g. Fidelity and errors and omission liability policy.

15. Data Processing/Operations/Technology

_____ a. Brief description of all automated accounting and information systems including mainframe, microcomputer, and branch network.
_____ b. System organizational charts.
_____ c. List of installed system hardware.
_____ d. List of installed system software.
_____ e. List of software and application programs, including vendor, age, and list of software on order.
_____ f. List of data processing services provided by others.
_____ g. Description of services provided for others.
h. Budgets for data processing and related areas (last two years).
i. List of outsourcing agreements, if any.
j. Copies of contracts or any license agreements, software, development contracts, or outside consulting contracts.

16. Miscellaneous

a. Detailed explanation of contingent liabilities, if any.
b. Description of off-balance sheet items, if any.
c. Description of the insurance agency subsidiary and its activities for the last two years.
d. Description of mortgage servicing activities, including number and dollar volume of mortgages serviced, resources devoted to those activities and associated expenses, revenue realized from these activities, etc.
Attachment
Due Diligence Checklist

What plans does the company offer:

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<th>No. of Retirees</th>
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<td>Other</td>
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| Welfare Plans:                           |                  |                 |                      |
| Medical                                  |                  |                 |                      |
| - Indemnity                              |                  |                 |                      |
| - Participating Provider Organization (PPO) |                  |                 |                      |
| - Point of Service (POS)                 |                  |                 |                      |
| - Health Maintenance Organization (HMO)  |                  |                 |                      |
| Dental                                   |                  |                 |                      |
| - Indemnity                              |                  |                 |                      |
| - Dental Maintenance Plan (DMO)          |                  |                 |                      |
| Employee Life                            |                  |                 |                      |
| Dependent Life                           |                  |                 |                      |
| Accident, Death, & Disability           |                  |                 |                      |
| Short-Term Disability                    |                  |                 |                      |
| Long-Term Disability                     |                  |                 |                      |
| Cafeteria Plan                           |                  |                 |                      |

| Other:                                   |                  |                 |                      |
| Perfect Attendance Programs              |                  |                 |                      |
| Stock Purchase                           |                  |                 |                      |
| (Payroll Deduction)                      |                  |                 |                      |
Board of Directors

Dear Members of the Board:

Gerrish Smith Tuck Consultants, LLC, Memphis, Tennessee is a financial advisory firm that offers financial advisory services to community banks nationwide. As part of its financial advisory business, Gerrish Smith Tuck Consultants, LLC is engaged in the evaluation of the fairness of proposed bank acquisition transactions from a financial point of view. Gerrish Smith Tuck Consultants, LLC’s involvement in the field of bank and thrift acquisitions has allowed us to become knowledgeable with regard to valuation theory and Internal Revenue Service rulings and guidelines involving valuation methodology, and judicial decisions regarding bank and thrift stock valuation matters.

As an expert in this field, you have asked for an opinion as to the fairness of the proposed acquisition of ________________, ________________ (“____”) by ________________, ________________, ________________ (“____”) to the shareholders of ________________ from a financial point of view. We understand this Fairness Opinion is to be used to assist the ______ Board of Directors in determining whether the proposed transaction with ______ is fair to the ______ shareholders from a financial point of view and is required pursuant to Section ______ of the proposed Agreement and Plan of Reorganization by and between ______ and ________.

In order to complete our assignment, you have provided us with Statements of Condition and Income for ________________, 20__. Additionally, information was provided pertaining to the past operating history of __________, previous trades of the ________ common stock, and other information deemed relevant to our opinion.

In arriving at our opinion as to whether the transaction is fair to the ________ stockholders from a financial point of view, we have reviewed the information we determined to be relevant to such opinion and examined the financial records of both ________.
and _______, including, but not limited to, each organization’s earnings, history, financial condition, operating environment, trading pattern and future prospects. We have also completed interviews with the executive management of both organizations. We have assumed and relied, without independent verification, upon the accuracy and completeness of all of the financial and other information that has been provided to us or made publicly available by each organization. We have also assumed and relied, without independent verification, upon the information provided to us by the representatives of each party. We are not experts in the evaluation of Allowances for Loan Losses and have not independently verified such Allowances, and have relied on and assumed that the Allowance for Loan Losses set forth in the balance sheet for each organization as of _____________, 20___ is adequate to cover such losses and complied fully with applicable law, regulatory policy and sound banking practices as of the date of such financial statements.

Gerrish Smith Tuck Consultants, LLC has no present or prospective interest in the proposed acquisition of _______ by _____ other than the fee payable to our firm upon completion of this assignment. Neither Gerrish Smith Tuck Consultants, LLC nor any of its stockholders have any personal interest or bias with respect to the parties involved. Our compensation is not contingent on an action or event resulting from the opinion or fair value report.

As a result of our examination of the information deemed relevant to this opinion, and as qualified herein, it is our opinion as of the date hereof that the acquisition of _________ by __________ in accordance with the provisions of the Agreement and Plan of Reorganization is fair to the _________ shareholders from a financial point of view.

Respectfully yours,

Gerrish Smith Tuck Consultants, LLC
Gerrish Bancorporation
Memphis, TN

Sample Fairness Report
(without exhibits)
Gerrish Smith Tuck Consultants, LLC and Gerrish Smith Tuck, PC, Attorneys offer consulting, financial advisory and legal services to community banks nationwide in the following areas: strategic planning; mergers and acquisitions, both financial analysis and legal services; dealing with the regulators, particularly involving troubled banks, memoranda of understanding, cease and desist and consent orders, and compliance; structuring and formation of bank holding companies; capital planning; employee stock ownership plans, leveraged ESOPs, KSOPs, and incentive compensation packages; directors and officers liability; new bank formations; S corporation formations; going-private transactions; and public and private securities offerings including trust preferred securities.
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TO: GERRISH BANCORPORATION, MEMPHIS, TENNESSEE

FROM: GERRISH SMITH TUCK CONSULTANTS, LLC, MEMPHIS, TENNESSEE

DATE: AUGUST, 2016

SUBJECT: FAIRNESS REPORT

The Board of Directors of Gerrish Bancorporation, Memphis, Tennessee ("GBC") recently received an unsolicited offer from Acquiror Financial Services, Memphis, Tennessee ("AFS") for the purchase of 100% of the outstanding common stock of GBC. The unsolicited offer was presented to GBC in the form of an Agreement and Plan of Reorganization ("Agreement"). GBC and AFS have, through each party’s respective counsel, negotiated the Agreement to arrive at an agreed upon transaction structure, the terms of which are fully outlined in the Agreement. Section 4.25 of the Agreement requires GBC to receive a Fairness Opinion from a qualified financial advisor that the transaction and offered consideration is fair to GBC’s shareholders from a financial point of view. GBC’s Board of Directors engaged Gerrish Smith Tuck Consultants, LLC, Memphis, Tennessee ("GST") to provide the required Fair Value Opinion. This report supports GST’s opinion that the transaction is fair to GBC’s shareholders from a financial point of view.

Transaction Overview

GBC is a Tennessee corporation that is headquartered in Memphis, Tennessee. GBC is the one-bank holding company for Smith and Tuck Bank, Memphis, Tennessee ("STB"). STB is a state-chartered commercial bank that is regulated by the FDIC ("FDIC") and the Tennessee Department of Financial Institutions ("TDFI"). As of June 30, 2016, GBC had total consolidated assets of approximately $307,726,000, total consolidated liabilities of approximately $257,886,000 and total equity of approximately $49,842,000. As of the same date, GBC had 1,067,347 shares of common stock outstanding, held by approximately 350 shareholders. The book value of GBC’s common stock as of June 30, 2016 was approximately $46.70 per share. GBC is a shell holding company with no material assets other than its ownership of 100% of the STB common stock. As of June 30, 2016, GBC had no material liabilities.
STB is a state-chartered commercial bank that is headquartered in Memphis, Tennessee. STB operates five branch locations, all of which are located in Shelby County, Tennessee. As of June 30, 2016, STB had the following financial highlights:

- Net Income for the six-month period ended June 30, 2016 - $1,651,000
- LTM Net Income - $2,389,000
- Total Assets - $307,712,000
- Total Loans (Net of ALLL) - $179,377,000
- Total Deposits - $249,695,000
- Net Loan to Deposit Ratio – 71.84%
- Total Equity - $49,827,000
- Tier 1 Capital - $49,686,000
- Tier 1 Leverage Ratio – 16.43%
- Tier 1 Risk-Based Capital Ratio – 25.40%
- Total Risk-Based Capital Ratio – 26.68%

AFS is a Tennessee corporation and one-bank holding company headquartered in Memphis, Tennessee. AFS’ primary asset is the ownership of 100% of the common stock of Acquiror Financial Services Bank (“AFS Bank”), a federally-chartered national bank that is regulated by the OCC. AFS Bank and AFS’s cash comprise AFS’s material assets.

As of June 30, 2016, AFS had consolidated assets of approximately $4,442,656,000, consolidated loans (net of Allowance for Loan and Lease Losses) of approximately $2,870,087,000, consolidated deposits of approximately $3,121,198,000, Trust Preferred Securities of approximately $67,000,000, senior debt of $55,000,000, common equity of approximately $373,951,000 and tangible common equity of approximately $334,410,000. As of June 30, 2016, AFS had 8,844,000 shares of common stock outstanding, representing a book value of $42.28 per share and a tangible book value of $37.81 per share.

AFS Bank is headquartered in Memphis, Tennessee. The Bank currently has 50 branch locations, 35 of which are in the State of Tennessee, 11 of which are located in the State of Mississippi, and 4 of which are located in the State of Arkansas.

The transaction outlined in the Agreement submitted by AFS, which was negotiated between the parties and executed on July 23, 2016, provides for a transaction that will result in the merger of GBC with and into AFS with AFS surviving the merger. Immediately following the merger of GBC with and into AFS, STB will be merged with and into AFS Bank, with AFS Bank surviving the merger. The merger of STB with and into AFS Bank will result in the current STB branches being operated as branches of AFS Bank. AFS and AFS Bank will take ownership of all of the assets and assume responsibility for all of the liabilities of GBC.
and STB Bank at the effective time of the merger, including those both known and unknown, as appropriate.

The agreed upon transaction structure values the GBC common stock at $60.00 per share, for total consideration of $64,040,820, which is equal to approximately 128.49% of the Company’s book value as of June 30, 2016 and is equal to 26.81 times the Company’s earnings for the 12-month period from June 30, 2015 to June 30, 2016. The transaction is structured as a 50% cash, 50% stock transaction. Specifically, the total consideration paid to the GBC shareholders will be $32,020,410 cash and 452,756 shares of AFS common stock, which, according to the Agreement between GBC and AFS, will be valued at approximately $70.72 per share (the 10-day volume weighted average closing price of the stock for the ten-day period ended July 22, 2016).

The Agreement allows the GBC shareholders the right to elect whether to receive the $60.00 per share consideration for their GBC common stock as either cash, AFS common stock (shareholders electing AFS common stock will receive .8484 shares of AFS common stock for each one share of GBC common stock) or a combination of both cash and AFS common stock. The Agreement also has “cram-down” provisions that ensure the total consideration paid to the GBC shareholders will equal $32,020,410 cash and 452,756 shares of AFS common stock.

**Acquiror Overview**

AFS is a Tennessee corporation and one-bank holding company headquartered in Memphis, Tennessee. The AFS common stock is traded on the NASDAQ market exchange under the symbol: AFSMT. The stock’s 52-week low was $40.93 per share as of July 23, 2016. The 52-week high for the stock was $75.84 as of the same period. The stock closed at $74.35 per share on July 22, 2016.

AFS Bank was founded in 1915. The deposits of AFS Bank are insured to the maximum insurance provided by the Federal Deposit Insurance Corporation.

As of June 30, 2016, AFS had, on a parent company only basis, the following financial highlights:

- Net Income for six months ended June 30, 2016 - $34,808,000
- LTM Net Income - $42,366,000
- Total Assets - $497,753,000
- Total Cash - $17,915,000
- Total Liabilities - $123,802,000
- Trust Preferred Securities - $67,000,000
- Total Senior Debt - $55,000,000
• Total Equity - $373,951,000
• Total Tangible Equity - $373,737,000

AFS Bank is a federally-chartered national bank that currently operates from 50 branch locations. As of June 30, 2016, AFS Bank had the following financial highlights:

• Net Income for six months ended June 30, 2016 - $31,507,000
• LTM Net Income - $39,253,000
• Total Assets - $4,398,048,000
• Total Loans (Net of ALLL) - $2,829,992,000
• Total Deposits - $3,140,862,000
• Net Loan to Deposit Ratio – 90.10%
• Total Equity - $462,684,000
• Tier 1 Capital - $448,088,000
• Tier 1 Leverage Ratio – 10.26%
• Tier 1 Risk-Based Capital Ratio – 13.16%
• Total Risk-Based Capital Ratio – 14.40%

AFS Bank is not currently subject to any type of regulatory enforcement action, either formal or informal.

**Consideration Analysis**

The negotiated and agreed upon Agreement structures the AFS acquisition of GBC as a 50% cash/50% stock transaction. According to the terms of the Agreement, which has been reviewed by GST, the GBC common stock is valued at $60.00 per share, which is approximately 128.48% of the stock’s book value as of June 30, 2016 and 26.79 times the stock’s earnings per share for the 12-month period from June 30, 2015 to June 30, 2016. Based on 1,067,347 shares of GBC common stock outstanding, the Agreement will provide the GBC common stock shareholders total consideration of $64,040,820. Fifty percent of the transaction consideration of the transaction will be payable to the GBC shareholders in cash, with the remaining 50% payable in AFS common stock. According to the terms of the Agreement, the GBC shareholders will receive .8484 shares of AFS common stock for each share of GBC common stock exchanged as the stock consideration. The Agreement values AFS’ common stock at $70.72 per share, which is 117.38% of the stock’s closing price of $60.25 per share as of June 30, 2016 and 95.11% of the stock’s closing price of $74.35 as of July 22, 2016. The Agreement will collectively provide the GBC shareholders $32,020,410 cash and 452,756 shares of AFS common stock.
Fairness Opinion Considerations

The evaluation of whether the transaction is fair to the AFS stockholders from a financial point of view requires the evaluation of whether the exchange of the GBC common stock for both cash and AFS common stock is fair to the GBC stockholders from a financial point of view. This analysis requires an evaluation of both the value assigned to the GBC common stock and the adequacy of the offered consideration. To analyze these factors, GST evaluated the transaction using several different evaluation techniques, which are summarized as follows:

- Analysis of the historical and future prospects of the GBC common stock on a stand-alone basis using publicly available information and estimates for GBC's future business based on a review of historical GBC performance and discussions with GBC management.

- Analysis of the historical and future prospects of the AFS common stock on a stand-alone basis using publicly available information and estimates for AFS' future business based on a review of historical AFS performance and discussions with AFS management.

- Analysis of the AFS common stock assuming an acquisition of GBC using pro forma financial information based on assumptions derived from both organizations’ historical and projected performance and making certain assumptions relative to the transaction.

- Contribution analysis, which calculates the required pro forma ownership of the combined organization in a 100% stock transaction based on each organization’s contribution to the combined organization’s earnings, equity and assets. The contribution analysis has been adjusted to account for the 50% cash/50% stock consideration.

- Comparable transaction analysis, which evaluates similar transactions and determines the adequacy of the consideration when compared against comparable transactions.

- Discounted future income analysis, which projects the present value of GBC’s projected net income using various discount rates.

GBC & AFS Stock Analysis and Comparison

The STB common stock is not quoted or traded on any public or private stock exchange. The Company’s common stock is traded through individual, privately negotiated transactions. GBC acts as its own transfer agent. According to information provided by GBC’s management, the Company is aware of the following trades in the Company’s common stock since June 30, 2014:
<table>
<thead>
<tr>
<th>Trade Date</th>
<th>Number of Shares Traded</th>
<th>Trading Price per Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/24/2014</td>
<td>6,000</td>
<td>$22.00</td>
</tr>
<tr>
<td>10/2/2014</td>
<td>500</td>
<td>$20.00</td>
</tr>
<tr>
<td>10/26/2014</td>
<td>500</td>
<td>$28.00</td>
</tr>
<tr>
<td>11/19/2015</td>
<td>250</td>
<td>$20.00</td>
</tr>
<tr>
<td>11/19/2015</td>
<td>500</td>
<td>$25.00</td>
</tr>
<tr>
<td>1/3/2015</td>
<td>25</td>
<td>$22.00</td>
</tr>
<tr>
<td>1/6/2015</td>
<td>1,500</td>
<td>$20.00</td>
</tr>
<tr>
<td>1/6/2015</td>
<td>45</td>
<td>$22.00</td>
</tr>
<tr>
<td>3/22/2015</td>
<td>97</td>
<td>$22.00</td>
</tr>
<tr>
<td>4/5/2015</td>
<td>700</td>
<td>$30.00</td>
</tr>
<tr>
<td>6/1/2015</td>
<td>500</td>
<td>$20.00</td>
</tr>
<tr>
<td>9/16/2015</td>
<td>600</td>
<td>$20.00</td>
</tr>
<tr>
<td>9/20/2015</td>
<td>100</td>
<td>$20.00</td>
</tr>
<tr>
<td>11/6/2015</td>
<td>496</td>
<td>$20.00</td>
</tr>
<tr>
<td>2/11/2016</td>
<td>1,000</td>
<td>$20.00</td>
</tr>
<tr>
<td>2/28/2016</td>
<td>500</td>
<td>$20.00</td>
</tr>
<tr>
<td>3/6/2016</td>
<td>500</td>
<td>$20.00</td>
</tr>
<tr>
<td>3/26/2016</td>
<td>157</td>
<td>$15.00</td>
</tr>
<tr>
<td>3/28/2016</td>
<td>1,761</td>
<td>$20.00</td>
</tr>
<tr>
<td>3/28/2016</td>
<td>1,000</td>
<td>$21.00</td>
</tr>
<tr>
<td>5/5/2016</td>
<td>1,000</td>
<td>$23.00</td>
</tr>
</tbody>
</table>

The Agreement values the GBC common stock at $60.00 per share. This assigned value is 100% the highest market trade in the Company’s common stock since June 30, 2014 and is 52.28% the average, volume-weighted trading price for all trades in the Company’s common stock since June 30, 2014.

Attached as page 1 of Exhibit A is a comparison of the $60.00 per share valuation against the financial metrics of the common stock of 50 similarly situated bank holding companies that are publicly traded (“STB Guideline Companies”). The STB Guideline Companies include all publicly traded bank and thrift holding companies with between $100 million and $500 million in total assets and at least a 0.5% ROA that are headquartered in the Southeast Region. According to the information set forth in Exhibit A, the average and median financial metrics of the STB Guideline Companies and the STB common stock valued at $60.00 per share is as follows:

<table>
<thead>
<tr>
<th>Financial Metric</th>
<th>GBC Valued at $60.00 per Share</th>
<th>GBC Guideline Median</th>
<th>GBC Guideline Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price/LTM EPS</td>
<td>26.79</td>
<td>12.54</td>
<td>14.53</td>
</tr>
<tr>
<td>Price/LTM Core EPS</td>
<td>26.79</td>
<td>13.43</td>
<td>15.24</td>
</tr>
<tr>
<td>Price/Book</td>
<td>128.48</td>
<td>100.11</td>
<td>107.86</td>
</tr>
<tr>
<td>Price/Tangible Book</td>
<td>128.48</td>
<td>103.63</td>
<td>111.18</td>
</tr>
<tr>
<td>Price/Assets</td>
<td>20.81</td>
<td>10.40</td>
<td>11.42</td>
</tr>
</tbody>
</table>
Attached as Exhibit B is a set of ten-year financial projections that projects GBC and STB’s financial performance over the next ten years. These financial projections are based on assumptions supplied or approved by GBC management. The financial projections incorporate the following assumptions:

- Beginning Bank assets of $307,712,000.
- Return on average assets of 0.76% in 2016, 0.95% in 2017 and 1.1% thereafter.
- Bank asset growth rate of 0% in 2016 and 2017, 3% in 2018 and 2019 and 6% thereafter.
- Beginning Bank Tier 1 Capital of $49,686,000.
- Capital to assets ratio constraint on dividends to Bank Holding Company of 8%.
- Effective income tax rate of 34.5%.
- Beginning Bank Holding Company cash of $1,000.
- 0% interest rate applied to Bank Holding Company cash balance.
- 1,067,347 shares outstanding.
- Annual dividend payments per share of $0.00 in 2016, $0.50 in 2017, $0.70 in 2018 and $1.00 thereafter.
- No material Holding Company liabilities.

AFS is an SEC reporting company whose stock is traded on the NASDAQ market exchange under the symbol: AFSMT. The AFS common stock has an average daily trading volume of 24,199 shares per day over the past year. Attached as page 2 of Exhibit A is a comparison of the financial metrics of the AFS common stock against the financial metrics of 40 similarly situated bank holding companies that are publicly traded (“AFS Guideline Companies”). The AFS Guideline Companies include all publicly traded bank and thrift holding companies with between $1 billion and $7.75 billion in total assets and at least a 0.5% ROA that are headquartered in the Southeast Region. According to the information set forth in Exhibit A, the average and median financial metrics of the AFS Guideline Companies and the AFS common stock is as follows:

<table>
<thead>
<tr>
<th>Annual Dividend Rate</th>
<th>0</th>
<th>.84</th>
<th>2.25</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividend Yield</td>
<td>0</td>
<td>2.73</td>
<td>2.57</td>
</tr>
</tbody>
</table>

Gerrish Bancorporation
Fair Value Report
Page 8
<table>
<thead>
<tr>
<th>Financial Metric</th>
<th>AFS Common Stock</th>
<th>AFS Guideline Median</th>
<th>AFS Guideline Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price/LTM EPS</td>
<td>15.8</td>
<td>16.01</td>
<td>16.99</td>
</tr>
<tr>
<td>Price/LTM Core EPS</td>
<td>17.4</td>
<td>15.79</td>
<td>17.37</td>
</tr>
<tr>
<td>Price/Book</td>
<td>168.2</td>
<td>137.29</td>
<td>137.05</td>
</tr>
<tr>
<td>Price/Tangible Book</td>
<td>188</td>
<td>153.43</td>
<td>159.65</td>
</tr>
<tr>
<td>Price/Assets</td>
<td>14.15</td>
<td>13.63</td>
<td>14.38</td>
</tr>
<tr>
<td>Annual Dividend Rate</td>
<td>.48</td>
<td>.60</td>
<td>1.79</td>
</tr>
<tr>
<td>Dividend Yield</td>
<td>.68</td>
<td>2.72</td>
<td>2.65</td>
</tr>
</tbody>
</table>

Attached as **Exhibit C** is a set of ten-year financial projections for AFS and AFS Bank that are identical to the financial projections for GBC and STB Bank attached as **Exhibit B**. The AFS financial projections are based on assumptions that have been derived from discussions with AFS management and a review of the Company's historical performance. The financial projections incorporate the following assumptions:

- Beginning Bank assets of $4,398,048,000.

- Return on average assets of 1%.

- Bank asset growth rate of 4%.

- Beginning Bank Tier 1 Capital of $448,088,000.

- Capital to assets ratio constraint on dividends to Bank Holding Company of 8%.

- Effective income tax rate of 36.63%.

- Beginning Bank Holding Company cash of $17,915,000.

- 0% interest rate applied to Bank Holding Company cash balance.

- 8,844,000 Holding Company shares outstanding.

- Annual dividend payments per share of $0.48 in 2016, $0.56 in 2017, $0.64 in 2018 and $0.72 thereafter.

- Holding Company senior debt of $55,000,000 which requires quarterly interest payments equal to 6.25% of principal outstanding. The debt is assumed to mature in 2021. The projections assume the $55,000,000 required to satisfy the debt comes from AFS Bank in the form of a special dividend.
Trust Preferred Securities outstanding of $67,000,000. The debt is assumed to be interest only for 30 years. The interest rate is assumed to equal 2.01% for 2016 through 2017 and 4% thereafter.

Attached as Exhibit D is a combined organization financial analysis that assumes AFS acquires GBC and STB is merged with and into AFS Bank with AFS Bank surviving the merger. This analysis is a combination of Exhibits B and C with assumed cost savings equal to 25% of STB’s noninterest expense. This analysis projects the combined organization’s financial performance over the next ten years based on the following assumptions:

- Beginning Bank assets of $4,673,739,590 (which is the two banks’ consolidated assets less the cash portion of the purchase price, which is assumed to come from AFS Bank in the form of a special dividend to AFS).
- Return on average assets of 1%.
- Assumed annual cost savings equal to approximately 25% of STB’s annual noninterest expense.
- Bank asset growth rate of 4%.
- Beginning Bank Tier 1 Capital of $451,539,770 (which is the combined Tier 1 Capital of both organizations minus the assumed $32,020,410 special dividend and the assumed intangible assets, which are deducted for regulatory Tier 1 Capital purposes).
- Capital to assets ratio constraint on dividends to Bank Holding Company of 8%.
- Income tax rate of 36.63%.
- Beginning Bank Holding Company cash of $17,915,000.
- 0% interest rate applied to cash balance.
- 9,303,136 shares of AFS common stock outstanding (the current number of AFS shares of common stock outstanding plus the shares assumed to be issued to the GBC shareholders in the transaction).
- Holding Company senior debt of $55,000,000 which requires quarterly interest payments equal to 6.25% outstanding. The debt is assumed to mature in 2021. The projections assume the $55,000,000 required to satisfy the debt comes from AFS Bank in the form of a special dividend.
• Trust Preferred Securities outstanding of $67,000,000. The debt is assumed to be interest only for 30 years. The interest rate is assumed to equal 2.01% for 2016 through 2017 and 4% thereafter.

The evaluation of whether the proposed transaction is fair to the GBC stockholders from a financial point of view requires a comparison of the value factors of the GBC common stock against the value factors of the consideration to be received. There are generally four factors included in the comparison. These factors include earnings per share, return on average equity, liquidity and cash flow from the common stock in the form of dividends. The following chart summarizes these four factors and compares the current factors for the GBC common stock for each year for 2016 through 2018 and 2025, the final year of the projection period, against the same factors for AFS common stock assuming an acquisition of GBC at the assumed exchange rate of .8484 shares of AFS common stock for each share of AFS common stock.

<table>
<thead>
<tr>
<th></th>
<th>GBC</th>
<th>AFS (assuming acquisition at exchange ratio)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Earnings Per Share</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2016 – 2.74</td>
<td>2016 – 4.24</td>
<td></td>
</tr>
<tr>
<td>2017 – 3.22</td>
<td>2017 – 4.41</td>
<td></td>
</tr>
<tr>
<td>2018 – 3.32</td>
<td>2018 – 4.52</td>
<td></td>
</tr>
<tr>
<td>2025 – 4.64</td>
<td>2025 – 5.98</td>
<td></td>
</tr>
<tr>
<td><strong>Dividends</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2016 - 0.50</td>
<td>2016 – 0.48</td>
<td></td>
</tr>
<tr>
<td>2017 - 0.70</td>
<td>2017 – 0.54</td>
<td></td>
</tr>
<tr>
<td>2018 – 1.00</td>
<td>2018 – 0.61</td>
<td></td>
</tr>
<tr>
<td>2025 – 1.00</td>
<td>2025 – 0.61</td>
<td></td>
</tr>
<tr>
<td><strong>Return on Average Equity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2016 – 5.63%</td>
<td>2016 – 9.35%</td>
<td></td>
</tr>
<tr>
<td>2017 – 6.31%</td>
<td>2017 – 8.98%</td>
<td></td>
</tr>
<tr>
<td>2018 – 6.20%</td>
<td>2018 – 8.52%</td>
<td></td>
</tr>
<tr>
<td>2025 – 6.53%</td>
<td>2025 – 7.41%</td>
<td></td>
</tr>
<tr>
<td><strong>Liquidity</strong></td>
<td>No appreciable market liquidity.</td>
<td>Publicly traded on NASDAQ with average daily volume of 24,199 shares over past year.</td>
</tr>
</tbody>
</table>
As is shown above, the exchange of the GBC common stock for AFS common stock using the agreed upon exchange ratio in the Agreement will provide the GBC shareholders what appears to be a superior common stock based on the valuation factors. Specifically, the GBC shareholders who receive AFS common stock will have a substantially higher earnings per share equivalent in the AFS common stock than is held in the GBC common stock. For example, in 2016, the earnings per share attributable to the GBC common stock is projected to be $2.74. The projected earnings per share for the AFS common stock on a combined organization basis is assumed to be $5.00 per share. When multiplied by the effective exchange ratio, this will provide the current GBC shareholders the equivalent of $4.24 earnings per share. This represents an approximately 54.75% increase in earnings per share. Since earnings are the primary factor in determining the value of the stock, this increase provides the GBC stockholders a more valuable stock than is offered by continuing to hold GBC on a stand-alone basis. The AFS common stock also appears to be superior based on the return on average equity and liquidity. The return on average equity for AFS as a combined organization assuming the transaction is completed is substantially higher than the projected return on average equity for GBC on a stand-alone basis. Finally, the liquidity of the AFS common stock is superior to that of GBC, as AFS is traded on the NASDAQ with appreciable market liquidity and GBC has no appreciable market liquidity.

When evaluating the value factors, GBC is projected to offer higher future dividends as a stand-alone company than are projected for AFS on a combined company basis. (This is estimated, as STB and GBC are currently prohibited from paying dividends.) Although the dividends per share are projected to be higher for GBC on a stand-alone basis, this does not outweigh the other factors to a point where the GBC common stock on a stand-alone basis is considered superior to the AFS common stock on a combined organization basis.

**Contribution Analysis**

Attached as Exhibit E is a contribution analysis that determines the appropriate ownership split of the combined organization in a 100% stock transaction. This analysis determines the percentage of the combined company that should be owned by the current AFS shareholders and the current GBC shareholders based on each organization’s contribution to the combined organization’s earnings, equity and assets in a 100% stock transaction. The contribution analysis applies a weighting to each of these contributions based on their importance to overall Company value. Since corporate earnings are the primary determination of corporate value, the contribution analysis weighs earnings at 50%. The contribution analysis weighs equity at 45% and assets at 5%. This weighting factor is considered to be appropriate since equity is significantly more important than assets when determining corporate value.
The contribution analysis uses the earnings, equity and assets for each organization as of June 30, 2016. The assumed annual income for each organization is estimated based on year-to-date income through June 30, 2016. Based on the assigned weighting factors, in a 100% stock transaction, the GBC shareholders should own 7.88% of the combined organization and the AFS shareholders should own 92.12% of the combined organization. Based on AFS’ 8,850,368 shares of common stock outstanding as of July 15, 2016, the contribution analysis would require AFS to issue 757,118 shares of common stock to the GBC shareholders in a 100% stock transaction. The issuance of 757,118 shares would result in 9,607,486 shares of AFS common stock outstanding, with the GBC shareholders owning 7.88% of the combined organization and the AFS shareholders owning 92.12% of the combined organization.

AFS’ acquisition of GBC is structured as a 50% cash/50% stock transaction. Adjustment to the contribution analysis is necessary to account for the issuance of the cash consideration. As is shown in Exhibit E, this adjustment is completed by multiplying the required number of shares to be issued by 50%. This results in a required issuance of 378,559 shares of AFS common stock to the GBC stockholders based on the contribution analysis. The transaction will result in the issuance of 452,768 shares of AFS common stock, which exceeds the required issuance as adjusted in the contribution analysis of 378,559 shares by 74,209 shares. The issuance of the excess of the 74,209 shares valued at $74.35 per share results in the exchange of $5,517,406 more in stock consideration than is required using the contribution analysis.

**Comparable Transaction Analysis**

In evaluating whether the transaction is fair to the GBC shareholders from a financial point of view, consideration must be given to comparable transactions. A comparable transaction analysis evaluates the consideration in similar deals and then compares the consideration to the transaction. Attached as Exhibit F is a pro forma GBC valuation that determines the Company’s projected value based on similar transactions. Page 1 of Exhibit F calculates a pro forma value for the Company based on similar transactions that occurred in the Southeast Region since June 30, 2014. This analysis values GBC based on the average and median deal value to earnings, deal value to book value and deal value to assets multiples for all bank transactions that occurred in the Southeast Region since June 30, 2014 where the target bank had between $100 million and $500 million in total assets. Attached as page 2 of Exhibit F is a similar comparable transaction analysis that applies the same average and median valuation metrics to all bank deals occurring in the United States since June 30, 2014 where the target bank had between $100 million and $500 million in total assets.
The comparable transaction analyses values GBC by determining the value of the Company based on the average and median pricing multiples for similar deals that have occurred since June 30, 2014 by averaging the multiples and then assigning a value to GBC based on the multiple and the Company’s metrics. This results in six different pro forma valuations for GBC under each scenario. The multiples for each of the data subsets are then averaged to determine the pro forma value of GBC based on similarly situated deals.

According to the comparable transaction analysis, the pro forma value of GBC based on similar deals in the Southeast Region that have occurred since June 30, 2014 is $50,562,831. The GBC pro forma Company value based on similar deals that have occurred in the United States since June 30, 2014 is $50,517,383. The agreed upon transaction consideration exceeds the pro forma Company value by $13,477,989 when compared to similar deals in the Southeast Region and $13,523,437 when compared to similar deals in the United States.

**Discounted Future Income Analysis**

A discounted future income analysis is a common technique for valuing organizations as an ongoing concern. This valuation technique determines the present value of the Company’s future net income using an appropriate discount rate. Attached as Exhibit G is a discounted cash flow analysis that determines the present value of GBC’s future net income using a 5%, 7.5%, 10% and 12.5% discount rate. The discounted cash flow analysis attached as Exhibit G assumes GBC net income equal to the projected net income for the Company for 2016 through 2020 on a stand-alone basis in Exhibit B. The analysis assumes constant GBC net income of $3,698,697 for years 2021 and beyond. As is shown in the analysis, the present value of GBC’s future net income under each of the assumed discount rates is as follows:

<table>
<thead>
<tr>
<th>Assumed Discount Rate</th>
<th>Present Value of Future Net Income</th>
<th>Excess of Consideration Over Present Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>5%</td>
<td>$63,988,411</td>
<td>$52,409</td>
</tr>
<tr>
<td>7.5%</td>
<td>$43,840,664</td>
<td>$20,200,156</td>
</tr>
<tr>
<td>10%</td>
<td>$32,485,251</td>
<td>$31,555,569</td>
</tr>
<tr>
<td>12.5%</td>
<td>$25,589,638</td>
<td>$38,451,182</td>
</tr>
</tbody>
</table>
Conclusions

• Although market trades in the GBC common stock are limited, the $60.00 per share value assigned to the GBC common stock in the transaction significantly exceeds the most recent and average price per share for market trades in the GBC common stock since June 30, 2014.

• The ownership of AFS common stock will provide the GBC shareholders what appears to be a superior financial investment based on the consideration of earnings per share, dividends, return on average equity and liquidity when compared to the alternative of owning GBC common stock as an independent institution.

• Based on the contribution analysis that determines the appropriate ownership split of the combined organization based on each organization’s contribution to the combined organization’s earnings, equity and assets, the GBC shareholders are receiving more than their fair portion of AFS common stock in the transaction.

• Based on the comparable transaction analysis, the $64,040,820 value assigned to GBC significantly exceeds the projected Company value based on recent comparable transactions.

• Based on the discounted future income analysis, the transaction consideration exceeds the present value of future net income.
AGREEMENT AND PLAN OF MERGER
BY AND BETWEEN

BUYER

AND

SELLER

AUGUST 2016
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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this “Agreement”) is dated as of August _____, 2016, by and between Buyer, a ________ corporation (“Buyer”), and Seller, a ________ corporation (“Seller”).

WHEREAS, the Board of Directors of each of Buyer and Seller (i) has determined that this Agreement and the business combination and related transactions contemplated hereby are in the best interests of their respective companies and shareholders and (ii) has determined that this Agreement and the transactions contemplated hereby are consistent with and in furtherance of their respective business strategies, and (iii) has adopted a resolution approving this Agreement and declaring its advisability; and

WHEREAS, in accordance with the terms of this Agreement, Seller will merge with and into Buyer (the “Merger”), and immediately thereafter Seller Bank, a ________ chartered bank and wholly owned subsidiary of Seller (“Seller Bank”), will be merged with and into Buyer Bank, a ________ chartered bank and wholly owned subsidiary of Buyer (“Buyer Bank”); and

WHEREAS, as a condition to the willingness of Buyer to enter into this Agreement, each of the directors of Seller has entered into a Voting Agreement dated as of the date hereof, with Buyer (the “Seller Voting Agreements”), pursuant to which each such director has agreed, among other things, to vote all shares of common stock of Seller owned by such person in favor of the approval of this Agreement and the transactions contemplated hereby, upon the terms and subject to the conditions set forth in the Seller Voting Agreements; and

WHEREAS, the parties intend the Merger to qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”), and that this Agreement be and is hereby adopted as a “plan of reorganization” within the meaning of Sections 354 and 361 of the Code; and

WHEREAS, the parties desire to make certain representations, warranties and agreements in connection with the business transactions described in this Agreement and to prescribe certain conditions thereto.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
CERTAIN DEFINITIONS

1.1. Certain Definitions.

As used in this Agreement, the following terms have the following meanings (unless the context otherwise requires, references to Articles and Sections refer to Articles and Sections of this Agreement).

“Affiliate” means any Person who directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person and, without limiting
the generality of the foregoing, includes any executive officer or director of such Person and any Affiliate of such executive officer or director.

“Agreement” means this agreement, and any amendment hereto.

“Applications” means the applications for regulatory approval that are required by the transactions contemplated hereby.

“Bank Merger” shall mean the merger of Seller Bank with and into Buyer Bank, with Buyer Bank as the surviving institution, which merger shall occur immediately following the Merger.

“Bank Regulator” shall mean any Federal or state banking regulator, including but not limited to the FRB, the FDIC and the Department, which regulates Buyer Bank or Seller Bank, or any of their respective holding companies or subsidiaries, as the case may be.

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

“Cash Consideration” shall have the meaning set forth in Section 3.1.3.

“Cash Election” shall have the meaning set forth in Section 3.1.3.

“Cash Election Shares” shall have the meaning set forth in Section 3.1.3.

“Certificate” shall mean certificates evidencing shares of Seller Common Stock.

“Closing” shall have the meaning set forth in Section 2.2.

“Closing Date” shall have the meaning set forth in Section 2.2.

“COBRA” shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

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

“Confidentiality Agreement” shall mean the confidentiality agreement referred to in Section 12.1 of this Agreement.

“Department” shall mean the ________ Division of Banking, State of ________, and where appropriate shall include the Commissioner and the ________ Board of Banking and Financial Institutions.

“Dissenting Shares” shall have the meaning set forth in Section 3.1.4.

“Dissenting Shareholder” shall have the meaning set forth in Section 3.1.4.

“Effective Time” shall mean the date and time specified pursuant to Section 2.2 hereof as the effective time of the Merger.

“Election Deadline” shall have the meaning set forth in Section 3.2.3.
“Election Form” shall have the meaning set forth in Section 3.2.2.

“Election Form Record Date” shall have the meaning set forth in Section 3.2.2.

“Environmental Laws” means any applicable Federal, state or local law, statute, ordinance, rule, regulation, code, license, permit, authorization, approval, consent, order, judgment, decree, injunction or agreement with any governmental entity relating to (1) the protection, preservation or restoration of the environment (including, without limitation, air, water vapor, surface water, groundwater, drinking water supply, surface soil, subsurface soil, plant and animal life or any other natural resource), and/or (2) the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Materials of Environmental Concern. The term Environmental Law includes without limitation (a) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq.; the Clean Air Act, as amended, 42 U.S.C. §7401, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, et seq.; the Toxics Substances Control Act, as amended, 15 U.S.C. §2601, et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001, et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f, et seq.; and all comparable state and local laws, and (b) any common law (including without limitation common law that may impose strict liability) that may impose liability or obligations for injuries or damages due to the presence of or exposure to any Materials of Environmental Concern.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.


“Exchange Agent” shall mean the bank or trust company or other agent designated by Buyer, and reasonably acceptable to Seller, which shall act as agent for Buyer in connection with the exchange procedures for converting Certificates into the Merger Consideration.

“Exchange Fund” shall have the meaning set forth in Section 3.3.1.

“Exchange Ratio” shall have the meaning set forth in Section 3.1.3.

“FDIA” shall mean the Federal Deposit Insurance Act, as amended.

“FDIC” shall mean the Federal Deposit Insurance Corporation or any successor thereto.

“FHLB” shall mean the Federal Home Loan Bank.

“Buyer Bank” shall mean Buyer Bank, a ________ chartered bank, with its principal offices located at ______________, ____________, ________, which is a wholly owned subsidiary of Buyer.

“Buyer” shall mean Buyer, a ________ corporation, with its principal executive offices located at ______________, ____________, ________.

“Buyer Common Stock” shall mean the common stock, par value $1.00 per share, of Buyer.
“Buyer Disclosure Schedule” shall mean a written disclosure schedule delivered by Buyer to Seller specifically referring to the appropriate section of this Agreement.

“Buyer Financial Statements” shall mean the (i) the audited consolidated statements of condition (including related notes and schedules) of Buyer and subsidiaries as of December 31, 2015 and 2014 and the consolidated statements of income, comprehensive income, changes in stockholders’ equity and cash flows (including related notes and schedules, if any) of Buyer and subsidiaries for each of the three years ended December 31, 2015, 2014 and 2013, and (ii) the unaudited interim consolidated financial statements of Buyer and subsidiaries as of the end of each calendar quarter following December 31, 2015, and for the periods then ended.

“Buyer Subsidiary” means any corporation, of which more than 50% of the capital stock is owned, either directly or indirectly, by Buyer or Buyer Bank, except any corporation the stock of which is held in the ordinary course of the lending activities of Buyer Bank.

“FRB” shall mean the Board of Governors of the Federal Reserve System and, where appropriate, the Federal Reserve Bank of ____________.

“GAAP” shall mean accounting principles generally accepted in the United States of America, consistently applied with prior practice.

“Seller Bank” shall mean Seller Bank, a ________ chartered bank, with its principal offices located at ________________, __________, ________ _________, which is a wholly owned subsidiary of Seller.

“Seller” shall mean Seller Service, a ________ corporation, with its principal offices located at ________________, __________, ________ _________.

“Seller Common Stock” shall mean the common stock, par value $1.00 per share, of Seller.

“Seller Disclosure Schedule” shall mean a written disclosure schedule delivered by Seller to Buyer specifically referring to the appropriate section of this Agreement.

“Seller Financial Statements” shall mean (i) the audited consolidated balance sheets (including related notes and schedules, if any) of Seller and subsidiaries as of December 31, 2015 and 2014 and the consolidated statements of operations, stockholders’ equity and cash flows (including related notes and schedules, if any) of Seller and subsidiaries for each of the three years ended December 31, 2015, 2014 and 2013, and (ii) the unaudited interim consolidated financial statements of Seller and subsidiaries as of the end of each calendar quarter following December 31, 2015 and for the periods then ended.

“Seller Recommendation” shall have the meaning set forth in Section 8.1.

“Seller Regulatory Reports” means the Call Reports of Seller Bank and accompanying schedules, as filed with the FDIC, for each calendar quarter beginning with the quarter ended December 31, 2015, through the Closing Date, and all Reports filed with the FDIC and FRB by Seller from December 31, 2015 through the Closing Date.

“Seller Shareholders Meeting” shall have the meaning set forth in Section 8.1.1.
“Seller Subsidiary” means any corporation, of which more than 50% of the capital stock is owned, either directly or indirectly, by Seller or Seller Bank, except any corporation the stock of which is held in the ordinary course of the lending activities of Seller Bank.

“Governmental Entity” shall mean any Federal or state court, administrative agency or commission or other governmental authority or instrumentality.

“IRS” shall mean the United States Internal Revenue Service.

“Knowledge” as used with respect to a Person (including references to such Person being aware of a particular matter) means those facts that are known or should have been known by the executive officers and directors of such Person, and includes any facts, matters or circumstances set forth in any written notice from any Bank Regulator or any other material written notice received by that Person.

“Material Adverse Effect” shall mean, with respect to Buyer or Seller, respectively, any effect that (i) is material and adverse to the financial condition, results of operations or business of Buyer and its Subsidiaries taken as a whole, or Seller and its Subsidiaries taken as a whole, respectively, or (ii) does or would materially impair the ability of either Seller, on the one hand, or Buyer, on the other hand, to perform its obligations under this Agreement or otherwise materially threaten or materially impede the consummation of the transactions contemplated by this Agreement; provided that “Material Adverse Effect” shall not be deemed to include the impact of (a) changes in laws and regulations affecting banks or thrift institutions or their holding companies generally, or interpretations thereof by courts or governmental agencies, (b) changes in GAAP or regulatory accounting principles generally applicable to financial institutions and their holding companies, (c) actions and omissions of a party hereto (or any of its Subsidiaries) taken with the prior written consent of the other party, (d) the impact of the announcement of this Agreement and the transactions contemplated hereby, and compliance with this Agreement on the business, financial condition or results of operations of the parties and their respective subsidiaries, including the expenses incurred by the parties hereto in consummating the transactions contemplated by this Agreement, (e) changes in national or international political or social conditions including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States, or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States, unless it uniquely affects either or both of the parties or any of their Subsidiaries (f) any change in the value of the securities or loan portfolio, or any change in the value of the deposits or borrowings, of Buyer or Seller, or any of their Subsidiaries, respectively, resulting from a change in interest rates generally, or (g) any charge or reserve taken by Seller at the request of Buyer pursuant to Section 6.11 of this Agreement.

“Materials of Environmental Concern” means pollutants, contaminants, wastes, toxic substances, petroleum and petroleum products, and any other materials regulated under Environmental Laws.

“Merger” shall mean the merger of Seller with and into Buyer (or a subsidiary thereof) pursuant to the terms hereof.
“Merger Consideration” shall mean the cash or Buyer Common Stock, or combination thereof, in an aggregate per share amount to be paid by Buyer for each share of Seller Common Stock, as set forth in Section 3.1.

“Merger Registration Statement” shall mean the registration statement, together with all amendments, filed with the SEC under the Securities Act for the purpose of registering shares of Buyer Common Stock to be offered to holders of Seller Common Stock in connection with the Merger.

“Pension Plan” shall have the meaning set forth in Section 4.13.2.

“Person” shall mean any individual, corporation, partnership, joint venture, association, trust or “group” (as that term is defined under the Exchange Act).

“Proxy Statement-Prospectus” shall have the meaning set forth in Section 8.2.1.

“Regulatory Approvals” means the approval of any Bank Regulator that is necessary in connection with the consummation of the Merger, the Bank Merger and the related transactions contemplated by this Agreement.

“Rights” shall mean warrants, options, rights, convertible securities, stock appreciation rights and other arrangements or commitments which obligate an entity to issue or dispose of any of its capital stock or other ownership interests or which provide for compensation based on the equity appreciation of its capital stock.

“SEC” shall mean the Securities and Exchange Commission or any successor thereto.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Securities Documents” shall mean all reports, offering circulars, proxy statements, registration statements and all similar documents filed, or required to be filed, pursuant to the Securities Laws.

“Securities Laws” shall mean the Securities Act; the Exchange Act; the Investment Company Act of 1940, as amended; the Investment Advisers Act of 1940, as amended; the Trust Indenture Act of 1939, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Shortfall Number” shall have the meaning set forth in Section 3.2.5.

“Significant Subsidiary” shall have the meaning set forth in Rule 1-02 of Regulation S-X of the SEC.

“Stock Consideration” shall have the meaning set forth in Section 3.1.3.

“Stock Conversion Number” shall have the meaning set forth in Section 3.2.1.

“Stock Election” shall have the meaning set forth in Section 3.1.3.

“Stock Election Number” shall have the meaning set forth in Section 3.2.4.
“Stock Election Shares” shall have the meaning set forth in Section 3.1.3.

“Surviving Corporation” shall have the meaning set forth in Section 2.1 hereof.

“Termination Date” shall mean December 31, 2016.

“Treasury Stock” shall have the meaning set forth in Section 3.1.2.

Other terms used herein are defined in the preamble and elsewhere in this Agreement.

ARTICLE II
THE MERGER

2.1. 

Merger.

Subject to the terms and conditions of this Agreement, at the Effective Time: (a) Seller shall merge with and into Buyer, with Buyer as the resulting or surviving corporation (the “Surviving Corporation”); and (b) the separate existence of Seller shall cease and all of the rights, privileges, powers, franchises, properties, assets, liabilities and obligations of Seller shall be vested in and assumed by Buyer. As part of the Merger, each share of Seller Common Stock (other than Dissenting Shares and Treasury Stock) will be converted into the right to receive the Merger Consideration pursuant to the terms of Article III hereof. Immediately after the Merger, Seller Bank shall merge with and into Buyer Bank, with Buyer Bank as the resulting institution.

2.2. 

Effective Time.

The Closing shall occur no later than the close of business on the fifth business day following the latest to occur of (i) the receipt of all Regulatory Approvals, (ii) Seller shareholder approval and Buyer shareholder approval of the Merger, or (iii) the passing of any applicable waiting periods; or at such other date or time upon which Buyer and Seller mutually agree (the “Closing”). The Merger shall be effected by the filing of a certificate of merger with the ________ Office of the Secretary of State on the day of the Closing (the “Closing Date”), in accordance with the _______ Business Corporation Act. The “Effective Time” means the date and time upon which the certificate of merger is filed with the ________ Office of the Secretary of State, or as otherwise stated in the certificate of merger, in accordance with the _______ Business Corporation Act.

2.3. 

Certificate of Incorporation and Bylaws.

The Certificate of Incorporation and Bylaws of Buyer as in effect immediately prior to the Effective Time shall be the Certificate of Incorporation and Bylaws of the Surviving Corporation, until thereafter amended as provided therein and by applicable law.

2.4. 

Directors and Officers of Surviving Corporation.

The current directors of Buyer and Seller immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and Bylaws of the Surviving Corporation. The officers of Buyer and Seller immediately prior to the Effective Time including, but not limited to, ________ shall be the
initial officers of Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified.

2.5. **Effects of the Merger.**

At and after the Effective Time, the Merger shall have the effects as set forth herein ______.

2.6. **Tax Consequences.**

It is intended that the Merger shall constitute a reorganization within the meaning of Section 368(a) of the Code, and that this Agreement shall constitute a “plan of reorganization” as that term is used in Sections 354 and 361 of the Code. From and after the date of this Agreement and until the Closing, each party hereto shall use its reasonable best efforts to cause the Merger to qualify, and will not knowingly take any action, cause any action to be taken, fail to take any action or cause any action to fail to be taken which action or failure to act could prevent the Merger from qualifying as a reorganization under Section 368(a) of the Code. Following the Closing, neither Buyer, Seller nor any of their affiliates shall knowingly take any action, cause any action to be taken, fail to take any action or cause any action to fail to be taken, which action or failure to act could cause the Merger to fail to qualify as a reorganization under Section 368(a) of the Code. Buyer and Seller each hereby agrees to deliver certificates substantially in compliance with IRS published advance ruling guidelines, with customary exceptions and modifications thereto, to enable counsel to deliver the legal opinion contemplated by Section 9.1.5, which certificates shall be effective as of the date of such opinion.

2.7. **Possible Alternative Structures.**

Notwithstanding anything to the contrary contained in this Agreement, prior to the Effective Time Buyer shall be entitled to revise the structure of the Merger or the Bank Merger, including without limitation, by merging Seller into a wholly owned subsidiary of Buyer, provided that (i) any such subsidiary shall become a party to, and shall agree to be bound by, the terms of this Agreement (ii) there are no adverse Federal or state income tax consequences to Seller shareholders as a result of the modification; (iii) the consideration to be paid to the holders of Seller Common Stock under this Agreement is not thereby changed in kind, value or reduced in amount; and (iv) such modification will not delay materially or jeopardize the receipt of Regulatory Approvals or other consents and approvals relating to the consummation of the Merger and the Bank Merger or otherwise cause any condition to Closing set forth in Article IX not to be capable of being fulfilled. The parties hereto agree to appropriately amend this Agreement and any related documents in order to reflect any such revised structure.

2.8. **Bank Merger**

Buyer and Seller shall use their reasonable best efforts to cause the merger of Seller Bank with and into Buyer Bank, with Buyer Bank as the surviving institution, to occur as soon as practicable after the Effective Time, but not before September 1, 2016. In addition, following the execution and delivery of this Agreement, Buyer will cause Buyer Bank, and Seller will cause Seller Bank, to execute and deliver a mutually acceptable Plan of Bank Merger.
2.9.  Additional Actions

If, at any time after the Effective Time, Buyer shall consider or be advised that any further deeds, assignments or assurances in law or any other acts are necessary or desirable to (i) vest, perfect or confirm, of record or otherwise, in Buyer its right, title or interest in, to or under any of the rights, properties or assets of Seller, Seller Bank, or (ii) otherwise carry out the purposes of this Agreement, Seller and its officers and directors shall be deemed to have granted to Buyer an irrevocable power of attorney to execute and deliver, in such official corporate capacities, all such deeds, assignments or assurances in law or any other acts as are necessary or desirable to (a) vest, perfect or confirm, of record or otherwise, in Buyer its right, title or interest in, to or under any of the rights, properties or assets of Seller or (b) otherwise carry out the purposes of this Agreement, and the officers and directors of the Buyer are authorized in the name of Seller or otherwise to take any and all such action.

ARTICLE III
CONVERSION OF SHARES

3.1.  Conversion of Seller Common Stock; Merger Consideration.

At the Effective Time, by virtue of the Merger and without any action on the part of Buyer, Seller or the holders of any of the shares of Seller Common Stock, the Merger shall be effected in accordance with the following terms:

3.1.1. Each share of Buyer Common Stock that is issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding following the Effective Time and shall be unchanged by the Merger.

3.1.2. All shares of Seller Common Stock held in the treasury of Seller (“Treasury Stock”) and each share of Seller Common Stock owned by Buyer immediately prior to the Effective Time (other than shares held in a fiduciary capacity or in connection with debts previously contracted) shall, at the Effective Time, cease to exist, and the certificates for such shares shall be canceled as promptly as practicable thereafter, and no payment or distribution shall be made in consideration therefor.

3.1.3. Subject to the provisions of this Article III, each share of Seller Common Stock issued and outstanding immediately prior to the Effective Time (other than Treasury Stock and Dissenting Shares) shall become and be converted into, as provided in and subject to the limitations set forth in this Agreement, the right to receive at the election of the holder thereof as provided in Section 3.2, the following, without interest:

(A) for each share of Seller Common Stock with respect to which an election to receive cash has been effectively made and not revoked or lost, pursuant to Section 3.2 (a “Cash Election”), cash from Buyer in an amount equal to $50.00 (the “Cash Consideration”) (collectively, “Cash Election Shares”);

(B) for each share of Seller Common Stock with respect to which an election to receive Buyer Common Stock has been effectively made and not revoked or lost,
pursuant to Section 3.2 (a “Stock Election”), 1.2 shares (“the Exchange Ratio”) of Buyer Common
(the “Stock Consideration”) (collectively, the “Stock Election Shares”);

(C) a combination of the Cash Consideration and the Stock Consideration (a “Mixed Election” and collectively the “Mixed Election Shares”); and

(D) for each share of Seller Common Stock other than shares as to which a Cash Election, a Stock Election or a Mixed Election has been effectively made and not revoked or lost, pursuant to Section 3.2 (collectively, “Non-Election Shares”), such Stock Consideration and/or Cash Consideration as is determined in accordance with Section 3.2.

3.1.4. Each outstanding share of Seller Common Stock the holder of which has perfected his right to dissent under the _______ Business Corporation Act and has not effectively withdrawn or lost such right as of the Effective Time (the “Dissenting Shares”) shall not be converted into or represent a right to receive the Merger Consideration hereunder, and the holder thereof shall be entitled only to such rights as are granted by the _______ Business Corporation Act. Seller shall give Buyer prompt notice upon receipt by Seller of any written demand for payment of the fair value of such shares of Seller Common Stock and of withdrawals of such notice and any other instruments provided pursuant to applicable law (any shareholder duly making such demand being hereinafter called a “Dissenting Shareholder”), and Buyer shall have the right to participate in all negotiations and proceedings with respect to any such demands. Seller shall not, except with the prior written consent of Buyer, voluntarily make any payment with respect to, or settle or offer to settle, any such demand for payment, or waive any failure to timely deliver a written demand for appraisal or the taking of any other action by such Dissenting Shareholder as may be necessary to perfect appraisal rights under the _______ Business Corporation Act. Any payments made in respect of Dissenting Shares shall be made by the Surviving Company.

3.1.5. If any Dissenting Shareholder shall effectively withdraw or lose (through failure to perfect or otherwise) his right to such payment at or prior to the Effective Time, such holder’s shares of Seller Common Stock shall be converted into a right to receive cash or Buyer Common Stock in accordance with the applicable provisions of this Agreement. If such holder shall effectively withdraw or lose (through failure to perfect or otherwise) his right to such payment after the Effective Time (or the Election Deadline), each share of Seller Common Stock of such holder shall be treated as a Non-Election Share.

3.1.6. After the Effective Time, shares of Seller Common Stock shall be no longer outstanding and shall automatically be canceled and shall cease to exist, and shall thereafter by operation of this section represent the right to receive the Merger Consideration (or as to Dissenting Shares, such rights as provided by the _______ Business Corporation Act) and any dividends or distributions with respect thereto or any dividends or distributions with a record date prior to the Effective Time that were declared or made by Seller on such shares of Seller Common Stock in accordance with the terms of this Agreement on or prior to the Effective Time and which remain unpaid at the Effective Time.

3.1.7. In the event Buyer changes (or establishes a record date for changing) the number of, or provides for the exchange of, shares of Buyer Common Stock issued and outstanding prior to the Effective Time as a result of a stock split, stock dividend, recapitalization, reclassification, or similar transaction with respect to the outstanding Buyer Common Stock and the
record date therefor shall be prior to the Effective Time, the Exchange Ratio shall be proportionately and appropriately adjusted; provided, that no such adjustment shall be made with regard to Buyer Common Stock if Buyer issues additional shares of Common Stock and receives fair market value consideration for such shares.

3.2. Election Procedures.

3.2.1. Holders of Seller Common Stock may elect to receive shares of Buyer Common Stock or cash (in either case without interest) in exchange for their shares of Seller Common Stock in accordance with the procedures set forth herein; provided that, in the aggregate, and subject to the provisions of 3.2, 50% of the total number of shares of Seller Common Stock issued and outstanding at the Effective Time, including any Dissenting Shares but excluding any Treasury Shares (the “Stock Conversion Number”), shall be converted into the Stock Consideration and the remaining outstanding shares of Seller Common Stock shall be converted into the Cash Consideration. Shares of Seller Common Stock as to which a Cash Election (including, pursuant to a Mixed Election) has been made are referred to herein as “Cash Election Shares.” Shares of Seller Common Stock as to which a Stock Election has been made (including, pursuant to a Mixed Election) are referred to as “Stock Election Shares.” Shares of Seller Common Stock as to which no election has been made (or as to which an Election Form is not returned properly completed) are referred to herein as “Non-Election Shares.” The aggregate number of shares of Seller Common Stock with respect to which a Stock Election has been made is referred to herein as the “Stock Election Number.” Any Dissenting Shares shall be deemed to be Cash Election Shares, and the holders thereof shall in no event receive consideration comprised of Buyer Common Stock with respect to such shares; provided; however, that for purposes of making the proration calculations provided for in this Section 3.2, only Dissenting Shares as existing at the Effective Time shall be deemed Cash Election Shares.

3.2.2. An election form and other appropriate and customary transmittal materials (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of such Certificates to the Exchange Agent), in such form as Seller and Buyer shall mutually agree (“Election Form”), shall be mailed no more than 40 business days and no less than 20 business days prior to the anticipated Effective Time or on such earlier date as Buyer and Seller shall mutually agree (the “Mailing Date”) to each holder of record of Seller Common Stock as of five business days prior to the Mailing Date (the “Election Form Record Date”). Each Election Form shall permit such holder, subject to the allocation and election procedures set forth in this Section 3.2, (i) to elect to receive the Cash Consideration for all of the shares of Seller Common Stock held by such holder, in accordance with Section 3.1.3, (ii) to elect to receive the Stock Consideration for all of such shares, in accordance with Section 3.1.3, (iii) elect to receive the Stock Consideration for a part of such holder’s Seller Common Stock and the Cash consideration for the remaining part of such holder’s Seller Common Stock, or (iv) to indicate that such record holder has no preference as to the receipt of cash or Buyer Common Stock for such shares. A holder of record of shares of Seller Common Stock who holds such shares as nominee, trustee or in another representative capacity (a “Representative”) mit multiple Election Forms, provided that each such Election Form covers all the shares of Seller Common Stock held by such Representative for a particular beneficial owner. Any shares of Seller Common Stock with respect to which the holder thereof shall not, as of the Election Deadline, have made an election by submission to the Exchange Agent of an effective, properly completed Election Form shall be deemed Non-Election Shares.
3.2.3. To be effective, a properly completed Election Form shall be submitted to the Exchange Agent on or before 5:00 p.m., local time, on the 20th day following the Mailing Date (or such other time and date as Buyer and Seller may mutually agree) (the “Election Deadline”); provided, however, that the Election Deadline may not occur on or after the Closing Date. Seller shall use its reasonable best efforts to make available up to two separate Election Forms, or such additional Election Forms as Buyer may permit, to all persons who become holders (or beneficial owners) of Seller Common Stock between the Election Form Record Date and the close of business on the business day prior to the Election Deadline. Seller shall provide to the Exchange Agent all information reasonably necessary for it to perform as specified herein. An election shall have been properly made only if the Exchange Agent shall have actually received a properly completed Election Form by the Election Deadline. An Election Form shall be deemed properly completed only if accompanied by one or more Certificates (or customary affidavits and indemnification regarding the loss or destruction of such Certificates or the guaranteed delivery of such Certificates) representing all shares of Seller Common Stock covered by such Election Form, together with duly executed transmittal materials included with the Election Form. If a Seller shareholder either (i) does not submit a properly completed Election Form in a timely fashion or (ii) revokes its Election Form prior to the Election Deadline (without later submitting a properly completed Election Form prior to the Election Deadline), the shares of Seller Common Stock held by such shareholder shall be designated as Non-Election Shares. Any Election Form may be revoked or changed by the person submitting such Election Form to the Exchange Agent by written notice to the Exchange Agent only if such notice of revocation or change is actually received by the Exchange Agent at or prior to the Election Deadline. Buyer shall cause the Certificate or Certificates relating to any revoked Election Form to be promptly returned without charge to the person submitting the Election Form to the Exchange Agent. Subject to the terms of this Agreement and of the Election Form, the Exchange Agent shall have discretion to determine when any election, modification or revocation is received and whether any such election, modification or revocation has been properly made. All elections shall be revoked automatically if the Exchange Agent is notified in writing by Buyer or Seller, upon exercise by Buyer or Seller of its respective or their mutual rights to terminate this Agreement to the extent provided under Article XI, that this Agreement has been terminated in accordance with Article XI.

3.2.4. If the aggregate number of shares of Seller Common Stock with respect to which Stock Elections shall have been made (the “Stock Election Number”) exceeds the Stock Conversion Number, then all Cash Election Shares and all Non-Election Shares of each holder thereof shall be converted into the right to receive the Cash Consideration, and Stock Election Shares of each holder thereof will be converted into the right to receive the Stock Consideration in respect of that number of Stock Election Shares equal to the product obtained by multiplying (x) the number of Stock Election Shares held by such holder by (y) a fraction, the numerator of which is the Stock Conversion Number and the denominator of which is the Stock Election Number, with the remaining number of such holder’s Stock Election Shares being converted into the right to receive the Cash Consideration.

3.2.5. If the Stock Election Number is less than the Stock Conversion Number (the amount by which the Stock Conversion Number exceeds the Stock Election Number being referred to herein as the “Shortfall Number”), then all Stock Election Shares shall be converted into the right to receive the Stock Consideration and the Non-Election Shares and Cash Election Shares shall be treated in the following manner:
(A) If the Shortfall Number is less than or equal to the number of Non-Election Shares, then all Cash Election Shares shall be converted into the right to receive the Cash Consideration and the Non-Election Shares of each holder thereof shall convert into the right to receive the Stock Consideration in respect of that number of Non-Election Shares equal to the product obtained by multiplying (x) the number of Non-Election Shares held by such holder by (y) a fraction, the numerator of which is the Shortfall Number and the denominator of which is the total number of Non-Election Shares, with the remaining number of such holder's Non-Election Shares being converted into the right to receive the Cash Consideration; or

(B) If the Shortfall Number exceeds the number of Non-Election Shares, then all Non-Election Shares shall be converted into the right to receive the Stock Consideration and Cash Election Shares of each holder thereof shall convert into the right to receive the Stock Consideration in respect of that number of Cash Election Shares equal to the product obtained by multiplying (x) the number of Cash Election Shares held by such holder by (y) a fraction, the numerator of which is the amount by which (1) the Shortfall Number exceeds (2) the total number of Non-Election Shares and the denominator of which is the total number of Cash Election Shares, with the remaining number of such holder's Cash Election Shares being converted into the right to receive the Cash Consideration.

3.2.6. Adjustment to Preserve Tax Treatment. Notwithstanding anything in this Article III to the contrary, if the aggregate value of the Stock Consideration to be delivered as of the Effective Time, less the amount of cash paid in lieu of fractional shares of Buyer Common Stock pursuant to Section 3.2.7 (the “Stock Value”), is less than 50% of the sum of (i) the aggregate value of the Merger Consideration to be delivered as of the Effective Time, plus (ii) the value of any consideration described in Treasury Regulations Section 1.368-1(e)(1)(ii), plus (iii) cash paid to holders of Dissenting Shares, plus (iv) the value of any consideration paid by Buyer or any of its Subsidiaries (or any “related person” to Buyer or any of its Subsidiaries within the meaning of Treasury Regulations Section 1.368-1(e)(3)) to acquire shares of Seller Common Stock prior to the Effective Time (such sum, the “Aggregate Value”), then Buyer may reduce the number of shares of outstanding Seller Common Stock entitled to receive the Cash Consideration and correspondingly increase the number of shares of Seller Common Stock entitled to receive the Stock Consideration by the minimum amount necessary to cause the Stock Value to equal 50% of the Aggregate Value.

3.2.7. No Fractional Shares. Notwithstanding anything to the contrary contained herein, no certificates or scrip representing fractional shares of Buyer Common Stock shall be issued upon the surrender for exchange of Certificates, no dividend or distribution with respect to Buyer Common Stock shall be payable on or with respect to any fractional share interest, and such fractional share interests shall not entitle the owner thereof to vote or to any other rights of a shareholder of Buyer. In lieu of the issuance of any such fractional share, Buyer shall pay to each former holder of Seller Common Stock who otherwise would be entitled to receive a fractional share of Buyer Common Stock, an amount in cash, rounded to the nearest cent and without interest, equal to the product of (i) the fraction of a share to which such holder would otherwise have been entitled and (ii) $50.00. For purposes of determining any fractional share interest, all shares of Seller Common Stock owned by a Seller shareholder shall be combined so as to calculate the maximum number of whole shares of Buyer Common Stock issuable to such Seller shareholder.
3.3. Procedures for Exchange of Seller Common Stock.

3.3.1. Buyer to Make Merger Consideration Available. After the Election Deadline and no later than the Closing Date, Buyer shall deposit, or shall cause to be deposited, with the Exchange Agent for the benefit of the holders of Seller Common Stock, for exchange in accordance with this Section 3.3, certificates representing the shares of Buyer Common Stock and an aggregate amount of cash sufficient to pay the aggregate amount of cash payable pursuant to this Article III (including any cash that may be payable in lieu of any fractional shares of Seller Common Stock) (such cash and certificates for shares of Buyer Common Stock, together with any dividends or distributions with respect thereto, being hereinafter referred to as the “Exchange Fund”).

3.3.2. Exchange of Certificates. Buyer shall take all steps necessary to cause the Exchange Agent, within five (5) business days after the Effective Time, to mail to each holder of a Certificate or Certificates, a form letter of transmittal for return to the Exchange Agent and instructions for use in effecting the surrender of the Certificates for the Merger Consideration and cash in lieu of fractional shares, if any, into which the Seller Common Stock represented by such Certificates shall have been converted as a result of the Merger. The letter of transmittal shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent. Upon proper surrender of a Certificate for exchange and cancellation to the Exchange Agent, together with a properly completed letter of transmittal duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor, as applicable, (i) a certificate representing that number of shares of Buyer Common Stock (if any) to which such former holder of Seller Common Stock shall have become entitled pursuant to the provisions of Section 3.1 or 3.2 hereof, (ii) a check representing that amount of cash (if any) to which such former holder of Seller Common Stock shall have become entitled pursuant to the provisions of Section 3.1 or 3.2 hereof and (iii) a check representing the amount of cash (if any) payable in lieu of fractional shares of Buyer Common Stock, which such former holder has the right to receive in respect of the Certificate surrendered pursuant to the provisions of Section 3.2, and the Certificate so surrendered shall forthwith be cancelled. No interest will be paid or accrued on the cash payable in lieu of fractional shares. Certificates surrendered for exchange by any person who is an “affiliate” of Seller for purposes of Rule 145(c) under the Securities Act shall not be exchanged for certificates representing shares of Buyer Common Stock until Buyer has received the written agreement of such person contemplated by Section 8.4 hereof.

3.3.3. Rights of Certificate Holders after the Effective Time. The holder of a Certificate that prior to the Merger represented issued and outstanding Seller Common Stock shall have no rights, after the Effective Time, with respect to such Seller Common Stock except to surrender the Certificate in exchange for the Merger Consideration as provided in this Agreement (or as to Dissenting Shares, such rights as provided by the _______ Business Corporation Act). No dividends or other distributions declared after the Effective Time with respect to Buyer Common Stock shall be paid to the holder of any unsurrendered Certificate until the holder thereof shall surrender such Certificate in accordance with this Section 3.3. After the surrender of a Certificate in accordance with this Section 3.3, the record holder thereof shall be entitled to receive any such dividends or other distributions, without any interest thereon, which theretofore had become payable with respect to shares of Buyer Common Stock represented by such Certificate.

3.3.4. Surrender by Persons Other than Record Holders. If the Person surrendering a Certificate and signing the accompanying letter of transmittal is not the record holder thereof, then
it shall be a condition of the payment of the Merger Consideration that: (i) such Certificate is properly endorsed to such Person or is accompanied by appropriate stock powers, in either case signed exactly as the name of the record holder appears on such Certificate, and is otherwise in proper form for transfer, or is accompanied by appropriate evidence of the authority of the Person surrendering such Certificate and signing the letter of transmittal to do so on behalf of the record holder; and (ii) the person requesting such exchange shall pay to the Exchange Agent in advance any transfer or other taxes required by reason of the payment to a person other than the registered holder of the Certificate surrendered, or required for any other reason, or shall establish to the satisfaction of the Exchange Agent that such tax has been paid or is not payable.

3.3.5. Closing of Transfer Books. From and after the Effective Time, there shall be no transfers on the stock transfer books of Seller of the Seller Common Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates representing such shares are presented for transfer to the Exchange Agent, they shall be exchanged for the Merger Consideration and canceled as provided in this Section 3.3.

3.3.6. Return of Exchange Fund. At any time following the six (6) month period after the Effective Time, Buyer shall be entitled to require the Exchange Agent to deliver to it any portions of the Exchange Fund which had been made available to the Exchange Agent and not disbursed to holders of Certificates (including, without limitation, all interest and other income received by the Exchange Agent in respect of all funds made available to it), and thereafter such holders shall be entitled to look to Buyer (subject to abandoned property, escheat and other similar laws) with respect to any Merger Consideration that may be payable upon due surrender of the Certificates held by them. Notwithstanding the foregoing, neither Buyer nor the Exchange Agent shall be liable to any holder of a Certificate for any Merger Consideration delivered in respect of such Certificate to a public official pursuant to any abandoned property, escheat or other similar law.

3.3.7. Lost, Stolen or Destroyed Certificates. In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by Buyer, the posting by such person of a bond in such amount as Buyer may reasonably direct as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration deliverable in respect thereof.

3.3.8. Withholding. Buyer or the Exchange Agent will be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement or the transactions contemplated hereby to any holder of Seller Common Stock such amounts as Buyer (or any Affiliate thereof) or the Exchange Agent are required to deduct and withhold with respect to the making of such payment under the Code, or any applicable provision of U.S. federal, state, local or non-U.S. tax law. To the extent that such amounts are properly withheld by Buyer or the Exchange Agent, such withheld amounts will be treated for all purposes of this Agreement as having been paid to the holder of the Seller Common Stock in respect of whom such deduction and withholding were made by Buyer or the Exchange Agent.

3.3.9. Treatment of Seller Options. SELLER DISCLOSURE SCHEDULE 4.3.1 sets forth all of the outstanding Seller Options as of the date hereof. Prior to and effective as of the Effective Time, Seller shall take all actions necessary to terminate the Seller Option Plans (and all other option plans listed in SELLER DISCLOSURE SCHEDULE 4.9.1(ii)). Holders of all
unexercised Seller Options as of the Effective Time will receive, in cancellation of their Seller Options, a cash payment from Seller immediately prior to the Effective Time, in an amount equal to the product of (x) the number of shares of Seller Common Stock provided for in such Seller Option and (y) the excess, if any, of $50.00 over the exercise price per share provided for in such Seller Option (the “Cash Option Payment”), which cash payment shall be treated as compensation and shall be net of any applicable federal or state withholding tax. Prior to the Effective Time, Seller shall use its reasonably best efforts to obtain the written consent of each option holder to the cancellation of the Seller Options in exchange for the Cash Option Payment, provided that the failure to obtain each consent shall not be a breach of this agreement.

3.3.10. Reservation of Shares. Buyer shall reserve for issuance a sufficient number of shares of the Buyer Common Stock for the purpose of issuing shares of Buyer Common Stock to the Seller shareholders in accordance with this Article III.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that the statements contained in this Article IV are correct and complete as of the later of the date of this Agreement or upon the completion of due diligence and delivery of the SELLER DISCLOSURE SCHEDULE supplement to be delivered no later than [30] days from the date hereof, and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article IV), subject to the standard set forth in Section 4.1 and except as set forth in the SELLER DISCLOSURE SCHEDULE delivered by Seller to Buyer on the date hereof and as supplemented no later than [30] days from the date hereof, and except as to any representation or warranty which specifically relates to an earlier date, which only need be so correct as of such earlier date. Seller has made a good faith effort to ensure that the disclosure on each schedule of the SELLER DISCLOSURE SCHEDULE corresponds to the section referenced herein. However, for purposes of the SELLER DISCLOSURE SCHEDULE, any item disclosed on any schedule therein is deemed to be fully disclosed with respect to all schedules under which such item may be relevant as and to the extent that it is reasonably clear on the face of such schedule that such item applies to such other schedule. References to the Knowledge of Seller shall include the Knowledge of Seller Bank.


No representation or warranty of Seller contained in this Article IV shall be deemed untrue or incorrect, and Seller shall not be deemed to have breached a representation or warranty, as a consequence of the existence of any fact, circumstance or event unless such fact, circumstance or event, individually or taken together with all other facts, circumstances or events inconsistent with any paragraph of Article IV, has had or is reasonably expected to have a Material Adverse Effect, disregarding for these purposes (x) any qualification or exception for, or reference to, materiality in any such representation or warranty and (y) any use of the terms “material”, “materially”, “in all material respects”, “Material Adverse Effect” or similar terms or phrases in any such representation or warranty. The foregoing standard shall not apply to representations and warranties contained in Sections 4.2 (other than the last sentence of Sections 4.2.1 and 4.2.2), and Sections 4.2.4, 4.2.5, 4.3, 4.4, 4.13.5, 4.13.8, 4.13.10 and 4.13.11, which shall be deemed untrue, incorrect and breached if they
are not true and correct in all material respects based on the qualifications and standards therein contained.

4.2. Organization.

4.2.1. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of __________, and is duly registered as a bank holding company under the BHCA. Seller has full corporate power and authority to carry on its business as now conducted and is duly licensed or qualified to do business in the states of the United States and foreign jurisdictions where its ownership or leasing of property or the conduct of its business requires such qualification.

4.2.2. Seller Bank is a bank duly organized, validly existing and in good standing (to the extent required) under the laws of the State of __________. The deposits of Seller Bank are insured by the FDIC to the fullest extent permitted by law, and all premiums and assessments required to be paid in connection therewith have been paid by Seller Bank when due. Seller Bank is a member in good standing of the FHLB and owns the requisite amount of stock therein.

4.2.3. SELLER DISCLOSURE SCHEDULE 4.2.3 sets forth each Seller Subsidiary. Each Seller Subsidiary is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization.

4.2.4. The respective minute books of Seller, Seller Bank and each other Seller Subsidiary accurately records, in all material respects, all material corporate actions of their respective shareholders and boards of directors (including committees).

4.2.5. Prior to the date of this Agreement, Seller has made available to Buyer true and correct copies of the certificate of incorporation or charter and bylaws of Seller, Seller Bank and each other Seller Subsidiary.

4.3. Capitalization.

4.3.1. The authorized capital stock of Seller consists of 5,000,000 shares of common stock, $1.00 par value per share, of which 755,000 shares are outstanding, validly issued, fully paid and nonassessable and free of preemptive rights. There are 85,000 shares of Seller Common Stock held by Seller as treasury stock. Neither Seller nor any Seller Subsidiary has or is bound by any Rights of any character relating to the purchase, sale or issuance or voting of, or right to receive dividends or other distributions on any shares of Seller Common Stock, or any other security of Seller or a Seller Subsidiary or any securities representing the right to vote, purchase or otherwise receive any shares of Seller Common Stock or any other security of Seller or any Seller Subsidiary, other than the shares issuable under the outstanding stock options. SELLER DISCLOSURE SCHEDULE 4.3.1 sets forth the name of each holder of options to purchase Seller Common Stock, the number of shares each such individual may acquire pursuant to the exercise of such options, the grant and vesting dates, and the exercise price relating to the options held.

4.3.2. Except as set forth in SELLER DISCLOSURE SCHEDULE 4.3.2, Seller owns all of the capital stock of Seller Bank, free and clear of any lien or encumbrance. Except for
the Seller Subsidiaries, Seller does not possess, directly or indirectly, any material equity interest in any corporate entity, except for equity interests held in the investment portfolios of Seller Subsidiaries, equity interests held by Seller Subsidiaries in a fiduciary capacity, and equity interests held in connection with the lending activities of Seller Subsidiaries, including stock in the FHLB. Either Seller or Seller Bank owns all of the outstanding shares of capital stock of each Seller Subsidiary free and clear of all liens, security interests, pledges, charges, encumbrances, agreements and restrictions of any kind or nature.

4.3.3. To Seller’s Knowledge, except as set forth in the SELLER DISCLOSURE SCHEDULE 4.3.3, no Person or “group” (as that term is used in Section 13(d)(3) of the Exchange Act), is the beneficial owner (as defined in Section 13(d) of the Exchange Act) of 5% or more of the outstanding shares of Seller Common Stock.

4.4. Authority; No Violation.

4.4.1. Seller has full corporate power and authority to execute and deliver this Agreement and, subject to the receipt of the Regulatory Approvals and the approval of this Agreement by Seller’s shareholders, to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Seller and the completion by Seller of the transactions contemplated hereby, including the Merger, have been duly and validly approved by the Board of Directors of Seller, and no other corporate proceedings on the part of Seller, except for the approval of the Seller shareholders, is necessary to complete the transactions contemplated hereby, including the Merger. This Agreement has been duly and validly executed and delivered by Seller, and subject to approval by the shareholders of Seller and receipt of the Regulatory Approvals and due and valid execution and delivery of this Agreement by Buyer, constitutes the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors’ rights generally, and subject, as to enforceability, to general principles of equity.

4.4.2. Subject to receipt of Regulatory Approvals and Seller’s and Buyer’s compliance with any conditions contained therein, and to the receipt of the approval of the shareholders of Seller, (A) the execution and delivery of this Agreement by Seller, (B) the consummation of the transactions contemplated hereby, and (C) compliance by Seller with any of the terms or provisions hereof will not (i) conflict with or result in a breach of any provision of the certificate of incorporation or bylaws of Seller or any Seller Subsidiary or the charter and bylaws of Seller Bank; (ii) to the knowledge of Seller violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Seller or any Seller Subsidiary or any of their respective properties or assets; or (iii) violate, conflict with, result in a breach of any provisions of, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default), under, result in the termination of, accelerate the performance required by, or result in a right of termination or acceleration or the creation of any lien, security interest, charge or other encumbrance upon any of the properties or assets of Seller or Seller Bank under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other investment or obligation to which Seller or Seller Bank is a party, or by which they or any of their respective properties or assets may be bound or affected, except for such violations, conflicts, breaches or defaults under clause (ii) or (iii) hereof which, either individually or in the aggregate, will not have a Material Adverse Effect on Seller and the Seller Subsidiaries taken as a whole.
4.5.  Consents.

Except for (a) filings with Bank Regulators, the receipt of the Regulatory Approvals, and compliance with any conditions contained therein, (b) the filing of the Certificate of Merger with the Secretary of State of the State of ________, (c) the filing with the SEC of (i) the Merger Registration Statement and (ii) the obtaining from the SEC of such orders as may be required in connection therewith, (d) such filings and approvals as are required to be made or obtained under the securities or “Blue Sky” laws of various states in connection with the issuance of the shares of Buyer Common Stock pursuant to this Agreement, and (e) the approval of this Agreement by the requisite vote of the shareholders of Seller and Buyer, no consents, waivers or approvals of, or filings or registrations with, any Governmental Entity are necessary, and, to Seller’s Knowledge, except as set forth on SELLER DISCLOSURE SCHEDULE 4.5, no consents, waivers or approvals of, or filings or registrations with, any other third parties are necessary, in connection with (x) the execution and delivery of this Agreement by Seller, and (y) the completion of the Merger and the Bank Merger. Seller has no reason to believe that (i) any Regulatory Approvals or other required consents or approvals will not be received, or that (ii) any public body or authority, the consent or approval of which is not required or to which a filing is not required, will object to the completion of the transactions contemplated by this Agreement.


4.6.1.  Seller has previously made available to Buyer the Seller Regulatory Reports. The Seller Regulatory Reports have been prepared in all material respects in accordance with applicable regulatory accounting principles and practices throughout the periods covered by such statements.

4.6.2.  Seller has previously made available to Buyer the Seller Financial Statements. The Seller Financial Statements have been prepared in accordance with GAAP, and (including the related notes where applicable) fairly present in each case in all material respects (subject in the case of the unaudited interim statements to normal year-end adjustments), the consolidated financial position, results of operations and cash flows of Seller and the Seller Subsidiaries on a consolidated basis as of and for the respective periods ending on the dates thereof, in accordance with GAAP during the periods involved, except as indicated in the notes thereto, or in the case of unaudited statements.

4.6.3.  At the date of each balance sheet included in the Seller Financial Statements or the Seller Regulatory Reports, neither Seller nor Seller Bank, as applicable, had any liabilities, obligations or loss contingencies of any nature (whether absolute, accrued, contingent or otherwise) of a type required to be reflected in such Seller Financial Statements or Seller Regulatory Reports or in the footnotes thereto which are not fully reflected or reserved against therein or fully disclosed in a footnote thereto, except for liabilities, obligations and loss contingencies which are not material individually or in the aggregate or which are incurred in the ordinary course of business, consistent with past practice, and except for liabilities, obligations and loss contingencies which are within the subject matter of a specific representation and warranty herein and subject, in the case of any unaudited statements, to normal, recurring audit adjustments and the absence of footnotes.

4.6.4.  The records, systems, controls, data and information of Seller and its Subsidiaries are recorded, stored, maintained and operated under means (including any electronic,
mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of Seller or its Subsidiaries or accountants (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a material adverse effect on the system of internal accounting controls described below in this Section 4.6.4. Seller (x) has implemented and maintains a system of internal control over financial reporting that is designed to provide reasonable assurances regarding the reliability of financial reporting and the preparation of its financial statements for external purposes in accordance with GAAP, (y) has implemented and maintains disclosure controls and procedures to ensure that material information relating to Seller, including its consolidated Subsidiaries, is made known to the chief executive officer and the chief financial officer of Seller by others within those entities, and (z) has disclosed, based on its most recent evaluation prior to the date hereof, to Seller’s outside auditors and the audit committee of Seller’s Board of Directors (i) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect Seller’s ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in Seller’s internal control over financial reporting. These disclosures (if any) were made in writing by management to Seller’s auditors and audit committee and a copy has previously been made available to Buyer.

4.6.5. Since December 31, 2015, (i) neither Seller nor any of its Subsidiaries nor, to the Knowledge of Seller, any director, officer, employee, auditor, accountant or representative of Seller or any of its Subsidiaries has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of Seller or any of its Subsidiaries or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that Seller or any of its Subsidiaries has engaged in questionable accounting or auditing practices, and (ii) no attorney representing Seller or any of its Subsidiaries, whether or not employed by Seller or any of its Subsidiaries, has reported evidence of a material violation of Securities Laws, breach of fiduciary duty or similar violation by Seller or any of its officers, directors, employees or agents to the Board of Directors of Seller or any committee thereof or to any director or officer of Seller.

4.7. Taxes.

Seller and the Seller Subsidiaries that are at least 80 percent owned by Seller are members of the same affiliated group within the meaning of Code Section 1504(a). Seller has duly filed all federal, state and material local tax returns required to be filed by or with respect to Seller and every Seller Subsidiary on or prior to the Closing Date, taking into account any extensions (all such returns, to Seller’s Knowledge, being accurate and correct in all material respects) and has duly paid or made provisions for the payment of all material federal, state and local taxes which have been incurred by or are due or claimed to be due from Seller and any Seller Subsidiary by any taxing authority or pursuant to any written tax sharing agreement on or prior to the Closing Date other than taxes or other charges which (i) are not delinquent, (ii) are being contested in good faith, or (iii) have not yet been fully determined. Seller has received no written notice of, and to Seller’s Knowledge there is no audit examination, deficiency assessment, tax investigation or refund litigation with respect to any taxes of Seller or any of its Subsidiaries, and no claim has been made by any authority in a jurisdiction where Seller or any of its Subsidiaries do not file tax returns that Seller or any such Subsidiary is subject to taxation in that jurisdiction. Seller and its Subsidiaries have not
executed an extension or waiver of any statute of limitations on the assessment or collection of any material tax due that is currently in effect. Seller and each of its Subsidiaries has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder or other third party, and Seller and each of its Subsidiaries, to Seller’s Knowledge, has timely complied with all applicable information reporting requirements under Part III, Subchapter A of Chapter 61 of the Code and similar applicable state and local information reporting requirements.

4.8. No Material Adverse Effect.

Seller has not suffered any Material Adverse Effect since December 31, 2015 and no event has occurred or circumstance arisen since that date which, in the aggregate, has had or is reasonably likely to have a Material Adverse Effect on Seller.

4.9. Material Contracts; Leases; Defaults.

4.9.1. Except as set forth in SELLER DISCLOSURE SCHEDULE 4.9.1, neither Seller nor any Seller Subsidiary is a party to or subject to: (i) any employment, consulting or severance contract or material arrangement with any past or present officer, director or employee of Seller or any Seller Subsidiary, except for “at will” arrangements; (ii) any plan, material arrangement or contract providing for bonuses, pensions, options, deferred compensation, retirement payments, profit sharing or similar material arrangements for or with any past or present officers, directors or employees of Seller or any Seller Subsidiary; (iii) any collective bargaining agreement with any labor union relating to employees of Seller or any Seller Subsidiary; (iv) any agreement which by its terms limits the payment of dividends by Seller or any Seller Subsidiary; (v) any instrument evidencing or related to material indebtedness for borrowed money whether directly or indirectly, by way of purchase money obligation, conditional sale, lease purchase, guaranty or otherwise, in respect of which Seller or any Seller Subsidiary is an obligor to any person, which instrument evidences or relates to indebtedness other than deposits, repurchase agreements, FHLB advances, bankers’ acceptances, and “treasury tax and loan” accounts and transactions in “federal funds” in each case established in the ordinary course of business consistent with past practice, or which contains financial covenants or other restrictions (other than those relating to the payment of principal and interest when due) which would be applicable on or after the Closing Date to Buyer or any Buyer Subsidiary; (vi) any other agreement, written or oral, that obligates Seller or any Seller Subsidiary for the payment of more than $50,000 annually or for the payment of more than $100,000 over its remaining term, which is not terminable without cause on 60 days’ or less notice without penalty or payment, or (vii) any agreement (other than this Agreement), contract, arrangement, commitment or understanding (whether written or oral) that restricts or limits in any material way the conduct of business by Seller or any Seller Subsidiary (it being understood that any non-compete or similar provision shall be deemed material).

4.9.2. Each real estate lease that requires the consent of the lessor or its agent resulting from the Merger or the Bank Merger by virtue of the terms of any such lease, is listed in SELLER DISCLOSURE SCHEDULE 4.9.2 identifying the section of the lease that contains such prohibition or restriction. Subject to any consents that may be required as a result of the transactions contemplated by this Agreement, to its Knowledge, neither Seller nor any Seller Subsidiary is in default in any material respect under any material contract, agreement, commitment, arrangement, lease, insurance policy or other instrument to which it is a party, by which its assets,
business, or operations may be bound or affected, or under which it or its assets, business, or operations receive benefits, and there has not occurred any event that, with the lapse of time or the giving of notice or both, would constitute such a default.

4.9.3. True and correct copies of agreements, contracts, arrangements and instruments referred to in Section 4.9.1 and 4.9.2 have been made available to Buyer on or before the date hereof, and are in full force and effect on the date hereof and neither Seller nor any Seller Subsidiary (nor, to the Knowledge of Seller, any other party to any such contract, arrangement or instrument) has materially breached any provision of, or is in default in any respect under any term of, any such contract, arrangement or instrument. Except as listed on SELLER DISCLOSURE SCHEDULE 4.9.3(b), no party to any material contract, arrangement or instrument will have the right to terminate any or all of the provisions of any such contract, arrangement or instrument as a result of the execution of, and the consummation of the transactions contemplated by, this Agreement. Except as set forth in SELLER DISCLOSURE SCHEDULE 4.9.3(c), no plan, contract, employment agreement, termination agreement, or similar agreement or arrangement to which Seller or any Seller Subsidiary is a party or under which Seller or any Seller Subsidiary may be liable contains provisions which permit an employee or independent contractor to terminate it without cause and continue to accrue future benefits thereunder. Except as set forth in SELLER DISCLOSURE SCHEDULE 4.9.3(d), no such agreement, plan, contract, or arrangement (x) provides for acceleration in the vesting of benefits or payments due thereunder upon the occurrence of a change in ownership or control of Seller or any Seller Subsidiary or upon the occurrence of a subsequent event; or (y) requires Seller or any Seller Subsidiary to provide a benefit in the form of Seller Common Stock or determined by reference to the value of Seller Common Stock.

4.9.4. Since December 31, 2015, through and including the date of this Agreement, except as furnished by Seller to Buyer prior to the date hereof, neither Seller nor any Seller Subsidiary has (i) except for (A) normal increases for employees made in the ordinary course of business consistent with past practice, or (B) as required by applicable law, increased the wages, salaries, compensation, pension, or other fringe benefits or perquisites payable to any executive officer, employee, or director from the amount thereof in effect as of December 31, 2015, granted any severance or termination pay, entered into any contract to make or grant any severance or termination pay or paid any bonus other than the customary year-end bonuses in amounts consistent with past practice, (ii) granted any options to purchase shares of Seller Common Stock, or any right to acquire any shares of its capital stock to any executive officer, director or employee other than grants to employees made in the ordinary course of business consistent with past practice under Seller Option Plans, (iii) increased or established any bonus, insurance, severance, deferred compensation, pension, retirement, profit sharing, stock option (including, without limitation, the granting of stock options, stock appreciation rights, performance awards, or restricted stock awards), stock purchase or other employee benefit plan, (iv) made any material election for federal or state income tax purposes, (v) made any material change in the delivery policies or procedures of Seller or any of its Subsidiaries, the effect of which was or is to make any such policy or procedure less restrictive in any material respect, (vi) made any material acquisition or disposition of any assets or properties, or any contract for any such acquisition or disposition entered into other than loans and loan commitments, (vii) entered into any lease of real or personal property requiring annual payments in excess of $100,000, other than in connection with foreclosed property or in the ordinary course of business consistent with past practice, (viii) changed any accounting methods, principles or practices of Seller or its Subsidiaries affecting its assets, liabilities or businesses,
including any reserving, renewal or residual method, practice or policy or (ix) suffered any strike, work stoppage, slow-down, or other labor disturbance.

4.10. Ownership of Property; Insurance Coverage.

4.10.1. Seller and each Seller Subsidiary has good and, as to real property, marketable title to all material assets and properties owned by Seller or each Seller Subsidiary in the conduct of its businesses, whether such assets and properties are real or personal, tangible or intangible, including assets and property reflected in the balance sheets contained in the Seller Regulatory Reports and in the Seller Financial Statements or acquired subsequent thereto (except to the extent that such assets and properties have been disposed of in the ordinary course of business, since the date of such balance sheets), subject to no material encumbrances, liens, mortgages, security interests or pledges, except (i) those items which secure liabilities for public or statutory obligations or any discount with, borrowing from or other obligations to FHLB, inter-bank credit facilities, or any transaction by an Seller Subsidiary acting in a fiduciary capacity, (ii) statutory liens for amounts not yet delinquent or which are being contested in good faith, (iii) non-monetary liens affecting real property which do not materially and adversely affect the value or use of such real property, and (iv) those described and reflected in the Seller Financial Statements. Seller and the Seller Subsidiaries, as lessee, have the right under valid and existing leases of real and personal properties used by Seller and its Subsidiaries in the conduct of their businesses to occupy or use all such properties as presently occupied and used by each of them.

4.10.2. With respect to all material agreements pursuant to which Seller or any Seller Subsidiary has purchased securities subject to an agreement to resell, if any, Seller or such Seller Subsidiary, as the case may be, has a lien or security interest (which to Seller’s Knowledge is a valid, perfected first lien) in the securities or other collateral securing the repurchase agreement, and the value of such collateral equals or exceeds the amount of the debt secured thereby.

4.10.3. Seller and each Seller Subsidiary currently maintain insurance considered by each of them to be reasonable for their respective operations. Neither Seller nor any Seller Subsidiary, has received notice from any insurance carrier during the past two years that (i) such insurance will be canceled or that coverage thereunder will be reduced or eliminated, or (ii) premium costs (other than with respect to health or disability insurance) with respect to such policies of insurance will be substantially increased. There are presently no material claims pending under such policies of insurance and no notices have been given by Seller or any Seller Subsidiary under such policies (other than with respect to health or disability insurance). All such insurance is valid and enforceable and in full force and effect, and within the last two years Seller and each Seller Subsidiary has received each type of insurance coverage for which it has applied and during such periods has not been denied indemnification for any material claims submitted under any of its insurance policies. SELLER DISCLOSURE SCHEDULE 4.10.3(b) identifies all material policies of insurance maintained by Seller and each Seller Subsidiary as well as the other matters required to be disclosed under this Section.

4.11. Legal Proceedings.

Neither Seller nor any Seller Subsidiary is a party to any, and there are no pending or, to Seller's Knowledge, threatened legal, administrative, arbitration or other proceedings, claims (whether asserted or unasserted), actions or governmental investigations or inquiries of any nature (i)
against Seller or any Seller Subsidiary, (ii) to which Seller or any Seller Subsidiary’s assets are or may be subject, (iii) challenging the validity or propriety of any of the transactions contemplated by this Agreement, or (iv) which could adversely affect the ability of Seller or Seller Bank to perform under this Agreement, except, in each of (i) through (iv) above, for any proceeding, claim, action, investigation or inquiry which, if adversely determined, individually or in the aggregate, would not be reasonably expected to have a Material Adverse Effect on Seller.


4.12.1. To Seller’s Knowledge and except as set forth in SELLER DISCLOSURE SCHEDULE 4.12.1, Seller and each Seller Subsidiary is in compliance in all material respects with all applicable federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders or decrees applicable to it, its properties, assets and deposits, its business, and its conduct of business and its relationship with its employees, including, without limitation, the USA Patriot Act, the Equal Credit Opportunity Act, the Fair Housing Act, the Community Reinvestment Act of 1977, the Home Mortgage Disclosure Act, and all other applicable fair lending laws and other laws relating to discriminatory business practices and neither Seller nor any Seller Subsidiary has received any written notice to the contrary. The Board of Directors of Seller Bank has adopted and Seller Bank has implemented an anti-money laundering program that contains adequate and appropriate customer identification verification procedures that has not been deemed ineffective by any Governmental Authority and that meets the requirements of Sections 352 and 326 of the USA Patriot Act and the regulations thereunder.

4.12.2. Each of Seller and each Seller Subsidiary has all material permits, licenses, authorizations, orders and approvals of, and has made all filings, applications and registrations with, all Governmental Entities and Bank Regulators that are required in order to permit it to own or lease its properties and to conduct its business as presently conducted; all such permits, licenses, certificates of authority, orders and approvals are in full force and effect and, to the Knowledge of Seller, no suspension or cancellation of any such permit, license, certificate, order or approval is threatened or will result from the consummation of the transactions contemplated by this Agreement, subject to obtaining Regulatory Approvals.

4.12.3. For the period beginning January 1, 2014 as to Seller Bank, and for the period beginning January 1, 2014 for Seller and each Seller Subsidiary (other than Seller Bank), neither Seller nor any Seller Subsidiary has received any written notification or, to Seller’s Knowledge, any other communication from any Bank Regulator (i) asserting that Seller or any Seller Subsidiary is not in material compliance with any of the statutes, regulations or ordinances which such Bank Regulator enforces; (ii) threatening to revoke any license, franchise, permit or governmental authorization which is material to Seller or any Seller Subsidiary; (iii) requiring, or threatening to require, Seller or any Seller Subsidiary, or indicating that Seller or any Seller Subsidiary may be required, to enter into a cease and desist order, agreement or memorandum of understanding or any other agreement with any federal or state governmental agency or authority which is charged with the supervision or regulation of banks or engages in the insurance of bank deposits restricting or limiting, or purporting to restrict or limit, in any material respect the operations of Seller or any Seller Subsidiary, including without limitation any restriction on the payment of dividends; or (iv) directing, restricting or limiting, or purporting to direct, restrict or limit, in any manner the operations of Seller or any Seller Subsidiary, including without limitation any restriction on the payment of dividends (any such notice, communication, memorandum,
agreement or order described in this sentence is hereinafter referred to as a “Seller Regulatory Agreement”). Neither Seller nor any Seller Subsidiary (other than Seller Bank) has consented to or entered into any Seller Regulatory Agreement that is currently in effect or that was in effect since January 1, 2014, and Seller Bank has not consented to or entered into any Seller Regulatory Agreement that is currently in effect or that was in effect since January 1, 2014. The most recent regulatory rating given to Seller Bank as to compliance with the Community Reinvestment Act (“CRA”) is satisfactory or better.

4.12.4. SELLER DISCLOSURE SCHEDULE 4.12.4 sets forth, as of December 31, 2015, a schedule of all executive officers and directors of Seller who have outstanding loans from Seller or Seller Bank, and there has been no default on, or forgiveness or waiver of, in whole or in part, any such loan during the two years immediately preceding the date hereof.


4.13.1. SELLER DISCLOSURE SCHEDULE 4.13.1 includes a descriptive list of all existing bonus, incentive, deferred compensation, pension, retirement, profit-sharing, thrift, savings, employee stock ownership, stock bonus, stock purchase, restricted stock, stock option, stock appreciation, phantom stock, severance, welfare benefit plans (including paid time off policies and other benefit policies and procedures), fringe benefit plans, employment, severance and change in control agreements and all other material benefit practices, policies and arrangements maintained by Seller or any Seller Subsidiary in which any employee or former employee, consultant or former consultant or director or former director of Seller or any Seller Subsidiary participates or to which any such employee, consultant or director is a party or is otherwise entitled to receive benefits (the “Seller Compensation and Benefit Plans”). Neither Seller nor any of its Subsidiaries has any commitment to create any additional Seller Compensation and Benefit Plan or to materially modify, change or renew any existing Seller Compensation and Benefit Plan (any modification or change that increases the cost of such plans would be deemed material), except as required to maintain the qualified status thereof. Seller has made available to Buyer true and correct copies of the Seller Compensation and Benefit Plans.

4.13.2. To the Knowledge of Seller and except as disclosed in SELLER DISCLOSURE SCHEDULE 4.13.2, each Seller Compensation and Benefit Plan has been operated and administered in all material respects in accordance with its terms and with applicable law, including, but not limited to, ERISA, the Code, the Securities Act, the Exchange Act, the Age Discrimination in Employment Act, COBRA, the Health Insurance Portability and Accountability Act (“HIPAA”) and any regulations or rules promulgated thereunder, and all material filings, disclosures and notices required by ERISA, the Code, the Securities Act, the Exchange Act, the Age Discrimination in Employment Act, COBRA and HIPAA and any other applicable law have been timely made or any interest, fines, penalties or other impositions for late filings have been paid in full. Each Seller Compensation and Benefit Plan which is an “employee pension benefit plan” within the meaning of Section 3(2) of ERISA (a “Pension Plan”) and which is intended to be qualified under Section 401(a) of the Code, is subject of a “Favorable Letter” within the meaning of Rev. Proc. 2006-27 Section 5.01, and Seller is not aware of any circumstances which are reasonably likely to result in revocation of any such Favorable Letter. There is no material pending or, to the Knowledge of Seller, threatened action, suit or claim relating to any of the Seller Compensation and Benefit Plans (other than routine claims for benefits). Neither Seller nor any Seller Subsidiary has engaged in a transaction, or omitted to take any action, with respect to any Seller Compensation and
Benefit Plan that would reasonably be expected to subject Seller or any Seller Subsidiary to an unpaid tax or penalty imposed by either Section 4975 of the Code or Section 502 of ERISA.

4.13.3. Seller does not maintain any defined benefit pension plan. To the Knowledge of Seller, there is no pending investigation or enforcement action by any Governmental Entity or Bank Regulator with respect to any Seller Compensation and Benefit Plan, or any plan maintained by any entity which is considered one employer with Seller under Section 4001(b)(1) of ERISA or Code Section 414 (“ERISA Affiliate”) (such plan being referred to as an “ERISA Affiliate Plan”). Neither Seller, its Subsidiaries, nor any ERISA Affiliate has contributed to any “multiemployer plan,” as defined in Section 3(37) of ERISA.

4.13.4. All material contributions required to be made under the terms of any Seller Compensation and Benefit Plan or ERISA Affiliate Plan or any employee benefit arrangements to which Seller or any Seller Subsidiary is a party or a sponsor have been timely made, and all contributions and funding obligations are accrued on Seller’s consolidated financial statements to the extent required by GAAP. Seller and its Subsidiaries have expensed and accrued as a liability the present value of future benefits under each applicable Seller Compensation and Benefit Plan for financial reporting purposes as required by GAAP.

4.13.5. Except as set forth in SELLER DISCLOSURE SCHEDULE 4.13.5(a), neither Seller nor any Seller Subsidiary has any obligations to provide retiree health, life insurance, disability insurance, or other retiree death benefits under any Seller Compensation and Benefit Plan, other than benefits mandated by COBRA or other applicable law. There has been no communication to employees by Seller or any Seller Subsidiary that would reasonably be expected to promise or guarantee such employees retiree health, life insurance, disability insurance, or other retiree death benefits.

4.13.6. Seller and its Subsidiaries do not maintain any Seller Compensation and Benefit Plans covering employees who are not United States residents.

4.13.7. With respect to each Seller Compensation and Benefit Plan, if applicable, Seller has provided or made available to Buyer copies of: (A) any trust instruments and insurance contracts; (B) the three most recent Forms 5500 filed with the IRS; (C) the three most recent actuarial reports and financial statements; (D) the most recent summary plan description; (E) most recent Favorable Letter issued by the IRS; (F) any Form 5310 or Form 5330 filed with the IRS within the last three years; and (G) the most recent nondiscrimination tests performed under ERISA and the Code (including 401(k) and 401(m) tests).

4.13.8. The consummation of the Merger will not, directly or indirectly (including, without limitation, as a result of any termination of employment or service at any time prior to or following the Effective Time) (A) entitle any employee, consultant or director to any payment or benefit (including severance pay, change in control benefit, or similar compensation) or any increase in compensation, (B) result in the vesting or acceleration of any benefits under any Seller Compensation and Benefit Plan or (C) result in any material increase in benefits payable under any Seller Compensation and Benefit Plan, except as set forth in SELLER DISCLOSURE SCHEDULE 4.13.8.
4.13.9. Neither Seller nor any Seller Subsidiary maintains any compensation plans, programs or arrangements under which any payment is reasonably likely to become non-deductible, in whole or in part, for tax reporting purposes as a result of the limitations under Section 162(m) of the Code and the regulations issued thereunder.

4.13.10. To the Knowledge of Seller, the consummation of the Mergers and the Bank Merger will not, directly or indirectly (including without limitation, as a result of any termination of employment or service at any time prior to or following the Effective Time), entitle any current or former employee, director or independent contractor of Seller or any Seller Subsidiary to any actual or deemed payment (or benefit) which could constitute a “parachute payment” (as such term is defined in Section 280G of the Code), except as set forth in SELLER DISCLOSURE SCHEDULE 4.13.10.

4.13.11. Except as disclosed in SELLER DISCLOSURE SCHEDULE 4.13.11, there are no stock appreciation or similar rights, earned dividends or dividend equivalents, or shares of restricted stock, outstanding under any of the Seller Compensation and Benefit Plans or otherwise as of the date hereof and none will be granted, awarded, or credited after the date hereof.

4.13.12. SELLER DISCLOSURE SCHEDULE 4.13.12(a) sets forth, as of the payroll date immediately preceding the date of this Agreement, a list of the full names of all officers, and employees whose annual rate of salary is $50,000 or greater, of Seller Bank or Seller, their title and rate of salary, and their date of hire. SELLER DISCLOSURE SCHEDULE 4.13.12(b) sets forth any changes to any Seller Compensation and Benefit Plan since December 31, 2015.

4.14. **Brokers, Finders and Financial Advisors.**

Neither Seller nor any Seller Subsidiary, nor any of their respective officers, directors, employees or agents, has employed any broker, finder or financial advisor in connection with the transactions contemplated by this Agreement, or incurred any liability or commitment for any fees or commissions to any such person in connection with the transactions contemplated by this Agreement.

4.15. **Environmental Matters.**

4.15.1. Except as may be set forth in SELLER DISCLOSURE SCHEDULE 4.15 and any Phase I Environmental Report identified therein, with respect to Seller and each Seller Subsidiary:

(A) Each of Seller and the Seller Subsidiaries, the Participation Facilities, and, to Seller’s Knowledge, the Loan Properties are in substantial compliance with, and are not liable in any material respect under, any Environmental Laws;

(B) Seller has received no written notice that there is any suit, claim, action, demand, executive or administrative order, directive, investigation or proceeding pending and, to Seller’s Knowledge, no such action is threatened, before any court, governmental agency or other forum against it or any of the Seller Subsidiaries or any Participation Facility (x) for alleged noncompliance (including by any predecessor) with, or liability under, any Environmental Law or (y) relating to the presence of or release (as defined herein) into the environment of any Materials of
Environmental Concern (as defined herein), whether or not occurring at or on a site owned, leased or operated by it or any of the Seller Subsidiaries or any Participation Facility;

(C) Neither Seller nor Seller Bank has received any written notice, by way of suit, claim, action, demand, executive or administrative order, directive, investigation or proceeding, or otherwise, alleging or indicating that it (or any subsidiary) may be liable under any Environmental Law with respect to any Loan Property;

(D) The properties currently owned or operated by Seller or any Seller Subsidiary (including, without limitation, soil, groundwater or surface water on, or under the properties, and buildings thereon) are not contaminated with and do not otherwise contain any Materials of Environmental Concern other than as permitted under applicable Environmental Law;

(E) Neither Seller nor any Seller Subsidiary during the past two years has received any written notice, demand letter, executive or administrative order, directive or request for information from any federal, state, local or foreign governmental entity or any third party indicating that it may be in violation of, or liable under, any Environmental Law;

(F) To Seller’s Knowledge, there are no underground storage tanks on, in or under any properties owned or operated by Seller or any of the Seller Subsidiaries or any Participation Facility, and to Seller’s Knowledge, no underground storage tanks have been closed or removed from any properties owned or operated by Seller or any of the Seller Subsidiaries or any Participation Facility; and

(G) To Seller’s Knowledge, during the period of (s) Seller’s or any of the Seller Subsidiaries’ ownership or operation of any of their respective current properties or (t) Seller’s or any of the Seller Subsidiaries’ participation in the management of any Participation Facility, there has been no contamination by or release of Materials of Environmental Concerns in, on, under or affecting such properties that could reasonably be expected to result in material liability under the Environmental Laws.

4.15.2. “Loan Property” means any property in which the applicable party (or a Subsidiary of it) holds a security interest, and, where required by the context, includes the owner or operator of such property, but only with respect to such property. “Participation Facility” means any facility in which the applicable party (or a Subsidiary of it) participates in the management (including all property held as trustee or in any other fiduciary capacity) and, where required by the context, includes the owner or operator of such property, but only with respect to such property.

4.16. Loan Portfolio.

4.16.1. The allowance for loan losses reflected in Seller’s audited consolidated balance sheet at December 31, 2015 was, and the allowance for loan losses shown on the balance sheets in Seller’s Call Reports for periods ending after December 31, 2015 was or will be, as the case may be, adequate, as of the dates thereof, under GAAP.

4.16.2. SELLER DISCLOSURE SCHEDULE 4.16.2 sets forth a listing, as of December 31, 2015, by account, of: (A) all loans (including loan participations) of Seller Bank or any other Seller Subsidiary that have been accelerated during the past twelve months; (B) all loan
commitments or lines of credit of Seller Bank or any other Seller Subsidiary which have been
terminated by Seller Bank or any other Seller Subsidiary during the past twelve months by reason of
a default or adverse developments in the condition of the borrower or other events or circumstances
affecting the credit of the borrower; (C) all loans, lines of credit and loan commitments as to which
Seller Bank or any other Seller Subsidiary has given written notice of its intent to terminate during
the past twelve months; (D) with respect to all commercial loans (including commercial real estate
loans), all notification letters and other written communications from Seller Bank or any other Seller
Subsidiary to any of their respective borrowers, customers or other parties during the past twelve
months wherein Seller Bank or any other Seller Subsidiary has requested or demanded that actions
be taken to correct existing defaults or facts or circumstances which may become defaults; (E) each
borrower, customer or other party which has notified Seller Bank or any other Seller Subsidiary
during the past twelve months of, or has asserted against Seller Bank or any other Seller Subsidiary,
in each case in writing, any “lender liability” or similar claim, and, to the Knowledge of Seller Bank,
each borrower, customer or other party which has given Seller Bank or any other Seller Subsidiary
any oral notification of, or orally asserted to or against Seller Bank or any other Seller Subsidiary, any
such claim; (F) all loans, (1) that are contractually past due 90 days or more in the payment of
principal and/or interest, (2) that are on non-accrual status, (3) that as of the date of this Agreement
are classified as “Other Loans Specially Mentioned”, “Special Mention”, “Substandard”,
“Doubtful”, “Loss”, “Classified”, “Criticized”, “Watch list” or words of similar import, together
with the principal amount of and accrued and unpaid interest on each such Loan and the identity of
the obligor thereunder, (4) where a reasonable doubt exists as to the timely future collectability of
principal and/or interest, whether or not interest is still accruing or the loans are less than 90 days
past due, (5) where, during the past three years, the interest rate terms have been reduced and/or the
maturity dates have been extended subsequent to the agreement under which the loan was originally
created due to concerns regarding the borrower’s ability to pay in accordance with such initial terms,
or (6) where a specific reserve allocation exists in connection therewith, and (G) all assets classified
by Seller Bank or any Seller Bank Subsidiary as real estate acquired through foreclosure or in lieu of
foreclosure, including in-substance foreclosures, and all other assets currently held that were
acquired through foreclosure or in lieu of foreclosure. DISCLOSURE SCHEDULE 4.16.2 may
exclude any individual loan with a principal outstanding balance of less than $50,000, provided that
DISCLOSURE SCHEDULE 4.16.2 includes, for each category described, the aggregate amount of
individual loans with a principal outstanding balance of less than $50,000 that has been excluded.

4.16.3. All loans receivable (including discounts) and accrued interest entered on the
books of Seller and the Seller Subsidiaries arose out of bona fide arm’s-length transactions, were
made for good and valuable consideration in the ordinary course of Seller’s or the appropriate Seller
Subsidiary’s respective business, and the notes or other evidences of indebtedness with respect to
such loans (including discounts) are true and genuine and are what they purport to be. To the
Knowledge of Seller, the loans, discounts and the accrued interest reflected on the books of Seller
and the Seller Subsidiaries are subject to no defenses, set-offs or counterclaims (including, without
limitation, those afforded by usury or truth-in-lending laws), except as may be provided by
bankruptcy, insolvency or similar laws affecting creditors’ rights generally or by general principles of
equity. All such loans are owned by Seller or the appropriate Seller Subsidiary free and clear of any
liens.

4.16.4. The notes and other evidences of indebtedness evidencing the loans
described above, and all pledges, mortgages, deeds of trust and other collateral documents or
security instruments relating thereto are, in all material respects, valid, true and genuine, and what they purport to be.

4.17. [Intentionally omitted]


Except as set forth in SELLER DISCLOSURE SCHEDULE 4.18, neither Seller nor any Seller Subsidiary is a party to any transaction (including any loan or other credit accommodation) with any director or officer of Seller or any Seller Subsidiary, or any affiliate thereof. All such transactions (a) were made in the ordinary course of business, (b) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other Persons, and (c) did not involve more than the normal risk of collectability or present other unfavorable features. No loan or credit accommodation to any Affiliate of Seller or any Seller Subsidiary is presently in default or, during the three year period prior to the date of this Agreement, has been in default or has been restructured, modified or extended. Neither Seller nor any Seller Subsidiary has been notified that principal and interest with respect to any such loan or other credit accommodation will not be paid when due or that the loan grade classification accorded such loan or credit accommodation by Seller is inappropriate.


None of the deposits of Seller or any Seller Subsidiary is a “brokered deposit” as defined in 12 CFR Section 337.6(a)(2).

4.20. Antitakeover Provisions Inapplicable; Required Vote.

The Board of Directors of Seller has, to the extent such statute is applicable, taken all action (including appropriate approvals of the Board of Directors of Seller) necessary to exempt Buyer, the Merger, the Merger Agreement and the transactions contemplated hereby from anti-takeover or fair price provisions set forth in the _______ Business Corporation Act. The affirmative vote of a majority of the issued and outstanding shares of Seller Common Stock is required to approve this Agreement and the Merger under Seller’s certificate of incorporation and the _______ Business Corporation Act.

4.21. Registration Obligations.

Neither Seller nor any Seller Subsidiary is under any obligation, contingent or otherwise, which will survive the Effective Time by reason of any agreement to register any transaction involving any of its securities under the Securities Act.

4.22. Risk Management Instruments.

All material interest rate swaps, caps, floors, option agreements, futures and forward contracts and other similar risk management arrangements, whether entered into for Seller’s own account, or for the account of one or more of Seller’s Subsidiaries or their customers (all of which
are set forth in SELLER DISCLOSURE SCHEDULE 4.22), were in all material respects entered into in compliance with all applicable laws, rules, regulations and regulatory policies, and to the Knowledge of Seller, with counterparties believed to be financially responsible at the time; and to Seller's Knowledge each of them constitutes the valid and legally binding obligation of Seller or one of its Subsidiaries, enforceable in accordance with its terms (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors’ rights or by general equity principles), and is in full force and effect. Neither Seller nor any Seller Subsidiary, nor to the Knowledge of Seller any other party thereto, is in breach of any of its obligations under any such agreement or arrangement in any material respect.

4.23.  [Intentionally omitted]

4.24.  Trust Accounts

To the knowledge of Seller, Seller Bank and each of its subsidiaries has properly administered all accounts for which it acts as a fiduciary, including but not limited to accounts for which it serves as trustee, agent, custodian, personal representative, guardian, conservator or investment advisor, in accordance with the terms of the governing documents and applicable laws and regulations. Neither Seller Bank nor any other Seller Subsidiary, and to the Knowledge of Seller, nor has any of their respective directors, officers or employees, committed any breach of trust with respect to any such fiduciary account and the records for each such fiduciary account.

4.25.  Intellectual Property

Seller and each Seller Subsidiary owns or, to Seller’s Knowledge, possesses valid and binding licenses and other rights (subject to expirations in accordance with their terms) to use all patents, copyrights, trade secrets, trade names, servicemarks and trademarks used in their business, each without payment and neither Seller nor any Seller Subsidiary has received any notice of conflict with respect thereto that asserts the rights of others. Seller and each Seller Subsidiary have performed all the obligations required to be performed, and are not in default in any respect, under any contract, agreement, arrangement or commitment relating to any of the foregoing. To the Knowledge of Seller, the conduct of the business of Seller and each Seller Subsidiary as currently conducted or proposed to be conducted does not, in any material respect, infringe upon, dilute, misappropriate or otherwise violate any intellectual property owned or controlled by any third party.

4.26.  Labor Matters

There are no labor or collective bargaining agreements to which Seller or any Seller Subsidiary is a party. To the Knowledge of Seller, there is no union organizing effort pending or threatened against Seller or any Seller Subsidiary. There is no labor strike, labor dispute (other than routine employee grievances that are not related to union employees), work slowdown, stoppage or lockout pending or, to the Knowledge of Seller, threatened against Seller or any Seller Subsidiary. There is no unfair labor practice or labor arbitration proceeding pending or, to the Knowledge of Seller, threatened against Seller or any Seller Subsidiary (other than routine employee grievances that are not related to union employees). Seller and each Seller Subsidiary is in compliance in all material respects with all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and are not engaged in any unfair labor practice.
4.27.  Seller Information Supplied

The information relating to Seller and any Seller Subsidiary to be contained in the Merger Registration Statement, or in any other document filed with any Bank Regulator or other Governmental Entity in connection herewith, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this Article V are correct and complete as of the later of the date of this Agreement or upon the completion of due diligence and delivery of the BUYER DISCLOSURE SCHEDULE supplement to be delivered no later than [30] days from the date hereof, and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article V), subject to the standard set forth in Section 5.1, and except as set forth in the BUYER DISCLOSURE SCHEDULE delivered by Buyer to Seller on the date hereof, and except as to any representation or warranty which specifically relates to an earlier date, which only need be so correct as of such earlier date. Buyer has made a good faith effort to ensure that the disclosure on each schedule of the BUYER DISCLOSURE SCHEDULE corresponds to the section referenced herein. However, for purposes of the BUYER DISCLOSURE SCHEDULE, any item disclosed on any schedule therein is deemed to be fully disclosed with respect to all schedules under which such item may be relevant as and to the extent that it is reasonably clear on the face of such schedule that such item applies to such other schedule. References to the Knowledge of Buyer shall include the Knowledge of Buyer Bank.

5.1.  Standard.

No representation or warranty of Buyer contained in this Article V shall be deemed untrue or incorrect, and Buyer shall not be deemed to have breached a representation or warranty, as a consequence of the existence of any fact, circumstance or event unless such fact, circumstance or event, individually or taken together with all other facts, circumstances or events inconsistent with any paragraph of Article V, has had or is reasonably expected to have a Material Adverse Effect, disregarding for these purposes (x) any qualification or exception for, or reference to, materiality in any such representation or warranty and (y) any use of the terms “material”, “materially”, “in all material respects”, “Material Adverse Effect” or similar terms or phrases in any such representation or warranty. The foregoing standard shall not apply to representations and warranties contained in Sections 5.2 (other than the last sentence of Sections 5.2.1 and 5.2.2), 5.3, and 5.4, and Sections 5.2.4 and 5.2.5, which shall be deemed untrue, incorrect and breached if they are not true and correct in all material respects based on the qualifications and standards therein contained.

5.2.  Organization.

5.2.1.  Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of ________, and is duly registered as a bank holding company under the BHCA. Buyer has full corporate power and authority to carry on its business as now conducted and is duly licensed or qualified to do business in the states of the United States and foreign...
jurisdictions where its ownership or leasing of property or the conduct of its business requires such qualification.

5.2.2. Buyer Bank is a bank duly organized, validly existing and in good standing (to the extent required) under ________ law. The deposits of Buyer Bank are insured by the FDIC to the fullest extent permitted by law, and all premiums and assessments required to be paid in connection therewith have been paid when due. Buyer Bank is a member in good standing of the FHLB and owns the requisite amount of stock therein.

5.2.3. BUYER DISCLOSURE SCHEDULE 5.2.3 sets forth each Buyer Subsidiary. Each Buyer Subsidiary is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization.

5.2.4. The respective minute books of Buyer and each Buyer Subsidiary accurately records, in all material respects, all material corporate actions of their respective shareholders and boards of directors (including committees).

5.2.5. Prior to the date of this Agreement, Buyer has made available to Seller true and correct copies of the certificate of incorporation and bylaws of Buyer and Buyer Bank and the Buyer Subsidiaries.

5.3. Capitalization.

5.3.1. The authorized capital stock of Buyer consists of 5,280,000 shares of common stock, $1.00 par value, of which 1,056,000 shares are outstanding, validly issued, fully paid and nonassessable and free of preemptive rights. Neither Buyer nor any Buyer Subsidiary has or is bound by any Rights of any character relating to the purchase, sale or issuance or voting of, or right to receive dividends or other distributions on any shares of Buyer Common Stock, or any other security of Buyer or any securities representing the right to vote, purchase or otherwise receive any shares of Buyer Common Stock or any other security of Buyer.

5.3.2. Buyer owns all of the capital stock of Buyer Bank free and clear of any lien or encumbrance.

5.4. Authority; No Violation.

5.4.1. Buyer has full corporate power and authority to execute and deliver this Agreement and, subject to receipt of the Regulatory Approvals, to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Buyer and the completion by Buyer of the transactions contemplated hereby, including the Merger, have been duly and validly approved by the Board of Directors of Buyer, and no other corporate proceedings on the part of Buyer, except for the approval of the Buyer Shareholders, are necessary to complete the transactions contemplated hereby, including the Merger. This Agreement has been duly and validly executed and delivered by Buyer, and subject to the receipt of the Regulatory Approvals and due and valid execution and delivery of this Agreement by Seller, constitutes the valid and binding obligations of Buyer, enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy,
insolvency and similar laws affecting creditors’ rights generally, and subject, as to enforceability, to general principles of equity.

5.4.2. Subject to receipt of Regulatory Approvals and Seller’s and Buyer’s compliance with any conditions contained therein, (A) the execution and delivery of this Agreement by Buyer, (B) the consummation of the transactions contemplated hereby, and (C) compliance by Buyer with any of the terms or provisions hereof will not (i) conflict with or result in a breach of any provision of the certificate of incorporation or bylaws of Buyer or any Buyer Subsidiary; (ii) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Buyer or any Buyer Subsidiary or any of their respective properties or assets; or (iii) violate, conflict with, result in a breach of any provisions of, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default), under, result in the termination of, accelerate the performance required by, or result in a right of termination or acceleration or the creation of any lien, security interest, charge or other encumbrance upon any of the properties or assets of Buyer or any Buyer Subsidiary under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other investment or obligation to which any of them is a party, or by which they or any of their respective properties or assets may be bound or affected, except for such violations, conflicts, breaches or defaults under clause (ii) or (iii) hereof which, either individually or in the aggregate, will not have a Material Adverse Effect on Buyer and the Buyer subsidiaries taken as a whole.

5.5. Consents.

Except for (a) filings with Bank Regulators, the receipt of the Regulatory Approvals, and compliance with any conditions contained therein, (b) the filing of the Certificate of Merger with the Secretary of State of the State of ________, (c) the filing with the SEC of (i) the Merger Registration Statement and (ii) such reports as may be required in connection with this Agreement and the transactions contemplated hereby and the obtaining from the SEC of such orders as may be required in connection therewith, and (d) such filings and approvals as are required to be made or obtained under the securities or “Blue Sky” laws of various states in connection with the issuance of the shares of Buyer Common Stock pursuant to this Agreement, and (e) the approval of this Agreement by the requisite vote of the shareholders of Seller and Buyer, no consents, waivers or approvals of, or filings or registrations with, any Governmental Entity are necessary, and, to Buyer’ Knowledge, no consents, waivers or approvals of, or filings or registrations with, any other third parties are necessary, in connection with (x) the execution and delivery of this Agreement by Buyer, and (y) the completion of the Merger and the Bank Merger. Buyer has no reason to believe that (i) any Regulatory Approvals or other required consents or approvals will not be received, or that (ii) any public body or authority, the consent or approval of which is not required or to which a filing is not required, will object to the completion of the transactions contemplated by this Agreement.

5.6. Financial Statements.

5.6.1. Buyer has previously made available to Seller the Buyer Financial Statements. The Buyer Financial Statements have been prepared in accordance with GAAP, and (including the related notes where applicable) fairly present in each case in all material respects (subject in the case of the unaudited interim statements to normal year-end adjustments) the consolidated financial position, results of operations and cash flows of Buyer and the Buyer Subsidiaries on a consolidated basis as of and for the respective periods ending on the dates thereof, in accordance with GAAP.
during the periods involved, except as indicated in the notes thereto, or in the case of unaudited statements.

5.6.2. At the date of each balance sheet included in the Buyer Financial Statements, Buyer did not have any liabilities, obligations or loss contingencies of any nature (whether absolute, accrued, contingent or otherwise) of a type required to be reflected in such Buyer Financial Statements or in the footnotes thereto which are not fully reflected or reserved against therein or fully disclosed in a footnote thereto, except for liabilities, obligations and loss contingencies which are not material individually or in the aggregate or which are incurred in the ordinary course of business, consistent with past practice, and except for liabilities, obligations and loss contingencies which are within the subject matter of a specific representation and warranty herein and subject, in the case of any unaudited statements, to normal, recurring audit adjustments and the absence of footnotes.

5.6.3. The records, systems, controls, data and information of Buyer and its Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of Buyer or its Subsidiaries or accountants (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a material adverse effect on the system of internal accounting controls described below in this Section 5.6.3. Buyer (x) has implemented and maintains a system of internal control over financial reporting that is designed to provide reasonable assurances regarding the reliability of financial reporting and the preparation of its financial statements for external purposes in accordance with GAAP, (y) has implemented and maintains disclosure controls and procedures to ensure that material information relating to Buyer, including its consolidated Subsidiaries, is made known to the chief executive officer and the chief financial officer of Buyer by others within those entities, and (z) has disclosed, based on its most recent evaluation prior to the date hereof, to Buyer’s outside auditors and the audit committee of Buyer’s Board of Directors (i) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect Buyer’s ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in Buyer’s internal control over financial reporting. These disclosures (if any) were made in writing by management to Buyer auditors and audit committee and a copy has previously been made available to Seller. As of the date hereof, to the Knowledge of Buyer, its Chief Executive Officer and Chief Financial Officer will be able to give the certification required pursuant to the rules and regulations pursuant to Section 302 of the Sarbanes-Oxley Act, without qualification when next due.

5.6.4. The allowance for credit losses reflected in Buyer’s audited statement of condition at December 31, 2015 was, and the allowance for credit losses shown on the balance sheets in Buyer’s Call Reports for periods ending after December 31, 2015 was or will be, as the case may be, adequate, as of the dates thereof, under GAAP.

5.7. Taxes.

Buyer and the Buyer Subsidiaries that are at least 80 percent owned by Buyer are members of the same affiliated group within the meaning of Code Section 1504(a). Buyer has duly filed all federal, state and material local tax returns required to be filed by or with respect to Buyer and each
Buyer Subsidiary on or prior to the Closing Date, taking into account any extensions (all such returns, to the Knowledge of Buyer, being accurate and correct in all material respects) and has duly paid or made provisions for the payment of all material federal, state and local taxes which have been incurred by or are due or claimed to be due from Buyer and any Buyer Subsidiary by any taxing authority or pursuant to any written tax sharing agreement on or prior to the Closing Date other than taxes or other charges which (i) are not delinquent, (ii) are being contested in good faith, or (iii) have not yet been fully determined. Buyer has received no written notice of, and to Buyer’ knowledge, there is no audit examination, deficiency assessment, tax investigation or refund litigation with respect to any taxes of Buyer or any of its Subsidiaries, and no claim has been made by any authority in a jurisdiction where Buyer, or any of its Subsidiaries do not file tax returns that Buyer or any such Subsidiary is subject to taxation in that jurisdiction. Buyer and its Subsidiaries have not executed an extension or waiver of any statute of limitations on the assessment or collection of any material tax that is currently in effect.

Buyer and each of its Subsidiaries has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder or other third party, and Buyer and each of its Subsidiaries, to the Knowledge of Buyer, has timely complied with all applicable information reporting requirements under Part III, Subchapter A of Chapter 61 of the Code and similar applicable state and local information reporting requirements.

5.8. No Material Adverse Effect.

Buyer has not suffered any Material Adverse Effect since December 31, 2015 and no event has occurred or circumstance arisen since that date which, in the aggregate, has had or is reasonably likely to have a Material Adverse Effect on Buyer.

5.9. Ownership of Property; Insurance Coverage.

5.9.1. Buyer and each Buyer Subsidiary has good and, as to real property, marketable title to all material assets and properties owned by Buyer or each Buyer Subsidiary in the conduct of their businesses, whether such assets and properties are real or personal, tangible or intangible, including assets and property reflected in the balance sheets contained in the Buyer Financial Statements or acquired subsequent thereto (except to the extent that such assets and properties have been disposed of in the ordinary course of business, since the date of such balance sheets), subject to no material encumbrances, liens, mortgages, security interests or pledges, except (i) those items which secure liabilities for public or statutory obligations or any discount with, borrowing from or other obligations to FHLB, inter-bank credit facilities, or any transaction by a Buyer Subsidiary acting in a fiduciary capacity, (ii) statutory liens for amounts not yet delinquent or which are being contested in good faith, (iii) non-monetary liens affecting real property which do not adversely affect the value or use of such real property, and (iv) those described and reflected in the Buyer Financial Statements. Buyer and the Buyer Subsidiaries, as lessee, have the right under valid and existing leases of real and personal properties used by Buyer and its Subsidiaries in the conduct of their businesses to occupy or use all such properties as presently occupied and used by each of them.

5.9.2. With respect to all material agreements pursuant to which Buyer or any Buyer Subsidiary has purchased securities subject to an agreement to resell, if any, or such Buyer
Subsidiary, as the case may be, has a lien or security interest (which to Buyer’s Knowledge is a valid, perfected first lien) in the securities or other collateral securing the repurchase agreement, and the value of such collateral equals or exceeds the amount of the debt secured thereby.

5.9.3. Buyer and each Buyer Subsidiary currently maintain insurance considered by each of them to be reasonable for their respective operations. Neither Buyer nor any Buyer Subsidiary, has received notice from an insurance carrier during the past two years that (i) such insurance will be canceled or that coverage thereunder will be reduced or eliminated, or (ii) premium costs (other than with respect to health or disability insurance) with respect to such policies of insurance will be substantially increased. There are presently no material claims pending under such policies of insurance and no notices have been given by Buyer or any Buyer Subsidiary under such policies (other than with respect to health or disability insurance). All such insurance is valid and enforceable and in full force and effect, and within the last two years Buyer and each Buyer Subsidiary has received each type of insurance coverage for which it has applied and during such periods has not been denied indemnification for any material claims submitted under any of its insurance policies. 

BUYER DISCLOSURE SCHEDULE 5.9.3(b) identifies all material policies of insurance maintained by Seller and each Seller Subsidiary as well as the other matters required to be disclosed under this Section.

5.10. Legal Proceedings.

Neither Buyer nor any Buyer Subsidiary is a party to any, and there are no pending or, to the Knowledge of Buyer, threatened legal, administrative, arbitration or other proceedings, claims (whether asserted or unasserted), actions or governmental investigations or inquiries of any nature (i) against Buyer or any Buyer Subsidiary, (ii) to which Buyer or any Buyer Subsidiary’s assets are or may be subject, (iii) challenging the validity or propriety of any of the transactions contemplated by this Agreement, or (iv) which would reasonably be expected to adversely affect the ability of Buyer to perform under this Agreement, except for any proceeding, claim, action, investigation or inquiry which, if adversely determined, individually or in the aggregate, would not be reasonably expected to have a Material Adverse Effect.

5.11. Compliance With Applicable Law.

5.11.1. To the Knowledge of Buyer, each of Buyer and each Buyer Subsidiary is in compliance in all material respects with all applicable federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders or decrees applicable to it, its properties, assets and deposits, its business, and its conduct of business and its relationship with its employees, including, without limitation, the USA Patriot Act, the Equal Credit Opportunity Act, the Fair Housing Act, the Community Reinvestment Act of 1977, the Home Mortgage Disclosure Act, and all other applicable fair lending laws and other laws relating to discriminatory business practices, and neither Buyer nor any Buyer Subsidiary has received any written notice to the contrary. The Board of Directors of Buyer Bank has adopted and Buyer Bank has implemented an anti-money laundering program that contains adequate and appropriate customer identification verification procedures that has not been deemed ineffective by any Governmental Authority and that meets the requirements of Sections 352 and 326 of the USA Patriot Act and the regulations thereunder.

5.11.2. Each of Buyer and each Buyer Subsidiary has all material permits, licenses, authorizations, orders and approvals of, and has made all filings, applications and registrations with,
all Bank Regulators that are required in order to permit it to own or lease its properties and to conduct its business as presently conducted; all such permits, licenses, certificates of authority, orders and approvals are in full force and effect and, to the Knowledge of Buyer, no suspension or cancellation of any such permit, license, certificate, order or approval is threatened or will result from the consummation of the transactions contemplated by this Agreement, subject to obtaining the Regulatory Approvals.

5.11.3. For the period beginning January 1, 2014, neither Buyer nor any Buyer Subsidiary has received any written notification or, to the Knowledge of Buyer, any other communication from any Bank Regulator (i) asserting that Buyer or any Buyer Subsidiary is not in material compliance with any of the statutes, regulations or ordinances which such Bank Regulator enforces; (ii) threatening to revoke any license, franchise, permit or governmental authorization which is material to Buyer or Buyer Bank; (iii) requiring or threatening to require Buyer or any Buyer Subsidiary, or indicating that Buyer or any Buyer Subsidiary may be required, to enter into a cease and desist order, agreement or memorandum of understanding or any other agreement with any federal or state governmental agency or authority which is charged with the supervision or regulation of banks or engages in the insurance of bank deposits restricting or limiting, or purporting to restrict or limit, in any material respect the operations of Buyer or any Buyer Subsidiary, including without limitation any restriction on the payment of dividends; or (iv) directing, restricting or limiting, or purporting to direct, restrict or limit, in any manner the operations of Buyer or any Buyer Subsidiary, including without limitation any restriction on the payment of dividends (any such notice, communication, memorandum, agreement or order described in this sentence is hereinafter referred to as an “Buyer Regulatory Agreement”). Neither Buyer nor any Buyer Subsidiary has consented to or entered into any currently effective Buyer Regulatory Agreement. The most recent regulatory rating given to Buyer Bank as to compliance with the CRA is satisfactory or better.


5.12.1. BUYER DISCLOSURE SCHEDULE 5.12 includes a list of all existing bonus, incentive, deferred compensation, pension, retirement, profit-sharing, thrift, savings, employee stock ownership, stock bonus, stock purchase, restricted stock, stock option, stock appreciation, phantom stock, severance, welfare benefit plans, fringe benefit plans, employment, severance and change in control agreements and all other benefit practices, policies and arrangements maintained by Buyer or any Buyer Subsidiary and in which employees in general may participate (the “Buyer Compensation and Benefit Plans”).

5.12.2. To the Knowledge of Buyer and except as disclosed in BUYER DISCLOSURE SCHEDULE 5.12.2, each Buyer Compensation and Benefit Plan has been operated and administered in all material respects in accordance with its terms and with applicable law, including, but not limited to, ERISA, the Code, the Securities Act, the Exchange Act, the Age Discrimination in Employment Act, COBRA, the Health Insurance Portability and Accountability Act and any regulations or rules promulgated thereunder, and no notice has been issued by any Governmental Entity questioning or challenging such compliance. All material filings, disclosures and notices required by ERISA, the Code, the Securities Act, the Exchange Act, the Age Discrimination in Employment Act and any other applicable law have been timely made or any interest, fines, penalties or other impositions for late filings have been paid in full. Each Buyer Compensation and Benefit Plan which is a Pension Plan and which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS, and Buyer is
not aware of any circumstances which are reasonably likely to result in revocation of any such favorable determination letter. There is no material pending or, to the Knowledge of Buyer, threatened action, suit or claim relating to any of the Buyer Compensation and Benefit Plans (other than routine claims for benefits). Neither Buyer nor any Buyer Subsidiary has engaged in a transaction, or omitted to take any action, with respect to any Buyer Compensation and Benefit Plan that would reasonably be expected to subject Buyer or any Buyer Subsidiary to an unpaid tax or penalty imposed by either Section 4975 of the Code or Section 502 of ERISA.

5.12.3. No Buyer Compensation and Benefit Plan is a Defined Benefit Plan. Neither Buyer nor any of its Subsidiaries has provided, or is required to provide, security to any Buyer Defined Benefit Plan or to any single-employer plan of an ERISA Affiliate pursuant to Section 401(a)(29) of the Code or has taken any action, or omitted to take any action, that has resulted, or would reasonably be expected to result in the imposition of a lien under Section 412(n) of the Code or pursuant to ERISA. Neither Buyer, its Subsidiaries, nor any ERISA Affiliate has contributed to any “multiemployer plan,” as defined in Section 3(37) of ERISA, on or after January 1, 1998.

5.12.4. All material contributions required to be made under the terms of any Buyer Compensation and Benefit Plan or ERISA Affiliate Plan or any employee benefit arrangements to which Buyer or any Buyer Subsidiary is a party or a sponsor have been timely made, and all anticipated contributions and funding obligations are accrued on Buyer’s consolidated financial statements to the extent required by GAAP. Buyer and its Subsidiaries have expensed and accrued as a liability the present value of future benefits under each applicable Buyer Compensation and Benefit Plan for financial reporting purposes as required by GAAP.


5.13.1. To the Knowledge of Buyer, neither the conduct nor operation of its business nor any condition of any property currently or previously owned or operated by it (including, without limitation, in a fiduciary or agency capacity), or on which it holds a lien, results or resulted in a violation of any Environmental Laws that is reasonably likely to impose a material liability (including a material remediation obligation) upon Buyer or any of Buyer Subsidiary. To the Knowledge of Buyer, no condition has existed or event has occurred with respect to any of them or any such property that, with notice or the passage of time, or both, is reasonably likely to result in any material liability to Buyer or any Buyer Subsidiary by reason of any Environmental Laws. Neither Buyer nor any Buyer Subsidiary during the past five years has received any written notice from any Person that Buyer or any Buyer Subsidiary or the operation or condition of any property ever owned, operated, or held as collateral or in a fiduciary capacity by any of them are currently in violation of or otherwise are alleged to have financial exposure under any Environmental Laws or relating to Materials of Environmental Concern (including, but not limited to, responsibility (or potential responsibility) for the cleanup or other remediation of any Materials of Environmental Concern at, on, beneath, or originating from any such property) for which a material liability is reasonably likely to be imposed upon Buyer or any Buyer Subsidiary.

5.13.2. There is no suit, claim, action, demand, executive or administrative order, directive, investigation or proceeding pending or, to the Buyer’s Knowledge, threatened, before any court, governmental agency or other forum against Buyer or any Buyer Subsidiary (x) for alleged noncompliance (including by any predecessor) with, or liability under, any Environmental Law or (y)
relating to the presence of or release (defined herein) into the environment of any Materials of Environmental Concern (as defined herein), whether or not occurring at or on a site owned, leased or operated by any of the Buyer.


The allowance for loan losses reflected in Buyer’s audited consolidated balance sheet at December 31, 2015 was, and the allowance for loan losses shown on the balance sheets in Buyer’s Call Reports for periods ending after December 31, 2015 were adequate, as of the dates thereof, under GAAP.

5.15. Required Vote of Shareholders.

The affirmative vote of a majority of the shares of Buyer eligible to be cast is required to approve the merger.

5.16. Brokers, Finders and Financial Advisors

Neither Buyer nor any Buyer Subsidiary, nor any of their respective officers, directors, employees or agents, has employed any broker, finder or financial advisor in connection with the transactions contemplated by this Agreement, or incurred any liability or commitment for any fees or commissions to any such person in connection with the transactions contemplated by this Agreement.

5.17. Buyer Common Stock

The shares of Buyer Common Stock to be issued pursuant to this Agreement, when issued in accordance with the terms of this Agreement, will be duly authorized, validly issued, fully paid and non-assessable and subject to no preemptive rights.

5.18. Buyer Information Supplied

The information relating to Buyer and any Buyer Subsidiary to be contained in the Merger Registration Statement, or in any other document filed with any Bank Regulator or other Governmental Entity in connection herewith, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading. The Merger Registration Statement will comply with the provisions of the Exchange Act and the rules and regulations thereunder and the provisions of the Securities Act and the rules and regulations thereunder, except that no representation or warranty is made by Buyer with respect to statements made or incorporated by reference therein based on information supplied by Seller specifically for inclusion or incorporation by reference in the Merger Registration Statement.
ARTICLE VI
COVENANTS OF SELLER


6.1.1.  Affirmative Covenants. During the period from the date of this Agreement to the Effective Time, except with the written consent of Buyer, which consent will not be unreasonably withheld, conditioned or delayed, Seller will, and it will cause each Seller Subsidiary to: operate its business, only in the usual, regular and ordinary course of business; use reasonable efforts to preserve intact its business organization and assets and maintain its rights and franchises; and voluntarily take no action which would (i) adversely affect the ability of the parties to obtain any Regulatory Approval or other approvals of Governmental Entities required for the transactions contemplated hereby or materially increase the period of time necessary to obtain such approvals, or (ii) adversely affect its ability to perform its covenants and agreements under this Agreement.

6.1.2.  Negative Covenants. Seller agrees that from the date of this Agreement to the Effective Time, except with the written consent of Buyer, which consent will not be unreasonably withheld, conditioned or delayed, or as otherwise specifically permitted or required by this Agreement, set forth in SELLER DISCLOSURE SCHEDULE 6.1.2, it will not, and it will cause each Seller Subsidiary not to:

(A) change or waive any provision of its Certificate of Incorporation, Charter or Bylaws, except as required by law, or appoint a new director to the board directors;

(B) change the number of authorized or issued shares of its capital stock, issue any shares of Seller Common Stock, including any shares that are held as “treasury shares” as of the date of this Agreement, or issue or grant any Right or agreement of any character relating to its authorized or issued capital stock or any securities convertible into shares of such stock, make any grant or award under the Seller Option Plans, or split, combine or reclassify any shares of capital stock, or declare, set aside or pay any dividend or other distribution in respect of capital stock, or redeem or otherwise acquire any shares of capital stock, except that (i) Seller may issue shares of Seller Common Stock upon the valid exercise, in accordance with the information set forth in SELLER DISCLOSURE SCHEDULE 4.3.1, of presently outstanding Seller Options issued under the Seller Option Plan, and (ii) any Seller Subsidiary may pay dividends to its parent company (as permitted under applicable law or regulations) consistent with past practice.

(C) enter into, amend in any material respect or terminate any contract or agreement (including without limitation any settlement agreement with respect to litigation) except in the ordinary course of business;

(D) other than as set forth in SELLER DISCLOSURE SCHEDULE 6.1.2(D), make application for the opening or closing of any, or open or close any, branch or automated banking facility;

(E) grant or agree to pay any bonus, severance or termination to, or enter into, renew or amend any employment agreement, severance agreement and/or supplemental executive agreement with, or increase in any manner the compensation or fringe benefits of, any of its directors, officers or employees, except (i) as may be required pursuant to commitments existing
on the date hereof and set forth on SELLER DISCLOSURE SCHEDULES 4.9.1 and 4.13.1, (ii) pay increases in the ordinary course of business consistent with past practice to non-officer employees, (iii) cash bonuses with respect to the year ending December 31, 2015 in the amounts and to the individuals set forth in SELLER DISCLOSURE SCHEDULE 6.1.2(E), and (iv) a contribution to the Seller Bank 401(k) Plan with respect to the year ending December 31, 2015, consistent with applicable law, up to an amount set forth in SELLER DISCLOSURE SCHEDULE 6.1.2(E). Neither Seller nor any Seller Subsidiary shall hire or promote any employee to a rank having a title of vice president or other more senior rank or hire any new employee at an annual rate of compensation in excess of $50,000, provided that Seller or an Seller Subsidiary may hire at-will, non-officer employees to fill vacancies that may from time to time arise in the ordinary course of business.

(F) enter into or, except as may be required by law, materially modify any pension, retirement, stock option, stock purchase, stock appreciation right, stock grant, savings, profit sharing, deferred compensation, supplemental retirement, consulting, bonus, group insurance or other employee benefit, incentive or welfare contract, plan or arrangement, or any trust agreement related thereto, in respect of any of its directors, officers or employees; or make any contributions to any defined contribution plan not in the ordinary course of business consistent with past practice;

(G) merge or consolidate Seller or any Seller Subsidiary with any other corporation; sell or lease all or any substantial portion of the assets or business of Seller or any Seller Subsidiary; make any acquisition of all or any substantial portion of the business or assets of any other person, firm, association, corporation or business organization other than in connection with foreclosures, settlements in lieu of foreclosure, troubled loan or debt restructuring, or the collection of any loan or credit arrangement between Seller, or any Seller Subsidiary, and any other person; enter into a purchase and assumption transaction with respect to deposits and liabilities; permit the revocation or surrender by any Seller Subsidiary of its certificate of authority to maintain, or file an application for the relocation of, any existing branch office, or file an application for a certificate of authority to establish a new branch office;

(H) sell or otherwise dispose of the capital stock of Seller or sell or otherwise dispose of any asset of Seller or of any Seller Subsidiary other than in the ordinary course of business consistent with past practice; except for transactions with the FHLB, subject any asset of Seller or of any Seller Subsidiary to a lien, pledge, security interest or other encumbrance (other than in connection with deposits, repurchase agreements, bankers acceptances, “treasury tax and loan” accounts established in the ordinary course of business and transactions in “federal funds” and the satisfaction of legal requirements in the exercise of trust powers) other than in the ordinary course of business consistent with past practice; incur any indebtedness for borrowed money (or guarantee any indebtedness for borrowed money), except in the ordinary course of business consistent with past practice;

(I) voluntarily take any action which would result in any of the representations and warranties of Seller or Seller Bank set forth in this Agreement becoming untrue as of any date after the date hereof or in any of the conditions set forth in Article IX hereof not being satisfied, except in each case as may be required by applicable law;
(J) change any method, practice or principle of accounting, except as may be required from time to time by GAAP (without regard to any optional early adoption date) or any Bank Regulator responsible for regulating Seller or Seller Bank;

(K) waive, release, grant or transfer any material rights of value or modify or change in any material respect any existing material agreement or indebtedness to which Seller or any Seller Subsidiary is a party, other than in the ordinary course of business, consistent with past practice;

(L) purchase any equity securities, or purchase any securities other than securities (i) rated “AAA” or higher by either Standard & Poor’s Ratings Services or Moody’s Investors Service, (ii) having a face amount of not more than $5,000,000, (iii) with a weighted average life of not more than five years and (iv) otherwise in the ordinary course of business consistent with past practice;

(M) except for commitments issued prior to the date of this Agreement which have not yet expired and which have been disclosed on the SELLER DISCLOSURE SCHEDULE 6.12(M), and the renewal of existing lines of credit, make any new loan or other credit facility commitment (including without limitation, lines of credit and letters of credit) in an amount in excess of $1,000,000 for a commercial real estate loan or $500,000 for a commercial business loan, or in excess of $500,000 for a residential loan. In addition, the prior approval of Buyer is required with respect to the foregoing: (i) any new loan or credit facility commitment in an amount of $500,000 or greater to any borrower or group of affiliated borrowers whose credit exposure with Seller Bank, Seller or any Seller Subsidiary, in the aggregate, exceeds $1,000,000 prior thereto or as a result thereof; and (ii) any new loan or credit facility commitment in excess of $500,000 to any person residing, or any property located, outside of the State of ________;

(N) enter into, renew, extend or modify any other transaction (other than a deposit transaction) with any Affiliate;

(O) enter into any futures contract, option, interest rate caps, interest rate floors, interest rate exchange agreement or other agreement or take any other action for purposes of hedging the exposure of its interest-earning assets and interest-bearing liabilities to changes in market rates of interest;

(P) except for the execution of this Agreement, and actions taken or which will be taken in accordance with this Agreement and performance thereunder, take any action that would give rise to a right of payment to any individual under any employment agreement;

(Q) make any material change in policies in existence on the date of this Agreement with regard to: the extension of credit, or the establishment of reserves with respect to the possible loss thereon or the charge off of losses incurred thereon; investments; asset/liability management; or other material banking policies except as may be required by changes in applicable law or regulations or by a Bank Regulator;

(R) except for the execution of this Agreement, and the transactions contemplated therein, take any action that would give rise to an acceleration of the right to payment to any individual under any Seller Employee Plan;
(S) make any capital expenditures in excess of $25,000 individually or $50,000 in the aggregate, other than pursuant to binding commitments existing on the date hereof and other than expenditures necessary to maintain existing assets in good repair;

(T) except as set forth in SELLER DISCLOSURE SCHEDULE 6.12(T), purchase or otherwise acquire, or sell or otherwise dispose of, any assets or incur any liabilities other than in the ordinary course of business consistent with past practices and policies;

(U) sell any participation interest in any loan (other than sales of loans secured by one- to four-family real estate that are consistent with past practice) (and provided that Buyer Bank will be given the first opportunity to purchase any loan participation being sold) or OREO properties (other than sales which generate a net book loss of not more than $20,000 per property);

(V) undertake or enter into any lease, contract or other commitment for its account, other than in the normal course of providing credit to customers as part of its banking business, involving a payment by Seller or Seller Bank of more than $25,000 annually, or containing any financial commitment extending beyond 24 months from the date hereof;

(W) pay, discharge, settle or compromise any claim, action, litigation, arbitration or proceeding, other than any such payment, discharge, settlement or compromise in the ordinary course of business consistent with past practice that involves solely money damages in the amount not in excess of $25,000 individually or $50,000 in the aggregate, and that does not create negative precedent for other pending or potential claims, actions, litigation, arbitration or proceedings;

(X) foreclose upon or take a deed or title to any commercial real estate without first conducting a Phase I environmental assessment of the property or foreclose upon any commercial real estate if such environmental assessment indicates the presence of a Materials of Environmental Concern;

(Y) purchase or sell any mortgage loan servicing rights other than in the ordinary course of business consistent with past practice;

(Z) issue any broadly distributed communication of a general nature to employees (including general communications relating to benefits and compensation) without prior consultation with Buyer and, to the extent relating to post-Closing employment, benefit or compensation information without the prior consent of Buyer (which shall not be unreasonably withheld) or issue any broadly distributed communication of a general nature to customers without the prior approval of Buyer (which shall not be unreasonably withheld), except as required by law or for communications in the ordinary course of business consistent with past practice that do not relate to the Merger or other transactions contemplated hereby;

(AA) sell or redeem any currently outstanding trust preferred securities or securities underlying any outstanding trust preferred securities; or

(BB) agree to do any of the foregoing.
6.2. **Current Information.**

6.2.1. During the period from the date of this Agreement to the Effective Time, Seller will cause one or more of its representatives to confer with representatives of Buyer and report the general status of its ongoing operations at such times as Buyer may reasonably request. Seller will promptly notify Buyer of any material change in the normal course of its business or in the operation of its properties and, to the extent permitted by applicable law, of any governmental complaints, investigations or hearings (or communications indicating that the same may be contemplated), or the institution or the threat of material litigation involving Seller or any Seller Subsidiary. Without limiting the foregoing, senior officers of Buyer and Seller shall meet on a reasonably regular basis (expected to be at least monthly) to review the financial and operational affairs of Seller and its Subsidiaries, in accordance with applicable law, and Seller shall give due consideration to Buyer’s input on such matters, with the understanding that, notwithstanding any other provision contained in this Agreement, neither Buyer nor any Buyer Subsidiary shall under any circumstance be permitted to exercise control of Seller or any Seller Subsidiary prior to the Effective Time.

6.2.2. Seller Bank and Buyer Bank shall meet on a regular basis to discuss and plan for the conversion of Seller Bank’s data processing and related electronic informational systems to those used by Buyer Bank, which planning shall include, but not be limited to, discussion of the possible termination by Seller Bank of third-party service provider arrangements effective at the Effective Time or at a date thereafter, non-renewal of personal property leases and software licenses used by Seller Bank in connection with its systems operations, retention of outside consultants and additional employees to assist with the conversion, and outsourcing, as appropriate, of proprietary or self-provided system services, it being understood that Seller Bank shall not be obligated to take any such action prior to the Effective Time and, unless Seller Bank otherwise agrees, no conversion shall take place prior to the Effective Time.

6.2.3. Seller Bank shall provide Buyer Bank, within fifteen (15) business days of the end of each calendar month, a written list of nonperforming assets (the term “nonperforming assets,” for purposes of this subsection, means (i) loans that are “troubled debt restructuring” as defined in Statement of Financial Accounting Standards No. 15, “Accounting by Debtors and Creditors for Troubled Debt Restructuring,” (ii) loans on nonaccrual, (iii) real estate owned, (iv) all loans ninety (90) days or more past due) as of the end of such month and (iv) impaired loans. On a monthly basis, Seller shall provide Buyer Bank with a schedule of all loan approvals, which schedule shall indicate the loan amount, loan type and other material features of the loan.

6.2.4. Seller shall promptly inform Buyer upon receiving notice of any legal, administrative, arbitration or other proceedings, demands, notices, audits or investigations (by any federal, state or local commission, agency or board) relating to the alleged liability of Seller or any Seller Subsidiary under any labor or employment law.

6.3. **Access to Properties and Records.**

Subject to Section 12.1 hereof, Seller shall permit Buyer reasonable access upon reasonable notice to its properties and those of the Seller Subsidiaries, and shall disclose and make available to Buyer during normal business hours all of its books, papers and records relating to the assets, properties, operations, obligations and liabilities, including, but not limited to, all books of account.
(including the general ledger), tax records, minute books of directors’ (other than minutes that discuss any of the transactions contemplated by this Agreement) and shareholders’ meetings, organizational documents, Bylaws, material contracts and agreements, filings with any regulatory authority, litigation files, plans affecting employees, and any other business activities or prospects in which Buyer may have a reasonable interest; provided, however, that Seller shall not be required to take any action that would provide access to or to disclose information where such access or disclosure would violate or prejudice the rights or business interests or confidences of any customer or other person or would result in the waiver by it of the privilege protecting communications between it and any of its counsel. Seller shall provide and shall request its auditors to provide Buyer with such historical financial information regarding it (and related audit reports and consents) as Buyer may reasonably request. Buyer shall use commercially reasonable efforts to minimize any interference with Seller’s regular business operations during any such access to Seller’s property, books and records. Seller and each Seller Subsidiary shall permit Buyer to cause a “phase I environmental audit” and a “phase II environmental audit” to be performed at any physical location owned or occupied by Seller or any Seller Subsidiary. In the event any subsurface or phase II site assessments are conducted, Buyer shall indemnify Seller for all costs and expenses associated with returning the property to the previous condition.

6.4. Financial and Other Statements.

6.4.1. Promptly upon receipt thereof, Seller will furnish to Buyer copies of each annual, interim or special audit of the books of Seller and the Seller Subsidiaries made by its independent auditors and copies of all internal control reports submitted to Seller by such auditors in connection with each annual, interim or special audit of the books of Seller and the Seller Subsidiaries made by such auditors.

6.4.2. As soon as reasonably available, but in no event later than the date such documents are filed with the Bank Regulators, Seller will furnish to Buyer copies of all documents, statements and reports as it or any Seller Subsidiary shall send to its shareholders, the FDIC, the FRB, the Department or any other regulatory authority, except as legally prohibited thereby. Within 25 days after the end of each month, Seller will deliver to Buyer a consolidated balance sheet and a consolidated statement of income, without related notes, for such month prepared in accordance with current financial reporting practices.

6.4.3. Seller will advise Buyer promptly of the receipt of any examination report of any Bank Regulator with respect to the condition or activities of Seller or any of the Seller Subsidiaries.

6.4.4. With reasonable promptness, Seller will furnish to Buyer such additional financial data that Seller possesses and as Buyer may reasonably request, including without limitation, detailed monthly financial statements and loan reports.

6.5. Maintenance of Insurance.

Seller shall maintain, and cause each Seller Subsidiary to maintain, insurance in such amounts as are reasonable to cover such risks as are customary in relation to the character and location of their properties and the nature of their business.

From time to time prior to the Effective Time, Seller will promptly supplement or amend the SELLER DISCLOSURE SCHEDULE delivered in connection herewith with respect to any matter hereafter arising which, if existing, occurring or known at the date of this Agreement, would have been required to be set forth or described in such SELLER DISCLOSURE SCHEDULE or which is necessary to correct any information in such SELLER DISCLOSURE SCHEDULE which has been rendered materially inaccurate thereby. No supplement or amendment to such SELLER DISCLOSURE SCHEDULE shall have any effect for the purpose of determining satisfaction of the conditions set forth in Article IX.

6.7. Consents and Approvals of Third Parties.

Seller shall use all commercially reasonable efforts to obtain as soon as practicable all consents and approvals necessary or desirable for the consummation of the transactions contemplated by this Agreement.

6.8. All Reasonable Efforts.

Subject to the terms and conditions herein provided, Seller agrees to use all commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement.

6.9. Failure to Fulfill Conditions.

In the event that Seller determines that a condition to its obligation to complete the Merger cannot be fulfilled and that it will not waive that condition, it will promptly notify Buyer.

6.10. No Solicitation.

(a) Seller shall not, and shall cause its Subsidiaries and the respective officers, directors, employees, investment bankers, financial advisors, attorneys, accountants, consultants, affiliates and other agents (collectively, the “Representatives”) not to, directly or indirectly, (i) initiate, solicit, induce or knowingly encourage, or take any action to facilitate the making of, any inquiry, offer or proposal which constitutes, or could reasonably be expected to lead to, an Acquisition Proposal; (ii) participate in any discussions or negotiations regarding any Acquisition Proposal or furnish, or otherwise afford access, to any Person (other than Buyer) any information or data with respect to Seller or any of its Subsidiaries or otherwise relating to an Acquisition Proposal; (iii) release any Person from, waive any provisions of, or fail to enforce any confidentiality agreement or standstill agreement to which Seller is a party; or (iv) enter into any agreement, agreement in principle or letter of intent with respect to any Acquisition Proposal or furnish, or otherwise afford access, to any Person (other than Buyer) any information or data with respect to Seller or any of its Subsidiaries or otherwise relating to an Acquisition Proposal. Any violation of the foregoing restrictions by Seller or any Representative, whether or not such Representative is so authorized and whether or not such Representative is purporting to act on behalf of Seller or otherwise, shall be deemed to be a breach of this Agreement by Seller. Seller and its Subsidiaries shall, and shall cause each of Seller Representative to, immediately cease and cause to
be terminated any and all existing discussions, negotiations, and communications with any Persons with respect to any existing or potential Acquisition Proposal.

For purposes of this Agreement, “Acquisition Proposal” shall mean any inquiry, offer or proposal (other than an inquiry, offer or proposal from Buyer), whether or not in writing, contemplating, relating to, or that could reasonably be expected to lead to, an Acquisition Transaction. For purposes of this Agreement, “Acquisition Transaction” shall mean (A) any transaction or series of transactions involving any merger, consolidation, recapitalization, share exchange, liquidation, dissolution or similar transaction involving Seller or any of its Subsidiaries; (B) any transaction pursuant to which any third party or group acquires or would acquire (whether through sale, lease or other disposition), directly or indirectly, any assets of Seller or any of its Subsidiaries representing, in the aggregate, fifteen percent (15%) or more of the assets of Seller and its Subsidiaries on a consolidated basis; (C) any issuance, sale or other disposition of (including by way of merger, consolidation, share exchange or any similar transaction) securities (or options, rights or warrants to purchase or securities convertible into, such securities) representing fifteen percent (15%) or more of the votes attached to the outstanding securities of Seller or any of its Subsidiaries; (D) any tender offer or exchange offer that, if consummated, would result in any third party or group beneficially owning fifteen percent (15%) or more of any class of equity securities of Seller or any of its Subsidiaries; or (E) any transaction which is similar in form, substance or purpose to any of the foregoing transactions, or any combination of the foregoing.

(b) Notwithstanding Section 6.10(a), Seller may take any of the actions described in clause (ii) of Section 6.10(a) if, but only if, (i) Seller has received a bona fide unsolicited written Acquisition Proposal that did not result from a breach of this Section 6.10; (ii) Seller Board determines in good faith, after consultation with and having considered the advice of its outside legal counsel and its independent financial advisor, that (A) such Acquisition Proposal constitutes or is reasonably likely to lead to a Superior Proposal and (B) the failure to take such actions would be inconsistent with its fiduciary duties to Seller’s shareholders under applicable law; (iii) Seller has provided Buyer with at least three (3) Business Days’ prior notice of such determination; and (iv) prior to furnishing or affording access to any information or data with respect to Seller or any of its Subsidiaries or otherwise relating to an Acquisition Proposal, Seller receives from such Person a confidentiality agreement with terms no less favorable to Seller than those contained in the Confidentiality Agreement. Seller shall promptly provide to Buyer any non-public information regarding Seller or its Subsidiaries provided to any other Person that was not previously provided to Buyer, such additional information to be provided no later than the date of provision of such information to such other party.

For purposes of this Agreement, “Superior Proposal” shall mean any bona fide written proposal (on its most recently amended or modified terms, if amended or modified) made by a third party to enter into an Acquisition Transaction on terms that Seller Board determines in its good faith judgment, after consultation with and having considered the advice of outside legal counsel and a financial advisor (i) would, if consummated, result in the acquisition of all, but not less than all, of the issued and outstanding shares of Seller Common Stock or all, or substantially all, of the assets of Seller and its Subsidiaries on a consolidated basis; (ii) would result in a transaction that (A) involves consideration to the holders of the shares of Seller Common Stock that is more favorable, from a financial point of view, than the consideration to be paid to Seller’s shareholders pursuant to this Agreement, considering, among other things, the nature of the consideration being offered and any material regulatory approvals or other risks associated with the timing of the proposed transaction.
beyond or in addition to those specifically contemplated hereby, and which proposal is not conditioned upon obtaining additional financing and (B) is, in light of the other terms of such proposal, more favorable to Seller’s shareholders than the Merger and the transactions contemplated by this Agreement; and (iii) is reasonably likely to be completed on the terms proposed, in each case taking into account all legal, financial, regulatory and other aspects of the proposal.

(c) Seller shall promptly (and in any event within twenty-four (24) hours) notify Buyer in writing if any proposals or offers are received by, any information is requested from, or any negotiations or discussions are sought to be initiated or continued with, Seller or any Seller Representatives, in each case in connection with any Acquisition Proposal, and such notice shall indicate the name of the Person initiating such discussions or negotiations or making such proposal, offer or information request and the material terms and conditions of any proposals or offers (and, in the case of written materials relating to such proposal, offer, information request, negotiations or discussion, providing copies of such materials (including e-mails or other electronic communications) unless (i) such materials constitute confidential information of the party making such offer or proposal under an effective confidentiality agreement, (ii) disclosure of such materials jeopardizes the attorney-client privilege or (iii) disclosure of such materials contravenes any law, rule, regulation, order, judgment or decree. Seller agrees that it shall keep Buyer informed, on a current basis, of the status and terms of any such proposal, offer, information request, negotiations or discussions (including any amendments or modifications to such proposal, offer or request).

(d) Neither the Seller Board nor any committee thereof shall (i) withdraw, qualify or modify, or propose to withdraw, qualify or modify, in a manner adverse to Buyer in connection with the transactions contemplated by this Agreement (including the Merger), the Seller Recommendation (as defined in Section 8.1), or make any statement, filing or release, in connection with Seller Shareholders Meeting or otherwise, inconsistent with the Seller Recommendation (it being understood that taking a neutral position or no position with respect to an Acquisition Proposal shall be considered an adverse modification of the Seller Recommendation); (ii) approve or recommend, or propose to approve or recommend, any Acquisition Proposal; or (iii) enter into (or cause Seller or any of its Subsidiaries to enter into) any letter of intent, agreement in principle, acquisition agreement or other agreement (A) related to any Acquisition Transaction (other than a confidentiality agreement entered into in accordance with the provisions of Section 6.10(b)) or (B) requiring Seller to abandon, terminate or fail to consummate the Merger or any other transaction contemplated by this Agreement.

(e) Notwithstanding Section 6.10(d), prior to the date of Seller Shareholders Meeting, the Seller Board may approve or recommend to the shareholders of Seller a Superior Proposal and withdraw, qualify or modify Seller Recommendation in connection therewith (a “Seller Subsequent Determination”) after the fifth (5th) Business Day following Buyer’s receipt of a notice (the “Notice of Superior Proposal”) from Seller advising Buyer that the Seller Board has decided that a bona fide unsolicited written Acquisition Proposal that it received (that did not result from a breach of this Section 6.10) constitutes a Superior Proposal (it being understood that Seller shall be required to deliver a new Notice of Superior Proposal in respect of any revised Superior Proposal from such third party or its affiliates that Seller proposes to accept) if, but only if, (i) the Seller Board has reasonably determined in good faith, after consultation with and having considered the advice of outside legal counsel and a financial advisor, that it is required to take such actions to comply with its fiduciary duties to Seller’s shareholders under applicable law, (ii) during the five (5) Business Day Period after receipt of the Notice of Superior Proposal by Buyer, Seller and the Seller Board shall...
have cooperated and negotiated in good faith with Buyer to make such adjustments, modifications or amendments to the terms and conditions of this Agreement as would enable Seller to proceed with the Seller Recommendation without a Seller Subsequent Determination; provided, however, that Buyer shall not have any obligation to propose any adjustments, modifications or amendments to the terms and conditions of this Agreement and (iii) at the end of such five (5) Business Day period, after taking into account any such adjusted, modified or amended terms as may have been proposed by Buyer since its receipt of such Notice of Superior Proposal, Seller Board has again in good faith made the determination (A) in clause (i) of this Section 6.10(e) and (B) that such Acquisition Proposal constitutes a Superior Proposal. Notwithstanding the foregoing, the changing, qualifying or modifying of the Seller Recommendation or the making of a Seller Subsequent Determination by the Seller Board shall not change the approval of the Seller Board for purposes of causing any Takeover Laws to be inapplicable to this Agreement and the Seller Voting Agreements and the transactions contemplated hereby and thereby, including the Merger.

6.11. Reserves and Merger-Related Costs.

Seller agrees to consult with Buyer with respect to its loan, litigation and real estate valuation policies and practices (including loan classifications and levels of reserves). Buyer and Seller shall also consult with respect to the character, amount and timing of restructuring charges to be taken by each of them in connection with the transactions contemplated hereby and shall take such charges as Buyer shall reasonably request and which are not inconsistent with GAAP, provided that no such actions need be effected until Buyer shall have irrevocably certified to Seller that all conditions set forth in Article IX to the obligation of Buyer to consummate the transactions contemplated hereby (other than the delivery of certificates or opinions) have been satisfied or, where legally permissible, waived.

6.12. Board of Directors and Committee Meetings.

Seller and Seller Bank shall permit representatives of Buyer (no more than two) to attend any meeting of the Board of Directors of Seller and/or Seller Bank or the Executive and Loan Committees thereof as an observer, provided that neither Seller nor Seller Bank shall be required to permit the Buyer representative to remain present during any confidential discussion of this Agreement and the transactions contemplated hereby or any third party proposal to acquire control of Seller or Seller Bank or during any other matter that the respective Board of Directors has reasonably determined to be confidential with respect to Buyer's participation.

6.13. Completion of Due Diligence.

Seller shall use its best efforts to complete its due diligence and shall supplement the SELLER DISCLOSURE SCHEDULE, both within [30] days of the date of this Agreement.

ARTICLE VII
COVENANTS OF BUYER

7.1. Conduct of Business.

During the period from the date of this Agreement to the Effective Time, except with the written consent of Seller, which consent will not be unreasonably withheld, Buyer will, and it will
cause each Buyer Subsidiary to use reasonable efforts to preserve intact its business organization and assets and maintain its rights and franchises; and voluntarily take no action that would: (i) adversely affect the ability of the parties to obtain the Regulatory Approvals or other approvals of Governmental Entities required for the transaction contemplated hereby, or materially increase the period of time necessary to obtain such approvals; (ii) adversely affect its ability to perform its covenants and agreements under this Agreement; or (iii) result in the representations and warranties contained in Article V of this Agreement not being true and correct on the date of this Agreement or at any future date on or prior to the Closing Date or in any of the conditions set forth in Article IX hereof not being satisfied.

7.2. Current Information.

During the period from the date of this Agreement to the Effective Time, Buyer will cause one or more of its representatives to confer with representatives of Seller and report the general status of its financial condition, operations and business and matters relating to the completion of the transactions contemplated hereby, at such times as Seller may reasonably request. Buyer will promptly notify Seller, of any material change in the normal course of its business or in the operation of its properties, and to the extent permitted by applicable law, of any governmental complaints, investigations or hearings (or communications indicating that the same may be contemplated), or the institution of material litigation involving Buyer and any Buyer Subsidiary. Buyer shall be responsive to reasonable requests by Seller for access to such information and personnel regarding Buyer and its Subsidiaries as may be reasonably necessary for Seller to confirm that the representations and warranties of Buyer contained herein are true and correct and that the covenants of Buyer contained herein have been performed in all material respects; provided, however, that Buyer shall not be required to take any action that would provide access to or to disclose information where such access or disclosure, in Buyer's reasonable judgment, would interfere with the normal conduct of Buyer's business or would violate or prejudice the rights or business interests or confidences of any customer or other person or would result in the waiver by it of the privilege protecting communications between it and any of its counsel.

7.3. Financial and Other Statements.

7.3.1. Promptly upon receipt thereof, Buyer will furnish to Seller copies of each annual, interim or special audit of the books of Buyer and the Buyer Subsidiaries made by its independent auditors and copies of all internal control reports submitted to Buyer by such auditors in connection with each annual, interim or special audit of the books of Buyer and the Buyer Subsidiaries made by such auditors.

7.3.2. As soon as reasonably available, but in no event later than the date such documents are filed with the Bank Regulators, Buyer will furnish to Seller copies of all documents, statements and reports as it or any Buyer Subsidiary shall send to its shareholders, the FDIC, the FRB, the Department or any other regulatory authority, except as legally prohibited thereby. Within 25 days after the end of each month, Buyer will deliver to Seller a consolidated balance sheet and a consolidated statement of income, without related notes, for such month prepared in accordance with current financial reporting practices.
7.3.3. Buyer will advise Seller promptly of the receipt of any examination report of any Bank Regulator with respect to the condition or activities of Buyer or any of the Buyer Subsidiaries.

7.3.4. With reasonable promptness, Buyer will furnish to Seller such additional financial data that Buyer possesses and as Seller may reasonably request, including without limitation, detailed monthly financial statements and loan reports.

7.4. Disclosure Supplements.

From time to time prior to the Effective Time, Buyer will promptly supplement or amend the BUYER DISCLOSURE SCHEDULE delivered in connection herewith with respect to any material matter hereafter arising which, if existing, occurring or known at the date of this Agreement, would have been required to be set forth or described in such BUYER DISCLOSURE SCHEDULE or which is necessary to correct any information in such BUYER DISCLOSURE SCHEDULE which has been rendered inaccurate thereby. No supplement or amendment to such BUYER DISCLOSURE SCHEDULE shall have any effect for the purpose of determining satisfaction of the conditions set forth in Article IX.

7.5. Consents and Approvals of Third Parties.

Buyer shall use all commercially reasonable efforts to obtain as soon as practicable all consents and approvals, necessary or desirable for the consummation of the transactions contemplated by this Agreement.

7.6. All Reasonable Efforts.

Subject to the terms and conditions herein provided, Buyer agrees to use all commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement.

7.7. Failure to Fulfill Conditions.

In the event that Buyer determines that a condition to its obligation to complete the Merger cannot be fulfilled and that it will not waive that condition, it will promptly notify Seller.


7.8.1. Buyer will review all Seller Compensation and Benefit Plans to determine whether to maintain, terminate or continue such plans. In the event employee compensation and/or benefits as currently provided by Seller or any Seller Subsidiary are changed or terminated by Buyer, in whole or in part, Buyer shall provide Continuing Employees (as defined below) with compensation and benefits that are, in the aggregate, substantially similar to the compensation and benefits provided to similarly situated employees of Buyer or applicable Buyer Subsidiary (as of the date any such compensation or benefit is provided). Employees of Seller or any Seller Subsidiary who become participants in an Buyer Compensation and Benefit Plan shall, for purposes of determining eligibility for and for any applicable vesting periods of such employee benefits only (and
not for benefit accrual purposes unless specifically set forth herein) be given credit for meeting eligibility and vesting requirements in such plans for service as an employee of Seller or Seller Bank or any predecessor thereto prior to the Effective Time, provided, however, that credit for benefit accrual purposes will be given only for purposes of Buyer vacation policies or programs and for purposes of the calculation of severance benefits under any severance compensation plan of Buyer. This Agreement shall not be construed to limit the ability of Buyer or Buyer Bank to terminate the employment of any employee or to review employee benefits programs from time to time and to make such changes (including terminating any program) as they deem appropriate.

7.8.2. Buyer and/or Buyer Bank shall execute assumption and modification of employment agreements in the form of Exhibit C hereto with respect to the following officers of Seller: ______________, ______________, ______________, and ______________,.

7.8.3. In the event of any termination or consolidation of any Seller health plan with any Buyer health plan, Buyer shall make available to employees of Seller or any Seller Subsidiary who continue employment with Buyer or a Buyer Subsidiary (“Continuing Employees”) and their dependents employer-provided health coverage on the same basis as it provides such coverage to Buyer employees. Unless a Continuing Employee affirmatively terminates coverage under a Seller health plan prior to the time that such Continuing Employee becomes eligible to participate in the Buyer health plan, no coverage of any of the Continuing Employees or their dependents shall terminate under any of the Seller health plans prior to the time such Continuing Employees and their dependents become eligible to participate in the health plans, programs and benefits common to all employees of Buyer and their dependents. In the event of a termination or consolidation of any Seller health plan, terminated Seller employees and qualified beneficiaries will have the right to continued coverage under group health plans of Buyer in accordance with COBRA, consistent with the provisions below. In the event of any termination of any Seller health plan, or consolidation of any Seller health plan with any Buyer health plan, any coverage limitation under the Buyer health plan due to any pre-existing condition shall be reduced or eliminated in accordance with the Health Insurance Portability and Accountability Act of 1996. All Seller Employees who cease participating in an Seller health plan and become participants in a comparable Buyer health plan shall receive credit for any co-payment and deductibles paid under Seller’s health plan for purposes of satisfying any applicable deductible or out-of-pocket requirements under the Buyer health plan, upon substantiation, in a form satisfactory to Buyer that such co-payment and/or deductible has been satisfied. Any employee of Seller who is not a party to an employment, change in control or severance agreement or contract providing severance payments shall, at the Effective Time, be covered by and eligible to receive severance benefits under the severance plan or policy of Buyer or its Subsidiaries applicable to its employees generally in accordance with the terms of such plan or policy.

7.9. Directors and Officers Indemnification and Insurance.

7.9.1. For a period of six years after the Effective Time, Buyer shall indemnify, defend and hold harmless each person who is now, or who has been at any time before the date hereof or who becomes before the Effective Time, an officer, director or employee of Seller or a Seller Subsidiary (the “Indemnified Parties”) against all losses, claims, damages, costs, expenses (including attorney’s fees), liabilities or judgments or amounts that are paid in settlement (which settlement shall require the prior written consent of Buyer, which consent shall not be unreasonably withheld) of or in connection with any claim, action, suit, proceeding or investigation, whether civil,
criminal, or administrative (each a “Claim”), in which an Indemnified Party is, or is threatened to be made, a party or witness in whole or in part on or arising in whole or in part out of the fact that such person is or was a director, officer or employee of Seller or a Seller Subsidiary if such Claim pertains to any matter of fact arising, existing or occurring at or before the Effective Time (including, without limitation, the Merger and the other transactions contemplated hereby), regardless of whether such Claim is asserted or claimed before, or after, the Effective Time, to the fullest extent permitted under applicable state or Federal law, Buyer’s Certificate of Incorporation and Bylaws, and under Seller’s Certificate of Incorporation or Charter and Bylaws. Buyer shall pay expenses in advance of the final disposition of any such action or proceeding to each Indemnified Party to the full extent permitted by applicable state or Federal law upon receipt of an undertaking to repay such advance payments if he shall be adjudicated or determined to be not entitled to indemnification in the manner set forth below. Any Indemnified Party wishing to claim indemnification under this Section 7.9.1 upon learning of any Claim, shall notify Buyer (but the failure so to notify Buyer shall not relieve it from any liability which it may have under this Section 7.9.1, except to the extent such failure materially prejudices Buyer) and shall deliver to Buyer the undertaking referred to in the previous sentence.

7.9.2. In the event that either Buyer or any of its successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving bank or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, then, and in each such case, proper provision shall be made so that the successors and assigns of Buyer shall assume the obligations set forth in this Section 7.9.

7.9.3. Buyer shall maintain, or shall cause Buyer Bank to maintain, in effect for six years following the Effective Time, the current directors’ and officers’ liability insurance policies covering the officers and directors of Seller (provided, that Buyer may substitute therefor policies of at least the same coverage containing terms and conditions which are not materially less favorable) with respect to matters occurring at or prior to the Effective Time; provided, however, that in no event shall Buyer be required to expend in the aggregate pursuant to this Section 7.9.3 more than 175% of the annual cost currently expended by Seller with respect to such insurance (the “Maximum Amount”); provided, further, that if the amount of the annual premium necessary to maintain or procure such insurance coverage exceeds the Maximum Amount, Buyer shall maintain the most advantageous policies of directors’ and officers’ insurance obtainable for a premium equal to the Maximum Amount. In connection with the foregoing, Seller agrees in order for Buyer to fulfill its agreement to provide directors and officers liability insurance policies for six years to provide such insurer or substitute insurer with such reasonable and customary representations as such insurer may request with respect to the reporting of any prior claims.

7.9.4. The obligations of Buyer provided under this Section 7.9 are intended to be enforceable against Buyer directly by the Indemnified Parties and shall be binding on all respective successors and permitted assigns of Buyer.

7.10. Stock and Cash Reserve.

Buyer agrees at all times from the date of this Agreement until the Merger Consideration has been paid in full to reserve a sufficient number of shares of its common stock and to maintain sufficient liquid accounts or borrowing capacity to fulfill its obligations under this Agreement.
7.11. **Completion of Due Diligence.**

Buyer shall use its best efforts to complete its due diligence and shall supplement the BUYER DISCLOSURE SCHEDULE, both within [30] days of the date of this Agreement.

7.12. **Access to Properties and Records.**

Subject to Section 12.1 hereof, Buyer shall permit Seller reasonable access upon reasonable notice to its properties and those of the Buyer Subsidiaries, and shall disclose and make available to Seller during normal business hours all of its books, papers and records relating to the assets, properties, operations, obligations and liabilities, including, but not limited to, all books of account (including the general ledger), tax records, minute books of directors’ (other than minutes that discuss any of the transactions contemplated by this Agreement) and shareholders’ meetings, organizational documents, Bylaws, material contracts and agreements, filings with any regulatory authority, litigation files, plans affecting employees, and any other business activities or prospects in which Seller may have a reasonable interest; provided, however, that Buyer shall not be required to take any action that would provide access to or to disclose information where such access or disclosure would violate or prejudice the rights or business interests or confidences of any customer or other person or would result in the waiver by it of the privilege protecting communications between it and any of its counsel. Buyer shall provide and shall request its auditors to provide Seller with such historical financial information regarding it (and related audit reports and consents) as Seller may reasonably request. Seller shall use commercially reasonable efforts to minimize any interference with Buyer’s regular business operations during any such access to Buyer’s property, books and records.

7.13. **Board of Directors and Committee Meetings.**

Buyer and Buyer Bank shall permit representatives of Seller (no more than two) to attend any meeting of the Board of Directors of Buyer and Buyer Bank or the Executive and Loan Committees thereof as an observer, provided that neither Buyer nor Buyer Bank shall be required to permit the Seller representative to remain present during any confidential discussion of this Agreement and the transactions contemplated hereby or any third party proposal to acquire control of Buyer or Buyer Bank or during any other matter that the respective Board of Directors has reasonably determined to be confidential with respect to Seller’s participation.

**ARTICLE VIII**

**REGULATORY AND OTHER MATTERS**

8.1. **Seller and Buyer Shareholder Meetings.**

8.1.1. Seller will (i) as promptly as practicable after the Merger Registration Statement is declared effective by the SEC, take all steps necessary to duly call, give notice of, convene and hold a meeting of its shareholders (the “Seller Shareholders Meeting”), for the purpose of considering this Agreement and the Merger, and for such other purposes as may be, in Seller’s reasonable judgment, necessary or desirable, (ii) subject to Section 6.10, have its Board of Directors recommend approval of this Agreement to the Seller shareholders (the “Seller Recommendation”).
8.1.2. Buyer will (i) as promptly as practicable after the Merger Registration Statement is declared effective by the SEC, take all steps necessary to duly call, give notice of, convene and hold a meeting of its shareholders (the “Buyer Shareholders Meeting”), for the purpose of considering this Agreement and the Merger, and for such other purposes as may be, in Buyer’ reasonable judgment, necessary or desirable, (ii) subject to the fiduciary responsibility of the Board of Directors of Buyer as advised by counsel, recommend to its shareholders the approval of the Agreement (the “Buyer’ Recommendation”).

8.2. Proxy Statement-Prospectus.

8.2.1. For the purposes (x) of registering Buyer Common Stock to be offered to holders of Seller Common Stock in connection with the Merger with the SEC under the Securities Act and (y) of holding the Seller Shareholders Meeting, and the Buyer Shareholders Meeting, as promptly as practicable after the date thereof, Buyer shall draft and prepare, and Seller shall cooperate in the preparation of, the Merger Registration Statement, including a combined proxy statement and prospectus satisfying all applicable requirements of applicable state securities and banking laws, and of the Securities Act and the Exchange Act, and the rules and regulations thereunder (such proxy statement/prospectus in the form mailed to the Seller shareholders and the Buyer shareholders, together with any and all amendments or supplements thereto, being herein referred to as the “Proxy Statement-Prospectus”). Buyer shall file the Merger Registration Statement, including the Proxy Statement-Prospectus, with the SEC and the Merger Registration Statement at the time it becomes effective shall in all material respects conform to the requirements of the Securities Act and the applicable rules and regulations of the SEC. Each of Buyer and Seller shall use their reasonable best efforts to have the Merger Registration Statement declared effective under the Securities Act as promptly as practicable after such filing, and each of Seller and Buyer shall thereafter promptly mail the Proxy Statement-Prospectus to their shareholders. Buyer shall also use its reasonably best efforts to obtain all necessary state securities law or “Blue Sky” permits and approvals required to carry out the transactions contemplated by this Agreement, and Seller shall furnish all information concerning Seller and the holders of Seller Common Stock as may be reasonably requested in connection with any such action.

8.2.2. Seller shall provide Buyer with any information concerning itself that Buyer may reasonably request in connection with the drafting and preparation of the Proxy Statement-Prospectus, and Buyer shall notify Seller promptly of the receipt of any comments of the SEC with respect to the Proxy Statement-Prospectus and of any requests by the SEC for any amendment or supplement thereto or for additional information and shall provide to Seller promptly copies of all correspondence between Buyer or any of their representatives and the SEC. Buyer shall give Seller and its counsel the opportunity to review and comment on the Proxy Statement-Prospectus prior to its being filed with the SEC and shall give Seller and its counsel the opportunity to review and comment on all amendments and supplements to the Proxy Statement-Prospectus and all responses to requests for additional information and replies to comments prior to their being filed with, or sent to, the SEC. Each of Buyer and Seller agrees to use all reasonable efforts, after consultation with the other party hereto, to respond promptly to all such comments of and requests by the SEC and to cause the Proxy Statement-Prospectus and all required amendments and supplements thereto to be mailed to the holders of Seller Common Stock entitled to vote at the Seller Shareholders Meeting hereof at the earliest practicable time.
8.2.3. Seller and Buyer shall promptly notify the other party if at any time it becomes aware that the Proxy Statement-Prospectus or the Merger Registration Statement contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. In such event, Seller shall cooperate with Buyer in the preparation of a supplement or amendment to such Proxy Statement-Prospectus that corrects such misstatement or omission, and Buyer shall file an amended Merger Registration Statement with the SEC, and each of Seller shall mail an amended Proxy Statement-Prospectus to the Seller shareholders. If requested by Buyer, Seller shall obtain a “comfort” letter from its independent certified public accountant, dated as of the date of the Proxy Statement-Prospectus and updated as of the date of consummation of the Merger, with respect to certain financial information regarding Seller, in form and substance that is customary in transactions such as the Merger.

8.3. **Regulatory Approvals.**

Each of Seller and Buyer will cooperate with the other and use all reasonable efforts to promptly prepare all necessary documentation, to effect all necessary filings and to obtain all necessary permits, consents, waivers, approvals and authorizations of the SEC, the Bank Regulators and any other third parties and governmental bodies necessary to consummate the transactions contemplated by this Agreement. Seller and Buyer will furnish each other and each other’s counsel with all information concerning themselves, their subsidiaries, directors, officers and shareholders and such other matters as may be necessary or advisable in connection with the Proxy Statement-Prospectus and any application, petition or any other statement or application made by or on behalf of Seller, Buyer to any Bank Regulatory or governmental body in connection with the Merger, and the other transactions contemplated by this Agreement. Seller shall have the right to review and approve in advance all characterizations of the information relating to Seller and any of its Subsidiaries, which appear in any filing made in connection with the transactions contemplated by this Agreement with any governmental body. Buyer shall give Seller and its counsel the opportunity to review and comment on each filing prior to its being filed with a Bank Regulator and shall give Seller and its counsel the opportunity to review and comment on all amendments and supplements to such filings and all responses to requests for additional information and replies to comments prior to their being filed with, or sent to, a Bank Regulator.

8.4. **Affiliates.**

8.4.1. Seller shall use all reasonable efforts to cause each director, executive officer and other person who is an “affiliate” (for purposes of Rule 145 under the Securities Act) of Seller to deliver to Buyer, as soon as practicable after the date of this Agreement, and at least thirty (30) days prior to the date of the Seller Shareholders Meeting, a written agreement, in the form of Exhibit B hereto, providing that such person will not sell, pledge, transfer or otherwise dispose of any shares of Buyer Common Stock to be received by such “affiliate,” as a result of the Merger otherwise than in compliance with the applicable provisions of the Securities Act and the rules and regulations thereunder.
ARTICLE IX
CLOSING CONDITIONS

9.1. Conditions to Each Party’s Obligations under this Agreement.

The respective obligations of each party under this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following conditions, none of which may be waived:

9.1.1. Shareholder Approval. This Agreement and the transactions contemplated hereby shall have been approved by the requisite vote of the shareholders of Seller and by the shareholders of Buyer.

9.1.2. Injunctions. None of the parties hereto shall be subject to any order, decree or injunction of a court or agency of competent jurisdiction that enjoins or prohibits the consummation of the transactions contemplated by this Agreement and no statute, rule or regulation shall have been enacted, entered, promulgated, interpreted, applied or enforced by any Governmental Entity or Bank Regulator, that enjoins or prohibits the consummation of the transactions contemplated by this Agreement.

9.1.3. Regulatory Approvals. All Regulatory Approvals and other necessary approvals, authorizations and consents of any Governmental Entities required to consummate the transactions contemplated by this Agreement shall have been obtained and shall remain in full force and effect and all waiting periods relating to such approvals, authorizations or consents shall have expired; and no such approval, authorization or consent shall include any condition or requirement, excluding standard conditions that are normally imposed by the regulatory authorities in bank merger transactions, that would, in the good faith reasonable judgment of the Board of Directors of Buyer, materially and adversely affect the business, operations, financial condition, property or assets of the combined enterprise of Seller, Seller Bank and Buyer or materially impair the value of Seller or Seller Bank to Buyer.

9.1.4. Effectiveness of Merger Registration Statement. The Merger Registration Statement shall have become effective under the Securities Act and no stop order suspending the effectiveness of the Merger Registration Statement shall have been issued, and no proceedings for that purpose shall have been initiated or threatened by the SEC and, if the offer and sale of Buyer Common Stock in the Merger is subject to the blue sky laws of any state, shall not be subject to a stop order of any state securities commissioner.

9.1.5. Tax Opinion. On the basis of facts, representations and assumptions which shall be consistent with the state of facts existing at the Closing Date, Buyer shall have received an opinion of ______________, reasonably acceptable in form and substance to Buyer, and Seller shall have received an opinion of ______________, reasonably acceptable in form and substance to Seller, each dated as of the Closing Date, substantially to the effect that for federal income tax purposes, the Merger will qualify as a reorganization within the meaning of Section 368(a) of the Code. In rendering the tax opinions described in this Section 9.1.5, the law firms may require and rely upon customary representations contained in certificates of officers of Buyer and Seller and their respective Subsidiaries.
9.2. Conditions to the Obligations of Buyer under this Agreement.

The obligations of Buyer under this Agreement shall be further subject to the satisfaction of the conditions set forth in Sections 9.2.1 through 9.2.5 at or prior to the Closing Date:

9.2.1. Representations and Warranties. Each of the representations and warranties of Seller set forth in this Agreement shall be true and correct as of the date of this Agreement and upon the Effective Time with the same effect as though all such representations and warranties had been made on the Effective Time (except to the extent such representations and warranties speak as of an earlier date), in any case subject to the standard set forth in Section 4.1; and Seller shall have delivered to Buyer a certificate to such effect signed by the Chief Executive Officer and the Chief Financial Officer of Seller as of the Effective Time.

9.2.2. Agreements and Covenants. Seller shall have performed in all material respects all obligations and complied in all material respects with all agreements or covenants to be performed or complied with by it at or prior to the Effective Time, and Buyer shall have received a certificate signed on behalf of Seller by the Chief Executive Officer and Chief Financial Officer of Seller to such effect dated as of the Effective Time.

9.2.3. Permits, Authorizations, Etc. Seller shall have obtained any and all material permits, authorizations, consents, waivers, clearances or approvals required for the lawful consummation of the Merger and the Bank Merger.

9.2.4. Dissenting Shares. As of immediately prior to the Effective Time, not more than 5% of the issued and outstanding shares of Seller Common Stock shall have dissented to the Merger under the ________, and preserved, as of immediately prior to the Effective Time, the right to pursue their right of appraisal for the fair value of their shares of Seller Common Stock under the ________ Business Corporation Act.

9.2.5. No Material Adverse Effect. Since December 31, 2015, no event has occurred or circumstance arisen that, individually or in the aggregate, has had or is reasonably likely to have a Material Adverse Effect on Seller.

9.2.6. Resignations.

[Intentionally omitted]

9.2.7. Conveyance/No Redemption of Trust Preferred Securities. Seller shall not take any action to repay/redeem their outstanding trust preferred securities and ancillary securities. The trust preferred securities shall convey and be assumable by Buyer.

Seller will furnish Buyer with such certificates of its officers or others and such other documents to evidence fulfillment of the conditions set forth in this Section 9.2 as Buyer may reasonably request.
9.3. **Conditions to the Obligations of Seller under this Agreement.**

The obligations of Seller under this Agreement shall be further subject to the satisfaction of the conditions set forth in Sections 9.3.1 through 9.3.5 at or prior to the Closing Date:

9.3.1. **Representations and Warranties.** Each of the representations and warranties of Buyer set forth in this Agreement shall be true and correct as of the date of this Agreement and upon the Effective Time with the same effect as though all such representations and warranties had been made on the Effective Time (except to the extent such representations and warranties speak as of an earlier date), in any case subject to the standard set forth in Section 5.1; and Buyer shall have delivered to Seller a certificate to such effect signed by the Chief Executive Officer and the Chief Financial Officer of Buyer as of the Effective Time.

9.3.2. **Agreements and Covenants.** Buyer shall have performed in all material respects all obligations and complied in all material respects with all agreements or covenants to be performed or complied with by it at or prior to the Effective Time, and Seller shall have received a certificate signed on behalf of Buyer by the Chief Executive Officer and Chief Financial Officer to such effect dated as of the Effective Time.

9.3.3. **Permits, Authorizations, Etc.** Buyer shall have obtained any and all material permits, authorizations, consents, waivers, clearances or approvals required for the lawful consummation of the Merger and the Bank Merger.

9.3.4. **Payment of Merger Consideration.** Buyer shall have delivered the Exchange Fund to the Exchange Agent on or before the Closing Date and the Exchange Agent shall provide Seller with a certificate evidencing such delivery.

9.3.5. **No Material Adverse Effect.** Since December 31, 2015, no event has occurred or circumstance arisen that, individually or in the aggregate, has had or is reasonably likely to have a Material Adverse Effect on Buyer.

9.3.6. **Fairness Opinion.** Seller shall have received the opinion of a financial valuation firm, acceptable to it, dated as of the date of this Agreement, to the effect that, as of such date, the Merger Consideration to be received by the holders of Seller Common Stock in the Merger is fair from a financial point of view to such holders of Seller Common Stock, and such opinion shall not have been withdrawn prior to the Closing Date.

9.3.7. **Assumption and Modification of Employment Agreements.** Buyer and/or Buyer Bank shall have executed assumption and modification of employment agreements in the form of Exhibit C hereto with respect to the following officers of Seller: ________________, ________________, ________________, and ________________.

Buyer will furnish Seller with such certificates of their officers or others and such other documents to evidence fulfillment of the conditions set forth in this Section 9.3 as Seller may reasonably request.
ARTICLE X
THE CLOSING

10.1. Time and Place.

Subject to the provisions of Articles IX and XI hereof, the Closing of the transactions contemplated hereby shall take place at the offices of _______________, _______________, _______________, at 10:00 a.m., or at such other place or time upon which Buyer and Seller mutually agree. A pre-closing of the transactions contemplated hereby (the “Pre-Closing”) shall take place at the offices of _______________, _______________, at 10:00 a.m. on the day prior to the Closing Date.

10.2. Deliveries at the Pre-Closing and the Closing.

At the Pre-Closing there shall be delivered to Buyer and Seller the opinions, certificates, and other documents and instruments required to be delivered at the Pre-Closing under Article IX hereof. At or prior to the Closing, Buyer shall have delivered the Merger Consideration as set forth under Section 9.3.4 hereof.

ARTICLE XI
TERMINATION, AMENDMENT AND WAIVER

11.1. Termination.

This Agreement may be terminated at any time prior to the Closing Date, whether before or after approval of the Merger by the shareholders of Seller:

11.1.1. At any time by the mutual written agreement of Buyer and Seller;

11.1.2. By the Board of Directors of either party (provided, that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein) if there shall have been a material breach of any of the representations or warranties set forth in this Agreement on the part of the other party, which breach by its nature cannot be cured prior to the Termination Date or shall not have been cured within 30 days after written notice of such breach by the terminating party to the other party provided, however, that neither party shall have the right to terminate this Agreement pursuant to this Section 11.1.2 unless the breach of representation or warranty, together with all other such breaches, would entitle the terminating party not to consummate the transactions contemplated hereby under Section 9.2.1 (in the case of a breach of a representation or warranty by Seller) or Section 9.3.1 (in the case of a breach of a representation or warranty by Buyer);

11.1.3. By the Board of Directors of either party (provided, that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein) if there shall have been a material failure to perform or comply with any of the covenants or agreements set forth in this Agreement on the part of the other party, which failure by its nature cannot be cured prior to the Termination Date or shall not have been cured within 30 days after written notice of such failure by the terminating party to the other party provided, however, that neither party shall have the right to terminate this Agreement pursuant to this Section 11.1.3
unless the breach of covenant or agreement, together with all other such breaches, would entitle the terminating party not to consummate the transactions contemplated hereby under Section 9.2.2 (in the case of a breach of covenant by Seller) or Section 9.3.2 (in the case of a breach of covenant by Buyer);

11.1.4. At the election of the Board of Directors of either party if the Closing shall not have occurred by the Termination Date, or such later date as shall have been agreed to in writing by Buyer and Seller, provided, that no party may terminate this Agreement pursuant to this Section 11.1.4 if the failure of the Closing to have occurred on or before said date was due to such party’s material breach of any representation, warranty, covenant or other agreement contained in this Agreement;

11.1.5. By the Board of Directors of either party if (i) the shareholders of Seller shall have voted at the Seller Shareholders Meeting on the transactions contemplated by this Agreement and such vote shall not have been sufficient to approve such transactions, or (ii) the shareholders of Buyer shall have voted at the Buyer Shareholders Meeting on the transactions contemplated by this Agreement and such vote shall not have been sufficient to approve such transactions;

11.1.6. By the Board of Directors of either party if (i) final action has been taken by a Bank Regulator whose approval is required in connection with this Agreement and the transactions contemplated hereby, which final action (x) has become unappealable and (y) does not approve this Agreement or the transactions contemplated hereby, or (ii) any court of competent jurisdiction or other governmental authority shall have issued an order, decree, ruling or taken any other action restraining, enjoining or otherwise prohibiting the Merger and such order, decree, ruling or other action shall have become final and nonappealable;

11.1.7. By the Board of Directors of either party (provided, that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein) in the event that any of the conditions precedent to the obligations of such party to consummate the Merger cannot be satisfied or fulfilled by the date specified in Section 11.1.4 of this Agreement.

11.1.8. By the Board of Directors of Buyer if Seller has received a Superior Proposal, and in accordance with Section 6.10 of this Agreement, the Board of Directors of Seller has entered into an acquisition agreement with respect to the Superior Proposal, terminated this Agreement, or withdraws its recommendation of this Agreement, fails to make such recommendation or modifies or qualifies its recommendation in a manner adverse to Buyer.

11.1.9. By the Board of Directors of Seller if Seller has received a Superior Proposal, and in accordance with Section 6.10 of this Agreement, the Board of Directors of Seller has made a determination to accept such Superior Proposal.

11.1.10. By the Board of Directors of either party if (i) the disclosure schedules supplement has not been delivered within [30] days of the date of this Agreement; or (ii) following completion of due diligence, the terminating party determines in good faith that proceeding under the Agreement is not in the best interests of the terminating party. Notwithstanding the foregoing, the right to terminate under this Section 11.1.10 must be exercised within ten (10) days after the
completion of due diligence and delivery of the disclosure schedule supplement and in any event no later than [40] days from the date of this Agreement.

11.2. **Effect of Termination.**

11.2.1. In the event of termination of this Agreement pursuant to any provision of Section 11.1, this Agreement shall forthwith become void and have no further force, except that (i) the provisions of Sections 11.2, 12.1, 12.2, 12.6, 12.9, 12.10, and any other Section which, by its terms, relates to post-termination rights or obligations, shall survive such termination of this Agreement and remain in full force and effect.

11.2.2. If this Agreement is terminated, expenses and damages of the parties hereto shall be determined as follows:

(A) Except as provided below, whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such expenses.

(B) In the event of a termination of this Agreement because of a willful breach of any representation, warranty, covenant or agreement contained in this Agreement, the breaching party shall remain liable for any and all damages, costs and expenses, including all reasonable attorneys’ fees, sustained or incurred by the non-breaching party as a result thereof or in connection therewith or with respect to the enforcement of its rights hereunder.

(C) As a condition of Buyer’s willingness, and in order to induce Buyer, to enter into this Agreement, and to reimburse Buyer for incurring the costs and expenses related to entering into this Agreement and consummating the transactions contemplated by this Agreement, Seller hereby agrees to pay Buyer, and Buyer shall be entitled to payment of a fee of $750,000 (the “Buyer Fee”), within three business days after written demand for payment is made by Buyer, following the occurrence of any of the events set forth below.

(i) Seller terminates this Agreement pursuant to Section 11.1.9 or Buyer terminates this Agreement pursuant to Section 11.1.8; or

(ii) The entering into a definitive agreement by Seller relating to an Acquisition Proposal or the consummation of an Acquisition Proposal involving Seller within twelve months after the occurrence of any of the following: (i) the termination of the Agreement by Buyer pursuant to Section 11.1.2 or 11.1.3 because of, in either case, a willful breach by Seller; or (ii) the failure of the shareholders of Seller to approve this Agreement after the occurrence of an Acquisition Proposal.

(D) If Buyer’s applications for regulatory approval are not approved and such non-approval stated in writing by the non-approving reporting authority to be solely because of the condition of Buyer, then Buyer will pay $250,000 to Seller.

(E) If demand for payment of the Buyer Fee is made pursuant to Section 11.2.2(C) and payment is timely made, then Buyer will not have any other rights or claims against Seller, its Subsidiaries, and their respective officers and directors, under this Agreement, it being agreed that
the acceptance of the Buyer Fee under Section 11.2.2(C) will constitute the sole and exclusive remedy of Buyer against Seller and its Subsidiaries and their respective officers and directors.

11.3. Amendment, Extension and Waiver.

Subject to applicable law, at any time prior to the Effective Time (whether before or after approval thereof by the shareholders of Seller), the parties hereto by action of their respective Boards of Directors, may (a) amend this Agreement, (b) extend the time for the performance of any of the obligations or other acts of any other party hereto, (c) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto, or (d) waive compliance with any of the agreements or conditions contained herein; provided, however, that after any approval of this Agreement and the transactions contemplated hereby by the shareholders of Seller, there may not be, without further approval of such shareholders, any amendment of this Agreement which reduces the amount, value or changes the form of consideration to be delivered to Seller’s shareholders pursuant to this Agreement. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. Any agreement on the part of a party hereto to any extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party, but such waiver or failure to insist on strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

ARTICLE XII
MISCELLANEOUS

12.1. Confidentiality.

Except as specifically set forth herein, Buyer and Seller mutually agree to be bound by the terms of the mutual confidentiality agreement dated September 16, 2015 (the “Confidentiality Agreement”). The parties hereto agree that such Confidentiality Agreements shall continue in accordance with their respective terms, notwithstanding the termination of this Agreement.

12.2. Public Announcements.

Seller and Buyer shall cooperate with each other in the development and distribution of all news releases and other public disclosures with respect to this Agreement, and except as may be otherwise required by law, neither Seller nor Buyer shall issue any news release, or other public announcement or communication with respect to this Agreement unless such news release, public announcement or communication has been mutually agreed upon by the parties hereto.

12.3. Survival.

All representations, warranties and covenants in this Agreement or in any instrument delivered pursuant hereto or thereto shall expire on and be terminated and extinguished at the Effective Time, except for those covenants and agreements contained herein which by their terms apply in whole or in part after the Effective Time.
12.4.  *Notices.*

All notices or other communications hereunder shall be in writing and shall be deemed given if delivered by receipted hand delivery or mailed by prepaid registered or certified mail (return receipt requested) or by recognized overnight courier addressed as follows:

If to Seller, to:  
President and Chief Executive Officer  
Seller Bank  
Jeffrey C. Gerrish, Esq.  
Gerrish Smith Tuck, PC  
700 Colonial Road, Suite 200  
Memphis, Tennessee  38117  
Fax: (901) 684-2339

With required copies to:  
Philip K. Smith, Esq.  
Gerrish Smith Tuck, PC  
700 Colonial Road, Suite 200  
Memphis, Tennessee  38117  
Fax: (901) 684-2339

If to Buyer, to:  
President and Chief Executive Officer  
Buyer  
Fax: (___)

With required copies to:  
Fax: (___)

or such other address as shall be furnished in writing by any party, and any such notice or communication shall be deemed to have been given: (a) as of the date delivered by hand; (b) three (3) business days after being delivered to the U.S. mail, postage prepaid; or (c) one (1) business day after being delivered to the overnight courier.
12.5. **Parties in Interest.**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto without the prior written consent of the other party. Except as provided in Article III and Sections 7.8.2 and 7.9, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their respective successors, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

12.6. **Complete Agreement.**

This Agreement, including the Exhibits and Disclosure Schedules hereto and the documents and other writings referred to herein or therein or delivered pursuant hereto, and the Confidentiality Agreement, referred to in Section 12.1, contains the entire agreement and understanding of the parties with respect to its subject matter. There are no restrictions, agreements, promises, warranties, covenants or undertakings between the parties other than those expressly set forth herein or therein. This Agreement supersedes all prior agreements and understandings (other than the Confidentiality Agreements referred to in Section 12.1 hereof) between the parties, both written and oral, with respect to its subject matter.

12.7. **Counterparts.**

This Agreement may be executed in one or more counterparts all of which shall be considered one and the same agreement and each of which shall be deemed an original. A facsimile copy of a signature page shall be deemed to be an original signature page.

12.8. **Severability.**

In the event that any one or more provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, by any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement and the parties shall use their reasonable efforts to substitute a valid, legal and enforceable provision which, insofar as practical, implements the purposes and intents of this Agreement.

12.9. **Governing Law.**

This Agreement shall be governed by the laws of ________, without giving effect to its principles of conflicts of laws.

12.10. **Interpretation.**

When a reference is made in this Agreement to Sections or Exhibits, such reference shall be to a Section of or Exhibit to this Agreement unless otherwise indicated. The recitals hereto constitute an integral part of this Agreement. References to Sections include subsections, which are part of the related Section (e.g., a section numbered “Section 5.5.1” would be part of “Section 5.5” and references to “Section 5.5” would also refer to material contained in the subsection described as “Section 5.5.1”). The table of contents, index and headings contained in this Agreement are for
reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”. The phrases “the date of this Agreement”, “the date hereof” and terms of similar import, unless the context otherwise requires, shall be deemed to refer to the date set forth in the Recitals to this Agreement. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

12.11. Specific Performance.

The parties hereto agree that irreparable damage would occur in the event that the provisions contained in this Agreement were not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions thereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

IN WITNESS WHEREOF, Buyer and Seller have caused this Agreement to be executed under seal by their duly authorized officers as of the date first set forth above.

Buyer

Dated: August _____, 2016

By: ____________________________
   Name: ________________________
   Title: President
          and Chief Executive Officer

Seller

Dated: August _____, 2016

By: ____________________________
   Name: ________________________
   Title: President
          and Chief Executive Officer
Tab 9
Main Contact Information:

Name
E-mail Address
Name of Institution
Phone/Fax

Mailing Address:

Name
Address
City, State, Zip
Phone

Billing Address:

Name
Address
City, State, Zip
Phone

The Bank Directors’ Bible: Commandments for Community Bank Directors

Now in its third edition, this 221 page book represents a compilation of the noted “Ten Commandments” articles published by Gerrish Smith Tuck over the years. Topics include Commandments for Bank Directors, Commandments for Enhancing Shareholder Value, Commandments for Strategic Planning, Commandments for Dealing with Regulators and other topics.

Gerrish’s Glossary for Bank Directors

Now in its second edition, this is a 203-page dictionary of key words, acronyms and terms (and, in some cases, a slightly irreverent look at some of the terms) typically used by bank directors and executives. Examples of defined terms include: accrual, ALCO, dependency ratio, financial holding company, kiting, liquidity risk, OAEM, private placement and many others.

Price: $99.00 for first book
$49.00 for each additional
(plus applicable shipping and handling)
$295.00 for “searchable PDF” for Board portals

Gerrish’s Musings

Gerrish’s Musings is designed for CEOs and board members of community banks. Gerrish’s Musings reflects our firm’s insights and experiences as we travel weekly visiting with community bank clients from coast to coast. The newsletter is delivered by e-mail twice a month to subscribers.

This is a free publication.

The Chairman’s Forum Newsletter

The Chairman’s Forum Newsletter is designed specifically for Chairmen of the Board. The newsletter is the response to the overwhelming success of the Chairman’s Forum Conference hosted by Jeff Gerrish and Philip Smith twice yearly. The newsletter is published electronically each month governing topics unique to the changing role of the Chairman of the Board.

This is a free publication.

Thank you for your order.
We would be pleased to receive your check with your order form or we will invoice you.

Our Mailing Address:
Gerrish Smith Tuck
P.O. Box 242120
Memphis, TN 38124-2120

Please feel free to contact us at (901) 767-0900 if you require any further information or assistance. This form may be faxed to Gerrish Smith Tuck at (901) 684-2339, e-mailed to gst@gerrish.com or mailed to the mailing address listed on this form.
Key Issues for Community Bank Directors

Three DVDs for director training available through the ICBA Education Department.

*Written and produced by Philip Smith of the legal and consulting firm Gerrish Smith Tuck.*

**Tips for Strategic Planning (26 minutes)**

Strategic planning is as important now as it has ever been. As financial institutions return to a focus on core profitability, move away from a harsher regulatory environment, and begin to set a course for a new day, it is important that a well-directed strategic plan be implemented. This 26-minute DVD will provide you the top ten tips for putting an appropriate plan in place. In addition, Mr. Smith discusses the appropriate strategic planning techniques, the process to conduct strategic planning, and outlines key substantive areas that all boards and management should be considering in adopting and implementing an appropriate strategic plan.

**The New Merger and Acquisition Market (28 minutes)**

The previously dormant acquisition market is beginning to show signs of life. This 28-minute DVD outlines current merger and acquisition trends, the focus for community banks in the acquisition environment, the impact of your strategy on acquisition planning, the renewed focus on creating value and measuring your price, the differences in the current climate compared to past merger and acquisition cycles, common mistakes of buyers and sellers, branch opportunities, and other strategies.

**Compliance for Bank Directors (23 minutes)**

Compliance is no longer just an issue for the compliance officer. In the new era of regulatory, legal and consumer compliance, the board of directors as well as other management members must be equally involved. This 23-minute DVD outlines practical things the board should focus on from a compliance standpoint, emerging director level compliance issues, outlines the directors’ job, discusses the impact of Dodd-Frank, and also discusses penalties and remediation.

Contact the ICBA Education Department for ordering information
www.icba.org
Dear Subscriber:

Greetings from Florida, Wisconsin, Tennessee and Georgia!

DATA BREACH

As noted in prior Musings, a number of our clients were subject to a data breach in 2016 that was caused by one of our friendly federal regulators. On behalf of these clients, we took the regulator to task, the same as we would any other vendor. We, on behalf of one of the clients, recently received somewhat of a “mea culpa” letter from the D.C. office of the regulator. In this particular case, the regulator admitted they were the cause of the breach (i.e., one of their departed employees caused the breach), that they had taken steps to prevent it in the future, and that they had turned it over to the Inspector General for that particular agency. Their letter back to the bank reminded me of any other letter from a vendor who had been taken to task for a problem. Good vendor management on the bank’s part I suppose. I will keep you posted.

RENEWED INTEREST IN ESOPs

In the last quarter of 2016 and the first part of 2017, we have seen a renewed interest from our client base in forming an ESOP or a KSOP. As I am sure Musings readers know, an ESOP is an Employee Stock Ownership Plan, and a KSOP is an Employee Stock Ownership Plan connected to your existing 401(k) plan.

The motivation for many of our clients moving toward ESOPs and KSOPs is varying. Some simply want an employee benefit and for the employees to “think like owners.” Others are looking to use the ESOP or KSOP as a liquidity mechanism for existing shareholders desiring to...
sell. This works well because it simply transfers shares from the shareholders desiring to sell to the ESOP or KSOP Trust, which holds the shares for the benefit of the employees and results ultimately in employee ownership of the holding company. (In other words, you swap out a shareholder who wants to sell for an employee who wants to own.) Other of our community bank clients are utilizing ESOPs or KSOPs to generate capital for the organization. An ESOP or a KSOP can be leveraged the same way a holding company can be leveraged. The difference is when the holding company borrows money, the holding company receives a tax deduction for the interest expense on the loan, which helps to shelter the bank’s earnings (because the bank and holding company file a consolidated tax return). If the ESOP or KSOP takes out the loan and uses it to buy stock in the holding company thereby creating cash which can be contributed to the bank as capital, as a practical matter, both interest and principal are tax deductible as the loan is paid back since the repayment of the ESOP loan is made with compensation expense, which is 100% tax deductible.

I am a big proponent of ESOPs/KSOPs for a variety of reasons, some of which are set forth above. If anybody wants any further information, please let me know.

**CONFLICT OF INTEREST**

In our firm’s business, and in the community banking business, it is important to avoid conflicts of interest or even the appearance of impropriety. That is why every time I see a transaction announcement where the investment banker who went out and found the deal, brought it in to the Board, convinced them to do it, and then also said it was “fair” from a financial point of view, I see an inherent conflict. It does not seem to bother them much, but it does bother us. We perform financial advisory services for our clients, including rendering fairness opinions, providing valuations, and the like. Our general rule is, however, we will not provide these services for a transaction in which we are otherwise involved or being compensated because (drum roll) it creates a potential conflict of interest. Think about it. Particularly if you are selling your bank or buying another, don’t you think you need an outside independent third party to give you a true answer as to whether that transaction is fair or appropriately priced or not? Keep it in mind.
TIME FOR A TUNE-UP

As many of you know, every couple weeks I produce a blog for Banking Exchange. The next blog is about the need for community banks to have a “tune-up.” You can read the blog here. The general theory is that the first of the year is a good time to go back and look at things that none of us ever look at, like our bank and holding company corporate governing documents, bank Loan Policy, other bank procedures, and the like. It is also not a bad idea to have an independent third party assist in that review. I will not replay the blog here, but take a look at it because I think it may provide you with some good ideas as a way to start the year off.

CONFIDENTIALITY

The issue of confidentiality in our boardrooms is still raising its ugly head. I have addressed this previously in Musings, but based on the emails I have received over the last month or so, it appears to be a continuing problem. Keep in mind, as directors and officers of our community banks we have three major duties: the duty of care, the duty of loyalty to the institution (avoiding conflicts of interest), and the duty of confidentiality. What happens in the boardroom stays in the boardroom. The last thing you want to do is have somebody who is a director or officer running their mouth in the community about confidential information from your boardroom, whether it is a loan issue, an acquisition issue, or anything else. It cannot do anything but sully the reputation of the bank. If you have not discussed directors’ and offices’ duties at your board level recently, then again, the first of the year is a good time to have those kind of fundamental discussions.

ATTRACTING AND RETAINING KEY PERSONNEL

I had a healthy discussion with a community bank board recently about the tools they needed to attract and retain key personnel. They were looking for some type of equity “tool” to attract someone into a new slot created at the bank, as well as to keep the existing personnel. We of course discussed ESOPs and KSOPs as noted above. There are also some other alternatives most banks can use. These include stock options, restricted stock, phantom stock, or stock appreciation rights. Each of these is a little bit different. As most of you know, if you give your employee a stock option, they actually have to come up with the money to exercise it. If you give them restricted stock, then it is basically a stock grant with the ability to put whatever kinds of restrictions on it that you want. The employee does not own the stock until the restrictions come off. If your community bank holding company is closely-held, then the owners probably
do not want to give anybody stock for anything. That is where phantom stock comes in, which is not really stock at all, but simply the right to receive cash based on the value of the stock. Stock appreciation rights are similar. With stock appreciation rights, the employee receives the right to receive cash based on the appreciation of the stock over a period of time. If anybody wants any further information on any of these incentives, please let me know.

THE “IMPOSSIBLE” NEGOTIATION

Over the past couple of months we have been assisting one of our community bank clients in the potential acquisition of what I would describe as a very troubled community bank. This bank is losing money at a pretty rapid pace and does not have any real capital cushion to absorb the losses. In short, this bank is not long for the world. It is a unique situation because, for a slew of reasons, this bank is partially owned by a government agency. In fact, the agency has a controlling interest in the bank, meaning it is calling the shots as it relates to the future of the organization.

Our client recently made a very fair offer to purchase the bank. There are lots of different issues at play here, and the offer addressed those issues in what we saw as an appropriate manner. Along with our client, we evaluated all of the risks associated with the transaction and worked our best to distribute those risks in a way that makes sense for both parties.

To put it plainly, the government agency that is the control shareholder was not interested in any type of risk allocation. The agency essentially said that if our client wanted to buy the bank, it was going to have to come up with a pretty hefty purchase price. The government agency also required that our client pay the selling bank’s professional fees and data processor contract termination fee, which were well into the millions of dollars. The government agency also said that there was zero chance it would be willing to provide any type of indemnification for any future losses associated with potential litigation. No surprise, the agency also created a real sense of urgency and said it had to know in 24 hours whether our client would accept the deal or whether it needed to move on to “Plan B.”

Our client was smart and avoided falling into the trap of a bad deal. It was very frustrating for our client because it was looking to negotiate an equitable transaction. This particular government agency was not. Unless this agency can find someone that is willing to overpay for this bank, my guess is that the bank will end up failing, leaving the government agency with nothing. Our deal would have at least provided them something. It is very
frustrating when you are trying to negotiate with a party that simply has no interest in negotiating.

**SUBCHAPTER S IN 2017**

Since Donald Trump’s election as President, we have been asked a number of different times whether a Subchapter S election makes sense in 2017. Many people asking this question are under the impression that Donald Trump’s plan to significantly reduce corporate income tax rates somehow means that the Subchapter S tax structure is no longer attractive. We have taken a look at the issue very closely and, for a couple reasons, believe Subchapter S will continue to make sense in 2017. First, it is widely expected that if there is a significant reduction in the corporate tax rate, there will be a corresponding change to the Tax Code that essentially places a ceiling on the tax rate of pass-through income (i.e., Subchapter S income) at a rate that is equal to the highest corporate tax rate. In other words, corporate income will be taxed at the same highest rate regardless of whether it is taxed at the corporate level or the individual shareholder level. Second, even if the tax ceiling on pass-through income is not imposed, corporate income tax rates have to get very low and individual income tax rates have to get very high in order for a C corporation to be more tax advantageous than an S corporation.

We have created a chart that determines whether a C corporation or S corporation is more advantageous under a number of different corporate and individual effective income tax rates. Please feel free to email us if you would like a copy.

**D&O “TAIL COVERAGE” EXPENSE**

When one community bank buys another community bank, the acquirer typically provides indemnification to the target company’s directors and executive officers. This indemnification essentially provides protection to the target’s directors and executive officers in the event they are ever sued for any act or omission as a director or officer of the target bank. In order to minimize the acquirer’s liability for this indemnification requirement, every transaction requires the target’s directors’ and officers’ liability policy to have an extended reporting or “tail coverage” period. This is essentially an extension of the target’s existing directors’ and officers’ policy providing a continuation of coverage for the target’s existing D&O policy for some period of time past the closing of the transaction. One of the issues that always comes up in an M&A transaction is who pays for the extended D&O policy. The answer is that there is no correct answer. It is a matter of
negotiation. In some instances, the target pays for their own tail coverage policy. In other instances, the acquirer picks up the bill. My experience has been the party that brings it to the table first and requires the other to make the payment is usually the “winner” in the negotiation. If you are thinking about a M&A transaction, be sure you understand this issue, because you may be able to save yourself some money.

**FORECLOSURE OF “CONTROL” SECURITIES**

We recently assisted a bank in what is a fairly common but pretty technical securities transaction. In this instance, our client made a loan to an individual that is the president of a rather large corporation. This individual was also a larger shareholder of this corporation, and the loan was secured by a number of shares of the corporation’s common stock. We became involved when the loan went bad and our client determined they were ready to foreclose on the stock and sell it to apply the sale proceeds to the loan balance. This all seems simple enough. This is actually a fairly complex transaction because the shares owned by the borrower are technically “control” securities in accordance with federal securities law. The sale of any control securities into the market must meet some pretty technical requirements. If the sale does not meet these requirements, the owner of the shares could be found to be in violation of the securities laws, and the purchaser could receive “restricted” securities, which further limits the purchaser’s ability to sell the shares. Obviously this is an outcome that all of the involved parties wanted to avoid.

If you are ever in a situation where you are foreclosing on stock as collateral and the owner of the stock is an executive officer, director, large shareholder, or other affiliate of the corporation that issued the stock, be sure you appropriately navigate all of the securities issues. In this situation, it is very easy to trip up and create a problem.

**CONCLUSION**

We hope everybody had a great start to the New Year and is up and running at full speed. We certainly are. Think about the “tune up” for your bank noted above and let us know if we can assist. See you in two weeks.

*Jeff Gerrish* and *Greyson Tuck*
Happy New Year! As we start a new calendar year, for many of us it is a time of cleaning out and checking in. We often go through the ritual of cleaning out files, cleaning out our desks or cleaning out our lives. Similarly, we start checking in on where things stand perhaps with last year’s resolutions, where we are financially, how close we may be to retirement, and similar factors. Likewise, we often do this in our businesses and it is really an appropriate time for Chairmen to take a full assessment of their Board of Directors, their organization as a whole, and to look to the future on what can be done differently or what things loom on the horizon to improve the organization in 2017.

In this year’s first edition of The Chairman’s Forum Newsletter, we take a look at some of those types of things that would help you tune up your bank, check in on its status and keep things running smoothly. We also look at a few situations we have encountered that may be important for you as Chairmen as we head into the new year. We hope you enjoy this edition and let us know what questions or comments you have or any ways that we can help.

Happy Reading!

Philip K. Smith
and
Jeffrey C. Gerrish

Gerrish Smith Tuck
700 Colonial Road, Suite 200
Memphis, TN 38117
Phone (901) 767-8900
www.gerrish.com
Chairman’s Summary

♦ Set a course for strategic planning.
♦ Refresh your basic corporate documents.
♦ Consider an organizational study and/or corporate governance evaluation.
♦ ESOP trustees beware.

Getting Your Arms Around the Big Picture

As we head into a new year, as Chairmen you should have the big picture of your organization in mind, knowing what your strategic direction is for the year, understanding the priorities and longer term objectives you hope to achieve, knowing the goals that have been set for the management team to measure your community bank’s and holding company’s success throughout the year, and other typical strategic initiatives. If you failed to conduct a strategic planning session in the second half of 2016, the start of the year might be an appropriate time to get your arms back around the big picture. For example, as Chairmen, do you think your organization should be looking at M&A transactions in 2017, are you looking for further expansion of lines of business or contraction, do you need to focus on creating liquidity for aging shareholders who want cash? All of those are the
types of big picture strategic questions that can greatly impact your organization throughout the year, and it is better to have a plan to meet them rather than handling them on an ad hoc basis.

For strategic planning purposes, our firm, of course, does scores of formal strategic planning sessions each year for banks of all sizes all across the country. However, you do not necessarily have to have a guy in a suit ride in from out of town to help you facilitate your planning session every year. Some of our clients, for example, might have us facilitate a formal planning session every other year, but, in the in-between years, the bank takes an informal approach to simply getting the Board and senior management together one afternoon in the boardroom to review what has been done in the past, talk about the vision and goals for the coming year, and to make sure everyone is merely on the same page. The important thing as Chairman is not to necessarily get everyone offsite for two days each year, but to ensure that your Board and management team are all pulling in the same direction. An outside facilitator like our firm can certainly help in that regard, but a more informal approach can be beneficial for organizations as well. We encourage you as Chairmen to require your Board and management team to discuss those types of issues each year at least informally.

**Corporate Document Basics**

One of the banking “tune-up” items we typically recommend on a periodic basis is to review your corporate organizational documents. This
typically means the Articles of Incorporation/Charter, as well as the Bylaws of both the bank and your holding company. We often find that an organization will decide to move forward with a new transaction, but has not considered whether their corporate documents, which probably have not been reviewed in a while, might not even permit the type of activity they are considering. For example, a bank decides to finally raise some additional capital to take advantage of growth opportunities in the market and to ensure that capital levels remain appropriate given its anticipated asset growth. However, it may get a long way down the road toward the process of selling new shares and then realize that the company has preemptive rights which prohibit the issuance of new shares unless all other shareholders are provided the opportunity to acquire a pro rata portion.

So the idea is to constantly fine-tune and update your corporate documents to ensure that they meet your needs for the coming year in terms of their technical and practical application. This may even include things like the ability of the Board to remove a director, the ability of stockholders to call a special meeting of stockholders, or some other corporate governance procedure. Many times we find that unless a bank and holding company have gone through a check-up and review of their core organizational documents, the institution may not be able to pursue the types of transactions that it desires.

**Organizational Assessments**

One of the somewhat new and “trendy” undertakings by many banks that seemed to start last year was what we would describe as “organizational
studies.” By this, we mean that organizations may have undertaken a board governance and structure study to look at committee structures, size of the board, board succession techniques, board evaluation processes, or something similar. Additionally, we saw those types of governance and board studies expand to include areas such as an interest rate risk analysis of the organization, a lending function top to bottom review, or something else similar in the nature of a “check-up.” As Chairman of the Board, you probably do not want the bank spending a ton of resources to do an entire organizational review of every aspect of the company, because if things were that bad, you would not be a healthy bank to start with. But an occasional review of various components within the organization such as board structure, the lending function, or something similar may be appropriate. Keep in mind how you might improve any weak links in your chain through those types of reviews and analysis.

**Renewed Focus on ESOPs**

An issue that we initially highlighted last year was the Department of Labor’s increasing focus on the Trustees of Employee Stock Ownership Plans (ESOPs) which are normally board members, and the interrelation of the fiduciary duty as a Trustee of the ESOP, with typical board service. In particular, in the heightened M&A environment we are experiencing, there seems to be a renewed focus on whether the ESOP Trustees have received separate independent advice as it relates to the fairness of transactions to the ESOP. As a result, when our firm is representing a seller, for example, we will seek out a third party to provide the fairness opinion to the ESOP Trustees. On transactions where we are not otherwise involved, our firm
often is the party that would render this third party fairness opinion related to the ESOP. The notion is that the board members who serve in those dual capacities need to wear separate hats and need to truly advocate on behalf of the ESOP holders to ensure fairness in transactions and otherwise. The Department of Labor seems to be stepping up its focus on that level of independence. Therefore, as Chairmen, it would certainly be a wise move to take extra caution in how the ESOP governs itself, and to seek outside assistance from parties not otherwise tied to a transaction anytime necessary to prevent further problems.

**Exploit Corporate Formalities: Use Corporate Formalities to Your Benefit**

Sometimes as Chairmen you may need to exploit your corporate formalities to your benefit. Consider a situation we recently encountered where the bank desired to remove some problem directors at the bank level, but wasn’t sure how to do that. However, the Chairman of the Board, whose family owned the majority of the stock of the holding company, agreed that the directors needed to be removed. As a result, we talked through the fact that once the holding company Board of Directors is selected by the shareholders (even if these problem directors are voted onto the holding company board), a simple majority vote of the Board of Directors of the holding company to elect the directors of the bank would be sufficient and the other directors could simply use their majority control of the Board to not re-elect the troublesome directors to the bank board. Likewise, the
Chairman and his family could exercise voting power to not even elect the problem directors to the holding company. So, majority rules still apply in most cases and sometimes you need to exploit that corporate formality to streamline your Board and organization.

**Meeting Adjourned**

So, we are off and running with tidbits of information, cautions, warning signs, and hopefully, some sound strategic advice to help you and your organizations in 2017. We welcome your calls, questions or comments at any time, and we will look forward to seeing many of you throughout the year. We look forward to helping you.

Until next time,

Philip K. Smith and Jeffrey C. Gerrish
GERRISH SMITH TUCK NEWSLETTER

PLEASE SEND YOUR EMAIL ADDRESS TO:
sloudermilk@gerrish.com

If you would like to be added to our database of clients and friends who receive this publication free of charge, please contact us or leave your business card with the speaker.
Dear Newsletter Subscriber,

As many of you may already be aware, beginning January 1, 2017, the names of our firms were changed to Gerrish Smith Tuck, PC, Attorneys and Gerrish Smith Tuck LLC, Consultants. This name change was the result of a couple of changes within our firms.

First, our long-time partner, Frank McCreary, who has been with our firms since their inception, has retired. We are grateful for the presence he has been in our firms, as well as his service to our firms’ clients and the industry as a whole.

In addition to Frank’s retirement, the name change to Gerrish Smith Tuck, PC, Attorneys and Gerrish Smith Tuck LLC, Consultants reflects Greyson Tuck’s contributions to our clients and the community banking industry as a whole. We are excited to be a part of this milestone with Greyson, and we invite you to congratulate him.

Regardless of what changes occur, our legal and consulting firms will continue to operate in the manner in which they have operated in the past—always putting the client’s needs first. We very much appreciate the relationship we have with each of you, and we look forward to continuing to provide you the best legal and consulting services in the industry.

If there are any matters with which we can be of assistance to you or your financial institution, please let us know. We remain always happy to help!

Sincerely,

Gerrish Smith Tuck
Attorneys and Consultants
With the new executive administration in place, it seems almost every industry and market segment is waiting to see the true, full impact of a Trump presidency. Community bankers in particular are waiting in hopeful anticipation. Interest rates are expected to continue to rise, but overall economic growth is still below the Federal Reserve’s mark. Taxes are also expected to move in a favorable direction, but where they will actually land has yet to be determined.

One particularly relevant perspective is the impact of the new administration’s policies on community bank mergers and acquisitions. Industry consolidation has continued aggressively over the past few years. Even though momentum—both in number of deals and pricing—slowed down somewhat in 2016, we now have fewer than 6,000 financial institutions in the nation. The new administration will undoubtedly impact merger and acquisition activity for community banks, but the reality is the knife will cut both ways. To fully assess the impact, it is necessary to view the matter from both a sell-side perspective and a buy-side perspective.

Less Incentive to Sell

As it relates to a seller's perspective, the short-term impact of the new administration is already being felt. There are many deals “in contemplation” across the nation that are already experiencing a slowdown. At minimum, the strategy has been to push more formal discussions further into 2017. Most industry experts expect the new administration to lower corporate tax rates, possibly landing somewhere in the 20% to 25% range. Also, recent executive orders have already signaled that regulatory overhaul could take place. With most industry players hoping for more favorable tax treatment and an eased regulatory environment, deals in contemplation are slowing to a stroll.

For those community banks contemplating a sale (but not yet involved in a transaction or discussions), our firm has seen a halt to essentially all forward movement. The reason for this is most sellers are adopting a “wait-and-see” approach as to what the Trump administration will ultimately do as it relates to community banks. One of our firm’s clients in particular put the matter succinctly—“If Hillary Clinton had won the election, our bank would have begun marketing itself for sale in 2017. With Trump in the White House, however, we are going to wait and see what happens.”

This phenomenon is fairly easy to understand considering the traditional underlying causes of community bank mergers—namely, lack of management succession, lack of board succession, lack of share liquidity, lack of adequate cash flow off the shares (i.e., dividends), and lack of economic growth in the bank’s market. In addition, the enormous regulatory burden placed on community banks since the middle of the Great Recession has created a strong impetus for community banks to sell over the past nearly 10 years.

(cont’d on pg. 3)
If tax rates actually decrease in a significant way, the decreased tax liability would have a direct and positive impact on overall bank profitability. Local economies would also likely benefit from tax cuts, largely in the form of increased small business activity. As the lender preference for the majority of small businesses, community banks stand to benefit the most from such increased activity. Similarly, if the regulatory burden decreases, community banks are some of the largest beneficiaries. The influx of post-Recession regulation has had a disproportionate impact on smaller banks in the nation, so regulatory relief is expected to have a similarly disproportionate impact. These two elements combined could mean a significant boost in community bank operations and profitability, which could allow community banks to sustain independence a little longer while taking time to address some of the bank’s internal issues, such as finding succession options for existing management and directors. Increased profitability could also flow through to the shareholders in the form of increased dividends. In other words, the “traditional” reasons for sale could be mitigated, at least in part, as a result of the new administration’s policies. Thus, it makes perfect sense why, for the short-term, sell-side community bank deals are slowing down.

Again, assuming the Trump administration enacts the policies it promoted on the campaign trail, such as a reduction in regulatory burden, job growth, economic growth, and the like, it makes sense that the trend of community bank mergers and acquisitions would slow down. Keep in mind, for every bank whose long-term strategy is to buy, there must be a bank whose strategy is to sell. If, indeed, “happy days are here again,” then it seems there will be a significantly smaller number of banks whose long-term strategy is to sell.

**More Capacity to Buy**

From a buy-side perspective, our firm is also noticing some delayed activity, but it is much more of a situation that institutions are much less willing to buy into “uncertainty.” With so many potential changes on the table, many buyers are also adopting a “wait-and-see” attitude that will result in a short-term slowdown in community bank mergers and acquisitions.

In large part, however, the counter-point to the sell-side slowdown is that larger banks’ stocks have improved with the post-Trump election bump, which means they have more valuable currency to utilize in acquisitions. Translation: larger banks can pay a higher price for the smaller banks because their currency of choice is worth more. Considering that larger, often regional, organizations are the primary purchasers of smaller community banks, it is expected that many larger banks may actually pursue smaller institutions more aggressively in the short term to take advantage of bank stock optimism.

In that case, an interesting phenomenon comes into play—no matter what a community bank’s strategy is, the community bank’s board of directors has to do what is right for the shareholders. If a larger bank presents an offer to acquire the bank for a good price with a stable, marketable stock as currency, the board may have a fiduciary obligation to sell, or at minimum to begin shopping the bank. Our firm refers to this situation as the “Godfather offer”—the one that the Board cannot refuse. If such an offer is put on the table, then the community bank is going to either take it, negotiate it, or at the very least, put the bank in play.

Therein is the double-edge sword of the Trump presidency as it relates to community bank mergers and acquisitions.

(continues on pg. 4)
acquisitions. The same factors that make long-term community bank independence more viable also give larger banks more opportunity and improved currency to acquire community banks. What, then, is the appropriate response for community bank boards of directors? In short, discuss and identify your bank’s independence strategy in light of current factors (currency values, economy, profitability and growth outlook, etc.) and stick to it.

If your strategy is to remain an independent community bank for the long-term, then plan for independence by 1) adopting and implementing a realistic business plan for the coming years, and 2) adopting an unsolicited offer policy setting forth protocol (factors—both financial and non-financial—for the board to consider when analyzing the offer’s viability, threshold amounts or metrics below which the board will refuse the offer outright, etc.) in the event one of those larger regional banks comes knocking. This latter component is particularly helpful because it forces the board to think through its expectations for unsolicited offers before one is even put in play.

If your bank’s strategy is to buy another bank or sell to another bank, then identify an appropriate time frame and begin making preparations. This may mean hiring a consultant to begin the process of marketing the bank for sale. It may mean having that consultant run pro forma financials on prospective business combinations with various targets in your bank’s market. Regardless of whether you are considering buying or selling, get the right professionals involved sooner rather than later. It will allow the bank to act more quickly when an opportunity arises.

Whatever your bank’s role in the current mergers and acquisitions environment, the Trump administration will certainly create an interesting dynamic as it relates to industry consolidation. Make sure your board adopts the right strategy for your bank and your shareholders. If our firm can be of any assistance, please let us know.

Gerrish Smith Tuck
Director Training Materials

Philip Smith of our firm has written and produced a three-DVD series for director training that is available through the Independent Community Bankers of America (ICBA) Community Banker University:

Key Issues for Community Bank Directors
- Tips for Strategic Planning (26 minutes)
- The New Merger and Acquisition Market (28 minutes)
- Compliance for Bank Directors (23 minutes)

The DVD series is available for ordering on the ICBA's webpage at www.icba.org/education (click the “Director” link in the righthand column, then click “Resources” near the top of the page), or go to www.gerrish.com/pubs.php.

The Community Bank Holding Company Stock Repurchase Program

Despite all of the merger and acquisition activity occurring in the industry, for many community bank holding companies seeking to maintain long-term independence, there are very few, if any, acquisitions available that will improve earnings per share and return on equity more than the simple alternative of repurchasing the institution’s own stock. In fact, many institutions are currently realizing that such repurchases are the most efficient deployment of excess capital or leveraging ability. This is particularly true for community bank holding companies where such repurchases can generally be accomplished at reasonable prices.

(cont’d on pg. 5)
Why do community bank holding companies undertake stock repurchase plans?

A holding company’s motivation to undertake a voluntary stock repurchase program is often unique to that organization’s specific needs. However, there are a few overarching motivations worth identifying.

First, community bank holding companies normally will undertake stock repurchase plans when stockholders need or desire share liquidity—that is, the ability to convert shares to cash. This could be due to the stockholder base aging, shift in generational needs/expectations, stockholders leaving the community, or any number of reasons. Regardless, stockholders’ need for cash now will often result in a company repurchasing its own shares when the community bank holding company has no other market liquidity.

A second motivation for stock repurchase programs is if a company believes its shares are otherwise undervalued. By initiating a stock repurchase program, it is able to provide a price support for the stock.

Third, a community bank holding company might also repurchase shares in an effort to consolidate ownership for purposes of electing Subchapter S status or otherwise consolidating the stockholder base.

What are the benefits of a stock repurchase?

A properly priced stock repurchase program has multiple benefits to an organization. Stockholders who desire to sell receive cash and, thus, instant liquidity for their shares, while the stockholders who do not sell become aware that the holding company has the ability to create a market and achieve “psychological” liquidity for their shares. The remaining stockholders also typically receive enhanced earnings per share and return on equity, as well as an increased ownership percentage in the company. Also worth mentioning is if the company continues to pay cash dividends in the same “gross” amount to the smaller stockholder base, the remaining stockholders will receive an increase in cash flow in the form of dividends. Significantly, all of these benefits to remaining stockholders require no action or financial outlay on their part. Overall, the transaction normally allows the company to consolidate ownership further, deploy excess capital effectively, improve stock performance metrics, and make the stockholders who sell happy, all while benefitting stockholders who choose not to participate in the repurchase program.

Are there any risks to stock repurchase plans?

The biggest challenge is not knowing how many stockholders will participate. A company might spend time, effort, and money to set up and initiate the program and then have no stockholders participate. Some Boards also struggle with setting the repurchase price per share. For a voluntary repurchase plan, our firm usually does not recommend that private companies get a valuation to set the price. Rather, our firm will typically conduct a financial analysis to determine the breakeven point at which the price paid for all shares to be repurchased results in a neutral earnings per share position based on any funding required for the repurchases, debt servicing

(cont’d on pg 6)
requirements, and similar factors. Then, the Board of Directors can set the price within its fiduciary duty at any point less than the breakeven point.

**What were the key components of such a plan?**

Because voluntary stock repurchase plans do not obligate stockholders to sell their shares, the Board can largely dictate terms and components of the specific program. With that said, there are a number of key elements every Board should consider, including:

1. The total amount of funds to be allocated to repurchase shares.
2. The price per share to be offered.
3. How long the stock repurchase program should stay open. (The SEC’s “anti-fraud” rules require a stock repurchase program to be open a minimum of twenty (20) business days, but most community banks will set some time frame such as sixty (60) or ninety (90) days—long enough to allow stockholders to consider the transaction, but short enough to create some impetus.)
4. How shares will be repurchased. For example, whether repurchases are made on a first come-first served basis until funds are depleted, whether they are prioritized from smallest number of shares tendered to largest number of shares tendered until funds are depleted, or some other prioritization.

Again, for privately held community bank holding companies whose stock is not registered with the SEC, the Board has wide discretion in setting the terms of the program. The directors’ fiduciary duties require the Board to operate with a certain level of prudence when it comes to setting the price per share, for example, but overall the Board has control of the program.

**What steps are involved in the repurchase process?**

If your Board is considering implementing a stock repurchase program, the first step is identifying the ultimate purpose for the repurchase plan, such as providing liquidity, deploying excess capital, or improving per share earnings performance. These factors will inform not only the size (i.e., dollar amount) of the offering, but also some of the underlying terms and priorities.

Next, our firm often conducts a detailed financial analysis to analyze the financial implications of repurchasing a given number of shares at a range of prices with various means of funding in order to determine the appropriate financial structure.

Then, once the Board has considered the available alternatives, the Board should approve by Board Resolution the proposed terms and conditions of the stock repurchase program. At that point, all legal, corporate, securities, and regulatory work should be undertaken to ensure compliance with applicable securities laws, filing of any requisite regulatory applications or approval requests, and adherence to any corporate formalities contained in the organization’s Articles and Bylaws.

Once all of the t’s are crossed and i’s dotted, detailed stock repurchase materials providing relevant financial information should be prepared and distributed to potential shareholders.
and operational data on the organization will be prepared and distributed to stockholders to allow them to make an informed investment decision on whether to sell their shares. Upon expiration of the repurchase program, stockholders are notified if their shares are to be acquired, and, if so, appropriate documentation is provided to them to submit their stock certificates along with verification of ownership in order to receive their cash payment from the organization.

In short, repurchasing its own stock is one of the most efficient and beneficial uses of capital currently available for community bank holding companies with a desire to remain independent. If your Board has any interest in considering a stock repurchase program for your organization, please let us know.

Several members of Gerrish Smith Tuck, Consultants and Attorneys, facilitate strategic planning sessions for community banks all over the nation. Now is the perfect time to schedule your board’s 2017 planning session. If you would like Gerrish Smith Tuck to facilitate your next strategic planning retreat, please call (901) 767-0900 or email Jeff Gerrish at jgerrish@gerrish.com, Philip Smith at psmith@gerrish.com, Greyson Tuck at gtuck@gerrish.com, or Doc Bodine at dbodine@gerrish.com to secure a date.
Gerrish Smith Tuck has created numerous Memos to Clients and Friends on various topics (available free of charge). Set forth below are sample Memos to Clients and Friends:

**Acquisitions**
- Responding to Unsolicited Offers
- Restrictions on Stock Received in a Merger or Acquisition Transaction

**Employee Benefit Issues**
- Incentive Compensation Plans
- Requirements of Employee Stock Purchase Plans
- Key Employment Contract Provisions Utilized by Community Banks

**Raising and Allocating Capital**
- Raising Capital Without Registering with the SEC
- Stock Repurchase Plans

**Regulatory**
- Qualified Mortgage Rule
- Civil Money Penalty Process
- Basel III’s Capital Conservation Buffer

**Subchapter S**
- Maintaining a Subchapter S Election
- Use of S Corporations by Financial Institutions

**Miscellaneous**
- Loan Production Offices
- Efficient Conduct of Board Meetings
- Enterprise Risk Management
- Tax Allocation Agreements
- Institutions with Over $500 Million in Total Assets

Gerrish Smith Tuck, in connection with various speaking engagements around the country, has created high quality “handout” booklets. The publications below are available for a nominal charge:

- A Director’s Guidebook to Effective Board Compliance
- A Fresh Start: Shareholder Value for a New Environment
- A Positive Look at Community Banking
- Corporate Governance
- Directors’ Responsibilities in Mergers & Acquisitions: Responding to the Unsolicited Offer
- Evaluating Bank Options: Remaining Independent or Preparing to Merge
- Family-Owned or Closely-Held Bank Issues
- How to Flourish in a Dodd-Frank World
- Is a Holding Company in Your Bank’s Future?
- Mergers & Acquisitions Are Back: Don’t Miss Your Opportunity
- New Truths About Directors, Shareholders and Regulators (Including Compliance)
- The Community Bank Survival Guide: How to Survive and Thrive
- The Pros and Cons of Converting to Subchapter S
- Strategic Planning: Don’t Make Me Do It!
- Understanding the Director’s Role

If you are interested in any of these memos or publications, please call or email Shelley Loudermilk at (901) 684-2306 or sloudermilk@gerrish.com.

Please visit our website at: www.gerrish.com
Gerrish Smith Tuck, LLC, Consultants and Gerrish Smith Tuck, PC, Attorneys are committed to the delivery of the highest quality, timely and most effective consulting and legal services exclusively to community financial institutions in the following areas:

**AREAS OF SERVICE**

**Financial Advisory/Consulting Services**
- Acquisition Financial Analysis
- Fairness Opinions
- Transaction Pricing Analysis
- Capital Planning
- Subchapter S Financial Modeling
- Directors’ Liability
- Mergers and Acquisitions
- Executive Compensation
- Acquisition Pricing
- Employee Benefits
- Bank/Stock Valuation Analysis
- Estate Planning
- Strategic Planning
- New Bank Formations
- Tax Planning
- Going Private
- Subchapter S Corporations
- Expert Witness

**Legal Services**
- Mergers and Acquisitions
- ESOPs
- Dealing with the Regulators
- Securities Offerings
- Going Private
- Director and Officer Liability
- Private Securities Placements
- Fair Lending
- Subchapter S Formations
- Executive Compensation
- Holding Company Formations
- Federal and State Taxation
- New Bank Formations
- General Corporate & Securities
- Regulatory Enforcement Actions
- Probate
- Employee Benefits
- Estate Planning for Executives

**CUSTOM DIRECTOR PROGRAMS & PRESENTATIONS**

In addition to facilitating numerous strategic planning retreats and proprietary director and officer training sessions, Gerrish Smith Tuck also has recently provided speakers for the following trade associations on a wide variety of topics:

- Alabama Bankers Association
- American Bankers Association
- Arkansas Community Bankers
- Bank Holding Company Association
- California Independent Bankers
- Community Bankers Association of Georgia
- Community Bankers Association of Illinois
- Community Bankers of Iowa
- Community Bankers of West Virginia
- Independent Bankers of Colorado
- Independent Community Bankers of America
- Independent Community Banks of North Dakota
- Independent Community Banks of South Dakota
- Indiana Bankers Association
- Iowa Independent Bankers
- Michigan Association of Community Bankers
- Montana Independent Bankers
- Nebraska Independent Community Bankers
- North Carolina Bankers Association
- Pennsylvania Association of Community Bankers
- Pennsylvania Bankers Association
- South Carolina Bankers Directors College
- Tennessee Bankers Association
- Virginia Association of Community Banks
- Washington Bankers Association
- Western Independent Bankers

Please email us or visit our website at www.gerrish.com for a complete listing of upcoming conferences and seminars at which we will be providing speakers. Gerrish Smith Tuck, Consultants and Attorneys, is also available to facilitate strategic planning retreats and proprietary director training designed for your Board of Directors.
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To discuss your institution’s strategic transaction opportunities, please contact Jeff Gerrish at jgerrish@gerrish.com, Philip Smith at psmith@gerrish.com, or Greyson Tuck at gtuck@gerrish.com.
### Recent Transactions

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Gerrish McCreary Smith, Attorneys, served as financial and legal advisors to the acquiring banks in the above transactions. Please contact Jeff Gerrish at jgerrish@gerrish.com, Philip Smith at psmith@gerrish.com, or Greyson Tuck at gtuck@gerrish.com for more information.

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**Note:** This document is a part of the Gerrish Smith Tuck publication, which focuses on recent bank transactions and strategic opportunities. For more details, please refer to the full publication or contact the provided contacts.
Recent Transactions

**TS Contrarian Bancshares, Inc.**  
Bank Holding Company for  
**TS Bank**  
Treynor, Iowa  
*has acquired*

**Gerrish McCreary Smith, Consultants and Attorneys, served as financial and legal advisors to Tioga Bank Holding Company and The Bank of Tioga.*

**Security Financial Services Corporation**  
Bank Holding Company for  
**sfb**  
Durand, Wisconsin  
*has acquired*

**Bloomer Bancshares, Inc.**  
Bank Holding Company for  
**Peoples State Bank of Bloomer**  
Bloomer, Wisconsin  
*Gerrish McCreary Smith, Consultants and Attorneys, served as financial and legal advisors to Bloomer Bancshares, Inc. and Peoples State Bank of Bloomer.*

**Sargent Bankshares, Inc.**  
Bank Holding Company for  
**Sargent County Bank**  
Forman, North Dakota  
*has acquired*

**FNB Bankshares, Inc.**  
Bank Holding Company for  
**First National Bank of Milnor and Lisbon**  
Milnor, North Dakota  
*Gerrish McCreary Smith, Consultants and Attorneys, served as financial and legal advisors to FNB Bankshares, Inc. and First National Bank of Milnor.*

*To discuss your institution’s strategic transaction opportunities, please contact Jeff Gerrish at jgerrish@gerrish.com, Philip Smith at psmith@gerrish.com, or Greyson Tuck at gtuck@gerrish.com.*
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