IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,	:	
	:	**Case No. 08-12229 (MFW)**
Debtors.	:	
	:	**(Jointly Administered)**

OBJECTION TO CONFIRMATION FILED BY CLASS PLAINTIFFS
ON BEHALF OF THE LTW HOLDERS

Broadbill Investment Corp., Nantahala Capital Partners, L.P. and Blackwell Partners, LLC, on behalf of themselves and all holders of LTWs (as herein defined) (collectively, the "**Claimants**" or the "**LTW Holders**"), by their undersigned counsel, for their objection to the Debtors' proposed Sixth Amended Plan of Reorganization, dated October 6, 2010 (as amended, the "**Proposed Plan**"), respectfully represent:

FACTUAL BACKGROUND - BASIS OF LTW CLAIMS

1. The Claimants hold litigation tracking warrants ("**LTWs**") originally issued by Dime Bancorp, Inc. ("**Dime**") which entitle the Claimants to receive 85% of the net recovery from the Anchor Litigation[1]. The Anchor Litigation has not been fully resolved but, at a minimum, a judgment has been entered in 2008 in favor of the plaintiff for approximately $356 million. The Claimants believe that the Anchor Litigation judgment will ultimately exceed $500 million.

2. The Proposed Plan puts the LTWs in Class XXI and provides that they are equity securities of WMI, which are not entitled to a distribution under the Proposed Plan.

[1] Terms used herein and not otherwise defined shall have the meanings ascribed to them in the Debtors Disclosure Statement, dated October 6, 2010 (as amended, the "**Disclosure Statement**").

3. The Claimants disagree with the Debtors' assertion. As set forth in the pleadings filed by the Claimants in the declaratory judgment action before this Court entitled *Broadbill Investment Corp., et al. v. Washington Mutual, Inc.*, Adv. No. 10-50911 (MWF) (the "**Action**"), the LTW Holders hold non-subordinated claims against Washington Mutual, Inc. ("WMI"). Among other things:

(a) By transferring the Anchor Litigation to JPMC without requiring JPMC to assume the obligations of WMI under the WMI Agreement (as herein defined), WMI has breached its contractual obligations to the LTW Holders.

(b) By transferring the Anchor Litigation to JPMC under the Global Settlement pursuant to the Proposed Plan free and clear of the LTW liens, claims and interests, WMI has breached its contractual obligations to the LTW Holders.

(c) By submitting the Proposed Plan which provides for the cancellation of the LTWs for no compensation or consideration, WMI has breached its contractual obligations to the LTW Holders.

(d) As further explained *infra*, by not paying LTW Holders cash as required by Sections 4.2(b) and (c) of the WMI Agreement, WMI has breached its contractual obligations to the LTW Holders.

(e) As further explained *infra*, by not making the "Adjustment" required under Section 4.4 of the WMI Agreement, WMI and its Board of Directors have breached their contractual obligations to the LTW Holders.

(f) By rejecting its obligations under the WMI Agreement pursuant to the Proposed Plan, WMI has breached its contractual obligations to the LTW Holders.

4. The following facts and circumstances illustrate the basis for the LTW Holders' claims against the Debtors:

(a) The Registration Statement, dated December 15, 2000 ("**Registration Statement**"), issued in connection with the Dime LTWs, at page 1, provides the following question and answer: "Why are we distributing the LTWs? We are distributing the LTWs in an effort to pass along the potential value of our claim against the government to our existing shareholders." **Exhibit A** is a copy of the Registration Statement.

(b) In a press release issued by Dime on December 18, 2000 (**Exhibit B**), Dime announced that its Board of Directors "has declared a distribution of a substantial portion of Dime's economic interest in its pending 'goodwill' litigation against the United States through the issuance of Litigation Tracking Warrants."

(c) In a further press release dated December 20, 2000 (**Exhibit C**), it was reported on behalf of Dime that once the LTWs were issued, Dime's common stock would trade on the New York Stock Exchange without the value of the LTWs.

(d) On March 12, 1998, in a meeting held by the Joint Committee of the SEC and the AICPA, the participants discussed "litigation tracking warrants" in the context of certain accounting issues. The highlights of the meeting (**Exhibit D**) described that "litigation tracking warrants" were issued because the issuer "does not believe the trading value of its shares in the market properly included the value of the contingent asset." The members of the Committee believed that "litigation tracking warrants," once issued, effectively separated the contingent asset from the remainder of the company--an issuance of "litigation tracking warrants" had the same economic effect of a spin-off of the contingent asset.

(e) The term "Litigation Tracking Warrants" is a trademarked term owned by Credit Suisse First Boston and was a financial product marketed by it to prospective clients, such as Dime.

(f) The structure of the LTWs make it clear that the LTWs are not true equity warrants. The LTWs do not provide for the purchase of a specific number of shares of stock at a strike price for a specified time -- which are three fundamental requisite elements of an equity warrant. See *Reiss v. Financial Performance Corp*., 764 NE 2d 958 (NY 2001).

(g) The Dime shareholders never "purchased" the LTWs -- they were given to them on a tax-free basis.

(h) The LTWs were drafted in a particular way in order that there not be a tax consequence to the Dime shareholders when they received the LTWs. The Claimants believe that tax driven aspects of the WMI Agreement are not dispositive of the intent of the parties and the purpose of the LTWs. The Debtors, without expressly adopting this position, have implicitly conceded the point in other proceedings. For example, Section 6.3 of the WMI Agreement provides, in part, that: "The Bank (WAMU Bank, as herein defined) will retain sole and exclusive control of the (Anchor) Litigation and will retain 100% of any recovery from the Litigation". In the face of that language, the Debtors have:

(i) filed pleadings in the JPMC Adversary Proceeding stating that WMI-- and not WAMU Bank -- owns the Anchor Litigation and is entitled to the recovery therefrom. (**Exhibit E**)

(ii) filed a pleading, through counsel, before the Court of Federal Claims that the real party in interest was WMI and not WAMU Bank. (**Exhibit F**)

(iii) filed a Form 8-K with the SEC dated March 21, 2008 in which it referred to the Anchor Litigation as WMI's litigation, and stated that WMI "was a party to the litigation as a result of its acquisition of Dime Bancorp. . ." (**Exhibit G**)

(iv) structured the Global Settlement with the assumption that WMI has an interest in the Anchor Litigation in order to utilize Section 363(f) of the Bankruptcy Code so that the Anchor Litigation could be transferred to JPMC free and clear of the rights and claims of the LTW Holders. Disclosure Statement at p. 57.

(i) There is no "exercise price" for the LTWs. Rather, LTWs are to be exchanged for 85% of the net recovery in the Anchor Litigation. (See WMI Agreement, dated March 11, 2003, ("**WMI Agreement**") -- **Exhibit H**)

(j) The common stock of WMI was traded on the New York Stock Exchange. The LTWs were traded on NASDAQ. LTW Holders as a class were former Dime shareholders -- they never were WMI shareholders. Many LTW Holders purchased on the open market and thus were never shareholders of either Dime or WMI. The price of the LTWs was a function of the anticipated recovery in the Anchor Litigation. The value of the LTWs was not impacted by the financial performance of WMI. LTW holders did not receive an equity upside in the financial performance of WMI. By contrast, the value of the equity securities of WMI was driven by the financial performance of WMI.

(k) The Risk Factors in the Registration Statement (**Exhibit A**) do not mention that the issuer (Dime) could file for bankruptcy and its common stock could be rendered worthless, and thus the LTWs would be rendered worthless.

(l) The Registration Statement makes clear that the LTWs are not stock warrants, equity securities or equity interests. In particular, the Registration Statement says at page 5: "An investment in the LTWs involves different risks and considerations from an investment in the common stock of a savings and loan company such as Dime Bancorp."

(m) When the Debtors commenced their bankruptcy cases, they did not include the LTW Holders in their Notice of Filing of List of Equity Holders. Main Docket No. 59. The List of Equity Holders sets forth the names of all known holders of WMI's equity

securities, and includes a comprehensive 700 page list of WMI's common and preferred stockholders.

(n) The Disclosure Statement does not list the LTWs as part of the Debtors capital structure or as "equity." See Disclosure Statement at pp. 42-43.

(o) Creditors of WMI did not extend credit to WMI based on the value of the Anchor Litigation. That contingent asset was dedicated to the LTW Holders before WMI acquired the Dime. Stated differently, WMI acquired the Dime subject to the rights of the LTW holders to 85% of the net recovery of the Anchor Litigation.

(p) When WMI purchased the Dime, it offered Dime shareholders their choice of cash (up to $1.4 billion) or stock (92.3 million shares) It appears as though Dime shareholders electing cash received their entire merger consideration in cash. WMI's purchase of Dime was a Combination within the meaning of the Dime Agreement dated as of December 21, 2000 ("**Dime Agreement**") (**Exhibit I**). Under Sections 4.2 (b) and 4.2 (c) of the Dime Agreement, if there was a Combination, LTW Holders were required to get the same type of consideration offered to Dime shareholders. For this case, that means LTW holders are entitled to elect to receive cash -- not stock -- for their share of the net recovery in the Anchor Litigation. Under Section 4.2(d) of the Dime Agreement, WMI assumed the obligations of Dime, including the Sections 4.2 (b) and (c) obligations. And, under Section 7.2 of the Dime Agreement, WMI was prevented from unilaterally changing the provisions of Sections 4.2 (b) and (c) without the consent of the LTW Holders -- a consent which was never sought, nor given. Bottom line, by virtue of the Dime/WMI merger, the LTWs are payable in cash, not stock of WMI.

(q) The Debtors' position that the LTW Holders are holders of equity securities is also belied by the terms of the WMI Agreement itself, which expressly envisions

several scenarios in which LTW Holders would receive their value in forms other than WMI stock. Specifically, the WMI Agreement provides that the LTW holders may receive "other [non-common stock] securities," "property" or "cash." (See, Sections 4.2, 4.3, 4.4 and 4.5 thereof.)

(r) The Debtors dispute that, even though WMI was a bank holding company, the 2008 transaction in which JPMC acquired the assets of Washington Mutual Savings Bank ("**WAMU Bank**") was a subsequent Combination within the meaning of the WMI Agreement. The Debtors also dispute that the WMI sale of assets to JPMC pursuant to Sections 363 and 365 of the Bankruptcy Code as part of the Global Settlement was a Combination within the meaning of the WMI Agreement. If either of those transactions was a Combination -- as the Claimants contend -- then the Debtors were required pursuant to Section 4.2(d) of the WMI Agreement to cause JPMC to assume the LTW obligations. The Debtors have admitted in discovery that they never asked JPMC to assume the LTW obligations. Instead, the Debtors did the exact opposite and breached the WMI Agreement. The Debtors structured the Global Settlement to provide for certain liabilities relating to assets purchased by JPMC to be assumed by JPMC. Disclosure Statement at p. 12. However, with regard to the Anchor Litigation to be purchased by JPMC and the related obligations to the LTW Holders, the Debtors expressly sought a different result. Under the Global Settlement, the Debtors are seeking relief under Section 363(f) of the Bankruptcy Code such that the Debtors' interests in the Anchor Litigation will be sold to JPMC "free and clear of the liens, claims and interests of the LTW Holders." Disclosure Statement at p. 57. There is no reason for the Debtors to structure the Global Settlement so as to ensure the protection of Section 363(f), if the Debtors and JPMC did not believe that Section 4.2(d) of the WMI Agreement could impose LTW obligations on a successor

company such as JPMC. The Debtors have two "Goodwill" Litigations. The Debtors claimed to own both and that JPMC owned none. Under the Global Settlement, the Debtors are retaining one (American Savings Bank) and selling one to JPMC (Anchor Litigation) pursuant to Section 363(f) of the Bankruptcy Code. It is not coincidental that the litigation which the Debtors seek to sell (as compared to retaining) free and clear of liens, claims and interests, has LTW obligations relating thereto.

(s) The Debtors failed to include the WMI Agreement in the list of assumable executory contracts in their Plan Supplement. Thus, the Debtors are rejecting their obligations under the WMI Agreement. This action results in a claim for the LTW Holders against the Debtors.

(t) Section 4.4 of the WMI Agreement, captioned "Other Events," puts an affirmative duty on the Debtors Board of Directors to act in "good faith" to do what is required to carry forward the "essential intent and principles" of the WMI Agreement -- that being, to provide 85% of the net recovery in the Anchor Litigation to the LTW Holders. That requirement is an express obligation of the Debtors' Board of Directors directly to the LTW Holders. The Debtors' Board of Directors never considered this issue. The Board's counsel never advised the Board of its duties to the LTW Holders pursuant to Section 4.4 of the WMI Agreement. The Debtors' Board breached its duty to the LTW Holders by proffering a Proposed Plan seeking to deprive the LTW Holders of their right to receive 85% of the net recovery of the Anchor Litigation and in derogation of its express Section 4.4 obligation to the LTW Holders.

(u) Significantly, the WMI Board has a special duty to the LTW Holders since the Agent under the WMI Agreement is an agent for the Debtors and not the LTW Holders. *See* WMI Agreement, Section 5.2. In this case, the Agent has done nothing of substance to protect

the LTW Holders, and has not been instructed by the Debtors to do anything of substance to protect the LTW Holders.

(v) The Proposed Plan improperly seeks a release for the WMI Board from the third party claims of the LTW Holders for, among other things, the breach of their Section 4.4 liability to the LTW Holders.

CONFIRMATION OBJECTIONS

A. The Proposed Plan Should Conform to the Agreements Made by the Debtors In the Disclosure Statement.

5. A material portion of the Claimants' objection to the Proposed Plan was satisfied based on (a) numerous objections made by the Claimants to the Debtors' prior versions of the Disclosure Statement, and (b) changes ultimately made by the Debtors to the Disclosure Statement. In essence, the Debtors agreed to treat the LTW claims as Disputed Claims under the Proposed Plan and reserve a distribution for the LTW Holders in the event their claims were allowed in full.

6. Specifically, the Debtors agreed that:

(a) If Broadbill prevailed in the Action, the LTW Holders would be treated as general unsecured creditors under the Proposed Plan. Disclosure Statement at p. 58.

(b) The Debtors agreed that LTW Holders' claims should be treated as "disputed claims." *Id.*

(c) The Debtors agreed that the Liquidating Trustee would reserve up to approximately $183.9 million on account of the LTW claims which they contended was the maximum amount payable to the LTW Holders. The Debtors also acknowledged that the Court could set a higher reserve than $183.9 million and that Broadbill had contended that the reserve should be in a greater amount than $183.9 million. *Id.*

7. The Debtors previously agreed to conform the agreement reflected in the Disclosure Statement into the Proposed Plan. Through inadvertence, the Debtors did not do that. In a pleading filed by the Debtors on November 17, 2010 to estimate the maximum amount of

the LTW claims (the "Estimation Motion"), the Debtors appear to reconfirm the understanding reflected in the Disclosure Statement where they state on Exhibit D that if Broadbill prevails in the Action, the LTW Holders would be treated as "General Unsecured Claims pursuant to the Plan." Accordingly, the Debtors should explicitly conform the above cited provisions of the Disclosure Statement and the Allocation Motion into the Proposed Plan.

B. The Reserve Set For the LTW Holders Claims Is Too Low.

8. Footnote 17 of page 58 of the Disclosure Statement sets forth the Debtors' calculation as to the maximum amount of the LTW claims ($183.9 million). In the Estimation Motion, the Debtors concede they made a mistake and the number should be $250 million. The Debtors' calculation is wrong for the following two reasons and the reserve amount should be no less than $337 million:

(a) **The Tax Gross-Up Amount**. In June 2010, JPMC filed a motion in the Court of Federal Claims seeking approval of its calculation of the amount of the tax gross-up (**Exhibit J**) relating to the proceeds of the Anchor Litigation. JPMC stated that the Court of Federal Claims already had ruled that a tax gross-up was appropriate. JPMC estimated the tax gross-up amount to be between $104 million and $144 million.

The Debtors' calculation of the reserve for the LTW Holders omits the tax gross-up portion but deducts $180 million in estimated taxes. There are two ways to correct this mistake. One way is to simply ignore the tax reduction of $180 million since the gross-up is intended to make the damage award tax neutral. That would have the effect of adding approximately $153 million to the reserve (85% of $180 million). The alternative way is to add the gross-up of approximately $144 million, which would cause the reserve to increase, subject to the other reserve adjustment discussed below.

In a recent pleading filed by JPMC in the Court of Federal Claims, it indicated that the amount of the tax gross-up could be impacted based on how it allocates the purchase price for the assets acquired from WAMU Bank and the Debtors. Presumably, that means the more tax basis JPMC allocates to the Anchor Litigation, the less tax gain, the smaller tax gross-up, the smaller amount of the Anchor Litigation judgment, and the reduced amount of the value of the LTWs. That result would be inequitable and improper. Under the intent and principles of the WMI Agreement (including Section 6.3 thereof), WAMU Bank was not permitted to transfer the Anchor Litigation to third parties unless it was to a successor and, then, only if the interests of the LTW Holders would remain aligned with the interests of the party prosecuting the Anchor Litigation. Transfer of the ownership to the Anchor Litigation was not supposed to impact the value of the LTWs based on tax considerations or otherwise. Section 4.4 of the WMI Agreement was intended to correct any unforeseen circumstance where LTW value was not being preserved in accordance with the intent and principles of the WMI Agreement. Based on the foregoing, the LTW Holders have a claim against the Debtors to the extent that the value of the LTWs has been, or will be negatively impacted by the transfer of the Anchor Litigation to JPMC.

(b) **The Tax Rate**: The Debtors' calculation of the reserve uses an effective tax rate of 45.5%. JPMC in its pleading for the tax gross-up said that it is taxed at a rate of 38.757%. Exhibit I, at p.7. The JPMC rate is what the Debtors should have used in calculating the reserve. There is no reason for two different rates. This change in rates would have reduced the tax reduction amount from approximately $180 million to $153 million. This difference would add $27 million to the LTW Holders claim reserve.

9. Taking into account these adjustments, the amount of the reserve should be not less than $337 million, calculated as follows:

Amount of Judgment: $419 million (not including tax gross-up or tax reduction)
Minus legal expenses: $22 million
Multiplied by .85%
Net Reserve: $337 million

C. The Third Party Releases in the Proposed Plan Are Improper.

10. The Proposed Plan contemplates giving third party releases to, among others, the Debtors Board of Directors and JPMC. The Plan further provides that creditors can opt in to giving a third party release by checking a box on the ballot. The LTW Holders did not get a ballot. Presumably that was either because they were put in Class XXI which would not be entitled to a distribution, or because they are considered disputed creditors, pursuant to the agreement reflected in the Disclosure Statement. In either event, having not gotten a ballot, it must be presumed that the LTW Holders have opted out of giving a third party release.

11. The Debtors state that notwithstanding this ballot "check the box" procedure, they still will seek a Court order binding all parties in interest to release individual claims against third parties. Assuming the LTW Holders were paid in full (i.e., received 85% of the net recovery of the Anchor Litigation, plus other damages for breach of the WMI Agreement), that would be fine, and there would be no need for a release. If the LTW Holders do not get paid in full, however, they are entitled to preserve their full rights and remedies against all third parties. This would include the Debtors' Board of Directors who, under such circumstances, breached their obligations to the LTW Holders pursuant to Section 4.4 of the WMI Agreement.

12. As for third party claims against JPMC, it would appear that the duty was on the Debtors to cause JPMC to assume the LTW obligations and that any claim for such breach, or

any successor liability claim against JPMC, would attach to the proceeds of the Global Settlement. Presumably, the reserve established for the LTW claims would cover this alternative theory of recovery.

13. In any event, at the present time, pending the final outcome of the Action, the Debtors are proffering a Proposed Plan that would pay nothing to the LTW Holders. Assuming the Debtors' position is sustained -- which the LTW Holders believe won't happen -- then it would be improper to release third party claims held by the LTW Holders. A party in interest who receives nothing under a plan of reorganization, and who is deemed to have voted against the plan, can not be required to give a third party release. In *Continental Airlines*, 203 F3d 203 (3rd Cir 2000), the Third Circuit held that the third party non-consensual releases under the plan were not permissible because there was no finding that they were "necessary" or supported by fair consideration paid to the objecting party. By definition, not paying anything to a party-in-interest under a plan is "no consideration" to such party. Similarly, in *Coram Healthcare Corp.* 315 B.R. 321 (Bankr. Del 2004), this Court refused to confirm a plan with non-consensual third party releases.

14. The Examiner's Report described the Releases under the Proposed Plan as "unduly broad and inappropriate" (p. 20).

D. The Proposed Plan Can't Pay Post Petition Interest Ahead of Subordinated Non-Equity Claims or Late Filed Claims

15. Under the Proposed Plan, the Debtors are paying postpetition interest on unsecured claims. The only basis to do so is if the Debtors are solvent. Under Section 1127(b)(7) of the Bankruptcy Code, a plan of reorganization can not be confirmed if the so-called "best interests" test is not satisfied. The "best interests" test requires that impaired parties in interest need to receive value under a plan of reorganization at least equal to what they would have

received under Chapter 7 of the Bankruptcy Code. Under Section 726 of the Bankruptcy Code, payment on account of late filed claims or non-equity based subordinated claims, comes ahead of payments for postpetition interest on unsecured claims.

16. The Debtors have objected to the LTW claims based on, among other things, an alternative theory premised on Section 510(b) of the Bankruptcy Code. There is no basis to do so since, among other things, the damages which the LTWs seek do not arise out of a purchase and sale of the equity securities of the Debtors. Moreover, the LTWs are not equity securities at all: there is no strike price, specific number of shares, or defined time period which circumscribe how the LTWs are effectuated, the LTWs value is not based on the financial performance of the Debtors, the LTW Holders did not seek or receive economic upside based on the financial performance of the Debtors, and the creditors of the Debtors did not advance money to the Debtors based on the strength of the Anchor Litigation, which is a contingent asset that had been spun off years before WMI acquired Dime.

17. If the Court were to hold -- as it should -- that LTWs are not equity of the Debtors, then Section 510(b) should not be used as an alternative means to challenge the LTW claims. For, among other reasons, the "best interests" test does not permit post-petition interest to be paid ahead of subordinated non-equity based claims.

18. Similarly, in the Action, the Debtors have raised the defense of late filed claims or non-filed claims with respect to certain LTW Holders even though, (a) the Debtors did not provide any notice to the LTW Holders of the claims bar date, (b) an LTW Holder purported to timely file a class claim on behalf of all LTW Holders, (c) by agreeing to the filing of the Action as a class action, the Debtors effectively waived this proof of claim argument, and (d) the rejection of the WMI Agreement under the Proposed Plan triggers a new claims bar date for the

LTW Holders which has not yet expired. Late filed claims get paid under the "best interests" test ahead of post petition interest on unsecured claims.

19. If the Debtors seek confirmation of the Proposed Plan which contorts the priority scheme of Section 726 of the Bankruptcy Code, incorporated into Chapter 11 through the "best interests" test under Section 1129(a)(7) of the Bankruptcy Code, it must be estopped from challenging the LTW claims on Section 510(b) or filing of proof of claim grounds. Otherwise, the Proposed Plan cannot be confirmed.

20. Exhibit C to the Disclosure Statement is the Debtors liquidation analysis. (**Exhibit K**) It is provided to show how the Debtors have satisfied the "best interests" test under Section 1129(a)(7) of the Bankruptcy Code. Exhibit C states that in a liquidation all classes of claims would get paid in full except the PIERS claims. That class is receiving in the Chapter 11 scenario $216 million less than their principal. Even under the “skewed” Chapter 7 analysis proffered by the Debtors, the PIERS class would receive $499 million less than their principal. By contrast, the liquidation analysis shows that in Chapter 11 the Debtors are paying in excess of $615 million of postpetition interest, and in the Chapter 7 scenario, they would pay in excess of $732 million of postpetition interest. Clearly, the payment of postpetition interest is not solely due to the implementation of subordination provisions in intercreditor agreements. There is an additional material amount which is being paid solely because the Debtors are solvent and paying postpetition interest on unsecured claims.

21. In sum, the Proposed Plan cannot be confirmed if it pays post petition interest on unsecured claims unless the Debtors concede that the Section 510(b) and proof of claim argument do not apply to LTWs.

E. The Election To Receive Reorganized Common Stock Should Have Been Given to the LTW Holders.

22. General unsecured creditors with allowed claims are given the right to elect to take their distribution in reorganized common stock. *See* Proposed Plan, Section 16.2. The election was to be made on a ballot, but as noted, the LTW Holders did not receive a ballot. It is believed that the election right has value and this value should have been shared with similarly situated creditors (such as the LTW Holders). In the Debtors' motion to abandon its stock interest in WAMU Bank, the Debtors indicate that such action could trigger a $5 billion worthless stock loss deduction, and that some portion of the net operating loss triggered by this stock loss deduction could be preserved for the Reorganized Debtors. If that can be accomplished, depending on the valuation given the reorganized stock, this election can be quite valuable. The LTW Holders should not be deprived of a form of consideration given to similarly situated creditors under the Proposed Plan merely because the LTWs are being treated as disputed claims and those objections have not yet been resolved.

CONCLUSION

23. Almost 10 years ago, Dime announced that it would spin off 85% of the net recovery in the Anchor Litigation to its shareholders. The LTWs and the Dime Agreement were the vehicle through which this value transfer to the LTW Holders was effectuated. For its 15% share, Dime assumed the obligation to manage the Anchor Litigation for the benefit of the LTW Holders, and Dime's Board affirmatively assumed obligations to the LTW Holders. When WMI purchased Dime, it, and its Board, assumed Dime's obligation to the LTW Holders. WMI acquired the Dime and the Anchor Litigation subject to the rights already transferred to the LTW Holders. By paying for the Dime/WMI merger in both cash and stock, WMI became obligated to

offer that same type of consideration to the LTW Holders. Consequently, the LTWs are payable in cash at the election of the LTW Holders.

24. WMI has consistently claimed that it owns the Anchor Litigation. Under the Proposed Plan, WMI seeks to monetize the Anchor Litigation by selling it to JPMC free of the LTW obligations which is a clear violation of the WMI Agreement. Then, under the Proposed Plan, WMI intends to give the monetized proceeds to its other creditors -- not the LTW Holders (as it was required to do). WMI's goal under its Proposed Plant is to utilize this circular flow of assets (from WMI to JPMC back to WMI), so that its other creditors will be paid their principal in full, post petition interest on their unsecured claims, and their attorneys fees, while the claims of the LTW Holders, resulting from these contractual breaches by WMI, will be paid nothing. That is improper, especially since WMI had a duty to act for -- not against -- the interests of the LTW Holders. WMI contends that even if the WMI Agreement makes clear that the "intent and principles" of the LTWs was to give 85% of the value of the Anchor Litigation to the LTW Holders (which it unquestionably does), and in good faith the Board recognizes that an Adjustment needs to be made to effectuate that intent, it could (a) cavalierly ignore its duty to the LTW Holders if it chooses to and make no Adjustment, and (b) construct a scheme through the Proposed Plan to destroy the value already given to the LTW Holders by a predecessor to WMI. The Action and the LTW claims reserve is intended to thwart WMI's improper scheme, and to compensate the LTW Holders for their valid claims.

25. For all of the reasons cited above, the Proposed Plan should not be confirmed unless the changes requested by the Claimants are made.

26. The Claimants also request that the Court grant it such other and further relief as is just.

Dated: November 19, 2010
New York, New York

/s/ Mark E. Felger
Mark E. Felger (No. 3919)
COZEN O'CONNOR
1201 N. Market Street
Suite 1400
Wilmington, DE 19801
Telephone: (302) 295-2000
Facsimile: (302) 295-2013

Paul N. Silverstein
Jeremy B. Reckmeyer
ANDREWS KURTH LLP
450 Lexington Avenue
New York, NY 10017
Telephone: (212) 850-2800
Facsimile: (212) 850-2929

Attorneys for Broadbill Investment Corp.

/s/ Frederick B. Rosner
Frederick B. Rosner (No. 3995)
Scott J. Leonhardt (No. 4885)
THE ROSNER LAW GROUP LLC
1000 N. West Street, Suite 1200
Wilmington, DE 19801
Telephone: (302) 295-4877

Arthur Steinberg
KING & SPALDING
1185 Avenue of the Americas
New York, NY 10036
Telephone: (212) 556-2100
Facsimile: (212)556-2222

Jonathan Hochman
SCHINDLER COHEN & HOCHMAN LLP
100 Wall Street
New York, NY 10005
Telephone: (212) 277-6300
Facsimile: (212) 277-6333

Attorneys for Nantahala Capital Partners, LP and Blackwell Partners LLC

Exhibit A

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As Filed With The Securities And Exchange Commission On December 15, 2000

Registration No. 333-48368

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

PRE-EFFECTIVE

AMENDMENT NO. 1

TO
FORM S-3

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Dime Bancorp, Inc.
(Exact Name of Registrant as Specified in its Charter)

<TABLE>

<S>	<C>
DELAWARE	11-3197414
(State or Other Jurisdiction of Incorporation)	(I.R.S. Employer Identification No.)

</TABLE>

589 FIFTH AVENUE, NEW YORK, NEW YORK 10017; (212) 326-6170
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

JAMES E. KELLY, ESQ.
General Counsel
Dime Bancorp, Inc.
589 Fifth Avenue
3rd Floor
New York, New York 10017
(212) 326-6170
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

With Copies To:
MITCHELL S. EITEL, ESQ.
Sullivan & Cromwell
125 Broad Street
New York, New York 10004
(212) 558-4000

Approximate Date of Commencement of Proposed Sale to the Public: Upon exercisability of the Litigation Tracking Warrants described herein.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. [_]

If any of the securities being registered on this Form are to be offered on

a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. [X]

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [_]

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+The information in this prospectus is not complete and may be changed. We may +
+not sell the common stock offered by this prospectus until the registration +
+statement we filed with the Securities and Exchange Commission is effective. +
+This prospectus is not an offer to sell our common stock and it is not +
+soliciting an offer to buy our common stock in any state where the offer or +
+sale is not permitted. +
++

Subject to Completion; Preliminary Prospectus Dated December 15, 2000

PROSPECTUS

19,471,485 Shares

Dime Bancorp, Inc.

Common Stock

On December 12, 2000, your board of directors declared a distribution of one Litigation Tracking Warrant(TM), also known as an LTW(TM), for each share of our common stock outstanding as of the close of business on December 22, 2000. Your board also made provision for the distribution of one LTW for each share of our common stock underlying each outstanding stock option previously granted.

This document relates to the shares of our common stock to be issued if and when the LTWs are exercised. The LTWs are securities that represent the right to purchase, upon the occurrence of a trigger, shares of our common stock equal in total value to 85% of the net after-tax proceeds, if any, from the lawsuit we have brought against the United States government. The first step of the trigger is our receipt of damages in this litigation.

We are pursuing a lawsuit against the government for breach of contract and unlawful taking of property without compensation in contravention of the United States Constitution. Our legal claim arose as a result of changes imposed by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to the rules for computing the regulatory capital of thrift institutions such as our subsidiary, The Dime Savings Bank of New York, FSB.

"Litigation Tracking Warrant" and "LTW" are trademarks of Credit Suisse First Boston Corporation for use in connection with its investment banking services.

Our common stock, which underlies the LTWs, is listed on the New York Stock Exchange under the trading symbol "DME." We have applied to list the LTWs on the Nasdaq National Market under the trading symbol "DIMEZ."

This document does not cover resales of any common stock received upon exercise of the LTWs. No person is authorized to make any use of this document in connection with any such resale or in connection with any other transaction or the offer or sale of any other securities.

See "Risk Factors" beginning on page 4 for information you should consider.

Neither the LTWs nor our common stock are deposits or other obligations of any bank or savings association and neither the LTWs nor our common stock are insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency.

None of the SEC, the FDIC, the Office of Thrift Supervision, any state securities commission nor any other regulatory body has approved or disapproved of the LTWs or our common stock or passed upon the accuracy or adequacy of this document. Any representation to the contrary is a criminal offense.

The date of this prospectus is [ ], 2000.

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SUMMARY

This summary highlights selected information from this document. It does not contain all of the information that is important to you. We urge you to read carefully the entire document and the other documents to which we refer to fully understand this issuance. See "Where You Can Find More Information" beginning on page 30.

Who is distributing the LTWs?

Dime Bancorp, Inc., a Delaware corporation and a savings and loan holding company, is distributing the LTWs. Dime Bancorp is the parent company of Dime Savings, a federally chartered savings bank.

Our headquarters are located at 589 Fifth Avenue, New York, New York 10017. Our telephone number is (212) 326-6170. See "Information about Dime Bancorp" beginning on page 7.

What are the LTWs?

The LTWs are securities that represent the right to purchase, upon the occurrence of the trigger, shares of our common stock having a total value equal to 85% of the net after-tax proceeds, if any, from our pending lawsuit against the United States government. See "Description of the LTWs" beginning on page 14.

Why are we distributing the LTWs?

We are distributing the LTWs in an effort to pass along the potential value of our claim against the government to our existing stockholders in the form of tradeable securities. The distribution is part of our effort to improve returns and provide enhanced value to our stockholders.

When are we distributing the LTWs?

Your board of directors fixed December 22, 2000 as the distribution record date for determining who will receive the LTWs.

How will you get the LTWs?

As a stockholder of record on the distribution record date, you will receive one LTW for each share of our common stock that you owned on the distribution record date. If the shares of our common stock that you owned on the distribution record date were held directly by you, then you will receive an LTW certificate by mail at your address of record as soon as practicable following the distribution date. If the shares of our common stock that you owned on the distribution record date were held in street name by your broker, your broker will also hold your LTW certificate in street name. We have also provided for the issuance of one LTW for each share of our common stock underlying the options previously granted by us under our stock-based benefit plans that were still outstanding on the distribution record date. Under the terms of the investment made by Warburg, Pincus Equity Partners, L.P. and its affiliates, Warburg will not receive any LTWs. See "Distribution of the LTWs" beginning on page 8.

Why are we suing the government?

Dime Savings, as the successor to Anchor Savings Bank FSB, maintains a lawsuit in the United States Court of Federal Claims against the government for breach of contract and taking of property without compensation in contravention of the Fifth Amendment to the United States Constitution. The action arose because the passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the regulations adopted by the OTS pursuant to that law deprived Anchor Savings of the ability to include supervisory goodwill and certain other assets when computing its regulatory capital, which is required by law to be maintained at certain levels. The Federal Savings and Loan Insurance Corporation had agreed to let Anchor Savings use these assets when computing its regulatory capital. The direct effect was to cause Anchor Savings to go from an institution that substantially exceeded its regulatory capital requirement to one that was substantially below this requirement. As a result, Anchor Savings was forced to curtail its activities and was required to sell valuable assets under liquidation-like circumstances. We have claimed three alternative measures of damages: expectancy damages totalling $980 million, restitution totalling $740 million and reliance damages totalling $512 million. See "The Litigation" beginning on page 9.

What is the status of the litigation?

We have asked the Court of Federal Claims to enter partial summary judgment against the government on the existence of a contract between the government and Dime Savings and the inconsistency of the government's actions with that contract. No date has been set for argument on our request. If the Claims Court grants our request, we will then present evidence as to damages. Discovery by both parties ended in May 2000. See "The Litigation" beginning on page 9.

Do we know whether or when we will be entitled to damages?

No. We do not know currently when the court will make a determination as to liability or damages. We also do not know if any payment will be made by the government to us, or how much that payment may be. See "The Litigation" beginning on page 9.

What are the risk factors associated with the LTWs?

You should consider carefully the information contained under the "Risk Factors" section of this document beginning on page 4, as well as the other information included in this prospectus relevant to the LTWs.

What are the tax consequences of your receipt of the LTWs?

Although the matter is uncertain because of the absence of any direct authority, we believe the distribution of the LTWs to you should be treated as a tax-free stock dividend for federal income tax purposes and you should not be required to include any amount in income for federal income tax purposes with respect to such distribution. We intend to treat the distribution of the LTWs for all reporting purposes in accordance with such characterization. It is possible that the Internal Revenue Service may assert that the distribution of the LTWs should be treated as a taxable stock dividend, in which case you would be required to treat as ordinary dividend income the fair market value of the LTWs on the date of distribution to the extent of your rateable share of our current and accumulated earnings and profits. You are therefore urged to consult your tax advisor as to the tax consequences of the distribution and receipt of the LTWs. See "Tax Consequences" beginning on page 20.

Are the LTWs tradeable separately from our common stock?

Yes. The LTWs will become tradeable after the distribution record date, December 29, 2000.

Where are our common stock and the LTWs listed?

Our common stock is listed on the NYSE under the trading symbol "DME." We have applied to list the LTWs on the Nasdaq National Market under the trading symbol "DIMEZ."

As an LTW holder, will you be entitled to any voting rights, dividends, liquidation preference or other special rights?

No, you will not be entitled to any voting rights, dividends, liquidation preference or other special rights as a result of owning LTWs. In addition, you will have no right to control the litigation. Any LTW holder who also owns shares of our common stock will, of course, be entitled to the rights of a common stockholder. See "Description of the LTWs" beginning on page 14.

When will you be able to exercise the LTWs?

You will not be able to exercise the LTWs until after receipt of notice of the occurrence of the trigger. LTW holders will be able to exercise the LTWs to purchase shares of our common stock for a period of 60 days after the date that the triggering notice is first sent to LTW holders. After that period, the LTWs will expire worthless. See "Description of the LTWs" beginning on page 14.

When will the trigger occur?

The trigger will occur upon the completion of the following events:

- we receive a final recovery of damages in our litigation,
- we calculate the full amount of the adjusted litigation recovery, and
- we receive all regulatory approvals necessary to issue shares of our common stock.

How will you be notified of the trigger?

Within 15 days of the occurrence of the trigger, if any, we will publicly announce by means of a press release and by written notice mailed to each record holder of LTWs that the trigger has occurred. See "Description of the LTWs" beginning on page 14.

Upon the occurrence of the trigger, how many shares of our common stock will you be able to purchase upon exercise of each LTW and how much will you have to pay to exercise them?

Upon the occurrence of the trigger, you will receive the right to purchase your pro rata portion of an amount of our common stock equal to the adjusted litigation recovery divided by the product of (1) our adjusted stock price multiplied by (2) the number of LTWs issued or reserved for issuance on the distribution record date. When you exercise your LTWs you will be required to pay an exercise price equal to $0.01 per whole share of our common stock you will receive as a result of that exercise. In the case of a reclassification, reorganization or combination by us, the exercise price formula will be adjusted. See "Description of the LTWs--Adjustments" beginning on page 17.

For example, if the adjusted stock price of our common stock on the occurrence of the trigger was $20.00, the number of LTWs issued or reserved for issuance on the distribution record date was 110,000,000 and the adjusted litigation recovery was $250 million, then the number of shares of our common stock issuable upon exercise of each LTW would be 0.1136 ($250,000,000 / ($20 x 110,000,000) = 0.1136). If you owned 100 LTWs, you would multiply the number of shares of our common stock issuable upon exercise of an LTW (0.1136) by the number of LTWs you own (100), which totals 11.36 (0.1136 x 100 = 11.36). As a result, upon the occurrence of the trigger you could purchase 11 shares of our common stock, paying an exercise price of $0.11 (11 X $0.01 = $0.11), and receive cash instead of the fractional share. To determine the cash amount you would receive instead of your fractional share, you would multiply the fractional share (0.36) by the sum of the adjusted stock price ($20.00) and the exercise price per whole share of common stock ($0.01), which totals $7.20 (0.36 x ($20.00 + $0.01) = $7.20). So if you owned 100 LTWs, upon their exercise, you would pay us $0.11 and receive 11 shares of our common stock and $7.20 in cash.

To determine the total net value of the LTWs upon exercise, you would multiply the number of shares you receive (11) by the sum of the adjusted stock price ($20.00) and the exercise price per whole share of common stock ($0.01), add the amount of cash you receive ($7.20) and subtract the total exercise price ($0.11), which totals $227.20 (11 x ($20.00 + $0.01) + $7.20-$0.11 = $227.20). As a result, the total net value of 100 LTWs would be $227.20, or $2.272 per LTW.

However, if the adjusted litigation recovery was zero, you would not be entitled to purchase any shares of our common stock, and the LTWs would expire worthless. See "Description of the LTWs--Determination of the Number of Shares of Our Common Stock Issuable Upon Exercise of an LTW" beginning on page 14.

You should keep in mind that the LTWs may not trade at prices reflecting the eventual litigation recovery or the eventual value per LTW. See "Risk Factors" beginning on page 4.

How will we determine the adjusted litigation recovery?

The adjusted litigation recovery is equal to 85% of the amount obtained from the following equation:

- amount of damages recovered in our litigation,
- minus our expenses in pursuing the litigation, obtaining payments and issuing the LTWs, and
- minus the tax expense allocated to the recovery.

See "Description of the LTWs--Determination of the Adjusted Litigation Recovery" beginning on page 15.

RISK FACTORS

LTW holders should carefully consider the following risk factors, as well as all the other information set forth in this document regarding us, our common stock and the issuance of the LTWs.

If we cannot establish the government's liability, the LTWs will be worthless

We may not prevail in establishing the government's liability in our pending litigation. Even if the Court of Federal Claims enters judgment in our favor, that judgment could be overturned on appeal by the United States Court of Appeals for the Federal Circuit or the United States Supreme Court. There have been decisions in other cases with contractual fact patterns similar to that of a 1996 Supreme Court decision, known as the Winstar case, in which the court ruled that the government was liable for breach of contract. See "The Litigation--Damages Decisions in Other Winstar-related Cases" beginning on page 12. While we believe that the contractual documentation and language relating to our suit present similarities to the contractual fact patterns presented in the Winstar case and in these other Winstar-related cases, we may not succeed in our breach of contract claim.

The number of shares of our common stock that you may purchase when you exercise your LTWs will depend on the amount of damages, if any, that we recover from the government

Our litigation and other Winstar-related cases present issues as to the amount and type of damages, if any, that the plaintiffs may be entitled to receive. If we do not recover any damages from the government, then the LTWs will be worthless. If we recover a small amount of damages, then you may be able to exercise the LTWs for only a small number of shares, if any.

The government has argued in earlier cases that the plaintiffs' damages were too speculative to permit a recovery of those damages. Although the government has been found liable in some other Winstar-related cases, the damages, as awarded by the trial courts, have ranged from $909 million to zero. Those earlier damage awards have been appealed. In addition, we have claimed a type of damages known as expectancy damages as part of our requested relief. Although in other cases the Claims Court has held that, under proper facts, expectancy damages may be appropriate, the Claims Court has yet to award expectancy damages in any case. For a discussion of our damage claims, see "The Litigation--Our Case" beginning on page 11. As a result, even if we prevail in establishing the liability of the government, we cannot predict whether or when we will recover any damages, or how much those damages may be if we do receive any.

The number of shares of our common stock that you can purchase upon exercise of your LTWs will be lowered by our litigation expenses and costs of this issuance, as well as the tax expense allocated to the damages recovery

We expect to incur a variety of expenses in connection with our litigation, including the fees and expenses of counsel, witnesses, experts and consultants,

and in issuing the LTWs, including legal, financial advisory and accounting fees, printing and registration costs and the fees and expenses of the warrant agent. If our litigation is protracted, our expenses may increase significantly. We currently expect our expenses to be about $26 million. We cannot know whether the recovery of damages, if any, will be sufficient to cover these expenses. In calculating the adjusted litigation recovery, we will subtract these expenses from any damages recovered. Furthermore, we will also subtract the tax expense allocated to the damages recovered. In determining such amount, we will use a tax rate that is based on the combined highest federal, New York State and New York City income tax rates applicable to financial institutions in the year or years in which the amount of damages is fixed or determinable. The amount of such rate for 2000 is 46.2%, but is subject to change. As a result, the higher our expenses and such taxes turn out to be, the fewer shares of our common stock you will be entitled to purchase when you exercise your LTWs.

We cannot be certain whether or when you will be able to exercise your LTWs to purchase our common stock

We cannot predict how or when our litigation will be resolved finally and all appeals exhausted or when, if ever, we will receive damages.

The distribution of the LTWs may be taxable

We believe the distribution of the LTWs is tax-free to you and intend to treat the distribution in such a manner. Because of the absence of any statutory, judicial or administrative authority that directly discusses how the distribution of LTWs should be treated for United States federal income tax purposes, the IRS could attempt to characterize the distribution of the LTWs as taxable to you. If the distribution of the LTWs is deemed to be taxable by the IRS, you could be required to pay taxes on your receipt of the LTWs. For a discussion of the possible tax consequences of the distribution to you, see "Tax Consequences" beginning on page 20.

Regulatory restrictions on Dime Savings' ability to pay dividends or make capital distributions may prevent it from distributing the damage award to Dime Bancorp

Any damages we recover in our litigation will be paid by the government to Dime Savings (the actual plaintiff in our case). As a federal savings association, Dime Savings is subject to restrictions on dividends pursuant to regulations of the OTS, its primary regulator, and may not make any capital distributions to its parent company, Dime Bancorp, that would cause Dime Savings to become "undercapitalized." See "Description of Our Capital Stock--Common Stock--Limitations on Dime Savings' Ability to Make Capital Distributions" beginning on page 22. The value of the LTWs and our common stock may be affected if Dime Savings is unable to distribute the damage award to Dime Bancorp, in the unlikely event that such distribution should be necessary or be deemed necessary by us for any reason.

LTW holders have very limited rights

As an LTW holder, you have very limited rights to enforce, institute or maintain any suit, action or proceeding against us relating to our litigation. You have no voting rights, no liquidation preferences and no rights to dividends or distributions other than the right to exercise your LTWs to purchase shares of our common stock, based on the valuation formula, after the occurrence of the trigger.

We control the litigation

We currently intend to continue pursuing our litigation and to seek a cash recovery in the amount claimed, but because we will retain control of this litigation, there can be no assurance that we will not make a different determination in the future.

There is no established trading market for the LTWs, and the price of the LTWs may be volatile

There is no current market for the LTWs, and we do not know whether an active market for the LTWs will develop or be sustained. If such a market develops, there can be no assurance as to the price at which the LTWs would trade at any time and such price could be subject to rapid and substantial change.

The price of the LTWs may depend on a number of factors, including, without limitation:

- the nature of court decisions in our litigation and the other Winstar-related cases that may go to trial prior to the completion of our litigation,
- speculation about the outcome of our litigation and the other Winstar-related cases, and
- settlement of any other Winstar-related cases.

Consequently, there could be wide fluctuations in the price of the LTWs over short periods of time. In addition, the price of the LTWs will not necessarily relate to the eventual value of the adjusted litigation recovery.

An investment in the LTWs involves different risks and considerations from an investment in the common stock of a savings and loan holding company such as Dime Bancorp

If a market develops for the LTWs, the nature of an investment in the LTWs will differ from the nature of an investment in a savings and loan holding company such as Dime Bancorp. You may therefore determine that investment in the LTWs does not suit your investment policies or, if you are a corporate or institutional stockholder, that such investment may be restricted by your charter. Such determinations by significant stockholders, or by a large number of our stockholders, may result in rapid divestment of the LTWs causing temporary selling pressure that would adversely affect the price of the LTWs.

There may only be limited information available regarding litigation developments

We file annual reports on Form 10-K and quarterly reports on Form 10-Q with the SEC and the NYSE, which may include an overview of the status of our litigation. We will continue to do so, and we will also file reports on Form 8-K upon the occurrence of a material judicial decision in, or in the event of any agreement to settle, our litigation. Our ability to disclose details of our litigation may be limited, however, by the inherent nature and rules of judicial proceedings, including, among other things, proceedings and filings that are sealed by the court, matters involving attorney-client privilege and proceedings that are conducted on a confidential basis by agreement between us and the government, such as settlement negotiations.

FORWARD-LOOKING STATEMENTS

This document contains a number of forward-looking statements regarding our litigation, financial condition, results of operations and business. These statements may be made directly in this document or may be incorporated in this document by reference to other documents. These statements may also include references to periods following the completion of the distribution of the LTWs or other transactions described in this document. You can find many of these statements by looking for words such as "believes," "expects," "anticipates," "estimates," "intends," "plans," "may," "will," and "potential" and similar expressions. These forward-looking statements involve substantial risks and uncertainties. Some of the factors that may cause actual results to differ

materially from those contemplated by the forward-looking statements include, but are not limited to, the following possibilities:

- the timing and occurrence or non-occurrence of events may be subject to circumstances beyond our control,
- there may be increases in competitive pressure among financial institutions or from non-financial institutions,
- changes in the interest rate environment may reduce interest margins or may adversely affect mortgage banking operations,
- changes in deposit flows, loan demand or real estate values may adversely affect our business,
- changes in accounting principles, policies or guidelines may cause our financial condition to be perceived differently,
- general economic conditions, either nationally or in some or all of the states in which we do business, or conditions in securities markets, the banking industry or the mortgage banking industry, may be less favorable than we currently anticipate,
- legislation or regulatory changes may adversely affect our business,
- technological changes may be more difficult or expensive than we anticipate,
- success or consummation of new business initiatives may be more difficult or expensive than we anticipate,

- the valuations of our common stock and the LTWs may be more or less than we expect, and
- the outcome of our litigation may be delayed and may be more or less favorable than we expect, and our recovery of damages, if any, may be more or less than we claimed or anticipated.

All subsequent written and oral forward-looking statements concerning matters addressed in this document and attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. We do not undertake any obligation to release publicly any revisions to such forward-looking statements to reflect events or circumstances after the date of this document or to reflect the occurrence of unanticipated events.

INFORMATION ABOUT DIME BANCORP

Dime Bancorp is a Delaware corporation and a savings and loan holding company. Dime Bancorp is the parent of Dime Savings, a federally chartered savings bank currently servicing consumers and businesses through 127 branches located throughout the greater New York City metropolitan area. Through Dime Savings and its subsidiaries, including North American Mortgage Company, we provide consumer loans, insurance products and mortgage banking services throughout the United States. At December 31, 1999, Dime Bancorp had consolidated assets of $23.9 billion, consolidated deposits of $14.3 billion and consolidated stockholders' equity of $1.5 billion. At September 30, 2000, Dime Bancorp had consolidated assets of $25.2 billion, consolidated deposits of $13.9 billion and consolidated stockholders' equity of $1.8 billion.

Our headquarters are located at 589 Fifth Avenue, New York, New York 10017. Our telephone number is (212) 326-6170.

RECENT DEVELOPMENTS

Stock Repurchase Program. On August 1, 2000, we commenced a "Dutch Auction" tender offer to purchase approximately 13.6 million shares of our outstanding common stock. On October 6, 2000, we announced the termination of the tender offer and the replacement of the tender offer with a stock repurchase program to purchase approximately 13.6 million shares in the open market or in privately negotiated transactions. This stock repurchase program is described in the press release included with our Form 8-K/A filed on October 12, 2000.

As we describe in "Description of Our Capital Stock--Investment by Warburg" beginning on page 23, we have sold preferred stock and warrants to Warburg. If our stock repurchase program is fully completed, the preferred stock issued to Warburg should be offset by the stock repurchased in this program. Accordingly, and assuming no other changes, if you continue to hold your stock, your percentage ownership interest in us after the completion of the stock repurchase program should be about the same as what your percentage ownership interest was, or would have been, before Warburg's investment. No time limit has been set for the completion of the stock repurchase program. Of course, we may issue additional shares of our common stock and other securities at any time, and these issuances will reduce your percentage ownership interest. We also may purchase more of our stock in the future, which would have the effect of increasing the percentage ownership interest in us represented by shares you continue to hold.

Based on the current market price of our common stock, our advisors estimate that the Warburg transaction, combined with our stock repurchase, will be slightly dilutive to our earnings per share for periods beginning after we complete our stock repurchase program, depending on the prices at which we purchase our stock and assuming we are able to purchase all of the shares that we plan to purchase. For periods before we purchase all of the shares we are seeking in our stock repurchase program, we expect that there will be a temporary reduction in our earnings per share because we have a greater number of shares outstanding as a result of the Warburg investment.

If we are able to purchase all of the shares we are seeking and if all of the shares of preferred stock Warburg has purchased are converted into our common stock, Warburg will own about 12.45% of our outstanding common stock. If Warburg also completely exercises its warrants, its holdings will represent about 22.14% of our outstanding common stock. These percentages will decrease if we do not purchase the full amount of shares we are seeking under our stock repurchase program.

USE OF PROCEEDS

We will use the net proceeds that we receive upon the exercise of the LTWs for general corporate purposes.

MARKET FOR OUR COMMON STOCK AND THE LTWS

Our common stock is listed on the NYSE under the trading symbol "DME." We have applied to list the LTWs on the Nasdaq National Market under the trading symbol "DIMEZ."

DISTRIBUTION OF THE LTWS

We will distribute one LTW for each share of our common stock outstanding on December 22, 2000, the distribution record date, to all of our stockholders of record on that date, except Warburg. As part of our overall compensation program, we have previously granted options to purchase our common stock to our employees and directors. We will reserve for issuance one LTW for each share of our common stock underlying these stock options that remained outstanding on the distribution record date.

If these stock options are exercised prior to the trigger, the option holder will receive the number of shares of our common stock underlying the option being exercised plus the number of LTWs that would have been received had the

option been exercised immediately before the distribution record date. If these stock options are exercised on or after the trigger, the option holder will receive the number of shares of our common stock underlying the option being exercised plus the number of additional shares of our common stock (and cash instead of any fractional shares) equal to the number of shares of our common stock that the option holder would have received had the holder (i) exercised the option immediately before the trigger and received a corresponding number of LTWs and (ii) exercised the LTWs for shares of our common stock immediately after the trigger. In the case of a stock option exercise on or after the trigger, the exercise price of the option will be increased by the exercise price of the LTWs deemed received, and exercised, with respect to that option.

Based on the number of shares of our common stock and stock options outstanding on November 30, 2000, we anticipate the number of LTWs that will be issued or reserved for issuance will be approximately 114,411,313. We anticipate issuing approximately 105,640,587 LTWs to our common stockholders and reserving approximately 8,770,726 LTWs for issuance to holders of our stock options.

THE LITIGATION

Our litigation against the United States government involves complex factual and legal issues over which the parties disagree. The following summary is not a full description of those issues and addresses only developments through the date of this document. The record of proceedings before the Claims Court consists of hundreds of pages of procedural filings, which may be examined at the Office of the Clerk of the Court located at 717 Madison Place, N.W. in Washington, D.C. In addition, thousands of pages of depositions have been taken and thousands more documents have been made available through discovery by us, the government, and third parties.

Introduction

On January 13, 1995, Anchor Savings Bank FSB filed a case in the United States Court of Federal Claims captioned Anchor Savings Bank FSB v. United States, No. 95-39C, alleging breach of contract and taking of property without compensation by the government in contravention of the Fifth Amendment to the United States Constitution. Dime Savings assumed Anchor Savings' case upon the consummation of the merger of Anchor Savings and its holding company, Anchor Bancorp, Inc., with Dime Savings and Dime Bancorp, respectively. Anchor Savings' claims arose from contracts with the government related to Anchor Savings' acquisition between 1982 and 1985 of eight failing federally insured savings and loan institutions. Four institutions were acquired with some direct financial assistance from the Federal Savings and Loan Insurance Corporation, a government agency that provided deposit insurance to savings and loans, and four were acquired without direct financial assistance. All of the acquisitions were considered supervisory cases by the FSLIC, which means that they were arranged by the FSLIC. In acquiring the institutions, Anchor Savings assumed liabilities determined to exceed the assets it acquired by over $650 million in the aggregate at the dates of the respective acquisitions. The difference between the fair values of the assets acquired and the liabilities assumed in the transactions were recorded on Anchor Savings' books as an asset called goodwill.

At the time of these acquisitions, the FSLIC had agreed that Anchor Savings could include in its regulatory capital this goodwill, amortizable over a number of years, as well as certain FSLIC contributions and certain capital instruments. Without those agreements, Anchor Savings would not have made the acquisitions.

When the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 was enacted, Anchor still had over $500 million of regulatory capital from supervisory acquisitions on its books, including the supervisory goodwill and other capital enhancements described above. Also, Anchor Savings had more than 20 years to amortize the remaining supervisory goodwill under its agreements

with the FSLIC. FIRREA required the remaining supervisory goodwill to be eliminated immediately for purposes of calculating tangible capital and to be phased out through December 31, 1994 for other regulatory capital purposes. In addition, until the formation of Anchor Bancorp as the holding company for Anchor Savings in 1991, FIRREA-mandated capital requirements impacted the $157 million associated with preferred stock that Anchor Savings issued to the FSLIC as a result of one of the acquisitions. The elimination of the supervisory goodwill and other components of regulatory capital damaged Anchor Savings by creating severe limitations on its activities and requiring the sale of valuable assets under liquidation-like circumstances.

Proceedings in the Claims Court

Our suit is one of 115 cases brought in the Claims Court with contractual fact patterns similar to that of a 1996 decision by the United States Supreme Court, known as the Winstar case, in which the Supreme Court held that the government was liable for breach of contract. Following the Supreme Court's decision, all of the Winstar-related cases, including our case, were assigned to Judge Smith of the Claims Court. Judge Smith has issued an omnibus case management order that controls the proceedings in all of these cases.

Under the omnibus order, we moved for partial summary judgment as to the existence of contracts between Anchor Savings and the government and the inconsistency of the government's actions with respect to those contracts. The government has disputed the existence of these contracts and cross-moved for summary

judgment. The government also submitted a filing acknowledging that it is not aware of any affirmative defenses it has against us. Initial briefing on these motions was completed on August 1, 1997.

In August 1997, the Claims Court held a hearing on summary judgment motions in four other Winstar-related cases. As part of those cases, the Claims Court issued an order on December 22, 1997, ruling in favor of the plaintiffs on eleven "common" issues. The Claims Court's order directed the government to submit a "show cause" filing by February 20, 1998 asserting why judgment for each of the plaintiffs in all of the Winstar-related cases, including us, should not be entered on each of the common issues with respect to each pending summary judgment motion. The government filed a response to the "show cause" order but asserted that it might need further discovery as to certain issues. At a status conference on March 11, 1998, the Claims Court directed each of the plaintiffs with a pending summary judgment motion to submit a proposed form of order for entry of judgment as to liability on the contract issues and an accompanying brief by March 31, 1998 and directed the government to respond by April 30, 1998 with a filing asserting any basis for not entering the order proposed by the plaintiff. On March 31, 1998, we submitted a proposed order imposing liability on the government as to each of our claims. On April 30, 1998, the government served its opposition to the entry of the order. Final submissions were made by us on May 15, 1998 and by the government on May 22, 1998.

In September 1999, the government filed supplemental papers in support of its pending summary judgment motion, at which time the government again requested entry of summary judgment on liability in its favor. We responded to such filings in early November 1999. No date has been set for argument on either our summary judgment motion or the government's motion.

In April 1998, thirty of the plaintiffs that elected to proceed with their cases against the government were allowed to commence full discovery. We are among these thirty plaintiffs, and we conducted discovery between April 1, 1998 and July 31, 1999. On October 29, 1999, we filed our experts' reports relating to our damage claims with the government. On March 16, 2000, the government filed the reports of its experts.

The Claims Court has entered summary judgment on liability, and proceeded to

trials on damages, in a number of Winstar-related cases where the plaintiffs waived pre-trial discovery. In an order dated September 20, 2000, Judge Smith announced his current intention to distribute the thirty cases that first proceeded with discovery, including our case, to the other judges of the Claims Court, for rulings on liability and consideration of damages issues.

After entry of judgment, either party may appeal a portion or all of the decision to the United States Court of Appeals for the Federal Circuit. Following the decision of the Federal Circuit, the unsuccessful party may petition for a rehearing en banc by the entire Federal Circuit. Assuming such a request for rehearing is denied, any proceedings in the Federal Circuit would be expected to take approximately one year. Appeal from the final decision of the Federal Circuit could be made to the Supreme Court, although the Supreme Court could decide not to hear the case. As a result, we cannot predict the amount or the timing of receipt of a damage award, if any is received. As of December 12, 2000, neither the Federal Circuit nor the Claims Court has issued any further opinions on liability or damages or set trial dates in any of these cases.

Damages Theories Set Forth in Our Expert Reports

Assuming we receive a ruling on liability in our favor, we expect to present evidence on three alternative damage theories at trial to determine the amount of our damages.

"Expectancy damages" are intended to place the injured party in as good a position as it would have been in had the contract been performed. Such damages may include the loss of any monetary benefits that the injured party would have received in the absence of the breach plus any other losses caused by the breach of the contract, less any costs or losses avoided by the injured party as a direct result of the breach.

"Restitution" is intended to restore to the injured party any benefits conferred on the breaching party. The injured party's restitution interest is ordinarily measured by the reasonable value of the benefits conferred by its

performance of the contract on the breaching party, less any benefits received by the injured party through the breaching party's partial performance up to the date of the breach.

"Reliance damages" are intended to restore the injured party to the position it would have been in if the contract had not been made. Reliance damages are generally measured by the injured party's investment less the net benefit realized from the cost of performance of the contract, plus additional expenses incurred as a result of the breach. Damages are usually limited to those that are a foreseeable result of the breach and require proof of the fact of damage with reasonable certainty.

We have the burden of proving the amount of our expectancy damages, or the value or cost of our performance as a basis for restitution or reliance damages, by a preponderance of the evidence.

Since neither the contracts between Anchor Savings and the government nor any statute provides for payment of prejudgment interest, prejudgment interest is not recoverable, either for the period from the date of the breach through the date of entry of judgment by the Claims Court or upon a judgment of the Claims Court pending appeal. If the Federal Circuit affirms a judgment by the Claims Court, we could receive interest at a statutorily specified rate on the judgment from the time of the Federal Circuit decision through any subsequent appeals to the date of payment.

Our Case

Following the adoption of FIRREA in 1989 and the resulting reductions of Anchor Savings' regulatory capital due to the elimination of the contractual

supervisory goodwill, FSLIC contribution, and preferred stock from its supervisory acquisitions, Anchor Savings was transformed from an institution that substantially exceeded its regulatory capital requirements to one that was significantly undercapitalized. Because Anchor Savings was unable to obtain any material infusion of external capital, it had no choice but to restructure and divest itself of significant valuable assets. While these strategies were required to remedy the noncompliance with regulatory capital requirements caused by FIRREA and avoid closure of Anchor Savings, they also had the effect of significantly reducing Anchor Savings' long-term earnings.

Under our expectancy damages claim, we claim that the government's breach:

- forced the sale of Anchor Savings' mortgage conduit subsidiary, Residential Funding Corporation, and the curtailment of Anchor Savings' remaining mortgage banking business,

- forced the sale of large portions of Anchor Savings' branch franchise, and

- required Anchor Savings to incur additional "wounded bank" damages or costs.

We have claimed expectancy damages totaling approximately $980 million. Under our restitution claim, we allege that the government received net benefits from its contracts with Anchor Savings totaling approximately $740 million. Under the reliance measure of damages, we expect to present evidence supporting our claim totaling approximately $512 million.

The Government's Case

The government contends that we were not damaged by the government's breach because FIRREA did not cause Anchor Savings to shrink or otherwise sell assets. The government contends that the lost profits we are claiming are speculative and therefore not allowable. The government also contends that FIRREA did not constrain Anchor Savings' ability to leverage capital or alternatively that the ability to leverage capital had no value.

The government has argued that the breach benefitted Anchor Savings in prompting it to exit from high risk lending activities in which it was engaged prior to the breach. The government further contends that the breach forced Anchor Savings to address core business problems.

The government has also argued that the principal assumptions underlying our claim for past and future lost profits, which are that Anchor Savings would not have sold Residential Funding or portions of its branch franchise absent the government's breach, are invalid because, among other things:

- retention of Residential Funding implied a degree of interest rate risk that would have been unacceptable to Anchor Savings' management, board of directors and regulators,

- Anchor Savings would not have been able to provide Residential Funding with sufficient low interest funds to ensure the successful operation of Residential Funding's business,

- Anchor Savings lacked a business and cultural fit with Residential Funding, and

- the poor strategic fit of the sold branches warranted the sales even absent the breach.

The government has further argued that Anchor Savings could have avoided the sale of Residential Funding, for example, by forming a holding company or altering the mix of loans Residential Funding purchased. Alternatively, the government has argued that Anchor Savings would have had to sell Residential

Funding due to non-breaching provisions of FIRREA and that the sales of Residential Funding and the Anchor Savings branches were at fair market value, thus precluding any damage claim.

In addition, the government has argued that we are not entitled to damages based on our restitution and reliance claims because the benefits Anchor Savings derived exceeded any cost that Anchor Savings incurred. The government further asserts that the elements of our reliance damages are the same as those for restitution and therefore not independently recoverable.

Damages Decisions in Other Winstar-related Cases

Various judges in the Claims Court have thus far rendered seven decisions on damages in Winstar-related cases. The first damages opinion was issued on April 9, 1999, in Glendale Federal Bank, FSB v. United States, Docket No. 90-772C. Glendale claimed expectancy damages totaling $1.6 billion for lost profits through the end of the contract's goodwill amortization period, increased cost of funds, increased deposit insurance premiums, and OTS assessments and other breach-related costs. Glendale claimed that it lost profits when the government's breach of their contract prevented Glendale from fully leveraging its pre-breach regulatory capital for growth and profit. Glendale sought reliance damages of approximately $863 million for its pre-breach and post-breach costs incurred in reliance that the government would perform. For restitution damages, Glendale requested $2 billion for the benefits conferred on the government by Glendale's performance, such as relieving FSLIC's obligation to pay a failing thrift's excess liabilities, the investment earnings on the insurance funds that FSLIC did not have to pay to the failing thrift's depositors and creditors, and other payments made by Glendale. The judge in Glendale concluded that Glendale had not proved its expectancy damages, but awarded the plaintiff $909 million in restitution damages.

On April 16, 1999, the Claims Court issued its second damages decision. In California Federal Bank v. United States, Docket No. 92-138C, the plaintiff sought expectancy, reliance, and restitution damages based on theories similar to those presented by Glendale, ranging between $725 million and $1.6 billion. Following a pretrial hearing, the Claims Court ruled that California Federal was not able to establish expectancy damages as a matter of law and precluded California Federal from presenting expectancy damages proof at trial. After a damages trial on California Federal's reliance and restitution claims, the Claims Court ordered the government to pay California Federal restitution of approximately $23 million under a theory of reimbursing California Federal for the transaction costs necessary to raise new capital to replace the goodwill eliminated by the government's breach of contract, which is called the cost of replacement capital theory.

The Claims Court's third damages decision was issued on September 30, 1999, in LaSalle Talman Bank, FSB v. United States, Docket No. 92-652C. In LaSalle Talman, the plaintiff sought expectancy damages of $858.8 million relating primarily to additional earnings from a merger that it claimed would have occurred but for the government's breach of their contract. LaSalle Talman also claimed approximately $1.2 billion in

damages for the costs of acquiring replacement capital. Under its restitution theory of damages, LaSalle Talman claimed $295.1 million for its assumption of net liabilities in four supervisory mergers, less the benefits it received. The Claims Court awarded LaSalle Talman approximately $5 million in damages for miscellaneous expenses.

The Claims Court's fourth damages decision was issued on March 3, 2000, in Landmark Land Company, Inc. v. United States, Docket No. 95-502C. Landmark presented claims for the restitution of property and cash contributions it made in its supervisory acquisition of a failing thrift, the lost profits or "use value" relating to those contributions while in the government's control, and non-overlapping reliance damages for additional contributions made to the failing thrift. The Claims Court ordered the government to pay approximately

$21 million under either a restitution or reliance theory of damages for Landmark's initial contribution. The Federal Deposit Insurance Corporation also appeared as a plaintiff in Landmark, as receiver for the failed thrift. The FDIC presented claims for $641.9 million in restitution damages for the net value of assets contributed to a failing thrift and expectancy damages of $32.3 million for the value of supervisory goodwill eliminated by the government's breach of their contract. The Claims Court ordered the government to pay the FDIC approximately $18 million as restitution damages for the benefit conferred on the government by its contribution to the failing thrift.

The Claims Court's fifth damages decision was issued on July 6, 2000, in Bluebonnet Savings Bank, FSB v. United States, Docket No. 95-532C. Bluebonnet presented an expectancy damages claim totaling $175.9 million based on the increased costs of financing its supervisory acquisition following the government's breach of their contract. The Claims Court held that Bluebonnet was unable to prove its damages with reasonable certainty and declined to award any damages.

The Claims Court's sixth damages decision was issued on July 21, 2000, in Glass v. United States, Docket No. 92-428C. Shareholder plaintiffs in Glass presented a claim for reliance damages seeking $5.8 million for the return of the claimed market value of their investment and an additional $72,000 for the transaction costs associated with the investment. Shareholder plaintiffs additionally claimed restitution damages of $8.4 million for the benefit conferred on the government by the contract. The Claims Court ordered the government to pay shareholder plaintiffs $4.0 million for the fair market value of their investment and the direct costs. The FDIC also appeared as a plaintiff in Glass, as receiver for the failed thrift, and presented a claim of $2.1 million to $2.5 million in expectancy damages as measured by the replacement value of goodwill that was destroyed by the passage of FIRREA. The Claims Court ordered the government to pay the FDIC $2.1 million in damages, which was the cash value of the goodwill remaining at the time of the government's breach of their contract.

The Claims Court issued its seventh damages decision on November 9, 2000, in Castle v. United States, Docket No. 90-1291C. The plaintiffs asserted a claim for expectancy damages between $36.3 million and $73.9 million based on an assumption that the bank would have continued to pursue the basic lines of business set out in its business plan if the government had not breached its contract with the bank. The plaintiffs also sought restitution damages under a number of different formulas. The Claims Court held that the plaintiffs were unable to prove their expectancy damages with reasonable certainty. The Claims Court did, however, award restitution in the amount of $15.1 million, representing the amount of the plaintiffs' initial contribution to the thrift.

The Claims Court did not enter judgment for expectancy damages in any case, although the Claims Court has consistently held that expectancy damages may be appropriate. The determinations of damages by the Claims Court in the Glendale, California Federal, LaSalle Talman, Landmark, Bluebonnet and Glass cases have been appealed. On July 7, 2000, a three-judge panel of the Federal Circuit heard arguments in the first two of these appeals, in the Glendale and California Federal cases.

During the summer of 1998, there were settlements in a total of four of the Winstar-related cases in which the government agreed to make payments to the plaintiffs. In addition, there also was a settlement in a small case in September 1999. We believe that the circumstances of the five settled cases were materially different from our case, and we do not believe that these settlements will affect the final outcome of our case. We are unaware of any other pending settlements.

We continue to believe that our claim is meritorious, that it is one of the more significant cases before the Claims Court and that we are entitled to non-overlapping damages under any of the theories asserted, which are estimated to exceed the goodwill remaining on Anchor Savings' books at the time FIRREA was

enacted. However, we are unable to predict the ultimate outcome of our case and can give no assurance of whether we will receive a damage award, or as to the amount or timing if any award is ultimately received.

DESCRIPTION OF THE LTWS

The following summary of certain provisions of a warrant agreement we have entered into with EquiServe Trust Company, N.A. and EquiServe Limited Partnership, as warrant agent, and the form of certificate representing the LTWs does not purport to be complete and is qualified in its entirety by reference to the warrant agreement and the form of certificate, which have been filed with the SEC as exhibits to this document, including the definitions in those documents of various terms.

Determination of the Number of Shares of Our Common Stock Issuable Upon Exercise of an LTW

The LTWs will entitle LTW holders to purchase shares of our common stock with an adjusted stock price equal to any adjusted litigation recovery. We explain these terms below.

Upon the occurrence of the trigger, LTW holders will be entitled to purchase shares of our common stock according to the following formula:

<TABLE>
<S> <C> <C> <C> <C>

$$\text{One LTW} = \frac{\text{adjusted litigation recovery}}{\text{adjusted stock price}} \times \frac{1}{\text{number of LTWs issued or reserved for issuance on the distribution record date}}$$

</TABLE>

For example, if the adjusted stock price of our common stock on the occurrence of the trigger is $20.00, the number of LTWs issued or reserved for issuance on the distribution record date was 110,000,000 and the adjusted litigation recovery is $250 million, the number of shares of our common stock issuable upon exercise of each LTW would be 0.1136:

<TABLE>
<S> <C> <C> <C> <C> <C> <C>

$$\text{One LTW} = \frac{\$250{,}000{,}000}{\$20.00} \times \frac{1}{110{,}000{,}000} = 0.1136 \text{ shares}$$

</TABLE>

If you own 100 LTWs, you would multiply the number of shares of our common stock issuable upon exercise of an LTW (0.1136) by the number of LTWs you own (100), which totals 11.36 shares (0.1136 x 100 = 11.36). As a result, upon the occurrence of the trigger, you could purchase 11 shares of our common stock, paying an exercise price equal to $0.01 per whole share of common stock you would receive on exercise of your LTWs (11), which totals $0.11 (11 X $0.01 = $0.11), and receive cash instead of the fractional share. The amount of cash you would receive instead of a fractional share is calculated by multiplying the fractional share (0.36) by the sum of the adjusted stock price ($20.00) and $0.01 (the exercise price for each whole share of common stock), which totals $7.20 (0.36 x ($20.00 + $0.01) = $7.20). So, if you owned 100 LTWs, upon their exercise you would pay us $0.11 and receive 11 shares of our common stock and $7.20 in cash.

To determine the total net value of the LTWs upon exercise, you would multiply the number of shares you receive (11) by the sum of the adjusted stock price ($20.00) and the $0.01 exercise price per whole common share, add the amount of cash you receive ($7.20), and subtract the total exercise price ($0.11), which totals $227.20 (11 x ($20.00 + $0.01) + $7.20 - $0.11 = $227.20). As a result, the total net value of 100 LTWs would be $227.20, or

$2.272 per LTW. You should keep in mind that the LTWs may not trade at prices reflecting the eventual amount we recover in our litigation or the eventual value per LTW. See "Risk Factors" beginning on page 4.

However, if the adjusted litigation recovery was zero, you would not be entitled to purchase any shares of our common stock and the LTWs would expire worthless.

<PAGE>

Determination of the Adjusted Litigation Recovery

To determine the adjusted litigation recovery, we will apply the following formula:

<TABLE>

<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
adjusted litigation recovery	=	85%	x	(amount recovered	-	litigation & LTW expenses	-	taxes)

</TABLE>

where:

- "amount recovered" equals the total amount of any cash payment and the fair market value of any property we actually receive as damages pursuant to a final, nonappealable judgment in or final settlement of our litigation, including any post-judgment interest we actually receive on any payment,

- "litigation and LTW expenses" equal the total expenses we incur, both before and after the date of this document, in pursuing our litigation and obtaining all damages payments, plus our total expenses incurred in connection with the creation, issuance and trading of the LTWs, including, legal, financial advisory and accounting fees, printing and registration costs and the fees and expenses of the warrant agent, and

- "taxes" equal, irrespective of the actual amount of taxes imposed with respect to the damages recovery, the product of (i) the amount of damages recovered less the expenses in the litigation and LTW issuance described in the preceding clauses and (ii) the combined highest federal, New York State and New York City income tax rates applicable to financial institutions in the year (or years) in which the amount of the damages (in whole or in part) is fixed or determinable (after taking into account the effect of the deductibility of such taxes for federal and state income tax purposes); for 2000, such rate is 46.2%.

For example, if we recover $572.6 million in damages in our litigation, the expenses in the litigation and LTWs are $26 million, and taxes are $252.5 million, then the adjusted litigation recovery would equal approximately $250 million.

<TABLE>

<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
adjusted litigation recovery	=	85%	x	($572,600,000	-	$26,000,000	-	$252,529,200)	=	$249,960,180

</TABLE>

Our determination of the amounts to be deducted from the amount of damages recovered and the amount of the adjusted litigation recovery will be final, conclusive and binding on the LTW holders.

Determination of the Adjusted Stock Price

When we receive a recovery of damages, we will determine the adjusted stock price of a share of our common stock on the 30th calendar day before the date on which we receive the total amount of the recovery. For purposes of calculating the adjusted stock price, the 30th calendar day before the total amount of recovery has been received is the "determination date." If the 30th calendar day before the total amount of recovery has been received is a day on which the NYSE is closed for business, then the determination date will be the next succeeding day on which the NYSE is open for business.

The "adjusted stock price" of a share of our common stock on this determination date will equal

- the average of the daily closing prices of our common stock for the thirty consecutive trading days ending on and including the determination date

- minus $0.01, the exercise price per whole share of our common stock.

Closing Price. The term "closing price" on any trading day means the closing sale price for our common stock on such day, or in case no such sale takes place on such day, the average of the reported closing bid and asked prices for our common stock in each case on the NYSE Composite Tape (or any successor composite tape reporting transactions on national securities exchanges), or, if our common stock is not listed on the NYSE, on the principal national securities exchange on which our common stock is listed or admitted to trading (the national securities exchange on which the greatest number of shares of our common stock has been traded during the five consecutive trading days ending on and including the determination date), or, if not listed or admitted to trading on any national securities exchange, the average of the closing bid and asked prices of our common stock on the over-the-counter market on the day in question as reported by NASDAQ, or a similar generally accepted reporting service, or if not so available as determined in good faith by your board of directors, on the basis of such relevant factors as it in good faith considers appropriate.

Trading Day. The term "trading day" means a day on which the NYSE or NASDAQ (or any of their successors) is open for the transaction of business.

Exercise Price. The exercise price you will need to pay is equal to the product of the par value of the stock, if any, into which your LTWs are exercisable multiplied by the number of shares of such stock into which one LTW is exercisable. In the case of your surrender of LTWs in exchange for our common stock, you will be required to pay an amount equal to $0.01 multiplied by the number of whole shares of our common stock which you will receive when you exercise the LTWs. For a discussion of adjustments to the exercise price in case of certain reclassifications, redesignations, reorganizations or combinations, see "Description of the LTWs--Adjustments" beginning on page 17. In any case, the total exercise price of the LTWs you exercise will be rounded down to the nearest whole cent. The amount of cash you pay is included in the determination of the number of shares of our common stock and cash, instead of any fractional shares, that you will receive upon exercise of your LTWs.

Exercise of the LTWs

Trigger. Subject to the procedures we have established and described in this document, you will be entitled to exercise your LTWs only after all of the following events have occurred:

- we receive the total amount of the damages recovery in our litigation,

- we calculate the full amount of the adjusted litigation recovery, and

- we receive all regulatory approvals necessary to issue the shares of our

common stock.

The occurrence of all three of these events constitutes the "trigger." If the damages recovery is payable by the government in installments, the trigger will not occur until we receive the last installment of the recovery in its entirety.

You will not be entitled to any interest or additional shares of our common stock for the period of time between the date on which we receive any recovery of damages and the date on which the LTWs become exercisable or are exercised.

Notice of Trigger. If the trigger occurs, we will publicly announce, not more than 15 calendar days after its occurrence, by means of a press release and by written notice mailed to each record holder of the LTWs:

- that the trigger has occurred,
- the total number of shares of our common stock for which all the LTWs are exercisable,
- the number of shares of our common stock for which one LTW is exercisable,
- the exercise price per LTW,
- the procedure for exercising the LTWs, and
- the date on which the LTWs will no longer be exercisable.

Expiration. Unless exercised, the LTWs will automatically expire on the expiration date, which is the earlier of

- 60 calendar days after the date on which a notice that the LTWs are exercisable is first sent to LTW holders, or
- the date on which our litigation has been resolved in a manner such that no shares of our common stock will be issuable under the terms of the LTWs.

Procedure for Exercise. Your LTWs may be exercised before the expiration date by surrendering the LTW certificates, with the accompanying form of election to purchase properly completed and executed, together with payment of the total exercise price for all LTWs exercised. You may pay the exercise price in the form of a certified or official bank check or personal check payable to the order of Dime Bancorp, Inc. Upon your surrender of the LTW certificate, your payment of the total exercise price and the warrant agent's receipt of your election form, the warrant agent will deliver or cause to be delivered, to you or to such other person as you designate in writing, stock certificates representing the number of whole shares of our common stock issuable upon exercise or other securities or property to which you are entitled under the LTWs and warrant agreement, including, without limitation, any cash payable to adjust for fractional interests in such shares issuable upon exercise. If you exercise less than all of the LTWs evidenced by an LTW certificate, a new LTW certificate will be issued for the remaining number of LTWs, but any LTWs represented by such new LTW certificate must be exercised prior to the same expiration date for the original LTWs.

No Fractional Shares. No fractional shares of our common stock will be issued upon exercise of your LTWs. When you exercise your LTWs, you may be entitled to a fractional share interest to the extent any portion of the LTWs you exercised does not entitle you to a whole share of our common stock. Instead of receiving a fractional share interest, you will receive an amount in cash computed to the nearest whole cent equal to:

- such fraction

- multiplied by the sum of the adjusted stock price and $0.01, the exercise price for the number of LTWs exercisable into one whole share of our common stock.

Distribution Record Date. The distribution record date is December 22, 2000, the date that your board of directors fixed for determining who is eligible to receive the LTWs.

LTW Certificates

As soon as practicable after the date of this document, we will send LTW certificates to each LTW holder as of the distribution record date. LTW certificates will be issued in global form or registered form as definitive certificates and no service charge will be made for registration of transfer or exercise upon surrender of any LTW certificate at the office of the warrant agent maintained for that purpose. We may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exercise of LTW certificates.

Adjustments

The LTWs will be adjusted in case of certain reclassifications, redesignations, reorganizations or changes in our common stock or consolidations or mergers in which we are involved or the sale of all or substantially all of our assets. In such a case, each LTW will be exercisable into the right to receive the kind of shares of stock or other securities or property into or for which our common stock was converted or exchanged or which was distributed to our stockholders in such transaction or event, so that each LTW may be exercised for a number of shares of such stock or other securities or an amount of property equal to

- the adjusted litigation recovery

- divided by the number of LTWs issued or reserved for issuance on the distribution record date, December 22, 2000

- divided by the adjusted stock price of the shares of the capital stock or other securities or property for or into which one share of our common stock was exchanged or converted.

For example, if we were to be acquired in a transaction where our stockholders receive securities and, upon the occurrence of the trigger, the adjusted stock price of the number of securities that one share of our common stock was converted into was $30, the number of LTWs issued or reserved for issuance on the distribution record date was 110,000,000 and the adjusted litigation recovery was $250 million, then, upon exercise of an LTW and the payment of the total exercise price, the holder of such LTW would receive 0.076 of a share of such securities for each LTW.

The exercise price will also be adjusted in case of certain reclassifications, redesignations, reorganizations or combinations. In such cases, the exercise price will equal

- if LTWs are exercisable into stock only or stock and any cash or property, other than cash which is received instead of any fractional share of stock, the per share par value of such stock multiplied by the number of whole shares of such stock to be received upon exercise and,

- if LTWs are exercisable for cash or property only, $0.01 per LTW being exercised.

The exercise price may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as your board of directors may determine in

good faith to be equitable in the circumstances.

The term "adjusted stock price," when used with respect to publicly traded securities other than our common stock, means:

- the average daily closing prices of a unit of such securities for the thirty consecutive trading days ending on and including the determination date,

- minus the per unit par value, if any, of such securities, which will be the exercise price per whole unit of such securities.

The term "adjusted stock price," when used with respect to property other than publicly traded securities, means the fair market value of the amount of such property distributable in respect of one share of our common stock, as determined in good faith by your board of directors, on the basis of such relevant factors as it in good faith considers appropriate.

Rights of LTW Holders

We will retain control of the litigation against the government and will retain 100% of the proceeds of any recovery of damages from our litigation. The litigation will remain an asset of Dime Savings. We have reserved the right, however, to pursue this litigation in any manner we deem appropriate. The LTW holders will not have any rights against us for any decision regarding the conduct of our litigation or the disposition of our claim for an amount less than the amount claimed in damages in the ongoing trial in the Claims Court, regardless of the effect on the value of the LTWs. Although we currently intend to continue pursuing our litigation vigorously and to seek a cash recovery in the amount claimed, there can be no assurance that we will not make a different determination in the future.

All rights of action in respect of the LTWs will be vested in the registered LTW holders; provided, however, that no registered LTW holder will have the right to enforce, institute or maintain any suit, action or proceeding against us to enforce, or otherwise act in respect of, the LTWs, unless

- that registered LTW holder has first given written notice to us of the substance of such dispute, and registered LTW holders of at least 25% of the issued and outstanding LTWs have given written notice to us of their support for the institution of such proceedings to resolve such dispute,

- the LTW holder has sent written notice of the substance of such dispute and of the support for the institution of such proceeding by such holders to the warrant agent, and

- the warrant agent has not instituted appropriate proceedings with respect to such dispute within 30 days following the date of such written notice to the warrant agent,

it being understood and intended that no one or more registered LTW holders will have the right in any manner whatsoever to affect, disturb or prejudice the rights of any other registered LTW holders, or to obtain or to seek to obtain priority or preference over any other LTW holders or to enforce any rights of the LTW holders, except in the manner described above for the equal and ratable benefit of all registered LTW holders.

Except as described above, the LTW holders will not have the right to enforce, institute or maintain any suit, action or proceedings to enforce, or otherwise act in respect of, the LTWs.

The LTW holders will have no voting rights, no liquidation preferences and no rights to dividends or other distributions in their capacity as an LTW holder.

Reservation of Shares of Our Common Stock

In the warrant agreement, we have agreed that we will use our best efforts to cause to be reserved and kept available out of the authorized and unissued shares of our common stock or any shares of our common stock held in treasury, a number of shares of our common stock sufficient to permit the exercise in full of all outstanding LTWs. Under the registration statement filed with the SEC, of which this document is a part, we have registered 19,471,485 shares of our common stock. We are authorized to issue 350 million shares of common stock under our certificate of incorporation, which we estimate, based on various assumptions, will be sufficient to permit the exercise in full of all LTWs expected to be outstanding. There can be no assurance, however, that this will be the case.

If, upon the occurrence of the trigger, the number of shares of our common stock authorized but unissued plus the number of shares held in treasury is less than the number of shares necessary to permit the exercise of the LTWs in full, we will be required by the terms of the warrant agreement either to

- repurchase from our stockholders shares of our common stock sufficient to eliminate the shortfall, to the extent permitted by applicable law and any material agreements then in effect to which we are a party, or

- call a special meeting of our stockholders to increase the number of authorized shares of our common stock to a number sufficient to eliminate the shortfall.

In addition, the expiration date of the LTWs will be automatically extended to 60 days after

- the date on which the repurchase of our common stock is successfully completed, or

- the effective date of the increase in the number of authorized shares of our common stock.

Shares of our common stock issued upon exercise of the LTWs will, upon such issuance, be fully paid and non-assessable, free of preemptive rights and free from all taxes, liens, charges and security interests with respect to the issuance thereof.

Amendment

From time to time, we and the warrant agent may amend or supplement the warrant agreement. Only amendments or supplements that have an adverse effect on the interests of the LTW holders will require the written consent of the LTW holders. In most cases, that consent will be required from holders of a majority of the then outstanding LTWs. In the case of an amendment that increases the exercise price of the LTWs or

decreases the number of shares of our common stock or other securities or property issuable upon exercise of the LTWs other than pursuant to adjustments provided for in the warrant agreement, the consent of each LTW holder will be required.

Reports

So long as any of the LTWs remain outstanding, we will cause copies of our annual report to stockholders and any other documents that we deem appropriate to be filed with the warrant agent and mailed to the LTW holders at their addresses appearing in the register of LTWs maintained by the warrant agent.

The Warrant Agent

EquiServe Trust Company, N.A. and EquiServe Limited Partnership collectively

act as warrant agent for the LTWs. The warrant agent maintains books for registration and transfer of the LTWs. An affiliate of EquiServe currently serves as our transfer agent. We and our affiliates may obtain other services from the warrant agent and its affiliates in the ordinary course of our respective businesses.

We have agreed to indemnify the warrant agent for any loss it incurs in connection with the warrant agreement, other than any loss resulting from its negligence, bad faith or willful misconduct. The warrant agent has agreed to indemnify us for any loss we incur in connection with the warrant agreement resulting from its negligence, bad faith or willful misconduct.

TAX CONSEQUENCES

In the opinion of Sullivan & Cromwell, our counsel, the following summary describes the material United States federal income tax consequences relating to the distribution, receipt and ownership of an LTW. This summary is based upon the Internal Revenue Code of 1986, as amended, Treasury regulations issued thereunder, administrative pronouncements and judicial decisions, all as in effect as of the date hereof and all of which are subject to change, possibly with retroactive effect. This summary addresses only LTWs that are held as capital assets and does not address all of the tax consequences that may be relevant to holders of the LTWs in light of their particular circumstances or to certain types of holders subject to special treatment under the Internal Revenue Code, including, without limitation, certain financial institutions, dealers in securities, currencies or commodities, traders in securities who elect to apply a mark-to-market method of accounting, tax-exempt organizations, persons whose functional currency is not the U.S. dollar, persons who hold an LTW as a position in a "straddle" or as a part of a "hedging," "conversion" or "constructive sale" transaction for federal income tax purposes. In addition, the discussion below applies only to a holder of our common stock who acquires the LTWs in the initial distribution and who is (i) a citizen or resident of the United States, (ii) a domestic corporation, (iii) an estate the income of which is includible in gross income for federal income tax purposes regardless of its source or (iv) a trust whose administration is subject to the primary supervision of a United States court and which has one or more United States persons who have the authority to control all substantial decisions of the trust. In this document, we refer to a stockholder that meets the preceding criteria as a "U.S. holder." This summary does not address the state, local or foreign tax consequences of the distribution, receipt and ownership of LTWs.

Distribution of the LTWs. Although the matter is uncertain because of the absence of any direct authority, the distribution of the LTWs to a U.S. holder should be treated as a tax-free stock dividend under Section 305(a) of the Internal Revenue Code and, therefore, a U.S. holder should not be required to include any amount in income with respect to such distribution. We intend to so treat the distribution (including for reporting purposes). Except as discussed below under "Alternative Characterization," the discussion below assumes that the distribution of the LTWs will be so treated.

If the fair market value of an LTW on the date of distribution is less than 15% of the fair market value of a share of our common stock on that date (with the fair market value for each based upon the average of the

high and low trading prices for each), a U.S. holder's tax basis in an LTW will be zero unless the U.S. holder elects to allocate the holder's tax basis in our common stock between the common stock and the LTWs in proportion to their relative fair market values. This election would need to be made for all the LTWs distributed to the U.S. holder, in the form of a statement attached to the U.S. federal income tax return filed by the U.S. holder for the year in which the U.S. holder receives the LTWs. If made, this election would be irrevocable. If, on the date of distribution of the LTWs, the fair market value of an LTW is 15% or more of the fair market value of a share of our common stock, a U.S. holder will be required to allocate the holder's tax basis in Dime common stock between the LTWs and the common stock in proportion to their relative fair

market values.

A U.S. holder's holding period for an LTW will include the U.S. holder's holding period for the shares of common stock with respect to which the LTW was distributed.

Sale or Exchange of the LTWs. Upon the sale or exchange of an LTW, a U.S. holder will recognize gain or loss in an amount equal to the difference between the amount realized upon the sale or exchange and the tax basis, if any, of the LTW. Any gain or loss from the sale or exchange will be capital gain or loss, and will be long-term capital gain or loss if the U.S. holder's holding period for the LTW (determined in the manner described above) is more than one year.

Expiration of the LTWs. If the LTWs expire without exercise, no basis will be allocated to the LTWs and no loss will be recognized upon their expiration. In this case, a U.S. holder's basis in Dime common stock would not be reduced as a result of the distribution of the LTWs.

Exercise of the LTWs. A U.S. holder will not recognize gain or loss upon exercise of an LTW, except that a U.S. holder will recognize short-term capital gain or loss with respect to any cash received in lieu of a fractional share of our common stock in an amount equal to the difference between the cash received and the portion of the U.S. holder's basis allocable to the fractional share of our common stock (determined in the manner described below) for which the cash is received.

Tax Basis of Our Common Stock Acquired Upon Exercise of an LTW. The tax basis of each share of our common stock acquired by an LTW exercise will equal the sum of the exercise price for the LTW and the tax basis, if any, for the LTW. The holding period of any share of our common stock acquired in this way will begin with and include the date of the LTW exercise.

Alternative Characterization. The IRS may assert that the distribution of the LTWs should be treated as a taxable stock dividend under Section 305(b) of the Internal Revenue Code to the extent of our current and accumulated earnings and profits because some of our stockholders and/or holders of rights with respect to our stock will not receive LTWs with respect to their stock and/or an adjustment to the exercise price of their rights with respect to their stock. We believe, however, that this fact should not cause the distribution of the LTWs to be a taxable stock dividend, because such stockholders and/or holders of rights with respect to our stock will not receive any cash dividends or other property in lieu of the LTWs and will not receive any dividends in excess of the dividends paid to our stockholders who do receive the LTWs. There is, however, no authority directly on point. If the IRS were to prevail in any such an assertion, a U.S. holder would be required to treat as ordinary dividend income the fair market value of the LTWs on the date of distribution (based upon the average of the high and low trading prices for the LTWs on such date) to the extent of the U.S. holder's ratable share of our current and accumulated earnings and profits and would have a basis in an LTW equal to its fair market value. U.S. holders are urged to consult their own tax advisors as to the possibility that the IRS would treat the distribution of the LTWs as a taxable stock dividend and as to the consequences to a U.S. holder of such treatment.

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DESCRIPTION OF OUR CAPITAL STOCK

In this section, we describe material features and rights of our capital stock. This summary is qualified in its entirety by reference to applicable Delaware law, Dime Bancorp's Amended and Restated Certificate of Incorporation and by-laws, and the rights agreement, as described below. See "Where You Can Find More Information" beginning on page 30.

Authorized Stock

Dime Bancorp's certificate of incorporation authorizes the issuance of up to

350 million shares of common stock and 40 million shares of preferred stock.

As of November 30, 2000, 105,640,587 shares of our common stock and 13,607.664 shares of our Series B Voting Preferred Stock were outstanding. In addition, 14,611,872 shares of our common stock were held in the treasury, and 27,370,162 shares of our common stock were reserved for issuance pursuant to our various stock based benefit plans and pursuant to outstanding warrants owned by Warburg.

Common Stock

Voting. Each share of our common stock entitles the holder to one vote on each matter submitted to our stockholders for their vote. Our stockholders do not have cumulative voting rights. Our by-laws provide that, when a quorum is present at any meeting, the vote of the holders of a majority of the stock that has voting power present in person or represented by proxy will decide any question brought before the meeting, unless a different vote is required by law, our certificate of incorporation, a certificate of designation of any series of our preferred stock or our by-laws.

Dividends. Each share of our common stock entitles the holder to dividends when, as and if declared by your board of directors, subject to any rights of any holders of our preferred stock that may be outstanding. Dime Bancorp's ability to pay dividends is limited by certain restrictions imposed on Delaware corporations. Under these restrictions, dividends may be paid only out of a surplus, as defined by the Delaware General Corporation Law or, if there is no surplus, our net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year.

Most of Dime Bancorp's cash flow comes from dividends and other capital distributions, if any, from Dime Savings, and such dividends and other capital distributions are subject to regulatory restrictions.

Limitations on Dime Savings' Ability to Make Capital Distributions. Savings associations such as Dime Savings may not make capital distributions (or pay management fees to their holding companies) if, following such distribution, the savings association will be undercapitalized. In addition, OTS regulations limit a savings association's ability to pay dividends and make other capital distributions according to its level of capital and income. For this purpose, "capital distributions" include

- distributions of cash or other property to stockholders (other than stock dividends or rights to purchase stock),
- payments by the savings association to stockholders to repurchase, redeem, retire or otherwise acquire any of its shares, including the extension of credit to finance an affiliate's acquisition of the savings association's shares,
- payments by the savings association to repurchase, redeem, retire or otherwise acquire debt instruments included in the savings association's total capital,
- direct or indirect payments of cash or other property to stockholders or affiliates in connection with a corporate restructuring,

- any other distribution charged against the savings association's capital accounts that would cause it to not be well capitalized following the distribution, or
- any transaction that the OTS or the FDIC determines to be a distribution of capital to owners of the savings association.

Under current OTS regulations, a savings association's ability to pay dividends and make other capital distributions requires a notice or application

to the OTS in advance of payment. The OTS may disapprove the proposed capital distribution if its payment would: make the association undercapitalized, significantly undercapitalized, or critically undercapitalized; raise safety or soundness concerns; or violate a statute, regulation, agreement with the OTS (or with the FDIC), or a condition imposed in an OTS-approved application or notice.

Assets upon Dissolution. Each share of our common stock entitles the holder to participate equally and ratably in our remaining assets after a liquidation, dissolution or winding up, subject to creditor's rights and any rights of any holders of our preferred stock that may be outstanding.

No Preemptive or Conversion Rights. Our common stockholders do not have preemptive rights to purchase or subscribe for any stock or other securities, and there are no conversion rights, redemption rights or sinking fund provisions with respect to our common stock.

Participating Preferred Stock Purchase Rights. Each issued share of our common stock includes a right to purchase one-hundredth of a share of our participating preferred stock in certain circumstances described in "Rights Agreement" below.

Transfer Agent and Registrar. Fleet National Bank is the transfer agent and registrar for our common stock.

Preferred Stock

Shares of our preferred stock may be issued in one or more series as determined by your board of directors. Your board of directors will determine by resolution the powers, designations, preferences and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions of any series of preferred stock, including the number of shares, dividend rights, redemption rights, liquidation preferences, voting rights and conversion rights.

In connection with the Warburg investment, we issued several different securities including preferred stock and warrants to purchase preferred stock. The material terms of these securities, including the Series B junior voting preferred stock, the Series C junior nonvoting preferred stock and the Series D junior nonvoting preferred stock, are set forth below.

Investment by Warburg

This section discusses the material terms of the Investment Agreement between us and Warburg, dated July 6, 2000, and the securities issued by us to Warburg in exchange for Warburg's $238 million investment. This information is not complete and is qualified in its entirety by reference to the Investment Agreement and its exhibits, which were filed with the SEC on a Form 8-K, dated July 11, 2000 as amended on October 12, 2000. The Investment Agreement and its exhibits are incorporated into this document by reference.

Warburg's investment was made over two closings. The first closing occurred upon signing the Investment Agreement on July 6, 2000. The second closing occurred on October 6, 2000 after necessary regulatory approvals had been received. The transactions are described below.

First Closing. On July 6, 2000, Warburg purchased rights to 12,009.491 shares of Series B junior voting preferred stock, representing about 9.9% of our outstanding common stock after issuance of the Series B stock, as each share of Series B stock has the economic rights equivalent to 1,000 shares of our

common stock, subject to antidilution adjustments. The rights converted into shares of Series B stock upon early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 on August 1,

2000. The Series B stock will convert into restricted shares of our underlying common stock upon, among other events, distribution of the LTWs. At the first closing, Warburg also purchased warrants to acquire 8,142.738 shares of Series C junior nonvoting preferred stock and warrants to acquire 3,866.753 shares of Series D junior nonvoting preferred stock, each series referencing 1,000 shares of our common stock per share of the series. The aggregate purchase price Warburg delivered to us at the first closing was approximately $210 million.

Second Closing. On October 5, 2000, Warburg received a determination by the OTS that Warburg does not control us. Given the receipt of this necessary regulatory approval, on October 6, 2000, at the second closing of the investment, Warburg purchased, for approximately $28 million, 1,598.173 additional shares of Series B stock and additional warrants to acquire 1,598.173 shares of Series D stock.

In total, after the completion of both closings for Warburg's investment, Warburg owns 13,607.664 shares of Series B stock, warrants to acquire 8,142.738 shares of Series C stock and warrants to acquire 5,464.926 shares of Series D stock.

Valuation. One way to think of the aggregate purchase price paid by Warburg is that Warburg paid a price of $17.50 for the economic equivalent of one share of our common stock and a warrant to purchase the economic equivalent of another share at an exercise price of $21.50, with such shares and warrants subject to a number of conditions, limits and rights. The warrants also have a surrender right on a change of control of Dime that entitles Warburg to a payment upon surrender even if there is a change of control at less than $21.50.

Our financial advisors, Credit Suisse First Boston Corporation and Merrill Lynch & Co., performed analyses of the securities Warburg was buying to assist us in evaluating and considering the investment and presented their analyses to our board of directors prior to the signing of the Investment Agreement. Both Credit Suisse First Boston and Merrill Lynch are internationally recognized investment banking firms that were selected by us to advise us on various matters, including the transaction with Warburg, based on their reputations and experience. Both firms are familiar with us, having worked on several engagements in recent years. Each of our advisors is receiving compensation in connection with the Warburg transaction and other matters on which they are advising us.

Our advisors concluded that, based on the market price of our common stock at the time that Warburg agreed to make the investment, Warburg received securities valued between $16.40 and $18.45 per underlying common share and related warrant. We refer to this as the "per share value" of Warburg's investment. We think this value compares favorably to the price of $17.50 per share and warrant Warburg paid and suggests that Warburg paid values consistent with the market value of our common stock at the time it agreed to make its investment. We provide some of the details of our financial advisors' analyses below. These analyses and estimates can vary greatly because they are based on a number of judgments and assumptions regarding financial, economic and market matters that are uncertain and beyond our control. Accordingly, if you have any questions regarding the effects of Warburg's investment, you may want to consult your own financial advisor.

Market Price of Our Common Stock. Our financial advisors began their analysis with the market price of our common stock and noted that the average closing price for the five trading days before we announced Warburg's investment on July 6 was $16.60.

Transfer Restrictions and Illiquidity. Next, our financial advisors considered the effect of the transfer restrictions that Warburg agreed to, as well as the large size of the equity investment. They noted that the transfer restrictions and the large percentage of the trading volume that the investment represents should generally reduce the value of the securities received by Warburg. They estimated that these transfer restrictions reduced the per share value to Warburg of its investment by

about 10% to 15% of the average market price of our common stock, or $1.66 to $2.49. Our financial advisors based these estimates on their

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market experience, although there were no directly comparable public valuations. Other financial analysts may value these transfer restrictions differently, which would change the estimated per share value of Warburg's investment. The transfer restrictions are summarized below.

Warrants. Using the Black-Scholes method for valuing options, our advisors then estimated the value of the warrants we were issuing to Warburg. To do so, our financial advisors made several important assumptions. In particular, they assumed a longer-term volatility in our common stock of between 25% and 35% and reduced the value of the warrants because the large amount of stock covered by them would likely be illiquid and to give effect to the transfer restrictions Warburg has agreed to. As a result, our advisors estimated that the warrants increased the per share value to Warburg of its investment by between $2.83 and $4.05. The terms of the warrants are summarized below.

You should note that the volatility our advisors assumed is lower than the short-term volatility implied by the price of publicly traded options on our common stock at the time Warburg agreed to make the investment and lower than the volatility Warburg and we agreed to use to calculate a purchase price if we are required by the Investment Agreement to buy back the warrants from Warburg in the event of a change of control of Dime. Our advisors believe the lower volatility is appropriate in light of the differential in risk associated with the significantly longer seven-year time period of the warrants relative to publicly traded options, which have terms of less than one year. The per share value of Warburg's investment would be increased, and the value of the investment from our perspective would be decreased, if a higher volatility and/or a smaller adjustment for the illiquidity of the underlying stock were used.

LTWs. Finally, our advisors considered that Warburg has agreed to give up the right to receive the LTWs. Based on the trading value of comparable securities issued by other thrifts, our financial advisors estimated that giving up the LTWs attributable to the shares they purchased decreased the per share value Warburg received by about $0.54. This valuation is based on a variety of assumptions that may or may not prove accurate. We do not know whether the LTWs will trade at or near this valuation. Accordingly, if you have any questions regarding the value of the LTWs, you may want to consult your own financial advisor.

Other. Our advisors considered other aspects of Warburg's investment, many of which are intangible, but did not assign a specific financial value to them because they did not believe it was possible or meaningful to attempt to do so. These included Warburg's agreement to limit its purchases of our common stock and not to acquire control of us, Warburg's right to surrender the warrants back to us if certain change of control events were to occur, our agreement to appoint or elect one Warburg representative to our board of directors, regulatory and market issues, and the fact that none of the securities we sold to Warburg is currently convertible into common stock. Some of these factors could be considered to be favorable to Warburg and some of them could be considered to be unfavorable. In addition, our advisors noted that they were not expressing any view as to the merits of the Warburg investment relative to any alternative business strategies or the effect of any other transaction in which we might engage.

Structure and Terms of Securities. To comply with regulatory requirements, Warburg's investment was structured using several different securities. In total, after the completion of both closings for Warburg's investment, Warburg owns 13,607.664 shares of Series B stock, warrants to acquire 8,142.738 shares of Series C stock and warrants to acquire 5,464.926 shares of Series D stock. If all the securities purchased by Warburg were to be converted today into shares of our common stock, they would amount to approximately 27.2 million

shares, or approximately 24.9%, of our outstanding common stock, before giving effect to the new issuance of shares of common stock underlying the convertible securities. None of these securities is in fact convertible into common stock at this time. The material terms of these securities are described below.

Series B Stock. Each share of Series B stock is entitled to 1,000 votes on all matters on which shares of our common stock are entitled to vote, together with the common stock as a single class. Shares of Series B stock are entitled to receive dividends the same as those paid on 1,000 shares of our common

stock, other than the distribution of the LTWs. In case of a merger or similar transaction, shares of Series B stock will be exchanged into equivalent securities of the acquiring company. Shares of Series B stock will convert into shares of our common stock on the earliest of (1) the issuance of the LTWs, (2) a change of control of Dime, (3) lapsing of the transfer restrictions placed on the securities under certain provisions of the Investment Agreement (for example, if we breach our material obligations in the Investment Agreement), or (4) April 6, 2001.

Series C Stock. Shares of Series C stock are not entitled to vote, except as required by law. Shares of Series C stock are entitled to receive dividends, other than the distribution of the LTWs, the same as those paid on 1,000 shares of our common stock. In case of a merger or similar transaction, shares of Series C stock will be exchanged into equivalent securities of the acquiring company. Upon the receipt of (1) written advice of counsel that, under applicable federal banking laws, the shares of Series C stock may be converted or (2) a certificate that Warburg is transferring the shares pursuant to a widely dispersed sale, shares of Series C stock are convertible into shares of our common stock, unless the Series B stock has not yet converted into our common stock, in which case, the shares of Series C stock will be convertible only into shares of Series B stock. Warburg does not currently own any shares of Series C stock, but owns only warrants to purchase shares of Series C stock.

Series D Stock. Shares of Series D stock are not entitled to vote, except as required by law. Shares of Series D stock are entitled to receive dividends, other than the distribution of the LTWs, the same as those paid on 1,000 shares of our common stock. In case of a merger or similar transaction involving Dime, shares of Series D stock will be exchanged into equivalent securities of the acquiring company. Our Series D stock will not be convertible into any other class of our stock unless we receive stockholder approval of the issuance of over 20% of our common stock or equivalents under NYSE rules. Upon such approval, the Series D stock will convert into Series C stock. The Series C stock may then be converted into Series B stock or common stock if the conversion of the Series C stock or Series B stock has already occurred. We have agreed to use our reasonable best efforts to obtain this stockholder approval prior to September 30, 2002. Warburg does not currently own any shares of Series D stock, but owns only warrants to acquire Series D stock.

Warrants. The Series C warrants and Series D warrants will allow Warburg to purchase Series C stock and Series D stock, respectively, at an exercise price of $21.50 per underlying common share, subject to a number of antidilution and other adjustments. All the warrants issued to Warburg expire seven years after issuance. None of the warrants has any voting rights. The warrants have a surrender right on a change of control of Dime that entitles Warburg to a payment upon surrender even if there is a change of control at less than $21.50.

As with the underlying Series C stock, the Series C warrants will be exchanged when it is permissible for us to do so under the federal banking laws and regulations or in the event that Warburg intends to transfer the warrants in a widely dispersed sale. At such time, the Series C warrants will be exchanged for Series B warrants if the Series B stock has not yet

converted into shares of our common stock. Otherwise, the Series C warrants will be converted into warrants to purchase our common stock.

As with the underlying Series D stock, the Series D warrants will be exchanged for Series C warrants upon the requisite approval by our stockholders under NYSE rules.

We have a right of first offer on any sale of warrants by Warburg. Warburg also has the right to sell, or surrender, any warrants to us (pursuant to an agreed valuation methodology) upon the occurrence of certain change of control events and has the right to sell, or surrender, any Series D warrants to us (pursuant to an agreed valuation methodology) if the appropriate stockholder approval under NYSE rules is not obtained by September 30, 2003 or the other transfer restrictions on the warrants lapse before then. The agreed valuation methodology will involve a calculation using the Black-Scholes method for valuing options. The assumptions to be used for this calculation include: a volatility rate of 40% (or 30% for a sale

back to us of the Series D warrants under the separate triggering events for the Series D warrants), a dividend yield of 1.9% and an interest rate of 6.25%. The exercise price will be assumed to be the exercise price of the warrant at the occurrence of the event allowing the surrender and the term of the warrant will be the remaining term of the warrant from the date of that event. For purposes of acquisition transactions causing a change of control of Dime, the underlying security price for the calculation will reference the price to be paid per share in the acquisition transaction; for other events permitting the surrender, the underlying security price will be based on the 5-day average closing market price for our common stock immediately after the event.

The warrants purchased by Warburg have a value even when the effective exercise price per common share is higher than the market price of our stock. This value is based, in part, on the seven-year term of the warrants and could be reduced if a change of control of Dime occurs before the end of the term. The surrender right was designed to offset this risk, particularly in light of the existence of a hostile offer at a price substantially lower than the effective exercise price of the warrants at the time Warburg agreed to purchase the warrants. Although it will not prevent offers by third parties to acquire us, the surrender right could have the effect of reducing the ultimate price per share available to our stockholders in an acquisition.

Given the assumptions used in the agreed-upon valuation methodology for the surrender right, if

- Dime is acquired,
- Warburg exercises its right to surrender the warrants it bought from us and causes us to buy them back, rather than holding the warrants, which Warburg may do instead, and converting them later into the same property that our other stockholders receive in the acquisition transaction, and
- Warburg exercises the surrender right with respect to all of the warrants it purchased from us,

then Warburg could potentially receive an amount in excess of the estimated economic value of the warrants at the time it surrenders them to us. We have the right under certain circumstances to pay to Warburg the surrender value in our common stock; otherwise, it will be payable in cash. Based on a number of assumptions discussed below, the surrender premium for the warrants in a theoretical acquisition transaction is described in the table below:

<TABLE>
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Acquisition Price Per Dime Common Share	Years Left Until Expiration of Warrants	Potential Payment to Warburg on Surrender of Warrant (based on agreed-upon valuation methodology) (in millions)	Potential Amount of Surrender Payment in Excess of Estimated Economic Value of Warrants (in millions)
<S>	<C>	<C>	<C>
	6	$ 70	$29
$16.00	4	55	26
	2	31	19
	6	87	32
$18.00	4	70	31
	2	45	24
	6	105	36
$20.00	4	87	35
	2	60	29
	6	119	39
$21.50	4	101	37
	2	73	33
	6	134	42
$23.00	4	115	40
	2	86	35

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For example, if we are acquired one year after the Warburg investment was made, our financial advisors estimate that this premium (the amount paid to Warburg in excess of the estimated economic value of the warrants) could range from $29 million to $42 million before any taxes incurred by Warburg on such amount, for acquisition prices between $16.00 and $23.00. If we are acquired at that time, the full payment to Warburg on the surrender of the warrants derived from the agreed-upon valuation methodology could range from $70 million to $134 million for acquisition prices between $16.00 and $23.00. As shown by the table, any surrender value would decline with time because the warrants themselves generally decline in value as the remaining term for their exercise shrinks from the initial seven years.

The surrender premium was estimated as follows: Based on the agreed-upon valuation methodology described above, we and our financial advisors calculated the amount we would have to pay to Warburg if they surrendered all of the warrants to us upon the occurrence of an acquisition transaction. These amounts appear in the third column. From this number, we subtracted the estimated economic value of the warrants at the time that Warburg would be surrendering them to us. The excess appears in the fourth column and represents the potential premium Warburg could receive on a surrender of the warrants.

When we and our financial advisors estimated the economic value of the warrants Warburg would be surrendering and subtracted that value from the amount we would have to pay Warburg if Warburg chose to surrender the warrants to us, we based the estimated valuation on a number of assumptions that may or may not prove correct. These assumptions include (1) the assumptions that our financial advisors used when valuing the warrants at the time they were issued to Warburg, including an assumed 30% volatility, which is the midpoint of the range of volatilities our financial advisors used at that time, and (2) an assumption that, if Warburg were to hold on to the warrants, the warrants would become exercisable for the stock of an

acquiror with characteristics comparable to our common stock.

Over different types of acquisition transactions or different types of consideration paid for our common stock, the surrender premium may be higher or lower depending upon the attributes of the stock or property received by our stockholders, and therefore underlying the warrants if Warburg chose to hold them, in the transaction. In addition, we do not know whether or not we will be acquired during the exercise period of the warrants or, if so, whether or not Warburg would exercise the surrender right or, if it does, whether Warburg would exercise the right with regard to all or only some of the warrants. Therefore, the values in this table are highly speculative and Warburg may not receive a surrender premium at all.

In addition to customary antidilution provisions for the warrants, we have agreed to additional antidilution protections in two circumstances. First, although the various series of stock that Warburg may acquire upon exercise of the warrants do not have the right to receive LTWs, the exercise price of the warrants may be adjusted if the average aggregate market price of the LTWs is over $100 million for an agreed period of time after the issuance of the LTWs. In this case, the exercise price of the warrants will be adjusted downward for the aggregate market price over $100 million, but only in proportion to Warburg's ownership of us. Second, the exercise price of the warrants may be adjusted downward, in proportion to Warburg's ownership of us, for any payment potentially made by us to Hudson United Bancorp in excess of $15 million under the Termination, Option Cancellation and Settlement Agreement, dated April 28, 2000, between us and Hudson regarding the termination of the then-pending merger between us and Hudson, unless the payment relates to (1) a breach of representations by Warburg regarding its ownership of us or (2) another subsequent transaction, such as a merger or tender offer, approved or recommended by our board of directors.

Other Material Provisions. The Investment Agreement contains a number of other material provisions, which are summarized below:

Standstill Agreement. Until July 6, 2003, Warburg has agreed that it will not purchase or acquire any shares of our common stock that would result in its having control over us or owning in excess of 24.9% of our outstanding voting shares. In addition, Warburg has agreed that it will not take any action that would violate its standard agreement with the OTS to refrain from controlling us.

<PAGE>

Voting. Each share of Series B stock will be entitled to the same voting rights as, and will vote together with, shares of our common stock (subject to each share of Series B stock representing the equivalent of 1,000 shares of our common stock). The Series C stock, Series D stock, the Series C warrants and the Series D warrants do not carry voting rights. Warburg has not entered into any voting agreement with us.

Preemptive Rights. As long as Warburg owns at least 5% of the outstanding shares of our common stock (assuming the exercise of all outstanding options and warrants and conversion of convertible preferred stock), if we issue any common stock after the date of the investment, Warburg has the right to purchase from us that amount of shares required for it to maintain its proportionate interest in us. To the extent Warburg utilizes this right to maintain its percentage ownership interest, it will not be entitled to duplicative protection of antidilution adjustments under the terms of the warrants.

Governance Matters. We have agreed to elect or appoint one person nominated by Warburg to serve as a director of both Dime Bancorp and Dime Savings. In addition, two Warburg representatives will be allowed to attend and observe meetings of the board of directors of both Dime Bancorp and Dime Savings, including meetings of any committees, but excluding executive

sessions of the boards of directors.

Warburg will relinquish the right to its board seat and will lose one observer upon the sale or distribution of 75% or more of its shares of our common stock (or securities representing common stock). In addition, Warburg has agreed to relinquish its right to a board seat, but retain the right to two observers, upon conversion by us to a bank holding company (should such conversion occur), if such action is necessary to satisfy Federal Reserve Board requirements. In such case, however, Warburg will be afforded the option of selling down its interest in us or taking other measures to reduce its voting interest in us and retain its board seat.

Mr. Howard H. Newman, a managing director of Warburg, became a director of Dime Bancorp's board on August 1, 2000. Mr. Newman became a director of Dime Savings effective October 8, 2000.

Transfer Restrictions. With certain exceptions, shares of our stock and warrants owned by Warburg will be restricted from transfer subject to, among other things, a schedule whereby 20% of the shares will be freely tradeable after one year; an additional 30% will be freely tradeable after two years; and the balance will be freely tradeable after three years. In addition, Warburg will be permitted to tender into tender or exchange offers (1) on a pro rata basis with other stockholders, provided at least 60% of the shares sought in the tender or exchange offer have been tendered by our other stockholders or (2) not opposed by your board of directors.

Warburg will be released from the transfer restrictions if, among other things, (1) we breach our material obligations in the Investment Agreement or (2) we execute documentation, or recommend an offer to stockholders, that would result in a change in control of us.

We have agreed to register the securities acquired by Warburg as the transfer restrictions expire.

Rights Agreement

Each share of our common stock has attached to it one right issued pursuant to a stockholder protection rights agreement, dated October 20, 1995, as amended, between Dime Bancorp and Dime Savings, as successor to The First National Bank of Boston, as rights agent. Unless the context otherwise requires, all references to our common stock in this document include the associated preferred stock purchase rights.

Each right entitles its holder to purchase one-hundredth of a share of our participating preferred stock at an exercise price of $50, subject to adjustment, after the separation time, which is after the close of business on the earlier of:

- the tenth business day after commencement of a tender or exchange offer that, if consummated, would result in a person becoming an acquiring person, which is defined in the rights agreement as a person beneficially owning 20% or more of the outstanding shares of our common stock, and

- the tenth business day after the first date of public announcement that a person has become an acquiring person, which is also called the flip-in date.

The rights will not be exercisable until the business day following the separation time. The rights will expire on the earlier of:

- immediately following our 2002 annual stockholders' meeting,

- their redemption, as described below,

- an exchange of the right for our common stock, as described below, or
- our merger into another corporation pursuant to an agreement entered into prior to a flip-in date.

Your board may, at any time prior to the occurrence of a flip-in date, redeem all the rights at a price of $0.01 per right.

If a flip-in date occurs, each right, other than those held by the acquiring person or any affiliate or associate of the acquiring person or by any transferees of any of these persons, will constitute the right to purchase shares of our common stock having an aggregate market price equal to $100 in cash, subject to adjustment. In addition, your board of directors may, at any time between a flip-in date and the time that an acquiring person becomes the beneficial owner of more than 50% of the outstanding shares of our common stock, elect to exchange the rights for shares of our common stock at an exchange ratio of one share of our common stock per right.

Under the rights agreement, we may not consolidate or merge, or engage in other similar transactions, with an acquiring person without entering into a supplemental agreement with the acquiring person providing that, upon consummation or occurrence of the transaction, each right shall thereafter constitute the right to purchase common stock of the acquiring person having an aggregate market price equal to $100 in cash, subject to adjustment.

The rights agreement will not apply to a tender offer that has at least a 50% cash component for all shares and sufficient liquidity in any securities component, provided that the offer is accepted by the beneficial owners of at least 75% of our outstanding common stock. In addition, the rights agreement does not apply to Warburg's investment.

The rights will not prevent our being taken over. The rights, however, may have antitakeover effects. The rights may cause substantial dilution to a person or group that acquires 20% or more of our outstanding common stock unless the rights are first redeemed by your board.

VALIDITY OF OUR COMMON STOCK

The validity of the shares of common stock issuable upon exercise of the LTWs will be passed upon for us by our counsel, Sullivan & Cromwell, New York, New York.

WHERE YOU CAN FIND MORE INFORMATION

We are subject to the information reporting requirements of the Securities Exchange Act of 1934, and in accordance with such laws we file with the SEC periodic reports, proxy statements and other information relating to our business, financial condition and other matters.

The reports, statements and other information (including any exhibits, amendments or supplements to such documents) we file may be inspected and copied at the public reference facilities maintained by the SEC at Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549; and at the following regional offices of the SEC: 7 World Trade Center, Suite 1300, New York, New York 10048; and Citicorp Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. Copies of this material can also be obtained by mail, upon payment of the SEC's customary charges, by writing to the Public Reference Section at 450 Fifth Street, N.W., Washington, D.C. 20549. The SEC also maintains a web site on the Internet at http://www.sec.gov that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. These reports, statements and other information concerning us can also be inspected at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

Incorporation by Reference

The rules of the SEC allow us to "incorporate by reference" information into this document, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. These documents contain important information about us.

<TABLE>
<CAPTION>

SEC Filings (File No. 001-13094)	Period or Date Filed
<S>	<C>
Annual Report on Form 10-K.....	Year ended December 31, 1999, as amended by Form 10K/A filed on March 31, 2000
Quarterly Reports on Form 10-Q....	Quarters ended March 31, 2000, June 30, 2000 and September 30, 2000
Reports on Form 8-K.....	Reports filed January 20, 2000, February 29, 2000, March 8, 2000 (2 reports filed on March 8, 2000), March 10, 2000, March 13, 2000 (2 reports filed on March 13, 2000), March 14, 2000, March 21, 2000, April 19, 2000, April 28, 2000, May 1, 2000, July 11, 2000 (as amended by Form 8-K/A filed on October 12, 2000), July 12, 2000, September 15, 2000, October 17, 2000, October 23, 2000, November 1, 2000 and November 9, 2000.
Proxy Statement for 2000 Annual Stockholders Meeting.....	Filed June 12, 2000
Soliciting Material Pursuant to Rule 14a-12 on Schedule 14A.....	Report filed August 17, 2000
The description of our common stock set forth in the registration statement on Form 8-A filed pursuant to Section 12 of the Securities Exchange Act, including any amendment or report filed with the SEC for the purpose of updating this description.....	Filed January 10, 1995
The description of the rights agreement, contained in the registration statement on Form 8-A filed pursuant to Section 12 of the Securities Exchange Act, including any amendment or report filed with the SEC for the purpose of updating this description.....	Filed November 3, 1995, as amended June 23, 2000 and July 12, 2000

</TABLE>

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We incorporate by reference into this document these reports and filings and any additional documents that we may file with the SEC after the date of this document. Those documents include periodic reports, such as annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, as well as proxy statements.

The documents incorporated by reference, including particularly our Annual Report on Form 10-K for the year ended December 31, 1999, as amended, and our Quarterly Reports on Form 10-Q filed since the 1999 Form 10-K, contain

financial statements and other information about our financial condition that is being incorporated by reference into this document.

You can obtain any of the documents incorporated by reference into this document from us without charge, excluding any exhibits to those documents, by requesting them in writing or by telephone from us at Investor Relations Department, 589 Fifth Avenue, New York, New York 10017, telephone: (212) 326-6170. Please be sure to include your complete name and address in your request. If you request any incorporated documents, we will mail them to you by first class mail, or another equally prompt means, within one business day after we receive your request. In addition, you can obtain copies of these documents from the SEC's web site. Such documents may also be inspected at the locations described above.

EXPERTS

The consolidated financial statements of Dime Bancorp, Inc. and subsidiaries as of December 31, 1999 and 1998, and for each of the years in the three-year period ended December 31, 1999, have been incorporated by reference into this document and in the registration statement of which it is a part in reliance upon the report of KPMG LLP, independent certified public accountants, incorporated by reference into this document, and upon the authority of such firm as experts in accounting and auditing.

<PAGE>

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The estimated amounts of the expenses of and related to the offerings are as follows:

<TABLE>

<S>	<C>
Registration Fee--Securities and Exchange Commission	$ 52
Printing and engraving expenses	68,000
Auditing and accounting fees and expenses	8,000
Legal fees and expenses	500,000
Blue Sky fees and expenses	0
Stock exchange listing fees and expenses	95,000
Transfer agent fees and expenses	44,000
Miscellaneous	2,000
Total	$717,052

</TABLE>

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

Dime's certificate of incorporation provides that Dime's directors will not be personally liable to Dime or its stockholders for monetary damages for breach of fiduciary duty as a director, except for

- any breach of the director's duty of loyalty to Dime or its stockholders,

- acts or omissions not in good faith or which involve intentional

misconduct or knowing violation of law,

- unlawful dividends or distributions, or

- any transaction from which the director derived an improper personal benefit.

Dime's certificate of incorporation further provides that, if Delaware law is amended to further eliminate or limit the personal liability of directors, then the liability of a director of Dime will be eliminated or limited to the fullest extent permitted by Delaware law. Delaware law provides that, subject to certain limitations in the case of suits brought by a corporation and derivative suits brought by a corporation's stockholders in its name, a corporation may indemnify any person who is made a party to any third party suit or proceeding on account of being a director, officer, employee or agent of the corporation against expenses, including attorney's fees, judgments, fines and amounts paid in settlement reasonably incurred by him in connection with the action, through, among other things, a majority vote of the directors who were not parties to the suit or proceeding, if the person

- acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation; and

- in a criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

Dime's certificate of incorporation provides that:

- in actions other than by or in the right of the corporation, Dime will, to the extent permitted by applicable banking law or regulation, indemnify any person who was or is a party or is threatened to be made a party to any action because that person is or was or agreed to be a director or officer of Dime, or is or was serving or agreed to serve at the request of Dime as a director, officer, partner, trustee, administrator or fiduciary of another entity, against any costs, expenses, judgments, fines and amounts paid in settlement, if that person acted in good faith and in a manner that person reasonably believed to be in, or not opposed to, the best interests of Dime, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Expenses may be advanced to these persons on the condition that they will be repaid if the person is not entitled to be indemnified.

- in actions by or in the right of the corporation, Dime will, to the extent permitted by applicable banking law or regulation, indemnify any person who was or is a party or is threatened to be made a party to any action by or in the right of Dime to procure a judgment in its favor because that person is or was or has agreed to become a director or officer of Dime, or is or was serving or has agreed to serve at the request of Dime as a director, officer, partner, trustee, administrator or fiduciary of another entity, against expenses actually and reasonably incurred by that person in the defense or settlement of such action, if he or she acted in good faith and in a manner that person reasonably believed to be in, or not opposed to, the best interest of Dime, except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to Dime unless and only to the extent that the court in which such action was brought determines that such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. Expenses may be advanced to these persons on the condition that they will be repaid if the person is not entitled to be indemnified.

- to the extent that a director or officer of Dime has been successful in defense of any action, that person must be indemnified against all expenses actually and reasonably incurred by that person.

. Dime may, but is not required to, indemnify and advance expenses to an employee or agent of Dime in defense of any action by reason of the fact that such person is or was or has agreed to become an employee or agent of Dime, or is or was serving or has agreed to serve at the request of Dime as an employee or agent of another entity, against all costs actually and reasonably incurred by that person.

<PAGE>

ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

EXHIBIT INDEX

<TABLE>

<C>	<S>
3.1	Amended and Restated Certificate of Incorporation of Dime (incorporated by reference to Exhibit 3.1 to Dime's Quarterly Report on Form 10-Q for the quarter ended March 31, 1998, filed with the SEC on May 15, 1998 (SEC file no. 001-13094)).
3.2	By-laws of Dime (incorporated by reference to Exhibit 3 to Dime's Quarterly Report on Form 10-Q for the quarter ended June 30, 1997, filed with the SEC on August 14, 1997 (SEC file no. 001-13094)).
4.1	Form of Warrant Agreement, among Dime, EquiServe Trust Company, N.A. and EquiServe Limited Partnership, pertaining to the Litigation Tracking Warrants (incorporated by reference to Exhibit 3 to Dime's Registration Statement on Form 8-A, filed with the SEC on December 15, 2000).
4.2	Form of Warrant Certificate (included in Exhibit 4.1).
4.3	Form of Common Stock Certificate (incorporated by reference to Exhibit 5 to Dime's Registration Statement on Form 8-A filed with the SEC on January 10, 1995).
5	Opinion of Sullivan & Cromwell regarding the validity of shares of Dime common stock.
8	Opinion of Sullivan & Cromwell regarding certain federal income tax matters.
23.1	Consent of Sullivan & Cromwell (included in opinions in Exhibit 5 and Exhibit 8).
23.2	Consent of KPMG LLP.
24	Power of Attorney.*

</TABLE>

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*Previously filed

ITEM 17. UNDERTAKINGS

The undersigned Registrant hereby undertakes:

(a) (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth

in the registration statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent not more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered here, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) The undersigned registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report, to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Article 3 of Regulation S-X is not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

(d) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(e) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act

of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant, Dime Bancorp, Inc., certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this amendment to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on December 15, 2000.

Dime Bancorp, Inc.

By: /s/ Lawrence J. Toal
Name: Lawrence J. Toal
Title: Chief Executive Officer, President and Chief Operating Officer

Pursuant to the requirements of the Securities Act of 1933, this amendment has been signed by the following persons in the capacities indicated as of December 15, 2000.

<TABLE>
<CAPTION>

Signature	Title
<C>	<S>
/s/ Lawrence J. Toal Lawrence J. Toal	Chief Executive Officer, President, Chief Operating Officer and a Director (Principal Executive Officer)
* Anthony P. Terracciano	Chairman of the Board
* Derrick D. Cephas	A Director
* Frederick C. Chen	A Director
* J. Barclay Collins II	A Director
* Richard W. Dalrymple	A Director

James F. Fulton

* A Director

Fred B. Koons

* A Director

Virginia M. Kopp

</TABLE>

<PAGE>

<TABLE>
<CAPTION>

Signature	Title
<S>	<C>
*	A Director
James M. Large, Jr.	
*	A Director
John Morning	
*	A Director
Howard H. Newman	
*	A Director
Margaret Osmer-McQuade	
*	A Director
Sally Hernandez-Pinero	
*	A Director
Eugene G. Schulz, Jr.	
*	A Director
Howard Smith	
*	A Director
Dr. Norman R. Smith	
*	A Director
Ira T. Wender	
/s/ Anthony R. Burriesci	Chief Financial Officer (Principal Financial Officer)
Anthony R. Burriesci	
/s/ John F. Kennedy	Controller (Principal Accounting Officer)
John F. Kennedy	

</TABLE>

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*By: /s/ Lawrence J. Toal
Lawrence J. Toal
Attorney-in-fact

<PAGE>

EXHIBIT INDEX

<TABLE>
<CAPTION>

Exhibit Number	Document Description
3.1	Amended and Restated Certificate of Incorporation of Dime (incorporated by reference to Exhibit 3.1 to Dime's Quarterly Report on Form 10-Q for the quarter ended March 31, 1998, filed with the SEC on May 15, 1998 (SEC file no. 001-13094)).
3.2	By-laws of Dime (incorporated by reference to Exhibit 3 to Dime's Quarterly Report on Form 10-Q for the quarter ended June 30, 1997, filed with the SEC on August 14, 1997 (SEC file no. 001-13094)).
4.1	Form of Warrant Agreement, among Dime, EquiServe Trust Company, N.A. and EquiServe Limited Partnership, pertaining to the Litigation Tracking Warrants (incorporated by reference to Exhibit 3 to Dime's Registration Statement on Form 8-A, filed with the SEC on December 15, 2000).
4.2	Form of Warrant Certificate (included in Exhibit 4.1).
4.3	Form of Common Stock Certificate (incorporated by reference to Exhibit 5 to Dime's Registration Statement on Form 8-A filed with the SEC on January 10, 1995).
5	Opinion of Sullivan & Cromwell regarding the validity of shares of Dime common stock.
8	Opinion of Sullivan & Cromwell regarding certain federal income tax matters.
23.1	Consent of Sullivan & Cromwell (included in opinions in Exhibit 5 and Exhibit 8).
23.2	Consent of KPMG LLP.
24	Power of Attorney.*

</TABLE>

* Previously filed.

</TEXT>
</DOCUMENT>

Exhibit B

8-K 1 0001.htm FORM 8-K CURRENT REPORT

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 18, 2000

Dime Bancorp, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware	001-13094	11-3197414
(State or Other Jurisdiction)	(Commission File Number)	(IRS Employer Identification No.)

589 Fifth Avenue New York, New York	10017
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: (212) 326-6170

Not applicable

(Former Name or Former Address, if Changed Since Last Report)

Item 5. Other Events.

Dime Bancorp, Inc. ("Dime") files this current report on Form 8-K (1) to disclose information regarding the issuance of litigation tracking warrants as a dividend on its outstanding common stock and (2) to update information previously disclosed regarding certain litigation arising out of the hostile takeover attempt against Dime (the "Hostile Tender Offer") by North Fork Bancorporation, Inc. ("North Fork").

(1) LITIGATION TRACKING WARRANTS

On December 18, 2000, Dime Bancorp, Inc. issued the following press release regarding its litigation tracking warrants:

Contact: Dime
William S. Burns
(212) 326-6170

December 18, 2000
00/37

FOR IMMEDIATE RELEASE

DIME ANNOUNCES DISTRIBUTION OF LITIGATION TRACKING WARRANTS

New York, NY-- December 18, 2000-- Dime Bancorp, Inc. (NYSE: DME) today announced that its Board of Directors has declared a distribution to common stockholders of a substantial portion of Dime's economic interest in its pending "goodwill" lawsuit against the United States government through the issuance of Litigation Tracking Warrants™(LTW™s).

Dime has set the close of business on December 22, 2000 as the record date for the determination of those stockholders eligible to receive LTWs. Each eligible stockholder will receive one LTW for each share of Dime's common stock held on the record date. Dime will distribute the LTWs to eligible stockholders beginning on December 29, 2000. The LTWs will be listed on the Nasdaq National Market under the trading symbol DIMEZ (CUSIP number 25429Q 11 0) and will begin trading following the record date. Dime understands that its common stock will continue to trade on the New York Stock Exchange with "due bills" (reflecting a seller's obligations to deliver LTWs when received) from December 20, 2000 until the "ex-distribution date," which will be January 2, 2001 - the first business day after the December 29th distribution date.

At September 30, 2000, Dime had assets of $25.2 billion and deposits of $13.9 billion. Its principal subsidiary, The Dime Savings Bank of New York, FSB (www.dime.com), is a regional bank serving consumers and businesses through 127 branches located throughout the greater New York City

metropolitan area. Directly and through its mortgage banking subsidiary, North American Mortgage Company (www.namc.com), Dime also provides consumer loans, insurance products and mortgage banking services throughout the United States.

Certain statements in this press release may be forward-looking. A variety of factors could cause Dime's actual results and experience to differ materially from the anticipated results or other expectations expressed in such forward-looking statements. The risks and uncertainties that may affect such forward-looking statements include the vagaries of litigation, the timing and occurrence (or non-occurrence) of events that may be subject to circumstances beyond Dime's control, market fluctuations, and changes in applicable laws and regulations or interpretations thereof.

# # #

(2) SALOMON SMITH BARNEY CASE

On March 29, 2000, Dime had filed suit in the Supreme Court of the State of New York, County of New York, against Salomon Smith Barney, Inc. ("Salomon"), which had been acting as a financial advisor to North Fork in connection with the Hostile Tender Offer. The complaint alleged violations of a provision of a confidentiality agreement, dated May 12, 1997, between Dime and Salomon, which the complaint stated prohibited Salomon, for a three-year period, from providing financial advisory services to any entity interested in acquiring or otherwise entering into a business combination transaction with Dime without Dime's prior written consent to either the transaction or the provision of such advice (the "Confidentiality Agreement"). On May 17, 2000, Dime had amended its complaint to include a claim for monetary damages from Salomon and a claim against North Fork. On June 30, 2000, North Fork moved to dismiss the amended complaint as against North Fork, which was denied on September 13, 2000. On December 7, 2000, the court granted Dime's motion for partial summary judgment against Salomon on the issue of liability, finding that Salomon breached the Confidentiality Agreement by advising North Fork without Dime's consent in connection with the Hostile Tender Offer, and denied Salomon's cross-motion for summary judgment against Dime on the issue of damages. In addition, on that date, Dime voluntarily dismissed its claims against North Fork.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

DIME BANCORP, INC.

By: /s/ James E. Kelly

Name: James E. Kelly
Title: General Counsel

Date: December 18, 2000

Exhibit C

8-K 1 0001.htm FORM 8-K CURRENT REPORT

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 20, 2000

Dime Bancorp, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware	001-13094	11-3197414
(State or Other Jurisdiction)	(Commission File Number)	(IRS Employer Identification No.)

589 Fifth Avenue New York, New York	10017
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: (212) 326-6170

Not applicable

(Former Name or Former Address, if Changed Since Last Report)

Item 5. Other Events.

On December 20, 2000, Dime Bancorp, Inc. issued the following press release regarding its litigation tracking warrants:

Contact: Dime
William S. Burns
(212) 326-6170

December 20, 2000
00/38

FOR IMMEDIATE RELEASE

DIME ANNOUNCES TIMETABLE FOR TRADING OF LITIGATION TRACKING WARRANTS

New York, NY — December 20, 2000 — Dime Bancorp, Inc. (NYSE: DME) today announced that its Litigation Tracking Warrants™ (LTW™s) will begin trading on the Nasdaq National Market on December 26, 2000 on a "when-issued" basis under the trading symbol DIMZV through December 29, 2000. Commencing January 2, 2001, the LTWs will be traded "regular-way" under the trading symbol DIMEZ.

Dime's common stock will continue to trade on the New York Stock Exchange with "due bills" (*i.e.,* including the value of the LTWs and reflecting a seller's obligation to deliver LTWs to a buyer) through December 29, 2000. Commencing January 2, 2001, Dime's common stock will trade on the New York Stock Exchange without the value of the LTWs.

At September 30, 2000, Dime had assets of $25.2 billion and deposits of $13.9 billion. Its principal subsidiary, The Dime Savings Bank of New York, FSB (www.dime.com), is a regional bank serving consumers and businesses through 127 branches located throughout the greater New York City metropolitan area. Directly and through its mortgage banking subsidiary, North American Mortgage Company (www.namc.com), Dime also provides consumer loans, insurance products and mortgage banking services throughout the United States.

# # #

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

DIME BANCORP, INC.

By: /s/ James E. Kelly

Name: James E. Kelly
Title: General Counsel

Date: December 21, 2000

Exhibit D

SEC Regulations Committee Highlights

Joint Meeting with SEC Staff - March 12, 1998

Location: SEC Headquarters – Washington, D.C.

NOTICE: The AICPA SEC Regulations Committee meets periodically with the staff of the SEC to discuss emerging technical accounting and reporting issues relating to SEC rules and regulations. The purpose of the following highlights is to summarize the issues discussed at the meetings. These highlights have not been considered and acted on by senior technical committees of the AICPA, or by the Financial Accounting Standards Board, and do not represent an official position of either organization.

In addition, these highlights are not authoritative positions or interpretations issued by the SEC or its staff. The highlights were not transcribed by the SEC and have not been considered or acted upon by the SEC or its staff. Accordingly, these highlights do not constitute an official statement of the views of the Commission or of the staff of the Commission.

I. ATTENDANCE

A. SEC Regulations Committee

Robert H. Herz, Chairman
Val Bitton
Mark Bagaason
Ernie Baugh
Ed Coulson
David Einhorn
Jay Hartig
Terri Iannaconi
Rodney Liddle
Eric Press
Tony Ressino
Amy Ripepi
Stewart Sandman
Bill Travis
Bill Yeates

B. Securities and Exchange Commission

Office of the Chief Accountant

Jane Adams, Deputy Chief Accountant
Scott Bayless, Assistant Chief Accountant
Donna Coallier, Professional Accounting Fellow
Jeffrey Jones, Professional Accounting Fellow
Mike Kigin, Associate Chief Accountant
Leslie Overton, Assistant Chief Accountant
Armando Pimentel, Professional Accounting Fellow
Cody Smith, Professional Accounting Fellow
Walter Teets, Academic Accounting Fellow
Bob Uhl, Professional Accounting Fellow

Division of Corporation Finance

Robert Bayless, Chief Accountant
Craig Olinger, Deputy Chief Accountant

Division of Market Regulation

Matt Hughey

C. **AICPA**

Annette Schumacher Barr, Technical Manager
Brad Davidson, Technical Manager

D. **Guests**

Kenny Chatelain, Coopers & Lybrand
Debra Mac Laughlin, BDO Seidman

II. ORGANIZATIONAL/STAFF CHANGES

Robert Bayless reported that the Division of Corporation Finance will be expanding the number of offices in operations from 9 to 12. A list of the new offices is included as Attachment A to these highlights.

Jane Adams announced that the Office of the Chief Accountant is seeking an additional professional accounting fellow with a background in financial instruments and financial services. Applications for this position will be accepted until April 10th, 1998.

III. STATUS OF COMPANY REGISTRATION

Craig Olinger reported that press reports regarding SEC proposal of "company registration" rules in the summer of 1998 are not entirely accurate. Proposed rules refining the registration process are expected by the end of 1998. The staff does not consider the proposal to be "company registration." Instead, it will be a comprehensive look at the entire registration process. Issues to be addressed may include:

- The communications outside the prospectus at or near the time of an offering
- Prospectus delivery requirements
- Private versus public offerings-distinctions and integration
- Improvements in the quality of disclosures
- The staff's administrative process regarding registrations.

IV. OBSERVATIONS ON SAB 98

Cody Smith made the following staff observations relating to Staff Accounting Bulletin (SAB) No. 98:

On February 3, 1998, the Commission issued SAB 98. SAB 98 makes technical revisions to various existing SABs to be consistent with the requirements of FASB Statement No. 128, Earnings Per Share. The SAB is effective immediately.

SAB 98 amends SAB Topic 1:B:2 and 1:B:3 to remove the previous requirement to delete historical earnings per share since deleting historical earnings per share is inconsistent with Statement 128. Pro forma information may be required under Article 11, and may be presented on the face of the income statement.

SAB 98 amends SAB Topic 3:A to delete the references to supplemental earnings per share in APB 15. The staff still expects registrants to provide the same information outside the financial statements if material based on the requirements of Article 11.

SAB 98 amends SAB Topic 4:D with respect to the calculation of earnings per share in an IPO. Previously, Topic 4:D specified a computation method to be applied to all prior periods presented to reflect the dilutive nature of stocks and warrants issued within a one year period prior to the IPO at prices below the IPO price. The revised guidance requires registrants to follow Statement 128 (which generally requires issuances to be reflected from issuance date forward) but cautions registrants that the staff considers issuances for nominal consideration before an IPO to be in-substance stock splits that should be retroactively reflected under Statement 128.

Issuances for which the recording of compensation or other expense has been appropriately considered under APB Opinion 25 or FASB Statement 123 ordinarily would not be considered nominal issuances. Also, issuances in exchange for assets (e.g. SAB 48 transactions) would not be considered nominal issuances unless the fair value of the assets is nominal in relation to the fair value of the equity instrument issued. The staff anticipates that nominal issuances will likely be limited to issuances to investors or promoters for considerably less than fair value. The revisions do not change existing requirements to recognize expense for stock or options issued in exchange for employee or non-employee services under APB Opinion 25 or FASB Statement 123. However, for financial statements for periods ending prior to December 15, 1997, the staff will not object to the continued application of SAB 83 as long as the registrant included SAB 74 disclosure as to what the earnings per share will be under Statement 128 and SAB 98 once adopted.

SAB 98 retains the guidance in SAB Topic 6:B:1 that calls for presentation of earnings available to common shareholders on the face of the income statement. SAB 98 amends Topic 6:B:1 to suggest how registrants who elect to present Comprehensive Income under FASB Statement 130 on the face of the income statement should report income available to common shareholders.

SAB 98 amends SAB Topic 6:G to change the references to basic and diluted earnings per share from primary and fully diluted earnings per share.

V. REVISED STAFF LEGAL BULLETIN NO. 5

Craig Olinger briefly discussed the revision to Staff Legal Bulletin 5. Jane Adams reported that she had reminded members of the Committee on Corporate Reporting of the Financial Executives Institute as to registrants' obligations to report the costs associated with year 2000 remediation.

VI. FASB STATEMENT NO. 131 AND MD&A

Craig Olinger stated that a decision to early adopt FAS 131 does not relieve the

issuer of the obligation to recast segment data for all years presented, unless to do so would be impractical. Companies that expect a material future change in their segment data are encouraged to apply the provisions of SAB 74, including: (1) a discussion of the standards and its requirement, and (2) the impact on their current segment groupings.

VII. PLAIN ENGLISH RULES

Craig Olinger discussed the recently adopted Plain English rules, noting that they will require registrants to follow six key elements of plain english when drafting the cover page, summary and risk factors section of prospectuses. The final rules, which are effective October 1, 1998, are substantially the same as the proposed rules. Elements in the proposed rules that were not adopted include limitations on the number of risk factors, ranking of risk factors, and overall length of the prospectus summary. Current Rule 421(B), which requires the entire prospectus to be written in clear and concise language, has been strengthened.

Bob Herz asked how the rules will be enforced in the review process. Mr. Olinger responded that the staff is being trained to evaluate "plain english" disclosures and does not intend to act as "grammar police". Amy Ripepi noted that the "Plain English" restatement of the risk factors on the ratio of earnings to fixed charges appears to change the calculation. Craig responded that no change to the substance of the rule was intended.

VIII. RECENT AMENDMENTS TO REGULATIONS

Craig Olinger briefly discussed the recent amendments to Regulation S. The amendments are designed to eliminate abusive practices under Regulation S, while preserving the benefits of the rule for capital formation. The amendments will affect offshore offerings of equity securities, including convertible securities, by US companies. Key provisions of the amendments include: the classification of offshore placements of equity securities of domestic issuers under Regulation S as "restricted securities" within the meaning of Rule 144, so that resales without registration will be restricted; lengthening of the holding period under Regulation S from 40 days to one year; and certification and legending requirements for the securities.

IX. FRR 50: RECOGNITION OF THE INDEPENDENCE STANDARDS BOARD

Scott Bayless briefly discussed Financial Reporting Release (FRR) 50 which recognizes the Independence Standards Board (ISB) as the authoritative standard-setting body for auditor independence.

Mr. Bayless stated that new questions regarding interpretation of SEC independence requirements should now be referred to the ISB staff. He also indicated that the release provides that the Commission and its staff will consult with the ISB during the course of ISB consideration of standards or interpretations, including those dealing with matters addressed by existing SEC guidance. As the ISB reconsiders and effectuates changes in independence standards and practices that involve existing SEC guidance, the Commission will consider modifying or withdrawing its conflicting guidance unless the Commission determines that it should not accept the

ISB position in a particular area.

X. BROKER DEALER YEAR 2000 REPORTS

Matt Hughey of the Division of Market Regulation described the recently proposed rules that would require broker-dealers to report on Year 2000 readiness. The proposed rules would also require auditors to attest to some relevant assertions.. The intent of the attestation rules was to require from auditors the lowest level of exposure while still rendering an attest report (rather than agreed-upon procedures). The $100,000 minimum net capital requirement for the broker-dealer report would cover about 2,200 of the 7,800 registered broker-dealers. The items to be discussed in the report (not attested to by the auditor) would include:

(1) Whether the board of directors (or similar body) of the broker-dealer has approved and funded plans for preparing and testing the broker-dealer's computer systems for potential computer problems caused by Year 2000 Problems;

(2) Whether the broker-dealer's plans exist in writing and address all of a broker-dealer's major computer systems wherever located throughout the world;

(3) Whether the broker-dealer has assigned existing employees, hired new employees, or engaged third parties to provide assistance in avoiding Year 2000 Problems; and if so, the work that these individuals have performed as of the date of each report;

(4) What is the broker-dealer's current progress on each stage of preparation for potential computer problems caused by Year 2000 Problems. These stages are:

(i) awareness of potential Year 2000 Problems;

(ii) assessment of what steps the broker-dealer must take to avoid Year 2000 Problems;

(iii) implementation of the steps needed to avoid Year 2000 Problems;

(iv) internal testing of software designed to avoid Year 2000 Problems, including the number and the nature of the exceptions resulting from such testing;

(v) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other broker-dealers, other financial institutions, customers, and vendors), including the number and the nature of the exceptions resulting from such testing; and

(vi) implementation of tested software that will avoid Year 2000 Problems;

(5) Whether the broker-dealer has written contingency plans in the event that, after December 31, 1999, it has computer problems caused by Year 2000 Problems; and

(6) Identify what levels of the broker-dealer's management are responsible for addressing potential computer problems caused by Year 2000 Problems, including a

description of these individuals' responsibilities regarding the Year 2000 and an estimate of the percentage of time that each individual has spent on Year 2000 issues during the preceding twelve month period; in each report, the broker-dealer shall identify a contact person regarding Year 2000 matters.

The second report for broker dealers and the two follow-up reports for transfer agents will require a series of assertions by management. The information in these assertions overlaps somewhat with the items required to be discussed. The intent of the overlap is to limit the assertions to items to which the Commission believes can be the subject of auditor attestation. Those assertions are as follows:

(1) Whether the broker-dealer has developed written plans for preparing and testing the broker-dealer's computer systems for potential Year 2000 Problems;

(2) Whether the board of directors (or similar body) of the broker-dealer has approved the plans described in (1) above;

(3) Whether a member of the broker-dealer's board of directors (or similar body) is responsible for the execution of the plans described in (1) above:

(4) Whether the broker-dealer's plans described in (1) above address the broker-dealer's domestic and international operations, including the activities of each of the firm's subsidiaries, affiliates, and divisions. (These provisions do not apply to subsidiaries, affiliates, and divisions of the broker-dealer that are regulated by U.S. or foreign regulators other than the Commission);

(5) Whether the broker-dealer has assigned existing employees, hired new employees, or engaged third parties to implement the broker-dealer's plans described in (1) above;

(6) Whether the broker-dealer or third party has conducted internal testing, whether such testing is on schedule in accordance with the plan described in paragraph (1) above, and whether the broker-dealer has determined as a result of the internal testing that the firm has modified its software to correct Year 2000 Problems; and

(7) Whether the broker-dealer has conducted external or industry-wide testing, whether such testing is on schedule in accordance with the plan described in paragraph (1) above, and whether the broker-dealer has determined as a result of the external or industry-wide testing that the firm has modified its software to correct Year 2000 Problems.

Comments on the proposed release are due on or about April 13, 1998.

XI. SECPS NOTIFICATION REQUIREMENTS

Scott Bayless and Bob Herz discussed the staff's views of the profession's proposal to change the SECPS requirement for the auditor to notify the staff of the termination of an audit relationship. The SECPS and the SEC Regulations Committee proposed an "exception reporting" requirement whereby the auditor would notify the staff only if the registrant does not provide a Form 8-K to the auditor. The staff would accept this change only if the auditor were also required to check EDGAR to verify that the 8-K

was filed. The SECPS is not willing to make auditors responsible for verifying that filings were made. Bob Herz asked whether a change to the "15 day letter" requirements might be made to require the auditor to file that letter directly with the staff, covering notification of termination and disagreements. Scott's reaction was that this would not satisfy the need for timely reporting of the termination.

XII. TOTAL RETURN SWAPS

Armando Pimentel addressed questions surrounding his remarks at the SEC Developments Conference in which the staff required consolidation of an SPE in a total return swap because the registrant retained "all of the substantive risks and rewards" in the arrangement. He stressed that his remarks were not intended to change practice or define the term "substantive" -- in the particular fact pattern, the registrant had in fact retained all of the risks and rewards.

XIII. DISCOUNTS ON RESTRICTED STOCK

The Committee asked the staff to participate in an effort to produce a "best practices" paper regarding valuations of restricted stock. The intent would be to reduce preparer uncertainty and inconsistency in the discount that the staff will accept. Donna Coallier reported that valuations were discussed in a recent training session held by the Division of Corporation Finance. Jay Hartig explained that rejection of company-specific valuations by the staff is of particular concern. Craig Olinger replied that often a "company-specific" valuation incorrectly excludes recent company developments such as contemporaneous issuances of equity for cash, and is based mainly on general information. Donna Coallier offered to review examples of valuations in connection with the staff's review of the "best practices" paper.

XIV. FASB STATEMENT NO. 123 PRO FORMA DISCLOSURES

Robert Bayless discussed the staff's reaction to a paper prepared by the Employee Benefits Task Force regarding materiality criteria and FAS 123 pro forma disclosures. Mr. Bayless indicated that a written response would be forthcoming. [Note: The Committee subsequently received a written response from the staff; see Attachment B to these highlights.] He expressed disagreement with the conclusion that materiality should be measured only quantitatively or based on the determination of whether an auditor might qualify their report because of its omission. He noted that the Commission viewed the required disclosure as a reasonable compromise from the FASB's preferred position of income statement recognition, and to eliminate that disclosure would be a breech of that compromise. He also observed that the public outcry over the proposed standard is difficult to reconcile with the frequent omission of the information because the effect is immaterial. Mr. Bayless also indicated that the Division's selection criteria for reviewing filings on Form S-2 and S-3 may be modified to include consideration of whether the issuer has reasonably excluded FAS 123 pro forma disclosures. The information gathered from these reviews will help the staff decide whether additional guidance on this issue is necessary.

XV. SECURITIZATION OF SUBPRIME LOANS

Robert Uhl discussed recent media reports of lenders eliminating recognition of gains on the sale of loans under SFAS No. 125. The staff will make an announcement at

the next EITF meeting that includes four major points:

1) Recognition of gain on the sale of loans is not elective.

2) In estimating the fair value of retained and new interests, the assumptions used must be reasonable and supportable.

3) Assumptions and methodologies used to estimate the fair value of similar instruments must be consistent.

4) Significant assumptions used in estimating the fair value of retained and new interests at the balance sheet date should be disclosed. Significant assumptions generally include default rates, interest rates and prepayment rates.

XVI. RULE 3-05 SIGNIFICANCE TEST AND EXCHANGE TRANSACTIONS

Craig Olinger discussed the following fact pattern and analysis:

A registrant and another party may each contribute businesses to a Newco (or "joint venture"), receiving in exchange an equity interest in the combined company. In this transaction, the registrant is giving the other party an interest in a formerly consolidated business in exchange for an equity interest in the other party's business.

Instruction 2 to Item 2 of Form 8-K specifies that dispositions and acquisitions effected through exchange transactions each be reported under that Item. The Item specifies separate thresholds for determining when each of those transactions is significant. The significance of the disposition and acquisition should be evaluated separately in determining whether pro forma information about the disposition (and receipt of an equity investment) is required, and whether audited financial statements of the business contributed by the other party are required.

Pro forma financial statements should be furnished to reflect the effects of a disposition of a controlling interest in a business if the business is a "significant subsidiary" exceeding the 10% level under the tests in Rule 1-02(w) of Regulation S-X. Retention of an equity interest in the business (or the newly combined businesses) does not alter that requirement.

The acquisition of an interest in a business to be accounted for using the equity method is deemed the acquisition of a business. Therefore, if the interest in the joint venture will be accounted for using the equity method, financial statements of the business or businesses contributed by the other party may be required under Rule 3-05 of Regulation S-X. The asset, investment and pretax earnings tests of Rule 1-02(w) should be based on the acquired percentage of the other party's business compared to the registrant's historical financial statements (without adjustment for the related disposition of the business contributed by the registrant to the joint venture). Whether or not the transaction is accounted for at fair value, the investment test should be based on the fair value of the consideration given up or the consideration received, whichever is more reliably determinable.

If reporting of both the disposition and the acquisition are required by Form 8-K, a

registrant may be unable to present a pro forma income statement depicting the joint venture formation because financial statements of the business contributed by the other party are not available. Those financial statements and related pro forma financial statements need not be filed until 75 days after the transaction is consummated. Pro forma financial statements depicting a significant disposition are required to be filed within 15 business days of the disposition. In these circumstances, the initial Form 8-K reporting the transaction should include a narrative description of the effects of the disposition, quantified to the extent practicable, with complete pro forma information depicting the effects of the exchange of interests furnished at the time that the audited financial statements of the acquired business are filed.

XVII. PRORATA CONSOLIDATION

Bob Herz noted that Robert Bayless has asked for the Committee's views about when prorata consolidation is considered appropriate. Bob stated that although no formal research was done, the Committee discussed the issue and agreed that prorata consolidation (other than in foreign issuer filings) is generally considered appropriate only for undivided interests. While this is most prevalent in some industries such as in oil and gas and construction projects, it may be appropriate in other circumstances provided there are undivided interests. However, "synthetic" undivided interests (such as might be created with corporate structures) should not qualify for such treatment. A Committee member noted that prorata statements could also be shown on a supplemental basis.

XVIII. PRO FORMA FINANCIAL STATEMENTS THAT INCLUDE COST-SAVING ADJUSTMENTS

Robert Bayless agreed to share ideas with the Filing Issues Task Force related to reporting expected cost savings and similar matters in pro forma financial statements. The emphasis of this effort will be to help issuers present information that is meaningful to investors while clearly distinguishing pro forma financial information in accordance with regulation S-X from other forward-looking information.

XIX. POOLING OF INTEREST CRITERIA

. Tainted Treasury Shares and the Acquisition of Preferred Shares

Jeff Jones discussed a pooling issue in which the company wanted to acquire the minority interest of a subsidiary in a target company. The registrant proposed to issue tainted treasury shares to acquire the outstanding minority interest and thereby cure the taint for the instant pooling transaction. The staff concluded that issuing tainted treasury shares for this purpose would not cure the taint for the instant pooling transaction. The staff would reach a similar conclusion if an issuer proposed to use tainted treasury shares to acquire other securities of the target company.

A. Litigation Tracking Warrants

Donna Coallier discussed a pooling issue in which a registrant had a contingent asset that could be realized upon favorable settlement of certain

litigation. The registrant did not believe that the trading value of its shares in the market properly included the value of the contingent asset. As a result, the registrant proposed to issue a warrant that they believed would capture and isolate the value of the contingent asset. The registrant planned to issue one warrant to each shareholder for each share outstanding as of a date shortly following a business combination. At issue was whether such an issuance would preclude pooling of interest accounting for the business combination that preceded the issuance.

The planned warrants were to be detachable and freely tradable separately from the common stock of the company. The warrants would be issued equally to issuer and combining company shareholders alike. The warrant would give the holder the right to obtain a variable amount stock for nominal consideration. The number of shares the holder available at exercise would vary based upon the amount of settlement received from the litigation. As a result, common stockholders that do not or cannot exercise warrants upon settlement of the litigation will be diluted to the extent of exercise by warrant holders that do exercise.

The staff concluded that if the company issued these warrants subsequent to consummation of a business combination, pooling of interest accounting would not be appropriate for the business combination. The staff believed that the instrument effectively separated the combined entity into two components: the contingent asset and the remainder of the company. Upon issuance of the warrant, the shareholders would be able to trade the value of the contingent asset separately from the rest of the company's value. The staff believed that such an ability was inconsistent with the introduction to paragraph 48 which requires that there be no planned transactions that are inconsistent with the combining of the entire existing common stock interests of the combining companies. In addition, the staff believed that the warrant issuance has the same economic effect as a spin-off of the contingent asset, which would be precluded by paragraph 48c.

B. **Systematic Patterns**

Donna Coallier discussed a pooling issue related to systematic patterns. She referred to a registrant that had submitted a formulaic systematic pattern based on the company's projections of annual treasury stock needs. The company projected its treasury stock needs based on the degree to which vested options were in or out of the money and historical exercise experience that had been compiled by its human resources department. The systematic pattern provided that the annual estimate of share needs would be repurchased ratably each day, after giving effect to legal black out periods. The staff concurred that the repurchase program described by the registrant qualified as a systematic pattern since it had explicit criteria that specified the amount and timing of shares to be repurchased.

However, in the first quarter in 1997, a decision was made to purchase additional shares beyond the number specified by systematic pattern. Specifically, due to sharp increases in the company's stock price, the company believed that a larger number of shares would be purchased in the first quarter, and adjusted repurchases accordingly. The systematic pattern

did not specify a criteria that would result in an immediate increase in share repurchases upon an increase in stock price. Rather, increases would be spread over time as through the mechanics of the systematic pattern. As a result, the staff concluded that the additional shares purchased beyond the number specified by the systematic pattern would be considered tainted shares that should be included in the company's 90% test in evaluating whether pooling of interest treatment is appropriate for business combinations.

XX. STAFF ANNOUNCEMENTS

The staff distributed the following written announcements:

. Impact of FASB Statement No. 128, "Earnings Per Share"

In February 1997, the FASB issued Statement No. 128, "Earnings per Share." The Statement establishes standards for computing and presenting earnings per share (EPS). It simplifies and supersedes the existing EPS guidance found in APB Opinion 15 and its 102 interpretations. The Statement is effective for financial statements issued for periods ending after December 31, 1997.

Audit literature may not permit an independent accountant to reissue its report on financial statements for inclusion in a Form S-3 after the registrant has reported its EPS initially in accordance with SFAS No. 128 in a Form 10-Q or in a press release. The staff will let firms decide for themselves whether they can permit reissuance of their opinion without restatement in this circumstance. However, if restated financial statements are not filed (under cover of Form 8-K, Item 5, for example), then the Form S-3 must present, at least, selected financial data (even though not required by instructions to Form S-3) that includes the restated EPS numbers (basic and diluted) for all periods, with prominent disclosure that the EPS data is restated in accordance with SFAS 128. This position is similar to the staff's position regarding stock splits that occur subsequent to filing of a Form 10-K that is incorporated by reference into a Form S-3.

See also the discussion below regarding filing of restated Financial Data Schedules.

A. Retroactive Changes and the Financial Data Schedule

Financial Data Schedules (FDS) are required to be included in EDGAR filings pursuant to Item 601(c) of Regulation S-K and Regulation S-B. Item 601(c)(iii) specifies when an amended or restated FDS is required to be filed. A restated FDS is required if any of the amounts reported in a previously submitted FDS are restated due to, for example, a pooling of interests or an accounting principle change. FAS 128 (Earnings per Share) is an example of a new accounting standard that requires retroactive restatement which will trigger an obligation to file restated FDSs.

Item 601(c)(2)(iii) specifies that restated FDSs should be filed for each affected period during the latest three fiscal years and interim periods of the

latest two fiscal years; except that a restated FDS need not be furnished for any period for which a FDS was not previously required to be furnished. The first filing made with the Commission which includes restated financial statements must include the restated FDS information. For registrants with a year-end of December 31, restated FDSs must be included with Form 10-K for the year ended December 31, 1997.

Even though the restatement may involve only a single item, such as EPS, the restated FDS must include all the required responses previously filed in addition to the restated item. (The tags in the FDS will not be changed in the near future to correspond to the new captions under FAS 128, so registrant should just report basic EPS for <EPS-Primary> and diluted EPS for <EPS-Diluted>. Filers should not change the tags. If they do, they will receive warning messages when they file.)

B. **Disclosures about Segments (FASB Statement No. 131)**

Disclosures specified by FASB Statement No. 131, Disclosures about Segments of an Enterprise and Related Information, are not required until annual financial statements for a year beginning after December 15, 1997 are presented. A registrant's election to adopt SFAS 131 in its annual financial statements earlier than required does not change the requirement to re-cast segment data for all years presented, unless impracticable. Companies should consider the requirement s of SAB 74 (see below) in light of the recent issuance of SFAS 131. Companies that expect a material future change in their segment financial information are encouraged to apply the provisions of SAB 74, including: (1) a discussion of the standard and its requirements, and (2) the impact on their current segment groupings.

Some companies may elect to furnish unaudited SFAS 131 segment data outside of annual financial statements or in interim statements earlier than required. If that data is presented, we believe unaudited segment information on the same basis should be furnished for the prior comparable period and all prior years included or incorporated by reference in the filing. However, the previously filed annual financial statements may always be incorporated by reference into a registration statement without revision to recast the segment data.

Items 101 and 303 of Regulation S-K require certain disclosures based on terms defined in SFAS 14, the previous segment standard. We will not object if companies electing to apply SFAS 131 early use the definitions of segments, products and services, and geographic areas in SFAS 131 in their responses to Item 101 and 303 of Regulation S-K. Of course, the disclosure must continue to be balanced and complete.

C. **Accounting and Disclosure by Physician Practice Management Companies**

Amortization PPMs may recognize "goodwill," in connection with a business combination with medical practices, or "capitalized management contract costs, " in connection with exchange transactions and management services

arrangements with medical practices. Factors inherent in this industry raise questions about the use of long amortization periods for these intangible assets. For example, significantly increased competition, industry consolidation, changing third party reimbursement requirements, technological medical innovation, an uncertain regulatory future, the ability of a PPM and the medical practices to perform under the terms of the services arrangement over an extended period, the uncertain continuity of revenues upon departure of key owner/physicians of the practice, and the relative infancy of the medical practice management industry make it difficult to assert that the PPM arrangement with the medical practices will survive and provide a competitive advantage on a long-term basis. The staff believes a relatively short amortization period is generally appropriate and does not contemplate circumstances where an amortization period in excess of twenty-five years would be justified.

Exhibit E

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re WASHINGTON MUTUAL, INC., et al.[1] Debtors.	Chapter 11 Case No. 08-12229 (MFW) Jointly Administered
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION Plaintiff - against - WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP., Defendants for all claims, - and- FEDERAL DEPOSIT INSURANCE CORPORATION, Additional Defendant for Interpleader claim.	Adversary Proceeding No. 09-50551 **JURY TRIAL DEMANDED FOR COUNTERCLAIMS 15 – 18** **Re: Docket No. 1**

DEBTORS' ANSWER AND COUNTERCLAIMS IN
RESPONSE TO THE COMPLAINT OF JPMORGAN CHASE BANK, N.A.

[1] The Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395). The Debtors continue to share their principal offices with the employees of JPMorgan Chase located at 1301 Second Avenue, Seattle, Washington 98101.

DEBTORS' ANSWER

Debtors Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment," and, together with WMI, the "Debtors" or "Counterclaims-Plaintiffs"), by their undersigned counsel, for their Answer And Counterclaims To The Complaint Of JPMorgan Chase Bank, N.A. ("JPMorgan Chase" or "Counterclaims-Defendant") dated March 24, 2009 (the "Complaint"), hereby respond as follows:

INTRODUCTION

Having obtained the largest deposit and new customer base ever seized by the Federal Deposit Insurance Corporation ("FDIC", and, as receiver, the "FDIC-Receiver"), in exchange for paying a token percentage of such deposits, JPMorgan Chase now seeks to further line its pockets at the expense of WMI by grabbing assets above and beyond the assets it already acquired at a fire-sale price. This Court should not permit JPMorgan Chase to raid the most significant remaining assets of the Debtors when these assets were never owned by the former bank subsidiaries of WMI. The assets in dispute in this adversary proceeding are and have always been property of the Debtors' estates which, by definition, could not have been transferred to JPMorgan Chase without this Court's approval because they became property of the estate pursuant to section 541 of title 11 of the United States Code (as amended, the "Bankruptcy Code").

Although JPMorgan Chase is correct to seek this Court's ruling as to whether it could take assets that belong to the Debtors' estates, launching this adversary proceeding is nothing but a transparent attempt to put its proofs of claims that were filed with this Court (at least ten of which seek exactly the relief sought in this action) in front of other creditors. As JPMorgan Chase well knows, the Debtors' human resources have been drained and they are operating at a significant informational disadvantage given the loss of employees and the substantial amount of historical books and records taken by JPMorgan Chase as part of the sale. Recognizing, however, the central

role this action will have on recoveries to the Debtors' creditors and shareholders, the Debtors do not seek to delay disposition of these core estate property questions and hereby file their answer (the "Answer") and assert counterclaims (the "Counterclaims") in response to the Complaint, reserving their right under Federal Rule of Bankruptcy Procedure 7013 to amend this pleading to assert additional counterclaims after the Debtors complete their investigation of all of the facts concerning JPMorgan Chase's actions, including pre-petition dealings with the Debtors.

With respect to the issues squarely placed before the Court in this adversary proceeding, JPMorgan Chase seeks numerous rulings that lie at the heart of this Court's core jurisdiction. The Complaint concerns the administration of the Debtors' estates, seeks allowance of JPMorgan Chase's claims, and seeks to "quiet title" as to disputed property interests, all while purporting to absolve JPMorgan Chase from any potential liability under the Bankruptcy Code's avoidance powers. The Debtors respectfully request that the Court not permit JPMorgan Chase to obtain a windfall at the expense of the Debtors' significant creditor and shareholder constituency (which already face the prospect of considerable losses) and thereby thwart any realistic prospect of recoveries pursuant to a confirmable Chapter 11 plan.

GENERAL DENIAL

Except as otherwise expressly admitted, Debtors deny each and every allegation in the Complaint, including, without limitation, any allegations contained in the preamble, prayer, headings, and subheadings of the Complaint. Pursuant to Federal Rule of Civil Procedure 8(b)(6), as made applicable to this action by Federal Rule of Bankruptcy Procedure 7008, averments in the Complaint to which no responsive pleading is required shall be deemed as denied. Debtors expressly reserve the right to seek to amend and/or supplement this Answer, as may be necessary.

Complaint 1: JPMorgan Chase brings this action in order to ensure that JPMorgan Chase and its subsidiaries are not divested of their assets

and interests purchased in good faith from the Federal Deposit Insurance Corporation ("FDIC") as receiver (the "Receiver") for Washington Mutual Bank, Henderson Nevada ("WMB") under Title 12 of the United States Code pursuant to that certain Purchase and Assumption Agreement (Whole Bank) dated as of September 25, 2008, a true and correct copy of which is attached as Exhibit A hereto (the "P&A"). JPMC also brings this action for indemnification and recovery against the Debtors for certain liabilities that may be asserted against JPMorgan Chase as the successor by merger to Washington Mutual Bank, fsb, Utah ("WMB fsb"), a former subsidiary of WMB, or against other former subsidiaries of WMB that currently are subsidiaries of JPMorgan Chase.

Answer: Paragraph 1 of the Complaint characterizes the nature of the Complaint and therefore no response is required. To the extent a response is required, the Debtors deny knowledge or information sufficient to determine why JPMorgan Chase brought this action and therefore deny same. Debtors further respectfully refer the Court to the Purchase and Assumption Agreement Whole Bank, dated September 25, 2008 ("P&A Agreement") for the content thereof and deny the remainder of paragraph 1 of the Complaint.

Complaint 2: Under the P&A, JPMorgan Chase acquired the business and related assets of WMB, including ownership of all of WMB's direct and indirect subsidiaries, and all right, title and interest of the Receiver in those assets. As provided for in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest" to these assets, pursuant to and in accordance with the Federal Deposit Insurance Act, as amended (the "FDI Act"). Among the assets acquired by JPMorgan Chase under the P&A were certain assets that have been claimed by Washington Mutual, Inc. ("WMI", and collectively with WMI Investment Corp. ("WMI Investment"), the "Debtors").

Answer: Debtors deny the allegations set forth in paragraph 2 of the Complaint, except respectfully refer the Court to the P&A Agreement for the content thereof.

Complaint 3: Many of the assets the Debtors now improperly claim belong to them (but that JPMorgan Chase in fact acquired from the FDIC) have already been determined not to be the Debtors' property pursuant to the resolution procedures under Title 12. On December 30, 2008, the Debtors submitted claims in the Receivership for,

among other things, ownership of these assets. On January 23, 2009, the FDIC, as Receiver, disallowed the Debtors' claims. The Debtors elected not to appeal the disallowance of their claims to ownership of these assets. Rather, on March 20, 2009, the Debtors filed an action against the FDIC in the United States District Court for the District of Columbia, *Washington Mutual, Inc., et al. v. Federal Deposit Insurance Corporation,* Case No. 1:09-cv-00533 (the "District Court Action"), challenging to the disallowance of their claims and also claiming ownership of those assets. The Debtors have exercised their purported right to demand a trial by jury in the District Court Action.

Answer: Debtors deny the allegations set forth in paragraph 3 of the Complaint, except respectfully refer the Court to the proof of claim Debtors filed with the FDIC-Receiver on December 30, 2008 (the "Proof of Claim"), the FDIC-Receiver's notice dated January 23, 2009 (the "Disallowance Notice"), and the complaint filed in *Washington Mutual, Inc., et al. v. Federal Deposit Insurance Corporation,* Case No. 1:09-cv-00533 (the "DC Action"), for the content thereof. Debtors further admit and aver that the Disallowance Notice stated in part: "[I]f you do not agree with this disallowance, you have the right to file a lawsuit on your claim ... in the United States District (or Territorial) Court for the District within which the failed Institution's principal place of business was located or the United States District Court for the District of Columbia within 60 days from the date of this notice. **IF YOU DO NOT FILE A LAWSUIT ... BEFORE THE END OF THE 60-DAY PERIOD, THE DISALLOWANCE WILL BE FINAL, YOUR CLAIM WILL BE FOREVER BARRED AND YOU WILL HAVE NO FURTHER RIGHTS OR REMEDIES WITH RESPECT TO YOUR CLAIM.**" (Emphasis and capitalization in original.)

Complaint 4: The assets that are the subject of the Debtors' disallowed claims are also among the assets set forth in the Debtors' Schedules and Statements of Financial Affairs filed with this Court on December 19, 2008, January 27, 2009 and February 24, 2009 (collectively, the "Schedules"). Notwithstanding the assertions in the Schedules and the District Court Action, the assets put at issue by the Debtors are not property of the Debtors' estates under 11 U.S.C. § 541, nor are they property of the Receiver any longer, but rather the assets

are property of JPMC, which acquired them in good faith and for value from the FDIC pursuant to the FDI Act.

Answer: Debtors deny the allegations set forth in paragraph 4 of the Complaint, except respectfully refer the Court to the Disallowance Notice, and the Debtors' Schedules and Statements of Financial Affairs filed by the Debtors with this Court on December 19, 2008, January 27, 2009 and February 24, 2009, for the content thereof.

Complaint 5: In response to the Debtors' actions and in order to protect its economic interests in the assets the Debtors chose to put at issue in the District Court Action, JPMorgan Chase has filed this Complaint.

Answer: Paragraph 5 of the Complaint characterizes the nature of the Complaint and therefore no response is required. To the extent a response is required, Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint that concern JPMorgan Chase's putative motivations for filing the Complaint, and therefore deny same. Debtors otherwise deny the allegations set forth in paragraph 5 of the Complaint, except respectfully refer the Court to the Complaint for the content thereof.

Complaint 6: The assets of the Receiver that were sold to JPMC, as to which WMI has asserted rights or has refused to acknowledge JPMC 's ownership, include (i) approximately $4 billion in the aggregate face amount of Trust Securities (as defined below) contributed by WMI to WMB, the amount of which constitutes regulatory core capital of WMB; (ii) the right to tax refunds arising from overpayments attributable to operations of WMB and its subsidiaries for the 2008 tax year and prior tax years and net operating loss, net capital loss, and excess tax credit carrybacks from 2008 to prior tax years; (iii) approximately $3.7 billion credited by book entry shortly prior to the receivership of WMB so as to create a purported deposit account at WMB fsb in the name of WMI without any apparent deposit of funds; (iv) at least $234 million in tax refunds that belonged to WMB and/or WMB subsidiaries and were acquired by JPMorgan Chase under the P&A but were deposited to the credit of WMI in the days following the Receivership; (v) goodwill judgments that arise from pending and prior litigation; (vi) assets of certain trusts supporting deferred compensation arrangements covering the former and current

employees of WMB and its subsidiaries; and (vii) other assets of WMB, including Visa shares, intellectual property and contractual rights, as described below. The Debtors are also refusing to recognize the Receiver's ability to transfer to JPMorgan Chase certain tax qualified pension and 401(k) plans pursuant to which the trust assets are held for the exclusive benefit of participants, most of whom were WMB's employees.

Answer: Debtors deny the allegations set forth in paragraph 6 of the Complaint, except respectfully refer the Court to the P&A Agreement for the content thereof.

Complaint 7: The liabilities at issue in this adversary proceeding are liabilities that did not transfer to the Receiver or to JPMorgan Chase, but rather are liabilities of the Debtors that relate to acts, conduct or omissions of WMI in connection with events prior to the commencement of the receivership proceedings for WMB and for which WMB and/or its former subsidiaries would be entitled to indemnification and contribution from the Debtors as primary actors. These liabilities relate principally to (i) the issuance of "Trust Securities" with the aggregate face amount of approximately $4 billion; (ii) so-called "deposit accounts," which in the aggregate were recorded as having a book balance of approximately $4.3 billion as of the commencement of these Chapter 11 cases; and (iii) the restructuring and transfer of assets and liabilities among the Debtors and their former subsidiaries.

Answer: Debtors deny the allegations set forth in paragraph 7 of the Complaint.

Complaint 8: In this action, JPMorgan Chase seeks, pursuant to Title 12 and the P&A, (i) a declaration that, as the successor of the Receiver, it has or is entitled to full legal title to and the beneficial interest in the assets at issue, (ii) a declaration that it has lien rights against, and/or is entitled to setoff, recoupment and/or imposition of a constructive trust with respect to any amounts to which the Debtors may otherwise claim to be entitled, (iii) a declaration of the rights of JPMC to indemnification, contribution and/or reimbursement for amounts paid or advanced by JPMC or WMB with respect to any of the assets at issue that are not transferred to JPMC, and (iv) adjudication of any and all conflicting claims to the so-called "deposit accounts" and any funds in them. JPMorgan Chase intends to file its proofs of claim for the amounts, if any, that this Court may determine in this adversary proceeding constitute claims against the Debtors and their estates.

Answer: The first sentence of paragraph 8 of the Complaint characterizes the nature of the Complaint and therefore no response is required. To the extent a response is required, Debtors deny same and deny that JPMorgan Chase is entitled to any relief. Debtors admit that JPMorgan Chase has filed proofs of claim in the Debtors' cases and respectfully refer the Court to the proofs of claim for the content thereof, and further aver that JPMorgan Chase is entitled to no recovery on such proofs of claim.

PARTIES AND BACKGROUND RELATIONSHIPS

Complaint 9: Plaintiff JPMorgan Chase is a national banking association organized under the laws of the United States of America with its principal place of business in Columbus, Ohio. JPMorgan Chase is a wholly-owned subsidiary of JPMorgan Chase & Co., a corporation organized under the laws of the State of Delaware. JPMorgan Chase is the "Assuming Bank" as that term is defined in the P&A and is the successor to and good faith purchaser for value from the Receiver under the P&A and under Title 12 of the United States Code.

Answer: Debtors deny the allegations set forth in paragraph 9 of the Complaint, except respectfully refer the Court to the P&A Agreement for the content thereof, and deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of paragraph 9 of the Complaint and therefore deny same.

Complaint 10: Defendant WMI is a holding company incorporated in Washington with its principal place of business in Seattle, Washington and is one of the debtors and debtors-in-possession in these cases, having filed its voluntary petition for reorganization under chapter 11 of Title 11 of the United States Code on September 26, 2008 (the "Petition Date") before the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

Answer: Debtors admit the allegations set forth in paragraph 10 of the Complaint.

Complaint 11: Defendant WMI Investment is a Delaware corporation with its principal place of business in Seattle, Washington and is the other debtor and debtor-in-possession in these cases.

Answer: Debtors admit the allegations set forth in paragraph 11 of the Complaint.

Complaint 12: Defendant FDIC is a federal corporation with its principal place of business in the District of Columbia. The FDIC is named as a defendant solely in connection with the interpleader claim.

Answer: Debtors admit the allegations set forth in the first sentence of paragraph 12 of the Complaint. The second sentence of paragraph 12 of the Complaint characterizes the nature of the Complaint and therefore no response is required. To the extent a response is required, Debtors deny same except respectfully refer the Court to the Complaint for the content thereof.

Complaint 13: At all times relevant hereto, WMI was a savings and loan holding company, WMI directly owned WMI Investment and directly or indirectly owned WMB and WMB's subsidiaries, including WMB fsb (WMB and WMB fsb as in existence prior to the Receivership are sometimes collectively referred to herein as the "Affiliated Banks").

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint and therefore deny same, and aver that the undefined phrase "[a]ll times relevant hereto" renders the allegations vague and ambiguous, except admit that at certain times WMI was a savings and loan holding company that owned Washington Mutual Bank ("WMB"), and indirectly owned WMB's subsidiaries, including Washington Mutual Bank fsb ("WMB fsb"), and that WMI was the direct parent of WMI Investment.

Complaint 14: At all times relevant hereto, the Debtors, WMB and WMB's direct and indirect subsidiaries, including WMB fsb, were subject to regulation by the Office of Thrift Supervision ("OTS") and various other state and federal depository institutions regulatory agencies and banking authorities, including the FDIC, which insured the banks' deposits.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint and therefore deny same, and aver that the undefined phrase "[a]ll times relevant hereto" renders the allegations vague and ambiguous, except admit that at certain times WMI, WMB, and WMB fsb were subject to regulation by the Office of

Thrift Supervision ("OTS"), and WMI's banking and non-banking subsidiaries were also overseen by various federal and state authorities, including the FDIC.

Complaint 15: On September 25, 2008, the Director of the OTS by order number 200836, appointed the FDIC as Receiver for WMB and the Receiver took possession of WMB in a receivership proceeding under section 1821 of Title 12 of the United States Code (the "Receivership").

Answer: Debtors deny the allegations set forth in paragraph 15 of the Complaint, except respectfully refer the Court to order number 2008-36 for the content thereof, and admit that on September 25, 2008, the Director of OTS, by order number 2008-36, appointed the FDIC as receiver for WMB and advised that the receiver was immediately taking possession of WMB.

Complaint 16: On September 25, 2008, the FDIC, as Receiver and in its corporate capacity, also entered into a Purchase and Assumption transaction with JPMorgan Chase under the P&A, whereby JPMorgan Chase acquired substantially all of the assets and assumed the deposit liabilities (as defined in the P&A and under 12 U.S.C. § 1813(1)) and certain other liabilities of WMB's banking operations under the authority vested in the FDIC by Title 12.

Answer: Debtors deny the allegations set forth in paragraph 16 of the Complaint, except respectfully refer the Court to the P&A Agreement for the content thereof, and admit that after its appointment as receiver, the FDIC-Receiver and the FDIC in its corporate capacity sold certain of the assets of WMB, including the stock of WMB fsb, to JPMorgan Chase pursuant to the P&A Agreement.

Complaint 17: On September 26, 2008, at approximately 10:16 p.m., WMI and WMI Investment filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (as amended, the "Bankruptcy Code") in the Bankruptcy Court, thereby commencing the Chapter 11 cases in which this adversary proceeding is filed.

Answer: Debtors admit the allegations set forth in paragraph 17 of the Complaint.

Complaint 18: On January 30, 2009, the Bankruptcy Court entered its order setting March 31, 2009 as the date by which all proofs of claim against the Debtors and their estates must be filed.

Answer: Debtors deny the allegations set forth in paragraph 18 of the Complaint, except respectfully refer the Court to the January 30, 2009 order for the content thereof.

Complaint 19: On February 24, 2009, the Debtors filed amended schedules in these cases.

Answer: Debtors deny the allegations set forth in paragraph 19 of the Complaint, except respectfully refer the Court to the Court dockets in "these cases" for the content thereof.

Complaint 20: On March 20, 2009, the Debtors commenced the District Court Action.

Answer: Debtors admit that on March 20, 2009 Debtors filed the complaint in the DC Action, and respectfully refer the Court to the complaint filed by the Debtors in the DC Action for the content thereof. Debtors further admit and aver that the FDIC-Receiver's Disallowance Notice stated in part: "[I]f you do not agree with this disallowance, you have the right to file a lawsuit on your claim ... in the United States District (or Territorial) Court for the District within which the failed Institution's principal place of business was located or the United States District Court for the District of Columbia within 60 days from the date of this notice. **IF YOU DO NOT FILE A LAWSUIT ... BEFORE THE END OF THE 60-DAY PERIOD, THE DISALLOWANCE WILL BE FINAL, YOUR CLAIM WILL BE FOREVER BARRED AND YOU WILL HAVE NO FURTHER RIGHTS OR REMEDIES WITH RESPECT TO YOUR CLAIM.**" (Emphasis and capitalization in original.)

JURISDICTION AND VENUE

Complaint 21: Since the Petition Date, the Debtors have been and continue to be authorized to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

Answer: Debtors admit that they have been and continue to be authorized to operate their businesses in accordance with applicable Bankruptcy Code sections, and respectfully refer the Court to the applicable Bankruptcy Code sections for the content thereof.

Complaint 22: On October 3, 2008, this Court entered an order pursuant to Federal Rule of Bankruptcy Procedure 1015(b) (collectively, the "Bankruptcy Rules") authorizing the joint administration of the Debtors' Chapter 11 cases.

Answer: Debtors admit the allegations set forth in paragraph 22 of the Complaint, and respectfully refer the Court to the October 3, 2008 order for the content thereof.

Complaint 23: This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. § 1334, 28 U.S.C. § 157, and Bankruptcy Rule 7001.

Answer: The Debtors state that the allegations set forth in paragraph 23 of the Complaint state a conclusion of law to which no response is required, except admit and aver that one or more of the claims asserted in this proceeding are core proceedings pursuant to 28 U.S.C. § 157(b)(2), and otherwise respectfully refer the Court to 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. § 1334, 28 U.S.C. § 157, and Federal Rule of Bankruptcy Procedure 7001, for the content thereof.

Complaint 24: Venue of this adversary proceeding in this Court is proper pursuant to 28 U.S.C. § 1409(a).

Answer: Debtors state that the allegations set forth in paragraph 24 of the Complaint state a conclusion of law as to which no response is required and respectfully refer the Court to 28 U.S.C. § 1409(a) for the content thereof.

STATEMENT OF FACTS

A. The Bank Failure And Acquisition

Complaint 25: On September 18, 2008, the OTS designated WMB as a "problem institution," thus subjecting it to closer control and scrutiny by the federal regulatory authorities and on September 25, 2008, the OTS placed WMB in receivership because of significant concerns over the safety and soundness of the institution. To ensure continuity of

operations, maximize public confidence and minimize cost to the public treasury, the FDIC ran an accelerated bidding process in accordance with statutorily mandated procedures under Title 12 that, subject to certain limited exceptions, resulted in the sale of all of the Receiver's right, title and interest to or in WMB's assets whether or not reflected on the books and records of WMB, to JPMorgan Chase pursuant to the terms of the P&A.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint to the extent they purport to characterize motivations of the OTS and of the FDIC, and Debtors therefore deny same. Debtors further state that the allegations set forth in paragraph 25 of the Complaint concerning Title 12 state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except respectfully refer the Court to Title 12 for the content thereof. Debtors otherwise deny the allegations set forth in paragraph 25 of the Complaint, except respectfully refer the Court to the P&A Agreement and to the putative document that purportedly "designate[d] WMB as a 'problem institution'" for the content thereof.

Complaint 26: At the time of the Receivership, WMB was the sixth largest bank in the United States, with 2207 branches, more than 43,000 employees, and more than 13 million depositors with more than $140 billion of deposit liabilities insured by the FDIC.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 of the Complaint and therefore deny same.

Complaint 27: WMB also indirectly owned 100% of WMB fsb. WMB fsb or "the little bank" (as it has sometimes been called) had 26 offices to WMB's 2,207 and less than $5 billion in customer deposits insured by the FDIC to WMB's more than $140 billion.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27 of the Complaint and therefore deny same.

Complaint 28: The FDIC's ability to promptly find a suitable acquirer of WMB's banking operations had significant economic and policy ramifications. This was a bank failure of unprecedented magnitude

that occurred in the midst of the most severe financial crisis in decades. Had the FDIC been unable to sell the assets of WMB, 13 million depositors would have lost their bank and the confidence of consumers in the banking system generally would likely have been further undermined. The protection of the title conveyed by the FDIC to institutions like JPMorgan Chase, who are encouraged to step into the breach and provide the stability and continuity necessary to avert a run on a failing bank and disruption of its services to the public, is critical to the ability of the regulators to manage bank failures under Title 12 and the government to administer an insurance fund that can maintain public confidence in the banking system.

Answer: The allegations set forth in paragraph 28 of the Complaint are argumentative and require no response. To the extent a response is required, Debtors deny same.

Complaint 29: That WMB stands as the largest bank failure in United States history stems in large part from the financial crisis and crisis of confidence that still grips the nation. In the ten days immediately prior to the Receivership, WMB experienced deposit outflows of more than $16.7 billion, amounting to more than $2 billion per banking business day, as its customers and even WMI itself were apparently moving their assets so as to avoid the effects of what was increasingly perceived to be- an inevitable bank failure.

Answer: The allegations set forth in paragraph 29 of the Complaint are argumentative and require no response. To the extent a response is required, Debtors deny same.

Complaint 30: JPMorgan Chase had only two days after being briefed by the FDIC to submit a bid and then only twenty-four hours from the time that its bid was accepted by the FDIC until the time the acquisition closed to complete the single largest acquisition of a failed institution in United States history. The circumstances which led to execution of the P&A meant that JPMorgan Chase had limited opportunity to prepare for this unprecedented transaction.

Answer: Debtors deny the allegations set forth in paragraph 30 of the Complaint.

Complaint 31: The acquisition included, among other things, a nationwide credit card lending business, a multi-family and commercial real estate lending business, and nationwide mortgage banking activities. JPMorgan Chase's acquisition avoided an interruption in banking services. It assured that the 2,207 branches operated by WMB, as well as the 26 additional branches operated by WMB fsb, opened for business on September 26, 2008, protecting the interests of

employees, customers, vendors, and communities who were dependent on WMB's banking operations. JPMorgan Chase paid $1.88 billion dollars to the FDIC for these and other assets, and assumed all deposits. This transaction involved no financial assistance from, or cost to, the FDIC's Deposit Insurance Fund. This stands in contrast to other recent bank failures such as the FDIC's sale of IndyMac Federal Bank FSB, which cost the FDIC approximately $10.7 billion, despite IndyMac being a much smaller bank than WMB.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 of the Complaint and therefore deny same, except respectfully refer the Court to the P&A Agreement for the content thereof.

Complaint 32: The task of stabilizing, integrating and creating as smooth a transition as possible has been time-consuming and arduous. But its success has been vital to the banking system, the communities served by WMB and the general public interest.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 of the Complaint and therefore deny same.

B. Combined Operations of Washington Mutual

Complaint 33: As a federal savings association committed to serving consumers and small businesses, WMB accepted deposits from the general public, originated, purchased, serviced and sold home loans, made credit card, home equity, multi-family and other commercial real estate loans, and to a lesser degree, engaged in certain commercial banking activities. WMB's substantial mortgage business was hit especially hard by increasing home and commercial mortgage delinquencies in late 2007 and 2008.

Answer: Debtors admit that WMB accepted deposits from the general public, originated, purchased, serviced and sold home loans, made credit card, home equity, multi-family and other commercial real estate loans, and engaged in certain commercial banking activities. Debtors otherwise state that the remaining allegations set forth in paragraph 33 of the Complaint are argumentative and require no response. To the extent a response is required, Debtors deny same.

Complaint 34: As the financial crisis took root toward the end of 2007, WMI focused its efforts on raising capital for WMB. In late 2007, WMI raised approximately $3 billion in new capital through the issuance of a series of debt securities. In early 2008, WMI sought out merger partners and equity investors. A number of companies participated in the process (including JPMorgan Chase which submitted a bid to acquire WMI, but whose bid was rejected by WMI). In April 2008, in lieu of an acquisition or a merger, WMI negotiated a capital infusion of approximately $7.2 billion from a group of investment funds led by Texas Pacific Group, a private equity firm, through an issuance of preferred stock, which included anti-dilution provisions that severely constricted the ability of WMI to raise additional capital.

Answer: Debtors admit that (i) from December 2007 through April 2008, WMI raised approximately $10 billion in the capital markets, (ii) during that period, WMI's principal assets included cash, the stock of WMB, and the stock of WMI Investment and of the other WMI subsidiaries, (iii) throughout 2008, WMI's debt obligations approximated $7 billion, (iv) from December 2007 through September 2008, WMI made $6.5 billion of capital contributions to WMB (the "Capital Contributions"), and (v) in April 2008, WMI completed a significant recapitalization, which resulted in a $7.2 billion capital infusion by a group of outside investors led by TPG Capital. The remaining allegations set forth in paragraph 34 of the Complaint are argumentative and require no response. To the extent a response is required, Debtors deny same.

Complaint 35: WMI formally contributed to WMB at least $6.5 billion of the approximately $10.2 billion in capital it had raised. As discussed below, certain book entries made between September 19 and September 24, 2008 reflect an additional contribution of $3.7 billion from WMI to WMB fsb, accounting for much of the remaining debt and equity capital raised by WMI during 2007 and 2008. While book entries were made, neither WMI nor WMB transferred cash or other good funds to WMB fsb corresponding to the book entries, whether as a contribution or otherwise.

Answer: Debtors deny the allegations set forth in paragraph 35 of the Complaint, except respectfully refer the Court to the P&A Agreement and to the book entries for the content

thereof, and admit that from December 2007 through September 2008, WMI made the Capital Contributions, as more fully described in paragraph 20 of the Proof of Claim and Exhibit D thereto.

Complaint 36: Prior to the Receivership, WMI and WMB had identical and overlapping directors and held joint meetings of the Boards of Directors of both entities on a combined basis, resulting in effect in a single Board of Directors with identical directors that met on the same topics at the same time and made decisions for both entities collectively. WMI's officers and employees were also officers and directors of WMB and WMI and WMB shared a joint general ledger and other books and records, and centralized their decision making, treasury, cash management, finance, governance, regulatory and executive functions in the same individuals. The overlap was so extensive that as of the time of the Receivership and subsequent Petition Date, WMI claimed it had only a handful of employees remaining as the result of the Receivership.

Answer: The allegations set forth in paragraph 36 of the Complaint are argumentative and so generalized and vague as to require no response. To the extent a response is required, Debtors deny same.

Complaint 37: Likewise, the assets and liabilities of the Debtors and their direct and indirect subsidiaries, including the Affiliated Banks, were connected and in many cases, commingled and intertwined. Prior to the Receivership, the Debtors and their direct and indirect subsidiaries operated a centralized and consolidated cash management system pursuant to which external receipts and payments were accounted for on a consolidated basis and internal receipts or payments were done in whole or in part by book or journal entry as "due to/from" accounts on the general ledger or other books of account.

Answer: The allegations set forth in paragraph 37 of the Complaint are argumentative and so generalized and vague as to require no response. To the extent a response is required, Debtors deny same.

Complaint 38: At various times prior to the Receivership, WMI entered into agreements with third parties that titled assets or contractual rights in WMI's name although WMB or a subsidiary of WMB paid for the asset or contractual right or was the entity liable on the payment or liability therefore. At various times prior to the Receivership, WMI also entered into intercompany arrangements

with the Affiliated Banks with documentation different than the documentation that the Affiliated Banks would have obtained in an arm's-length transaction with an unaffiliated party.

Answer: Debtors deny the allegations set forth in paragraph 38 of the Complaint, except respectfully refer the Court to the putative agreements and arrangements for the content thereof.

Complaint 39: In 2007 and 2008, WMI undertook a series of projects and other acts, at least some of which appear to have moved assets away from WMB or its subsidiaries to WMI or another of WMI's subsidiaries. This included transfers undertaken during August and September 2008 as part of WMI's self-titled "WMI Cash Optimization Program", for the apparent benefit of WMI.

Answer: The allegations set forth in paragraph 39 of the Complaint are argumentative and so generalized and vague as to require no response. To the extent a response is required, Debtors deny same.

Complaint 40: To the extent that any person has or may assert claims against JPMC that resulted from these transactions, JPMC is entitled to be indemnified and held harmless by WMI since all pre-petition transactions were consummated at the behest and direction of WMI and for its benefit.

Answer: Debtors deny the allegations set forth in paragraph 40 of the Complaint.

C. Trust Securities

Complaint 41: Between March 2006 and October 2007, certain issuer trusts (the "Issuing Trusts") formed by WMI and its then subsidiaries issued securities (the "Trust Securities") in the aggregate face amount of approximately $4 billion, exchangeable into depository shares representing preferred stock of WMI upon the occurrence of certain events. A complete list of the Trust Securities is attached as Exhibit B. The Trust Securities were issued in global form registered in the name of Cede & Co., as nominee, and held by Wilmington Trust as depositary for the Depositary Trust Corporation ("DTC"). The sole assets of the Issuing Trusts, in turn, were preferred securities issued by Washington Mutual Preferred Funding LLC ("WMPF").

Answer: Debtors deny the allegations set forth in paragraph 41 of the Complaint, except admit that, between March 2006 and October 2007, in four instances, certain issuing special purpose entities formed by WMI and its then-subsidiaries (the "SPEs") issued securities (the "Trust Securities"), and respectfully refer the Court to the documents evidencing the Trust Securities and Exhibit B to the Complaint for the content thereof, and admit, on information and belief, that the Trust Securities have an aggregate liquidated preference of as much as $4 billion.

Complaint 42: As set forth below, JPMorgan Chase acquired the Trust Securities under the P&A and all steps required to transfer the Trust Securities as required were completed prior to the Petition Date save and except for the ministerial formality of changing record title as reflected at DTC and described below.

Answer: Debtors deny the allegations set forth in paragraph 42 of the Complaint.

Complaint 43: The Trust Securities, like other trust securities issued by financial institutions, qualified as regulatory core capital of WMB under applicable banking laws and regulations with specific approvals and requirements governing their issuance and treatment. They were, by their express terms, mandatorily and automatically exchangeable for a like amount of newly issued depository shares representing WMI preferred stock upon the occurrence of an exchange event. In addition, for the Trust Securities to be treated as core capital of WMB or any other regulated institution when issued, the Trust Securities would have to be structured in a manner that assured they would become property of the regulated institution upon exchange.

Answer: Debtors deny the allegations set forth in paragraph 43 of the Complaint, except respectfully refer the Court to the offering documents for the content thereof, and admit that according to the terms of the Trust Securities, the exchange of the Trust Securities for preferred stock of WMI (or depositary shares representing an interest in preferred stock of WMI) was to follow the issuance by WMI of a press release announcing the exchange event.

Complaint 44: On January 30, 2006, WMB submitted a Notice for Establishment of an Operating Subsidiary (the "Notice") to the OTS and the FDIC regarding the establishment of WMPF. WMPF's assets consisted of indirect interests in various residential mortgage and home equity

loans and other permitted investments. WMPF in turn issued preferred securities to the Issuing Trusts that entitled the Issuing Trusts to a liquidation preference against the assets of WMPF. In the Notice to the OTS and the FDIC, WMB sought confirmation from the OTS that the Trust Securities would qualify for inclusion in the core capital of WMB.

Answer: Debtors deny the allegations set forth in paragraph 44 of the Complaint, except respectfully refer the Court to the documents referenced in paragraph 44 for the content thereof, and admit that Washington Mutual Preferred Funding LLC's ("WMPF") assets were limited to direct or indirect interests in mortgages or mortgage-related assets, cash and other permitted assets, and that WMPF issued preferred securities.

Complaint 45: On February 23, 2006, WMI committed to contribute the Trust Securities to WMB and stated that WMI "hereby undertakes that if, as a result of a Supervisory Event," WMI exchanges its preferred stock for the Trust Securities, "WMI will contribute to WMB the [Trust Securities]." A true and correct copy of that commitment is attached as Exhibit C.

Answer: Debtors deny the allegations set forth in paragraph 45 of the Complaint, except refer to Exhibit C to the Complaint for the content thereof.

Complaint 46: WMI's written commitment to contribute the Trust Securities to WMB in exchange for including the Trust Securities in the core capital of WMB constituted a capital commitment to a federal depository institutions regulatory agency or its predecessor which was deemed assumed as of the Petition Date under 11 U.S.C. Section 365(o). That commitment also constituted a binding agreement (the "Contribution Agreement"), the breach of which would give rise to post-petition administrative claims against WMI.

Answer: Debtors deny the allegations set forth in paragraph 46 of the Complaint.

Complaint 47: At all times relevant hereto solely by virtue of the Contribution Agreement, WMB was permitted to include the Trust Securities in-its- core capital and counted the amount of the Trust Securities as regulatory core capital. The Trust Securities have never been beneficially owned by WMI and have always been subject to a concomitant obligation to contribute the Trust Securities to WMB

as a necessary corollary to the treatment of the Trust Securities as core capital of WMB.

Answer: Debtors deny the allegations set forth in paragraph 47 of the Complaint.

Complaint 48: The issuance of the Trust Securities and the Contribution Agreement were duly authorized by all requisite corporate action on the part of WMI and WMB. True and correct copies of the minutes of the Board of Directors authorizing the transaction are attached as Exhibit D.

Answer: Debtors deny the allegations set forth in paragraph 48 of the Complaint, except respectfully refer the Court to the documents referenced in paragraph 48 for the content thereof.

Complaint 49: On September 25, 2008, in a letter to WMI, the OTS declared an Exchange Event had occurred and directed an immediate exchange of the Trust Securities for WMI preferred stock. WMI responded to the OTS letter later on September 25, 2008, confirming the exchange and contribution.

Answer: Debtors deny the allegations set forth in paragraph 49 of the Complaint, except respectfully refer the Court to any September 25, 2008 letters for the content thereof.

Complaint 50: On September 25, 2008, WMI contributed the Trust Securities to WMB pursuant to an Assignment Agreement, a true and correct copy of which is attached as Exhibit E, pursuant to which, among other things, effective as of September 25, 2008, WMI transferred "all of [WMI's] right, title and interest, whether now owned or hereafter acquired, in and to the [Trust] Securities" to WMB. Furthermore, upon execution, WMI assigned to WMB all present and future "rights and benefits arising out of the [Trust] Securities which come into the possession of [WMI]."

Answer: Debtors deny the allegations set forth in paragraph 50 of the Complaint, except respectfully refer the Court to the Assignment Agreement for the content thereof.

Complaint 51: Under the express terms of the P&A, JPMorgan Chase purchased "all right, title, and interest of the Receiver in and to all of the assets . . . of [WMB] whether or not reflected on the books of [WMB] as of Bank Closing," which includes WMB's and the Receiver's rights to receive-the Trust Securities, a transfer that was effected on September 25, 2008. The Receiver sold the Trust

Securities to JPMorgan Chase under the P&A and, therefore, JPMorgan Chase is the sole owner of all equitable and beneficial right, title and interest in the Trust Securities, leaving only the ministerial act of correcting the record at DTC (or with the Issuing Trusts and their trustees) undone before the filing of these Chapter 11 cases.

Answer: Debtors deny the allegations set forth in paragraph 51 of the Complaint.

Complaint 52: Although the Debtors did not initially dispute JPMorgan Chase's ownership of the Trust Securities and the parties drafted and agreed to a stipulation to transfer the Trust Securities to JPMorgan Chase to accompany the account stipulation, the Debtors amended their schedules on January 27, 2009 to add a Footnote 4 to Schedule B regarding the Trust Securities which had not been mentioned in the Schedules originally filed on December 19, 2008. In that footnote, which is repeated verbatim in the Debtors' Second Amended Schedules filed on February 24, 2009, the Debtors assert unspecified and potential rights to or interests in the Trust Securities.

Answer: Debtors deny the allegations set forth in paragraph 52 of the Complaint, except admit and aver that Debtors have rights and interests in the Trust Securities, and respectfully refer the Court to the Schedules for the content thereof.

Complaint 53: To the extent that WMI ever held or now holds any interest in the Trust Securities — and JPMorgan Chase believes WMI had and has no legally cognizable interest in them — that interest has never consisted of anything more than bare legal title to a securities entitlement to the Trust Securities for the moment in time of the conditional exchange and contribution. Section 541(iv) of the Bankruptcy Code provides that "property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate . . . only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold."

Answer: Debtors deny the allegations set forth in paragraph 53 of the Complaint except admit and aver that the Debtors have rights and interests in the Trust Securities.

Complaint 54: As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in the Trust Securities, pursuant to and in accordance with the FDI Act. On December 30, 2008,

WMI nonetheless submitted a claim to the Receiver asserting, among other things, ownership of the Trust Securities. On January 23, 2009, the Debtors' claims were disallowed by the Receiver. The Receiver's disallowance is dispositive of the fact that the Debtors do not own the Trust Securities. On March 20, 2009, the Debtors commenced the District Court Action with respect to the disallowance of their claims to the Trust Securities.

Answer: Debtors deny the allegations set forth in paragraph 54 of the Complaint, except respectfully refer the Court to the Proof of Claim, the Disallowance Notice, the complaint filed in the DC Action on March 20, 2009, and the P&A Agreement, for the content thereof.

Complaint 55: Accordingly, JPMorgan Chase seeks a declaration that it owns the Trust Securities and an order directing third parties including, DTC, Cede & Co., Wilmington Trust Corporation and any other trustee, custodian, depository or other securities intermediary, to take all actions reasonably necessary or appropriate, as requested by JPMorgan Chase, to have the record legal title reflect JPMorgan Chase as the sole owner of the Trust Securities.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 55 of the Complaint.

Complaint 56: In addition, JPMC is entitled to be indemnified and held harmless by WMI for any liabilities associated with the issuance, exchange, contribution or recovery of the Trust Securities, including without limitation any claims regarding authorization, enforceability, avoidability or inadequate disclosure. JPMC seeks a determination that WMI, as the controlling parent, the primary issuer and the principal actor, has the obligation to indemnify and hold harmless its indirect formerly wholly owned. subsidiaries from any liability to third parties associated with or related to the Trust Securities.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 56 of the Complaint.

D. Tax Refunds

Complaint 57: To the extent WMB is or was entitled to tax refunds, the right to receive those refunds was purchased by JPMorgan Chase under the P&A.

Answer: Debtors deny the allegations set forth in paragraph 57 of the Complaint.

Complaint 58: For taxable years prior to 2008, the Washington Mutual entities, consisting of WMI, WMB, and other direct and indirect subsidiaries of WMI (collectively, the "WaMu Group"), filed- a consolidated-tax return, a unitary tax report or a combined tax return with appropriate taxing authorities wherever permissible. WMB (and its subsidiaries) made payments to WMI in the same manner and at the same time as if filing separate returns or separate consolidated returns.

Answer: Debtors deny the allegations set forth in paragraph 58 of the Complaint, except respectfully refer the Court to the tax filings for the content thereof.

Complaint 59: For all tax refunds and rights to receive tax refunds attributable to tax attributes of WMB or its subsidiaries, pursuant to applicable rules and regulations, and as between the Debtors and WMB (or their respective subsidiaries), WMB (or such subsidiary) is the beneficial owner of such tax refund or such right to receive a tax refund attributable to its tax attributes. All or substantially all of the refunds received by, now due and hereafter expected to be due to the WaMu Group are attributable to income and losses of, and taxes paid by, WMB and its subsidiaries, and, therefore, as among the members of the WaMu Group, WMB and its subsidiaries were and are the beneficial owners of all or substantially all tax refunds received, tax refunds due and rights to receive tax refunds.

Answer: Debtors deny the allegations set forth in paragraph 59 of the Complaint.

(i) California Tax Refunds

Complaint 60: For taxable years prior to 2008, the WaMu Group filed a unitary tax report with the California Franchise Tax Board ("FTB"), pursuant to the filing of FTB Form 2523A (for years prior to 1991), and pursuant to a Schedule R-7 (for taxable years after 1991). For taxable years on or after 2005, the Schedule R-7 was filed in compliance with FTB regulations promulgated in 2005 and effective for returns filed after January 8, 2005. In each case, the WaMu Group filed group returns under California tax law, with WMI as the "key corporation." In each case, the agent and surety

for the other members included in the unitary tax report was WMI, the "key corporation" as defined under California tax law.

Answer: Debtors deny the allegations set forth in paragraph 60 of the Complaint, except respectfully refer the Court to the applicable tax regulations and tax filings for the content thereof.

Complaint 61: Even though each taxpayer corporation in the combined group is required under California law to file its own California return and pay its own tax due, as a- matter of administrative convenience, the FTB permits groups to file a group return.

Answer: Debtors deny the allegations set forth in paragraph 61 of the Complaint, except respectfully refer the Court to the applicable tax regulations and tax filings for the content thereof.

Complaint 62: A "key corporation" only acts as agent for the other taxpayer members. Thus, (i) all California refunds are identifiable to an individual taxpayer in the WMI Group, and (ii) all California tax refunds WMI receives that are identified to California income taxes of WMB (or any of WMB's subsidiaries) are held by WMI merely as agent for WMB (or its respective subsidiary) and WMB (or its respective subsidiary) is the beneficial owner of such California tax refunds.

Answer: Debtors deny the allegations set forth in paragraph 62 of the Complaint, except respectfully refer the Court to the applicable tax regulations and tax filings for the content thereof.

Complaint 63: California tax refunds, substantially all of which are expected to be attributable to WMB and its subsidiaries, are expected for the 2008 tax year and for tax years prior to 2008 relating to overpayments of taxes to the FTB.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63 of the Complaint (which refer to what is purportedly "expected" by unidentified person(s)), and therefore deny same.

Complaint 64: All facts and circumstances necessary to determine the amount of California tax refunds for WMB and for any of WMB's subsidiaries are fixed and determinable.

Answer: Debtors deny the allegations set forth in paragraph 64 of the Complaint, except respectfully refer the Court to the applicable tax regulations and tax filings for the content thereof.

Complaint 65: The Debtors have wrongly asserted that WMI—and not WMB (or its respective subsidiaries)—is entitled to the California tax refunds due to the WaMu Group. Accordingly, JPMorgan Chase requests that the Court enter an order declaring that, pursuant to the P&A, JPMorgan Chase and its subsidiaries own the rights to such refunds.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 65 of the Complaint.

Complaint 66: WMI has already received at least a portion of the California income tax refunds due as agent for the WaMu Group and owes those amounts to JPMorgan Chase and the former WMB subsidiaries acquired by JPMorgan Chase under the P&A.

Answer: Debtors deny the allegations set forth in paragraph 66 of the Complaint.

Complaint 67: The beneficial interest in all or a portion of the California income tax refunds received by WMI as agent for the WaMu Group belongs to JPMorgan Chase, as successor in interest to WMB.

Answer: Debtors deny the allegations set forth in paragraph 67 of the Complaint.

Complaint 68: WMI has refused to turn over to JPMorgan Chase those California income tax refunds received already or in the future that are properly allocable to WMB (and its subsidiaries). As a result, JPMorgan Chase seeks an order from the Court compelling the Debtors to turn over those tax refunds.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 68 of the Complaint.

Complaint 69: Various employees and agents of WMB and its subsidiaries had been in discussions with the FTB regarding ongoing California tax matters, such as the progress of audits, and anticipated tax refunds, prior to September 26, 2008. WMI had threatened FTB and its officials with sanctions for violation of the stay to prevent them from continuing their communications with WMB.

Answer: Debtors deny the allegations set forth in paragraph 69 of the Complaint.

Complaint 70: JPMorgan Chase has been significantly prejudiced by not being able to communicate directly without restrictions with the FTB about matters concerning WMB or its subsidiaries since the Petition Date. Certain employees and agents of JPMorgan Chase need to continue these discussions with the FTB about California tax matters related to WMB and its subsidiaries, in order to preserve beneficial tax attributes, to complete pending audits and refund applications, and to arrange for the receipt of California income tax refunds.

Answer: Debtors deny the allegations set forth in paragraph 70 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning what "[c]ertain employees and agents of JPMorgan Chase need" and therefore deny same.

Complaint 71: JPMorgan Chase is entitled to communicate with the FTB about matters concerning refunds that may be due to WMB and its subsidiaries, or WMB's successors. WMI only recently directed a letter to the FTB granting them "permission" to speak to WMB for the limited purpose of continuing negotiation of audit matters previously under discussion subject to numerous restrictions, including that WMI retained rights as the "key corporation" for the WaMu Group.

Answer: The allegations set forth in the first sentence of paragraph 71 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required,

Debtors deny same, except respectfully refer the Court to the putative "letter to the FTB" for the content thereof and deny that JPMorgan Chase is entitled to any relief.

Complaint 72: WMI is ineligible to serve as a "key corporation" under California law and its attempt to exercise continuing control over assets and property that do not belong to it is without legal authority or basis. WMI is no longer able to act as an agent for either- WMB or any successors in interest to WMB, for matters involving both years prior to 2008, and for years on or after 2008, because WMI is no longer affiliated with WMB or its former subsidiaries and filing for bankruptcy has caused WMI to have interests adverse to those of WMB and WMB's successors in interest. As a result, JPMorgan Chase is entitled to unrestricted communications with the FTB about all matters concerning WMB, including but not limited to audit activity, assessments, tax refunds and notices. JPMorgan Chase therefore requests that the Court enter an Order authorizing it to engage in such communications and precluding the Debtors or anyone else from interfering with those communications.

Answer: Debtors deny the allegations set forth in paragraph 72 of the Complaint, except respectfully refer the Court to the applicable tax regulations and tax filings for the content thereof, and deny that JPMorgan Chase is entitled to any relief.

(ii) Federal and Other State Tax Refunds

Complaint 73: For taxable years prior to 2008, the WaMu Group filed a consolidated U.S. federal tax return pursuant to regulations promulgated by the U.S. Department of the Treasury ("Treasury Regulations") and the Internal Revenue Service (the "IRS") under Internal Revenue Code ("IRC") Section 1501 *et seq*. For the tax year of 2008, WMB and its subsidiaries were members of the WaMu Group consolidated group until at least September 25, 2008. For each time period, WMI was the common parent of the consolidated group.

Answer: The allegations set forth in paragraph 73 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny the allegations set forth in paragraph 73 of the Complaint.

Complaint 74: To the extent permissible under applicable state law, the WaMu Group filed consolidated tax returns, unitary reports or similar, combined returns with other (non-California) state revenue

authorities with which it was required to file tax returns. Such consolidated or combined returns were filed in those states listed on Exhibit F.

Answer: Debtors deny the allegations set forth in paragraph 74 of the Complaint, except respectfully refer the Court to the applicable state law and tax filings for the content thereof.

Complaint 75: Pursuant to applicable law, WMI acted as agent for the WaMu Group in filing the consolidated tax returns.

Answer: Debtors deny the allegations set forth in paragraph 75 of the Complaint, except respectfully refer the Court to the applicable law and tax filings for the content thereof.

Complaint 76: As with California tax filings, for all tax refunds attributable to tax attributes of WMB or its subsidiaries, WMB (or its-respective subsidiary) is, and under applicable law and regulation is required to be, the beneficial owner of the portions of such tax refund attributable to its tax attributes.

Answer: Debtors deny the allegations set forth in paragraph 76 of the Complaint, except respectfully refer the Court to the applicable law and tax filings for the content thereof.

Complaint 77: WMI has already received certain U.S. federal and state income tax refunds as agent for the WaMu Group that have not been allocated and transferred to WMB (or its subsidiaries).

Answer: Debtors deny the allegations set forth in paragraph 77 of the Complaint, except respectfully refer the Court to the applicable tax regulations and tax filings for the content thereof.

Complaint 78: WMI has likely received additional U.S. federal and state income tax refunds as agent for the WaMu Group of which JPMorgan Chase is presently unaware.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 78 of the Complaint and therefore deny same.

Complaint 79: The beneficial interest in all or a portion of the U.S. federal and state income tax refunds received by WMI as agent for the WaMu Group belongs to JPMorgan Chase, as successor in interest to WMB (and its subsidiaries).

Answer: Debtors deny the allegations set forth in paragraph 79 of the Complaint.

Complaint 80: WMI has refused to turn over to JPMorgan Chase those U.S. federal and state income tax refunds received that are properly allocable to WMB (and its subsidiaries).

Answer: Debtors deny the allegations set forth in paragraph 80 of the Complaint.

Complaint 81: U.S. federal and state income tax refunds, substantially all of which are expected to be attributable to WMB and its subsidiaries, are expected for the 2008 tax year and for tax years prior to 2008 relating to overpayments of taxes by the WaMu Group to the various state taxing authorities.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81 of the Complaint (which refer to what is purportedly "expected" by unidentified person(s)), and therefore deny same.

Complaint 82: For the 2008 tax year, the WaMu Group is expected to have a variety of tax attributes such as net operating losses, net capital losses, and excess tax credits, and a substantial portion of such tax attributes are expected to be attributable to the operations of WMB and its subsidiaries. The WaMu Group expects to be able to carry back these favorable tax attributes to prior tax years, where such carrybacks will result in additional U.S. federal and state income tax refunds for such prior tax years.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 82 of the Complaint (which refer to what is purportedly "expected" by unidentified person(s)), and therefore deny same.

Complaint 83: All facts and circumstances necessary to determine the amount of U.S. federal and state tax refunds for WMB and for any of WMB's subsidiaries are fixed and determinable.

Answer: Debtors deny the allegations set forth in paragraph 83 of the Complaint, except respectfully refer the Court to the applicable tax regulations and tax filings for the content thereof.

Complaint 84: Debtors have wrongly asserted that WMI—and not WMB (nor its respective subsidiaries)—is entitled to the U.S. federal and state tax refunds due to the WaMu Group.

Answer: Debtors deny the allegations set forth in paragraph 84 of the Complaint.

Complaint 85: As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in these tax refunds, pursuant to and in accordance with the FDI Act. On December 30, 2008, WMI nonetheless submitted a claim to the Receiver asserting, among other things, ownership of the tax refunds. On January 23, 2009, the Debtors' claims were disallowed by the Receiver. The Receiver's disallowance is dispositive of the fact that the Debtors do not own or have an interest the tax refunds. On March 20, 2009, the Debtors filed the District Court Action with respect to the disallowance of their claims to the tax refunds.

Answer: Debtors deny the allegations set forth in paragraph 85 of the Complaint, except respectfully refer the Court to the P&A Agreement, the Proof of Claim, the Disallowance Notice, and the complaint filed in the DC Action on March 20, 2009, for the content thereof.

Complaint 86: Accordingly, JPMorgan Chase requests that in addition to an order directing the turnover of the funds, the Court enter an order declaring that as the acquirer of WMB's interests pursuant to the P&A, JPMorgan Chase and its subsidiaries own the rights to such refunds and further ordering Debtors to turn over to JPMorgan Chase any such refunds already received.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 86 of the Complaint.

Complaint 87: In addition, during the time that WMI, WMB and their respective eligible subsidiaries filed a consolidated tax return for U.S. federal income tax purposes, items of income, deduction, loss and credit were combined in one consolidated return, filed by WMI on behalf of the consolidated group.

Answer: Debtors deny the allegations set forth in paragraph 87 of the Complaint, except respectfully refer the Court to the tax filings for the content thereof.

Complaint 88: During this time, WMB was subject to a variety of state and local taxes. The accrual and payment of these state and-local taxes generated by WMB created -a deduction against income for the combined U.S. federal income tax return. Said differently, the state and local taxes accrued by virtue of WMB's operations created deductions that were used to offset the WMI consolidated group taxable income.

Answer: Debtors deny the allegations set forth in paragraph 88 of the Complaint, except respectfully refer the Court to the applicable tax regulations and tax filings for the content thereof.

Complaint 89: Although these deductions should have been recognized as a benefit that was solely WMB's, WMI did not credit WMB in any way for the state and local income tax deductions attributable to WMB's operations. In effect, WMI claimed for itself the state and local tax deductions properly attributable to WMB. Debtors have wrongly asserted that WMI-and not WMB (nor its respective subsidiaries)—is entitled to these deductions.

Answer: Debtors deny the allegations set forth in paragraph 89 of the Complaint.

Complaint 90: The total dollar value of such deductions is at least approximately $517 million. As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in these assets, pursuant to and in accordance with the FDI Act. JPMorgan Chase requests that the Court enter an order declaring that as the acquirer of WMB's interests pursuant to the P&A, JPMorgan Chase and its subsidiaries own the rights to any cash value generated by such deductions and further ordering Debtors to turn over to JPMorgan Chase the value of any such deductions.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 90 of the Complaint.

(iii) Tax Sharing Agreement

Complaint 91: On August 31, 1999, WMI and members of the WaMu Group entered into a Tax Sharing Agreement, which required various members of the WaMu Group to pay WMI for each member's share of the WaMu Group's consolidated income, and required

WMI to return to each member such member's share of any tax refunds paid to WMI.

Answer: The allegations set forth in paragraph 91 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except respectfully refer the Court to the Tax Sharing Agreement for the content thereof, and admit that WMI, WMB, WMB fsb, and certain other direct and indirect subsidiaries of WMI and WMB are parties to that certain Tax Sharing Agreement, dated as of August 31, 1999, and that pursuant to the Tax Sharing Agreement, all federal income taxes were paid directly by WMI on behalf of the consolidated tax group, which includes WMB and its subsidiaries.

Complaint 92: The Tax Sharing Agreement provides further support that WMI would receive any tax refund attributable to WMB's or WMB's subsidiaries' tax attributes merely as agent, and-that WMB (or its respective subsidiary) would be the beneficial owner of such tax refund. At all times the Tax Sharing Agreement was subject, by law and by its own terms, to applicable bank and thrift regulatory guidelines. The ownership of the tax refunds that would result from application of either applicable law or the Tax Sharing Agreement should be identical—in neither event may WMI retain refunds that are not attributable to the tax attributes of its regulated subsidiaries.

Answer: The allegations set forth in paragraph 92 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except respectfully refer the Court to the Tax Sharing Agreement for the content thereof.

E. The Intercompany Amounts and Accounts

(i) The "On-Us" Accounting Entries

Complaint 93: On the Petition Date, WMI claimed that JPMorgan Chase was liable to pay a total purported deposit liability to WMI and its non-WMB subsidiaries, originally claimed in the amount of $5 billion and then ultimately asserted in the total amount of $4,358,492,498 (the "Intercompany Amounts"). According to WMI, the Intercompany Amounts represented deposits maintained by WMI at the Affiliated Banks, all as non-interest bearing demand deposit accounts. A true and correct copy of the original list of twenty-nine

account numbers (the "Accounts") provided to JPMorgan Chase by WMI shortly after the Petition Date is attached as Exhibit G.

Answer: Debtors deny the allegations set forth in paragraph 93 of the Complaint, except respectfully refer the Court to WMI's court filings made on September 26, 2009 (the "Petition Date") for the content thereof, and Debtors respectfully refer the Court to Exhibit G to the Complaint for the content thereof.

Complaint 94: As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in the Intercompany Amounts, pursuant to and in accordance with the FDI Act. On December 30, 2008, the Debtors nonetheless submitted a claim to the Receiver asserting, among other things, ownership of the Intercompany Amounts. On January 23, 2009, the Debtors' claims were disallowed by the Receiver. On March 20, 2009, the Debtors commenced the District Court Action with respect to the disallowance of their claims, assert that the Intercompany Amounts are deposit accounts at JPMorgan Chase, and claim damages relating to the Intercompany Amounts.

Answer: Debtors deny the allegations set forth in paragraph 94 of the Complaint, except respectfully refer the Court to the P&A Agreement, the Proof of Claim, the Disallowance Notice, and the complaint filed in the DC Action on March 20, 2009, for the content thereof.

Complaint 95: With the exception of signature cards for several of the smaller Accounts, JPMC has not located and believes there do not exist pre-petition any deposit account agreements, signature cards or any other documentation for the Accounts as deposit accounts. Notwithstanding that fact and while it continued to investigate whether such documents existed somewhere, JPMorgan Chase was prepared to treat the Accounts as if they were deposit accounts so long as all rights of all parties, including JPMorgan Chase's rights, were acknowledged and approved by order of this Court. Toward that end, on or about October 15, 2008, JPMorgan Chase and the Debtors entered into a proposed stipulation (the "Account Stipulation") with respect to the Accounts that was filed with the Court for approval. The Account Stipulation was ultimately withdrawn following objections filed by certain creditors of the Receivership and the FDIC and was never entered by the Court.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of paragraph 95 of the Complaint and therefore deny same. Debtors deny the remaining allegations set forth in paragraph 95 of the Complaint, except Debtors respectfully refer the Court to the October 15, 2008 document for the content thereof, and further allege and aver that the October 15, 2008 document was withdrawn and never approved by the Court.

> Complaint 96: Pursuant to the Account Stipulation, and before it was withdrawn, JPMorgan Chase and the Debtors executed customary deposit account agreements regarding the Accounts on or about October 21, 2008 that provided, among other things, customary rights of setoff, recoupment and banker's liens to secure JPMorgan Chase's rights to recover claims JPMC may have against the Debtors or their subsidiaries and affiliates from the funds on deposit in the Accounts.

Answer: Debtors object to the allegations set forth in paragraph 96 of the Complaint on the grounds that such allegations purport to disclose confidential settlement communications in violation of ethical and legal rules binding upon JPMorgan Chase and its counsel (*see, e.g.*, Fed. R. Evid. 408), and Debtors reserve all rights, remedies and defenses with respect to the breach of such ethical and legal obligations. To the extent a response is required, Debtors deny the allegations set forth in paragraph 96 of the Complaint.

> Complaint 97: After the execution of those documents but prior to December 19, 2008, JPMorgan Chase acceded to a request of the Debtors and the Official Committee of Unsecured Creditors (the "Committee") to agree to the accrual of interest on the Intercompany Amounts as a sign of good faith in the event that it were ultimately determined that any of the Intercompany Amounts were in fact deposit accounts, without prejudice to its rights. Similarly, JPMorgan Chase agreed to the Debtors' further-request that as a sign of "goodwill" it agree to release $292 million of the Intercompany Amounts attributable to the Accounts of the non-debtor subsidiaries of WMI, without prejudice to its rights.

Answer: Debtors deny the allegations set forth in paragraph 97 of the Complaint.

Complaint 98: JPMorgan Chase agreed to those requests from the Debtors in good faith, without prejudice to its rights, and on the understanding that the parties were working diligently to resolve open questions and issues with respect to the Intercompany Amounts. It did so in reliance on the Debtors' execution of account documentation for the Accounts that protected the interests of JPMC, and on the understanding that the Debtors would respect those rights. However, on or about December 19, 2008, after obtaining from JPMorgan Chase the benefit of these concessions, the Debtors advised JPMorgan Chase that the execution of those deposit account agreements on October 21, 2008, was only in anticipation of the proposed Account Stipulation and, since that stipulation had never been approved, the execution and delivery of the agreements was in error, unauthorized and considered by the Debtors to be null, void and without legal effect.

Answer: Debtors deny the allegations set forth in paragraph 98 of the Complaint.

Complaint 99: The execution and effectiveness of the account documentation executed by the Debtors on October 21, 2008, was a key factor in JPMorgan Chase's decision to agree to the request that it accrue interest on the Intercompany Amounts and to the release of $292 million to the Debtors and their non-debtor affiliates. While JPMorgan Chase does not dispute that the Account Stipulation was never so ordered, to the extent that such documentation is ineffective, it should be ineffective for all parties and for all purposes, including the effectiveness of any post-petition book entries reflecting any portion of the Intercompany Amounts or Accounts as deposit liabilities and the release of any funds to the Debtors or their non-Debtor affiliates.

Answer: Debtors deny the allegations set forth in paragraph 99 of the Complaint.

Complaint 100: Although JPMorgan Chase still has not discovered any pre-petition deposit account agreements, signature cards or other documentation for the Accounts that would have been required of depositors that were not affiliates in order to treat the Accounts as deposit accounts (except for the signature cards on a few accounts as described above), it is nonetheless clear that if these are deposit accounts—not capital contributions—they were and are subject to the standard terms and conditions specified in the Master Business Account Disclosures and Regulations (the "MBA Policy") of the Affiliated Banks.

Answer: Debtors deny the allegations set forth in paragraph 100 of the Complaint.

Complaint 101: The Accounts were associated with the DDA numbers provided by WMI. Of the twenty-nine, most were so-called "On–Us Accounts", the internal nomenclature for intercompany receivables that were understood to represent deposit accounts at the Affiliated Banks. Thus, the balances in these Accounts as of any point in time, unlike third party deposit accounts, were maintained both at the depository institution and as intercompany book entries on the general ledger of WMI and the Affiliated Banks that were its subsidiaries.

Answer: Debtors deny the allegations set forth in paragraph 101 of the Complaint, except admit that "On Us Accounts" were deposit accounts, and respectfully refer the Court to the documents referenced in paragraph 101 for the content thereof.

Complaint 102: The decision on how to characterize an intercompany transaction was made by a single centralized Treasury group for WMI and all of its affiliates. That Treasury group was under the direct supervision of Robert Williams, currently the Chief Executive Officer of WMI.

Answer: Debtors deny the allegations set forth in paragraph 102 of the Complaint.

Complaint 103: To the extent the Intercompany Amounts and the Accounts reflect capital contributions, they are the property of JPMorgan Chase under the terms of the P&A. To the extent they are deposit liabilities, they must be governed by standard terms and conditions governing unaffiliated deposit accounts, as a result of which they become subject to any liens, claims and interests that JPMC may have, and are also subject to setoff, recoupment or other offset.

Answer: Debtors deny the allegations set forth in paragraph 103 of the Complaint.

(ii) Deposit Liabilities

Complaint 104: To the extent the Intercompany Amounts in the Accounts are not capital contributions and are in fact deposit liabilities of WMB or WMB fsb assumed by JPMorgan Chase under the P&A, WMI and its subsidiaries, like every other Affiliated Bank depositor (expressly or otherwise), are bound by the standard terms and conditions for deposits at the Affiliated Banks.

Answer: The allegations set forth in paragraph 104 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same.

Complaint 105: The Accounts were utilized to settle intercompany obligations, including obligations arising from the payment and allocation of expenses among WMI and all of its subsidiaries, with intercompany allocations, payments and settlements on a periodic, usually monthly, basis. The balances on the Accounts were reflected on "On-Us Elevation Reports" generated on a monthly basis and on paper "Washington Mutual Internal Checking Detail" statements mailed to an employee of WMB on a monthly basis. Copies of the "On-Us Elevation Reports" and of the "Washington Mutual Internal Checking Detail" statements for August, September and October, 2008 are attached as Exhibits H and I, respectively.

Answer: Debtors deny the allegations set forth in paragraph 105 of the Complaint, except admit that Exhibits H and I to the Complaint contain, among other language, headings that state "On-Us Elevation Report" and "Washington Mutual Internal Checking Detail Information".

Complaint 106: These Accounts were established by WMI or one of its non-bank subsidiaries at the Affiliated Banks pursuant to WMI' s Internal Corporate Demand Deposit Account Establishment and Usage Policy (the "On-Us Policy"). According to that policy, WMB had the right to use the Intercompany Amounts for, among other things, processing and clearing transactions between WMB and WMI or their respective subsidiaries, customers, vendors, or investors, again raising the question of whether the Intercompany Amounts represented a continuing deposit liability or should be characterized as a general reserve, a capital contribution or a form of intercompany advance to the Affiliated Banks. The On-Us Policy was silent regarding the rules and terms governing the acceptance by the Affiliated Banks of amounts under the On-Us Policy as deposit accounts and services related to such accounts maintained at the Affiliated Banks.

Answer: Debtors deny the allegations set forth in paragraph 106 of the Complaint, except admit that the Accounts were established by WMI or one of its non-bank subsidiaries and respectfully refer the Court to the documents referenced in paragraph 106 for the content thereof.

Complaint 107: WMI and the Affiliated Banks maintained a detailed, forty-page policy, the MBA Policy, that operated as a contract setting forth the terms and conditions governing all deposit accounts established at the Affiliated Banks. The MBA Policy contained, among other things, a self-executing clause that made the terms of the policy binding upon all depositors, even those who did not

expressly give permission, through consent implied by the opening and continued use of the deposit account.

Answer: The allegations set forth in paragraph 107 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except refer to the documents referenced in paragraph 107 for the content thereof.

Complaint 108: The MBA Policy and its terms and conditions apply to and govern any accounts that are in fact deposit accounts at the Affiliated Banks, including the Accounts to the extent any are deposit accounts. WMI as the sole shareholder and parent of the Affiliated Banks is charged with knowledge and acceptance of the MBA Policy for any deposit account it maintained at the Affiliated Banks.

Answer: The allegations set forth in paragraph 108 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except refer to the documents referenced in paragraph 108 for the content thereof.

Complaint 109: Any claim that WMI is entitled to terms more favorable to it than the terms imposed on third party depositors under the MBA Policy would violate applicable federal law and regulations and be untenable. The provision of services, including deposit services, to WMI by its Affiliated Banks, under relevant banking laws and regulations, were required to have been conducted on terms and conditions no less favorable to the bank than would have been undertaken in a comparable transaction with an unaffiliated third party. Thus, these accounts, to the extent they reflect deposits, were required by law to be maintained on terms no less favorable to the Affiliated Banks than those clearly set forth in the MBA Policy.

Answer: The allegations set forth in paragraph 109 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except refer to the documents referenced in paragraph 109 for the content thereof.

Complaint 110: The MBA Policy expressly grants the Affiliated Banks a right to offset any and all claims against all deposit account liabilities. Specifically, the MBA Policy provides, "you agree we have the right to offset any account or asset of yours then held by us, by our sister bank, or any subsidiary of ours or our sister bank." Said

differently, to the extent the Accounts and the Intercompany Amounts contained therein are deposit liabilities of the Affiliated Banks, the MBA Policy created a broad contractual right of setoff against the Accounts and the Intercompany Amounts for the benefit of the Affiliated Banks and their subsidiaries.

Answer: The allegations set forth in paragraph 110 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except refer to the documents referenced in paragraph 110 for the content thereof.

Complaint 111: Accordingly, to the extent that any of the Accounts or Intercompany Amounts are found by the Court to constitute deposit liabilities of JPMorgan Chase as assignee of the Receiver, they are deposit liabilities subject to and created under the MBA Policy and JPMorgan Chase has a security interest in, lien rights against and rights of set off and recoupment against the Intercompany Amounts as deposit liabilities under the MBA Policy and standard deposit account agreement terms and conditions applicable to all third party depositors and as in effect at the time that the Affiliated Banks and their parent entered into the transactions creating and maintaining the Accounts.

Answer: The allegations set forth in paragraph 111 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same and further deny that JPMorgan Chase is entitled to any relief.

(iii) JPMorgan Chase Also Has an Express Security Interest in at Least One Account

Complaint 112: In addition, WMI entered into at least one specific security agreement with WMB (the "Security Agreement") whereby WMB received a security interest in and lien upon at least one of the Accounts in return for providing value to WMI. According to its terms, the Security Agreement "shall be binding upon [WMI] and its successors and assigns, and shall inure to the benefit of, and may be enforced by [WMB] and its successors, transferees, and assigns." This express security interest creates a lien to secure any and all intercompany obligations. JPMorgan Chase is the successor, transferee or assignee of the Security Agreement and entitled to enforce its terms against WMI at least as to Intercompany Amounts associated with Account No. 177-8911206. A true and correct copy of the Security Agreement is attached as Exhibit J.

Answer: The allegations set forth in paragraph 112 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except respectfully refer the Court to the documents referenced in paragraph 112 for the content thereof.

(iv) The September $3.67 Billion Book Entry Transfer

Complaint 113: Between September 19, 2008 and September 24, 2008, in the days immediately preceding the impending takeover of WMB by its regulators, WMI directed book entries purporting to transfer approximately $3.67 billion (the "$3.67 Billion Book Entry Transfer") from WMB to WMB fsb. The entries direct the transfer from the triple 070-10450009909 "On-Us" Account No. 17900001650667, which is reflected in the internal On-Us Elevation Report and the Internal Checking Detail as an account at WMB, to what WMI now claims was a deposit account at WMB fsb identified as triple 070-10441-0009909 "On-Us" Account No. 44100000064234.

Answer: Debtors deny the allegations set forth in paragraph 113 of the Complaint, except Debtors admit and aver that $3.67 billion was transferred to a deposit account bearing Account No. 44100000064234, and respectfully refer the Court to the documents referenced in paragraph 113 and the Complaint for the content thereof.

Complaint 114: The general ledger entries for this transaction indicate that the entries were posted on September 24, 2008 with a "retro" date to September 19, 2008 and describe the $3.67 Billion Book Entry Transfer as "WMI contributes to FSB." WMI has asserted that the transaction was intended to be a transfer of funds from a WMI deposit account at WMB to a WMI deposit account at WMB fsb. What is clear, however, is that no cash or other funds were actually moved to or received by WMB fsb in connection with the transfer.

Answer: Debtors deny the allegations set forth in paragraph 114 of the Complaint, except admit that there was a transfer of funds from a WMI deposit account at WMB to a WMI deposit account at WMB fsb, and respectfully refer the Court to the ledger entries for the content thereof.

Complaint 115: The Debtor's agreement to the terms of the Account Stipulation and the deposit agreements that provide JPMorgan Chase on behalf of itself and its affiliates and subsidiaries with broad post-petition lien rights and rights of setoff and recoupment resulted in the entry of the $3.67 Billion Book Entry Transfer as a deposit liability on the books and records of JPMC. Having executed the standard deposit agreements with JPMorgan Chase necessary to have this account reflected as a deposit at JPMorgan Chase, WMI should be estopped from taking the position that these account agreements were a mistake and not binding on it or from enjoying-the benefit of having-the Accounts reflected as deposit liabilities free of the lien and setoff rights created by those very same agreements. To the extent that any post-petition book entry is considered as relevant to the status of the purported deposit, any such resulting deposit should similarly be considered subject to the depository institution's rights, including post-petition contractual and statutory rights of setoff, that accompany the post-petition deposit.

Answer: Debtors object to the allegations set forth in paragraph 115 of the Complaint on the grounds that such allegations purport to disclose confidential settlement communications in violation of ethical and legal rules binding upon JPMorgan Chase and its counsel (*see, e.g.*, Fed. R. Evid. 408), and Debtors reserve all rights, remedies and defenses with respect to the breach of such ethical and legal obligations. To the extent a response is required, Debtors deny the allegations set forth in paragraph 115 of the Complaint.

Complaint 116: WMB fsb would never have accepted a deposit liability from an unaffiliated third party without first receiving good funds, or at least not a deposit liability of the magnitude its parent now asserts was created on or about September 19, 2008. The $3.67 Billion Book Entry Transfer represented approximately 44% of the total deposits at WMB fsb, an increase of nearly 80% in total deposit liabilities. In no way was this an ordinary course transaction. Regardless of the fact that WMI and its affiliates may have operated a centralized cash management system for efficiency as members of the same corporate family, intracompany transfers, unaccompanied by actual movement of funds, cannot create obligations and liabilities as third parties when the corporate ownership link is broken. Because no cash or other funds were actually transferred by WMI to WMB fsb, the $3.67 Billion Book Entry Transfer could not have created a deposit liability of WMB fsb to WMI without receipt of good funds. To the extent the $3.7

Billion Book Entry Transfer is nonetheless deemed to create such a liability, JPMC is entitled to a complete offset for WMI's failure to deliver good funds representing that $3.67 billion deposit.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 116 of the Complaint.

Complaint 117: The $3.7 Billion Book Entry Transfer was not a deposit account and WMI should be estopped from making any claims to the contrary.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 117 of the Complaint.

Complaint 118: Alternatively, to the extent any third party has or may have a claim against WMB fsb and/or JPMorgan Chase with respect to or as a result of the $3.7 Billion Book Entry Transfer, JPMorgan Chase is entitled to-be indemnified by WMI for any liability it may incur and is entitled to recover the amount by which it is or may be liable to any such third party from the Intercompany Amounts.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 118 of the Complaint.

(v) The Tax Refunds and other Funds in the Accounts

Complaint 119: A substantial portion of the Intercompany Amounts were, at the time of the Receivership and the Petition Date, in fact the property of the Affiliated Banks, representing tax payments made by the Affiliated Banks either as (i) accelerated payments of amounts previously claimed by WMI against the Affiliated Banks purportedly for taxes paid in prior years by WMI on behalf of the Affiliated Banks; or (ii) amounts transferred to WMI in payment of estimated or actual 2008 taxes.

Answer: Debtors deny the allegations set forth in paragraph 119 of the Complaint.

Complaint 120: In addition, after the Petition Date, at least approximately $234 million of tax refunds due to WMB — the rights to which were purchased by JPMorgan Chase as assets of WMB (the "Tax Refunds Received") — were paid to WMI. An amount equal to at least this $234 million of the Tax Refunds Received are included in the balance of the Intercompany Amounts and the Accounts and should be paid over to JPMorgan Chase as the lawful owner of those funds.

Answer: Debtors deny the allegations set forth in paragraph 120 of the Complaint.

Complaint 121: The Tax Refunds Received should not have been, and at various times were not in fact, recorded in any way as a deposit liability. The Tax Refunds Received were and are property of JPMorgan Chase purchased under the P&A.

Answer: Debtors deny the allegations set forth in paragraph 121 of the Complaint.

(vi) Section 9.5 of P&A Agreement

Complaint 122: To the extent any of the Accounts are deposit liabilities assumed by JPMorgan Chase, pursuant to Section 9.5 of the P&A, "[a]t any time, the [FDIC] may, in its discretion, determine that all or any portion of any deposit balance assumed by [JPMorgan Chase] pursuant to this Agreement does not constitute a "Deposit" . . . and may direct [JPMorgan Chase] to withhold payment of all or any portion of any such deposit. Upon such direction, [JPMorgan Chase] agrees to hold such deposit and not make payment of such deposit balance to or on behalf of the depositor, or to itself, whether by way of transfer, set-off, or otherwise. [JPMorgan Chase] shall be obligated to reimburse the [FDIC], . . . for the amount of any deposit balance or portion thereof paid by [JPMorgan Chase] in contravention of any previous direction to withhold payment of such deposit balance or return such deposit balance, the payment of which was withheld pursuant to this Section."

Answer: Debtors deny the allegations set forth in paragraph 122 of the Complaint, except respectfully refer the Court to the P&A Agreement for the content thereof.

Complaint 123: The FDIC has not to date notified JPMorgan Chase that all or any portion of the Intercompany Amounts or Accounts are or are not Deposit Liabilities within the meaning of the P&A. Nor has the FDIC directed JPMorgan Chase to withhold payment on all or any portion of the Accounts. JPMorgan Chase requests that to the extent this Court orders JPMorgan Chase to pay any portion of the

Intercompany Amounts or Accounts to the Debtors or into the registry of this Court, that the Court do so by way of interpleader under Rule 7022, releasing JPMorgan Chase from any liability for such amounts to any person and preserving the rights of all parties and all possible claimants with respect to those funds (including JPMorgan Chase). Specifically, JPMorgan Chase requests a finding that it only has to pay or credit the Accounts or the Intercompany Amounts once and that this Court's determination regarding ownership, character and rights in or to the Intercompany Amounts or the Accounts is final so that JPMorgan Chase has no further liability in any capacity for the Intercompany Amounts or Accounts except as may be determined by this Court in this proceeding.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of paragraph 123 of the Complaint and therefore deny same. Debtors further deny that JPMorgan Chase is entitled to any relief.

Complaint 124: In the District Court Action, the Debtors assert that JPMorgan Chase assumed these liabilities as deposit liabilities under the P&A and that they are now depositors of JPMorgan Chase.

Answer: Debtors deny the allegations set forth in paragraph 124 of the Complaint, except respectfully refer the Court to the complaint filed by the Debtors in the DC Action for the content thereof.

F. Goodwill Litigation

Complaint 125: JPMorgan Chase, as the successor in interest to the Receiver and WMB-and not WMI—is the proper recipient of both the $356,454,911 judgment entered in *Anchor Savings Bank, FSB v. United States*, No. 95-872C (Fed. Cl.) (the "Anchor Judgment") and the $55,028,000 partial judgment entered in American Savings Bank, F.A. v. United States, No. 92-872C (Fed. Cl.) (the "ASB Judgment"), as well as the proper plaintiff in the continuing *Anchor Savings Bank and American Savings Bank* cases.

Answer: The allegations set forth in paragraph 125 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same,

except respectfully refer the Court to the pleadings and court decisions of the referenced cases for the content thereof.

Complaint 126: The *Anchor Savings Bank and American Savings Bank* cases are two of the numerous actions brought against the United States, asserting that passage of the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA") breached supervisory merger contracts that permitted financial institutions to apply special accounting treatment to their acquisitions of failing savings and loan thrifts. Specifically, the contracts permitted the treatment of supervisory goodwill as regulatory capital that was no longer permissible under FIRREA.

Answer: Debtors deny the allegations set forth in paragraph 126 of the Complaint, except respectfully refer the Court to the pleadings and documents in the referenced cases for the content thereof, and state that the allegations in the last sentence of paragraph 126 of the Complaint state a conclusion of law as to which no response is required.

Complaint 127: As the facts and court decisions in the *Anchor Savings Bank* action establish, the damages resulting from the United States' breach of a series of contracts were incurred by *Anchor Savings Bank*. Ownership of the Anchor Savings Bank cause of action remained at all times with Anchor Savings Bank—the sole plaintiff in the action—and the successor thrifts so that the Anchor Judgment thereby became an asset of WMB. In 1995, the operations and assets of Anchor Savings Bank were merged with those of Dime Savings Bank. In 2002, Dime Savings Bank was merged into WMB.

Answer: The allegations set forth in paragraph 127 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except respectfully refer the Court to the pleadings and court decisions in the referenced cases for the content thereof.

Complaint 128: Similarly, the capital at issue in the *American Savings Bank* action was provided and posted by American Savings Bank, F.A. and consisted of inventory capital and retained earnings held by American Savings-Bank, F.A. As the facts and-court decisions in the *American Savings Bank* action establish, the damages resulting from the United States' breach of the Note Forbearance—which are

the damages comprising the ASB Judgment—were incurred by American Savings Bank, F.A. The plaintiff that provided the capital, American Savings Bank, F.A., was the predecessor in interest to WMB and amended its Federal Stock Charter in 1997 to change its corporate title from American Savings Bank, F.A. to Washington Mutual Bank, F.A. In addition, the parent company of American Savings Bank, F.A., New American Capital, Inc., was subsequently liquidated and merged into WMB, not WMI.

Answer: The allegations set forth in paragraph 128 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except respectfully refer the Court to the merger documents and to the pleadings and court decisions in the referenced cases for the content thereof.

Complaint 129: WMI has asserted that it is entitled to the ASB Judgment, which on February 16, 2009, this Court ordered be paid into its registry. This Court further directed that any party, other than the Debtors, asserting an ownership interest in the ASB Judgment bring its claim through an adversary proceeding in accordance with Bankruptcy Rule 7001. JPMorgan Chase hereby does so.

Answer: Debtors admit the allegations set forth in paragraph 129 of the Complaint, except deny that JPMorgan Chase is entitled to any relief.

G. Legacy Rabbi Trusts and Benefit Plans

(i) Legacy Rabbi Trusts

Complaint 130: The Debtors have refused to acknowledge JPMorgan Chase's ownership of the assets of certain rabbi trusts ("Legacy Rabbi Trusts") that belong to JPMorgan Chase under the terms of the P&A, even though these assets were reflected on WMB's books and records and WMB was the successor to the original settlor. These assets support obligations under certain non-qualified retirement and pension plans covering current or former employees of or retirees from WMB or its predecessors in interest.

Answer: Debtors deny the allegations that JPMorgan Chase has "ownership of the assets" and otherwise deny the allegations set forth in paragraph 130 of the Complaint.

Complaint 131: In a series of mergers in the late 1990s and the early part of this decade, WMI, through a variety of subsidiaries, acquired a

number of financial institutions, which were merged into, or the assets of which were purchased by, WMB. As part of-these acquisitions, WMB also acquired a number of non-qualified plans funded through Legacy Rabbi Trusts as well as liabilities for other plans not supported by trust assets. Rabbi Trusts are used to fund the payment of benefits under nonqualified deferred compensation plans that were adopted by some of the financial institutions WMI acquired. As of September 30, 2008, the books and records of WMB and WMI reflected 16 separate legacy plan Rabbi Trusts with aggregate legacy Rabbi Trust assets of over $550 million.

Answer: Debtors deny the allegations set forth in paragraph 131 of the Complaint, except respectfully refer the Court to the merger documents, plan documents, and books and records, for the content thereof.

Complaint 132: The "Legacy Rabbi Trusts" support the liabilities created under a number of non-qualified deferred compensation and supplemental retirement plans ("legacy plans") adopted by predecessor institutions acquired by the Washington Mutual family over the years.

Answer: Debtors admit that "Legacy Rabbi Trusts" support liabilities created under a number of non-qualified deferred compensation and supplemental retirement plans adopted by predecessor institutions acquired by certain Washington Mutual entities over the years, and otherwise deny the allegations set forth in paragraph 132 of the Complaint.

Complaint 133: Since the execution of the P&A, JPMorgan Chase has been prepared to assume the obligations supported by the rabbi trust assets that it purchased under the P&A but the Debtors have refused to provide joint instructions to the trustees even where it is incontrovertible that the assets for a particular trust were acquired by JPMorgan Chase under the P&A. In so refusing to acknowledge JPMC's ownership and utilizing the automatic stay, the Debtors in effect have halted the payment of benefits to employees and many elderly retirees.

Answer: Debtors deny the allegations set forth in paragraph 133 of the Complaint.

Complaint 134: Under the P&A, the assets of twelve Legacy Rabbi Trusts were sold to JPMorgan Chase by the FDIC. With respect to five of these Legacy Rabbi Trusts, the FDIC has directed the trustees to turn the assets over to JPMorgan Chase and, when that happens,

JPMorgan Chase has agreed to recommence the payment of benefits to retirees and others whose benefits were supported by the Legacy Rabbi Trust assets. With respect to the other seven Legacy Rabbi Trusts—four Dime Savings Bank Rabbi Trusts (the "Dime Rabbi Trusts"), two Great Western Rabbi Trusts (the "Great Western Rabbi Trusts"), and a Providian Rabbi Trust (the "Providian Rabbi Trust" and, together with the Dime Rabbi Trusts and the Great Western Rabbi Trusts, the "Bank Rabbi Trusts")[2]—there was some initial ambiguity as to either the identity of the successor to the original settlor of the Bank Rabbi Trust or the source of funding for the trust assets. JPMorgan Chase has since provided the Debtors with documentation for the conclusion that WMB had properly accounted for the assets of the Bank Rabbi Trusts on its books and that WMB was the successor to the original settlor. Accordingly, the assets of the Bank Rabbi Trusts were confirmed as property of WMB and thus also purchased by JPMorgan Chase under the P&A. To date, the Debtors have refused to acknowledge JPMorgan Chase's ownership of the Bank Rabbi Trust assets in writing.

Answer: Debtors deny the allegations set forth in paragraph 134 of the Complaint.

Complaint 135: To determine with finality the ownership of the assets of the Legacy Rabbi Trusts, JPMorgan Chase requests that the Court enter an order declaring that JPMorgan Chase purchased the assets of the Legacy Rabbi Trusts, and an order authorizing JPMorgan Chase and the trustees of each of the Legacy Rabbi Trusts to take all actions necessary or appropriate to transfer ownership of the assets to JPMorgan Chase and compel Debtors to cooperate in the transfer of them to JPMorgan Chase.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 135 of the Complaint.

(ii) The Pension Plan and the 401(k) Plan

Complaint 136: As of the Petition Date, WMI sponsored the WaMu Savings Plan, a tax qualified savings plan under section 401(k) of the Internal Revenue Code (the "401(k) Plan"), and a tax qualified

[2] JPMorgan Chase does not assert an ownership interest in the Rabbi Trusts previously sponsored by H.F. Ahmanson and Co. Accordingly, the Ahmanson Rabbi Trusts' assets and related liabilities are not included in the definition of Rabbi Trusts for the purposes of this Complaint.

cash balance pension plan, the WaMu Pension Plan (the "Pension Plan") (collectively, the "Plans"). In 2007, WMB booked an intercompany receivable of approximately $316 million payable by WMI to WMB, of which approximately $275 million is still owed to WMB.

Answer: Debtors admit that WMI sponsored employee benefit plans, including, among others, the Washington Mutual, Inc. Savings Plan, and otherwise deny the allegations set forth in paragraph 136 of the Complaint, except respectfully refer the Court to the plan documents and applicable book entries for the content thereof.

Complaint 137: While WMI was the sponsor of the Plans as of the Petition Date, nearly all of the employees covered by the Plans were employees of WMB or its subsidiaries, many of whom are now employed by JPMorgan Chase.

Answer: Debtors admit the allegations set forth in paragraph 137 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 137 that the employees are currently employed by JP Morgan Chase and therefore deny same.

Complaint 138: Employees who participate in the 401(k) Plan contribute a percentage of their pre-tax income to the 401(k) Plan. Prior to the Petition Date, WMB would then match a portion of participants' contributions and fund that amount directly or indirectly by making a payment to the trust associated with the 401(k) Plan, which was administered by Fidelity Management Trust Company. The 401(k) Plan is administered by an administration committee and investments are overseen by an investment committee, whose members were appointed by WMI.

Answer: Debtors admit the allegations set forth in paragraph 138 of the Complaint.

Complaint 139: The Pension Plan is a defined benefit plan in which no employee contributions are required. Instead, required funding contributions were made by WMI and/or participating employers. As with the 401(k) Plan, the Pension Plan was administered, and investments were overseen, by individuals appointed by WMI. As of Petition Date, the Pension Plan had approximately 32,000 participants and assets valued at approximately $1 billion.

Answer: Debtors admit that the Pension Plan is a defined benefit plan in which no employee contributions are required, that required funding contributions were made by WMI and/or participating employers, and that the Pension Plan was administered, and investments were overseen, by individuals appointed by WMI. Debtors otherwise deny the allegations set forth in paragraph 139 of the Complaint, except respectfully refer the Court to the plan documents for the content thereof.

Complaint 140: Since the Petition Date, WMI has refused to relinquish sponsorship of the Plans. Members of the committees for each plan have made all administrative and investment decisions. WMI has retained responsibility for making payments to participants in the Plans.

Answer: Debtors deny the allegations set forth in paragraph 140 of the Complaint, except admit and aver that (i) WMI has rightfully refused to relinquish sponsorship of Plans, and (ii) JPMorgan Chase has made a number of administrative decisions with respect to the Plans without WMI's guidance or permission.

Complaint 141: Since September 25, 2008, JPMorgan Chase has been seeking to assume the Plans to ensure that covered employees retain their benefits and interests under the Plans. In anticipation of sponsoring the Plans, JPMorgan Chase, for the benefit of former WMB employees currently employed by JPMorgan Chase, has continued to record accruals for the Pension Plan. JPMorgan Chase also has directed employee contributions into the 401(k) Plan and funded significant matching contributions.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 141 of the Complaint and therefore deny same.

Complaint 142: WMB, not WMI, had the real economic interest in the Plans, having (i) incurred most of the pension and other expenses associated with the Pension Plan and funded the contributions for the 401(k) Plan and (ii) employed nearly all of the participants. As of the Petition Date, the Pension and 401(k) Plans were not material to WMI's business or reorganization because WMI, by its own account, had only a handful of employees as of the Petition Date and, even since the Petition Date, has added only a dozen or two additional former employees of WMB. Thus, JPMorgan Chase believed that it would ultimately assume sponsorship of the Plans.

Answer: Debtors deny the allegations set forth in paragraph 142 of the Complaint, except Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of paragraph 142 of the Complaint and therefore deny same.

Complaint 143: The Debtors have nonetheless refused to allow JPMorgan Chase to assume the Plans. With respect to the Pension Plan, the Debtors' refusal appears to be based on the unfounded claim that the Pension Plan is over-funded and the desire to extract from JPMorgan Chase the purported over-funding as a condition to assuming sponsorship. There is no support for this assertion under fact, law (including the Employee Retirement Income Security Act of 1974, which likely would prevent such a recapture) or the P&A. JPMorgan Chase intends to assume and continue the Pension Plan and the sufficiency of the Pension Plan's assets to cover benefit obligations will continue to vary depending upon ongoing market and economic fluctuations that affect the value of plan assets, as well as the interest rate used to discount liabilities. It therefore makes no sense to suggest that there is "over-funding" that is due to the Debtors today as a practical matter, under relevant law or pursuant to the P&A.

Answer: Debtors deny the allegations set forth in paragraph 143 of the Complaint, and deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 143 of the Complaint that refer to what JPMorgan Chase purportedly intends and Debtors therefore deny same.

Complaint 144: With respect to the 401(k) Plan, Debtors' position is even less well reasoned. Debtors cannot obtain any value from the 401(k) Plan or its termination because the assets belong to the employees. Likewise, there is no basis for Debtors' assertion that, in connection with assumption of the Plans, JPMorgan Chase should acquire litigation pending against WMI and certain individual officers and directors arising from their pre-petition alleged misconduct.

Answer: Debtors deny the allegations set forth in paragraph 144 of the Complaint.

Complaint 145: Debtors have no rational basis on which to retain sponsorship of the Plans given the pending Chapter 11 proceeding and JPMorgan Chase's repeated attempts to assume the sponsorship and to ensure that the participants and beneficiaries are protected on an ongoing basis. To avoid hardship to its employees,

JPMorgan Chase has continued to accrue benefits and make contributions into the 401(k) Plan, while waiting for WMI to stop holding the participants and their benefits hostage as the value of the assets in the Pension Plan has dropped. The decline in value of those assets may be of little moment to WMI since it no longer employs the participants and is a debtor in bankruptcy, but it does matter to others.

Answer: Debtors deny the allegations set forth in paragraph 145 of the Complaint.

Complaint 146: JPMorgan Chase seeks a determination that either (i) JPMorgan Chase be permitted immediately to assume sponsorship of the Plans without making payments to the Debtors that they have no right to demand; or (ii) the Debtors and their estates are responsible for, and must indemnify and hold JPMorgan Chase harmless for any liabilities due to the decline in value of the Pension Plan during this Chapter 11 case.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 146 of the Complaint.

Complaint 147: JPMorgan Chase further requests that this Court allow its administrative claims against the Debtors for (i) the amount of all contributions made from and after the Petition Date to the 401(k) Plan; and (ii) the amount by which the decline in the value of the assets in the Pension Plan from and after the Petition Date has resulted from WMI's inattention and failure properly to administer the Pension Plan assets. Finally, whatever the outcome of the sponsorship issue, the pending litigation matters are and should remain the responsibility of WMI and its estate and JPMC is entitled to be fully indemnified and held harmless for any and all claims related to the Pension and 401(k) Plans prior to the date upon which JPMC may assume their sponsorship.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 147 of the Complaint.

Complaint 148: As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in the Plans, pursuant to and in accordance with the FDI Act. On December 30, 2008, the Debtors nonetheless submitted a claim to the Receiver asserting,

among other things, ownership of various of the employee benefits plans. On January 23, 2009, the Debtors' claims were disallowed by the Receiver. On March 20, 2009, the Debtors commenced the District Court Action with respect to the disallowance of their claims and put ownership of the plans and its liabilities at issue in that action.

Answer: Debtors deny the allegations set forth in paragraph 148 of the Complaint, except respectfully refer the Court to the P&A Agreement, the Proof of Claim, the Disallowance Notice, and the complaint filed by the Debtors in the DC Action on March 20, 2009, for the content thereof.

H. Other Assets

(i) Company and Bank Owned Life Insurance Policies

Complaint 149: JPMorgan Chase also seeks an order confirming that certain life insurance policies owned by WMB and the cash surrender value of which were reflected on the books and records of WMB as of September 25, 2008 are JPMorgan Chase's property and were purchased under the P&A. These life insurance policies are known as Bank Owned Life Insurance ("BOLI").

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 149 of the Complaint.

Complaint 150: The BOLI policies are types of life insurance policies purchased by WMB (or a predecessor company) on the lives of employees. Under these types of plans, WMB paid the premiums on the insurance and was also the primary beneficiary of the policies. In the case of a split dollar policy, the insurance proceeds are split by both WMB (or a predecessor company) and the insured employees designated beneficiary. WMB used- these BOLI policies and split dollar policies as a tax-deferred way to fund the costs of various welfare plans, hedge deferred compensation arrangements and to provide insurance benefits to certain employees.

Answer: Debtors admit the allegations set forth in the first sentence of paragraph 150 of the Complaint. Debtors deny knowledge or information sufficient to form a belief as to the truth of

the remaining allegations in paragraph 150 of the Complaint and therefore deny same, except respectfully refer the Court to the BOLI policies for the content thereof.

Complaint 151: By letter dated November 7, 2008, a true and correct copy of which is attached as Exhibit K (the "Cease and Desist Letter"), counsel for the Debtors demanded that JPMorgan Chase cease exercising control over the BOLI policies on the ground that the Debtors believed they might have an ownership interest in those policies and demanded access to books and records regarding the BOLI policies. JPMorgan Chase complied with the demand in the Cease and Desist Letter in order to provide the Debtors with the information they requested. JPMorgan Chase and Debtor have provided each other with documentation establishing the ownership of each party in certain policy list bills. (See Exhibit L for list bills owned by JPMorgan Chase.) Accordingly, each of the parties have exercised their respective ownership rights over the policies that they own.

Answer: Debtors deny the allegations set forth in paragraph 151 of the Complaint, except respectfully refer the Court to the documents referenced in paragraph 151 for the content thereof.

Complaint 152: There are two BOLI policies issued by Pacific Life list bills of 7675A and 7729A on which the Debtors and JPMorgan Chase could not reach agreement as to ownership (the "Pac Life List Bill Policies"). As between WMI and WMB, these BOLI policies are reflected on WMB's books and records and owned by WMB. WMB acquired the policies from a banking institution that merged with WMB and these policies were on the books of that institution at the time of the merger. The accounting records of WMB do not show a dividend of these policies to WMI or a purchase of these policies by WMI , the only lawful ways that these policies could have been acquired by WMI from WMB. However, the carrier has advised JPMorgan Chase that, according to the records of the carrier, Washington Mutual Revocable Trust, not WMB, is shown as the policy owner. Because Debtors have refused to acknowledge JPMorgan Chase's ownership of these policies, JPMorgan Chase has not taken any action with respect thereto. JPMorgan Chase requests that the Court determine that JPMorgan Chase acquired all right, title and interest in and to these policies under the P&A and that WMI has no interest in them. To the extent that the carrier's records reflect WMI as the policy owner, WM] has no more than bare legal title under Section 541(iv) of the Bankruptcy

Code and JPMorgan Chase is entitled to a declaration that it, and not WMI, is the rightful owner of the policies.

Answer: Debtors admit the allegations set forth in the first sentence of paragraph 152 of the Complaint, and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 152 of the Complaint and therefore deny same, and further deny that JPMorgan Chase is entitled to any relief.

Complaint 153: The parties did not address and no action has been taken by JPMorgan Chase with respect to certain other policies, the cash surrender value of which is reflected on WMB's books and records as of September 25, 2008. These policies consist of ING Security Life List Bills E208090000 and E208090001 and approximately 955 Split Dollar policies issue by a number of carriers.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 153 of the Complaint and therefore deny same.

Complaint 154: The ING Security Life policies were reflected on the books and records of American Savings Bank, F.A. when it merged into WMB and supported American Savings Bank's executive life insurance plan. These policies were reflected on WMB's books and records as of September 25, 2008 and therefore were acquired by JPMorgan Chase from the Receiver under the P&A. WMI has no legal, record, equitable or beneficial interest in any of these policies and no right to continue to interfere with JPMorgan Chase's administration of these policies.

Answer: Debtors deny the allegations set forth in paragraph 154 of the Complaint, except respectfully refer the Court to the P&A Agreement for the content thereof.

Complaint 155: As of the date of the P&A, the 955 Split Dollar policies were recorded on the books of WMB. These policies initially belonged to Commercial Capital Bancorp Inc. ("CCBI") when it was merged into WMB in April 2006 and were reflected on its books as of the date of the merger. Correspondence with the insurance carriers for these Split Dollar policies—Beneficial Life, Jefferson Pilot Financial, John Hancock, Massachusetts Mutual, Midland National, New York Life, Northwestern Mutual, Security Life of Denver, and West Coast Life confirms that WMB was the owner of these policies as of September 25, 2008. Once again, there can

be no legitimate dispute regarding JPMorgan Chase's ownership of these policies. WMI has no legal, record, equitable, or beneficial interest in any of these policies and no right to interfere with JPMorgan Chase's administration of these policies as they clearly are property of JPMorgan Chase acquired from the Receiver under the P&A.

Answer: Debtors deny the allegations set forth in paragraph 155 of the Complaint.

Complaint 156: Accordingly, JPMorgan Chase seeks a determination that it owns the BOLI policies and Split Dollar policies discussed above, along with an administrative claim for its damages, fees, costs, and expenses, including for any deterioration in the value of these policies during the administration of these cases.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 156 of the Complaint.

Complaint 157: As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in the BOLI policies and Split Dollar policies, pursuant to and in accordance with the FDI Act. On December 30, 2008, the Debtors nonetheless submitted a claim to the Receiver asserting, among other things, ownership of certain of these policies. On January 23, 2009, the Debtors' claims were disallowed by the Receiver. The Receiver's disallowance is dispositive of the fact that the Debtors do not own these policies. On March 20, 2009, the Debtors commenced the District Court Action with respect to the disallowance of their claims.

Answer: Debtors deny the allegations set forth in paragraph 157 of the Complaint, except respectfully refer the Court to the P&A Agreement, the Proof of Claim, the Disallowance Notice, and the complaint filed in the DC Action on March 20, 2009, for the content thereof.

(ii) Visa Shares

Complaint 158: WMB was the original WaMu Group member of Visa U.S.A. Inc. WMB fsb became a member on July 27, 1994, when it signed the Visa U.S.A Inc. Membership Agreement with Washington Mutual, a Federal Savings Bank (predecessor to WMB) serving as its sponsor. WMB conducted the Visa payment card business for WaMu Group, paid all service fees, and bore the risk of the Visa payment card business.

Answer: The allegations set forth in paragraph 158 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except respectfully refer the Court to the documents referenced in the allegations set forth in paragraph 158 of the Complaint for the content thereof.

Complaint 159: As part of Visa's restructuring and initial public offering, members of Visa U.S.A. were allocated shares of Class B common stock in Visa, Inc. The shares were allocated based on each member's ownership interest, which was calculated on the basis of service fees paid over a period of time.

Answer: The allegations set forth in paragraph 159 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except respectfully refer the Court to the relevant restructuring and initial public offering documents for the content thereof.

Complaint 160: The allocation of Class B shares and Visa's retrospective responsibility plan (the "Plan") are outlined in Visa, Inc.'s Prospectus dated March 18, 2008 (the "Final Prospectus") (filed with the U.S. Securities and Exchange Commission), as well as in certain transaction documents. Class B shares are subject to the restrictions and are encumbered by contingent liabilities. The Class B shares are convertible into Class A shares upon the satisfaction of certain conditions and pursuant to a conversion formula, all as described in Visa Inc.'s Final Prospectus and certain related transaction documents.

Answer: The allegations set forth in paragraph 160 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except respectfully refer the Court to the documents referenced in the allegations set forth in paragraph 160 of the Complaint for the content thereof.

Complaint 161: Pursuant to the restructuring documents, Visa U.S.A. members have litigation indemnification obligations to Visa Inc. with respect to certain antitrust litigation (whether a named defendant or not) referred to in the transaction documents as "Covered Litigation." The Class B shares are restricted until the later of three years or the conclusion of all Covered Litigation. If

shares remain at the conclusion of the Covered Litigation and after the passage of three years, the Class B shares may be converted to Class A shares.

Answer: The allegations set forth in paragraph 161 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except respectfully refer the Court to the documents referenced in the allegations set forth in paragraph 161 of the Complaint for the content thereof.

Complaint 162: In connection with and in furtherance of the restructuring, certain Visa U.S.A. members executed a Loss Sharing Agreement (the "LSA") and an Interchange Judgment Sharing Agreement (the "JSA"), each document is dated July 2007. Each agreement provides that its signatories will indemnify Visa Inc. for potential liabilities associated with the Covered Litigation whether the signatory is a named defendant or not. The obligation is limited to their Visa U.S.A. respective membership-portions. WMB signed the JSA on July 2, 2007; WMI signed the LSA, which applied to all Covered Litigation, on July 2, 2007.

Answer: The allegations set forth in paragraph 162 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except respectfully refer the Court to the documents referenced in the allegations set forth in paragraph 162 of the Complaint for the content thereof.

Complaint 163: Indemnity obligations that may arise in connection with the Covered Litigation are to be funded by an escrow account established by Visa. The escrow was established with some proceeds of Visa Inc.'s initial public offering and, to the extent that the escrow must be replenished, through further dilution of the Class B common stock. If the funds contained in the escrow account (after continued Class B share dilution) prove insufficient to satisfy a Covered Litigation, the Final Prospectus as well as certain transaction documents, provide that in addition to the dilution of the Visa Class B shares, any shortfall is to be paid from the voting members' own funds in accordance with their respective ownership proportion. The foregoing is clearly set out in the Final Prospectus, as well as in the LSA and in other transaction documents.

Answer: Debtors deny the allegations set forth in paragraph 163 of the Complaint, except respectfully refer the Court to the documents referenced in paragraph 163 for the content thereof.

Complaint 164: On October 2, 2007, a notice of pre-true up share allocation was sent to WMI, indicating that WaMu Group would be allocated 5,465,562 shares of Visa Inc. class USA common stock. Pursuant to a true-up procedure, on March 17, 2008, the share allocation was adjusted to 5,130,523 shares of Visa Class B common stock. In the course of the initial public offering, Visa Inc. redeemed some of the Class B Shares of its members and paid proceeds to the members. On March 28, 2008, after redemption and payment of proceeds, 3,147,059 shares of Visa Inc. Class B common stock (the "Visa shares") were allocated to WaMu Group.

Answer: Debtors deny the allegations set forth in paragraph 164 of the Complaint, except respectfully refer the Court to the documents referenced in paragraph 164 for the content thereof.

Complaint 165: JPMorgan Chase believes that the Visa shares were issued in the name of WMI consistent with Visa's general practice of issuing its stock to the holding company of its issuing bank members. The Visa shares were not in the name of the bank entity issuing the credit and/or debit payment cards, which entity had paid fees to Visa and also had responsibility for the gains and-losses associated with being a card issuing Visa member.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 165 of the Complaint which refer to what JPMorgan Chase supposedly "believes", and therefore deny same. Debtors deny the remaining allegations set forth in paragraph 165 of the Complaint, except respectfully refer the Court to the documents referenced in paragraph 165 for the content thereof.

Complaint 166: The proceeds Visa paid to its members in the initial public offering were in the case of WaMu Group, distributed to WMB.

Answer: Debtors deny the allegations set forth in paragraph 166 of the Complaint.

Complaint 167: Although WMI may have received bare legal title from Visa upon distribution of the shares, WMB at all times remained, and was required by applicable regulations and law to be, the beneficial owner of the Visa shares.

Answer: Debtors deny the allegations set forth in paragraph 167 of the Complaint.

Complaint 168: The expense and reserve associated with the Covered Litigation were posted to WMB and recorded in the profit and loss statement at the WMB level. For example, in 2007, WMB recognized a guarantee liability of $50 million for the modified indemnification obligation that resulted from Visa's reorganization and initial public offering. According to publicly filed documents, therefore, WMB accounted for loss with respect to the Covered Litigation which burdens the Visa shares. WMB was the beneficial owner of the Visa shares, ownership which passed to JPMorgan Chase as the successor to the Receiver under the P&A.

Answer: Debtors deny the allegations set forth in paragraph 168 of the Complaint.

Complaint 169: Debtors have refused to transfer title in the Visa shares to JPMorgan Chase. In WMI's Schedule of Assets and Liabilities, originally filed December 19, 2008, first amended on January 27, 2009 and then amended again on February 24, 2009, Debtors list approximately 5.4 million shares of Visa Inc. Class B stock as an asset of the estate in "Schedule B — Personal Property," Item 13.

Answer: Debtors admit that Debtors have not transferred to JPMorgan Chase title in the Class B common stock of Visa that was allocated to the WaMu Group on March 28, 2008 (the "Visa Shares"). Debtors deny the remaining allegations set forth in paragraph 169 of the Complaint, except respectfully refer the Court to the documents referenced in paragraph 169 of the Complaint for the content thereof.

Complaint 170: Upon information and belief, WMI holds only 3.147 million Visa shares, which it received post-redemption.

Answer: Debtors admit that WMI holds 3.147 million Visa Shares, which it received post-redemption.

Complaint 171: As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in the Visa shares, pursuant to and in accordance with the FDI Act. JPMorgan Chase seeks an

order determining that the Visa shares in which WMI has bare legal title were owned by WMB are JPMorgan Chase's property and were purchased pursuant to the P&A.

Answer: Debtors deny the allegations set forth in paragraph 171 of the Complaint, except respectfully refer the Court to the P&A Agreement for the content thereof, and deny that JPMorgan Chase is entitled to any relief.

(iii) Contracts, Intellectual Property and Other Intangible Assets

Complaint 172: Prior to the Receivership, WMB was the primary operating subsidiary of WMI and both WMI and WMB had registered the trademarks "Washington Mutual" and the "W" logo ("Trademarks") and utilized the marks interchangeably in their operations, agreements and transactions.

Answer: Debtors admit that WMB was the primary operating subsidiary of WMI. Debtors deny the remaining allegations set forth in paragraph 172 of the Complaint, except respectfully refer the Court to the registration documents for the content thereof.

Complaint 173: Prior to the Receivership, a number of contracts and other counterparty transactions to lease property, perform services, deliver goods, license, develop or acquire software were entered into for the benefit of the banking operations formerly owned by WMB, now owned and operated by JPMorgan Chase (the "Vendor Contracts"), were bought or paid for by WMB and were utilized extensively if not exclusively by WMB. Some of the Vendor Contracts include prepaid rights, incentives, rebates or developed software (all of the foregoing, together with the Trademarks and the Vendor Contracts, the "Intangible Assets").

Answer: Debtors deny the allegations set forth in paragraph 173 of the Complaint, except admit that (i) WMI is party to numerous agreements with vendors (the "Vendors") who lease property, perform services, deliver goods, or license software that primarily benefit the banking operations formerly owned by WMB (the "Vendor Contracts"); (ii) typically, prior to the receivership, WMB, as the primary beneficiary, paid Vendors for goods and services received pursuant to the Vendor Contracts; (iii) after September 25, 2008 (the "Receivership Date"),

JPMorgan Chase paid certain Vendors for outstanding pre- and post-receivership obligations incurred in connection with the Vendor Contracts; and (iv) notwithstanding these payments, there continue to be unpaid obligations outstanding in connection with certain of the Vendor Contracts.

Complaint 174: As a result of the Receivership and the P&A, WMB's banking operations and subsidiaries no longer belong directly or indirectly to WMI. Vendors have, nonetheless, continued to provide goods and services under the Vendor Contracts. By order dated December 16, 2008, this Court authorized and approved a stipulation between the Debtors and JPMorgan Chase regarding certain of the Vendor Contracts (the "Vendor Stipulation"). The Vendor Stipulation, among other things, (i) facilitates the transfer of the services to JPMorgan Chase, (ii) requires JPMorgan Chase to pay for the services provided under those contracts until twenty days after notice of the rejection of a contract is given by JPMorgan Chase to the Debtors, thereby reducing or eliminating certain expenses of administration, and (iii) allows the Debtors to use any new contracts negotiated by JPMorgan Chase for such services to mitigate any--damage claims filed by such vendors for rejection of their contracts.

Answer: Debtors admit that WMI no longer owns any subsidiaries with any banking operations and that vendors have continued to provide goods and services under vendor contracts. Debtors deny the remaining allegations set forth in paragraph 174 of the Complaint, except respectfully refer the Court to the December 16, 2008 order for the content thereof.

Complaint 175: While the Vendor Stipulation resolved a number of the outstanding issues and protected the estates against administrative liability, the Vendor Stipulation did not resolve issues regarding ownership of the Intangible Assets. There are a number of Intangible Assets which JPMorgan Chase believes were properly assets of WMB, not WMI, and which have not been resolved to date.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 175 of the Complaint and therefore deny same, except respectfully refer the Court to the December 16, 2008 order for the content thereof.

Complaint 176: Any interest of WMI in these Intangible Assets consists of nothing more than bare legal title and all beneficial and equitable

rights thereunder were WMB's and now belong to JPMorgan Chase as the successor to the Receiver under the P&A and Title 12. While WMI may have been the nominal contracting party for contracts entered by the WaMu Group entities, WMB held all beneficial and equitable title and interest in each Intangible Asset. WMB paid for the Intangible Assets, recorded the Intangible Assets on its books, and interacted directly with the counterparties as the Intangible Assets supported WMB's business, now owned and operated by JPMorgan Chase. All payments and pre-payments on the Vendor Contracts and other Intangible Assets were made by WMB.

Answer: The allegations set forth in paragraph 176 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same.

Complaint 177: WMI's Schedule of Assets and Liabilities appears to assert ownership over a number of these Intangible Assets in Schedule G—Executory Contracts and Unexpired Leases.

Answer: Debtors deny the allegations set forth in paragraph 177 of the Complaint, except respectfully refer the Court to the schedule for the content thereof.

Complaint 178: As set forth in the P&A, JPMorgan Chase purchased "all of the Receiver's right, title and interest," in the Vendor Contracts, pursuant to and in accordance with the FDI Act. On December 30, 2008, WMI nonetheless submitted a claim to the Receiver asserting, among other things, an interest in certain of these contracts. On January 23, 2009, the WMI's claims were disallowed by the Receiver. The Receiver's disallowance is dispositive of the fact that the Debtors do not own these contracts. On March 20, 2009, the Debtors commenced the District Court Action with respect to the disallowance of their claims.

Answer: Debtors deny the allegations set forth in paragraph 178 of the Complaint, except respectfully refer the Court to the P&A Agreement, the Proof of Claim, the Disallowance Notice, and the complaint filed in the DC Action on March 20, 2009, for the content thereof.

Complaint 179: JPMorgan Chase is entitled to a declaration that it has all right, title and interest to these Intangible Assets or, in the alternative, JPMorgan Chase is entitled to a claim for the full amount of all damages it may suffer from the loss of these Intangible Assets and to exercise rights of offset and recoupment for that loss.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 179 of the Complaint.

RELIEF REQUESTED BY JPMORGAN CHASE

TRUST SECURITIES

Count One: Trust Securities (Declaratory Judgment)

Complaint 180: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 180 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 181: As set forth above, JPMorgan Chase contends that, pursuant to the P&A, it purchased the Trust Securities. The Debtors have disputed JPMorgan Chase's ownership of these assets in this bankruptcy case, in their Schedules and in the filing of the District Court Action.

Answer: Paragraph 181 of the Complaint characterizes the nature of the Complaint and therefore no response is required. To the extent a response is required, Debtors deny same, except respectfully refer the Court to the Complaint for the content thereof.

Complaint 182: There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and otherwise deny the allegations set forth in paragraph 182 of the Complaint, except admit that the Complaint purports to present a request for declaratory relief, and respectfully refer the Court to 28 U.S.C. § 2201 for the content thereof.

Complaint 183: JPMorgan Chase requests a declaratory judgment finding that Debtors must proceed with any claim to the Trust Securities

through the District Court Action it chose to commence. In the alternative, JPMorgan Chase requests a declaratory judgment determining that the Trust Securities are assets purchased by and belonging to JPMorgan Chase.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 183 of the Complaint.

Count Two: Trust Securities
(Breach of Contract)

Complaint 184: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 184 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 185: WMI assumed a direct obligation to WMB upon entering into the Contribution Agreement to immediately contribute and transfer the Trust Securities to WMB following the conditional exchange. In the alternative, WMB was the third party beneficiary of WMI' s commitment to the OTS and the FDIC under the Contribution Agreement. WMI also assumed a direct obligation to WMB pursuant to the Assignment Agreement.

Answer: The allegations set forth in paragraph 185 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same, except respectfully refer the Court to the documents referenced in paragraph 185 for the content thereof.

Complaint 186: To the extent the Assignment Agreement is interpreted as leaving WMI with anything other than bare legal title, WMI breached the Contribution Agreement. WMI further breached the Contribution Agreement and the Assignment Agreement by refusing to assist JPMorgan Chase in obtaining registered ownership of the Trust Securities.

Answer: Debtors deny the allegations set forth in paragraph 186 of the Complaint.

Complaint 187: JPMorgan Chase (as successor in interest to WMB), has suffered, and will suffer, substantial monetary damages as a proximate result of WMI's breach of the Contribution Agreement and the Assignment Agreement.

Answer: Debtors deny the allegations set forth in paragraph 187 of the Complaint.

Count Three: Trust Securities
(Unjust Enrichment)

Complaint 188: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 188 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 189: The Debtors would be unjustly enriched if they retained the Trust Securities. From the time of the creation of the Trust Securities, the Debtors benefited from the treatment of the Trust Securities as core capital, which permitted the Debtors to, among other things, satisfy regulatory requirements and report higher capital ratios.

Answer: Debtors deny the allegations set forth in paragraph 189 of the Complaint.

Complaint 190: Thus, to the extent the Court does not enter a declaratory judgment determining that the Trust Securities are assets purchased by and belonging to JPMorgan Chase, JPMorgan Chase requests that the Court establish a constructive trust for the benefit of JPMorgan Chase consisting of the value recognized by Debtors as a result of the treatment of the Trust Securities as core capital.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 190 of the Complaint.

TAX REFUNDS

Count Four: Tax Refunds
(Declaratory Judgment)

Complaint 191: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 191 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 192: As discussed above, JPMorgan Chase is the beneficial owner of tax refunds due to, and deductions generated by, the WaMu Group. JPMorgan Chase is also the beneficial owner of tax refunds already received by, and deductions taken by, WMI. The Debtors dispute JPMorgan Chase's ownership of these refunds and deductions.

Answer: The allegations set forth in paragraph 192 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same.

Complaint 193: Furthermore, JPMorgan Chase should be permitted to communicate directly without restriction with the taxing authorities concerning ongoing tax matters affecting WMB and its subsidiaries. The Debtors have sought to prohibit JPMorgan Chase from engaging in these communications.

Answer: The allegations set forth in paragraph 193 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same.

Complaint 194: There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and otherwise deny the allegations set forth in paragraph 194 of the Complaint, except admit that the Complaint purports to present a request for declaratory relief, and respectfully refer the Court to 28 U.S.C. § 2201 for the content thereof.

Complaint 195: JPMorgan Chase requests a declaratory judgment finding that Debtors must proceed with any claim to the tax refunds and deduction through the District Court Action they elected to commence. In the alternative, JPMorgan Chase requests a declaratory judgment determining that the tax refunds and deductions are assets purchased by and belonging to JPMorgan Chase.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 195 of the Complaint.

Count Five: Tax Refunds
(Unjust Enrichment)

Complaint 196: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 196 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 197: In the alternative, WMI would be unjustly enriched if it retained any tax refunds received on behalf of, or generated by, the WaMu Group that are attributable to tax attributes of WMB or its subsidiaries.

Answer: The allegations set forth in paragraph 197 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same.

Complaint 198: WMI received the tax refunds and deductions merely as agent for the WaMu Group. If WMI is permitted to retain the tax refunds, it will have received a windfall by receiving a refund on income tax paid by WMB (or its subsidiaries).

Answer: The allegations set forth in paragraph 198 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same.

Complaint 199: JPMorgan Chase requests that the Court establish a constructive trust for the benefit of JPMorgan Chase consisting of the tax refunds received by and/or deductions recognized by WMI to which WMB is entitled.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 199 of the Complaint.

Complaint 200: Furthermore, any future tax refunds received by and/or deductions recognized by WMI as agent for the WaMu Group should be similarly deposited into the constructive trust for the benefit of JPMorgan Chase.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 200 of the Complaint.

DISPUTED INTERCOMPANY AMOUNTS

Count Six: Disputed Funds
(Declaratory Judgment: $3.7 Billion Book Entry Transfer)

Complaint 201: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 201 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 202: WMI has asserted that the $3.7 Billion Book Entry Transfer creates a deposit liability owed to it by WMB fsb, now JPMorgan Chase. JPMorgan Chase disputes that there is a valid deposit liability due to Debtors as the result of the $3.7 Billion Book Entry Transfer.

Answer: Paragraph 202 of the Complaint characterizes the nature of the Complaint and is argumentative and therefore no response is required. To the extent a response is required, Debtors deny same, except admit that $3.7 billion was transferred to a deposit account.

Complaint 203: There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and otherwise deny the allegations set forth in paragraph 203 of the Complaint, except admit that the Complaint purports to present a request for declaratory relief, and respectfully refer the Court to 28 U.S.C. § 2201 for the content thereof.

Complaint 204: JPMorgan Chase requests a declaratory judgment finding that Debtors must proceed with any claim to assert ownership of or interest in the $3.7 Billion Book Entry Transfer through the District Court Action they elected to commence. In the alternative, JPMorgan Chase requests a declaratory judgment determining that there is no valid deposit liability due to Debtors as a result of the $3.7 Billion Book Entry Transfer.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 204 of the Complaint.

Count Seven: Disputed Funds
(Declaratory Judgment: Setoff, Recoupment, and Other Equitable Limitations)

Complaint 205: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 205 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 206: To the extent that JPMC has any liabilities to Debtors, including deposit account liabilities, it is entitled to (i) recoup and or setoff all such amounts under the MBA Policy and/or any other applicable terms and conditions governing those liabilities or deposit accounts; (ii) imposition of a constructive trust for the amount of all such liabilities over any funds of Debtors it possesses; and (iii) enforce any security interest determined to apply to the funds of the Debtors. Debtors dispute that JPMorgan Chase has these rights.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 206 of the Complaint.

Complaint 207: The amounts owed to JPMorgan Chase include, but are not limited to, the at least approximately $234 million in tax refunds deposited in the Accounts and due to WMB, which the Debtors have claimed as their own, the intercompany receivables of $275 million due from WMI to WMB, and any amounts awarded by the Court under this Complaint.

Answer: Debtors deny the allegations set forth in paragraph 207 of the Complaint.

Complaint 208: There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and otherwise deny the allegations set forth in paragraph 208 of the Complaint, except admit that the Complaint purports to present a request for declaratory relief, and respectfully refer the Court to 28 U.S.C. § 2201 for the content thereof.

Complaint 209: JPMorgan Chase requests a declaratory judgment determining its right to setoff, recoupment, imposition of a constructive trust, and/or enforcement of its security interests.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 209 of the Complaint.

Count Eight: Any Remaining Deposit Liabilities
(Interpleader Pursuant to Bankruptcy Rule 7022)

Complaint 210: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 210 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 211: Pursuant to the terms of the P&A, JPMorgan Chase, WMI, and the FDIC have asserted, or may assert, competing claims to any funds that constitute deposit liabilities and JPMorgan Chase may be exposed to double liability if it were to pay these claims to the wrong party.

Answer: The allegations set forth in paragraph 211 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same.

Complaint 212: JPMorgan Chase seeks to interplead any remaining funds that constitute deposit liabilities pursuant to Bankruptcy Rule 7022, less any attorneys' fees and costs, so that all claims to the amounts can be adjudged and the funds can be properly disbursed.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 212 of the Complaint.

GOODWILL LITIGATION

Count Nine: Goodwill Litigations (Declaratory Judgment)

Complaint 213: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 213 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 214: There is an actual and substantial controversy between JPMorgan Chase and WMI as to whether WMI or WMB (as successor in interest to Anchor Savings Bank and American Savings Bank) is entitled to the Anchor and ASB Judgments and any future judgment entered in either litigation.

Answer: The allegations set forth in paragraph 214 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same.

Complaint 215: This is an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and otherwise deny the allegations set forth in paragraph 215 of the Complaint, except admit that the Complaint purports to present a request for declaratory relief, and respectfully refer the Court to 28 U.S.C. § 2201 for the content thereof.

Complaint 216: JPMorgan Chase requests a declaratory judgment determining that WMB (and thus JPMorgan Chase as successor in interest) owns the beneficial interest in the Anchor and American Judgments and all monies paid on account of those judgments and directing payment of the Anchor and ASB Judgments, as well as any future judgment in either the *Anchor Savings Bank or the American Savings Bank* litigations, to JPMorgan Chase.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 216 of the Complaint.

RABBI TRUSTS

Count Ten: Rabbi Trusts (Declaratory Judgment)

Complaint 217: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 217 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 218: As set forth above, JPMorgan Chase contends that, pursuant to the P&A, it purchased the Legacy Rabbi Trusts. The Debtors dispute JPMorgan Chase's ownership of these assets.

Answer: Paragraph 218 of the Complaint characterizes the nature of the Complaint and therefore no response is required. To the extent a response is required, Debtors deny same.

Complaint 219: There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and otherwise deny the allegations set forth in paragraph 219 of the Complaint, except admit that the Complaint purports to present a request for declaratory relief, and respectfully refer the Court to 28 U.S.C. § 2201 for the content thereof.

Complaint 220: JPMorgan Chase requests a declaratory judgment determining that JPMorgan Chase purchased the assets of the Legacy Rabbi Trusts and an order authorizing JPMorgan Chase and the trustees of each of the Legacy Rabbi Trusts to take all actions necessary or appropriate to transfer ownership to JPMorgan Chase.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 220 of the Complaint.

Count Eleven: Rabbi Trusts
(Unjust Enrichment)

Complaint 221: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 221 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 222: In the alternative, in the event that this Court finds that JPMorgan Chase did not purchase the assets of the Legacy Rabbi Trusts, the Debtors would be unjustly enriched if they were allowed to retain the assets. The Debtors did not fund the Trusts and the assets were owned by WMB.

Answer: The allegations set forth in paragraph 222 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same.

Complaint 223: JPMorgan Chase requests that the Court establish a constructive trust for the benefit of JPMorgan Chase consisting of the value of the assets of the Legacy Rabbi Trusts.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 223 of the Complaint.

PENSION AND 401(K) PLANS

Count Twelve: Pension and 401(k) Plans (Declaratory Judgment)

Complaint 224: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 224 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 225: JPMorgan Chase stands ready, willing and able to assume the Pension and 401(k) Plans, and continues to record accruals for the Pension Plan and fund significant matching contributions to the 401(k) Plan in anticipation of doing so.

Answer: Debtors deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 225 of the Complaint and therefore deny same.

Complaint 226: As set forth above, JPMorgan Chase contends that it may assume the Pension and 401(k) Plans in their entirety. The Debtors dispute this contention. Debtors assert that JPMorgan Chase is required to pay them an amount reflecting a purported "excess funding" in the Pension Plan. However, the Pension and 401(k) Plans will not be terminated if they are assumed by JPMorgan Chase. Rather, JPMorgan Chase would assume the Pension Plan on an ongoing basis without any termination but, instead, with the continuing obligation to pay accrued benefits. And, because the Pension Plan is continuing, the sufficiency of their assets to cover benefit obligations will continue to vary depending upon ongoing fluctuations in the value of plan assets as well as the interest rate used to discount liabilities. It therefore makes no sense to suggest that there exists some excess value to which Debtors are presently entitled as though the Pension Plan was being terminated with no further liabilities.

Answer: Paragraph 226 of the Complaint characterizes the nature of the Complaint (to the extent it describes what JPMorgan Chase "contends") and is argumentative and therefore no response is required. To the extent a response is required, Debtors deny same, except that with respect to the allegations concerning what Debtors supposedly have "assert[ed]", Debtors respectfully refer the Court to Debtors' pleadings for the content thereof.

Complaint 227: In addition, the Debtors have claimed that, in order to assume the Pension and 401(k) Plans, JPMorgan Chase must assume the liabilities associated with litigation against WMI and its officers and directors for their conduct in administrating the Pension and 401(k) Plans before the Petition Date. JPMorgan Chase does not have any obligation to assume these liabilities.

Answer: Paragraph 227 of the Complaint is argumentative and therefore no response is required. To the extent a response is required, Debtors deny same, except with respect to the allegations concerning what Debtors supposedly have "claimed", Debtors respectfully refer the Court to Debtors' pleadings for the content thereof.

Complaint 228: There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and otherwise deny the allegations set forth in paragraph 228 of the Complaint, except admit that the Complaint purports to present a request for declaratory relief, and respectfully refer the Court to 28 U.S.C. § 2201 for the content thereof.

Complaint 229: JPMorgan Chase requests a declaratory judgment finding that Debtors must proceed with any claim to assert ownership of any assets in any employee benefit plans through the District Court Action they elected to commence. Alternatively, JPMorgan Chase requests a declaratory judgment determining that JPMorgan Chase may assume the Pension and 401(k) Plans without requiring it to forfeit any hypothetical over-funding to Debtors and without imposing liability for litigation that does not belong to JPMorgan Chase. In the alternative, JPMorgan Chase requests a declaratory judgment determining that, if it is not permitted to assume the

Pension and 401(k) Plans, it has no further liability to any person for any liabilities associated with those plans.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and further state that the allegations set forth in paragraph 229 of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, Debtors deny same.

Count Thirteen: Pension and 401(k) Plans (Unjust Enrichment)

Complaint 230: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 230 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 231: In the alternative, in the event that this Court finds that JPMorgan Chase can only assume the Pension and 401(k) Plans by either paying the hypothetical excess funding or assuming pending litigation liabilities upon assumption of the Pension and 401(k) Plans, and JPMorgan Chase does not assume the Pension and 401(k) Plans, the Debtors would be unjustly enriched by benefiting through JPMorgan Chase's contributions to the 401(k) Plan that were made in the expectation that it would be able to assume the 401(k) Plan pursuant to the P&A. Debtors and JPMorgan Chase understood that JPMorgan Chase was making these payments in anticipation of assumption of the plans.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 231 of the Complaint.

Complaint 232: The Debtors would unjustly realize a windfall from the circumstances alleged herein if they do not reimburse JPMorgan Chase for the funds contributed to the 401(k) and resources it allocated to the Plans, which Debtors (or another party) would have needed to contribute if JPMorgan Chase had not done so. The Debtors did not contribute any of these funds or resources relating to the post-September 25, 2008 operation of the Pension and 401(k) Plans and have no right to them.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 232 of the Complaint.

Complaint 233: By reason of the foregoing, a post-petition constructive trust should be imposed on the Debtors in the full amount necessary to reimburse JPMorgan Chase for the amounts it contributed to the 401(k) Plan.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 233 of the Complaint.

BANK OWNED LIFE INSURANCE POLICIES

Count Fourteen: Life Insurance Policies (Declaratory Judgment)

Complaint 234: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 234 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 235: As set forth above, there is an actual and substantial controversy between JPMorgan Chase and the Debtors. JPMorgan Chase contends that, pursuant to the P&A, it purchased the BOLI policies and Split Dollar policies referenced above. The Debtors appear to contend to the contrary.

Answer: Paragraph 235 of the Complaint characterizes the nature of the Complaint and states a conclusion of law and therefore no response is required. To the extent a response is required, Debtors deny same.

Complaint 236: There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and otherwise deny the allegations set forth in paragraph 236 of the Complaint, except admit that the Complaint purports to present a request for declaratory relief, and respectfully refer the Court to 28 U.S.C. § 2201 for the content thereof.

Complaint 237: JPMorgan Chase requests a declaratory judgment finding that Debtors must proceed with any claim to assert ownership of or interest in the BOLI Policies and Split Dollar policies through the District Court Action they elected to commence. Alternatively, JPMorgan Chase requests a declaratory judgment determining that the BOLI policies and Split Dollar policies are assets purchased by and belonging to JPMorgan Chase.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 237 of the Complaint.

Count Fifteen: Life Insurance Policies
(Unjust Enrichment)

Complaint 238: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 238 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 239: In the alternative, in the event that this Court finds that JPMorgan Chase did not purchase the BOLI policies and Split Dollar policies, the Debtors would be unjustly enriched if they were allowed to retain the policies. The Debtors were never the policyholders for the BOLI policies and Split Dollar policies. Accordingly, they have no right to the BOLI policies and Split Dollar policies and would unjustly realize a windfall from the circumstances alleged herein if they are permitted to retain the BOLI policies and Split Dollar policies.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 239 of the Complaint.

Complaint 240: JPMorgan Chase requests that the Court establish a constructive trust for the benefit of JPMorgan Chase consisting of the value of the BOLI policies and Split Dollar policies.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 240 of the Complaint.

VISA SHARES

Count Sixteen: Visa Shares (Declaratory Judgment)

Complaint 241: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 241 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 242: There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and otherwise deny the allegations set forth in paragraph 242 of the Complaint, except admit that the Complaint purports to present a request for declaratory relief, and respectfully refer the Court to 28 U.S.C. § 2201 for the content thereof.

Complaint 243: JPMorgan Chase requests a declaratory judgment determining that the Visa shares are assets purchased by and belonging to JPMorgan Chase. In the alternative, if the Court should determine that the Visa shares are assets belonging to the Debtors, JPMorgan Chase requests a declaratory judgment determining that Debtors assume the full liabilities associated with the Visa Inc.

restructuring and initial public offering in which those shares were issued by requiring that the Debtors pay and discharge any Covered Litigation obligation not satisfied by the Visa shares.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 243 of the Complaint.

Count Seventeen: Visa Shares
(Unjust Enrichment)

Complaint 244: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 244 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 245: The Debtors would be unjustly enriched if they retained title to the Visa shares.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 245 of the Complaint.

Complaint 246: If the Debtors are permitted to retain the Visa shares without bearing full liability associated with the reorganization and creation of the asset, they will incur a windfall if and to the extent JPMorgan Chase is responsible for any Covered Litigation shortfall relating to the Visa shares.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 246 of the Complaint.

Complaint 247: Thus, to the extent the Court does not enter a declaratory judgment protecting JPMorgan Chase from any such liabilities, JPMorgan Chase requests that the Court establish a constructive trust for the benefit of JPMorgan Chase over any Visa shares

remaining after satisfaction of obligations related to the Covered Litigation.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 247 of the Complaint.

INTANGIBLE ASSETS

Count Eighteen: Intangible Assets (Declaratory Judgment)

Complaint 248: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 248 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 249: As set forth above, JPMorgan Chase contends that, pursuant to the P&A and Title 12, it owns the Intangible Assets. The Debtors dispute this.

Answer: Paragraph 249 of the Complaint characterizes the nature of the Complaint and therefore no response is required. To the extent a response is required, Debtors deny same.

Complaint 250: There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and otherwise deny the allegations set forth in paragraph 250 of the Complaint, except admit that the Complaint purports to present a request for declaratory relief, and respectfully refer the Court to 28 U.S.C. § 2201 for the content thereof.

Complaint 251: JPMorgan Chase requests a declaratory judgment determining that JPMorgan Chase is the owner of the Intangible Assets. In the alternative, JPMorgan Chase requests a declaratory judgment determining that, if it is not the owner of the Intangible Assets, it

has no liability to any person for any liabilities associated with those Intangible Assets.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 251 of the Complaint.

Count Nineteen: Intangible Assets
(Unjust Enrichment)

Complaint 252: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 252 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 253: In the alternative, in the event that this Court finds that JPMorgan Chase does not own the Intangible Assets, the Debtors would be unjustly enriched if they were allowed to retain the Intangible Assets or were not ordered to repay JPMorgan Chase for amounts paid by WMB in connection with the Intangible Assets.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 253 of the Complaint.

Complaint 254: JPMorgan Chase requests that the Court establish a constructive trust for the benefit of JPMorgan Chase consisting of the value of Intangible Assets.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 254 of the Complaint.

ADMINISTRATIVE CLAIM

Count Twenty: Administrative Expenses

Complaint 255: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 255 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 256: To the extent the Court accepts WMI's claims of ownership of any of the Pension and 401(k) Plans or other assets and JPMorgan Chase has made payments and incurred expenses in connection with these assets, JPMorgan Chase is entitled to reimbursement from Debtors of all post-petition expenses it has incurred and payments it has made on account of those assets.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 256 of the Complaint.

Complaint 257: To the extent JPMorgan Chase incurs any liability or suffers any loss as the result of conduct by Debtors after the Petition Date, including conduct by the Debtors as the sponsor of any of the Pension and 401(k) Plans, JPMorgan Chase is entitled to post-petition administrative claim for those amounts.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 257 of the Complaint.

INDEMNIFICATION

Count Twenty-One: Indemnification

Complaint 258: JPMorgan Chase realleges and incorporates by reference each and every allegation set forth above, as though fully set forth herein.

Answer: In response to paragraph 258 of the Complaint, Debtors repeat and reallege the answers to the foregoing paragraphs of the Complaint as if fully set forth herein.

Complaint 259: Claims have been threatened against JPMC arising out of or relating to the acts, omissions or conduct of Debtors prior to the Petition Date. To the extent that any claim is asserted against JPMC as a result of such matters, JPMC is entitled to be indemnified and held harmless by the Debtors for any loss, damage or liability they might incur.

Answer: Debtors deny that JPMorgan Chase is entitled to any relief and to the extent a response is otherwise required Debtors deny the allegations set forth in paragraph 259 of the Complaint.

DEFENSES, AFFIRMATIVE DEFENSES, AND RESERVATION OF RIGHTS

The statement of any defense hereinafter does not assume the burden of proof for any issue as to which applicable law places the burden upon JPMorgan Chase. Debtors expressly reserve the right to assert, and hereby give notice that they intend to rely upon, any other defense and/or affirmative defense that may become available or appear during discovery proceedings or otherwise in this case and hereby reserve the right to amend this Answer to assert any such defense and/or affirmative defense. Debtors hereby incorporate into this Answer and assert any and all defenses asserted or pled in this proceeding by any other party to the extent the defenses are applicable to the Debtors under the facts and law.

Debtors have not knowingly or intentionally waived any applicable affirmative defenses. Debtors presently lack sufficient knowledge or information on which to form a belief as to whether they may have, as yet unstated, affirmative defenses, and expressly reserve all rights with respect to all affirmative defenses that may be revealed during the course of discovery. Debtors further reserve all rights to assert any and all applicable defenses or affirmative defenses against JPMorgan Chase, including, but not limited to, all equitable claims, avoidance actions, and set-off rights.

Debtors assert the following affirmative defenses, without assuming the burden of proof when the burden of proof would otherwise be on JPMorgan Chase:

First Defense

The Complaint fails to state a claim upon which relief may be granted.

Second Defense

JPMorgan Chase is not entitled to a declaration that it has a right to set off the amount of claims it owes to Debtors against the amount of obligations that Debtors allegedly owe to it because such setoff does not comply with the Bankruptcy Code or any other applicable law, including because, without limitation, mutuality among the parties is lacking.

Third Defense

JPMorgan Chase's claims are barred, in whole or in part, by section 502(d) of the Bankruptcy Code because JPMorgan Chase is in possession of property recoverable by the Debtors under sections 542 and 550 of the Bankruptcy Code and because JPMorgan Chase is a transferee of transfers avoidable under sections 544, 547 and 548 of the Bankruptcy Code.

Fourth Defense

JPMorgan Chase's claims are barred, in whole or in part, by section 558 of the Bankruptcy Code because the Debtors are entitled to the defense of setoff or recoupment under applicable state law.

Fifth Defense

JPMorgan Chase is not the real party in interest with respect to some or all of its claims.

Sixth Defense

JPMorgan Chase lacks standing to assert some or all of its claims.

Seventh Defense

JPMorgan Chase's Complaint is barred in whole or in part by the Statute of Frauds.

Eighth Defense

JPMorgan Chase has benefited from the acts and transactions of Debtors complained of in an amount exceeding JPMorgan Chase's claimed damages. JPMorgan Chase is required to set off against such alleged damages the benefits received and thus has suffered no legally cognizable damages proximately caused by any conduct of Debtors.

Ninth Defense

JPMorgan Chase is precluded to the extent it seeks any recovery or indemnification, in whole or in part, because JPMorgan Chase has failed to mitigate its damages.

Tenth Defense

JPMorgan Chase is precluded from recovery because it would be unjustly enriched thereby.

Eleventh Defense

By virtue of its conduct, JPMorgan Chase is estopped from asserting the claims in the Complaint.

Twelfth Defense

JPMorgan Chase's claims are barred, in whole or in part, by waiver.

Thirteenth Defense

JPMorgan Chase's claims are barred, in whole or in part, by the doctrine of laches.

Fourteenth Defense

JPMorgan Chase's claims are barred, in whole or in part, by JPMorgan Chase's approval and ratification of the conduct upon which the claims are based.

Fifteenth Defense

JPMorgan Chase is precluded from recovery, in whole or in part, because of its own wrongful and/or negligent conduct and the doctrines of comparative negligence and contributory negligence.

Sixteenth Defense

JPMorgan Chase's Complaint is barred, in whole or in part, by the doctrine of unclean hands.

Seventeenth Defense

JPMorgan Chase is precluded from recovery, in whole or in part, because JPMorgan Chase had knowledge of and approved and assumed the risk of the transactions of which it complains.

Eighteenth Defense

JPMorgan Chase's Complaint is barred, in whole or in part, by the doctrine of *in pari delicto*.

Nineteenth Defense

JPMorgan Chase's claims are barred, in whole or in part, by the statute of limitations.

Twentieth Defense

JPMorgan Chase's claims are barred, in whole or in part, by its illegal conduct.

Twenty-First Defense

JPMorgan Chase's claims are barred, in whole or in part, by the release of those claims.

Twenty-Second Defense

JPMorgan Chase's claims are barred, in whole or in part, by the payment of those claims.

Twenty-Third Defense

With respect to Counts 4 and 5, JPMorgan Chase's claims are barred, in whole or in part, by operation of the Internal Revenue Code (26 U.S.C.) and the Federal Tax Regulations (26 C.F.R.).

Twenty-Fourth Defense

JPMorgan Chase's claims, in whole or in part, have been or will be discharged in the bankruptcy.

DEBTORS' COUNTERCLAIMS

The Debtors, through their undersigned counsel, bring the following Counterclaims against JPMorgan Chase. The Debtors assert and expressly reserve all rights with respect to all counterclaims or cross-claims that may be revealed during the course of discovery, including the right to amend to assert any counterclaims or cross-claims that may hereafter be revealed during discovery.

INTRODUCTION

1. This suit is brought to redress certain injuries that WMI has suffered as a result of fraudulent and preferential transfers of potentially more than $10 billion in WMI assets to WMB and subsequently to JPMorgan Chase, among other things.

2. Since at least December 2007 until it was ultimately seized and placed into receivership by the FDIC, WMB was under liquidity pressure. During this period, WMI down-streamed billions of dollars without recompense and made significant preferential transfers to WMB on account of antecedent debts.

3. To the extent such contributions were made at a time when WMI was insolvent or engaged in business for which its assets were unreasonably small capital and when WMB was insolvent, WMI received no consideration in exchange for making such contributions and they are avoidable as a matter of law. Moreover, contributions or other transfers made when the likelihood of the FDIC's seizure was increasingly becoming inevitable resulted in WMI again receiving no consideration in exchange for making such contributions. Similarly, to the extent the transfers on account of prior obligations were made at a time when WMI was insolvent, they too are avoidable as a matter of law.

4. WMI and WMB's financial condition ultimately resulted in regulatory action. On the Receivership Date, by order number 2008-36, the OTS closed WMB and appointed the FDIC

Receiver. Immediately upon its appointment, the FDIC sold the majority of WMB's assets – having a book value of more than $300 billion – to JPMorgan Chase in exchange for payment of just $1.88 billion (the "P&A Transaction"), pursuant to the P&A Agreement.

5. JPMorgan Chase thereupon booked an extraordinary gain, reflecting that it acquired WMB's assets at a significant discount to fair market value. Specifically, based upon JPMorgan Chase's own accounting, the adjusted fair value of the net assets acquired was higher than the purchase price paid in the amount of $1.9 billion – an amount in and of itself more than the total consideration paid by JPMorgan Chase. Moreover, JPMorgan Chase has recently announced that it stands to realize a $29 billion gain on WMB assets it purchased and marked down pursuant to the P&A Transaction based upon the actual value of such assets. On the date of the P&A Transaction, WMI was both a creditor and a stockholder of WMB, and thus WMI was harmed further by this transaction. The next day, the Debtors commenced their cases under chapter 11 of the Bankruptcy Code.

JURISDICTION AND VENUE

6. This is an action pursuant to Federal Rule of Bankruptcy Procedure 7001 and 11 U.S.C. §§ 541, 544, 547, 548, and 550.

7. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and 1334(b).

8. Venue is proper in this Court under 28 U.S.C. § 1409(b).

9. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

THE PARTIES

10. Counterclaim-Defendant JPMorgan Chase is a national banking association organized under the laws of the United States with its principal place of business in Columbus, Ohio.

JPMorgan Chase is a wholly-owned subsidiary of JPMorgan Chase & Co., a corporation organized under the laws of Delaware.

11. Counterclaim-Plaintiff WMI is a corporation organized under the laws of the State of Washington with its principal place of business located at 1301 Second Avenue, Seattle, Washington 98101.

12. Counterclaim-Plaintiff WMI Investment is a corporation organized under the laws of the State of Delaware with its principal place of business located at 1301 Second Avenue, Seattle, Washington 98101.

FACTUAL ALLEGATIONS

A. WMI's Capital Contributions

13. From December 2007 through April 2008, WMI made the Capital Contributions to WMB in the amount of $6.5 billion:

Date	Amount Contributed to WMB
December 18, 2007 (the "December '07 Capital Contribution")	$1 billion
April 18, 2008 (the "April '08 Capital Contribution")	$3 billion
July 21, 2008 (the "July '08 Capital Contribution")	$2 billion
September 10, 2008 (the "September '08 Capital Contribution")	$500 million

14. During this period, WMI had public debt obligations of approximately $7 billion, 3.5 million shares of preferred stock, and more than 1.7 billion shares of common stock.

15. All Capital Contributions made at a time when WMI was insolvent or engaged in business for which its assets were unreasonably small capital and when WMB was insolvent resulted

in WMI receiving no consideration in exchange for making such contributions. Moreover, Capital Contributions made during this period, when the likelihood of the FDIC's closing of WMB was increasingly inevitable, although not understood to be by WMI, resulted in WMI receiving no consideration in exchange for making such contributions. Thus, WMB (and ultimately, JPMorgan Chase) received the benefit of billions of dollars of Capital Contributions to the detriment of WMI.

(i) December '07 and April '08 Capital Contributions

16. In December 2007, WMI was recognizing serious signs of asset deterioration. On December 10, 2007, WMI announced a loss for the fourth quarter because of a $1.6 billion charge to write down the value of its home-loan business, and its plans to lay off approximately 3,150 employees. *See* Bill Virgin, *WaMu To Slash 3,150 Jobs Facing Fourth Quarter Loss, Bank Cuts Dividend 73% And Sets Office Closures*, THE SEATTLE POST-INTELLIGENCER, Dec. 11, 2007, at A1.

17. At this time, WMI already carried a debt burden that included approximately $7 billion in publicly-traded debt.

18. On the day of the April '08 Capital Contribution, WMI announced a net loss of approximately $1.1 billion, a provision for loan losses for the first quarter of approximately $3.5 billion, and expected first quarter net charge-offs of approximately $1.4 billion. *See* Washington Mutual, Inc. Press Release, *Company Expects First Quarter Net Loss of Approximately $1.1 Billion*, April 8, 2008.

(ii) July '08 Capital Contribution

19. On June 30, 2008, the OTS completed an examination of WMB and identified various "supervisory issues," and a general weakened financial condition. Pursuant to this examination WMB's board of directors and management were instructed to construct a three-year business plan to be submitted to the OTS for its approval. This examination culminated on September 7, 2008, when the OTS entered into Memorandums of Understanding with each of WMI and WMB (the "MOUs").

The MOU entered into by WMB provided various measures aimed at improving its financial health, including, among other things, limitations placed on the ability of WMB to pay dividends, a requirement that WMB's board of directors review and approve a "contingency capital plan," and incorporation of an asset reduction plan with respect to certain targeted assets.

20. On Friday, July 11, 2008, the OTS seized IndyMac Bank and appointed the FDIC receiver of its assets. *See IndyMac Taken Over By Regulators,* REUTERS, July 11, 2008. On Monday, July 14, 2008, WMB experienced significant loss of deposits in the wake of IndyMac Bank being placed into receivership.

21. On July 22, 2008 – one day after the July '08 Capital Contribution was made – WMI announced a second quarter net loss of $3.33 billion and increased loan loss provisions by 69 percent to $5.9 billion. *See* Washington Mutual, Inc. Press Release, *WaMu Reports Significant Build-Up of Reserves Contributing to Second Quarter Net Loss of $3.3 Billion*, July 22, 2008. WMI's second quarter announcement spurred analyst concerns. Citi analyst Bradley Ball stated Citi's concern that "credit and market conditions will continue to damage Washington Mutual's financial flexibility over the near to intermediate term." *See* Maurna Desmond, *Alarm Over WaMu,* FORBES.COM, July 24, 2008.[3] Richard Bove, a Ladenburg Thalmann analyst, discussing his firm's projections noted that, "these numbers are based on our projection of what Washington Mutual must do to return to profitability, not what is necessarily likely to happen." *Id.*

22. The capital markets evidenced WMI's financial distress. WMI credit default swaps (reflecting risk of default on WMI's publicly-issued notes) were trading at record-high levels just four days after the consummation of the July '08 Capital Contribution. *See* Shannon D. Harrington,

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3 http://www.forbes.com/2008/07/24/wamu-analyst-update-market-equity-cx_md_0724markets46.html.

WaMu Bond Risk Climbs to Record Amid Mortgage Losses, BLOOMBERG.COM, July 25, 2008.[4] Further indicative of WMI's financial distress, WMI subordinated notes were offering 15.0% yields to compensate investors for their risk, in stark contrast to five-year Treasury bonds that were offering a mere 3.3%. *See* Maurna Desmond, *Alarm Over WaMu*, FORBES.COM, July 24, 2008.

(iii) September '08 Capital Contribution

23. In September, 2008, WMI and WMB continued to experience a deterioration of their financial positions. On September 7, 2008, it was reported that WMI was forced to replace its then acting CEO, Kerry Killinger. *Washington Mutual CEO Killinger is out*, CNNMONEY.COM, Sept. 7, 2008.[5] The September '08 Capital Contributions were transferred to WMB only three days later.

24. The ratings agencies perceived WMI's financial distress. One day after the September '08 Capital Contributions were made, on September 11, 2008, both Moody's and Fitch Ratings downgraded their ratings on WMI to "junk status" and BBB- "with a negative outlook," respectively. *See Washington Mutual tries to soothe anxiety*, CNNMONEY.COM, September 7, 2008.[6] Just five days later, Standard & Poor's followed suit, lowering its WMI ratings to three levels below investment grade. *See* Ari Levy, *WaMu Rating Lowered to Junk by S&P on Mortgage Losses*, BLOOMBERG.COM, Sept. 15, 2008.[7]

25. In a September 25, 2008 letter to the WMI board of directors, the OTS discussed the prior two-week period as one of substantial "deposit outflows" from WMB that gave rise to "significant liquidity pressures." During this period, more than $16.7 billion was withdrawn by

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4 http://www.bloomberg.com/apps/news?pid=20601087&sid=ax7YtHccUeAQ&refer=home

5 http://money.cnn.com/2008/09/07/news/companies/wamu_ceo/?postversion=2008090722

6 http://money.cnn.com/2008/09/12/news/companies/wamu_3Q_update/index.htm

7 http://www.bloomberg.com/a pps/news?pid=20601087&sid=awDjhtIfoz_Q

WMB customers. *See* Robin Sidel, David Enrich, and Dan Fitzpatrick, *WaMu Is Seized, Sold Off to J.P. Morgan, In Largest Failure in U.S. Banking History,* WALL ST. J., Sept. 26, 2008, at A1. The OTS ultimately concluded that WMB "is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business because it does not have sufficient liquid assets to pay those obligations and fund the expected withdrawals." *See* OTS Order 2008-36 at 2.

(iv) Capital Contributions Were Made For Less Than Reasonably Equivalent Value

26. To the extent that as of the time the Capital Contributions were made, WMB was insolvent, WMI's equity value in those entities was worthless and WMI did not receive any value in exchange for the Capital Contributions. Moreover, as the prospect of WMB being seized by the OTS approached inevitability, WMI's equity shares in WMB were likewise valueless.

27. WMI did not receive any tangible benefit in exchange for disbursing the funds. WMI received no indirect benefit either, such as increased equity value flowing from its wholly-owned subsidiary, WMB. At such time, there was no possibility that WMI would ever receive any return on the Capital Contributions.

28. At all such times, WMI had a debt burden of more than $7 billion, and its primary asset, the equity value in WMB, was reduced to nothing. To the extent that WMI was either insolvent or engaged in business for which its assets were unreasonably small capital, each of the Capital Contributions harmed WMI and are avoidable as a matter of law.

(v) Capital Contributions are Subsequently Transferred to JPMorgan Chase

29. The Capital Contributions were transfers of an interest in WMI's property. In its Complaint, JPMorgan Chase admits that the Capital Contributions were transferred to WMB, stating: "WMI formally contributed to WMB at least $6.5 billion of the approximately $10.2 billion in capital it had raised." (Complaint at ¶ 35).

30. Pursuant to the P&A Agreement, JPMorgan Chase purchased substantially all of WMB's assets. On the Receivership Date, funds that comprised the Capital Contributions were transferred to JPMorgan Chase.

31. Because the Capital Contributions are avoidable as constructive fraudulent transfers, WMI may recover from JPMorgan Chase as the subsequent transferee of the Capital Contributions, either the Capital Contributions or the value of the Capital Contributions for the benefit of WMI's estate pursuant to section 550 of the Bankruptcy Code. On the Receivership Date, JPMorgan Chase knew or should have known of the Capital Contributions and about the respective financial conditions of WMI and WMB. Thus, JPMorgan Chase did not acquire its interest in WMI property in good faith and without knowledge of the voidability of the Capital Contributions.

B. The Trust Securities

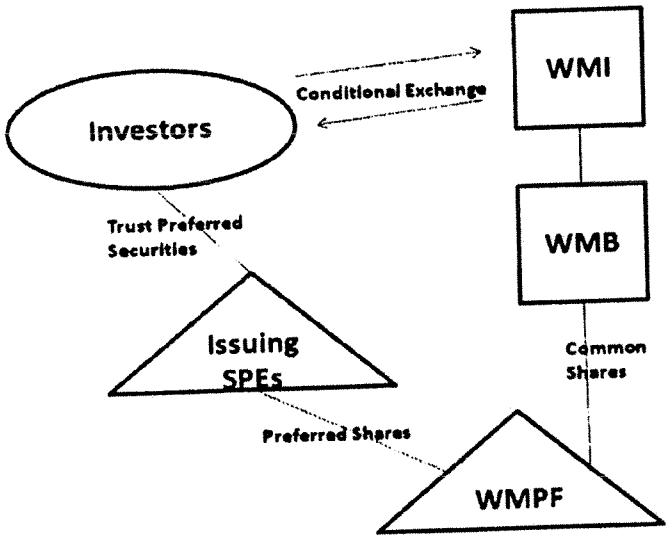
(i) Issuance of the Trust Securities

32. Between March 2006 and October 2007, in four instances, certain SPEs associated with WMI and its then subsidiaries issued the Trust Securities in connection with, and facilitated by, WMPF. The Trust Securities have an aggregate liquidation preference of approximately $4 billion and upon information and belief are currently worth at least as much.

33. WMPF's assets were limited to direct or indirect interests in mortgage or mortgage-related assets, cash, and other permitted assets which were held in certain trusts. WMPF issued preferred securities which were held by, and were the only asset of, the SPEs. These securities were senior in priority to the common equity interests of WMPF which were indirectly held by WMB and WMI. In turn, the SPEs issued the Trust Securities.

34. The Trust Securities were offered and sold to "qualified institutional buyers" or "qualified purchasers" subject to a conditional exchange feature that operated to exchange the Trust Securities into related classes of WMI preferred stock, or depository shares representing WMI

preferred stock, upon the occurrence of certain events as directed by the OTS under certain circumstances (*i.e.*, WMB becoming undercapitalized, WMB being placed into receivership, or the OTS anticipating WMB becoming undercapitalized in the near future, each an "Exchange Event"). Pursuant to the declaration of such an Exchange Event, the Trust Securities would be then held by WMI, having been exchanged for newly-issued preferred stock of WMI (a "Conditional Exchange"). A simplified illustrative chart follows:



35. On February 23, 2006, by letter addressed to Darrel Dochow of the OTS, John F. Robinson, WMI Corporate Risk Management, indicated to the OTS that if, as a result of the occurrence of an Exchange Event declared by the OTS, WMI issues preferred stock, or depository shares representing WMI preferred stock, in exchange for the Trust Securities, "WMI will contribute to WMB the [Trust Securities]" (collectively, with the November 14, 2006 and the August 17, 2007 correspondence discussed below, the "Downstream Undertakings"). On February 24, 2006, the OTS responded by letter from Dochow to Robinson, indicating that it would consider the value of the Trust Securities in WMB's core capital in light of WMI's Downstream Undertaking. With respect to

subsequent issuances of Trust Securities, similar letter exchanges took place on November 14, 2006 and December 4, 2006, and August 17, 2007 and September 20, 2007.

36. The February 26, 2006 OTS letter went on to state that "[n]otwithstanding the above, the OTS reserves the right, in its sole discretion, to exclude the [Trust Securities] (or prospective issuances of [Trust Securities]) if the terms are revised or it otherwise ceases to provide meaningful capital support and a realistic ability to absorb losses, or otherwise raises supervisory concerns." Similar reservations of rights appeared in correspondence relating to subsequent issuances of Trust Securities (collectively, the "OTS Reservation of Rights").

37. The Trust Securities were certificated securities, represented by global certificates held by Depository Trust Company ("DTC") and registered in the name of DTC's nominee, Cede & Co.

(ii) The OTS Declares an Exchange Event

38. On September 24, 2008, the day prior to the Receivership Date, the OTS notified WMI that an Exchange Event had occurred.

39. On September 25, 2008, by letter addressed to Steve Frank and Alan Fishman of WMI from Darrel Dochow of the OTS, the OTS directed WMI to cause a Conditional Exchange, exchanging the Trust Securities for preferred shares of WMI.

40. Later that day, immediately after the OTS closed WMB, its assets were purportedly sold to JPMorgan Chase pursuant to the P&A Transaction.

41. Still later that day, just prior to 9:00 p.m. Eastern time, an employee of WMI executed an Assignment Agreement which purported to assign the right, title, and interest in the Trust Securities to WMB (the "Assignment").

42. Pursuant to section 4.08 of the Amended and Restated Trust Agreement, dated as of March 7, 2006 (the "Trust Agreement") governing the Trust Securities, the Trust Securities were to

be transferred to WMI in a Conditional Exchange at "the earliest possible date such exchange could occur consistent with the directive, as evidenced by the issuance by WMI of a press release prior to such time." (Trust Agreement §4.08). WMI sent a letter to the OTS on the evening of September 25, 2008, indicating that the Conditional Exchange would occur at 8:00 a.m. Eastern time on the 26th of September and that WMI would immediately contribute the Trust Securities to WMB upon the Conditional Exchange.

(iii) The Transfer of the Trust Securities Was Made For Less Than Reasonably Equivalent Value

43. The transfer of the Trust Securities pursuant to the Assignment Agreement is avoidable as a constructive fraudulent transfer of an interest in WMI's property that harmed WMI and its creditors.

44. At 8:00 a.m. Eastern time on the Petition Date, at a time when WMI was insolvent, WMI transferred the Trust Securities to WMB or to JPMorgan Chase, as successor in interest to WMB (Complaint at ¶ 79), for no consideration.

45. WMI did not receive any direct benefit in exchange for the transfer of the Trust Securities. WMI received no indirect benefit either, such as increased equity value flowing from WMB because its wholly-owned subsidiary WMB was insolvent. Moreover, both the transfer, and the Assignment the day prior, were made after WMB had been seized by the OTS, and thus WMI's equity shares in WMB were likewise valueless.

46. JPMorgan Chase is liable to WMI's estate as an initial or subsequent transferee of the Trust Securities. On the Receivership Date and the Petition Date, JPMorgan Chase knew or should have known of the transfers of the Trust Securities and about the financial condition of WMI and WMB. Thus, JPMorgan Chase did not acquire its interest in WMI property in good faith and without knowledge of the voidability of the transfer of the Trust Securities.

(iv) In the Alternative, the Transfer of the Trust Securities in Satisfaction of the Downstream Undertakings is Fraudulent as to Creditors and a Voidable Preference

47. Alternatively, the transfer of the Trust Securities at 8:00 a.m. Eastern time on the Petition Date in satisfaction of the Downstream Undertakings was both fraudulent as to WMI's creditors under applicable state law and a preferential transfer under the Bankruptcy Code.

48. First, the transfer of the Trust Securities was fraudulent as to WMI's creditors that existed as of the date of the transfer under applicable state law because the transfer was made to an insider, WMB or JPMorgan Chase, as successor in interest to WMB, while WMI was insolvent and while WMB or JPMorgan Chase had reasonable cause to believe that WMI was insolvent. The transfer was made on account of an antecedent obligation – the Downstream Undertakings. Thus, JPMorgan Chase is liable to WMI's estate as an initial or subsequent transferee of the Trust Securities. On the Receivership Date and the Petition Date, JPMorgan Chase knew or should have known of the purported transfers of the Trust Securities and about the financial condition of WMI. Thus, JPMorgan Chase did not acquire its interest in WMI property in good faith and without knowledge of the voidability of the transfer of the Trust Securities.

49. Second, the transfer of the Trust Securities was a preferential transfer under the Bankruptcy Code. At a time when WMI was insolvent, WMI transferred the Trust Securities on account of an antecedent obligation – the Downstream Undertakings.

50. The transfer was made either to WMB or JPMorgan Chase and enabled WMB or JPMorgan Chase to receive more than either would have received if WMI had not transferred the Trust Securities and had filed a bankruptcy case under chapter 7 of the Bankruptcy Code.

51. JPMorgan Chase expressly did not acquire any claims against WMI under the P&A Agreement and cannot be construed as a contractual assignee (P&A Agreement, Schedule 3.5), yet it asserted a claim to the Trust Securities in light of its assumption of all of WMB's deposit liabilities.

If the Trust Securities are deemed to have been transferred to JPMorgan Chase, they were transferred to JPMorgan Chase as subrogee to WMB, and subrogees do not enjoy the priority contemplated by section 507(a)(9) of the Bankruptcy Code. Therefore, the transfer enabled WMB to receive more than it would have received in a hypothetical WMI chapter 7 bankruptcy case. As such, JPMorgan Chase would be left with only a general unsecured claim and would stand to recover significantly less than the value of the Trust Securities.

52. Further, even if WMB or JPMorgan Chase could assert a priority claim under section 507(a)(9) of the Bankruptcy Code, which WMI disputes, the transfer enabled WMB or JPMorgan Chase to receive more than either would have received in a hypothetical WMI chapter 7 bankruptcy case. This is so because, as asserted above and below, WMB and JPMorgan Chase are transferees of transfers that are avoidable under the Bankruptcy Code. Section 502(d) of the Bankruptcy Code would operate to disallow any claim of WMB in a hypothetical WMI chapter 7 bankruptcy case.

53. JPMorgan Chase is liable to WMI's estate as an initial or subsequent transferee of the Trust Securities. On the Receivership Date and the Petition Date, JPMorgan Chase knew or should have known of the purported transfers of the Trust Securities and about the financial condition of WMI. Thus, JPMorgan Chase did not acquire its interest in WMI property in good faith and without knowledge of the voidability of the transfer of the Trust Securities.

(v) In the Alternative, the Trust Securities Were Not Transferred and are Owned by WMI

54. In the alternative, if it is determined that the Trust Securities were not in fact transferred to WMB or to JPMorgan Chase pursuant to the Assignment Agreement, then the Trust Securities are owned by WMI and are property of WMI's bankruptcy estate.

55. Pursuant to section 4.08 of the Trust Agreement, upon a Conditional Exchange, until replacement certificates are issued by WMI for the new WMI preferred stock issued to the prior

holders of the Trust Securities, the certificates formerly representing the Trust Securities shall be deemed for all purposes to represent the preferred shares of WMI. (Trust Agreement § 4.08). The September 26, 2008 press release provided that "until such depositary receipts are delivered or in the event such depositary receipts are not delivered, any certificates previously representing [Trust] Securities will be deemed for all purposes, effective as of 8:00 AM New York time on September 26, 2008, to represent Fixed Rate Depositary Shares or Fixed-to-Floating Rate Depositary Shares, as applicable." A copy of the press release is attached hereto as Exhibit 1. Thus, upon a Conditional Exchange, the Trust Securities necessarily became uncertificated.

56. Upon information and belief, the SPEs, the issuers of the Trust Securities, have made no transfer notations registering the Trust Securities to WMB to reflect any purported Assignment.[8]

57. More than simply a clerical act, registration is a legally significant act that facilitates the administration of a large-scale security issuance involving multiple holders, like the Trust Securities. Neither WMB nor JPMorgan Chase is the registered owner listed in the registrar's books with respect to the Trust Securities. Therefore, under applicable law and the Uniform Commercial Code as adopted by the State of Washington, the Trust Securities have not been delivered to WMB. Thus, the Trust Securities are property of WMI's bankruptcy estate.

(vi) JPMorgan Chase Has No Claim for the Trust Securities

58. The Trust Securities were not assigned to JPMorgan Chase under the terms of the P&A Agreement. Under Section 3.2(b) of the P&A Agreement, JPMorgan Chase was required to submit a bid for any securities that were not the capital stock of an acquired subsidiary of WMB. (P&A Agreement ¶ 3.2(b)). No such bid was submitted to WMB or the FDIC for the Trust

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8 The Debtors are not aware of any transfer notations being made post-petition, but reserve their right to amend the complaint to avoid any such unauthorized transfers of property of the Debtors' estate.

Securities. The P&A Agreement further provides that "in the absence of an acceptable bid from [JPMorgan Chase], each such security shall not pass to [JPMorgan Chase] and shall be deemed to be an excluded asset hereunder." (P&A Agreement ¶ 3.2(b)). Therefore, JPMorgan Chase has no claim to the Trust Securities.

59. Further, Section 3.5 of the P&A Agreement provides that Schedule 3.5, "Certain Assets Not Purchased," enumerates certain assets not purchased, acquired, or assumed by JPMorgan Chase under the P&A Agreement. (P&A Agreement ¶ 3.5). Listed on Schedule 3.5 is "any interest, right, action, claim, or judgment against . . . any shareholder or holding company of [WMB] . . . ." (P&A Agreement, Schedule 3.5). Thus, JPMorgan Chase expressly did not acquire any claim from WMB for the Trust Securities under the Assignment Agreement or otherwise.

60. Further, in light of the fact that JPMorgan Chase assumed all of WMB's deposit liabilities, to the extent JPMorgan Chase has subrogated to the rights of WMB with respect to the Trust Securities, section 507(d) of the Bankruptcy Code provides that any priority status that WMB may have with respect to the Trust Securities will not inure to the benefit of JPMorgan Chase as subrogee.

61. Moreover, property is recoverable from JPMorgan Chase on account of, among other things, its status as a transferee of the avoidable Capital Contributions, as asserted above. Thus, section 502(d) of the Bankruptcy Code operates to disallow any claim of JPMorgan Chase (in any event) until JPMorgan Chase turns over the value of the avoidable Capital Contributions, among other things, to WMI's estate. Accordingly, any claim JPMorgan Chase may have on account of the Trust Securities or otherwise is disallowed.

C. Preferential Payments

(i) WMI Transfers Cash and Interests in Property to WMB on Account of Antecedent Debt

62. On or before the Receivership Date, WMI transferred significant sums or other interest in property to WMB, to third parties for the benefit of WMB, or to WMB fsb. These transfers were made on account of pre-existing tax-related (the "Tax Transfers") or administrative obligations (the "Intercompany Settlements," and with the Tax Transfers, the "Preferential Transfers") owed WMB and were made during the one-year period immediately preceding the Petition Date.

63. During this period, the Tax Transfers were made to WMB by WMI in an approximate amount of $1,112,517,472. During this period, the Intercompany Settlements were made to WMB by WMI in an approximate amount of $151,934,564. The Preferential Transfers are detailed in the schedules attached hereto as Exhibit 2. At the time of the Preferential Transfers, WMB and WMB fsb were both "insiders" of WMI and "creditors" of WMI as those terms are defined in the Bankruptcy Code or under applicable non-bankruptcy law.

64. WMB and WMB fsb received more on account of the Preferential Transfers than they would have received under a hypothetical chapter 7 bankruptcy case had the Preferential Transfers not been made.

65. To the extent WMI was insolvent at the time of the various Preferential Transfers, the Preferential Transfers are avoidable under the Bankruptcy Code and under applicable state law as fraudulent transfers. To the extent WMI was insolvent at the time of the various Preferential Transfers, WMB and WMB fsb had reasonable cause to believe that WMI was insolvent.

(ii) Preferential Transfers are Subsequently Transferred to JPMorgan Chase

66. The Preferential Transfers were transfers of an interest of WMI in property. Pursuant to P&A Agreement, JPMorgan Chase purchased substantially all of WMB's assets. Moreover, by subsequent transaction, JPMorgan Chase merged with WMB fsb. Thus, on the Receivership Date, the funds and/or value that comprised the Preferential Transfers were transferred to JPMorgan Chase.

67. Because the Preferential Transfers are avoidable as preferential transfers or as fraudulent transfers, then pursuant to section 550 of the Bankruptcy Code, WMI may recover the Preferential Transfers from JPMorgan Chase as subsequent transferee, or the value of the Preferential Transfers for the benefit of WMI's estate. On the Receivership Date and the Petition Date, JPMorgan Chase knew or should have known of the Preferential Transfers and about the financial condition of WMI. Thus, JPMorgan Chase did not acquire its interest in WMI property in good faith and without knowledge of the voidability of the Preferential Transfers.

D. FDIC Sells WMB's Assets to JPMorgan Chase For Less Than Reasonably Equivalent Value

68. As reported in the *Wall Street Journal*, because the FDIC had informed JPMorgan Chase in early September that it desired to "immediately auction off WaMu's assets" upon the seizure of WMB, "J.P. Morgan was well-prepared . . . when the FDIC asked for bids" for the purchase of WMB's assets. Heidi N. Moore, *Deal Journal*, WALL ST. J., Sept. 30, 2008, at C7.

69. Prior to the Receivership Date, the FDIC determined that it would accept JPMorgan Chase's bid for WMB's assets.

70. Immediately after its appointment as receiver, the FDIC purportedly sold the majority of WMB's assets to JPMorgan Chase in exchange for consideration of $1.88 billion.

71. Under the P&A Transaction, JPMorgan Chase likely acquired more than $300 billion of assets at book value, including $134 billion of retail deposits and over $8 billion of uninsured deposits which have matching liabilities. *See* FDIC Memorandum to Board of Directors, September 24, 2008.

72. Less than a week after the P&A Transaction was consummated, JPMorgan Chase booked an after-tax extraordinary gain from "merger-related items" in connection with the P&A Transaction in the amount of $581 million. *See* JPMorgan Chase & Co., Form 10-Q for the quarter ended September 30, 2008, at 9. This amount reflected "negative goodwill," or a gain occurring when the price paid for an acquisition is less than the fair value of the acquired net assets. Subsequently, and because JPMorgan Chase's initial assessment of the value received over and beyond what it paid was conducted just days after the P&A Transaction, that gain was reassessed and increased to *$1.9 billion* – an amount in and of itself more than the total consideration paid by JPMorgan Chase. *See* JPMorgan Chase & Co., Form 10-K for the fiscal year ended December 31, 2008, at 26.

73. The actual windfall to JPMorgan Chase was even greater, taking an immediate effect on JPMorgan Chase revenues. Having acquired WMB at fire-sale prices, JPMorgan Chase has achieved "record firmwide revenue" in first quarter 2009 and has enjoyed growth in retail banking deposits by 62% and in checking accounts by 126%.[9] Further, JPMorgan Chase has announced that

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9 *See* JPMorgan Chase Press Release, *JPMorgan Chase Reports First-Quarter 2009 Net Income of $2.1 Billion, or $0.40 per Share,* April 16, 2009. Specifically, net income in JPMorgan Chase's Retail Financial Services division "was $474 million, compared with a net loss of $311 million in the prior year" due, in part, to the "positive impact of the Washington Mutual transaction . . ." Net income in JPMorgan Chase's Commercial Banking division "was $338 million, an increase of $46 million, or 16%, from the prior year, driven by higher net revenue reflecting the impact of the Washington Mutual transaction . . ." "Net interest income [at JPMorgan Chase] was $15.5 billion, up by $6.1 billion, or 65%, due to the impact of the Washington Mutual transaction," among other things.

it is now poised to recognize significant gains (*i.e.*, as much as $29 billion), as it recognizes the actual market value of many of the WMB assets it purchased and marked down at aggressive discounts. *See* Ari Levy and Elizabeth Hester, *JPMorgan's WaMu Windfall Turns Bad Loans Into Income*, BLOOMBERG.COM, May 26, 2009.[10]

74. At the time of the P&A Transaction, WMI was an actual creditor of WMB pursuant to various promissory notes and other intercompany payables. WMB was insolvent at the time of, or was rendered insolvent by, the P&A Transaction or was engaged in a business for which its remaining assets were unreasonably small.

75. In short, WMB did not receive from JPMorgan Chase reasonably equivalent value in exchange for the transfer of WMB's assets in the P&A Transaction.

E. Former Intercompany Amounts Due Assumed and Payable by JPMorgan Chase

76. WMB was indebted to WMI, or certain of WMI's non-bank, non-Debtor subsidiaries, under certain demand promissory notes that are due and payable in an approximate aggregate amount of $177 million as of the Petition Date (the "Promissory Notes"), plus interest accruing thereafter, as follows:[11]

- $82,048,081 under that certain Revolving Master Note, dated as of December 22, 2005, by and between WMB, as borrower, and H.S. Loan Corporation, as lender. H.S. Loan Corporation is a subsidiary of WMI, in which WMB owns 1.3283%.
- $73,670,153 under that certain Revolving Master Note, dated as of December 22, 2005, by and between WMB, as borrower, and H.S. Loan Partners, as lender. H.S. Loan Partners is an indirect, wholly-owned subsidiary of WMI.

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10 http://www.bloomberg.com/apps/news?pid=20601087&sid=aYhaiSOq_Tbc &refer=home

11 Separately, WMB and WMB fsb were indebted to the Debtors on account of deposit liabilities in an amount in excess of $4 billion. These deposit liabilities are the subject of a separate adversary proceeding commenced on April 27, 2009, captioned *Washington Mutual, Inc. et al.v. JPMorgan Chase Bank, N.A.*, Adv. No. 09-50934.

- $7,781,240 under that certain Revolving Master Note, dated as of February 11, 2005, by and between WMB, as borrower, and WMHFA Delaware Holdings LLC, as lender. WMEIFA Delaware Holdings LLC is an indirect, wholly-owned subsidiary of WMI.

- $13,576,245 under that certain Registered Security, Note A, dated as of December 17, 2004, by and between University Street, Inc., as payor and predecessor in interest to WMB, and WMRP Delaware Holdings LLC, as payee, and predecessor in interest to PCA Asset Holdings LLC. This Promissory Note is recorded on WMI's books and records as an obligation owed to PCA Asset Holdings LLC, an indirect subsidiary of WMI, by WMB.

77. Further, there were significant intercompany receivables, that arose pursuant to that certain Administrative Services Agreement (the "Administrative Services Agreement"), identified by account numbers 28101, 28120, and 28025 owed WMI by WMB or its subsidiary WaMu Capital Corp. in the approximate amount of $22.5 million (the "Intercompany Receivables"). A summary of the amounts owed to WMI is as follows:

Account Debtor	WMI A/R Number	Amount
WMB	28101	$9,298,479
WMB	28120	$13,200,977
WaMu Capital Corp.	28025	$28,558

78. Additionally, there may be other service agreements which would fall under the Administrative Services Agreement that operated to benefit WMB or one of its subsidiaries prior to the Petition Date. To the extent it is determined that the Debtors are liable for any amounts owed under such agreements, a related intercompany payable would have accrued payable from WMB to WMI (the "Additional Intercompany Receivables").

79. Separately, as of the Petition Date, WMI sponsored a tax qualified cash balance pension plan, the WaMu Pension Plan (the "Plan"). Beginning in December 2006, and contrary to historical practice, WMI began to make contributions on account of both WMI and WMB plan participants. Pursuant to the Administrative Services Agreement, WMB is obligated to compensate WMI for such contributions. From December 2006 through the Petition Date, WMI contributed

approximately $491 million on account of both WMI and WMB plan participants and has not been paid any amounts owed it by WMB for the amount contributed on account of WMB plan participants (the portion allocable to WMB or WMB subsidiary plan participants being the "Retirement Benefit Advances," and collectively, with the Promissory Notes, the Intercompany Receivables, and the Additional Intercompany Receivables, the "Intercompany Amounts Due").

80. Under the P&A Agreement, JPMorgan Chase "expressly assumes . . . all of the liabilities of [WMB] which are reflected on the Books and Records of [WMB]. . .and all liabilities associated with any and all employee benefit plans . . . ." (P&A Agreement at § 2.1). Thus, JPMorgan Chase assumed the Intercompany Amounts Due. However, the Intercompany Amounts Due have not been paid to WMI's estate and remain due and payable.

F. JPMorgan Chase's Unauthorized Use of the WaMu Trademarks

81. WMI is the owner of more than 80 federal trademark registrations and applications comprising a family of Washington Mutual trademarks, including but not limited to the marks "WAMU," "WASHINGTON MUTUAL," and the "W Logo" for a variety of services including but not limited to banking, credit card, lending, investment and other financial services as well as community, education and philanthropic oriented services (the "WaMu Marks"). The registrations are valid and subsisting, unrevoked and uncancelled, in full force and effect. A list of the aforesaid federal trademark registrations and applications is attached hereto as Exhibit 3.

82. In the years preceding the seizure, the WaMu corporate family encompassed dozens of companies that operated, primarily under the WAMU brand, as a single, unified organization. Many of these companies conducted business under the WaMu Marks, as part of the larger Washington Mutual corporate family.

82. The WaMu Marks are unquestionably famous and extremely valuable. Banking services and related services have been provided under some or all of the WaMu Marks since 1889.

The WAMU mark has been continuously used since at least as early as 1983. At the time of the seizure of WMB, it was the largest thrift and the sixth largest banking institution in the United States. In fact, the rights to the WAMU brand alone was recently valued at approximately $6 billion.

83. WMI also owns registrations for at least 140 other trademarks and service marks, each in connection with various lines of business of the WaMu corporate family (the "Secondary Marks"). The registrations are valid and subsisting, unrevoked and uncancelled, in full force and effect. A list of the aforesaid federal trademark registrations and applications is attached hereto as Exhibit 4.

84. It was WMI's policy and practice to register the WaMu Marks and the Secondary Marks with the United States Patent and Trademark Office in the name of WMI, the holding company. WMI subsidiaries operating under the WaMu Marks and/or using the Secondary Marks were permitted to use them for the products and services relevant to such subsidiary's business pursuant to an implied license from WMI for as long as the subsidiary remained part of the Washington Mutual corporate family.

85. WMI is the owner of approximately 1350 domain names containing the WaMu Marks and the Secondary Marks, including, but not limited to, wamu.com, washingtonmutual.com, and wamubank.com. WMI is also the owner of numerous other domain names related to advertising campaigns (together, the "WaMu Domain Names"). WMI subsidiaries were permitted to use the WaMu Domain Names to advertise and provide information to customers regarding the products and services relevant to such subsidiary's business pursuant to an implied license from WMI for as long as the subsidiary remained part of the Washington Mutual corporate family.

86. Wamu.com was the primary website for WMI and its subsidiaries, and as such was the primary centralized focal point for customer interaction, from advertising WMI's various

products and services to providing online banking and financial and investment consultation services. In addition, WAMU.COM is the subject of a U.S. federal trademark registration for a broad range of banking and financial services.

87. WMB, as a subsidiary of WMI, used the WaMu Marks pursuant to an implied license from WMI which operated so long as WMB remained a member of WMI's corporate family.

88. On September 25, 2008, upon the OTS's seizure of WMB, WMB's license to use the WaMu Marks terminated.

89. JPMorgan Chase's continued use of the WaMu Marks, including the WaMu Domain Names, in connection with its business operations is unauthorized and infringing.

90. JPMorgan Chase has infringed the WaMu Domain Names by continuing to use at least 120 active domain names, including, but not limited to wamu.com, and by causing at least 60 active of the WaMu Domain Names, including, but not limited to wamu.com, to display JPMorgan Chase-branded and run websites.

91. JPMorgan Chase's continued use of the WaMu Marks, the Secondary Marks and the WaMu Domain Names will cause consumers to falsely believe that the products and/or services provided by JPMorgan Chase under such marks and domain names emanate from WMI, or are being rendered with the authorization or approval of WMI, when they are not.

92. JPMorgan Chase's use of the WaMu Marks, the Secondary Marks and the WaMu Domain Names is intentional and willful.

FIRST COUNTERCLAIM

Avoidance and Recovery of Capital Contributions Pursuant to 11 U.S.C. §§ 548, 550

93. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-92.

94. Each of the Capital Contributions was a transfer of an interest in WMI's property within two years of the Petition Date.

95. WMI received no direct consideration in exchange for each of the Capital Contributions.

96. As of the time of each of the Capital Contributions, to the extent that WMI was either insolvent or was left with unreasonably small capital and WMB was insolvent or the prospect of WMB being seized by the OTS was so likely that equity shares in WMB were valueless, each of the Capital Contributions was for less than reasonably equivalent value and is avoidable as a fraudulent transfer under section 548 of the Bankruptcy Code.

97. JPMorgan Chase is liable to WMI's estate as a subsequent transferee of the interest in WMI's property that was transferred by each of the Capital Contributions plus pre-judgment interest at the highest applicable rate to be determined by the Court. JPMorgan Chase did not acquire its interest in the WMI property that was transferred by each of the Capital Contributions in good faith and without knowledge of the voidability of each of the Capital Contributions.

SECOND COUNTERCLAIM

Avoidance and Recovery of Capital Contributions Pursuant to 11 U.S.C. §§ 544, 550; RCW §§ 19.40.041, 19.40.051, 19.40.071 & 19.40.081

98. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-97.

99. On the dates of each of the Capital Contributions, there were actual creditors of the Debtors holding unsecured claims allowable against the Debtors' estates within the meaning of sections 502(d) and 544(b) of the Bankruptcy Code, which claims remained unsatisfied on the Petition Date. Pursuant to section 544(b) of the Bankruptcy Code, the Debtors have the rights of an existing unsecured creditor of the Debtors.

100. Each of the Capital Contributions was a transfer of an interest in WMI's property within four years of the Petition Date.

101. WMI received no direct consideration in exchange for each of the Capital Contributions.

102. As of the time of each of the Capital Contributions, to the extent that WMI was either insolvent or was left with unreasonably small remaining assets and WMB was insolvent or the prospect of WMB being seized by the OTS was so likely that equity shares in WMB were valueless, each of the Capital Contributions was not for reasonably equivalent value and are avoidable fraudulent transfers under RCW §§ 19.40.041, 19.40.051 and section 544 of the Bankruptcy Code.

103. JPMorgan Chase is liable to WMI's estate as a subsequent transferee of the interest in WMI's property that was transferred by each of the Capital Contributions plus pre-judgment interest at the highest applicable rate to be determined by the Court. JPMorgan Chase did not acquire its interest in the WMI property that was transferred by each of the Capital Contributions in good faith and without knowledge of the voidability of each of the Capital Contributions.

THIRD COUNTERCLAIM

Avoidance and Recovery of Trust Securities Pursuant to 11 U.S.C. §§ 548, 550

104. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-103.

105. The transfer of the Trust Securities to WMB or to JPMorgan Chase is avoidable pursuant to 11 U.S.C. § 548.

106. The transfer of the Trust Securities was a transfer of an interest in WMI's property within two years of the Petition Date.

107. At the time of the transfer of the Trust Securities, WMI was insolvent or had unreasonably small capital. WMI did not receive any value for transferring the Trust Securities to WMB or to JPMorgan Chase. Further, WMI received no indirect benefit either, such as increased equity value flowing from WMB because its wholly-owned subsidiary WMB was insolvent or had been seized by FDIC thereby rendering WMI's equity stake in WMB worthless. Moreover, both the purported transfer, and the Assignment the day prior, were made after WMB had been seized by the OTS, and thus WMI's equity shares in WMB were likewise valueless.

108. If the Trust Securities were transferred by WMI to JPMorgan Chase, then pursuant to section 550 of the Bankruptcy Code, WMI may recover the Trust Securities from JPMorgan Chase as initial transferee, or the value of the Trust Securities for the benefit of WMI's estate plus, in both instances, pre-judgment interest at the highest applicable rate to be determined by the Court.

109. If the Trust Securities were transferred by WMI to WMB and then to JPMorgan Chase, then pursuant to section 550 of the Bankruptcy Code, WMI may recover the Trust Securities from JPMorgan Chase as subsequent transferee, or the value of the Trust Securities for the benefit of WMI's estate plus, in both instances, pre-judgment interest at the highest applicable rate to be

determined by the Court. JPMorgan Chase did not acquire its interest in WMI property in good faith and without knowledge of the voidability of the Trust Securities.

FOURTH COUNTERCLAIM

Avoidance and Recovery of Trust Securities Pursuant to 11 U.S.C. §§ 544, 550; RCW §§ 19.40.041, 19.40.051, 19.40.071 & 19.40.081

110. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-109.

111. The transfer of the Trust Securities to WMB or to JPMorgan Chase is avoidable pursuant to applicable Washington state law.

112. The transfer of the Trust Securities was a transfer of an interest in WMI's property within four years of the Petition Date.

113. On the date of the transfer of the Trust Securities, there were actual creditors of WMI holding unsecured claims allowable against WMI's estate within the meaning of sections 502(d) and 544(b) of the Bankruptcy Code, which claims remained unsatisfied on the Petition Date. Pursuant to section 544(b) of the Bankruptcy Code, WMI has the rights of an existing unsecured creditor of WMI.

114. At the time of the transfer of the Trust Securities, WMI was insolvent or had unreasonably small remaining assets. WMI did not receive any value for transferring the Trust Securities to WMB or to JPMorgan Chase. Further, WMI received no indirect benefit either, such as increased equity value flowing from WMB because its wholly-owned subsidiary WMB was insolvent or had been seized by FDIC thereby rendering WMI's equity stake in WMB worthless. Moreover, both the purported transfer, and the Assignment the day prior, were made after WMB had been seized by the OTS, and thus WMI's equity shares in WMB were likewise valueless.

115. If the Trust Securities were transferred by WMI to JPMorgan Chase, then pursuant to section 550 of the Bankruptcy Code, WMI may recover the Trust Securities from JPMorgan Chase as initial transferee, or the value of the Trust Securities for the benefit of WMI's estate plus, in both instances, pre-judgment interest at the highest applicable rate to be determined by the Court.

116. If the Trust Securities were transferred by WMI to WMB and then to JPMorgan Chase, then pursuant to section 550 of the Bankruptcy Code, WMI may recover the Trust Securities from JPMorgan Chase as subsequent transferee, or the value of the Trust Securities for the benefit of WMI's estate plus, in both instances, pre-judgment interest at the highest applicable rate to be determined by the Court. JPMorgan Chase did not acquire its interest in WMI property in good faith and without knowledge of the voidability of the Trust Securities.

FIFTH COUNTERCLAIM

Avoidance and Recovery of Trust Securities Pursuant to 11 U.S.C. §§ 547, 550

117. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-116.

118. In the alternative to the third and fourth counterclaims, if it is determined at or before trial that WMI transferred the Trust Securities to WMB or to JPMorgan Chase in satisfaction of the Downstream Undertakings as valid, enforceable, antecedent obligations, then such transfer is avoidable pursuant to 11 U.S.C. § 547.

119. As such, WMB or JPMorgan Chase, as subrogee or successor in interest to WMB, were creditors of WMI pursuant to the Downstream Undertakings at the time the transfer was made.

120. The transfer of the Trust Securities was a transfer of an interest in WMI's property within ninety days of the Petition Date.

121. WMI was insolvent at the time the transfer was made.

122. As asserted above, WMB, as recipient of the Capital Contributions, is a transferee of a transfer avoidable under the Bankruptcy Code. Property is recoverable under the Bankruptcy Code from JPMorgan Chase on account of its status as a transferee of the Capital Contributions.

123. The transfer allowed WMB or JPMorgan Chase to receive more by virtue of the transfer than either of them would have received had the transfer not been made in a hypothetical WMI chapter 7 bankruptcy case.

124. Pursuant to section 550 of the Bankruptcy Code, WMI may recover the Trust Securities from JPMorgan Chase as initial or subsequent transferee, or the value of the Trust Securities for the benefit of WMI's estate plus, in both instances, pre-judgment interest at the highest applicable rate to be determined by the Court. JPMorgan Chase did not acquire its interest in WMI property in good faith and without knowledge of the voidability of the Trust Securities.

SIXTH COUNTERCLAIM

Avoidance and Recovery of Trust Securities Pursuant to 11 U.S.C. §§ 544, 550; RCW §§ 19.40.051, 19.40.071 & 19.40.081

125. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-124.

126. On the dates of the transfer of the Trust Securities, there were actual creditors of WMI holding unsecured claims allowable against WMI's estate within the meaning of sections 502(d) and 544(b) of the Bankruptcy Code, which claims remained unsatisfied on the Petition Date. Pursuant to section 544(b) of the Bankruptcy Code, WMI has the rights of an existing unsecured creditor of WMI.

127. In the alternative to the third and fourth counterclaims, if it is determined at or before trial that WMI transferred the Trust Securities to WMB or to JPMorgan Chase in satisfaction of the

Downstream Undertakings as valid, enforceable, antecedent obligations, then such transfer is avoidable pursuant to 11 U.S.C. § 544 and Washington state law.

128. As such, WMB or JPMorgan Chase, as successor in interest to WMB, were creditors of WMI pursuant to the Downstream Undertakings at the time the transfer was made.

129. WMB or JPMorgan Chase, as successor in interest to WMB, was an insider of WMI under applicable law at the time the transfer of the Trust Securities was made.

130. The transfer of the Trust Securities was a transfer of an interest in WMI's property within one year of the Petition Date.

131. WMI was insolvent at the time the transfer was made and WMB or JPMorgan Chase had reasonable cause to believe that WMI was insolvent in light of the seizure of WMB by the FDIC, among other reasons.

132. Pursuant to section 550 of the Bankruptcy Code, WMI may recover the Trust Securities from JPMorgan Chase as subsequent transferee, or the value of the Trust Securities for the benefit of WMI's estate plus, in both instances, pre-judgment interest at the highest applicable rate to be determined by the Court. JPMorgan Chase did not acquire its interest in WMI property in good faith and without knowledge of the voidability of the Trust Securities.

SEVENTH COUNTERCLAIM

Declaratory Judgment that Trust Securities are Property of the Estate

133. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-132.

134. In the alternative to the third, fourth, fifth, and sixth counterclaims, as set forth above, the Trust Securities were not transferred to WMB, the FDIC, or JPMorgan Chase.

135. JPMorgan Chase asserts a claim of ownership to the Trust Securities.

136. The Trust Securities were not assigned to JPMorgan Chase under the terms of the P&A Agreement. Thus, at best, JPMorgan Chase has a general unsecured claim against WMI's estate as subrogee to WMB.

137. There is an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

138. Debtors request a declaratory judgment that the Trust Securities are property of WMI's bankruptcy estate and were never delivered or transferred therefrom.

EIGHTH COUNTERCLAIM

Avoidance and Recovery of Preferential Transfers to WMB Pursuant to 11 U.S.C. §§ 547, 550

139. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-138.

140. The Preferential Transfers were transfers of an interest in WMI's property within one year of the Petition Date.

141. WMB and WMB fsb were creditors of WMI at the time the Preferential Transfers were made and the Preferential Transfers were made to WMB or WMB fsb or for their benefit.

142. WMB and WMB fsb were insiders of WMI within the meaning of the Bankruptcy Code at the time the Preferential Transfers were made.

143. The Preferential Transfers allowed WMB and WMB fsb to receive more by virtue of the Preferential Transfers than they would have received had the Preferential Transfers not been made in a hypothetical WMI chapter 7 bankruptcy case.

144. To the extent WMI was insolvent at the time the Preferential Transfers were made, the Preferential Transfers are avoidable pursuant to 11 U.S.C. § 547.

145. JPMorgan Chase is liable to WMI's estate as a subsequent transferee of the Preferential Transfers plus pre-judgment interest at the highest applicable rate to be determined by the Court. JPMorgan Chase did not acquire its interest in WMI property in good faith and without knowledge of the voidability of the Preferential Transfers.

NINTH COUNTERCLAIM

Avoidance and Recovery of Preferential Transfers to WMB Pursuant to 11 U.S.C. §§ 544, 550; RCW §§ 19.40.051, 19.40.071 & 19.40.081

146. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-145.

147. On the dates of the Preferential Transfers, there were actual creditors of WMI holding unsecured claims allowable against WMI's estate within the meaning of sections 502(d) and 544(b) of the Bankruptcy Code, which claims remained unsatisfied on the Petition Date. Pursuant to section 544(b) of the Bankruptcy Code, WMI has the rights of an existing unsecured creditor of WMI.

148. The Preferential Transfers were transfers of an interest in WMI's property within one year of the Petition Date.

149. WMB and WMB fsb were creditors of WMI at the time the Preferential Transfers were made.

150. WMB and WMB fsb were insiders of WMI under applicable law at the time the Preferential Transfers were made.

151. To the extent WMI was insolvent at the time the Preferential Transfers were made (which WMB and WMB fsb each would have had reason to know of), the Preferential Transfers are avoidable pursuant to 11 U.S.C. § 544 and Washington state law.

152. Pursuant to section 550 of the Bankruptcy Code, JPMorgan Chase is liable to WMI's estate as a subsequent transferee of the Preferential Transfers plus pre-judgment interest at the

highest applicable rate to be determined by the Court. JPMorgan Chase did not acquire its interest in WMI property in good faith and without knowledge of the voidability of the Preferential Transfers.

TENTH COUNTERCLAIM

Fraudulent Transfer Pursuant to 11 U.S.C. § 541; RCW §§ 19.40.041, 19.40.051, 19.40.071, & 19.40.081; NEV. REV. STAT. §§ 112.180, 112.190, 112.210, & 112.220

153. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-152.

154. The P&A Transaction is avoidable as a fraudulent transfer by WMI in WMI's capacity as a creditor of WMB under Nevada state law or alternatively under Washington state law.

155. At the time of the P&A Transaction, WMI was an actual creditor of WMB pursuant to various promissory notes and other intercompany payables. WMB was insolvent at the time of, or was rendered insolvent by, the P&A Transaction or was engaged in a business for which its remaining assets were unreasonably small.

156. The P&A Transaction is avoidable because it took place within four years of the date hereof and WMB did not receive reasonably equivalent value for its assets from JPMorgan Chase.

157. JPMorgan Chase did not acquire WMB's assets in good faith.

158. JPMorgan Chase is liable to WMI's estate for the actual value of WMB's assets at the time of the P&A Transaction to be demined at trial plus pre-judgment interest at the highest applicable rate to be determined by the Court.

159. Alternatively, JPMorgan Chase is liable to WMI's estate in an amount necessary to satisfy any and all claims that WMI has against WMB in full.

160. With respect to the claims recited in paragraphs 158 and 159 hereof, WMI has a claim against JPMorgan Chase for money damages and for any other relief that the circumstances may require.

161. Alternatively, WMI may avoid the P&A Transaction to the extent necessary to satisfy any and all claims that WMI has against WMB in full.

ELEVENTH COUNTERCLAIM

Disallowance of Claims Pursuant to 11 U.S.C. §§ 105, 502

162. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-161.

163. JPMorgan Chase filed proofs of claims in the Debtors' bankruptcy cases. The Debtors hereby object to any and all claims filed or asserted by JPMorgan Chase pursuant to section 502(d) of the Bankruptcy Code.[12]

164. Property is recoverable from JPMorgan Chase on account of its status as a transferee of the Capital Contributions, the Preferential Transfers, and to the extent applicable, the Trust Securities, as asserted above. JPMorgan Chase has failed to turn over to the Debtors such property of the Debtors' estates.

165. Pursuant to Section 502(d) of the Bankruptcy Code, each claim asserted by JPMorgan Chase must be disallowed because property of the Debtors' estates is recoverable from JPMorgan Chase and JPMorgan Chase has not turned over all of such property to the Debtors.

166. Further, pursuant to Section 502(b)(1) of the Bankruptcy Code, the Debtors have a right of setoff under applicable state law, and because the Debtors have claims against JPMorgan

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12 The Debtors reserve their rights to object to JPMorgan Chase's proofs of claims on different grounds through the Debtors' claims reconciliation process.

Chase that exceed the amount (if any) owed by the Debtors to JPMorgan Chase, JPMorgan Chase's claims are unenforceable and must be disallowed.

TWELFTH COUNTERCLAIM

Declaratory Judgment that Certain Assets are Property of the Estate

167. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-166.

168. In its Complaint, JPMorgan Chase asserts a claim of ownership to the: (i) Trust Securities; (ii) Tax Refunds; (iii) $3.7 Billion Book Entry Transfer; (iv) Anchor and American Judgments (as defined therein) and all monies paid on account of those judgments, as well as any future judgment in either the *Anchor Savings Bank* or the *American Savings Bank* litigations; (v) Legacy Rabbi Trusts; (vi) Pension and 401(k) Plans; (vii) BOLI and Split Dollar Policies; (viii) Visa Shares; and (ix) Intangible Assets (each as defined in the Complaint, and collectively, the "Disputed Assets").

169. The Disputed Assets are property of the Debtors' estates and were not purchased by JPMorgan Chase under the terms of the P&A Agreement.

170. There is an actual controversy that is of sufficient immediacy to warrant judicial relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

171. The Debtors request a declaratory judgment determining that all of the Disputed Assets are property of the Debtors' estates and were not purchased by JPMorgan Chase under the terms of the P&A Agreement.

THIRTEENTH COUNTERCLAIM

Turnover of Intercompany Amounts Due Pursuant to 11 U.S.C. § 542

172. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-171.

173. The Intercompany Amounts Due are debts owed to the Debtors' estates that are matured and payable on demand.

174. Pursuant to section 542 of the Bankruptcy Code, JPMorgan Chase is required to pay the Intercompany Amounts Due, including pre-judgment interest at the highest applicable rate to be determined by the Court, to the Debtors' estates.

FOURTEENTH COUNTERCLAIM

Unjust Enrichment, Constructive Trust, and Equitable Lien

175. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-174.

176. JPMorgan Chase would be unjustly enriched if it were allowed to retain the Capital Contributions, the Trust Securities (if transferred), the Preferential Transfers, or any of the Disputed Assets.

177. In order to prevent that unjust enrichment, equity entitles WMI to recover the value of the property transferred, including through the remedies of constructive trust and/or equitable lien.

FIFTEENTH COUNTERCLAIM

Trademark Infringement Pursuant to 15 U.S.C. § 1114

178. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-177.

179. JPMorgan Chase's continued use of the WaMu Marks, the Secondary Marks, and the WaMu Domain Names that incorporate either the WaMu Marks or the Secondary Marks, in connection with its business operations is unauthorized and infringing.

180. JPMorgan Chase's use of the WaMu Marks, the Secondary Marks and the WaMu Domain Names is intentional and willful.

181. The aforesaid acts of JPMorgan Chase constitute trademark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

182. The aforesaid acts of Counterclaim-Defendants have caused, and are causing, great and irreparable harm to WMI and, unless JPMorgan Chase is permanently restrained by this Court, said injury will continue.

183. WMI, the owner of the WASHINGTON MUTUAL and W Logo marks, permitted WMB, as its licensee, to retain two United States trademark registrations that cover a small fraction of WMB's services (United States Trademark Registrations Nos. 1197378 and 1214303), as an administrative convenience. Since the license is now terminated, WMI is entitled to an order requiring that JPMorgan Chase assign said trademark registrations to WMI to rectify the Federal Register or, in the alternative, cancelling such registrations.

184. WMI is entitled to recover its damages sustained as a result of JPMorgan Chase's federal trademark infringement, together with an accounting of JPMorgan Chase profits arising from such infringing activities.

185. WMI is entitled to recover treble damages under 15 U.S.C. § 1117 by reason of the willful and deliberate acts of federal trademark infringement by JPMorgan Chase.

186. WMI is entitled to recover its reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

SIXTEENTH COUNTERCLAIM

Common Law Trademark Infringement

187. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-186.

188. The aforesaid acts of JPMorgan Chase constitute use that is likely to cause confusion as to the source of JPMorgan Chase's services.

189. The aforesaid acts of JPMorgan Chase constitute trademark infringement in violation of WMI's continuing and residual common law trademark rights in the WaMu Marks and the Secondary Marks.

190. The aforesaid acts of JPMorgan Chase have caused, and are causing, great and irreparable harm to WMI, and, unless permanently restrained by this Court, said injury will continue.

191. WMI is entitled to recover JPMorgan Chase's profits and/or damages by reason of JPMorgan Chase's acts of trademark infringement under the common law.

SEVENTEENTH COUNTERCLAIM

Patent Infringement

192. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-191.

193. The Court has jurisdiction pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157.

194. WMI is the owner by assignment of United States Patent No. 6,681,985, entitled "System For Providing Enhanced Systems Management, Such As In Branch Banking" (the "'985 patent"). The '985 patent was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on January 27, 2004. A true and correct copy of the '985 patent is attached hereto as Exhibit 5.

195. In the years preceding the seizure, the WaMu corporate family encompassed dozens of companies that operated as a single, unified organization. WMB practiced the '985 patent as part of the larger corporate family.

196. Related companies were permitted to practice the '985 patent pursuant to an implied license from WMI for as long as they remained part of the Washington Mutual corporate family.

197. On September 25, 2008, upon the OTS's seizure of WMB, WMB's implied license to practice the '985 patent terminated.

198. JPMorgan Chase has continued to practice the '985 patent in connection with its business operations, which use is unauthorized and infringing.

199. In violation of 35 U.S.C. § 271, JPMorgan Chase has been and is now directly infringing and indirectly infringing, by way of inducement and/or contribution, literally and/or under the doctrine of equivalents, the '985 patent by practicing one or more claims of the '985 patent by making, using, selling, offering for sale, contributing to the use of, and/or inducing the use of financial transaction processing systems to process financial transactions for a customer in a branch bank.

200. JPMorgan Chase's infringement of the '985 patent includes, but is not limited to, use of the patented system in connection with banking operations in former Washington Mutual branch banks.

201. JPMorgan Chase's actions have damaged WMI in an amount to be determined at trial and have caused and will continue to cause WMI irreparable injury for which WMI has no adequate remedy at law.

202. Upon information and belief, JPMorgan Chase's infringement, contributory infringement, and inducement to infringe have been, and continue to be, willful, and will continue to injure WMI unless and until the Court enters an injunction prohibiting further infringement.

203. WMI is entitled to an award of damages adequate to compensate WMI for the infringement that has occurred, together with prejudgment interest from the date infringement began.

204. WMI is also entitled to increased damages as permitted under 35 U.S.C. § 284, as well a finding that this case is exceptional, entitling WMI to attorneys' fees and costs as provided by 35 U.S.C. § 285.

205. WMI is also entitled to a permanent injunction prohibiting JPMorgan Chase's further infringement, inducement of infringement, and contributory infringement of the '985 patent.

EIGHTEENTH COUNTERCLAIM

Federal Copyright Infringement Pursuant to 17 U.S.C. § 501

206. Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs 1-205.

207. WMI owns the copyright for, and has applied to register, its website at wamu.com (the "Website"). True and correct copies of the applications as filed with the United States Copyright Office, and the filing receipts for these applications, are attached hereto as Exhibit 6.

208. Upon information and belief, JPMorgan Chase has continued to display, reproduce and distribute the Website, or significant parts thereof, without authorization from WMI.

209. Upon information and belief, JPMorgan Chase has created, reproduced and distributed derivative works based on the Website without authorization from WMI.

210. The actions and conduct by JPMorgan Chase as described above infringe upon the exclusive rights of WMI granted by Section 106 of the Copyright Act, 17 U.S.C. § 106, to display, reproduce, and distribute the copyrighted Website to the public, and to create derivative works based on the copyrighted Website. WMI is informed and believes, and on that basis alleges, that JPMorgan Chase has infringed directly and indirectly WMI's exclusive rights in the Copyrighted Website.

211. Such actions and conduct by JPMorgan Chase constitute copyright infringement under Section 501 of the Copyright Act, 17 U.S.C. § 501.

212. As a result of the copyright infringement described above, WMI is entitled to relief including, but not limited to, injunctive relief, actual damages, and prejudgment interest.

PRAYER FOR RELIEF

WHEREFORE, Debtors WMI and WMI Investment respectfully request that the Court enter judgment in favor of Debtors:

A. Dismissing the Complaint with prejudice;

B. Ordering JPMorgan Chase to return and pay to WMI's estate an amount equal to the Capital Contributions plus pre-judgment interest at the highest applicable rate to be determined by the Court;

C. Declaring that the Trust Securities are property of WMI's estate and were never delivered or transferred therefrom;

D. In the alternative, ordering JPMorgan Chase to return the Trust Securities to WMI's estate or to pay to WMI's estate an amount equal to the value of Trust Securities as of the Petition Date plus pre-judgment interest at the highest applicable rate to be determined by the Court;

E. Ordering JPMorgan Chase to return and pay to WMI's estate an amount equal to the Preferential Transfers plus pre-judgment interest at the highest applicable rate to be determined by the Court;

F. Ordering JPMorgan Chase to pay to WMI's estate the fair market value of the assets it purchased from WMB at the time of the P&A Transaction or, in the alternative, ordering JPMorgan Chase to return and pay to WMI's estate an amount necessary to satisfy any and all claims that WMI has against WMB in full, or, in the alternative, avoiding the P&A Transaction to the extent necessary to satisfy any and all claims that WMI has against WMB in full, in each case plus pre-judgment interest at the highest applicable rate to be determined by the Court;

G. Ordering JPMorgan Chase to pay restitution to the Debtors in an amount equal to JPMorgan Chase's unjust enrichment;

H. Disallowing each and every claim asserted by JPMorgan Chase against the Debtors' estates;

I. Declaring that the Disputed Assets are property of WMI's estate and were not purchased by JPMorgan Chase under the terms of the P&A Agreement;

J. Declaring that JPMorgan Chase has assumed the Intercompany Amounts Due and that such debts are due and payable;

K. Enjoining the further use of the WaMu Marks, the Secondary Marks and the WaMu Domain Names by JPMorgan Chase;

L. Ordering that JPMorgan Chase be required to assign United States Trademark Registrations Nos. 1197378 and 1214303 to WMI to rectify the Federal Register or, in the alternative, ordering the cancellation said trademark registrations;

M. Ordering that WMI recover its damages sustained as a result of JPMorgan Chase's federal trademark infringement, together with an accounting of JPMorgan Chase's profits arising from such infringing activities;

N. Ordering that WMI have and recover treble damages under 15 U.S.C. § 1117 by reason of the willful and deliberate acts of federal trademark infringement by JPMorgan Chase;

O. Ordering that WMI have and recover its reasonable attorneys' fees pursuant to 15 U.S.C. § 1117;

P. Ordering that WMI have and recover JPMorgan Chase's profits and/or damages by reason of JPMorgan Chase's acts of trademark infringement under the common law;

Q. Ordering that JPMorgan Chase pay damages adequate to compensate Debtors for JPMorgan Chase's past and ongoing willful infringement of the '985 patent and increased damages as permitted under 35 U.S.C. § 284;

R. Ordering that WMI have and recover its reasonable attorneys' fees and costs pursuant to 35 U.S.C. § 285;

S. Enjoining JPMorgan Chase's infringement, inducement of infringement, and contributory infringement of the '985 patent;

T. Ordering that WMI recover its damages sustained as a result of JPMorgan Chase's federal copyright infringement, together with prejudgment interest;

U. Enjoining JPMorgan Chase's copyright infringement;

V. Awarding the Debtors costs and attorneys' fees and expenses; and

W. Granting Debtors such other legal or equitable relief as is just.

DEMAND FOR JURY TRIAL

Debtors hereby demand trial by jury on counts fifteen to eighteen (15-18).

Dated: May 29, 2009

Wilmington, Delaware

ELLIOTT GREENLEAF

Rafael X. Zahralddin-Aravena (DE Bar No. 4166)
Neil R. Lapinski (DE Bar No. 3645)
Shelley A. Kinsella (DE Bar No. 4023)
1105 North Market Street, Suite 1700
Wilmington, Delaware 19801
Telephone: (302) 384-9400
Facsimile: (302) 384-9399
E-mail: rxza@elliottgreenleaf.com
E-mail: nrl@elliottgreenleaf.com
E-mail: sak@elliottgreenleaf.com

-and-

QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
Peter E. Calamari
Michael B. Carlinsky
Susheel Kirpalani
David Elsberg
51 Madison Avenue
New York, New York 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

Special Litigation and Conflicts Co-Counsel to Washington Mutual, Inc. and WMI Investment Corp

EXHIBIT F

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Anchor Savings Bank, FSB v. United States

No. 2008-5175

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party) Appellee/Cross-Appellant certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Anchor Savings Bank, FSB

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Washington Mutual, Inc.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Jones Day, by: George T. Manning, Donald B. Ayer, Peter F. Garvin, Michael A. Carvin, Adrian Wager-Zito, Edwin L. Fountain, Geoffrey S. Irwin, Michael S. Fried, Debra S. Clayman

22 SEPT 08
Date

Edwin L. Fountain
Signature of counsel

EDWIN L. FOUNTAIN
Printed name of counsel

Please Note: All questions must be answered

cc: John J. Todor, Esq., U.S. Department of Justice

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

SEP 22 2008

JAN HORBALY
CLERK

EXHIBIT G

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): March 14, 2008

WASHINGTON MUTUAL, INC.
(Exact name of Registrant as specified in its charter)

Washington	**1-14667**	**91-1653725**
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

1301 SECOND AVENUE
SEATTLE, WASHINGTON 98101
(Address of principal executive offices and Zip Code)

Registrant's telephone number, including area code: (206) 461-2000

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

SECTION 7 – REGULATION FD

Item 7.01. Regulation FD Disclosure.

Washington Mutual, Inc. (the "Company") is filing this Current Report on Form 8-K to provide an update to the

status of the Company's litigation against the U.S. government arising from contracts entered into by Anchor Savings Bank FSB and the government. The Company is a party to the litigation as a result of its acquisition of Dime Bancorp, and the acquisition by the Company's subsidiary, Washington Mutual Bank, of Dime Savings Bank of New York FSB, a subsidiary of Dime Bancorp, which in turn had previously acquired Anchor Savings Bank FSB.

Prior to the Company's acquisition of Dime Bancorp in January 2002, Dime Bancorp had created Litigation Tracking Warrants™ ("LTWs") and had distributed one LTW for each share of its common stock outstanding on December 22, 2000 to each of its shareholders on that date. The LTWs originally permitted the holders to receive common stock of Dime Bancorp at a price based on the adjusted amount actually recovered in the Anchor Savings case. Upon the Company's acquisition of Dime Bancorp, the LTWs became exercisable for the Company's common stock. The LTWs trade on the Nasdaq Global Market under the symbol "DIMEZ".

On March 14, 2008, the U.S. Court of Federal Claims issued an order and findings in the case of Anchor Savings Bank, FSB v. The United States of America, No. 95-39 C. The Court's order and findings concluded that Anchor Savings had incurred recoverable damages in the amount of approximately $382 million, plus an undetermined amount for a gross-up of the Company's tax liabilities. The Court ordered the parties to provide certain information with respect to the gross-up by May 1, 2008, so that it could make a final determination in regard to the gross-up. The Court found that Anchor was entitled to damages for the lost profits resulting from its forced sale of its Residential Funding Corporation subsidiary and of large portions of its branch network. The Court awarded additional damages based on expectation damages from reduced stock proceeds, "wounded bank" damages and overpayment of FDIC premiums. The Company anticipates that the government will appeal the Court's ruling. In such event, the Company cannot estimate when a final resolution of all appeals will be concluded. In complex litigation such as this case, the appeals process could last several years. In the event of an appeal the amount of the Court's damages findings could be reduced or negated.

The LTWs may not be exercised for shares of the Company's stock until the litigation, including all appeals, is ultimately concluded and the Company has collected proceeds of any judgment from the government. There is a possibility that some or all of the damage awards will be reversed on appeal. Therefore, although the Company has received a trial court judgment in the case, there is no assurance that the Company will ultimately collect any significant proceeds from the final judgment in the case. The trial court judgment has no immediate financial impact on the Company.

On a Form 8-K dated March 12, 2003, the Company provided background on the litigation and the detailed formula for the calculation of the number of shares of Company common stock that could be issued to the holder of an LTW upon final judgment and collection of proceeds and how that formula was affected by the Company's acquisition of Dime Bancorp. The basic formula is:

One LTW	=	adjusted litigation recovery / merger adjusted stock price	X	1 / 112,975,597 (the number of LTWs originally issued or reserved for issuance)

In this formula, the "adjusted litigation recovery" is determined as follows:

Adjusted Litigation Recovery	=85%	(Amount Recovered	-	Litigation and LTW Expenses	-	Taxes	)

- "Amount Recovered" equals the total amount of any cash payment and the fair market value of any property the Company actually receives as damages pursuant to a final, nonappealable judgment in or final settlement of its litigation against the government, including any post-judgment interest the Company actually receives on any payment;

- "Litigation and LTW Expenses" equal the total expenses the Company incurs, both before and after the date of this document, in pursuing its litigation and obtaining all damages payments, plus its total expenses incurred in connection with the creation, issuance and trading of the LTWs including legal, financial advisory and accounting fees, printing and registration costs and the fees and expenses of the warrant agent; and

- "Taxes" equal, regardless of the actual amount of taxes imposed with respect to the damages recovery, the product of (i) the amount of damages recovered less the expenses in the litigation and LTW issuance described in the preceding clauses and (ii) the combined highest federal, New York State and New York City income tax rates applicable to financial institutions in the year (or years) in which the amount of the damages (in whole or in part) is fixed or determinable (after taking into account the effect of the deductibility of such taxes for federal and state income tax purposes).

The "merger adjusted stock price" equals (i) the Company's running average stock price over the 30 trading days ending on the "determination date" times (ii) 1.1232, which is the exchange ratio in the Company's merger with Dime Bancorp. The "determination date" is the 30th calendar day before the Company receives the total amount of its recovery from the government (if any), or the next trading day if the NYSE is not open for trading on such date.

The number of shares of Company common stock to be issued to the holder of an LTW upon final judgment and collection of proceeds is subject to adjustment in the event of a reclassification, redesignation or reorganization of the shares of the Company's common stock.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: March 21, 2008

WASHINGTON MUTUAL, INC.

By: /s/ Stewart M. Landefeld

Stewart M. Landefeld
Executive Vice President

EXHIBIT H

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<SEQUENCE>3
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<TEXT>

Exhibit 4.1

2003 AMENDED AND RESTATED

WARRANT AGREEMENT

Dated as of

March 11, 2003

between

WASHINGTON MUTUAL, INC.

and

MELLON INVESTOR SERVICES LLC,

as the Warrant Agent

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THIS 2003 AMENDED AND RESTATED WARRANT AGREEMENT, dated as of March 11, 2003 (this "Agreement"), between Washington Mutual, Inc (the "Company"), successor by merger to DIME BANCORP, INC., a Delaware corporation ("Dime") and Mellon Investor Services LLC, a New Jersey limited liability company (the "Warrant Agent"), successor to EQUISERVE TRUST COMPANY, N.A. and EQUISERVE LIMITED PARTNERSHIP, as Warrant Agent ("Equiserve"), amends and restates the Warrant Agreement, dated as of December 21, 2000, between Dime and Equiserve, as previously amended and restated by the parties hereto.

RECITALS

A. The Board of Directors of Dime authorized a distribution of one Litigation Tracking Warrant(TM) (a "Warrant") for each share of Dime's common stock, par value $0.01 per share (the "Dime Common Stock"), outstanding as of the Close of Business (as defined below) on the Record Date (as defined below). Each Warrant represents the right to purchase shares or a portion of a share of Dime's common stock (subject to adjustment as provided herein), upon the terms and subject to the conditions herein set forth.

B. The Board of Directors of Dime also authorized the issuance of Warrants to holders of outstanding Dime Convertible Securities (as defined herein) who exercise or convert such Dime Convertible Securities at any time and from time to time before the occurrence of the Trigger (as defined herein).

C. On January 4, 2002, Dime merged with and into the Company (the "Merger") and the Company succeeded to Dime's rights and obligations with respect to the Warrants. As a result of the Merger, Warrant holders will be entitled to receive, if and when the Warrants are exercised and in accordance with the terms of this Agreement, for each Warrant they hold, shares of Washington Mutual common stock (the "Common Stock").

D. In order to issue Warrants to holders of options to purchase Common Stock, which options were previously Dime Convertible Securities prior to the Merger, who exercise or convert such options at any time and from time to time before the occurrence of the Trigger, and to set forth the terms of the Warrants following the Merger, the Company has determined to enter into this Agreement with the Warrant Agent.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

ARTICLE I
Defined Terms

1.1 Definitions. As used in this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

"Adjusted Litigation Recovery" means an amount equal to 85% of the amount obtained from the following equation: (a) the Amount Recovered minus (b) the sum of the following: (i) the total of all expenses incurred by or on behalf of the Bank and the Company in pursuing the Litigation and obtaining the Amount Recovered (whether incurred before or after the date hereof), including, without limitation, fees and expenses of counsel, witnesses, experts and consultants, (ii) the total of all expenses incurred by the Company in

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connection with the creation, issuance and trading of the Warrants, including, without limitation, legal, financial advisory and accounting fees, the fees and expenses of the Warrant Agent and printing and registration costs (whether incurred before or after the date hereof) and (iii) an amount equal to the Amount Recovered, less the expenses described in the preceding clauses (i) and (ii), multiplied by the combined highest federal, New York State and New York

City income tax rates applicable to financial institutions in the year (or years) in which the amount of the damages (in whole or in part) is fixed or determinable (after taking into account the effect of the deductibility of such taxes for federal and state income tax purposes).

"Adjusted Stock Price" means the average of the daily Closing Prices of a share of Common Stock for the thirty consecutive Trading Days ending on and including the Determination Date; provided, that if the context in which this defined term is used is with respect to securities other than shares of Common Stock, then "Adjusted Stock Price" means the average of the daily Closing Prices of a unit of such securities for the thirty consecutive Trading Days ending on and including the Determination Date minus the Exercise Price determined for such securities in the manner described in Section 4.3; and provided, further that if the context in which this defined term is used is with respect to property other than publicly traded securities, then "Adjusted Stock Price" means the Fair Market Value of the amount of such property distributable in respect of one share of Common Stock.

"Amount Recovered" means the aggregate amount of any cash payment and the Fair Market Value of any property or assets actually received by the Bank pursuant to a final, nonappealable judgment in or final settlement of the Litigation (including any post-judgment interest actually received by the Bank on any Amount Recovered).

"Assistant Secretary" means any assistant secretary or person of similar title of the Company.

"Bank" means Washington Mutual Bank, FA, a federal association or any successor thereto.

"Board" means the Board of Directors of the Company or any committee thereof duly authorized to act on behalf of such Board of Directors.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in the State of New York or the State of Washington are authorized or required by law to close.

"Close of Business" on any given date means 5:00 P.M., Western time, on such date; provided, however, that if such date is not a Business Day it will mean 5:00 P.M., Western time, on the next succeeding Business Day.

"Closing Price" on any day means the closing sale price regular way (with any relevant due bills attached) of a share of Common Stock on such day, or in case no such sale takes place on such day, the average of the

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reported closing bid and asked prices regular way (with any relevant due bills attached) of a share of Common Stock, in each case on the NYSE Composite Tape (or any successor composite tape reporting transactions on national securities exchanges), or, if the Common Stock is not listed or admitted to trading on the NYSE, on the principal national securities exchange on which the Common Stock is listed or admitted to trading (which will be the national securities exchange on which the greatest number of shares of Common Stock has been traded during the

five consecutive Trading Days ending on and including the Determination Date), or, if not listed or admitted to trading on any national securities exchange, the average of the closing bid and asked prices regular way (with any relevant due bills attached) of a share of Common Stock on the over-the-counter market on the day in question as reported by NASDAQ, or a similar generally accepted reporting service, or if not so available as determined in good faith by the Board, on the basis of such relevant factors as it in good faith considers appropriate.

"Combination" means an event in which the Company consolidates with, merges with or into, or sells all or substantially all its property and assets to another Person.

"Determination Date" means the 30th calendar day before the date on which the Bank receives the total amount of the Amount Recovered unless such date is not a Trading Day, in which case the Determination Date will be the next succeeding Trading Day. If the Amount Recovered is payable by the United States Government in installments, the Determination Date will be the 30th calendar day before the date on which the Bank receives the last installment of the Amount Recovered unless such date is not a Trading Day, in which case the Determination Date will be the next succeeding Trading Day.

"Dime Exchange Ratio" means 1.1232, which is the "Exchange Ratio" as defined and calculated in accordance with Section 2.5(b) of the Agreement and Plan of Merger, dated as of June 25, 2001, by and between the Company and Dime.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Fair Market Value" means the fair market value of the relevant property on the Determination Date as determined in good faith by the Board, on the basis of such factors as it in good faith considers appropriate.

"Holder" means the duly registered holder of a Warrant under the terms of this Agreement.

"Litigation" means the Bank's case against the United States Government in the United States Court of Federal Claims entitled Anchor Savings Bank, FSB v. United States, No. 95-39C, filed on January 13, 1995.

"NASDAQ" means the stock market and automated quotation system operated by the National Association of Securities Dealers, Inc.

"NYSE" means the stock exchange operated by The New York Stock Exchange, Inc.

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"Officer" means the Chief Executive Officer, the President, any Senior Executive Vice President or any Executive Vice President of the Company.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision

thereof or any other entity.

"Record Date" means December 22, 2000.

"SEC" means the Securities and Exchange Commission.

"Secretary" means the secretary of the Company.

"Securities Act" means the Securities Act of 1933, as amended.

"Trading Day" means a date on which the NYSE or NASDAQ (or any successor thereto) is open for the transaction of business.

"Trigger" means the occurrence of all of the following events: (a) receipt by the Bank of the Amount Recovered in full, (b) determination by the Bank of the amount of the Adjusted Litigation Recovery and (c) receipt of all regulatory approvals necessary to issue the shares of Common Stock to be issued upon the exercise of the Warrants, including without limitation, the effectiveness of a registration statement relating to the issuance of the Warrant Shares under the Securities Act.

"Warrant Shares" means the shares of Common Stock of the Company issued and received upon exercise of the Warrants.

1.2 Other Definitions.

Term	Defined in Section
"Agent Members"	2.2(c)
"Certificate Register"	2.4
"Certificated Warrants"	2.2(a)
"Common Stock"	Recitals
"Company"	Recitals
"Dime"	Recitals
"Dime Common Stock"	Recitals
"Dime Convertible Securities"	2.1(a)
"DTC"	2.2(b)
"Exercise Notice"	3.2
"Exercise Price"	3.1
"Global Warrant"	2.2(b)
"Maximum Number of Warrants"	2.1(b)
"Merger"	Recitals
"Number of Shortfall Shares"	3.7(b)

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"Registrar"	3.7(a)
"Successor Company"	4.2(b)
"Successor Warrant Agent"	5.6
"Termination Date"	3.3
"Termination Notice"	3.3
"Transfer Agent"	3.5
"Warrant"	Recitals

ARTICLE II

Warrant Certificates

2.1 Issuance of Warrant Certificates. (a) At any time and from time to time before the Trigger occurs, the Company may instruct the Warrant Agent in writing to issue, in accordance with its instructions and the provisions of this Article 2, one or more Warrant Certificates, in substantially the form of Exhibit A hereto (a "Warrant Certificate"), evidencing Warrants to holders of stock options of the Company that were outstanding on the Record Date as options to purchase Dime Common Stock (all options to purchase Dime Common Stock outstanding as of the Record Date, the "Dime Convertible Securities") to such holders who exercise or convert such Dime Convertible Securities into shares of Common Stock and Warrants in accordance with the terms and conditions of such Dime Convertible Securities.

(b) The maximum number of Warrants (the "Maximum Number of Warrants") that may be issued hereunder is equal to 112,975,597 (the sum of (i) the number of shares of Dime Common Stock that were outstanding on the Record Date plus (ii) the number of Warrants issuable to holders of Dime Convertible Securities had all Dime Convertible Securities been exercised immediately before the Record Date).

2.2 Form and Dating. The Warrant Certificates will be substantially in the form of Exhibit A, hereto. The Warrants may have such notations, legends or endorsements as the Company may deem appropriate, which do not affect the rights, duties or responsibilities of the Warrant Agent, and as are not inconsistent with the provisions hereof or as may be required by law, stock exchange or stock market rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). Each Warrant will be dated the date of its countersignature.

(a) Certificated Warrants. The Warrants may be issued in definitive form represented by a physical Warrant Certificate (such certificate and all other certificates representing physical delivery of Warrants in definitive form being called "Certificated Warrants").

(b) Global Warrant. The Warrants may be issued in the form of one or more fully registered global certificates with the global securities legend set forth in Exhibit A hereto (the "Global Warrant"), which

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will be registered on the records of the Warrant Agent on behalf of beneficial owners of Warrants and in the name of the Depository Trust Company ("DTC") or a nominee of DTC, duly executed by the Company and countersigned by the Warrant Agent as hereinafter provided. The number of Warrants represented by Global Warrants may from time to time be increased or decreased by adjustments made on the records of the Warrant Agent and DTC or its nominee as hereinafter provided.

Except as provided in Section 2.5, owners of beneficial interests in a Global Warrant will not be entitled to receive physical delivery of Certificated Warrants.

(c) Book-Entry Provisions. Members of, or participants in, DTC ("Agent Members") will have no rights under this Agreement with respect to any Global Warrant held on their behalf with DTC or by the Warrant Agent or under such Global Warrant, and DTC may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Global Warrant for all purposes whatsoever. Notwithstanding the foregoing, nothing herein will prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of a holder of a beneficial interest in any Global Warrant.

2.3 Execution and Countersignature. (a) With respect to any Global Warrant to be issued hereunder, one Officer will sign, and the Secretary or any Assistant Secretary will attest, such Global Warrant. The Warrant Agent, upon the written instruction of the Company signed by an Officer, will countersign any Global Warrant certificate by manual or facsimile signature, and such Global Warrant will be registered in accordance with Section 2.2(b) hereof.

(b) With respect to all other Warrants, an Officer will sign, and the Company's Secretary or any of its Assistant Secretaries will attest, the Warrant Certificates for the Company by manual or facsimile signature. The Warrant Agent will countersign and deliver the Warrant Certificates for original issue, in each case upon a written instruction of the Company signed by an Officer of the Company. Such instruction will specify (in addition to the number of Warrants) the date on which the original issue of Warrants is to be countersigned.

(c) If an Officer whose signature is on a Warrant Certificate no longer holds that office at the time the Warrant Agent countersigns the Warrant Certificate, the Warrant will be valid nevertheless. A Warrant will not be valid until an authorized signatory of the Warrant Agent manually countersigns the Warrant Certificate. The signature will be conclusive evidence that the Warrant Certificate has been countersigned under this Agreement.

(d) The Warrant Agent may appoint an agent reasonably acceptable to the Company to countersign the Warrant Certificates. Unless limited by the terms of such appointment, such agent may countersign Warrant Certificates whenever the Warrant Agent may do so. Each reference in this Agreement to countersignature by the Warrant Agent includes countersignature by such agent. Such agent will have the same rights as the Warrant Agent for service of notices and demands.

2.4 Certificate Register. The Warrant Agent will keep a register (the "Certificate Register") of the Warrant Certificates and of their

transfer and exchange which the Company may examine upon reasonable written notice. The Certificate Register will show the names and addresses of the respective Holders and the date and number of Warrants evidenced on the face of each of the Warrant Certificates. The Company and the Warrant Agent may deem and treat the Person in whose name a Warrant Certificate is registered as the absolute owner of such Warrant Certificate and neither the Company nor the Warrant Agent will be affected by any notice to the contrary.

2.5 Transfer and Exchange.

(a) Transfer and Exchange of Certificated Warrants. When Certificated Warrants are presented to the Warrant Agent with a request to register the transfer or exchange of such Certificated Warrants, the Warrant Agent will register the transfer or make the exchange as requested; provided, that the Certificated Warrants surrendered for transfer or exchange have been duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Warrant Agent, duly executed by the Holder thereof or its attorney duly authorized in writing.

(b) Restrictions on Transfer of Certificated Warrants for a Beneficial Interest in a Global Warrant. Certificated Warrants may not be exchanged for a beneficial interest in a Global Warrant except upon satisfaction of the requirements set forth below. Upon receipt by the Warrant Agent of Certificated Warrants, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Warrant Agent, together with written instructions directing the Warrant Agent to make, or to direct DTC to make, an adjustment on its books and records with respect to such Global Warrants to reflect an increase in the number of Warrants represented by the Global Warrant, then the Warrant Agent will, and is hereby instructed to, cancel such Certificated Warrants and cause, or direct DTC to cause, the number of Warrants represented by the Global Warrant to be increased accordingly.

(c) Transfer and Exchange of Global Warrants. The transfer and exchange of beneficial interests in a Global Warrant will be effected through DTC, in accordance with this Agreement and the procedures of DTC.

(d) Restrictions on Transfer and Exchange of the Global Warrant. Notwithstanding any other provisions of this Agreement, Global Warrants may not be transferred as a whole except by DTC to a nominee of DTC or by a nominee of DTC to DTC or another nominee of DTC or by DTC or any such nominee to a successor depositary or a nominee of such successor depositary.

(e) Authentication and Distribution of Certificated Warrants. If at any time:

(i) DTC notifies the Company that DTC is unwilling or unable to continue as depositary for Global Warrants and a successor depositary for Global Warrants is not appointed by the Company within 90 calendar days after delivery of such notice;

(ii) DTC ceases to be a clearing agency registered under the Exchange Act; or

(iii) the Company, in its sole discretion, notifies the Warrant Agent in writing that it elects to cause the issuance of Certificated Warrants under this Agreement;

then, the Company will execute, and the Warrant Agent, upon receipt of a written order of the Company signed by an Officer requesting the delivery of Certificated Warrants to the holders of beneficial interests in the Global Warrant, will countersign and deliver Certificated Warrants equal to the number of Warrants represented by Global Warrants, in exchange for such Global Warrants. Certificated Warrants issued in exchange for a beneficial interest in a Global Warrant will be registered in such names and in such authorized denominations as DTC, pursuant to instructions from its direct or indirect participants or otherwise, will instruct the Warrant Agent in writing. The Warrant Agent is hereby instructed to deliver such Certificated Warrants to the Persons in whose names such Warrants are so registered in accordance with the written instructions of DTC.

(f) Cancellation or Adjustment of Global Warrants. At such time as all beneficial interests in Global Warrants have either been exchanged for Certificated Warrants, redeemed, repurchased or canceled, such Global Warrant will be returned to DTC for cancellation or retained and canceled by the Warrant Agent. At any time before such cancellation, if any beneficial interest in a Global Warrant is exchanged for Certificated Warrants, redeemed, repurchased or canceled, the number of Warrants represented by such Global Warrant will be reduced and an adjustment will be made on the books and records of the Warrant Agent with respect to such Global Warrant, by the Warrant Agent or DTC, to reflect such reduction.

(g) Obligations with Respect to Transfers and Exchanges of Warrants.

(i) To permit registrations of transfers and exchanges, the Company will execute and the Warrant Agent will countersign Certificated Warrants and Global Warrants as required pursuant to the provisions of this Section 2.5.

(ii) All Certificated Warrants and Global Warrants issued upon any registration of transfer or exchange of Certificated Warrants will be the valid obligations of the Company, entitled to the same benefits under this Agreement as the Certificated Warrants or Global Warrants surrendered upon such registration of transfer or exchange.

(iii) Before due presentment for registration of transfer of any Warrant, the Warrant Agent and the Company may deem and treat the Person in whose name any Warrant is registered as the absolute owner of such Warrant and neither the Warrant Agent nor the Company will be affected by any notice to the contrary.

(iv) No service charge will be made to a Holder for any registration of transfer or exchange upon

surrender of any Warrant Certificate at the office of the Warrant Agent maintained for that purpose. The Company may require payment of a sum sufficient to

cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Warrant Certificates. The Warrant Agent shall have no duty or obligation under this Section 25 unless and until it is satisfied tat all such taxes and/or changes have been paid in full.

2.6 Replacement Certificates. If a mutilated Warrant Certificate is surrendered to the Warrant Agent or if the Holder of a Warrant Certificate claims that the Warrant Certificate has been lost, destroyed or wrongfully taken, the Company will issue and the Warrant Agent will countersign a replacement Warrant Certificate. If required by the Warrant Agent or the Company, such Holder will furnish an indemnity bond or other instrument sufficient in the judgment of the Company and the Warrant Agent to protect the Company and the Warrant Agent from any loss which either of them may suffer if a Warrant Certificate is replaced. The Company and the Warrant Agent may charge the Holder for their expenses in replacing a Warrant Certificate.

2.7 Cancellation. (a) In the event the Company will purchase or otherwise acquire Certificated Warrants, the same will thereupon be delivered to the Warrant Agent for cancellation.

(b) The Warrant Agent and no one else will cancel and destroy all Warrant Certificates surrendered for transfer, exchange, replacement, exercise or cancellation and deliver a certificate of such destruction to the Company unless the Company directs the Warrant Agent to deliver canceled Warrant Certificates to the Company. The Company may not issue new Warrant Certificates to replace Warrant Certificates to the extent they evidence Warrants that have been exercised or Warrants that the Company has purchased or otherwise acquired.

2.8 Purchase of Warrants by the Company. The Company will have the right, except as limited by law or other agreement, to purchase or otherwise acquire Warrants at such times, in such manner and for such consideration as it may deem appropriate.

ARTICLE III

Exercise Terms

3.1 Number of Warrant Shares; Exercise Price. Each Warrant will, upon exercise thereof and subject to adjustment as provided herein, entitle the Holder thereof to purchase the number of shares of Common Stock equal to the quotient of (a) the quotient of (i) the Adjusted Litigation Recovery divided by (ii) the Maximum Number of Warrants (112,975,597), divided by (b) the product of (x) the Adjusted Stock Price, and (y) the Dime Exchange Ratio (1.1232), upon surrender or cancellation of the Warrant and payment of an exercise price per Warrant equal to the number of shares of Common Stock for which the Warrant is exercisable multiplied by the Exercise Price (as defined below). All calculations made pursuant to this Section 3.1 will be performed by

the Company (with written notice of any such calculation to the Warrant Agent) and shall be rounded to the nearest ten-thousandth. As of the date of this Agreement, the "Exercise Price" is zero dollars and zero cents ($0.00) per each whole share of Common Stock, but shall be subject to adjustment as provided in this Agreement. The Warrant Agent shall not be deemed to have knowledge of any

such calculations made pursuant to this Section 3.1 unless and until it has received written notice thereof, and the Warrant Agent shall have no duty or obligation to inquire as to whether any such calculation is accurate.

3.2 Exercise Period. (a) The Company will provide written notice, as described below (the "Exercise Notice") to each Holder and the Warrant Agent, of the occurrence of the Trigger not more than 15 calendar days after the occurrence thereof. If the Amount Recovered is payable by the United States government in installments, the Trigger will not be deemed to have occurred until the Bank receives the last installment of the Amount Recovered. The Exercise Notice will be dated the date it is first sent to Holders and the Warrant Agent and will be provided by means of a press release to one or more national news services and by mailing such notice first class, postage prepaid, to each Holder at such Holder's address as it appears on the Certificate Register; provided, however, that neither the failure to give such notice by mail to any particular Holder or the Warrant Agent nor any defect therein will affect the validity of the Exercise Notice or the expiration of all Warrants on the Close of Business on the last day of the Warrant Exercise Period with respect to the other Holders. The Exercise Notice will contain the following information:

(i) that the Trigger has occurred,

(ii) the total number of shares for which the Warrants are exercisable,

(iii) the number of shares of Common Stock for which one Warrant is exercisable,

(iv) the Exercise Price (if any) per Warrant,

(v) the manner in which the Warrants are exercisable, and

(vi) the date on which the Warrants will no longer be exercisable.

(b) Subject to the terms and conditions set forth herein, each Warrant will be exercisable at any time or from time to time during the 60-day period commencing on the date on which the Exercise Notice is first sent to Holders and the Warrant Agent pursuant to Section 3.2(a) (the "Warrant Exercise Period").

(c) No Warrant will be exercisable after the Close of Business on the last day of the Warrant Exercise Period.

3.3 Expiration. A Warrant will terminate and become void as of

the earlier of (a) the Close of Business on the last day of the Warrant Exercise Period, (b) the Close of Business on the date the Litigation has been disposed of in a manner such that no shares of Common Stock or other securities or property will be issuable under the terms of the Warrants (and the Agent shall receive prompt written notice thereof)(the "Termination Date") or (c) the time and date such Warrant is exercised. The Company will provide notice, as described below (the "Termination Notice"), of the occurrence of the Termination Date or the expiration of the Warrant Exercise Period not more than 60 calendar days after the occurrence thereof to the Holders and the Warrant Agent. The Termination Notice will be dated the date it is first sent to Holders and the Warrant Agent and will be provided by means of a press release to one or more

national news services and by mailing such notice first class, postage prepaid, to each Holder at such Holder's address as it appears on the Certificate Register. The Termination Notice will state the following:

(i) that the Termination Date has occurred or the Warrant Exercise Period has expired, as the case may be, and

(ii) that all outstanding Warrants have terminated and become void.

The Warrants will terminate and become void as provided herein notwithstanding the Company's failure to give the Termination Notice. The Warrant Agent shall not be deemed to have knowledge the Termination Date has occurred , the Warrant Exercise Period has expired or the outstanding Warrants have terminated unless and until it shall have received written notice thereof.

3.4 Manner of Exercise. Warrants may be exercised upon (i) surrender to the Warrant Agent of the Warrant Certificates, together with the form of election to purchase Common Stock on the reverse thereof properly completed and validly executed by the Holder thereof and (ii) payment to the Warrant Agent, for the account of the Company, of the total Exercise Price (if any) for the number of Warrants being exercised. Such payment will be made by certified or official bank check or personal check payable to the order of the Company. Subject to Sections 3.2 and 3.3, the Warrants will be exercisable at the election of the Holders thereof either in full at any time or from time to time in part. In the event that a Warrant Certificate is surrendered for exercise in respect of less than all the Warrant Shares purchasable on such exercise at any time before the expiration of the Warrant Exercise Period a new Warrant Certificate exercisable for the remaining Warrant Shares will be issued and its exercise will also be subject to Sections 3.2 and 3.3. The Warrant Agent will countersign and deliver the required new Warrant Certificates, and the Company, at the Warrant Agent's request, will supply the Warrant Agent with Warrant Certificates duly signed on behalf of the Company for such purpose. The Warrant Agent will account promptly to the Company with respect to all Warrants exercised and concurrently pay to the Company all moneys received by the Warrant Agent for the purchase of shares of Common Stock through the exercise of such Warrants.

3.5 Issuance of Warrant Shares. Subject to Section 3.6, upon the surrender of Warrant Certificates and payment of the Exercise Price in

accordance with Section 3.4, the Company will issue and cause the Warrant Agent or, if appointed, a transfer agent for the Common Stock ("Transfer Agent") to countersign and deliver to or upon the written order of the Holder and in such name or names as the Holder may designate, a certificate or certificates for the number of full Warrant Shares so purchased upon the exercise of such Warrants or such other securities or property to which it is entitled, to the Person or Persons entitled to receive the same, together with the payment of cash by the Company as provided in Section 3.6 in respect of any fractional Warrant Shares. Such certificate or certificates will be deemed to have been issued and any Person so designated to be named therein will be deemed to have become a holder of record of such Warrant Shares as of the date of the surrender of such Warrant Certificates and payment of the Exercise Price.

3.6 Fractional Warrant Shares. The Company will not issue fractional Warrant Shares. If any fraction of a Warrant Share would, except for this Section 3.6, be issuable, the Company will pay an amount in cash equal to (a) the sum of (i) the Adjusted Stock Price and (ii) the Exercise Price (if any) per whole Warrant Share that would have been received), multiplied by (b) such fraction. Such cash amount will be rounded to the nearest whole cent.

3.7 Reservation of Warrant Shares. (a) The Company will use its best efforts to at all times keep reserved and available out of its authorized and unissued shares of Common Stock or shares of Common Stock held in its treasury a number of shares of Common Stock sufficient to provide for the exercise in full of all Warrants then outstanding or reserved for issuance pursuant to Section 2.1. The registrar for the Common Stock (the "Registrar") will at all times until the Termination Date, or the time at which all Warrants have been exercised or canceled, reserve such number of authorized shares as will be required for such purpose. The Company will keep a copy of this Agreement on file with the Registrar. The Company will supply such Registrar with duly executed stock certificates for such purpose and will itself provide or otherwise make available any cash which may be payable as provided in Section 3.6. The Company will furnish to such Registrar a copy of all notices of adjustments and certificates related thereto transmitted to each Holder.

(b) If, upon the Trigger, the number of shares of Common Stock authorized but not issued plus the number of shares of Common Stock held in the Company's treasury is less than the number of shares of Common Stock necessary to permit the exercise in full of the Warrants then outstanding or reserved for issuance pursuant to Section 2.1 (the number of shares of Common Stock comprising such deficiency being the "Number of Shortfall Shares"), then the Company will either (i) to the extent permitted by applicable law and any material agreements then in effect to which the Company is a party, commence a tender offer or buyback for the aggregate number of shares of Common Stock at least equal to the Number of Shortfall Shares or (ii) call a special meeting of the holders of Common Stock for the purpose of increasing the number of authorized shares of Common Stock in an amount at least equal to the Number of Shortfall Shares. In such an event, the Warrant Exercise Period will be automatically extended to 60 calendar days after (A) the date on which the tender offer or buyback referred to in clause (i) above is successfully completed or (B) the effective date of the increase in the number of authorized shares of Common Stock referred to in clause (ii) above.

(c) The Company covenants that all shares of Common Stock

that may be issued upon exercise of Warrants will, upon issue, be fully paid, nonassessable, free of preemptive rights, free from all taxes, liens, charges and security interests, created by or through the Company, with respect to the issue thereof.

3.8 Compliance with Law. (a) Notwithstanding anything in this Agreement to the contrary, in no event will a Holder be entitled to exercise a Warrant unless (i) a registration statement filed under the Securities Act in respect of the issuance of the Warrant Shares is then effective or (ii) an exemption from such registration requirements is available to all Holders under the Securities Act at the time of such exercise.

(b) If any shares of Common Stock required to be reserved for purposes of exercise of Warrants require, under any other Federal or state

law or applicable governing rule or regulation of any national securities exchange or stock market, registration with or approval of any governmental authority, or listing on any such national securities exchange or stock market before such shares may be issued upon exercise, the Company will cause such shares to be duly registered or approved by such governmental authority or listed on the relevant national securities exchange or stock market.

3.9 Holders Not Entitled to Interest. Notwithstanding anything to the contrary, Holders will not be entitled to receive any interest or additional shares of our common stock for any period, including, without limitation, the period of time between the date on which the Bank receives the Amount Recovered (in full or in part) and the date on which the Warrants become exercisable.

ARTICLE IV

Adjustments

4.1 Reclassifications, Redesignations or Reorganizations of Common Stock. (a) In the event that at any time or from time to time after the date hereof the Company will issue by reclassification, redesignation or reorganization of the shares of Common Stock any shares of capital stock of the Company then, in any such event, the Holders will have the right to receive upon exercise of each Warrant the number of shares of such capital stock of the Company equal to the Adjusted Litigation Recovery divided by the Maximum Number of Warrants divided by the aggregate Adjusted Stock Price of the capital stock of the Company that 1.1232 shares of Common Stock were exchanged for or converted into as a result of such reclassification, redesignation or reorganization.

(b) The proportion and type of capital stock of the Company that the Holders will have the right to receive in the circumstance set forth in Section 4.1(a) will be in the same proportion and type as one share of Common Stock was exchanged for or converted into as a result of such reclassification, redesignation or reorganization. Such adjustment will become effective immediately after the effective date of such reclassification, redesignation or reorganization. In the event of the occurrence of more than one

of the foregoing, such adjustments will be made successively.

4.2 Combination. (a) Except as provided in Section 4.2(c), in the event of a Combination, the Holders will have the right to receive upon exercise of each Warrant the number of shares of capital stock or other securities or an amount of property equal to the Adjusted Litigation Recovery divided by the Maximum Number of Warrants divided by the aggregate Adjusted Stock Price of the capital stock, other securities or property that 1.1232 shares of Common Stock were exchanged for or converted into as a result of such Combination.

(b) The proportion and type of capital stock, other securities or property that the Holders will have the right to receive in the circumstance set forth in Section 4.2(a) will be in the same proportion and type as one share of Common Stock was exchanged for or converted into as a result of such Combination. The provisions of this Section 4.2 will similarly apply to successive Combinations involving the surviving or acquiring Person (the "Successor Company") in any Combination.

(c) In the event of a Combination where consideration is payable to holders of Common Stock in exchange for their shares solely in cash, the Holders will have the right to receive upon exercise of each Warrant cash in an amount equal to the Adjusted Litigation Recovery divided by the Maximum Number of Warrants, less the Exercise Price (if any). In case of any Combination described in this Section 4.2(c), the surviving or acquiring Person will promptly after the occurrence of the Trigger deposit with the Warrant Agent the funds necessary to pay to the Holders of the Warrants the amounts to which they are entitled as described above. After such funds and the surrendered Warrant Certificates are received, the Warrant Agent is hereby instructed to make payment to the Holders by delivering a check in such amount as is appropriate to such Person or Persons as it may be directed in writing by the Holders surrendering such Warrants. No interest will accrue to the Holders or the surviving or acquiring Person on such funds.

(d) The Company hereby represents and warrants that any Successor Company will enter into, and the Company will provide, an agreement with the Warrant Agent confirming the Holders' rights pursuant to this Section 4.2 and providing for adjustments, which will be as nearly equivalent as may be practicable to the adjustments provided for in this Article IV.

4.3 Exercise Price Adjustment. In case of any reclassification, redesignation or reorganization described in Section 4.1 or any Combination described in Section 4.2, the Exercise Price of one Warrant after such reclassification, redesignation, reorganization or Combination will equal (i) if the Warrants are exercisable into stock only or stock and any cash or property other than cash which is received instead of any fractional share of stock, the per share par value (if any) of such stock multiplied by the number of shares of such stock into which one Warrant is exercisable and (ii) if the Warrants are exercisable for cash or property only, $0.01. The Exercise Price may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the Board may determine in good faith to be equitable in the circumstances. The Warrant Agent shall not be deemed to have knowledge of any such adjustment of the Exercise Price unless and until it has received written notice thereof.

4.4 Other Events. If any event occurs as to which the foregoing provisions of this Article IV are not strictly applicable or, if strictly applicable, would not, in the good faith judgment of the Board, fairly and adequately protect the purchase rights of the Holders of the Warrants in accordance with the essential intent and principles of such provisions, then the Board may make, without the consent of the Holders, such adjustments to the terms of this Article IV, in accordance with such essential intent and principles, as will be reasonably necessary, in the good faith opinion of such Board, to protect such purchase rights as aforesaid.

4.5 Notice of Certain Transactions. In the event that the Company will publicly announce a plan (a) to effect any reclassification, redesignation or reorganization of its shares of Common Stock, (b) to effect any capital reorganization, consolidation or merger or (c) to effect the voluntary or involuntary dissolution, liquidation or winding-up of the Company, the Company will within 5 calendar days after such public announcement send to the Warrant Agent and the Warrant Agent will within 5 Business Days after receipt of such notice thereof and the form of notice of action, send the Holders a notice (in such form as will be furnished to the Warrant Agent by the Company) of such proposed action, such notice to be mailed by the Warrant Agent to the Holders at their addresses as they appear in the Certificate Register, which notice will

specify the expected date that such issuance or event is to take place and the expected date of participation therein by the holders of Common Stock and will briefly indicate the effect of such action on the Common Stock and on the number and kind of any other shares of stock and on other securities or property, if any, and the number of shares of Common Stock and other securities or property, if any, purchasable upon exercise of each Warrant and the Exercise Price after giving effect to any adjustment which will be required as a result of such action.

4.6 Adjustment to Warrant Certificate. The form of Warrant Certificate need not be changed because of any adjustment made pursuant to this Article IV, and Warrant Certificates issued after such adjustment may have the same terms and conditions as are stated in any Warrant Certificates issued prior to the adjustment. The Company, however, may at any time in its sole discretion make any change in the form of Warrant Certificate that it may deem appropriate to give effect to such adjustments, which do not affect the rights, duties or responsibilities of the Warrant Agent and that does not affect the substance of the Warrant Certificate, and any Warrant Certificate thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed.

ARTICLE V

Warrant Agent

5.1 Nature of Duties and Responsibilities Assumed.

(a) Appointment. The Company hereby appoints the Warrant Agent to act as agent of the Company as expressly set forth in this Agreement.

The Warrant Agent hereby accepts the appointment as agent of the Company and agrees to perform that agency upon the express terms and conditions herein set forth (and no implied duties or obligations), by all of which the Company and the Warrant Holders, by their acceptance thereof, will be bound.

(b) Authorization. Whenever in the performance of its duties under this Agreement, the Warrant Agent will deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking, suffering or omitting any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by an Officer and delivered to the Warrant Agent; and such certificate will be full authorization to the Warrant Agent and the Warrant Agent shall incur no liability for or in respect of any action taken, suffered or omitted in good faith by it under the provisions of this Agreement in reliance upon such certificate.

(c) Liability of Warrant Agent. The Warrant Agent will be liable hereunder only for its own gross negligence, bad faith or willful misconduct, as each is finally determined by a court of competent jurisdiction. The Warrant Agent will not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Warrant Certificates or be required to verify the same, but all such statements and recitals are and will be deemed to have been made by the Company only. The Warrant Agent will not

have any liability or responsibility in respect of the legality, validity or enforceability of this Agreement or the execution and delivery hereof (except the due execution hereof by the Warrant Agent) or in respect of the validity or execution of any Warrant Certificate (except its countersignature thereof); nor will it be responsible or liable for any breach by the Company of any covenant or condition contained in this Agreement or in any Warrant Certificate; nor will it be responsible or liable for the making of any change in the number of shares of Common Stock required under the provisions of Article IV or responsible for the manner, method or amount of any such change or the ascertaining of the existence of any facts that would require any such adjustment or change; nor will it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Agreement or any Warrant Certificate or as to whether any shares of Common Stock will, when issued, be validly issued, fully paid and nonassessable. The Warrant Agent will not be responsible or liable for any failure of the Company to comply with any of the covenants contained in this Agreement or in the Warrant Certificates to be complied with by the Company. The Warrant Agent will not incur any liability or responsibility to the Company or to any Warrant Holder for any action taken, suffered or omitted, in reliance on any notice, resolution, waiver, consent, order, instruction, certificate, or other paper, document or instrument reasonably believed by the Warrant Agent to be genuine and to have been signed, sent or presented by the proper party or parties. Anything to the contrary notwithstanding, in no event shall the Warrant Agent be liable for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Warrant Agent has been advised of the likelihood of such loss or damage. Any liability of the Warrant Agent under this Agreement will be

limited to the amount of fees paid by the Company to the Warrant Agent. The provisions provided in this Section shall survive to termination of this Agreement and the resignation or removal of the Warrant Agent hereunder.

(d) Litigation. The Warrant Agent will be under no obligation to institute any action, suit or legal proceeding or take any other action likely to involve expense unless the Company or one or more Holders of Warrants will furnish the Warrant Agent with security and indemnity satisfactory to the Warrant Agent for any costs and expenses which may be incurred. All rights of action under this Agreement or under any of the Warrants may be enforced by the Warrant Agent without the possession of any of the Warrants or the production thereof at any trial or other proceeding relative thereto, and any such action, suit or proceeding instituted by the Warrant Agent will be brought in its name as Warrant Agent and any recovery of judgment, except for judgments relating to claims of indemnification and compensation due the Warrant Agent hereunder, will be for the ratable benefit of the Holders of the Warrants, as their respective rights or interests may appear. The Warrant Agent will promptly notify the Company in writing of any claim made or action, suit or proceeding instituted against it arising out of or in connection with this Agreement.

(e) Instructions from the Company. The Warrant Agent is hereby authorized and directed to accept written instructions, orders or other communications, with respect to the performance of its duties hereunder from an Officer, and to apply to any such Officer for advice or instructions in connection with the Warrant Agent's duties, and it will not be liable for or in respect of any action taken, suffered or omitted by it in good faith in accordance with the instructions of any such Officer.

(f) Agents. The Warrant Agent may execute and exercise any of the rights and powers hereby vested in it or perform any of its duty or obligation hereunder either itself or by or through its attorneys or agents and the Warrant Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys or agent or for any loss to the Company, any Holder, or any other Person, resulting from such act, default, neglect or misconduct, absent gross negligence or willful misconduct, as each is finally determined b a court of competent jurisdiction, in the selection and in the continued employment of any such attorney or agent.

(g) Other Acts. The Company will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further acts, instruments and assurances as may reasonably be required by the Warrant Agent in order to enable it to carry out or perform its duties under this Agreement.

(h) Agreement as Source of Duties. The Warrant Agent will act hereunder solely as agent of the Company in a ministerial capacity, and its duties will be determined solely by the expressed provisions hereof.

5.2 Right to Consult Counsel. The Warrant Agent may at any time consult with legal counsel satisfactory to it (who may be legal counsel for the Company) and the advice or opinion of such counsel will be full and complete

authorization and protection to the Warrant Agent as to any action taken, suffered or omitted by it in good faith in accordance with such advice or opinion.

5.3 Compensation and Reimbursement. The Company agrees to pay to the Warrant Agent from time to time compensation for all services rendered by it hereunder as set forth in the attached Exhibit D, and to reimburse the Warrant Agent for reasonable expenses and disbursements incurred in connection with the preparation, delivery, execution, amendment and administration of this Agreement (including the reasonable compensation and expenses of its counsel). The provisions of this Section 5.3 shall survive the termination of this Agreement and the resignation or removal of the Warrant Agent. The costs and expenses incurred in enforcing this right of compensation shall be paid by the Company.

5.4 Indemnification. The Company agrees to indemnify the Warrant Agent for, and to hold it harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expenses incurred without gross negligence, bad faith or willful misconduct on its part (as each is finally determined by a court of competent jurisdiction) for any action taken, suffered or omitted by the Warrant Agent in connection with the acceptance and administration of this Agreement or the exercise or performance of its duties hereunder, including, without limitation, the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The indemnity provided herein shall survive the termination of this Agreement and the resignation or removal of the Warrant Agent. The costs and expenses incurred in enforcing this right of indemnification shall be paid by the Company.

5.5 Warrant Agent May Hold Company Securities. The Warrant Agent and any stockholder, director, officer affiliate or employee of the

Warrant Agent may buy, sell or deal in any of the Warrants or other securities of the Company or its affiliates or have a pecuniary interest in any transaction in which the Company or its affiliates may be interested, or contract with or lend money to the Company or its affiliates or otherwise act as fully and freely as though it were not the Warrant Agent under this Agreement. Nothing herein will preclude the Company and its affiliates from engaging the Warrant Agent in any other capacity.

5.6 Change of Warrant Agent. The Warrant Agent may resign and be discharged from its duties under this Agreement upon 30 calendar days' prior notice in writing mailed, by registered or certified mail, to the Company. The Company may remove the Warrant Agent or any successor warrant agent upon 60 calendar days' prior notice in writing, mailed to the Warrant Agent or successor warrant agent, as the case may be, by registered or certified mail. Notwithstanding the foregoing, if the Warrant Agent becomes incapable of acting or is adjudged a bankrupt or insolvent or a receiver of the Warrant Agent or its property is appointed or any public officer takes control of the Warrant Agent or its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the Company may remove the Warrant Agent immediately. If the Warrant Agent resigns or is removed or otherwise becomes incapable of acting,

the Company will appoint a successor to the Warrant Agent (the "Successor Warrant Agent") and will, within 30 calendar days following such appointment, give notice thereof in writing to each registered Holder of the Warrant Certificates. If the Company fails to make such appointment within a period of 30 calendar days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Warrant Agent, then the Company agrees to perform the duties of the Warrant Agent hereunder until a Successor Warrant Agent is appointed. After appointment, the Successor Warrant Agent will be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Warrant Agent without further act or deed; but the former Warrant Agent will deliver and transfer to the Successor Warrant Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for this purpose. Failure to give any notice provided for in this Section, however, or any defect therein will not affect the legality or validity of the resignation or removal of the Warrant Agent or the appointment of the Successor Warrant Agent, as the case may be.

5.7 Merger or Consolidation or Change of Name of Warrant Agent. Any Person into which the Warrant Agent or any Successor Warrant Agent may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which the Warrant Agent or any Successor Warrant Agent shall be a party, or any Person succeeding to the business of the Warrant Agent or any Successor Warrant Agent, shall be the successor to the Warrant Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case at the time such Successor Warrant Agent shall succeed to the agency created by this Agreement, any of the Warrant Certificates shall have been countersigned but not delivered, any such Successor Warrant Agent may adopt the countersignature of the predecessor Warrant Agent and deliver such Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, any Successor Warrant Agent may countersign such Warrant Certificates either in the name of the predecessor Warrant Agent or in the name of the Successor Warrant Agent; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Agreement.

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ARTICLE VI

Rights of Holders

6.1 Holders not Stockholders. No Holder, as such, will be entitled to vote or to receive dividends or otherwise will be deemed to be the holder of shares of Common Stock for any purpose, nor will anything contained herein or in any Warrant Certificate be construed to confer upon any Holder, as such, any of the rights of a stockholder of the Company or any right to vote upon or give or withhold consent to any action of the Company (whether upon any reorganization, issuance of securities, reclassification or conversion of Common Stock, consolidation, merger, sale, lease, conveyance or otherwise), receive notice of meetings or other action affecting stockholders (except for notices expressly provided for in this Agreement) or receive dividends or subscription rights, unless and until such Warrant Certificate will have been surrendered for exercise as provided in this Agreement, payment in respect of such exercise will have been received by the Warrant Agent, and shares of Common Stock will have

become issuable thereunder and such person will have been deemed to have become a holder of record of such shares. No Holder will, upon the exercise of Warrants, be entitled to any dividends if the record date with respect to payment of such dividends will be a date prior to the date such shares of Common Stock became issuable upon the exercise of such Warrants.

6.2 Claims by Holders. All rights of action in respect of the Warrants will be vested in the respective Holders; provided, however, that no Holder will have the right to enforce, institute or maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of, the Warrants, unless (a) such Holder has previously given written notice to the Company of the substance of such dispute, and the Holders of at least 25% of the issued and outstanding Warrants have given written notice to the Company of their support for the institution of such proceeding to resolve such dispute, (b) such Holder has previously given written notice to the Warrant Agent of the substance of such dispute and of the support for the institution of such proceeding and (c) the Warrant Agent has not instituted appropriate proceedings with respect to such dispute within 30 days following the date of such written notice to the Warrant Agent, it being understood and intended that the Warrant Agent has no obligation to institute proceedings and that no one or more Holders will have the right in any manner whatsoever to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any rights of the Holders, except in the manner described in this Section 6.2 for the equal and ratable benefit of all Holders. Except as described above, no Holder will have the right to enforce, institute or maintain any suit, action or proceeding to enforce, or otherwise act in respect of, the Warrants.

6.3 Control of Litigation. The Bank will retain sole and exclusive control of the Litigation and will retain 100% of any recovery from the Litigation. The Holders will not have any right to control or manage the course or disposition of the Litigation or the proceeds of any recovery therefrom or any rights against the Company for any decision regarding the conduct of the Litigation or disposition of the Litigation for an amount less than the amount claimed in damages in the Litigation, regardless of the effect on the value of the Warrants.

<PAGE>

6.4 Determination of Values. The determination of the Board of the Adjusted Litigation Recovery, the number of shares of Common Stock issuable upon exercise of a Warrant and the Exercise Price will be final, conclusive and binding upon the Holders.

ARTICLE VII

Miscellaneous

7.1 Information. So long as any Warrant remains outstanding, the Company will deliver to the Warrant Agent and the Holders its annual report to stockholders and any other documents that the Company, in its discretion, deems appropriate.

7.2 Amendment. This Agreement may be amended by the parties hereto without the consent of any Holder for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision

contained herein or making any other provisions with respect to matters or questions arising under this Agreement as the Company and the Warrant Agent may deem necessary or desirable; provided, however, that such action will not affect adversely the rights of the Holders. Any amendment or supplement to this Agreement that has an adverse effect on the interests of the Holders will require the written consent of the Holders of a majority of the then outstanding Warrants. The consent of each Holder affected will be required for any amendment pursuant to which the Exercise Price would be increased or the number of Warrant Shares purchasable upon exercise of Warrants would be decreased (other than pursuant to adjustments provided for herein). In determining whether the Holders of the required number of Warrants have concurred in any direction, waiver or consent, Warrants owned by the Company or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company will be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Warrant Agent will be protected in relying on any such direction, waiver or consent, only Warrants which the Warrant Agent knows are so owned will be so disregarded. Also, subject to the foregoing, only Warrants outstanding at the time will be considered in any such determination. Prior to executing any amendment or supplement to this Agreement, an Officer of the Company shall deliver to the Warrant Agent a certificate that states that the proposed supplement or amendment is in compliance with the terms of this Section 7.2.

7.3 Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by telecopy or telefacsimile, upon confirmation of receipt, (b) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service, or (c) on the third Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder will be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

<PAGE>

(a) If to the Company:

Fay L. Chapman
Senior Executive Vice President
Washington Mutual, Inc.
1201 Third Avenue, WMT 1601
Seattle, WA 98101
Telecopy: (206) 461-5739

with a copy to:

David R. Wilson, Esq.
Heller Ehrman White & McAuliffe
701 Fifth Avenue
Seattle, WA 98104
Telecopy: (206) 447-0849

(b) If to Warrant Agent:

Mellon Investor Services LLC

520 Pike Street, Suite 1220
Seattle, WA 98101
Attn: U. Julie Roh

Any notice or communication mailed to a Holder will be mailed to the Holder at the Holder's address as it appears on the Certificate Register and will be sufficiently given if so mailed within the time prescribed. Failure to mail a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

7.4 GOVERNING LAW. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE.

7.5 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

7.6 Entire Agreement, Etc. (a) This Agreement constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, between the parties, with respect to the subject matter hereof, and (b) this Agreement will not be assignable by operation of law or otherwise, except as provided herein with respect to any Successor Company or Successor Warrant Agent (any such other attempted assignment in contravention hereof being null and void).

7.7 Counterparts and Facsimile. For the convenience of the parties hereto, this Agreement may be executed in any number of separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same agreement. Executed signature pages to this Agreement may be delivered by facsimile and such facsimiles will be deemed as sufficient as if actual signature pages had been delivered.

7.8 Captions. The Article, Section and paragraph captions herein are for convenience of reference only, do not constitute part of this Agreement and will not be deemed to limit or otherwise affect any of the provisions hereof.

7.9 Severability. If any provision of this Agreement or the application thereof to any person (including, without limitation, the officers and directors of the Warrant Agent and the Company) or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, will remain in full force and effect and will in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination, the parties will negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

7.10 No Third-Party Beneficiaries. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any Person other than the parties hereto, any benefit, right or remedies.

7.11 Successors. All agreements of the Company in this Agreement and the Warrant Certificates will bind its successors. All agreements of the Warrant Agent in this Agreement will bind its successors.

[Remainder of Page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

WASHINGTON MUTUAL, INC.

By: /s/ Fay L. Chapman

Name: Fay L. Chapman
Title: Senior Executive Vice President

MELLON INVESTOR SERVICES LLC,
as Warrant Agent,

By: /s/ U. Julie Roh

Name: U. Julie Roh
Title: Assistant Vice President

EXHIBIT A

[FORM OF FACE OF WARRANT CERTIFICATE]

[Unless and until it is exchanged in whole or in part for Warrants in definitive

form, this Warrant may not be transferred except as a whole by the depositary to a nominee of the depositary or by a nominee of the depositary to the depositary or another nominee of the depositary or by the depositary or any such nominee to a successor depositary or a nominee of such successor depositary. The Depository Trust Company ("DTC") (55 Water Street, New York, New York) will act as the depositary until a successor will be appointed by the Company and the Warrant Agent. Unless this certificate is presented by an authorized representative of DTC to the issuer or its agent for registration of transfer, exchange or Amount Recovered, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any Amount Recovered is made to Cede & Co. or such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]*

WASHINGTON MUTUAL, INC.

LITIGATION TRACKING WARRANT

No. _____

Certificate for _____ Litigation Tracking Warrants to
Purchase Shares of Common Stock
of Washington Mutual, Inc.

THIS CERTIFIES THAT, _____, or registered assigns, is the registered holder of the number of Litigation Tracking Warrants set forth above (the "Warrants"). Each Warrant entitles the holder thereof (the "Holder"), at its option and subject to the provisions contained herein and in the Warrant Agreement referred to below, to purchase from Washington Mutual, Inc. (the "Company"), successor by merger to DIME BANCORP, INC., a Delaware corporation ("Dime"), the number of shares of Common Stock ("Warrant Shares"), no par value per share, of the Company (the "Common Stock") equal to the Adjusted Litigation Recovery divided by the product of (1) the Adjusted Stock Price, multiplied by (2) the Maximum Number of Warrants, multiplied by (3) the Dime Exchange Ratio (1.1232), at an exercise price per Warrant equal to the number of shares of Common Stock for which one Warrant is exercisable multiplied by the Exercise Price, if any. This Warrant Certificate will terminate and become void on the earliest of (i) the Close of Business on the last day of the Warrant Exercise Period, (ii) the Close of Business on the date the Litigation has been disposed of in a manner such that no shares of Common Stock or other securities or property will be issuable under the terms of the Warrants and (iii) the time and date such Warrant is exercised.

_____

* To be included only if the Warrant is in global form.

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This Warrant Certificate and each Warrant represented hereby are issued pursuant to and are subject in all respects to the terms and conditions contained in a 2003 Amended and Restated Warrant Agreement dated as of March 11, 2003 as such agreement may be amended from time to time (the "Warrant Agreement"), between the Company, as successor to Dime, and Mellon Investor Services LLC, as successor to EquiServe Trust Company, N.A. and EquiServe

Limited Partnership, as warrant agent (in such capacity, the "Warrant Agent", which term includes any successor Warrant Agent under the Warrant Agreement), to all of which terms and provisions the Holder of this Warrant Certificate consents by acceptance hereof. The Warrant Agreement is hereby incorporated herein by reference and made a part hereof. Reference is hereby made to the Warrant Agreement for a full statement of the respective rights, limitations of rights, duties and obligations of the Company, the Warrant Agent and the Holders of the Warrants. Capitalized terms used but not defined herein will have the meanings ascribed thereto in the Warrant Agreement. A copy of the Warrant Agreement may be obtained for inspection by the Holder hereof upon written request to the Warrant Agent.

Subject to the terms of the Warrant Agreement, the Warrants may be exercised in whole or in part by surrender of this Warrant Certificate with the form of election to purchase Warrant Shares attached hereto duly executed and with the simultaneous payment of the Exercise Price in cash (subject to adjustment) to the Warrant Agent for the account of the Company at the office of the Warrant Agent. Payment of the Exercise Price will be made by certified or official bank check or personal check payable to the order of the Company or by wire transfer of funds to an account designated by the Company for such purpose. No fractional Warrant Shares will be issued upon the exercise of any Warrant, but the Company will pay cash in lieu of a fractional share as provided in the Warrant Agreement.

As provided in the Warrant Agreement and subject to the terms and conditions therein set forth, each Warrant will be exercisable at any time from and from time to time during the Warrant Exercise Period only and will not be exercisable after the expiration of the Warrant Exercise Period.

The Warrant Agreement provides that upon the occurrence of certain events the number of Warrant Shares may be, subject to certain conditions, adjusted.

The Company may require payment of a sum sufficient to pay all taxes and other governmental charges in connection with the transfer or exchange of the Warrant Certificates.

The holder in whose name the Warrant Certificate is registered may be deemed and treated by the Company and the Warrant Agent as the absolute owner of the Warrant Certificate for all purposes whatsoever and neither the Company nor the Warrant Agent will be affected by any notice to the contrary.

The Warrants represent a contingent right to purchase shares of Common Stock with an aggregate value based on a portion of any proceeds that may be received by the Bank from the Litigation. There can be no assurance as to when the Litigation will be resolved or the amount of proceeds, if any, the Bank or the Company will receive therefrom. The Holders will not have any right to control or manage the course or disposition of the Litigation or the proceeds of any recovery therefrom.

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The Warrants do not entitle any holder hereof to any of the rights of a holder of any Common Stock or Preferred Stock of the Company.

This Warrant Certificate will not be valid or obligatory for any

purpose until it will have been countersigned by the Warrant Agent.

WASHINGTON MUTUAL, INC.

By _____

[SEAL]

Attest: _____
Secretary

DATED:

Countersigned:
[_____]
as Warrant Agent,

by _____
Authorized Signatory

<PAGE>

EXHIBIT B

FORM OF ELECTION TO PURCHASE WARRANT SHARES
(to be executed only upon exercise of Warrants)

WASHINGTON MUTUAL, INC.

The undersigned hereby irrevocably elects to exercise [ ] Warrants at an exercise price per Warrant of $[ ] to acquire [ ] shares of Common Stock, no par value per share, of Washington Mutual, Inc. (the "Company"), on the terms and conditions specified in the within Warrant Certificate and the Warrant Agreement therein referred to, surrenders this Warrant Certificate and all right, title and interest therein to the Company, and directs that the shares of Common Stock deliverable upon the exercise of such Warrants be registered and delivered in the name and at the address specified below and delivered thereto.

Date: _____, ____

_____
(Signature of Owner)*

_____
(Street Address)

_____
(City) (State) (Zip Code)

_____
Signature Guaranteed by:

_____

* The signature must correspond with the name as written upon the face of the within Warrant Certificate in every particular, without alteration or enlargement or any change whatever, and must be guaranteed by a national bank or trust company or by a member firm of any national securities exchange.

<PAGE>

Securities and/or check to be issued to:

Name:_____

Social security or Federal tax identification number:_____

Street Address:_____

City, State and Zip Code:_____

Any unexercised Warrants evidenced by the within Warrant Certificate to be issued to:

Name:_____

Social security or Federal tax identification number:_____

Street Address:_____

City, State and Zip Code:_____

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EXHIBIT C

The following exchanges of a part of this Global Warrant for definitive Warrants have been made:

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR
REGISTRATION OF TRANSFER OF WARRANTS

Re: Warrants to Purchase Common Stock (the "Warrants") of Washington Mutual, Inc. (the "Company")

This Certificate relates to _____ Warrants held in definitive form by _____ (the "Transferor").

The Transferor has requested the Warrant Agent by written order to exchange or register the transfer of a Warrant or Warrants. The Warrant Agent and the Company are entitled to rely upon this Certificate and are irrevocably authorized to produce this Certificate or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

[INSERT NAME OF TRANSFEROR]

by _____

Date: _____

</TEXT>
</DOCUMENT>

EXHIBIT I

<DOCUMENT>
<TYPE>EX-3
<SEQUENCE>2
<FILENAME>0002.txt
<DESCRIPTION>FORM OF WARRANT AGREEMENT
<TEXT>

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Exhibit 3

Form of

Warrant Agreement

Dated as of

December [ ], 2000

among

Dime Bancorp, Inc.

EquiServe Trust Company, N.A.

and

EquiServe Limited Partnership

as the Warrant Agent

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Article VII

Miscellaneous

Warrant Agreement, dated as of December [ ], 2000 (this "Agreement"), among Dime Bancorp, Inc., a Delaware corporation (the "Company") and EquiServe Trust Company, N.A. and EquiServe Limited Partnership collectively as Warrant Agent (in such capacity, the "Warrant Agent").

Recitals

A. The Board of Directors of the Company has authorized a distribution (the "Distribution") of one Litigation Tracking Warrant(TM) (a "Warrant") for each share of the Company's common stock, par value $0.01 per share ("Common Stock"), outstanding as of the Close of Business (as defined below) on the Record Date (as defined below). Each Warrant represents the right to purchase shares or a portion of a share of Common Stock (subject to adjustment as provided herein), upon the terms and subject to the conditions herein set forth.

B. In order to issue Warrants in the Distribution and to issue Warrants to holders of outstanding Convertible Securities (as defined herein) who exercise or convert such Convertible Securities at any time and from time to time before the occurrence of the Trigger (as defined herein), the Company has determined to enter into this Agreement with the Warrant Agent.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

Article I

Defined Terms

1.1 Definitions. As used in this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

"Adjusted Litigation Recovery" means an amount equal to 85% of the amount obtained from the following equation: (a) the Amount Recovered minus (b) the sum of the following: (i) the total of all expenses incurred by or on behalf of

the Bank and the Company in pursuing the Litigation and obtaining the Amount Recovered (whether incurred before or after the date hereof), including, without limitation, fees and expenses of counsel, witnesses, experts and consultants, (ii) the total of all expenses incurred by the Company in connection with the creation, issuance and trading of the Warrants, including, without limitation, legal, financial advisory and accounting fees, the fees and expenses of the Warrant Agent and printing and registration costs (whether incurred before or after the date hereof) and (iii) an amount equal to the Amount Recovered, less the expenses described in the preceding clauses (i) and (ii), multiplied by the combined highest federal, New York State and New York City income tax rates applicable to financial institutions in the year (or years) in which the amount of the damages (in whole or in part) is fixed or determinable (after taking into account the effect of the deductibility of such taxes for federal and state income tax purposes).

"Adjusted Stock Price" means the average of the daily Closing Prices of a share of Common Stock for the thirty consecutive Trading Days ending on and including the Determination Date minus $0.01; provided, that if the context in which this defined term is used is with respect to securities other than shares of Common Stock, then "Adjusted Stock Price" means the average of the daily Closing Prices of a unit of such securities for the thirty consecutive Trading Days ending on and including the Determination Date minus the exercise price determined for such securities in the manner described in Section 4.3; and provided, further that if the context in which this defined term is used is with respect to property other than publicly traded securities, then "Adjusted Stock Price" means the Fair Market Value of the amount of such property distributable in respect of one share of Common Stock.

"Amount Recovered" means the aggregate amount of any cash payment and the Fair Market Value of any property or assets actually received by the Bank pursuant to a final, nonappealable judgment in or final settlement of the Litigation (including any post-judgment interest actually received by the Bank on any Amount Recovered).
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"Assistant Secretary" means any assistant secretary or person of similar title of the Company.

"Bank" means The Dime Savings Bank of New York, FSB, a federally chartered savings bank or any successor thereto.

"Board" means the Board of Directors of the Company or any committee thereof duly authorized to act on behalf of such Board of Directors.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

"Close of Business" on any given date means 5:00 P.M., New York City time, on such date; provided, however, that if such date is not a Business Day it will mean 5:00 P.M., New York City time, on the next succeeding Business Day.

"Closing Price" on any day means the closing sale price regular way (with any relevant due bills attached) of a share of Common Stock on such day, or in case no such sale takes place on such day, the average of the reported closing bid and asked prices regular way (with any relevant due bills attached) of a share of Common Stock, in each case on the NYSE Composite Tape (or any successor composite tape reporting transactions on national securities exchanges), or, if the Common Stock is not listed or admitted to trading on the NYSE, on the principal national securities exchange on which the Common Stock

is listed or admitted to trading (which will be the national securities exchange on which the greatest number of shares of Common Stock has been traded during the five consecutive Trading Days ending on and including the Determination Date), or, if not listed or admitted to trading on any national securities exchange, the average of the closing bid and asked prices regular way (with any relevant due bills attached) of a share of Common Stock on the over-the-counter market on the day in question as reported by NASDAQ, or a similar generally accepted reporting service, or if not so available as determined in good faith by the Board, on the basis of such relevant factors as it in good faith considers appropriate.

"Combination" means an event in which the Company consolidates with, merges with or into, or sells all or substantially all its property and assets to another Person.

"Determination Date" means the 30th calendar day before the date on which the Bank receives the total amount of the Amount Recovered unless such date is not a Trading Day, in which case the Determination Date will be the next succeeding Trading Day. If the Amount Recovered is payable by the United States Government in installments, the Determination Date will be the 30th calendar day before the date on which the Bank receives the last installment of the Amount Recovered unless such date is not a Trading Day, in which case the Determination Date will be the next succeeding Trading Day.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Fair Market Value" means the fair market value of the relevant property on the Determination Date as determined in good faith by the Board, on the basis of such factors as it in good faith considers appropriate.

"Holder" means the duly registered holder of a Warrant under the terms of this Agreement.

"Litigation" means the Bank's case against the United States Government in the United States Court of Federal Claims entitled Anchor Savings Bank, FSB v. United States, No. 95-39C, filed on January 13, 1995.

"NASDAQ" means the stock market and automated quotation system operated by the National Association of Securities Dealers, Inc.

"NYSE" means the stock exchange operated by New York Stock Exchange, Inc.

"Officer" means the Chief Executive Officer, the President or any Executive Vice President of the Company.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"Record Date" means the date fixed by the Board for the Distribution.

"SEC" means the Securities and Exchange Commission.

"Secretary" means the secretary of the Company.

"Securities Act" means the Securities Act of 1933, as amended.

"Trading Day" means a date on which the NYSE or NASDAQ (or any successor thereto) is open for the transaction of business.

"Trigger" means the occurrence of all of the following events: (a) receipt by the Bank of the Amount Recovered in full, (b) determination by the Bank of the amount of the Adjusted Litigation Recovery and (c) receipt of all regulatory approvals necessary to issue the shares of Common Stock to be issued upon the exercise of the Warrants, including without limitation, the effectiveness of a registration statement relating to the issuance of the Warrant Shares under the Securities Act.

"Warrant Shares" means the shares of Common Stock of the Company issued and received upon exercise of the Warrants.

1.2 Other Definitions

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Term	Defined in Section
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"Warrant Exercise Period"	3.2(b)

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Article II

Warrant Certificates

2.1 Issuance of Warrant Certificates. (a) As soon as practicable after the Record Date, the Warrant Agent will prepare and execute, the Company will countersign, and the Warrant Agent will send by first-class, postage-prepaid mail or other means as required by the Warrant Agent's insurance, to each

record holder of Common Stock as of the Close of Business on the Record Date, at the address of such holder shown on the records of the Company, one or more Warrant Certificates, in substantially the form of Exhibit A hereto (a "Warrant Certificate"), evidencing one Warrant for each share of Common Stock held.

(b) At any time and from time to time before the Trigger occurs, the Company may cause the Warrant Agent to issue, in accordance with the provisions of this Article 2, Warrants to holders of stock options of the Company (the "Stock Options") that were outstanding on the Record Date, who exercise or convert such Convertible Securities into shares of Common Stock and Warrants in accordance with the terms and conditions of such Convertible Securities.

(c) The maximum number of Warrants (the "Maximum Number of Warrants") that may be issued hereunder is equal to (i) the number of shares of Common Stock outstanding on the Record Date plus (ii) the number of Warrants that holders of Convertible Securities would be entitled to receive had such Convertible Securities been exercised immediately before the Record Date.

2.2 Form and Dating. The Warrant Certificates will be substantially in the form of Exhibit A, hereto. The Warrants may have such notations, legends or endorsements as the Company may deem appropriate and as are not inconsistent with the provisions hereof or as may be required by law, stock exchange or stock market rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). Each Warrant will be dated the date of its countersignature.

(a) Certificated Warrants. The Warrants may be issued in definitive form represented by a physical Warrant Certificate (such certificate and all other certificates representing physical delivery of Warrants in definitive form being called "Certificated Warrants").

(b) Global Warrant. The Warrants may be issued in the form of one or more fully registered global certificates with the global securities legend set forth in Exhibit A hereto (the "Global Warrant"), which will be registered in the name of the Warrant Agent on behalf of beneficial owners of Warrants and deposited in an account with the Depository Trust Company (or with such other custodian as it may direct) ("DTC") , and registered in the name of DTC or a nominee of DTC, duly executed by the Company and countersigned by the Warrant Agent as hereinafter provided. The number of Warrants represented by Global Warrants may from time to time be increased or decreased by adjustments made on the records of the Warrant Agent and DTC or its nominee as hereinafter provided. Except as provided in Section 2.5, owners of beneficial interests in a Global Warrant will not be entitled to receive physical delivery of Certificated Warrants.

(c) Book-Entry Provisions. Members of, or participants in, DTC ("Agent Members") will have no rights under this Agreement with respect to any Global Warrant held on their behalf with DTC or by the Warrant Agent or under such Global Warrant, and DTC may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Global Warrant for all purposes whatsoever. Notwithstanding the foregoing, nothing herein will prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of a holder of a beneficial interest in any Global Warrant.

2.3 Execution and Countersignature. (a) With respect to any Global Warrant to be issued hereunder, one Officer will sign, and the Secretary or any

Assistant Secretary will attest, such Global Warrant. The Warrant

Agent, upon the written order of the Company signed by an Officer, will countersign any Global Warrant certificate by manual or facsimile signature, and such Global Warrant will be deposited in accordance with Section 2.2(b) hereof.

(b) With respect to all other Warrants, an Officer will sign, and the Company's Secretary or any of its Assistant Secretaries will attest, the Warrant Certificates for the Company by manual or facsimile signature. The Warrant Agent will countersign and deliver the Warrant Certificates for original issue, in each case upon a written order of the Company signed by an Officer of the Company. Such order will specify (in addition to the number of Warrants) the date on which the original issue of Warrants is to be countersigned.

(c) If an Officer whose signature is on a Warrant Certificate no longer holds that office at the time the Warrant Agent countersigns the Warrant Certificate, the Warrant will be valid nevertheless. A Warrant will not be valid until an authorized signatory of the Warrant Agent manually countersigns the Warrant Certificate. The signature will be conclusive evidence that the Warrant Certificate has been countersigned under this Agreement.

(d) The Warrant Agent may appoint an agent reasonably acceptable to the Company to countersign the Warrant Certificates. Unless limited by the terms of such appointment, such agent may countersign Warrant Certificates whenever the Warrant Agent may do so. Each reference in this Agreement to countersignature by the Warrant Agent includes by such agent. Such agent will have the same rights as the Warrant Agent for service of notices and demands.

2.4 Certificate Register. The Warrant Agent will keep a register (the "Certificate Register") of the Warrant Certificates and of their transfer and exchange which the Company may examine upon reasonable notice. The Certificate Register will show the names and addresses of the respective Holders and the date and number of Warrants evidenced on the face of each of the Warrant Certificates. The Company and the Warrant Agent may deem and treat the Person in whose name a Warrant Certificate is registered as the absolute owner of such Warrant Certificate and neither the Company nor the Warrant Agent will be affected by notice to the contrary.

2.5 Transfer and Exchange.

(a) Transfer and Exchange of Certificated Warrants. When Certificated Warrants are presented to the Warrant Agent with a request to register the transfer or exchange of such Certificated Warrants, the Warrant Agent will register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Certificated Warrants surrendered for transfer or exchange will be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Warrant Agent, duly executed by the Holder thereof or its attorney duly authorized in writing.

(b) Restrictions on Transfer of Certificated Warrants for a Beneficial Interest in a Global Warrant. Certificated Warrants may not be exchanged for a beneficial interest in a Global Warrant except upon satisfaction of the requirements set forth below. Upon receipt by the Warrant Agent of Certificated Warrants, duly endorsed or accompanied by appropriate instruments of transfer,

in form satisfactory to the Warrant Agent, together with written instructions directing the Warrant Agent to make, or to direct DTC to make, an adjustment on its books and records with respect to such Global Warrants to reflect an increase in the number of Warrants represented by the Global Warrant, then the Warrant Agent will cancel such Certificated Warrants and cause, or direct DTC to cause, in accordance with the standing instructions and procedures existing between DTC and the Warrant Agent, the number of Warrants represented by the Global Warrant to be increased accordingly.

(c) Transfer and Exchange of Global Warrants. The transfer and exchange of beneficial interests in a Global Warrant will be effected through DTC, in accordance with this Agreement and the procedures of DTC.

(d) Restrictions on Transfer and Exchange of the Global Warrant. Notwithstanding any other provisions of this Agreement, Global Warrants may not be transferred as a whole except by DTC to a nominee of DTC or by a nominee of DTC to DTC or another nominee of DTC or by DTC or any such nominee to a successor depositary or a nominee of such successor depositary.

(e) Authentication and Distribution of Certificated Warrants. If at any time:

(i) DTC notifies the Company that DTC is unwilling or unable to continue as depositary for Global Warrants and a successor depositary for Global Warrants is not appointed by the Company within 90 calendar days after delivery of such notice;

(ii) DTC ceases to be a clearing agency registered under the Exchange Act; or

(iii) the Company, in its sole discretion, notifies the Warrant Agent in writing that it elects to cause the issuance of Certificated Warrants under this Agreement;

then, the Company will execute, and the Warrant Agent, upon receipt of a written order of the Company signed by an Officer requesting the delivery of Certificated Warrants to the holders of beneficial interests in the Global Warrant, will countersign and deliver Certificated Warrants equal to the number of Warrants represented by Global Warrants, in exchange for such Global Warrants. Certificated Warrants issued in exchange for a beneficial interest in a Global Warrant will be registered in such names and in such authorized denominations as DTC, pursuant to instructions from its direct or indirect participants or otherwise, will instruct the Warrant Agent. The Warrant Agent will deliver such Certificated Warrants to the Persons in whose names such Warrants are so registered in accordance with the instructions of DTC.

(f) Cancellation or Adjustment of Global Warrants. At such time as all beneficial interests in Global Warrants have either been exchanged for Certificated Warrants, redeemed, repurchased or canceled, such Global Warrant will be returned to DTC for cancellation or retained and canceled by the Warrant Agent. At any time before such cancellation, if any beneficial interest in a Global Warrant is exchanged for Certificated Warrants, redeemed, repurchased or canceled, the number of Warrants represented by such Global Warrant will be reduced and an adjustment will be made on the books and records of the Warrant Agent with respect to such Global Warrant, by the Warrant Agent or DTC, to reflect such reduction.

(g) Obligations with Respect to Transfers and Exchanges of Warrants.

(i) To permit registrations of transfers and exchanges, the Company will execute and the Warrant Agent will countersign Certificated Warrants and Global Warrants as required pursuant to the provisions of this Section 2.5.

(ii) All Certificated Warrants and Global Warrants issued upon any registration of transfer or exchange of Certificated Warrants will be the valid obligations of the Company, entitled to the same benefits under this Agreement as the Certificated Warrants or Global Warrants surrendered upon such registration of transfer or exchange.

(iii) Before due presentment for registration of transfer of any Warrant, the Warrant Agent and the Company may deem and treat the Person in whose name any Warrant is registered as the absolute owner of such Warrant and neither the Warrant Agent nor the Company will be affected by notice to the contrary.

(iv) No service charge will be made to a Holder for any registration of transfer or exchange upon surrender of any Warrant Certificate at the office of the Warrant Agent maintained for that purpose. The Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Warrant Certificates.

2.6 Replacement Certificates. If a mutilated Warrant Certificate is surrendered to the Warrant Agent or if the Holder of a Warrant Certificate claims that the Warrant Certificate has been lost, destroyed or wrongfully taken, the Company will issue and the Warrant Agent will countersign a replacement Warrant Certificate if the

reasonable requirements of the Warrant Agent and of Section 8-405 of the Uniform Commercial Code as in effect in the State of New York are met. If required by the Warrant Agent or the Company, such Holder will furnish an indemnity bond or other instrument sufficient in the judgment of the Company and the Warrant Agent to protect the Company and the Warrant Agent from any loss which either of them may suffer if a Warrant Certificate is replaced. The Company and the Warrant Agent may charge the Holder for their expenses in replacing a Warrant Certificate.

2.7 Temporary Certificates. Until definitive Warrant Certificates are ready for delivery, the Company may prepare and the Warrant Agent will countersign temporary Warrant Certificates. Temporary Warrant Certificates will be substantially in the form of definitive Warrant Certificates but may have variations that the Company considers appropriate for temporary Warrant Certificates. Without unreasonable delay, the Company will prepare and the Warrant Agent will countersign definitive Warrant Certificates and deliver them in exchange for temporary Warrant Certificates.

2.8 Cancellation. (a) In the event the Company will purchase or otherwise acquire Certificated Warrants, the same will thereupon be delivered to the Warrant Agent for cancellation.

(b) The Warrant Agent and no one else will cancel and destroy all Warrant Certificates surrendered for transfer, exchange, replacement, exercise or cancellation and deliver a certificate of such destruction to the Company unless the Company directs the Warrant Agent to deliver canceled Warrant

Certificates to the Company. The Company may not issue new Warrant Certificates to replace Warrant Certificates to the extent they evidence Warrants that have been exercised or Warrants that the Company has purchased or otherwise acquired.

2.9 Purchase of Warrants by the Company. The Company will have the right, except as limited by law or other agreement, to purchase or otherwise acquire Warrants at such times, in such manner and for such consideration as it may deem appropriate.

Article III

Exercise Terms

3.1 Number of Warrant Shares; Exercise Price. Each Warrant will, upon exercise thereof as provided herein, initially entitle the Holder thereof to purchase the number of shares of Common Stock having an Adjusted Stock Price equal to the Adjusted Litigation Recovery divided by the Maximum Number of Warrants at an exercise price per Warrant equal to the number of shares of Common Stock for which the Warrant is exercisable multiplied by $0.01 (the "Exercise Price"). All calculations made pursuant to this Section 3.1 will be rounded to the nearest ten-thousandth. When exercising Warrants, a Holder shall pay a total Exercise Price of $0.01 per each whole share of Common Stock the Holder will receive upon such exercise.

3.2 Exercise Period. (a) The Company will provide notice, as described below (the "Exercise Notice") to each Holder and the Warrant Agent, of the occurrence of the Trigger not more than 15 calendar days after the occurrence thereof. If the Amount Recovered is payable by the United States government in installments, the Trigger will not be deemed to have occurred until the Bank receives the last installment of the Amount Recovered. The Exercise Notice will be dated the date it is first sent to Holders and will be provided by means of a press release to one or more national news services and by mailing such notice first class, postage prepaid, to each Holder at such Holder's address as it appears on the Certificate Register; provided, however, that neither the failure to give such notice by mail to any particular Holder nor any defect therein will affect the validity of the Exercise Notice or the expiration of all Warrants on the Close of Business on the last day of the Warrant Exercise Period with respect to the other Holders. The Exercise Notice will contain the following information:

(i) that the Trigger has occurred,

(ii) the total number of shares for which the Warrants are exercisable,

(iii) the number of shares of Common Stock for which one Warrant is exercisable,

(iv) the Exercise Price per Warrant,

(v) the manner in which the Warrants are exercisable, and

(vi) the date on which the Warrants will no longer be exercisable.

(b) Subject to the terms and conditions set forth herein, each Warrant will be exercisable at any time or from time to time during the 60-day period commencing on the date on which the Exercise Notice is first sent to Holders

pursuant to Section 3.2(a) (the "Warrant Exercise Period").

(c) No Warrant will be exercisable after the Close of Business on the last day of the Warrant Exercise Period.

3.3 Expiration. A Warrant will terminate and become void as of the earlier of the Close of Business on the last day of the Warrant Exercise Period, the Close of Business on the date the Litigation has been disposed of in a manner such that no shares of Common Stock or other securities or property will be issuable under the terms of the Warrants (the "Termination Date") or the time and date such Warrant is exercised. The Company will provide notice, as described below (the "Termination Notice"), of the occurrence of the Termination Date or the expiration of the Warrant Exercise Period not more than 60 calendar days after the occurrence thereof. The Termination Notice will be dated the date it is first sent to Holders and will be provided by means of a press release to one or more national news services and by mailing such notice first class, postage prepaid, to each Holder at such Holder's address as it appears on the Certificate Register. The Termination Notice will state the following:

(i) that the Termination Date has occurred or the Warrant Exercise Period has expired, as the case may be, and

(ii) that all outstanding Warrants have terminated and become void.

The Warrants will terminate and become void as provided herein notwithstanding the Company's failure to give the Termination Notice.

3.4 Manner of Exercise. Warrants may be exercised upon (i) surrender to the Warrant Agent of the Warrant Certificates, together with the form of election to purchase Common Stock on the reverse thereof properly completed and validly executed by the Holder thereof and (ii) payment to the Warrant Agent, for the account of the Company, of the total Exercise Price for the number of Warrants being exercised. Such payment will be made by certified or official bank check or personal check payable to the order of the Company. Subject to Sections 3.2 and 3.3, the Warrants will be exercisable at the election of the Holders thereof either in full at any time or from time to time in part. In the event that a Warrant Certificate is surrendered for exercise in respect of less than all the Warrant Shares purchasable on such exercise at any time before the expiration of the Warrant Exercise Period a new Warrant Certificate exercisable for the remaining Warrant Shares will be issued and its exercise will also be subject to Sections 3.2 and 3.3. The Warrant Agent will countersign and deliver the required new Warrant Certificates, and the Company, at the Warrant Agent's request, will supply the Warrant Agent with Warrant Certificates duly signed on behalf of the Company for such purpose. The Warrant Agent will account promptly to the Company with respect to all Warrants exercised and concurrently pay to the Company all moneys received by the Warrant Agent for the purchase of shares of Common Stock through the exercise of such Warrants.

3.5 Issuance of Warrant Shares. Subject to Section 3.6, upon the surrender of Warrant Certificates and payment of the Exercise Price in accordance with Section 3.4, the Company will issue and cause the Warrant Agent or, if appointed, a transfer agent for the Common Stock ("Transfer Agent") to countersign and deliver to or upon the written order of the Holder and in such name or names as the Holder may designate, a certificate or certificates for the number of full Warrant Shares so purchased upon the exercise of such Warrants or such other securities or property to which it is entitled, to the Person or Persons entitled to receive the same, together

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with cash as provided in Section 3.6 in respect of any fractional Warrant Shares. Such certificate or certificates will be deemed to have been issued and any Person so designated to be named therein will be deemed to have become a holder of record of such Warrant Shares as of the date of the surrender of such Warrant Certificates and payment of the Exercise Price.

3.6 Fractional Warrant Shares. The Company will not issue fractional Warrant Shares. If any fraction of a Warrant Share would, except for this Section 3.6, be issuable, the Company will pay an amount in cash equal to (a) the sum of (i) the Adjusted Stock Price and (ii) $0.01 (the Exercise Price per whole Warrant Share that would have been received), multiplied by (b) such fraction. Such cash amount will be rounded to the nearest whole cent.

3.7 Reservation of Warrant Shares. (a) The Company will use its best efforts to at all times keep reserved and available out of its authorized and unissued shares of Common Stock or shares of Common Stock held in its treasury a number of shares of Common Stock sufficient to provide for the exercise in full of all Warrants then outstanding or reserved for issuance pursuant to Section 2.1. The registrar for the Common Stock (the "Registrar") will at all times until the Termination Date, or the time at which all Warrants have been exercised or canceled, reserve such number of authorized shares as will be required for such purpose. The Company will keep a copy of this Agreement on file with the Registrar. The Company will supply such Registrar with duly executed stock certificates for such purpose and will itself provide or otherwise make available any cash which may be payable as provided in Section 3.6. The Company will furnish to such Registrar a copy of all notices of adjustments and certificates related thereto transmitted to each Holder.

(b) If, upon the Trigger, the number of shares of Common Stock authorized but not issued plus the number of shares of Common Stock held in the Company's treasury is less than the number of shares of Common Stock necessary to permit the exercise in full of the Warrants then outstanding or reserved for issuance pursuant to Section 2.1 (the number of shares of Common Stock comprising such deficiency being the "Number of Shortfall Shares"), then the Company will either (i) to the extent permitted by applicable law and any material agreements then in effect to which the Company is a party, commence a tender offer or buyback for the aggregate number of shares of Common Stock at least equal to the Number of Shortfall Shares or (ii) call a special meeting of the holders of Common Stock for the purpose of increasing the number of authorized shares of Common Stock in an amount at least equal to the Number of Shortfall Shares. In such an event, the Warrant Exercise Period will be automatically extended to 60 calendar days after (A) the date on which the tender offer or buyback referred to in clause (i) above is successfully completed or (B) the effective date of the increase in the number of authorized shares of Common Stock referred to in clause (ii) above.

(c) The Company covenants that all shares of Common Stock that may be issued upon exercise of Warrants will, upon issue, be fully paid, nonassessable, free of preemptive rights, free from all taxes, liens, charges and security interests, created by or through the Company, with respect to the issue thereof.

3.8 Compliance with Law. (a) Notwithstanding anything in this Agreement to the contrary, in no event will a Holder be entitled to exercise a Warrant unless (i) a registration statement filed under the Securities Act in respect of the issuance of the Warrant Shares is then effective or (ii) an exemption from such registration requirements is available to all Holders under the Securities Act at the time of such exercise.

(b) If any shares of Common Stock required to be reserved for purposes of exercise of Warrants require, under any other Federal or state law or applicable governing rule or regulation of any national securities exchange or stock market, registration with or approval of any governmental authority, or listing on any such national securities exchange or stock market before such shares may be issued upon exercise, the Company will cause such shares to be duly registered or approved by such governmental authority or listed on the relevant national securities exchange or stock market.

3.9 Holders Not Entitled to Interest. Notwithstanding anything to the contrary, Holders will not be entitled to receive any interest or additional shares of our common stock for any period, including, without limitation, the period of time between the date on which the Bank receives the Amount Recovered (in full or in part) and the date on which the Warrants become exercisable.

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Article IV

Adjustments

4.1 Reclassifications, Redesignations or Reorganizations of Common Stock. (a) In the event that at any time or from time to time after the date hereof the Company will issue by reclassification, redesignation or reorganization of the shares of Common Stock any shares of capital stock of the Company then, in any such event, the Holders will have the right to receive upon exercise of each Warrant the number of shares of such capital stock of the Company equal to the Adjusted Litigation Recovery divided by the Maximum Number of Warrants divided by the aggregate Adjusted Stock Price of the capital stock of the Company that one share of Common Stock was exchanged for or converted into as a result of such reclassification, redesignation or reorganization.

(b) The proportion and type of capital stock of the Company that the Holders will have the right to receive in the circumstance set forth in Section 4.1(a) will be in the same proportion and type as one share of Common Stock was exchanged for or converted into as a result of such reclassification, redesignation or reorganization. Such adjustment will become effective immediately after the effective date of such reclassification, redesignation or reorganization. In the event of the occurrence of more than one of the foregoing, such adjustments will be made successively.

4.2 Combination. (a) Except as provided in Section 4.2(c), in the event of a Combination, the Holders will have the right to receive upon exercise of each Warrant the number of shares of capital stock or other securities or an amount of property equal to the Adjusted Litigation Recovery divided by the Maximum Number of Warrants divided by the aggregate Adjusted Stock Price of the capital stock, other securities or property that one share of Common Stock was exchanged for or converted into as a result of such Combination.

(b) The proportion and type of capital stock, other securities or property that the Holders will have the right to receive in the circumstance set forth in Section 4.2(a) will be in the same proportion and type as one share of Common Stock was exchanged for or converted into as a result of such Combination. The provisions of this Section 4.2 will similarly apply to successive Combinations involving the surviving or acquiring Person (the "Successor Company") in any Combination.

(c) In the event of a Combination where consideration is payable to holders

of Common Stock in exchange for their shares solely in cash, the Holders will have the right to receive upon exercise of each Warrant cash in an amount equal to the Adjusted Litigation Recovery divided by the Maximum Number of Warrants, less the Exercise Price. In case of any Combination described in this Section 4.2(c), the surviving or acquiring Person will promptly after the occurrence of the Trigger deposit with the Warrant Agent the funds necessary to pay to the Holders of the Warrants the amounts to which they are entitled as described above. After such funds and the surrendered Warrant Certificates are received, the Warrant Agent will make payment to the Holders by delivering a check in such amount as is appropriate to such Person or Persons as it may be directed in writing by the Holders surrendering such Warrants. No interest will accrue to the Holders or the surviving or acquiring Person on such funds.

(d) The Company will provide that any Successor Company will enter into an agreement with the Warrant Agent confirming the Holders' rights pursuant to this Section 4.2 and providing for adjustments, which will be as nearly equivalent as may be practicable to the adjustments provided for in this Article IV.

4.3 Exercise Price Adjustment. In case of any reclassification, redesignation or reorganization described in Section 4.1 or any Combination described in Section 4.2, the Exercise Price of one Warrant after such reclassification, redesignation, reorganization or Combination will equal (i) if the Warrants are exercisable into stock only or stock and any cash or property other than cash which is received instead of any fractional share of stock, the per share par value of such stock multiplied by the number of shares of such stock into which one Warrant is exercisable and (ii) if the Warrants are exercisable for cash or property only, $0.01. The Exercise Price may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the Board may determine in good faith to be equitable in the circumstances.

4.4 Other Events. If any event occurs as to which the foregoing provisions of this Article IV are not strictly applicable or, if strictly applicable, would not, in the good faith judgment of the Board, fairly and adequately protect the purchase rights of the Holders of the Warrants in accordance with the essential intent and principles of such provisions, then the Board may make, without the consent of the Holders, such adjustments to the terms of this Article IV, in accordance with such essential intent and principles, as will be reasonably necessary, in the good faith opinion of such Board, to protect such purchase rights as aforesaid.

4.5 Notice of Certain Transactions. In the event that the Company will publicly announce a plan (a) to effect any reclassification, redesignation or reorganization of its shares of Common Stock, (b) to effect any capital reorganization, consolidation or merger or (c) to effect the voluntary or involuntary dissolution, liquidation or winding-up of the Company, the Company will within 5 calendar days after such public announcement send to the Warrant Agent and the Warrant Agent will within 5 calendar days after receipt thereof send the Holders a notice (in such form as will be furnished to the Warrant Agent by the Company) of such proposed action, such notice to be mailed by the Warrant Agent to the Holders at their addresses as they appear in the Certificate Register, which notice will specify the expected date that such issuance or event is to take place and the expected date of participation therein by the holders of Common Stock and will briefly indicate the effect of such action on the Common Stock and on the number and kind of any other shares of stock and on other securities or property, if any, and the number of shares

of Common Stock and other securities or property, if any, purchasable upon exercise of each Warrant and the Exercise Price after giving effect to any adjustment which will be required as a result of such action.

4.6 Adjustment to Warrant Certificate. The form of Warrant Certificate need not be changed because of any adjustment made pursuant to this Article IV, and Warrant Certificates issued after such adjustment may have the same terms and conditions as are stated in any Warrant Certificates issued prior to the adjustment. The Company, however, may at any time in its sole discretion make any change in the form of Warrant Certificate that it may deem appropriate to give effect to such adjustments and that does not affect the substance of the Warrant Certificate, and any Warrant Certificate thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed.

Article V

Warrant Agent

5.1 Nature of Duties and Responsibilities Assumed.

(a) Appointment. The Company hereby appoints the Warrant Agent to act as agent of the Company as set forth in this Agreement. The Warrant Agent hereby accepts the appointment as agent of the Company and agrees to perform that agency upon the terms and conditions herein set forth, by all of which the Company and the Warrant Holders, by their acceptance thereof, will be bound.

(b) Authorization. Whenever in the performance of its duties under this Agreement, the Warrant Agent will deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by an Officer and delivered to the Warrant Agent; and such certificate will be full authorization to the Warrant Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon such certificate.

(c) Liability of Warrant Agent. The Warrant Agent will be liable hereunder only for its own negligence, bad faith or willful misconduct. The Warrant Agent will not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Warrant Certificates (except its countersignature on the Warrant Certificates and such statements or recitals describing the Warrant Agent or action taken or to be taken by it) or be required to verify the same, but all such statements and recitals are and will be deemed to have

been made by the Company only. The Warrant Agent will not have any liability or responsibility in respect of the legality, validity or enforceability of this Agreement or the execution and delivery hereof (except the due execution hereof by the Warrant Agent) or in respect of the validity or execution of any Warrant Certificate (except its countersignature thereof); nor will it be responsible or liable for any breach by the Company of any covenant or condition contained in this Agreement or in any Warrant Certificate; nor will it be responsible or liable for the making of any change in the number of shares of Common Stock required under the provisions of Article IV or responsible for the manner, method or amount of any such change or the ascertaining of the existence of any facts that would require any such adjustment or change; nor will it by any act

hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Agreement or any Warrant Certificate or as to whether any shares of Common Stock will, when issued, be validly issued, fully paid and nonassessable. The Warrant Agent will not be responsible or liable for any failure of the Company to comply with any of the covenants contained in this Agreement or in the Warrant Certificates to be complied with by the Company. The Warrant Agent will not incur any liability or responsibility to the Company or to any Warrant Holder for any action taken, or any failure to take action, in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument reasonably believed by the Warrant Agent to be genuine and to have been signed, sent or presented by the proper party or parties.

(d) Litigation. The Warrant Agent will be under no obligation to institute any action, suit or legal proceeding or take any other action likely to involve expense unless the Company or one or more Holders of Warrants will furnish the Warrant Agent with reasonable security and indemnity for any costs and expenses which may be incurred. All rights of action under this Agreement or under any of the Warrants may be enforced by the Warrant Agent without the possession of any of the Warrants or the production thereof at any trial or other proceeding relative thereto, and any such action, suit or proceeding instituted by the Warrant Agent will be brought in its name as Warrant Agent and any recovery of judgment will be for the ratable benefit of the Holders of the Warrants, as their respective rights or interests may appear. The Warrant Agent will promptly notify the Company in writing of any claim made or action, suit or proceeding instituted against it arising out of or in connection with this Agreement.

(e) Instructions from the Company. The Warrant Agent is hereby authorized and directed to accept written instructions with respect to the performance of its duties hereunder from an Officer, and to apply to any such Officer for advice or instructions in connection with the Warrant Agent's duties, and it will not be liable for any action taken or suffered to be taken or omitted by it in good faith in accordance with the instructions of any such Officer.

(f) Agents. The Warrant Agent may execute and exercise any of the rights and powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys, agents or employees, provided, however, reasonable care has been exercised in the selection and in the continued employment of any such attorney, agent or employee.

(g) Other Acts. The Company will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further acts, instruments and assurances as may reasonably be required by the Warrant Agent in order to enable it to carry out or perform its duties under this Agreement.

(h) Agreement as Source of Duties. The Warrant Agent will act hereunder solely as agent of the Company in a ministerial capacity, and its duties will be determined solely by the provisions hereof.

5.2 Right to Consult Counsel. The Warrant Agent may at any time consult with legal counsel satisfactory to it (who may be legal counsel for the Company) and the opinion of such counsel will be full and complete authorization and protection to the Warrant Agent as to any action taken, suffered or omitted by it in good faith in accordance with such opinion; provided, however, that the Warrant Agent will have exercised reasonable care in the selection of such counsel.

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5.3 Compensation and Reimbursement. The Company agrees to pay to the Warrant Agent from time to time compensation for all services rendered by it hereunder as set forth in the attached Exhibit D, and to reimburse the Warrant Agent for reasonable expenses and disbursements incurred in connection with the execution and administration of this Agreement (including the reasonable compensation and expenses of its counsel) except for expenses incurred as a result of the Warrant Agent's negligence, bad faith or willful misconduct.

5.4 Indemnification. The Company agrees to indemnify the Warrant Agent for, and to hold it harmless against, any loss, liability or expenses incurred without negligence, bad faith or willful misconduct on its part, arising out of or in connection with the acceptance and administration of this Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. In no case will either party be liable to the other party for special, indirect, incidental or consequential loss or damages of any kind whatsoever (including, but not limited to, lost profits), even if such party has been advised of the possibility of such damages.

5.5 Warrant Agent May Hold Company Securities. The Warrant Agent and any stockholder, director, officer or employee of the Warrant Agent may buy, sell or deal in any of the Warrants or other securities of the Company or its affiliates or have a pecuniary interest in any transaction in which the Company or its affiliates may be interested, or contract with or lend money to the Company or its affiliates or otherwise act as fully and freely as though it were not the Warrant Agent under this Agreement. Nothing herein will preclude the Company and its affiliates from engaging the Warrant Agent in any other capacity.

5.6 Change of Warrant Agent. The Warrant Agent may resign and be discharged from its duties under this Agreement upon 90 calendar days' prior notice in writing mailed, by registered or certified mail, to the Company. The Company may remove the Warrant Agent or any successor warrant agent upon 60 calendar days' prior notice in writing, mailed to the Warrant Agent or successor warrant agent, as the case may be, by registered or certified mail. Notwithstanding the foregoing, if the Warrant Agent becomes incapable of acting or is adjudged a bankrupt or insolvent or a receiver of the Warrant Agent or its property is appointed or any public officer takes control of the Warrant Agent or its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the Company may remove the Warrant Agent immediately. If the Warrant Agent resigns or is removed or otherwise becomes incapable of acting, the Company will appoint a successor to the Warrant Agent and will, within 30 calendar days following such appointment, give notice thereof in writing to each registered holder of the Warrant Certificates. If the Company fails to make such appointment within a period of 30 calendar days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Warrant Agent, then the Company agrees to perform the duties of the Warrant Agent hereunder until a successor warrant agent is appointed. After appointment, the successor warrant agent will be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Warrant Agent without further act or deed; but the former Warrant Agent will deliver and transfer to the successor Warrant Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for this purpose. Failure to give any notice provided for in this Section, however, or any defect therein will not affect the legality or validity of the resignation or removal of the Warrant Agent or the appointment of the successor warrant agent, as the case

may be.

Article VI

Rights of Holders

6.1 Holders not Stockholders. No Holder, as such, will be entitled to vote or to receive dividends or otherwise will be deemed to be the holder of shares of Common Stock for any purpose, nor will anything contained herein or in any Warrant Certificate be construed to confer upon any Holder, as such, any of the rights of a stockholder of the Company or any right to vote upon or give or withhold consent to any action of the Company (whether upon any reorganization, issuance of securities, reclassification or conversion of

Common Stock, consolidation, merger, sale, lease, conveyance or otherwise), receive notice of meetings or other action affecting stockholders (except for notices expressly provided for in this Agreement) or receive dividends or subscription rights, unless and until such Warrant Certificate will have been surrendered for exercise as provided in this Agreement, payment in respect of such exercise will have been received by the Warrant Agent, and shares of Common Stock will have become issuable thereunder and such person will have been deemed to have become a holder of record of such shares. No Holder will, upon the exercise of Warrants, be entitled to any dividends if the record date with respect to payment of such dividends will be a date prior to the date such shares of Common Stock became issuable upon the exercise of such Warrants.

6.2 Claims by Holders. All rights of action in respect of the Warrants will be vested in the respective Holders; provided, however, that no Holder will have the right to enforce, institute or maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of, the Warrants, unless (a) such Holder has previously given written notice to the Company of the substance of such dispute, and the Holders of at least 25% of the issued and outstanding Warrants have given written notice to the Company of their support for the institution of such proceeding to resolve such dispute, (b) such Holder has previously given written notice to the Warrant Agent of the substance of such dispute and of the support for the institution of such proceeding and (c) the Warrant Agent has not instituted appropriate proceedings with respect to such dispute within 30 days following the date of such written notice to the Warrant Agent, it being understood and intended that the Warrant Agent has no obligation to institute proceedings and that no one or more Holders will have the right in any manner whatsoever to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any rights of the Holders, except in the manner described in this Section 6.2 for the equal and ratable benefit of all Holders. Except as described above, no Holder will have the right to enforce, institute or maintain any suit, action or proceeding to enforce, or otherwise act in respect of, the Warrants.

6.3 Control of Litigation. The Bank will retain sole and exclusive control of the Litigation and will retain 100% of any recovery from the Litigation. The Holders will not have any right to control or manage the course or disposition of the Litigation or the proceeds of any recovery therefrom or any rights against the Company for any decision regarding the conduct of the Litigation or disposition of the Litigation for an amount less than the amount claimed in damages in the Litigation, regardless of the effect on the value of the Warrants.

6.4 Determination of Values. The determination of the Board of the Adjusted Litigation Recovery, the number of shares of Common Stock issuable upon exercise of a Warrant and the Exercise Price will be final, conclusive and binding upon the Holders.

Article VII

Miscellaneous

7.1 Information. So long as any Warrant remains outstanding, the Company will deliver to the Warrant Agent and the Holders its annual report to stockholders and any other documents that the Company, in its discretion, deems appropriate.

7.2 Amendment. This Agreement may be amended by the parties hereto without the consent of any Holder for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein or making any other provisions with respect to matters or questions arising under this Agreement as the Company and the Warrant Agent may deem necessary or desirable; provided, however, that such action will not affect adversely the rights of the Holders. Any amendment or supplement to this Agreement that has an adverse effect on the interests of the Holders will require the written consent of the Holders of a majority of the then outstanding Warrants. The consent of each Holder affected will be required for any amendment pursuant to which the Exercise Price would be increased or the number of Warrant Shares purchasable upon exercise of Warrants would be decreased (other than pursuant to adjustments provided for

herein). In determining whether the Holders of the required number of Warrants have concurred in any direction, waiver or consent, Warrants owned by the Company or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company will be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Warrant Agent will be protected in relying on any such direction, waiver or consent, only Warrants which the Warrant Agent knows are so owned will be so disregarded. Also, subject to the foregoing, only Warrants outstanding at the time will be considered in any such determination.

7.3 Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by telecopy or telefacsimile, upon confirmation of receipt, (b) on the first business day following the date of dispatch if delivered by a recognized next-day courier service, or (c) on the third business day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder will be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

(a) If to the Company:

James E. Kelly, Esq.
General Counsel
Dime Bancorp, Inc.
589 Fifth Avenue
New York, New York 10017
Telecopy: (212) 326-6110

with a copy to:

Mitchell S. Eitel, Esq.
Sullivan & Cromwell
125 Broad Street
New York, New York 10004
Telecopy: (212) 558-3588

(b) If to Warrant Agent:

EquiServe Trust Company, N.A.
c/o EquiServe Limited Partnership
150 Royall Street
Canton, MA 02021
Attn: Client Administration

Any notice or communication mailed to a Holder will be mailed to the Holder at the Holder's address as it appears on the Certificate Register and will be sufficiently given if so mailed within the time prescribed. Failure to mail a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

7.4 GOVERNING LAW. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE.

7.5 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

7.6 Entire Agreement, Etc. (a) This Agreement constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, between the parties, with respect to the subject matter hereof, and (b) this Agreement will not be assignable by operation of law or otherwise (any attempted assignment in contravention hereof being null and void).

7.7 Counterparts and Facsimile. For the convenience of the parties hereto, this Agreement may be executed in any number of separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same agreement. Executed signature pages to this Agreement may be delivered by facsimile and such facsimiles will be deemed as sufficient as if actual signature pages had been delivered.

7.8 Captions. The Article, Section and paragraph captions herein are for convenience of reference only, do not constitute part of this Agreement and will not be deemed to limit or otherwise affect any of the provisions hereof.

7.9 Severability. If any provision of this Agreement or the application thereof to any person (including, without limitation, the officers and directors of the Warrant Agent and the Company) or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or

unenforceable, will remain in full force and effect and will in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination, the parties will negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

7.10 No Third Party Beneficiaries. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person or entity other than the parties hereto, any benefit right or remedies.

7.11 Successors. All agreements of the Company in this Agreement and the Warrant Certificates will bind its successors. All agreements of the Warrant Agent in this Agreement will bind its successors.

In witness whereof, the parties have caused this Agreement to be duly executed as of the date first written above.

Dime Bancorp, Inc.

By: _____
Name:
Title:

EquiServe Trust Company, N.A.
as Warrant Agent,

By: _____
Name:
Title:

EquiServe Limited Partnership
as Warrant Agent,

By: _____
Name:
Title:

EXHIBIT A

[FORM OF WARRANT CERTIFICATE]

[Unless and until it is exchanged in whole or in part for Warrants in definitive form, this Warrant may not be transferred except as a whole by the depositary to a nominee of the depositary or by a nominee of the depositary to the depositary or another nominee of the depositary or by the depositary or any such nominee to a successor depositary or a nominee of such successor depositary. The Depository Trust Company ("DTC") (55 Water Street, New York, New York) will act as the depositary until a successor will be appointed by the Company and the Warrant Agent. Unless this certificate is presented by an authorized representative of DTC to the issuer or its agent for registration of transfer, exchange or Amount Recovered, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an

authorized representative of DTC (and any Amount Recovered is made to Cede & Co. or such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]*

Dime Bancorp, Inc.

Litigation Tracking Warrant

No.

Certificate for Litigation Tracking Warrants to
Purchase Shares of Common Stock
of Dime Bancorp, Inc.

THIS CERTIFIES THAT, , or registered assigns, is the registered holder of the number of Litigation Tracking Warrants set forth above (the "Warrants"). Each Warrant entitles the holder thereof (the "Holder"), at its option and subject to the provisions contained herein and in the Warrant Agreement referred to below, to purchase from Dime Bancorp, Inc., a Delaware corporation (the "Company"), the number of shares of Common Stock ("Warrant Shares"), par value of $0.01 per share, of the Company (the "Common Stock") equal to the Adjusted Litigation Recovery divided by the product of (1) the Adjusted Stock Price multiplied by (2) the Maximum Number of Warrants, at an exercise price per Warrant equal to the number of shares of Common Stock for which one Warrant is exercisable multiplied by $0.01 (the "Exercise Price"). This Warrant Certificate will terminate and become void on the earliest of (i) the Close of Business on the last day of the Warrant Exercise Period, (ii) the Close of Business on the date the Litigation has been disposed of in a manner such that no shares of Common Stock or other securities or property will be issuable under the terms of the Warrants and (iii) the time and date such Warrant is exercised.

This Warrant Certificate and each Warrant represented hereby are issued pursuant to and are subject in all respects to the terms and conditions contained in a Warrant Agreement dated as of December [ ], 2000, as such agreement may be amended from time to time (the "Warrant Agreement"), among the Company and EquiServe Trust Company, N.A. and EquiServe Limited Partnership collectively as Warrant Agent (in such capacity, the "Warrant Agent", which term includes any successor Warrant Agent under the Warrant Agreement), to all of which terms and provisions the Holder of this Warrant Certificate consents by acceptance hereof. The Warrant Agreement is hereby incorporated herein by reference and made a part hereof. Reference is hereby made to the Warrant Agreement for a full statement of the respective rights, limitations of rights, duties and obligations of the Company, the Warrant Agent and the Holders of the Warrants. Capitalized terms used but not defined herein will have the meanings ascribed thereto in the Warrant Agreement. A copy of the Warrant Agreement may be obtained for inspection by the Holder hereof upon written request to the Warrant Agent.

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* To be included only if the Warrant is in global form.

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Subject to the terms of the Warrant Agreement, the Warrants may be exercised in whole or in part by surrender of this Warrant Certificate with the form of election to purchase Warrant Shares attached hereto duly executed and with the simultaneous payment of the Exercise Price in cash (subject to adjustment) to

the Warrant Agent for the account of the Company at the office of the Warrant Agent. Payment of the Exercise Price will be made by certified or official bank check or personal check payable to the order of the Company or by wire transfer of funds to an account designated by the Company for such purpose. No fractional Warrant Shares will be issued upon the exercise of any Warrant, but the Company will pay cash in lieu of a fractional share as provided in the Warrant Agreement.

As provided in the Warrant Agreement and subject to the terms and conditions therein set forth, each Warrant will be exercisable at any time from and from time to time during the Warrant Exercise Period only and will not be exercisable after the expiration of the Warrant Exercise Period.

The Warrant Agreement provides that upon the occurrence of certain events the number of Warrant Shares may be, subject to certain conditions, adjusted.

The Company may require payment of a sum sufficient to pay all taxes, assessments and other governmental charges in connection with the transfer or exchange of the Warrant Certificates.

The holder in whose name the Warrant Certificate is registered may be deemed and treated by the Company and the Warrant Agent as the absolute owner of the Warrant Certificate for all purposes whatsoever and neither the Company nor the Warrant Agent will be affected by notice to the contrary.

The Warrants represent a contingent right to purchase shares of Common Stock with an aggregate value based on a portion of any proceeds that may be received by the Bank from the Litigation. There can be no assurance as to when the Litigation will be resolved or the amount of proceeds, if any, the Bank will receive therefrom. The Holders will not have any right to control or manage the course or disposition of the Litigation or the proceeds of any recovery therefrom.

The Warrants do not entitle any holder hereof to any of the rights of a holder of any Common Stock or Preferred Stock of the Company.

This Warrant Certificate will not be valid or obligatory for any purpose until it will have been countersigned by the Warrant Agent.

DIME BANCORP, INC.

By _____

[SEAL]

Attest: _____
Secretary

DATED:

Countersigned: [_____]
as Warrant Agent,

by _____
Authorized Signatory

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EXHIBIT B

FORM OF ELECTION TO PURCHASE WARRANT SHARES
(to be executed only upon exercise of Warrants)

DIME BANCORP, INC.

The undersigned hereby irrevocably elects to exercise [ ] Warrants at an exercise price per Warrant of $[ ] to acquire [ ] shares of Common Stock, par value $0.01 per share, of Dime Bancorp, Inc. (the "Company"), on the terms and conditions specified in the within Warrant Certificate and the Warrant Agreement therein referred to, surrenders this Warrant Certificate and all right, title and interest therein to the Company, and directs that the shares of Common Stock deliverable upon the exercise of such Warrants be registered and delivered in the name and at the address specified below and delivered thereto.

Date: ,

(Signature of Owner)*

(Street Address)

(City) (State) (Zip Code)

Signature Guaranteed by:

Securities and/or check to be issued to:

Name: _____

Social security or Federal tax identification number: _____

Street Address:_____

City, State and Zip Code:_____

Any unexercised Warrants evidenced by the within Warrant Certificate to be issued to:_____

Name:_____

Social security or Federal tax identification number:_____

Street Address:_____

City, State and Zip Code:_____

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* The signature must correspond with the name as written upon the face of the within Warrant Certificate in every particular, without alteration or enlargement or any change whatever, and must be guaranteed by a national bank or trust company or by a member firm of any national securities exchange.

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EXHIBIT C

The following exchanges of a part of this Global Warrant for definitive Warrants have been made:

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR
REGISTRATION OF TRANSFER OF WARRANTS

Re: Warrants to Purchase Common Stock (the "Warrants") of Dime Bancorp, Inc. (the "Company")

This Certificate relates to Warrants held in definitive form by (the "Transferor").

The Transferor has requested the Warrant Agent by written order to exchange or register the transfer of a Warrant or Warrants. The Warrant Agent and the Company are entitled to rely upon this Certificate and are irrevocably authorized to produce this Certificate or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

[INSERT NAME OF TRANSFEROR]

by _____

Date:

</TEXT>
</DOCUMENT>

EXHIBIT J

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ANCHOR SAVINGS BANK FSB, Plaintiff, v. THE UNITED STATES, Defendant.	)	No. 95-39C (Judge Block)

PLAINTIFF'S RULE 60(b) MOTION FOR AWARD OF A TAX GROSS-UP

This Court previously determined that plaintiff Anchor Savings Bank was entitled to a "tax gross-up" on certain portions of the damages award, and that Anchor would be permitted to file a Rule 60(b) motion "to obtain an equitable result with regard to the tax gross-up if appropriate at a later date." Opinion and Order (June 27, 2008) at 3. It is now the appropriate time to calculate and award the tax gross-up.

BACKGROUND

A. Trial proceedings

After the trial of this matter, this Court awarded the following damages to Anchor:

a. Net lost profits from the sale of RFC	$111,619,000
b. Damages from reduced stock proceeds	***$ 42,000,000***
c. Mitigation costs for NAMCO purchase	***$185,900,000***
d. Damages from branch sales	$ 8,146,125
e. "Wounded bank" damages	$ 8,789,785.91
	$356,454,910.91

Anchor Savings Bank v. United States, 81 Fed. Cl. 1, 153 (2008) (as corrected by Order, July 16, 2008). Items *b* and *c*, emphasized above, are the portions of the award subject to a tax gross-up.

At trial, Anchor argued that "in order to make the award tax-neutral, an adjustment to [Anchor's] damage award was required to offset the income tax implications." 81 Fed. Cl. at 134. "[I]f plaintiff were required to pay income taxes on its damages award compensating plaintiff for" the reduced stock proceeds and NAMCO purchase price, Anchor "would be made less-than-whole unless an adjustment is made to the award to 'zero out' the ultimate tax liability attributable to those two portions of the damages award." Id.

This Court agreed. "The Federal Circuit has embraced this concept . . . as a means of ensuring that a damage award effectively compensates the plaintiff for harm." 81 Fed. Cl. at 134 (citing Home Savings of America, FSB v. United States, 399 F.3d 1341, 1356 (Fed. Cir. 2005)). "Moreover, the Federal Circuit approved the trial court's implementation of the gross-up despite defendant's argument on appeal that 'future tax rates are unknown, so adjusting damages based on projected rates of taxation is speculative.'" *Id.* (quoting Home Savings, 399 F.3d at 1355-56). *See also* LaSalle Talman Bank, FSB v. United States, 462 F.3d 1331, 1338 (Fed. Cir. 2006).

B. Deferral of the gross-up calculation

Anchor provided evidence at trial, in the form of an affidavit and testimony from Washington Mutual's controller, Robert Miles, that Washington Mutual conservatively projected a combined federal/state marginal tax rate of 38.3% in 2005 (the year the case was tried). PX 825; Tr. 2840-63. That projection was based on the assumption that Washington Mutual would have profits of more than $18 million in 2005, and thus would be subject to the top marginal tax rates.

However, because the case was tried in 2005 but the trial court did not issue its decision until 2008, the Court stated that "there is no evidence in the record concerning how and what factors the court should consider in determining the gross-up for the current tax-year of 2008.

This evidence still must be adduced." 81 Fed. Cl. at 135. The court directed the parties to meet to determine the appropriate final calculation of the gross-up amount. *Id.* at 153.

By 2008, however, Washington Mutual was in a difficult financial condition and could not confidently project it would earn taxable income in 2008. Anchor did illustrate that, by operation of NOL carry-backs (if Washington Mutual's 2008 losses did not exceed its combined 2006 and 2007 taxable income) or carry-forwards (if its 2008 losses did exceed its 2006-07 income), the net tax expense associated with the damages award (and thus the appropriate gross-up) would be the same one way or the other. The government, however, pointed out that if Washington Mutual incurred a carry-forward, it would not actually incur the tax expense until some later year, meaning that an award of the gross-up in 2008 would over-compensate Washington Mutual because of the time value of money. *See* Joint Report of Revised Tax Gross-Up Calculation (June 16, 2008).

Because of Washington Mutual's uncertain financial condition in 2008, the parties stipulated that the court should not enter a tax gross-up award at that time. *Id.* at 4-5. The Court agreed that "it is appropriate for plaintiff to file for relief pursuant to Rule 60(b) at such time as Washington Mutual actually pays taxes upon the award in this case," and accordingly ordered that Anchor could seek "an equitable result with regard to the tax gross-up if appropriate at a later date." Opinion and Order (June 27, 2008) at 3. The court noted that similar orders had been entered in other Winstar cases. *Id.*, citing Bank of America, FSB v. Doumani, 495 F.3d 1366, 1374-75 (Fed. Cir. 2007)**;** Slattery v. United States, 73 Fed. Cl. 527, 531 (2006), *aff'd in relevant part, rev'd in part on other grounds*, 583 F.3d 800, 829 (Fed. Cir. 2009); Suess v. United States, 74 Fed. Cl. 510, 514-15 (2006), *vacated on other grounds*, 535 F.3d 1348 (Fed. Cir. 2008).

C. Appeal

The defendant appealed the portions of the damages award relating to Anchor's sale of RFC, but did not appeal the Court's ruling that, if RFC damages were awarded, Anchor was entitled to a tax gross-up. On March 10, 2010, the Court of Appeals for the Federal Circuit affirmed this Court's judgment in its entirety (while remanding for consideration of additional damages with respect to one aspect of the award). Anchor Savings Bank, FSB v. United States, 597 F.3d 1356 (Fed. Cir. 2010). The defendant did not seek reconsideration or rehearing *en banc*, and the judgment and mandate of the Federal Circuit were issued on May 3, 2010.

ARGUMENT

I. IT IS NOW THE APPROPRIATE TIME TO CALCULATE AND AWARD THE TAX GROSS-UP.

It is true that in 2008, because of Washington Mutual's dire financial straits (which ultimately culminated in the bank's failure), the Court directed that Anchor could seek a gross-up "at such time as Washington Mutual actually pays taxes upon the award." Opinion and Order (June 27, 2008) at 3. The situation has since changed considerably, and there is no longer a justification to defer award of the gross-up.

Subsequent to this Court's judgment, in September 2008 Washington Mutual Bank was seized by federal regulators, which appointed the Federal Deposit Insurance Corporation as receiver. The FDIC entered a purchase and assumption agreement with JPMorgan Chase Bank ("JPMorgan"), whereby JPMorgan acquired substantially all the assets of Washington Mutual Bank, including the Anchor judgment and cause of action. JPMorgan is thus now the real party in interest in the case, and will receive the judgment proceeds.

Unlike the case with Washington Mutual in 2008, JPMorgan's profitability, and therefore its taxability, in 2010 are not seriously in doubt. On April 14, 2010, JPMorgan reported first

quarter 2010 net income of $3.3 billion, compared with $2.1 billion in the first quarter of 2009. Declaration of James T. Weyant ("Weyant Decl.") ¶ 3 (attached as Exhibit 1). JPMorgan anticipates earning more than $18 million in taxable income in 2010, which is the threshold for applying the top marginal federal tax rate, and thus expects to be taxed at the top marginal federal and state rates on all income in excess of $18 million. *Id.* The tax on the judgment will be paid currently; because corporations pay quarterly estimated taxes throughout the course of the year, the tax on the judgment will be paid soon after it is received.

The Court should therefore award the gross-up now, rather than waiting until after the underlying judgment is paid. As the Court previously observed in this case, "[t]he court will typically award the tax gross-up along with compensatory damages if it is reasonably certain about the rate at which plaintiffs will pay income tax on the compensatory damages." Opinion and Order (June 27, 2008) at 2. As the Court has recognized (*see supra* at 2), the Federal Circuit has affirmed awards of gross-up damages even though they are based on projections of "unknown" future tax rates. 81 Fed. Cl. at 134 (citing Home Savings, 399 F.3d at 1355-56).

Thus, this Court has routinely included tax gross-ups in Winstar cases as part of the underlying judgment based on projections of marginal tax rates, and the Federal Circuit has routinely approved such awards. American Federal Bank, FSB v. United States, 72 Fed. Cl. 586, 624-26 (2006), *aff'd*, 295 F. App'x. 368 (Fed. Cir. 2008); Fifth Third Bank v. United States, 71 Fed. Cl. 56, 94-97 (2006), *aff'd*, 518 F.3d 1368 (Fed. Cir. 2008); LaSalle Talman Bank, F.S.B. v. United States, 64 Fed. Cl. 90, 114-18 (2005), *aff'd*, 462 F.3d 1331, 1338 (Fed. Cir. 2006); Home Savings of America, F.S.B. v. United States, 57 Fed. Cl. 694, 729-31 (2003), *aff'd*, 399 F.3d 1341, 1356 (Fed. Cir. 2005); First Nationwide Bank v. United States, 56 Fed. Cl. 438, 448-49

(2003), *aff'd*, 431 F.3d 1342 (Fed. Cir. 2005). There is no reason not to follow the same course of action here. [1]

The government has previously cited three Winstar cases where the Court deferred calculation of the gross-up and authorized the plaintiff to file a Rule 60(b) motion if and when tax was paid on the judgment. *See* Defendant's Response to Order Setting Status Conference (June 7, 2010) at 2 n.1. In each of those cases, however, it was either uncertain that the judgment was taxable in the first place, or that plaintiff's receivership estate would ever be subject to taxation at all. In this case, in contrast, the government has never contended that taxes will not be paid on the damages awarded by the Court, and so those cases are inapplicable. *See* Bank of America, FSB v. United States, 67 Fed. Cl. 577, 596-97 (2005) (government contended that damages would not be subject to taxation; court found it uncertain whether any recovery would be taxed), *aff'd*, 495 F.3d 1366, 1374-75 (2007); Suess v. United States, 74 Fed. Cl. 510, 514 (2006) ("the receivership may not ultimately pay any taxes in light of the $38.25 million interest deduction"); Slattery v. United States, 73 Fed. Cl. 527, 531 (2006) (plaintiff could file a Rule 60(b) motion "if the receivership ultimately pays taxes"), *aff'd and rev'd on other grounds*, 583 F.3d 800 (Fed. Cir. 2009).

Accordingly, there is no basis for deferring award of the tax gross-up.

II. THE GROSS-UP RATE CAN BE DETERMINED WITH REASONABLE CERTAINTY.

JPMorgan's 2010 combined federal/state marginal tax rate is currently 38.757%. Weyant Decl. ¶ 3. This rate is consistent with (and in fact less than) JPMorgan's historic marginal tax

[1] This Court has previously indicated that if JPMorgan's actual 2010 marginal tax rate ultimately proves to be less than 38.757%, then the government may in turn seek Rule 60(b) relief from the Court. Opinion and Order (June 27, 2008) at 2; *see* Long Island Savings Bank v. United States, 67 Fed. Cl. 616, 656 (2005) (acknowledging the government's right to seek relief under Rule 60(b) if the court's determination as to the judgment's taxability proved to be erroneous), *rev'd on liability grounds*, 476 F.3d 917 (Fed. Cir. 2007).

rates, which ranged between 39.121% and 39.257% between 2006-2008. Moreover, as the Court is well aware, at this stage of the litigation, once the fact of damages has been proven and only the amount need be determined, "it is not essential that the amount thereof be ascertainable with absolute exactness or mathematical precision." Bluebonnet Savings Bank v. United States, 266 F.3d 1348, 1355 (Fed. Cir. 2001); *see also* LaSalle Talman Bank, F.S.B. v. United States, 317 F.3d 1363, 1374 (Fed. Cir. 2003) ("when damages are hard to estimate, the burden of imprecision does not fall on the innocent party"). As the cases cited above reflect (*supra* at 5), this Court "typically" includes the tax gross-up as part of the underlying judgment, even though in those circumstances the gross-up necessarily reflects an estimate of a future tax rate that would eventually apply once the judgment was actually received and the tax actually paid. *See* Home Savings, 399 F.3d at 1355-56; Anchor, 81 Fed. Cl. at 134.

At a 38.757% marginal tax rate, the gross-up is calculated as follows:

1		$185.9 million	NAMCO mitigation costs
2	*less*	*$63 million*	*RFC sales price*
3	plus	$42 million	reduced stock proceeds
4		$164.9 million	Damages subject to gross-up
5		$269,255,260	Grossed-up amount, at 38.757% marginal tax rate: $\frac{\$164.9 \text{ million (line 4)}}{(1-.38757)}$ *[or 0.61243]*
6		$104,355,260	Line 5 minus line 4

Accordingly, based on the damages awarded by the Court to date, Anchor is entitled to a tax gross-up of $104,355,260.

Finally, pursuant to remand instructions from the Court of Appeals, Anchor has separately requested the Court to correct an error in its calculation of Anchor's mitigation damages. *See* Plaintiff's Motion on Remand for Correction of Award of Mitigation Damages

(June 11, 2010). That correction, if made, would increase the compensable NAMCO mitigation costs (line 1, above) from $185.9 million to $249,091,000, which would in turn increase line 4 above to $228,091,000. From that figure, the same gross-up calculation would apply:

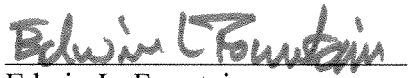
4	$228,091,000	Damages subject to gross-up
5	$372,436,030	Grossed-up amount, at 38.757% marginal tax rate
6	$144,345,030	Line 5 minus line 4

* * * * *

In light of the foregoing, Anchor respectfully moves the Court to modify its judgment to award a tax gross-up in the amount of $104,355,260, or in the alternative $144,345,030 in the event the Court corrects the error in the calculation of mitigation damages.

Dated: June 11, 2010

Respectfully submitted,



Edwin L. Fountain
JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3939 (phone)
(202) 626-1700 (fax)
elfountain@jonesday.com

Counsel of Record for plaintiff Anchor Savings Bank

Of Counsel:
George T. Manning
Adrian Wager-Zito
Debra S. Clayman

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on this 11th day of June, 2010, I caused the foregoing PLAINTIFF'S RULE 60(b) MOTION FOR AWARD OF A TAX GROSS-UP to be filed pursuant to the Court's electronic filing system.

EXHIBIT K

Exhibit C

Liquidation Analysis for Each Debtor

Pursuant to section 1129(a)(7) of the Bankruptcy Code (the "Best Interest Test"), each holder of an impaired Claim or Equity Interest must either (i) accept the Plan, or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such non-accepting holder would receive or retain if the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code on the Effective Date. In determining whether the Best Interest Test has been met, the first step is to determine the dollar amount that would be generated from a hypothetical liquidation of the Debtors' assets in chapter 7. The gross amount of Cash available would be the sum of the proceeds from the disposition of the Debtors' assets and the Cash held by the Debtors at the commencement of their chapter 7 cases. Such amount then would be reduced by the costs and expenses of the liquidation. Prior to determining whether the Best Interest Test has been met for general unsecured creditors, further reductions would be required to eliminate Cash and asset liquidation proceeds that would be applied to Secured Claims and amounts necessary to satisfy chapter 11 Administrative Expense Claims, Priority Tax Claims, and Priority Non-Tax Claims that are senior to General Unsecured Claims, including any incremental Administrative Expense Claims that may result from the termination of the Debtors' businesses and the liquidation of assets. Any remaining Cash would be available for Distribution to general unsecured creditors and Equity Interest holders in accordance with the distribution hierarchy established by section 726 of the Bankruptcy Code.

The Liquidation Analysis (the "Liquidation Analysis") below reflects the estimated Cash proceeds, net of liquidation-related costs that would be available to the Debtors' creditors if the Debtors were to be liquidated in a chapter 7 case. Underlying the Liquidation Analysis are a number of estimates and assumptions regarding liquidation proceeds that, although developed and considered reasonable by the Debtors, are inherently subject to significant business, economic, and competitive uncertainties and contingencies beyond the control of the Debtors. ACCORDINGLY, THERE CAN BE NO ASSURANCE THAT THE VALUES REFLECTED IN THE LIQUIDATION ANALYSES WOULD BE REALIZED IF THE DEBTORS WERE, IN FACT, TO UNDERGO SUCH A LIQUIDATION, AND ACTUAL RESULTS COULD VARY MATERIALLY FROM THOSE SHOWN HERE.

General Assumptions

For purposes of the Liquidation Analysis, the Debtors considered many factors and made certain assumptions. Those assumptions that the Debtors consider significant are described below.

1. **Conversion:** Each of the Chapter 11 cases are converted to chapter 7 in 2010.

2. **Appointment of Chapter 7 Trustee:** A chapter 7 trustee is appointed to liquidate and wind down the Debtors' estates.

3. **Chapter 7 Trustee:** The chapter 7 trustee would retain professionals (investment bankers, law firms, accounting firms, consultants, forensic experts, etc.) to assist in the liquidation and

wind down of the Debtors' estates. Although the chapter 7 trustee may retain certain of the Debtors' professionals for discrete projects, it is assumed that the trustee's primary investment banking, legal, accounting, consulting and forensic support would be provided by new professionals, because most (if not all) of the Debtors' professionals will hold Claims in the chapter 7 cases.

4. Tax Refunds: For the purposes of this analysis, the Debtors have assumed receipt of future tax refunds to be on or prior to December 31, 2010. It's the receipt of these refunds that provide the recovery to the Senior Subordinated Notes, the CCB Guarantees, and the PIERS.

5. Start-Up Time: Given the complexity of the Chapter 11 cases and the underlying assets and Claims, it is anticipated that the chapter 7 trustee and any newly retained professionals will require at least 2 to 4 months to familiarize themselves with the Debtors' estates, the assets, the Claims and related matters before they begin marketing assets or litigating Claims.

6. Settlement Agreement: The conversion of the cases to chapter 7 are assumed to delay the consummation of the Global Settlement Agreement while the chapter 7 trustee and its professionals review the Debtors' major assets and the terms of the Global Settlement Agreement. For the purposes of this analysis, it is assumed that a chapter 7 trustee is able to consummate a global settlement agreement on the same terms and conditions as the Debtors propose in the Plan. Without a consummation of a global settlement agreement on similar terms as the Global Settlement Agreement or, in the alternative, litigating to finality each issue related to distribution of assets, a chapter 7 trustee would be unable to resolve all claims in these estates or make significant distributions. The Debtors can provide no assurance that a chapter 7 trustee will be able to execute a Global Settlement Agreement on at least as favorable terms as the current agreement.

7. Duration of Liquidation: The Liquidation Analysis assumes that after the start-up period the actual liquidation of assets of the Debtors would continue for 2 to 4 months, during which time all of the Debtors' major assets would be sold and the Cash proceeds, net of liquidation-related costs, would be available for distribution to creditors.

Approximately 4,000 Claims have been filed in the Chapter 11 cases. It is unlikely that a chapter 7 trustee could adequately reconcile all Claims during a 9 to 12 month period of assessment and asset recovery. Therefore, a large number of the Claims in these cases will be reconciled, valued, negotiated and settled, and/or litigated to conclusion only after the asset recovery work is mostly complete. The Debtors estimate that a chapter 7 trustee will require an additional 6 to 12 months to reconcile Claims and pursue litigations. It is possible that some distributions could be made prior to such period, but Claims would be subject to reserves or an estimation process.

It is not uncommon in large cases for liquidations to last many years while chapter 7 trustees prosecute difficult Claims-related issues and other types of litigation.

8. Consolidation for Administrative Purposes: This Liquidation Analysis assumes that the Debtors are consolidated for administrative purposes during the chapter 7 cases.

9. Presentation: For the purposes of this analysis, the two Debtors, WMI and WMI Investment Corp., are shown combined. WMI Investment Corp. is not anticipated to have any claims against it, and therefore, the value of WMI Investment Corp.'s assets will be assets of WMI.

(Dollars in Millions)	Chapter 11 Plan			Chapter 7 Liquidation			Notes
	Proceeds			**Proceeds**			
Cash	$ 5,197			$ 5,197			(a)
Reorganized WMI	145			50			(b)
Investment in Subsidiaries & Other	25			25			(c)
Future Income Taxes Receivable	2,195			2,195			(d)
Total Proceeds	7,562			7,467			
Bank Exp, Priority Claims & Convenience Class	(116)			(202)			(e)
Net Proceeds	$ 7,446			$ 7,265			
	Claim Amount	**Recovery Amount**	**Recovery %**	**Claim Amount**	**Recovery Amount**	**Recovery %**	
Unsecured Claims [1]							
Senior Notes							
Prepetition	$ 4,132	$ 4,132	100%	$ 4,132	$ 4,132	100%	(f)
Post-Petition	349	349	100%	414	414	100%	
Total	4,481	4,481	100%	4,546	4,546	100%	
Senior Subordinated Notes							
Prepetition	1,666	$ 1,666	100%	1,666	$ 1,666	100%	
Post-Petition	258	258	100%	309	309	100%	
Total	1,924	1,924	100%	1,976	1,976	100%	
General Unsecured Claims	375	$ 375	100%	375	$ 375	100%	(g)
CCB Guarantees							
Prepetition	70	$ 70	100%	70	$ 70	100%	
Post-petition	8	8	100%	9	9	100%	
Total	78	$ 78	100%	79	$ 79	100%	
PIERS							(h)
Prepetition	789	$ 588	74%	789	$ 290	37%	
Post-petition	160	-	0%	191	-	0%	
Total	949	$ 588	62%	980	$ 290	30%	
Subordinated Claims	-	-	N/A	-	-	N/A	(i)

Notes:

(1) All amounts assumed to be paid at 12/31/10 under a Chapter 11 plan and 05/31/11 under a Chapter 7 liquidation.

Notes:

(a) Cash is comprised of cash (including WMI's share of tax refunds already received) and restricted cash at WMI, WMI Investment Corp. and its subsidiaries, plus payments from JPMC for Visa Shares and intercompany loans pursuant to the Global Settlement Agreement proceeds related to the American Savings Bank Goodwill Litigation and BOLI/COLI and Rabbi Trust assets in both chapter 7 and 11 cases.

(b) The Reorganized WMI includes WMI, WMI Investment Corp. and WMMRC, a wholly-owned subsidiary of WMI and a Hawaiian captive reinsurance company. WMI retained Blackstone Advisory Partners ("Blackstone") to prepare a valuation of the Reorganized WMI. Blackstone's conclusions regarding the value of Reorganized WMI are subject to the assumptions, limitations and qualifications set forth in the valuation analysis, annexed to this Disclosure Statement as

Exhibit D. As set forth therein, Blackstone's valuation work produced a range of $125 million to $165 million (on a pre-rights offering basis). For purposes of this analysis, we have included the midpoint of that range, $145 million.

In chapter 7 cases, the Debtors believe that a chapter 7 trustee would be forced to sell WMMRC quickly which would substantially reduce the recovery associated with this asset. The Debtors' belief is based on consultation with various investment banks and potential bidders of WMMRC.

(c) Includes investments in wholly-owned subsidiaries WaMu 1031 Exchange, a 1031 exchange administrator, and Ahmanson Obligation Company. Other assets include the Assurant Trust account and a remaining note related to a venture capital investment, as described in the Disclosure Statement.

(d) In both the chapter 11 and 7 cases, WMI's portion of future tax refunds equates to 20% of the initial tax refund of approximately $2.9 billion and an additional tax refund of $2.8 billion less $1,185 million paid to the FDIC and the WMB bondholders, netting a total of $2,195 million.

(e) It is anticipated that a delay would result from the conversion of the chapter 11 cases to cases under chapter 7 of the Bankruptcy Code due to the knowledge transfer required and associated with the transition to new attorneys and other professionals likely to be selected by a chapter 7 trustee. For the purposes of this analysis, the Debtors assumed that a 5 month delay would occur while a trustee is appointed and while the trustee's professionals become familiar with the many complex issues in the Debtors' cases. Based on the current rate of operating expenses, the Debtors estimate that the conversion of the cases to cases under chapter 7 of the Bankruptcy Code would result in an increase of $4 million in operational expenses. Based on the current rate of professional fees being incurred in the Debtors' chapter 11 cases, the Debtors estimate that the conversion would equate to $44 million in professional fees. In addition, as is customary, the Debtors anticipate that a chapter 7 trustee would receive compensation in the form of a transaction fee based on the total distribution available for creditors. For the purposes of this liquidation analysis, the Debtors assumed a 0.5% transaction fee would be imposed on the total distribution to creditors, which is equal to $38 million.

(f) As discussed, conversion to chapter 7 cases will cause a delay in the resolution of the cases. For the purposes of this analysis, it is assumed that payment on Senior Notes, Subordinated Notes, CCB Guarantees and PIERs prepetition and post-petition claims will be delayed by an additional five months. This results in increased post-petition interest on the Senior Notes, Subordinated Notes, CCB Guarantees and PIERs claims. The actual amount of delay could be somewhat less or far greater than this amount.

(g) In both the chapter 11 and 7 cases, general unsecured claims will vary widely depending on the outcome of various claims objections. Current filed claims total in excess of $55 billion excluding unliquidated claims. However, the Debtors' best estimate of eventually allowed claims in both cases will be approximately $375 million.

(h) PIERS claims consists of claims related to both preferred and common securities. All common securities are owned by WMI. Therefore recoveries in excess of $765 million plus corresponding post-petition interest will be distributed back to the estate.

Exhibit J

(i) Subordinated Claims could arise from the outcome of various litigations and as such, no estimate of those claims have been included in the liquidation analysis under either a chapter 11 plan or a chapter 7 liquidation.