SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of

THE BANK OF NEW YORK MELLON, (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America (intervenor), Invesco Advisors, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank Baden-Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio (intervenor), Federal Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), and Western Asset Management Company (intervenor),

Petitioners,

for an order, pursuant to C.P.L.R. § 7701, seeking judicial instructions and approval of a proposed settlement.

Index No. 651786-2011

Kapnick, J.

EXPERT REPORT OF ROBERT M. DAINES

CONFIDENTIAL

Introduction

On June 7, 2011, I provided a report in connection with a potential settlement (the "Settlement") involving securitization trusts (the "Trusts") for which The Bank of New York Mellon ("BNY Mellon" or the "Trustee") is trustee or indenture trustee. My report dealt with the likelihood that the Trustee would prevail in a veil piercing or successor liability claim against Bank of America Corporation ("BAC" or "Bank of America") if certain Bank of America subsidiaries were liable for damages to the Trusts and unable to meet their respective obligations.

The Trustee has now asked me to review the report of Professor John C. Coates, IV, submitted on February 28, 2013, and to consider whether any information presented in that report alters my initial opinions. After reviewing Professor Coates's report, as well as additional information related to the claims made by Professor Coates therein, the opinions expressed in my June 7, 2011 report remain unchanged.

Qualifications

I am the Pritzker Professor of Law and Business at the Stanford University School of Law. I am also Co-Director of the Rock Center for Corporate Governance at Stanford and a Professor (by courtesy) of Finance in the Graduate School of Business.

My academic research focuses on the economic and empirical analysis of corporate transactions, mergers and acquisitions, corporate governance and the impact of securities regulation. This research has appeared in such publications as the Journal of Financial Economics, the Journal of Law, Economics and Organization and The Yale Law Journal. It has also been reported on by The Economist, The New York Times, The Wall Street Journal, Financial Times, Forbes, Fortune and other media.

I regularly teach the basic Corporations course at Stanford, which includes mergers and acquisitions. I also teach advanced courses on mergers and acquisitions, the law and finance of complex transactions, corporate governance and corporate finance. Before joining the faculty at Stanford, I taught at the New York University School of Law and the Yale Law School, and have also taught at Columbia Law School, the University of Toronto Faculty of Law, and the University of Basel.

I have been a member of the NASDAQ Stock Market Review Council, Chair of the Corporate and Securities Law Section of the American Law and Economics Association and Chair of the Law and Economics Section of the Association of American Law Schools. In addition, I have served as a referee for various professional journals and publications, including Journal of Finance, Journal of Financial Economics, Journal of Law and Economics, Journal of Law, Economics and Organization, Financial Management, Journal of Legal Studies, The American Law and Economics Review and others.

I regularly provide business and legal training to corporate directors, both independently and as part of an executive education program run by the Stanford Law School, Stanford Business School, University of Chicago Booth School of Business and the Tufts Business School. This training includes the fiduciary duties of board members, corporate governance and mergers and acquisitions.

I have served as an expert witness or consultant on numerous cases involving mergers and acquisitions, complex transactions and corporate structure, and have been retained by the Securities and Exchange Commission and the Attorney General of California to advise on merger-related issues.

Before entering academics, from 1993 to 1997, I was an associate in the investment banking division of Goldman Sachs & Co., where I advised firms and conducted due diligence investigations for public and private financings, bank loans and potential acquisitions.

I received my J.D. from Yale Law School, where I received the Olin Prize for the Best Paper in Law and Economics. Following law school I served as a law clerk for Judge Ralph Winter on the United States Court of Appeals for the Second Circuit.[1]

Compensation

I am being compensated for my work in this matter at an hourly rate of $1,000. My compensation does not depend on the outcome of the case or the substance of my opinions. If additional documents or information become available to me, I reserve the right to amend or update this report if I deem it necessary or appropriate.

Response to Professor Coates's Report

1. Nothing in Professor Coates's expert report changes my original opinion.

Nothing in Professor Coates's report changes my opinion that "a successor liability case would be difficult to win if a court concluded that BAC paid a fair price in the Transactions" or my opinion that "BAC has a reasonable argument that a successor liability claim would be defeated." Ex. 3 (June 7, 2011 Daines Report ("Daines Rep.")) at 7.

I continue to believe that fair value is a key consideration in determining whether Bank of America was likely to face successor liability. As I stated in my original report, "[a] veil piercing claim would likely fail" and "[t]o succeed on a veil piercing claim, the Trustee would

[1] A copy of my curriculum vitae is included as Exhibit 1. A list of the documents that I relied on in forming this opinion is included as Exhibit 2.

probably need to show that BAC siphoned off value from Countrywide by materially underpaying for the assets it purchased in the [LD2 and LD100] Transactions." Ex. 3 (Daines Rep.) at 5. In addition, "[t]he outcome of a successor liability claim is uncertain and would depend on where the case was brought, whether BAC underpaid in the Transactions, and other factual findings. Based on the facts as I understand them, BAC has a reasonable argument that any successor liability claim would be defeated." *Id.* at 6. I also continue to believe that regardless of where a successor liability case were brought, the court would likely apply Delaware law. *See id.* at 39.

In this section, I conclude that: (a) while Professor Coates suggests additional areas for further investigation, he offers no opinion about what such an investigation would yield; (b) none of the suggestions for additional information change my opinion on the difficulty of a successor liability claim; and (c) the various claims that Professor Coates suggests might have been pursued do not alter my conclusions about the difficulty of pursuing a successor liability claim against Bank of America.

a. While Professor Coates suggests additional areas for further investigation, he offers no opinion about what such an investigation would yield.

Professor Coates's report primarily suggests other areas that I or the Trustee could have investigated or considered. *See* February 28, 2013 Coates Report ("Coates Rep.") at 7-15. But even assuming that Professor Coates is correct, he never opines that these additional considerations would or should have changed my bottom-line opinion or the Trustee's decision. Most importantly, Professor Coates admits that he has "*not* conducted a complete study" of — and has *not* "reached any bottom-line conclusions" as to — the ability of Countrywide Financial Corporation ("CFC" or "Countrywide") to pay or Bank of America's potential successor liability. *Id.* at 7 (emphasis added).[2] Professor Coates also admits that he has *not* "conducted or had conducted for [him] . . . a choice-of-law analysis." *Id.*

Instead, Professor Coates suggests alternate avenues of investigation and consideration, without saying what those investigations would unveil or explaining how those considerations would undermine the ultimate conclusions reached in my original report.[3]

Nor does Professor Coates provide any opinion about whether these other areas of investigation would have (or should have) affected the Trustee's decision to enter into the Settlement. There may have been benefits to additional analysis (though Professor Coates never quantifies them), but there were certainly costs as well. Rational decision makers must consider costs as well as benefits, including the costs of acquiring additional information. Professor Coates says only that these costs would be "non-trivial," but does not describe these costs in a meaningful way or opine that these other analyses would have been worth the costs. Coates Rep. at 13 (asserting without citation that "the *likely* increase in the ability of the Trustee to make *better estimates* of the *likely* outcomes of any fully litigated Claim would have been enormously benefited by incurring those costs") (emphasis added). Nor does he describe the real potential downsides to the interests of the Trusts should the Trustee have commenced litigation as a means

[2] In this report, I refer to CFC or Countrywide, but by doing so do not mean to imply that the same principles do not apply to Countrywide Home Loans, Inc. ("CHL").

[3] For example, Professor Coates states: "The Trustee has not presented evidence that it considered or took a number of steps that it could have taken to adequately evaluate the Settlement, including obtaining information about or pursuing . . ." (Coates Rep. at 1); "The evidence that the Trustee has presented as to the steps that it did take — such as obtaining a report from Capstone, and reports from Professor Robert Daines and Professor Barry Adler — shows that those reports were based on limited facts [and] were constrained by strong limiting assumptions that were not tested by the Trustee . . . that prevented the providers of the reports from obtaining more than minimal information that was likely to have affected the nature of their analyses, particularly in regards to successor liability . . ." (Coates Rep. at 2); and "[f]urther, the choice of law analysis that the Trustee obtained did not adequately consider the customs and laws that would govern the likely choice of law that would apply to any successor liability claim that the Trustee might bring, or the choices that the Trustee might have in deciding among possible courts to bring such claims, or how those choices might affect the outcome of such a choice of law analysis, or address choice of law in respect of any Claim other than successor liability or veil-piercing claims" (*Id.*).

of obtaining information. *See id*. at 13. [redacted][4] It would be entirely rational — if not mandatory — for the Trustee to consider such a risk.

While Professor Coates mentions several things that the Trustee could have considered, it is important to note that a group of sophisticated and highly motivated investors preferred the Trustee's approach (settling the claims) to Professor Coates's suggestion that they pursue additional information or litigation. The twenty-two institutional investors that participated in the negotiation of, and support, the Settlement represent sophisticated entities such as Freddie Mac, ING Investments, BlackRock, PIMCO and MetLife — among the world's largest investors. My understanding is that, as a group, [redacted] and thus were highly motivated to make value-maximizing decisions about whether and on what terms their claims should settle. *See* Institutional Investors' Responses and Objections to the Steering Committee's First Set of Interrogatories (Aug. 27, 2012), Exhibit A.

Professor Coates offers no reason to think that these sophisticated, highly motivated investors made poor decisions about settling or seeking additional information. In fact, these investors were likely in the best position to decide whether to support a settlement, having strong incentives to make a rational decision about the strength of Bank of America's corporate

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[4] *See* Griffin Dep. 227:25-229:8 [redacted] Golin Dep. 152:18-153:12 [redacted] Mirvis Dep. 128:14-24 [redacted] Koplow Dep. 36:10-16 [redacted]

separateness defense and the costs of pursuing the additional information and litigation strategy Professor Coates has suggested. I understand that [redacted] *See* Golin Dep. 313:14-22. I suspect that these investors weighed the benefits of additional research and litigation and found them wanting.

It is undisputed that in reaching their decision to support the Settlement, the institutional investors relied, in part, on their view that Bank of America had a strong separateness defense and Countrywide had limited assets. *See* Institutional Investors' Statement in Support of Settlement and Consolidated Response to Settlement Objections, Case No. 1:11-cv-05988-WHP, Dkt. No. 124 (S.D.N.Y. Oct. 31, 2011), at 24-26 ("The successor liability risk here is obvious. . . . The case for successor liability or de facto merger is far from clear. . . . It was inherently reasonable for the Trustee to settle for twice the likely recovery from Countrywide, given the prospect that successor liability issues might be lost. Settlement is also entirely reasonable given the very real possibility that Bank of America might yet bankrupt Countrywide, leaving the Trusts fighting for what they could get in a Countrywide bankruptcy. . . . It was not unreasonable for the Trustee to conclude that certainty, and the substitution of Bank of America as a solvent obligor, were a better outcome for the Trusts than years of uncertain litigation at the end of which there might be only a bankrupt Countrywide to satisfy the Trustee's claims. Given the risks, the Trustee's decision to settle might well have been the only truly *prudent* conclusion to be drawn.").[5]

[5] *See also id*. at 6-7 ("Evaluation of any settlement necessarily requires consideration not only of the terms of the proposed settlement but an estimate of the likely outcome of a litigated alternative. . . . Speculative claims that Bank of America is liable as a successor in interest for contracts with the Countrywide Mortgage Sellers do little to assure investors that years of contested litigation will not end with only an insolvent Countrywide to respond to their claims.").

It would be entirely rational (if not required) for the Trustee to take the view of such investors into account. The fact that the Settlement had the support of a large group of sophisticated institutional investors is strong evidence that "BAC has a reasonable argument that a successor liability claim would be defeated" (Ex. 3 (Daines Rep.) at 7) and that the Settlement was reasonable.

b. None of the suggestions for additional information change my opinion on the difficulty of a successor liability claim.

None of the suggestions for additional information in Professor Coates's report alter the conclusions that I reached regarding the difficulty of pursuing a successor liability claim. In preparing my report, [redacted] *See* Daines Dep. 22:9-23:25. In rendering my initial report, I had all the information that I needed to express the opinions that I did.[6] I did not need sworn testimony to reach my conclusions, *e.g.*, that "a successor liability case would be difficult to win if a court concluded that BAC paid a fair price in the Transactions." Ex. 3 (Daines Rep.) at 7. *Cf.* Coates Rep. at 15-16.

The plain fact is that findings of successor liability are rare — a proposition I do not believe Professor Coates would dispute. They are rare, as Professor Coates has elsewhere recognized, because of the "strong, long-standing, and consistent recognition of corporate separateness" and the "consistent reluctance of the law to allow shareholders, creditors, or agents of one corporation to attach or obtain assets of another corporation by setting that separateness aside, whether styled as veil-piercing, reverse veil-piercing, substantive consolidation, constructive trusts, or other legal or equitable doctrines." Ex. 4 (Coates Report in *Starr Int'l Co.*

[6] Contrary to the charge in Professor Coates's report, I had adequate time to reach my opinions. I was first contacted by the Trustee's counsel on April 24, 2011. I began work on my report on April 26, 2011, six weeks before I provided my written opinion.

v. Am. Int'l Grp., Inc., Case No. 05-cv-6283, Dkt. No. 184-2 (S.D.N.Y. Feb. 2, 2009)) at 1, 8. He has further opined that corporate separateness principles "apply . . . where a parent and a 100% owned subsidiary are involved — the subsidiary cannot simply grab assets of the parent company for its own benefit, or for the benefits of its creditors, because the parent will have creditors (and shareholders) of its own that have prior claims to those assets." *Id.* at 21.[7]

Professor Coates claims that "[h]ad the Trustee sought to do more than simply accept BAC's word on crucial facts, and had it not imposed such strong limits on the efforts of its advisors, the Trustee would have discovered facts such as those reflected in [Professor Coates's report in the *MBIA* case], which would tend to show that the successor liability elements of the Claims had a materially greater chance of success than the Trustee appears to have believed." Coates Rep. at 3. But Professor Coates provides no explanation for why the purportedly unreviewed facts would have materially changed the Trustee's view of the success of the successor liability claims. Reviewing the expert report of Professor Coates in *MBIA Insurance Corp. v. Countrywide Home Loans, Inc.*, Index No. 602825/2008 (Sup. Ct. N.Y. Cnty.), as well as reviewing additional expert material in *MBIA* (discussed below), does not change my conclusion about the likelihood of success of a successor liability claim against Bank of America.

Professor Coates has attached the report that he prepared in the *MBIA* case to his report in this case. After reviewing his report, as well as several responsive and other expert reports in *MBIA*, my opinion remains the same. In fact, this review reveals an important fact that supports my opinion: MBIA chose not to dispute evidence that Bank of America paid fair value to

[7] In that case, Professor Coates was acting as an expert witness adverse to AIG and AIG sought to have Professor Coates's opinion excluded. *See* AIG's Mem. of Law in Supp. of its Mot. in Limine to Exclude the Test. of John C. Coates IV and Portions of the Test. of Ronald J. Gilson, *Starr Int'l Co. v. Am. Int'l Grp., Inc.*, Case. No. 05-cv-6283, Dkt. No. 183 (S.D.N.Y. Feb. 2, 2009).

Countrywide in the July and November 2008 transactions (also referred to as the LD2 and LD100 transactions). This makes it less likely that a successor liability claim would succeed.

In *MBIA*, Dr. John McConnell opined that Bank of America paid Countrywide adequate consideration in the LD2 and LD100 transactions. While MBIA had every incentive and opportunity to rebut Dr. McConnell's opinion, I understand that it did not. As detailed in Dr. McConnell's report, Bank of America paid a total of $46.20 billion to Countrywide in the July and November 2008 transactions in the form of cash, demand notes and liabilities assumed. *See* Ex. 5 (McConnell *MBIA* Report ("McConnell Rep.")) at 8-11. Dr. McConnell conducted a detailed, asset-by-asset valuation analysis, and concluded that "Countrywide-legacy entities received aggregate consideration from the BofA-legacy entities in the July and November 2008 transactions that exceeded the aggregate value, as defined above, of the assets they sold by $1.41 billion." *Id.* at 8.

This unrefuted analysis by Dr. McConnell is particularly important in my opinion, because a prerequisite to the sensible application of any successor liability doctrine is inadequacy of consideration. *See* Ex. 3 (Daines Rep.) at 6-7, 27-28, 32, 37-39.[8] If fair value was paid, there is little reason to apply the doctrine. I previously opined that "a successor liability case would be difficult to win *if a court concluded that BAC paid a fair price in the Transactions*." Ex. 3 (Daines Rep.) at 7 (emphasis added). Dr. McConnell's unrefuted opinion supports the idea that

[8] For example, in my initial report I concluded that veil piercing was not likely under Delaware, New York and California law "unless the Trustee can prove that the [LD2 and LD100] Transactions harmed creditors." Ex. 3 (Daines Rep.) at 27. I also concluded that "it is highly unlikely that a de facto merger claim would succeed in Delaware absent a showing that the Transactions materially reduced the value of the selling corporations." *Id.* at 32. And while I acknowledged that New York de facto merger law is more difficult to predict, I stated that "the economic arguments and bulk of the case law favor BAC" and "the Trustee's best chance to recover under this theory would be to appeal to the strain of cases that look at simple tests and ignore the underlying economic reality (the benefits of consolidating operations, the need for legal certainty, and *the need to focus on whether creditors were harmed in the transaction*)." *Id.* at 38 (emphasis added). As to the application of the de facto merger doctrine, I testified that [redacted] Daines Dep. 263:19-23.

this fundamental condition might not be demonstrated even in a case with a full discovery record.

In short, as I testified in my deposition, [redacted] Daines Dep. 100:6-7. The de facto merger doctrine of successor liability "has been described as a 'judge-made device for avoiding patent injustice that might befall a party simply because a merger has been called something else.'" Ex. 3 (Daines Rep.) at 34-35 (quoting *Cargo Partner AG v. Albatrans, Inc.*, 207 F. Supp. 2d 86, 104 (S.D.N.Y. 2002)). If adequate consideration was provided by Bank of America in the asset transactions, it seems unlikely that Countrywide creditors suffered any prejudice, let alone patent injustice.

c. The hypothetical claims that Professor Coates suggests may have been pursued do not alter my conclusions about the difficulty of pursuing a successor liability claim against Bank of America.

Fraudulent Conveyance

Professor Coates states that he has "seen no evidence that the Trustee ever considered the possibility that CFC or its subsidiaries may have had assets in the form of potential fraudulent conveyance claims." Coates Rep. at 8. The Trustee's purported failure to consider such a claim does not impact my opinion whether the *Trustee* (not Countrywide) could have succeeded on a successor liability claim against Bank of America. And indeed, Professor Coates offers no opinion on whether a fraudulent conveyance claim would have resulted in any meaningful recovery for the Trusts.

As an initial matter, Professor Coates is describing a hypothetical fraudulent conveyance claim made by *Countrywide* against Bank of America. However, in my original report I considered the likelihood of success on claims that the *Trustee* could have asserted against Bank of America because those are the only claims within the Trustee's control. Hypothetical claims that have not been asserted by Countrywide were not relevant to my analysis.

Moreover, Professor Coates does not opine on whether such a claim would actually be successful. As Professor Coates concedes, a fraudulent conveyance claim requires "proof that less than adequate consideration was paid in the relevant transaction." Coates Rep. at 8-9. Professor Coates points to no evidence that this was the case. To the contrary, Dr. McConnell's unrebutted opinion in *MBIA* — establishing that Countrywide received adequate consideration from Bank of America in the asset-sale transactions at issue here — supports the idea that this fundamental condition could not be demonstrated even in a fully litigated case with a full discovery record. Ex. 5 (McConnell Rep.) at 8-11

Indeed, constructive fraudulent transfer claims are highly fact-intensive, not only on questions of whether reasonably equivalent value was given in the transaction, but also on whether the transferor was insolvent at the time of the transfer or became insolvent or was left with unreasonably small capital to continue on in its business as a result of the transfer. Professor Coates offers no analysis of whether anyone could establish these elements of a claim or the costs and expenses of doing so. There is competing testimony on this issue in the MBIA expert record, including the opinion of Mr. Gene Deetz, CPA/ABV, ASA, CFF, that the Countrywide entities were solvent at the time of both the July and November 2008 asset sale transactions.[9]

Similarly, the value of a claim for intentional fraudulent conveyance is unclear. Thomas L. Porter, Ph.D., C.P.A., concluded in *MBIA* that "the amount [Bank of America] paid for [Countrywide's] assets" in the July and November 2008 transactions "was determined using methods designed to reasonably approximate the assets' fair value. This means that the asset

[9] As MBIA stated in its reply in support of its motion for summary judgment, "[t]he issue of CFC's and CHL's solvency is clearly in dispute, as the parties submitted competing expert reports on the issue." MBIA Reply Mem. of Law in Further Supp. of Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 3645 (Nov. 27, 2012) at 19.

sales were intentionally designed to provide Countrywide with the same economic value after the asset sales as it had before the asset sales . . . . [T]he asset sale transactions converted future income streams from currently illiquid assets into their equivalent net present value in liquid consideration." Ex. 6 (Porter *MBIA* Rebuttal Report) at 2.

Moreover, it is not correct to say without qualification, as Professor Coates does on page 8 of his report and reiterates in substance throughout, that Countrywide or its subsidiaries "may have had assets in the form of potential fraudulent conveyance claims." That could only be true if Countrywide were in bankruptcy. Only in bankruptcy do fraudulent conveyance claims become capable of assertion by the company due to provisions of the Bankruptcy Code.

In this case, Countrywide was not in bankruptcy when the Trustee was faced with a decision whether to settle, and the Trustee had minimal ability to force Countrywide into bankruptcy. Professor Coates does not address whether Countrywide could or should have been put into bankruptcy. He also does not analyze whether such a bankruptcy would have been likely if the Trustee were pursuing various claims rather than settling. But *only in bankruptcy and not otherwise* could Countrywide "have had a basis to increase its assets by pursuing such a claim," as Professor Coates says the Trustee should have considered. Coates Rep. at 8.

Professor Coates does not contend that the investors would have been better off if Countrywide were in bankruptcy. If the Trustee undertook an evaluation of the benefits of a Countrywide bankruptcy, where a hypothetical fraudulent conveyance claim by Countrywide might exist, the Trustee would also have had to consider the costs, delays and risks of a Countrywide bankruptcy. For example, the Trustee would be only one creditor in a long line of creditors, and would be a creditor with only contingent claims against Countrywide's bankruptcy estate. As is clear from public disclosures, there are numerous other litigations pending against legacy Countrywide entities. *See* Bank of America Corp., Annual Report (Form 10-K) (Feb. 28, 2013) at 230-31, 234-37. It is unclear why investors would have been better off if Countrywide were in bankruptcy.

Fiduciary Duty

Professor Coates's objection that he has "seen no evidence that the Trustee considered the possibility that CFC and its subsidiaries may have more assets than reflected in the Capstone report based on their having fiduciary duty claims against BAC or its subsidiaries" is irrelevant to the conclusions in my initial report and omits the fact that, absent evidence of harm, such claims would be highly unlikely to succeed or provide value to Countrywide if successful. Coates Rep. at 9.

This fiduciary duty claim, like the fraudulent conveyance claim, is one that Countrywide, not the Trustee, might bring. *See* p. 11, *supra*. So even if a fiduciary duty claim was successful, any recovery would flow to Countrywide (not the Trustee) and thus be subject to multiple claims from all of Countrywide's creditors. Professor Coates also never asserts that such a claim actually could be successful. Moreover, because undisputed evidence establishes that fair value was paid in the LD2 and LD100 transactions, it is not clear what damages Countrywide would be able to obtain through a fiduciary duty claim based upon those transactions.

Professor Coates asserts that the subsidiary directors were obligated to act in the best interests of the subsidiary's creditors such that the transactions between Bank of America and Countrywide after the Red Oak merger were "conflict-of-interest transaction[s]" requiring proof of entire fairness. Coates Rep. at 9-10. But the legal and factual predicates for such a claim are uncertain. Mr. Deetz, for example, has provided an opinion in *MBIA* that the Countrywide entities were in fact solvent at the time of both the July and November 2008 sale transactions.

Moreover, there is unrefuted evidence that Bank of America did pay a fair value. *See* Ex. 5 (McConnell Rep.) at 8-11.

PSAs and Servicing Losses

Professor Coates's complaint that he has "seen no evidence that the Trustee obtained information or evaluated successor liability claims based on the contract provisions of the PSAs" in my view provides no basis to criticize the Trustee's decision. Coates Rep. at 10.

As an initial matter, the PSAs do not provide for successor liability claims, as Professor Coates's report suggests. Instead, the PSAs merely provide for certain obligations of the Master Servicer, Countrywide Home Loans Servicing Inc. ("CHLS"), which could be replaced by a successor servicer under the PSAs. In my original report, I acknowledged that CHLS was one of the assets *transferred* in the LD2 transaction. *See* Ex. 3 (Daines Rep.) at 9. To the best of my knowledge, Bank of America has never contended that the liabilities of the *Master Servicer* have not been transferred to Bank of America's subsidiary, Bank of America, N.A.

Professor Coates states that "[l]iabilities arising from failure to perform [servicing] obligations were not subject to the defense that CFC had insufficient assets . . . ." Coates Rep. at 10. However, the claims for breaches of representations and warranties are *origination* claims, not *servicing* claims. And under the PSAs that Professor Coates cites, liability for the origination claims runs to CHL (the Originator) and not CHLS (the Master Servicer). *See, e.g.*, CWHL 2004-22 Pooling and Servicing Agreement § 2.03. As to CHL, the corporate separateness defense applies with full force. The provisions he cites in his report do not apply to these origination claims.

2. The expert record and briefing on successor liability in *MBIA* do not alter my original opinions on the difficulty of pursuing a successor liability claim against Bank of America.

Professor Coates's evaluation of my report includes, as an attachment, his report in the *MBIA* case. Therefore, I have reviewed expert reports related to successor liability from both sides in *MBIA*, as well as the briefs filed in conjunction with cross motions for summary judgment on successor liability in that case. I am attaching certain of Bank of America's expert reports filed in *MBIA* as exhibits to this report. *See* Exs. 5-12. That record, as well as MBIA's decision not to rebut the evidence that fair value was paid, further supports my original view that a successor liability claim against Bank of America would be difficult.

At a minimum, the battle of experts in *MBIA* demonstrates the extremely problematic nature of litigating a successor liability claim. The successor liability litigation in *MBIA* has already lasted three years, has involved protracted discovery, and is still only at the summary judgment stage.

Moreover, each of the expert opinions in *MBIA* offered by Bank of America offers reasonable rebuttals to Professor Coates's conclusions in his report:

First, in both his *MBIA* report and in his response to my opinion, Professor Coates refers to the LD2 and LD100 transactions as "Asset Stripping Transactions." *E.g.*, Coates Rep. at 2-3. This pejorative description is unsupported however. Professor Coates offered no analysis to support the idea that the transactions actually reduced the value of Countrywide — and this is perhaps the fundamental issue. As discussed earlier, Dr. McConnell concluded that Bank of America did the opposite of "asset stripping." Bank of America paid $46.20 billion in consideration for assets worth $44.78 billion. *See* Ex. 5 (McConnell Rep.) at 8. Thus, Countrywide "received aggregate consideration from the BofA-legacy entities in the July and

November 2008 transactions that exceeded the aggregate value . . . of the assets they sold by $1.41 billion." *Id*. MBIA did not even attempt to challenge that conclusion.

As Professor John C. Coffee explained, "once we follow the flow of funds between BAC and CFC and its subsidiaries after the date of these July and November transactions, we see that assets were not 'stripped'; rather, they were in large measure converted from illiquid to liquid in a manner that provided CFC and CHL with the cash necessary to meet their obligations as they became due." Ex. 7 (Coffee MBIA Report ("Coffee Rep.")) at 4.

Second, Professor Coates states that the Red Oak Merger and the LD2 and LD100 transactions "are inconsistent with M&A customs and practices for how a purchaser would customarily effect the acquisition of a stand-alone entity." Coates Rep. at 3. However, Professor Coffee opined that "[t]here is no rule in law, or any generally recognized custom or practice, that required BAC to treat all of CFC's creditors identically or equally. An acquirer is free to decide in its own best interests to pay off some creditors of an acquired business, but not others." Coffee Rep. at 21. Professor Coffee further stated that "triangular mergers are the norm in M&A custom and practice," and that "the normal custom and practice (at least within the banking sector) is for the acquiring firm to seek selectively to avoid the assumption of some liabilities." *Id.* at 23, 45. *See also id.* at 21.

In addition, Professor Guhan Subramanian concluded that, contrary to Professor Coates's assertion that there are only two customary post-acquisition integration strategies (absorption and confederation), "absorption strategies are *regularly* paired with triangular mergers and designed to take advantage of potential synergies while preserving separation between the acquirer and the target entities." Ex. 8 (Subramanian *MBIA* Rebuttal Report ("Subramanian Rebuttal Rep.")) at 1-2 (emphasis added).

Finally, Professor Timothy J. Galpin stated that "contrary to Professor Coates's assertion that purchasers have a 'custom and practice' of employing either absorption or confederation, sophisticated market participants do not simply choose full absorption or full confederation. . . . The end result more often than not is a transition that falls between Professor Coates's two extremes." Ex. 9 (Galpin *MBIA* Report ("Galpin Rep.")) at 8. Professor Galpin concluded that Bank of America's transition practices were consistent with those of other "large-scale organizational change efforts" he has observed, and were thus in accordance with industry custom and practice. *Id*. at 15, 23.

Third, Professor Coates states that "[t]he Asset-Stripping Transactions had equivalent economic effects on CFC, CHL and the Other Subs and their business operations as if they had been *de jure* merged into BAC and its subsidiaries." Coates Rep. at 3. But Professor Coffee concluded that "the July and November transactions were the precise opposite of a *de jure* triangular merger because such a merger normally gives stockholders something (stock in BAC) and creditors nothing. In contrast, the July and November transactions gave creditors something (cash and notes) and stockholders nothing." Ex. 7 (Coffee Rep.) at 23.

Moreover, Professor Subramanian opined that whether the transactions achieved the "economic equivalent" of a *de jure* merger or "could have been accomplished" through a *de jure* merger is irrelevant. I agree with Professor Subramanian that if courts too quickly invoked "the *de facto* merger doctrine it would wreak havoc on transactional practice, because (i) the benefits of asset partitioning, entity shielding, and internal capital markets described in my original report would be eviscerated, and (ii) *de facto* merger would become the norm rather than the exception. This would deter economically beneficial transactions, as transactional planners could no longer predict the legal consequences of the structures that they use." Ex. 8 (Subramanian Rebuttal Rep.) at 1.

Fourth, Professor Coates states that "CFC and its subsidiaries ceased operating a business while BAC [ ] continued maintaining the ownership, management, personnel, physical location and the bulk of the assets and business operations through other BAC commonly controlled and owned subsidiaries . . . ." Coates Rep. at 3. However, Professor Coffee observed that "it seems obvious that BAC was not a 'mere continuation' of CFC, because it is far larger, with far broader operations, a different senior management, and far more and different shareholders. Indeed, BAC can hardly be seen as a 'mere continuation' of CFC, where (i) CFC's shareholders received only 2% of BAC's common stock, and (ii) over four years later, CFC has not been dissolved." Ex. 7 (Coffee Rep.) at 62.

Fifth, Professor Coates repeatedly questions Countrywide's solvency at LD2 and LD100. *See* Coates Rep. at 3, 9, 10, 17, 22, 23, 24. But, Mr. Deetz concluded in the *MBIA* case that Countrywide and CHL were solvent as of July 31, 2008 and November 30, 2008.

Sixth, Professor Coates states that "[t]he procedures by which the Asset-Stripping Transactions were approved were inconsistent with corporate governance customs and practices for economically similar transactions, and certainly inconsistent with 'best practices.'" Coates Rep. at 3. But, the expert record in *MBIA* casts real doubt on the legal and factual predicates of this claim. As noted above, there is unrefuted evidence that Bank of America did pay a fair value in the July and November 2008 transactions. *See* Ex. 5 (McConnell Rep.) at 8-11. This unrefuted testimony undermines Professor Coates's corporate governance concerns because the only purpose for corporate governance and "best practices" in the first place is to try to make it more likely that fair value is paid. Therefore, if Bank of America paid fair value, there is no reason to worry about these objections. Moreover, Professor Coates has assumed, but not established, the factual basis for his opinion, *i.e.*, the insolvency of Countrywide. At the very least, there is disagreement in the *MBIA* expert record about this important predicate. *See* note 9, *supra*.

3. The opinions I express in my original report are also supported by the litigation history of successor liability claims against Bank of America, in which courts routinely dismiss those claims at the pleading stage.

The opinions that I expressed in my original report are supported by the *MBIA* expert record and bolstered by surveying the outcomes of successor liability claims asserted in litigation against Bank of America in recent years. These claims are dismissed regularly at the pleading stage and, when not dismissed, are highly contested and hotly litigated for years (with no guarantee of success even then).

The balance of the court opinions that have considered the successor liability issue clearly weighs in favor of considering successor liability an unlikely result. There are at least twenty-two federal cases, decided both before and after the date of my expert report, in which successor liability claims against Bank of America have been dismissed — that is, rejected by the court at the pleading stage, even assuming all the facts asserted by the plaintiffs were true. Before the Settlement, nine different judges in eight different courts had granted motions to dismiss successor liability claims of various sorts against Bank of America (if limited to RMBS-related cases, two judges in two different courts); after the Settlement, twelve decisions by three different judges have likewise dismissed such claims (if limited to RMBS-related cases, ten decisions by one judge).[10] I am attaching as Exhibit 13 to this report a chart that summarizes these decisions.

[10] In the MBS context, the cases dismissing successor liability claims include: *Argent Classic Convertible Arbitrage Fund LP v. Countrywide Fin. Corp.*, 2009 WL 8572340 (C.D. Cal. Mar. 19, 2009), *In re IndyMac*

Most notably, in *Allstate Insurance Co. v. Countrywide Financial Corp.*, 842 F. Supp. 2d 1216 (C.D. Cal. 2012), the court granted Bank of America's motion to dismiss Allstate's successor liability claims, finding that plaintiffs had failed to adequately plead a *de facto* merger under Delaware law with respect to (1) the Red Oak merger standing alone, (2) the LD2 transaction standing alone, (3) the LD100 transaction standing alone, and (4) the three transactions together.

In *Allstate*, the court observed that "Delaware uses the doctrine of *de facto* merger sparingly, 'only in very limited contexts.'" *Id*. at 1231. The court then went on to find that "Allstate has never contended that the Red Oak Merger failed to comply with applicable Delaware statutes, and no court has ever so-found" and that "Countrywide retained all of its assets in the Red Oak Merger. It is therefore difficult to see how creditors could have been harmed by the Red Oak Merger standing alone." *Id.* at 1231-32. Finally, the court concluded that "Allstate has pleaded no facts from which the Court could infer that the compensation in the [LD2] and LD100 transactions was not reasonably equivalent. Neither has Allstate pleaded any

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Mortgage-Backed Secs. Litig., 718 F. Supp. 2d 495 (S.D.N.Y. 2010), *Maine State Ret. Sys. v. Countrywide Fin. Corp.*, 2011 WL 1765509 (C.D. Cal. Apr. 20, 2011), *Allstate Ins. Co. v. Countrywide Fin. Corp.*, 824 F. Supp. 2d 1164 (C.D. Cal. 2011), *Allstate Ins. Co. v. Countrywide Fin. Corp.*, 842 F. Supp. 2d 1216 (C.D. Cal. 2012), *Thrivent Fin. for Lutherans v. Countywide Fin. Corp.*, 2012 WL 1799028 (C.D. Cal. Feb. 17, 2012), *Dexia Holdings, Inc. v. Countrywide Fin. Corp.*, 2012 WL 2161498 (C.D. Cal. June 1, 2012), *Thrivent Fin. for Lutherans v. Countywide Fin. Corp.*, 2012 WL 2161002 (C.D. Cal. June 1, 2012), *Nat'l Integrity Life Ins. Co. v. Countrywide Fin. Corp.*, 2012 U.S. Dist. LEXIS 184429 (C.D. Cal. June 29, 2012), *Mass. Mut. Life Ins. Co. v. Countrywide Fin. Corp.*, 2012 WL 3578666 (C.D. Cal. Aug. 17, 2012), *Minnesota Life Ins. Co. v. Countrywide Fin. Corp.*, 2012 WL 6742119 (C.D. Cal. Dec. 6, 2012), *Bank Hapoalim B.M. v. Bank of America Corp.*, 2012 WL 6814194 (C.D. Cal. Dec. 21, 2012), and *F.D.I.C. v. Countrywide Fin. Corp.*, 2013 WL 49727 (C.D. Cal. Jan. 3, 2013).

Outside the MBS context, the cases dismissing successor liability claims include: *Pantoja v. Countrywide Home Loans, Inc.*, 640 F. Supp. 2d 1177 (N.D. Cal. 2009), *Infante v. Bank of America Corp.*, 680 F. Supp. 2d 1298 (S.D. Fla. 2009), *Jones v. Countrywide Home Loans, Inc.*, 2010 WL 551418 (N.D. Ill. Feb. 11, 2010), *Ralston v. Mortgage Investors Group, Inc.*, 2010 WL 1136317 (N.D. Cal. Mar. 22, 2010), *Madura v. Bank of America, N.A.*, 2010 WL 2821936 (M.D. Fla. July 16, 2010), *Pajarillo v. Bank of America*, 2010 WL 4392551 (S.D. Cal. Oct. 28, 2010), *Araki v. Bank of America*, 2010 WL 5625970 (D. Haw. Dec. 14, 2010), *Rodenhurst v. Bank of America*, 2011 WL 4625696 (D. Haw. Sept. 30, 2011), and *Serna v. Bank of America, N.A.*, 2012 WL 2030705 (C.D. Cal. June 4, 2012); *cf. Crawford v. Countrywide Home Loans, Inc.*, 2010 WL 597942 (N.D. Ind. Feb. 12, 2010) (denying plaintiffs' motion to add Bank of America as additional defendant on successor liability grounds).

facts from which the Court could infer that the transactions were designed to disadvantage creditors." *Id.* at 1232.

Professor Coates does not claim to predict the eventual results of litigation of successor liability claims, nor do I, but based on the *MBIA* expert record and decisions in other cases, I stand by my initial view that "a successor liability case would be difficult to win unless the Transactions materially reduced the value of the legacy Countrywide subsidiaries" (Ex. 3 (Daines Rep.) at 38), and that it was appropriate for the Trustee to consider the difficulty of prevailing on a successor liability claim in reaching its decision to enter into the Settlement.

4. Nothing in Professor Coates's report changes my opinion that Delaware law would probably apply to successor liability claims.

Professor Coates asserts that a "more careful analysis" of choice of law was required (Coates Rep. at 23), but does not conduct a separate choice of law analysis, either in his report for AIG in this case or in the *MBIA* report he attaches. Coates Rep. at 7 ("Nor have I conducted or had conducted for me . . . a choice-of-law analysis."). Professor Coates does not say that New York law should apply, or express any opinion on what the right choice of law would be.

My initial report analyzed the choice of law issue as it relates to successor liability and the possible law that courts could consider applying (including New York law, which Professor Coates appears to favor), and concluded that "a court would probably apply Delaware law" based on the internal affairs doctrine. Ex. 3 (Daines Rep.) at 39; *see generally id.* at 39-43. I specifically concluded that "a New York court would likely apply Delaware law," though this is not certain, "Delaware courts are likely to apply Delaware law" and "it seems more likely that a California court would apply Delaware law." *Id.* at 39, 41, 43. Moreover, after reviewing the lengthy choice of law briefing in *MBIA*, my opinion remains unchanged.

As to the substance of Professor Coates's choice-of-law critique, there are several problems:

First, Professor Coates incorrectly states that one New York court has "concluded" that it would apply New York law to a successor liability claim against Bank of America. Coates Rep. at 21. I presume that he is referencing the *MBIA* case, but I understand that the New York court considering successor liability claims against Bank of America in that case has, in fact, reached no conclusion on the choice of law argument.[11] In *MBIA*, both sides briefed this issue on summary judgment, it was a topic of debate during oral argument, and it is still under consideration by the court.[12]

Second, Professor Coates suggests that the Trustee should have "considered the choice of law analysis more carefully, by getting some more detailed sense of how often and when cases involving *creditors* led courts to use interest analysis rather than the internal affairs doctrine." Coates Rep. at 22. However, I did consider the interest-of-creditors argument in my initial report, and still concluded that, while the outcome is uncertain, "a New York court would likely apply Delaware law." Ex. 3 (Daines Rep.) at 39-40.

Predicating choice of law on the interests of creditors would create uncertainty about important legal rules because the state law applicable to corporate-separateness issues would

[11] *MBIA Ins. Corp. v. Countrywide Home Loans, Inc.*, Index No. 602825/2008, 36 Misc. 3d 1215(A) (Sup. Ct. N.Y. Cnty. Apr. 27, 2010) (applying New York law without discussion). *See also* Order re Mot. to Compel, *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 1736 (Sup. Ct. N.Y. Cnty. June 4, 2012), at 5 ("The court makes no finding on the choice of law argument.").

[12] *See* (1) MBIA Mem. of Law in Supp. of Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 2074 (Sept. 28, 2012) at 17-28; (2) BAC Mem. of Law in Opp'n to MBIA's Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 2212 (Nov. 7, 2012) at 8-18; (3) MBIA Reply Mem. of Law in Further Supp. of Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 3645 (Nov. 27, 2012) at 2-6; (4) BAC Mem. of Law in Supp. of Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 2073 (Sept. 28, 2012) at 21-25; (5) MBIA Mem. of Law in Opp'n to BAC Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 2213 (Nov. 7, 2012) at 11-24; (6) BAC Reply Mem. of Law in Further Supp. of Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 3608 (Nov. 27, 2012) at 4-8; and (7) Transcript of Oral Argument, *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 4036 (Jan. 9, 2013) at 28-34, 115-43.

then depend on the identity of the creditor that challenged the transaction. These dangers are detailed in the *MBIA* briefing. As I explained in my initial report, "Delaware, contracting parties and capital markets generally all have a strong interest in the clarity offered by a bright line rule (like following the law of the state of incorporation), while an ad hoc 'state's interest' analysis would generate a great deal of uncertainty . . . ." Ex. 3 (Daines Rep.) at 41.

Moreover, federal courts assessing the choice of law issues in cases arising out of the same facts have repeatedly reached the conclusion that Delaware law applies to creditors' successor liability claims against Bank of America. *See, e.g.*, *Allstate Ins. Co. v. Countrywide Fin. Corp.* 824 F. Supp. 2d 1164, 1173 (C.D. Cal. 2011) ("[A]pplying Delaware law to *de facto* merger questions will allow Delaware to provide its corporations with one bright-line rule rather than subjecting them to the vagaries of multiple states' rules."); *Maine State Ret. Sys. v. Countrywide Fin. Corp.*, 2011 WL 1765509, at *4 (C.D. Cal. Apr. 20, 2011) ("Mergers, reorganizations, and matters that may affect the interests of the corporation's creditors all fall within the scope of Section 302 [of the Restatement (Second) of Conflict of Laws], which prescribes the law of the state of incorporation.").

And in *MBIA*, even MBIA appears to have questioned this position at summary judgment by arguing that North Carolina (the place of business of Bank of America) has the most significant interest in the case. *See* MBIA Reply Mem. of Law in Further Supp. of Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 3645 (Nov. 27, 2012) at 3 (arguing "North Carolina law is the more appropriate alternative (than Delaware law) to New York law because North Carolina is BAC's principal place of business."). In my opinion, it would be quite surprising, and unfounded, for a court to apply the law of a corporation's place of business to the question of its having or not having successor liability as a result of its participation in a triangular merger and asset purchases: it is difficult to understand why the principal-place-of-business state would have the requisite level of interest (Professor Coates's report does not appear to disagree).

Third, Professor Coates argues that Delaware, while "well-known and highly regarded for its case law regarding alleged fiduciary duty breaches in cases brought by shareholders," is not a common choice of law or forum "for resolving non-shareholder contract disputes involving private companies." Coates Rep. at 21. Professor Coates suggests that the fact that the PSAs were governed by New York law militates in favor of applying New York law to the successor liability claims. *See id.*

However, successor liability claims are *not* contract disputes. Instead, they go to the essence of Bank of America's corporate structure. These claims will determine what assets are available to creditors of Countrywide and, as many have recognized, this is the essential role of corporate law.[13] Because successor liability claims so directly involve this essential role of determining the assets that creditors can claim, courts often rely on the law of the state of incorporation when resolving such claims. Indeed, by their terms, the PSA's choice-of-law provisions are not applicable to successor liability claims but to the primary contract claims. And, as noted above, "an ad hoc 'state's interest' analysis would generate a great deal of uncertainty." Ex. 3 (Daines Rep.) at 41.

Of course, even if New York law were to apply to the successor liability claim, Bank of America would have a reasonable argument that a successor liability claim would be defeated. Even under New York law, an essential element of any successor liability claim based on de

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[13] *See* Henry Hansmann & Reinier Kraakman, *The Essential Role of Organizational Law*, 110 YALE L.J. 387 (2000).

facto merger should be whether fair consideration was paid.[14] I have seen no evidence that the consideration here was grossly inadequate. Rather, the undisputed McConnell report suggests that fair value was paid. And, as indicated in my initial report, New York and Delaware courts have not held a buyer liable on facts similar to those here. *See* Ex. 3 (Daines Rep.) at 28.

5. Other issues raised by Professor Coates are outside the scope of my report.

Professor Coates devotes a significant portion of his report to critiques of the Trustee's methods and process — *e.g.*, contending that the Trustee should have used probability weightings or litigated (like MBIA) rather than settled. *See* Coates Rep. at 12-19. These issues fall well outside the scope of my assignment and analysis and may be better suited for an expert on trustee's functions.

Respectfully submitted,

Rob Daines

Robert M. Daines
March 14, 2013

[14] *See, e.g.*, *Cargo Partner AG v. Albatrans, Inc.*, 352 F.3d 41, 45 (2d Cir. 2003) ("So long as the buyer pays a bona fide, arms-length price for the assets, there is no unfairness to creditors in thus limiting recovery to the proceeds of the sale-cash or other consideration roughly equal to the value of the purchased assets would take the place of the purchased assets as a resource for satisfying the seller's debts. Moreover, as the magistrate judge observed, allowing creditors to collect against the purchasers of insolvent debtors' assets would 'give the creditors a windfall by increasing the funds available compared to what would have been available if no sale had taken place.'").

EXHIBIT 1

Robert M. Daines

Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
Phone: (650) 736-2684
Daines@Stanford.edu

Employment

Stanford Law School *2004-*
- Pritzker Professor of Law and Business
- Co-Director of the Rock Center for Corporate Governance at Stanford
- Graduate School of Business, Professor of Finance by courtesy

NYU School of Law Professor of Law *1997-04*

Yale Law School Visiting Professor *2001*

Columbia Law School Visiting Olin Fellow *1999*

Goldman Sachs & Company Associate in Leveraged Finance *1993-97*
Advised firms on high-yield bond and bank financings, acquisition finance and project finance in emerging markets.

Hon. Ralph K. Winter, United States Court of Appeals for the Second Circuit *1992-93*
Law Clerk

Teaching

Corporate law, corporate governance, mergers and acquisitions, corporate finance, and the law and economics of complex transactions

Awarded Stanford Law School's JBH Award for Excellence in Teaching

Education

Yale Law School *1993*
- Postgraduate research on property and tort reform

Yale Law School (J.D.) *1989-92*
- John M. Olin prize for best paper on law, economics and public policy
- Lead and Executive Editor, Yale Journal on Regulation
- Summer Research Fellow, Program in Civil Liability; John M. Olin Fellow

Brigham Young University *1985-89, 1982-83*
- BS Economics, BA American Studies
- University Honors, Highest Distinction
- Magna Cum Laude / Spencer W. Kimball Scholar
- Student body President
- Research Assistant to University President, Jeffery R. Holland.

Professional

- Current or former: Member, NASDAQ Stock Market Review Council; Chair of the Corporate and Securities Law section of the American Law and Economics Association; Chair of the Law and Economics Section of the Association of American Law Schools.
- Referee for the Journal of Finance; Journal of Financial Economics, Journal of Law and Economics; Journal of Law, Economics and Organization; Financial Management; Journal of Legal Studies; and the American Law and Economics Review.

Research

Right on Schedule: CEO options and self interest (with Rob Schonlau and Grant McQueen)

Pornography and Divorce (with Tyler Shumway)

Rating the Ratings: How Good are Commercial Corporate Governance Ratings (with Ian Gow and Dave Larcker) (Journal of Financial Economics)

The Law and Economics of Corporate Law (with Michael Klausner) (Palgrave Dictionary of Economics)

Agents protecting agents: The governance of spin-offs (with Michael Klausner)

Mandatory Disclosure, Information Asymmetry and Liquidity: The Effect of the 1934 Act (with Charles Jones).

The Good, the Bad and the Lucky: CEO pay and skill (with Vinay B. Nair and Lewis Kornhauser)

Do classified boards affect firm value? Takeover defenses after the pill (revise and resubmit, Journal of Financial and Quantitative Analysis)

The incorporation choices of IPO firms 2002 NYU Law Review 77, 6

Does Delaware law improve firm value? 2001 Journal of Financial Economics 62, 3.

Do IPO charters maximize firm value? Antitakeover provisions in IPOs (with Michael Klausner) 2001 Journal of Law, Economics, and Organization 17, 83

The Corporate Law Paradox, 102 Yale Law Journal 577 (with Jon Hanson)

Measuring Legal Change (with Scott Naatjes)

EXHIBIT 2

EXHIBIT 2

DOCUMENTS RELIED UPON[1]

Robert Daines

Expert Reports in *MBIA Insurance Corp. v. Countrywide Home Loans, Inc.*, Index No. 602825/2008 (Sup. Ct. N.Y. Cnty.)

1. Expert Report of John C. Coates IV, June 22, 2012, as publicly filed
2. Expert Report of Thomas L. Porter, Ph.D., June 25, 2012, as publicly filed
3. Expert Report of Guhan Subramanian, June 25, 2012, as publicly filed
4. Expert Rebuttal Report of John C. Coates IV, July 27, 2012, as publicly filed
5. Expert Report of John C. Coffee, Jr., July 27, 2012, as publicly filed
6. Expert Report of Timothy J. Galpin, Ph.D., July 27, 2012, as publicly filed
7. Expert Rebuttal Report of Thomas L. Porter, Ph.D., July 27, 2012, as publicly filed
8. Expert Rebuttal Report of Guhan Subramanian, July 27, 2012, as publicly filed
9. Expert Report of Scott Winn, Aug. 2, 2012, as publicly filed
10. Expert Report of Gene Deetz, Sept. 4, 2012
11. Expert Report of John McConnell, including Amendment and Supplement to the Expert Report of John McConnell, Sept. 4, 2012, as publicly filed

Other Expert Reports

1. Expert Report of John C. Coates IV in *Starr Int'l Co. v. Am. Int'l Grp., Inc.*, Case No. 05-cv-6283, Dkt. No. 184-2 (S.D.N.Y. Feb. 2, 2009)
2. Expert Report of Robert Daines, June 7, 2011

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[1] To the extent that I have relied upon documents that I listed on Appendix B of my June 7, 2011 report, I have not necessarily repeated those documents here.

Deposition Transcripts

1. Deposition of Elaine Golin, Nov. 12, 2012

2. Deposition of Meyer Koplow, Nov. 19, 2012

3. Deposition of Theodore Mirvis, Nov. 28, 2012

4. Deposition of Robert Griffin, Jan. 3, 2013

5. Deposition of Robert Daines, Jan. 24, 2013

Court Documents

1. AIG's Mem. of Law in Supp. of its Mot. in Limine to Exclude the Test. of John C. Coates IV and Portions of the Test. of Ronald J. Gilson, *Starr Int'l Co. v. Am. Int'l Grp., Inc.*, Case. No. 05-cv-6283, Dkt. No. 183 (S.D.N.Y. Feb. 2, 2009)

2. Institutional Investors' Statement in Support of Settlement and Consolidated Response to Settlement Objections, Case 1:11-cv-05988-WHP, Dkt. No. 124 (S.D.N.Y. Oct. 31, 2011)

3. BAC Mem. of Law in Supp. of Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 2073 (Sept. 28, 2012), as publicly filed

4. MBIA Mem. of Law in Supp. of Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 2074 (Sept. 28, 2012), as publicly filed

5. BAC Mem. of Law in Opp'n to MBIA's Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 2212 (Nov. 7, 2012), as publicly filed

6. MBIA Mem. of Law in Opp'n to BAC Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 2213 (Nov. 7, 2012), as publicly filed

7. BAC Reply Mem. of Law in Further Supp. of Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 3608 (Nov. 27, 2012), as publicly filed

8. MBIA Reply Mem. of Law in Further Supp. of Mot. for S.J., *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 3645 (Nov. 27, 2012), as publicly filed

9. Transcript of Oral Argument, *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 4036 (Jan. 9, 2013), as publicly filed

Decisions and Orders

1. *MBIA Ins. Corp. v. Countrywide Home Loans, Inc.*, Index No. 602825/2008, 36 Misc. 3d 1215(A) (Sup. Ct. N.Y. Cnty. Apr. 27, 2010)

2. Order re Mot. to Compel, *MBIA Ins. Corp.*, Index No. 602825/2008, Dkt. No. 1736 (Sup. Ct. N.Y. Cnty. June 4, 2012)

3. *Cargo Partner AG v. Albatrans, Inc.*, 207 F. Supp. 2d 86, 104 (S.D.N.Y. 2002)

4. *Cargo Partner AG v. Albatrans, Inc.*, 352 F.3d 41, 45 (2d Cir. 2003)

5. *Argent Classic Convertible Arbitrage Fund LP v. Countrywide Fin. Corp.*, 2009 WL 8572340 (C.D. Cal. Mar. 19, 2009)

6. *In re IndyMac Mortgage-Backed Secs. Litig.*, 718 F. Supp. 2d 495 (S.D.N.Y. 2010)

7. *Maine State Ret. Sys. v. Countrywide Fin. Corp.*, 2011 WL 1765509 (C.D. Cal. Apr. 20, 2011)

8. *Allstate Ins. Co. v. Countrywide Fin. Corp.*, 824 F. Supp. 2d 1164 (C.D. Cal. 2011)

9. *Allstate Ins. Co. v. Countrywide Fin. Corp.*, 842 F. Supp. 2d 1216 (C.D. Cal. 2012)

10. *Thrivent Fin. for Lutherans v. Countywide Fin. Corp.*, 2012 WL 1799028 (C.D. Cal. Feb. 17, 2012)

11. *Dexia Holdings, Inc. v. Countrywide Fin. Corp.*, 2012 WL 2161498 (C.D. Cal. June 1, 2012)

12. *Thrivent Fin. for Lutherans v. Countywide Fin. Corp.*, 2012 WL 2161002 (C.D. Cal. June 1, 2012)

13. *Nat'l Integrity Life Ins. Co. v. Countrywide Fin. Corp.*, 2012 U.S. Dist. LEXIS 184429 (C.D. Cal. June 29, 2012)

14. *Mass. Mut. Life Ins. Co. v. Countrywide Fin. Corp.*, 2012 WL 3578666 (C.D. Cal. Aug. 17, 2012)

15. *Minnesota Life Ins. Co. v. Countrywide Fin. Corp.*, 2012 WL 6742119 (C.D. Cal. Dec. 6, 2012)

16. *Bank Hapoalim B.M. v. Bank of America Corp.*, 2012 WL 6814194 (C.D. Cal. Dec. 21, 2012)

17. *F.D.I.C. v. Countrywide Fin. Corp.*, 2013 WL 49727 (C.D. Cal. Jan. 3, 2013)

18. *Pantoja v. Countrywide Home Loans, Inc.*, 640 F. Supp. 2d 1177 (N.D. Cal. 2009)

19. *Infante v. Bank of America Corp.*, 680 F. Supp. 2d 1298 (S.D. Fla. 2009)

20. *Jones v. Countrywide Home Loans, Inc.*, 2010 WL 551418 (N.D. Ill. Feb. 11, 2010)

21. *Ralston v. Mortgage Investors Group, Inc.*, 2010 WL 1136317 (N.D. Cal. Mar. 22, 2010)

22. *Madura v. Bank of America, N.A.*, 2010 WL 2821936 (M.D. Fla. July 16, 2010)

23. *Pajarillo v. Bank of America*, 2010 WL 4392551 (S.D. Cal. Oct. 28, 2010)

24. *Araki v. Bank of America*, 2010 WL 5625970 (D. Haw. Dec. 14, 2010)

25. *Rodenhurst v. Bank of America*, 2011 WL 4625696 (D. Haw. Sept. 30, 2011)

26. *Serna v. Bank of America, N.A.*, 2012 WL 2030705 (C.D. Cal. June 4, 2012)

27. *Crawford v. Countrywide Home Loans, Inc.*, 2010 WL 597942 (N.D. Ind. Feb. 12, 2010)

Law Review Articles

1. Henry Hansmann & Reinier Kraakman, *The Essential Role of Organizational Law*, 110 YALE L.J. 387 (2000)

Other Documents

1. Institutional Investors' Responses and Objections to the Steering Committee's First Set of Interrogatories (Aug. 27, 2012), Exhibit A

2. CWHL 2004-22 Pooling and Servicing Agreement

3. Bank of America Corp., Annual Report (Form 10-K) (Feb. 28, 2013)

EXHIBIT 3

EXHIBIT D-2

Jason H. P. Kravitt
Sean T. Scott
Mayer Brown LLP
71 S. Wacker Drive
Chicago, IL 60606

Matthew D. Ingber
Mayer Brown LLP
1675 Broadway
New York, NY 10019-5820

Dear Gentlemen:

You have asked for my opinion in connection with a potential settlement (the "Potential Settlement") involving securitization trusts (the "Trusts") for which Mayer Brown's client, The Bank of New York Mellon ("BNY Mellon" or the "Trustee") is trustee or indenture trustee. In particular, I have been asked to consider two legal theories (veil piercing and successor liability) under which the Trustee could potentially seek to recover money from Bank of America Corporation ("BAC") if certain BAC subsidiaries were liable for damages to the Trusts and unable to meet their respective obligations. In particular, you have asked me to focus on certain business combination transactions between Countrywide Financial Corporation ("CFC"), Countrywide Home Loans, Inc. ("CHL") and Countrywide Home Loans Servicing ("CHLS") on the one hand, and BAC and its subsidiary, NB Holdings Corporation ("NB Holdings") on the other, in 2008, and whether such transactions provide a basis for the Trustee to recover from BAC under either a veil piercing or successor liability theory. Below are my general views of how those doctrines likely would come into play.

This memo describes in general terms the law of veil-piercing and successor liability in Delaware, New York and California (as described in Appendix A, any of these could apply) and describes how these laws may apply to a potential case against BAC. This does not constitute legal advice, but gives my general opinions as an academic interested in corporate law and is limited by the available factual record and certain assumptions I make. Both veil piercing and successor liability are fact-intensive legal theories; any ultimate judicial determination may turn on documents or testimony that would be produced at trial that I haven't seen. Much of my understanding comes from review of public filings and transaction documents as well as from discussions with BAC and legacy Countrywide personnel. I have not independently verified the accuracy of any facts discussed or assumed. This opinion is intended solely for your information, and I make no recommendation regarding the Settlement to either Mayer Brown or the Trustee.

Rob Daines

Robert Daines
Pritzker Professor of Law and Business
Stanford Law School

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SUMMARY

Based on my understanding of the facts, and as further explained below:

- A veil piercing claim would likely fail.
  - First, from a policy perspective, it is generally not a good idea to pierce the veil for contractual claims (like a breach of warranty claim against CHL). To be blunt, the mere fact that creditors, including judgment creditors, will otherwise not be paid in full is no reason to pierce the veil. If investors in the trust certificates (the "Investors") agreed to bear the risk that Countrywide would someday fail, they presumably charged for this risk.
  - The mere fact that BAC bought Countrywide is no reason to pay creditors with BAC's assets that they were not relying on when they invested. Unless the value of Countrywide's assets was materially reduced in the Transactions (as defined below), Investors were not harmed by either the Transactions or the Acquisition of Countrywide and there is no reason to overturn the original bargain.
  - The general presumption against veil piercing for sophisticated contract creditors (like Investors) is a foundational legal rule. It is in fact extremely valuable and one of the few things on which commentators almost universally agree. To pierce the corporate veil simply because creditors would otherwise lose money would destroy this valuable and fundamental rule of corporate law.
  - Moreover, most veil piercing claims fail in the face of proper observance of corporate formalities. Based on my discussion with BAC management and review of corporate disclosures, it appears they did take steps to ensure that formalities were observed sufficiently to make a veil piercing claim difficult, as would be expected.
  - Thus, BAC very likely has a valid defense to claims that it lacked corporate separateness and it is highly unlikely that Investors' losses would qualify as injustice or the result of BAC's actions.

- To succeed on a piercing claim, the Trustee would probably need to show that BAC siphoned off value from Countrywide by materially underpaying for the assets it purchased in the Transactions. If it could show this, then both precedent and policy would support veil-piercing (as well as other claims against BAC, including successor liability and fraudulent conveyance).
  - Based on my understanding of the facts, however, this may not be easy to show. As discussed later in this memorandum:
    - According to BAC representatives, the pricing for the Transactions was based on valuations initially done in connection with the Acquisition, which was an arm's-length transaction between two unrelated parties. If this is true, it may be difficult for the Trustee to prove that BAC gave less than fair consideration in the Transactions.

        - There was a plausible business purpose for the Transactions.
        - I have seen no evidence to support a claim of asset stripping.

- The outcome of a successor liability claim is uncertain and would depend on where the case was brought, whether BAC underpaid in the Transactions, and other factual findings. Based on the facts as I understand them, BAC has a reasonable argument that any successor liability claim would be defeated.
    - Policy arguments seem to favor BAC and to argue against a finding of successor liability. Moreover, if BAC <u>did</u> pay a fair price for the assets, there is little reason for a court to find successor liability. Indeed doing so would undermine valuable corporate law rules.
        - In general, buyers do not (and should not) become liable for the seller's debts, especially if the seller's creditors were sophisticated and informed about the risks they faced at the time of their investment.
        - There are exceptions to this general policy, but they are aimed at deterring fraud and protecting creditors' reasonable expectations about the risks they took.
        - If BAC paid a fair price for the assets, the sales did not hurt Investors and there would be no reason to hold BAC entities liable for losses that Investors agreed to bear. Thus, absent potential fraudulent underpayment, there would be little policy justification for invoking successor liability based on the Transactions.
        - A finding of successor liability in this case would effectively grant Investors a windfall based on BAC's acquisition. If Investors knowingly accepted Countrywide credit risk, they should have access to Countrywide assets and no more. The mere fact that BAC subsequently bought Countrywide, after the alleged contractual breaches, is no reason to impose additional financial cost on BAC and would not plausibly deter the losses the Investors now face.
    - If the Trustee can show that BAC paid an unfair price that materially reduced the assets available to satisfy Investor claims, successor liability (or a similar theory) could well succeed.
    - Nonetheless, as a matter of practice, successor liability claims are rarely successful.
    - It appears that BAC likely has valid defenses to successor liability claims (especially under Delaware law).
    - The more difficult question is whether BAC would be liable under the de facto merger doctrine. Though I think the economic arguments and bulk of the case law favor BAC, I cannot ignore the stream of case law in New York and elsewhere that is something of a wildcard -- the relatively wooden application of which could theoretically hold BAC liable. The recent MBIA decision in New York is an example of this. A simple reading of some New York cases may lead to a conclusion that

BAC would be liable under a de facto merger theory. But as I conclude below, I do not believe that New York law will apply. Moreover, while the ultimate outcome is a difficult question, turning on unknown facts and developing law, in the end, I think a successor liability case would be difficult to win if a court concluded that BAC paid a fair price in the Transactions. At the very least, as discussed in more detail below, BAC has a reasonable argument that a successor liability claim would be defeated.

BACKGROUND

LEGACY BANK OF AMERICA

BAC is a Delaware corporation, a bank holding company and a financial holding company, with its principal executive offices in Charlotte, NC. Prior to its acquisition of Countrywide, BAC had approximately $1.7 trillion in assets, and employed approximately 210,000 people across three primary business segments, (i) Global Consumer and Small Business Banking, (ii) Global Corporate and Investment Banking, and (iii) Global Wealth and Investment Management.[1]

LEGACY COUNTRYWIDE

Prior to the Acquisition, (as defined below) Countrywide was engaged in real estate finance-related businesses, including mortgage banking, banking and mortgage warehouse lending, dealing in securities and insurance underwriting. As of June 30, 2008, Countrywide had assets with a book value of $172 billion, and employed approximately 44,000 people.

COUNTRYWIDE ACQUISITION

On January 11, 2008, BAC announced the acquisition of Countrywide for approximately $4 billion in an all stock transaction. On July 1, 2008, in accordance with the terms of the merger, Countrywide shareholders received .1822 of a share of Bank of America in exchange for each share of Countrywide stock (the “Acquisition”). BAC also cancelled $2 billion of Countrywide’s Series B convertible preferred shares that it held prior to the Acquisition. BAC’s initial purchase price allocation indicated that the fair value of net assets acquired was negative $0.2 billion, resulting in associated goodwill of approximately $4.4 billion.[2] Over the next few months, BAC and Countrywide entities entered into several transactions, which, I understand from discussions with BAC personnel, were anticipated as of the merger date and which served to integrate Countrywide’s operations with those of BAC (the “Transactions”).

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[1] Bank of America Corporation, Form 10-K for the year ended December 31, 2007.
[2] Bank of America Corporation, Form 10-K for the year ended December 31, 2008, p. 125.

ANALYSIS AND UNDERSTANDING OF FACTS

I have reviewed certain documents, public filings, and have spoken with Bank of America management familiar with the Transactions.[3] This section describes my understanding of the details surrounding the Acquisition and Transactions, as well as the operations, corporate structure and governance of the Countrywide entities.

After the announcement of the Acquisition in January of 2008, BAC determined that it would integrate Countrywide's operations with its existing operations, and determined that certain operations could be integrated immediately after the Acquisition, while others required third-party consent from regulators and contractual parties. To accomplish this, it planned a series of transactions:

- Shortly after the merger closed, CHL would sell to NB Holdings:
  a. two pools of mortgage loans (the "Initial Loan Sales"); and
  b. the vast majority of Countrywide's mortgage servicing rights and related assets.

  These transactions did occur shortly following the merger and are referred to as the "LD-2 Transactions" (for Legal Day 2, or day 2 following the Acquisition's legal closing).

- Following the necessary consents and approvals, BAC would buy:
  a. substantially all of CHL's remaining assets, including its mortgage origination operations (the "Asset Purchase Agreement"); and
  b. the stock of significant CFC subsidiaries, including its interest in Countrywide Bank, FSB (the "Stock Purchase Agreement"). These transactions occurred on November 7, 2008, 100 days following the merger, and are referred to as the "LD-100 Transactions."

THE LD-2 TRANSACTIONS

The Initial Loan Sales

The Initial Loan Sales consisted of the transfers of two pools of mortgage loans from CHL to NB Holdings in exchange for approximately $9.4 billion in cash and promissory notes. These transfers were made pursuant to the Master Mortgage Loan Purchase and Subservicing Agreement, which was executed on July 1, 2008. Deal No. 2008-1 was effectuated through a purchase confirmation and was closed on July 1, 2008 for approximately $6.9 billion.[4] Deal No. 2008-002 was also effectuated through a purchase confirmation and closed on July 3, 2008 for approximately $2.5 billion.[5]

[3] Appendix B contains a list of documents I have received in connection with this engagement. I have also relied on certain assertions made by BAC management, although I have not verified those assertions.
[4] BACMBIA-C0000161250-1257.
[5] BACMBIA-C0000161224-1231.

July 2, 2008 - LD-2

On July 2, 2008, NB Holdings entered into the Purchase and Sale Agreement with CHL whereby NB Holdings acquired CHL's membership interests in Countrywide GP, LLC and Countrywide LP, LLC, whose sole assets were equity interests in Countrywide Home Loans Servicing LP ("Servicing LP"). Servicing LP was the operating entity which serviced the vast majority of residential mortgage loans for the Countrywide entities. As consideration for this valuable asset, NB Holdings issued a promissory note to CHL for approximately $19.7 billion. My understanding is that the primary assets of Servicing LP were mortgage servicing rights and reimbursable servicing advances.[6]

In addition to the LD-2 Transactions, on July 3, 2008, Countrywide Commercial Real Estate Finance ("CCREF") sold a pool of commercial real estate loans to NB Holdings for approximately $237 million.[7]

Valuation

In my conversations with BAC representatives, they said that the valuation used to determine the consideration for the Acquisition was also used to determine the consideration for the Initial Loan Sales and LD-2. This is supported by Countrywide's Form 10-Q for the quarter ended June 30, 2008.

Note 2 to the financial statements described the Acquisition as well as several of the Transactions. The note stated, "The Company [CFC] expects to record no material gain or loss on these transactions after giving effect to purchase price adjustments." Under purchase price accounting, all assets and liabilities of CFC would be adjusted to fair value in connection with the Acquisition. Since the Transactions took place immediately subsequent to the Acquisition, and CFC did not record any material gain or loss in connection with the Transactions, it may be difficult for the Trustee or some other potential plaintiff to demonstrate that the consideration paid in connection with the Initial Loan Sales and LD-2 did not represent the fair value of the net assets transferred.

Approval and Execution

From what I have seen, it appears that the Initial Loan Sales and LD-2 were documented, approved, and executed properly. Both sales were approved by the Board of Directors of CHL through a unanimous written consent dated July 1, 2008, and executed by Andrew Gissinger, III. Mr. Gissinger was a legacy Countrywide employee, served as President, Chief Operating Officer and Head of Mortgage Lending for Countrywide. It is my understanding that Mr. Gissinger stayed on with Countrywide for a short time after the Acquisition. The Purchase and Sale Agreement and the Master Mortgage Loan Purchase and Subservicing Agreement were each executed by Gissinger on behalf of CHL, and by Joe Price, Chief Financial Officer, on behalf of NB Holdings. The purchase confirmation for Deal No. 2008-1 was executed by Mr. Gissinger on behalf of CHL and by Mr. Price on behalf of NB Holdings. The purchase confirmation for

[6] Countrywide Financial Corporation, Form 10-Q for June 30, 2008, p. 6.
[7] BACMBIA-C0000161613-1628.

Deal No. 2008-2 was executed by Monica Brudenell, Senior Vice President, on behalf of CHL and Jeffrey Brown, Treasurer, on behalf of NB Holdings.

THE LD-100 TRANSACTIONS

On November 7, 2008, BAC entered into a series of transactions with Countrywide entities, including the Stock Purchase Agreement and the Asset Purchase Agreement. Through the Stock Purchase Agreement and the Asset Purchase Agreement, BAC entities purchased substantially all of the remaining operating assets of legacy Countrywide, including its mortgage origination business and Countrywide Bank, FSB.

In connection with the Stock Purchase Agreement, BAC issued a promissory note to CFC for approximately $3.6 billion and assumed approximately $16.6 billion in CFC's public debt in exchange for CFC's equity interest in Effinity Financial Corporation ("Effinity"), its subsidiaries, as well as dozens of other direct and indirect subsidiaries of CFC.

In connection with the Asset Purchase Agreement, BAC issued a promissory note to CHL for approximately $1.76 billion in exchange for all assets utilized in CHL's mortgage business, including, but not limited to, (i) a pool of residential mortgages, (ii) remaining mortgage servicing rights, (iii) securities, (iv) real estate acquired through foreclosure on mortgage loans, (v) the technology platform, (vi) furniture fixtures and equipment, (vii) third party contract rights, (viii) real property owned by CHL, and (ix) mortgage servicing advance receivables.[8]

Valuation

BAC managers informed me that the price for the LD-100 purchases was determined using the same methods and assumptions they used to value Countrywide at the time of BAC's initial acquisition, with the exception of a change to account for the interest rate environment. It is also my understanding that no material gain or loss was recorded in connection with LD-100. While I cannot verify these claims, if BAC essentially purchased all of Countrywide's assets at prices largely based on the original third-party negotiations, then BAC may have overpaid for these assets given the severe deterioration in the markets between July and November of 2008.

While the mortgage industry was already in a state of decline at the time of the Acquisition, the mortgage industry and financial markets nearly collapsed between the Acquisition in July and LD-100 (in November). Specifically, on September 6, 2008, the U.S. Treasury placed government sponsored enterprises Fannie Mae and Freddie Mac into conservatorship. On September 15, 2008, Lehman Brothers filed for bankruptcy protection, becoming the largest bankruptcy in U.S. history with $600 billion in assets. On September 25, 2008, in the largest bank failure in U.S. history, Washington Mutual was seized by its regulator, the Office of Thrift Supervision, and the FDIC was appointed receiver. Any one of these events by itself could have had a significant negative impact on the mortgage industry, and therefore on valuations of mortgage industry assets and participants. In combination, the effects were devastating.

[8] Asset Purchase Agreement, Schedule 2.2.

Therefore, if BAC bought the stock and assets in November at prices that roughly approximate a value set in third party negotiations in July, this would suggest that BAC over-paid (rather than underpaid) for those stock and assets at LD-100.

Approval and Execution

The Asset Purchase Agreement was approved by the sole stockholder of CHL via written consent, executed on October 14, 2008 by Anne McCallion, Chief Financial Officer. I understand that Ms. McCallion was a legacy Countrywide finance executive and remained with Countrywide for approximately six months after the Acquisition. Further, the Asset Purchase Agreement was approved by the Board of Directors of CHL via unanimous written consent dated October 14, 2008, and executed by Board members Jack Schakett and Kevin Bartlett, each of whom were legacy Countrywide senior executives. The Asset Purchase Agreement was executed by Ms. McCallion on behalf of CHL and by Mr. Price on behalf of BAC.

The Stock Purchase Agreement was approved by the Board of Directors of CFC via unanimous written consent dated October 3, 2008 by Helga Houston, Greg Hobby, and Helen Eggers. I understand that all three directors were legacy BAC employees. The Stock Purchase Agreement was executed by Ms. McCallion on behalf of CFC and by Mr. Price on behalf of BAC.

OTHER INTERCOMPANY ACTIVITY POST ACQUISITION

There is other evidence that would appear to contradict any potential claim of asset stripping on the part of BAC.

First, in connection with the Transactions, BAC and NB Holdings issued numerous promissory notes to CFC and CHL in an aggregate amount exceeding $30 billion. Based on discussions with Bank of America management, I understand that all of these promissory notes were settled, either in cash or as part of an offset for items paid by BAC and or NB Holdings on behalf of Countrywide. While I have not had the opportunity to independently verify this through a review of BAC's books and records, public filings are consistent with this assertion.

Second, based on my discussions with Bank of America management, no dividends have been paid up to any BAC entities from the Countrywide entities. Again, while I have not been able to verify this in BAC's books and records, this assertion is consistent with the standalone Countrywide financial statements I have reviewed.

Third, BAC has made capital contributions exceeding $3 billion since the Acquisition. If an entity were engaged in fraudulent asset stripping, I would expect to see quite a different set of facts.

Fourth, intercompany transactions appear to be fairly limited, and ostensibly seem to favor Countrywide in their application. BAC utilizes certain Countrywide employees, and is charged for their services, but because CFC is in "wind down," BAC does not allocate corporate expenses to CFC or its subsidiaries. This practice is consistent with how BAC treats other similarly situated subsidiaries.

CORPORATE STRUCTURE AND GOVERNANCE OF COUNTRYWIDE

BAC may well have had legitimate business purposes for integrating the mortgage business of Countrywide, including its servicing operations, with BAC's existing operations. BAC managers assert that the Transactions made business sense given: (i) BAC's lower cost of funding, (ii) management experience, (iii) tax-related issues, and (iv) efficiencies.

BAC and the Countrywide entities appear to have observed corporate formalities. Based on my discussions with BAC management, I understand that CFC and CHL had their own officers and directors, held regular Board meetings and maintained minutes documenting those meetings.

Since the date of the Acquisition, CFC and its subsidiaries, including CHL, have maintained separate accounting systems, and have produced balance sheet and profit and loss statements at the subsidiary level.

Since the Acquisition, CFC and its subsidiaries have maintained separate bank accounts from BAC and its other subsidiaries.

At the time of the Acquisition, Countrywide employed approximately 44,000 people. Approximately 20,000 of those employees have remained on with BAC in some capacity. Countrywide entities currently employ approximately 600 employees, primarily dedicated to resolving representation and warranty claims. After the Acquisition, BAC's own management team began to run the combined operations.

Continuation of Countrywide's Business

With the exception of Balboa Insurance, BAC has discontinued use of Countrywide's trade names. Further, Countrywide's mortgage origination business had declined dramatically as of the Acquisition date. Further, BAC announced that it would not originate "pay option arm mortgages," which represented a significant percentage of loans originated by Countrywide.

In late 2007, Countrywide discontinued lending and sales of subprime mortgage loans, and prior to June 30, 2008, Countrywide discontinued lending and sales of home equity loans, except for additional draws under existing loan agreements and securitizations. Following is a comparison of revenue from Countrywide's Loan Production segment for the first two quarters of 2007 compared to 2008.

- Three months ended March 31, 2007 - $1.2 billion
- Three months ended June 30, 2007 - $1.5 billion
- Three months ended March 31, 2008 - $1.1 billion
- Three months ended June 30, 2008 - $762 million

The volume of loans sold was also in decline:

- Three months ended June 30, 2007 - $109 billion
- Three months ended June 30, 2008 - $57 billion

THE LEGAL RISKS: WHEN SHOULD BAC BE LIABLE FOR THE DEBTS OF A SUBSIDIARY?

THE BENEFITS OF LIMITED LIABILITY

As a general matter, a firm (including a holding company or wholly-owned subsidiary) is liable for its own debts and no others. There are good reasons for this rule, even when it results in unpaid creditors and even when the firm's shareholders could afford to pay the debt themselves.

First, this rule allows individuals and firms to limit the amount of capital they will risk in any one venture: if a venture in Firm A goes bad, creditors will not be able to dismantle a successful Firm B or claim all of the owner's assets. This encourages firms to make the risky investments that are necessary for economic growth, which benefits shareholders and society.

Second, this rule makes it easier for creditors to monitor the creditworthiness of the debtor. Creditors of Subsidiary B need only keep track of Subsidiary B's activities and financial condition, and do not need to worry that creditors from Subsidiary A will swoop in and lay a claim to Subsidiary B assets on which they had been relying. Thus, they can save money by effectively ignoring Subsidiary A's assets, liabilities and activities as well as the assets of Subsidiary A creditors. Creditors pass these cost savings on to borrowers and shareholders in the form of a lower interest rate, better terms or more available credit.

Commentators point out a host of other potential benefits arising from limited liability, including vibrant and accurate capital markets, and offer enthusiastic praise, calling limited liability "the greatest single discovery of modern times."[9] Thus, there is a robust presumption against piercing the corporate veil or holding a successor liable for another firm's debts. This presumption is so important that it has been widely recognized as "the essential role of organizational law."[10] Refusing to pierce the corporate veil is simply the court's way of enforcing the terms of the original bargain between a corporation and its voluntary creditors.

WHEN TO IGNORE LIMITED LIABILITY

When should we ignore this general rule against veil piercing or successor liability? For contractual creditors, the answer is: not often. Contractual creditors are free to protect themselves from the risk of loss by insisting on additional protections (guarantees, security interests, or restrictive covenants), charging higher prices to compensate for this risk or by refusing to deal with the firm. Thus, absent some form of misrepresentation or opportunism that defeats a creditor's reasonable expectations about the assets available to satisfy a debt, there is relatively little reason to overturn the default rule.[11]

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[9] NICHOLAS MURRAY BUTLER, WHY SHOULD WE CHANGE OUR FORM OF GOVERNMENT 82 (1912).

[10] These arguments are outlined in Henry Hansmann and Reinier Kraakman, *The Essential Role of Organizational Law*, 110 YALE L. J. 387 (2000).

[11] By contrast, tort victims (involuntary creditors) do not do business with the firm voluntarily and cannot protect themselves against the risk of non-payment that comes from limited liability. Thus, there is a much stronger public

Because the Trustee's potential claims against Countrywide are contract claims, there is a relatively weak policy justification for piercing the veil. The Investors voluntarily assumed a risk that Countrywide would be unable to meet its obligations if it breached any representations and warranties or other contractual terms, and they could take that risk into account and charge accordingly. When a contractual creditor is misled about a corporation's financial condition, this argument is less persuasive. However, in this case, misstatements to Investors, if any, would have been made before BAC's involvement. Therefore, from a pure policy perspective, there is generally no reason to pierce the corporate veil merely because CHL is a BAC subsidiary, even if it is insolvent and BAC is not.[12] I think the cases are generally consistent with this reasoning; a veil-piercing claim is highly unlikely to succeed based simply on BAC's ownership of Countrywide.

This analysis would change if it could be shown that Bank of America skimmed the cream off Countrywide and left Investors with the dregs, thus siphoning off value for itself. If BAC bought substantially all of Countrywide's assets at an unfair price, this would obviously rob Countrywide's creditors of the protection they bargained for. In such circumstances, there would be sound legal and economic reasons to hold BAC liable under veil-piercing, successor liability, or similar theories.

Note, though, that there is a difference between value-reducing asset stripping, which unexpectedly increases investors' credit risks by diluting the assets to which they had claim, and either (a) asset sales - for which a buyer pays a fair value and leaves creditors unharmed; or (b) careful legal planning and acquisition structuring, such as a buyer who takes steps to limit its exposure to creditor claims by, for example, purchasing the assets with a corporation instead of a general partnership. The Trustee or other litigants would likely have to attack the value paid by BAC in the LD-2 or LD-100 Transactions under any asset-stripping theory, and show that the consideration was materially less than fair value.

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interest in veil piercing or finding successor liability if that is necessary to protect involuntary creditors, although even in such circumstances, the presumption against veil piercing is robust.

[12] This is generally true for contract creditors; I am excluding, as beyond the scope, any arguments unique to the housing crisis or systemic financial risk.

VEIL PIERCING

Veil piercing law is notoriously difficult to characterize and has been described as "a doctrinal mess,"[13] perhaps in part because of its rare and relatively unpredictable application. Prominent corporate law scholars (and now Federal Judge) Frank Easterbrook and (former Dean of Chicago Law School) Daniel Fischel famously observed that:

> '[p]iercing' seems to happen freakishly. Like lightening, it is rare, severe and unprincipled. There is consensus that the whole area of limited liability, and conversely of piercing the corporate veil, is among the most confusing in corporate law.[14]

Even the doctrine's most ardent defenders say it is "a scourge on corporate law,"[15] "troublesome and mysterious" and "applied by courts in an extremely discretionary manner, in accordance with the individual consciences of judges[.]"[16]

The test for this rare exception to the general rule of limited liability is deceptively simple. The common formulation is that courts will hold a shareholder liable for the corporation's debts when: (1) the debtor corporation is completely dominated or controlled by its shareholder; and (2) when failing to pierce would result in a fraud, injustice or a wrong. This rule is easy to state, but hard to apply:

(1) *Domination/control*: It is difficult to know what factors a court will consider important in determining whether a parent dominated and controlled a wholly owned subsidiary. Courts look to a long list of factors – as many as nineteen – to answer this question. Frustratingly, none of these factors is dispositive and there is little guidance about which factor is important, necessary, sufficient or frankly even relevant. Nevertheless, there are some general patterns which I describe below.

(2) *Fraud/Injustice/Wrong*: What counts as a fraud or injustice? This is another wildcard and often differs from judge to judge; what one considers injustice, another may find a bargained-for risk. Generally, however, the injustice or wrong must be significant, even if it does not rise to the level of fraud.

Finally, courts sometimes vacillate about whether <u>both</u> domination and fraud/wrong are required or whether fraud alone is enough.

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[13] Peter B. Oh, *Veil-Piercing*, 89 TEX. L. REV. 81, 84 (2010).
[14] Frank H. Easterbrook and Daniel Fischel, *Limited Liability and the Corporation*, 52 U. CHI. LAW REV. 89, 89 (1985).
[15] Oh, *supra* at 81.
[16] STEPHEN PRESSER, PIERCING THE CORPORATE VEIL §1.1 (2010).

Successful veil piercing claims are relatively uncommon. For instance, one study of reported cases found that veil piercing succeeded in only 8% of cases where, as seems likely here, the parent did not make any misrepresentations.[17] Moreover, courts are reportedly less likely to pierce the veil when the shareholder is a corporation than they are when the shareholder is a person.

Below, I describe generally the law of Delaware, New York and California.

PIERCING THE CORPORATE VEIL IN DELAWARE

Although Delaware is recognized as the center of corporate law, it lacks any simple rules for when it will pierce. In 1968, the Delaware Supreme Court laid down the broad principle that they would pierce only "in the interest of justice, when such matters as fraud, contravention of law or contract, public wrong, or where equitable consideration among members of the corporation require it, are involved."[18] Lower courts expressly decline to clarify the vague standard ("the legal test . . . cannot be reduced to a single formula.") and reserve the power to pierce as needed to avoid inequitable results.[19] Because of this uncertainty, influential Delaware judges sometimes prefer to avoid veil piercing and to instead use alternative legal theories, such as fraudulent conveyance or tortious interference with contract, that better focus on the key question: is the parent culpable for the losses of its subsidiary's creditors?

In spite of the indeterminacy of Delaware's formal law, it is important to note that Delaware courts have traditionally been conservative on veil piercing and sensitive to transaction planners' need for certainty. Recent surveys rank Delaware as one of the states that is least likely to pierce. In the words of the *Harco* court, "It should be noted at the outset that persuading a Delaware Court to disregard the corporate entity is a difficult task."[20]

Below I discuss factors that Delaware courts have examined in veil piercing cases.

Mere Instrumentality or "Exclusive Domination and Control"

Delaware courts sometimes refuse to pierce unless the owner exerts "exclusive domination and control" over the debtor corporation, such that it becomes a "mere instrumentality" or establishes that the parent and the subsidiary operated as a "single economic entity."

It is well-settled that the parent-subsidiary relationship, by itself, is not enough to justify piercing the corporate veil and that a parent corporation does not necessarily dominate and control even a wholly owned subsidiary. Moreover, a plaintiff must show "exclusive" control by the parent corporation (and not simply by employees of the parent corporation). For example, in *Hart Holding Co. v. Drexel Burnham Lambert, Inc*, the intercorporate connections between the California partnerships and the Delaware corporation were thick: only Drexel Burnham employees were permitted to own partnership assets; the partnerships had none of their own

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[17] Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036, 1064 n.141 (1991).
[18] *Pauley Petroleum Inc. v. Continental Oil Co.*, 239 A.2d 629, 633 (Del. Ch. 1968).
[19] *Irwin & Leighton, Inc. v. W.M. Anderson Co.*, 532 A.2d 983, 989 (Del Ch. 1987).
[20] *Harco Nat'l Ins. Co. v. Green Farms. Inc*., 1989 WL 110537, at *4 (Del. Ch. Sept. 19, 1989).

employees; and senior Drexel Burnham employees performed all of the work for these partnerships. Despite all this, Chancellor Allen held that while "the partnership may indeed have been dominated and controlled by certain employees of Drexel," the plaintiffs had not shown that Drexel Burnham itself "controlled and directed the operations of the partnerships." [21]

The common test used to examine whether the corporation was dominated and controlled is to ask whether the subsidiary adheres to corporate formalities: whether it maintains its own board of directors and separate books and records, and documents any transfers between the corporation and its shareholders.[22] Following these formalities weighs against piercing "because it demonstrates that those in control of a corporation treated the corporation as a distinct entity and had a reasonable expectation that the conventional attributes of corporateness, including limited liability, would be accorded to it."[23] Failure to keep records and maintain formalities is penalized in part because it can make it harder for creditors to verify that the firm's assets remained available to repay their debts.

As noted above, the Countrywide subsidiaries appear to have adhered to corporate formalities with respect to the LD-2 and LD-100 Transactions, which would tend to weigh against veil piercing here. The Transactions were well documented, each entity maintained their own officers and directors, and each entity maintained separate books and records.

Fraud or something like it

In Delaware, the failure to observe corporate formalities, by itself, is probably not enough to justify piercing the corporate veil. Even after a gross failure to observe corporate formalities and after unreported asset transfers, the *Harco* court refused to pierce until plaintiffs could demonstrate that the transfers were done with the intent to defraud the corporation's creditors and not for some other valid corporate purpose.

Thus, "mere domination and control" are insufficient; Delaware courts typically refuse to pierce the corporate veil unless there is also some element of fraud, deceit or asset-stripping: "Beyond according respect for the formalities some weight, however, the cases inevitably tend to evaluate the specific facts with a standard of 'fraud' or 'misuse' or some other general term of reproach in mind."[24] Thus, plaintiffs must show that the corporation is "a sham and exist[s] for no other purpose than as a vehicle for fraud."[25]

Delaware courts have the power to pierce if there is a wrong or injustice that falls short of outright fraud, including a "contravention of law or contract, public wrong, or . . . equitable consideration among members of the corporation."[26] In particular, applying Delaware law, the

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[21] *Hart Holding Co. v. Drexel Burnham Lambert, Inc.*, C.A. No. 11514, 1992 WL 127567, at *11 (Del. Ch. May 28, 1992).
[22] *Harco Nat'l Ins. Co.*, 1989 WL 110537, at *6.
[23] *See Irwin & Leighton, Inc. v. W.M. Anderson Co.*, 532 A.2d 983, 989 (Del. Ch. 1987).
[24] *Id.*
[25] *Wallace ex rel. Cencom Cable Income Partners II, Inc., L.P. v. Wood*, 752 A.2d 1175, 1183–84 (Del. Ch. 1999).
[26] *Pauley Petroleum Inc. v. Cont'l Oil Co.*, 239 A.2d 629, 633 (Del. 1968); *see also Harco Nat'l Ins. Co.*, 1989 WL 110537, at *5 ("It is not necessary in Chancery, therefore, to show that a defendant accused of fraud has to have known or believed that his statement was false or to have proceeded in reckless disregard of the truth.").

District of Delaware noted that under the "alter ego" inquiry, if the corporation fails to observe corporate formalities, undercapitalization, or asset-stripping, the plaintiff need only show an element of injustice or unfairness rather than fraud.

The mere fact of nonpayment does not count as an injustice, however. A host of cases state that mere insolvency is not enough to allow piercing of the corporate veil. Instead, the fraud or injustice must consist of something more than the alleged wrong in the complaint and relate to a misuse of the corporate structure.

Asset-Stripping

Courts are most likely to pierce when shareholders engage in asset-stripping -- siphoning off the firm's assets and providing little or no (or inadequate) consideration in return.[27] Observance of corporate formalities will not save a corporation from piercing where the corporation engaged in asset-stripping. In this case, courts need not find common law fraud (or an investor's reliance on a misstatement), but something less – even an element of wrong.

The reason that asset-stripping alone may justify veil piercing is that: (a) Delaware cases explicitly state that fraud on its own may justify veil piercing; and (b) the fact of asset-stripping may serve double duty, as it may show both prongs of the test. The logic is that asset-stripping typically occurs when a shareholder so dominated and controlled the corporation that the corporation agreed to a transaction that made the firm materially worse off (and the shareholder better off, presumably), which by definition works a fraud or injustice on the corporation and its creditors. Thus, transactions that suggest fraud at the corporation's expense go a long way to showing the "mere instrumentality" test.

Successful asset stripping cases are often egregious. For example, in *Pereira v. Cogan*,[28] the court dismissed defendant's motion to dismiss plaintiff's veil piercing claim after finding a pattern of extreme asset-stripping and other fraudulent conveyances was sufficient injustice to warrant piercing the corporate veil, even though the defendants observed corporate formalities. In *Geyer v. Ingersoll Publications Co.*,[29] the court found three conveyances intended to benefit the parent corporation's other business partners were sufficient to support an instrumentality theory of piercing the corporate veil. Other cases involve transfers to a parent corporation for inadequate consideration.

While extremely rare, Delaware courts have pierced on "public policy" grounds before. The Chancery Court appears to have applied this justification in *David v. Mast,* No. 1369-K, 1999 WL 135244, at *1 (Del. Ch. Mar. 2, 1999) where it pierced even though the shareholder followed corporate formalities when an almost-insolvent roofing company owned by a single individual shareholder violated Delaware's consumer protection policies when it advertised ten-year roofing guarantees that it knew it wouldn't be able to pay out. This "public policy" exception creates some additional uncertainty on the merits of a veil-piercing claim here given the importance of the underlying dispute.

[27] *Mabon, Nugent & Co. v. Texas Am. Energy Corp.*, 1988 WL 5492, at *1-4 (Del. Ch., Jan. 27, 1988) (together with soft assurances that the parent corporation would be liable for the subsidiaries' debt); *United States v. Golden Acres, Inc.*, 702 F. Supp. 1097, 1106 (D. Del. 1988) (applying federal common law and including failure to observe corporate formalities); *Harco Nat'l Ins. Co.*, 1989 WL 110537, at *2 (together with operation of the business "in an informal and cavalier manner").

[28] No. 00 CIV. 619(RWS), 2001 WL 243537, at *21 (S.D.N.Y. Mar. 8, 2001).

[29] *Geyer v. Ingersoll Publications Co.*, 621 A.2d 784, 793 (Del. Ch. 1992).

An extreme case of undercapitalization or asset-stripping is more likely to suggest fraudulent intent and to justify veil-piercing which gives the debtor full relief. For a more moderate case, less suggestive of fraudulent intent to avoid a judgment, the doctrine of fraudulent conveyance and simply recapturing any value reduction makes more sense.

Here, the facts as I understand them seem to weigh against a successful asset-stripping claim under Delaware law: (1) BAC paid very substantial consideration for the assets acquired in the LD-2 and LD-100 Transactions, and the resulting intercompany debt was paid in full by BAC; (2) that price was based on prices determined by the Acquisition, which was presumably adequate because it was approved by the Countrywide shareholders, (3) BAC did not take any dividends from the subsidiaries at issue, and instead has made additional capital contributions to support the operations of those subsidiaries; and (4) there were ostensibly valid corporate purposes for the Transactions at the time, and I have seen not seen evidence that the purpose of the Transactions was to render Countrywide entities judgment-proof. Most importantly, BAC managers say that they paid for the assets based on fair-value accounting and subsequent disclosures in Countrywide's public financial statements do not recognize any substantial gains or losses from those transactions. If true, this is a strong defense against asset stripping, particularly when the value of Countrywide's assets were likely dropping during this time. (See the valuation subsection of The LD-100 Transactions section, on page 10.)

PIERCING THE CORPORATE VEIL IN NEW YORK

Commentators describe New York's law as obscure, but generally agree that it is relatively difficult to pierce the corporate veil in New York state courts. Commentators have described its laws as "'nearly impregnable'"[30] and "somewhat more restrictive on piercing than cases from the rest of the country."[31] Moreover, some federal courts (interpreting New York law) appear even less willing to pierce for contract creditors who do business with the corporation voluntarily and who have agreed to bear the risk. The courts note that "There is a general tendency not to pierce the corporate veil…, particularly in contract cases where the complaining party has chosen to deal with the protected party and has had the opportunity to negotiate the terms of liability, thereby protecting himself from the harmful effects of wrongdoing."[32]

The New York rule is easier to state than Delaware's; piercing is permissible when: "(1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud wrong against the [petitioner] which resulted in [that petitioner's] injury."[33]

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[30] William D. Harrington, *Business Associations*, 43 SYRACUSE L. REV. 25, 65 (1992).

[31] Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036, 1052 (1992) ("As a group, the New York decisions seem somewhat more restrictive on piercing than cases from the rest of the country.").

[32] *See, e.g.*, *Matter of Tax Indebtedness of Coppola*, 91-CV-0919(JBW), 1994 WL 159525, at *4 (E.D.N.Y. Jan. 10, 1994) (citing *Carte Blanche (Singapore) PTE., Ltd. v. Diners Club Int'l, Inc.*, 758 F. Supp. 908, 913 (S.D.N.Y. 1991)).

[33] *In re Morris v. N.Y. State Dept. of Taxation & Fin.*, 82 N.Y.2d 135, 141 (1993).

Because both elements of the test must be shown, New York's rule is arguably stricter than Delaware (where only fraud is required). This distinction may be illusory, however; a court that finds that the Transactions constituted a fraud or wrong is also very likely to be able to find that CHL was dominated or controlled; that is, "fraudulent" related-party transfers between wholly owned subsidiaries are very likely to be the product of dominated boards, even if formalities were followed and records were kept.

Complete Domination

To evaluate whether owners have exercised "complete domination of the corporation," New York courts typically look to a long list of factors, many of which focus on the whether the owner observed corporate formalities.

> (1) the absence of the formalities and paraphernalia that are part and parcel of the corporate existence, *i.e.*, issuance of stock, election of directors, keeping of corporate records and the like, (2) inadequate capitalization, (3) whether funds are put in and taken out of the corporation for personal rather than corporate purposes, (4) overlap in ownership, officers, directors, and personnel, (5) common office space, address and telephone numbers of corporate entities, (6) the amount of business discretion displayed by the allegedly dominated corporation, (7) whether the related corporations deal with the dominated corporation at arm's length, (8) whether the corporations are treated as independent profit centers, (9) the payment or guarantee of debts of the dominated corporation by other corporations in the group, and (10) whether the corporation in question had property that was used by other of the corporations as if it were its own.[34]

The list of factors is longer in New York, but there is little analysis to guide their application; none of these factors is dispositive and no weights are given for the individual factors. Several factors (like "undercapitalization" and "common ownership") may be unhelpful truisms; a firm that can't pay its debts is by definition undercapitalized and there is almost always some common ownership link in a veil piercing case.

The most important factors are probably those focusing on whether corporate formalities were observed (separate board meetings held, separate records kept) and whether the separate identity of the firm was respected by its owner. The use of interlocking directors and similar facts "in and of themselves [are] insufficient facts to justify the imposition of such liability on the parent corporation,"[35] absent a showing of other failings like shared bank accounts, addresses, and records or the personal use of corporate funds. Examples of activity considered domination include the following: the absence of formalities such as corporate meetings and records, inadequate capitalization of the subsidiary; the intermingling of personal and corporate funds, and the use of corporate property for other purposes, including the formation of a second

[34] *Passalacqua Builders, Inc. v. Resnick Developers S., Inc*., 933 F.2d 131, 139 (2d Cir. 1991).
[35] *Pebble Cove Homeowners' Ass'n, Inc. v. Fid. N.Y. FSB,* 153 A.D.2d 843, 843 (2d Dep't 1989).

corporation with overlapping ownership, officers, directors, and personnel; and inadequate documentation of intercompany transfers.[36]

Careful observance of corporate formalities limits many veil piercing claims, even if the formalities are observed solely for the purpose of limiting predictable exposure to creditors. However, the courts often blend unity of interest tests (prong 1) with tests about whether asset transfers harmed creditors (prong 2). As a result, simple observance of formalities is alone probably insufficient to insulate BAC from any veil piercing claims. If a court found that BAC fraudulently paid a materially unfair price in the Transactions, thereby reducing the value of CFC and/or CHL, a court could probably find something in the above list of 10 factors to justify piercing. Absent that, the observance of formalities may provide BAC with an important defense.

Fraud or Wrong

Even if a creditor is able to show that a corporation was completely dominated and controlled by its owner, New York courts typically refuse to pierce the corporate veil unless a creditor can also show that "such domination was used to commit a fraud or wrong against the [petitioner] which resulted in [that petitioner's] injury."[37]

It is not always clear, of course, what counts as a "fraud" or "wrong." Generally speaking, it takes more than nonpayment or breach of contract to count as a "wrong"; if nonpayment and breach were enough to justify veil piercing, every valid claim on an insolvent corporation would succeed and the exceptions to limited liability would completely swallow the rule.

Thus, New York courts require something like fraud, deception or "bad-faith" actions, such as knowingly collecting fees from customers when performance was impossible or attempting to avoid federal regulation. This wrong need not amount to full-blown common law fraud and very often actions that amount to misrepresentation or deceit are sufficient. Insolvency itself is not a fraud or a wrong.

Asset Stripping

Although many aspects of the fraud test are unclear, it is clear that "stripping of corporate assets by shareholders to render the corporation judgment proof constitutes a fraud or wrong justifying piercing the corporate veil."[38] Examples include cases where parent corporations

[36] *See, e.g.*, *Commercial Sites, Co. v. Prestige Photo Studios, Inc.*, 272 A.D.2d 360 (2d Dep't 2000); *Anderson St. Realty Corp. v. RHMB New Rochelle Leasing Corp.*, 243 A.D.2d 595, 596 (2d Dep't 1997); *Simplicity Pattern Co. v. Miami Tru-Color Off-Set Serv*., 210 A.D.2d 24, 25 (1st Dep't 1994).

[37] *Lederer v. King*, 214 A.D.2d 354, 354 (1st Dep't 1995) ("Plaintiff was not required to plead or prove fraud in order to pierce the corporate defendant's corporate veil, but only that the individual defendant's control of the corporate defendant was used to perpetrate a wrongful or unjust act toward plaintiff") (citing *In re Morris v. N.Y. State Dept. of Taxation & Fin.*, 82 N.Y.2d 135, 141, 623 N.E.2d 1157 (1993)).

[38] For example of in-depth analysis of incriminating facts in federal asset-stripping cases, *see Carte Blanche (Singapore) PTE, Ltd. v. Diners Club Int'l, Inc.*, 758 F. Supp. 908 (S.D.N.Y.1991); *Smoothline Ltd. v. N. Am. Foreign Trading Corp.*, 00 CIV. 2798 DLC, 2002 WL 31885795 (S.D.N.Y. Dec. 27, 2002); *Matter of Arbitration between Holborn Oil Trading Ltd. & Interpol Bermuda Ltd.*, 774 F. Supp. 840 (S.D.N.Y. 1991); *United Rubber,*

denude subsidiaries of their assets in order to render them unable to honor their obligations, particularly in advance of a contemplated judgment.[39] Such transfers often are without consideration and are tantamount to fraudulent conveyances. Pending litigation is not a requirement, however; courts may pierce when owners strip assets from a corporation in order to make it judgment-proof, even if owners were simply on notice of impending litigation.[40]

This focus on whether the debtor received fair consideration is evident in cases that show veil piercing is unavailable when the "evidence establishe[s] that the challenged transfers were made for fair consideration or to satisfy an antecedent debt and also that the net effect of the transfers was not to prefer any creditor over plaintiffs."[41]

Thus, NY courts often sensibly and implicitly apply the norms of fraudulent conveyance law to claims of asset-stripping as they arise in veil piercing claims. Even asset sales from dominated and undercapitalized corporations will not justify veil piercing absent proof that the value of assets removed was greater than the value of the contributed services.[42]

In my opinion, is very unlikely that the mere fact that BAC acquired Countrywide and operates it as a wholly-owned subsidiary would justify veil piercing. BAC is likely to have observed the corporate formalities and maintained the separate corporate identity of CHL with sufficient care and rigor to succeed on the "complete domination" prong.[43] Moreover, BAC did not own, much less control, CHL at the time the underlying liabilities were created – and New York law requires that an owner exercised domination "*in respect to the transaction attacked*"[44] and that the attacked transaction harmed creditors. Thus, veil piercing on these grounds alone is very unlikely. To succeed on veil piercing in New York, I think the Trustee would have to prove that BAC paid too little in the Transactions, thus fraudulently removing value from CHL to the detriment of its creditors. I do not have any reason to think that would be an easy task and it may in fact be very difficult. As noted above, I understand that the prices paid in the Transactions

Cork, Linoleum & Plastic Workers of Am., AFL-CIO v. Great Am. Indus., Inc., 479 F. Supp. 216, 240 (S.D.N.Y. 1979); *Directors Guild of Am., Inc. v. Garrison Productions, Inc.*, 733 F. Supp. 755, 762 (S.D.N.Y. 1990).

[39] *888 7th Ave. Assocs. Ltd. P'ship v. Arlen Corp.*, 172 A.D.2d 445, 445 (1st Dep't 1991); *see* also *Chase Manhattan Bank (Nat. Ass'n) v. 264 Water St. Assocs.*, 174 A.D.2d 504, 505 (1st Dep't 1991).

[40] *See, e.g.*, *Godwin Realty Assocs. v. CATV Enters.*, 275 A.D.2d 269, 270 (1st Dep't 2000) ("The stripping of corporate assets by shareholders to render the corporation judgment proof constitutes a fraud or wrong justifying piercing the corporate veil. Although no action had been commenced at the time of liquidation, there was evidence that defendant was nonetheless on notice of the presently asserted claims by building owners with respect to building damage and unauthorized use of electricity.") (citing *Matter of Arbitration between Holborn Oil Trading Ltd. & Interpol Bermuda Ltd.*, 774 F. Supp. 840, 847 (S.D.N.Y. 1991), which quotes *Carte Blanche (Singapore) Pte., Ltd. v. Diners Club Int'l, Inc.*, 758 F.Supp. 908, 917 (S.D.N.Y.1991)).

[41] *See, e.g.*, *Rebh v. Rotterdam Ventures Inc.*, 277 A.D.2d 659, 661 (3d Dep't 2000).

[42] *Ravens Metal Products Inc. v. McGann*, 267 A.D.2d 527, 528-29 (3d Dep't 1999) .

[43] *Pebble Cove Homeowners' Ass'n, Inc.*, 153 A.D.2d at 843. *See also A. W. Fiur Co., Inc. v. Ataka & Co., Ltd.*, 71 A.D.2d 370, 374 (1st Dep't 1979) ("A subsidiary corporation over which the parent corporation exercises control in everyday operations may be deemed an instrumentality or agent of the parent. The determinative factor is whether the subsidiary corporation is a dummy for the parent corporation." (citations omitted)); *Feszczyszyn v. Gen. Motors Corp.*, 248 A.D.2d 939, 940 (4th Dep't 1998) (company "substantially responsible for its own day-to-day operations and the hiring and termination of most of its employees," with different directors on the board, is not dominated by parent).

[44] *See In re Morris*, 82 N.Y.2d at 141.

were based on arm's length prices paid in connection with the Acquisition. (See the valuation discussions related to the LD-2 and LD-100 transactions on pages 9 and 10.)

PIERCING THE CORPORATE VEIL IN CALIFORNIA

The general standard for veil piercing in California is familiar: a plaintiff must prove both (1) unity of interest and ownership between the corporation and its shareholder, and (2) that there will be an inequitable result if the veil is not pierced.[45] In my view, California courts are actually fairly conservative about veil piercing in practice.

Not to be outdone by New York's list of ten factors, California courts consider a list of nineteen that can inform one or both prongs of the test:[46]

- "Commingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses;
- The treatment by an individual of the assets of the corporation as his own;
- The failure to obtain authority to issue stock or to subscribe to or issue the same;
- The holding out by an individual that he is personally liable for the debts of the corporation;
- The failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities;
- The identical equitable ownership in the two entities;
- The identification of the equitable owners thereof with the domination and control of the two entities;
- Identification of the directors and officers of the two entities in the responsible supervision and management;
- Sole ownership of all of the stock in a corporation by one individual or the members of a family;
- The use of the same office or business location;
- The employment of the same employees and/or attorney;
- The failure to adequately capitalize a corporation; the total absence of corporate assets, and undercapitalization;
- The use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another corporation;
- The concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities;
- The disregard of legal formalities and the failure to maintain arm's length relationships among related entities;

[45] *Automotriz Del Golfo De Cal. S.A. De C.V. v. Resnick*, 47 Cal.2d 792, 796 (1957).
[46] *Associated Vendors, Inc. v. Oakland Meat Co., Inc.*, 210 Cal. App. 2d 825, 838-41 (Cal. Ct. App. 1962) (bullets added; citations omitted).

- The use of the corporate entity to procure labor, services or merchandise for another person or entity;
- The diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another;
- The contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of illegal transactions; and
- The formation and use of a corporation to transfer to it the existing liability of another person or entity."

How a court will apply a nineteen-factor test is perhaps anybody's guess. The *Associated Vendors, Inc.* court noted that while several factors usually support a trial court's decision to pierce, that determination is a factual one, and an appellate court approaches it with a deferential standard of review. Below I describe how these factors are usually considered (some regularities emerge).

Unity of Interest

Failure to Observe Corporate Formalities

The typical tests apply in California, including "failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities . . . the failure to obtain authority to issue stock or to subscribe to or issue the same . . . [and] the disregard of legal formalities and the failure to maintain arm's length relationships among related entities[.]"[47] Failing to observe these corporate formalities can go a long way towards satisfying the unity of interest prong. As discussed above, it appears that BAC and CHL observed corporate formalities. CHL had its own officers and directors, and its board of directors held meetings and maintained minutes of those meetings.

Identification of a Shareholder with the Corporation

Courts ask whether the corporation and the shareholder are, in all but legal name, the same entity. A leading case, *Associated Vendors, Inc.*, lists factors such as "the identical equitable ownership in the two entities . . . the identification of the equitable owners thereof with the domination and control of the two entities . . . identification of the directors and officers of the two entities in the responsible supervision and management . . . sole ownership of all of the stock in a corporation by one individual or the members of a family . . . the use of the same office or business location . . . the employment of the same employees and/or attorney . . . [and] the holding out by an individual that he is personally liable for the debts of the corporation."[48]

[47] *Id.* at 840.
[48] *Id.* at 838.

While this list of factors suggests that a parent-subsidiary relationship would almost always meet the "unity of interest" prong, in practice the courts avoid this outcome by blurring this test with the second prong of the *Automotriz* test and generally requiring facts that show manipulation or bad faith even when a subsidiary is wholly owned and controlled by the parent.[49] Thus, failure on this prong alone is insufficient to justify piercing; courts tend to look also for deception or manipulation. Conversely, even consolidated financial statements and interlocking directors show unity of interest where there is asset stripping that suggests bad faith.

Control and Domination: "Mere Instrumentality" or Single-Enterprise Liability

Finally, a California court may find a unity of interest where it determines that a subsidiary corporation is a "mere instrumentality" of the parent corporation. Obviously, in practice, a wholly-owned subsidiary will act as its sole shareholder directs, so the term "mere instrumentality" must mean more than this: typically it is used when there is an element of asset-stripping, deception, manipulation or fraud (and the shareholder simply uses the debtor corporation as a pawn in some underlying wrong).[50] Thus, the focus is not on corporate formalities as much as whether creditors were deceived about the risks they were taking.

California courts examine whether the subsidiary is financially independent and consider financial dependence as a factor indicating control. However, even financial dependence is not enough to justify veil piercing unless it is done "'for the purpose of perpetrating a fraud.'"[51] Thus, the test primarily focuses on times when the debtor engaged in fraud with the assistance of affiliates or when the debtor was grossly and intentionally undercapitalized (rather than due to economic distress). In *Las Palmas Associates v. Las Palmas Center Associates*, which is probably the leading case on single-enterprise liability in California, the court explained, "[I]t would be unjust to permit those who control companies to treat them as a single or unitary enterprise and then assert their corporate separateness in order to commit frauds and other misdeeds with impunity."[52] In such cases, the same facts that lead the court to conclude that there is unity of interest will also suggest fraud or asset-stripping sufficient to satisfy the inequity prong of the test.

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[49] *Id.* at 839. In *Pathology, Inc. v. Cal. Health Laboratories, Inc.*, the court held that "intercorporate connections" between a parent and its wholly-owned subsidiary did not rise to the level of "manipulative control" required to meet the unity of interest prong even when the parent and subsidiary had interlocking directors and officers, the parent kept the subsidiary's books at its corporate headquarters, and employees often transferred between the two corporations. *Institute of Veterinary Pathology, Inc. v. Cal. Health Laboratories, Inc.*, 116 Cal. App. 3d 111, 120 (Cal. Ct. App. 1981) (requiring "direct evidence of manipulative control of its subsidiaries which would require imposition of liability.").

[50] *Electro Lock, Inc. v. Core Indus., Inc.*, No. B134386, 2002 WL 1057468, at *17–18 (Cal. Ct. App. May 28, 2002) (piercing to parent corporation where parent corporation's management treated subsidiary's president as a "puppet," provided all administrative assistance and legal advice, and forced the subsidiary to sell products at a loss to the parent corporation); *ADO Finance, A.G. v. McDonnell Douglas Corp.*, 931 F. Supp. 711, 717–18 (C.D. Cal. 1996) (piercing for jurisdictional purposes to sole individual shareholder who appointed the board, directed business decisions, managed daily operations, spun off subsidiaries for less than their true value, and loaned substantial sums of money to the parent); *Institute of Veterinary Pathology, Inc.*, 116 Cal.App.3d at 120.

[51] *Sonora Diamond Corp. v. The Superior Court of Tuolomne Cnty.*, 83 Cal. App. 4th 523, 539 (Cal. Ct. App. 2000).

[52] *Las Palmas Assocs. v. Las Palmas Ctr. Assocs.*, 235 Cal. App. 3d 1220, 1250 (Cal. Ct. App. 1991); *see also Electro Lock*, 2002 WL 1057468, at *19; *ADO Finance, A.G.*, 931 F. Supp. at 718.

Inequitable Result

Undercapitalization

Inadequate capitalization may lead to an "inequitable result" to justify piercing; however, in practice, courts find this only when a corporation's woefully inadequate financing suggests an intent to evade liability for debts that the corporation could reasonably expect to incur in the ordinary course of business.[53] California generally does not infer "misconduct or injustice" from a corporation's mere "inability to meet the balance of its [debts]."[54] Thus, once again the cases are generally consistent with the idea that piercing is inappropriate to overturn bargained-for risks.

In imputing bad faith from a corporation's undercapitalization, the industry standards for capitalization are relevant. Courts may also consider whether normal business or industry risks led to the company's inability to pay debts in the future.

Siphoning off Corporate Assets

A finding of asset stripping or a diversion of assets may itself (if sufficiently egregious) justify a veil-piercing claim. *Associated Vendors* lists "the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another" and "the failure to maintain arm's length relationships among related entities" as factors to consider.[55]

The fact of asset-stripping may serve double duty, as it is considered under both prongs of the *Automotriz* test. As discussed above, the logic is that because the corporation's shareholder so dominated and controlled the corporation, the corporation agreed to a transaction that made the firm worse off (and the shareholder better off, presumably). Such a transfer may have worked a fraud or injustice on the corporation and its creditors. Thus, courts have found unity of interest in the parent corporation's control of the subsidiary, and injustice in the parent's siphoning assets from the subsidiary in certain cases.[56] Conversely, courts have refused to pierce

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[53] *Automotriz Del Golfo De Cal. S.A. De C.V.*, 47 Cal. 2d at 796-97; *Minton v. Cavaney*, 56 Cal. 2d 576, 580 (1961); *Carlesimo v. Schwebel*, 87 Cal. App. 2d 482, 493 (Cal. Ct. App. 1987) ("[I]nadequate financing, where such appears, is a factor, and an important factor, in determining whether to remove the insulation to stockholders normally created by the corporate method of operation."). The Ninth Circuit held in 1988 that "the California Supreme Court has held that undercapitalization alone will justify piercing the corporate veil," but this reading of California law is disputed. *Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. Louisiana Hydrolec*, 854 F.2d 1538, 1544 (9th Cir. 1988). *But see* STEPHEN B. PRESSER, PIERCING THE CORPORATE VEIL § 2.5 (2010); *Carlesimo*, 87 Cal. App. 2d at 493 (refusing to pierce because plaintiffs did not show that "the financial setup of the corporation is just a sham, and accomplishes injustice").

[54] *Sonora Mining Corp.*, 83 Cal. App. 4th at 539 ("The alter ego doctrine does not guard every unsatisfied creditor of a corporation but instead affords protection where some conduct amounting to bad faith makes it inequitable for the corporate owner to hide behind the corporate form."); *see also Pearl v. Shore*, 17 Cal. App. 3d 608, 617 (Cal. Ct. App. 1971) (holding that where undercapitalization resulted not from a bad faith "initial undercapitalization" but from poor management, undercapitalization alone was not sufficient to justify piercing).

[55] *Associated Vendors, Inc.*, 210 Cal. App. 2d at 838.

[56] *Electro Lock, Inc.*, 2002 WL 1057468, at *19; *ADO Finance, A.G.*, 931 F. Supp. at 718.

where the parent company was found not to have drained its subsidiary of assets,[57] or even when a sole shareholder liquidated his wholly-owned corporation and started a new corporation, but did not pay inadequate consideration.[58]

I have not seen any evidence that BAC or its subsidiaries drained the Countrywide entities of their assets. See sections titled LD-2 Transactions and LD-100 Transactions above.

SUMMARY

Based on what I understand, in my opinion courts likely would not pierce the corporate veil to allow the Trustee to recover money from BAC. From an economic perspective, the Investors agreed to bear the risk that Countrywide would someday fail and they presumably charged for this risk. The fact that BAC bought Countrywide is no reason to pay creditors with BAC's assets; Investors were not relying on BAC's assets when they invested.

Unless the value of Countrywide's assets was materially reduced in the Transactions, Investors were not harmed by either the Transactions or the Acquisition of Countrywide and there is no reason to overturn the original bargain. Based on what BAC managers have said about how the prices were determined, it may be difficult to establish that Countrywide did not receive fair value.

I believe Delaware law is likely (but not certain) to apply. Though there is no simple rule in Delaware, adherence to corporate form and standard procedures are important and help to defeat veil piercing claims. And unless the Trustee can prove that the Transactions harmed creditors, I do not think the Delaware courts will pierce the veil.

The same is also probably true in New York and California, given the importance that they place on corporate formalities (which I understand BAC will be able to show). Given the unpredictability of veil-piercing law, it is impossible to know for sure, but I would be reasonably confident that a veil piercing claim is unlikely to succeed; a sensible opinion would not pierce in this case, absent unexpected and highly unusual facts, such as BAC significantly underpaying in the Transactions.

SUCCESSOR LIABILITY

Generally speaking, a corporation which acquires the assets of another corporation is not liable for the seller's debts. This is not surprising: when you buy a used car from a neighbor, you don't have to start paying his mortgage as well. The corporate equivalent of this rule is well-established and comes from the idea that corporations are persons and therefore liable for their debts and not the debts of others (not even of their affiliates). This rule is taught in every introductory corporate law class and relied on every day by business planners. Thus, it is indisputable that BAC would not normally become liable for Countrywide's debts when it bought Countrywide assets.

[57] *Cf. Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101 (C.D. Cal. 2003).

[58] *Katzir's Floor & Home Design v. M-MLS.Com*, 394 F.3d 1143, 1149 (9th Cir. 2004).

There are four main exceptions to this general rule. The buyer may be liable if: 1) it agrees to assume liability; 2) the buyer is a mere continuation of the selling company; 3) there is fraud; or 4) the asset sale is a de facto merger between the buyer and seller.

The reason for the first exception is obvious: a buyer can agree to take on a debt and the law will enforce it. The other exceptions are generally intended to protect third parties from bearing credit risk they did not agree to. Courts often protect creditors, and hold buyers liable, when there is an opportunistic use of the corporate form to defeat a creditor's reasonable expectations about the assets available to satisfy a debt.

As with veil piercing, successor liability is not used simply to prevent creditors from losing money. There is nothing wrong with a corporation selling assets and retaining the liabilities; as long as the seller receives equivalent value in return, its creditors have a claim on the proceeds and should in theory be unharmed. Moreover, if contractual creditors do not like this rule, they are free to bargain for additional protections (security interests, change of control provisions, etc).

Successor liability is thus often invoked as something of a backstop, when a court believes that a third party has been harmed or forced to bear credit risk they didn't bargain for. Many of the cases enforce essentially the same basic policy as fraudulent conveyance law and support or complement the goal.[59] This logic is evident in the recent decision *Maine State Retirement System v. Countrywide Financial Corporation,* where the court dismissed a successor liability claim against BAC on the grounds that plaintiffs had not alleged that the Transactions harmed creditors.

There are two more points before jumping into the law. First, these exceptions are relatively uncommon; claims for successor liability are "overwhelming[ly] reject[ed]" by courts. The fact that I spend more time discussing the exceptions (than the rule) should not imply there are more exceptions. Second, I don't believe that New York or Delaware courts have actually ever held a buyer liable on facts similar to those here; California has already ruled that Delaware law applies. Existing cases generally involve unrelated buyers and sellers, while here the buyers and sellers were both wholly-owned subsidiaries of the same firm; although the doctrine should apply to corporate affiliates.[60] The common ownership of affiliates may actually increase the risk of harm to creditors that the doctrine was designed to prevent, and so the doctrine could apply.

SUCCESSOR LIABILITY IN DELAWARE

The law on successor liability in Delaware follows the general common law principles: "Absent unusual circumstances 'a successor corporation is liable only for liabilities it expressly

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[59] Scholars and commentators sometimes justify successor liability in tort as a possible way to deter misbehavior: if buyers are liable for the seller's tort liabilities, it will reduce the price it pays to acquire the seller's business (which should give sellers an incentive to avoid tort liability). This justification does not work for contractual debts and thus isn't relevant in this case.

[60] This is true even though, as one commentator has stated, "[i]t should be obvious that successor liability will apply to transactions between related corporations as well as between unrelated sellers and purchasers." Phillip I. Blumberg, *The Continuity of the Enterprise Doctrine*: *Corporate Successorship in United States Law*, 10 FLA. J. INT'L L. 365, 414 (1996).

assumes[.]'"[61] However, this rule "'is not absolute'" as 'in some limited situations where an avoidance of liability would be unjust, a purported sale of assets for cash or other consideration may be found to transfer liabilities of the predecessor corporation.'"[62] Although the cases are ultimately fact intensive, a review of the law suggests that it would be an uphill battle to hold BAC liable as a successor to CHL.

Delaware recognizes the same four general exceptions, which are reviewed below.

Assumption of Liability

Delaware courts read this exception strictly and typically find assumption of liability only expressly stated by the asset purchase agreement. Absent a buyer's express assumption of liability, Delaware courts are reluctant to find a buyer did so implicitly. For example, in *Fountain*, a buyer's agreement to conclude all of its predecessor's work was found not to be an implicit assumption of corporate liabilities.[63] Delaware courts focus on the language of the contract rather than intent or even the buyer's statements to third parties.

According to the terms of the Asset Purchase Agreement executed in connection with the LD-100 Transaction, the assumed liabilities included certain obligations related to public debt securities, and "liabilities with respect to the ownership and operation of Purchased Assets only to the extent arising from or relating to any event, circumstance or condition occurring on or after the Closing…"[64] In fact, the Asset Purchase Agreement specifically describes liabilities to be retained by CHL, including, inter alia,

> …all Liabilities of Seller or any of its Subsidiaries arising in connection with any litigation, complaint, claim, demand, action, cause of action, suit, arbitration, inquiry, proceeding, or investigation by or before any Government Authority, except to the extent arising from Buyer's ownership and operation of the Purchased Assets after Closing…[65]

Similarly, the Purchase and Sale Agreement executed in connection with the LD-2 Transaction states:

> Seller [CHL] assumes all debts, liabilities, commitments and obligations of any kind, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not accrued, asserted or not asserted, known or unknown, determined, determinable or otherwise, of GP, LP or Servicing LP to the extent such debt, liabilities, commitments or obligations attributable to any action or inaction prior to the date of Closing.[66]

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[61] *Mason v. Network of Wilmington, Inc.*, No. A. 19434-NC., 2005 WL 1653954, at *5 (Del. Ch. July 2005) (quoting *Fell v. S.W.C. Corp.*, 433 F. Supp. 939, 945 (D. Del. 1977)).
[62] *Fell*, 433 F .Supp. at 945; *see also Mason*, 2005 WL 1653954, at *5.
[63] *Fountain v. Colonial Chevrolet Co*, 1988 WL 40019, at *8 (Del. Super. Ct. 1988).
[64] Asset Purchase Agreement, Section 2.3.
[65] Asset Purchase Agreement, Schedule 2.4-1.
[66] Purchase and Sale Agreement, Section 1.3.

Based on the foregoing language, it appears unlikely that the Trustee could successfully argue that BAC expressly assumed liability on the Investors' claims here.

Mere Continuation

Delaware courts interpret this exception narrowly. In order to recover under this theory, "it must appear that the former corporation is the same legal entity as the latter."[67] In other words, "it must be the same legal person, having a continued existence under a new name."[68] As the *Elmer* court stated, "[t]he test is not the continuation of the business operation, but rather the continuation of the corporate entity."[69]

Obviously, purchased assets will typically continue in their same use after a sale, without triggering a finding that the buyer was a "mere continuation" of the seller. Therefore, this is essentially a test for fraud and the emphasis appears to be on the word "mere": the new buyer may not be merely the seller in new clothes. If the buyer has the seller's same business, same workforce, same owners, same officers and directors, same customers, it is unlikely that the asset sale had an real economic purpose and more likely that it was motivated by the desire to leave seller's creditors with fewer assets to claim (what else would justify the expense and tax consequences of an asset sale to an identical entity?).

This concern about the buying entity being a sham does not apply here. It is my understanding from the transaction documents that with respect to the LD-100 Transactions, the buyer was BAC, a large public firm and independent legal entity that has significantly more assets and operations than those which it acquired in the Transactions at issue. Further, as described on page 13, Countrywide's business had changed dramatically in the months leading up to the Acquisition, and BAC, while still in the mortgage business, was ceasing to originate the type of mortgages which contributed to Countrywide's prior operating results. The combination of legacy BAC and legacy Countrywide, two publicly held entities, could not be construed as a mere continuation of legacy Countrywide. In fact, I am not aware of a case finding a publicly held buyer to be a mere continuation of the assets of a publicly held seller.

In *Elmer*, one of the leading cases on this issue, the court suggested that related party transactions might be treated differently than arms-length transactions. In reaching the determination that the successor corporation was not the "mere continuation" of the predecessor, the *Elmer* court relied in part on the fact that the sale between predecessor and successor occurred on an arms-length basis and that each corporation had different owners.[70] Although this weighs in favor of holding BAC liable, I found no precedent for courts actually holding a successor liable on these grounds.

Fraud

I have not found any Delaware case that analyzed fraud in the successor liability context, so it seems unlikely that they would hold BAC liable under this theory. Other states that have

[67] *Elmer v. Tenneco Resins, Inc.*, 698 F. Supp. 535, 542 (D. Del. 1988); *see also Fountain*, 1988 WL 40019, at *8.
[68] *Elmer*, 698 F. Supp. at 542.
[69] *Id.*
[70] *Id.*

found successor liability on this ground generally follow the standards of fraudulent conveyance law, although what counts as fraud or valuable consideration in such a case is very fact specific.

Thus, it seems unlikely that Delaware courts would hold BAC liable under this exception, unless the Trustee were able to establish that the Transactions effectively constituted a fraudulent conveyance.

De Facto Merger

It seems unlikely that Delaware courts would grant successor liability under this exception as well. I have not found Delaware cases that actually use the de facto merger doctrine to protect creditors following an asset sale. Cases typically only refer to the possibility and suggest it would be applied narrowly at any rate and only "for the protection of creditors or stockholders who have suffered by reason of failure to comply with the statute governing such sales."[71] Because I have seen no allegations or facts that BAC failed to comply with Delaware law governing asset sales and harmed creditors by re-directing the purchase price to another BAC entity, it would be difficult for a court to impose liability on BAC under the Delaware de facto merger exception.

There are two additional reasons I believe Delaware courts would not apply the doctrine here:

Uncertainty

Delaware courts are loathe to characterize a sale of assets as a de facto merger because it would create a great deal of uncertainty, making it hard to make reliable plans and execute complex transactions, which is Delaware law's bread and butter. Delaware is the corporate law capital of the US in large part because it facilitates enormously complex transactions by offering predictable rules where possible. A broad de facto merger doctrine negates this advantage because dealmakers would not be able to reliably plan on what rights a court would enforce (i.e. when will a court say that the sale was "really" a de facto merger?). This would reduce the value of Delaware law.

This concern sometimes arises in a different context (i.e. when shareholders assert rights that they would have in a merger, but not in an asset sale) but the court's response is instructive: Delaware rejects shareholder de facto merger claims in favor of rules that allow for legal certainty in transaction planning. Delaware vigorously defends the idea that "action taken under one section of [the General Corporation Law] is legally independent, and its validity is not dependent upon, nor to be tested by the requirements of other unrelated sections under which the same final result might be attained by different means."[72] As a leading treatise has summarized, the doctrine of independent legal significance and its accompanying reluctance to find a de facto

[71] *Heilbrunn v. Sun Chem. Corp.*, 150 A.2d 755, 758 (Del. 1959); *see also Finch v. Warrior Cement Corp.*, 141 A. 54 (Del. Ch. 1928); *Drug, Inc. v. Hunt*, 168 A. 87 (Del. Ch. 1933). These older cases demonstrate that the de facto merger doctrine may be applied when the transaction is structured to permit the consideration to be distributed directly to the stockholders without coming into the possession of the selling corporation.

[72] *Rauch v. RCA Corp.*, 861 F.2d 29, 31 (2d Cir. 1988) (quoting *Rothschild Int'l Corp. v. Liggett Group*, 474 A.2d 133, 136 (Del. 1984)).

merger, "has become a keystone of Delaware corporate law and is continually relied upon by practitioners to assure that transactions can be structured under one section of the General Corporation Law without having to comply with other sections which could lead to the same result."[73]

Although such shareholder de facto merger claims are quite different from the claim the Trustee would bring, Delaware's determined and total resistance to these shareholder claims suggests that the Trustee would face an uphill battle. Delaware courts are likely to recognize the significant uncertainty that such a novel ruling would impose if they were to find a de facto merger under the circumstances here.

Economic Harm

Secondly, Delaware courts are likely to apply the de factor merger test somewhat conservatively. As the *Maine State Retirement System v. Countrywide Financial Corporation* suggests, Delaware courts sensibly focus on the underlying economic realities: they reject de facto merger claims unless plaintiffs can show that the selling firm received inadequate compensation, thereby damaging creditors. This would lead them to avoid some of the unpredictable and formal legal tests New York courts sometimes apply.

Thus, in my opinion, it is highly unlikely that a de facto merger claim would succeed in Delaware absent a showing that the Transactions materially reduced the value of the selling corporations. As discussed earlier, given the facts and circumstances surrounding the LD-2 and LD-100 Transactions as I understand them, it would be unlikely that a plaintiff could demonstrate that these transactions materially reduced the value of CHL. (See the valuation discussions related to the LD-2 and LD-100 transactions on pages 9 and 10.)

SUCCESSOR LIABILITY IN NEW YORK

New York's successor liability law is more developed than Delaware's, though it too follows the general rule that a buyer is not charged with the seller's preexisting liabilities unless: 1) it agrees to assume liability; 2) the buyer is a mere continuation of the selling company; 3) there is fraud; or 4) the asset sale is a de facto merger between the buyer and seller.[74] This standard applies for both tort and contract debts.

The law is generally consistent with the general description given above, but since it is applied by judges of widely different exposure to and experience with business claims, it is less predictable than decisions by the Delaware judiciary and there are decisions that grant successor liability more readily than Delaware courts would.

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[73] JESSE A. FINKELSTEIN & R. FRANKLIN BALOTTI, DELAWARE LAW OF CORPORATIONS AND BUSINESS ORGANIZATIONS § 9.4 (2010).

[74] *See Schumacher v. Richards Shear Co.*, 59 N.Y.2d 239, 244 (1983).

Assumption of liability

A corporation can expressly assume the liability of its predecessor, but courts will not impose liability when a buyer explicitly disclaims it. Most New York courts focus on the language of the contract, even when determining implied liability.[75]

Although a buyer might implicitly assume liability by its words or actions, there are few cases that actually find this, so the standard is unclear. One might argue that Brian Moynihan, BAC's CEO, implicitly assumed liabilities by promising to honor Countrywide's liabilities[76] and by paying certain of CFC's and/or CHL's liabilities in settlements.[77] I doubt this would ultimately work, however. First, to my knowledge, no New York court has ever found such a statement to be sufficient basis for successor liability. Second, courts are clear that a seller's payments to one creditor do not imply it has assumed liability to other parties.[78] Third, most courts focus on the contract rather than what is implied by statements or payments to third parties. Finally, even cases that look to verbal statements often require that someone was misled by the statement and relied to their detriment. A federal court, applying New York law, has held that "[w]hile no precise rule governs the finding of implied liability, the authorities suggest that the conduct or representations relied upon by the party asserting liability must indicate an intention on the part of the buyer to pay the debts of the seller."[79] The Trustee's claims against BAC do not fit this pattern: I haven't seen a claim that Investors were misled by these statements or payments.

Mere continuation

A buyer can be liable for the seller's debts if "the purchasing corporation was a mere continuation of the selling corporation."[80] For the "mere continuation" doctrine to apply, the "purchasing corporation must represent merely a 'new hat' for the seller."[81] It is not enough to allege that the seller's president became one of several of the successor's vice presidents and that the buyer and seller shared customers.

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[75] *See City of N.Y. v. Charles Pfizer & Co.*, 260 A.D.2d 174, 175 (1st Dept. 1999); *Grant-Howard Assocs. v. General Housewares Corp.*, 115 Misc.2d 704, 707 (N.Y. Sup. Ct. N.Y. Cty. 1982).

[76] Mike Taylor, *BofA Gets Pugilistic With Mortgage Putback Crowd*, N.Y. OBSERVER, Nov. 16, 2010, available at http://www.observer.com/2010/wall-street/bofa-gets-pugilistic-mortgage-putback-crowd.

[77] BAC made approximately $2 billion in capital contributions to CFC, who in turn made contributions to CHL to reimburse CHL for amounts paid to the GSE's in connection with representation and warranty liabilities. Under the terms of the agreements with the GSE's the seller and the servicer were jointly and severally liable for the obligations under the reps and warranties given to the GSE's.

[78] *See Hayes v. Equality Specialities*, 740 F. Supp. 2d 474, 482 (S.D.N.Y. 2010); *Marenyi v. Packard Press Corp.*, No. 90-cv-4439, 1994 WL 16000129, at *6 (S.D.N.Y. June 9, 1994) (settlement of one claim did not amount to an assumption of all debts of seller).

[79] *Beck v. Roper Whitney, Inc*. 190 F. Supp. 2d 524, 537 (W.D.N.Y. 2001). Two unreported cases go into more detail, citing "factors such as whether the buyer's conduct or representations indicate such an intent, including admissions of liability by officers or other spokesmen of the buyer, and the effect of the transfer upon creditors of the seller corporation." *Vasquez v. Ranieri Cheese Corp*., No. 07-CV-464, 2010 WL 1223606, at *11 (E.D.N.Y. Mar. 26, 2010).

[80] *Schumacher*, 59 N.Y.2d at 245.

[81] *Ladjevardian v. Laidlaw-Coggeshall, Inc.*, 431 F. Supp. 834, 839 (S.D.N.Y. 1977) (citations omitted).

Thus, this exception has been described as essentially that of a corporate reorganization, where one corporation is dissolved and another, essentially identical corporation, survives.[82] Courts thus often refuse to find "mere continuation" when the selling corporation continues to exist after the asset sale; the "fact that the vendor corporation continued to exist after the sale and apparently received fair consideration for its assets [was] sufficient to take this case out of the 'mere continuation' exception."[83] A shell corporation shorn of its assets continuing for a year was sufficient to avoid the finding of "mere continuation."[84]

This concern should not apply here because, as I understand:

- The buyer in LD-100 was BAC, at the time an enormous public company that could not in any way be viewed as simply a continuation of Countrywide.
- The business operations changed following the purchase:
  - o As discussed on page 13, Countrywide's business had changed dramatically in the months leading up to the Acquisition – loan production and sales were down approximately 50% in the second quarter of 2008 compared to the second quarter of 2007.
  - o The Acquisition combined Countrywide's operations with those of BAC, and BAC phased in its own management team to run the combined operations.
  - o Over 50% of legacy Countrywide employees were severed subsequent to the Acquisition.

Fraud

Although NY courts, in theory, recognize the fraud exception, the only published cases on this are from 1865 and 1892.[85] Given the lack of precedent, it seems unlikely that NY courts would hold BAC liable under this exception unless the Trustee was able to show that the LD-2 and LD-100 Transactions were unfair and not bona fide. Based on the facts as I understand them, this would be a very difficult showing to make. Other states that have found successor liability on this ground generally follow the standards of fraudulent conveyance.

De facto merger

The concept of de facto merger in New York is frequently litigated. It has been described as a "judge-made device for avoiding patent injustice that might befall a party simply because a

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[82] *In re Seventh Jud. Dist. Asbestos Litig.*, 788 N.Y.S.2d 579, 581 (N.Y. Sup. Ct. Ont. Cty. 2005).

[83] *Ladjevardian*, 431 F. Supp. at 839.

[84] For instance, in *Douglas v. Stamco*, 363 Fed. Appx. 100, 102 (2d Cir. 2010), the fact that the Seller was not dissolved for more than a year made the "mere continuation" doctrine inapplicable; the creditor retained a claim only against the bankrupt Seller. Thus, in New York, the "mere continuation" doctrine may be more formalistic than the "quick dissolution" standard in de facto mergers. The "quick dissolution" under a de facto merger "may be satisfied, notwithstanding the selling corporation's continued formal existence, if that entity is shorn of its assets and has become, in essence, a shell.'" *In re N.Y. City Asbestos Litig.*, 15 A.D.3d 254, 257 (1st Dep't 2005).

[85] *See* George W. Kuney, *Successor Liability in New York*, N.Y. ST. B.A. J. 24, 22–27 (September 2007) (stating that no New York court has used fraud to find successor liability). Professor Kuney must mean in the modern era, as two cases from the 19th century have done so. *See Cole v. Millerton Iron Co.*, 133 N.Y. 164 (1892); *Booth v. Bunce*, 33 N.Y. 139 (1865).

merger has been called something else."[86] However, the test is nevertheless unpredictable in practice, in part because judges differ as to what constitutes "patent injustice" and some courts apply the tests in a way that would allow the exception to swallow the rule of buyer non-liability.

There are four tests for de facto merger:

1. continuity of ownership;
2. the seller ceasing ordinary business operations and dissolving as soon as possible after the transaction;
3. the buyer assuming liabilities ordinarily necessary to continue the seller's business uninterrupted; and
4. the buyer continuing the successor's management, personnel, physical location, assets and general business operation.

Frustratingly, these tests sound a lot like the first three exceptions (express assumption, mere continuation or fraud), rather than tests for a new fourth exception. Indeed, some courts have observed that "the mere-continuation and de-facto-merger doctrines are so similar that they may be considered a single exception."[87] The doctrine is thus unpredictable and there is even a disagreement about how the four-factor test should be applied: several decisions suggest that the courts apply a "flexible" standard: i.e., they consider all of the factors and that any of these factors could trigger a de facto merger.[88] However, recently, federal courts, applying New York law, have tried to identify factors that were a prerequisite for a finding of de facto merger.[89] Given this uncertainty, it is impossible to predict with confidence what would happen. But as discussed, BAC certainly has a reasonable argument that the de facto merger doctrine would not apply.

Continuity of Ownership

Continuity of ownership exists "where the shareholders of the predecessor corporation become direct or indirect shareholders of the successor corporation as the result of the successor's purchase of the predecessor's assets, as occurs in a stock-for-assets transaction."[90] Although in practice, this is typically found only when the assets are sold for stock (which didn't happen here), this test would likely be satisfied in a case against BAC given that both the seller

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[86] *Cargo Partner AG v. Albatrans Inc.*, 207 F. Supp. 2d 86, 104 (S.D.N.Y. 2002) (citations omitted).
[87] *Cargo Partner AG v. Albatrans Inc.*, 352 F.3d 41, 45, n.3 (2d Cir. 2003) (hereinafter "*Cargo Partner AG II*").
[88] *Sweatland v. Park Corp.*, 181 A.D.2d 243, 246 (4th Dep't 1992) ("[w]hile factors such as shareholder and management continuity will be evidence that a de facto merger has occurred, those factors alone shall not be determinative.").
[89] *Cargo Partner AG II*, 352 F.3d at 47. More recently, then-Judge Sotomayor held, for a Second Circuit panel in *National Service Industries*, that the same is true in the tort context. "The continuity-of-ownership element 'is designed to identify situations where the shareholders of a seller corporation retain some ownership interest in their assets after cleansing those assets of liability.'" *N.Y. v. Nat'l Serv. Indus., Inc.*, 460 F.3d 201, 211 (2d Cir. 2006) The one New York state court to discuss *National Service Industries* does so approvingly. *Morales v. City of N.Y.*, 849 N.Y.S.2d 406, 411 (N.Y. Sup. Ct. Kings Cty. 2007).
[90] *In re N.Y. City Asbestos Litig.*, 15 A.D.3d at 256.

and buyer were wholly owned subsidiaries. However, this obviously isn't enough to justify a finding of de facto merger.

Quick dissolution

The second element of a de facto merger "may be satisfied, notwithstanding the selling corporation's continued formal existence, if that entity is shorn of its assets and has become, in essence, a shell."[91] This would ultimately turn on a factual determination. Countrywide and its subsidiaries continue to exist – and it has been longer than the year courts sometimes use in the "mere continuation" test – which would argue against de facto merger. However, they are no longer active businesses and appear to be winding up their affairs in preparation for dissolution, which could favor a de facto merger.

Buyer assumes liabilities necessary to sustain the enterprise

The third element of a de facto merger examines the "assumption by the successor of the liabilities ordinarily necessary for the uninterrupted continuation of the business of the acquired corporation."[92] This is obviously similar to the first theory of successor liability, the assumption of liability, and so courts focus on the language of the contracts.[93] To my knowledge, this element has, however, never been the decisive factor in a finding of successor liability.[94] This factor cuts both ways: the contractual language clearly disclaims various liabilities, including those arising from the Trustee's and Investors' likely claims here, but BAC also likely did assume most of the liabilities necessary to continue the Countrywide business, which would weigh in favor of the Trustee's claim.

Continuity of management and personnel

This factor is heavily fact dependent, and will hinge on the extent to which the management, personnel, and physical plant between the predecessor and successor overlap. However, there is no clear standard applied to determine whether this factor has been satisfied.[95]

[91] *Buja v. KCI Konecranes Intern. Plc.*, 815 N.Y.S.2d 412, 412 (N.Y. Sup. Ct. Monroe Cty. 2006) (citing *In re N.Y. City Asbestos Litig.*, 15 A.D.3d at 257; *In re AT&S Transp., LLC v. Odyssey Logistics & Technology Corp.*, 22 A.D.3d 750, 753 (2d Dep't 2005); *Fitzgerald v. Fahnestock & Co., Inc.*, 286 A.D.2d 573, 575 (1st Dep't 2001).

[92] *Fitzgerald*, 286 A.D.2d at 574.

[93] *See Morales,* 849 N.Y.S.2d at 412-413 (explaining that this element was already addressed under the section of the case explaining the defendant's express assumption of its predecessors' royalty obligations to the plaintiffs.); *Trystate Mechanical, Inc. v. Tefco, LLC,* No. 7343/10, 2010 WL 3960604 (N.Y. Sup. Ct. Kings Cty. Oct. 2010); *Buja,* 815 N.Y.S.2d at 417 (looking at the "contract between the parties, 'Acquisition of Assets of Shepard Niles Inc by Konecranes, Inc.'").

[94] Indeed, the fact that the defendant has assumed some of its predecessor's liabilities was ruled insufficient, in light of the other missing elements of the de facto merger analysis, to ultimately result in a finding of successor liability. *In re N.Y. City Asbestos Litig.*, 15 A.D.3d at 258-59.

[95] Compare *Trystate,* 2010 WL 3960604, (which found that the plaintiff had appropriately pled successor liability, citing affirmatively the continuity of some key personnel, namely, the fact that the COO in the successor corporation was the President of the predecessor corporation) to *Buja*, 815 N.Y.S.2d at 417 (where continuity of equipment, inventories, accounts receivable, naming rights, customer lists, intellectual property, phone numbers, and goodwill were not sufficient to reach "continuity of management").

That said, "[t]he mere hiring of some of the predecessor's employees is insufficient to raise a triable issue as to continuity of management."[96] Nor does the continued use of a predecessor's name or goodwill constitute the necessary continuity.[97] Whatever extra is needed is left undefined, and thus to the judgment of the court.

This test is uncertain in part because buyers will often (and appropriately) want to use the seller's assets in the same business, and in mergers with synergies there will often be overlap between the buyer's and seller's operations. Therefore, some overlap and continuity should be expected, and absent the sort of concerns discussed in connection with the "mere continuation" test (i.e. where the buying entity is identical to the selling entity and appears to be a simple attempt to defraud creditors), there is no reason to penalize buyers by taxing them with seller's liability just because they continue to employ the assets in a similar business. Moreover, such a rule would be wasteful to the degree that it discouraged valuable mergers or prohibited valuable integration; society and even creditors are no better off if sellers simply acquire the buyer, but operate it as a stand-alone entity without integrating its operations.

As discussed on page 13, BAC not only transitioned in its own management team, but over half of the legacy Countrywide employees were severed subsequent to the Acquisition, and approximately 600 have remained with Countrywide.

In the end, although I think the economic arguments and bulk of the case law weigh against a claim for successor liability based on de factor merger, there is uncertainty as to how a New York court would rule on such a claim. As discussed, however, BAC's position that the de facto merger doctrine would not apply is certainly reasonable.

SUCCESSOR LIABILITY IN CALIFORNIA

This memo does not discuss the law of successor liability in California. The recent decision by a Federal District court judge, *Maine State Retirement System v. Countrywide Financial Corporation*, suggests that California courts would apply Delaware law (reviewed above).

Summary

Based on my understanding of the facts, it would probably be a bad idea for courts to hold BAC liable as a successor, especially if it paid a fair price in the Transactions; if Investors were not harmed by the Transactions, there is no reason to hold BAC entities liable. A finding of successor liability would effectively grant Investors a windfall based on BAC's acquisition and would undermine valuable corporate law rules. This would be costly for society and discourage valuable transactions that will be deterred by the possibility of an adverse ruling. Imposing additional liabilities on BAC would function as something of an unexpected tax on its merger. Given the importance of mergers (and asset sales and subsequent integration) to a recovering banking and mortgage industry, such a rule could have harmful effects.

If Delaware law applies, as I think it would, BAC would probably not be liable unless the Trustee could show that BAC materially underpaid in the Transactions. Assumption of liability

[96] *Kretzmer v. Firesafe Prods. Corp.*, 24 A.D.3d 158, 159 (1st Dep't 2005).
[97] *Buja*, 815 N.Y.S.2d at 417.

arguments will likely fail given the express language to the contrary in the Transaction Documents; "mere continuation" is unlikely because the primary purchaser was BAC, an entity that that had approximately $1.7 trillion in assets prior to the transactions at issue; and a de facto merger is unlikely because Delaware courts eschew the kind of uncertainty such a holding would bring and tend to focus on whether the sale harmed creditors.

The more difficult question is whether BAC would be liable under the de facto merger doctrine under New York law. I think the economic arguments and bulk of the case law favor BAC, but it is possible – though not likely – that the Trustee could succeed on this. New York case law on this is sometimes erratic and a number of cases interpret the law in a way that would make BAC liable. New York courts could follow the lead of the recent decision in *MBIA v. Countrywide* and find that de facto merger allegations are plausible enough to survive a motion to dismiss. The Trustee's best chance to recover under this theory would be to appeal to the strain of cases that look at simple tests and ignore the underlying economic reality (the benefits of consolidating operations, the need for legal certainty, and the need to focus on whether creditors were harmed in the Transaction). The potential for a favorable ruling however is muted by the fact that New York law may not even apply.

While the ultimate outcome is a difficult question, turning on unknown facts and developing law, in the end, I believe that a successor liability case would be difficult to win unless the Transactions materially reduced the value of the legacy Countrywide subsidiaries. It is simply too hard to explain why BAC should be liable – and a fundamental rule of corporate transactions set aside – if the Transactions caused no harm to Investors.

Dated: June 7, 2011

Rob Daines

Professor Robert Daines

Appendix A Choice of Law

Veil piercing and successor liability are matters of state (rather than federal) law and each state has its own laws. Therefore, you have asked me to consider which state laws might apply to a veil piercing or successor liability claim against BAC. I describe the likely outcomes if a suit is brought in New York, in Delaware (where Bank of America and Countrywide are incorporated), or in California (Countrywide's physical headquarters).

As described below, I expect a court would probably apply Delaware law.

New York as Forum State

If suit is brought in New York, New York's choice of law rules will determine which state's substantive law governs. Typically, New York courts (and federal courts applying New York law) simply apply the law of the state of incorporation to veil piercing and successor liability claims.[98] Thus, a New York court would likely apply Delaware law because Countrywide and Bank of America are both incorporated in Delaware.

First, some argue this is dictated by the "internal affairs" rule, which holds that the internal affairs of a firm are governed by the state of incorporation (internal affairs include the relationship between managers, officers and shareholders, shareholder rights the rules governing mergers, limited liability and the duties of control shareholders).

Second, Delaware may have a greater interest in having its laws apply. New York courts typically apply "the law of the jurisdiction which, because of its relationship or contact with the occurrence or the parties, has the greatest concern with the specific issue raised in the litigation."[99] New York courts typically find that the state of incorporation has a stronger interest in veil piercing and successor liability claims. For example, in *Soviet Pan Am v. Travel Committee, Inc.*, 756 F. Supp. 126 (S.D.N.Y. 1991), the court (applying New York's choice of law doctrine) found that the state of incorporation (Maryland) had the greatest interest in deciding successor liability and corporate veil piercing claims even though New York had the greater interest in deciding the underlying breach of contract claims.[100] Thus, "[b]ecause a

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[98] *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1456 (2d Cir. 1995) (affirming that, under New York's choice of law rules, "'[t]he law of the state of incorporation determines when the corporate form will be disregarded and liability will be imposed on shareholders.'"); *see also Kalb, Voorhis & Co. v. Am. Fin. Corp.*, 8 F.3d 130, 132-33 (2d Cir. 1993) (applying Texas law to corporate veil piercing and alter ego claims against a Texas corporation, even though "the debentures for which Appellant [Kalb] seeks to hold Appellee [AFC] liable were issued, purchased, and payable in New York," "the underwriters were based in New York," and "the debentures contained a clause stating that New York law should govern"); *Time Warner Cable, Inc. v. Networks Groups, LLC*, No. 09 Civ. 10059(DLC), 2010 WL 3563111, at *3-4 (S.D.N.Y. Sept. 9, 2010) (explaining that, in a case where Time Warner sued Networks Groups and TMG (corporations incorporated in Colorado), under New York's choice of law principles, "the law of Colorado governs the plaintiff's veil-piercing claim"); *U.S. Fid. & Guar. Co. v. Petroleo Brasileiro S.A.-Petrobras*, No. 98 Civ. 3099(THK), 2005 WL 289575, at *5 (S.D.N.Y. Feb. 4, 2005) ("The question of successor liability in this proceeding . . . should be governed by the law of . . . the jurisdiction of the relevant entities' incorporation," meaning that the New York court applied Brazilian law since the defendant corporation was incorporated in Brazil).

[99] Interest analysis follows the court's determination that there is "actual conflict" between the states' laws that could apply. *Burnett v. Columbus McKinnon Corp.*, 69 A.D.3d 58, 60 (4th Dep't 2009).

[100] *Soviet Pan Am*, 756 F. Supp. at 131.

corporation is a creature of state law whose primary purpose is to insulate shareholders from legal liability, the state of incorporation has the greater interest in determining when and if that insulation is to be stripped away," and therefore Maryland had the greater interest in applying its law to the successor liability claim.

However, there are several ways that New York law could apply. First, both parties may consent (either explicitly or implicitly by failing to raise the issue) and New York law may be judged "substantially similar" to Delaware's.[101] This was the case in the recent *MBIA v. Countrywide* case.[102] Although the New York Supreme Court did not explain its choice of law decision or discuss why it presumed the application of New York's substantive law, the decision might influence other New York courts.[103]

Second, a court might decide that the rights of creditors and third parties should not be governed by the "internal affairs rule." The United States Supreme Court held, for instance, that "the law of the state of incorporation normally determines issues relating to the *internal* affairs of a corporation" but that "[d]ifferent conflicts principles apply . . . where the rights of third parties *external* to the corporation are at issue."[104] Such a rule may make sense as a policy matter: shareholders may select a state of incorporation based on the protection it offers them, but there is less reason to think that shareholders will select (or incorporation states provide) rules that provide the right protection for creditors.[105]

Third, it is always possible that, despite general precedent, a court could decide that New York has a unique interest in having its law apply to this particular case, as it is my understanding that most, if not all, of the Pooling and Servicing Agreements relating to the original loan transfers were governed by New York law, as were the vast majority of the

[101] For example, in *Wausau Business Ins. Co. v. Turner Constr. Co.*, 141 F. Supp. 2d 412 (S.D.N.Y. 2001), a New York construction company sought to pierce the corporate veil of a Delaware corporation to reach the parent corporation based on sums owed for breach of contract. *Id.* at 415. The court noted that even though New York choice of law principles would require the application of Delaware law (the state of incorporation), "some courts . . . have adopted the law the parties agree to employ rather than the law of the state of incorporation where there is no substantive difference between the two state law approaches to piercing the corporate veil." *Id.* at 417. The court applied New York law, since both parties relied on New York law in their briefs and "the standards for piercing the corporate veil are substantially similar under Delaware and New York law." *Id; see also In re Saba Enter., Inc.*, 421 B.R. 626, 648-52 (Bankr. S.D.N.Y. 2006) (discussing line of cases that allows for application of New York's substantive law if parties have consented to New York law and substantial similarity between laws exists).

[102] *See* Order on Countrywide and BAC's Motion to Dismiss *MBIA Insurance v. Countrywide Home Loans*, Index No. 602825/2008 (N.Y. Sup. Ct. N.Y Cty. Apr. 27, 2010).

[103] *See id* at 11-12.

[104] *First Nat'l City Bank v. Banco paro el Comercio Exterior de Cuba*, 462 U.S. 611, 621 (1983) (emphasis in original). Plaintiffs in *Maine State*, involving similar claims against Bank of America, argued that in "matters that affect[s] the rights of third parties, such as creditors" interest analysis should apply. Brief for Plaintiff at 14 *Maine State Ret. System v. Countrywide Fin. Corp., et al.*, No. 2:10-CV-00302 (C.D. Cal. Sept. 16, 2010), 2010 WL 4774120.

[105] The comments to Restatement (Second) of Conflict of Laws Section 302 could also be persuasive (even though New York is not a "Restatement" state), since they indicate that "[t]he reasons for applying the local law of the state of incorporation carry less weight when the corporation has little or no contact with this state other than the fact that was incorporated there. In such situations, some other state will almost surely have a greater interest than the state of incorporation in the determination of the particular issue." Restatement (Second) of Conflict of Laws § 302 cmt. g (1971).

operative agreements relating to the Transactions at issue. A recent case hinted that New York law rather than the law of the firm's domicile might apply to corporate claims "in the rare circumstance where the corporation has no contacts with its state of incorporation, other than the fact of incorporation, and has more significant contacts with the forum state."[106,107]

I do not expect this, however. Delaware, contracting parties and capital markets generally all have a strong interest in the clarity offered by a bright line rule (like following the law of the state of incorporation), while an ad hoc "state's interest" analysis would generate a great deal of uncertainty and I have seen no argument that New York or California have a unique interest in applying their choice of law here..[108]

Delaware as Forum State

If Delaware is the forum state, in my opinion Delaware courts are likely to apply Delaware law. Delaware has adopted the Second Restatement's approach to analyzing choice of law problems and therefore will attempt to determine the state with the "most significant relationship" to the issues.[109]

The Restatement (Second) of Conflicts creates a strong presumption that the law of the state of incorporation governs a firm's "internal affairs" - including matters that affect creditors.[110] Oddly, there is not much precedent about whether veil piercing claims and successor liability are "internal affairs" subject to Delaware substantive law or, instead, other

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[106] *See Sokol v. Ventures Educ. Systems Corp.*, No. 602856/02, 2005 Slip Op 51963U, at *4 (N.Y. Sup. Ct. N.Y. Cty. 2005). However, even in this case the court still applied Delaware law even though all the significant contacts (besides incorporation) were with New York.

[107] If New York courts considered creditors' claims as rooted in tort (fraud) or contract (breach of warranty or misrepresentation), it is unclear which law would instead apply. In tort cases, "the court should focus almost exclusively on the parties' domiciles and the locus of the tort." *See Roselink Investors, LLC v. Shenkman*, 386 F. Supp. 2d 209, 225 (S.D.N.Y. 2004); *see also Padula v. Lilarn Prop. Corp.*, 620 N.Y.S.2d 310, 311 (1994) (discussing New York choice of law principles in tort).

If New York contract analysis is applied, the court applies a "center of gravity" test, which will be fact specific and may point to New York rather than Delaware law. *See Matter of Allstate Ins. Co (Stolarz)*, 81 N.Y.2d 219, 226 (1993) ("The 'center of gravity' or 'grouping of contacts' choice of law theory applied in contract cases enables the court to identify which law to apply without entering into the difficult, and sometimes inappropriate, policy thicket. Under this approach, the spectrum of significant contacts—rather than a single possibly fortuitous event—may be considered. Critical to a sound analysis, however, is selecting the contacts that obtain significance in the particular contract dispute. As we have noted, the traditional choice of law factors should be given 'heavy weight' in a grouping of contacts analysis.").

[108] In *Sokol*, the court did not apply New York law, even though the firm's principal place of business was in New York and it had "no office, employees, or contacts in Delaware, and conduct[ed] no business there." 2005 Slip Op 51963U, at *4. Instead, it ultimately applied Delaware law because the parties had previously "agreed to govern [the firm's] internal affairs in accordance with the laws of Delaware" and because the firm conducted business across the United States outside of New York. As a result, Delaware law governed the firm's internal affairs, but New York governed other claims. *Id*. at *5.

[109] *Liggett Group Inc. v. Affiliated FM Ins. Co.*, 788 A.2d 134, 137 (Del. Super. Ct. 2001). See factors set out in Section 6 of the Restatement (Second), as well as specialized sections depending on the matter at hand. *See Travelers Indem. Co. v. Lake*, 594 A.2d 38, 45-47 (Del. 1991).

[110] Restatement (Second) of Conflicts § 302 cmt. A (1971). However, "corporate acts that can also be done by individuals" are subject to the "most significant relationship" test. The test is set out in Section 6 of the Restatement (Second) of conflicts. *Id.*

corporate acts subject to the "most significant relationship" test. In either case, however, Delaware courts are likely to apply Delaware law.

First, given Delaware's special place in corporate law, Delaware courts are especially vigorous in protecting the "internal affairs doctrine" and tend to construe it broadly.[111] Second, Delaware courts are likely to decide that Delaware has more significant interests in resolving claims of veil piercing and successor liability here, involving as they do the questions of limited liability, shareholder liability for corporate debts, rules governing acquisitions, and the role of officers, directors and control shareholders. Sophisticated contracting parties and investors benefit from the clarity offered by a bright line rule like following the law of the state of incorporation.[112] The Supreme Court has noted that "a corporation - except in the rarest situations - is organized under, and governed by, the law of a single jurisdiction."[113]

California as Forum State

Under California choice of law rules, Delaware's substantive law could apply in one of two ways.[114] First, as the Central District of California recently found in the *Maine State* case, successor liability claims against Bank of America could be considered an internal corporate affair.[115] Second, a court could decide that Delaware's law "would be more impaired [than

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[111] In *In re Washington Mutual, Inc.*, the U.S. Bankruptcy Court for the District of Delaware (applying Delaware's choice of law rules) rejected the plaintiff mortgage holder's attempt to pierce the corporate veil between Washington Mutual, Inc., the Washington-incorporated savings and loan holding company, and Washington Mutual Bank, its Washington-incorporated subsidiary after the latter was taken over by the FDIC and the former filed for Chapter 11 bankruptcy. *In re Washington Mutual, Inc.*, No. 08–12229 (MFW), 2010 WL 3238903, at *1 (Bankr. D. Del. Aug. 13, 2010). The court found that "Delaware's choice-of-law rules require a court sitting in Delaware to look to a company's state of incorporation to determine the relationship between the corporate entity and its shareholders. Because both WMI and WMB are incorporated in the state of Washington, the Court applies Washington law in deciding whether WMI can be held liable for WMB's actions." *Id*, at *11 (citation omitted)." *See also Maine State Ret. System v. Countrywide Fin.*, No. 2:10-CV-0302, 2011 WL 1765509, at *4 (C.D. Cal. Apr. 20, 2011) (applying Delaware law in a case involving identical parties to the one at hand after discussing Section 302 of the Restatement (Second) of Conflict of Laws and finding that "[t]he particular issue . . . is successor liability by virtue of *de facto* merger. Mergers, reorganizations, and matters that may affect the interests of the corporation's creditors all fall within the scope of Section 302, which prescribes the law of the state of incorporation.").

[112] In addition, "[a]pplication of the local law of the state of incorporation will usually be supported by those choice-of-law factors favoring the needs of the interstate and international systems, certainty, predictability and uniformity of result, protection of the justified expectations of the parties and ease in the application of the law to be applied"; this sort of "[u]niform treatment . . . can only be attained by having the rights and liabilities of those persons with respect to the corporation governed by a single law." Restatement (Second) of Conflict of Laws § 302 cmt. e.

[113] *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 90 (1987); *see Examen, Inc. v. VantagePoint Venture Partners 1996*, 873 A.2d 318, 324 (Del. Ch. 2005); *McDermott, Inc. v. Lewis*, 531 A.2d 206, 216-17 (Del. 1987). (quoting *CTS* and emphasizing the importance of having a single state govern the internal affairs of a corporation).

[114] *Love v. Assoc. Newspapers, Ltd.*, 611 F.3d 601, 610 (9th Cir. 2010) (setting out California's approach to interest analysis).

[115] *Maine State Ret. System*, 2011 WL 1765509, at *4 ("The particular issue in this case is successor liability by virtue of *de facto* merger . . . because the issue of whether an asset transfer constitutes a *de facto* merger is peculiar to corporations, Delaware law applies.") California has adopted the internal affairs doctrine and "[i]n general, courts in California follow this rule and apply the law of the state of incorporation in considering claims relating to internal corporate affairs." *In re Sagent Tech., Inc., Derivative Litig.*, 278 F. Supp. 2d 1079, 1087 (N.D. Cal. 2003). As noted above, however, whether successor liability and corporate veil piercing, in particular, are internal affairs when third parties are involved is disputed. In *Oncology Therapeutics Network Connection v. Virginia Hematology Oncology*

California's] if its law were not applied."[116] It is possible that the issues could be characterized as "external" to corporate affairs or that California has a more substantial interest given that Countrywide and potential claimants are there.[117] However, it seems more likely that a California court would apply Delaware law given (1) the precedent set by the recent Federal court decision applying Delaware law to similar claims on these facts,; and (2) the public's interest in predictability, uniformity of results, and protecting the expectations of parties.[118] I have not seen any evidence or arguments that California has a unique interest in having its law apply.

PLLC, No. C 05-3033 WDB, 2006 WL 334532, at *12 (N.D. Cal. Feb. 10, 2006), the court discussed which law would apply to defendant Oncology Networks' proposed alter ego claims against a second Virginia corporation, allegedly created by the plaintiff to avoid liability. The court distinguished the facts of that case from prior applications of the internal affairs by noting that prior cases "do[] not involve an effort by an *outsider* to pierce the corporate veil based on alter ego. Moreover, it is not clear to us that an 'alter ego' claim such as that asserted by plaintiff involves 'internal' affairs of the corporation, as opposed to affairs 'external' to the corporation." *Id.* at *17. Instead, the court found that the interests of the state of incorporation would factor into a broader interest analysis. *Id.*

[116] *See Love*, 611 F.3d at 610 (quoting *Downing v. Abercrombie & Fitch*, 265 F.3d 994, 1005 (9th Cir. 2001)).

[117] *See Wilson v. Louisiana-Pacific Resources, Inc.*, 187 Cal. Rptr. 852, 858 (Cal. Ct. App. 1982) (noting, although in a context unrelated to corporate veil piercing or successor liability, that the internal affairs doctrine has never been "followed blindly in California").

[118] In *Schlumberger Logelco, Inc. v. Morgan Equip. Co.*, No. C 94-1776 MHP, 1996 WL 251951, at *3 (N.D. Cal. May 3, 1996), the court held that Austrian law would apply to an alter ego claim to pierce the corporate veil of an Austrian corporation to reach its parent corporation for unpaid debts. Citing the Second Circuit's decision in *Kalb*, discussed above, the court found "that the law of Austria, as the state of incorporation, governs plaintiffs' alter ego claim" and that "Austria has a substantial interest in determining whether to pierce the corporate veil of one of its corporations. *Id; see also Sunnyside Dev. Co., LLC v. Opsys Ltd.*, No. C 05-0553 MHP, 2005 WL 1876106, at *3 (N.D. Cal. 2005) (finding "no reason to depart from the analysis set forth in the *Schlumberger*" and applying British law to determine whether to pierce the corporate veil based on an alter-ego theory of liability against a British corporate defendant).

Appendix B Materials reviewed

SEC Filings

Bank of America

Bank of America Corporation, Form 10-K, for the year ended December 31, 2008, filed February 27, 2009.

Bank of America Corporation, Form 10-Q, for the three months ended June 30, 2008, filed August 7, 2008.

Bank of America Corporation, Form 10-Q, for the three months ended September 30, 2008, filed November 6, 2008.

Bank of America Corporation, Form 10-Q, for the three months ended March 31, 2011, filed May 5, 2011.

Bank of American Corporation, Form 8-K, Current Report for January 11, 2008.

Bank of American Corporation, Form 8-K, Current Report for April 21, 2008.

Bank of American Corporation, Form 8-K, Current Report for May 28, 2008.

Bank of American Corporation, Form 8-K, Current Report for July 1, 2008.

Bank of American Corporation, Form 8-K, Current Report for July 21, 2008.

Bank of American Corporation, Form 8-K, Current Report for October 6, 2008.

Bank of American Corporation, Form 8-K, Current Report for November 7, 2008.

Bank of American Corporation, Form 8-K, Current Report for November 12, 2008.

Bank of American Corporation, Form 8-K/A, Current Report for December 31, 2008.

Bank of American Corporation, Form 8-K, Current Report for February 27, 2009.

Bank of American Corporation, Form 8-K, Current Report for March 3, 2009.

Bank of American Corporation, Form 8-K, Current Report for May 28, 2009.

Bank of American Corporation, Form 8-K, Current Report for October 16, 2009.

Countrywide

Countrywide Financial Corp., Form 10-K, for the year ended December 31, 2004, filed March 15, 2005.

Countrywide Financial Corp., Form 10-K, for the year ended December 31, 2005, filed March 1, 2006.

Countrywide Financial Corp., Form 10-K, for the year ended December 31, 2006, filed March 1, 2007.

Countrywide Financial Corp., Form 10-K, for the year ended December 31, 2007, filed February 29, 2008.

Countrywide Financial Corp., Form 10-K/A, for the year ended December 31, 2007, filed April 24, 2008.

Countrywide Financial Corp., Form 10-Q, for the three months ended March 31, 2008, filed May 12, 2008.

Countrywide Financial Corp., Form 10-Q, for the three months ended June 30, 2008, filed August 11, 2008.

Countrywide Financial Corp., Form 10-Q, for the three months ended June 30, 2007, filed August 9, 2007.

Countrywide Financial Corp., Form 8-K, Current Report for January 9, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for January 11, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for January 17, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for January 30, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for January 31, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for February 15, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for March 13, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for April 3, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for April 30, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for June 2, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for June 25, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for July 8, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for September 17, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for October 14, 2008.

Countrywide Financial Corp., Form 8-K, Current Report for October 21, 2008.

Countrywide Financial Corp., Form 11-K, for the fiscal year ended December 31, 2007, filed June 30, 2008.

Financial Statements

Countrywide Financial Corporation, Selected Consolidated Financial Information (Unaudited) March 31, 2011.

Countrywide Financial Corporation, Selected Consolidated Financial Information (Unaudited) December 31, 2010.

Countrywide Home Loans, Selected Financial Information (Unaudited) March 31, 2011.

Countrywide Home Loans, Selected Financial Information (Unaudited) December 31, 2010.

Corporate Organization Charts

Countrywide Financial Corp Organization Chart, dated March 31, 2008.

Bank of America Corporation, Organization Chart with Countrywide entities, dated July 31, 2008.

Bank of America Corporation, Organization Chart with Countrywide entities, dated October 31, 2008.

Bank of America Corporation, Organization Chart with Countrywide entities, dated January 31, 2011.

Other Documents

Demand Note dated July 1, 2008 (BACMBIA-C0000161141 – 145).

Repayment Demand Notice dated July 2, 2008 (BACMBIA-C0000161146 – 147).

Repayment Demand Notice dated July 2, 2008 (BACMBIA-C0000161148 – 149).

Demand Note dated July 3, 2008 (BACMBIA-C0000161219 – 223).

Demand Note dated July 2, 2008 (BACMBIA-C0000161271 – 275).

Amendment to Mortgage Servicing Rights Purchase Agreement dated July 1, 2008 (BACMBIA-C0000161200 – 202).

Minutes to a Special Meeting of the Board of Directors of Countrywide Commercial Real Estate Finance, Inc., dated June 30, 2008 (BACMBIA-C0000161010 – 012).

Countrywide Home Loans, Inc. Action by Unanimous Written Consent of Directors in Lieu of Meeting of Directors, dated July 1, 2008 (BACMBIA-C0000161322 – 324).

Amendment No. 3 to Limited Partnership Agreement of Countrywide Home Loans Servicing LP, dated June 26, 2008 (BACMBIA-C0000161216 – 218).

Amendment No. 1 to Operating Instrument of Countrywide GP, LLC, dated July 2, 2008 (BACMBIA-C0000161595 – 597).

Amendment No. 1 to Operating Instrument of Countrywide LP, LLC, dated July 2, 2008 (BACMBIA-C0000161598 – 600).

Amendment No. 2 to Operating Instrument of Countrywide GP, LLC, dated July 2, 2008 (BACMBIA-C0000161601 – 602).

Amendment No. 2 to Operating Instrument of Countrywide LP, LLC, dated July 2, 2008 (BACMBIA-C0000161603 – 604).

Master Services Agreement, dated July 2, 2008 (BACMBIA-C0000161203 – 215).

Countrywide Home Loans Servicing LP Action by Written Consent of the General Partner, dated July 1, 2008 ((BACMBIA-C0000160997 – 999).

Countrywide GP, LLC Action by Written Consent of Sole Member, dated July 1, 2008 (BACMBIA-C0000161000 – 001).

Countrywide LP, LLC Action by Written Consent of Sole Member, dated July 1, 2008 (BACMBIA-C0000161002 – 003).

Assignment (GP), dated July 1, 2008 (BACMBIA-C0000161244 – 245).

Assignment (LP), dated July 1, 2008 (BACMBIA-C0000161246 – 247).

Assignment (SLP), dated July 1, 2008 (BACMBIA-C0000161248 – 249).

Bailment Agreement, dated July 1, 2008 (BACMBIA-C0000161258 – 264).

Bailment Agreement, dated July 1, 2008 (BACMBIA-C0000161265 – 270).

Bailment Agreement, dated July 3, 2008 (BACMBIA-C0000161276 – 282).

Bailment Agreement, dated July 3, 2008 ((BACMBIA-C0000161283 – 288).

Purchase and Sale Agreement, dated July 2, 2008 (BACMBIA-C0000161342 – 350).

Commercial Real Estate Loan Purchase and Sale Agreement, dated July 3, 2008 (BACMBIA-C0000161613 – 628).

Master Mortgage Loan Purchase and Subservicing Agreement, dated July 1, 2008 (BACMBIA-C0000161028 – 140).

Countrywide Home Loans, Inc. Amended and Restated Mortgage Loan Subservicing Agreement, dated July 2, 2008 (BACMBIA-C0000161150 – 174).

Countrywide Home Loans Servicing LP Amended and Restated Mortgage Loan Subservicing Agreement, dated July 2, 2008 (BACMBIA-C0000161175 – 199).

Purchase Confirmation Deal No. 2008-002, dated July 3, 2008 (BACMBIA-C0000161224 – 231).

Purchase Confirmation Deal No. 2008-001, dated July 1, 2008 (BACMBIA-C0000161250 – 257).

State of Florida Certification for Countrywide Capital Markets, dated June 5, 2009 (BACMBIA-C0000168098 – 123).

GlobaLoans International Technology Limited Partnership, Limited Partnership Act 1907 dated January 16, 2009 (BACMBIA-C0000168639 – 642).

Plan of Conversion of Balboa Insurance Group, Inc. into CW Insurance Group, LLC, dated October 31, 2008 (BACMBIA-C0000168054 – 058).

Balboa Insurance Group, Inc. Action by Unanimous Written Consent of Directors in Lieu of Meeting of Directors, dated October 31, 2008 (BACMBIA-C0000168059 – 062).

Balboa Insurance Group, Inc. Action by Written Consent of Sole Shareholder, dated October 31, 2008 (BACMBIA-C0000068063 – 065).

CW Insurance Group, LLC Action by Written Consent of the Manager, dated October 31, 2008 (BACMBIA-C0000168066 – 069).

Plan of Conversion of Countrywide Capital Markets, Inc. into Countrywide Capital Markets, LLC, dated October 31, 2008 (BACMBIA-C0000168076 – 080).

Countrywide Capital Markets, Inc. Action by Unanimous Written Consent of Directors in Lieu of Meeting of Directors, dated October 31, 2008 (BACMBIA-C0000168081 – 086).

Countrywide Capital Markets, Inc. Action by Written Consent of the Sole Shareholder, dated October 31, 2008 (BACMBIA-C0000168087 – 089).

Countrywide Capital markets, LLC Action by Written Consent of the Manager, dated October 31, 2008 (BACMBIA-C0000168090 – 092).

CW Insurance Group, Inc. Action by Written Consent of the Manager, dated October 31, 2008 (BACMBIA-C0000168128 – 131).

Countrywide Capital Markets, LLC Action by Written Consent of the Manager, dated October 31, 2008 (BACMBIA-C0000168133 – 135).

Demand Note, dated November 7, 2008 (BACMBIA-C0000168237 – 241).

Purchase and Sale Agreement, dated November 7, 2008 (BACMBIA-C0000168406 – 416).

Demand Note, dated November 7, 2008 (BACMBIA-C0000168417 – 421).

Purchase and Sale Agreement, dated November 7, 2008 (BACMBIA-C0000168422 – 436).

Demand Note, dated November 7, 2008 (BACMBIA-C0000168437 – 442).

Demand Note, dated November 7, 2008 (BACMBIA-C0000168502 – 507).

Certificate of Ownership Merging Countrywide Financial Holding Company, Inc. with and into Countrywide Financial Corporation, dated October 31, 2008 (BACMBIA-C0000168044 – 046).

Amendment No. 1 to the Asset Purchase Agreement, dated January 5, 2009 (BACMBIA-C0000168230 – 232).

Termination of Asset Contribution Agreement, dated November 7, 2008 (BACMBIA-C0000168311 – 312).

Termination of Mortgage Loan Subservicing Agreement, dated November 7, 2008 (BACMBIA-C0000168313 – 314).

Termination of Master Services Agreement, dated November 7, 2008 (BACMBIA-C0000168315 – 316).

Termination Agreement for Management Agreement, dated November 7, 2008 (BACMBIA-C0000168317 – 318).

Termination Agreement for Designation Agreement, dated November 7, 2008 (BACMBIA-C0000168332 – 333).

Amendment No. 1 to the Amended and Restated Mortgage Loan Subservicing Agreement, dated November 7, 2008 (BACMBIA-C0000168376 – 377).

Supplemental Agreement No. 1 to the Asset Purchase Agreement, dated March 6, 2009 (BACMBIA-C0000168233 – 236).

Amendment No. 1 to the Demand Note, dated March 6, 2009 (BACMBIA-C0000168242 – 245).

Amendment No. 1 to the Stock Purchase Agreement, dated January 5, 2009 (BACMBIA-C0000168495 – 497).

Supplemental Agreement No. 1 to the Stock Purchase Agreement, dated March 6, 2009 (BACMBIA-C0000168498 – 501).

Amendment No. 1 to the Demand Note, dated March 6, 2009 (BACMBIA-C0000168508 – 511).

Countrywide International Consulting Services, LLC Action Written Consent of the Managers, dated January 16, 2009 (BACMBIA-C0000168634 – 637).

Countrywide Financial Holding Company, Inc. Action by Unanimous Written Consent of Directors in Lieu of Meeting of Directors, dated October 31, 2008 (BACMBIA-C0000168047 – 048).

Countrywide Financial Corporation Action by Unanimous Written Consent of Directors in Lieu of Meeting of Directors, dated October 31, 2008 (BACMBIA-C0000168049 – 052).

Countrywide Financial Corporation Action by Unanimous Written Consent of Directors in Lieu of Meeting with Directors, dated October 31, 2008 (BACMBIA-C0000168167 – 170).

Effinity Financial Corporation Action by Unanimous Written Consent of Directors in Lieu of Meeting of Directors, dated October 31, 2008 (BACMBIA-C0000168141 – 143).

Countrywide Servicing Exchange Written Consent of the Other Member of Countrywide International Consulting Services, dated November 7, 2008 (BACMBIA-C0000168144 – 146).

Effinity Financial Corporation Action by Unanimous Written Consent of Directors in Lieu of Meeting of Directors, dated October 31, 2008 (BACMBIA-C0000168152 – 154).

Countrywide GP, LLC Action by Written Consent of Director, dated November 1, 2008 (BACMBIA-C0000168601 – 603).

Countrywide LP, LLC Action by Written Consent of the Manager, dated November 1, 2008 (BACMBIA-C0000168604 – 606).

Countrywide Home Loans Servicing, LP Action by Written Consent of the General Partner, dated November 1, 2008 (BACMBIA-C0000168607 – 609).

Effinity Financial Corporation Action by Unanimous Written Consent of Directors in Lieu of Meeting of Directors, dated December 31, 2008 (BACMBIA-C0000168614 – 616).

Countrywide Servicing Exchange Action by Unanimous Written Consent of Directors in Lieu of Meeting with Directors, dated December 31, 2008 (BACMBIA-C0000168617 – 622).

Countrywide Servicing Exchange Action by Unanimous Written Consent of Directors in Lieu of Meeting with Directors, dated December 31, 2008 (BACMBIA-C0000168628 – 633).

Operating Instrument of CW Insurance Group, LLC, dated October 31, 2008 (BACMBIA-C0000168070 – 074).

Operating Instrument of Countrywide Capital Markets, LLC, dated October 31, 2008 (BACMBIA-C0000168093 – 097).

Assignment and Assumption Agreement for Technology License Agreement, dated November 7, 2008 (BACMBIA-C0000168279 – 281).

Assignment and Assumption Agreement for Hedge Participation Agreement, dated November 7, 2008 (BACMBIA-C0000168282 – 284).

Contribution Agreement, dated November 1, 2008 (BACMBIA-C0000168124 – 126).

Contribution Agreement, dated November 1, 2008 (BACMBIA-C0000168136 – 139).

Contribution Agreement, dated November 1, 2008 (BACMBIA-C0000168147 – 150).

Contribution Agreement, dated November 1, 2008 (BACMBIA-C0000168162 – 166).

Contribution Agreement, dated November 7, 2008 (BACMBIA-C0000168573 – 576).

Contribution Agreement, dated November 7, 2008 (BACMBIA-C0000168577 – 579).

Contribution Agreement, dated December 31, 2008 (BACMBIA-C0000068610 – 613).

Contribution Agreement, dated January 16, 2009 (BACMBIA-C0000168624 – 627).

Management Services Agreement, dated November 1, 2008 (BACMBIA-C0000168319 – 331).

Management Services Agreement, dated November 1, 2008 (BACMBIA-C0000168334 – 346).

Management Services Agreement, dated November 1, 2008 (BACMBIA-C0000168347 – 359).

Management Services Agreement, dated November 1, 2008 (BACMBIA-C0000168360 – 375).

Notice of Termination of Intercompany Account Agreement, dated November 7, 2008 (BACMBIA-C0000168285 – 310).

NB Holdings Corporation Termination of the subservicing provision in the Master Mortgage Loan Purchase and Subservicing Agreement, dated November 10, 2008 (BACMBIA-C0000168378 – 405).

Asset Purchase Agreement by and between Bank of America Corporation and Countrywide Home Loans, Inc., dated November 7, 2008 (BACMBIA-C0000168172 – 229).

Bill of Sale, dated November 7, 2008 (BACMBIA-C0000168246 – 247).

Assignment and Assumption Agreement, dated November 7, 2008 (BACMBIA-C0000168248 – 250).

Stock Purchase Agreement by and between Bank of America Corporation and Countrywide Financial Corporation, dated November 7, 2008 (BACMBIA-C0000168443 – 494).

Countrywide Home Loans, Inc Action by Unanimous Written Consent of Directors in Lieu of Meeting Directors, dated October 14, 2008 (BACMBIA-C00000168260 – 277).

Countrywide Financial Corporation Action by Unanimous Written Consent of Directors in Lieu of Meeting of Directors, dated October 3, 2008 (BACMBIA-C0000168521 – 542).

Countrywide Home Loans, Inc. Action by Unanimous Written Consent of Directors in Lieu of Meeting of Directors, dated October 14, 2008 (BACMBIA-C0000168543 – 560).

GlobaLoans International Technology Limited Partnership, Limited Partnership Act 1907 dated November 3, 2008 (BACMBIA-C0000168158 – 161).

State of California Limited Liability Company Articles of Organization Conversion, dated October 31, 2008 (BACMBIA-C0000168053).

State of California Limited Liability Company Articles of Organization Conversion, dated October 31, 2008 (BACMBIA-C0000168075).

Secretary's Certificate of CW Insurance Group LLC, dated November 1, 2008 (BACMBIA-C0000168127).

Secretary's Certificate of Countrywide Capital Markets, LLC, dated November 1, 2008 (BACMBIA-C0000168132).

Consent to Assignment of Interest in GlobaLoans International Technology Limited Partnership, dated October 31, 2008 (BACMBIA-C0000168155).

The London Gazette, dated November 3, 2008 (BACMBIA-C0000168156).

Form of Adherence, dated November 1, 2008 (BACMBIA-C0000168157).

Action by Written Consent of the Sole Stockholder of Countrywide Home Loans, Inc., dated October 14, 2008 (BACMBIA-C0000168278).

Countrywide Servicing Exchange Written Consent of the Other Member of Countrywide International Consulting Services, LLC, dated December 31, 2008 (BACMBIA-C0000168623).

Form of Adherence, dated January 16, 2009 (BACMBIA-C0000168638).

CASES

PEIRCING THE CORPORATE VEIL

DELAWARE

David v. Mast, No. 1369-K, 1999 WL 135244 (Del. Ch. Mar. 2, 1999)

Geyer v. Ingersoll Publications Co., 621 A.2d 784 (Del. Ch. 1992)

Harco Nat'l Ins. Co. v. Green Farms. Inc., 1989 WL 110537 (Del. Ch. Sept. 19, 1989)

Hart Holding Co. v. Drexel Burnham Lambert, Inc., C.A. No. 11514, 1992 WL 127567 (Del. Ch. May 28, 1992)

Irwin & Leighton, Inc. v. W.M. Anderson Co., 532 A.2d 983 (Del Ch. 1987)

Mabon, Nugent & Co. v. Texas Am. Energy Corp., 1988 WL 5492 (Del. Ch., Jan. 27, 1988)

Pauley Petroleum Inc. v. Continental Oil Co., 239 A.2d 629 (Del. Ch. 1968)

United States v. Golden Acres, Inc., 702 F. Supp. 1097 (D. Del. 1988)

Wallace ex rel. Cencom Cable Income Partners II, Inc., L.P. v. Wood, 752 A.2d 1175 (Del. Ch. 1999)

Pereira v. Cogan, No. 00 CIV. 619(RWS), 2001 WL 243537 (S.D.N.Y. Mar. 8, 2001)

NEW YORK

888 7th Ave. Assocs. Ltd. P'ship v. Arlen Corp., 172 A.D.2d 445 (1st Dep't 1991)

A. W. Fiur Co., Inc. v. Ataka & Co., Ltd., 71 A.D.2d 370 (1st Dep't 1979)

Anderson St. Realty Corp. v. RHMB New Rochelle Leasing Corp., 243 A.D.2d 595 (2d Dep't 1997)

Carte Blanche (Singapore) PTE., Ltd. v. Diners Club Int'l, Inc., 758 F. Supp. 908 (S.D.N.Y. 1991)

Chase Manhattan Bank (Nat. Ass'n) v. 264 Water St. Assocs., 174 A.D.2d 504 (1st Dep't 1991)

Commercial Sites, Co. v. Prestige Photo Studios, Inc., 272 A.D.2d 360 (2d Dep't 2000)

Directors Guild of Am., Inc. v. Garrison Productions, Inc., 733 F. Supp. 755 (S.D.N.Y. 1990)

Feszczyszyn v. Gen. Motors Corp., 248 A.D.2d 939 (4th Dep't 1998)

Godwin Realty Assocs. v. CATV Enters., 275 A.D.2d 269 (1st Dep't 2000)

In re Morris v. N.Y. State Dept. of Taxation & Fin., 82 N.Y.2d 135 (1993)

Lederer v. King, 214 A.D.2d 354 (1st Dep't 1995)

Matter of Arbitration between Holborn Oil Trading Ltd. & Interpol Bermuda Ltd., 774 F. Supp. 840 (S.D.N.Y. 1991)

Matter of Tax Indebtedness of Coppola, 91-CV-0919(JBW), 1994 WL 159525 (E.D.N.Y. Jan. 10, 1994)

Passalacqua Builders, Inc. v. Resnick Developers S., Inc., 933 F.2d 131 (2d Cir. 1991)

Pebble Cove Homeowners' Ass'n, Inc. v. Fid. N.Y. FSB, 153 A.D.2d 843 (2d Dep't 1989)

Ravens Metal Products Inc. v. McGann, 267 A.D.2d 527 (3d Dep't 1999)

Rebh v. Rotterdam Ventures Inc., 277 A.D.2d 659 (3d Dep't 2000)

Simplicity Pattern Co. v. Miami Tru-Color Off-Set Serv., 210 A.D.2d 24 (1st Dep't 1994)

Smoothline Ltd. v. N. Am. Foreign Trading Corp., 00 CIV. 2798 DLC, 2002 WL 31885795 (S.D.N.Y. Dec. 27, 2002)

United Rubber, Cork, Linoleum & Plastic Workers of Am., AFL-CIO v. Great Am. Indus., Inc., 479 F. Supp. 216 (S.D.N.Y. 1979)

Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036, 1052 (1992)

William D. Harrington, *Business Associations*, 43 SYRACUSE L. REV. 25 (1992)

CALIFORNIA

ADO Finance, A.G. v. McDonnell Douglas Corp., 931 F. Supp. 711 (C.D. Cal. 1996)

Associated Vendors, Inc. v. Oakland Meat Co., Inc., 210 Cal. App. 2d 825 (Cal. Ct. App. 1962)

Automotriz Del Golfo De Cal. S.A. De C.V. v. Resnick, 47 Cal.2d 792 (1957)

Carlesimo v. Schwebel, 87 Cal. App. 2d 482 (Cal. Ct. App. 1987)

Electro Lock, Inc. v. Core Indus., Inc., No. B134386, 2002 WL 1057468 (Cal. Ct. App. May 28, 2002)

Institute of Veterinary Pathology, Inc. v. Cal. Health Laboratories, Inc., 116 Cal. App. 3d 111 (Cal. Ct. App. 1981)

Katzir's Floor & Home Design v. M-MLS.Com, 394 F.3d 1143 (9th Cir. 2004)

Las Palmas Assocs. v. Las Palmas Ctr. Assocs., 235 Cal. App. 3d 1220 (Cal. Ct. App. 1991)

Minton v. Cavaney, 56 Cal. 2d 576 (1961)

Neilson v. Union Bank of Cal., N.A., 290 F. Supp. 2d 1101 (C.D. Cal. 2003)

Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. Louisiana Hydrolec, 854 F.2d 1538 (9th Cir. 1988)

Pearl v. Shore, 17 Cal. App. 3d 608 (Cal. Ct. App. 1971)

Sonora Diamond Corp. v. The Superior Court of Tuolomne Cnty., 83 Cal. App. 4th 523 (Cal. Ct. App. 2000)

Pereira v. Cogan, No. 00 CIV. 619(RWS), 2001 WL 243537 (S.D.N.Y. Mar. 8, 2001)

STEPHEN PRESSER, PIERCING THE CORPORATE VEIL (2010)

SUCCESSOR LIABLILITY

DELAWARE

Drug, Inc. v. Hunt, 168 A. 87 (Del. Ch. 1933)

Elmer v. Tenneco Resins, Inc., 698 F. Supp. 535 (D. Del. 1988)

Fell v. S.W.C. Corp., 433 F. Supp. 939 (D. Del. 1977)

Finch v. Warrior Cement Corp., 141 A. 54 (Del. Ch. 1928)

Fountain v. Colonial Chevrolet Co, 1988 WL 40019 (Del. Super. Ct. 1988)

Heilbrunn v. Sun Chem. Corp., 150 A.2d 755 (Del. 1959)

Mason v. Network of Wilmington, Inc., No. A. 19434-NC., 2005 WL 1653954 (Del. Ch. July 2005)

Rauch v. RCA Corp., 861 F.2d 29 (2d Cir. 1988)

Rothschild Int'l Corp. v. Liggett Group, 474 A.2d 133 (Del. 1984)

Pereira v. Cogan, No. 00 CIV. 619(RWS), 2001 WL 243537 (S.D.N.Y. Mar. 8, 2001)

15 W. Fletcher, *Cyclopedia of the Law of Private Corporations* § 7125 (1973 Rev. Vol.)

JESSE A. FINKELSTEIN & R. FRANKLIN BALOTTI, DELAWARE LAW OF CORPORATIONS AND BUSINESS ORGANIZATIONS (2010)

NEW YORK

Beck v. Roper Whitney, Inc. 190 F. Supp. 2d 524 (W.D.N.Y. 2001)

Booth v. Bunce, 33 N.Y. 139 (1865)

Buja v. KCI Konecranes Intern. Plc., 815 N.Y.S.2d 412 (N.Y. Sup. Ct. Monroe Cty. 2006)

City of N.Y. v. Charles Pfizer & Co., 260 A.D.2d 174 (1st Dept. 1999)

Cole v. Millerton Iron Co., 133 N.Y. 164 (1892)

Cargo Partner AG v. Albatrans Inc., 207 F. Supp. 2d 86 (S.D.N.Y. 2002)

Cargo Partner AG v. Albatrans Inc., 352 F.3d 41 (2d Cir. 2003)

Douglas v. Stamco, 363 Fed. Appx. 100 (2d Cir. 2010)

Fitzgerald v. Fahnestock & Co., Inc., 286 A.D.2d 573 (1st Dep't 2001)

Grant-Howard Assocs. v. General Housewares Corp., 115 Misc.2d 704 (N.Y. Sup. Ct. N.Y. Cty. 1982)

Hayes v. Equality Specialities, 740 F. Supp. 2d 474 (S.D.N.Y. 2010)

In re AT&S Transp., LLC v. Odyssey Logistics & Technology Corp., 22 A.D.3d 750 (2d Dep't 2005)

In re N.Y. City Asbestos Litig., 15 A.D.3d 254 (1st Dep't 2005)

In re Seventh Jud. Dist. Asbestos Litig., 788 N.Y.S.2d 579 (N.Y. Sup. Ct. Ont. Cty. 2005)

Kretzmer v. Firesafe Prods. Corp., 24 A.D.3d 158 (1st Dep't 2005)

Ladjevardian v. Laidlaw-Coggeshall, Inc., 431 F. Supp. 834 (S.D.N.Y. 1977)

Marenyi v. Packard Press Corp.,No. 90-cv-4439, 1994 WL 16000129 (S.D.N.Y. June 9, 1994)

Morales v. City of N.Y., 849 N.Y.S.2d 406 (N.Y. Sup. Ct. Kings Cty. 2007)

N.Y. v. Nat'l Serv. Indus., Inc., 460 F.3d 201 (2d Cir. 2006)

Schumacher v. Richards Shear Co., 59 N.Y.2d 239 (1983)

Trystate Mechanical, Inc. v. Tefco, LLC, No. 7343/10, 2010 WL 3960604 (N.Y. Sup. Ct. Kings Cty. Oct. 2010)

Vasquez v. Ranieri Cheese Corp., No. 07-CV-464, 2010 WL 1223606 (E.D.N.Y. Mar. 26, 2010)

George W. Kuney, *Successor Liability in New York*, N.Y.

Mike Taylor, *BofA Gets Pugilistic With Mortgage Putback Crowd*, N.Y. OBSERVER, Nov. 16, 2010, available at http://www.observer.com/2010/wall-street/bofa-gets-pugilistic-mortgage-putback-crowd

CHOICE OF LAW

NEW YORK

Burnett v. Columbus McKinnon Corp., 69 A.D.3d 58 (4th Dep't 2009)

First Nat'l City Bank v. Banco paro el Comercio Exterior de Cuba, 462 U.S. 611 (1983)

Fletcher v. Atex, Inc., 68 F.3d 1451 (2d Cir. 1995)

In re Saba Enter., Inc., 421 B.R. 626 (Bankr. S.D.N.Y. 2006)

Kalb, Voorhis & Co. v. Am. Fin. Corp., 8 F.3d 130 (2d Cir. 1993)

Maine State Ret. System v. Countrywide Fin. Corp., et al., No. 2:10-CV-00302 (C.D. Cal. Sept. 16, 2010), 2010 WL 4774120

Matter of Allstate Ins. Co (Stolarz), 81 N.Y.2d 219 (1993)

MBIA Insurance v. Countrywide Home Loans, Index No. 602825/2008 (N.Y. Sup. Ct. N.Y Cty. Apr. 27, 2010)

Padula v. Lilarn Prop. Corp., 620 N.Y.S.2d 310 (1994)

Roselink Investors, LLC v. Shenkman, 386 F. Supp. 2d 209 (S.D.N.Y. 2004)

Sokol v. Ventures Educ. Systems Corp., No. 602856/02, 2005 Slip Op 51963U (N.Y. Sup. Ct. N.Y. Cty. 2005)

Soviet Pan Am v. Travel Committee, Inc., 756 F. Supp. 126 (S.D.N.Y. 1991)

Sweatland v. Park Corp., 181 A.D.2d 243 (4th Dep't 1992)

Time Warner Cable, Inc. v. Networks Groups, LLC, No. 09 Civ. 10059(DLC), 2010 WL 3563111 (S.D.N.Y. Sept. 9, 2010)

U.S. Fid. & Guar. Co. v. Petroleo Brasileiro S.A.-Petrobras, No. 98 Civ. 3099(THK), 2005 WL 289575 (S.D.N.Y. Feb. 4, 2005)

Wausau Business Ins. Co. v. Turner Constr. Co., 141 F. Supp. 2d 412 (S.D.N.Y. 2001)

Restatement (Second) of Conflict of Laws

DELAWARE

CTS Corp. v. Dynamics Corp. of Am., 481 U.S. 69 (1987)

In re Washington Mutual, Inc., No. 08–12229 (MFW), 2010 WL 3238903 (Bankr. D. Del. Aug. 13, 2010)

McDermott Inc. v. Lewis, 531 A.2d 206 (Del. 1987)

Travelers Indem. Co. v. Lake, 594 A.2d 38 (Del. 1991)

Examen, Inc. v. VantagePoint Ventires Partners 1996, 873 A.2d 318 (Del. Ch. 2005)

Restatement (Second) of Conflict of Laws

CALIFORNIA

Downing v. Abercrombie & Fitch, 265 F.3d 994 (9th Cir. 2001)

In re Sagent Tech., Inc., Derivative Litig., 278 F. Supp. 2d 1079 (N.D. Cal. 2003)

Kalb, Voorhis & Co. v. Am. Fin. Corp., 8 F.3d 130 (2d Cir. 1993)

Liggett Group Inc. v. Affiliated FM Ins. Co., 788 A.2d 134 (Del. Super. Ct. 2001)

Love v. Assoc. Newspapers, Ltd., 611 F.3d 601 (9th Cir. 2010)

Oncology Therapeutics Network Connection v. Virginia Hematology Oncology PLLC, No. C 05-3033 WDB, 2006 WL 334532 (N.D. Cal. Feb. 10, 2006)

Schlumberger Logelco, Inc. v. Morgan Equip. Co., No. C 94-1776 MHP, 1996 WL 251951 (N.D. Cal. May 3, 1996)

Sunnyside Dev. Co., LLC v. Opsys Ltd., No. C 05-0553 MHP, 2005 WL 1876106 (N.D. Cal. 2005)

Wilson v. Louisiana-Pacific Resources, Inc., 187 Cal. Rptr. 852 (Cal. Ct. App. 1982)

Maine State Ret. System v. Countrywide Fin., No. 2:10-CV-0302, 2011 WL 1765509 (C.D. Cal. Apr. 20, 2011)

EXHIBIT 4

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STARR INTERNATIONAL COMPANY, **Plaintiff,** vs. **AMERICAN INTERNATIONAL GROUP, INC.** **Defendant.**	§ § § § § § § § § § § § § §	**Civil Action No. 05 CV 6283**

EXPERT REPORT OF PROFESSOR JOHN C. COATES IV

Summary

I have been retained by counsel for plaintiff, Starr International Company, Inc. (***SICO***).[1] This report addresses (a) the customs and practices of M&A transactions, such as those by which SICO acquired (i) stock of American International Reinsurance Company, Inc. (***AIRCO***) in the AIRCO Exchange described below (***the AIRCO Exchange***), and (ii) stock of American International Group, Inc. (***AIG***) in the AIRCO/AIG Merger described below (***the AIG Merger***), and (b) the economic principles that support the strong, long-standing, and consistent recognition of corporate separateness and the corresponding strong, long-standing, and consistent reluctance of the law to allow shareholders, creditors, or agents of one corporation to attach or obtain assets of another corporation by setting that separateness aside, whether under the guise of veil-piercing, reverse veil-piercing, substantive consolidation, constructive trusts, or other legal or equitable doctrines. My fee is $950 per hour for time spent on litigation, including preparing this report and preparing and giving associated testimony.

Based on my experience as an attorney and a professor specializing in business organizations, securities law, finance, and mergers and acquisitions (***M&A***), and after a review of documents and testimony in the case, set out in Exhibit C, it is my opinion that:

(1) the AIRCO Exchange and the AIG Merger were conventional M&A transactions, designed and executed in customary ways,

(2) the AIRCO Exchange and the AIG Merger were distinct, separate transactions, not materially related to each other,

(3) the record I have reviewed does not cause me to believe the AIRCO Exchange and the AIG Merger were other than proper, equitable, and fair to both SICO and its counterparties, including AIG,

(4) the record reveals nothing about the corporate history of SICO that provides a reason:

  (a) to ignore the corporate separateness of SICO and AIG,

  (b) to believe that SICO entered into any contract or guarantee to hold the stock of AIG owned by SICO in trust for AIG or its employees,

  (c) to believe SICO has converted assets of AIG or AIG's employees, or otherwise acted inequitably or improperly.

The bases for these opinions, as well as additional opinions, are set out in Parts II, III and IV below.

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[1] Throughout, defined terms are defined when first used, in bold italics. Prior to August 21, 1970, SICO was named American International Underwriters Overseas, Inc. (AIUO), but is referred to as SICO in this report.

I. Background / Experience

I am the John F. Cogan Jr. Professor of Law and Economics at the Harvard Law School. At Harvard I teach, among other courses, the basic course on corporations, partnerships, limited liability companies and other business organizations, and advanced courses on M&A, corporate control and governance, the regulation of insurance and other financial institutions, and securities law and regulation, including basic principles of accounting, economics and finance as they relate to corporate, securities or financial institutions law or the design and implementation of business transactions. In my courses, I teach or have taught units on the basics of accounting and finance, option theory, economics, econometrics and statistical theory, decision theory, and efficient markets theory and related academic research. Before joining the Harvard faculty, I taught M&A at New York University for five years, and I also served as an adjunct professor at Boston University, where I taught courses on M&A and the regulation of financial institutions such as banks, insurance companies, and mutual funds. A copy of my *curriculum vitae* (including a list of all of my publications in the last ten years) is attached as Exhibit A.

Before joining the Harvard faculty, I was a partner at the New York law firm of Wachtell, Lipton, Rosen & Katz, one of the nation's leading law firms and consistently ranked one or two in *American Lawyer's* AmLaw 100. I worked at Wachtell Lipton from 1988 to 1997. In my practice at Wachtell Lipton, I represented large public companies and other firms involved in large financial transactions, including stock and asset purchases, corporate mergers, business combinations, joint enterprises, public offerings, private placements and recapitalizations. I routinely advised parties as to their rights and obligations under transaction agreements and relevant securities and corporate laws and regulations, as well as the customs and practices of M&A with respect to such transactions. I was frequently involved in the preparation of documents filed by large public companies under the 1934 Act, including regularly filed 1934 Act Documents. Since joining the faculty of Harvard Law School, I have provided or am providing consulting services to the Securities and Exchange Commission (*SEC*), the New York Stock Exchange, and other organizations and individuals actively involved in corporate and financial transactions, including private equity funds, mutual funds, public and private companies, law firms, and investment banks, regulatory agencies, trade organizations, and entrepreneurs. As a consultant and while at Wachtell Lipton, I was or am a principal advisor in more than 50 completed corporate transactions, each involving more than $100 million, including transactions involving AT&T, Bank of America, GE, IBM, Sara Lee, USAir, and Valero Energy.[2] I have also consulted with or advised an array of investment banks and other financial institutions, including Goldman Sachs on a total of approximately $7.4 billion of financings by Sears, Roebuck and Co., CS First Boston, The Travelers, Bank of America, Merrill Lynch, MFS Financial Services, John Nuveen, First Chicago, Citigroup, and Capital One.

I have studied and written extensively about the law and economics of corporations and other business entities, and of corporate transactions, such as M&A transactions, as well

[2] I have not previously provided services to SICO, whether as an attorney, consultant, or expert witness.

as the contracts and customs and practices of business persons and lawyers relevant to such topics. I am the author *inter alia* of chapters in M. LIPTON & E. STEINBERGER, TAKEOVERS AND FREEZEOUTS (the leading practitioner-oriented treatise on M&A), and for seven years, I co-authored the leading treatise on M&A in the financial industry, FINANCIAL INSTITUTIONS MERGERS AND ACQUISITIONS. My articles have appeared in *Stanford Law Review, California Law Review, University of Pennsylvania Law Review, Texas Law Review, Journal of Corporation Law*, and *The Business Lawyer*. Articles of mine have been chosen by legal academics as among the ten best corporate law articles in 1999, 2001, 2002, 2003 and 2004, and the best securities law articles in 2000, and several have been cited by the Delaware Supreme and Chancery Courts. My research methodologies include doctrinal and policy analysis, historical and recent-event case studies, large-scale empirical data-gathering and analysis, and econometric and statistical analysis. My current research includes detailed, large-sample empirical studies of takeover bids, executive compensation and its effect on M&A in the 1990s, the market structure of the legal profession and the roles of lawyers in the transactional context, factors affecting M&A completion rates, causes and consequences of management buyouts, and the market structure and regulation of the mutual fund industry.

I have been invited to be a speaker at the law schools of Yale, Stanford, NYU, Columbia, Chicago, Penn, Texas, Berkeley, Virginia, Georgetown, and the Royal College of Spain, among others; at Harvard Business School, the Stern School of Business at New York University, and the Wharton School; at the Federal Judicial Center, the American Law Institute, the American Bar Association, the International Bar Association, and the American Association of Law Schools; the National Bureau of Economic Research, the American Law and Economics Association, the Investment Company Institute, and the Federal Reserve Bank of New York; and the High Level Group of Corporate Law Experts established under the auspices of the European Union. I am or have been a member of the Legal Advisory Committee to the New York Stock Exchange, the American Bar Association, the American Association of Law Schools, and the board of directors of the American Law and Economics Association.

A list of cases in which I have testified as an expert at trial or by deposition in the last four years is attached as Exhibit B. As reflected on Exhibit B, I have testified at trial and by deposition in judicial proceedings as an expert witness on disputes concerning M&A transactions, M&A contracts, and the economic principles of and customs and practices regarding corporate separateness. For example, I have provided testimony on behalf of the Commonwealth of Massachusetts in a tax case in which a large corporation claimed that it had entered into corporate transactions as a takeover defense; I have provided testimony on behalf of NatWest in response to a claim that it should be liable for the obligations of a separate corporation, the stock of which was wholly owned by NatWest; and I have provided trial testimony in two unrelated cases (one in the Federal District Court of Connecticut, one in New Jersey state court) regarding M&A customs and practices relevant to those cases.

II. Customs and Practices Related to M&A Transactions

In this section, I describe the customs and practices of M&A transactions, such as the AIRCO Exchange and the AIG Merger, as they existed in the 1970s and today. I first briefly describe the customary purposes and forms of M&A transactions. I then briefly describe the principal disclosure, approval, and fairness requirements for M&A transactions such as the AIRCO Exchange and the AIG Merger, and customs and practices that have been developed to satisfy those requirements. I then describe customs and practices of contracts for M&A transactions, including their purpose and nature.

A. Purposes and Forms of M&A Transactions

The underlying motives for M&A transactions vary enormously, ranging from obtaining economies of scale to tax savings, but the basic purpose of any M&A transaction is to shift ownership and/or control of a business or collection of assets from one owner (or set of owners) to another. Most significant businesses are owned in a corporate form (for reasons including those discussed in Part III), and in fact most shareholders of most large businesses that are organized as corporations are themselves corporations. Thus, most M&A transactions are corporate transactions, and the basic purpose of most M&A transactions is to shift ownership and/or control of a business or collection of assets from one corporation to another. Obviously, owners of a corporation that give up ownership or control of a business will typically expect to receive something in exchange, either directly or by transfer to the corporation. Payment in M&A transactions customarily takes the form of stock, cash, other assets or contract rights, or some combination. Taking into account the interests of owners of both the purchasing and the selling corporation, then, the purpose of most M&A transactions is to shift ownership and/or control of a business or collection of assets in return for stock, cash, or other assets.

M&A transactions take one of three basic legal forms: (a) stock purchase, (b) asset purchase, and (c) merger. The choice of which form to use depends on a host of legal and business considerations, including transaction costs, taxes, accounting, speed, approval requirements, regulatory requirements, and the pre-existing and desired structure of ownership of the corporations involved. The choice of form of transaction is independent of the choice of consideration. It is not unusual to see a stock-for-stock swap, a cash purchase of assets, or a cash merger, as well as a stock-for-assets swap (such as the AIRCO Exchange) and a stock merger (such as the AIG Merger). In a stock-for-assets swap, one company transfers assets to a second company, which in return transfers stock (of another company), so that afterward, all three companies involved continue in existence, but with new assets, ownership, and/or control rights, all as specified in a written transaction agreement. In a stock merger, one company merges into another, with shareholders of the disappearing company receiving stock of the surviving company, so that afterward, shareholders of the two merging companies collectively own the surviving company, all as specified in a merger agreement filed in accordance with corporate law.

B. Corporate Approval, Disclosure, and Fairness Requirements for M&A Transactions

The corporate approval, disclosure and fairness requirements for M&A transactions depend upon the form of the transaction, the form of consideration involved and the ownership structure of the corporations involved.

1. Approvals

With respect to corporate approvals, the board of a corporation that is directly a party to a significant M&A transaction must approve that transaction. Where shareholders sell their stock, however, the corporation involved may not formally be a party to the transaction. If the corporation is not formally a party to the transaction, board approval may not be required. Where a corporation sells substantially all of its assets, the laws of most jurisdictions require that both the board and the shareholders of the corporation approve the sale. Where a corporation buys a business or assets, however, the laws of most jurisdictions require only that the acquisition be approved by or under delegated authority from the acquiror's board of directors. For most mergers, both the board and the shareholders of the merging companies must approve the transaction.[3] Additional approval requirements may apply to companies listed on a stock exchange. In general, when shareholder approval is required for an M&A transaction, shareholders vote on the transaction based on proportionate share ownership. Before shareholders vote on an M&A transaction involving one or more "public companies" (as defined below), they must be provided legally required disclosures to inform the shareholders about the transaction (as discussed more below), as was separately done for the AIRCO Exchange and the AIG Merger. As a result, if shareholders do not believe that the transaction will benefit them, they will be able and can be expected to vote against the transaction, and if a majority (or in some instances, a minority) of shareholders vote against the transaction, the transaction may not take place. In addition, quorum and voting rules often require that a minimum number of shares be affirmatively voted in favor of any transaction subject to a shareholder vote, so that if enough shareholders remain passive and do not vote, again, the transaction will not take place.

2. Disclosure

With respect to disclosure, corporations that have stock listed on a stock exchange are treated as "public companies" under the federal securities laws. The same is true of any company that has 500 or more shareholders and more than a specified amount of assets (currently specified as $10 million) as of the last day of its most recent fiscal year. Public companies must disclose significant M&A transactions under applicable SEC rules, and, if applicable, rules of the relevant stock exchange. Significant changes in the ownership of public companies must also be disclosed.

[3] This is not only generally true for entities in the United states (incorporated under the laws of one or more states), but also for entities incorporated in Panama.

Where a vote of shareholders of a public company is sought to approve an M&A transaction, the person soliciting the vote must also comply with the disclosure requirements of the SEC's proxy rules. The purpose of these rules is to require the disclosure of material information so that investors can make an informed decision. Among other requirements, the proxy rules require a company to disclose:

- the material features of the proposed transaction,
- the terms of the transaction agreement,
- the reasons for engaging in the transaction,
- a description of any past, present, or proposed material contracts, arrangements, understandings, relationships, negotiations, or transactions in the immediately prior period between the parties to the transaction or their affiliates, specifically including any agreements or understandings with respect to future M&A transactions, and
- any substantial interest, direct or indirect, of any director or executive officer of the company in any matter to be voted upon.

In addition, one of the SEC's proxy rules forbids the omission of any facts necessary to make the statements made in the proxy statement not misleading. In an M&A context these requirements effectively mean that the companies involved must disclose to shareholders all material facts relevant to the effects of an M&A transaction for which shareholder approval is sought, including any legal agreements, promises, obligations or contractual restrictions related to the transaction. If at the time one M&A transaction is disclosed to shareholders for their vote, there is any "understanding" (much less an agreement) about another, future M&A transaction between the same parties, that understanding would have to be disclosed. If at the time an M&A transaction is disclosed to shareholders for their vote, any executive officer of a party to the transaction has a material interest in the transaction, even an indirect one, such as would be the case if s/he were to expect to have the right to receive future compensation from the companies involved in the transaction, that interest would have to be disclosed.[4]

3. Fairness

With respect to fairness, the fiduciaries (directors and officers) of corporations that engage in M&A transactions must comply with duties imposed by corporate law. Among those duties are the requirement that fiduciaries act with care and loyalty. Where an M&A transaction presents an actual or potential conflict of interest for a given fiduciary, the fiduciary may be required to prove the "fairness" (or "entire fairness" as it is

[4] Advisors such as outside counsel and accountants have always had a substantial role in ensuring a company's compliance with securities laws governing disclosure. For example, attorneys have always had an obligation to act consistent with ethical requirements, including not participating in a crime or fraud, and auditors have always had an obligation to provide an independent opinion on the fairness of a public company's financial statements. Moreover, with the passage of the Sarbanes-Oxley Act of 2002, these obligations have been further enhanced, for example, imposing affirmative obligations on attorneys when there is sufficient evidence of a "material violation" of the securities laws and imposing restrictions on non-auditing services that can be performed by an auditor to ensure an auditor's independence.

sometimes said) of the transaction, including both the price (*i.e.*, the value of the consideration) and the process by which the transaction was approved. The stringency with which courts applying state corporate law will review a given M&A transaction for fairness may turn on whether and how the transaction was approved, and by whom, and whether the transaction met relevant disclosure requirements or was otherwise disclosed to shareholders. In general terms, M&A transactions that are adequately disclosed and approved by shareholders are more likely to be found to be fair for fiduciary duty purposes, even if public disclosure and shareholder approval was not technically required.

C. M&A Contracts

In all M&A transactions of which I am aware, the transactions have been documented by formal, written agreements drafted, negotiated and finalized by teams of business persons and attorneys. Such agreements are almost always detailed and lengthy, and include specific descriptions of the transactions to be completed, the conditions that must be satisfied before the transactions will be consummated, representations and warranties by the parties concerning the business and consideration involved, termination provisions, and miscellaneous covenants. In large deals, significant M&A transactions are documented extensively, and any significant obligations arising out of M&A transactions are invariably in writing. As stated by Frank Zarb, Chairman of the Board of Directors of AIG, in his deposition testimony, sophisticated parties insist on putting significant legal obligations in writing.[5] M&A contracts also almost always contain "merger clauses" -- clauses that state that all of the agreements related to the subject matter of the contract are contained in the written agreement. As a result, and for obvious business reasons, important collateral agreements, reservations of rights, limitations or restrictions on consideration being transferred, or other similar matters are also put in writing. Particularly when obligations or legal agreements are significant, indefinite in duration, and affect a significant number of parties, such obligations and agreements are customarily put in writing.

[5] Dep. Tr. of Frank Zarb (5/31/06) at 116; see also Dep. Tr. of Martin Sullivan (5/24/06) at 402 (AIG CEO agreeing that if he had a contract that involved millions of dollars, he would want to have it in writing).

III. Economic Principles Supporting Corporate Separateness

In this section, I outline economic principles that support the strong, long-standing, and consistent recognition of corporate separateness and the corresponding strong, long-standing, and consistent reluctance of the law to allow shareholders, creditors, or agents of one corporation to attach or obtain assets of another corporation by setting that separateness aside, whether styled as veil-piercing, reverse veil-piercing, substantive consolidation, constructive trusts, or other legal or equitable doctrines. I briefly describe how those principles support the conventional legal and equitable doctrines that address the limited circumstances under which corporate separateness will be ignored. I also briefly describe customs and practices of corporations and their shareholders that affect whether the economic principles that support recognition of corporate separateness are relevant in a given factual setting.

A. Economic Advantages of Corporate Separateness

At the most general level, corporate separateness provides net benefits to society by reducing the cost of capital without imposing uncompensated costs on third parties. The specific, direct economic advantages of corporate separateness include the following:

- Shareholders are not liable for the debts of a corporation, and *vice versa*. Thus, neither needs to worry about assets, debts, liabilities, investments, or activities of the other (except to the extent of shareholders' equity in a corporation). Corporate separateness thus reduces the costs of monitoring or controlling the activities or liabilities of corporations and shareholders alike. The same is true when shareholders are themselves corporations.
- The same is true of *creditors* of both corporations and shareholders. Creditors of a shareholder need not worry about the assets, debts, *etc.* of *other* shareholders, or of corporations in which a shareholder has invested. Creditors of a corporation need not worry about assets, debts, *etc.* of shareholders.
- Shares become much more readily transferable, and simpler to price, since the identity (assets, debts, *etc.*) of a shareholder does not directly affect the value of the corporation or its shares.
- Transferability enhances liquidity, which is intrinsically valuable.
- Simpler pricing enhances transferability and liquidity, too, and improves the allocation of capital among different companies.

Of course, by limiting the ability of creditors of shareholders and corporations to pursue assets beyond those with whom they have expressly contracted, corporate separateness may in the first instance increase the cost of debt capital for any given shareholder or corporation, as well. But the net cost of capital to shareholders and the corporation as a whole is lower, because creditors can (and do) specialize, some lending to the corporation, others lending to shareholders (who may be individuals or other corporations). Specialization allows better risk allocation among creditors, and offers the classic economic advantages of specialization: division of labor, learning, and innovation. Monitoring costs faced by creditors fall as a result, and competition among lenders passes along those economies to corporations and their shareholders.[6]

Corporate separateness also lowers the overall cost of capital by reducing transaction costs. Because the law on corporate separateness is usually clear, well-known and relatively easy to communicate, creditors and shareholders of corporations can more cheaply negotiate transactions than would be the case if corporate separateness were not the default rule. An important subset of costs reflected in the expected cost of capital for a given corporation is the costs of bankruptcy and liquidation in the event of insolvency. Again, because corporate separateness is a clear default rule that can more cheaply be varied by contract than alternatives, it is more economically efficient for corporations and creditors alike for corporate separateness to generally be respected in the case of insolvent corporations and related parties.

Corporate separateness can also reduce a company's cost of capital by allowing it to partition its capital in separate subsidiaries, which may be wholly owned or partly owned by third parties. By partitioning its capital into separate subsidiaries, various legal restrictions will make it more costly for managers of the overall enterprise to shift capital from one use to another, and/or will make doing so more transparent to outside investors, including both shareholders and creditors. Corporate separateness can thus reduce the agency costs that can arise if corporate managers are free to shift capital from one use to another.

Finally, the duration and strength of the rules of corporate separateness, and the fact that they reinforce the reliability of corporate assets and solvency, all helps parties that deal with a corporation to make long-term commitments secure in the knowledge that the corporation will last long enough for those commitments to pay investors back.

B. Costs of Ignoring Corporate Separateness

The inverse of the principles stated in the foregoing analysis are the costs that would flow from the failure of the law to respect corporate separateness. If courts were to frequently or casually ignore corporate separateness, allowing, for example, creditors of a corporation to sue shareholders to obtain the value of a shareholder's personal assets, or for creditors of a shareholder to sue a corporation to obtain the value of the corporation's assets, the overall cost of capital for corporations and shareholders would rise. Higher costs of capital would mean fewer businesses would be started, and fewer projects would be pursued, even if they would otherwise produce net social benefits. Shareholder liquidity would fall, and agency costs, transactions costs and the expected cost of insolvency would all rise. Rational creditors would anticipate all of this, and charge

[6] Where specialization of this kind would not lower the overall cost of capital for a corporation and its shareholders, the shareholders can easily and cheaply guarantee through contract the debts of the corporation, or vice versa. Because the opposite is not true – that is, because it is not cheap or easy for a corporation and its shareholders by contract to establish the rules of corporate separateness – the default rules for corporate separateness are important, and have beneficial economic consequences compared to alternative default rules.

higher interest rates. Rational shareholders would anticipate all of this, and demand a higher expected return on equity capital before investing in a new corporation, or investing more equity in an existing corporation.

C. Applications of these Principles to Legal and Equitable Doctrines

The foregoing economic principles are reflected in various doctrines of corporate and bankruptcy law and in principles of equity. I describe these doctrines here not because I am expecting to (nor am I offering) legal opinions about them – none of what follows would be very controversial in any event – but because the relationship between these doctrines, on the one hand, and the economic principles just discussed, on the other hand, is something I believe to be relevant, as a factual matter, to this case.

Corporate separateness has four features, each a standard feature of the corporate form in countries around the world, including, but not limited to, in the U.S. and Panama: *limited liability*, *creditor priority* (or structural subordination), *reverse limited liability*, and *asset shielding*.

- As a result of limited liability, buying or owning stock does not by that fact alone make a person liable for the debts or other liabilities of the corporations that issued the stock. Generally, neither the corporation nor the creditors (or other shareholders) of the corporation can use or obtain value from the assets of any given shareholder.
- As a result of creditor priority, creditors of a corporation have a claim on the assets of the corporation prior to the claims of shareholders. Even when a parent corporation owns 100% of the stock of a subsidiary corporation, creditors of the parent are "structurally subordinated" to the creditors of the subsidiary. If the subsidiary were liquidated, the subsidiary's creditors must be paid in full before the parent's creditors can be paid.
- As a result of reverse limited liability, creditors of shareholders may not use or obtain value from the assets of the corporation in which those shareholders own stock, unless those assets are legally distributed by the corporation to shareholders.
- As a result of asset shielding, neither creditors nor shareholders may withdraw their capital from (or initiate the liquidation of) a corporation except in specific, limited ways in specific, limited circumstances. A corporation will typically be able to retain invested capital and associated earnings in perpetuity, even if the shareholders themselves face insolvency.

Together, these features strongly and fully separate the ownership, assets, and debts and other liabilities of a corporation from those of its shareholders, and *vice versa*. They thus provide the general economic benefits described above.

D. Customs and Practices of Corporations Related to Corporate Separateness

Because of the importance of corporate separateness, for the economic reasons set forth above, corporations and the individuals that control them customarily engage in practices designed to make it more likely that courts will respect their corporate separateness, and to provide clear indications when they seek to alter that baseline. Among other things, corporations observe legal and accounting formalities, including having charters, bylaws, board minutes, books and records, and bank accounts. They formally designate directors, who formally meet or act by written consent, to among other things appoint officers. Directors and officers act on the corporation's behalf, and obtain shareholder approvals where required by law or for other reasons. Where the size or significance of a corporation's activities warrant the expense, or if the law requires (as with public companies, which must have their financial statements audited by independent auditors), corporations engage law and accounting firms to help them in this regard. Where the size or significance of a corporation's activities warrant the expense, they prepare financial statements and have them audited. They file tax returns and maintain their corporate franchises in good standing in the jurisdictions in which they do business. They document their significant obligations and assets, particularly assets that represent contract rights of a significant nature. When one corporation acts on another's behalf, or holds significant assets for the benefit of another corporation, or engages in a transfer or contribution of significant assets, the corporations involved will carefully document those relationships or transactions.

IV. Opinions Specific to the Facts of this Case

In this section, I relate the opinions set out in Parts II and III above to the facts of this case. In sum, my opinions are that: (1) the AIRCO Exchange and the AIG Merger were conventional M&A transactions, designed and executed in customary ways, (2) the AIRCO Exchange and the AIG Merger were distinct, separate transactions, not materially related to each other, (3) the record I have reviewed does not cause me to believe the AIRCO Exchange and the AIG Merger were other than proper, equitable, and fair to both SICO and its counterparties, including AIG, (4) the record reveals nothing about the corporate history of SICO that provides a reason (a) to ignore the corporate separateness of SICO and AIG, (b) to believe that SICO entered into any contract or guarantee to hold the stock of AIG owned by SICO in trust for AIG or its employees, or (c) to believe SICO has converted assets of AIG or AIG's employees or otherwise acted inequitably or improperly.

A. Relevant Facts

The following facts are based on the written record I have reviewed, and for the most part appear to be undisputed by the parties in this case.

1. SICO's corporate history prior to the AIRCO Exchange

In 1943, SICO was legally organized as a corporation domiciled in Panama having perpetual existence. Prior to 1970, SICO was a holding company for a large number of managing general agencies (MGAs) doing business outside the United States. SICO was thus organized twenty-five years prior to AIG's organization as a Delaware corporation.

2. SICO's shareholders and creditors

From before 1970 through today, SICO has had a set of voting shareholders entitled to full voting rights but only nominal dividend and liquidation rights. SICO also has a class of non-voting preferred stock entitled to no voting rights, cumulative quarterly dividends, and a liquidation preference equal to accrued and unpaid dividends plus the subscription price for such shares. SICO's preferred shares are owned primarily by descendants of former participants in the DCPPPs (described below).

In 1971, the Starr International Charitable Trust was created for the advancement of education, relief of poverty, and other purposes beneficial to the community ***(the Charitable Trust)*** and acquired all of SICO's shares of non-voting common stock, which are entitled to no voting rights but are entitled to dividends as declared by SICO's board of directors or its voting shareholders (amounting to several hundred thousand dollars or more per year), as well as to all of SICO's assets in liquidation after payment of creditors and the nominal liquidation rights of SICO's voting shares and the liquidation rights of the preferred stock. Thus, the principal economic ownership rights associated with SICO's value have since 1971 been held by the Charitable Trust.[7]

SICO's charter has long restricted the ability of SICO to pay distributions or dividends to its voting shareholders, and in particular prohibited distributions out of restricted surplus. In connection with the AIRCO Exchange (as defined above and discussed more below), SICO's voting shareholders amended SICO's charter to treat the difference between the market value of the AIRCO stock received in that transaction (and any future stock received in exchange for that stock) and the book value of that stock as restricted surplus, thus effectively prohibiting the distribution of that value to shareholders other than to the Charitable Trust. SICO's charter similarly treated the AIG stock received in the AIG Merger.

In 1975, SICO amended its charter to provide that (in general terms) no more than 20% in value of the AIRCO stock that it acquired in the AIRCO Exchange could be used by SICO as credit support for SICO and its subsidiaries, except when necessary for the benefit of AIRCO, AIG, or their subsidiaries.

As AIG has acknowledged in writing, SICO has and has had from time to time since 1970 a number of third-party creditors, who have specifically relied upon AIG shares

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[7] See, e.g., PWCSICO 000129 (basis for AIG auditors' conclusion that SICO should not be consolidated with AIG included that "the beneficial owner of the shares held by SICO is a charitable trust").

owned by SICO in extending credit to SICO, including Goldman Sachs International, and HSBC (***the Creditors***).[8]

3. The AIRCO Exchange

In the AIRCO Exchange, leading law firms and investment banks provided advice to SICO, AIG and other involved parties. The material terms of the AIRCO Exchange, as reflected in the contemporaneous written transaction documents, were described in contemporaneous and subsequent filings with the SEC, and approved by the relevant boards and sets of shareholders. The AIRCO Exchange has thus been part of the public record for 25+ years.

Specifically, in 1970, SICO exchanged substantially all its business operations for stock of AIRCO, pursuant to an Agreement and Plan of Reorganization dated as of May 28, 1970, and AIRCO simultaneously exchanged those business operations for stock of AIG, pursuant to the same written contract. The transaction was approved by the board of AIG at meetings held February 25, March 4, and May 13, 1970; and by the SICO board on April 10, 1970. The transaction was also approved by the AIRCO board on March 5, 1970 and by the AIRCO shareholders on June 17, 1970.

Since the AIRCO Exchange represented the sale of substantially all of SICO's assets at the time, it was also approved by the voting shareholders of SICO on May 14, 1970. In addition, despite the fact that AIG shareholder approval was not required by Delaware law or by AIG's charter, the AIRCO Exchange was conditioned upon approval of AIG shareholders, including its public shareholders.

AIG filed a proxy statement with the SEC on May 12, 1970, mailed definitive copies of that proxy statement to shareholders on May 29, 1970, and obtained shareholder approval on June 29, 1970. Nowhere does the proxy statement contain any mention of a contract or promise by SICO to use the AIRCO stock it was to receive in the AIRCO Exchange for the benefit of AIG or its employees, as would have been required to be disclosed under SEC rules if such a contract or promise had existed. Nor is there any mention in the proxy statement of any contract for a future transaction between AIRCO and AIG, any negotiations for such a transaction, or any understanding about such a transaction, as would have been required to be disclosed under SEC rules if they had existed.

AIG's board and shareholder approvals for both exchanges were obtained following receipt by the AIG Board on February 19, 1970 of a customary written opinion from an independent investment bank, Morgan Stanley & Co. (***Morgan Stanley***). Morgan Stanley's opinion was included in AIG's proxy statement, and at the request of the AIG

[8] See, e.g., AIG-S2 00351605 (email from Kathleen Shannon to Margaret Barnes dated 7/17/03 replying to email from Barnes to Shannon dated 7/16/03, which refers to obligations of SICO to HSBC and Goldman Sachs secured by stock of AIG owned by SICO); AIG-S2 00423841 (letter dated 2/4/05 from AIG to Goldman Sachs International acknowledging obligations of SICO to Goldman Sachs and fact that SICO had pledged AIG stock as collateral supporting those obligations, and confirming that there were no contractual arrangements between AIG and SICO that would be violated by the pledge).

board, on May 29, 1970, Morgan Stanley provided a customary "bring down" of its opinion, to reflect information provided to Morgan Stanley through that date. Morgan Stanley's opinions concluded that, from a financial point of view, the two exchanges were fair and reasonable to AIG shareholders.

The AIRCO Exchange was closed on June 30, 1970. The AIRCO Exchange was conditioned upon a simultaneous, separate exchange transaction between AIG and C.V. Starr & Co., Inc. (***CV Starr***) that did not directly involve SICO, but which was also publicly disclosed and approved by AIG shareholders. The two exchanges provided synergies to AIG by allowing for certain cost savings and economies in the operations of businesses it acquired in those transactions. After completion of the exchanges, AIG owned substantially all of the operating businesses of the companies involved (including SICO's MGAs); AIRCO and CV Starr were substantial shareholders of AIG, which remained a public company; and SICO was a substantial shareholder of AIRCO.

4. The AIG Merger

Again, in the AIG Merger, leading law firms and investment banks provided advice to AIRCO, AIG and other involved parties. The AIG Merger was described in all material respects in contemporaneous and subsequent filings with the SEC, and approved by the relevant boards and sets of shareholders. The AIG Merger has thus all been part of the public record for 25+ years.

Specifically, in 1978, AIRCO merged into AIG, pursuant to a Plan and Agreement of Combination and Reorganization dated as of August 9, 1979. In the AIG Merger, AIRCO merged with and into AIG, with AIG continuing as the surviving corporation, and all of the shares of AIRCO common stock were converted into 1.1 shares of common stock of AIG. The boards of directors of AIRCO and AIG approved the AIG Merger, and a proxy statement filed with the SEC and dated August 17, 1978 was mailed to shareholders, describing the material terms of the AIG Merger. Nowhere in the proxy statement is there any mention of a contract or promise about, or restriction on, the AIG stock to be issued to SICO as a result of the merger, as would have been required to be disclosed if one had existed. Thereafter, shareholders approved the AIG Merger.

SICO was treated identically to other shareholders of AIRCO in the AIG Merger, and accordingly became a direct shareholder of AIG.

5. Absence of written agreements between SICO and AIG

It appears to be accepted by AIG that there has never been a shareholders agreement, voting agreement, or other similar written agreement between SICO and AIG with respect to the AIG stock owned by SICO.[9] By contrast, in 1970, at the time SICO

[9] See, e.g., Dep. Tr. of Frank Zarb (5/31/06) at 156 (director of AIG 2001-2004 stating to his knowledge no written contract existed between AIG and SICO regarding the AIG stock owned by SICO); Dep. Tr. of Martin Sullivan (5/24/06) at 563 (AIG CEO stating "I don't believe there's a written agreement."); Dep. Tr.

acquired stock of AIRCO, there was a formal written shareholders agreement among CV Starr and shareholders of AIRCO.[10] Nowhere in the charter or bylaws of SICO is there any provision requiring SICO to use its assets for the benefit of AIG or its employees. I understand that AIG accepts that no deed of trust or written trust agreement exists that requires SICO to hold its AIG stock for the benefit of AIG or its employees.[11] No document reveals a donative transfer or contribution of the AIG stock owned by SICO, or of any interest of AIG or its employees in that stock. No board of directors resolution, shareholders resolution, or termsheet approves or sets forth the terms of any contract governing the $19 billion of AIG stock owned by SICO.

6. Separateness of AIG and SICO

AIG has never been a shareholder, parent company, or holding company for SICO, and has never controlled SICO,[12] nor has SICO exerted control over AIG.[13] AIG has since 1969 been a public company, with dispersed shareholders; SICO, by contrast, has always been a separate, privately held company.[14] AIG has never included, and still does not include, SICO as a consolidated company in AIG's financial statements filed with the SEC. While SICO and AIG for many years had overlapping boards and officers, SICO and AIG have always operated as formally and legally distinct entities, with non-identical

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of Ernest Patrikis (6/6/06), at 173-78; Dep. Tr. of Carla Hills (6/30/06), at 110-20; Dep. Tr. of Kathleen Shannon (6/23/06), at 82-87, 195-96; Dep. Tr. of Steve Gorman (5/12/06), at 42-45.

[10] See AIG Proxy Statement dated May 28, 1970, filed with the SEC, at 5; Exhibits 12 and 13 to Dep. Tr. of Edward Matthews (5/18/06).

[11] See, e.g., Dep. Tr. of Martin Sullivan (5/24/06) at 335 (AIG CEO stating "I never saw ... a written trust").

[12] See, e.g., BARCL-038-0001904 (draft letter from AIG corporate secretary stating that SICO and CV Starr "are privately owned and not controlled by AIG"); AIG-S 00063986 (listing SICO as "private" and "non-AIG company"); BARCL-038-0001932 (letter dated 2/12/93 from Edmund Tse to Assistant Commissioner of Insurance, Hong Kong, stating that AIG has "no control" over SICO, which are "private investors" in AIG, nor does AIG have a way of knowing SICO's exact AIG holdings or financial status); PWCSICO 042384 and 042396 (memo dated 4/26/04 from Barry Winograd and Richard Mayock to Jeffrey Allen, which states that this analysis is based on a review of SICO's charter, by-laws, and trust agreement dated 6/29/71 and the supplemental agreement thereto dated 12/8/73, along with discussions with AIG's senior vice president, secretary and deputy general counsel, and with SICO's vice president and secretary, and concludes "AIG cannot wrest control over the AIG shares" owned by SICO).

[13] See, e.g., BARCL-011-0001187 (letter dated 6/15/01 from Ernest Patrikis, senior vice president and general counsel of AIG, to Commissioner of Insurance for Tennessee, summarizing certificate from SICO's vice president and secretary, and stating that SICO is a "passive shareholder in AIG" and does not exercise or attempt to exercise directly or indirectly control over AIG); Dep. Tr. of Kathleen Shannon (6/23/06), Exh. 10; Dep. Tr. of Ernest Patrikis (6/6/06), at 85-92; Dep. Tr. of Kathleen Shannon (6/23/06), at 108-09, 130-33, 163-71, and 189-90; Dep. Tr. of Carla Hills (6/30/06), at 107.

[14] Dep. Tr. of Martin Sullivan (5/23/06) at 199-200 (CEO of AIG and former board member of SICO stating that SICO was a separate, privately held company not owned by AIG).

shareholders, creditors, assets, liabilities,[15] cash,[16] boards of directors,[17] and officers. While the size of SICO's holdings of stock of AIRCO and then AIG substantially aligned the interests of SICO and those companies from 1970 to the present, SICO continues to own and manage commercial real estate and other assets worth over $2 billion. Indeed, if AIG had the right to control and utilize a significant part of SICO's assets, as AIG now claims, one would expect that not only would AIG reflect this as an asset in its financials, but one would also expect, at a minimum, a requirement by SICO creditors that AIG in effect "guarantee" any SICO debt. The majority of AIG's shareholders and creditors are and always have been persons other than SICO.

SICO and AIG have always had separate board meetings, kept their own board minutes, had their own charters, bylaws and other corporate documents, and maintained their own books, records, and financial statements, and bank accounts. For many years, AIG and SICO had overlapping officers, but SICO has and has long had at least one or more employees that are or were not employees of AIG, and *vice versa*. Since March 2005 the two companies have had -- by virtue of actions taken by each company – few if any officers or employees in common. SICO has had its headquarters in Dublin for some time, and before that was headquartered in Bermuda. In contrast, AIG has been headquartered in New York for many years. While AIG and SICO engaged in transactions from time to time (including, for example, in 2003, payment by AIG to SICO of several million dollars for services and rentals, and payment by SICO to AIG of several million dollars for services and rentals), these transactions were conducted at fair market values[18] and were publicly disclosed in AIG's SEC filings.

7. The DCPPPs

For many years, starting in the 1970s, SICO contingently awarded, pursuant to two-year deferred compensation profit participation plans (***DCPPPs***), a very small percentage of its assets to both SICO and AIG employees who remained employees for specified periods of time.[19] AIG has never reflected liabilities under SICO's DCPPPs on its own books and records, even after its May 2005 restatement "correcting" what it now claims

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[15] See, e.g., AIG-S2 00422528 (memo dated 12/9/92 from Coopers & Lybrand to the boards and management of SICO, AIG, the Robert Plan Corporation, and the New Jersey Insurance Department, stating that AIG management and a SICO director each represented that AIG has not guaranteed and is not contingently liable for any SICO debts).

[16] See Dep. Tr. of Edward Matthews (5/19/06), at 382-85 (discussing different cash positions of AIG and SICO).

[17] See AIG Annual Proxy Statement dated 4/5/02, at 2-6 (listing 20 directors, of whom 7 were also directors of SICO); BARCL-042-0000256 (SICO Annual General Meeting minutes, dated 7/18/02, listing 16 directors, of whom 7 are listed in AIG Annual Proxy Statement as directors of AIG).

[18] E.g., Dep. Tr. of Martin Sullivan (5/25/06) at 544-55; OSBOR-015-0001685; ARCHI 1080002002, 1080000262 to -264; and GREEN 0060003424 to -3433.

[19] See, e.g., BARCL-013-00001423.

were its past misstatements. SICO, by contrast, has reflected all costs associated with the DCPPPS in its financial statements.

Under the DCPPPs, amounts that were awarded would not be distributed until specified times or terms of service had elapsed; prior to distribution, SICO "reserved" some of its assets (including very small amounts of AIG stock) for eventual distribution to the participants in the DCPPPs. SICO has never awarded more than a small percentage of its AIG stock under the DCPPPs, so the vast majority of its AIG stock has never been "reserved" for distribution to a DCPPP participant,[20] and even those shares were never held in trust for the participants and remained part of SICO's general assets subject to its general corporate liabilities.[21] In recent years, the costs of the DCPPPs would have represented less than 1 percent of AIG's pre-tax income, had they been incurred by AIG rather than by SICO. Even as to shares reserved for DCPPP participants, SICO is entitled to incidents of ownership, such as dividends and voting rights, which AIG has acknowledged by paying dividends to SICO for such shares.

There is no and there has never been any written "plan" or equivalent document that required SICO to continue to adopt new DCPPPs. SICO's board unilaterally determined the terms of the DCPPPs, the identities of the participants, and the amounts of awards.[22] Each DCPPP plainly stated: "nothing ... shall confer ... any right to be included in any future Plan of a similar nature," and each Plan also made clear this was being undertaken "for the benefit of SICO."[23] Prospective participants were informed that no promise could be made that there would be any future distributions under the current DCPPP, or any future plans.[24] From time to time, SICO's board made substantial changes in the DCPPPs without any approval by AIG, including elimination of cash payments and changes in the term of service required before amounts were distributed.[25]

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[20] See, e.g., GREEN-006-0003425 (letter dated 5/28/82 from Gompers & Blau to Maurice Greenberg summarizing ownership of AIG stock by SICO, listing 276,423 shares reserved for holders of DCPPP units and a total of over 10 million shares not so reserved, representing over 97% of SICO's AIG shares). Overall, from 1975 to 2004, SICO reserved approximately 45 million of its original AIG shares for plan participants and when forfeited shares of approximately 4 million are backed out, this represents just under 13%.

[21] See, e.g., BARCL-001-0000959 (letter dated 7/13/01 from Conyers Dill & Pearman to Mello Jones & Martin).

[22] See, e.g., Dep. Tr. of Axel Feudmann (6/1/06) at 60-61 (head of AIG human resources agreeing that SICO board, and not AIG compensation committee, had final approval authority over DCPPP awards); Dep. Tr. of Margaret M. M. Barnes (4/28/06), at 33 (SICO board made ultimate decision about DCPPP participation).

[23] AIG-S 00078318 (DCPPP for 2001/2002, at 7).

[24] Dep. Tr. of Edward Matthews (5/19/06) at 261.

[25] E.g., AIG-S 00031704 (SICO board resolution removing cash distributions from DCPPP).

B. Record Evidence Is Consistent with M&A Customs and Practices

1. The AIRCO Exchange and AIG Merger were Conventional M&A Transactions

Based on my experience as an M&A attorney and a professor of law teaching M&A, subject to further review of the record, it is my opinion that the AIRCO Exchange and the AIG Merger were entirely conventional M&A transactions. In each case, the evident purpose of the transaction was to shift ownership or control of assets. The forms of transaction were conventional – a stock purchase and a merger – as were the forms of consideration – assets and stock. The disclosure, approval, and other procedural steps followed were consistent with custom, practice, and legal requirements.

2. The AIRCO Exchange and AIG Merger were Distinct, Separate Transactions, Not Materially Related To Each Other

The AIRCO Exchange and the AIG Merger were distinct, separate transactions, not materially related to each other. The two transactions took place eight years apart. Nothing in the board minutes related to the two transactions suggests that they were part of an overall agreement or understanding between the parties. The proxy statements filed with the SEC and sent to shareholders in 1970 do not mention any agreement or understanding about the 1978 transaction, as would have been required had such an agreement or understanding existed. The proxy statement sent to shareholders in 1978 never describes the 1978 transaction as the second- or final step of the 1970 transaction, as would have been required had such an agreement or understanding existed. There was nothing about the two transactions that was required by the other, as a legal matter, a business matter, or a logical matter.

3. Record Evidence Reveals Nothing Improper about the Transactions

The record I have reviewed does not cause me to believe that either the AIRCO Exchange or the AIG Merger was other than entirely proper, equitable, and fair to both SICO and its counterparties, including AIG. In the AIRCO Exchange, Morgan Stanley's fairness opinions, the full disclosure under SEC rules of the terms of the transactions, and the fact that the AIG shareholders were able to vote on the transaction despite not having a legal right to do so all are consistent with best M&A practices. Likewise, the AIG Merger was a relatively straightforward reorganization of affiliated companies that complied with all relevant legal and equitable requirements.

C. Record Evidence Does Not Support AIG's Claims

Nothing in the record I have reviewed regarding the corporate history of SICO (including the AIRCO Exchange and the AIG Merger) causes me to conclude that the corporate separateness of SICO and AIG should be ignored in part or in whole, or that there was any contractual understanding that the stock of AIG owned by SICO was being held in trust for AIG or its employees, or that SICO has acted inequitably or otherwise improperly, or that SICO has been unjustly enriched by the AIRCO Exchange, the AIG Merger, or subsequently. The record shows that SICO respected corporate formalities. It is also clear from the record that SICO acquired AIG stock in distinct, conventional M&A transactions. SICO's stock in AIG can be directly and relatively straightforwardly traced back to its own, separate business (the MGAs) that represented the consideration it provided for the AIRCO stock it received in 1970; and in the AIG Merger it is undisputed that SICO was treated identically to other AIRCO shareholders. As stated on 6/29/05 by AIG's CEO, Martin J. Sullivan, "the shares owned by SICO are owned by SICO."[26] Mr. Sullivan did not qualify that public statement – as would be required by the federal securities laws, of which he was aware – with further statements about contracts or promises made by SICO to use its assets for the benefit of AIG or AIG's employees. The record shows that – far from harming AIG – SICO's use of a small fraction of its assets to create and fund the series of separate DCPPPs benefited AIG (for no consideration on AIG's part) by giving AIG employees incentives to increase the earnings and value of AIG. SICO, as a shareholder of AIG, also benefited from the effects of these incentives in direct proportion to its ownership of AIG stock.

Nothing in the record suggests that either the AIRCO Exchange or the AIG Merger – by which SICO obtained stock of AIG – deceived or misled any third parties with legal rights or interests in either transaction. To the contrary, the record makes it clear that AIG has consistently filed financial statements over the years reflecting SICO's corporate separateness, as well as the ownership by SICO, not AIG, of the stock of AIG that AIG is now seeking to obtain. Even after the filing of this case, AIG paid dividends to SICO, and permitted SICO to vote its AIG stock, inconsistent with AIG's claims.

It is also telling what is *not* in the record; based on my experience as an M&A attorney and a professor teaching M&A, certain disclosures or documents, at a minimum, would be in the record if AIG's claims in this case had merit. Despite the existence of numerous written documents – shareholder agreements, merger agreements, plans of reorganization, deeds of trust, board minutes, shareholder resolutions, charter amendments (such as SICO's 1975 charter amendment restricting the amount of AIRCO stock SICO acquired in the AIRCO Exchange that could be used by SICO as credit support for SICO and its subsidiaries), and the DCPPPs themselves – there are no written documents signed by SICO backing up the assertion that the difference between market value and the book value of the AIG stock held by SICO was being held in trust for AIG or its employees. The absence of such documents is not simply oversight; the possibility that some or all of SICO's assets might be put into an actual trust for various purposes was considered and rejected by the SICO board on more than one occasion.[27]

[26] Corrected Transcript of a Conference Call published by CallStreet (6/29/05).

[27] E.g., AIG-S 00081250 (SICO board minutes dated 6/19/92, stating the board "discussed whether all or a portion of [its cash flow] should be placed in a separate trust ... to isolate the funds for purposes considered by the Directors to be catastrophic events. The Directors determined that an irrevocable trust constituted too formal a legalistic approach and would impede the flexibility of management to deal with the unforeseen future needs and problems which may arise with regard" to SICO); BARCL-081-0000382 (SICO board minutes dated 6/1/84, stating "a discussion of a Ten Year Foreign Trust designed to pass

Nor is it the case that the value of the AIRCO shares acquired by SICO in the AIRCO Exchange was so small or insubstantial as to not be worth documenting how it was to be used or controlled: it is undisputed that the value of those shares (and the amount that AIG now asserts was set aside for its employees) was over $100 million at the time. This would have been even more true in 1978, when AIRCO merged with AIG and SICO's stake in AIG was worth considerably more. At the time of the AIG Merger, when SICO directly acquired its stake in AIG, AIG had a number of fully independent directors, holding no other position at AIG, AIRCO or SICO, including Carter Bacot, president of the Bank of New York, Charles Coombs, former executive vice president of the Federal Reserve Bank of New York, and John Sawhill, president of New York University. To put it mildly, it would have not been customary for independent directors to fail to inquire whether a significant obligation of a counterparty in a major M&A transaction should be put in writing, or disclosed to shareholders to whom the directors were recommending the deal.

It is also *not* the case that AIG was represented by incompetent counsel who did not know how to create a deed of trust, shareholders agreement or charter restriction. Rather, AIG was represented by one of the leading M&A law firms in the country. The lawyers at that firm were (and are) also excellent securities lawyers, and would have not allowed AIG to flagrantly violate the SEC's rules, as AIG's claims now imply: the proxy statements filed in connection with the AIRCO Exchange and the AIG Merger omit any mention of what AIG now asserts was the case – a legally binding oral agreement by SICO to use the difference between market value and the book value of the AIG stock it received in those transactions for the benefit of AIG's employees. Such a restriction on how SICO could use the consideration it was obtaining in the transactions would have been a good selling point for AIG shareholders who were being asked to vote on the transactions, so that even if the SEC rules did not require disclosure of such an agreement (which they did), AIG would have had an incentive to disclose the agreement anyway. Nowhere, of course, do those proxy statements even remotely suggest that SICO would be obliged to put AIG's interests ahead of SICO's own shareholders and creditors.

Likewise, in AIG's many public filings with the SEC since the AIRCO Exchange and later AIG Merger, no mention was made of an oral agreement or trust as now alleged by AIG. If it existed as AIG claims, some mention of such a contract or trust would have been required in AIG's annual proxy statements, at a minimum. If credited, AIG's claims by clear implication suggest that AIG has been violating the federal securities laws for more than 30 years and that its outside professional advisors have been complicit in those violations. To put it mildly, this seems highly implausible.

through U.S. withholding tax on AIG dividends to the individual income beneficiaries of the Trust occurred. The Directors felt that the Plan was complicated to understand even if it were only applied to the top twenty current participants in the DCPPP ... [and] determined not to approve the plan due to its complexity."). I have reviewed the SICO Shareholder Statements of Commitment and they do not alter my opinions herein. These documents appear to me to be aspirational statements between SICO's voting shareholders and were not with, directed to, or for the benefit of AIG and it employees.

SICO had and continues to have its own creditors and shareholders (particularly, the Charitable Trust) who have interests that are directly implicated by control of SICO's assets. Were AIG to succeed in its claims, SICO's creditors and shareholders would – obviously – lose. The Charitable Trust, in particular, would lose its residual ownership interest in the AIG stock. SICO's creditors would no longer be able to rely on the AIG stock owned by SICO to support their credit.

D. Implications of AIG's Claims for Economic Value of Corporations

More generally, by attempting to invade SICO's assets and "acquire" – for free! – SICO's stock in AIG, AIG's claims threaten precisely to invert conventional corporate relationships and destroy the fundamental principles of corporate separateness. These principles apply, it should be noted, even in a more compelling case, where a parent and a 100% owned subsidiary are involved – the subsidiary cannot simply grab assets of the parent company for its own benefit, or for the benefits of its creditors, because the parent will have creditors (and shareholders) of its own that have prior claims to those assets. These principles should apply even more strongly here, where third party shareholders and creditors have interests directly in conflict with those asserted by AIG.

AIG's efforts in this case to impose a constructive trust on SICO's principal asset (AIG stock owned by SICO) would in its economic essence represent a type of extraordinary veil-piercing – AIG would be disregarding its own corporate veil to permit it to obtain its own shareholder's assets – on behalf not of a creditor but AIG's management and other shareholders. Economically, it would be no different than ignoring the corporate separateness of both AIG and SICO, simultaneously, to benefit one group of AIG's shareholders (and, more directly, AIG's current management) at the expense of another shareholder. It would have all of the bad economic effects of ignoring corporate separateness generally: it would contribute to a higher cost of equity capital for companies like AIG in the future, since investors would potentially stand to lose their assets to the corporations in which they invest even if they never agreed to contribute their assets to those corporations.

The action would deprive SICO's own creditors and residual shareholder – a charitable trust – of SICO's primary asset by transferring it to AIG. Creditors of investment and holding companies generally would need to consider that other shareholders of portfolio companies might be able to similarly impose trusts on shares held by the investment or holding companies, leaving investment or holding companies stripped of their largest assets. The cost of both equity and debt capital for corporations generally would rise. Even worse than a veil-piercing action, such trusts would directly benefit public company management by eliminating the disciplinary effect that large blockholders have on managers of public companies with dispersed shareholders. The bottom line is simple: to permit the constructive trust claim asserted by AIG to represent a colorable threat to SICO's assets would have negative economic consequences for public companies generally.

Conclusion

In conclusion, based on my experience as an attorney and a professor specializing in business organizations, securities law, finance, and M&A, and after a review of documents and testimony in the case, it is my opinion that (1) the AIRCO Exchange and the AIG Merger were conventional M&A transactions, designed and executed in customary ways, (2) the AIRCO Exchange and the AIG Merger were distinct, separate transactions, not materially related to each other, (3) the record I have reviewed does not cause me to believe the AIRCO Exchange and the AIG Merger were other than proper, equitable, and fair to both SICO and its counterparties, including AIG, (4) the record reveals nothing about the corporate history of SICO that provides a reason (a) to ignore the corporate separateness of SICO and AIG, (b) to believe that SICO entered into any contract or guarantee to hold the stock of AIG owned by SICO in trust for AIG or its employees, or (c) to believe SICO has converted assets of AIG or AIG's employees or otherwise acted inequitably or improperly.

Dated: September 18, 2006

Professor John C. Coates IV

A

Exhibit A

JOHN C. COATES IV

22 Thayer Street
Brookline, Massachusetts 02445
(617) 496-4420 (office tel)
(617) 496-5156 (office fax)
jcoates@law.harvard.edu (email)

EXPERIENCE

Harvard Law School, Cambridge, MA

John F. Cogan Jr. Professor of Law and Economics	6/06 - Present
Professor of Law	6/01 – 6/06
Assistant Professor of Law	6/97 - 6/01

Teaching Corporations, Mergers & Acquisitions, Contracts, Financial Institutions Regulation, and advanced seminars

Securities and Exchange Commission, Washington, D.C.

Independent Distribution Consultant	5/04 - Present

Wachtell, Lipton, Rosen & Katz, NYC

Partner	1/96 - 5/97
Associate (Full- or Part-Time)	3/88 - 12/95

Specialized in corporate, securities, M&A, and financial institutions law and regulation

Managed legal work for large corporate mergers and acquisitions, recapitalizations, buyouts, freezeouts, and public offerings

Advised participants in proxy fights, auctions, and hostile takeovers

Managed disclosure and compliance "crises" at public companies, particularly financial institutions

New York University School of Law, NYC

Visiting Professor	7/05 – 12/05
Adjunct Assistant Professor	1/93 -5/97
Lecturer	1/92 - 12/93

Boston University Law School, Boston, MA

Lecturer	1/95 – 6/97

MEMBERSHIPS / AFFILIATIONS

New York Stock Exchange	Member, Legal Advisory Board
American Bar Association	Member, Section on Business Law
American Law and Economics Association	Member, Board of Directors
Association of American Law Schools	Member
National Bureau of Economic Research	Invited Speaker / Researcher
Harvard Business School / Harvard Law School Ad Hoc Group on Corporate Governance	Founding Member
Harvard Center on Lawyers and the Professional Services Industry	Founding Member

EDUCATION

New York University School of Law	J.D. Cum Laude, May 1989
New York University Law Review 1987-88 -- Staff Member	1988-89 -- Editorial Board, Articles Editor
Law Review Alumni Association Award	Third in Class
George P. Foulk Memorial Award	Scholarship
Pomeroy Prize	Outstanding Academic Performance
Order of the Coif	
American Jurisprudence Awards (contracts, procedure, securities)	
University of Virginia	B.A. (History), Highest Distinction, May 1986

Thesis: "Christianity, Kingship and a Carolingian Lord"

Younger Prize	Distinction in American History
Jefferson Scholar	Four-year Merit-Based Scholarship
Echols Scholar	Academic and Leadership Merit

B

PUBLICATIONS **Exhibit B**

Recent Publications

Separating Myth and Reality in the Sarbanes-Oxley Act, *J. Econ. Persp.* (forthcoming 2006)

Ownership, Takeovers and EU Law: How Contestable Should EU Corporations Be?, in Company and Takeover Law in Europe, eds. E. Wymeersch & G. Ferrarini (Oxford University Press 2004)

The Powerful Antitakeover Force of Staggered Boards: Further Findings and a Reply to Symposium Participants, 55 *Stan L. Rev.* 885 (2003) (with Lucian A. Bebchuk and Guhan Subramanian), selected as one of 10 best corporate law articles published during 2003 by academics surveyed

The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence and Policy, 54 *Stan. L. Rev.* 887 (2002) (with Lucian A. Bebchuk and Guhan Subramanian), selected as one of 10 best corporate law articles published during 2002 by academics surveyed

Explaining Variation in Takeover Defenses: Blame the Lawyers, 89 *Cal. L. Rev.* 1301 (2001), selected as one of 10 best corporate law articles published during 2002 by academics surveyed

Second-Generation Shareholder Bylaws: Post-*Quickturn* Alternatives, 56 *Bus. Law.* 1323 (2001) (with Bradley C. Faris)

Private vs. Public Choice of Securities Regulation: A Political Cost/Benefit Analysis, 41 *Va. J. Int'l L.* 531 (2001), selected as one of 10 best securities law articles published during 2001 by academics surveyed

A Buy-Side Model of M&A Lockups: Theory and Evidence, 53 *Stan. L. Rev.* 307 (2000) (with Guhan Subramanian)

Takeover Defenses in the Shadow of the Pill: A Critique of the Scientific Evidence on Takeover Defenses, 79 *Tex. L. Rev.* 271 (2000), reprinted in 43 *Corp. Practice Commentator* 1 (2002) as one of 10 best corporate law articles published in 2001-02 by academics surveyed

Empirical Evidence on Structural Takeover Defenses: Where do We Stand?, 54 *U. Miami L. Rev.* 783 (2000)

Other Major Publications

Measuring the Domain of Mediating Hierarchy: How Contestable Are US Public Corporations?, 24 *J. Corp. L.* 837 (1999)

"Fair Value" as a Default Rule of Corporate Law: Minority Discounts in Conflict Transactions, 147 U. Penn. L. Rev. 1251 (1999), reprinted in 41 Corp. Practice Commentator 1 (2000) and selected as one of 10 best corporate law articles published in 1999-2000 by academics surveyed

Freezeouts, Management Buyouts and Going Private, in *Takeovers & Freezeouts* (eds. M. Lipton & E. Steinberger, Law Journal Seminars-Press 1998)

Reassessing Risk-Based Capital in the 1990s: Encouraging Consolidation and Productivity, in *Bank Mergers and Acquisitions* (eds. Y. Amihud & G. Miller, Kluwer Academic Publishers 1998)

Annual Survey of Developments in Mergers and Acquisitions of Financial Institutions 1990-1998 (with Herlihy et al.) (co-authored leading annual survey for eight years; privately published)

Acquisitions of Financial Advisory and Investment Management Businesses, 17 Bank & Corp. Gov. L. Rep. 8 (Sep. 1996) (with Herlihy et al.)

Concentration Limits: New Interstate Moves Still Face Minefield of Deposit Cap Statutes, in a Special Report on Interstate Banking, 13 Banking Policy Rep. 23 (Aug. 15, 1994) (with Neill)

Mergers of Equals: Achieving a Delicate Balance of Control, 13 Banking Policy Report 1 (Oct. 3, 1994) (with Herlihy et al.)

State Takeover Statutes and Corporate Theory: The Revival of an Old Debate, 64 N.Y.U. L. Rev. 806 (1989)

Other Publications

The Trouble With Staggered Boards: A Reply to Georgeson's John Wilcox, Corporate Governance Advisor (2002) (with Lucian A. Bebchuk and Guhan Subramanian)

Purchase Accounting Deals: A Look at Pricing Formulas and Allocation Procedures, 15 Banking Policy Report 1 (Nov. 18, 1996) (with Herlihy, et al.)

Takeovers & Freezeouts (L.J. Seminars-Press) (with Lipton et al.)

New Guidance for Freezeouts and MBOs -- Negotiation Strategy Privileged from Disclosure, Corp. Rep. (Aspen Law & Business (June 1996) (with Rowe)

M&A Strategies, 9 Bank Accounting and Finance 40 (Winter 1995-96) (with Herlihy, et al.)

Bank M&A Preparedness, 66 Corp. Rep. 1 (Aspen Law & Business Nov. 15, 1995) (with Herlihy, et al.)

Mergers and Acquisitions of Financial Institutions – 1995: An Unprecedented Year of Consolidation, Securities Activities of Banks, Fifteenth Annual Institute (1995) (with Herlihy, et al.)

Deal Developments Update, Corporate Control Alert (August 1995) (with Herlihy et al.)

Updating the Use of Special Committees in Freeze-Outs and Other Conflict Transactions, Corp. Rep. (Aspen Law & Business Aug. 15, 1995)

Banking on Nonbank Acquisitions, The Community Banker 46 (Second Quarter 1995)

Fundamental Rules For Bank Merger Transactions Remain Unchanged After Paramount, in Banking Expansion Institute, Thirteenth Annual (Aspen Law & Business 1995) (with Herlihy, et al.)

Bank and Thrift Mergers and Acquisitions -- 1994, in Securities Activities of Banks, Prentice-Hall Law & Business, Fourteenth Annual Institute (1994) (with Herlihy, et al.)

Stock Buybacks: Strategic, Legal and Fiduciary Issues, 8 Insights 10 (Nov. 1994) (with Herlihy et al.)

Banking Developments, Banking on Non-Bank Acquisitions and Current Issues in Bank Acquisitions, in Bank Mergers and Acquisitions, Practicing Law Institute (1994) (with Herlihy, et al.)

Current Issues in Bank Acquisitions, 7 Bank Acct'g & Fin. 44 (Spring 1994) (with Herlihy et al.)

Recent Deals Feature New Pricing Formulas, 13 Banking Pol. Rep. 2 (Apr. 4, 1994) (with Herlihy et al.)

M&A Strategies, 7 Bank Accounting & Finance 48 (Winter 1993- 94) (with Herlihy et al.)

Assessing the Current Bank Merger Environment: A Preparedness Checklist, 12 Banking Policy Report 1 (Oct. 18, 1993) (with Herlihy et al.)

Bank Mergers and Acquisitions -- 1993: A Year of Increasing Franchise Consolidation, in *Securities Activities of Banks*, Prentice-Hall Law & Business, 13th Annual Institute (1993) (with Herlihy, et al.)

Hostile Acquisition Overtures At Smaller Banks and Thrifts, 11 Bank & Corp. Gov. L. Rep. 47 (1993) (with Herlihy et al.)

Flexibility on Safety and Soundness, 3 Bank Director 3 (Third Quarter 1993) (with Wasserman)

Designing Bank Governance Structures, 12 Bank Policy Report (Apr. 19, 1993) (with Herlihy et al.)

Capital and Compliance Strategies in the Era of Prompt Corrective Action, in *The New Implementing Regulations Under FDICIA* (Prentice Hall 1992) (with Wasserman et al.)

1992 -- A Year of Continuing Financial Industry Consolidation: Current Trends and Various Considerations in Bank Mergers and Acquisitions, in Securities Activities of Banks, Prentice-Hall Law & Business, Twelfth Annual Institute (1992) (with Herlihy, et al.)

Bank Regulators Turn Up Intensity in Examination of Racial Discrimination in Lending Practices, 9 Bank & Corp. Governance L. Rep. 758 (December 1992) (with Stern et al.)

Meeting the Challenge of Loan Bias Scrutiny, Am. Banker (August 21, 1992) (with Stern et al.)

Investment Company Act Exemption Proposed, 11 Int'l Fin. L. Rev. 41 (July 1992) (with Robinson)

Dealing with Market Risks in Stock Mergers: Collars and Walk-aways, 6 Insights 4 (July 1992) (with Herlihy et al.)

Market Risks in Bank Mergers, 1 Bank Governance L. Rep. 1114 (July 1992) (with Herlihy et al.)

Racial Discrimination in Lending Practices, 1 Bank Gov. L. Rep. 1114 (July 1992) (with Stern et al.)

Disclosure of the Analyses Underlying Investment Banker Fairness Opinions, 6 Insights 11 (March 1992) (with Herlihy et al.)

Federal Reserve Board Approval Criteria for Bank Mergers, 7 Bank & Corp. Governance L. Rep. 45 (1992) (with Herlihy et al.)

Consensus Needed on Early Resolution's Legal Issues, Am. Banker (Mar. 25, 1992) (with Wasserman)

An Overview of Current Trends and Various Considerations in Bank Mergers and Acquisitions, in Securities Activities of Banks, Prentice-Hall Law & Business, Eleventh Annual Institute (1991) (with Herlihy et al.)

"The Greatest American Shambles": An Exchange, 38 *N.Y. Rev. of Books*, 59 (June 13, 1991)

Management Buyouts and the Duties of Independent Directors to Shareholders and Creditors, in Corporate Deleveragings and Restructurings, Practising Law Institute (1991) (with Lederman et al.)

Liabilities Under Sections 11, 12, 15 and 17 of the Securities Act of 1933 and Sections 10, 18 and 20 of the Securities Exchange Act of 1934, in Introduction to Securities Law 1990, Practising Law Institute (1990) (with Vizcarrondo et al.)

Advising the Board of Directors of a Target Company Regarding Defensive Strategies, in Dynamics of Corporate Control IV, American Bar Association National Institute (1989) (with Fogelson)

State Takeover Statutes: A Fifty-State Survey (privately published) (1989) (with Robinson et al.)

The Reorganization Plan: Statutory Framework and Commercial Realities, in Business Reorganizations and Workouts, Law Journal Seminars-Press (1988) (with Koplow)

Working Papers

An Empirical Reassessment of MBO Bids: Techniques, Outcomes, and Delaware Corporate Law, Working Paper (October 2005)

Why Are Firms Sold? The Role of the Target CEO's Age, Tenure, And Share Ownership, Working Paper (October 2005) (with Reinier Kraakman)

Competition and Shareholder Fees in the Mutual Fund Industry: Evidence and Implications for Policy, Working Paper (November 2005) (with R. Glenn Hubbard)

The Legal Origins of the Politically Puzzling U.S. "Market" for Corporate Charters, Working Paper (October 2004)

The Power of Defenses, National Bureau of Economics Research Working Paper (July 2003) (with Lucian Arye Bebchuk and Guhan Subramanian)

CEO Incentives and M&A Activity in the 1990s: Stock Options and Real Options, Working Paper (March 2002) (with Reinier Kraakman)

An Index of the Contestability of Corporate Control: Studying Variation in Legal Takeover Vulnerability, Working Paper (June 1999)

EXHIBIT 5

EXHIBIT 68

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MBIA INSURANCE CORPORATION,

Plaintiff,

-against-

COUNTRYWIDE HOME LOANS, INC., COUNTRYWIDE SECURITIES CORP., COUNTRYWIDE FINANCIAL CORP., COUNTRYWIDE HOME LOANS SERVICING, LP (n/k/a Bank of America, N.A., successor by *de jure* merger to BAC Home Loans Servicing, LP), and BANK OF AMERICA CORP.,

Defendants.

Index No. 602825/2008

IAS Part 3 (Bransten, J.)

EXPERT REPORT OF JOHN MCCONNELL[1]

September 4, 2012

[1] This report has been revised as of September 4, 2012 as explained in the Amendment and Supplement to the Expert Report of John McConnell, dated September 4, 2012.

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I. Executive Summary

1. BAC acquired CFC on July 1, 2008, in a forward triangular merger, whereby CFC merged into a BAC subsidiary.[2] After CFC became a BAC subsidiary, Countrywide-legacy entities sold assets to the BofA-legacy entities in the July and November 2008 Transactions. The BofA-legacy entities compensated the Countrywide-legacy entities for those assets by issuing demand notes, assuming CFC and CHL obligations with respect to certain public debt securities, and paying cash. I have been asked by counsel for BAC, a defendant in *MBIA Insurance Corporation v. Countrywide Home Loans, Inc. et al.*, to value the assets that the Countrywide-legacy entities sold to the BofA-legacy entities and to value the consideration that the BofA-legacy entities paid to the Countrywide-legacy entities.

2. In my report, I present a detailed discussion of the underpinnings of my analysis and the calculations that form the basis of my conclusions. I first set forth my experience as a Professor of Finance at the Krannert Graduate School of Management at Purdue University since 1976 and my relevant background as it pertains to the kinds of valuation analyses undertaken in this report. I then describe the methodology that I employ for valuing the assets, demand notes, and debt obligations at issue in the July and November 2008

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[2] I use certain abbreviations throughout the report, as follows: "BAC" refers to Bank of American Corporation; "NB Holdings" refers to NB Holdings Corporation, a subsidiary of BAC; "BANA" refers to Bank of America, N.A. , a subsidiary of BAC; "CFC" refers to Countrywide Financial Corporation; "CHL" refers to Countrywide Home Loans, a subsidiary of CFC; "Countrywide-legacy entities" refers to CFC and its direct and indirect subsidiaries as of July 1, 2008; "BofA-legacy entities" refers to BAC and its subsidiaries, except for the Countrywide-legacy entities; "July 2008 Transactions" refers to transactions that occurred between Countrywide-legacy entities and BofA-legacy entities on July 1–3, 2008, and on July 31, 2008; "November 2008 Transactions" refers to transactions that occurred between Countrywide-legacy entities and BofA-legacy entities on November 7, 2008; and "July and November 2008 Transactions" refers to both the July 2008 Transactions and the November 2008 Transactions. These abbreviated terms, as well as other abbreviated terms used in the report, are listed in Section XII, Glossary of Defined Terms, at p. 156.

Transactions. Because of the report's length and level of detail, I begin with this executive summary.

A. Overview of Opinions

3. In my opinion, the assets that the Countrywide-legacy entities sold to the BofA-legacy entities had a value of $44.78 billion, consisting of $37.58 billion of assets that I independently value, $5.67 billion of assets for which I provide a maximum value, and $1.53 billion of assets stated at book value that I do not value. In my opinion, the consideration that the BofA-legacy entities paid to the Countrywide legacy entities had an aggregate fair market value of $46.20 billion. In sum, the Countrywide-legacy entities received aggregate consideration from the BofA-legacy entities in the July and November 2008 transactions that exceeded the aggregate value, as defined above, of the assets they sold by $1.41 billion.

4. In my opinion, the aggregate fair market value of the consideration that CFC received ($11.11 billion) exceeded the aggregate value, as defined above, of the assets it sold ($10.68 billion) in the November 2008 Transactions by $0.43 billion.

5. In my opinion, the aggregate fair market value of the consideration that CHL received ($34.21 billion) exceeded the aggregate value, as defined above, of the assets it sold ($32.89 billion) in the July and November 2008 Transactions by $1.32 billion.

B. The Countrywide-Legacy Entities' Assets Sold

6. To calculate the $44.78 billion aggregate value, as defined above, of the assets that the Countrywide-legacy entities sold to the BofA-legacy entities—I consider three categories of assets:

7. ***Assets that I independently value.*** The Countrywide-legacy entities comprised a diversified financial enterprise that originated, serviced, and securitized residential real estate mortgage loans, offered various insurance and banking products, and engaged in other related activities. Relying on publicly reported pricing data for comparable financial securities, I am able to independently estimate the fair market value, by dollar amount, of a substantial majority of the assets that the Countrywide-legacy entities sold to the BofA-legacy entities as of the dates of the July 2008 and November 2008 Transactions. These assets include residential and commercial mortgage loans, residential and commercial mortgage-backed securities, novated derivatives, interest-only securities, principal-only securities, the rights to service mortgage loans (by collecting loan payments from a borrower on behalf of the lender), and the equity of certain Countrywide-legacy entities, including Effinity Financial Corporation, Countrywide Warehouse Lending, Countrywide Hillcrest, Inc., Countrywide GP, and Countrywide LP. In total, I have independently valued the above assets at $37.58 billion.

8. ***Assets for which I provide a maximum value.*** The Countrywide-legacy entities also sold to the BofA-legacy entities certain reimbursable servicing advances in both the July 2008 Transactions and the November 2008 Transactions. The servicing advances were payments of interest, principal, real estate taxes, and insurance premiums that the Countrywide-legacy entities paid to holders of mortgage-backed securities—that is, to the investors that bought the mortgage-backed securities that the Countrywide-legacy entities were servicing—in anticipation of payments that would eventually be received from mortgage borrowers. I am not able to value these advances because I do not have market prices or values of comparable securities for these assets. The book value of these

advances plus the associated loss reserves was $5.67 billion as of the transaction dates. It is my understanding that this is the maximum payment that could be received from the parties to whom advances were made because $5.67 billion is the total amount advanced and servicing advances are the right to be reimbursed in this amount. Although a reasonable argument can be made that the value of this asset should be discounted by some amount, for purposes of aggregation, I include these advances at their maximum value of $5.67 billion.[3]

9. ***Assets that I do not independently value.*** The Countrywide-legacy entities sold certain other assets to the BofA-legacy entities, including property, plant, equipment, and certain other financial and nonfinancial assets. I include these assets at their book values which, in the aggregate, was $1.53 billion.

C. The Consideration Paid by BofA-Legacy Entities

10. To arrive at the second figure—the $46.20 billion fair market value of the consideration paid by the BofA-legacy entities to the Countrywide-legacy entities—I evaluated three categories of consideration:

11. ***Demand notes.*** As partial consideration for the assets described above, the BofA-legacy entities issued demand notes to the Countrywide-legacy entities. The notes paid a floating rate of interest and had no fixed repayment date. The Countrywide-legacy entities had the right to demand payment of the notes from the BofA-legacy entities at any time; the BofA-

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[3] The $5.67 billion figure is the sum of the maximum values of the servicing advances sold in the July 2008 Transactions (discussed in paragraph 24) and the servicing advances sold in the November 2008 Transactions (discussed in paragraph 28).

legacy entities had the right to make payment to the Countrywide-legacy entities at any time. Because of those particular characteristics, I determine that the demand notes' combined face value of $29.46 billion was equal to their combined fair market value as of the dates of the transactions.[4]

12. ***Liabilities assumed.*** In addition to issuing demand notes, BAC assumed CFC's and CHL's obligations with respect to certain public debt securities. These public debt securities were in the form of notes and bonds that CFC and CHL had previously issued and guaranteed. By relying primarily on observable transaction prices and third-party valuations, I determine that the fair market value of the obligations with respect to certain public debt securities assumed by BAC was $15.07 billion, as of the dates of the transactions.

13. ***Cash paid.*** The BofA-legacy entities also paid the Countrywide-legacy entities $1.67 billion in cash.

D. Methodology

14. To estimate the fair market value of the assets sold by the Countrywide-legacy entities and the consideration paid by the BofA-legacy entities, I employ valuation and statistical techniques widely used and widely accepted in scholarly and practical financial analyses. My report, supplemented by the attached exhibits, describes my valuation methodology and explains the process by which I adapt these methods to the specific asset or liability I have

[4] The face value is net of any adjustments that were made to the notes after the dates of the July and November 2008 Transactions as described in detail in section IX.

been asked to value. Two concepts are central to my analysis: comparable-asset valuation and regression analysis.

15. ***Comparable-asset valuation.*** When market prices or other independent third-party valuations are available for the assets and liabilities I have been asked to consider, I use these as the fair market values. Because many of the assets and liabilities here were not publicly traded or valued by an independent third party, I have instead compared them to similar assets and liabilities whose market prices or valuations have been reported. Known as the comparable-asset (or comparable-liability) method, this valuation technique relies on the proposition that assets having similar characteristics, including similar risks and prospects, will trade at similar prices.

16. Because even similar assets can have significant differences—an important one being their size—I typically scale the prices of comparable assets by their size before using them in my analysis. One particular comparable measure that I use in valuing the Countrywide-legacy entities is the ratio between their market value of equity and their book value of equity (also known as a "valuation ratio"). The ratio scales the observed market value of equity by book value of equity, which is a measure of size. With this valuation ratio as a starting point, further refinements can be made with a widely used statistical technique known as regression analysis.

17. ***Regression analysis.*** Size is only one way in which assets can differ. In the case of mortgages, for instance, other factors are related to the valuation ratio, such as the features of the loans and the creditworthiness of the borrowers. Regression analysis provides a statistically reliable way to quantify these other relationships. It is the mathematical

expression of the correlation between the characteristics of the comparable assets and the observed value of the comparable assets. By expressing that relationship in mathematical terms, the valuation ratio can be adjusted in statistically reliable ways—and that adjusted valuation ratio can then be applied to the specific asset whose value is in question.

18. Imagine, for example, we want to know how changes in temperature are related to the chirping of crickets. We would begin by examining a group of crickets, counting their chirps, and recording the temperature. As the weather changes, we would repeat the experiment, counting chirps under a range of conditions, until we had gathered enough data to graph the relationship between chirps and temperature. The result would be an equation—a function—that would allow us to plug in any temperature and forecast with reasonable certainty a cricket's chirp rate, even if we were not in a position to independently count the chirps. In this example, regression analysis is a statistical technique for reliably estimating the equation relating the temperature to the chirps. In general, regression analysis is a commonly used scientific method for predicting outcomes; it allows us to use what we do know to predict what is not observed.

E. Valuing the Countrywide-Legacy Entities' Assets

19. ***Residential mortgage loans.*** In July 2008, CHL sold residential mortgage loans with an unpaid principal balance ("UPB") of $12.29 billion to the NB Holdings. In November 2008, CHL sold residential mortgage loans with a UPB of $734.5 million to BAC. To value these loans, I compare them to other loans with similar characteristics issued to borrowers of similar credit quality, but with known prices. To do this, I compare the loans

that I seek to value to residential mortgage-backed securities ("RMBS") that were publicly issued and whose prices or valuations are known.

20. I use regression analysis to calculate the relation between the values of RMBS and the characteristics of the loans underlying the RMBS. I then use this relation, along with the characteristics of the loans sold by CHL to the BofA-legacy entities, to estimate the value of the residential mortgage loans sold. This calculation yields values of $9.53 billion for the residential mortgage loans sold in the July 2008 Transactions and $515.2 million for the loans sold in the November 2008 Transactions. In my opinion, the fair market value of the portfolio of residential mortgage loans sold by CHL to the BofA-legacy entities was $10.04 billion (the sum of $9.53 billion and $515.2 million), as of the July and November 2008 Transactions.

21. ***Novated derivative securities.*** In July 2008, CHL novated a portfolio of derivatives to BANA. In these novations, BANA "stepped into the shoes" of CHL as the counterparty in each derivative security. Using a *Bloomberg* terminal, a computer system that provides subscribers with financial market data, I calculate the following values for the derivatives: -$477.4 million for interest rate swaps, $1.74 billion for interest rate swaptions, $43.4 million for cancellable interest rate swaps, -$290.1 million for forward rate agreements, $454.5 million for cross-currency interest rate swaps, $0.4 million for total rate of return swaps, and -$6.2 million for credit default swaps. In my opinion, the fair market value of the novated derivatives totaled $1.46 billion, the sum of the values above, as of July 2008.

22. ***Commercial real estate loans.*** In July 2008, a Countrywide-legacy entity sold commercial real estate loans to NB Holdings that had a combined UPB of $300.9 million, for an

aggregate UPB plus interest of $302.2 million. Because I do not have transaction prices for the loans, I compare them to the publicly reported prices of commercial mortgage-backed securities ("CMBS"). Based on this comparison, in my opinion, a reasonable estimate of the fair market value of the commercial real estate loans sold by the Countrywide-legacy entity to NB Holdings was $277.1 million, as of July 2008.

23. ***Mortgage-backed securities.*** In July 2008, Countrywide Securities Corporation sold to Blue Ridge Investments, LLC a portfolio of 168 RMBS and CMBS with a combined book value of $186.7 million. Using evaluated prices provided by independent third parties for comparable securities, I independently value 155 securities; for the remaining 13, I use the book value of $1.9 million assigned to them by the Countrywide-legacy entities. Based on these data, I value the 155 securities at $251.1 million. In my opinion, the value of the mortgage-backed securities, as defined above, sold by Countrywide Securities Corporation to Blue Ridge Investments, LLC was $253.1 million (the sum of $251.1 million and $1.9 million), as of July 2008.

24. ***Mortgage servicing rights.*** In November 2008, CHL sold to BAC the rights to service residential mortgage loans with a UPB of $23.1 billion. A mortgage servicer collects loan payments from a borrower and passes the payments through to the holder of the loan; in return, the servicer retains a percentage of each payment as a servicing fee. In most instances, the servicing fee is calculated as a fraction of the UPB of the loans being serviced. Relying on valuations of comparable assets reported by publicly traded mortgage servicers, I calculate the ratio of the value of the mortgage servicing rights ("MSRs") and the UPB of the loans being serviced. With this ratio adjusted by regression analysis for loan delinquencies, I estimate the value of the MSRs sold to be $232.2 million.

Additionally, Countrywide-legacy entities made reimbursable servicing advances on behalf of borrowers whose loans the Countrywide-legacy entities were servicing. These advances had a gross book value of $1.04 billion.[5] As I explain above, I am unable to independently value these advances because I do not have market prices or values of comparable securities. Although a reasonable argument can be made that the value of this asset should be discounted by some amount, for purposes of aggregation, I use the book value of $1.04 billion. It is my understanding that this is the maximum payment that could be received from the parties to whom advances were made because $1.04 billion is the total amount advanced and servicing advances are the right to be reimbursed in this amount. In my opinion, the fair market value of the reimbursable servicing advances sold to BAC was likely to have been less (but not more) than $1.04 billion, as of November 2008.

25. ***Interest-only and principal-only mortgage-backed securities.*** In November 2008, Countrywide-legacy entities sold to BAC interest-only securities ("IO securities") based on a notional amount of $59.47 billion and principal-only securities ("PO securities") based on a UPB of $472.6 million. The IO securities are claims to cash flows from RMBS that typically entitle the owner to receive some fraction of the interest paid by borrowers of the underlying loans. The PO securities entitle the owner to receive a fraction of the principal repaid by borrowers of the underlying loans. I am able to identify independent third-party evaluated prices for most of the IO securities (276 of 320) and PO securities (232 of 252). To value the IO and PO securities for which such valuations are not available, I conduct a regression analysis, factoring in certain characteristics of the securities. In my opinion, the

[5] Book value of $1.02 billion plus a loss reserve of $0.028 billion equals the gross book value of approximately $1.04 billion.

fair market value of all PO securities sold by the Countrywide-legacy entities to BAC in the November 2008 Transactions is $293.7 million. In my opinion, for those IO securities for which I am able to estimate a fair market value, the fair market value of the IO securities sold by the Countrywide-legacy entities to BAC in the November 2008 Transactions was $724.5 million. Additionally, the Countrywide-legacy entities sold to BAC IO securities in the November 2008 Transactions that had a recorded value of $25.8 million.

26. ***Effinity Financial Corporation.*** In November 2008, CFC sold 100% of the equity of Effinity Financial Corporation to BAC. Effinity's assets included Countrywide Bank's equity (consisting of common stock with a book value of $13.01 billion and preferred stock with a book value of $2 billion), Balboa Group's equity (with a book value of $1.33 billion), and the equity of other entities (with a book value of equity of $920.3 million). I estimate the value of Effinity's common stock as the sum of the market values of Effinity's equity interest in the various entities that it owned on November 7, 2008. To estimate the fair market value of the common stock of Countrywide Bank, I calculate the market-to-book equity ratio for the common stock of comparable publicly traded financial institutions. I use regression analysis to establish the relation between the market-to-book equity ratio of the comparable financial institutions and their recent profitability. I use this relation, along with the book value of equity of Countrywide Bank, to estimate the fair market value of Countrywide Bank's common stock. I also conduct a regression analysis using the preferred stock of the comparable institutions to estimate the fair market value of the Bank's preferred stock. These analyses yield a fair market value of $5.70 billion for the Bank's common stock and a fair market value of $1.28 billion for its preferred stock—or, in other words, $6.98 billion ($5.70 billion + $1.28 billion) for all of Countrywide Bank's

equity. I conduct a similar analysis for Balboa Group using publicly traded insurers as the comparable companies. This analysis yields a value of $2.27 billion for the equity of Balboa Group. I value the equity of the other Effinity-owned entities, which supported Countrywide Bank's activities, using the same valuation model as for the common stock of Countrywide Bank. This yields a value of $1.44 billion for the other Effinity subsidiaries. In my opinion, the fair market value of the equity interest in Effinity that CFC sold to BAC was $10.68 billion (the total of $5.70 billion in Countrywide Bank common equity, $1.28 billion in Countrywide Bank preferred equity, $2.27 billion in Balboa Group equity, and $1.44 billion in other entities' equity), as of November 2008.

27. ***Countrywide Warehouse Lending and Countrywide Hillcrest, Inc.*** In November 2008, CHL sold the equity of Countrywide Warehouse Lending and Countrywide Hillcrest, Inc., to BAC. Countrywide Warehouse Lending had a book value of equity of $256.2 million and Countrywide Hillcrest had a book value of equity of $9.3 million. Because these two entities supported Countrywide Bank's business activities, I value their equity using the valuation model employed for valuation of Countrywide Bank's common equity. In my opinion, the combined fair market value of the equity of Countrywide Warehouse Lending and Countrywide Hillcrest was $209.8 million, as of November 2008.

28. ***Countrywide GP and Countrywide LP.*** In July 2008, CHL sold the equity of Countrywide GP and Countrywide LP to NB Holdings. Countrywide GP's and LP's only asset was the equity of Countrywide Home Loans Servicing LP ("CHL Servicing"), whose primary asset was the mortgage servicing rights to loans with a total UPB of $1.121 trillion. As with the other MSRs sold by CHL, I rely on financial data reported by comparable publicly traded mortgage servicers to identify an MSR-to-UPB valuation ratio. I use regression analysis to

calculate the relation between the MSR-to-UPB valuation ratio and delinquencies and foreclosures of the loans being serviced by the comparable mortgage servicers. Multiplying the UPB of the loans being serviced by CHL Servicing and the MSR-to-UPB ratio adjusted for loan delinquencies and foreclosures yields a value of $13.41 billion. In my opinion, the fair market value of the equity of Countrywide GP and Countrywide LP sold to NB Holdings was $13.41 billion, as of July 2008. Additionally, Countrywide GP and Countrywide LP sold reimbursable servicing advances to NB Holdings. These advances had a gross book value of $4.63 billion. For the reasons described above, in my opinion, the maximum market value of these reimbursable servicing advances was not more (and likely less) than their book value of $4.63 billion, as of July 2008.

F. Valuing the BofA-Legacy Entities' Payments

29. ***Demand notes.*** In July 2008, NB Holdings issued demand notes to the Countrywide-legacy entities with a face amount of $27.79 billion. In November 2008, BAC issued updated demand notes to the Countrywide-legacy entities which included an additional face amount of $1.67 billion.[6] These floating-rate notes allowed BofA-legacy entities to "call" the notes at any time and allowed the Countrywide-legacy entities to "put" the notes at any time. If the market rate of interest for such a security were to fall below the rate of interest promised on the note, the BofA-legacy entities, acting in their value-maximizing self-interest, would have called the note (i.e., made payment) immediately. By the same token, if the market rate of interest for such a security were to rise above the rate of interest

[6] The two amounts are net of any adjustments that were made to the notes after the dates of the July and November 2008 Transactions as described in detail in section IX.

promised on the note, the Countrywide-legacy entities, acting in their value-maximizing self-interest, would have put the notes (i.e., demanded payment) immediately. If the notes were neither put nor called, the implication is that their market values would have been close to or at their face amounts of $27.79 billion in July 2008 and $1.67 billion in November 2008. In my opinion, the fair market value of the demand notes issued by BAC and NB Holdings to the Countrywide-legacy entities was the same as their combined face value of $29.46 billion (the sum of $27.79 billion and $1.67 billion).

30. ***Liabilities assumed.*** In November 2008, BAC assumed CFC's and CHL's obligations with respect to certain public debt securities—specifically, 119 public notes and bonds, with various characteristics and interest rates—with a total face value of $16.64 billion. The securities' face values are the amount of principal outstanding on the notes and bonds that CFC and CHL had issued and guaranteed before the merger as of the date of the November 2008 Transactions. For notes and bonds that traded on or near the date of the November 2008 Transaction, I use their transaction prices as their fair market values. For notes and bonds with no transaction prices during that period, I use their evaluated price assigned by independent third-party vendors as the fair market values of the notes and bonds. In this way, I am able to value all but two of the 119 securities. For those remaining two, I estimate values using comparable bonds. In my opinion, the fair market value of CFC's and CHL's obligations with respect to certain public debt securities that BAC assumed was $15.07 billion, as of November 2008.

31. My work in this matter is ongoing. My analysis and conclusions are based on the information available to me at the present time. Should additional information or data become available to me as this matter proceeds, I reserve the right to revise or update my

analysis and refine my opinions as necessary. A list of documents and data sources that I relied on in my work in this matter is given in Appendix 1 to this Report.

II. Assignment

32. I have been retained by counsel for Defendant, BAC, in the matter of *MBIA Insurance Company v. Countrywide Home Loans, Inc. et al*. to estimate the fair market value of certain assets that Countrywide-legacy entities sold to BofA-legacy entities in the July and November 2008 Transactions. I have also been asked to estimate the fair market value of certain demand notes that NB Holdings issued to the Countrywide-legacy entities as partial consideration in the July 2008 Transactions and BAC issued to CFC and CHL as partial consideration in the November 2008 Transactions, as well as CFC's and CHL's obligations with respect to certain public debt securities that BAC assumed as partial consideration in the November 2008 Transactions. I have been asked to estimate the values of the assets, demand notes, and liabilities as of the dates on which the transactions occurred.

III. Overview of Report

33. In Section IV, I present my professional qualifications. Section V briefly describes the July and November 2008 Transactions. Section VI presents a summary of my opinions. Section VII sets forth the general methodology that I use in valuation of the assets sold, demand notes issued, and obligations with respect to certain public debt securities assumed.

34. Section VIII describes the assets sold by Countrywide-legacy entities to BofA-legacy entities in the July and November 2008 Transactions and presents my conclusions about the fair market values of the assets sold.

35. Section IX describes the demand notes that BAC and NB Holdings issued to Countrywide-legacy entities as consideration in the July and November 2008 Transactions and presents my conclusions about the fair market values of the demand notes issued.

36. Section X describes the obligations under the CFC and CHL public debt securities that BAC assumed as consideration in the November 2008 Transactions and presents my conclusions about the fair market values of those assumed obligations.

37. Section XI describes the "diversification discount," a phenomenon recognized in an extensive body of academic literature indicating that the market value of a diversified company is, on average, less than the market value of the sum of its individual parts. I undertake an analysis of CFC and its individual components and present my conclusions on whether their estimated market values are consistent with this body of literature.

38. Section XII provides a glossary of defined terms.

IV. Professional Qualifications of John J. McConnell

39. I am the Emanuel T. Weiler Distinguished Professor of Management (in Finance) at the Krannert Graduate School of Management at Purdue University, where I have been a faculty member since 1976. At the Krannert School, in addition to my duties as a Professor of Finance, I have served as Director of Doctoral Programs and Research (1989–1998), Area Coordinator of Finance (1994–1998; 2006–2007), and Academic Director of Professional Masters Programs (2001–2006).

40. I received a B.A. in Economics from Denison University (1968), an M.B.A. from the University of Pittsburgh (1969), and a Ph.D. in Finance and Econometrics from Purdue

University (1974). I have also taught at The Ohio State University (1975–1976), the University of Minnesota (1981–1982), Stanford University (1986–1987), and the University of North Carolina (1999). I have taught courses in corporate finance, investments, and capital markets in the graduate and undergraduate programs of these universities. I received special recognition for my teaching as the winner of the Salgo-Noren Outstanding Master's Teaching Award (1993, 1995, 2011, and 2012), the Most Effective Teacher KGSA Award (1992), and the Dean's MBA Core Course Outstanding Teaching Award (2005, 2007, and 2009).

41. I have served as a member of the Boards of Directors of the Federal Home Loan Bank of Indianapolis, the Harrington Financial Group, Inc., Harrington Bank FSB, Harrington West Financial Group, Inc., Los Padres Bank, the American Finance Association, and the Western Finance Association. I currently serve as a member of the Advisory Board of the Global Finance Academy of the University College Dublin.

42. I have served as a consultant to government agencies (including the Government National Mortgage Association, the Department of Housing and Urban Development, the Department of Justice, the Office of Thrift Supervision, and the Office of Federal Housing Enterprise Oversight), investment banks (including Merrill Lynch and Goldman Sachs), and more than fifty law firms throughout the United States on various aspects of financial markets and securities, including such matters as stock and bond pricing and valuation, corporate valuation, mergers and acquisitions, use and valuation of financial derivatives, valuation of mortgage-backed securities, collateralized mortgage obligations and asset-backed securities, subprime lending, money management practices, corporate hedging programs, and bank lending and investment guidelines.

43. I have published more than seventy-five articles in leading peer-reviewed finance, economics, and management journals on such topics as stock, bond, and derivatives valuation and returns, portfolio management, corporate governance, mergers and acquisitions, corporate restructurings, derivative securities, asset leasing, cost of capital, and related topics.

44. I have been recognized as the Distinguished Scholar of the Eastern Finance Association (2002) and as a Fellow of the Financial Management Association (2007). I have served on the Editorial Boards of the *Journal of Finance*, *Financial Management*, the *Journal of American Real Estate and Urban Economics Association*, *The Journal of Real Estate Finance and Economics*, the *Financial Review*, and the *Pacific Basin Finance Journal*. I currently serve on the Editorial Boards of the *Journal of Financial and Quantitative Analysis*, the *Journal of Fixed Income*, the *Real Estate Review*, and the *Journal of Corporate Finance*.

45. My curriculum vitae is attached as Appendix 2 to this Report.

V. Transactions Between Countrywide-Legacy Entities and BofA-Legacy Entities

A. Merger Between CFC and Red Oak Merger Corporation

46. On July 1, 2008, CFC completed its merger with Red Oak Merger Corporation, a wholly-owned subsidiary of BAC, pursuant to the terms of the previously announced Agreement and Plan of Merger, dated January 11, 2008, by and among BAC, Red Oak Merger

Corporation, and CFC. Upon consummation of the merger, Red Oak Merger Corporation was renamed "Countrywide Financial Corporation."[7]

47. I have not been asked to opine on the fair market value of consideration paid in the merger between CFC and Red Oak Merger Corporation. My report focuses solely on the value of the assets sold and the consideration paid (i.e., the cash paid, demand notes issued, and obligations with respect to certain public debt securities assumed) in the July and November 2008 Transactions between Countrywide-legacy entities and BofA-legacy entities, as described below.

B. July 2008 Transactions

48. Between July 1 and July 3, 2008, Countrywide-legacy entities sold assets to BofA-legacy entities. Specifically, on July 1, 2008, CHL sold residential mortgage loans to NB Holdings in exchange for a demand note with a face value of $6.94 billion,[8] and CHL novated a portfolio of derivative securities to BANA in exchange for $1.5 billion in cash.[9] On July 2, 2008, CHL sold its equity interest in Countrywide GP and Countrywide LP (the two Countrywide-legacy entities that owned 100% of the equity of Countrywide Home Loans Servicing LP) to NB Holdings in exchange for a demand note with a face value of

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[7] Countrywide Financial Corporation, Current Report (Form 8-K), at 2 (July 8, 2008).

[8] Countrywide Financial Corporation, Current Report (Form 8-K), at 5 (July 8, 2008). *See also* Master Mortgage Loan Purchase and Subservicing Agreement between CHL and NB Holdings (BACMBIA-C0000161028–1140); Purchase Confirmation Letter (BACMBIA-C0000161250–57); July 1, 2008 Demand Note between CHL and NB Holdings (BACMBIA-C0000161141–44).

[9] Countrywide Financial Corporation, Current Report (Form 8-K), at 5 (July 8, 2008); Countrywide Financial Corporation, Current Report (Form 8-K/A) Exhibit 99.1, at 7–8 (September 17, 2008).

$19.68 billion[10] (later adjusted to $18.04 billion),[11] and Countrywide Securities Corporation (a Countrywide-legacy entity) sold a portfolio of securities in exchange for $147 million in cash to Blue Ridge Investments, LLC (a BofA-legacy entity).[12] On July 3, 2008, CHL sold residential mortgage loans to NB Holdings in exchange for a demand note with a face value of $2.53 billion[13] and Countrywide Commercial Real Estate Finance, Inc. ("CCREF," a Countrywide-legacy entity) sold commercial mortgage loans to NB Holdings in exchange for a demand note with a face value of $237.6 million.[14] Finally, on July 31, 2008, CCREF and Countrywide Bank sold additional commercial loans to NB Holdings in exchange for demand notes with a face value of $35.9 million.[15]

C. November 2008 Transactions

49. On November 7, 2008, Countrywide-legacy entities sold assets to BofA-legacy entities. First, CFC sold its equity interest in Effinity Financial Corporation (which owned the equity of certain other Countrywide-legacy entities) to BAC in exchange for BAC's assumption of CFC's obligations with respect to certain public debt securities with a book

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[10] Countrywide Financial Corporation, Current Report (Form 8-K), at 5 (July 8, 2008). *See also* July 2, 2008 Purchase and Sale Agreement between CHL and NB Holdings (BACMBIA-C0000161342–350); July 2, 2008 Demand Note between CHL and NB Holdings (BACMBIA-C0000161271–75).

[11] The net value of the demand note was subsequently adjusted to $18.27 billion on July 2, 2008 and further adjusted to $18.04 billion on September 1, 2008. *See* BACMBIA-R0000006150.

[12] Countrywide Financial Corporation, Current Report (Form 8-K), at 5 (July 8, 2008).

[13] Countrywide Financial Corporation, Current Report (Form 8-K), at 5 (July 8, 2008). *See also* Purchase Confirmation Letter at 2 & Exhibit B (BACMBIA-C0000161224–231).

[14] Countrywide Financial Corporation, Current Report (Form 8-K), at 5 (July 8, 2008). *See also* Commercial Real Estate Loan Purchase and Sale Agreement (BACMBIA-C0000161613–628); Demand Note between CCREF and NB Holdings (BACMBIA-C0000161219–223).

[15] Commercial Real Estate Loan Purchase and Sale Agreement (BACMBIA-R0000006283-6301); BACMBIA-R0000006150.

value of $9.74 billion and demand notes with a face value of $3.46 billion[16] (later adjusted to $1.77 billion).[17] Second, CHL sold substantially all of its remaining assets (i.e., assets not sold in the July 2008 Transactions), including certain mortgage servicing rights, certain interest-only and principal-only mortgage-backed securities, certain residential mortgage loans, certain premises and equipment, equity interests in Countrywide Warehouse Lending and Countrywide Hillcrest Inc., and certain other assets to BAC in exchange for BAC's assumption of CHL's obligations with respect to certain public debt securities with a book value of $5.79 billion[18] and demand notes issued by BAC with a face value of $3.05 billion[19] (later adjusted to $3.55 billion).[20] Third, CWIBH, Inc., and CW Securities Holdings, Inc., (both Countrywide-legacy entities) sold interest-only mortgage-backed securities to BAC in exchange for demand notes with face values of $446.8 million and $7.8 million, respectively.[21]

VI. Summary of Opinions

50. I have valued certain assets of the Countrywide-legacy entities that were sold to BofA-legacy entities in the July and November 2008 Transactions. I have also valued the

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[16] November 7, 2008 Stock Purchase Agreement By and Between BAC and CFC (BACMBIA-C0000168443–494); November 7, 2008 Demand Note between CFC and BAC at Schedule 1.2(b) (BACMBIA-C0000168443–494). A list of all Effinity entities appears as Schedule 2.3(a) to the Stock Purchase Agreement By and Between BAC and CFC. *See* November 7, 2008 Stock Purchase Agreement By and Between BAC and CFC, at Schedule 2.3(a) (BACMBIA-C0000168443–494).

[17] March 6, 2009 Supplemental Agreement No. 1 to the Stock Purchase Agreement (BACMBIA-C0000168508–511).

[18] For the book value of assets and liabilities assumed of $5.79 billion. *See* BACMBIA-R0000006043; BACMBIA-R0000006047.

[19] November 7, 2008 Demand Note between CHL and BAC (BACMBIA-C0000168237-241).

[20] March 6, 2009 Amendment No. 1 to the Asset Purchase Agreement (BACMBIA-C0000168242–45).

[21] November 7, 2008 IO Securities Purchase Agreement between BAC and CWSHI (BACMBIA-C0000168406–416); November 7, 2008 Demand Note between BAC and CWSHI (BACMBIA-C0000168417–421); November 7, 2008 IO Securities Purchase Agreement between BAC and CWIBH (BACMBIA-C0000168422–436); November 7, 2008 Demand Note between BAC and CWIBH (BACMBIA-C0000168437–442).

consideration paid in those transactions by the BofA-legacy entities to Countrywide-legacy entities. In my opinion, the aggregate value of the assets sold by Countrywide-legacy entities in the July and November 2008 Transactions was $44.78 billion consisting of the sum of: (1) $37.58 billion in assets whose fair market value I independently assess; (2) $5.67 billion in assets for which I provide a maximum market value; and (3) $1.53 billion of property, plant, and equipment, and *de minimis* other assets stated at book value that I do not independently value.[22] In my opinion, the fair market value of the consideration paid by BofA-legacy entities to Countrywide-legacy entities in exchange for these assets was $46.20 billion. In sum, the fair market value of the consideration paid by BofA-legacy entities to Countrywide-legacy entities was $1.41 billion greater than the value, as defined above, of the assets sold by Countrywide-legacy entities to BofA-legacy entities.

A. July 2008 Transactions

51. As I describe in Section VIII below, I value certain assets that Countrywide-legacy entities sold to BofA-legacy entities in the July 2008 Transactions. These assets include residential mortgage loans, commercial mortgage loans, mortgage-backed securities, and mortgage servicing rights sold as part of the sale of the equity interest in Countrywide GP and Countrywide LP. I also value a portfolio of derivative securities novated by CHL to BANA. In my opinion, the fair market value of these assets, including the novated portfolio of derivative securities, was $24.93 billion, as of the dates of the transactions. Additionally, as part of the sale of the equity interest in Countrywide GP and Countrywide

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[22] *See* Exhibit 1.

LP, CHL entities sold to NB Holdings certain reimbursable servicing advances. As I explain in my report, it is my opinion that the fair market value of the reimbursable servicing advances is likely to have been less (but not more) than $4.63 billion. Additionally, Countrywide-legacy entities sold certain mortgage-backed securities as part of the July 2008 Transactions that I do not independently value because I have incomplete data. Countrywide-legacy entities assigned a value of $1.9 million to these securities as of June 30, 2008. For the purposes of aggregation, I include these securities in the total at the value assigned by Countrywide-legacy entities of $0.002 billion. The aggregate value, as defined above, of the assets that the Countrywide-legacy entities sold in the July 2008 Transactions described above was $29.56 billion ($24.93 billion + $4.63 billion + $0.002 billion = $29.56 billion), as of the dates of the transactions.

52. Based on the analysis set forth in Section IX below, in my opinion, the aggregate fair market value of the demand notes issued to Countrywide-legacy entities by NB Holdings, plus the $1.67 billion cash paid, in the July 2008 Transactions was $29.45 billion as of the dates of the transactions.

B. November 2008 Transactions

53. As I describe in Section VIII below, I also value certain assets that Countrywide-legacy entities sold to BofA-legacy entities in the November 2008 Transactions. These assets include residential mortgage loans, mortgage servicing rights, interest-only and principal-only mortgage-backed securities, the common stock of Effinity Financial Corporation, the common stock of Countrywide Warehouse Lending, and the common stock of Countrywide Hillcrest Inc. In my opinion, the fair market value of these assets was $12.66

billion as of November 7, 2008. Additionally, in conjunction with the sale of mortgage servicing rights, CHL sold to BAC certain reimbursable servicing advances. As I explain in my report, it is my opinion that the fair market value of the reimbursable servicing advances is likely to have been less (but not more) than $1.04 billion as of November 7, 2008. Additionally, I do not independently value certain other assets (including property, plant, and equipment) that were recorded on the financial statements of CHL at a book value of $1.50 billion as of November 7, 2008. For the purposes of aggregation, I include these assets in the total at $1.50 billion. Further, I do not independently value certain mortgage-backed securities to which BofA-legacy entities and Countrywide-legacy entities assigned a value of $25.8 million. For the purposes of aggregation, I include these securities in the total at a value of $0.026 billion. The total of the values described above is $15.23 billion ($12.66 billion + $1.04 billion + $1.50 billion + $0.026 billion = $15.23 billion), as of November 7, 2008.

54. Based on the analysis set forth in Section IX below, in my opinion, the aggregate fair market value of demand notes issued to Countrywide-legacy entities by BAC in the November 2008 Transactions was $1.67 billion (net of subsequent adjustments) as of the dates of the transactions.

55. Based on the analysis set forth in Section X below, in my opinion, the aggregate fair-market value of the CFC and CHL obligations with respect to certain public debt securities that BAC assumed in the November 2008 Transactions was $15.07 billion as of the dates of the transactions.

C. The July and November 2008 Transactions

56. In my opinion, the fair market value of the assets that I value in this report and that were sold by Countrywide-legacy entities to BofA-legacy entities (including residential real estate loans, commercial real estate loans, residential mortgage-backed securities, commercial mortgage-backed securities, mortgage servicing rights, and the equity in certain operating subsidiaries) was $37.58 billion, as of the dates of the July and November 2008 Transactions. Additionally, Countrywide-legacy entities sold to BofA-legacy entities certain property, plant, equipment, and miscellaneous other assets that were reported on Countrywide-legacy entities' financial statements with a value of $1.50 billion and certain mortgage-backed securities that were recorded on Countrywide-legacy entities' financial statements with a value of $0.028 billion. Further, Countrywide-legacy entities sold to BofA-legacy entities reimbursable servicing advances that were recorded on Countrywide-legacy entities' financial statements with a value of $5.67 billion. The total of these values is $44.78 billion ($37.58 billion + $1.50 billion + $0.028 billion + $5.67 billion = $44.78 billion).

57. In my opinion, the fair market value of the demand notes that BAC and NB Holdings issued to Countrywide-legacy entities plus the fair market value of the CFC and CHL obligations with respect to certain public debt securities that BAC assumed plus the cash that BofA-legacy entities paid to Countrywide-legacy entities in consideration for assets purchased was $46.20 billion ($29.45 billion + $15.07 billion + $1.67 billion = $46.20 billion), as of the dates of the July and November 2008 Transactions.

58. Of the $44.78 billion, as defined above, the value of the assets that CFC sold to the BofA-legacy entities was $10.68 billion. Of the $46.20 billion in consideration paid, the fair

market value of the consideration paid by BofA-legacy entities to CFC was $11.11 billion.[23] The value, as defined above, of the assets that CHL sold to BofA-legacy entities was $32.89 billion and the fair market value of the consideration paid by BofA-legacy entities to CHL was $34.21 billion.[24]

59. My opinions with regard to the values of assets, obligations with respect to certain public debt securities assumed, and demand notes issued are summarized in Exhibit 1.

60. On the basis of the analysis described in Section XI, I conclude that CFC's observed market valuations on three different dates before the July and November 2008 Transactions are consistent with the value of CFC as a whole being no greater than and likely less than the sum of the values of its component parts as would be estimated with my valuation methodology.

61. My work in this matter is ongoing. My analysis and conclusions are based on the information available to me at the present time. Should additional information or data become available to me as this matter proceeds, I reserve the right to revise or update my analysis and refine my opinions as necessary. A list of documents and data sources that I relied on in my work in this matter is given in Appendix 1 to this Report.

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[23] $10.68 billion is the fair market value of the common stock of Effinity as described in section VIII.J. The $11.11 billion of fair market value of consideration paid includes the value of demand notes issued to CFC and CFC's obligations with respect to certain public debt securities assumed. The value of obligations with respect to certain public debt securities assumed was allocated to CFC based on BACMBIA-C0000168443–494.

[24] $32.89 billion is the sum of the fair market values of residential mortgage loans sold by CHL, novated derivatives, certain interest-only and principal-only securities sold by CHL, rights to service mortgage loans sold by CHL, common stock of Countrywide Warehouse Lending and Countrywide Hillcrest, common stock of Countrywide GP and Countrywide LP, the maximum value of servicing advances sold by CHL, and the book value of certain other assets sold by CHL and not independently valued of $1.50 billion. The $34.21 billion of fair market value of consideration paid includes the value of cash paid to CHL, demand notes issued to CHL, and CHL's obligations with respect to certain public debt securities assumed. The value of obligations with respect to certain public debt securities assumed was allocated to CHL based on BACMBIA-C0000168172–229.

VII. Overview of Valuation Methodology

62. In my assessments of the fair market value of assets sold, demand notes issued, and obligations with respect to certain public debt securities assumed, I adopt a well-accepted definition of fair market value: the price at which a willing buyer and a willing seller, with neither being under compulsion to exchange and both having access to relevant information, would agree to trade.[25]

63. In those instances in which market prices or independent third-party valuations are available for specific assets sold, demand notes issued, or obligations with respect to certain public debt securities assumed, I use those prices or valuations to establish fair market values.

64. In those instances in which market prices or independent third-party valuations of the specific assets sold, demand notes issued, or obligations with respect to certain public debt securities assumed are not available, the general methodology that I use in assessing fair market value is the comparable-asset or comparable-liability method. This methodology relies on the proposition that assets or liabilities that have similar risks and similar prospects for future cash flows will trade at similar prices.[26] In each instance where I

[25] "Fair Market Value.* The price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts." *See* AMERICAN SOCIETY OF APPRAISERS, ASA BUSINESS VALUATION STANDARDS 27 (2009). *See also* AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, APPENDIX B TO STATEMENT ON STANDARDS FOR VALUATION SERVICES NO. 1, 44; STEPHEN A. ROSS ET AL., CORPORATE FINANCE 23 (7th ed. 2005) ("*Market value* is the price at which willing buyers and sellers trade the assets.").

[26] *See* JONATHAN BERK & PETER DEMARZO, CORPORATE FINANCE 262 (2007) ("Another application of the Law of One Price is the method of comparables."); ASWATH DAMODARAN, THE DARK SIDE OF VALUATION: VALUING YOUNG, DISTRESSED, AND COMPLEX BUSINESSES 90 (2nd ed. 2010) ("Relative valuation values an asset based on how similar assets are currently priced in the market. A prospective house buyer decides how much to pay for a house by looking at the prices paid for similar houses in the neighborhood. A baseball card collector makes a judgment on how much to pay for a Mickey Mantle rookie card by

employ this general methodology, I adapt the methodology to the specifics of the asset or liability being valued.[27]

65. A caveat to note is that any methodology that does not directly use an observed arm's-length price agreed on by two willing parties embeds a degree of uncertainty with respect to fair market value. However, in my opinion, the fair market value estimates for the assets sold, demand notes issued, and obligations with respect to certain public debt securities assumed given in my report are unbiased estimates of the price at which the assets, demand notes, and liabilities would be exchanged in a transaction as defined above.

66. My applications of the comparable-asset or comparable-liability methodology (henceforth, "comparable asset" includes both assets and liabilities unless a distinction is specifically made) proceed as follows. I describe the asset to be valued, and I identify a general class or set of assets comparable to the asset to be valued. These comparable assets must have observable market prices or independent third-party valuations. For example, the set of comparable assets may consist of companies in the same industry as the company to be valued to ensure similarity of the operating characteristics and risks, or be a set of traded securities with similar characteristics and risks as the security being valued. I use the observed prices or valuations of this set of comparable assets as a basis for estimating the

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checking transaction prices on other Mickey Mantle rookie cards. In the same vein, a potential investor in a stock tries to estimate its value by looking at the market pricing of 'similar' stocks."); MATTHIAS MEITNER, THE MARKET APPROACH TO COMPARABLE COMPANY VALUATION 8 (2006) (The comparable approach "is based on the principal [*sic*] of arbitrage that says that all substitutes should sell for the same price" and "[t]hus . . . values target companies based on how investors value similar companies."); SHERIDAN TITMAN & JOHN D. MARTIN, VALUATION: THE ART AND SCIENCE OF CORPORATE INVESTMENT DECISIONS 215 (2008) ("[V]aluation using market comparables [is] a technique that is often used to value businesses, business units, and other major investments.").

[27] As a note of clarification, each liability assumed or demand note issued by one party is an asset for the owner of the liability or demand note. Thus, the comparable asset methodology, with the relevant adaptations, can still be applied.

fair market value of the asset to be valued. In most instances, as a preliminary measure of value, I use a measure based on the median valuation of the comparable assets.[28]

67. In many instances, however, the asset or liability to be valued is not identical to the set of comparable assets. In those cases I use statistical analysis or other techniques to adjust for differences between the set of comparable assets and the asset to be valued, and to refine the preliminary median-based valuation. The primary statistical technique that I use is regression analysis.[29]

68. Regression analysis is widely used in scholarly and applied analyses of financial and economic data.[30] Regression analysis essentially examines the correlation between the observed values of the comparable assets and the characteristics of the comparable assets. That statistical relationship creates a framework for assessing an asset whose value has not been observed. By comparing the specific characteristics of the asset in question with the characteristics of the assets whose value is known, regression analysis can determine what the value of the asset in question would have been in an arm's-length transaction.

69. In most instances, the comparable-asset valuation methodology employs a valuation ratio to scale the values of the asset or class of assets in question to adjust for differences in size

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[28] I rely on the median since it "is a robust or resistant measure of center, because large changes in a few data values change the median very little. In contrast, the mean is not resistant to such changes, since it gives equal weight to all observations." *See* AJIT C. TAMHANE & DOROTHY D. DUNLOP, STATISTICS AND DATA ANALYSIS: FROM ELEMENTARY TO INTERMEDIATE 113 (2000).

[29] More precisely, I use ordinary least squares ("OLS") regression analysis. OLS is "a method for estimating the parameters of a multiple linear regression model." *See* JEFFREY M. WOOLDRIDGE, INTRODUCTORY ECONOMETRICS: A MODERN APPROACH 867 (3rd ed. 2006).

[30] "Researchers in the social sciences, business, policy studies and other areas rely heavily on the use of linear regression analysis." *See* LARRY D. SCHROEDER ET AL., UNDERSTANDING REGRESSION ANALYSIS: AN INTRODUCTORY GUIDE 7 (1986). *See also* John J. McConnell and Henri Servaes, *Equity Ownership and the Two Faces of Debt*, 39 JOURNAL OF FINANCIAL ECONOMICS (1995); Mara Faccio et al., *Political Connections and Corporate Bailouts*, 61 THE JOURNAL OF FINANCE (2006).

between the asset to be valued and the comparable assets. Consider the following. Suppose the asset to be valued is the common equity (i.e., the common stock) of a company's privately held operating subsidiary. Suppose the book value of equity of the subsidiary is \$5. Suppose that the subsidiary has a comparable publicly traded twin that is identical in all relevant respects except that the publicly traded twin's operations are twice as large as those of the privately held subsidiary. Accordingly, the publicly traded twin has a book value of equity of \$10. Further, suppose the market value of equity of the publicly traded twin is \$30. Valuation of the privately held subsidiary requires adjusting the market value of the publicly traded firm for the difference in the sizes of the public and private companies.

70. In this example, the market-to-book value ratio of equity of the public company is 3:1, which is calculated by dividing the market equity value of \$30 by the book equity value of \$10. The value of the subsidiary is estimated by multiplying the subsidiary's book value of equity by 3. In this case, the subsidiary's estimated fair market value of equity would be calculated as 3 times \$5 or \$15. In this example, the ratio of market value of equity to the book value of equity (commonly referred to as the market-to-book equity value ratio) is the valuation ratio.

71. Because valuation using market-to-book equity value ratios is based on the market price of the comparable publicly traded company, it incorporates value that derives from the ongoing operation of the business (such as growth options) that may not be captured by book equity value alone. Market price of equity includes the market's assessment of the

impact of possible future events weighted by their associated probabilities on the market value of a company's equity.[31]

72. Valuation using valuation ratios—where value is assigned relative to the values of other comparable assets—is a commonly used valuation approach.[32]

73. In most instances, however, any two entities or assets are likely to differ from each other in some manner other than size. Nevertheless, a valuation ratio is still the starting point of the analysis. To further the analysis, the valuation ratio is adjusted for these differences using a suitable statistical technique or other method, one of which is regression analysis. Regression analysis is used to measure how much the valuation ratio should be adjusted for the particular characteristics of the asset to be valued.

74. Consider further the example of the operating subsidiary. Suppose that instead of just one identical comparable company that is precisely twice the size of the subsidiary to be valued, there are 10 comparable companies that are similar, but not identical, to the operating subsidiary. Suppose the comparable companies are in the same line of business as the subsidiary, but they all have different capital structures such that some rely heavily on debt financing while others use very little debt. Suppose further that debt financing

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[31] "[T]he price of a share of stock can be viewed as the sum of two different items. The first term (EPS/r) is the value of the firm if it rested on its laurels, that is, if it simply distributed all earnings to the stockholders. The second term is the *additional* value if the firm retains earnings in order to fund new projects." [emphasis in original] *See* STEPHEN A. ROSS ET AL. CORPORATE FINANCE 120 (7th ed. 2005).

[32] "Notwithstanding the focus on discounted cash flow valuation in classrooms and in theory, evidence exists that most assets are valued on a relative basis." Further, "[m]ost equity research reports are based on multiples," and "[w]hile casual empiricism suggests that almost every acquisition is backed up by a discounted cash flow valuation, the value paid in the acquisition is often determined using a multiple." *See* ASWATH DAMODARAN, THE DARK SIDE OF VALUATION: VALUING YOUNG, DISTRESSED, AND COMPLEX BUSINESSES 91 (2nd ed. 2010). *See also* MATTHIAS MEITNER, THE MARKET APPROACH TO COMPARABLE COMPANY VALUATION back cover (2006) ("Corporate valuation using multiples is one of the most popular corporate valuation approaches.").

tends to increase the market-to-book equity value ratios of the publicly traded comparable companies but the relationship cannot be precisely determined by simple inspection of the data.

75. Regression analysis can be used to examine the observed valuations of the comparable companies and quantify a mathematical relation between the valuation ratios of the comparable companies and their leverage (i.e., debt-to-asset) ratios. This mathematical relationship can be used, along with the debt-to-asset ratio of the privately held subsidiary, to estimate what the fair market value of the subsidiary would be if it were to be exchanged between a willing buyer and a willing seller in an open-market trade.

76. In the regression analysis, the valuation ratio is termed the dependent variable. The characteristics of the asset to be valued are termed the explanatory or predictor variables. The predictor variables are used to calibrate the valuation ratio of the asset to be valued. This adjusted ratio is then used to estimate the value of the asset being valued.

77. Regression analysis is applicable to most types of assets. For example, in this report, I use regression analysis to determine the relation between the observed values of pools of residential mortgage loans and the characteristics of the underlying loans and of the borrowers. I use the results of the regression analysis along with the characteristics of non-traded loans sold to NB Holdings to predict what the fair market value of the loans sold would have been had they been exchanged between buyers and sellers in an arm's-length transaction in an open market.

78. When market prices of the asset to be valued are not available, the comparable-asset valuation approach along with regression analysis or another suitable technique is the

general approach that I use in the valuation of assets sold, demand notes issued, and obligations with respect to certain public debt securities assumed.

VIII. Valuation of Assets Sold by Countrywide-Legacy Entities to BofA-Legacy Entities

A. Overview

79. This section is devoted to the valuation of assets sold by Countrywide-legacy entities to BofA-legacy entities in both the July and November 2008 Transactions.

80. I consider the assets sold in two categories. First, I value assets other than equity interests in subsidiaries. These assets include residential mortgage loans, novated derivatives, commercial loans, and mortgage-backed securities ("MBS") sold in the July 2008 Transactions, and residential mortgage loans, interest-only ("IO") and principal-only ("PO") mortgage-backed securities, mortgage servicing rights ("MSR"), and certain CHL assets sold in the November 2008 Transactions. I value these assets in subsections VIII.B through VIII.I.

81. Second, I value the equity (i.e., the common stock) of subsidiaries sold by Countrywide-legacy entities to BofA-legacy entities. These include the equity of Countrywide GP and Countrywide LP sold in the July 2008 Transactions and the equity of Effinity Financial Corporation and the equity of Countrywide Warehouse Lending and Countrywide Hillcrest Inc. sold in the November 2008 Transactions. In subsections VIII.J through VIII.L, I value the equity interests of the subsidiaries sold and in section XI, I consider certain implications of valuing the equity interests as though they had been sold individually rather than as part of a diversified financial conglomerate.

B. Valuation of Residential Mortgage Loans Sold

82. In this subsection, I value residential mortgage loans that were sold by CHL to BofA-legacy entities in the July and November 2008 Transactions. A residential mortgage loan is a loan collateralized by a one- to-four family residential property.

B.1 Description of the Residential Mortgage Loans Sold

83. In the July 2008 Transactions, CHL sold residential mortgage loans with an unpaid principal balance ("UPB") of $12.29 billion to NB Holdings.[33, 34] In the November 2008 Transactions, CHL sold residential mortgage loans with a UPB of $734.5 million to BAC.[35]

B.2 Description of Valuation Methodology for Residential Mortgage Loans Sold

84. In valuing the residential mortgage loans, I use characteristics of the loans and the credit quality of the borrowers to estimate the value of the portfolio of loans sold based on the prices of residential mortgage-backed securities ("RMBS") that are backed by loans with characteristics and credit quality similar to the characteristics and credit quality of the portfolio of loans sold.

85. I measure credit quality with the borrower's credit score as of the date of loan origination.[36] The loan characteristics that I include are the year in which the loan was originated, the

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[33] Purchase Confirmation Letter (BACMBIA-C0000161224–231); Purchase Confirmation Letter (BACMBIA-C0000161250–57).

[34] The UPB is the amount of principal owed by the borrower on a given date. It does not include future interest payments on the loan. *See* JOHN DOWNES & JORDAN ELLIOT GOODMAN, DICTIONARY OF FINANCE AND INVESTMENT TERMS 557 (8th ed. 2010); "Balance" definition 8, *Merriam-Webster Dictionary* website, http://www.merriam-webster.com/dictionary/balance, most recently checked for availability on June 19, 2012.

[35] BACMBIA-V0000028418.

[36] There is no one accepted methodology for calculating credit scores. Credit scores are offered to lenders by various organizations such as the credit bureaus in the U.S. Each provider uses its own algorithm to compute a borrower's credit score. One example of a credit score is the FICO Score. *See* "Products – Scores – FICO® Score," 2012, http://www.fico.com/en/Products/Scoring/Pages/FICO-score.aspx, FICO website, most recently checked for availability on June

principal balance of the loan as of the date of origination of the loan, the ratio of the principal balance of the loan to the value of the underlying real estate as of the date of origination of the loan (the "LTV" ratio), whether the loan was delinquent as of the date of the loan sale (i.e., whether the loan was delinquent as of July or November of 2008, as appropriate), the age of the loan, whether the loan is a fixed-rate mortgage ("FRM") or an adjustable-rate mortgage ("ARM"), whether the loan is a first- or second-lien loan, and whether the loan is an interest-only loan (i.e., whether the monthly payment includes a portion for repayment of principal or whether the monthly payment covers interest only).

86. The loan and borrower characteristics that I use in valuing the residential loans have been shown in studies by scholars and practitioners to predict the probability of default by borrowers.[37] According to finance theory, the probability of default is an important determinant of the value of a debt security, because, it, together with the interest rate, maturity, and payment schedule, determines the expected cash flow to the lender.[38]

87. Because I do not have transaction prices for loans, I value the mortgage loans sold to BofA-legacy entities using a valuation methodology based on prices of RMBS that were sponsored by CFC and sold to public investors. This methodology is based on the comparable-asset methodology described in Section VII.

20, 2012, for an explanation of FICO scores. *See also* Geetesh Bhardwaj & Rajdeep Sengupta, *Credit Scoring and Loan Default,* Federal Reserve Bank of St. Louis Working Paper Series, Working Paper 2011-040A, 2 (2011).

[37] *See generally* Andra C. Ghent & Marianna Kudlyak, *Recourse and Residential Mortgage Default: Evidence from U.S. States,* 24 THE REV. OF FIN. STUD.3139 (2011); Adam B. Ashcraft et al., *MBS Ratings and the Mortgage Credit Boom*, Federal Reserve Bank of New York Staff Reports, No. 449 (May 2010), *available at* http://www.newyorkfed.org/research/staff_reports/sr449.pdf; Wei Jiang et al., *Liar's Loan? Effects of Origination Channel and Information Falsification on Mortgage Delinquency,* (Columbia University Working Paper April 2011), *available at* http://www.columbia.edu/~wj2006/liars_loan.pdf.

[38] *See, e.g.,* ZVI BODIE ET AL., INVESTMENTS 467–476 (8th ed. 2009).

88. More precisely, I value the portfolio of residential mortgage loans sold as if it were one large mortgage-backed security. In doing so, I rely on prices of publicly issued RMBS as a basis for valuing the large portfolio of residential mortgage loans.

89. RMBS are claims to principal and interest payments from an underlying pool of residential mortgage loans. In a typical RMBS, there are different classes of claims issued against a pool of mortgage loans. The claims are referred to as tranches. The tranches carry different rights to the payments generated by the underlying pool of loans.

90. A typical RMBS has tranches of different seniority such that, in general, senior tranches have a priority claim to interest and principal payments from the underlying loans relative to junior tranches. Thus, when losses occur on the underlying loans because of defaults by borrowers, the most junior tranches are the first to absorb the losses. The most junior tranche absorbs losses until the promised principal balance of the tranche is exhausted. Further losses on the underlying loans are then absorbed by the next most junior tranche until the principal balance of that tranche is fully exhausted. Senior tranches have the highest priority claim and are, therefore, last in line to take losses.[39]

91. The most junior tranches are typically called “equity” or “residual” tranches. Equity tranches are the first to absorb losses when defaults occur. Tranches are also created that pay only interest to the investor or that pay only principal. These are called IO and PO tranches, respectively. Tranches that do not pay principal have an associated notional

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[39] Adam B. Ashcraft and Til Schuermann, *Understanding the Securitization of Subprime Mortgage Credit*, Federal Reserve Bank of New York Staff Reports, No. 318, 29 (2008).

amount instead of a UPB. The amount is "notional" in the sense that it is used to determine the payments due on the securities, but is not itself paid to the investors.[40]

92. Tranches are rated by rating agencies according to perceived credit risk. In general, within an RMBS, the more senior tranches receive higher credit ratings than the more junior tranches.[41]

93. Generally speaking, within an RMBS, all of the possible principal and interest payments from the underlying loans are committed to one or more of the tranches. What this means is that if an investor were to buy all of the tranches of an RMBS and hold those tranches until all of the underlying loans were paid off or defaulted on, the investor would receive the same principal and interest payments as if he or she had purchased all of the underlying loans and held those until all were paid off or were defaulted on.

94. One of the fundamental principles of financial economics is that two assets that provide the same set of possible cash flows have the same value. This fundamental proposition is referred to as the "value additivity" principle.[42] According to the value additivity principle, because an investor would receive the same cash flows of principal and interest from the loans regardless of whether that investor purchased the underlying pool of loans or all the tranches of the RMBS supported by those loans, the price at which the purchase would occur would be the same.

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[40] JOHN C. HULL, OPTIONS, FUTURES & OTHER DERIVATIVES 709 (5th ed. 2003).

[41] Adam B. Ashcraft and Til Schuermann, *Understanding the Securitization of Subprime Mortgage Credit*, Federal Reserve Bank of New York Staff Reports, No. 318, 29 (2008).

[42] STEPHEN A. ROSS ET AL., CORPORATE FINANCE 145 (7th ed. 2005) ("Note that the value of the firm is merely the sum of the values of the different projects, divisions, or other entities within the firm. This property [is] called **value additivity**…[and] implies that the contribution of any project to a firm's value is simply the NPV [net present value] of the project.").

95. I rely on the value additivity principle in valuing the residential mortgage loans sold by CHL to BofA-legacy entities in two ways. I first rely on this principle to arrive at a price for each Countrywide-sponsored RMBS based on observed valuations of the individual tranches of the RMBS that are claims to principal and interest payments. That is, I determine the values of the individual tranches that compose the RMBS and sum them to determine the total value of the RMBS. This value can be expressed as a price per dollar of UPB by dividing the total value of the RMBS by the total UPB of the loans underlying the RMBS.

96. I then rely on the value additivity principle to estimate the fair market value of the loans sold by CHL to BofA-legacy entities. To value the loans, I conduct a regression analysis with the price of the RMBS as the valuation ratio. I use the characteristics of the RMBS as explanatory or predictor variables to estimate the regression. Given the characteristics of the loans and the borrowers of the loans underlying a Countrywide-sponsored RMBS, I could use the results of the regression to estimate the price of other RMBS sponsored by CFC.

97. In this instance, I use the results of the regression analysis and the characteristics of the portfolio of loans sold by CHL to BofA-legacy entities to estimate what the fair market value of the loans would have been had the loans been sold as an RMBS.

98. To value the loans sold, I use the coefficients of the regression along with the characteristics of the portfolio of loans that CHL sold to BofA-legacy entities to predict what the fair market value of the loans would have been had the loans been securitized and sold as an RMBS. This value is the same as the value of the loans if they are sold outright

without first securitizing them because owning the loans outright would yield essentially identical cash flows and risks as owning all the outstanding tranches of an RMBS based on similar loans.

99. As stated above, my valuation methodology treats the portfolio of loans sold by CHL in the July 2008 Transactions as one large RMBS and the portfolio of loans sold by CHL in the November 2008 Transactions as another RMBS. The value additivity principle (see paragraph 94, above) implies that, because the interest and principal cash flows from the portfolio of loans would be the same regardless of whether the loans were sold to an investor or whether the loans were placed into an RMBS and sold as tranches, the total value would be the same.

B.3 Selection of Comparable Assets

100. As comparables, I use RMBS sponsored by CFC.

101. I identify Countrywide-sponsored RMBS using the *ABSNet* database and select all securitizations sponsored by CFC that were tracked by this database. This results in a sample of 925 Countrywide-sponsored securitizations. According to *ABSNet*, the database covers a significant portion of the public and 144A series RMBS issued in the United States. *ABSNet* provides characteristics and historical performance of the RMBS and of the loans underlying the RMBS.[43] For each RMBS, I use *ABSNet* to identify the CUSIP

[43] *See* "ABSNet," *Lewtan* website, http://www.lewtan.com/products/ABSNETnet.html, most recently checked for availability on June 20, 2012.

number associated with each tranche.[44] I obtain tranche values (by using CUSIPs) as of July 1, 2008, or November 7, 2008, for tranches from *Standard & Poor's Securities Evaluations, Inc.* ("*S&P*") and *Interactive Data Corporation* ("*IDC*").[45]

102. RMBS tranches rarely trade on a daily basis. As a result, obtaining actual market transaction prices for each day is not possible. Instead, third-party pricing services calculate values that are termed "evaluated prices." For example, *S&P* states that "[t]he evaluated prices provided by [S&P] to clients are an opinion about the market value of securities that, for the most part, do not trade on a regular, daily basis" and that "[t]he trading levels of the small percentage of securities that do trade daily are used in the evaluation process for the evaluated prices of the securities that have not traded."[46]

103. According to *IDC*, its "independent evaluations represent its good faith opinion as to what a buyer in the marketplace would pay for a security (typically in an institutional round lot position) in a current sale" [47] with the objective "to detect and reflect market activity, which typically relates only to a fraction of the outstanding fixed income securities, and to

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[44] A CUSIP (Committee on Uniform Securities Identification Procedures) is a unique nine-character identifier that classifies debt and equity securities issued by companies, governments, and municipalities. *See* "About CGS Identifiers," CUSIP Global Services (CGS) website, https://www.cusip.com/cusip/about-cgs-identifiers.htm, most recently checked for availability on June 20, 2012.

[45] All the providers of evaluated prices used in my report are cited in Savita Iyer and Jeffrey Kutler, "Valuation Nation," RISK PROFESSIONAL 6 (August 2010), *available at* http://www.fincad.com/pdfs/risk-professional-valuation-nation.pdf. *Id.* at 4, 6, *available at* http://www.fincad.com/pdfs/risk-professional-valuation-nation.pdf.

[46] STANDARD & POOR'S SECURITY EVALUATIONS, INC., SPSE GENERAL METHODOLOGY FOR EVALUATED PRICING 3 (March 17, 2011).

[47] "Products and Services – Evaluation Services," *Interactive Data* website, http://www.interactivedata.com/index.php/productsandservices/content/id/Evaluation+Services, most recently checked for availability on June 20, 2012.

extrapolate that information using its models and methodologies to the population of bonds for which market activity is not available."[48]

104. In the aggregate, values of the tranches of the RMBS can be stated as a percentage of the UPB of the loans underlying the RMBS. Thus, a value of 86.50 means that the investor would pay $86.50 per $100.00 of UPB of the RMBS. In that respect, the price is the valuation ratio calculated as the dollar amount paid for the UPB of the loans underlying the RMBS divided by the UPB of the underlying loans.

105. Prices for RMBS tranches that are backed by both principal and interest payments ("P&I" tranches) of the underlying loans or PO tranches are quoted as a percentage of face value. Thus, a price of 75.50 means that the investor pays $75.50 per $100.00 of par or face value then outstanding for the tranche. In that respect, the price is the valuation ratio calculated as the dollar amount paid for the tranche divided by the face value of the tranche. As with other valuation ratios, this ratio standardizes the dollar amount paid by the size of the tranche.

106. For IO tranches, prices are quoted as a percentage of the tranche's notional value. The notional amount is equivalent to the principal amount in a loan in that the interest payments are based on the amount of principal. However, in an IO tranche, the notional amount is not paid, unlike the principal amount of a loan.

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[48] "Products and Services – Evaluation Services – Evaluation Methodologies," *Interactive Data* website, http://www.interactivedata.com/index.php/Contents/show/content/EvalMeth, most recently checked for availability on June 20, 2012.

107. Prices of equity tranches can be quoted as a percentage of face value or a percentage of notional amount.

108. I calculate the value of each tranche using prices for the tranche and the UPB of the tranche for P&I and PO tranches, the notional amount for IO tranches, and the principal or notional amount for equity tranches, as appropriate. I sum the values of the tranches to determine the total value of the RMBS.

109. Not every tranche, however, has an associated price from each pricing service. Certain tranches (particularly the most junior tranches, which are the equity or residual tranches) are often not priced by either of the pricing services.

110. For an RMBS to be included in my analysis, I require that prices be available for every offered tranche in the RMBS.

111. To price the tranches, I use data from the two services identified in paragraph 101. When a given tranche is priced by only one service, I use that price as the price of the tranche. When a tranche is priced by two services, I use the average of the two prices.[49]

112. In those instances in which there is a tranche in a given RMBS with no price in any of the services, I search for other tranches of the same type (i.e., P&I, PO, IO, or equity) with available prices and the same credit rating in the given RMBS. If there are other tranches of the same type with available prices and the same credit rating in a given RMBS, I use the median value of prices of those other tranches. If no such tranches with prices can be

[49] The average value equals the median value of a sample with two observations.

identified, I search for tranches of the same type with the next higher credit rating in the given RMBS for which a price is available. I use the minimum prices of tranches with the next higher rating. If no such tranches with prices are identified, I consider tranches with the next higher rating, and so on. So, for example, if no price is available for a P&I tranche rated AA-, I identify the median price of the other P&I tranches rated AA- of the same RMBS as the price of the AA- P&I tranche for which no price is available. If there are no other AA- tranches with prices available, I use the minimum price of P&I tranches rated AA from the same RMBS.

113. By performing this procedure, I have assembled sufficient pricing data to calculate prices for 289 of the 925 Countrywide-sponsored RMBS as of July 1, 2008.

114. Likewise, I have assembled sufficient pricing data to calculate prices for 290 of the 925 Countrywide-sponsored RMBS as of November 7, 2008.

115. In those instances where sufficient pricing data are not available to calculate a price for the RMBS, it is because there are certain tranche types (typically, equity or IO tranches) for which no pricing data are available from either of the two pricing services for any rating. Therefore, I cannot use the procedure described in paragraph 112 to approximate the price of these tranches because I require at least one tranche of a given type to have a price.

116. To calculate the valuation ratio for each RMBS as of July 1, 2008, and November 7, 2008, I first calculate the value of individual P&I and PO tranches by multiplying the price of the tranche by the UPB of the tranche. For IO tranches, I multiply the price of the IO by the notional value. For equity tranches, I multiply the price by the face value or the notional value depending on the particular nature of the equity tranche. I then sum the values of the

tranches for each RMBS to obtain the aggregate RMBS value. Finally, I calculate the valuation ratio by dividing the RMBS value by the UPB of the loans underlying the RMBS.

117. Exhibit 2 presents summary statistics of prices, as of July 1, 2008, for the Countrywide-sponsored RMBS by year of issuance. As of July 1, 2008, the median price across these RMBS was 86.43.

118. Exhibit 2 also presents summary statistics of prices, as of November 7, 2008, for the Countrywide-sponsored RMBS by year of issuance. As of November 7, 2008, the median price across all Countrywide-sponsored RMBS was 80.90.

119. Using the median price of the Countrywide-sponsored RMBS for July 1, 2008 as the valuation ratio and multiplying that ratio by the UPB of the loans sold by CHL to BofA-legacy entities in the July 2008 Transactions gives an estimate of the fair market value of 86.43% times $12.29 billion, or $10.62 billion for the loans sold in the July 2008 Transactions.

120. Using the median price of the Countrywide-sponsored RMBS for November 7, 2008 as the valuation ratio and multiplying that ratio by the UPB of the loans sold by CHL to BofA-legacy entities in the November 2008 Transactions gives an estimate of the fair market value of 80.90% times $734.5 million, or $594.2 million for the loans sold in the November 2008 Transactions.

121. Exhibit 2 also gives the price for the RMBS with the lowest price ("Minimum Price"), the RMBS with the highest price ("Maximum Price"), and the RMBS with the median price by year of issuance. As of July 1, 2008, across all Countrywide-sponsored RMBS, the prices

range from a minimum of 50.32 to a maximum of 102.98. As of July 1, 2008, across years of issuance, the median prices range from 80.46 to 94.54.

122. As of November 7, 2008, across all Countrywide-sponsored RMBS, the prices range from a minimum of 37.08 to a maximum of 99.86. As of November 7, 2008, across years of issuance, the median prices of Countrywide-sponsored RMBS range from 55.87 to 91.71.

123. The wide range in prices is not surprising because the Countrywide-sponsored RMBS have a corresponding wide range of characteristics. As shown in Exhibit 3, using the UPBs of the loans underlying the RMBS as the weights, the weighted average credit scores across Countrywide-sponsored RMBS range from 611.2 to 787, the weighted average LTV ratios range from 16.41% to 83.35%, delinquency rates range from essentially zero for one RMBS to 44% in July 2008 and from zero to 54% in November 2008, weighted average age of the loans ranges from 16.85 months to 120.53 months, and the fraction of second-lien loans in the RMBS ranges from zero to 100%. I use regression analysis to adjust the valuation ratios by incorporating these and other characteristics in valuing the loans sold by CHL to BofA-legacy entities in both the July 2008 and the November 2008 Transactions.

B.4 Adjusting for Characteristics That Affect Valuation Ratios

124. In estimating the regression, the dependent variable to be predicted is the valuation ratio (i.e., the price) of the Countrywide-sponsored RMBS for which I have sufficient pricing data to estimate the price of the RMBS. The predictor variables are the credit scores of the

borrowers and the characteristics of the loans underlying the RMBS.[50] I estimate two regressions, one for July 1, 2008, and one for November 7, 2008. The first is used to estimate the fair market value of the residential mortgage loans sold in the July 2008 Transactions. The second is used to estimate the fair market value of the residential mortgage loans sold in the November 2008 Transactions.

125. In estimating the regressions, because I have one price per RMBS, I use weighted average borrower credit scores and weighted average characteristics of the loans underlying the RMBS as the predictor variables. The precise definitions of the variables used in all the analyses in my report are given in Appendix 3.

126. The coefficients of the two regressions are given in Exhibit 4. As shown in the exhibit, both the July 2008 and the November 2008 regressions are statistically significant with F-statistics of 60.27 and 105.83, respectively.[51]

127. Because the regression analysis is based on the portfolios of loans underlying RMBS, I use the results of the analysis to predict the value of the loans sold to BofA-legacy entities by treating the loans sold as a portfolio of loans. In that respect, the portfolio of loans sold can be viewed as one large RMBS. In particular, I consider a portfolio constructed by

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[50] When used in the context of regression analysis, the term "estimation" involves the calculation through a formula of regression coefficients for the predictor variables using data on the predictor variables and on the dependent variable.

[51] The F-statistic is a quantity associated with the statistical test of whether the regression model has statistically significant explanatory power—in other words, explanatory power superior to simply using the mean of the independent variable. More precisely, this test examines the hypothesis that the coefficients of the explanatory variables (except for the intercept) are all zero. A high value of the F-statistic relative to a benchmark value indicates that the model has superior explanatory power over the sample mean. In this instance, the statistical hypothesis that the coefficients of the explanatory variables are all zero is rejected with a high level of statistical significance or precision. Statistical significance is related to the likelihood that a statistical hypothesis is rejected when it is in fact true; a high level of significance means that there is a low probability of incorrectly rejecting the hypothesis. *See* LARRY D. SCHROEDER ET AL., UNDERSTANDING REGRESSION ANALYSIS: AN INTRODUCTORY GUIDE 39, 51 (1986).

combining all of the loans sold in the July 2008 Transactions and another portfolio of loans constructed by combining all of the loans sold in the November 2008 Transactions.

128. With the exception of government-insured (i.e., FHA) or government-guaranteed (i.e., VA) loans (henceforth, “FHA/VA loans”) and loans covered by private mortgage insurance (henceforth, “PMI loans”), I use the coefficients of the regressions along with the credit scores and characteristics of the loans sold in the July and November 2008 Transactions to predict the fair market values of the portfolios of loans sold.[52] I value the FHA/VA loans at a price of 105.1. I use this price, because as I describe in section VIII.E, government-sponsored RMBS pass-through tranches were priced at this value in July 2008. I value PMI loans at face value. Of the loans sold in the July 2008 Transactions, FHA/VA loans constituted $897.5 million (i.e., 7.3% of the total UPB) and PMI loans constituted $810.3 million (i.e., 6.6% of the total UPB). Of the loans sold in the November 2008 Transactions, FHA/VA loans constituted $205.9 million (i.e., 28% of the total UPB) and PMI loans constituted $74.2 million (i.e., 10.1% of the total UPB).

129. Exhibit 5 summarizes the credit scores and other characteristics of the non-FHA/VA and non-PMI loans sold in each transaction. The exhibit also compares the characteristics of

[52] To calculate average credit scores and other average characteristics, except original principal balance, of loans sold in the July and November 2008 Transactions, I use UPB weighted averages as of the corresponding sale date. Original principal balance is equally weighted. There are 388 loans with missing UPB information, as of July 1, 2008, and November 1, 2008. These are excluded from the analysis. These loans represent 0.3% of the total number of loans transferred as of July 1, 2008, and November 7, 2008.

these loans with the characteristics of the loans underlying the Countrywide-sponsored RMBS that I use in my regression analysis.[53]

130. On July 1, 2008, CHL sold loans with a UPB of $9.43 billion and on July 3, 2008, CHL sold additional loans with a UPB of $2.86 billion.[54] Thus, of the loans sold in July 2008, 77% were sold on July 1, 2008. I use the coefficients of the July 1 regression in Exhibit 4 along with the credit scores and loan characteristics of all non-FHA/VA and non-PMI loans sold in the July 2008 Transactions to estimate the value of all non-FHA/VA and non-PMI loans sold in the July 2008 Transactions. I add to this value the calculated value of all FHA/VA loans and the UPB of all PMI loans sold in the July 2008 Transactions to estimate the total value of all loans sold in the July 2008 Transactions.

131. This calculation, as shown in Exhibit 6, results in a total value of the residential loans sold in the July 2008 Transactions of $9.53 billion.

132. I use the coefficients of the November 7, 2008 regression in Exhibit 4 along with the credit scores and loan characteristics of non-FHA/VA and non-PMI loans sold in the November 2008 Transactions to estimate the value of all non- FHA/VA and non-PMI loans sold in the November 2008 Transactions. I add to this value the calculated value of all FHA/VA loans and the UPB of all PMI loans sold in the November 2008 Transactions to estimate the total value of all loans sold in the November 2008 Transactions.

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[53] The data for these characteristics of the residential loans sold by CHL to BofA-legacy entities are from spreadsheets containing data on loans sold (BACMBIA-V0000028417–423).

[54] *See* BACMBIA-V0000028419–23.

133. This calculation, as shown in Exhibit 6, results in a total value of the residential loans sold in the November Transactions of $515.2 million.

B.5 Fair Market Value of Residential Mortgage Loans Sold

134. In my opinion, the fair market value of the portfolio of residential mortgage loans sold by CHL to NB Holdings in the July 2008 Transactions was $9.53 billion as of the date of the transactions.

135. In my opinion, the fair market value of the portfolio of residential mortgage loans sold by CHL to BAC in the November 2008 Transactions was $515.2 million as of the date of the transactions.

C. Valuation of Novated Derivative Securities

136. In this subsection, I value a portfolio of derivative securities that were novated ("novated derivatives") as part of the July 2008 Transactions between CHL and NB Holdings. The portfolio of derivatives, described in more detail below, was novated on July 1, 2008.[55] A novation is an agreement between parties to a transaction to substitute a new contract in place of the existing contract. In this case, I understand that the novation involved changing the relevant counterparty for each derivative security from a Countrywide-legacy entity to a BofA-legacy entity.[56] That is, a BofA-legacy entity "stepped into the shoes" of the Countrywide-legacy entity as the counterparty in each derivative security.

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[55] Countrywide Financial Corporation, Current Report (Form 8-K), at 5 (July 8, 2008); Countrywide Financial Corporation, Current Report (Form 8-K/A) Exhibit 99.1 at 8 (September 17, 2008).

[56] INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, USER'S GUIDE TO THE 2004 ISDA NOVATION DEFINITIONS 2 (2004).

C.1 Description of the Novated Derivative Securities

137. The portfolio of novated derivatives consists of interest rate swaps, interest rate swaptions, cancellable swaps, forward rate agreements, cross-currency swaps, total rate of return swaps, and credit default swaps.[57]

138. I now provide a brief explanation of each type of derivative.

139. *Interest rate swaps* are agreements to exchange payments of interest at a fixed rate for payments at a floating rate of interest for a specified period. For example, swaps can be used to hedge the risks associated with an obligation to pay an unknown floating rate of interest by “swapping” the obligation to pay the floating rate for an obligation to pay a predetermined fixed rate, thereby removing uncertainty associated with a floating rate. The dollar amounts of the interest rate payments are determined with the notional amount of the swap. The notional amount is an amount on which the interest payments are based. The notional amount is analogous to the principal amount of a loan because interest payments are based on the notional amount. However, unlike a loan contract, the notional amount is never paid as would be the case with the principal of a loan. Only the periodic interest payments (based on the fixed and floating rates) are exchanged in an interest rate swap. For example, a swap contract may involve party A paying a fixed rate of 4% and counterparty B paying a floating rate of 3-month LIBOR. If the applicable LIBOR rate on a given payment date were 3% and the contract had a notional value of $1 million, party A would pay party B $10,000 on that payment date, which is the difference between A’s

[57] *See* BACMBIA-A0000064323.

obligation to pay 4% of $1 million and B's obligation to pay 3% of $1 million. One hundred thirty-one interest rate swaps based on a net notional amount of $56.46 billion were novated.[58]

140. *Interest rate swaptions* are financial options that give the owner the right, but not the obligation, to enter into an interest rate swap agreement at a future date. Eighty swaptions based on a net notional amount of $78.97 billion were novated.[59]

141. *Cancellable interest rate swaps* are interest rate swap agreements with an embedded option giving one party the right to terminate the swap without penalty before its maturity. Thirty-four cancellable interest rate swaps based on a net notional amount of $1.90 billion were novated.[60]

142. The interest rates swaps, interest rate swaptions, and cancellable interest rate swaps novated in the July 2008 Transactions were agreements to exchange the 3-month London Interbank Offered Rate of interest ("LIBOR") for a fixed rate of interest that varied from one swap to another.

143. *Forward rate agreements* ("FRAs") are "over-the-counter agreement[s] that a certain interest rate will apply to a certain principal during a specified future period of time."[61]

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[58] *See* BACMBIA-A0000064323.

[59] *See* BACMBIA-A0000064323.

[60] *See* BACMBIA-A0000064323.

[61] JOHN C. HULL, OPTIONS, FUTURES & OTHER DERIVATIVES 100 (5th ed. 2003). Over-the-counter transactions are bilateral transactions that do not take place on an exchange but directly between the parties to the transaction.

Twenty-six FRAs based on a net notional amount of -$49.10 billion were novated.[62] The FRAs used the 30-year constant maturity mortgage rate ("CMM" rate) as the rate to be applied in the future.[63]

144. *Cross-currency interest rate swaps* are agreements to exchange both (1) fixed or floating interest rate payments denoted in different currencies for a specified period; and (2) a final notional amount at a specified exchange rate.[64] The amounts of the payments are based on the notional amount of the swap as is the case for interest rate swaps described above. Nine cross-currency swaps based on a net notional amount of -$4.6 million were novated.[65]

145. *Total rate of return swaps* ("TRORS") are agreements to exchange fixed or floating interest rates plus spread for the return and any changes in price (i.e., capital gains or losses) on a reference asset for a fixed period of time. Six TRORS based on a net notional amount of $100 million were novated.[66] The TRORS were agreements to exchange the difference between AAA-rated commercial mortgage-backed security yields and AAA-rated corporate yields plus a fixed spread.[67]

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[62] *See* BACMBIA-A0000064323. Negative notional amounts represent short positions. Figure reported is the sum of the notional amounts of the individual positions of all the FRAs. I value each position separately.

[63] *See* BACMBIA-A0000064323.

[64] *See* "Cross currency interest rate swap" at "Glossary," International Swaps and Derivative Association website, http://www2.isda.org/functional-areas/research/Glossary/#c, most recently checked for availability on July 30, 2012.

[65] *See* BACMBIA-A0000064323. Negative notional amounts represent short positions. Figure reported is the sum of the notional amounts of the individual positions of all the cross-currency swaps. I value each position separately.

[66] *See* BACMBIA-A0000064323. Negative notional amounts represent short positions. Figure reported is the sum of the notional amounts of the individual positions of all the TRORS. I value each position separately.

[67] *See* BACMBIA-A0000064323.

146. *Credit default swaps* ("CDS") are agreements in which one party agrees to pay the other in the event of a default by a third party. CDS are essentially default insurance. Five CDS based on a net notional amount of $190.0 million were novated.[68] The five CDS contracts were investments in the publicly traded ABX index that tracks the price of insurance contracts on subprime mortgages.[69]

147. The types of derivatives novated in the July 2008 Transactions (with the possible exception of the TRORS and CDS contracts) are often termed "plain vanilla" derivatives because they are standard in their terms.

C.2 Description of Valuation Methodology for Novated Derivatives

148. I value the novated derivatives, except for the FRAs, using a *Bloomberg* terminal and *Bloomberg Professional*. *Bloomberg Professional* is a service provided by *Bloomberg LP* that provides financial analysis and financial data. It is accessed through the *Bloomberg* terminal and is widely used and relied on by financial institutions, investors, and scholars.[70, 71]

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[68] *See* BACMBIA-A0000064323. Negative notional amounts represent short positions. Figure reported is the sum of the notional amounts of the individual positions of all the CDS. I value each position separately.

[69] *See* BACMBIA-A0000064323.

[70] *Bloomberg*'s credit default swap (CDSW) and swap manager (SWPM) functions are utilized by market participants. The credit default swap function is "based on the ISDA [Standard] Model v1," which was "developed and supported in collaboration with Markit Group Ltd." Since the International Swaps and Derivatives Association ("ISDA") is the industry standard-setting body for over-the-counter derivatives, the *Bloomberg* function is implementing the industry standard model. The swap manager function is "a highly customizable swap pricing utility" and is "popular with large banks and institutional investors." *See* CDSW Function, *Bloomberg*; SWPM Function, *Bloomberg*; "About ISDA," ISDA website, http://www2.isda.org/about-isda/, most recently checked for availability on June 13, 2012; "The Bloomberg Terminal at a Glance," *Investopedia* website, October 13, 2011, http://www.investopedia.com/articles/professionaleducation/11/bloomberg-terminal.asp, most recently checked for availability on June 21, 2012.

[71] Forward rates for the CMM rate were not available on Bloomberg. I value the FRAs as described later in this section.

149. One of the services provided by *Bloomberg Professional* is a valuation tool to value contracts such as the novated derivatives. To value each novated derivative, I enter the relevant characteristics of the agreement. Based on the relevant contractual features of the derivative security and the prevailing market interest rate data, the *Bloomberg* valuation tool calculates values for the agreement in question.

150. For interest rate swaps, the relevant characteristics are the notional amount, trade date, maturity date, fixed coupon rate, floating coupon index and spread, and the valuation date.[72]

151. For interest rate swaptions, the relevant characteristics are the notional amount, trade date, maturity date, fixed coupon rate, floating coupon index and spread, type of optionality (i.e., European or American), and the valuation date.[73]

152. For cancellable swaps, the relevant characteristics are the notional amount, trade date, maturity date, fixed coupon rate, floating coupon index and spread, type of optionality (i.e., European or American), and the valuation date.

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[72] An interest rate swap can be used to transform a fixed or floating rate asset or liability to a floating or fixed-rate exposure and its value is always zero at initiation. Depending on the movement of the interest rates, the value of the swap can become positive or negative to its holder. *See* JOHN C. HULL, OPTIONS, FUTURES & OTHER DERIVATIVES 125–129, 136–137 (5th ed. 2003).

[73] A swaption allows the holder to enter into a swap at predetermined terms, which allows the holder "to benefit from favorable interest rate movements while acquiring protection from unfavorable interest rate movements." A swaption's value partly derives from its optionality, which, much like an option, has an "intrinsic value," which depends on the difference between the prevailing interest rate and the fixed rate in the swap, and a "time value," which depends on the "possibility of future favorable movements" in the interest rate. A longer maturity may allow for more future favorable movements. An American option, which "can be exercised at any time up to the expiration date," may allow the holder to capture any favorable movements in the interest rate before the expiration date. *See* JOHN C. HULL, OPTIONS, FUTURES & OTHER DERIVATIVES 6, 154, 521 (5th ed. 2003).

153. For cross-currency swaps, the relevant characteristics include the two currencies, the notional amounts, trade date, maturity date, fixed coupon or floating coupon index and spread for each of the two currencies, and the valuation date.

154. For TRORS, the relevant characteristics include the notional amount, trade date, maturity date, two reference indices and spread, and the valuation date.[74]

155. Finally, for CDS, the relevant characteristics include the notional amount, maturity date, reference entity, and the valuation date.

156. Since forward rate data for the CMM rate is not available through *Bloomberg*, I value the FRAs as the present value of their future cash flow. This valuation is based on the fundamental finance theory of no arbitrage and the relationship between forward rates and spot rates.[75]

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[74] I use *Bloomberg* Swap Manager's total return swap valuation function to value these securities. I use the Lehman Brothers 8.5+ Year AAA CMBS Index as the reference asset and the Lehman Brothers 8.5+ Year Investment Grade AAA Index as the funding rate. As neither index is available to me through *Bloomberg*, I use the Morgan Stanley U.S. Fixed Rate CMBS Super Senior AAA (Average Life 10 Years) Index ("MS Index") as a proxy for the reference asset, and the Merrill Lynch 10-15 Years AAA-rated U.S. Corporate Bond Total Return Index ("ML Index") as a proxy for the funding rate. Since the MS Index is a spread over the 10-Year US Treasury rate, I add the 10-Year US Treasury rate as of the relevant dates to the values of the MS Index. As the ML Index cannot be used in the *Bloomberg* function, I use the 1-month LIBOR as the funding rate and add a spread over the 1-month LIBOR to approximate the value of the ML Index. This derived spread, in conjunction with the additional spread inherent in the swap, is used to estimate the market value for the floating leg of the total return swap. The funding rate is called such because a total return swap is "usually used as a financing tools [sic]." A reference asset index receiver paying LIBOR plus 25 basis points is "in the same position as it would have been if it had borrowed money at LIBOR plus 25 basis points to buy the bond." *See* JOHN C. HULL, OPTIONS, FUTURES & OTHER DERIVATIVES 644-45 (5th ed. 2003).

[75] First, I subtract the fixed rate from the CMM rate as of July 1, 2008, and multiply this difference by the notional amount. I use the spot CMM rate as a proxy for the forward CMM rate, because forward rates for the CMM rate are unavailable to me through *Bloomberg*. Using the spot rate in place of the forward rate assumes a flat yield curve. Under expectations theory, "a forward interest rate corresponding to a certain future period is equal to the expected future zero interest rate for that period." *See* JOHN C. HULL, OPTIONS, FUTURES & OTHER DERIVATIVES 102 (5th ed. 2003). The product of the interest rate difference and the notional amount represents the future value of the FRA at the maturity date of the contract. Therefore, I discount this future value to obtain the present value of the FRA as of July 1, 2008. The discount rate used is a linearly interpolated USD Swaps Curve as obtained from *Bloomberg* (the US023 interest rate curve).

157. The valuation tool obtains the prevailing market interest rate data for each contract from *Bloomberg*'s database. The data used are based on observed market trades and other data available to *Bloomberg* as of the valuation date. In this instance, that date is July 1, 2008.

158. In essence, the methodology is a variant of the comparable-asset valuation methodology because values are derived relative to prevailing market rates. I use this procedure to estimate the fair market value of the novated derivatives.

159. I sum the values of the individual novated derivatives to obtain the total fair market value of the novated derivatives portfolio.

C.3 Fair Market Value of Novated Derivatives

160. As shown in Exhibit 7, as of July 1, 2008, the estimated fair market value of the interest rate swaps was -$477.4 million, the estimated fair market value of the interest rate swaptions was $1.74 billion, the estimated fair market value of the cancellable swaps was $43.4 million, the estimated fair market value of the FRAs was -$290.1 million, the estimated fair market value of the cross-currency swaps was $454.5 million, the estimated fair market value of the TRORS was $0.4 million, and the estimated fair market value of the CDS was -$6.2 million. In total, the estimated fair market value of the derivatives novated in the July 2008 Transactions was $1.46 billion.

161. In my opinion, the fair market value of the derivatives novated in the July 2008 Transactions was $1.46 billion.

D. Valuation of Commercial Real Estate Loans Sold

162. In this subsection, I value commercial real estate loans that were sold by CCREF to NB Holdings as part of the July 2008 Transactions.

D.1 Description of Commercial Real Estate Loans Sold

163. On July 3, 2008, CCREF, a Countrywide-legacy entity, sold a portfolio of 26 commercial real estate mortgage loans and commercial real estate mezzanine loans to NB Holdings.[76]

164. Additionally, on July 31, 2008, CCREF and Countrywide Bank sold seven commercial loans to NB Holdings.[77]

165. Commercial real estate mortgage loans are loans collateralized by commercial real estate. Commercial real estate mezzanine loans are loans backed by commercial real estate that have an indirect claim on the underlying commercial real estate.

166. The 26 loans sold on July 3, 2008 had a combined UPB of $258.2 million plus $1.1 million of accrued interest for a total of $259.3 million. The properties underlying the loans were located in Arkansas, Arizona, California, Florida, Georgia, Hawaii, Illinois, New York, Pennsylvania, South Carolina, Texas, and Utah.[78]

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[76] *See* Countrywide Financial Corporation, Current Report (Form 8-K), at 5 (July 8, 2008); Countrywide Financial Corporation, Current Report (Form 8-K/A) Exhibit 99.1, at 7-8 (September 17, 2008). *See also* July 3, 2008 Commercial Real Estate Loan Purchase and Sale Agreement (BACMBIA-C0000161613–628). This portfolio also had one commitment to make a future loan. I do not value that commitment in this analysis.

[77] *See* BACMBIA-R0000006283–6301.

[78] *See* BACMBIA-C0000161613 at BACMBIA-C0000161613–628.

167. The seven loans sold on July 31, 2008 had a combined UPB of $42.8 million plus $0.2 million of accrued interest for a total of $42.9 million. The properties underlying the loans were located in Colorado, Hawaii, Maryland, New York, and Texas.[79]

D.2 Description of Valuation Methodology for Commercial Real Estate Loans Sold

168. To value the commercial real estate loans sold, I use the comparable-asset valuation methodology. As the comparable asset, I use commercial mortgage-backed securities ("CMBS") that underlie the *Markit* CMBX index.

169. I use independent third-party evaluated prices of CMBS to value the commercial real estate loans sold.

D.3 Identification of Comparable Assets

170. The CMBX index is a "synthetic tradeable index referencing a basket of 25 commercial mortgage-backed securities."[80] According to *Markit*, the index has "become a widely used benchmark for the performance of CMBS."[81]

171. CMBS are trusts that hold portfolios of commercial real estate loans and issue claims against the cash flows generated by the loans. Each of the 25 CMBS underlying the CMBX consists of at least 50 separate commercial real estate mortgages from at least 10

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[79] *See* BACMBIA-R0000006283–6301; BACMBIA-Y0000028659–77; BACMBIA-Y0000028678; BACMBIA-Y0000028679.

[80] "Products & Services – Indices – Markit Structured Finance Indices," *Markit* website, http://www.markit.com/en/products/data/indices/structured-finance-indices/cmbx/cmbx.page, most recently checked for availability on June 13, 2012.

[81] "Products & Services – Indices – Markit Structured Finance Indices," *Markit* website, http://www.markit.com/en/products/data/indices/structured-finance-indices/cmbx/cmbx.page, most recently checked for availability on June 13, 2012.

unaffiliated borrowers. Further, the properties underlying the loans cannot be heavily concentrated in one state nor can more than 60% of the properties underlying the loans be of the same type.[82]

172. The economic structure of CMBS is analogous to that of RMBS described in subsection VIII.B. As with RMBS, CMBS cash flows are allocated among different tranches and receive payments based on seniority. Also, as with RMBS, CMBS tranches receive credit ratings. According to the value additivity principle, the total value of a given CMBS (which approximates the value of the commercial loans underlying the CMBS) can be constructed as the sum of the values of its tranches.

173. As of July 2008, the CMBX index had five series.[83] The series represent CMBS by year of issuance, called "vintage." The Series 1 CMBX was issued on March 7, 2006.[84] The subsequent Series were issued at approximately six-month intervals following March 7, 2006, such that Series 5 was issued on May 22, 2008.[85]

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[82] *Markit, CMBX Indices.The New Commercial Mortgage Backed Credit Default Swap Benchmark Indices,* at 18 (March 2006), *available at* http://www.markit.com/assets/en/docs/products/data/structured-finance/Documentation/CMBX_Marketing_Presentation.pdf, most recently checked for availability on June 22, 2012.

[83] "Products and Services – Indices – Market Credit and Loan Indices – Credit Index Annex Archives – Markit CMBX," *Markit* website, http://www.markit.com/en/products/data/indices/credit-and-loan-indices/index-annexes/annexes-archive.page?, most recently checked for availability on June 21, 2012; "Products and Services – Indices – Market Credit and Loan Indices – Credit Index Annexes – Markit CMBX," *Markit* website, http://www.markit.com/en/products/data/indices/credit-and-loan-indices/index-annexes/annexes.page?, most recently checked for availability on June 21, 2012.

[84] Annex for CMBX Index CMBX.NA.AAA.1, *available at* http://www.markit.com/assets/en/docs/products/data/indices/credit-index-annexes/CMBX.NA.AAA.1.pdf. The date of issuance of the AAA class of the series is assumed to be the date of issuance of all the classes in that series.

[85] Annex for CMBX Index CMBX.NA.AAA.1, *available at* http://www.markit.com/assets/en/docs/products/data/indices/credit-index-annexes/CMBX.NA.AAA.1.pdf; Annex for CMBX Index CMBX.NA.AAA.2, *available at* http://www.markit.com/assets/en/docs/products/data/indices/credit-index-annexes/CMBX.NA.AAA.2.pdf; Annex for CMBX Index CMBX.NA.AAA.3, *available at* http://www.markit.com/assets/en/docs/products/data/indices/credit-index-annexes/CMBX.NA.AAA.3.pdf; Annex for CMBX Index CMBX.NA.AAA.4, *available at* http://www.markit.com/assets/en/docs/products/data/indices/credit-index-annexes/CMBX.NA.AAA.4.pdf; Annex for CMBX Index CMBX.NA.AAA.5, *available at* http://www.markit.com/assets/en/docs/products/data/indices/credit-index-

174. I identify the CMBS that underlie each CMBX Series from the *Markit* website and obtain CUSIPs of all tranches underlying each CMBS using the *ABSNet* database.[86] Analogous to RMBS, CMBS have P&I tranches, PO tranches, IO tranches, and equity tranches. Also analogous to RMBS, CMBS have rated and unrated tranches. I use the prices of all tranches to construct the price of the entire CMBS.

175. I search *Capital IQ* for prices for each tranche (identified by CUSIP) of each CMBS as of July 3, 2008 and July 31, 2008. *Capital IQ* is an electronic research platform owned by *S&P* that provides financial information and data.[87]

176. *Capital IQ* provides evaluated prices from *IDC*, which describes its prices as its "independent evaluations [that] represent its good faith opinion as to what a buyer in the marketplace would pay for a security (typically in an institutional round lot position) in a current sale" with the objective "to detect and reflect market activity, which typically relates only to a fraction of the outstanding fixed income securities, and to extrapolate that

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annexes/CMBX.NA.AAA.5.pdf. The date of issuance of the AAA class of the series is assumed to be the date of issuance of all the classes in that series.

[86] The AM index was not available as of the July 2008 Transaction and is excluded. The AAA through BB indices were available as of the July 2008 Transaction. "Products and Services – Indices – Market Credit and Loan Indices – Credit Index Annex Archives – Markit CMBX," *Markit* website, http://www.markit.com/en/products/data/indices/credit-and-loan-indices/index-annexes/annexes-archive.page?, most recently checked for availability on June 21, 2012; "Products and Services – Indices – Market Credit and Loan Indices – Credit Index Annexes – Markit CMBX," *Markit* website, http://www.markit.com/en/products/data/indices/credit-and-loan-indices/index-annexes/annexes.page?, most recently checked for availability on June 21, 2012.

[87] "About Us," *Standard & Poor's* website, http://www.standardandpoors.com/about-sp/main/en/us, most recently checked for availability on June 19, 2012; "Who We Are," *Capital IQ* website, https://www.capitaliq.com/home/about-us.aspx, most recently checked for availability on June 21, 2012. *See also,* "The Data Page," *NYU Stern School of Business: Damodaran Online* website, http://pages.stern.nyu.edu/~adamodar/New_Home_Page/data.html, most recently checked for availability on June 19, 2012; "Inside Market Data Awards 2012," *incisivemedia* website, http://events.insidemarketdata.com/awards/static/2012-winners, most recently checked for availability on June 21, 2012.

information using its models and methodologies to the population of bonds for which market activity is not available."[88]

177. Summary data for the CMBS for which prices are available, the tranches, and the tranche prices are given in Exhibits 8A and 8B.

178. Prices for P&I and PO tranches are quoted as a percentage of face value. Thus, a price of 75.50 means that the investor pays $75.50 per $100.00 of par or face value then outstanding for the tranche. For IO tranches, prices are quoted as a percentage of the tranche's notional amount. Prices of equity tranches can be quoted as a percentage of face value or a percentage of the notional amount of the tranche.

179. I calculate the value of each tranche using prices for the tranche and the UPB of the tranche for P&I and PO tranches, the notional amount for IO tranches, and the principal or notional amount for equity tranches as appropriate. I sum the values of the tranches to determine the total value of the CMBS.

180. For six CMBS, prices are available for every tranche in the structure as of both July 3, 2008 and July 31, 2008.

181. In those CMBS in which there is a tranche with no price available, I search for other tranches of the same type (i.e., P&I, PO, IO, or equity) with available prices and the same credit rating in the same CMBS. If there are other tranches of the same type with available

[88] "Products and Services – Evaluation Services," *Interactive Data* website, http://www.interactivedata.com/index.php/productsandservices/content/id/Evaluation+Services, most recently checked for availability on June 20, 2012. *See also*, "Products and Services – Evaluation Services – Evaluation Methodologies," *Interactive Data* website, http://www.interactivedata.com/index.php/Contents/show/content/EvalMeth, most recently checked for availability on June 20, 2012.

prices and the same credit rating in the same CMBS, I use the median price of those other tranches as the price of the tranche for which no price is available. If no such tranches with prices can be identified, I search for tranches of the same type with the next higher credit rating in the same CMBS for which a price is available. I use the minimum prices of tranches with the next higher rating as the price of the tranche in question. If no such tranches with prices are identified, I consider tranches with next higher rating, and so on. So, for example, if no price is available for a P&I tranche rated AA-, I identify the median price of the other P&I tranches rated AA- of the same CMBS as the price of the AA- P&I tranche for which no price is available. If there are no other AA- tranches with prices available, I use the minimum price of P&I tranches rated AA from the same CMBS. For tranches that are not rated or have no credit rating, I use the lowest price of the lowest rated tranches with available prices within each given CMBS. Using this procedure, I have assembled sufficient pricing data to calculate prices for an additional 18 of the 118 CMBS underlying the CMBX indices as of July 3, 2008 and July 31, 2008.

182. Therefore, I have assembled sufficient pricing data to calculate prices for 24 of the 118 CMBS underlying the CMBX indices as of July 3, 2008 and July 31, 2008.

183. In those instances where sufficient pricing data are not available to calculate a price for the CMBS, it is because there are certain tranche types, typically equity or IO tranches, for which no pricing data are available from *Capital IQ* for any rating of that type of tranche in that CMBS.[89]

[89] I do not require that tranches with a zero current balance have a price.

184. To calculate the valuation ratio for each CMBS as of July 3, 2008, and July 31, 2008, I first calculate the value of individual P&I and PO tranches by multiplying the price of the tranche by the UPB of the tranche. For IO tranches, I multiply the price of the IO by the notional value. For equity tranches, I multiply the price by the face value or the notional value depending on the particulars of the tranche. I sum the values of the tranches for each CMBS to obtain the aggregate value of the CMBS. Finally, I calculate the price of the CMBS (i.e., its valuation ratio) by dividing the value of the CMBS by the UPB of the loans underlying the CMBS.

185. The prices (or valuation ratios) of the CMBS thus obtained are given in Exhibit 9. For the six CMBS for which prices are available for every tranche as of July 3, 2008, the prices of the CMBS range from 91.51 to 92.95 with a median of 92.21. For the 18 CMBS for which prices are calculated using the algorithm described above, the prices range from 88.11 to 96.82 with a median of 91.33 as of July 3, 2008. In combination, the median price of all 24 CMBS is 91.86.

186. For the six CMBS for which prices are available for every tranche as of July 31, 2008, the prices of the CMBS range from 89.55 to 91.57 with a median of 90.71. For the 18 CMBS for which prices are calculated using the algorithm described above, the prices range from 86.13 to 95.61 with a median of 89.77 for July 31, 2008. In combination, the median price of all 24 CMBS is 90.51.

187. To estimate the value of the commercial real estate loans sold on July 3, 2008, I multiply the UPB of the commercial real estate loans of $258.2 million by the median valuation ratio of the CMBS of 91.86 on July 3, 2008 and add the accrued interest of $1.1 million.

As shown in Exhibit 10, this calculation yields a value of $238.3 million. To estimate the value of the commercial real estate loans sold on July 31, 2008, I multiply the UPB of the commercial real estate loans of $42.8 million by the median valuation ratio of the CMBS of 90.51 on July 31, 2008 and add the accrued interest of $0.2 million. As shown in Exhibit 10, this calculation yields a value of $38.9 million.

D.4 Fair Market Value of Commercial Real Estate Loans Sold

188. In my opinion, a reasonable estimate of the fair market value of the commercial real estate loans sold by CCREF to NB Holdings in the July 2008 Transactions was $277.2 million ($238.3 million + $38.9 million = $277.2 million) as of the dates of the transactions.

E. Valuation of Mortgage-Backed Securities Sold

189. In this subsection, I value a portfolio of mortgage-backed securities ("MBS") that Countrywide Securities Corporation sold to Blue Ridge Investments, LLC, a BofA-legacy entity, in the July 2008 Transactions. On July 2, 2008, Countrywide-legacy entities sold a portfolio containing 168 different MBS.[90]

E.1 Description of Mortgage-Backed Securities Sold

190. The securities sold are tranches of RMBS and CMBS sponsored by a number of private and government-affiliated institutions. The government-affiliated institutions are the Federal National Mortgage Association ("Fannie Mae"), the Government National Mortgage

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[90] BACMBIA-A0000064881; Countrywide Financial Corporation, Current Report (Form 8-K) at 5 (July 8, 2008); Countrywide Financial Corporation, Current Report (Form 8-K/A) Exhibit 99.1, at 7-8 (September 17, 2008).

Association ("Ginnie Mae"), and the Federal Home Loan Mortgage Corporation ("Freddie Mac").

191. The 168 securities appear to have comprised the "Trading Securities Owned" by Countrywide Securities Corporation.[91] These securities had a book value of $186.7 million as of June 30, 2008.[92]

192. Using the securities' CUSIPs, I am able to locate more detailed information for 161 of the 168 securities using the *ABSNet* database, the *Bloomberg* terminal, and *Capital IQ*. I am not able to obtain information (such as whether a given security is a residual tranche or a P&I tranche) for the remaining seven securities, which I have consequently not independently valued in this report. These seven securities are included in the totals for the July 2008 Transactions at a value of $1.8 million—an internal value assigned by Countrywide-legacy entities to the securities as of June 30, 2008.[93]

193. Among the 161 securities for which I am able to obtain additional information, 13 were RMBS sponsored by Fannie Mae, Ginnie Mae, or Freddie Mac. The other 148 were sponsored by private issuers. Of the 148 securities that were sponsored by private issuers, 142 were tranches of RMBS and six were tranches of CMBS, as shown in Exhibit 11. I first describe the valuation of the RMBS tranches. I then describe the valuation of the CMBS tranches.

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[91] BACMBIA-A0000064881; BACMBIA-R0000006045.

[92] The balance sheet for Countrywide Securities Corp. shows "Trading Securities Owned" of $186.7 million as of June 30, 2008. *See* BACMBIA-R0000006045.

[93] These seven securities account for 1.2% of the total book value of the MBS portfolio as of June 30, 2008. *See* BACMBIA-A0000064881.

E.2 Description of Valuation Methodology: RMBS

194. For those RMBS tranches for which independent third-party evaluated prices are available, I use these to value the securities sold. I use independent third-party evaluated prices from *S&P*, *IDC*, and *Bloomberg*. When such prices are not available, I use the comparable-asset methodology to value the securities.

195. Eleven of the Fannie Mae, Ginnie Mae, and Freddie Mac securities sold are portions of simple pass-through securities with pro rata claims to both principal and interest from the underlying residential mortgage loans. Of these 11 Fannie Mae, Ginnie Mae, and Freddie Mac securities, two had prices available from *Bloomberg* as of July 2, 2008.[94] The prices of these two pass-through securities were 105.1 as of July 2, 2008. I use these prices to value these two securities and the other nine Fannie Mae, Ginnie Mae, and Freddie Mac pass-throughs. The remaining two securities are tranches of a Fannie Mae whole loan collateralized mortgage obligation ("CMO").[95] I do not independently value these; the value assigned to these securities by Countrywide-legacy entities was $200 as of June 30, 2008.[96]

196. As I describe above, an RMBS represents a claim to cash flows from a pool of mortgage loans. In some instances, the loans are classified by category, including prime, subprime, Alt-A, second-lien, scratch and dent, reperforming, net interest margin, and home equity lines of credit ("HELOC").

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[94] Prices were available through *Bloomberg* for CUSIPs 31343ERA0 and 31344MMM0.

[95] Two of the 13 Fannie Mae, Ginnie Mae, and Freddie Mac securities are tranches of a Fannie Mae whole loan collateralized mortgage obligation. *See* BACMBIA-A0000064881.

[96] BACMBIA-A0000064881.

197. In many instances, prime mortgages are mortgages that meet underwriting standards set by Fannie Mae and Freddie Mac and are therefore eligible for sale and securitization in RMBS sponsored by government-affiliated entities.[97] Subprime mortgages are often loans made to borrowers with impaired credit.[98] Alt-A mortgages are "loans to prime-credit borrowers that have some combination of nontraditional documentation, non-standard product structure, or more liberal underwriting."[99] "Scratch and dent" mortgages are loans that did not meet underwriting criteria for inclusion in an RMBS before being offered for securitization in a special scratch and dent offering.[100] Reperforming mortgages are loans that were delinquent in the past but have become current.[101] Net interest margin is the "securitization of excess cash flow from residential mortgage-backed securitizations ('RMBS') effected by the re-securitization of economic residual interests."[102] Home equity lines of credit ("HELOC") are loans that allow the "borrower to obtain cash drawn against the equity of his home."[103]

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[97] *See* "Prime Mortgage" at "Dictionary of Banking Terms," Barron's Educational Series Inc., 2006, available at "Prime Mortgage," All Business website, http://www.allbusiness.com/glossaries/prime-mortgage/4946139-1.html, most recently checked for availability on June 19, 2012.

[98] *See* "Subprime" at "Glossary," Inside Mortgage Finance website, http://www.insidemortgagefinance.com/glossary/, most recently checked for availability on June 19, 2012.

[99] *See* "Alt A" at "Glossary," Inside Mortgage Finance website, http://www.insidemortgagefinance.com/glossary/, most recently checked for availability on June 19, 2012.

[100] *See* "Scratch & Dent Loans" at "Glossary," Inside Mortgage Finance website, http://www.insidemortgagefinance.com/glossary/, most recently checked for availability on June 19, 2012.

[101] *See* "Reperforming Loans" at "Glossary," Inside Mortgage Finance website, http://www.insidemortgagefinance.com/glossary/, most recently checked for availability on June 19, 2012.

[102] "Net interest margin" available at Keith L. Krasney, *Legal Structure of Net Interest Margin Securities*, 13 THE JOUR. OF STRUCT. FIN. 54 (2007).

[103] *See* "HELOC" at "Glossary," Inside Mortgage Finance website, http://www.insidemortgagefinance.com/glossary/, most recently checked for availability on June 19, 2012.

198. As I also describe above, RMBS tranches can be classified according to whether the tranche receives principal and interest on a pro rata basis (P&I), receives principal only (PO), receives interest only (IO), or is a residual tranche that receives cash flows only after all the senior and subordinated tranches have been paid.

199. Exhibit 11 presents summary statistics by type of loans underlying the security and by type of tranche. Of the 148 securities shown in the exhibit, 34 are backed by prime loans, 39 are backed by Alt-A loans, eight are backed by subprime loans, two are backed by second-lien loans, and 65 are backed by a combination of scratch-and-dent loans, net interest margin securitizations, reperforming loans, HELOC, and CMBS. The types of tranches of the securities are also shown in the exhibit. For example, of the 39 securities backed by Alt-A loans, 36 are P&I securities and three are PO securities.

200. Of the 142 RMBS tranches issued by private issuers, prices are available for 39 from at least one of the independent pricing services.[104] I use these prices for these tranches. When a price is available from only one source, I use that price as the price of the tranche. When a price is available from two sources, I use the average of the two prices as the price of the tranche.

201. Of the 103 RMBS tranches for which no evaluated prices are available, I use the comparable-asset methodology.

202. I use Countrywide-sponsored RMBS as used in the residential mortgage loan analysis in subsection VIII.B to create a list of comparable securities. I use the median price of

[104] Exhibit 12.

securities that are comparable based on four characteristics in the following order: type of tranche (e.g., P&I, PO, IO, or equity), credit rating of the tranche, year of issuance, and loan category (e.g., prime, subprime, Alt-A, second-lien, scratch and dent, reperforming, net interest margin, and HELOC). For example, to value an AAA-rated tranche that pays both principal and interest that was issued in 2006 and backed by Alt-A loans, I first identify P&I tranches for which I have prices. Among these, I identify those that are AAA-rated. Then, among the AAA-rated P&I tranches, I identify those that were issued in 2006. Thus, I have a set of AAA-rated P&I tranches that were issued in 2006. Finally, I exclude those tranches that are not backed by Alt-A loans. For the tranches that remain, I calculate the median price. I use the median price of the comparable tranches to value the tranche in question.

203. With this comparable-asset methodology, I calculate prices for 32 tranches. I do so by matching on the four metrics described above. Note that the tranche must be rated for me to use these four criteria. The portfolio of RMBS sold also includes 65 unrated tranches.[105]

204. In instances in which there are no comparable securities based on the four criteria listed above, I use three criteria—tranche type, credit rating, and tranche issuance date—to identify matching tranches. Doing so yields matches for an additional four tranches. Again, I use the median price of matching tranches to value the tranche in question.[106]

[105] Exhibit 12.

[106] Exhibit 12.

205. For the two remaining tranches, I search for matching tranches on two criteria: tranche type and credit rating. I identify matching tranches for these two tranches. I use the median price of the matching tranches to estimate the value of the tranches in question. In this way, I identify matching tranches for 38 of the 142 RMBS tranches issued by private issuers.[107]

206. To value the 65 unrated tranches without evaluated prices, I follow a comparable security methodology similar to the one I describe above for rated tranches. I identify comparable tranches based on tranche type, year of issuance, and category of loan among the unrated Countrywide-sponsored RMBS. I am able to identify comparable matching tranches for five of the unrated tranches with these three criteria. For 32 tranches, I identify comparable tranches by matching on type of tranche and year of issuance. I identify comparable matching tranches for 28 unrated tranches by matching only on tranche type.[108]

E.3 Description of Valuation Methodology: CMBS

207. To value the tranches of CMBS, I use evaluated prices from *IDC* that were obtained through *Capital IQ*.

208. The CMBS tranches include one P&I tranche, three IO tranches, and two tranches that provide a pro rata claim to prepayment penalties.[109]

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[107] Exhibit 12.

[108] Exhibit 12.

[109] Exhibit 11.

209. To value the P&I CMBS tranche (with CUSIP 60688BAU2), I first search *Capital IQ* for evaluated prices. Because there is no price available for this tranche, I value it using a comparable security methodology. In subsection VIII.D, I describe CMBS underlying the *Markit* index. I use the tranches of the CMBS described in Section VIII.D to identify comparable securities.

210. The P&I CMBS tranche is rated BBB. The CMBS was issued in 2007. To value the tranche, I search among all BBB-rated P&I tranches of CMBS that were referenced by the CMBX indices and issued in 2007 for which I have prices as of July 2, 2008. I use the median of these prices as the value of the CMBS P&I tranche.

211. I am able to find an evaluated price from *IDC* for one of the IO CMBS tranches in *Capital IQ*. For that IO tranche, I use the *IDC* evaluated price. I do not assess a value for the other two IO tranches. The value assigned to these two securities by Countrywide-legacy entities was $138,368 as of June 30, 2008.[110]

212. I was not able to find a price for the two CMBS tranches that provided a pro rata claim to prepayment penalty payments. Further, the tranches were not rated by any major credit rating agency. I am unable to identify comparable securities with which to value these tranches. Therefore, I do not independently value them in my report; the value assigned to these two securities by Countrywide-legacy entities was $30,659 as of June 30, 2008.[111]

E.4 Fair Market Value of Mortgage-Backed Securities

[110] BACMBIA-A0000064881.

[111] BACMBIA-A0000064881.

213. Based on the analysis described above, I estimate the fair market value of the 155 securities for which I am able to assess a value to be $251.1 million. In addition, there were 13 securities for which I do not have enough information to assess values. These securities are included in the totals for the July 2008 Transactions at a value of $1.9 million, which is the value assigned to them as of June 30, 2008 by Countrywide-legacy entities.[112]

F. Valuation of Mortgage Servicing Rights Sold

214. In this subsection, I value mortgage servicing rights that were sold by CHL to BAC in the November 2008 Transactions. Specifically, in the November 2008 Transactions, CHL sold MSRs to BAC as part of the sale of CHL's other assets.[113]

F.1 Description of MSRs Sold

215. The rights to service a mortgage loan are created when a loan is "originated and subsequently sold in the secondary market, [and] a servicer agrees to collect the periodic payments [associated with the loan] from the borrower and pass the payments through to the holder of the loan. In return, the servicer retains a portion of each payment as a servicing fee."[114] To the extent that the servicing fees received by the loan servicer exceed the cost of servicing the loan, MSRs can be valuable assets.

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[112] BACMBIA-A0000064881.

[113] "Subject to the terms and conditions of this Agreement, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all of Seller's right, title and interest as of immediately prior to the Closing in and to all of the tangible and intangible assets, properties, rights and interests owned, of Seller, wherever located including the Servicing Rights…" *See* Asset Purchase Agreement by and between BAC and CHL (BACMBlA-C0000168182).

[114] Leonard D. Van Drunen & John McConnell, *Valuing Mortgage Loan Servicing*, 1 J. OF REAL ESTATE FINANCE AND ECONOMICS 5–22 (1988).

216. The MSRs sold by CHL in the November 2008 Transactions were the rights and obligations to service residential mortgage loans with a UPB of $23.07 billion.[115]

F.2 Description of Valuation Methodology for MSRs Sold

217. The value of MSRs depends on the expected future servicing fees less the expected future cost of servicing the loans. In most instances, the servicing fee is calculated as a fraction of the UPB of the loans being serviced. Thus, holding all else equal, the value of MSRs is directly related to the UPB of the loans being serviced. Because the servicer is responsible for dealing with delinquencies and defaults of the loans being serviced, in general, the cost of servicing loans depends, among other factors, on the level of delinquencies and defaults of the loans.

218. To value the MSRs sold to BAC, I use the comparable-asset valuation methodology. More specifically, in their financial filings, publicly traded mortgage servicers often report two key statistics: (1) the fair value of their MSRs and (2) the UPBs of the loans being serviced. I calculate the ratio of the reported fair value of the MSRs to the UPBs of the loans being serviced for publicly traded mortgage servicers. I use this ratio (henceforth, the "MSR-to-UPB ratio") as the valuation ratio for assessing the value of the MSRs sold in the November 2008 Transactions.

219. To begin, I identify publicly traded mortgage servicers. From these servicers' financial statements, I collect the reported fair value of their MSRs and the UPBs of the loans being serviced. With these data, I calculate the MSR-to-UPB ratio for each servicer. I then use

[115] BACMBIA-V0000028409.

these ratios as the dependent variable in a regression analysis. The result of the regression analysis is an equation for predicting the MSR valuation ratio. I use this equation to predict a valuation ratio for the MSRs sold by CHL to BAC in the November 2008 Transactions. I use this predicted ratio to estimate the value of the MSRs sold.

F.3 Identification of Comparable Mortgage Servicers

220. To calculate the valuation ratio, I identify comparable mortgage servicers. To do so, I use the list of the "Top 50 Mortgage Servicers in 2008" (henceforth, the "Top 50 Servicers") published by *Inside Mortgage Finance*.[116] I use the Top 50 Servicers because CFC was one of the largest mortgage servicers in the United States at the time.[117]

221. I search to determine which of the servicers from the Top 50 Servicers are publicly traded or are owned by holding companies that were publicly traded as of November 7, 2008 (henceforth, "mortgage servicers"),[118] because I require access to their publicly available financial statements for my analysis. Of the Top 50 Servicers, 40 were publicly traded as of November 7, 2008. Of these 40 comparable companies, 19 had data available from publicly available financial statements to determine their MSR-to-UPB ratios. These 19 mortgage servicers are listed in Exhibit 13.

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[116] INSIDE MORTGAGE FINANCE PUBLICATIONS INC., 1 THE 2011 MORTGAGE MARKET STATISTICAL ANNUAL 198 (2011).

[117] CFC ranks first on the list of the "Top 40 Mortgage Servicers in 2007." I exclude BAC from the analysis as its data for the quarterly period ended September 30, 2008, includes the transferred Countrywide assets.

[118] Of the Top 50 Mortgage Servicers that were subsidiaries of publicly traded holding companies, none experienced a change in the holding company between July 2, 2008, and November 7, 2008, the date of CHL's MSR sale. I identified holding companies using information from the National Information Center website that collects Federal Reserve System data on financial institutions and from *Capital IQ*. *See* "Institution Search," National Information Center website, http://www.ffiec.gov/nicpubweb/nicweb/SearchForm.aspx, most recently checked for availability on June 19, 2012, and the *Capital IQ* website, https://www.capitaliq.com/, most recently checked for availability on June 19, 2012.

222. For each of the 19 servicers, I accessed its financial statements filed with the Securities and Exchange Commission ("SEC") through *Capital IQ*. I accessed its most recent fiscal quarter-end financial statement before November 7, 2008. For each entity, from its SEC filings, I collect the fair value of its MSRs and the reported UPB of its residential mortgage loan servicing portfolio as of the most recent financial-filing quarter-end before November 7, 2008.[119] These are given in columns 6 and 7 of Exhibit 13, respectively.

223. In their financial filings, the mortgage servicers describe the methodologies used to value their MSRs.

224. As one example, in its 10-Q for the fiscal quarter ending September 30, 2008, Flagstar Bancorp, Inc. comments on the valuation of its MSRs:

> This approach consists of projecting servicing cash flows under multiple interest rate scenarios and discounting these cash flows using risk-adjusted discount rates. The key assumptions used in the valuation of residential MSRs include mortgage prepayment speeds and discount rates. Management periodically obtains third-party valuations of the residential MSR portfolio to assess the reasonableness of the fair value calculated by its internal valuation model.[120]

225. As a second example, National City Corporation describes the valuation of its residential MSR portfolio in its 10-Q for the fiscal quarter ending September 30, 2008 as:

> The fair value of MSRs is estimated using a valuation model that calculates the present value of estimated future net servicing cash flows, taking into consideration actual and expected mortgage loan prepayment rates, discount rates, servicing costs, and other economic factors, which are determined

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[119] When the fair value for the residential mortgage servicing portfolio is not available, I use the fair value of the company's entire MSR portfolio. When the UPB of the residential mortgage servicing portfolio is not available, I use the UPB of the company's entire MSR portfolio.

[120] Flagstar Bancorp, Inc., Quarterly Report (Form 10-Q), at 14 (November 10, 2008).

> based on current market conditions. Expected mortgage loan prepayment assumptions are estimated by an internal proprietary model and consider empirical data drawn from the historical performance of the Corporation's managed loan servicing portfolio.[121]

226. Finally, in its 10-Q for the fiscal quarter ending September 30, 2008, Wells Fargo & Company states:

> We use a dynamic and sophisticated model to estimate the fair value of our MSRs and periodically benchmark our estimates to independent appraisals. While the valuation of MSRs can be highly subjective and involve complex judgments by management about matters that are inherently unpredictable, changes in interest rates influence a variety of significant assumptions included in the periodic valuation of MSRs. Assumptions affected include prepayment speed, expected returns and potential risks on the servicing asset portfolio, the value of escrow balances and other servicing valuation elements impacted by interest rates.[122]

227. I calculate the valuation ratio for each mortgage servicer by dividing the fair value of its MSRs in column 6 of Exhibit 13 by the UPB of its servicing portfolio in column 7. The MSR-to-UPB ratios for the 19 servicers are given in column 8.

228. The ratios range from 0.44% to 2.50% with a median value of 1.27%. The UPB of the mortgage loans in the servicing portfolio sold by CHL to BAC in the November 2008 Transactions was $23.07 billion. Multiplying the median MSR-to-UPB ratio of 1.27% by the UPB of the CHL servicing portfolio of $23.07 billion yields a value of $293.8 million for the MSRs sold.

F.4 Adjusting for Characteristics That Affect Valuation Ratios

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[121] National City Corporation, Quarterly Report (Form 10-Q), at 33 (November 6, 2008).

[122] Wells Fargo & Company, Quarterly Report (Form 10-Q), at 28–29 (October 30, 2008).

229. A factor that plays a key role in the valuation of MSRs is the cost of servicing. That cost is often directly related to the "quality" of the loans being serviced. In particular, in addition to collecting monthly payments and passing these through to the holder of the loan, one of the major responsibilities of the mortgage servicer is to deal with mortgage loan delinquencies and defaults by taking steps to preserve the value of the collateral property and managing the foreclosure process. In general, holding all else equal, the greater the level of loan delinquencies and defaults on the loans being serviced, the greater the cost of servicing the loans to the mortgage servicer. Further, the greater the cost of servicing, the lower the value of the MSRs.

230. To account for the influence of delinquencies and foreclosures on the valuation of MSRs, I conduct a regression analysis. In the regression analysis, the dependent variable to be predicted is the valuation ratio of MSR-to-UPB for each servicer. The predictor variable is each servicer's delinquency ratio for the loans in its servicing portfolio. I describe the delinquency ratio below.

231. Data on "Large Mortgage Servicers in 2008" as provided in the *2011 Mortgage Market Statistical Annual* include delinquency and foreclosure rates for 15 large servicers for the year ended December 31, 2008.[123] Servicing volume is the dollar amount of UPB of loans being serviced as of the year end, December 31, 2008.[124] A subsidiary of BAC is one of the servicers on the list. I exclude this entity from the regression analysis for the November

[123] INSIDE MORTGAGE FINANCE PUBLICATIONS INC., 1 THE 2011 MORTGAGE MARKET STATISTICAL ANNUAL 231 (2011).

[124] For one servicer, Residential Capital, LLC, the servicing volume only represents mortgage loans held for investment. *See* INSIDE MORTGAGE FINANCE PUBLICATIONS INC., 1 THE 2011 MORTGAGE MARKET STATISTICAL ANNUAL 231 (2011).

2008 Transactions. Nine of the remaining 14 servicers are publicly traded or are subsidiaries of publicly traded holding companies and are, therefore, also included in Exhibit 13. For these nine servicers, MSR-to-UPB ratios and the rates of delinquencies and foreclosures are available.[125]

232. Delinquency data are reported in the *2011 Mortgage Market Statistical Annual* as a proportion of loans that are delinquent, classified by number of days that a loan is delinquent. The categories are 30–60 days delinquent, 60–90 days delinquent, and delinquent 90 days or longer. The data are presented on an annual basis for the calendar year ended December 31, 2008. The *2011 Mortgage Market Statistical Annual* also reports the proportion of loans in foreclosure for the year ended December 31, 2008. Except as noted in the exhibit, the reported delinquency ratios are calculated as the UPB of the delinquent and foreclosed loans divided by the UPB of the loans being serviced as of year-end December 31, 2008.[126]

233. I calculate the mortgage delinquency ratio used in my regression analysis as the sum of the proportion of loans in foreclosure and proportions of loans that were delinquent 30–60 days, 60–90 days, and 90 days or longer for each mortgage servicer's portfolio of loans being serviced for the year ended December 31, 2008. This ratio is given in column 9 of

[125] From "Large Mortgage Servicer Delinquency Rates in 2008," INSIDE MORTGAGE FINANCE PUBLICATIONS INC., 1 THE 2011 MORTGAGE MARKET STATISTICAL ANNUAL 231 (2011).

[126] Delinquency and foreclosure rates for these nine servicers are based on dollar volume of loans serviced for the year ended December 31, 2008, except for National City Mortgage Co., OH, whose holding company is National City Corporation, and Flagstar Bank, MI, whose holding company is Flagstar Bancorp, Inc. For these two companies, delinquency and foreclosure rates are calculated as the number of delinquent and foreclosed loans divided by the total number of loans being serviced as of year-end December 31, 2008. *See* INSIDE MORTGAGE FINANCE PUBLICATIONS INC., 1 THE 2011 MORTGAGE MARKET STATISTICAL ANNUAL 231 (2011).

Exhibit 13 for each of the ten servicers for which delinquency and foreclosure data are available. One of these companies is a subsidiary of BAC and is excluded from the regression.

234. As shown in Exhibit 13, the delinquency ratios for comparable servicers range from 4.40% to 42.10%. The total delinquency ratio for the MSR portfolio sold by CHL to BAC in the November 2008 Transactions was 21.34% as of November 2008.[127]

235. I estimate a regression for the nine servicers with the MSR-to-UPB ratio as the dependent variable and an intercept and the delinquency ratios from Exhibit 13 as the predictor variables. The regression allows me to adjust for the effect of delinquency ratios on the value of MSRs.

236. The coefficients of the regression along with their standard errors are given in Exhibit 14. With an F-statistic of 3.53, the regression is statistically significant. The coefficient of the total delinquency ratio is negative, indicating that a higher rate of delinquencies and defaults is associated with a lower valuation ratio.

237. I use the results of the regression along with the delinquency ratio for CHL's servicing portfolio to predict the MSR-to-UPB ratio for the MSRs sold to BAC in the November 2008 Transactions. As shown in Exhibit 15, the predicted ratio is 1.01%.

F.5 Fair Market Value of MSRs Sold

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[127] The total delinquency ratio is calculated as the UPB of delinquent loans divided by the total UPB of the loans in the servicing portfolio sold. *See* BACMBIA-V0000028409.

238. As shown in Exhibit 15, to estimate the fair market value of the MSRs sold by CHL to BAC in the November 2008 Transactions, I multiply the predicted MSR-to-UPB ratio of 1.01% by the UPB of $23.07 billion. The estimated fair market value of the MSRs sold to BAC in the November 2008 Transactions is therefore $233.0 million.

239. In my opinion, as of November 7, 2008, the fair market value of the MSRs sold by CHL to BAC in the November 2008 Transactions was $233.0 million as of the date of the transaction.

G. Reimbursable Mortgage Servicing Advances Sold

240. In this subsection, I describe reimbursable servicing advances sold by CHL to BAC in the November 2008 Transactions. CHL sold reimbursable servicing advances with a book value of $1.02 billion to BAC in the November 2008 Transactions.[128]

241. Reimbursable servicing advances arise when a servicer advances monthly payments of interest and principal to the holders of the mortgage loans being serviced before the servicer has received the payments from the borrower.[129]

242. In certain cases, the servicer is also obligated to pay property taxes and insurance premiums on the property. Such advances represent payments that the servicer anticipates receiving in the future from the borrower. If the borrower fails to pay as agreed, the servicer

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[128] BACMBIA-R0000006043.

[129] "As part of its loan servicing responsibilities, the Company is required to advance funds to cover delinquent scheduled principal and interest payments to security holders, as well as to cover delinquent tax and insurance payments and other costs required to protect the investors' interest in the collateral securing the loans." Countrywide Financial Corporation, Annual Report (Form 10-K), at F-98–99 (February 28, 2008). *See also* Adam J. Levitin & Tara Twomey, *Mortgage Servicing*, 28 YALE J. ON REG. 1, 47 (Winter 2011).

generally has a priority claim to the liquidation proceeds once the loan is foreclosed. Because of these terms, servicing advances are payments expected to be received in the future and are an asset of the mortgage servicer. Such advances are referred to as reimbursable servicing advances.

243. Many of the reimbursable servicing advances sold were associated with servicing RMBS. It is my understanding that reimbursable servicing advances are functionally the most senior claim in RMBS because the advances can be "entitled to repayment before any interest or principal is paid on the [RMBS] bonds."[130, 131]

244. According to its December 31, 2007 10-K filing with the SEC, CFC accounted for servicing advances "in other assets at realizable value."[132] I understand that this means that the servicing advances were reported at the amount advanced to the holders of the loans less an allowance for uncollectible servicing advances as determined by CFC.

245. The reimbursable servicing advances with a book value of $1.02 billion sold to BAC in the November 2008 Transactions are net of a loss reserve of $0.028 billion.[133] It is my understanding that loss reserves are created when it is probable that an asset's value will not be realized and when the amount of expected loss can be reasonably estimated.[134]

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[130] Adam J. Levitin & Tara Twomey, *Mortgage Servicing*, 28 YALE J. ON REG. 1, 47 (Winter 2011).

[131] Ocwen Financial Corporation, Annual Report (Form 10-K), at 4 (March 17, 2008).

[132] Countrywide Financial Corporation, Annual Report (Form 10-K), at F-99 (February 28, 2008).

[133] BACMBIA-R0000006043.

[134] It is my understanding that an account receivable is created when the servicer advances funds in the collection process. This account receivable may not be fully recovered, thus an allowance for such uncollectible portion of the receivable is created. "A servicer advances funds and incurs costs on behalf of investors during the collection process and during the time foreclosed property is administered as other real estate owned. An account receivable is normally established to account for these investor advances. The investor subsequently reimburses the servicer for much of the funds advanced and costs incurred… The bank

Thus, the gross amount of the reimbursable servicing advances (i.e., the amount actually advanced or paid out and the maximum amount that can be collected) was $1.02 billion plus $0.028 billion as of November 7, 2008.

246. It is my understanding that the upper bound for the amount of reimbursable advances that could have been recovered by BAC is the book value of $1.02 billion plus the loss reserve of $0.028 billion. Based on that understanding, it is my opinion that the maximum fair market value of the reimbursable advances sold in the November 2008 Transactions was $1.02 billion plus $0.028 billion, or $1.04 billion as of the date of the transaction. Because the advances may not have been reimbursed in full and because the advances would likely have been reimbursed with a delay, it is my opinion that the fair market value of the reimbursable servicing advances is likely to have been less (but not more) than $1.04 billion.[135]

should establish a 'foreclosure reserve' to provide for uncollectible investor advances. Using historical collection and disposal costs for each major product type as a guide, the foreclosure reserve should adequately cover expected losses." *See* COMPTROLLER OF THE CURRENCY, MORTGAGE BANKING: COMPTROLLER'S HANDBOOK 20 (1998). "[B]oth U.S. GAAP and IFRS require that sellers report account receivable *net* of the estimated uncollectible amount… Recognizing revenue before the seller collects cash requires *estimating* the amount of uncollectible accounts with reasonable accuracy. Both U.S. GAAP and IFRS require the **allowance method** for uncollectible accounts, which involves estimating the amount of uncollectible accounts receivable associated with each accounting period's credit sales. The firm recognizes this estimated account as an expense in the period of the sale, thereby matching expenses with associated revenue. The credit is to a contra-asset account, **Allowance for Uncollectibles**, that reduces *total* accounts receivable (**Accounts Receivable, Gross**) to the amount of cash the firm expects to collect from customers (**Accounts Receivable, Net**)." [emphasis in original] *See* CLYDE P. STICKNEY ET AL., FINANCIAL ACCOUNTING: AN INTRODUCTION TO CONCEPTS, METHODS, AND USES 316-17 (13th ed. 2010).

[135] It is my understanding that CHL established loss reserves for servicing advances it expected would not be repaid. *See* BACMBIA-G0000000053–66 at BACMBIA-G0000000063 ("Reserve is held for non-recoverable servicing advances on investor owned loans."). In addition, servicing advances were being written off during the relevant period (approximately $31 million in Q2 2008 and approximately $40 million in Q3 2008). *See* BACMBIA-I0000004385. *See also,* "Nationstar Mortgage Opens Down 3.1% Post-IPO," Marketwatch, March 8, 2012. ("The biggest risk facing Nationstar and other mortgage servicers is government crackdowns on the way foreclosures are being handled, which has resulted in the suspension of foreclosure procedures in several states, and delays and increased costs associated with foreclosures. Nationstar warns that more delays could occur, and could require it to make additional servicing advances or delay the recovery of those advances, which could hurt earnings and increase its need for capital.").

247. Although a reasonable argument can be made that the value of this asset should be discounted by some amount, for the purposes of aggregation of the values of the assets sold in the November 2008 Transactions, I include reimbursable servicing advances at $1.04 billion.

H. Valuation of Interest-Only and Principal-Only Securities Sold

248. In this subsection, I value IO and PO securities that were sold by Countrywide-legacy entities to BAC as part of the November 2008 Transactions. Countrywide Securities Holdings, Inc. (a Countrywide-legacy entity) sold four IO securities with a notional amount of $533.5 million to BAC.[136] CWIBH, Inc. (a Countrywide-legacy entity) sold 203 IO securities with a notional amount of $50.25 billion to BAC.[137] CHL sold 113 IO securities with a notional amount of $8.68 billion and 252 PO securities with a UPB of $472.6 million to BAC as part of the November 2008 Transactions.[138]

H.1 Description of the Interest-Only and Principal-Only Securities Sold

249. IO and PO securities are tranches of RMBS as described in subsection VIII.B.

250. The IO securities that were sold are claims to cash flows from RMBS. The typical IO security entitles its owner to receive only some fraction of the interest from the underlying pool, and, sometimes, a modest amount of principal. Consider the offering document for

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[136] November 7, 2008 IO Securities Purchase Agreement (BAC-CWSHI) at Schedule A (BACMBIA-C0000168411). Principal amount as of November 7, 2008 as obtained from *Bloomberg*.

[137] November 7, 2008, IO Securities Purchase Agreement (BAC-CWIBH) at Schedule A (BACMBIA-C0000168427–431). Principal amount as of November 7, 2008 as obtained from *Bloomberg*.

[138] November 7, 2008 IO Securities Purchase Agreement (BAC-CWSHI) at Schedule A (BACMBIA-C0000168411); November 7, 2008, IO Securities Purchase Agreement (BAC-CWIBH) at Schedule A (BACMBIA-C0000168427–431); BACMBIA-R0000005929. Principal amount as of November 7, 2008 as obtained from *Bloomberg*.

Countrywide Alternative Loan Trust 2005-73CB, which states that the "assets of the trust fund that will support both the offered certificates and other classes of certificates will consist, on the closing date, of a pool of mortgage loans with an aggregate stated principal balance of approximately $363,723,729 as of November 1, 2005 and certain other property and assets."[139] The offering document goes on to state that IO securities are:

> A class that receives some or all of the interest payments made on the underlying Mortgage Assets or other assets of the trust fund and little or no principal. Interest only classes have either a nominal principal balance or a notional amount. A nominal principal balance represents actual principal that will be paid on the class. It is referred to as nominal since it is extremely small compared to other classes. A notional amount is the amount used as a reference to calculate the amount of interest due on an interest only class that is not entitled to any distributions of principal.[140]

251. The PO securities sold are also claims to cash flows from RMBS. A typical PO security entitles its owner to receive a fraction of the principal repaid by borrowers of the underlying loans. The offering document for Countrywide Alternative Loan Trust 2005-73CB states that the "assets of the trust fund that will support both the offered certificates and other classes of certificates will consist, on the closing date, of a pool of mortgage loans with an aggregate stated principal balance of approximately $363,723,729, as of November 1, 2005 and certain other property and assets."[141] The offering document defines a principal-only security as:

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[139] Prospectus Supplement (Form 424B5), Mortgage Pass-Through Certificates, Series 2005-73CB, at S-3 (November 28, 2005).

[140] Prospectus Supplement (Form 424B5), Mortgage Pass-Through Certificates, Series 2005-73CB, at 33 (November 28, 2005).

[141] Prospectus Supplement (Form 424B5), Mortgage Pass-Through Certificates, Series 2005-73CB, at S-3 (November 28, 2005).

> A class that does not bear interest and is entitled to receive only distributions of principal.[142]

H.2 Description of Valuation Methodology

252. To value the IO and PO securities, I use independent third-party evaluated prices when such prices are available. For securities for which such prices are not available, I use a comparable-assets pricing methodology. I use comparable IO and PO securities to estimate market prices for those securities for which prices are not available.

253. For each IO and PO security sold to BAC, I use the security's CUSIP to search *Capital IQ* for a price as of November 7, 2008. *Capital IQ* provides prices from *IDC*, an evaluated pricing service. In addition, I obtain prices from *S&P*, as detailed in subsection VIII.B, where I discuss the valuations of the residential mortgage loans.

254. Prices of both IO and PO securities are stated as dollar amounts per $100 of notional amount outstanding or UPB, respectively.

255. By number, prices are available for 276 of the 320 IO with total notional amount of $51.12 billion and for 232 of the 252 PO securities with total UPB of $426.4 million as of November 7, 2008. By notional amount and by UPB, prices are available for 86% of the IOs and for 90% of the POs, respectively, as of that date.[143]

256. Summary statistics are given in Exhibit 16 for the IOs and POs with available prices as of November 7, 2008. The minimum, maximum, and median IO prices are 0.00, 3.39, and

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[142] Prospectus Supplement (Form 424B5), Mortgage Pass-Through Certificates, Series 2005-73CB, at 33 (November 28, 2005).
[143] Exhibit 16.

1.04, respectively. The minimum, maximum, and median PO prices are 48.86, 86.13, and 64.50, respectively.

257. There are an additional 44 IOs and 20 POs with total notional values and UPBs of $8.35 billion and $46.2 million, respectively, for which *Capital IQ* and *S&P* do not provide prices on November 7, 2008.

258. For IOs, prices are expressed as a percentage of notional amount. For POs, prices are expressed as a percentage of principal amount. To estimate values for the IOs for which prices are not available on November 7, 2008, I estimate a regression. I use the prices of the IOs available as of November 7, 2008 as the dependent variable in estimating the regression. That is, the price as a percentage of notional value is the valuation ratio.

259. As predictor variables in the regression, I use characteristics of the tranches that are available from *Capital IQ* and *ABSNet*. These are the promised coupon rate of the IO tranche as of November 7, 2008, the remaining term to maturity of the tranche as of November 7, 2008, a measure of the historical rate of loan prepayments for the loans underlying the IO (i.e., I use the lifetime Constant Prepayment Rate ("CPR") of the loans as defined in Appendix 3), a measure of the historical default rate of the loans underlying the IO (i.e., I use the lifetime Constant Default Rate ("CDR") of the loans as defined in Appendix 3), the weighted average coupon rate ("WAC") of the loans underlying the IO, and indicator variables assigned a value of 1 depending on whether the IO security was issued in 2005, 2006, or 2007–2008. The indicator variables are all set to zero for securities not issued during those years. The data used for the regression are from *Capital IQ* (remaining term to maturity) and the *ABSNet* database (all other regression data).

260. The coefficients of the IO regression are given in Exhibit 17 along with their standard errors. With an F-statistic of 69.87, the regression is statistically significant.

261. To estimate values of POs for which prices are not available on November 7, 2008, I also estimate a regression. I use the prices of the POs available as of November 7, 2008, as the dependent variable in estimating the regression. That is, the price as a percentage of principal amount is the valuation ratio.

262. As predictor variables in the regression, I use characteristics of the tranches that are available from *Capital IQ* and *ABSNet*. These are the remaining term to maturity of the tranche as of November 7, 2008, the CPR, the CDR, and the WAC of the loans underlying the PO, and indicator variables assigned a value of 1 depending on whether the security was issued in 2005, 2006, or 2007–2008. The indicator variables are all set to zero for securities not issued during those years. The data used for the regression are from *Capital IQ* (remaining term to maturity) and the *ABSNet* database (all other regression variables).

263. The coefficients of the PO regression are given in Exhibit 17 along with their standard errors. The regression is statistically significant with an F-statistic of 56.36.

264. I use the results of the IO regression in Exhibit 17 to estimate the fair market values of 37 of 44 IO securities for which I do not have prices as of November 7, 2008. I estimate the prices as of November 7, 2008.

265. I cannot use the regression to price an additional seven IO securities for which prices are not available. To estimate IO prices with the regression, I must know the values of the predictor variables for the IOs to be valued. For these seven IOs, such data are not available. For six of the seven IOs, I multiply each security's notional amount by the

weighted average price of the IOs (by notional amount) with available prices on November 7, 2008 to estimate its fair market value. This yields an approximate value given that I do not have data on the characteristics of the security and the underlying collateral. The weighted average price of IOs with available prices on November 7, 2008 is 1.21. To value the six IOs, I multiply their notional amounts of $359.0 million by 0.0121.

266. There is one IO security for which I do not have sufficient data to estimate a value.

267. Likewise, I use the results of the regression in Exhibit 17 to estimate the fair market values for 11 of the 20 PO securities for which I do not have prices as of November 7, 2008. I estimate the prices as of November 7, 2008.

268. I cannot use the regression to price an additional nine PO securities without available prices. To estimate PO prices with the regression, I must know the values of the predictor variables for the POs to be priced. For the nine POs, which have a UPB of $24.6 million, such data are not available. For these nine PO securities, I multiply each security's UPB by the weighted average price of POs (weighted by UPB) with available prices on November 7, 2008, to estimate their fair market values. This yields an approximate value given that I do not have data on the characteristics of the security and the underlying collateral. The weighted average price of POs with available prices on November 7, 2008, is 62.24. The UPB of the nine POs is $24.6 million.

H.3 Fair Market Value of Interest-Only and Principal-Only Securities

269. For the IO securities with prices as of November 7, 2008, and using those prices to estimate market value, the estimated market value is $619.0 million. For six of the IO securities with prices, I lack the notional amount required to calculate an estimated market value. For

IOs with no available prices, and using the results of the regression in Exhibit 17 (for 37 securities) or applying the weighted average price of the IO securities (for six securities), the estimated market value is $105.5 million. There are an additional seven IOs (six from the IOs with prices and one from the IOs with no available prices) for which I do not have sufficient data to value using the methods detailed above, because I lack the notional amount outstanding for these IOs.[144] Six of these securities were assigned a value of $25.8 million by BofA-legacy entities. I do not have information about the value assigned to these securities by Countrywide-legacy entities. The remaining IO security that was sold for which I have neither a price, nor notional amount, nor the value assigned to it by BofA-legacy entities was recorded on Countrywide-legacy entities' books with a value of $62,703 as of June 30, 2008.[145] For the purposes of aggregation, these securities are included at either the value assigned to them by Countrywide-legacy entities (one security) or the value assigned to them by BofA-legacy entities after the sale (six securities).

270. As shown in Exhibit 18, summing the estimated market values for all IOs yields a total of $750.2 million as the estimated market value of the IO securities sold by Countrywide-legacy entities to BAC in the November 2008 Transactions.

271. For the PO securities with prices as of November 7, 2008, and using those prices to estimate fair market values, the estimated fair market value is $265.4 million. For POs with no available prices, and using the results of the regression in Exhibit 17 (for 11

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[144] The CUSIPs of these securities are 12668A6A8, 02151WAD4, 12667G6M0, 12667G6N8, 12667G6P3, 12669GAC5, and 126694VJ4.

[145] BACMBIA-A0000067491.

securities) or applying the weighted average price of the PO securities (for nine securities), the estimated fair market value is $28.3 million. As shown in Exhibit 18, summing the estimated market values for all POs yields a total of $293.7 million as the estimated fair market value of the PO securities sold by Countrywide-legacy entities to BAC in the November 2008 Transactions.

272. In my opinion, for those IO securities for which I am able to estimate a fair market value, the fair market value of the IO securities sold by Countrywide-legacy entities to BAC in the November 2008 Transactions was $724.5 million as of the date of the transactions. Additionally, Countrywide-legacy entities sold to BAC IO securities in the November 2008 Transactions that had a recorded value of $25.8 million.

273. In my opinion, the fair market value of all PO securities sold by Countrywide-legacy entities to BAC in the November 2008 Transactions was $293.7 million as of the date of the transactions.

I. Other CHL Assets Sold

274. In this subsection, I describe the other CHL assets that were sold to BAC as part of the November 2008 Transactions and have not been valued elsewhere in my report.

275. I do not value these remaining assets either because detailed information about the assets sold was not available to me, because valuation of the particular assets (e.g., technology assets) is outside my area of expertise, or because doing so was not part of my assignment.

I.1 Description of Assets Sold and Not Valued

276. Certain assets and liabilities moved from Countrywide-legacy entities' books to BofA-legacy entities' books as part of the November 2008 Transactions.[146]

277. Assets include "MBS Held For Sale" with a book value of $0.48 million, "Premises & Equipment" with a book value of $1.25 billion, and "Other Assets" with a book value of $0.82 billion.

278. Liabilities include "Fees Due Liabilities" with a book value of $269.2 million, "Payroll and Benefits" with a book value of $213.7 million, "Interest Payable" with a book value of $43.4 million, and miscellaneous other liabilities with a book value of $30.7 million.

279. Therefore, the total net book value of assets sold as part of CHL's other assets that I did not value is $1.50 billion ($0.00048 billion + $1.25 billion + $0.82 billion – $0.269 billion – $0.214 billion – $0.043 billion – $0.031 billion = $1.50 billion).[147]

J. Valuation of Effinity Financial Corporation

280. I now turn to valuation of equity interests in subsidiaries sold by Countrywide-legacy entities to BofA-legacy entities. I begin by valuing the equity of Effinity Financial Corporation ("Effinity"), which was a Countrywide-legacy entity and a subsidiary of CFC.

281. As part of the November 2008 Transactions, CFC sold 100% of Effinity's equity (i.e., the common stock) to BAC. The sale occurred on November 7, 2008. At the time of the sale, Effinity's only assets were the common and preferred stock of Countrywide Bank, FSB

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[146] BACMBIA-R0000006043.

[147] An asset described as "Debt Swap Valuation-Shortcut" of $59.6 million has also not been independently valued and is not included in the totals above. BACMBIA-R0000006043 (Row 518).

("Countrywide Bank" or "the Bank"), the common stock of certain subsidiaries of Balboa Group, Inc. ("Balboa Group"), and the common stock of certain other entities including Landsafe, Inc., Countrywide Tax Services Corporation, GlobaLoans International Technology LP, Countrywide International Consulting Services, LLC, Countrywide Field Services Corporation, Countrywide Servicing Exchange, CTC Real Estate Services, and Trusite Real Estate Services, Inc.[148]

282. As of November 7, 2008, I understand that Effinity had no liabilities or debt outstanding on a non-consolidated entity-level basis.[149] Therefore, I value the common stock of Effinity as the sum of the estimated market values of Effinity's assets as of the date of the sale.

283. In terms of book value, Countrywide Bank was the largest of Effinity's assets. I first value the equity of Countrywide Bank. I then value the equity of the Balboa Group subsidiaries owned by Effinity. Finally, I value the equity of the other subsidiaries owned by Effinity. For each entity owned by Effinity, I describe the entity, explain the comparable company valuation methodology to be applied, explain the selection of comparable companies, and explain the particular application of the comparable company valuation methodology to that entity. I conclude with my opinion of the fair market value of CFC's equity interest in Effinity that was sold to BAC in the November 2008 Transactions.

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[148] CFC sold its equity interests in Effinity to BAC on November 7, 2008. *See* November 7, 2008 Stock Purchase Agreement by and between Bank of America Corporation and Countrywide Financial Corporation, at 1, Schedule 2.3(a)-1 (BACMBIA-C0000168443–494). Specifically, before the acquisition of the Bank by BAC, Effinity, a wholly owned subsidiary of CFC, held 100% of Countrywide Bank's common stock and CFC held 100% of Countrywide Bank's preferred stock. *See* November 7, 2008 Stock Purchase Agreement by and between Bank of America Corporation and Countrywide Financial Corporation, at 1, Schedule 2.3(b)-1 (BACMBIA-C0000168443–494). Effinity also held $88,364 in cash and $519,886 of intercompany receivables (BACMBIA-R0000006047).

[149] BACMBIA-R0000006047.

J.1 Description of Countrywide Bank

284. As of the date of the sale of the equity of Effinity, Countrywide Bank was chartered as a Federal Savings Bank ("FSB") and was, therefore, regulated by the Office of Thrift Supervision ("OTS").[150] As an FSB, the Bank would be characterized as a "thrift."

285. As described by the Federal Reserve, the primary business activity of thrifts includes accepting deposits and investing the proceeds in mortgage assets.[151] According to CFC's 2007 annual report, the Bank's primary business activities included originating residential mortgage loans; gathering deposits through checking accounts, savings accounts, and certificates of deposit; and providing document custody services.[152] According to CFC's year-end 2007 public financial filings, the Bank's operations were undertaken "primarily [to] fund and purchase mortgage loans and home equity loans for investment purposes…." Further, "[f]or liquidity and asset-liability management purposes, [the Bank also invested] in securities such as collateralized mortgage obligations and agency MBS."[153]

286. As of January 1, 2008, Countrywide Bank was responsible for "substantially all of [CFC's] loan production activities" and accounted for more than 97% of CFC's mortgage loan production for the six months ended June 30, 2008.[154] Total mortgage loan production by

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[150] February 19, 2008 Notification to the Board of Governors of the Federal Reserve by Bank of America Corporation in connection with the acquisition of Countrywide Financial Corporation, at 4 (BACMBIA-C0000160643-677).

[151] "All Institution Types Defined," *Federal Reserve System National Information Center* website, http://www.ffiec.gov/nicpubweb/Content/HELP/Institution%20Type%20Description.htm, most recently checked for availability on April 17, 2012.

[152] Countrywide Financial Corporation, Annual Report (Form 10-K), at 12 (February 28, 2008); Bank of America Corporation, Quarterly Report (Form 10-Q), at 118 (November 6, 2008).

[153] Countrywide Financial Corporation, Annual Report (Form 10-K), at 12 (February 28, 2008).

[154] Countrywide Financial Corporation, Quarterly Report (Form 10-Q), at 43 (August 11, 2008).

Countrywide Bank during the 12 months ended December 31, 2008, was $111.18 billion.[155]

287. As of September 30, 2008, the most recent regulatory filing before the valuation date, the Bank reported total book value of assets of $112.95 billion, total book value of liabilities of $101.48 billion, and book value of equity of $11.47 billion.[156]

288. In book-value terms, the Bank's largest assets consisted of $77.95 billion in mortgage loans, $13.25 billion in mortgage-backed securities, $17.61 billion in other assets including intangible assets, and $4.13 billion in cash and other liquid securities. The Bank's liabilities included $55.19 billion in deposits and $44.45 billion in borrowings from the Federal Home Loan Bank system.[157]

289. For the period from January 1, 2008, to September 30, 2008, Countrywide Bank reported an operating loss of $956.4 million.[158] Its income for the period was, among other factors, affected by a $3.31 billion provision for loan losses.[159]

J.2 Description of the Valuation Methodology for Countrywide Bank's Common Equity

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[155] INSIDE MORTGAGE FINANCE PUBLICATIONS INC., 1 THE 2010 MORTGAGE MARKET STATISTICAL ANNUAL 395 (2010). Loan production value only includes first-lien loans.

[156] Financial data from the OTS as obtained from *Capital IQ*. This includes the $5.53 billion capital contribution that CFC made to CW Bank on July 2, 2008. *See* BACMBIA-R0000006061.

[157] Financial data from the OTS as obtained from *Capital IQ*.

[158] Financial data from the OTS as obtained from *Capital IQ*.

[159] Financial data from the OTS as obtained from *Capital IQ*.

290. I use the comparable-asset valuation methodology to value the equity of Countrywide Bank. In most instances, the equity of a company has a value that is substantially less than the value of its assets. When an owner sells the equity ownership of a business, the owner is selling the value of the business's assets less the value of the debts owed by the business.[160] I use a numerical example to illustrate this point.

291. Consider a business with assets of $100 and debts of $95 such that its equity is $5. If the owner were to sell his equity interest in the company, the fair purchase price is $5 even though the entity owns assets with a value of 20 times that amount.

292. In the example, I do not distinguish between book values and market values. In fact, the book values of the assets, liabilities, and equity of a company may differ from their current market values. This is because for most companies, book values recorded on the company's balance sheet are recorded at a mixture of historical costs and estimated current market values. In comparison, market values represent the price at which a willing buyer and willing seller would agree to exchange ownership of the assets, liabilities, or equity of the company.

293. To estimate the market values of the Bank's common and preferred equity as of November 7, 2008, I use the comparable-companies methodology described in Section VII.[161]

294. To begin the process of valuing the equity of the Bank, I identify publicly traded financial institutions that are comparable to Countrywide Bank as of the date of the sale. I use the

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[160] STEPHEN A. ROSS ET AL., CORPORATE FINANCE 23 (7th ed. 2005).

[161] For example, the comparable-asset valuation for companies "values target companies based on how investors value similar companies." *See* MATTHIAS MEITNER, THE MARKET APPROACH TO COMPARABLE COMPANY VALUATION 8 (2006).

market value of equity of the comparable institutions as the basis for estimating the market value of the Bank's equity. I use the ratio of the market value of equity to book value of equity of the comparable institutions to estimate the fair market value of the common equity (i.e., the common stock) of Countrywide Bank.[162] That is, the market-to-book ratio is the valuation ratio that I use to value Effinity's equity interest in the Bank. The market-to-book equity ratio is widely used in valuing financial institutions and other operating businesses.[163]

295. I use a separate valuation ratio, which I describe later, to value the preferred stock of Countrywide Bank.

296. The book value of common equity represents the dollar value of funds invested by common shareholders in the bank measured using applicable accounting methodology. The market value of common equity is the number of common shares outstanding times the share price as of the valuation date. In this instance, the valuation date is November 7, 2008. Thus, the market-to-book equity value ratio is the Bank's market value of equity per dollar of balance sheet equity as of November 7, 2008.

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[162] I will refer to common equity and equity interchangeably in this report.

[163] *See, e.g.*, ASWATH DAMODARAN, THE DARK SIDE OF VALUATION: VALUING YOUNG, DISTRESSED, AND COMPLEX BUSINESSES 475 (2nd ed. 2010) ("The difficulties associated with defining debt make equity multiples such as price earnings or price to book value ratios better suited for comparing financial services firms than value multiples."); JONATHAN BERK & PETER DEMARZO, CORPORATE FINANCE 25 (2007) (The market-to-book ratio "is one of many financial ratios used by analysts to evaluate a firm."). *See also* Jay Dahya et al., *Dominant Shareholders, Corporate Boards, and Corporate Value: A Cross-country Analysis*, 87 JOURNAL OF FINANCIAL ECONOMICS (2008).

297. For a given bank, the market-to-book ratio of common equity can be less than, equal to, or greater than one. Multiple factors can influence this ratio, including investors' expectations of the bank's future profitability.

298. To adjust the comparable companies' market-to-book valuation ratios for other factors that affect the valuation ratio, I conduct a regression analysis. I use the results of the regression analysis to estimate the market-to-book equity valuation ratio of the Bank as of November 7, 2008. I multiply this predicted ratio by the book value of the Bank's common equity to estimate the market value of the Bank's common equity as of November 7, 2008.

299. In this multiplication, I use the Bank's book value of equity as of the fiscal quarter-end before November 7, 2008. That fiscal quarter-end is September 30, 2008. I understand that generally accepted accounting principles required that, with certain exceptions, CFC's consolidated assets and liabilities be revalued at accounting fair value upon the close of the July 1, 2008 merger between CFC and Red Oak Merger Corporation regardless of whether the assets or liabilities were previously recorded at historical cost or at fair value—a process known as "purchase accounting."[164] As described in CFC's September 17, 2008 SEC filing, "Under the purchase method of accounting, the assets and liabilities of Countrywide have been recorded. . . at their estimated [accounting] fair values as of the date of the Merger [July 1, 2008]."[165] This would include the assets, liabilities, and therefore, equity of Countrywide Bank.

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[164] Statement of Financial Accounting Standards No. 141 ¶35 (2001).

[165] Countrywide Financial Corporation, Current Report (Form 8-K/A), at 1 (September 17, 2008). *See also* Countrywide Bank, FSB, Thrift Financial Report, Schedule NS, Optional Narrative Statement (September 30, 2008) ("On July 1, 2008, Countrywide

300. Absent purchase accounting, however, it is my understanding that financial institutions (including the comparable financial institutions) record assets and liabilities on their balance sheets at a mix of historical cost with periodic testing for impairment or accounting fair value.[166]

301. In comparison, Countrywide Bank's equity as of September 30, 2008, would reflect mostly fair value accounting. To make the book value of the Bank's equity comparable to the book value of equity of the comparable banks, I adjust the book value of equity of the Bank as of the valuation date to remove the effects of purchase accounting.[167]

302. To make this adjustment, I begin with the Bank's total book value of equity of $7.22 billion, as of June 30, 2008, as reported in the Bank's Thrift Financial Report for the third quarter of 2008.[168] From this value, I subtract the book value of preferred stock of $2.00 billion obtained from the same report to arrive at the book value of common equity of $5.22 billion, as of June 30, 2008. To this figure, I add the capital contribution of $6.92 billion that occurred during the third quarter of 2008 as reported in the same Thrift Financial Report. I also add the net income of $587.0 million and other comprehensive

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Financial Corporation, the former thrift holding company of Countrywide Bank, FSB was merged with and into a subsidiary of Bank of America. As a result of the merger, purchase accounting was 'pushed down' to Countrywide Bank, FSB and is reflected in the September 30, 2008 Thrift Financial Report accounting for certain variances from the June 30, 2008 Thrift Financial Report.").

[166] "Today's financial statements are based on a mixed-attribute accounting model. This means that an entity's balance sheet may include certain values reported at historical cost and certain values reported at fair value." *See Fair Value Accounting*, 91 FED. RES. BULL. 28 (2005). For example, Citigroup, a holding company of a comparable mortgage originator, reports that "[c]ertain non-marketable equity securities are carried at cost and periodically assessed for other-than-temporary impairment," while other assets such as "MSRs in the U.S. mortgage and student loan classes of servicing rights are accounted for at fair value." *See* Citigroup Inc., Annual Report (Form 10-K), at 112, 114 (February 22, 2008).

[167] The comparable companies did not go through recent acquisitions.

[168] Countrywide Bank, FSB, Thrift Financial Report (September 30, 2008), *available through* http://www2.fdic.gov/, most recently checked for availability on June 9, 2012.

income of $282.6 million reported for the third quarter of 2008.[169] This calculation yields a hypothetical (i.e., not affected by purchase accounting adjustments) book value of common equity of $13.01 billion, as of September 30, 2008.

303. The hypothetical book value of $13.01 billion of common equity is an estimate for the amount of book common equity that the Bank would have had, as of September 30, 2008, had its balance sheet not been adjusted to reflect purchase accounting requirements and further assuming that the Bank's reported net income in the third quarter of 2008 was not itself affected by the purchase accounting adjustments.[170]

J.3 Identification of Comparable Companies

304. To estimate the market value of the common equity of Countrywide Bank as of November 7, 2008, I use two sets of comparable companies.

305. The first set is the 50 "Largest OTS-Regulated Thrift Mortgage Lenders in 2008" list ("OTS Thrifts List").[171] I use the OTS Thrifts List because the Bank is an OTS-regulated thrift. Countrywide Bank is ranked first on the OTS Thrifts List and is not included in my set of comparable companies.

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[169] Countrywide Bank, FSB, Thrift Financial Report (September 30, 2008), *available through* http://www2.fdic.gov/, most recently checked for availability on June 9, 2012.

[170] It is my understanding that the Bank's book value of equity as of September 30, 2008 includes the equity of CWB Venture Management Corporation, which was sold to BofA-legacy entities on October 1, 2008 in exchange for a demand note with a face value of $63.2 million. *See* BACMIBA-R0000006253-61 and BACMBIA-R0000006100-05. I do not value this transaction separately. Instead, the equity of CWB Venture Management Corporation is valued as a component of Countrywide Bank.

[171] INSIDE MORTGAGE FINANCE PUBLICATIONS INC., 1 THE 2010 MORTGAGE MARKET STATISTICAL ANNUAL 395 (2010).

306. The second set is the "Top 50 Mortgage Originators in 2008" list ("Mortgage Originators List").[172] I use the Mortgage Originators List because the Bank is a large mortgage loan originator.[173] CFC is ranked fourth on the Mortgage Originators List and is excluded from my set of comparable companies. As previously mentioned, the Bank accounted for more than 97% of CFC's mortgage loan production for the six months ended June 30, 2008.[174]

J.4 Comparable OTS Thrifts

307. I first construct a set of comparable entities using the OTS Thrifts List.

308. Because most thrifts are wholly owned by thrift holding companies, they do not have publicly traded equity. I therefore use publicly traded thrift holding companies that were listed on stock exchanges as of November 7, 2008, as a proxy for the market equity values of the thrifts.[175]

309. Because the Bank is a thrift, and to ensure that my list of comparable thrifts accurately reflects their equity values (as opposed to the value of other subsidiaries owned by the holding company), I include only thrift holding companies for which the thrift's assets constituted at least 90% of the assets of the holding company as of the most recent fiscal quarter-end before November 7, 2008, using data obtained from thrift regulatory filings.

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[172] INSIDE MORTGAGE FINANCE PUBLICATIONS INC., 1 THE 2010 MORTGAGE MARKET STATISTICAL ANNUAL 43 (2010).

[173] Countrywide Financial Corporation, Quarterly Report (Form 10-Q), at 43 (August 11, 2008).

[174] Countrywide Financial Corporation, Quarterly Report (Form 10-Q), at 43 (August 11, 2008).

[175] I identified the holding companies of the banks on the OTS Thrifts List using information from the National Information Center website that collects Federal Reserve System data on financial institutions, and from *Capital IQ*. *See* "Institution Search," National Information Center website, http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx, most recently checked for availability on June 19, 2012, and the *Capital IQ* website, https://www.capitaliq.com/, most recently checked for availability on June 19, 2012.

310. I further require that the institution have accounting financial statement data, including book value of equity, available for a financial period ending no earlier than August 7, 2008 (i.e., approximately 90 days before the November 2008 Transactions).[176]

311. This screening process yields the 19 thrifts owned by publicly traded holding companies ("Comparable Thrifts") listed in Exhibit 19. As also shown in Exhibit 19, on average, the assets of the thrift constituted 99.07% of the assets of the holding company, indicating that valuations based on holding company values provide an appropriate proxy for the market value of a thrift.

312. For each of the holding companies of the Comparable Thrifts, I calculate the total market value of common equity as of November 7, 2008, by multiplying the firm's closing share price on November 7, 2008, by the number of shares of common stock outstanding as of that date. I obtain the share prices and number of shares outstanding from *Capital IQ*. The total market values of common equity for the thrifts are shown in column 7 of Exhibit 19.

313. For each of the holding companies of the Comparable Thrifts, I obtain the total book value of common equity as reported in the *Capital IQ* database for the most recent fiscal quarter-end before November 7, 2008, (and no earlier than August 7, 2008).[177] For each thrift, I require that these financial results be known to market participants (i.e., publicly released)

[176] I require that data be publicly available as of November 7, 2008.

[177] *Capital IQ* defines total book value of common equity as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." *See* "Financials Glossary," *Capital IQ* website, https://www.capitaliq.com/CIQDotNet/Financial/glossary.aspx, most recently checked for availability on June 16, 2012. APIC is "Additional Paid In Capital."

as of November 7, 2008, to ensure that book values of equity that I use are reflected in the observed equity prices as of that date.[178] These are given in column 6 of Exhibit 19.

314. For each thrift, I divide the market value of common equity by the book value of common equity to obtain the market-to-book equity value ratio. These ratios are given in column 8 of Exhibit 19.

315. As shown at the bottom of Exhibit 19, the median market-to-book equity value ratio of the 19 comparable thrifts was 0.37 as of November 7, 2008. The minimum ratio was 0.07 and the maximum was 3.46. For the twelve months ending on September 30, 2008, the Bank generated a loss of $1.11 billion.[179] Among thrifts that reported losses for the twelve months before the financial filing that I use in this calculation, the median market-to-book value equity ratio as of November 7, 2008, was 0.27. In comparison, among thrifts that generated a profit over this 12-month period, the median market-to-book equity value ratio was 1.32.

J.5 Comparable Mortgage Originators

316. I construct the second set of comparable companies using the Mortgage Originators List. I identify the originators whose common shares were publicly traded or that were the subsidiaries of holding companies whose shares were publicly traded as of November 7,

[178] I determine the date on which financial filings are filed using *Capital IQ*. For regulatory filings, specifically OTS and FFIEC filings, I assume that the third-quarter data were available as of November 7, 2008.

[179] Normalized net income is defined by *Capital IQ* as EBT, Excl. Unusual Items x (1 – Statutory Tax Rate), where *Capital IQ* assumes a statutory tax rate of 37.5% for all companies.

2008.[180] This yields the set of 25 comparable mortgage originators listed in Exhibit 20. As with thrifts, I require that financial accounting data be available for a fiscal period ending no earlier than August 7, 2008, (i.e., approximately 90 days before the date of the November 2008 Transactions) be publicly available as of November 7, 2008.[181] For each of these companies, I determine the ratio of the market value of common equity as of November 7, 2008, to the book value of common equity as of the most recent fiscal quarter-end before November 7, 2008, (and no earlier than August 7, 2008). The market value of equity is calculated as the number of shares of common stock outstanding as of November 7, 2008, times the market price per share of common stock as of November 7, 2008. I obtain these data from *Capital IQ*. I also gather the book value of equity data from *Capital IQ*. The market values of common equity are given in column 5 of Exhibit 20 and the book values are given in column 4.

317. The market-to-book equity value ratios for common stock are given in column 6 of Exhibit 20. As shown in Exhibit 20, the median market-to-book equity value ratio for the set of comparable mortgage originators was 0.67, the minimum was 0.15, and the maximum was 2.37 as of November 7, 2008. Among unprofitable comparable mortgage originators, the median market-to-book equity value ratio was 0.35. By comparison, among profitable mortgage originators, the median market-to-book equity value ratio was 0.94.

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[180] I identified the holding companies of the entities on the Mortgage Originators List using information from the National Information Center website that collects Federal Reserve System data on financial institutions, and from *Capital IQ*. The holding companies of the banks are assumed to be the same from September 30, 2008 to November 7, 2008. *See* "Institution Search," National Information Center website, http://www.ffiec.gov/nicpubweb/nicweb/SearchForm.aspx, most recently checked for availability on June 19, 2012, and the *Capital IQ* website, https://www.capitaliq.com/, most recently checked for availability on June 19, 2012.

[181] I determine the date on which financial filings are filed using *Capital IQ*. For regulatory filings, specifically OTS and FFIEC filings, I assume that the third-quarter data was available as of November 7, 2008.

318. Multiplying the median market-to-book equity ratio of 0.37 for all comparable thrifts by the Bank's hypothetical book value of equity of $13.01 billion as of September 30, 2008, yields a value of $4.81 billion. Multiplying the median market-to-book equity ratio of unprofitable comparable thrifts of 0.27 by the Bank's hypothetical book value of equity of $13.01 billion as of September 30, 2008, yields a value of $3.52 billion.

319. Multiplying the median market-to-book equity value ratio of 0.67 for all comparable mortgage originators by the Bank's hypothetical book value of equity of $13.01 billion as of September 30, 2008, yields a value of $8.72 billion. Multiplying the median market-to-book equity value ratio of unprofitable comparable mortgage originators of 0.35 by the Bank's hypothetical book value of equity of $13.01 billion as of September 30, 2008 yields a value of $4.55 billion.

320. The median-based value estimates result in a range of values from $3.52 billion to $8.72 billion depending on whether the median is obtained from the comparable thrifts or comparable mortgage originators and on whether all institutions or only the unprofitable institutions are included in the calculation of the median.

J.6 Adjusting for Factors That Affect the Common Equity Valuation Ratios

321. Because the thrifts and mortgage originators are not identical, I use regression analysis to adjust for differences in their market-to-book equity value ratios that are related to observable thrift and mortgage originator characteristics. The regression is estimated using the thrifts and mortgage originators listed in Exhibits 19 and 20. The dependent variable in the regression is the thrifts and mortgage originators' market-to-book equity value ratios as of November 7, 2008.

322. It is well established that market-to-book equity ratios are related to companies' earnings expressed as return on book equity ("ROE") where ROE is measured by dividing earnings by the book value of common equity.[182] As discussed above and as shown in Exhibits 19 and 20, this is the case for thrifts and mortgage originators. For that reason, I include ROE as a predictor variable when earnings are positive.[183] When earnings are negative, I include an indicator variable in the regression that is set equal to one when earnings are negative and set equal to zero when earnings are positive. Earnings are measured over the 12-month interval preceding the month-end for which I use the book value of common equity. In calculating ROE, book value of equity is as of the beginning of the 12-month period over which earnings are measured. I also include an intercept term and an indicator variable that is set equal to one when the entity is a thrift and zero otherwise.[184]

323. The results of the regression are given in Exhibit 21. The exhibit includes the coefficients of the regression along with their standard errors. With an F-statistic of 7.21, the regression is statistically significant. The coefficient of ROE is positive, indicating that

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[182] As Damodaran notes:

> The most common approach to estimating PBV [price/book value] ratios for a firm is to choose a group of comparable firms, to calculate the average PBV ratio for this group, and to base the PBV ratio estimate for a firm on this average. The adjustments made to reflect differences in fundamentals between the firm being valued and the comparable group are usually made subjectively. There are several problems with this approach. . . . There are two ways in which we can bring home these mismatches – a matrix approach and a sector regression. . . . If the price-to-book ratio is largely a function of the return on equity, we could regress the former against the latter:
>
> PBV = a + b*ROE
>
> If the relationship is strong and linear, we could use this regression to obtain predicted price-to-book ratio for all of the firms in the sector.

ASWATH DAMODARAN, INVESTMENT VALUATION 523-24 (3rd ed. 2012).

[183] The variable for ROE is zero for unprofitable institutions and equals the institution's ROE for profitable institutions.

[184] The intercept term is the average market-to-book equity ratio for a non-thrift institution with ROE equal to zero and its inclusion ensures that market-to-book ratios computed using the regression are zero on average.

profitable institutions have higher market-to-book equity value ratios. The coefficient of the negative earnings indicator is negative, indicating that institutions that had generated losses over the prior 12 months had lower market-to-book equity value ratios. The coefficient of the thrift indicator is 0.30, indicating that thrifts tend to have higher market-to-book equity value ratios than mortgage originators after controlling for ROE.

J.7 Valuation of the Common Equity of Countrywide Bank

324. I now use the coefficients of the regression to estimate the valuation ratio for the common equity of Countrywide Bank. I use the estimated valuation ratio to estimate the value of the common equity of Countrywide Bank as of November 7, 2008. As shown in Exhibit 22, the estimated market-to-book equity value ratio is 0.44. Multiplication of this ratio by the Bank's hypothetical book equity value of $13.01 billion yields an estimated value of $5.70 billion for the Bank's common equity.

J.8 Valuation of Countrywide Bank's Preferred Equity

325. Effinity also owned Countrywide Bank's perpetual nonconvertible 7.25% preferred stock.[185]

326. Preferred stock is a security with a priority claim to dividends over common stock. This means that common stock cannot be paid a dividend in any given period unless the preferred stockholders receive their promised dividend in that period. Nonconvertible means that the stock is not convertible into the common stock of the issuing company. The

[185] Minutes of the Meeting of the Board of Directors of Countrywide Bank, FSB, September 27, 2007; Minutes of the Meeting of the Board of Directors of Countrywide Bank, FSB, January 28, 2008.

promised dividend of 7.25% means that the Bank promises to pay a dividend of $7.25 for each $100 of par value of the stock.

J.9 Description of Valuation Methodology for the Bank's Preferred Equity

327. I use comparable-security valuation in valuing the Bank's preferred stock as described in Section VII. I identify publicly traded comparable preferred stocks issued by comparable financial institutions on the OTS Thrifts and Mortgage Originators Lists. For these stocks, I calculate their ratio of market price per share to promised dividend per share. I use this price-to-dividend ratio as the valuation ratio in valuing the Bank's preferred stock.

J.10 Identification of Comparable Preferred Stocks

328. To identify comparable preferred stocks that were publicly traded as of November 7, 2008, I use the *Bloomberg* terminal to search for any perpetual nonconvertible preferred shares with a fixed promised coupon payment issued by any of the holding companies of the comparable thrifts, or any of the subsidiaries of the holdings companies listed in the OTS Thrifts List, or any of the holding companies of the comparable mortgage originators, or any of the subsidiaries of the holdings companies listed in the Mortgage Originators List.

329. I identify one comparable thrift, Sovereign Bank, with a holding company of Sovereign Bancorp, Inc., that had a publicly traded preferred stock that matched the requisite characteristics of being perpetual nonconvertible with a fixed promised dividend payment.

330. I identify 34 publicly traded preferred stocks of Comparable Mortgage Originators that matched the requisite characteristics. The preferred stocks are listed in Exhibit 23 along with their par values, their promised coupon rates, their market prices as of November 7, 2008, their price-to-dividend ratios, and their yields.

331. Some holding companies had multiple issues of preferred stock outstanding at that time. For companies with multiple preferred stocks outstanding, I calculate the median price-to-dividend ratio of the multiple preferred issues. I use this median price-to-dividend ratio for that institution. With this procedure, I calculate the median price-to-dividend ratio across companies. The median price-to-dividend ratio is 9.75, the minimum is 4.57, and the maximum is 15.06.

332. The Bank's promised dividend equals the book (par) value of preferred equity of $2.00 billion times the promised coupon rate of 7.25%, which equals $145.0 million per annum in promised dividends. Multiplying the median price-to-dividend ratio of 9.75 by the promised dividend of $145.0 million gives a value of $1.41 billion for the Bank's preferred stock as of November 7, 2008.[186]

J.11 Adjustments for Characteristics That Affect Preferred Stock Valuation Ratios

333. To take into account factors that may affect the preferred stock valuation ratios, I estimate a regression with the set of preferred stocks listed in Exhibit 23. The dependent variable in the regression is the price-to-dividend ratio of the preferred stock of each issuer, where the price-to-dividend ratio is calculated by taking the inverse of the weighted average dividend yield, where the weights are the offering amounts of the preferred stocks. The predictor variable is the market-to-book ratio of common equity for that issuer. The estimated coefficient of the market-to-book ratio is positive, which indicates that companies with higher market-to-book ratios have higher values of preferred stock after adjusting for the

[186] Exhibit 23.

promised coupon rate of the preferred stock. The results of this regression are shown in Exhibit 24.

J.12 Valuation of Countrywide Bank's Preferred Stock

334. Using the coefficients of the regression in Exhibit 24 to predict the price-to-dividend ratio of the Bank's preferred equity yields a predicted ratio of 8.80.

335. Multiplying the promised dividend of preferred equity of $145.0 million by the estimated valuation ratio of 8.80 yields a market value for preferred equity of $1.28 billion as shown in Exhibit 25.

J.13 Description of the Balboa Group

336. Effinity also owned the common stock of Balboa Group. Balboa Group was a national property, casualty, life, disability, and credit insurance provider, including lender-placed insurance.[187]

337. Balboa Insurance Company, Balboa Life & Casualty, LLC, Balboa Warranty Services Corporation, Meritplan Insurance Company, Newport E&S Insurance Company, Newport Insurance Company, and Newport Management Corporation (collectively, "Balboa P&C")

[187] Countrywide Financial Corporation, Annual Report (Form 10-K), Exhibit 10.108(B) (February 28, 2008); Countrywide Financial Corporation, Quarterly Report (Form 10-Q), at 44 (August 11, 2008); *AM Best Credit Report*, Balboa Insurance Company, at 3 (July 17, 2008).

were subsidiaries of Balboa Group that were primarily involved in providing property and casualty insurance.[188]

338. Balboa Group owned all of the common equity of the Balboa P&C subsidiaries.[189]

339. Balboa Life Insurance Company and Balboa Life Insurance Company of New York (collectively, "Balboa Life") were subsidiaries of Balboa Group that were primarily involved in providing life, disability, and credit insurance.[190] They "also [offered] mortgage life insurance on real estate-related loans generated by CFC."[191]

340. Balboa Group owned all of the common equity of the Balboa Life subsidiaries.

341. Countrywide Insurance Services, Inc. marketed and offered a distribution platform for both the life insurance and property and casualty insurance products.[192] DirectNet Insurance Agency similarly appears to have marketed Balboa Life's and Balboa P&C's products and services.[193] Henceforth, Countrywide Insurance Services and DirectNet Insurance Agency are collectively referred to as "Balboa Marketing."

342. Balboa Group owned all of the equity of the Balboa Marketing subsidiaries.

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[188] *AM Best Credit Report*, Balboa Insurance Company, at 3-4 (July 17, 2008) ("Lender-placed collateral protection business and lender-placed fire and hazard business" constituted "more than 73% of Balboa [Group's] net premium writings for the year ended December 31, 2007.").

[189] November 7, 2008 Stock Purchase Agreement by and between Bank of America Corporation and Countrywide Financial Corporation, at Schedule 2.3(b)-4 - (b)-5 (BACMBIA-C0000168443–494).

[190] *AM Best Credit Report*, Balboa Life Insurance Company, at 3 (May 23, 2008) ("Balboa Life and Balboa Life of NY are engaged in the accidental death and dismemberment (AD&D), credit disability, credit life and voluntary term life lines of business.").

[191] *AM Best Credit Report*, Balboa Life Insurance Company, at 3 (May 23, 2008).

[192] *AM Best Credit Report*, Balboa Insurance Company, at 3–4 (July 17, 2008); *AM Best Credit Report*, Balboa Life Insurance Company, at 3 (May 23, 2008).

[193] *AM Best Credit Report*, Balboa Life Insurance Company, at 3 (May 23, 2008).

343. As of October 31, 2008, the book value of assets of the Balboa P&C subsidiaries was $3.1 billion, the book value of assets of the Balboa Life subsidiaries was $45.8 million, and the book value of assets of the Balboa Marketing subsidiaries was $68.5 million.[194] The book values of equity of the three entities were $1.44 billion, $35.7 million, and $30.3 million, respectively.[195]

J.14 Description of Valuation Methodology for Balboa Group Equity

344. I value the common equity of Balboa Group as the sum of the estimated market values of the common equity of Balboa P&C, Balboa Life, and Balboa Marketing. I use the comparable-companies methodology to separately value the common equity of each group of subsidiaries.

345. The general valuation approach follows the approach that I use to value Countrywide Bank. I identify companies that were comparable to Balboa P&C, Balboa Life, and Balboa Marketing and whose common stock was publicly traded as of November 7, 2008. I use the market-to-book equity value ratio as my valuation ratio. I use regression analysis to adjust this ratio for the effect of ROE on the valuation ratio. I use the results of the regression analysis to predict market-to-book equity valuation ratios for Balboa P&C, Balboa Life, and Balboa Marketing. I use these valuation ratios to estimate the market values of the equity of Balboa P&C, Balboa Life, and Balboa Marketing. I sum these values to obtain an estimate of the market value of the common equity of Balboa Group.

[194] BACMBIA-R0000006043; BACMBIA-R0000006047.

[195] BACMBIA-R0000006043; BACMBIA-R0000006047.

J.15 Identification of Comparable Companies for Valuation of Balboa Subsidiaries

346. To identify comparable companies for Balboa P&C, I begin with the largest 125 companies ranked by annual premiums as reported in the *2008 Market Share Reports for Property/Casualty Insurance Groups and Companies* ("P&C List"), which is published by the National Association of Insurance Commissioners ("NAIC"). With total premiums of $1.92 billion during 2008, the Balboa P&C subsidiaries in the aggregate ranked 38th on this list.[196]

347. To identify comparable companies for the Balboa Life subsidiaries, I begin with the largest 125 companies ranked by annual premiums as reported in the *2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies* ("Life Insurers List," and together with the P&C List, the "Lists"), which is also published by the NAIC. The Balboa Life subsidiaries were not among the largest 125 on the Life Insurers List.[197]

348. I have been unable to identify a set of publicly traded comparable companies for the analysis of Balboa Marketing, because I have not been able to identify a list of publicly traded companies that specialize in the marketing of insurance products. I use the average of the predicted market-to-book equity value ratios of Balboa P&C and Balboa Life as the predicted market-to-book equity value ratio of Balboa Marketing.

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[196] NAT'L ASSOC. OF INS. COMM'RS, 2008 MARKET SHARE REPORTS FOR PROPERTY/CASUALTY INSURANCE GROUPS AND COMPANIES 13–14 (2009).

[197] NAT'L ASSOC. OF INS. COMM'RS, 2008 MARKET SHARE REPORTS FOR LIFE AND FRATERNAL INSURANCE GROUPS AND COMPANIES 5–6 (2009).

349. To identify comparable companies with observable market values, I search the lists to identify those whose shares are publicly traded or whose shares are owned by holding companies whose shares were publicly traded as of November 7, 2008.[198] For these companies, I access *Capital IQ* to obtain financial data.

350. To enter my analysis, I further require that the company have financial statement data, including book value of common equity for a fiscal period ending no earlier than August 7, 2008.[199] From the P&C List, I identify 54 property and casualty insurance companies that were publicly traded as of November 7, 2008 that met this criterion. These are listed in Exhibit 26 ("P&C Comparables"). I use these as the comparable companies for valuation of the equity of Balboa P&C.[200] From the Life Insurers List, I identify 42 life insurance companies that were publicly traded as of November 7, 2008, and that also had publicly available financial statement data, including book value of common equity, for a fiscal period ending no earlier than August 7, 2008. These are listed in Exhibit 27 ("Life Comparables"). I use these as the comparable companies for valuation of the equity of Balboa Life.[201]

351. To calculate the market-to-book value equity ratios of the comparable companies, I calculate the market value of the comparable companies by multiplying the market price per share of the comparable company's common equity as of the close of trade on

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[198] Institutions that had multiple series of common stock as of September 30, 2008 were excluded.

[199] I require that data be publicly available as of November 7, 2008.

[200] *AM Best Credit Report*, Balboa Insurance Company, at p. 3 (July 17, 2008).

[201] *AM Best Credit Report*, Balboa Life Insurance Company, at p. 3 (May 23, 2008).

November 7, 2008, by the number of shares of common equity outstanding as of November 7, 2008.

352. I gather the book values of common equity of the comparable companies as of the most recent fiscal quarter-end before November 7, 2008, but no earlier than August 7, 2008, from *Capital IQ*. The book values and the market values of equity are given in columns 3 and 4 of Exhibit 26 for the P&C Comparables and in columns 3 and 4 of Exhibit 27 for the Life Comparables.

353. As shown at the bottom of Exhibit 26, the median market-to-book equity ratio of the P&C Comparables is 0.89. The ratios range from a minimum of 0.11 to a maximum of 2.65. As shown at the bottom of Exhibit 27, the median market-to-book equity value ratio of the Life Comparables is 0.86. The ratios range from a minimum of 0.11 to a maximum of 3.39.

354. As with other CFC assets and liabilities, the equity values of the Balboa subsidiaries were adjusted as of July 1, 2008, to reflect purchase accounting requirements. However, with the data available to me, I am able to approximate what the book value of equity of the Balboa subsidiaries would have been as of October 31, 2008, the most recent fiscal month-end for the Balboa Group before November 7, 2008, had there been no purchase accounting adjustment.[202] I do so by adding the balance of the "APIC – Purchase Accounting," "FAS 52 PA Contra," "Retained Earnings 2007 PA R/C," and "Retained Earnings PA Reclass" equity accounts to end-of-period equity balance.

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[202] *See* BACMBIA-R0000006043.

355. As of October 31, 2008, the hypothetical book value of equity (i.e., after extracting the effects of purchase accounting) of the Balboa P&C subsidiaries was $1.27 billion, the book value of equity of the Balboa Life subsidiaries was $35.4 million, and the book value of equity of the Balboa Marketing subsidiaries was $30.4 million.[203]

356. Multiplication of the October 31, 2008 hypothetical book value of equity of Balboa P&C of $1.27 billion by the median market-to-book equity ratio of the P&C Comparables of 0.89 yields a value of $1.13 billion.

357. Multiplication of the October 31, 2008 hypothetical book value of equity of the Balboa Life subsidiaries of $35.4 million by the median market-to-book equity value ratio of the Life Comparables of 0.86 yields a value of $30.4 million.

358. For the Balboa Marketing subsidiaries, I use an average of the two medians. The average is 0.87. Multiplication of the October 31, 2008 hypothetical book value of equity of the Balboa Marketing subsidiaries of $30.4 million by the average of the median market-to-book equity value ratios of 0.87 yields a value of $26.5 million.

359. The sum of these values using the October 31, 2008 purchase-accounting-adjusted hypothetical book equity values is $1.18 billion.

J.16 Adjustments for Characteristics That Affect Balboa Equity Valuation Ratios

360. To adjust for factors that might affect the Balboa equity valuation ratios, I estimate two regressions, one for the P&C Comparables and one for the Life Comparables. The results

[203] *See* BACMBIA-R0000006043.

of the regressions are shown in Exhibit 28. The dependent variable in the first regression is the market-to-book equity value ratio of the P&C Comparables. The dependent variable in the second regression is the market-to-book equity value ratio of the Life Comparables.

361. As predictor variables in both regressions, I include ROE when earnings are positive. When earnings are negative, I include an indicator variable that is set equal to one only when earnings are negative and set equal to zero when earnings are positive.[204] To calculate ROE, earnings are measured over the 12 months before the end date of the fiscal period from which I use the book value of common equity to calculate the market-to-book value equity ratio. I also include an intercept term.

362. The coefficients of the regressions along with their standard errors are given in Exhibit 28. With F-statistics of 6.72 and 7.80, respectively, both the regression with the P&C Comparables and the regression with the Life Comparables are statistically significant.

J.17 Valuation of Balboa Group Equity

363. I now use the coefficients of the regressions to estimate the valuation ratios for Balboa P&C, Balboa Life, and Balboa Marketing.

364. As shown in Exhibit 29, the estimated valuation ratio for Balboa P&C is 1.75. Multiplication of the October 31, 2008 hypothetical book value of equity of Balboa P&C of $1.27 billion by the estimated market-to-book equity value ratio of 1.75 yields a value of $2.21 billion.

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[204] That is, the variable for ROE is zero for unprofitable institutions and equals the institution's ROE for profitable institutions.

365. As also shown in Exhibit 29, the estimated valuation ratio for Balboa Life is 0.53. Multiplication of the October 31, 2008 hypothetical book value of equity of the Balboa P&C subsidiaries of $35.4 million by the estimated market-to-book equity value ratio of 0.53 yields a value of $18.9 million.

366. For the Balboa Marketing subsidiaries, I use an average of the two estimated valuation ratios. The average is 1.14. Multiplication of the October 31, 2008 hypothetical book value of equity of the Balboa Marketing subsidiaries of $30.4 million by the average of the estimated market-to-book equity value ratios of 1.14 yields a value of $34.6 million.

367. The sum of these values is $2.27 billion ($2.21 billion + $0.0189 billion + $0.0346 billion = $2.27 billion).

J.18 Description of the Other Effinity Subsidiaries

368. As measured by book value of equity, Countrywide Bank and the Balboa Group were the largest Effinity subsidiaries as of the date of the sale.[205] In this subsection, I value the equity of the other Effinity subsidiaries.

369. Analogously to the adjustments performed for the other Effinity subsidiaries, I extract the effect of purchase accounting by adding the balance of the "APIC – Purchase Accounting," "FAS 52 PA Contra," "Retained Earnings 2007 PA R/C," and "Retained Earnings PA Reclass" equity accounts to the end-of-period equity balance.

[205] BACMBIA-R0000006043; BACMBIA-R0000006047.

370. The other Effinity subsidiaries, along with their book values of common equity after adjustments to remove the effect of purchase accounting as of October 31, 2008, their annualized net incomes as of October 31, 2008, and a brief business description, include:[206]

a. Landsafe, Inc. (book value of equity of $340.4 million and net income of $66.8 million). This entity provided residential property appraisals, credit reporting services, flood zone determinations, title insurance, and closing services.

b. Countrywide Tax Services Corporation (book value of equity of $260.6 million and net income of $25.9 million). This entity provided tax services for residential mortgage transactions such as locating parcel numbers for properties and ensuring taxes are paid at closing.

c. GlobaLoans International Technology Company (book value of equity of $114.3 million and net income of $24.1 million). This entity was engaged in software development and related consulting services. It also held rights to certain software applications.

d. Countrywide International Consulting Services (book value of equity of $89.1 million and net income of $2.6 million). This entity provided mortgage origination, servicing, and broker-dealer services internationally.

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[206] List of business units sold from BACMBIA-R0000006047. Book value of equity and annualized net income as of October 31, 2008 from BACMBIA-R0000006043. Analogous to the procedure performed for the Bank and Balboa Group, the book value of equity as of October 31, 2008, is adjusted to remove purchase accounting adjustments. Annualized net income is calculated as EBT, Excl. Unusual Items x (1 – Statutory Tax Rate), where I assume a statutory tax rate of 37.5% for all companies. I did this so that the calculated annualized net income was comparable to the normalized net income as provided by *Capital IQ*. *See also* BACMBIA-C0000168643 for business descriptions.

e. Countrywide Field Services Corporation (book value of equity of $65.3 million and net income of $35.9 million). This entity "provide[d] inspection and property preservation services for CHL on loans it services for itself and other investors. These services [were] provided for loans in default, loans already foreclosed, and loans where there has been property damage or the property is vacant."

f. Countrywide Servicing Exchange, also known as Countrywide Capital Markets, Inc. (book value of equity of $24.0 million and net loss of $0.3 million). This entity was a company "which broker[ed] bulk servicing for third parties and purchase[d] servicing for CHL and Countrywide Home Loans Servicing LP."

g. CTC Real Estate Services (book value of equity of $21.2 million and net income of $0.3 million). This entity at one point acted as trustee under deeds of trust for reconveyance and foreclosure purposes; however the business was transferred to ReconTrust Company, National Association.

h. TruSite Real Estate Services, Inc. (book value of equity of $5.5 million and net income of $0.1 million). This entity facilitated participation in real estate commissions and served as a broker for obtaining retail space leased by Countrywide.

J.19 Valuation Methodology for Equity of Other Effinity Subsidiaries

371. It is my understanding that the subsidiaries described in subsection VIII.J.18 are engaged in various activities in support of Countrywide's mortgage origination business. Because of these entities' connection to Countrywide's mortgage origination and securitization business, I value their equity using the results of the regression shown in Exhibit 21. This

regression is based on the data for thrifts and large mortgage originators. Specifically, as discussed in Section VIII.J.6 and shown in Exhibit 21, the regression uses earnings measures of the combined Thrift and Mortgage Originator Comparables as explanatory variables of the market-to-book equity value ratios of thrifts and mortgage originators.[207]

372. In applying the regression, because the Effinity subsidiaries are not thrifts, I set the indicator variable for thrifts to zero in calculating the predicted market-to-book equity value ratios of the other Effinity subsidiaries.

373. I use each subsidiary's hypothetical book value of common equity (i.e., after extracting the effects of purchase accounting) and its annualized 10-month earnings to predict its market-to-book equity value ratio. The 10-month earnings are annualized by multiplying the 10-month earnings by $^{6}/_{5}$. The results of this analysis are given in Exhibit 30.

J.20 Valuation of the Other Effinity Subsidiaries' Common Equity

374. Based on the calculations shown in Exhibit 30, the total estimated market value of the other Effinity subsidiaries described in this section is $1.44 billion.

J.21 Fair Market Value of Effinity Financial Corporation

375. Summing the values of the common and preferred equity of Countrywide Bank, the common equity of the subsidiaries of Balboa Group owned by Effinity, and the common equity of the other Effinity subsidiaries, in my opinion, the fair market value of the equity

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[207] None of these subsidiaries have preferred stock outstanding as of June 30, 2008 or October 31, 2008. *See* BACMBIA-R0000006043, BACMBIA-R0000006045, and BACMBIA-R0000006047.

interest in Effinity that was sold to BAC in the November 2008 Transactions was $10.68 billion as of November 7, 2008.[208]

K. Valuation of Countrywide Warehouse Lending and Countrywide Hillcrest Inc.

376. In this subsection, I value two subsidiaries of CHL that were sold to BAC in the November 2008 Transactions.

377. The two CHL subsidiaries,[209] along with their book values of common equity after adjustments to remove the effect of purchase accounting as of October 31, 2008, their annualized net incomes as of October 31, 2008, and a brief business description, are:[210]

   a. Countrywide Warehouse Lending (book value of equity of $256.2 million and net income of $2.5 million). This entity "[p]rovide[d] warehouse lending to mortgage bankers on a national basis."

   b. Countrywide Hillcrest, Inc. (book value of equity of $9.3 million and net loss of $2.1 million). This was a "special purpose entity that acquired a commercial office building in Thousand Oaks, California for use as premises."

K.1 Valuation Methodology for Equity of Countrywide Warehouse Lending and Countrywide Hillcrest Inc.

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[208] *See* Exhibits 22, 29, and 30.

[209] November 7, 2008 Asset Purchase Agreement by and between BAC and CHL, at 7 (BACMBIA-C0000168172–8229).

[210] List of business units sold from BACMBIA-R0000006047. Book value of equity and annualized net income as of October 31, 2008 from BACMBIA-R0000006043. Analogous to the procedure performed for the Bank and Balboa Group, the book value of equity as of October 31, 2008, is adjusted to remove purchase accounting adjustments. Annualized net income is calculated as EBT, Excl. Unusual Items * (1 – Statutory Tax Rate), where I assume a statutory tax rate of 37.5% for all companies. I did this so that the calculated annualized net income was comparable to the normalized net income as provided by *Capital IQ*. *See also* BACMBIA-C0000168643 for business descriptions.

378. It is my understanding that the subsidiaries described in subsection K are engaged in various activities in support of Countrywide's mortgage origination and securitization business. Because of these entities' connection to Countrywide's mortgage origination and securitization business, I value their equity using the results of the regression shown in Exhibit 21. This regression is based on the data for thrifts and large mortgage originators. Specifically, as discussed and shown in Exhibit 21, the regression uses earnings measures of the combined Thrift and Mortgage Originator Comparables as explanatory variables of the market-to-book equity value ratios of thrifts and mortgage originators.[211]

379. In applying the regression, because the subsidiaries are not thrifts, I set the indicator variable for thrifts to zero in calculating the predicted market-to-book equity value ratios of these subsidiaries.

380. I use each subsidiary's hypothetical book value of equity (i.e., after extracting the effects of purchase accounting) and its annualized 10-month earnings to predict its market-to-book equity value ratio.[212] The results of this analysis are given in Exhibit 31.

K.2 Fair Market Value of Common Equity of Countrywide Warehouse Lending and Countrywide Hillcrest Inc.

381. Based on the calculations shown in Exhibit 31, the total estimated market value of the subsidiaries described in this section is $209.8 million.

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[211] None of these subsidiaries have preferred stock outstanding as of June 30, 2008 or October 31, 2008. *See* BACMBIA-R0000006043, BACMBIA-R0000006045, and BACMBIA-R0000006047.

[212] Effects of purchase accounting were extracted by adding the balance of the "APIC – Purchase Accounting," "FAS 52 PA Contra," "Retained Earnings 2007 PA R/C," and "Retained Earnings PA Reclass" equity accounts to end-of-period equity balance. *See* BACMBIA-R00006043.

382. In my opinion, the fair market value of the equity of Countrywide Warehouse Lending and Countrywide Hillcrest, Inc. in total was $209.8 million.

L. Valuation of Countrywide GP and Countrywide LP

383. In this subsection, I value the equity of Countrywide GP and Countrywide LP. The equity of Countrywide GP and Countrywide LP was sold by CHL to NB Holdings on July 2, 2008.

L.1 Description of Countrywide GP and Countrywide LP

384. Countrywide GP and Countrywide LP were two Countrywide-legacy entities that owned 100% of the equity of Countrywide Home Loans Servicing LP (CHL Servicing).[213] Further, the only asset of Countrywide GP and Countrywide LP was the equity of CHL Servicing.[214] Because the only asset owned by Countrywide GP and Countrywide LP was the equity of CHL Servicing, and because neither Countrywide GP nor Countrywide LP had any debt outstanding as of July 2, 2008, I value the equity of Countrywide GP and Countrywide LP as being equal to the value of the common stock (i.e., equity) of CHL Servicing.[215]

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[213] Countrywide Financial Corporation, Current Report (Form 8-K), at 5 (July 8, 2008).

[214] Specifically, NB Holdings Corp., a fully owned subsidiary of BAC, acquired the partnership interests in Countrywide GP, LLC, and Countrywide LP, LLC, wholly owned entities of CHL. The sole assets of Countrywide GP, LLC, and Countrywide LP, LLC, were their ownership interests in CHL Servicing, LP. *See* July 2, 2008 Purchase and Sale Agreement by and between NBHC and CHL, at 1 (BACMBIA-C0000161342–350).

[215] BACMBIA-R0000006045.

385. CHL Servicing's business was the servicing of residential mortgage loans and its primary assets were MSRs.[216]

386. As of June 30, 2008, CHL Servicing reported book value of assets of $27.15 billion and total liabilities of $5.55 billion.[217] The book value of assets included an intercompany receivable of $7.34 billion.[218] The book value of liabilities included a tax liability of $5.42 billion.[219] It is my understanding that the intercompany receivable and the tax liability were not transferred to NB Holdings as part of the sale of CHL Servicing.[220] Thus, for my analysis, I remove the accounts receivable and the tax liability from the balance sheet of CHL Servicing.

387. After intercompany accounts receivable and tax liabilities are removed from CHL Servicing's balance sheet, its remaining primary assets were MSRs, which comprised 77.3% of CHL Servicing's remaining book value of assets, and reimbursable servicing advances, which comprised 22.4% of CHL Servicing's remaining book value of assets, and cash and investments in other financial instruments which comprised 0.23% of CHL Servicing's remaining book value of assets. The MSRs owned by CHL Servicing were for servicing loans with a total UPB of $1.121 trillion.[221] CHL Servicing reported reimbursable servicing advances with a gross book value of $4.63 billion and a net book

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[216] "Servicing LP owns servicing rights to residential mortgage loans and conducts servicing functions related to those loans. It also performs subservicing for residential mortgage loans when such loans or the related mortgage servicing rights are owned by the Registrant." *See* Countrywide Financial Corporation, Current Report (Form 8-K), at 5 (July 8, 2008).

[217] BACMBIA-R0000006045.

[218] BACMBIA-R0000006045.

[219] BACMBIA-R0000006045.

[220] BACMBIA-R0000006175.

[221] BACMBIA-V0000028410–416.

value of $4.45 billion where the net book value is calculated as the gross book value less a loss reserve of $181.7 million.[222] After removing the tax liability of $5.42 billion, CHL Servicing's only liability comprised $131.2 million of Accounts Payable & Accrued Liabilities.[223]

L.2 Description of Valuation Methodology

388. To estimate the fair market value of the equity of CHL Servicing, I value the MSRs and reimbursable servicing advances owned by CHL Servicing using the methodology described in subsections VIII.F and VIII.G.

L.3 Valuation of CHL Servicing's MSRs

389. In conducting this analysis, I use the list of comparable mortgage servicers given in Exhibit 13. For each servicer in the exhibit, I obtain its financial statements as of the most recent fiscal quarter-end before July 2, 2008. From these, I collect the accounting fair value of each servicer's MSRs and the UPB of its servicing portfolio. These are given in columns 3 and 4 of Exhibit 13. Column 5 gives the MSR-to-UPB ratio for each servicer as of the most recent financial reporting quarter-end before July 2, 2008.

390. The median MSR-to-UPB ratio of the comparable servicers is 1.29%. Multiplication of the UPB of CHL Servicing's servicing portfolio of $1.121 trillion by the median MSR-to-UPB ratio of the comparable servicers of 1.29% yields a value of $14.42 billion.

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[222] Countrywide Financial Corporation, Quarterly Report (Form 10-Q), at 6 (August 11, 2008). *See also* BACMBIA-R0000006045.

[223] BACMBIA-R0000006045.

L.4 Adjusting for Characteristics That Affect the MSR Valuation Ratios

391. To adjust the MSR valuation ratio for mortgage loan delinquencies in the servicing portfolio, I estimate a regression in which the servicers' MSR-to-UPB ratios, as shown in Exhibit 13, are the dependent variable. As predictor variables, I use an intercept and the servicers' delinquency ratios as of December 31, 2008, since delinquency ratios were only available at calendar year-end.[224] The delinquency ratios for the nine servicers for which such data are available are given in column 9 of Exhibit 13.

392. The results of the regression are given in Exhibit 14. With an F-statistic of 8.9, the regression is statistically significant. I use the coefficients of the regression in Exhibit 14 along with CHL Servicing's total delinquency ratio of 11.70% to estimate CHL Servicing's valuation ratio for its MSRs as of June 30, 2008. The predicted valuation ratio is 1.20%.[225]

393. Multiplication of the predicted valuation ratio of 1.20% by the UPB of CHL Servicing's servicing portfolio of $1.121 trillion yields a value of $13.41 billion.[226]

L.5 Maximum Value of CHL Servicing's Reimbursable Servicing Advances

394. As of June 30, 2008, CHL Servicing reported reimbursable servicing advances with a gross book value of $4.63 billion and a net book value of $4.45 billion where the net book value

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[224] Delinquency and foreclosure rates for these nine servicers are based on dollar volume of loans serviced for the year ended December 31, 2008, except for National City Mortgage Co., OH, whose holding company is National City Corporation, and Flagstar Bank, MI, whose holding company is Flagstar Bancorp, Inc. For these two companies, delinquency and foreclosure rates are measured based on loan count, or number of loans serviced, for the year ended December 31, 2008. *See* INSIDE MORTGAGE FINANCE PUBLICATIONS INC., 1 THE 2011 MORTGAGE MARKET STATISTICAL ANNUAL 231 (2011).

[225] Exhibit 15.

[226] Exhibit 15.

is calculated as the gross book value less a loss reserve of $181.7 million.[227] It is my understanding that the gross book value of reimbursable servicing advances is the maximum amount that can be recovered from such advances. Thus, in my opinion, the maximum market value of CHL Servicing's reimbursable servicing advances as of July 2, 2008 was $4.63 billion. Because the advances may not have been reimbursed in full and because the advances would likely have been reimbursed with a delay, it is my opinion that the fair market value of the reimbursable servicing advances is likely to have been less (but not more) than $4.63 billion.[228, 229]

L.6 Fair Market Value of the Equity of Countrywide GP and Countrywide LP

395. In my opinion, the fair market value of CHL Servicing's MSRs as of June 30, 2008, was $13.41 billion.[230]

396. In my opinion the maximum market value of CHL Servicing's reimbursable servicing advances is $4.63 billion.

397. The sum of these two values is $18.04 billion.

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[227] BACMBIA-R0000006045.

[228] It is my understanding that CHL established loss reserves for servicing advances that it expected would not be recoverable. *See* BACMBIA-G0000000053–66 at BACMBIA-G0000000063 ("Reserve is held for non-recoverable servicing advances on investor owned loans."). In addition, servicing advances were being written off during the relevant period (approximately $31 million in Q2 2008). *See* BACMBIA-I0000004385.

[229] *See* "Nationstar Mortgage Opens Down 3.1% Post-IPO," Marketwatch, March 8, 2012. ("The biggest risk facing Nationstar and other mortgage servicers is government crackdowns on the way foreclosures are being handled, which has resulted in the suspension of foreclosure procedures in several states, and delays and increased costs associated with foreclosures. Nationstar warns that more delays could occur, and could require it to make additional servicing advances or delay the recovery of those advances, which could hurt earnings and increase its need for capital.").

[230] Exhibit 15.

IX. Valuation of Demand Notes Issued by BAC and NB Holdings in the July and November 2008 Transactions

398. This section is devoted to valuation of the demand notes that were issued by BofA-legacy entities to Countrywide-legacy entities as consideration in the July and November 2008 Transactions. I first describe the demand notes issued. I then describe the valuation of the demand notes. I conclude this section with my opinion of the fair market value of the demand notes issued.

A. Description of Demand Notes Issued in the July 2008 and November 2008 Transactions

399. In the July 2008 Transactions, NB Holdings issued demand notes with a face amount of $27.79 billion (net of subsequent adjustments described in this section) to Countrywide-legacy entities.[231]

400. In the November 2008 Transactions, BAC issued demand notes with a face amount of $1.67 billion to Countrywide-legacy entities after adjusting for the remaining balance of the demand notes issued in the July 2008 Transactions and additional markdowns of the notes that occurred after November 7, 2008.[232] These adjustments are described in more detail below. The combined face amount of demand notes issued in the July and November 2008 Transactions (net of subsequent adjustments) was $29.46 billion.

[231] BACMBIA-R0000006150. This document omits the $6.94 billion note that was issued for the sale of residential mortgage loans on July 1, 2008. *See* July 1, 2008 Demand Note between NBHC and CHL (BACMBIA-C0000161141-144).

[232] BACMBIA-C0000168242–45 and BACMBIA-R0000006150.

401. As of October 31, 2008, the unpaid principal balance remaining on certain of the notes issued in the July 2008 Transactions was $4.17 billion.[233] It is my understanding that this remaining balance was included in the demand notes issued on November 7, 2008 and that the original notes issued in the July 2008 Transactions were cancelled.[234] New notes issued in the November 2008 Transactions had a total face value of $7.03 billion.[235] Therefore, the net amount of demand notes issued in the November 2008 Transactions was $2.87 billion ($7.03 billion – $4.17 billion = $2.87 billion).

402. The net amount of demand notes issued in the November 2008 Transactions of $2.87 billion was further adjusted downward after November 7, 2008 by a net amount of $1.20 billion.[236] Therefore, the net amount of notes issued in the November 2008 Transactions after adjustments was $1.67 billion ($2.87 billion – $1.20 billion = $1.67 billion).

403. The remaining unpaid balance of the demand notes as of December 31, 2008 was $5.23 billion.[237] The total face amount of demand notes issued in the July and November 2008 Transactions including all subsequent adjustments was $29.46 billion. Thus, the majority of the principal of the demand notes ($24.23 billion) had been repaid to Countrywide-legacy entities by BofA-legacy entities as of December 31, 2008.

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[233] BACMBIA-R0000006150.

[234] This is the case only for certain of the notes. Other notes outstanding at the time were not replaced. *See* BACMBIA-R0000006150.

[235] BACMBIA-R0000006150. The $7.03 billion consists of the following demand notes issued in the November 2008 Transactions: $3.46 billion for the sale of common equity of Effinity, $3.05 billion for the sale of CHL's other assets, $63.2 million for the Countrywide Bank JV sale, and $446.8 million and $7.8 million for IO and PO securities sold. *See* BACMBIA-C0000168502–07; BACMBIA-C0000168237–241; BACMBIA-R0000006100–05; BACMBIA-C0000168437–442; BACMBIA-C0000168417–421.

[236] BACMBIA-R0000006150 and BACMBIA-C0000168242–45.

[237] BACMBIA-R0000006150.

404. The demand notes had five key features in common. First, the notes could be "repaid in full or in part at any time at the option of the Borrower, without premium, penalty or broken-funding reimbursement."[238] That is, the notes could be called at any time at face amount at the option of BAC and NB Holdings. Second, the Countrywide-legacy entities had the right to demand payment of the notes at their remaining face amount at any time. The note agreements stated that "[t]he Borrower shall repay to the Lender all or such part of the outstanding Loan Amount as the Lender may demand from time to time, together with all accrued and unpaid interest thereon, within one Business Day after written demand…."[239] That is, the notes could be put to BAC and NB Holdings at any time for face value. Third, the notes offered a floating rate of interest indexed to the three-month LIBOR. The notes offered a rate of LIBOR plus a fixed spread (which was 65 basis points for all but one of the notes that paid a spread of 40 basis points). For example, a demand note issued as consideration for the sale of residential mortgage loans in the July 2008 Transactions stated that "[i]nterest shall accrue for each Interest Period on the outstanding principal amount of this Note...at a rate per annum equal to LIBOR plus 0.65%...."[240] Fourth, the notes had no stated maturity, i.e. they would remain outstanding until paid in full either by being called by BAC and NB Holdings or put by Countrywide-legacy entities.

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[238] BACMBIA-C0000161141–44; BACMBIA-C0000161271–75; BACMBIA-C0000161219–223; BACMBIA-C0000168237–241; BACMBIA-C0000168242–45; BACMBIA-C0000168417–421; BACMBIA-C0000168437–442; BACMBIA-C0000168502–07; BACMBIA-C0000168508–511; BACMBIA-R0000006067–071; BACMBIA-R0000006100–05.

[239] BACMBIA-C0000161141–44; BACMBIA-C0000161271–75; BACMBIA-C0000161219–223; BACMBIA-C0000168237–241; BACMBIA-C0000168242–45; BACMBIA-C0000168417–421; BACMBIA-C0000168437–442; BACMBIA-C0000168502–07; BACMBIA-C0000168508–511; BACMBIA-R0000006067–071; BACMBIA-R0000006100–05.

[240] BACMBIA-C0000161141–44; BACMBIA-C0000161271–75; BACMBIA-C0000161219–223; BACMBIA-C0000168237–241; BACMBIA-C0000168242–45; BACMBIA-C0000168417–421; BACMBIA-C0000168437–442; BACMBIA-C0000168502–07; BACMBIA-C0000168508–511; BACMBIA-R0000006067–071; BACMBIA-R0000006100–05.

Fifth, the notes were unsecured. Certain contractual provisions of each note issued in the July and November 2008 Transactions are given in Exhibit 32.

405. The put and call features of the demand notes play two particular roles in their valuation. First, in combination, these two features mean that, despite their long—indeed, infinite—maturities, the notes are equivalent to short-term notes. The reason is as follows. On the one hand, if the rate of interest promised on a note is below the prevailing market rate of interest for such a security, a value-maximizing holder of the note will exercise its option to put the note (i.e., demand repayment), thereby extinguishing the note. On the other hand, if the rate of interest promised on a note is above the prevailing market rate of interest for such a security, a value-maximizing issuer will exercise its option to call the note (i.e., repay the note).

406. The second important role of the put and call features in the valuation of the demand notes is as follows. On the one hand, if the fair market value of the notes were to rise above their face value at any time, the issuer, acting in its value-maximizing self-interest, would call the notes immediately. On the other hand, if the fair market value of the notes were to fall below their face value at any time, a holder, acting in its value-maximizing self-interest, would put the notes immediately. The implication is that, if the notes were not put or called, their market values would be close to or at their face amounts.

B. Valuation of Demand Notes

407. The issuers of the demand notes were BAC and NB Holdings.

408. Commercial paper is short-term unsecured debt that is publicly issued by companies. In the United States, commercial paper has a maximum maturity of nine months.[241]

409. Commercial paper issuers are assigned credit ratings by credit rating agencies. As of July 1, 2008, BAC was rated A1+ by *S&P* as commercial paper issuers. As of November 7, 2008, BAC was rated A1+ with a negative watch by *S&P* as commercial paper issuers.[242] A1+ is the highest rating that *S&P* awards to commercial paper issuers.[243]

410. The ICAP New York Funding Rate (NYFR) Fixings Index is the result of a survey of unsecured bank funding costs. The index is calculated as an average (after deleting the highest and lowest 25% of responses) of the rates that participating banks submit in response to a request for a rate "where a representative A1/P1 institution would be likely to obtain funding in the market."[244] The index is calculated every business day.

411. Exhibit 33 lists each of the demand notes, their issuance dates, and their promised interest rates as of their dates of issuance. Exhibit 33 also gives the three-month ICAP NYFR Fixings Index as of the issuance date of each note. For each note, the promised rate exceeds the ICAP NYFR Fixings Rate. The differences range from 2 basis points to 65 basis points. That is, as of their issuance dates, the promised rate is greater than the rate

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[241] RICHARD A. BREALEY ET AL., PRINCIPLES OF CORPORATE FINANCE 859 (8th ed. 2006).

[242] Standard & Poor's Research Update, *Bank of America Downgraded, Ratings Put on Watch Negative; Merrill Lynch on Watch Developing* (September 15, 2008).

[243] "Standard & Poor's Ratings Definitions," *Standard & Poor's* website, http://www.standardandpoors.com/ratings/articles/en/us/?articleType=HTML&assetID=1245334075323, most recently checked for availability on June 20, 2012.

[244] "ICAP Launches NYFR Fixings (SM)," *ICAP* website, June 10, 2008. http://www.icap.com/news-events/in-the-news/news/2008/icap-launches-nyfr-fixings.aspx, most recently checked for availability on May 11, 2012.

"where a representative A1/P1 institution would be likely to obtain funding in the market."[245]

412. Given that the demand notes were equivalent to short-term borrowings and that the rate of interest promised on the notes was at or above the level "where a representative A1/P1 institution would be likely to obtain funding in the market," the market values of the notes would have been close to their face amounts as of their dates of issuance.[246]

C. Fair Market Value of Demand Notes Issued in the July and November 2008 Transactions

413. In my opinion, the fair market value of the demand notes that BAC and NB Holdings issued to Countrywide-legacy entities in the July 2008 Transactions and the November 2008 Transactions was $27.79 billion and $1.67 billion respectively. Therefore, the total fair market value of the demand notes issued in the July and November 2008 Transactions was $29.46 billion.

X. Valuation of Obligations With Respect to Certain Public Debt Securities Assumed

414. This section is devoted to valuation of certain CFC and CHL obligations under public debt securities that BAC assumed in the November 2008 Transactions. I first describe the liabilities. I then describe the methodology that I use for valuation. I conclude with my

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[245] "ICAP Launches NYFR Fixings (SM)," *ICAP* website, June 10, 2008. http://www.icap.com/news-events/in-the-news/news/2008/icap-launches-nyfr-fixings.aspx, most recently checked for availability on May 11, 2012.

[246] "ICAP Launches NYFR Fixings (SM)," *ICAP* website, June 10, 2008. http://www.icap.com/news-events/in-the-news/news/2008/icap-launches-nyfr-fixings.aspx, most recently checked for availability on May 11, 2012.

opinion on the fair market value of the CFC and CHL public debt obligations that BAC assumed.

415. Assumption of a debt by a third party means that the debtor is relieved of the burden of the debt. That is, assumption of a debt by a third party means that the third party has "stepped into the shoes" of the debtor with respect to the debt. In most circumstances, from an economic perspective, relieving a debtor of its debt is equivalent to paying cash to the debtor.[247] Thus, from an economic perspective, BAC's assumption of Countrywide-legacy entities' debt obligations with respect to certain public debt securities is equivalent to BAC paying cash consideration to CFC and CHL. The amount of consideration paid is equal to the fair market value of the debt obligations assumed.

A. Description of Obligations with Respect to Certain Public Debt Securities Assumed

416. The liabilities assumed in the November 2008 Transactions were public debt securities (henceforth, "bonds") issued by either CFC and guaranteed by CHL or public debt securities issued by CHL and guaranteed by CFC. The total face or par value of the bonds outstanding as of November 7, 2008, was $16.64 billion.[248]

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[247] *See* "Council Regulation (EC) No 2223/96," *Official Journal of the European Communities*, 123, 4.165(f) (November 30, 1996), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1996:310:0001:0469:EN:PDF, most recently checked for availability on June 19, 2012.

[248] Calculated as the total amount outstanding of November 7, 2008 based on amount outstanding of each of the assumed liabilities presented in column 9 of Exhibit 34. *See* November 7, 2008 Asset Purchase and Sale Agreement by and between BAC and CHL, at Schedule 2.3 (BACMBIA-C0000168172–8229); November 7, 2008 Stock Purchase Agreement by and between BAC and CFC, at Schedule 1.2(a) (BACMBIA-C0000168443–494); BACMBIA-I0000071808.

417. Face value represents the promised amount of principal outstanding on the bonds. Repayment of principal and payment of interest was promised by CFC and CHL to the owners of the bonds at a future time depending on the maturity date and other characteristics of a particular bond.

418. Characteristics of the bonds are summarized in Exhibit 34. In total, 119 bonds were assumed.[249] Of the bonds, 103 were fixed-rate nonconvertible bonds with a total face value of $9.36 billion, ten were floating-rate nonconvertible bonds with a total face value of $4.77 billion, two were floating-rate convertible bonds with a total face value of $310 million, two were fixed-rate nonconvertible debentures supporting trust preferred securities ("TRUPS") with a total face value of $2.00 billion, one was a fixed-rate nonconvertible subordinated capital income security ("SKIS") with a face value of $0.20 billion, and one was a nonconvertible Step-Up bond with a face value of $6.3 million.

419. All of the bonds are public debt securities and all but nine are denominated in U.S. dollars.

420. I list all of these bonds in Exhibit 34 along with their maturity dates, their coupon rates of interest, their credit ratings as of November 7, 2008, and their principal amounts outstanding as of November 7, 2008.

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[249] I identify the liabilities assumed based on CUSIPs and other identifiers found in (i) Schedule 2.3 of the November 7, 2008 Asset Purchase Agreement by and between BAC and CHL (BACMBIA-C0000168172–8229), and (ii) Schedule 1.2(a) of the November 7, 2008 Stock Purchase Agreement by and between BAC and CFC (BACMBIA-C0000168443–494). As of November 7, 2008, 40 of the bonds that had already matured appear on the lists of debt securities assumed as part of the November 2008 Transactions. I do not value the matured bonds and they are not included in the estimated fair market value of the liabilities assumed. CH0024763853 has been included as an obligation with respect to a public debt security that was assumed by BAC in the November 2008 Transactions as explained in the Amendment and Supplement to the Expert Report of John McConnell dated September 4, 2012. See also BACMBIA-I0000071808.

B. Valuation Methodology for Obligations With Respect to Certain Public Debt Securities Assumed

421. To value CFC's and CHL's obligations with respect to certain public debt securities assumed by BAC, I use transaction prices, third-party evaluated prices, and a comparable-asset valuation methodology.

422. For bonds that traded on November 7, 2008, I use their transaction prices as of that date as their market values. Transaction prices are from *Bloomberg*.

423. For bonds that did not trade on November 7, 2008 but did trade on any day between October 24, 2008 (two weeks before November 7, 2008) and November 6, 2008, I use the transaction price as of the date closest to November 7, 2008, as its market value. There were seven such bonds: one traded on October 30, one traded on November 3, three traded on November 4, and two traded on November 5, 2008.

424. For bonds that did not trade on November 7, 2008, or on any date between October 24, 2008 and November 6, 2008, I search the *Capital IQ* database or *Bloomberg* for an evaluated price as of November 7, 2008. If the *Capital IQ* database or *Bloomberg* provides an evaluated price as of November 7, 2008 for the bond, I use that price as its market value.

425. For bonds that did not trade on November 7, 2008, or on any date between October 24, 2008, and November 6, 2008, and for which *Capital IQ* does not provide an evaluated price as of November 7, 2008, I search the *Capital IQ* database for an evaluated price as of any date between October 24, 2008, and November 6, 2008. If *Capital IQ* provides an evaluated price as of any date between October 24, 2008, and November 6, 2008, I use the evaluated price closest in time to November 7, 2008, as the market value of the bond. If

Capital IQ does not provide an evaluated price as of any date between October 24, 2008, and November 6, 2008, I search *Bloomberg* for an evaluated price as of any date between October 24, 2008, and November 6, 2008. If *Bloomberg* provides an evaluated price as of any date between October 24, 2008, and November 6, 2008, I use the evaluated price closest to November 7, 2008, as the market value of the bond.

426. If neither the *Capital IQ* database nor *Bloomberg* provides a transaction price or evaluated price for a bond as of any date between October 24, 2008, and November 6, 2008, I search among the other CFC and CHL bonds that were assumed for a bond that matches the bond for which I do not have a price. I seek to match on six dimensions. These dimensions are maturity, credit rating, whether the bond is convertible, whether the bond is callable, whether it is a fixed- or floating-rate bond, and the currency in which the bond is denominated.

427. I calculate the yield to maturity of the matching bond and use that yield to discount the future interest and principal payments of the bond to be valued. I use the discounted value of these cash flows as the fair market value of the bond.

428. To find bond prices, I use *Bloomberg*. *Bloomberg* provides trade information for publicly registered bonds. *Bloomberg* reports information on bond transactions from the Trade Reporting and Compliance Engine ("TRACE"). Bond dealers subject to U.S. regulations are required to submit transactions prices to TRACE, which is a centralized database. According to the Financial Industry Regulatory Authority ("FINRA"):

> NASD introduced TRACE (Trade Reporting and Compliance Engine) in July 2002 in an effort to increase price transparency in the U.S. corporate debt market. The system captures and disseminates consolidated information on secondary market transactions in publicly traded TRACE-eligible securities

(investment grade, high yield and convertible corporate debt) — representing all over-the-counter market activity in these bonds.[250]

429. As shown in Exhibit 34, *Bloomberg* reports a transaction price on November 7, 2008, or on another date between October 24, 2008, and November 6, 2008, for 26 of the 103 fixed-rate bonds with a total face value of $3.55 billion and for five of the nine floating-rate bonds with a total face value of $3.68 billion. *Bloomberg* also reports transaction prices for both of the TRUPS, for the SKIS, for the two convertible bonds, and for the Step-Up bond between October 24, 2008, and November 7, 2008.[251] These bonds with prices from *Bloomberg* had an approximate total face value outstanding of $9.74 billion as of November 7, 2008.

430. Therefore, in total, *Bloomberg* provides transaction prices for bonds with a face value of $9.74 billion in outstanding principal out of the total face value of bonds of $16.64 billion.

431. As also shown in Exhibit 34, for bonds with no transaction price on any date between October 24, 2008, and November 7, 2008, an evaluated price is available as of at least one date within that interval for 76 of the fixed-rate bonds and for four of the floating rate bonds.

432. In sum, using the pricing algorithm described above, I have a transaction price or an evaluated price for 117 of the 119 bonds for which BAC assumed liability in the November 2008 Transactions.

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[250] "TRACE Corporate Bond Data," Financial Industry Regulatory Authority (FINRA) website, http://www.finra.org/Industry/Compliance/MarketTransparency/TRACE/CorporateBondData, most recently checked for availability on June 19, 2012.

[251] Only the Step-Up bond has a transaction price on November 4, 2008. All other bonds have transaction prices on November 7, 2008.

433. For the two bonds without a price, I search for a comparable CFC or CHL bond among the bonds for which I do have a price. Neither of them is a convertible bond. One is a fixed-rate bond and one is a floating-rate bond. I search among nonconvertible fixed-rate bonds with prices to identify a bond comparable to the fixed-rate bond for which I do not have a price. I search among the nonconvertible floating-rate bonds with prices to identify a bond comparable to the floating-rate bond for which I do not have a price.

434. The fixed-rate bond, for which I do not have a price, is denominated in British pounds and identified in transaction documents as a "Euro Medium Term Note" bond with ISIN ("International Securities Identification Number") of XS0243822060. The bond matures on February 17, 2011, is nonconvertible, is noncallable, pays a coupon of 5.13%, and is rated AA- with a face amount of $473.6 million outstanding as of November 7, 2008.[252] I search among other non-U.S.-dollar denominated fixed-rate bonds for a comparable bond. I use the "Euro Medium Term Note" bond with ISIN of XS0192950367 as the comparable bond. The comparable bond is also denominated in British pounds, matures on December 15, 2008, is rated AA-, is nonconvertible, is noncallable, and pays a coupon rate of 5.88%. For the comparable bond, I use its price as of November 7, 2008, to calculate its annualized yield to maturity to be 19.58% as of November 7, 2008. I use this yield to discount the future promised interest and principal of the "Euro Medium Term Note" bond for which I

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[252] *See* Exhibit 34.

do not have a price to estimate its market value as of November 7, 2008. The estimated market value of this bond is $356.1 million.[253]

435. The floating-rate bond, for which I do not have a price, is denominated in U.S. dollars and is identified in transaction documents as a "Euro Medium Term Note" bond with ISIN of XS0094006482. The bond matures on January 20, 2009, is nonconvertible, is noncallable, is rated Aa2, pays a coupon of USD-LIBOR-BBA + 0.4%, and has an amount outstanding of $50.0 million as of November 7, 2008.[254] I search among other CFC U.S. dollar denominated floating-rate bonds for a comparable bond. I use the "CFC B" bond with CUSIP of 22238HEL0 as the comparable bond. The comparable bond matures on January 5, 2009, is rated Aa2, is nonconvertible, is noncallable, and pays a coupon of LIBOR + 0.14%.[255] For the comparable bond, I use its price as of November 7, 2008, to calculate its annualized yield to maturity to be 9.51% as of November 7, 2008. I use this yield to discount the future promised interest and principal of the "Euro Medium Term Note" bond for which I do not have a price to estimate its market value as of November 7, 2008. The estimated market value of this bond is $49.4 million.

C. Valuation of Obligations With Respect to Certain Public Debt Securities Assumed

436. To estimate the market value of CFC's and CHL's liabilities that were assumed by BAC in the November 2008 Transactions, I multiply the prices in column 12 of Exhibit 34 by the

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[253] *See* Exhibit 34.

[254] If the six-month USD-LIBOR-BBA rate is greater than 4%, this note pays a fixed rate of 6.1%; if not, it pays a floating rate of USD-LIBOR-BBA six-month rate + 0.4%. *See* Countrywide Home Loans, Inc., Fixed/Floating Rate Notes due 2009, Pricing Supplement, January 13, 1999. On November 7, 2008, as of the fixing date for the period ending January 20, 2009 (the last coupon period of this note), the USD-LIBOR-BBA rate was below 4%. *See* Exhibit 34.

[255] *See* Exhibit 34.

outstanding principal balance in column 9 of the exhibit. These give the estimated market values as of November 7, 2008. These market values are given in column 14. The sum of the values in column 14 is $15.07 billion.

D. Fair Market Value of Obligations With Respect to Certain Public Debt Securities Assumed

437. In my opinion, the fair market value of CFC's and CHL's obligations with respect to certain public debt securities that were assumed by BAC in the November 2008 Transactions was $15.07 billion as of the date of the November 2008 Transactions.

XI. Valuation of the Components of CFC

438. This section addresses the recognized phenomenon that the market value of a diversified financial services company like CFC is, on average, less than the market value of the sum of its individual parts.[256] I first provide a brief overview of the literature on this phenomenon, known as the "diversification discount." I then undertake an analysis of CFC to determine whether its market value is consistent with this literature. More precisely, I consider whether application of my valuation methodology indicates that CFC viewed as the sum of the value of its components would lead to a value greater or less than the value of CFC as a whole.

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[256] *See* Philip G. Berger and Eli Ofek, *Diversification's effect on firm value*, 37 JOURNAL OF FINANCIAL ECONOMICS (1995) ("We estimate diversification's effect on firm value by imputing stand-alone values for individual business segments. Comparing the sum of these stand-alone values to the firm's actual value implies a 13% to 15% average value loss from diversification during 1986-1991."); Larry H. P. Lang and René M. Stulz, *Tobin's q, Corporate Diversification, and Firm Performance*, 102 JOURNAL OF POLITICAL ECONOMY (1994) ("We find no evidence supportive of the view that diversification provides firms with a valuable intangible asset."); Henri Servaes, *The Value of Diversification During the Conglomerate Merger Wave*, 51 THE JOURNAL OF FINANCE (1996) ("This article examines the value of diversification when many corporations started to diversify. I find no evidence that diversified companies were valued at a premium over single segment firms during the 1960s and 1970s.").

439. To perform this analysis, I calculate the market-to-book equity value ratio of CFC on three separate dates in the period before certain BofA-legacy entities acquired certain Countrywide-legacy entities in the July and November 2008 Transactions. I then compare CFC's market-to-book equity value ratio to the market-to-book equity value ratios, as of those dates, for companies engaged in business similar to those of CFC's individual components. If the diversification discount is present in the case of CFC, CFC's market-to-book equity value ratio would be lower than the market-to-book equity value ratios of the companies engaged in operations similar to those of CFC's individual components. I present my conclusions on whether the market value of CFC—as a whole and as individual components—is consistent with this set of literature. In brief, the answer is that the data are consistent with CFC exhibiting a diversification discount.

440. Numerous economic and finance studies show that the sum of the equity values of the components of large diversified enterprises (if those units were valued as freestanding entities) is greater than the equity market value of the diversified enterprise as a whole. That is, these studies show that the market value of the equity of a diversified company is, on average, less than the sum of the market values of freestanding companies that are comparable to the units that constitute the diversified firm. This difference has come to be known as the diversification discount.

441. In particular, two recent studies focus on financial conglomerates. In their 2007 study, Luc Laeven and Ross Levine conclude that "[t]he market values of financial conglomerates that engage in multiple activities, e.g., lending and non-lending financial services, are lower

than if those financial conglomerates were broken into financial intermediaries that specialize in the individual activities."[257] Similarly, in a 2009 article, Markus Schmid and Ingo Walter state that "[b]ased on a U.S. dataset comprising approximately 4060 observations covering the period 1985–2004, [the authors] report a substantial and persistent conglomerate discount among financial intermediaries."[258]

442. To consider whether these studies apply to the relationship between CFC and its individual components, as valued using my analysis, I conduct the investigation described in this section.

443. I base my analysis on the market-to-book equity value ratios for the companies in question as of three dates: August 15, 2007, March 15, 2007, and August 15, 2006. I chose these dates because they provide measures of CFC's market value before BAC's acquisition yet are reasonably close in time to the July and November 2008 Transactions. I chose August 15, 2007, because it precedes (i) the July and November 2008 Transactions by approximately one year, (ii) the announcement that BAC would acquire the common stock of CFC by approximately five months, and (iii) BAC's purchase of the preferred stock of CFC by one week. Thus, BAC's acquisition of CFC is unlikely to have affected the market value of CFC's common stock as of that date. If the market were anticipating the merger, CFC's stock would have been valued by the market according to the market's expectations of the consideration that CFC shareholders would potentially receive in the merger. I chose

[257] Luc Laeven and Ross Levine, *Is there a diversification discount in financial conglomerates?*, 85 JOURNAL OF FINANCIAL ECONOMICS (2007).

[258] Markus M. Schmid and Ingo Walter, *Do financial conglomerates create or destroy economic value?*, 18 JOURNAL OF FINANCIAL INTERMEDIATION (2009).

March 15, 2007, because it also precedes the merger and because the year-end 2006 financial reports of CFC and its peers would have been released by that date. I chose August 15, 2006, because it precedes the July and November 2008 Transactions and the BAC merger by approximately two years.

444. In this analysis, I compare the market-to-book equity value ratio of CFC as an ongoing entity with the market-to-book equity value ratios of entities that are comparable to the individual units that constituted CFC as of the three valuation dates. As of August 15, 2007, CFC comprised three major business units and certain other assorted business units. The three major business units were Countrywide Bank, CHL, and Balboa Group, which together engaged in banking, mortgage banking, capital markets, and insurance operations. According to CFC's 2006 10-K, banking, mortgage banking, capital markets, and insurance accounted for 99% of CFC's pretax earnings.[259]

445. To calculate the market value of CFC's common equity as of August 15, 2007, March 15, 2007, and August 15, 2006, I multiply CFC's stock price as of each date (retrieved from *Capital IQ*) by the number of shares of CFC's common stock outstanding as of each date (also retrieved from *Capital IQ*). In calculating CFC's market-to-book equity value ratio, I use the most recent publicly available book value of its equity. Those figures come, respectively, from CFC's June 30, 2007, December 31, 2006, and June 30, 2006 financial filings (i.e., the end of CFC's second fiscal quarter of 2007, year-end 2006, and second fiscal quarter 2006). Dividing CFC's August 15, 2007, market value of common equity of

[259] Countrywide Financial Corporation, Annual Report (Form 10-K), at 1 (March 1, 2007).

$12.3 billion by its June 30, 2007, book value of common equity yields a market-to-book equity value ratio of 0.85. CFC's market-to-book equity value ratio as of both March 15, 2007, and August 15, 2006, is 1.46.[260]

446. Once I establish the market-to-book equity value ratio of CFC as a whole, I then assess the market-to-book equity value ratios of entities comparable to CFC's individual units. I first consider peers of Countrywide Bank. To assess the market-to-book equity value ratios of the Bank's peers, I use the list of thrifts given in the OTS Thrifts List. Of these thrifts, 19 have assets constituting at least 90% of their holding company's assets, as of the most recent of the three dates, August 15, 2007, and their holding company's common stock was publicly traded. For each of these thrifts, I collect its book value of equity from its financial filing filed between May 16, 2007 (three months prior to August 15, 2007) and August 15, 2007 (if available, retrieved from *Capital IQ*). These requirements give rise to the set of 19 thrifts listed in Exhibit 36A.

447. The market-to-book equity value ratios of these comparable thrifts (given in column 8 of the exhibit) range from 0.65 to 3.21, with a median value of 1.38. Thus, as of August 15, 2007, CFC's market-to-book equity value ratio—0.85—was less than the median of large publicly traded financial institutions classified as doing business similar to Countrywide Bank. As of the other two dates, March 15, 2007, and August 15, 2006, 19 and 17 of the thrifts, respectively, listed in the OTS Thrifts List meet the requirements that the assets of the thrift constitute at least 90% of the assets of its holding company, the holding

[260] Exhibit 35.

company's stock is publicly traded, and the holding company's financial reports from the three months prior to March 15, 2007, and August 15, 2006, were publicly available.

448. I replicate the market-to-book analysis for the comparable thrifts as of each date. The resulting median market-to-book equity value ratios for the two sets of thrifts (given in column 8 of Exhibits 37A and 38A, respectively) are 1.59 and 1.81, respectively. Thus, as of March 15, 2007, and August 15, 2006, CFC's market-to-book equity value ratios—1.46 for both dates—were again less than the medians of large publicly traded financial institutions classified as doing business similar to Countrywide Bank.

449. The results of this analysis are summarized in Exhibit 35.

450. I next consider peers of CHL. According to CFC's 2006 10-K, CHL was involved in mortgage origination and loan servicing.[261] Thus, as comparables for CHL, I use the set of mortgage originators given in the Mortgage Originators List and the set of mortgage servicers in the Top 50 Servicers. As with thrifts, for each of the entities listed in the Mortgage Originators List and the Top 50 Servicers, I determine whether it or its holding company has common stock that was publicly traded as of August 15, 2007. If so, I calculate the market value of the entity's common stock as of that date with data retrieved from *Capital IQ*. For each of these mortgage originators and servicers, I collect its book value of equity from its financial filing filed between May 16, 2007 (three months prior to August 15, 2007) and August 15, 2007 (if available, retrieved from *Capital IQ*). These requirements give rise to the set of 33 mortgage originators and 36 mortgage servicers

[261] Countrywide Financial Corporation, Annual Report (Form 10-K), at 3 and 10 (March 1, 2007).

listed in Exhibits 36B and 36C, respectively. Repeating this analysis for March 15, 2007, and August 15, 2006, gives rise to the set of 31 comparable mortgage originators listed in Exhibits 37B and 38B, respectively, and the sets of 33 and 34 comparable mortgage servicers listed in Exhibits 37C and 38C, respectively.

451. As of August 15, 2007, the market-to-book equity value ratios of the mortgage originators (given in column 6 of Exhibit 36B) range from 0.68 to 2.65, with a median value of 1.36. The market-to-book equity value ratios of the servicers (given in column 6 of Exhibit 36C) range from 0.68 to 2.65, with a median value of 1.50. As of August 15, 2007, the market-to-book equity value ratio of CFC (0.85) was less than the median of the market-to-book equity value ratios of large mortgage originators and servicers. Repeating these analyses as of March 15, 2007, and August 15, 2006, the resulting median market-to-book equity value ratios for mortgage originators (given in column 6 of Exhibits 37B and 38B, respectively) are 1.62 and 1.79, respectively. The resulting market-to-book equity value ratios for mortgage servicers (given in column 6 of Exhibits 37C and 38C, respectively) are 1.72 and 1.91, respectively. Thus, as of March 15, 2007, and August 15, 2006, CFC's market-to-book equity value ratios (1.46) were again less than the medians of the market-to-book equity value ratios of large mortgage originators and servicers.

452. Examination of Exhibits 37A, B, and C with Exhibits 38A, B, and C shows substantial overlap among originators and servicers. For each date, I compile a list of originators and servicers that includes each originator or servicer only once. Thus, the list contains no overlapping originators or servicers. For each of the three dates of the analysis, I compute a median market-to-book equity value ratio of the combined originators and servicers list. The three medians are 1.86, 1.62, and 1.36 (as of August 15, 2006, March 15, 2007, and

August 15, 2007, respectively). Thus, on each date, inclusion of only unique originators and servicers gives rise to median market-to-book equity value ratios greater than CFC's.

453. The results of these analyses are summarized in Exhibit 35.

454. I now consider the peers of Balboa Group. As described in Section VIII.J.11, Balboa Group can be viewed as consisting of Balboa P&C, Balboa Life, and Balboa Marketing. As comparables for Balboa P&C, I use the set of property and casualty insurers given in the P&C List. As comparables for Balboa Life, I use the set of life and fraternal insurers given in the Life Insurers List. As with thrifts and mortgage originators, for each of the entities listed in the P&C List and the Life Insurers List, I determine whether it or its holding company has common stock that was publicly traded as of August 15, 2007. If so, I calculate the market value of the entity's common stock as of that date with data retrieved from *Capital IQ*. For each of these, I collect its book value of common equity from its financial filing filed between May 16, 2007 (three months prior to August 15, 2007) and August 15, 2007 (if available, retrieved from *Capital IQ*). These requirements give rise to the set of 60 property and casualty insurers listed in Exhibit 36D and the set of 52 life and fraternal insurers listed in Exhibit 36E. Replicating this analysis for March 15, 2007, and August 15, 2006, yields the sets of 60 and 56 comparable property and casualty insurers listed in Exhibits 37D and 38D, respectively, and the sets of 47 and 50 comparable life and fraternal insurers listed in Exhibits 37E and 38E, respectively.

455. I repeat the market-to-book equity value ratio analyses for property and casualty and life insurers as of August 15, 2007. The market-to-book equity value ratios of the property and casualty insurers (given in column 5 of Exhibit 36D) range from 0.32 to 3.70, with a

median value of 1.28. The market-to-book equity value ratios of the life and fraternal insurers (given in column 5 of Exhibit 36E) range from 0.62 to 3.61, with a median value of 1.57. As of August 15, 2007, the market-to-book equity value ratio of CFC (0.85) was less than the median of the market-to-book equity value ratios of comparable insurance companies. Repeating these analyses as of March 15, 2007, and August 15, 2006, the resulting median market-to-book equity value ratios for property and casualty insurers (given in column 5 of Exhibits 37D and 38D, respectively) are 1.38 and 1.43, respectively. The resulting median market-to-book equity value ratios for life and fraternal insurers (given in column 5 of Exhibits 37E and 38E, respectively) are 1.68 and 1.70, respectively.

456. As of March 15, 2007, and August 15, 2006, the market-to-book equity value ratios of CFC (1.46) were less than the median market-to-book equity value ratios of the comparable life and fraternal insurers, but higher than the median market-to-book equity value ratios of the comparable property and casualty insurers.

457. The results of these analyses are summarized in Exhibit 35.

458. The results of my analyses, summarized in Exhibit 35, are consistent with the extensive literature on diversification discounts. As shown in the exhibit, on August 15, 2007, March 15, 2007, and August 15, 2006, CFC’s observed market-to-book equity value ratio is less than the median market-to-book equity value ratios of thrifts, mortgage originators, mortgage servicers, and life and fraternal insurance companies that are comparable to the individual CFC components. Further, on August 15, 2007, CFC’s market-to-book equity value ratio is less than the median market-to-book equity value ratio of the property and casualty insurance companies that are comparable to the individual CFC components. On

March 15, 2007, and August 15, 2006, however, CFC's market-to-book equity value ratio is higher than the median ratios of the property and casualty comparables.

459. Given that CFC's insurance operations (i.e., Balboa Group) accounted for 6% of CFC's pretax earnings in 2006,[262] these data are overall consistent with CFC as an entity exhibiting a diversification discount of the sort reported in the finance and economics literature for other large diversified business entities and financial firms.

460. These data are consistent with the value of CFC as a whole being no greater than and likely less than the sum of the estimated values of its component parts, as of the three valuation dates before the July and November 2008 Transactions.

XII. Glossary of Defined Terms

- **Alt-A Mortgages**: "Loans to prime-credit borrowers that have some combination of nontraditional documentation, non-standard product structure, or more liberal underwriting." *See* "Alt A" at "Glossary," Inside Mortgage Finance website, http://www.insidemortgagefinance.com/glossary/, most recently checked for availability on June 19, 2012.
- **ARM**: Adjustable-rate mortgage.
- **BAC**: Bank of America Corporation; a banking and financial services firm.
- **Balboa Group**: Balboa Insurance Group, Inc.; an Effinity subsidiary and Countrywide-legacy entity that was a national property, casualty, life, disability, and credit insurance provider, including lender-placed insurance.
- **Balboa Life**: Balboa Life Insurance Company and Balboa Life Insurance Company of New York, collectively; subsidiaries of Balboa Group that were primarily involved in providing life, disability, and credit insurance.
- **Balboa Marketing**: Countrywide Insurance Services and DirectNet Insurance Agency, collectively; subsidiaries of Balboa Group that were primarily involved in marketing and distributing the life insurance and property and casualty insurance products.

[262] Countrywide Financial Corporation, Annual Report (Form 10-K), at 1 (March 1, 2007).

- **Balboa P&C**: Balboa Insurance Company, Balboa Life & Casualty, LLC, Balboa Warranty Services Corporation, Meritplan Insurance Company, Newport E&S Insurance Company, Newport Insurance Company, and Newport Management Corporation, collectively; subsidiaries of Balboa Group that were primarily involved in providing property and casualty insurance.
- **BANA**: Bank of America, N.A.; a BofA-legacy entity that provides banking services in North America.
- **BofA-Legacy Entities**: BAC and its subsidiaries, except for the Countrywide-legacy entities.
- **Cancellable Interest Rate Swaps**: Interest rate swap agreements with an embedded option giving one party the right to terminate the swap without penalty before its maturity.
- **CCREF**: Countrywide Commercial Real Estate Finance, Inc.; a Countrywide-legacy entity that sold commercial mortgage loans to NB Holdings in the July 2008 Transactions.
- **CDR**: The lifetime constant default rate of the mortgage loan pool underlying the RMBS, as obtained from *ABSNet*.
- **CDS**: *See* Credit Default Swaps.
- **CFC**: Countrywide Financial Corporation; a Countrywide-legacy entity that acted as a banking and financial services firm.
- **CHL Servicing**: Countrywide Home Loans Servicing LP; a Countrywide-legacy entity owned entirely by Countrywide GP and Countrywide LP that was primarily involved in the servicing of residential mortgage loans and whose primary asset was MSRs.
- **CHL**: Countrywide Home Loans, Inc.; a Countrywide-legacy entity that sold residential mortgage loans and its remaining assets to BofA-legacy entities in the July and November 2008 Transactions.
- **CMBS**: Commercial mortgage-backed securities.
- **CMBX Index**: A "synthetic tradeable index referencing a basket of 25 commercial mortgage-backed securities…." *See* "Products & Services – Indices – Markit Structured Finance Indices," *Markit* website, http://www.markit.com/en/products/data/indices/structured-finance-indices/cmbx/cmbx.page, most recently checked for availability on June 13, 2012.
- **CMO**: Collateralized mortgage obligation; a mortgage-backed bond issued by a special purpose entity that "separates mortgage pools into different tranches based on maturity and risk." *See* JOHN DOWNES & JORDAN ELLIOT GOODMAN, DICTIONARY OF FINANCE AND INVESTMENT TERMS 124 (8th ed. 2010).
- **Countrywide Bank**: Countrywide Bank, FSB; a Countrywide-legacy entity and subsidiary of Effinity that acted as a Federal Savings Bank whose primary business activities included originating residential mortgage loans, gathering deposits through checking accounts, savings accounts, and certificates of deposit, and providing document custody services.
- **Countrywide-legacy Entities**: Countrywide Financial Corporation and its direct and indirect subsidiaries as of July 1, 2008.

- **CPR**: The total lifetime constant prepayment rate of the mortgage loan pool underlying the RMBS, as obtained from *ABSNet*.
- **Credit Default Swaps**: Agreements in which one party agrees to pay the other in the event of a default by a third party.
- **Cross-currency Interest Rate Swaps**: Agreements to exchange fixed or floating interest rates denoted in different currencies for a specified period of time.
- **CUSIP**: A unique nine-character identifier that classifies debt and equity securities issued by companies, governments, and municipalities.
- **Demand Notes**: The demand notes issued by BAC and NB Holdings to Countrywide-legacy entities as partial consideration for the assets sold in the July and November 2008 Transactions.
- **Dependent Variable**: The variable to be predicted from the explanatory variables when estimating a regression.
- **Effinity**: Effinity Financial Corporation; a Countrywide-legacy entity that owned the common and preferred stock of certain Countrywide-legacy entities.
- **Equity Tranches**: The most junior tranches of an MBS.
- **Evaluated Prices**: Values calculated by third-party pricing services for securities that rarely trade on a daily basis.
- **Explanatory Variables**: The characteristics of the asset to be valued used in a regression to predict the dependent variable.
- **Fair Market Value**: "The price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts." *See* AMERICAN SOCIETY OF APPRAISERS, ASA BUSINESS VALUATION STANDARDS 27 (2009).
- **Fannie Mae**: The Federal National Mortgage Association; a government-affiliated MBS issuer.
- **FHA/VA Loans**: Loans that are government insured (by the Federal Housing Administration) or government guaranteed (by the Department of Veterans Affairs).
- **FINRA**: Financial Industry Regulatory Authority, Inc.; a private corporation that regulates member brokerage firms and markets.
- **First-Lien Loans**: Loans that represent a primary claim on the underlying property.
- **Forward Rate Agreements**: "Over-the-counter agreement[s] that a certain interest rate will apply to a certain principal during a specified future period of time." JOHN C. HULL, OPTIONS, FUTURES & OTHER DERIVATIVES 100 (5th ed. 2003).
- **FRAs**: *See* Forward Rate Agreements.
- **Freddie Mac**: The Federal Home Loan Mortgage Corporation; a government-affiliated MBS issuer.
- **FRM**: Fixed-rate mortgage.

- **FSB**: Federal Savings Bank; an institution categorized as a thrift and regulated by the OTS.
- **F-statistic**: The F-statistic is a quantity associated with the statistical test of whether the regression model has statistically significant explanatory power—in other words, explanatory power superior to simply using the mean of the independent variable. More precisely, this test examines the hypothesis that the coefficients of the explanatory variables (except for the intercept) are all zero. A high value of the F-statistic relative to a benchmark value indicates that the model has superior explanatory power beyond the sample mean. Statistical significance is related to the likelihood that a statistical hypothesis is rejected when it is in fact true; a high level of significance means that there is a low probability of incorrectly rejecting the hypothesis.
- **Ginnie Mae**: The Government National Mortgage Association; a government-affiliated MBS guarantor.
- **HELOC**: *See* Home Equity Lines of Credit.
- **Home Equity Lines of Credit**: Mortgage loans that allow the "borrower to obtain cash drawn against the equity of his home, up to a predetermined amount." *See* "HELOC" at "Glossary," Inside Mortgage Finance website, http://www.insidemortgagefinance.com/glossary/, most recently checked for availability on June 19, 2012.
- ***IDC***: *Interactive Data Corporation*; a third-party pricing service that provides MBS pricing.
- **Interest-Only Loan**: A loan for which the monthly payment only covers the interest on the loan.
- **Interest Rate Swaps**: Agreements to exchange payments of interest at a fixed rate for payments of interest at a floating rate for a specified period.
- **Interest Rate Swaptions**: Also known as a "Swap Option." The option to enter into an interest rate swap, giving the buyer the option, rather than obligation, to enter into the agreement.
- **IO**: Interest-only; can refer to a loan, an MBS, or a tranche of an MBS.
- **ISDA**: The International Swaps and Derivatives Association; a trade organization that sets standards for over-the-counter derivatives.
- **ISIN**: International Securities Identification Number; a unique 12-character alpha-numerical identifier that classifies bonds, commercial paper, equities, and warrants.
- **July 2008 Transactions**: Transactions that occurred between July 1 and July 3, 2008 and on July 31, 2008.
- **July and November 2008 Transactions**: The July 2008 Transactions and the November 2008 Transactions, collectively.
- **LIBOR**: The London Interbank Offered Rate of interest.
- **Life Comparables**: Life insurance companies on the Life Insurers List that were publicly traded as of November 7, 2008.

- **Life Insurers List**: The list of companies included in the *2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies*; published by the NAIC.
- **LTV**: Loan-to-Value; the ratio of the value of the loan to the value of the underlying collateral as of the date of the origination of the loan.
- **MAX Class**: The set of highest class securities (class "A-1") of the 25 CMBS underlying each of the CMBX Indices.
- **Maximum Price**: The highest price within a set of prices.
- **MBS**: Mortgage-backed securities.
- **Minimum Price**: The lowest price within a set of prices.
- **ML Index**: The Merrill Lynch 10-15 Years AAA-rated U.S. Corporate Bond Total Return Index.
- **Mortgage Originators List**: The companies listed in the "Top 50 Mortgage Originators in 2008" list; contained in THE 2010 MORTGAGE MARKET STATISTICAL ANNUAL.
- **Mortgage Servicers**: The servicers from the Top 50 Servicers that are publicly traded or are owned by holding companies that were publicly traded as of November 7, 2008; contained in THE 2011 MORTGAGE MARKET STATISTICAL ANNUAL.
- **MS Index**: The Morgan Stanley U.S. Fixed Rate CMBS Super Senior AAA (Average Life 10 Years) Index.
- **MSRs**: Mortgage servicing rights; an agreement for a third party that specializes in servicing mortgages to have the right to service the set of mortgage loans.
- **MSR-to-UPB Ratio**: The ratio of the value of the MSR to the UPB of the loans being serviced.
- **NAIC**: National Association of Insurance Commissioners.
- **NB Holdings**: NB Holdings Corporation; a BofA-legacy entity that holds assets and issues demand notes.
- **Net Interest Margin**: The "securitization of excess cash flow from residential mortgage-backed securitizations ('RMBS') effected by the re-securitization of economic residual interests." *See* Keith L. Krasney, *Legal Structure of Net Interest Margin Securities*, 13 THE JOUR. OF STRUCT. FIN. 54 (2007).
- **Nominal Principal Balance**: The principal paid on IO securities, if present. The principal is "nominal" because it is very small compared to other classes.
- **Nonconvertible**: Preferred stock that is not convertible into the common stock of the issuing company.
- **Notional Amount**: The amount used to calculate payments in an interest rate swap (or other derivative). The amount is "notional" because it is neither paid nor received.
- **Novated Derivatives**: A portfolio of derivative securities that were novated as part of the July 2008 Transactions between CHL and BANA.
- **November 2008 Transactions**: Transactions that occurred on November 7, 2008.

- **NYFR**: New York Funding Rate; an index of unsecured bank funding costs for U.S. institutions.
- **OLS Regression Analysis**: Ordinary least squares regression analysis; a form of linear regression.
- **OTS Thrifts List**: The 50 "Largest OTS-Regulated Thrifts Mortgage Lenders in 2008" list; contained in THE 2010 MORTGAGE MARKET STATISTICAL ANNUAL.
- **OTS**: Office of Thrift Supervision; a government agency responsible for regulating financial institutions including thrifts.
- **P&C Comparables**: Property and casualty insurance companies on the P&C List that had financial statement data publicly available as of November 7, 2008, for a fiscal period ending no earlier than August 7, 2008, and that were publicly traded as of November 7, 2008.
- **P&C List**: The *2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*; published by the NAIC.
- **P&I Tranches**: Tranches that receive principal and interest on a pro rata basis.
- **Plain Vanilla Derivatives**: Derivatives that are standard in their terms.
- **PMI Loans**: Loans covered by private mortgage insurance.
- **PO**: Principal-only; can refer to a loan, an MBS, or a tranche of an MBS.
- **Predictor Variables**: *See* Explanatory Variables.
- **Preferred Stock**: A security with a priority claim to dividends over common stock.
- **Prime Mortgages**: Mortgages that meet underwriting standards set by Fannie Mae and Freddie Mac and are therefore eligible for sale and securitization in RMBS sponsored by government-affiliated entities.
- **Purchase Accounting**: The process by which the consolidated assets and liabilities of a company being purchased or merged are revalued at accounting fair value upon the close of the purchase or merger.
- **Regression Analysis**: An examination of the correlation between the observed values of the comparable assets and the characteristics of the comparable assets.
- **Reperforming Mortgages**: Loans that were delinquent in the past but have become current.
- **Residual Tranches**: *See* Equity Tranches.
- **RMBS**: Residential mortgage-backed securities.
- **ROE**: Return on book value of equity; measured by dividing earnings by the book value of common equity for the period prior to when the earnings were earned.
- ***S&P***: Standard & Poor's Inc.; a credit rating agency for bonds, RMBS, CMBS, and other securities. In the context of RMBS pricing, it may refer to *Standard & Poor's Securities Evaluations, Inc*.; a third-party pricing service for MBS.
- **Scratch-and-Dent Mortgages**: Loans that did not meet investor criteria in another RMBS.

- **SEC**: Securities and Exchange Commission; a government agency that enforces federal securities laws.
- **Second-Lien Loans**: Loans that represent a residual claim to the proceeds from the sale of the underlying property; paid only after the first-lien holder's claim has been satisfied.
- **Servicing Volume**: The dollar amount of UPB of loans being serviced as of the year-end.
- **SKIS**: Subordinated capital income security.
- **Subprime Mortgages**: Loans made to borrowers with impaired credit.
- **The Bank**: *See* Countrywide Bank.
- **The Lists**: The P&C List and the Life Insurers List, collectively.
- **Thrift**: An institution whose primary business activities include accepting deposits and investing the proceeds in mortgage assets.
- **Top 50 Servicers**: The list of the "Top 50 Mortgage Servicers in 2008"; contained in THE 2010 MORTGAGE MARKET STATISTICAL ANNUAL.
- **Total Rate of Return Swaps**: Also known as Total Return Swaps. Agreements to exchange fixed or floating interest rates plus spread for the return and any changes in price (i.e., capital gains or losses) on a reference asset for a fixed period of time.
- **TRACE**: Trade Reporting and Compliance Engine; a centralized database to which U.S. bond dealers must submit transaction prices.
- **TRORS**: *See* Total Rate of Return Swaps.
- **TRUPS**: Trust preferred securities.
- **UPB**: Unpaid principal balance; the amount of principal owed by the borrower on a given date; does not include future interest payments.
- **Valuation Ratio**: A ratio used to scale the values of the asset or class of assets in question to adjust for differences in size between the asset to be valued and the comparable assets.
- **Value Additivity Principle**: The fundamental principle of financial economics stating that two assets that provide the same set of possible cash flows have the same value.
- **Vintage**: The year of issuance of an MBS.
- **WAC**: Weighted average of the coupon interest rates of the loans underlying each RMBS, where the weights are the unpaid principal balances of the mortgage loan pool underlying the RMBS from *ABSNet*.

Dated: September 4, 2012

By: ______________________
John J. McConnell

Appendix 1

Documents Relied Upon

Academic Literature:

- Anderson, R. C., S. A. Mansi, and D. M. Reeb (2003), "Founding Family Ownership and the Agency Cost of Debt," *Journal of Financial Economics*, v68, pp. 263–285

- Ashcraft, A. B. and T. Schuermann (2008), "Understanding the Securitization of Subprime Mortgage Credit," *Federal Reserve Bank of New York Staff Reports*, No. 318

- Ashcraft, A., P. Goldsmith-Pinkham, and J. Vickery (2010), "MBS Ratings and the Mortgage Credit Boom," *Federal Reserve Bank of New York Staff Reports*, No. 449

- Berger, P. and E. Ofek (1995), "Diversification's Effect on Firm Value," *Journal of Financial Economics*, v37, pp. 39–65

- Bhardwaj, G. and R. Sengupta (2011), "Credit Scoring and Loan Default," *Federal Reserve Bank of St. Louis Working Paper Series*, Working Paper 2011-040A

- Demyanyk, Y. and O. Van Hemert (2011), "Understanding the Subprime Mortgage Crisis", v24(6), *The Review of Financial Studies*, pp. 1848–1880

- Dahya, J., O. Dimitrov, and J. J. McConnell (2008), "Dominant Shareholders, Corporate Boards, and Corporate Value: A Cross-country Analysis," *Journal of Financial Economics*, v87, pp. 73–100

- Faccio, M., R. W. Masulis, and J. J. McConnell (2006), "Political Connections and Corporate Bailouts," *The Journal of Finance*, v61(6), pp. 2597–2635

- Ghent, A.C. and M. Kudlyak (2011), "Recourse and Residential Mortgage Default: Evidence from U.S. States," *The Review of Financial Studies*, v24(9), pp. 3139–3186

- Jewell, J. and M. Livingston (1999), "A Comparison of Bond Ratings from Moody's S&P and FITCH IBCA," *Financial Markets, Institutions & Instruments*, v8(4), pp. 1–45

- Jiang, W., A. A. Nelson, and E. Vytlacil (2011), "Liar's Loan? Effects of Origination Channel and Information Falsification on Mortgage Delinquency," Columbia University Working Paper

- Krasney, K. L. (2007), "Legal Structure of Net Interest Margin Securities," *The Journal of Structured Finance*, v13(1), pp. 54–59

- Laeven, L. and R. Levine (2007), "Is There a Diversification Discount in Financial Conglomerates?" *Journal of Financial Economics*, v85, pp. 331–367

- Lang, L. and R. Stulz (1994), "Tobin's q, Corporate Diversification, and Firm Performance," *Journal of Political Economy*, v102(6), pp. 1248–1280

- Levitin, A. J. and T. Twomey (2011), "Mortgage Servicing," *Yale Journal on Regulation*, v28(1), pp. 1–90

- McConnell, J. J., H. Servaes (1995), "Equity Ownership and the Two Faces of Debt," *Journal of Financial Economics*, v39, pp. 131–157

- Schmid, M. and I. Walter (2009), "Do Financial Conglomerates Create or Destroy Economic Value," *Journal of Financial Intermediation*, v18, pp. 193–216

- Servaes, H. (1996), "The Value of Diversification During the Conglomerate Merger Wave," *The Journal of Finance*, v51(4), pp. 1201–1225

- Van Drunen, L. and J. McConnell (1988), "Valuing Mortgage Loan Servicing," *Journal of Real Estate Finance and Economics*, v1(1), pp. 5–22

Bates Stamp Documents:

- BACMBIA-A0000064323
- BACMBIA-A0000064881
- BACMBIA-A0000067491
- BACMBIA-C0000005986
- BACMBIA-C0000008998
- BACMBIA-C0000009017
- BACMBIA-C0000009094
- BACMBIA-C0000160643–677
- BACMBIA-C0000161028–1140
- BACMBIA-C0000161141–144
- BACMBIA-C0000161219–223

- BACMBIA-C0000161224–231
- BACMBIA-C0000161250–257
- BACMBIA-C0000161271–275
- BACMBIA-C0000161342–350
- BACMBIA-C0000161613–628
- BACMBIA-C0000168172–229
- BACMBIA-C0000168237–241
- BACMBIA-C0000168242–245
- BACMBIA-C0000168406–416
- BACMBIA-C0000168417–421
- BACMBIA-C0000168422–436
- BACMBIA-C0000168437–442
- BACMBIA-C0000168443–494
- BACMBIA-C0000168502–507
- BACMBIA-C0000168508–511
- BACMBIA-C0000168643
- BACMBIA-G0000000053–66
- BACMBIA-H0000008165
- BACMBIA-I0000004385
- BACMBIA-I0000005288–289
- BACMBIA-I0000071804–807
- BACMBIA-I0000071808
- BACMBIA-R0000005929

- BACMBIA-R0000006003
- BACMBIA-R0000006043
- BACMBIA-R0000006045
- BACMBIA-R0000006047
- BACMBIA-R0000006048
- BACMBIA-R0000006061
- BACMBIA-R0000006067–071
- BACMBIA-R0000006088
- BACMBIA-R0000006093
- BACMBIA-R0000006100–105
- BACMBIA-R0000006150
- BACMBIA-R0000006175
- BACMIBA-R0000006253–261
- BACMBIA-R0000006283–301
- BACMBIA-V0000028409
- BACMBIA-V0000028410
- BACMBIA-V0000028411
- BACMBIA-V0000028412
- BACMBIA-V0000028413
- BACMBIA-V0000028414
- BACMBIA-V0000028415
- BACMBIA-V0000028416
- BACMBIA-V0000028417

- BACMBIA-V0000028418
- BACMBIA-V0000028419
- BACMBIA-V0000028420
- BACMBIA-V0000028421
- BACMBIA-V0000028422
- BACMBIA-V0000028423
- BACMBIA-Y0000028659–77
- BACMBIA-Y0000028678
- BACMBIA-Y0000028679

Books:

- Berk, J. and P. Demarzo (2007), "Corporate Finance," *Pearson Education, Inc.*
- Bodie, Z., A. Kane, and A. Marcus (2004), "Investments," 8th Edition, *McGraw-Hill/Irwin*
- Brealey, R., S. Myers, and F. Allen (2006), "Principles of Corporate Finance," 8th Edition, *McGraw-Hill/Irwin*
- Damodaran, A. (2010), "The Dark Side of Valuation," 2nd Edition, *Pearson Education, Inc.*
- Damodaran, A. (2012), "Investment Valuation," 3rd Edition, *John Wiley & Sons, Inc.*
- Downes, J. and J. E. Goodman (2010), "Dictionary of Finance and Investment Terms," 8th Edition, *Barron's Educational Series, Inc.*
- Hull, J. C. (2003), "Options, Futures & Other Derivatives," 5th Edition, *Pearson Education, Inc.*
- Meitner, M. (2006), "The Market Approach to Comparable Company Valuation," *Physica-Verlag Heidelberg*
- Ross, S., R. Westerfield, and J. Jaffe (2005), "Corporate Finance," 7th Edition, *McGraw-Hill/Irwin*

- Schroeder, L., D. Sjoquist, and P. Stephan (1986), "Understanding Regression Analysis: An Introductory Guide," *Sage Publications, Inc.*

- Stickney, C. P., R. L. Weil, K. Schipper, and J. Francis (2010), "Financial Accounting: An Introduction to Concepts, Methods, and Uses," 13th Edition, *Southern-Western, Cengage Learning*

- Tamhane, A. C. and D.D. Dunlop (2000), "Statistics and Data Analysis: From Elementary to Intermediate," *Prentice Hall, Inc.*

- Thomas, R. and B. Gup (2010), "The Valuation Handbook: Valuation Techniques from Today's Top Practitioners," *John Wiley & Son, Inc.*

- Titman, S. and J. Martin (2008), "Valuation: The Art and Science of Corporate Investment Decisions," *Pearson Education, Inc.*

- Wooldridge, J. M. (2006), "Introductory Econometrics: A Modern Approach," *Thomson South-Western*

<u>Company Related Reports & SEC Filings:</u>

Company Reports:

- Countrywide Financial Corporation, Annual Report, 2006

- Countrywide Bank, FSB 2008 Thrift Financial Report Optional Narrative Statement for the quarter ending September 30, 2008

- Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2007

- Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2008

Press Releases:

- Bank of America, October 20, 2008, http://investor.bankofamerica.com/phoenix.zhtml?c=71595&p=irol-newsArticle&ID=1214370&highlight=#fbid=gZ2pPczyIzY

SEC Filings:

- Bank of America Corporation, Form 10-Q, Q2 2008

- Bank of America Corporation, Form 10-Q, Q3 2008

- Bank of America Corporation, Form 10-K, 2008
- BB&T Corp, Form 10-Q, Q2 2008
- BB&T Corp, Form 10-Q, Q3 2008
- Citigroup Inc., Form 10-K, 2007
- Countrywide Financial Corporation, Form 8-K, July 8, 2008
- Countrywide Financial Corporation, Form 8-K/A, September 17, 2008
- Countrywide Financial Corporation, Form 10-K, 2006
- Countrywide Financial Corporation, Form 10-K, 2007
- Countrywide Financial Corporation, Form 10-Q, Q2 2008
- Flagstar Bancorp, Inc., Form 10-Q, Q2 2008
- Flagstar Bancorp, Inc., Form 10-Q, Q3 2008
- JPMorgan Chase & Co., Form 10-Q, Q2 2008
- JPMorgan Chase & Co., Form 10-Q, Q3 2008
- National City Corporation, Form 10-Q, Q2 2008
- National City Corporation, Form 10-Q, Q3 2008
- Ocwen Financial Corporation, Form 10-K, 2007
- Ocwen Financial Corporation, Form 10-Q, Q2 2008
- Ocwen Financial Corporation, Form 10-Q, Q3 2008
- PHH Corporation, Form 10-Q, Q2 2008
- PHH Corporation, Form 10-Q, Q3 2008
- Residential Capital, LLC, Form 10-Q, Q2 2008
- Residential Capital, LLC, Form 10-Q, Q3 2008
- SunTrust Banks, Inc. , Form 10-Q, Q2 2008

- SunTrust Banks, Inc. , Form 10-Q, Q3 2008
- Wells Fargo & Company, Form 10-Q, Q2 2008
- Wells Fargo & Company, Form 10-Q, Q3 2008
- Wells Fargo & Company, Form 8-K, January 2, 2009

Data Sources:

- ABSNet
- ABSNet Loan
- Bloomberg
- Capital IQ
- Federal Deposit Insurance Corporation
- Federal Reserve
- Interactive Data Corporation
- Markit
- Standard & Poor's Financial Services LLC
- Standard & Poor's Securities Evaluations, Inc.
- U.S. Department of the Treasury

Preferred Stock - Terms of Issuance:

- Minutes of the Meeting of the Board of Directors of Countrywide Bank, FSB, September 27, 2007
- Minutes of the Meeting of the Board of Directors of Countrywide Bank, FSB, January 28, 2008

Prospectus, Prospectus Supplements, Pricing Supplements, and Offering Circulars

- Bank of America, 424(b)(5) Prospectus Supplement, September 6, 2006
- Bank of America, Prospectus Supplement, September 20, 2007

- Bank of America, 424(b)(5) Prospectus Supplement, November 14, 2007
- Bank of America, Prospectus Supplement, May 20, 2008
- Bear Stearns Commercial Mortgage Securities Trust 2007-BBA8, Offering Circular, June 20, 2007
- Countrywide Financial Corporation, 424(b)(3) Medium-Term Notes, Series A due Nine Months or More From Date of Issue, Pricing Supplement, June 20, 2005
- Countrywide Financial Corporation, 424(b)(3) Medium-Term Notes, Series A Due Nine Months or More From Date of Issue, Pricing Supplement, July 22, 2005
- Countrywide Financial Corporation, 424(b)(3) Medium-Term Notes, Series A due Nine Months or More From Date of Issue, Pricing Supplement, August 22, 2005
- Countrywide Financial Corporation, Floating Rate Notes due November 2010, Final Terms, November 21, 2005
- Countrywide Financial Corporation, 424(b)(2) Medium-Term Notes, Series A Due Nine Months or More From Date of Issue, Pricing Supplement, December 14, 2005
- Countrywide Financial Corporation, Floating Rate Notes due 2010, Pricing Supplement, December 16, 2005
- Countrywide Financial Corporation, Notes due February 2011, Final Terms, February 16, 2006
- Countrywide Financial Corporation, 424(b)(2) Medium-Term Notes, Series B Due Nine Months or More From Date of Issue, Pricing Supplement, March 21, 2006
- Countrywide Financial Corporation, Floating Rate Notes due April 2009, Final Terms, April 4, 2006
- Countrywide Financial Corporation, 424(b)(2) Medium-Term Notes, Series B Due Nine Months or More From Date of Issue, Pricing Supplement, June 4, 2007
- Countrywide Financial Corporation, Series A & B Floating Rate Convertible Senior Debentures Due 2037, Prospectus, November 15, 2007
- Countrywide Home Loans, Inc., Fixed/Floating Rate Notes due 2009, Pricing Supplement, January 13, 1999
- Countrywide Home Loans Inc., Euro Medium Term Note Programme, Offering Circular, April 30, 2004

- Countrywide Home Loans, Inc., Guaranteed Floating Rate Notes due 2008, Pricing Supplement, May 20, 2004
- Countrywide Home Loans, Inc., Guaranteed Notes due 2008, Pricing Supplement, May 25, 2004
- Countrywide Home Loans, Inc., Euro Medium Term Note Programme, Prospectus, August 15, 2005
- Countrywide Home Loans Inc., Fixed/Floating Rate Notes due 2009, Pricing Supplement, January 13, 1999
- Merrill Lynch & Co., Inc., 424(b)(3) Depositary Shares, Prospectus Supplement, November 9, 2005
- Merrill Lynch & Co., Inc., 424(b)(2) Depositary Shares, Pricing Supplement, April 22, 2008
- Merrill Lynch Floating Trust Pass-Through Certificates, Series 2006-1, Offering Circular, May 16, 2007
- Merrill Lynch Preferred Capital Trust III, 424(b)(1) Prospectus, January 12, 1998
- Merrill Lynch Preferred Capital Trust IV, 424(b)(5) Prospectus, June 16, 1998
- Merrill Lynch Preferred Capital Trust V, 424(b)(5) Prospectus, October 29, 1998
- Countrywide Home Loans Inc., Mortgage Pass-Through Certificates, Series 2005-73CB, 424(b)(5), November 28, 2005
- Republic New York Corporation, Cumulative Preferred Stock, Prospectus Supplement, September 17, 1997
- Santander Finance Preferred S.A. Unipersonal, 424(b)(3) 6.41% Non-Cumulative Guaranteed Series 1 Preferred Securities, Prospectus, September 27, 2004
- Santander Finance Preferred, S.A. Unipersonal, US$500,000,000 6.80% Non-Cumulative Guaranteed Series 4 Preferred Securities, Listing Prospectus, December 4, 2009
- Santander Finance Preferred, S.A. Unipersonal, US$600,000,000 6.50% Non-Cumulative Guaranteed Series 5 Preferred Securities, Listing Prospectus, December 4, 2009
- Sovereign Bancorp, 424(b)(2) Depositary Shares, Prospectus Supplement, April 26, 2006

<u>Publications & Reports:</u>

- "2008 Bank Failures," *Lace Financial Corp.*, January 28, 2008 – December 15, 2008
- "2008 Market Share Reports for Property/Casualty Insurance Groups and Companies," *National Association of Insurance Commissioners*, 2009
- "2008 Market Share Reports for the Top 125 Life and Fraternal Insurance Groups and Companies by State and Countrywide," *National Association of Insurance Commissioners*, 2009
- "Appendix B to Statement on Standards for Valuation Services No. 1," *American Institute of Certified Public Accountants*
- "ASA Business Valuation Standards," *American Society of Appraisers*, 2009
- "Council Regulation (EC) No 2223/96," *Official Journal of the European Communities*, November 30, 1996
- "Fair Value Accounting," *Federal Reserve Bulletin*, Winter 2005
- "Mortgage Banking: Comptroller's Handbook," *Comptroller of the Currency*, March 1998
- "SPSE General Methodology for Evaluated Pricing," *Standard & Poor's Security Evaluations, Inc.*, March 17, 2011
- "Statement of Financial Accounting Standards No. 141," *Financial Accounting Standards Board*, June 2001
- "Statement of Financial Accounting Standards No. 157," *Financial Accounting Standards Board*, 2008
- "The 2010 Mortgage Market Statistical Annual, Volume I," *Inside Mortgage Finance Publications, Inc.*, 2010
- "The 2011 Mortgage Market Statistical Annual, Volume 1," *Inside Mortgage Finance Publications, Inc.*, 2011
- "User's Guide to the 2004 ISDA Novation Definitions," *International Swaps and Derivatives Association, Inc.*, 2004
- "Valuation Nation," *Risk Professional*, August 2010
- "Nationstar Mortgage Opens Down 3.1% Post-IPO," *MarketWatch*, March 8, 2012

<u>Rating Agency and Credit Reports:</u>

- "Bank of America Corp. Outlook Revised to Negative; 'AA/A-1+' Rating Affirmed," Standard & Poor's Research Update, June 2, 2008
- "Bank of America Downgraded, Ratings Put on Watch Negative; Merrill Lynch on Watch Developing," Standard & Poor's Research Update, September 15, 2008
- *AM Best Credit Report*, Balboa Life Insurance Company, May 23, 2008
- *AM Best Credit Report*, Balboa Insurance Company, July 17, 2008

Securities Periodic Report:

- Countrywide Home Loans Asset-Backed Securities Series 2003-S&D3, Periodic Report distributed April 25, 2011
- Countrywide Home Loans Servicing LP CHL Mortgage Pass-Through Trust Series 2005-CFJ1, Periodic Report distributed June 18, 2008

CMBS:

- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-4, July 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-4, August 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-5, July 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-5, August 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-6, July 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-6, August 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-2, July 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-2, August 2008

- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-3, July 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-3, August 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-4, July 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-4, August 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-5, July 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-5, August 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-6, July 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-6, August 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-1, July 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-1, August 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-2, July 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-2, August 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-3, July 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-3, August 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-4, July 2008

- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-4, August 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-5, July 2008
- Banc of America Commercial Mortgage Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-5, August 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-PWR9, July 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-PWR9, August 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-PW10, July 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-PW10, August 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-T20, July 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-T20, August 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-PW12, July 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-PW12, August 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-PW13, July 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-PW13, August 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-PW14, July 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2006-PW14, August 2008

- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-PW15, July 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-PW15, August 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-PW16, July 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-PW16, August 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-PW17, July 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-PW17, August 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-PW18, July 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-PW18, August 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-T28, July 2008
- Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-T28, August 2008
- CD 2005-CD1 Commercial Mortgage Trust Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-CD1, July 2008
- CD 2005-CD1 Commercial Mortgage Trust Inc. Commercial Mortgage Pass-Through Certificates, Series 2005-CD1, August 2008
- CD 2007-CD4 Commercial Mortgage Trust Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-CD4, July 2008
- CD 2007-CD4 Commercial Mortgage Trust Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-CD4, August 2008
- CD 2007-CD5 Commercial Mortgage Trust Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-CD5, July 2008

- CD 2007-CD5 Commercial Mortgage Trust Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-CD5, August 2008

Website Listings:

- "Prime Mortgage," *AllBusiness* website, http://www.allbusiness.com/glossaries/prime-mortgage/4946139-1.html, most recently checked for availability on June 19, 2012

- "ICAP Launches NYFR Fixings (SM)," *Business Wire News Releases*, June 10, 2008, http://www.wnd.com/markets/news/read/5701492/icap_launches_nyfr_fixings, most recently checked for availability on May 11, 2012

- *Capital IQ* website, https://www.capitaliq.com/, most recently checked for availability on June 19, 2012

- "Financials Glossary," *Capital IQ* website, https://www.capitaliq.com/CIQDOTNET/financial/glossary.aspx, most recently checked for availability on June 16, 2012

- "Who We Are," *Capital IQ* website, https://www.capitaliq.com/home/about-us.aspx, most recently checked for availability on June 21, 2012

- "About CGS Identifiers," *CUSIP Global Services* (CGS) website, https://www.cusip.com/cusip/about-cgs-identifiers.htm, most recently checked for availability on June 20, 2012

- "All Institution Types Defined," *Federal Reserve System National Information Center* website, http://www.ffiec.gov/nicpubweb/Content/HELP/Institution%20Type%20Description.htm, most recently checked for availability on April 17, 2012

- "Products – Scores – FICO® Score," 2012, *FICO* website, http://www.fico.com/en/Products/Scoring/Pages/FICO-score.aspx, most recently checked for availability on June 20, 2012

- "TRACE Corporate Bond Data," *Financial Industry Regulatory Authority* (FINRA) website, http://www.finra.org/Industry/Compliance/MarketTransparency/TRACE/CorporateBondData, most recently checked for availability on June 19, 2012

- "Products and Services – Evaluation Services," *Interactive Data* website, http://www.interactivedata.com/index.php/productsandservices/content/id/Evaluation+Services, most recently checked for availability on June 20, 2012

- "Products and Services – Evaluation Services – Evaluation Methodologies," *Interactive Data* website, http://www.interactivedata.com/index.php/Contents/show/content/EvalMeth, most recently checked for availability on June 20, 2012

- "Inside Market Data Awards 2012," *incisivemedia* website, http://events.insidemarketdata.com/awards/static/2012-winners, most recently checked for availability on June 21, 2012

- "Glossary," *Inside Mortgage Finance* website, http://www.insidemortgagefinance.com/glossary/, most recently checked for availability on June 19, 2012

- "Glossary," *International Swaps and Derivative Association* website, http://www2.isda.org/functional-areas/research/Glossary/#c, most recently checked for availability on July 30, 2012

- "The Bloomberg Terminal At a Glance," *Investopedia* website, October 13, 2011, http://www.investopedia.com/articles/professionaleducation/11/bloomberg-terminal.asp, most recently checked for availability on June 21, 2012

- "About ISDA," *ISDA* website, http://www2.isda.org/about-isda/, most recently checked for availability on June 13, 2012

- "ABSNet," *Lewtan* website, http://www.lewtan.com/products/ABSNETnet.html, most recently checked for availability on June 20, 2012

- "CMBX Indices. The New Commercial Mortgage Backed Credit Default Swap Benchmark Indices," Presentation dated March, 2006, *Markit Group Limited* website, http://www.markit.com/assets/en/docs/products/data/structured-finance/Documentation/CMBX_Marketing_Presentation.pdf, most recently checked for availability on June 22, 2012

- "Markit Adds 'AM' Tranche to CMBX Indices," *Markit Group Limited* website, http://www.markit.com/en/media-centre/press-releases/detail.page?dcr=/markit/PressRelease/data/2010/02/09, most recently checked for availability on June 19, 2012

- "Products and Services – Indices – Market Credit and Loan Indices – Credit Index Annexes," *Markit Group Limited* website, http://www.markit.com/en/products/data/indices/credit-and-loan-indices/index-annexes/annexes.page?, most recently checked for availability on June 21, 2012

- "Products and Services – Indices – Market Credit and Loan Indices – Credit Index Annex Archives – Markit CMBX," *Markit Group Limited* website, http://www.markit.com/en/products/data/indices/credit-and-loan-indices/index-annexes/annexes-archive.page?, most recently checked for availability on June 21, 2012

- "Products & Services – Indices – Markit Structured Finance Indices – CMBX," *Markit Group Limited* website,, http://www.markit.com/en/products/data/indices/structured-finance-indices/cmbx/cmbx.page, most recently checked for availability on June 19, 2012
- "Balance" definition 8, *Merriam-Webster Dictionary* website, http://www.merriam-webster.com/dictionary/balance, most recently checked for availability on June 19, 2012
- "Institution Search," *National Information Center* website, http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx, most recently checked for availability on June 19, 2012
- "The Data Page," *NYU Stern School of Business: Damodaran Online* website, http://pages.stern.nyu.edu/~adamodar/New_Home_Page/data.html, most recently checked for availability on June 19, 2012
- "About Us," *Standard & Poor's* website, http://www.standardandpoors.com/about-sp/main/en/us, most recently checked for availability on June 19, 2012
- "Standard & Poor's Ratings Definitions," *Standard & Poor's* website, http://www.standardandpoors.com/ratings/articles/en/us/?articleType=HTML&assetID=1245334075323, most recently checked for availability on June 20, 2012

Appendix 2

JOHN J. MCCONNELL
February 2012

I. ADDRESS

BUSINESS:
Purdue University
Krannert Building
403 West State Street
West Lafayette, IN 47907-2056
Telephone: (765) 494-5910
E-mail: mcconnj@purdue.edu
FAX: (765) 494-7863

HOME:
725 Northridge Drive
West Lafayette, IN 47906
Telephone: (765) 463-9678

II. PERSONAL

Born November 13, 1945, Warren, Ohio
Married with two children

III. EDUCATION

Ph.D., Purdue University, August 1974
M.B.A., University of Pittsburgh, August 1969
B.A., Denison University, June 1968

IV. ACADEMIC EMPLOYMENT

Emanuel T. Weiler University Distinguished Professor of Management, Purdue University, 2000-present
Academic Director of Professional Masters Programs, May 2001-June 2006
Emanuel T. Weiler Professor of Management, Purdue University, 1989-2000
Director of Doctoral Programs and Research, Krannert School of Management, Purdue University, July 1989-1998
Professor of Management, Purdue University, July 1983-present
Visiting Scholar, University of North Carolina, January 1999-March 1999
Visiting Professor of Finance, Stanford University, September 1986-August 1987
Professor of Finance, University of Minnesota, July 1981-July 1982
Associate Professor of Management, Purdue University, July 1979-June 1983
Assistant Professor of Management, Purdue University, July 1976-June 1979
Assistant Professor of Finance, Ohio State University, January 1975-June 1976
Visiting Assistant Professor, Purdue University, August 1974-December 1974

V. RECOGNITION OF OUTSTANDING TEACHING

Salgo-Noren Outstanding Teacher Award, 1993, 1995, 2011
Salgo-Noren Outstanding Teacher Award, Runner Up, 1986, 1994, 1996, 2001, 2008, 2010
Most Effective Teacher, Krannert Graduate Student Association, 1992
Purdue University Teaching Academy, 2001-present
Dean's MBA Core Course Outstanding Teacher Award, 2005, 2007, 2009, 2010

VI. MAJOR ACADEMIC HONORS

Fellow, Financial Management Association, 2007
Distinguished Scholar, Eastern Finance Association, 2002
Phi Kappa Alpha Academic Honorary
Omicron Delta Epsilon Economics Honorary
Keynote Speaker, MWFA, 2009
Keynote Speaker, FMA - Europe, 2008
Keynote Speaker, EFA, 2002
Best Paper, *Review of Financial Studies*, 1989, "Requiem for a Market: An Analysis of the Rise and Fall of a Financial Futures Contract" (with E. T. Johnston)
Fama-DFA Prize for Capital Markets and Asset Pricing, *Journal of Financial Economics*, Second Place, 2006, "The Other January Effect" (with M. J. Cooper and A. V. Ovtchinnikov)
Graham and Dodd Scroll Award, *Financial Analysts Journal*, 2008, "Equity Returns at the Turn-of-the-Month" (with W. Xu)
All Star Paper, *Journal of Financial Economics*, 1983, "An Empirical Investigation of the Impact of 'Antitakeover' Amendments on Common Stock Prices" (with S. Linn)
All Star Paper, *Journal of Financial Economics*, 1985, "Corporate Capital Expenditure Decisions and the Market Value of the Firm" (with C. J. Muscarella)
All Star Paper, *Journal of Financial Economics*, 1989, "Further Evidence on the Bank Lending Process and the Capital-Market Response to Bank Loan Agreements" (with S. L. Lummer)
All Star Paper, *Journal of Financial Economics*, 1990, "Additional Evidence on Equity Ownership and Corporate Value" (with H. Servaes)

VII. BOARDS OF DIRECTORS

Federal Home Loan Bank of Indianapolis, 1983-1986
American Finance Association, 1986-1988
Harrington Bank, FSB, 1993-2001
Harrington Financial Group, Inc., 1996-2001
Los Padres Bank, 1996-2009
Harrington West Financial Group, Inc., 1996-2009
Western Finance Association, 2002-2004
Advisory Board, Global Finance Academy, University College Dublin, 2007-present

VIII. EDITORIAL EXPERIENCE

Co-Editor, FMA Survey and Synthesis Series, 2011-present
Associate Editor, Journal of Financial and Quantitative Analysis, 1987-present
Associate Editor, Journal of Finance, 1992-2000
Associate Editor, Journal of Real Estate Finance and Economics, 1987-1998
Editorial Review Board, Journal of Business Research, 1977-1993
Associate Editor, Financial Management, 1979-1993
Associate Editor, Journal of American Real Estate and Urban Economics Association, 1980-1991
Associate Editor, Journal of Financial Intermediation, 1989-1995
Associate Editor, Asia Pacific Journal of Management, 1990-2000
Associate Editor, Journal of Fixed Income, 1990-present
Associate Editor, Journal of Empirical Finance, 1991-1995
Associate Editor, Pacific Basin Finance Journal, 1997-2006
Associate Editor, Financial Review, 1998-2003
Associate Editor, Asia Pacific Journal of Finance, 1998-2000

Associate Editor, Real Estate Review, 1999-present
Associate Editor, Journal of Corporate Finance, 2001-present
Associate Editor, Annals of Finance, 2005-present
Associate Editor, Investment Management and Financial Innovations, 2009-present
Editorial Board, International Journal of Governance, 2011-present

IX. RESEARCH GRANTS AND CONTRACTS

National Science Foundation Research Grant, 1976-1977, 1977-1978
Department of Housing and Urban Development Research Contract, 1978-1979, 1979-1980, 1980-1981
Small Business Administration Research Contract, 1979-1980
Federal Home Loan Bank Board Research Grant, 1982-1983
Eli Lilly and Co. Summer Research Grant, 1985
Center for the Study of Futures Markets Research Grant, 1987
Small Business Administration Finance Research Program Grant, 1988
Mid-America Institute Research Grant, 1993
Center for International Business Education and Research Grant, 1999
BSI Gamma Foundation Research Grant, 2008

X. RESEARCH ACTIVITIES AND PUBLICATIONS

Books

Corporate Restructuring, co-editor with D. J. Denis (Edward Elgar Publishing, 2005).

Governance: An International Perspective, co-editor with D. K. Denis (Edward Elgar Publishing, 2005).

Monographs and Book Chapters

Research Topics in Mortgage Markets, Monograph No. 3, Credit Research Center, Purdue University, 1976, co-editor with R. M. Fisher.

Survey of the Impact of Regulation on the Residential Mortgage Market, Chapter 5, Monograph No. 10, Credit Research Center, Purdue University, 1978.

"Application of the Modern Theory of Finance to Small Business Firms" (with R. Pettit) in Small Business Finance, Ed. P. M. Horvitz and R. R. Pettit (JAI Press, Inc.: Greenwich, CT, 1984).

"The Impact of Usury Laws on the Effectiveness and Efficiency of the Operation of Small Business" (with R. Pettit) in Small Business Finance, Ed. P. M. Horvitz and R. R. Pettit (JAI Press, Inc.: Greenwich, CT, 1984).

"Common Stock Valuation Effects of International Joint Ventures" (with S. Lummer) in Pacific Basin Capital Markets Research, Vol. I, Ed. R. Chang and S. Rhee (Elsevier Science Publishers: North-Holland, 1989).

"Dividend Policy" (with J. A. Brickley) in The New Palgrave: A Dictionary of Economics, Vol. I, Ed. J. Eatwell, M. Milgate and P. Newman (MacMillan Press, Ltd., 1987). Also in The New Palgrave Dictionary on Money and Finance (MacMillan Press, Ltd., 1990).

"What Do We Know About Corporate Performance and Ownership Structure?" (with H. Servaes) in Pacific Basin Capital Markets Research, Vol. II, Ed. R. Chang and S. Rhee (Elsevier Science Publishers: North-Holland, 1991).

"Bank Credit and Information in Capital Markets" (with S. L. Lummer) in The Palgrave Dictionary on Money and Finance, Ed. J. Eatwell and P. Newman (MacMillan Press, Ltd., 1992).

"Securities Transaction Taxes: What Would Be Their Effects on Investors and Portfolios" in Securities Transaction Taxes: False Hopes and Unintended Consequences (Irwin Books, 1995).

"Introduction to Corporate Restructuring" (with D. J. Denis) in Corporate Restructuring, Vol. I & II, co-editor with D. J. Denis (Edward Elgar Publishing, 2005).

"Introduction" (with D. K. Denis) in Governance: An International Perspective, co-editor with D. K. Denis (Edward Elgar Publishing, 2005).

"Dividend Policy" (with D. J. Denis) in The New Palgrave Dictionary of Economics, 2nd edition, Ed. S. N. Durlauf and L. E. Blume (Palgrave Macmillan Ltd., 2008).

"Corporate Governance and Ownership Structure" (with S. B. McKeon and W. Xu) in Corporate Governance, Ed. H. K. Baker and R. Anderson (John Wiley & Sons, Inc., 2010).

Papers, Notes and Comments

"Payback Substitutes for Discounted Cash Flow," Financial Management, Summer 1973, Vol. 2, pp. 17-23 (with W. G. Lewellen and H. P. Lanser).

"The Weighted Average Cost of Capital: Some Questions on Its Definition, Interpretation and Use: Comment," Journal of Finance, June 1975, Vol. XXX, No. 3, pp. 883-886 (with C. M. Sandberg).

"Mortgage Companies: A Financial Model and Evaluation of Their Residential Real Estate Lending Activities: A Dissertation Abstract," Journal of Finance, September 1975, Vol. XXX, No. 4, pp. 1157-1158.

"Asset Leasing In Competitive Capital Markets," Journal of Finance, June 1976, Vol. XXXI, pp. 787-798 (with W. G. Lewellen and M. S. Long).

"Valuation of A Mortgage Company's Servicing Portfolio," Journal of Financial and Quantitative Analysis, September 1976, Vol. XI, pp. 433-453.

"Mortgage Company Bids on The GNMA Auction," Journal of Bank Research, Winter 1977, Vol. 7, pp. 294-302.

"Corporate Merger and The Co-Insurance of Corporate Debt," Journal of Finance, May 1977, Vol. XXXII, No. 2, pp. 349-365 (with E. H. Kim).

"Capital Structure Rearrangements and Me-First Rules in an Efficient Capital Market," Journal of Finance, June 1977, Vol. XXXII, No. 3, pp. 789-810 (with E. H. Kim and P. R. Greenwood).

"Price Distortions Induced by The Revenue Structure of Federally-Sponsored Mortgage Loan Programs," Journal of Finance, September 1977, Vol. XXXII, pp. 1201-1206.

"Tax Reform, Firm Valuation, and Capital Costs," Financial Management, Winter 1977, Vol. 6, pp. 59-66 (with W. G. Lewellen).

"Financial Leverage Clienteles: Theory and Evidence," Journal of Financial Economics, March 1978, Vol. 7, pp. 83-110 (with E. H. Kim and W. G. Lewellen).

"Sale-And-Leaseback Agreements and Enterprise Valuation," Journal of Financial and Quantitative Analysis, December 1978, Vol. XIII, pp. 871-883 (with E. H. Kim and W. G. Lewellen).

"Discussion," Journal of Finance, May 1980, Vol. 35, pp. 465-467.

"Another Foray into the Backwaters of the Market," Journal of Portfolio Management, Fall 1980, Vol. 7, pp. 61-65 (with G. G. Schlarbaum).

"Rates of Return on GNMA Securities: The Cost of Mortgage Funds," Journal of American Real Estate and Urban Economics Association, Fall 1980, Vol. 8, pp. 320-336 (with K. B. Dunn).

"Evidence on the Impact of Exchange Offers on Security Prices: The Case of Income Bonds," Journal of Business, January 1981, Vol. 54, No. 1, pp. 65-85 (with G. G. Schlarbaum).

"Returns, Risks and Pricing of Income Bonds, 1956-1976 (Does Money Have An Odor?)," Journal of Business, January 1981, Vol. 54, No. 1, pp. 33-63 (with G. G. Schlarbaum).

"A Comparison of Alternative Models for Pricing GNMA Mortgage-Backed Securities," Journal of Finance, May 1981, Vol. 36, No. 2, pp. 471-484 (with K. B. Dunn).

"Valuation of GNMA Mortgage-Backed Securities," Journal of Finance, June 1981, Vol. 36, No. 3, pp. 599-616 (with K. B. Dunn).

"Further Evidence on the Terms of Financial Leases," Financial Management, Autumn 1981, Vol. 10, No. 4, pp. 7-14 (with P. J. Crawford and C. P. Harper).

"Rate of Return Indexes for GNMA Securities," Journal of Portfolio Management, Winter 1981, Vol. 7, No. 2, pp. 65-74 (with K. B. Dunn).

"The Administrative Costs of Corporate Bankruptcy," Journal of Finance, March 1982, Vol. 37, No. 1, pp. 219-226 (with J. S. Ang and J. H. Chua).

"The Income Bond Puzzle," Chase Financial Quarterly, Summer 1982, Vol. 1, No. 9, pp. 9-28 (with G. G. Schlarbaum).

"An Empirical Investigation of the Impact of 'Antitakeover' Amendments on Common Stock Prices," Journal of Financial Economics, April 1983, Vol. 11, Nos. 1-4, pp. 361-399 (with S. Linn).

"The Market Value of Control in Publicly-Traded Corporations," Journal of Financial Economics, April 1983, Vol. 11, Nos. 1-4, pp. 439-471 (with R. C. Lease and W. H. Mikkelson).

"Valuation of Asset Leasing Contracts," Journal of Financial Economics, August 1983, Vol. 12, No. 2, pp. 237-261 (with J. S. Schallheim).

"A Trading Strategy for New Listings on the NYSE," Financial Analysts Journal, January/February 1984, Vol. 40, No. 1, pp. 34-38 (with G. Sanger).

"The Turn-of-the-Year in Canada," Journal of Finance, March 1984, Vol. 39, No. 1, pp. 185-192 (with A. Berges and G. G. Schlarbaum).

"The Market Value of Differential Voting Rights in Closely Held Corporations," Journal of Business, October 1984, Vol. 57, No. 4, pp. 443-467 (with R. C. Lease and W. H. Mikkelson).

"Corporate Combinations and Common Stock Returns: The Case of Joint Ventures," Journal of Finance, June 1985, Vol. 40, No. 2, pp. 519-536 (with T. J. Nantell).

"Corporate Capital Expenditure Decisions and the Market Value of the Firm," Journal of Financial Economics, September 1985, Vol. 14, No. 3, pp. 399-422 (with C. J. Muscarella).

"A Model for the Determination of 'Fair' Premiums on Lease Cancellation Insurance Policies," Journal of Finance, December 1985, Vol. 40, No. 5, pp. 1439-1457 (with J. S. Schallheim).

"Stock Exchange Listings, Firm Value, and Security Market Efficiency: The Impact of NASDAQ," Journal of Financial and Quantitative Analysis, March 1986, Vol. 21, No. 1, pp. 1-25 (with G. C. Sanger).

"Corporate Mergers and Security Returns," Journal of Financial Economics, June 1986, Vol. 16, No. 2, pp. 143-187 (with D. K. Dennis).

"LYON Taming," Journal of Finance, July 1986, Vol. 41, No. 3, pp. 561-577 (with E. S. Schwartz).

"The Evidence on Limited Voting Stock: Motives and Consequences," Midland Corporate Finance Journal, Summer 1986, Vol. 4, No. 2, pp. 66-71 (with R. C. Lease and W. H. Mikkelson).

"The Puzzle in Post-Listing Common Stock Returns," Journal of Finance, March 1987, Vol. 42, No. 1, pp. 119-140 (with G. C. Sanger).

"The Determinants of Yields on Financial Leasing Contracts," Journal of Financial Economics, September 1987, Vol. 19, No. 1, pp. 45-67 (with J. S. Schallheim, R. Johnson and R. C. Lease).

"Valuing Mortgage Loan Servicing," Journal of Real Estate Finance and Economics, March 1988, Vol. 1, No. 1, pp. 5-22 (with L. D. Van Drunen).

"Requiem for a Market: An Analysis of the Rise and Fall of a Financial Futures Contract," Review of Financial Studies, 1989, Vol. 2, No. 1, pp. 1-23 (with E. T. Johnston).

"Further Evidence on the Bank Lending Process and the Capital-Market Response to Bank Loan Agreements," Journal of Financial Economics, November 1989, Vol. 25, No. 1, pp. 99-122 (with S. L. Lummer).

"Realized Returns and the Default and Prepayment Experience of Financial Leasing Contracts," Financial Management, Summer 1990, Vol. 19, No. 2, pp. 11-20 (with R. C. Lease and J. S. Schallheim).

"Additional Evidence on Equity Ownership and Corporate Value," Journal of Financial Economics, September 1990, Vol. 27, No. 1, pp. 595-612 (with H. Servaes).

"Day-of-the-Week Effects in Financial Futures: An Analysis of GNMA, T-Bond, T-Note, and T-Bill Contracts," Journal of Financial and Quantitative Analysis, March 1991, Vol. 26, No. 1, pp. 23-44 (with E. T. Johnston and W. A. Kracaw).

"Corporate Performance, Corporate Takeovers, and Management Turnover," Journal of Finance, June 1991, Vol. 46, No. 2, pp. 671-687 (with K. J. Martin).

"Prepayments and the Valuation of Adjustable Rate Mortgage-Backed Securities," Journal of Fixed Income, June 1991, Vol. 1, pp. 21-35 (with M. K. Singh).

"The Economics of Pre-packaged Bankruptcy," Journal of Applied Corporate Finance, Summer 1991, Vol. 4, No. 2, pp. 93-97 (with H. Servaes).

"The Origin of LYONs: A Case Study in Financial Innovation," Journal of Applied Corporate Finance, Winter 1992, Vol. 4, No. 4, pp. 82-89 (with E. S. Schwartz).

"Seasonalities in NYSE Bid-Ask Spreads and Stock Returns in January," Journal of Finance, December 1992, Vol. 47, No. 5, pp. 1999-2014 (with R. A. Clark and M. K. Singh).

"Valuation and Analysis of Collateralized Mortgage Obligations," Management Science, June 1993, Vol. 39, No. 6, pp. 692-709 (with M. Singh).

"The Effect of Market Segmentation and Illiquidity on Asset Prices: Evidence From Exchange Listings," Journal of Finance, June 1994, Vol. 49, No. 2, pp. 611-636 (with G. B. Kadlec).

"Rational Prepayments and the Valuation of Collateralized Mortgage Obligations," Journal of Finance, July 1994, Vol. 49, No. 3, pp. 891-921 (with M. Singh).

"Investor Base, Cost of Capital, and New Listings on the NYSE," Journal of Applied Corporate Finance, Spring 1995, Vol. 8, No. 1, pp. 59-63 (with G. B. Kadlec).

"Equity Ownership and the Two Faces of Debt," Journal of Financial Economics, September 1995, Vol. 39, No. 1, pp. 131-157 (with H. Servaes).

"Open-Market Share Repurchase Programs and Bid-Ask Spreads on the NYSE: Implications for Corporate Payout Policy," Journal of Financial and Quantitative Analysis, September 1995, Vol. 30, No. 3, pp. 365-382 (with J. M. Miller).

"Can Takeover Losses Explain Spin-off Gains?," Journal of Financial and Quantitative Analysis, December 1995, Vol. 30, No. 4, pp. 465-485 (with J. W. Allen, S. L. Lummer and D. K. Reed).

"Prepacks: An Empirical Analysis of Prepackaged Bankruptcies," Journal of Financial Economics, January 1996, Vol. 40, No. 1, pp. 135-162 (with E. Tashjian and R. C. Lease).

"Implementing an Option-Theoretic CMO Valuation Model with Recent Prepayment Data," Journal of Fixed Income, March 1996, Vol. 5, No. 4, pp. 45-55 (with M. K. Singh).

"Prepacks as a Mechanism for Resolving Financial Distress: The Evidence," Journal of Applied Corporate Finance, Winter 1996, Vol. 8, No. 4, pp. 99-106 (with R. C. Lease and E. Tashjian).

"A Survey of Evidence on Domestic and International Stock Exchange Listings with Implications for Markets and Managers," Pacific-Basin Finance Journal, 1996, Vol. 4, pp. 347-376 (with H. J. Dybevik, D. Haushalter and E. Lie).

"An Analysis of Prices, Bid/Ask Spreads and Bid and Ask Depths Surrounding Ivan Boesky's Illegal Insider Trading in Carnation's Stock," Financial Management, Summer 1997, Vol. 26, No. 2, pp. 18-34 (with S. Chakravarty).

"To Live or Let Die? An Empirical Analysis of Piecemeal Voluntary Corporate Liquidations," Journal of Corporate Finance, December 1997, Vol. 3, No. 4, pp. 325-354 (with G. R. Erwin).

"Equity Carve-outs and Managerial Discretion," Journal of Finance, February 1998, Vol. LIII, No. 1, pp. 163-186 (with J. W. Allen).

"Mortgage Prepayment Float: Pricing and Risk Analysis," Journal of Fixed Income, March 1998, Vol. 7, No. 4, pp. 83-93 (with L. A. Angbazo, I. F. Megbolugbe and T. T. Yang).

"MIPS, QUIPS and TOPrS: Old Wine in New Bottles," Journal of Applied Corporate Finance, Spring 1998, Vol. 11, No. 1, pp. 39-44 (with A. Khanna).

"Earnings Signals in Fixed-Price and Dutch Auction Self-Tender Offers," Journal of Financial Economics, August 1998, Vol. 49, No. 2, pp. 161-186 (with E. Lie).

"Does Insider Trading Really Move Stock Prices?," Journal of Financial and Quantitative Analysis, June 1999, Vol. 34, No. 2, pp. 191-209 (with S. Chakravarty).

"A Survey of U.S. Corporate Financing Innovations: 1970-1997," Journal of Applied Corporate Finance, 1999, Vol. 12, No. 1, pp. 55-69 (with K. Carow and G. Erwin).

"Do Institutional Investors Exacerbate Managerial Myopia?," Journal of Corporate Finance, September 2000, Vol. 6, No. 3, pp. 307-329 (with S. Wahal).

"Spin-offs, Ex Ante," Journal of Business, April 2001, Vol. 74, No. 2, pp. 245-280 (with M. Ozbilgin and S. Wahal).

“Debt-Reducing Exchange Offers,” Journal of Corporate Finance, June 2001, Vol. 7, No. 2, pp. 179-207 (with E. Lie and H. J. Lie).

“The Cadbury Committee, Corporate Performance, and Top Management Turnover,” Journal of Finance, February 2002, Vol. 57, No. 1, pp. 461-483 (with J. Dahya and N. G. Travlos).

“Learning from a Keynote Speaker: Lessons from Merton Miller’s PACAP Addresses,” Pacific-Basin Finance Journal, 2002, Vol. 10, pp. 359-369.

“International Corporate Governance,” Journal of Financial and Quantitative Analysis, March 2003, Vol. 38, No. 1, pp. 1-36 (with D. K. Denis).

“S&P 500 Index Additions and Earnings Expectations,” Journal of Finance, October 2003, Vol. 58, No. 5, pp. 1821-1840 (with D. K. Denis, A. V. Ovtchinnikov and Y. Yu).

“Predictability of Long-Term Spinoff Returns,” Journal of Investment Management, 2004, Vol. 2, No. 3, pp. 35-44 (with A. Ovtchinnikov).

“Outside Directors and Corporate Board Decisions,” Journal of Corporate Finance, 2005, Vol. 11, pp. 37-60 (with J. Dahya).

“Returns to Acquirers of Listed and Unlisted Targets,” Journal of Financial and Quantitative Analysis, March 2006, Vol. 41, No. 1, pp. 197-220 (with M. Faccio and D. Stolin).

“The Other January Effect,” Journal of Financial Economics, November 2006, Vol. 82, No. 2, pp. 315-342 (with M. J. Cooper and A. V. Ovtchinnikov).

“Political Connections and Corporate Bailouts,” Journal of Finance, December 2006, Vol. 61, No. 6, pp. 2597-2635 (with M. Faccio and R. Masulis).

“Board Composition, Corporate Performance, and the Cadbury Committee Recommendation,” Journal of Financial and Quantitative Analysis, September 2007, Vol. 42, No. 3, pp. 535-564 (with J. Dahya).

“Dominant Shareholders, Corporate Boards and Corporate Value: A Cross-Country Analysis,” Journal of Financial Economics, January 2008, Vol. 87, No. 1, pp. 73-100 (with J. Dahya and O. Dimitrov).

“Changes in Insider Ownership and Changes in the Market Value of the Firm,” Journal of Corporate Finance, April 2008, Vol. 14, No. 2, pp. 92-106 (with H. Servaes and K. V. Lins).

“Equity Returns at the Turn-of-the-Month,” Financial Analysts Journal, March/April 2008, Vol. 64, No. 2, pp. 49-64 (with W. Xu).

“Capital Market Imperfections and the Sensitivity of Investment to Stock Prices,” Journal of Financial and Quantitative Analysis, 2009, Vol. 44, No. 3, pp. 551-578 (with A. V. Ovtchinnikov).

"Does Board Independence Matter in Companies with a Controlling Shareholder?," Journal of Applied Corporate Finance, Winter 2009, Vol. 21, No. 1, pp. 67-78 (with O. Dimitrov and J. Dahya).

"Auction Failures and the Market for Auction Rate Securities," Journal of Financial Economics, September 2010, Vol. 97, No. 3, pp. 451-469 (with A. Saretto).

"Why Did Auction Rate Bond Auctions Fail During 2007-2008?," Journal of Fixed Income, Fall 2010, Vol. 20, No. 2, pp. 5-18 (with B. Liu and A. Saretto).

"What's the Best Way to Trade Using the January Barometer?," Journal of Investment Management, Fourth Quarter 2010, Vol. 8, No. 4, pp. 1-15 (with M. J. Cooper and A. V. Ovtchinnikov).

"The Origins and Evolution of the Market for Mortgage Backed Securities," Annual Review of Financial Economics, December 2011, Vol. 3, pp. 173-192 (with S. A. Buser).

"Sheltering Corporate Assets from Political Extraction," Journal of Law, Economics, and Organization, forthcoming 2014, Vol. 30 (with L. Caprio and M. Faccio).

Book Reviews

Security Prices in a Competitive Capital Market, Richard A. Brealey, The Financial Review, Spring 1973, pp. 74-75.

Risk and Opportunity: A New Approach to Stock Market Profits, Conrad W. Thomas, The Bankers Magazine, Summer 1975, Vol. 158, p. 108.

The Inflation of House Prices, Leo Grebler and Frank Mittelbach, Journal of Money, Credit and Banking, November 1980, Vol. XII, No. 4, p. 677.

Sponsored Reports

"Feasibility of an Organized Market for Options on GNMA Securities," Parts 1-4, Department of Housing and Urban Development, Office of Housing Finance, Washington, D.C., 1978.

"The Fungibility of GNMA Securities and the Implications for Market Liquidity," Department of Housing and Urban Development, Office of Housing Finance, Washington, D.C., 1979.

"Application of the Theory of Finance to Small Businesses," Small Business Administration, Washington, D.C., 1980 (with R. R. Pettit).

"The Impact of State Usury Laws on Small Businesses," Small Business Administration, Washington, D.C., 1980 (with R. R. Pettit).

"The Efficiency of the GNMA Securities Market: Model Development and Documentation," Department of Housing and Urban Development, Washington, D.C., 1981 (with K. B. Dunn).

"Evaluation of an S&L's Mortgage Servicing Portfolio," Federal Home Loan Bank Board, Washington, D.C., 1984 (with L. D. Van Drunen).

"Realized Returns and the Default and Prepayment Experience of Financial Leasing Contracts," Small Business Administration, Washington, D.C., 1988 (with R. C. Lease and J. S. Schallheim).

XI. PROFESSIONAL EDUCATION PROGRAMS

National Real Estate Lending School sponsored by American Bankers Association, Columbus, OH, 1975
Advanced Seminar on Consumer Credit sponsored by National Association of Mutual Savings Banks, Bridgeport, CT, 1977, 1978
Portuguese Housing Conference sponsored by Portuguese National Bank and U.S. Agency for International Development, Salt Lake City, UT, 1979
Executive Seminar on "Cash Management and Short-term Financial Planning," San Diego, Houston, Toledo and Cincinnati, 1978-1979
Seminar on Mergers and Acquisitions sponsored by Berkeley Program in Finance, Monterey, CA, 1983
Seminar on the Analysis of Security Prices sponsored by University of Chicago Center for Research in Security Prices, Chicago, IL, May 1984, November 1984, November 1985
Executive Seminar on "Introduction to Corporate Finance" for BATUS, Inc., 1986
Executive Seminar on "Financial Planning and Corporate Valuation" for Sears, Roebuck & Co., 1996 and 1997
Pacific Coast Bank School sponsored by Pacific Coast Bankers Association, Seattle, WA, 1978
Directors Forum, "The Role of Capital Markets in Corporate Governance," Universidade Católica Portuguesa, 2009

XII. PROFESSIONAL ACTIVITIES

Presented Testimony before

U.S. House of Representatives Subcommittee on Housing and Urban Development during hearings on H.R. 6442, "The Federal Home Loan Mortgage Corporation Act," June 1982
U.S. Senate Subcommittee on Housing and Urban Affairs during roundtable discussion on the "Safety and Soundness of Fannie Mae and Freddie Mac," February 1990

Presented Papers at

American Finance Association Meeting, 1976, 1978, 1980, 1981, 1982, 1983, 1985, 1986, 1988, 1990, 1991, 1993, 1998, 2003, 2006, 2009
Financial Management Association Meeting, 1975, 1976, 1977, 1978, 1980, 1981, 1982, 1983, 1984, 1986, 1988, 1992, 1999, 2000, 2001
Western Economics Association Meeting, 1975
Midwest Finance Association Meeting, 1975, 1985
American Real Estate and Urban Economics Association Meeting, 1979, 1981
Western Finance Association Meeting, 1980, 1981, 1982, 1984, 1985, 1986, 1988, 1989, 1990, 1995, 2000
American Economics Association Meeting, 1987, 2006, 2009
Pacific Basin Finance Conference, 1989, 1990
Garn Institute Symposium, 1989
Western Finance Conference, 1991
Hyundai Research Institute Conference, 1996

Association of Financial Economists Meeting, 1999
European Finance Association, 1999
European Financial Management Association, 2000
Global Finance Academy Conference, 2008, 2011

Discussed Papers at

American Finance Association Meeting, 1976, 1977, 1979, 1985, 2000
Financial Management Association Meeting, 1975, 1977
American Real Estate and Urban Economics Association Meeting, 1978, 1979
American Economics Association Meeting, 1985
Pacific Basin Finance Conference, 1989
National Bureau of Economic Research Conference, 1994

Session Chairman at

Financial Management Association Meeting, 1979, 1985, 2006
American Finance Association Meeting, 1981, 1988, 1994, 1995, 1996, 1999, 2000, 2001
Winter Finance Conference, 1992, 1995

Program Committee for

Financial Management Association Meeting, 1979, 1984, 1985, 1986, 1988, 1993, 2009
(Chairman, Doctoral Student Consortium, 1993)
Western Finance Association Meeting, 1980, 1986, 1991, 1993, 1995
American Finance Association Meeting, 1987, 1988, 1994, 1996, 1998, 1999
Pacific Basin Finance Conference, 1989, 1990, 1998, 2000
Eastern Finance Association, 2007

XIII. COMMITTEE ASSIGNMENTS -- PURDUE UNIVERSITY

Finance Area Recruiting Committee, 1977-present
Krannert School Library Committee, 1977-1978
Krannert School Doctoral Student Placement Officer, 1978-1979
Krannert School Colloquium Committee, 1978-1981
Purdue University Grievance Committee, 1978-1980, 2001-2003
(Subcommittee Chairman, 1980; Chairman, 2002-2003)
Krannert School Masters Student Advisory Committee, 1979-1980
Krannert School Masters Student Examining Committee, 1980-1981
Krannert School Undergraduate Program Committee, 1979-1980
(Subcommittee Chairman)
Finance Area Ph.D. Admissions Committee, 1979-1981, 1983-1985, 1991-present
Krannert School Search Committee for Morgan Professor of Private Enterprise, 1980-1981
Krannert School Computer Policy Committee, 1982-1984
Krannert School Dean Search Committee, 1982-1984, 1989-1990
Krannert School Committee on Organizational Structure
(Chairman, 1984)
Krannert School Committee on Funded Research, 1984-1985
Krannert School Ph.D. Preliminary Examination Committee, 1982-1984
(Chairman, 1982)
Krannert School Faculty Grievance Committee, 1985-1986
Area Coordinator, Finance Faculty, 1985-1986, 1994-1998, 2006-2008

Krannert School Management Policy Committee, 1985-1986, 1992-1993, 1994-2008
Krannert School Faculty Relations Committee, 1985-1986
Purdue University Senate, 1987-1990
Krannert School Management Lecture Series Committee, 1987-1989
(Chairman, 1987-1989)
Krannert School Grade Appeals Committee, 1988-1991
(Chairman, 1989-1990)
Krannert School Accounting Faculty Search Committee, 1988-1989
(Chairman, 1988-1989)
Krannert School M.I.S. Faculty Search Committee, 1989-1990, 1999-2000
(Chairman, 1989-1990)
Krannert School Search Committee for Henderson Professorship, 1991-1993
(Chairman, 1991-1992)
Krannert School Committee to Reconsider Ph.D. Program in Management, 1990-1991
(Chairman, 1990-1991)
Krannert School Faculty Advisory Committee, 1992-1998
Krannert School Teaching and Research Supplement Committee, 1993-2003
(Chairman, 1994-1996)
Krannert School MSM Curriculum Committee, 1996-1998
Krannert School Search Committee for Accenture Professor of IT, 2000-2002
(Chairman, 2001-2002)
Purdue University Committee for Ethics in Graduate Education, 2002-2004
Krannert School MBA Rankings Committee, 2002-2004
(Chairman, 2002-2004)
Purdue University Graduate School Council, 2002-2006
Purdue University Search Committee for Dean of the Graduate School, 2002-2003
Krannert School Masters Programs Review Committee, 2003-2004
(Chairman, 2003-2004)
Krannert School Undergraduate Program Task Force, 2006-2007
Purdue University Retirement Plan Review Task Force, 2008-2010

XIV. CONSULTING

Government Agencies

Department of Housing and Urban Development
Small Business Administration
Government National Mortgage Association
U.S. Internal Revenue Service
Office of Thrift Supervision (Topeka, KS)
Department of Justice
Office of Federal Housing Enterprise Oversight

Corporations

Knutsen Companies, Inc.
Wilder Foundation
Merrill Lynch White Weld Capital Markets, Inc.
Goldman, Sachs and Company
Federal Home Loan Bank of Dallas
Federal Home Loan Mortgage Corporation
Merrill Lynch Mortgage Capital, Inc.
Ernst and Young
Santa Fe Pacific Corporation

Federal Home Loan Bank of Indianapolis
Consolidated Edison, Incorporated

Trade Associations

National Association of Mutual Savings Banks
Massachusetts Consumer Finance Association

Law Firms

Cravath, Swaine & Moore (New York, NY)
Davis, Polk & Wardwell (New York, NY)
Simpson, Thacher & Bartlett (New York, NY)
Mayer, Brown & Platt (Chicago, IL)
Davis, Miner & Barnhill (Chicago, IL)
Stroock & Stroock & Lavan (New York, NY)
Shartsis, Friese & Ginsburg (San Francisco, CA)
Franta & White (Minneapolis, MN)
Kightlinger, Young, Gray & DeTrude (Indianapolis, IN)
Wetzel & DeFrang (Portland, OR)
Cochrane & Bresnahan (St. Paul, MN)
Kirkpatrick & Lockhart (Washington, DC)
Brown & Bain (Palo Alto, CA)
Hennigan & Mercer (Los Angeles, CA)
Cadwalader, Wickersham & Taft (Washington, DC)
Drinker, Biddle & Reath (Philadelphia, PA)
Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson (Miami, FL)
Timothy D. Kelly (Minneapolis, MN)
Mackall, Crounse & Moore (Minneapolis, MN)
Streich, Lang, Weeks & Cardon (Phoenix, AZ)
Finkelstein, Thompson & Loughran (Washington, DC)
Maslon, Edelman, Borman & Brand (Minneapolis, MN)
Morrison & Hecker (Phoenix, AZ)
Bell, Boyd & Lloyd (Chicago, IL)
Ireland, Stapleton, Pryor & Pascoe (Denver, CO)
Carr & Mussman (San Francisco, CA)
Oppenheimer, Wolff & Donnelly (Minneapolis, MN)
Gibson, Dunn & Crutcher (Dallas, TX; San Diego, CA)
Sachnoff & Weaver (Chicago, IL)
Richards & O'Neil (New York, NY)
Choate, Hall & Stewart (Boston, MA)
Barnes & Thornburg (Indianapolis, IN)
Schiff, Hardin & Waite (Chicago, IL)
Leonard, Street & Deinard (Minneapolis, MN)
Wilson, Sonsini, Goodrich & Rosati (San Francisco, CA)
Theodore Goddard (London, England)
Akerman, Senterfitt & Eidson (Miami, FL)
Jones, Day, Reavis & Pogue (Cleveland, OH)
Brobeck, Phleger & Harrison (San Francisco, CA)
Davis, Scott, Weber & Edwards (New York, NY)
Kramer, Levin, Naftalis & Nessen (New York, NY)
Rogers & Wells (New York, NY)
Willkie, Farr & Gallagher (New York, NY)

Appendix 2

Shearman & Sterling (San Francisco, CA)
Gibson, Dunn & Crutcher (San Francisco, CA)
Sidley & Austin (Chicago, IL)
Arnold & Porter (Washington, DC)
Stuart, Branigin, Ricks & Schilling (Lafayette, IN)
Hertlein & Brown (Columbus, OH)
Brault, Graham, Scott & Brault (Baltimore, MD)
Spriggs & Hollingsworth (Washington, DC)
Jenner & Block (Chicago, IL)
Brown & Wood (New York, NY)
Alschuler, Grossman, Stein & Kahan (Los Angeles, CA)
Wynne & Maney (Houston, TX)
Wachtell, Lipton, Rosen & Katz (New York, NY)
Quarles & Brady Streich Lang (Phoenix, AZ)
Herrick, Feinstein (New York, NY)
McCutchen, Doyle, Brown & Enersen (San Francisco, CA)
Shaffer, Lombardo & Shurin (Kansas City, MO)
James E. Dahl & Associates (Chicago, IL)
Lankler, Siffert & Wohl (New York, NY)
Hogan & Hartson (New York, NY)
Bendinger, Crockett, Peterson, Greenwood & Casey (Salt Lake City, UT)
Schulte, Roth & Zabel (New York, NY)
Lewis, Brisbois, Bisgaard & Smith (New York, NY)
Skadden, Arps, Slate, Meagher & Flom (New York, NY)
Menz, Bonner & Komar (New York, NY)
Sutherland, Asbill & Brennan, LLP (Washington, DC)
Jeffer, Mangels, Butler & Marmaro (Los Angeles, CA)
Roeca, Luria & Hiraoka (Honolulu, HI)
Blank Rome (Philadelphia, PA)
Zelle, Hofmann, Voelbel & Mason (Minneapolis, MN)
Bingham McCutchen (Los Angeles, CA)
Winston & Strawn (Chicago, IL)
Fried Frank (New York, NY)

Appendix 3

Description of Variables Used in Analysis

- Exhibit 2 – Summary of Prices for CFC-Sponsored RMBS

    - **CFC-Sponsored RMBS Tranches**: CFC-sponsored RMBS tranches constitute all tranches of residential mortgage-backed securities that were issued in the United States by Countrywide Asset Backed Securities, Countrywide Home Loans, Inc. ("CWABS, Inc.," "CWALT, Inc.," "CWHEQ, Inc.," "CWMBS, Inc."), Countrywide Home Loans Servicing L.P., and Countrywide Mortgage Backed Securities, Inc., over the period from 1998 to 2007.
    - **Year of Issuance**: The year of issuance of the CFC-Sponsored RMBS.
    - **Number of RMBS**: Number of CFC-sponsored RMBS for which pricing information is available for all of the underlying tranches.
    - **Equal-Weighted RMBS Price**: Simple average of the prices across the number of CFC-sponsored RMBS in that Year of Issuance as of the date of the July or November 2008 Transaction.

$$Equal\ Weighted\ RMBS\ Price = \frac{\sum_{i=1}^{N} (RMBS\ Price)_i}{N}$$

- Exhibit 3 – Summary Statistics for Characteristics of Loans Underlying CFC-Sponsored RMBS

    - **CFC-Sponsored RMBS Tranches**: CFC-sponsored RMBS tranches constitute all tranches of residential mortgage-backed securities that were issued in the United States by Countrywide Asset Backed Securities, Countrywide Home Loans, Inc. ("CWABS, Inc.," "CWALT, Inc.," "CWHEQ, Inc.," "CWMBS, Inc."), Countrywide Home Loans Servicing L.P., and Countrywide Mortgage Backed Securities, Inc., over the period from 1998 to 2007.
    - **Number of RMBS**: Number of CFC-Sponsored RMBS with data for the named variable.
    - **Fraction of Delinquent Loans**: Fraction of loans in CFC-sponsored RMBS that are more than 30 days delinquent as of the date of the July or November 2008 Transaction weighted by the unpaid principal balance (UPB).

$$Fraction\ of\ Delinquent\ Loans\ for\ each\ RMBS = \frac{\sum_{i=1}^{N} (dummy\ for\ if\ loan\ is\ delinquent)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

Appendix 3

- **Loan Age**: Time in months since origination of the loans underlying the CFC-sponsored RMBS weighted by the unpaid principal balance (UPB) of the loan as of the date of the July or November 2008 Transaction.

$$\text{Loan Age for each RMBS} = \frac{\sum_{i=1}^{N}(\text{time in months since loan origination})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Adjustable-Rate Mortgage Loans**: Fraction of loans with an adjustable interest rate among loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$\text{Fraction of Adjustable-Rate Mortgage Loans for each RMBS} = \frac{\sum_{i=1}^{N}(\text{dummy for if loan has adjustable-rate mortgage})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Interest-Only Loans**: Fraction of interest-only loans among the loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction, where an interest-only loan is a loan in which the monthly payment covers interest only.

$$\text{Fraction of Interest-Only Loans for each RMBS} = \frac{\sum_{i=1}^{N}(\text{dummy for if loan is interest-only})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Original Loan Balance**: The equal-weighted average of the original principal balances of the loans underlying the CFC-sponsored RMBS.

$$\text{Original Loan Balance for each RMBS} = \frac{\sum_{i=1}^{N}(\text{principal balance of loan})_i}{N}$$

- **Fraction of Loans Originated in 2005**: Fraction of loans originated in 2005 among the loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$\text{Fraction of Loans Originated in 2005 for each RMBS} = \frac{\sum_{i=1}^{N}(\text{dummy for if loan is originated in 2005})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Loans Originated in 2006**: Fraction of loans originated in 2006 among the loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$\text{Fraction of Loans Originated in 2006 for each RMBS} = \frac{\sum_{i=1}^{N}(\text{dummy for if loan is originated in 2006})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Loans Originated after 2006**: Fraction of loans originated after 2006 among the loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$\textit{Fraction of Loans Originated after } 2006 \textit{ for each RMBS} = \frac{\sum_{i=1}^{N} (\textit{dummy for if loan is originated after } 2006)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Original Loan-to-Value**: Ratio of the value of the loan to the value of the underlying real estate collateral as of the date of the origination of the loan weighted by the unpaid principal balance (UPB) among loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$\textit{Original Loan-to-Value for each RMBS} = \frac{\sum_{i=1}^{N} (\textit{original loan-to-value})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Second-Lien Loans**: Fraction of second-lien loans among loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$\textit{Fraction of Second-Lien Loans for each RMBS} = \frac{\sum_{i=1}^{N} (\textit{dummy for if loan is second-lien})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Credit Score**: Borrowers' credit score as of the date of loan origination weighted by the unpaid principal balances (UPB) of the loans underlying the CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$\textit{Credit Score for each RMBS} = \frac{\sum_{i=1}^{N} (\textit{borrower's credit score at origination})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- Exhibit 4 – Regression Analysis for CFC-Sponsored RMBS

  - **CFC-Sponsored RMBS Tranches**: CFC-sponsored RMBS tranches constitute all tranches of residential mortgage-backed securities that were issued in the United States by Countrywide Asset Backed Securities, Countrywide Home Loans, Inc. ("CWABS, Inc.," "CWALT, Inc.," "CWHEQ, Inc.," "CWMBS, Inc."), Countrywide Home Loans Servicing L.P., and Countrywide Mortgage Backed Securities, Inc., over the period from 1998 to 2007.
  - **Fraction of Delinquent Loans**: Fraction of loans in CFC-sponsored RMBS that are more than 30 days delinquent as of the date of the July or November 2008 Transaction weighted by the unpaid principal balance (UPB).

$$\textit{Fraction of Delinquent Loans for each RMBS} = \frac{\sum_{i=1}^{N} (\textit{dummy for if loan is delinquent})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

Appendix 3

- **Loan Age**: Time in months since origination of the loans underlying the CFC-sponsored RMBS weighted by the unpaid principal balance (UPB) of the loan as of the date of the July or November 2008 Transaction.

$$Loan\ Age\ for\ each\ RMBS = \frac{\sum_{i=1}^{N}(time\ in\ months\ since\ loan\ origination)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Adjustable-Rate Mortgage Loans**: Fraction of loans with an adjustable interest rate among loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$Fraction\ of\ Adjustable\text{-}Rate\ Mortgage\ Loans\ for\ each\ RMBS = \frac{\sum_{i=1}^{N}(dummy\ for\ if\ loan\ has\ adjustable\text{-}rate\ mortgage)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Interest-Only Loans**: Fraction of interest-only loans among the loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction, where an interest-only loan is a loan in which the monthly payment covers interest only.

$$Fraction\ of\ Interest\text{-}Only\ Loans\ for\ each\ RMBS = \frac{\sum_{i=1}^{N}(dummy\ for\ if\ loan\ is\ interest\text{-}only)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Original Loan Balance**: The equal-weighted average of the original principal balances of the loans underlying the CFC-sponsored RMBS.

$$Original\ Loan\ Balance\ for\ each\ RMBS = \frac{\sum_{i=1}^{N}(principal\ balance\ of\ loan)_i}{N}$$

- **Fraction of Loans Originated in 2005**: Fraction of loans originated in 2005 among the loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$Fraction\ of\ Loans\ Originated\ in\ 2005\ for\ each\ RMBS = \frac{\sum_{i=1}^{N}(dummy\ for\ if\ loan\ is\ originated\ in\ 2005)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Loans Originated in 2006**: Fraction of loans originated in 2006 among the loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$Fraction\ of\ Loans\ Originated\ in\ 2006\ for\ each\ RMBS = \frac{\sum_{i=1}^{N}(dummy\ for\ if\ loan\ is\ originated\ in\ 2006)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Loans Originated after 2006**: Fraction of loans originated after 2006 among the loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$\textit{Fraction of Loans Originated after } 2006 \textit{ for each RMBS} = \frac{\sum_{i=1}^{N}(\textit{dummy for if loan is originated after } 2006)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Original Loan-to-Value**: Ratio of the value of the loan to the value of the underlying real estate collateral as of the date of the origination of the loan weighted by the unpaid principal balance (UPB) among loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$\textit{Original Loan-to-Value for each RMBS} = \frac{\sum_{i=1}^{N}(\textit{original loan-to-value})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Second-Lien Loans**: Fraction of second-lien loans among loans underlying CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$\textit{Fraction of Second-Lien Loans for each RMBS} = \frac{\sum_{i=1}^{N}(\textit{dummy for if loan is second-lien})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Credit Score**: Borrowers' credit score as of the date of loan origination weighted by the unpaid principal balances (UPB) of the loans underlying the CFC-sponsored RMBS as of the date of the July or November 2008 Transaction.

$$\textit{Credit Score for each RMBS} = \frac{\sum_{i=1}^{N}(\textit{borrower's credit score at origination})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Adjusted R^2**: The modification of R^2 that adjusts for the number of explanatory variables in a model. R^2 is the statistical measure of the movement of the dependent variable that can be explained by the predictor variables in regression analysis.
- **F-statistic**: The F-statistic is a quantity associated with the statistical test of whether the regression model has statistically significant explanatory power—in other words, explanatory power superior to simply using the mean of the independent variable. More precisely, this test examines the hypothesis that the coefficients of the explanatory variables (except for the intercept) are all zero. A high value of the F-statistic relative to a benchmark value indicates that the model has superior explanatory power beyond the sample mean. In this instance, the statistical hypothesis that the coefficients of the explanatory variables are all zero is rejected with a high level of statistical significance. Statistical significance is related to the likelihood that a statistical hypothesis is rejected when it is in fact true; a high level of significance means that there is a low probability of incorrectly rejecting the hypothesis.

- Exhibit 5 – Summary Statistics for Residential Mortgage Loans Sold and Loans Underlying CFC-Sponsored RMBS

  - **CFC-Sponsored RMBS Tranches**: CFC-sponsored RMBS tranches constitute all tranches of residential mortgage-backed securities that were issued in the United States by Countrywide Asset Backed Securities, Countrywide Home Loans, Inc. ("CWABS, Inc.," "CWALT, Inc.," "CWHEQ, Inc.," "CWMBS, Inc."), Countrywide Home Loans Servicing L.P., and Countrywide Mortgage Backed Securities, Inc., over the period from 1998 to 2007.
  - **Fraction of Delinquent Loans**: Fraction of loans in CFC-sponsored RMBS and CFC residential mortgage loans sold that are more than 30 days delinquent as of the date of the July or November 2008 Transaction weighted by the unpaid principal balance (UPB).

$$\text{Fraction of Delinquent Loans for each RMBS or loans sold} = \frac{\sum_{i=1}^{N} (\text{dummy for if loan is delinquent})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

  - **Loan Age**: Time in months since origination of the loans underlying the CFC-sponsored RMBS and CFC residential mortgage loans sold weighted by the unpaid principal balance (UPB) of the loan as of the date of the July or November 2008 Transaction.

$$\text{Loan Age for each RMBS or loans sold} = \frac{\sum_{i=1}^{N} (\text{time in months since origination})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

  - **Fraction of Loans Originated in 2005**: Fraction of loans originated in 2005 among the loans underlying CFC-sponsored RMBS and CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction.

$$\text{Fraction of Loans Originated in } 2005 \text{ for each RMBS or loans sold} = \frac{\sum_{i=1}^{N} (\text{dummy for if loan is originated in } 2005)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

  - **Fraction of Loans Originated in 2006**: Fraction of loans originated in 2006 among the loans underlying CFC-sponsored RMBS and CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction.

$$\text{Fraction of Loans Originated in } 2006 \text{ for each RMBS or loans sold} = \frac{\sum_{i=1}^{N} (\text{dummy for if loan is originated in } 2006)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

  - **Fraction of Loans Originated after 2006**: Fraction of loans originated after 2006 among the loans underlying CFC-sponsored RMBS and CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction.

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$$\textit{Fraction of Loans Originated after } 2006 \textit{ for each RMBS or loans sold} = \frac{\sum_{i=1}^{N}(\textit{dummy for if loan is originated after } 2006)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Original Loan-to-Value**: Ratio of the value of the loan to the value of the underlying real estate collateral as of the date of the origination of the loan weighted by the unpaid principal balance (UPB) among loans underlying CFC-sponsored RMBS and CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction.

$$\textit{Original Loan-to-Value for each RMBS or loans sold} = \frac{\sum_{i=1}^{N}(\textit{original loan-to-value})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Second-Lien Loans**: Fraction of second-lien loans among loans underlying CFC-sponsored RMBS and CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction.

$$\textit{Fraction of Second-Lien Loans for each RMBS or loans sold} = \frac{\sum_{i=1}^{N}(\textit{dummy for if loan is second-lien})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Credit Score**: Borrowers' credit scores as of the date of loan origination weighted by the unpaid principal balances (UPB) of the loans underlying the CFC-sponsored RMBS and CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction.

$$\textit{Credit Score for each RMBS or loans sold} = \frac{\sum_{i=1}^{N}(\textit{borrower's credit score at origination})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Original Loan Balance**: The equal-weighted average of the original principal balances of the loans underlying the CFC-sponsored RMBS and CFC residential mortgage loans sold.

$$\textit{Original Loan Balance for each RMBS or loans sold} = \frac{\sum_{i=1}^{N}(\textit{principal balance of loan})_i}{N}$$

- **Unpaid Loan Balance**: Unpaid principal balance (UPB) of the loans underlying the CFC-sponsored RMBS and CFC residential mortgage loans sold as of the date of the July or November 2008 transaction.

$$\textit{Unpaid Loan Balance} = \sum_{i=1}^{N}(\textit{unpaid principal balance of loan})_i$$

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- Exhibit 6 – Valuation of Residential Mortgage Loans Sold

  - **Fraction of Delinquent Loans**: Fraction of loans in CFC residential mortgage loans sold that are more than 30 days delinquent as of the date of the July or November 2008 Transaction weighted by the unpaid principal balance (UPB).

$$\mathit{Fraction\ of\ Delinquent\ Loans\ for\ each\ RMBS\ or\ loans\ sold} = \frac{\sum_{i=1}^{N}(\mathit{dummy\ for\ if\ loan\ is\ delinquent})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

  - **Loan Age**: Time in months since origination of the loans underlying the CFC residential mortgage loans sold weighted by the unpaid principal balance (UPB) of the loan as of the date of the July or November 2008 Transaction.

$$\mathit{Loan\ Age\ for\ each\ RMBS\ or\ loans\ sold} = \frac{\sum_{i=1}^{N}(\mathit{time\ in\ months\ since\ origination})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

  - **Fraction of Adjustable-Rate Mortgage Loans**: Fraction of loans with an adjustable interest rate among loans underlying CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction.

$$\mathit{Fraction\ of\ Adjustable\text{-}Rate\ Mortgage\ Loans\ for\ each\ RMBS\ or\ loans\ sold} = \frac{\sum_{i=1}^{N}(\mathit{dummy\ for\ if\ loan\ has\ adjustable\text{-}rate\ mortgage})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

  - **Fraction of Interest-Only Loans**: Fraction of interest-only loans among the loans underlying CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction, where an interest-only loan is a loan in which the monthly payment covers interest only.

$$\mathit{Fraction\ of\ Interest\text{-}Only\ Loans\ for\ each\ RMBS\ or\ loans\ sold} = \frac{\sum_{i=1}^{N}(\mathit{dummy\ for\ if\ loan\ is\ interest\text{-}only})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

  - **Original Loan Balance**: The equal-weighted average of the original principal balances of the loans underlying the CFC residential mortgage loans sold.

$$\mathit{Original\ Loan\ Balance\ for\ each\ RMBS\ or\ loans\ sold} = \frac{\sum_{i=1}^{N}(\mathit{principal\ balance\ of\ loan})_i}{N}$$

  - **Fraction of Loans Originated in 2005**: Fraction of loans originated in 2005 among the loans underlying CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction.

$$\mathit{Fraction\ of\ Loans\ Originated\ in}\ 2005\ \mathit{for\ each\ RMBS\ or\ loans\ sold} = \frac{\sum_{i=1}^{N}(\mathit{dummy\ for\ if\ loan\ is\ originated\ in}\ 2005)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Loans Originated in 2006**: Fraction of loans originated in 2006 among the loans underlying CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction.

$$\textit{Fraction of Loans Originated in } 2006 \textit{ for each RMBS or loans sold} = \frac{\sum_{i=1}^{N}(\textit{dummy for if loan is originated in } 2006)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Loans Originated after 2006**: Fraction of loans originated after 2006 among the loans underlying CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction.

$$\textit{Fraction of Loans Originated after } 2006 \textit{ for each RMBS or loans sold} = \frac{\sum_{i=1}^{N}(\textit{dummy for if loan is originated after } 2006)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Original Loan-to-Value**: Ratio of the value of the loan to the value of the underlying real estate collateral as of the date of the origination of the loan weighted by the unpaid principal balance (UPB) of CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction.

$$\textit{Original Loan-to-Value for each RMBS or loans sold} = \frac{\sum_{i=1}^{N}(\textit{original loan-to-value})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Fraction of Second-Lien Loans**: Fraction of second-lien loans among loans underlying CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction.

$$\textit{Fraction of Second-Lien Loans for each RMBS or loans sold} = \frac{\sum_{i=1}^{N}(\textit{dummy for if loan is second-lien})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- **Credit Score**: Borrowers' credit scores as of the date of loan origination weighted by the unpaid principal balances (UPB) of the loans underlying the CFC residential mortgage loans sold as of the date of the July or November 2008 Transaction.

$$\textit{Credit Score for each RMBS or loans sold} = \frac{\sum_{i=1}^{N}(\textit{borrower's credit score at origination})_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

Appendix 3

- Exhibit 7 – Valuation of Novated Derivatives

    - **Total Notional**: The principal used to calculate payments in an interest rate swap [or other derivative]. The principal is “notional” because it is neither paid nor received.
    - **Swap**: The exchange of a security for another in order to change the maturity, quality, or objectives.
    - **Swaption**: Also known as a “Swap Option.” The option to enter into a swap, giving the buyer the option, rather than obligation, to enter into the agreement.
    - **Cancellable Swap**: Interest rate swap agreements with an embedded option giving one party the right to terminate the swap without penalty before its maturity.
    - **Forward Rate Agreement**: Over-the-counter agreements or contracts that agree to a certain interest rate which will be applied to a certain principal amount over a specified period of time, beginning at a future date.
    - **Cross-Currency Swap**: Agreements to exchange fixed or floating interest rates denoted in different currencies for a specified period.
    - **Total Return Swap**: Agreements to exchange fixed or floating interest rates plus any changes in price (i.e., capital gains or losses) on a reference asset for a fixed period.
    - **Credit Default Swap**: Agreements in which one party agrees to pay the other in the event of a default by a third party.

- Exhibits 8A and 8B – CMBS Price Summary

    - **Deal Size:** The total balance outstanding on the deal, including the notional amount of interest-only tranches, as of the relevant date.
    - **UPB/Notional of Priced Tranches**: The total UPB and notional of all tranches in the deal with prices from *Capital IQ* as of the relevant date.
    - **% Coverage by UPB/Notional**: The percentage of the total deal size for which prices are available by unpaid principal balance (UPB) or notional amount.

$$\%\,Coverage\ by\ UPB/Notional = \frac{UPB/Notional\ of\ Priced\ Tranches}{Deal\ Size}$$

Appendix 3

- Exhibit 9 – CMBS Prices

  - **Weighted Deal Price**: I calculate the Weighted Deal Price as the sum of the prices of each tranche in the CMBS, weighted by the unpaid principal balance (UPB) of that tranche. This total is divided by the total UPB of the CMBS.

$$Weighted\ Deal\ Price = \frac{\sum_{i=1}^{N}(Price)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

- Exhibit 11 – Number of Mortgage-Backed Securities Sold

  - **Type of Tranches**: The following categories are reported by *ABSNet*: P&I [Principal and Interest], Principal-Only, Interest-Only, Residual, OC [Overcollateralization], Prepay without Balance, and Other. I use the "Prepayment" type to describe two securities from commercial mortgage-backed securities that are not detailed by *ABSNet* but, as described by RMBS documents, receive their payments from prepayment penalties.
  - **Type of Loans**: The type of loans as obtained from, and defined by, *ABSNet*. *ABSNet* determines the loan type of the mortgage-backed security by reviewing the deal prospectus and determining whether there is a clear indication of the loan subtype. If there is no indication of a clear loan subtype, *ABSNet* applies classification criteria depending on characteristics of the loans such as weighted average credit score, level of documentation for the majority of loans, subordination percentages, loan-to-value ratios, and property type. Failing this, *ABSNet* consults with the rating agencies.
  - **P&I**: Tranches that receive principal and interest on a pro rata basis.
  - **Principal-Only**: A tranche which receives payment exclusively from principal payments of the loans underlying the MBS on a pro rata basis.
  - **Interest-Only**: A tranche which receives payment exclusively from interest payments of the loans underlying the MBS on a pro rata basis.
  - **Residual**: The most junior tranches of an MBS.
  - **OC [Overcollateralization]**: A tranche in which the total amount of the underlying assets exceeds the sum of the offered tranches supported by the collateral.
  - **Prepay without Balance**: A mortgage-backed security without a nominal balance. The payments to investors are the future prepayment penalties from loans underlying an RMBS.
  - **Prepayment**: A mortgage-backed security with a nominal balance. The payments to investors are the future payment penalties from loans underlying the RMBS.

- Exhibit 13 – Comparable Mortgage Servicers

    - **MSR Value**: The fair value of residential mortgage servicing rights; unless otherwise noted, obtained from relevant SEC filings.
    - **UPB**: Unpaid principal balance of the portfolio of residential mortgage loans being serviced; unless otherwise noted, obtained from relevant SEC filings.
    - **MSR-to-UPB Value Ratio**: I calculate the MSR-to-UPB Value Ratio as the MSR Value divided by the UPB.

$$MSR\text{-}to\text{-}UPB\ Value\ Ratio = \frac{MSR\ Value}{UPB}$$

    - **Total Mortgage Delinquency Rate as of 12/31/08**: The total mortgage delinquency rate in 2008 for Large Mortgage Servicers in 2008 by Servicing Volume as of December 31, 2008, according to *The 2011 Mortgage Market Statistical Annual, Volume I*. Includes 30–60 Day delinquencies, 60–90 Day delinquencies, 90+ Day delinquencies, and foreclosures. Unless otherwise noted, delinquency rates are based on dollar volume.

- Exhibit 14 – Regression Analysis for Valuation of MSRs

    - **Total Rate of Mortgage Delinquencies:** The total mortgage delinquency rate in 2008 for Large Mortgage Servicers in 2008 by Servicing Volume as of December 31, 2008, according to *The 2011 Mortgage Market Statistical Annual, Volume I*. Includes 30–60 Day delinquencies, 60–90 Day delinquencies, 90+ Day delinquencies, and foreclosures. Unless otherwise noted, delinquency rates are based on dollar volume.
    - **Adjusted R^2**: The modification of R^2 that adjusts for the number of explanatory variables in a model. R^2 is the statistical measure of the movement of the dependent variable that can be explained by the predictor variables in regression analysis.
    - **F-statistic**: The F-statistic is a quantity associated with the statistical test of whether the regression model has statistically significant explanatory power—in other words, explanatory power superior to simply using the mean of the independent variable. More precisely, this test examines the hypothesis that the coefficients of the explanatory variables (except for the intercept) are all zero. A high value of the F-statistic relative to a benchmark value indicates that the model has superior explanatory power beyond the sample mean. In this instance, the statistical hypothesis that the coefficients of the explanatory variables are all zero is rejected with a high level of statistical significance. Statistical significance is related to the likelihood that a statistical hypothesis is rejected when it is in fact

true; a high level of significance means that there is a low probability of incorrectly rejecting the hypothesis.

- Exhibit 17 – Regression Analysis for Valuation of Interest-Only and Principal-Only Tranches Sold in November 2008 Transactions

  - **Coupon**: The coupon rate paid by the security. Principal-only securities do not have a coupon.
  - **Term**: Remaining term to maturity of the RMBS as of November 7, 2008.
  - **CDR**: The lifetime constant default rate of the mortgage loan pool underlying the RMBS as obtained from *ABSNet*.
  - **CPR**: The total lifetime constant prepayment rate of the mortgage loan pool underlying the RMBS as obtained from *ABSNet*.
  - **WAC**: The WAC is the weighted average of the coupon interest rates of the loans underlying each RMBS, where the weights are the unpaid principal balances of the mortgage loan pool underlying the RMBS from *ABSNet*.

$$WAC = \frac{\sum_{i=1}^{N}(coupon\ of\ the\ loan)_i \times (UPB)_i}{\sum_{i=1}^{N} UPB_i}$$

  - **Dummy: 2005 Vintage**: One for an RMBS issued in 2005 and zero otherwise.
  - **Dummy: 2006 Vintage**: One for an RMBS issued in 2006 and zero otherwise.
  - **Dummy: 2007–2008 Vintage**: One for an RMBS issued in 2007 or 2008 and zero otherwise.
  - **Adjusted R^2**: The modification of R^2 that adjusts for the number of explanatory variables in a model. R^2 is the statistical measure of the movement of the dependent variable that can be explained by the explanatory predictor variables in regression analysis.
  - **F-statistic**: The F-statistic is a quantity associated with the statistical test of whether the regression model has statistically significant explanatory power—in other words, explanatory power superior to simply using the mean of the independent variable. More precisely, this test examines the hypothesis that the coefficients of the explanatory variables (except for the intercept) are all zero. A high value of the F-statistic relative to a benchmark value indicates that the model has superior explanatory power beyond the sample mean. In this instance, the statistical hypothesis that the coefficients of the explanatory variables are all zero is rejected with a high level of statistical significance. Statistical significance is related to the likelihood that a statistical hypothesis is rejected when it is in fact true; a high level of significance means that there is a low probability of incorrectly rejecting the hypothesis.

- Exhibit 19 – Comparable OTS Thrifts

    - **Holding Company Assets**: Total Assets of the holding company from *Capital IQ*, publicly reported as of November 7, 2008. The asset information is as of the most recent fiscal period.
    - **Bank Assets**: Total Assets of the bank as of September 30, 2008, as reported by the Office of Thrift Supervision (OTS) to *Capital IQ*. If the data are not available through the OTS on *Capital IQ*, total assets as of September 30, 2008, are obtained as reported by the Federal Financial Institutions Examination Council (FFIEC) to *Capital IQ*.
    - **Bank/Holding Asset Ratio**: I calculate the Bank/Holding Asset Ratio as the Bank Assets divided by the Holding Company Assets.

$$Bank/Holding\ Asset\ Ratio = \frac{Bank\ Assets}{Holding\ Company\ Assets}$$

    - **Book Value of Common Equity**: The Book Value of Common Equity from *Capital IQ*, publicly reported as of November 7, 2008. The Book Value of Common Equity is as of the most recent fiscal period.
    - **Market Value of Common Equity**: I calculate the Market Value of Common Equity as the product of the common stock price and the shares outstanding as of November 7, 2008, as obtained from *Capital IQ*.
    - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

    - **Return on Common Equity**: I calculate Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}$$

- Exhibit 20 – Comparable Mortgage Originators

  - **Total Assets**: Total Assets from *Capital IQ*, publicly reported as of November 7, 2008. The asset information is as of the most recent fiscal period.
  - **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of November 7, 2008. The Book Value of Common Equity is as of the most recent fiscal period.
  - **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding as of November 7, 2008, as obtained from *Capital IQ*.
  - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

  - **Return on Common Equity**: I calculate return on common equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity 12\ Months\ Prior)}$$

- Exhibit 21 – Regression Analysis for Valuation of Countrywide Bank, FSB Common Equity as of 11/7/08

  - **ROE (when Positive)**: The Return on Common Equity ("ROE") of a comparable mortgage servicer or thrift when it is positive and zero otherwise. I calculate ROE for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 -

Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$ROE\ (when\ Positive) = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}, if\ ROE > 0, \\ 0\ otherwise$$

- **ROE Negative Indicator**: One when the ROE of the comparable entity is negative and zero otherwise.
- **Thrift Indicator**: One when the comparable entity is a thrift and zero otherwise.
- **Adjusted R^2**: The modification of R^2 that adjusts for the number of explanatory variables in a model. R^2 is the statistical measure of the movement of the dependent variable that can be explained by the predictor variables in regression analysis.
- **F-statistic**: The F-statistic is a quantity associated with the statistical test of whether the regression model has statistically significant explanatory power—in other words, explanatory power superior to simply using the mean of the independent variable. More precisely, this test examines the hypothesis that the coefficients of the explanatory variables (except for the intercept) are all zero. A high value of the F-statistic relative to a benchmark value indicates that the model has superior explanatory power beyond the sample mean. In this instance, the statistical hypothesis that the coefficients of the explanatory variables are all zero is rejected with a high level of statistical significance. Statistical significance is related to the likelihood that a statistical hypothesis is rejected when it is in fact true; a high level of significance means that there is a low probability of incorrectly rejecting the hypothesis.

- Exhibit 22 – Valuation of Countrywide Bank, FSB Common & Preferred Equity Using Regression Models

  - **Predicted Market-to-Book Value Ratio of Common Equity of the Bank**: I base the Predicted Market-to-Book Value Ratio of Common Equity of the Bank on the regression coefficients from Exhibit "Regression Analysis for Valuation of Countrywide Bank, FSB Common Equity as of 11/7/08" and the corresponding Countrywide Bank variables. Countrywide Bank's Return on Common Equity equals -14.37%, thus the "ROE Negative Indicator" is one and "ROE when Positive" is zero.

- **Adjusted Book Value of Common Equity of the Bank as of 9/30/08**: I calculate the Adjusted Book Value of Common Equity of the Bank as the total book value of equity for Countrywide Bank less the reported book value of preferred stock according to the September 30, 2008, balance sheet, as obtained from *Capital IQ*, and less purchase accounting adjustments from Countrywide Bank's 2008 Thrift Financial Report for the quarter ending September 30, 2008, Schedule SI, submitted to the Office of Thrift Supervision.
- **Predicted Market Value of Common Equity of the Bank as of 11/7/08**: I calculate the Predicted Market Value of Common Equity of the Bank as the product of the Predicted Market-to-Book Value Ratio of Common Equity and the Adjusted Book Value of Common Equity.

$$\begin{aligned}&\mathit{Predicted\ Market\ Value\ of\ Common\ Equity\ of\ the\ Bank}\\&= (\mathit{Predicted\ Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity})\\&\times(\mathit{Adjusted\ Book\ Value\ of\ Common\ Equity})\end{aligned}$$

- **Predicted Market Value of Preferred Equity of the Bank as of 11/7/08**: I calculate the Predicted Market Value of Preferred Equity of the Bank based on Exhibit “Valuation of Countrywide Bank, FSB Preferred Equity Using Regression Models.”
- **Predicted Market Value of the Bank’s Total Equity as of 11/7/08**: I calculate the Predicted Market Value of the Bank’s Total Equity as the sum of the Predicted Market Value of Common Equity and the Predicted Market Value of Preferred Equity.

$$\begin{aligned}&\mathit{Predicted\ Market\ Value\ of\ the\ Bank's\ Total\ Equity}\\&\qquad= (\mathit{Predicted\ Market\ Value\ of\ Common\ Equity})\\&\qquad+(\mathit{Predicted\ Market\ Value\ of\ Preferred\ Equity})\end{aligned}$$

- Exhibit 23 – Preferred Stock of Comparable Thrifts and Mortgage Originators

  - **Par Value**: The stated face value of each security as reported in $US, as obtained from *Bloomberg*, unless otherwise specified.
  - **Price per Share as of 11/7/08**: Reported in $US, as obtained from *Bloomberg* and *Capital IQ*, unless otherwise specified. If two prices are available, the median price is taken.
  - **Promised Coupon Rate**: The promised coupon rate of the security expressed as a percentage, as obtained from *Bloomberg* or *Capital IQ*.
  - **Price-to-Dividend**: I calculate Price-to-Dividend as the price of the security divided by the dollar amount of the dividend per share. The dollar amount of the dividend is calculated as the product of the dividend rate and the par value.

$$Price\text{–}to\text{–}Dividend = \frac{Price\ of\ the\ Security}{(Dividend\ Rate) \times (Par\ Value)}$$

- **Yield**: I calculate yield as the reciprocal of Price-to-Dividend.

$$Yield = \frac{1}{Price\text{–}to\text{–}Dividend}$$

- Exhibit 24 – Regression Analysis for Valuation of Countrywide Bank, FSB Preferred Equity

  - **Market-to-Book Value Ratio of Common Equity**: I calculate Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity. The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding of the holding company as of the relevant date as obtained from *Capital IQ*. The Book Value of Common Equity of the holding company is obtained from *Capital IQ* and is the most recent publicly released figure available as of November 7, 2008.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

  - **Adjusted R^2**: The modification of R^2 that adjusts for the number of explanatory variables in a model. R^2 is the statistical measure of the movement of the dependent variable that can be explained by the explanatory predictor variables in regression analysis.
  - **F-statistic**: The F-statistic is a quantity associated with the statistical test of whether the regression model has statistically significant explanatory power—in other words, explanatory power superior to simply using the mean of the independent variable. More precisely, this test examines the hypothesis that the coefficients of the explanatory variables (except for the intercept) are all zero. A high value of the F-statistic relative to a benchmark value indicates that the model has superior explanatory power beyond the sample mean. In this instance, the statistical hypothesis that the coefficients of the explanatory variables are all zero is rejected with a high level of statistical significance. Statistical significance is related to the likelihood that a statistical hypothesis is rejected when it is in fact true; a high level of significance means that there is a low probability of incorrectly rejecting the hypothesis.

Appendix 3

- Exhibit 26 – Comparable Property and Casualty Insurance Companies

  - **Total Assets**: Total Assets of the holding company as of November 7, 2008, as obtained from *Capital IQ*. The asset information is as of the most recent fiscal period.
  - **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of November 7, 2008. The Book Value of Common Equity is as of the most recent fiscal period.
  - **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding of the holding company as of the relevant date as obtained from *Capital IQ*.
  - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

  - **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}$$

- Exhibit 27 – Comparable Life and Fraternal Insurance Companies

  - **Total Assets**: Total Assets of the holding company as of November 7, 2008, as obtained from *Capital IQ*. The asset information is as of the most recent fiscal period.
  - **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of November 7, 2008. The Book Value of Common Equity is as of the most recent fiscal period.

Appendix 3

- **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding of the holding company as of the relevant date as obtained from *Capital IQ*.
- **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

- **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}$$

- Exhibit 28 – Regression Analysis for Valuation of Balboa Group

  - **ROE (when Positive)**: The Return on Common Equity ("ROE") of a comparable mortgage servicer or thrift when it is positive and zero otherwise. I calculate ROE for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$ROE\ (when\ Positive) = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}, if\ ROE > 0,\ 0\ otherwise$$

- **ROE Negative Indicator**: Equal to one when the ROE of the comparable entity is negative and zero otherwise.
- **Adjusted R^2**: The modification of R^2 that adjusts for the number of explanatory variables in a model. R^2 is the statistical measure of the movement of the dependent variable that can be explained by the predictor variables in regression analysis.
- **F-statistic**: The F-statistic is a quantity associated with the statistical test of whether the regression model has statistically significant explanatory power—in other words, explanatory power superior to simply using the mean of the independent variable. More precisely, this test examines the hypothesis that the coefficients of the explanatory variables (except for the intercept) are all zero. A high value of the F-statistic relative to a benchmark value indicates that the model has superior explanatory power beyond the sample mean. In this instance, the statistical hypothesis that the coefficients of the explanatory variables are all zero is rejected with a high level of statistical significance. Statistical significance is related to the likelihood that a statistical hypothesis is rejected when it is in fact true; a high level of significance means that there is a low probability of incorrectly rejecting the hypothesis.

- Exhibit 30 – Valuation of Common Equity of Other Effinity Subsidiaries Using Regression Models

  - **Book Value of Common Equity as of 10/31/07**: Book value of equity, identified as 'Total Equity," as of October 31, 2008, minus annualized retained earnings, which are calculated by multiplying available data on retained earnings for the 10 months ending in October 31, 2008, identified as "Current RE from P&L," by 6/5.

$$\begin{aligned} &\mathit{Book\ Value\ of\ Common\ Equity\ as\ of}\ 10/31/07 \\ &\quad = (\mathit{Total\ Equity\ as\ of\ October}\ 31, 2008) \\ &\quad - \left[(\mathit{Current\ RE\ from\ P\&L}) \times \frac{6}{5}\right] \end{aligned}$$

  - **LTM Income (Last Twelve Months Income)**: I calculate LTM Income as the "Earnings Before Income Tax" for the 10 months ended October 31, 2008, annualized by multiplying by 6/5.

$$\mathit{LTM\ Income} = (\mathit{Earnings\ Before\ Income\ Tax}) \times \frac{6}{5}$$

  - **LTM Revenue (Last Twelve Months Revenue)**: I calculate LTM Revenue as the "Total Revenue" for the 10 months ended October 31, 2008, annualized by multiplying by 6/5.

$$LTM\ Revenue = (Total\ Revenue) \times \frac{6}{5}$$

- **Return on Common Equity (ROE)**: I calculate ROE for the comparable companies by dividing the "LTM Income" by the "Book Value of Common Equity as of 10/31/07" for the most recent fiscal-period end immediately before the 12-month period over which "LTM Income" was earned.

$$Return\ on\ Common\ Equity = \frac{LTM\ Income}{Book\ Value\ of\ Common\ Equity\ as\ of\ October\ 31, 2007}$$

- Exhibit 31 – Valuation of Common Equity of Other CHL Subsidiaries Using Regression Models

  - **Book Value of Common Equity as of 10/31/07**: Book value of equity, identified as "Total Equity," as of October 31, 2008, minus annualized retained earnings, which are calculated by multiplying available data on retained earnings for the 10 months ending in October 31, 2008, identified as "Current RE from P&L," by 6/5.

$$Book\ Value\ of\ Common\ Equity\ as\ of\ 10/31/07 = (Total\ Equity\ as\ of\ October\ 31, 2008) - \left[(Current\ RE\ from\ P\&L) \times \frac{6}{5}\right]$$

  - **LTM Income (Last Twelve Months Income)**: I calculate LTM Income as the "Earnings Before Income Tax" for the 10 months ended October 31, 2008, annualized by multiplying by 6/5.

$$LTM\ Income = (Earnings\ Before\ Income\ Tax) \times \frac{6}{5}$$

  - **LTM Revenue (Last Twelve Months Revenue)**: I calculate LTM Revenue as the "Total Revenue" for the 10 months ended October 31, 2008, annualized by multiplying by 6/5.

$$LTM\ Revenue = (Total\ Revenue) \times \frac{6}{5}$$

  - **Return on Common Equity (ROE)**: I calculate ROE for the comparable companies by dividing the "LTM Income" by the "Book Value of Common Equity as of 10/31/07" for the most recent fiscal-period end immediately before the 12-month period over which "LTM Income" was earned.

$$Return\ on\ Common\ Equity = \frac{LTM\ Income}{Book\ Value\ of\ Common\ Equity\ as\ of\ October\ 31, 2007}$$

Appendix 3

- Exhibit 33 – Bank of America Demand Note Interest Rates

    - **LIBOR plus Spread**: The effective interest rate calculated as the sum of the LIBOR-USD Fixed 3-Month interest rate as of the date of the demand note and the additional basis points as defined in the demand note.
    - **3-Month NYFR Fixings Index**: 3-Month Interest Rate from the 3-Month New York Funding Rate (NYFR) Fixings Index by *ICAP* as of the Issue Date, as obtained from *Bloomberg*.
    - **3-Month Interest Rate Difference**: The difference between the (LIBOR plus Spread) and the 3-Month NYFR Fixings Index.

$$3\text{–}\,Month\ Interest\ Rate\ Difference = (LIBOR\ plus\ Spread) - (3\text{-}Month\ NYFR\ Fixings\ Index)$$

- Exhibit 34 – Liabilities of Countrywide-legacy Entities Assumed by BofA-legacy Entities November 2008 Transactions

    - **Price as % of Par as of 11/7/08**: Transaction prices or evaluated prices from *Bloomberg*, or evaluated prices from *Capital IQ* from *Interactive Data Corporation* (*IDC*). If a transaction price up to 14 days before November 7, 2008, is available, this transaction price is shown. All transaction prices are obtained from *Bloomberg* as provided by *TRACE*. Otherwise, the evaluated price from *Capital IQ*, from *IDC*, as of November 7, 2008, is displayed, where available. When an evaluated price from *Capital IQ* is not available, an evaluated price from *Bloomberg* as of November 7, 2008, is used. Prices are expressed as a percentage of par value.

- Exhibit 35 – Market-to-Book Value Comparison for CFC and Comparable Companies
    - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

Appendix 3

- Exhibit 36A – Selected Comparable OTS Thrifts with Financial Data Available as of 8/15/07

    - **Holding Company Assets**: Total Assets of the holding company from *Capital IQ*, publicly reported as of August 15, 2007. The asset information is as of the most recent fiscal period ended after May 15, 2007.
    - **Bank Assets**: Total Assets of the bank as of August 15, 2007, for the most recent fiscal period ended after May 15, 2007, as reported by the Office of Thrift Supervision (OTS) to *Capital IQ*. If the data are not available through the OTS on *Capital IQ*, total assets are obtained as reported by the Federal Financial Institutions Examination Council (FFIEC) to *Capital IQ*.
    - **Bank/Holding Asset Ratio**: I calculate the Bank/Holding Asset Ratio as the Bank Assets divided by the Holding Company Assets.

$$Bank/Holding\ Asset\ Ratio = \frac{Bank\ Assets}{Holding\ Company\ Assets}$$

    - **Book Value of Common Equity**: The Book Value of Common Equity from *Capital IQ*, publicly reported as of August 15, 2007. The Book Value of Common Equity is as of the most recent fiscal period ended after May 15, 2007.
    - **Market Value of Common Equity**: I calculate the Market Value of Common Equity as the product of the common stock price and the shares outstanding as of August 15, 2007, as obtained from *Capital IQ*.
    - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

    - **Return on Common Equity**: I calculate Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}$$

- Exhibit 36B – Selected Comparable Mortgage Originators with Financial Data Available as of 8/15/07

    - **Total Assets**: Total Assets from *Capital IQ*, publicly reported as of August 15, 2007. The asset information is as of the most recent fiscal period ended after May 15, 2007.
    - **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of August 15, 2007. The Book Value of Common Equity is as of the most recent fiscal period ended after May 15, 2007.
    - **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding as of August 15, 2007, as obtained from *Capital IQ*.
    - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

    - **Return on Common Equity**: I calculate return on common equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}$$

- Exhibit 36C – Selected Comparable Mortgage Servicers with Financial Data Available as of 8/15/07

    - **Total Assets**: Total Assets of the holding company as of August 15, 2007, as obtained from *Capital IQ*. The asset information is as of the most recent fiscal period ended after May 15, 2007.

Appendix 3

- **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of August 15, 2007. The Book Value of Common Equity is as of the most recent fiscal period ended after May 15, 2007.
- **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding of the holding company as of August 15, 2007, as obtained from *Capital IQ*.
- **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

- **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}$$

- Exhibit 36D – Comparable Property and Casualty Insurance Companies 8/15/07

  - **Total Assets**: Total Assets of the holding company as of August 15, 2007, as obtained from *Capital IQ*. The asset information is as of the most recent fiscal period ended after May 15, 2007.
  - **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of August 15, 2007. The Book Value of Common Equity is as of the most recent fiscal period ended after May 15, 2007.
  - **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding of the holding company as of August 15, 2007, as obtained from *Capital IQ*.
  - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$\text{Market-to-Book Value Ratio of Common Equity} = \frac{\text{Market Value of Common Equity}}{\text{Book Value of Common Equity}}$$

- **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$\text{Return on Common Equity} = \frac{\text{Normalized Net Income}}{(\text{Total Common Equity } 12 \text{ Months Prior})}$$

- Exhibit 36E – Comparable Life and Fraternal Insurance Companies 8/15/07

  - **Total Assets**: Total Assets of the holding company as of August 15, 2007, as obtained from *Capital IQ*. The asset information is as of the most recent fiscal period ended after May 15, 2007.
  - **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of August 15, 2007. The Book Value of Common Equity is as of the most recent fiscal period ended after May 15, 2007.
  - **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding of the holding company as of August 15, 2007, as obtained from *Capital IQ*.
  - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$\text{Market-to-Book Value Ratio of Common Equity} = \frac{\text{Market Value of Common Equity}}{\text{Book Value of Common Equity}}$$

  - **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}$$

- Exhibit 37A – Selected Comparable OTS Thrifts with Financial Data Available as of 3/15/07

  - **Holding Company Assets**: Total Assets of the holding company from *Capital IQ*, publicly reported as of March 15, 2007. The asset information is as of the most recent fiscal period ended after December 15, 2006.
  - **Bank Assets**: Total Assets of the bank as of March 15, 2007, for the most recent fiscal period ended after December 15, 2006, as reported by the Office of Thrift Supervision (OTS) to *Capital IQ*. If the data are not available through the OTS on *Capital IQ*, total assets are obtained as reported by the Federal Financial Institutions Examination Council (FFIEC) to *Capital IQ*.
  - **Bank/Holding Asset Ratio**: I calculate the Bank/Holding Asset Ratio as the Bank Assets divided by the Holding Company Assets.

$$Bank/Holding\ Asset\ Ratio = \frac{Bank\ Assets}{Holding\ Company\ Assets}$$

  - **Book Value of Common Equity**: The Book Value of Common Equity from *Capital IQ*, publicly reported as of March 15, 2007. The Book Value of Common Equity is as of the most recent fiscal period ended after December 15, 2006.
  - **Market Value of Common Equity**: I calculate the Market Value of Common Equity as the product of the common stock price and the shares outstanding as of March 15, 2007, as obtained from *Capital IQ*.
  - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

  - **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net

Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}$$

- Exhibit 37B – Selected Comparable Mortgage Originators with Financial Data Available as of 3/15/07

  - **Total Assets**: Total Assets from *Capital IQ*, publicly reported as of March 15, 2007. The asset information is as of the most recent fiscal period ended after December 15, 2006.
  - **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of March 15, 2007. The Book Value of Common Equity is as of the most recent fiscal period ended after December 15, 2006.
  - **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding as of March 15, 2007, as obtained from *Capital IQ*.
  - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

  - **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}$$

- Exhibit 37C – Selected Comparable Mortgage Servicers with Financial Data Available as of 3/15/07

  - **Total Assets**: Total Assets of the holding company as of March 15, 2007, as obtained from *Capital IQ*. The asset information is as of the most recent fiscal period ended after December 15, 2006.
  - **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of March 15, 2007. The Book Value of Common Equity is as of the most recent fiscal period ended after December 15, 2006.
  - **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding of the holding company as of March 15, 2007, as obtained from *Capital IQ*.
  - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

  - **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the “Normalized Net Income,” as obtained from *Capital IQ*, by the “Total Common Equity” for the fiscal-period end immediately before the 12-month period over which “Normalized Net Income” was earned, as obtained from *Capital IQ*. *Capital IQ* defines “Normalized Net Income” as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and “Total Common Equity” as the sum of “Common Stock & APIC,” “Retained Earnings,” and “Treasury Stock & Other.” The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}$$

- Exhibit 37D – Comparable Property and Casualty Insurance Companies 3/15/07

  - **Total Assets**: Total Assets of the holding company as of March 15, 2007, as obtained from *Capital IQ*. The asset information is as of the most recent fiscal period ended after December 15, 2006.
  - **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of March 15, 2007. The Book Value of Common Equity is as of the most recent fiscal period ended after December 15, 2006.

- **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding of the holding company as of March 15, 2007, as obtained from *Capital IQ*.
- **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$\mathit{Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity} = \frac{\mathit{Market\ Value\ of\ Common\ Equity}}{\mathit{Book\ Value\ of\ Common\ Equity}}$$

- **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$\mathit{Return\ on\ Common\ Equity} = \frac{\mathit{Normalized\ Net\ Income}}{(\mathit{Total\ Common\ Equity}\ 12\ \mathit{Months\ Prior})}$$

- Exhibit 37E – Comparable Life and Fraternal Insurance Companies 3/15/07

  - **Total Assets**: Total Assets of the holding company as of March 15, 2007, as obtained from *Capital IQ*. The asset information is as of the most recent fiscal period ended after December 15, 2006.
  - **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of March 15, 2007. The Book Value of Common Equity is as of the most recent fiscal period ended after December 15, 2006.
  - **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding of the holding company as of March 15, 2007, as obtained from *Capital IQ*.
  - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$\mathit{Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity} = \frac{\mathit{Market\ Value\ of\ Common\ Equity}}{\mathit{Book\ Value\ of\ Common\ Equity}}$$

- **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}$$

▪ Exhibit 38A – Selected Comparable OTS Thrifts with Financial Data Available as of 8/15/06

- **Holding Company Assets**: Total Assets of the holding company from *Capital IQ*, publicly reported as of August 15, 2006. The asset information is as of the most recent fiscal period ended after May 15, 2006.
- **Bank Assets**: Total Assets of the bank as of August 15, 2006, for the most recent fiscal period ended after May 15, 2006, as reported by the Office of Thrift Supervision (OTS) to *Capital IQ*. If the data are not available through the OTS on *Capital IQ*, total assets are obtained as reported by the Federal Financial Institutions Examination Council (FFIEC) to *Capital IQ*.
- **Bank/Holding Asset Ratio**: I calculate the Bank/Holding Asset Ratio as the Bank Assets divided by Holding Company Assets.

$$Bank/Holding\ Asset\ Ratio = \frac{Bank\ Assets}{Holding\ Company\ Assets}$$

- **Book Value of Common Equity**: The Book Value of Common Equity from *Capital IQ*, publicly reported as of August 15, 2006. The Book Value of Common Equity is as of the most recent fiscal period, ended after May 15, 2006.
- **Market Value of Common Equity**: I calculate the Market Value of Common Equity as the product of the common stock price and the shares outstanding as of August 15, 2006, as obtained from *Capital IQ*.
- **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$\textit{Market-to-Book Value Ratio of Common Equity} = \frac{\textit{Market Value of Common Equity}}{\textit{Book Value of Common Equity}}$$

- **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$\textit{Return on Common Equity} = \frac{\textit{Normalized Net Income}}{(\textit{Total Common Equity } 12 \textit{ Months Prior})}$$

▪ Exhibit 38B – Selected Comparable Mortgage Originators with Financial Data Available as of 8/15/06

- **Total Assets**: Total Assets from *Capital IQ*, publicly reported as of August 15, 2006. The asset information is as of the most recent fiscal period ended after May 15, 2006.
- **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of August 15, 2006. The Book Value of Common Equity is as of the most recent fiscal period ended after May 15, 2006.
- **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding as of August 15, 2006, as obtained from *Capital IQ*.
- **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$\textit{Market-to-Book Value Ratio of Common Equity} = \frac{\textit{Market Value of Common Equity}}{\textit{Book Value of Common Equity}}$$

- **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net

Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}$$

- Exhibit 38C – Selected Comparable Mortgage Servicers with Financial Data Available as of 8/15/06

  - **Total Assets**: Total Assets of the holding company as of August 15, 2006, as obtained from *Capital IQ*. The asset information is as of the most recent fiscal period ended after May 15, 2006.
  - **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of August 15, 2006. The Book Value of Common Equity is as of the most recent fiscal period ended after May 15, 2006.
  - **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding of the holding company as of August 15, 2006, as obtained from *Capital IQ*.
  - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

  - **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ at\ the\ End\ of\ the\ Prior\ Fiscal\ Period)}$$

Appendix 3

- Exhibit 38D – Comparable Property and Casualty Insurance Companies 8/15/06

  - **Total Assets**: Total Assets of the holding company as of August 15, 2006, as obtained from *Capital IQ*. The asset information is as of the most recent fiscal period ended after May 15, 2006.
  - **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of August 15, 2006. The Book Value of Common Equity is as of the most recent fiscal period ended after May 15, 2006.
  - **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding of the holding company as of August 15, 2006, as obtained from *Capital IQ*.
  - **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity = \frac{Market\ Value\ of\ Common\ Equity}{Book\ Value\ of\ Common\ Equity}$$

  - **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$Return\ on\ Common\ Equity = \frac{Normalized\ Net\ Income}{(Total\ Common\ Equity\ 12\ Months\ Prior)}$$

- Exhibit 38E – Comparable Life and Fraternal Insurance Companies 8/15/06

  - **Total Assets**: Total Assets of the holding company as of August 15, 2006, as obtained from *Capital IQ*. The asset information is as of the most recent fiscal period ended after May 15, 2006.
  - **Book Value of Common Equity**: The Book Value of Common Equity is from *Capital IQ*, publicly reported as of August 15, 2006. The Book Value of Common Equity is as of the most recent fiscal period ended after May 15, 2006.

- **Market Value of Common Equity**: The Market Value of Common Equity is calculated as the product of the common stock price and the shares outstanding of the holding company as of August 15, 2006, as obtained from *Capital IQ*.
- **Market-to-Book Value Ratio of Common Equity**: I calculate the Market-to-Book Value Ratio of Common Equity as the Market Value of Common Equity divided by the Book Value of Common Equity.

$$\mathit{Market\text{-}to\text{-}Book\ Value\ Ratio\ of\ Common\ Equity} = \frac{\mathit{Market\ Value\ of\ Common\ Equity}}{\mathit{Book\ Value\ of\ Common\ Equity}}$$

- **Return on Common Equity**: I calculate the Return on Common Equity for the comparable companies by dividing the "Normalized Net Income," as obtained from *Capital IQ*, by the "Total Common Equity" for the fiscal-period end immediately before the 12-month period over which "Normalized Net Income" was earned, as obtained from *Capital IQ*. *Capital IQ* defines "Normalized Net Income" as Earnings Before Tax, Excl. Unusual Items × (1 - Statutory Tax Rate, which is assumed to be 37.5% for all companies) and "Total Common Equity" as the sum of "Common Stock & APIC," "Retained Earnings," and "Treasury Stock & Other." The Statutory Tax Rate is the rate as assumed by *Capital IQ*.

$$\mathit{Return\ on\ Common\ Equity} = \frac{\mathit{Normalized\ Net\ Income}}{(\mathit{Total\ Common\ Equity}\ 12\ \mathit{Months\ Prior})}$$

Exhibit 1

Summary of Transactions and Associated Values

Source: BACMBIA-C0000168242–45; BACMBIA-R0000006043; BACMBIA-R0000006061; BACMBIA-R0000006150; Exhibits 2–34
(Dollars in Billions)

Assets Sold with Estimated Fair Market Values		July 2008 Transactions		November 2008 Transactions		Total
Residential Mortgage Loans		$9.53		$0.52		$10.04
Novated Derivatives		$1.46		-		$1.46
MSRs (excluding Countrywide GP and LP)	[1]	-		$0.23		$0.23
Mortgage-Backed Securities		$0.25		-		$0.25
Commercial Real Estate Loans		$0.28		-		$0.28
Interest-Only Securities		-		$0.72		$0.72
Principal-Only Securities		-		$0.29		$0.29
Common Stock of Effinity Financial Corporation		-		$10.68		$10.68
Common Stock of Countrywide Warehouse Lending and Countrywide Hillcrest		-		$0.21		$0.21
Common Stock of Countrywide GP and LP		$13.41		-		$13.41
Total		$24.93		$12.66		$37.58
Assets Sold with Maximum Realizable Value						
Reimbursable Servicing Advances (excluding Countrywide GP and LP)		-		$1.04		$1.04
Reimbursable Servicing Advances (Countrywide GP and LP)		$4.63		-		$4.63
Total		$4.63		$1.04		$5.67
Assets Sold Not Valued						
CHL Remaining Assets (at book value)		-		$1.50	[2]	$1.50
Mortgage-Backed Securities		$0.00	[3]	-		$0.00
Interest-Only Securities		-		$0.03	[4]	$0.03
Total		$0.00		$1.52		$1.53
Total		$29.56		$15.23		$44.78
Consideration Paid at Fair Market Value						
Liabilities Assumed		-		$15.07		$15.07
Cash		$1.67		-		$1.67
Demand Notes Issued		$27.79	[5]	$1.67	[5]	$29.46
Total		$29.45		$16.74		$46.20

Note:

[1] Mortgage Servicing Rights ("MSRs") sold as part of CHL Remaining Assets.

[2] I do not value these remaining assets either because detailed information about the assets sold is not available to me or the valuation of the particular assets, e.g., technology assets, is not part of my assignment.

[3] Thirteen securities are not valued because of insufficient data. They are included at book value per Countrywide documents at $1.92 million.

[4] Six interest-only tranches with insufficient data for valuation (12667G6M0, 12667G6N8, 12667G6P3, 12669GAC5, 12668A6A8, and 02151WAD4) are assigned the value recorded in BACMBIA-R0000005929, as of June 23, 2009. The tranche with CUSIP 126694VJ4 is not recorded in BACMBIA-R0000005929 and so does not have a value as of June 23, 2009, but has a value of $62,703 as of June 30, 2008, from BACMBIA-A0000067491.

[5] Demand notes reflect adjustments.

Exhibit 2

Summary of Prices for CFC-Sponsored RMBS [1]

Source: *ABSNet* ; *Interactive Data Corp.* ; *Standard & Poor's Financial Services LLC*

	July 1, 2008 [2]					November 7, 2008 [2]				
Year of Issuance [1]	Number of RMBS [1]	Equal-Weighted RMBS Price [1]	Minimum RMBS Price	Median RMBS Price	Maximum RMBS Price	Number of RMBS [1]	Equal-Weighted RMBS Price [1]	Minimum RMBS Price	Median RMBS Price	Maximum RMBS Price
1998	1	88.96	88.96	88.96	88.96	1	90.06	90.06	90.06	90.06
1999	1	83.53	83.53	83.53	83.53	1	60.79	60.79	60.79	60.79
2001	1	94.54	94.54	94.54	94.54	1	90.53	90.53	90.53	90.53
2002	29	91.97	81.22	94.54	100.52	29	89.43	74.17	91.71	98.95
2003	71	90.91	81.06	93.03	102.98	71	88.60	75.90	88.88	99.86
2004	76	87.61	74.43	87.63	95.51	76	79.61	60.21	80.78	96.53
2005	82	80.49	61.19	81.35	99.63	82	70.22	45.67	73.86	85.29
2006	16	78.37	50.32	80.46	96.11	17	62.42	37.08	61.74	90.12
2007	12	80.52	60.55	82.79	91.49	12	56.50	37.83	55.87	78.59
All Securities	**289**	**86.05**	**50.32**	**86.43**	**102.98**	**290**	**78.18**	**37.08**	**80.90**	**99.86**

Note:

[1] See Appendix 3 for variable definitions.

[2] Price of a CFC-sponsored RMBS is equal to the weighted average price of tranches comprising each RMBS for which a price is available for all of its tranches. The RMBS price as of July 1, 2008, is weighted by the unpaid principal balance of tranches with prices as of July 1, 2008. The RMBS price as of November 7, 2008, is weighted by the unpaid principal balance of tranches with prices as of November 1, 2008. "Equal-Weighted RMBS Price" is an average of the above described prices (as of the named date) across the RMBS in that year of issuance. Minimum, median, and maximum are calculated in a similar fashion.

Exhibit 3

Summary Statistics for Characteristics of Loans Underlying CFC-Sponsored RMBS [1]

Source: *ABSNet Loan*

July 1, 2008

Variable [1][2]		Number of RMBS [1]	Minimum	25th Percentile	Average	Median	75th Percentile	Maximum
Fraction of Delinquent Loans (as of July 2008)		284	0.00	0.03	0.08	0.05	0.10	0.44
Loan Age (as of July 2008)		285	16.85	39.42	50.04	50.29	61.61	117.38
Fraction of Adjustable-Rate Mortgage Loans		287	0.00	0.00	0.24	0.00	0.00	1.00
Fraction of Interest-Only Loans		287	0.00	0.00	0.18	0.04	0.29	1.00
Original Loan Balance		288	$33,469	$213,748	$389,732	$442,487	$497,941	$2,993,423
Fraction of Loans Originated in 2005		284	0.00	0.00	0.26	0.00	0.69	1.00
Fraction of Loans Originated in 2006		284	0.00	0.00	0.05	0.00	0.00	1.00
Fraction of Loans Originated after 2006		284	0.00	0.00	0.03	0.00	0.00	0.99
Original Loan-to-Value	[3]	287	16.41	68.47	70.16	71.21	73.92	83.35
Fraction of Second-Lien Loans		284	0.00	0.00	0.01	0.00	0.00	1.00
Credit Score		282	611.20	708.91	721.18	722.41	740.11	787.00

November 1, 2008

Variable [1][4]		Number of RMBS [1]	Minimum	25th Percentile	Average	Median	75th Percentile	Maximum
Fraction of Delinquent Loans (as of November 2008)		287	0.00	0.03	0.10	0.06	0.13	0.54
Loan Age (as of November 2008)		286	20.85	42.96	53.89	54.21	65.62	120.53
Fraction of Adjustable-Rate Mortgage Loans		288	0.00	0.00	0.24	0.00	0.01	1.00
Fraction of Interest-Only Loans		288	0.00	0.00	0.18	0.04	0.30	1.00
Original Loan Balance		289	$33,469	$213,454	$389,096	$441,836	$497,401	$2,993,423
Fraction of Loans Originated in 2005		285	0.00	0.00	0.26	0.00	0.67	1.00
Fraction of Loans Originated in 2006		285	0.00	0.00	0.06	0.00	0.00	1.00
Fraction of Loans Originated after 2006		285	0.00	0.00	0.03	0.00	0.00	0.99
Original Loan-to-Value	[3]	288	16.45	68.47	70.21	71.30	74.04	83.23
Fraction of Second-Lien Loans		285	0.00	0.00	0.01	0.00	0.00	1.00
Credit Score		283	611.30	709.01	720.98	722.25	740.06	787.00

Note:

[1] See Appendix 3 for variable definitions.

[2] All variables, except original loan balance, are weighted by the unpaid principal balance (UPB) of loans underlying the CFC-sponsored RMBS as of July 1, 2008. Original loan balance is an equal-weighted average.

[3] Original Loan-to-Value for remaining loans in the CFC-sponsored RMBS.

[4] All variables, except original loan balance, are weighted by the unpaid principal balance (UPB) of loans underlying the CFC-sponsored RMBS as of November 1, 2008. Original loan balance is an equal-weighted average.

Exhibit 4

Regression Analysis for CFC-Sponsored RMBS [1]

Source: *ABSNet*; *ABSNet Loan*; *Interactive Data Corp*.; *Standard & Poor's Financial Services LLC*; BACMBIA-V0000028417–423

	July 1, 2008		November 7, 2008	
Variable [2]	**Coefficient [3]**	**Standard Error**	**Coefficient [3]**	**Standard Error**
Fraction of Delinquent Loans (as of July 2008)	-54.800 ***	7.113	-	-
Fraction of Delinquent Loans (as of November 2008)	-	-	-64.656 ***	8.258
Loan Age (as of July 2008)	0.108 ***	0.035	-	-
Loan Age (as of November 2008)	-	-	0.273 ***	0.048
Fraction of Adjustable-Rate Mortgage Loans	-0.132	0.919	-2.061	1.335
Fraction of Interest-Only Loans	4.321 ***	1.169	0.949	1.619
Original Loan Balance	-0.000	0.000	-0.000	0.000
Fraction of Loans Originated in 2005	-5.072 ***	1.008	-4.093 ***	1.396
Fraction of Loans Originated in 2006	0.405	1.990	-5.382 **	2.590
Fraction of Loans Originated after 2006	-0.016	2.314	-6.858 **	3.153
Original Loan-to-Value	0.025	0.089	-0.190	0.117
Fraction of Second-Lien Loans	5.978	5.281	-12.820 *	7.012
Credit Score	0.053 ***	0.019	0.045 *	0.026
Constant	45.425 ***	15.665	53.695 **	21.633
Number of Observations	278		282	
Adjusted R^2	70.2%		80.4%	
F-statistic	60.27		105.83	

Note:

[1] Regression of RMBS prices on underlying loan characteristics of each RMBS. RMBS prices are calculated using all of the tranches underlying the RMBS. Underlying loan characteristics are obtained from *ABSNet Loan*. See Appendix 3 for detailed description of CFC-sponsored RMBS.

[2] All of the explanatory variables, except original loan balance, in July 1, 2008, and November 7, 2008, regressions are weighted by the unpaid principal balance of the loans underlying the offering as of July 1, 2008, and November 1, 2008, respectively. Original loan balance is equally weighted. See Appendix 3 for variable definitions.

[3] ***,**, and * denote that the coefficient estimate is significantly different from zero at the 1%, 5%, or 10% level, respectively.

Exhibit 5

Summary Statistics for Residential Mortgage Loans Sold and Loans Underlying CFC-Sponsored RMBS [1]

Source: *ABSNet*; *ABSNet Loan*; BACMBIA-V0000028417–423

		Residential Mortgage Loans Sold [2]		Loans Underlying RMBS [3]	
Variables [4]		**July 1, 2008**	**November 7, 2008**	**July 1, 2008**	**November 7, 2008**
Fraction of Delinquent Loans		0.26	0.24	0.10	0.14
Loan Age		4.09	1.35	41.50	45.28
Fraction of Adjustable-Rate Mortgage Loans		0.37	0.31	0.27	0.28
Fraction of Interest-Only Loans		0.19	0.06	0.21	0.21
Fraction of Loans Originated in 2005		0.03	0.07	0.43	0.43
Fraction of Loans Originated in 2006		0.09	0.10	0.11	0.12
Fraction of Loans Originated after 2006		0.69	0.68	0.07	0.07
Original Loan-to-Value		48.93	64.98	71.90	71.95
Fraction of Second-Lien Loans		0.47	0.15	0.00	0.00
Credit Score		693.97	706.87	718.81	718.56
Equal-Weighted Original Loan Balance		$102,585	$254,776	$282,685	$282,685
Unpaid Loan Balance		$95,889	$215,902	$266,545	$267,699
Number of Loans (non-FHA/VA and non-PMI)	[5]	110,769	2,105	649,704	649,704

Note:

[1] See Appendix 3 for description of CFC-sponsored RMBS.

[2] Weighted by unpaid principal loan balance as of the corresponding sale date.

[3] Variables are weighted by unpaid balance of loans underlying the RMBS. The unpaid principal balance of the loans underlying the RMBS is calculated as of July 1, 2008, and November 1, 2008, for July 1, 2008, and November 7, 2008, regressions, respectively.

[4] See Appendix 3 for variable definitions.

[5] FHA/VA loans and loans with private mortgage insurance are excluded from residential mortgage loans sold in this exhibit.

Exhibit 6

Valuation of Residential Mortgage Loans Sold [1]

Source: *ABSNet* ; *ABSNet Loan* ; *Interactive Data Corp.* ; *Standard & Poor's Financial Services LLC* ;
BACMBIA-V0000028417–423

Variable [2]		July 1, 2008 Valuation Inputs	November 7, 2008 Valuation Inputs
Fraction of Delinquent Loans (as of July 2008)		0.26	-
Fraction of Delinquent Loans (as of November 2008)		-	0.24
Loan Age (as of July 2008)		4.09	-
Loan Age (as of November 2008)		-	1.35
Fraction of Adjustable-Rate Mortgage Loans		0.37	0.31
Fraction of Interest-Only Loans		0.19	0.06
Original Loan Balance	[3]	$102,585	$254,776
Fraction of Loans Originated in 2005		0.03	0.07
Fraction of Loans Originated in 2006		0.09	0.10
Fraction of Loans Originated after 2006		0.69	0.68
Original Loan-to-Value		48.93	64.98
Fraction of Second-Lien Loans		0.47	0.15
Credit Score		693.97	706.87
Predicted Price	[4]	73.47	49.44
Predicted Value	[5]	$7.78	$0.22
Outstanding Balance of Government Loans	[6]	$0.90	$0.21
Outstanding Balance of PMI Loans	[7]	$0.81	$0.07
Total Estimated Value	[8]	$9.53	$0.52

Note:
[1] All residential mortgage loans sold are grouped into a single portfolio based on the corresponding sale date.
[2] All of the variables, except original loan balance, are weighted by unpaid principal balance of the loans as of the corresponding sale date. See Appendix 3 for variable definitions.
[3] Original Loan Balance is reported in dollars.
[4] Predicted Price is reported as a percentage of unpaid principal balance of the loans.
[5] Predicted Value is calculated as the product of the Predicted Price and the UPB of non-government sponsored and non-PMI insured loans sold by Countrywide-legacy entities to BofA-legacy entities on the respective transaction dates. Dollar value in billions.
[6] Includes 9,515 FHA/VA loans that are categorized by Countrywide as "Govt ARM," "Govt Fixed," and "Title 1 Fixed." These loans are excluded from estimation and valued at $105.08. Dollar value in billions.
[7] Includes 4,493 loans that have private mortgage insurance. These loans are valued at par. Dollar value in billions.
[8] Total value is equal to the sum of predicted value, value of FHA/VA loans, and outstanding balance of PMI loans. Dollar value in billions.

Exhibit 7

Valuation of Novated Derivatives

7/1/08

Source: BACMBIA-A0000062796; BACMBIA-A0000064323; *Bloomberg* ; *U.S. Treasury*

(Dollars in Millions)

Security [1]		Count	Total Notional [1]	Total Value
Swap		131	$56,459.6	-$477.4
Swaption		80	$78,970.0	$1,735.5
Cancellable Swap		34	$1,899.5	$43.4
Forward Rate Agreement	[2]	26	-$49,100.0	-$290.1
Cross-Currency Swap		9	-$4.6	$454.5
Total Return Swap	[3]	6	$100.0	$0.4
Credit Default Swap		5	$190.0	-$6.2
Total (All Securities)		**291**	**$88,514.5**	**$1,460.1**

Note:

[1] See Appendix 3 for variable definitions.

[2] To value the FRA, I subtract the fixed rate from the constant maturity mortgage ("CMM") rate as of July 1, 2008, and multiply this difference by the notional amount of the FRA. I use the spot CMM rate as a proxy for the forward CMM rate obtained from *Bloomberg* . Using the spot rate assumes a flat yield curve. The product of the interest rate difference and the notional amount represents the future value of the FRA at the maturity date of the contract. I discount this future value to obtain the present value of the FRA as of July 1, 2008. The discount rate used is a linearly interpolated USD Swaps Curve obtained from *Bloomberg* (the US023 interest rate curve).

[3] I utilize *Bloomberg* Swap Manager's total return swap valuation function to value these securities. All TRORS use the Lehman Brothers 8.5+ Year AAA CMBS Index as the reference asset and the Lehman Brothers 8.5+ Year Investment Grade AAA Index as the funding rate. As neither index is available to me through *Bloomberg* , I use the Morgan Stanley U.S. Fixed Rate CMBS Super Senior AAA (Average Life 10 Years) Index ("MS Index") as a proxy for the reference asset, and the Merrill Lynch 10-15 Years AAA-rated U.S. Corporate Bond Total Return Index ("ML Index") as a proxy for the funding rate. Since the MS Index is a spread over the 10-Year US Treasury rate, I add the 10-Year US Treasury rate as of the relevant dates to the values of the MS Index. As the ML Index cannot be used in the *Bloomberg* function, I use the 1-month LIBOR as the funding rate and add a spread over the 1-month LIBOR to approximate the value of the ML Index. This derived spread, in conjunction with the additional spread inherent in the swap, is used to estimate the market value for the floating leg of the total return swap.

Exhibit 8A

CMBS Price Summary

7/3/08

Source: *ABSNet* ; *Capital IQ* ; *Markit*
(Dollars in Millions)

Deal [1]	Deal Size 7/3/08 [2]	UPB/Notional of Priced Tranches 7/3/08 [2]	% Coverage by UPB/Notional 7/3/08 [2]
	a	*b*	*c = b / a*
Banc of America Commercial Mortgage 2005-4	$4,494	$4,494	100.00%
Banc of America Commercial Mortgage 2005-5	$5,543	$5,543	100.00%
Banc of America Commercial Mortgage 2005-6	$5,593	$5,593	100.00%
Banc of America Commercial Mortgage 2006-2	$5,333	$5,333	100.00%
Banc of America Commercial Mortgage 2006-3	$3,897	$3,829	98.24%
Banc of America Commercial Mortgage 2006-4	$7,992	$7,992	100.00%
Banc of America Commercial Mortgage 2006-5	$6,569	$6,505	99.02%
Banc of America Commercial Mortgage 2006-6	$7,213	$7,136	98.93%
Banc of America Commercial Mortgage 2007-1	$6,274	$6,184	98.56%
Banc of America Commercial Mortgage 2007-2	$6,327	$6,227	98.42%
Banc of America Commercial Mortgage 2007-3	$7,026	$6,894	98.12%
Banc of America Commercial Mortgage 2007-4	$4,457	$4,376	98.19%
Banc of America Commercial Mortgage 2007-5	$3,713	$3,641	98.06%
Bear Stearns Commercial Mortgage Securities Inc. 2005-PWR10	$7,430	$7,430	100.00%
Bear Stearns Commercial Mortgage Securities 2005-PWR9	$6,045	$6,045	100.00%
Bear Stearns Commercial Mortgage Securities 2005-TOP20	$4,024	$4,004	99.50%
Bear Stearns Commercial Mortgage Securities 2006-PWR12	$4,115	$4,115	100.00%
Bear Stearns Commercial Mortgage Securities 2006-PWR13	$8,450	$8,450	100.00%
Bear Stearns Commercial Mortgage Securities 2006-PWR14	$6,053	$6,053	100.00%
Bear Stearns Commercial Mortgage Securities 2007-PWR15	$8,221	$8,144	99.06%
Bear Stearns Commercial Mortgage Securities 2007-PWR16	$6,609	$3,304	50.00%
Bear Stearns Commercial Mortgage Securities 2007-PWR17	$9,688	$5,971	61.63%
Bear Stearns Commercial Mortgage Securities 2007-PWR18	$7,437	$4,781	64.29%
Bear Stearns Commercial Mortgage Securities 2007-TOP28	$5,241	$1,722	32.85%
CD Commercial Mortgage Trust 2005-CD1	$7,665	$7,665	100.00%
CD Commercial Mortgage Trust 2007-CD4	$24,115	$17,004	70.51%
CD Commercial Mortgage Trust 2007-CD5	$6,219	$3,838	61.71%

Note:
[1] CMBS underlying the CMBX indices that have tranches with prices as of July 3, 2008, from *Capital IQ.*
[2] See Appendix 3 for variable definitions.

Exhibit 8B

CMBS Price Summary

7/31/08

Source: *ABSNet* ; *Capital IQ* ; *Markit*

(Dollars in Millions)

Deal [1]	Deal Size 7/31/08 [2]	UPB/Notional of Priced Tranches 7/31/08 [2]	% Coverage by UPB/Notional 7/31/08 [2]
	a	*b*	*c = b / a*
Banc of America Commercial Mortgage 2005-4	$4,492	$4,492	100.00%
Banc of America Commercial Mortgage 2005-5	$5,541	$5,541	100.00%
Banc of America Commercial Mortgage 2005-6	$5,589	$5,589	100.00%
Banc of America Commercial Mortgage 2006-2	$5,330	$5,330	100.00%
Banc of America Commercial Mortgage 2006-3	$3,896	$3,827	98.23%
Banc of America Commercial Mortgage 2006-4	$7,920	$7,920	100.00%
Banc of America Commercial Mortgage 2006-5	$6,568	$6,503	99.02%
Banc of America Commercial Mortgage 2006-6	$7,212	$7,135	98.93%
Banc of America Commercial Mortgage 2007-1	$6,273	$6,183	98.56%
Banc of America Commercial Mortgage 2007-2	$6,323	$6,223	98.42%
Banc of America Commercial Mortgage 2007-3	$7,025	$6,893	98.12%
Banc of America Commercial Mortgage 2007-4	$4,456	$4,375	98.18%
Banc of America Commercial Mortgage 2007-5	$3,713	$3,641	98.06%
Bear Stearns Commercial Mortgage Securities Inc. 2005-PWR10	$7,426	$7,426	100.00%
Bear Stearns Commercial Mortgage Securities 2005-PWR9	$6,045	$6,045	100.00%
Bear Stearns Commercial Mortgage Securities 2005-TOP20	$4,020	$4,000	99.50%
Bear Stearns Commercial Mortgage Securities 2006-PWR12	$4,113	$4,113	100.00%
Bear Stearns Commercial Mortgage Securities 2006-PWR13	$8,447	$8,447	100.00%
Bear Stearns Commercial Mortgage Securities 2006-PWR14	$6,049	$6,049	100.00%
Bear Stearns Commercial Mortgage Securities 2007-PWR15	$8,219	$8,142	99.06%
Bear Stearns Commercial Mortgage Securities 2007-PWR16	$6,607	$3,304	50.00%
Bear Stearns Commercial Mortgage Securities 2007-PWR17	$9,686	$5,970	61.64%
Bear Stearns Commercial Mortgage Securities 2007-PWR18	$7,436	$4,780	64.28%
Bear Stearns Commercial Mortgage Securities 2007-TOP28	$5,240	$1,721	32.85%
CD Commercial Mortgage Trust 2005-CD1	$7,660	$7,660	100.00%
CD Commercial Mortgage Trust 2007-CD4	$24,113	$17,002	70.51%
CD Commercial Mortgage Trust 2007-CD5	$6,219	$3,838	61.71%

Note:

[1] CMBS underlying the CMBX indices that have tranches with prices as of July 31, 2008, from *Capital IQ.*

[2] See Appendix 3 for variable definitions.

Exhibit 9

CMBS Prices

Source: *ABSNet*; *Capital IQ; Markit*

	Weighted Deal Price [1]	
	July 3, 2008	**July 31, 2008**
Deals with All Tranches Valued by Third-Party Prices [2]		
Banc of America Commercial Mortgage 2006-2	91.51	89.55
Bear Stearns Commercial Mortgage Securities Inc. 2005-PWR10	92.95	91.57
Bear Stearns Commercial Mortgage Securities 2005-PWR9	92.54	91.51
Bear Stearns Commercial Mortgage Securities 2006-PWR12	91.71	90.30
Bear Stearns Commercial Mortgage Securities 2006-PWR13	92.43	90.88
Bear Stearns Commercial Mortgage Securities 2006-PWR14	92.00	90.53
Minimum	91.51	89.55
Median	92.21	90.71
Mean	92.19	90.72
Maximum	92.95	91.57
Sample Size	6	6
Deals with Tranches Valued with Third-Party and Comparable-Asset Method Prices [3]		
Banc of America Commercial Mortgage 2005-4	92.19	91.04
Banc of America Commercial Mortgage 2005-5	91.73	90.49
Banc of America Commercial Mortgage 2005-6	90.41	89.06
Banc of America Commercial Mortgage 2006-3	92.68	91.19
Banc of America Commercial Mortgage 2006-4	92.96	91.33
Banc of America Commercial Mortgage 2006-5	93.25	91.92
Banc of America Commercial Mortgage 2006-6	92.09	90.82
Banc of America Commercial Mortgage 2007-1	89.46	87.62
Banc of America Commercial Mortgage 2007-2	89.90	88.19
Banc of America Commercial Mortgage 2007-3	88.11	86.13
Banc of America Commercial Mortgage 2007-4	88.97	87.09
Banc of America Commercial Mortgage 2007-5	89.90	87.71
Bear Stearns Commercial Mortgage Securities 2005-TOP20	92.27	91.20
Bear Stearns Commercial Mortgage Securities 2007-PWR15	89.31	87.21
Bear Stearns Commercial Mortgage Securities 2007-PWR17	90.33	88.20
Bear Stearns Commercial Mortgage Securities 2007-PWR18	90.94	88.78
CD Commercial Mortgage Trust 2005-CD1	96.82	95.61
CD Commercial Mortgage Trust 2007-CD5	94.17	91.80
Minimum	88.11	86.13
Median	91.33	89.77
Mean	91.42	89.74
Maximum	96.82	95.61
Sample Size	18	18
All Deals		
Minimum	88.11	86.13
Median	91.86	90.51
Mean	91.61	89.99
Maximum	96.82	95.61
Sample Size	24	24

Note:

[1] See Appendix 3 for variable definitions.

[2] Consists of CMBS referenced by the CMBX indices as of July 3, 2008, with prices as of July 3, 2008, and July 31, 2008, for all tranches.

[3] Consists of CMBS referenced by the CMBX indices as of July 3, 2008, with prices as of July 3, 2008, and July 31, 2008, for some tranches, and others priced by a comparable-asset methodology similar to that used in the residential mortgage loan valuation analysis. Third-party or comparable-asset prices for all tranches in deals BSCMS 2007-PW16, BSCMS 2007-T28, and CD 2007-CD4 were unavailable. Tranches with a current balance of zero are excluded in determining which CMBS are fully priced.

Exhibit 10

Valuation of Commercial Real Estate Loans Sold

Source: *ABSNet*; BACMBIA-C0000161613–628; BACMBIA-R0000006283–6301; BACMBIA-Y0000028678–79; *Bloomberg*; *Capital IQ*; *Markit*

(Dollars in Millions)

		Total UPB of Loans Sold as of the Date of the Transaction	Median CMBS Price [1]	Valuation [2]	Accrued Interest	Value Including Accrued Interest
		a	***b***	***c = a * b***	***d***	***e = c + d***
July 3, 2008 Transaction	[3]	$258.17	91.86	$237.16	$1.09	$238.25
July 31, 2008 Transaction	[4]	$42.77	90.51	$38.71	$0.16	$38.86

Note:

[1] The median CMBS price is the median of the prices of the CMBS underlying the CMBX indices, where the CMBS must have prices for all tranches either from *Capital IQ* or through the pricing algorithm. See Exhibit "CMBS Prices."

[2] Calculated as the product of the Median CMBS Price and the Total UPB of Loans Sold.

[3] UPB of loans as of July 3, 2008, and accrued interest from BACMBIA-C00000161626.

[4] UPB of loans as of July 31, 2008, and accrued interest from BACMBIA-Y0000028678 and BACMBIA-Y0000028679.

Exhibit 11

Number of Mortgage-Backed Securities Sold [1]

Source: *ABSNet* ; BACMBIA-A0000064881; *Bloomberg* ; *Capital IQ* ; Offering Circulars; Periodic Reports

	Type of Tranches [2]								
Type of Loans [2]	**P&I**	**Principal-Only**	**Interest-Only**	**Residual**	**OC**	**Prepay without Balance**	**Prepayment**	**Other**	**Total**
Alt-A	36	3	-	-	-	-	-	-	39
Prime	31	-	2 [3]	1	-	-	-	-	34
Subprime	4	-	-	1	1	2	-	-	8
Second-Lien	1	-	-	-	1	-	-	-	2
Scratch and Dent	1	-	24	10	3	-	3	-	41
Net Interest Margin (NIMs)	-	-	-	1	-	-	-	-	1
Reperforming	4	-	4	4	-	-	-	1	13
HELOC	4	-	-	-	-	-	-	-	4
CMBS	1	-	3	-	-	-	2	-	6
Total Number of Tranches	82	3	33	17	5	2	5	1	148

Note:

[1] Table excludes 13 government-sponsored (FNMA, FHLMC, and GNMA) securities, and seven other tranches for which information sufficient for classification is not available.

[2] As classified by *ABSNet* . When not available on *ABSNet* , the type of loan was obtained from a review of the offering circular, periodic report, or description on *Bloomberg* . See Appendix 3 for variable definitions.

[3] One tranche with CUSIP 12669GBW0 corresponds to the interest-only tranche of three different loan groups in the relevant pool and as such returns three distinct entries from *ABSNet* . Two of these entries are not used to avoid double-counting.

Exhibit 12

Mortgage-Backed Securities Valuation Summary

Source: *ABSNet* ; Academic Literature; BACMBIA-A0000064881; *Bloomberg* ; *Capital IQ* ; *Interactive Data Corp.* ; *Markit* ; Offering Circulars; Periodic Reports; *Standard & Poor's Financial Services LLC*

(Dollars in Millions)

	Private Issuer RMBS [1]		Government-Sponsored RMBS [2]		CMBS [3]		Unknown [4]		Total	
	Number of Securities	Value	Number of Securities	Value	Number of Securities	Value	Number of Securities	Value	Number of Securities	Value
Valued using Third-Party Evaluated Prices	39	$118.87	2	$0.00	1	$0.01	-	-	42	$118.88
Valued using Comparable-Asset Method	103	$129.93	-	-	1	$2.32	-	-	104	$132.25
Rated Tranches										
Valued by Tranche type, Rating, Vintage, Category	32	$39.44	-	-	-	-	-	-	32	$39.44
Valued by Tranche type, Rating, Vintage	4	$3.16	-	-	1	$2.32	-	-	5	$5.48
Valued by Tranche type, Rating	2	$11.16	-	-	-	-	-	-	2	$11.16
Unrated Tranches										
Valued by Tranche type, Vintage, Category	5	$1.85	-	-	-	-	-	-	5	$1.85
Valued by Tranche type, Vintage	32	$74.23	-	-	-	-	-	-	32	$74.23
Valued by Tranche type	28	$0.09	-	-	-	-	-	-	28	$0.09
Valued Equivalently [5]	-	-	9	$0.00	-	-	-	-	9	$0.00
Valued	142	$248.80	11	$0.00	2	$2.33	0	$0.00	155	$251.13
Not Valued	0	$0.00	2	$0.00	4	$0.17	7	$1.76	13	$1.92
Portfolio Total	**142**	**$248.80**	**13**	**$0.00**	**6**	**$2.50**	**7**	**$1.76**	**168**	**$253.05**

Note:

[1] One tranche with CUSIP 12669GBW0 corresponds to the interest-only tranche of three different loan groups in the relevant pool and as such returns three distinct entries from *ABSNet* . Two of these entries are not used to avoid double-counting.

[2] Total valuation for eleven government-sponsored (FNMA, FHLMC, and GNMA) securities is $562. The remaining two government-sponsored securities, which are tranches of a Fannie Mae collateralized mortgage obligation, are not valued. Countrywide-legacy entities assigned an internal value of $200 to these securities from BACMBIA-A0000064881. This is the value which is shown here.

[3] Documentation for four CMBS tranches (CUSIPs 07387M9A9, 59023UAE2, 59023UCC4, and 92976BHM7) is not sufficient for valuation. Countrywide-legacy entities assigned an internal value of $0.17 million to these tranches. See BACMBIA-A0000064881.

[4] Seven tranches lack sufficient information for classification and valuation. Countrywide-legacy entities assigned an internal value of $1.76 million to these securities. See BACMBIA-A0000064881.

[5] Nine of the 11 valued government-sponsored RMBS are pass-through securities and are valued at the same price as the two government-sponsored pass-through securities with third-party evaluated prices.

Exhibit 13

Comparable Mortgage Servicers [1]

Source: BACMBIA-V0000028409–BACMBIA-V0000028416; *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examinations Council* ; SEC Filings; *The 2011 Mortgage Market Statistical Annual, Volume I*

(Dollars in Millions)

			July 2008 Comparable Mortgage Servicers			November 2008 Comparable Mortgage Servicers			
Mortgage Servicer	**Holding Company**		**MSR Value [2]**	**UPB of Loans Serviced [2]**	**MSR-to-UPB Ratio [2]**	**MSR Value [2]**	**UPB of Loans Serviced[2]**	**MSR-to-UPB Ratio [2]**	**Total Mortgage Delinquency Rate as of 12/31/08 [2]**
			a	*b*	*c = a / b*	*d*	*e*	*f = d / e*	
Bank of America Mtg. & Affiliates, NC	Bank of America Corporation	[3][4]	$4,250	$540,800	0.79%	$20,811	$2,012,100	1.03%	10.34%
BB&T Mortgage, NC	BB&T Corporation		$611	$45,087	1.36%	$601	$45,903	1.31%	4.40%
Chase Home Finance, NJ	JPMorgan Chase & Co.		$11,617	$659,100	1.76%	$17,048	$681,800	2.50%	7.45%
National City Mortgage Co., OH	National City Corporation	[3]	$2,625	$176,465	1.49%	$2,296	$175,346	1.31%	7.49%
PHH Mortgage, NJ	PHH Corporation		$1,673	$128,643	1.30%	$1,671	$129,266	1.29%	4.76%
Residential Capital LLC, NY	Residential Capital, LLC	[5]	$5,404	$434,242	1.24%	$4,723	$425,845	1.11%	10.02%
SunTrust Mortgage Inc., VA	SunTrust Banks, Inc.		$1,500	$158,800	0.94%	$1,400	$159,300	0.88%	8.59%
US Bank Home Mortgage, MN	U.S. Bancorp		$1,731	$107,300	1.61%	$1,750	$112,900	1.55%	-
HomEq Servicing Corporation, CA	Wachovia Corporation		$601	$29,100	2.07%	$628	$33,732	1.86%	-
Wells Fargo & Company, IA	Wells Fargo & Company	[3]	$19,928	$1,566,000	1.27%	$19,806	$1,580,000	1.25%	6.79%
Flagstar Bank, MI	Flagstar Bancorp, Inc.	[3]	$662	$44,547	1.49%	$722	$50,588	1.43%	9.60%
Fifth Third Bank, OH	Fifth Third Bancorp		$697	$49,400	1.41%	$684	$50,100	1.37%	-
Sovereign Savings Bank, PA	Sovereign Bancorp, Inc.	[6]	$162	$12,900	1.25%	$162	$13,100	1.24%	-
Ocwen Financial Corporation, FL	Ocwen Financial Corporation	[7]	$217	$47,047	0.46%	$186	$42,449	0.44%	42.10%
Capital One Financial (GreenPoint Mortgage), VA	Capital One Financial Corporation		$232	$38,000	0.61%	$227	$36,400	0.62%	-
M&T Mortgage, NY	M&T Bank Corporation	[8]	$109	$15,200	0.72%	$108	$15,400	0.70%	-
Huntington Bancshares Inc., OH	Huntington Bancshares Incorporated		$240	$15,800	1.52%	$230	$15,700	1.47%	-
Third Federal S&L Assoc. of Cleveland, OH	TFS Financial Corporation	[9]	$42	-	-	$85	$6,930	1.22%	-
Banco Popular de Puerto Rico	Popular, Inc.	[10]	$186	$20,400	0.91%	$165	$20,000	0.83%	-
Comparable Mortgage Servicers									
Minimum			$109	$12,900	0.46%	$85	$6,930	0.44%	4.40%
Median			$679	$48,224	1.29%	$656	$48,002	1.27%	7.49%
Mean			$2,914	$227,157	1.23%	$2,916	$199,709	1.24%	11.24%
Maximum			$19,928	$1,566,000	2.07%	$19,806	$1,580,000	2.50%	42.10%
Sample Size			18	18	18	18	18	18	9
Comparable Mortgage Servicers with Delinquency Data									
Minimum			$217	$44,547	0.46%	$186	$42,449	0.44%	4.40%
Median			$2,149	$167,633	1.29%	$1,671	$159,300	1.29%	7.49%
Mean			$4,849	$380,073	1.21%	$5,384	$365,611	1.28%	11.24%
Maximum			$19,928	$1,566,000	1.76%	$19,806	$1,580,000	2.50%	42.10%
Sample Size			10	10	10	9	9	9	9

Countrywide Financial Corporation		**July 2008 Transaction MSRs**	**November 2008 Transaction MSRs**
Transferred UPB of Loans Serviced	[2]	$1,120,650	$23,074
Calculated MSR value using Median Multiple of Comparables		$14,417	$294

Exhibit 13 - Continued

Comparable Mortgage Servicers [1]

Source: BACMBIA-V0000028409–BACMBIA-V0000028416; *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examinations Council* ; SEC Filings; *The 2011 Mortgage Market Statistical Annual, Volume I*

(Dollars in Millions)

Note:

[1] Comparable mortgage servicers are from the list of "Top 50 Mortgage Servicers in 2008," as reported in *The 2011 Mortgage Market Statistical Annual, Volume I* , where there is publicly available information on the fair value and the unpaid principal balance (UPB) of the holding companies' mortgage servicing rights (MSRs). July 2008 data are based on the holding companies' Form 10-Q for the quarterly period ended June 30, 2008. November 2008 data are based on the holding companies' Form 10-Q for the quarterly period ended September 30, 2008, except where otherwise specified.

[2] See Appendix 3 for variable definition.

[3] Delinquency rates are based on loan count.

[4] Bank of America Corporation's Form 10-Q for the quarterly period ended September 30, 2008, includes the purchased Countrywide assets and therefore the data from that quarter have been excluded from the calculation of the summary statistics. See Bank of America Corporation's Form 10-Q for the quarterly period ended September 30, 2008, p. 68.

[5] Residential Capital, LLC's delinquency numbers represent mortgage loans held for investment only.

[6] The fair value of MSRs represents Sovereign Bancorp, Inc.'s residential MSR portfolio. The UPB represents the UPB of residential mortgage loans serviced. See Sovereign Bancorp, Inc.'s Form 10-Q for the quarterly period ended June 30, 2008, p. 37, and Form 10-Q for the quarterly period ended September 30, 2008, p. 41.

[7] The UPB used for Ocwen Financial Corp includes assets serviced under subservicing agreements. See Ocwen Financial Corp's Form 10-Q for the quarterly period ended June 30, 2008, p. 13, and Form 10-Q for the quarterly period ended September 30, 2008, p. 14.

[8] The UPB and fair value of the MSRs for M&T Bank Corporation's residential mortgage loans have been reduced by the value of small balance commercial mortgage loans from BLG and its affiliates. See M&T Bank Corporation's Form 10-Q for the quarterly period ended June 30, 2008, p. 45, and Form 10-Q for the quarterly period ended September 30, 2008, p. 47.

[9] TFS Financial Corporation did not report the unpaid principal balance of its MSRs in its 10-Q filings and, therefore, the MSR-to-UPB ratio is calculated using data from the 10-K for the fiscal year ended September 30, 2008. The UPB and fair value of MSRs is the principal balance of loans owned by others and serviced by the Third Federal Saving and Loan Association of Cleveland, for which TFS Financial Corporation is the holding company. See TFS Financial Corporation Form 10-K for the fiscal year ended September 30, 2008, pp. 10 and 37.

[10] The UPB and fair value of the MSRs of Popular, Inc. are residential mortgage loans serviced by Popular Financial Holdings and Popular, Inc.'s banking subsidiaries. "The Corporation recognizes as assets the rights to service loans for others, whether these rights are purchased or result from asset transfers (sales and securitizations)." Popular, Inc.'s Form 10-Q for the quarterly period ended September 30, 2008, p. 23.

Exhibit 14

Regression Analysis for Valuation of MSRs [1]

Source: *National Information Center Website of the Federal Financial Institutions Examinations Council*; SEC Filings; *The 2011 Mortgage Market Statistical Annual, Volume I*

	July 2008		November 2008	
Variables [2]	**Coefficent [3]**	**Standard Error**	**Coefficent [3]**	**Standard Error**
Total Rate of Mortgage Delinquencies	-0.02 ***	0.01	-0.03 *	0.01
Constant	0.01 ***	0.00	0.02 ***	0.00
Number of Observations	10		9	
Adjusted R^2	46.7%		24.0%	
F-statistic	8.90		3.53	

Note:

[1] The comparable companies consist of companies in the "Large Mortgage Servicer Delinquency Rates in 2008" table, according to *The 2011 Mortgage Market Statistical Annual, Volume I*, and their holding companies for which there was publicly available information of the holding companies' mortgage servicing rights (MSRs), specifically the fair value and the unpaid principal balance (UPB) of the loans being serviced. This results in ten and nine comparable companies as of the second and third quarters of 2008, respectively.

[2] See Appendix 3 for variable definitions.

[3] ***,**, and * denote that the coefficient estimate is significantly different from zero at the 1%, 5%, or 10% level, respectively.

Exhibit 15

Valuation of Countrywide MSRs using Regression Models

Source: BACMBIA-V0000028409–BACMBIA-V0000028416; *National Information Center website of the Federal Financial Institutions Examinations Council*; SEC Filings; *The 2011 Mortgage Market Statistical Annual, Volume I*
(Dollars in Billions)

		July 2008 [1]	November 2008 [1]
Predicted Countrywide MSR-to-UPB Ratio	[2]	1.20%	1.01%
UPB of loans being serviced	[3]	$1,120.65	$23.07
Countrywide MSR Valuation	[4]	$13.41	$0.23

Note:

[1] Valuation based on the regression coefficients in Exhibit "Regression Analysis for Valuation of MSRs."

[2] Countrywide's MSR-to-UPB Ratio for July 2008 is predicted using a delinquency rate of 11.70%, calculated based on the portfolio of MSRs sold in July 2008. For the portfolio of MSRs sold in November 2008, the delinquency rate is 21.34%. All loans underlying the MSR portfolios that were at least 30 days delinquent, denoted as "30," "90," and "120," as well as foreclosed loans denoted as "F1" in BACMBIA-V0000028409–BACMBIA-V0000028416, are included as delinquent loans.

[3] The UPB of the portfolio of MSRs sold in the July 2008 and November 2008 transactions are obtained from BACMBIA-V0000028409–BACMBIA-V0000028416.

[4] Calculated as the product of the Predicted Countrywide MSR-to-UPB ratio and the Countrywide UPB as of the relevant transaction date.

Exhibit 16

Summary Statistics of Interest-Only and Principal-Only Prices [1]

11/7/08

Source: BACMBIA-C0000168406–416; BACMBIA-C0000168422–436; BACMBIA-R0000005929; *Bloomberg* ; *Capital IQ* ; *Interactive Data* ; *Standard and Poor's Financial Services LLC*

Security	Number of Tranches	Number of Tranches with Prices [1]	UPB of Tranches with Prices (Millions) [2]	% of Tranches with Prices by UPB [3]	Minimum Price	Median Price	Maximum Price
Interest-Only Tranches	320	276	$51,120	85.96%	0.00	1.04	3.39
Principal-Only Tranches	252	232	$426	90.22%	48.86	64.50	86.13

Note:

[1] Prices as of November 7, 2008, are from *Capital IQ* , *Interactive Data* , and *Standard and Poor's Financial Services LLC.*

[2] UPB is the unpaid principal balance of the tranche as of November 7, 2008.

[3] Shows the percentage of interest-only tranches or principal-only tranches that have prices by UPB.

Exhibit 17

Regression Analysis for Valuation of Interest-Only and Principal-Only Tranches Sold in November 2008 Transactions

Source: *ABSNet*; BACMBIA-C0000168406–416; BACMBIA-C0000168422–436; BACMBIA-R0000005929; *Bloomberg*; *Capital IQ*; *Interactive Data*; *Standard and Poor's Financial Services LLC*

	Interest-Only Tranches [1]		Principal-Only Tranches [2]	
Variable [4]	**Coefficient [3]**	**Standard Error**	**Coefficient [3]**	**Standard Error**
Coupon	2.39 ***	0.12	-	-
Term	0.01	0.00	-0.58 ***	0.09
CDR	-0.05 ***	0.02	-0.07	0.21
CPR	-0.07 ***	0.01	0.31 ***	0.12
WAC	0.75 ***	0.07	-2.62 *	1.47
Dummy: 2005 Vintage	-0.34 ***	0.08	-2.12 *	1.10
Dummy: 2006 Vintage	-0.66 ***	0.10	-5.97 ***	1.61
Dummy: 2007/2008 Vintage	-1.08 ***	0.12	-4.68 **	1.94
Constant	-3.22 ***	0.41	94.54 ***	7.35

	Interest-Only Tranches	Principal-Only Tranches
Number of Observations	229	211
Adjusted R^2	70.7%	64.9%
F-statistic	69.87	56.36

Note:

[1] The securities used in the regression are from BACMBIA-C0000168422–436 at BACMBIA-C0000168427, BACMBIA-C0000168406–416 at BACMBIA-C0000168411, and those securities labeled as "CW Interest-Only Security" in BACMBIA-R0000005929 that were not involved in the CW Securities Holdings and CWIBH transaction that had data for all predictor variables and prices from *Capital IQ*, *Interactive Data*, and *Standard and Poor's Financial Services LLC* on November 7, 2008.

[2] The securities used in the regression are from BACMBIA-C0000168422–436 at BACMBIA-C0000168427, BACMBIA-C0000168406–416 at BACMBIA-C0000168411, and those securities labeled "CW Principal-Only Security" in BACMBIA-R0000005929 that were not involved in the CW Securities Holdings and CWIBH transaction that had data for all predictor variables and prices from *Capital IQ, Interactive Data,* and *Standard and Poor's Financial Services LLC* on November 7, 2008.

[3] ***, **, and * denote that the coefficient estimate is significantly different from zero at the 1%, 5%, or 10% level, respectively.

[4] See Appendix 3 for variable definitions.

Exhibit 18

Valuation of Interest-Only and Principal-Only Tranches Sold in November 2008 Transactions

Source: *ABSNet*; BACMBIA-A0000067491; BACMBIA-C0000168406–416; BACMBIA-C0000168422–436; BACMBIA-R0000005929; *Bloomberg*; *Capital IQ*; *Interactive Data; Standard and Poor's Financial Services LLC*

(Dollars in Millions)

Securities		CW Securities Holdings & CWIBH Transaction [1]	Securities Sold as Part of CHL Remaining Assets [2]
Interest-Only Tranches Priced Using Evaluated Prices	[3]	$554.4	$64.6
Interest-Only Tranches Priced Using Regression Model	[4]	$97.5	$7.9
Principal-Only Tranches Priced Using Evaluated Prices	[3]	-	$265.4
Principal-Only Tranches Priced Using Regression Model	[4]	-	$28.3
BofA/Countrywide Assigned Value of Interest-Only Tranches Not Valued	[5]	$16.7	$9.1
Total Interest-Only Securities		**$668.6**	**$81.7**
Total Principal-Only Securities		**-**	**$293.7**

Note:

[1] The tranches valued are from BACMBIA-C0000168422–436 at BACMBIA-C0000168427–431 and BACMBIA-C0000168406–416 at BACMBIA-C0000168411. Three tranches (CUSIPs 12668A6A8, 02151WAD4, and 126694VJ4) with a recorded market value of $15.7 million could not be valued because their amounts outstanding as of the transaction date are unavailable. Tranche 02151WAD4 has no recorded market value from the internal documents.

[2] Tranches sold as part of CHL remaining assets are those tranches labeled as "CW Interest-Only Security" and "CW Principal-Only Security" in BACMBIA-R0000005929 (Bank of America retained interest) that were not involved in the CW Securities Holdings and CWIBH transaction. Four tranches (CUSIPs 12667G6M0, 12667G6N8, 12667G6P3, and 12669GAC5) can not be valued because their amounts outstanding as of the transaction date are not available.

[3] Prices as of November 7, 2008, obtained from *Capital IQ*, *Interactive Data*, and *Standard and Poor's Financial Services LLC*. I assume that 100% of the ownership of securities without percentage ownership data recorded in BACMBIA-R0000005929 were sold to BofA-legacy entities.

[4] The interest-only ("IO") and principal-only ("PO") tranches' regression prices are based on the regression coefficients from Exhibit "Regression Analysis for Valuation of Interest-Only and Principal-Only Tranches Sold in November 2008 Transactions" multiplied by their corresponding percent ownership as recorded in BACMBIA-R0000005929 and the amount outstanding as of November 7, 2008. Tranches without price data were priced using the weighted-average price of tranches with evaluated prices from *Capital IQ*, *Interactive Data*, and *Standard and Poor's Financial Services LLC* as of November 7, 2008.

[5] Six IO tranches with insufficient data for valuation (12667G6M0, 12667G6N8, 12667G6P3, 12669GAC5, 12668A6A8, and 02151WAD4) are assigned the value recorded in BACMBIA-R0000005929, as of June 23, 2009. The tranche with CUSIP 126694VJ4 is not shown in BACMBIA-R0000005929 and so does not have a value as of June 23, 2009. This tranche does have a value of $62,703 as of June 30, 2008, from BACMBIA-A0000067491.

Exhibit 19

Comparable OTS Thrifts [1]

11/7/08

Source: *Bloomberg*; *Capital IQ*; Countrywide Bank, FSB 2008 TFR Report for the quarterly period ended September 30, 2008; *Federal Deposit Insurance Corporation*; *Lace Financial Corporation*;
Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2007; Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2008;
National Information Center website of the Federal Financial Institutions Examination Council; *The 2010 Mortgage Market Statistical Annual, Volume I*
(Dollars in Millions)

Bank Name	Holding Company [2]		Holding Company Assets [3]	Bank Assets [3]	Bank/Holding Asset Ratio [3]	Holding Company: Book Value of Common Equity [3]	Holding Company: Market Value of Common Equity [3]	Holding Company: Market-to-Book Value Ratio of Common Equity [3]	Holding Company: Return on Common Equity [3]
			a	*b*	*c = b / a*	*d*	*e*	*f = e / d*	
Sovereign Bank	Sovereign Bancorp Inc.		$77,321	$77,152	99.78%	$7,144	$1,932	0.27	-7.32%
Hudson City Savings Bank	Hudson City Bancorp, Inc.		$51,775	$51,616	99.69%	$4,786	$8,574	1.79	8.96%
E*TRADE Bank	E*TRADE Financial Corporation		$49,705	$45,620	91.78%	$2,537	$918	0.36	-1.60%
Astoria Federal Savings and Loan Association	Astoria Financial Corporation		$22,173	$22,136	99.83%	$1,190	$1,626	1.37	9.99%
People's United Bank	People's United Financial Inc.		$20,042	$18,728	93.44%	$5,239	$5,574	1.06	3.58%
Guaranty Bank (TX)	Guaranty Financial Group Inc.		$15,391	$15,350	99.74%	$1,001	$68	0.07	-9.51%
Flagstar Bank, FSB	Flagstar Bancorp Inc.		$14,159	$14,119	99.71%	$676	$104	0.15	-11.47%
Washington Federal Savings and Loan Association	Washington Federal Inc.		$11,796	$11,797	100.01%	$1,333	$1,467	1.10	4.54%
First Federal Bank of California, a Federal Savings Bank	FirstFed Financial Corp.		$7,355	$7,354	99.98%	$499	$109	0.22	-23.64%
Investors Savings Bank	Investors Bancorp Inc.		$7,037	$7,026	99.84%	$836	$1,472	1.76	2.30%
AnchorBank, fsb	Anchor BanCorp Wisconsin, Inc.		$4,928	$4,865	98.73%	$318	$110	0.35	-2.05%
TrustCo Bank	TrustCo Bank Corp. NY		$3,428	$3,445	100.48%	$241	$835	3.46	13.94%
First Place Bank	First Place Financial Corp.		$3,316	$3,326	100.30%	$311	$92	0.30	1.06%
Wilmington Savings Fund Society, FSB	WSFS Financial Corp.		$3,255	$3,253	99.94%	$223	$283	1.27	11.56%
TierOne Bank	TierOne Corp.		$3,217	$3,215	99.95%	$274	$96	0.35	-13.42%
Superior Bank	Superior Bankcorp		$3,104	$3,085	99.38%	$342	$55	0.16	-0.97%
ViewPoint Bank	ViewPoint Financial Group		$1,989	$1,989	100.00%	$200	$401	2.01	2.26%
First Federal Bank of the Midwest	First Defiance Financial Corp.		$1,922	$1,917	99.76%	$190	$83	0.44	5.91%
Guaranty Bank (WI)	Guaranty Financial Corporation	[4]	$1,562	$1,562	100.00%	$151	$56	0.37	-13.73%
Countrywide Bank, FSB	**Bank of America Corporation**	[5]	**-**	**$112,947**	**-**	**$13,014**	**-**	**-**	**-14.37%**
Comparable Thrifts									
Minimum			$1,562	$1,562	91.78%	$151	$55	0.07	-23.64%
Median			$7,037	$7,026	99.83%	$499	$283	0.37	1.06%
Mean			$15,972	$15,661	99.07%	$1,447	$1,256	0.89	-1.03%
Maximum			$77,321	$77,152	100.48%	$7,144	$8,574	3.46	13.94%
Sample Size			19	19	19	19	19	19	19
Comparable Thrifts with Negative ROE [3]									
Minimum			$1,562	$1,562	91.78%	$151	$55	0.07	-23.64%
Median			$7,355	$7,354	99.74%	$499	$104	0.27	-9.51%
Mean			$19,638	$19,147	98.78%	$1,438	$383	0.26	-9.30%
Maximum			$77,321	$77,152	100.00%	$7,144	$1,932	0.37	-0.97%
Sample Size			9	9	9	9	9	9	9
Comparable Thrifts with Positive ROE [3]									
Minimum			$1,922	$1,917	93.44%	$190	$83	0.30	1.06%
Median			$5,233	$5,235	99.89%	$574	$1,151	1.32	5.23%
Mean			$12,673	$12,523	99.33%	$1,455	$2,041	1.46	6.41%
Maximum			$51,775	$51,616	100.48%	$5,239	$8,574	3.46	13.94%
Sample Size			10	10	10	10	10	10	10

Exhibit 19 - Continued

Comparable OTS Thrifts [1]

11/7/08

Source: *Bloomberg* ; *Capital IQ* ; Countrywide Bank, FSB 2008 TFR Report for the quarterly period ended September 30, 2008; *Federal Deposit Insurance Corporation* ; *Lace Financial Corporation* ;
Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2007; Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2008;
National Information Center website of the Federal Financial Institutions Examination Council ; *The 2010 Mortgage Market Statistical Annual, Volume I*
(Dollars in Millions)

Note:
[1] Comparable banks are from the list of 50 "Largest OTS-Regulated Thrift Mortgage Lenders in 2008" ("OTS Thrifts List") as reported in *The 2010 Mortgage Market Statistical Annual, Volume I* that comprise at least 90% of the total assets of their publicly traded holding companies. All but two banks comprise at least 95% of the total assets of their publicly traded holding companies. Countrywide Bank, FSB is ranked first in the OTS thrifts list. Asset information obtained as of November 7, 2008, from *Capital IQ* . Comparable holding companies for which balance sheet or income statement data is not available for a fiscal period ended after August 7, 2008, are excluded. Institutions that fail on or before December 31, 2008, are excluded (failed institutions include Downey Financial Corporation, IndyMac Bancorp, Incorporated, and Lehman Brothers Holdings Incorporated).
[2] Holding company as of September 30, 2008, as identified from the *National Information Center website of the Federal Financial Institutions Examination Council* and *Capital IQ* .
[3] See Appendix 3 for variable definitions.
[4] Total assets and total common equity of Guaranty Financial Corporation are from its Consolidated Statement of Financial Condition as of September 30, 2008. The filing date of this document is unknown; I assume the filing date was before November 7, 2008. I calculate the ROE of Guaranty Financial Corporation using the Total Common Equity as of September 30, 2007, from its Consolidated Statement of Financial Condition as of September 30, 2007.
[5] Holding company data are for Countrywide Bank, FSB. I calculate the book value of common equity as the total value of equity for Countrywide Bank of $9,467 million less the reported book value of preferred stock according to the September 30, 2008, balance sheet as obtained from Capital IQ and accounting adjustments from Countrywide Bank's 2008 Thrift Financial Report for the quarterly period ended September 30, 2008, Schedule SI, submitted to the Office of Thrift Supervision. I calculate Countrywide Bank's ROE using the Bank's total common equity of $7,727 million as of September 30, 2007, and 12-month earnings for the period from September 30, 2006, to September 30, 2007.

Exhibit 20

Comparable Mortgage Originators [1]

11/7/08

Source: *Bloomberg*; *Capital IQ*; Countrywide Bank, FSB 2008 TFR Report for the quarterly period ended September 30, 2008; *Federal Deposit Insurance Corporation*; *Lace Financial Corporation*;
Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2007; Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2008;
National Information Center website of the Federal Financial Institutions Examination Council; *The 2010 Mortgage Market Statistical Annual, Volume I*
(Dollars in Millions)

			Holding Company				
Mortgage Originator	**Holding Company [2]**		**Total Assets [3]**	**Book Value of Common Equity [3]**	**Market Value of Common Equity [3]**	**Market-to-Book Value Ratio of Common Equity [3]**	**Return on Common Equity [3]**
				a	***b***	***c = b / a***	
Chase Home Finance, NJ	JPMorgan Chase & Co.		$2,251,469	$137,691	$140,896	1.02	9.38%
Citi, MO	Citigroup, Inc.		$2,050,131	$98,638	$64,414	0.65	5.27%
Merrill Lynch	Merrill Lynch		$875,780	$29,750	$26,820	0.90	33.22%
Wachovia Corporation, NC	Wachovia Corporation		$764,378	$40,178	$12,036	0.30	-4.10%
Wells Fargo & Company, IA	Wells Fargo & Company		$622,361	$46,999	$98,095	2.09	18.36%
MetLife Home Loans, TX	Metlife, Inc.		$521,299	$27,832	$27,252	0.98	10.12%
US Bank Home Mortgage, MN	U.S. Bancorp		$247,055	$20,175	$47,726	2.37	17.03%
SunTrust Mortgage Inc., VA	Suntrust Banks, Inc.		$174,777	$17,456	$13,546	0.78	11.72%
Capital One Financial Corp., OH	Capital One Financial Corp.		$154,803	$25,612	$13,440	0.52	18.04%
Regions Financial Corp., AL	Regions Financial Corp.		$144,292	$19,705	$7,584	0.38	4.18%
National City Mortgage Co., OH	National City Corporation		$143,691	$15,838	$5,131	0.32	-12.72%
BB&T Mortgage, NC	BB&T Corporation		$137,041	$12,935	$17,674	1.37	11.52%
Fifth Third Bank, OH	Fifth Third Bancorp		$116,294	$9,614	$6,173	0.64	6.64%
Sovereign Bank, PA	Sovereign Bancorp Inc.		$77,321	$7,144	$1,932	0.27	-7.32%
M&T Bank Corp., NY	M&T Bank Corporation	[4]	$65,247	$6,417	$8,131	1.27	7.14%
Huntington Mortgage Group, OH	Huntington Bancshares Incorporated		$54,671	$5,814	$3,470	0.60	0.97%
Hudson City Savings, NJ	Hudson City Bancorp, Inc.		$51,775	$4,786	$8,574	1.79	8.96%
E*Trade Financial, CA	E*TRADE Financial Corporation		$49,705	$2,537	$918	0.36	-1.60%
First Horizon Home Loans, TX	First Horizon National Corporation		$32,804	$2,578	$2,270	0.88	-13.27%
Astoria Federal Savings, NY	Astoria Financial Corporation		$22,173	$1,190	$1,626	1.37	9.99%
Flagstar Bank, MI	Flagstar Bancorp Inc.		$14,159	$676	$104	0.15	-11.47%
Pulte Mortgage Corp., MI	PulteGroup, Inc.		$8,183	$3,183	$2,639	0.83	5.89%
CTX Mortgage, TX	Centex Corporation		$7,285	$1,973	$1,332	0.67	-15.31%
TierOne Bank, NE	TierOne Corp.		$3,217	$274	$96	0.35	-13.42%
Guaranty Bank, WI	Guaranty Financial Corporation	[5]	$1,562	$151	$56	0.37	-13.73%
Countrywide Bank, FSB		[6]	**$112,947**	**$13,014**	-	-	**-14.37%**

Exhibit 20 - Continued

Comparable Mortgage Originators [1]

11/7/08

Source: *Bloomberg* ; *Capital IQ* ; Countrywide Bank, FSB 2008 TFR Report for the quarterly period ended September 30, 2008; *Federal Deposit Insurance Corporation* ; *Lace Financial Corporation* ;
Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2007; Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2008;
National Information Center website of the Federal Financial Institutions Examination Council ; *The 2010 Mortgage Market Statistical Annual, Volume I*
(Dollars in Millions)

Comparable Mortgage Originators	Total Assets [3]	Book Value of Common Equity [3]	Market Value of Common Equity [3]	Market-to-Book Value Ratio of Common Equity [3]	Return on Common Equity [3]
Minimum	$1,562	$151	$56	0.15	-15.31%
Median	$116,294	$9,614	$7,584	0.67	5.89%
Mean	$343,659	$21,566	$20,477	0.85	3.42%
Maximum	$2,251,469	$137,691	$140,896	2.37	33.22%
Sample Size	25	25	25	25	25
Comparable Mortgage Originators with Negative ROE [3]					
Minimum	$1,562	$151	$56	0.15	-15.31%
Median	$32,804	$2,537	$1,332	0.35	-12.72%
Mean	$121,569	$7,928	$2,653	0.41	-10.33%
Maximum	$764,378	$40,178	$12,036	0.88	-1.60%
Sample Size	9	9	9	9	9
Comparable Mortgage Originators with Positive ROE [3]					
Minimum	$8,183	$1,190	$1,626	0.38	0.97%
Median	$149,548	$18,581	$13,493	0.94	9.69%
Mean	$468,585	$29,237	$30,504	1.10	11.15%
Maximum	$2,251,469	$137,691	$140,896	2.37	33.22%
Sample Size	16	16	16	16	16

Exhibit 20 - Continued

Comparable Mortgage Originators [1]

11/7/08

Source: *Bloomberg* ; *Capital IQ* ; Countrywide Bank, FSB 2008 TFR Report for the quarterly period ended September 30, 2008; *Federal Deposit Insurance Corporation* ; *Lace Financial Corporation* ;
Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2007; Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2008;
National Information Center website of the Federal Financial Institutions Examination Council ; *The 2010 Mortgage Market Statistical Annual, Volume I*
(Dollars in Millions)

Note:

[1] Comparable companies are institutions in the list of "Top 50 Mortgage Originators in 2008" ("Mortgage Originators List") as reported in *The 2010 Mortgage Market Statistical Annual, Volume I* . Asset information obtained as of November 7, 2008, from *Capital IQ* . Comparable holding companies for which balance sheet or income statement data is not available for a fiscal period ended after August 7, 2008, are excluded. Comparable mortgage originators for which market value of equity of the corresponding holding company is not available as of November 7, 2008, are excluded. Institutions that fail on or before December 31, 2008, are excluded (failed institutions include Downey Financial Corporation, IndyMac Bancorp, Incorporated, and Lehman Brothers Holdings Incorporated). Bank of America Mtg & Affiliates, NC is excluded as its holding company is Bank of America. Countrywide Financial, CA is excluded as it is the holding company for Countrywide Bank, FSB.

[2] Holding company as of September 30, 2008, as identified from the *National Information Center website of the Federal Financial Institutions Examination Council* and *Capital IQ* .

[3] See Appendix 3 for variable definitions.

[4] M&T Bank Corp.'s holding company is Allied Irish Banks, PLC. M&T Bank Corp. is publicly traded, hence the financial information shown is M&T Bank Corp.'s financial data.

[5] Total assets and total common equity of Guaranty Financial Corporation taken from its Consolidated Statement of Financial Condition as of September 30, 2008. The filing date of this document is unknown; I assume the filing date was before November 7, 2008. I calculate the ROE of Guaranty Financial Corporation using the Total Common Equity as of September 30, 2007, from its Consolidated Statement of Financial Condition as of September 30, 2007.

[6] Holding company data are for Countrywide Bank, FSB. I calculate the book value of common equity as the total value of equity for Countrywide Bank of $9,467 million less the reported book value of preferred stock according to the September 30, 2008, balance sheet as obtained from Capital IQ and accounting adjustments from Countrywide Bank's 2008 Thrift Financial Report for the quarterly period ended September 30, 2008, Schedule SI, submitted to the Office of Thrift Supervision. I calculate Countrywide Bank's ROE using the Bank's total common equity of $7,727 million as of September 30, 2007, and 12-month earnings for the period from September 30, 2006, to September 30, 2007.

Exhibit 21

Regression Analysis for Valuation of Countrywide Bank, FSB Common Equity as of 11/7/08 [1]

Source: *Bloomberg* ; *Capital IQ* ; *Federal Deposit Insurance Corporation* ; Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2007; Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2008; *Lace Financial Corporation* ; *National Information Center website of the Federal Financial Institutions Examination Council* ; *The 2010 Mortgage Market Statistical Annual, Volume I*

Variable [2]	Coefficient [3]	Standard Error
ROE (when Positive)	3.19 *	1.80
ROE Negative Indicator	-0.65 **	0.26
Thrift Indicator	0.30	0.21
Constant	0.78 ***	0.24

Number of Observations	37	
Adjusted R^2	34.1%	
F-statistic	7.21	

Note:

[1] Comparable companies are institutions from the list of "Top 50 Mortgage Originators in 2008" ("Mortgage Originators List") and "Largest OTS-Regulated Thrift Mortgage Lenders in 2008" ("OTS Thrifts List") as reported in *The 2010 Mortgage Market Statistical Annual, Volume I* . Thrifts comprise at least 90% of the total assets of their publicly traded holding companies. Comparable companies for which balance sheet or income statement data for the corresponding holding companies is not available later than August 7, 2008, are excluded. Comparable companies for which market value of equity of the corresponding holding company is not available as of November 7, 2008, are also excluded. Institutions that fail before December 31, 2008, are excluded (failed institutions include Downey Financial Corporation, IndyMac Bancorp, Incorporated, and Lehman Brothers Holdings Incorporated). Bank of America Mtg & Affiliates, NC is excluded as its holding company is Bank of America. Countrywide Financial, CA is excluded as it is the holding company for Countrywide Bank, FSB.

[2] See Appendix 3 for variable definitions.

[3] ***,**, and * denote that the coefficient estimate is significantly different from zero at the 1%, 5%, or 10% level, respectively.

Exhibit 22

Valuation of Countrywide Bank, FSB Common & Preferred Equity Using Regression Models [1][2]

Source: *Bloomberg* ; *Capital IQ* ; Countrywide Bank, FSB 2008 TFR Report for the quarterly period ended September 30, 2008; *Federal Deposit Insurance Corporation* ; Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2007; Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2008; *Lace Financial Corporation* ; *National Information Center website of the Federal Financial Institutions Examination Council* ; *The 2010 Mortgage Market Statistical Annual, Volume I*

(Dollars in Millions)

	Valuation
Predicted Market-to-Book Value Ratio of Common Equity of the Bank	0.44
Adjusted Book Value of Common Equity of the Bank as of 9/30/08	$13,014.45
Predicted Market Value of Common Equity of the Bank as of 11/7/08	$5,703.01
Predicted Market Value of Preferred Equity of the Bank as of 11/7/08	$1,275.63
Predicted Market Value of the Bank's Total Equity 11/7/08	$6,978.65

Note:

[1] Comparable companies are institutions in the list of "Top 50 Mortgage Originators in 2008" ("Mortgage Originators List") and "Largest OTS-Regulated Thrift Mortgage Lenders in 2008" ("OTS Thrifts List") as reported in *The 2010 Mortgage Market Statistical Annual, Volume I* . Thrifts comprise at least 90% of the total assets of their publicly traded holding companies. Comparable holding companies for which balance sheet or income statement data for the corresponding holding companies is not available later than August 7, 2008, are excluded. Institutions that fail before December 31, 2008, are excluded (failed institutions include Downey Financial Corporation, IndyMac Bancorp, Incorporated, and Lehman Brothers Holdings Incorporated). Bank of America Mtg & Affiliates, NC is excluded as its holding company is Bank of America. Countrywide Financial, CA is excluded as it is the holding company for Countrywide Bank, FSB.

[2] See Appendix 3 for variable definitions.

Exhibit 23

Preferred Stock of Comparable Thrifts and Mortgage Originators [1]

Source: *Bloomberg*; *Capital IQ*; Minutes of the Meeting of the Board of Directors of Countrywide Bank, FSB, September 27, 2007; Minutes of the Meeting of the Board of Directors of Countrywide Bank, FSB, January 28, 2008; *National Information Center website of the Federal Financial Institutions Examination Council*; September 2008 Countrywide Bank TFR; SEC Filings; *The 2010 Mortgage Market Statistical Annual, Volume I*

CUSIP [2]		Holding Company	Par Value [3]		Price per Share as of 11/7/08 [3]	Promised Coupon Rate [3]	Price-to-Dividend [3]	Yield [3]
			a		b	c	d = b / (a * c)	e = 1 / d
172967556		Citigroup, Inc.	$25		$17.25	8.50%	8.12	12.32%
172967572		Citigroup, Inc.	$25		$15.60	8.13%	7.68	13.02%
40427H509	[4]	HSBC Holdings PLC	$25		$19.20	5.10%	15.06	6.64%
40427H707	[4]	HSBC Holdings PLC	$25		$18.30	5.00%	14.64	6.83%
404280604		HSBC Holdings PLC	$25		$17.06	6.20%	11.01	9.09%
404280703		HSBC Holdings PLC	$25		$23.19	8.13%	11.42	8.76%
40428H201	[5]	HSBC Holdings PLC	$50		$36.15	5.72%	12.65	7.90%
40428H862		HSBC Holdings PLC	$25		$20.00	6.50%	12.31	8.13%
40429C607		HSBC Holdings PLC	$25		$17.71	6.36%	11.14	8.98%
44667X208		Huntington Bancshares Incorporated	$25		$18.25	7.88%	9.27	10.79%
456837202		ING Groep NV	$25		$13.90	7.05%	7.89	12.68%
456837301		ING Groep NV	$25		$14.52	7.20%	8.07	12.40%
456837400		ING Groep NV	$25		$12.15	6.20%	7.84	12.76%
456837509		ING Groep NV	$25		$12.70	6.13%	8.29	12.06%
456837608		ING Groep NV	$25		$12.62	6.38%	7.92	12.63%
456837707		ING Groep NV	$25		$14.36	7.38%	7.79	12.84%
456837806		ING Groep NV	$25		$17.67	8.50%	8.31	12.03%
46625H621		JPMorgan Chase & Co.	$25		$24.80	8.63%	11.50	8.69%
46625H696		JPMorgan Chase & Co.	$50		$37.20	5.49%	13.55	7.38%
46625H712		JPMorgan Chase & Co.	$50		$39.40	5.72%	13.78	7.26%
46625H720		JPMorgan Chase & Co.	$50		$41.25	6.15%	13.41	7.45%
060505559		Merrill Lynch	$25		$21.09	8.63%	9.78	10.22%
060505617		Merrill Lynch	$25		$16.10	6.38%	10.10	9.90%
59021F206		Merrill Lynch	$25		$17.22	7.00%	9.84	10.16%
59021G204		Merrill Lynch	$25		$17.39	7.12%	9.77	10.24%
59021K205		Merrill Lynch	$25		$17.78	7.28%	9.77	10.24%
59156R603		Metlife, Inc.	$25		$16.95	6.50%	10.43	9.59%
908080203		Regions Financial Corp.	$100,000		$35,406.25	7.75%	4.57	21.89%
80282K205		Sovereign Bancorp Inc.	$25		$16.75	7.30%	9.18	10.90%
86788X203		Suntrust Banks, Inc.	$100,000		$92,312.50	9.00%	10.26	9.75%
33765A202		U.S. Bancorp	$1,000		$951.25	8.88%	10.72	9.33%
902973882		U.S. Bancorp	$25		$25.00	7.88%	12.70	7.88%
92977V206		Wachovia Corporation	$25		$17.40	7.25%	9.60	10.42%
949746879		Wells Fargo & Company	$25		$19.50	8.00%	9.75	10.26%
		Countrywide Bank, FSB	**$2,000,000,000**	**[6]**		**7.25%**		

Comparable Fixed Rate Perpetual Preferred			
Minimum	5.00%	4.57	6.64%
Median [7]	7.30%	9.75	10.26%
Mean	7.10%	10.24	10.33%
Maximum	9.00%	15.06	21.89%
Sample Size	34	34	34

Note:

[1] Comparable companies are holding companies of institutions in the list of "Top 50 Mortgage Originators in 2008" ("Mortgage Originators List") and "Largest OTS-Regulated Thrift Mortgage Lenders in 2008" ("OTS Thrifts List") as reported in *The 2010 Mortgage Market Statistical Annual, Volume I*. Thrifts comprise at least 90% of the total assets of their publicly traded holding companies. Countrywide Bank, FSB is ranked first in the OTS Thrifts List. Asset information obtained as of November 7, 2008, from *Capital IQ*. Comparable companies for which market value of equity of the corresponding holding company is not available as of November 7, 2008, are excluded. Bank of America is excluded. Countrywide Financial, CA is excluded as it is the holding company for Countrywide Bank, FSB. Securities issued by Lehman Brothers Holdings Inc. and any of its subsidiaries are excluded. Only nonconvertible preferred stock of the Thrift and Mortgage Originators Comparables with prices as of November 7, 2008, are included. One stock has been excluded because of insufficient data, CUSIP 84610XAA1.

[2] Perpetual preferred stock issued by the comparable company, or any of its subsidiaries, that were outstanding and had pricing information as of November 7, 2008.

[3] See Appendix 3 for variable definition.

[4] Price and notional reported in Canadian Dollars.

[5] Dividend is calculated using the dollar dividend as obtained from *Bloomberg* divided by the par value of the stock.

[6] Notional value of all outstanding Countrywide Bank, FSB preferred stock.

[7] For companies with multiple issues of preferred equity, I calculate the median of the multiple preferred issues. I use this median for that institution in calculating the median of the comparable companies.

Exhibit 24

Regression Analysis for Valuation of Countrywide Bank, FSB Preferred Equity [1]

Source: *Bloomberg* ; *Capital IQ* ; Minutes of the Meeting of the Board of Directors of Countrywide Bank, FSB, September 27, 2007; Minutes of the Meeting of the Board of Directors of Countrywide Bank, FSB, January 28, 2008; *National Information Center website of the Federal Financial Institutions Examination Council* ; *Federal Reserve* ; September 2008 Countrywide Bank TFR; *The 2010 Mortgage Market Statistical Annual, Volume I*

Variable [2]	Coefficient [3]	Standard Error
Market-to-Book Value Ratio of Common Equity	1.61 *	0.89
Constant	8.09 ***	1.03

Number of Observations	11	
Adjusted R^2	18.4%	
F-statistic	3.25	

Note:

[1] Comparable OTS Thrifts and Mortgage Originators with outstanding perpetual preferred stock with prices as of November 7, 2008, as provided by *Capital IQ* . The market-to-book value ratio of common equity as of November 7, 2008, of the Comparable OTS Thrifts and Mortgage Originators is regressed on their price-to-dividend ratio of the preferred stock, as of November 7, 2008. For comparable companies with multiple series of preferred stock outstanding, I calculate the price-to-dividend ratio by taking the inverse of the average of the yields weighted by the offering amount. For comparable companies with preferred stock in currencies other than USD, prices and values are converted to USD using Federal Reserve exchange rate data as of November 7, 2008. Companies for which balance sheet or income statement data are not available as of August 7, 2008, are excluded.

[2] See Appendix 3 for variable definitions.

[3] ***,**, and * denote that the coefficient estimate is significantly different from zero at the 1%, 5%, or 10% level, respectively.

Exhibit 25

Valuation of Countrywide Bank, FSB Preferred Equity Using Regression Model [1]

Source: *Bloomberg* ; *Capital IQ* ; Minutes of the Meeting of the Board of Directors of Countrywide Bank, FSB, September 27, 2007; Minutes of the Meeting of the Board of Directors of Countrywide Bank, FSB, January 28, 2008; *National Information Center website of the Federal Financial Institutions Examination Council* ; *Federal Reserve* ; September 2008 Countrywide Bank TFR; *The 2010 Mortgage Market Statistical Annual, Volume I*

(Dollars in Billions)

	Valuation
Predicted Price-to-Dividend Ratio of Preferred Equity of the Bank [2]	8.80
Dividend of Preferred Equity of the Bank 9/30/08	7.25%
Book Value of Countrywide Bank Preferred Equity [3]	$2.00
Predicted Market Value of Preferred Equity of the Bank [4]	$1.28

Note:

[1] Comparable OTS Thrifts and Mortgage Originators with outstanding perpetual preferred stock with prices as of November 7, 2008, as provided by *Capital IQ* .

[2] Predicted Price-to-Dividend Ratio is based on the regression coefficients in Exhibit "Regression Analysis for Valuation of Countrywide Bank, FSB Preferred Equity." Countrywide Bank's market-to-book value of common equity as of November 7, 2008, is 0.438, based on the regression and corresponding valuation in Exhibits "Regression Analysis for Valuation of Countrywide Bank, FSB Common Equity as of 11/7/08" and "Valuation of Countrywide Bank, FSB Common & Preferred Equity Using Regression Models." Companies for which balance sheet or income statement data are not available as of August 7, 2008, are excluded.

[3] As obtained from the Thrift Financial Report (TFR) for Countrywide Bank, FSB as of September 30, 2008.

[4] Calculated as the product of the predicted price-to-dividend ratio and the promised dividend amount on Countrywide Bank preferred equity. The dividend amount in USD is calculated by multiplying the book value of Countrywide Bank's preferred equity by its dividend rate of 7.25%.

Exhibit 26

Comparable Property and Casualty Insurance Companies [1]

11/7/08

Source: *AM Best Credit Report* , Balboa Insurance Company, published July 17, 2008; BACMBIA-R0000006043; *Capital IQ* ;
NAIC *2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
Wells Fargo Group	$622,361	$46,999	$98,095	2.09	18.36%
Metropolitan Group	$521,299	$27,832	$27,252	0.98	10.12%
Hartford Fire and Casualty Group	$311,485	$12,557	$4,445	0.35	-8.77%
Munich Re Group	$301,316	$29,600	$25,694	0.87	8.15%
Swiss Re Group	$241,870	$21,512	$13,825	0.64	2.23%
AllState Insurance Group	$143,574	$16,938	$14,412	0.85	-0.33%
Travelers Group	$112,695	$24,629	$23,153	0.94	10.19%
Genworth Fin Group	$109,561	$10,498	$1,156	0.11	-1.26%
Ameriprise Financial Group	$99,150	$6,717	$4,555	0.68	4.58%
Ace Limited Group	$75,155	$15,356	$17,795	1.16	8.93%
CNA Insurance Group	$53,708	$7,736	$3,928	0.51	1.15%
XL Amer Group	$50,781	$8,660	$2,785	0.32	-11.55%
MBIA Group	$37,652	$2,623	$2,181	0.83	14.80%
Fairfax Fin Group	$27,860	$4,620	$5,100	1.10	51.81%
American Financial Group	$26,925	$2,777	$2,474	0.89	8.39%
Assurant Inc Group	$25,354	$3,732	$2,629	0.70	8.98%
Delek Group	$23,580	$857	$750	0.87	-0.78%
Progressive Group	$18,640	$4,261	$8,404	1.97	-1.29%
White Mountains Group	$17,764	$4,062	$3,498	0.86	-5.46%
Everest Reins Holding Group	$17,370	$5,037	$4,338	0.86	-0.25%
Arch Insurance Group	$16,131	$3,517	$3,657	1.04	10.95%
Axis Capital Group	$15,175	$4,101	$3,774	0.92	8.20%
Cincinnati Financial Group	$14,303	$4,687	$4,165	0.89	5.48%
Old Republic Group	$13,204	$3,914	$2,061	0.53	-8.36%
Markel Corp Group	$9,931	$2,313	$3,118	1.35	0.95%
The Hanover Insurance Group	$9,255	$2,040	$1,961	0.96	5.92%
Unitrin Group	$9,211	$1,799	$1,235	0.69	-1.52%
MGIC Group	$8,953	$2,629	$456	0.17	-42.17%
HCC Insurance Holdings Group	$8,449	$2,547	$2,609	1.02	12.81%
Radian Group	$8,238	$2,332	$301	0.13	-25.70%
Allied World Assur Holding Group	$8,102	$2,273	$1,523	0.67	6.59%
Endurance Group	$7,869	$2,261	$1,571	0.69	6.04%
Fidelity National Fin Group	$7,314	$2,821	$2,375	0.84	-6.33%
Alleghany Group	$7,196	$2,390	$2,126	0.89	6.67%
Argonaut Group	$6,470	$1,350	$1,010	0.75	6.07%
Horace Mann Group	$5,787	$462	$328	0.71	1.08%
PMI Group	$5,361	$1,453	$163	0.11	-26.03%
Selective Insurance Group	$5,041	$978	$1,173	1.20	6.85%
Philadelphia Consolidated Holding Group	$4,816	$1,607	$4,260	2.65	14.50%
Mercury General Group	$4,150	$1,695	$2,402	1.42	-4.11%

Exhibit 26 - Continued

Comparable Property and Casualty Insurance Companies [1]

11/7/08

Source: *AM Best Credit Report*, Balboa Insurance Company, published July 17, 2008; BACMBIA-R0000006043; *Capital IQ*; NAIC *2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
Kingsway Group	$3,891	$772	$312	0.40	-11.54%
Navigators Group	$3,341	$656	$812	1.24	9.45%
Employers Group	$3,265	$395	$672	1.70	25.70%
Harleysville Group	$3,121	$655	$893	1.36	7.24%
Erie Insurance Group	$2,735	$934	$2,080	2.23	9.82%
United Fire and Casualty Group	$2,712	$684	$618	0.90	3.87%
Pennsylvania Manufacturers Group	$2,599	$358	$170	0.47	3.93%
Zenith National Insurance Group	$2,596	$1,045	$1,165	1.12	11.40%
RLI Ins Group	$2,508	$719	$1,228	1.71	11.20%
Infinity Property and Casualty Insurance Group	$1,848	$556	$575	1.03	8.55%
Meadowbrook Insurance Group	$1,807	$423	$183	0.43	8.62%
Safety Group	$1,462	$595	$614	1.03	11.91%
Tower Group	$1,411	$318	$542	1.70	16.57%
EMC Insurance Company Group	$1,108	$303	$338	1.11	0.06%
Balboa P&C [3]	**$3,077**	**$1,268**	**-**	**-**	**44.74%**

Comparable P&C Insurance Companies

Minimum	$1,108	$303	$163	0.11	-42.17%
Median	$9,082	$2,361	$2,103	0.89	6.06%
Mean	$56,434	$5,789	$5,869	0.96	3.94%
Maximum	$622,361	$46,999	$98,095	2.65	51.81%
Sample Size	54	54	54	54	54

Comparable P&C Insurance Companies with Negative Return on Common Equity [2]

Minimum	$3,891	$772	$163	0.11	-42.17%
Median	$15,287	$3,368	$2,218	0.61	-5.89%
Mean	$47,067	$5,018	$3,068	0.66	-9.72%
Maximum	$311,485	$16,938	$14,412	1.97	-0.25%
Sample Size	16	16	16	16	16

Comparables P&C Insurance Companies with Positive Return on Common Equity [2]

Minimum	$1,108	$303	$170	0.43	0.06%
Median	$7,986	$2,267	$2,103	0.97	8.47%
Mean	$60,379	$6,113	$7,049	1.08	9.69%
Maximum	$622,361	$46,999	$98,095	2.65	51.81%
Sample Size	38	38	38	38	38

Note:

[1] The companies or groups of companies are from the Property and Casualty Insurance companies listed in the "Top 125 Property and Casualty Insurance Companies by Premiums Written" in *The 2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*, published by the NAIC, that had publicly traded holding companies as of September 30, 2008, as identified from *Capital IQ*. The holding companies of the insurance companies are assumed to be the same as of September 30, 2008, and November 7, 2008. Berkshire Hathaway Group and Universal Insurance Holding Group are not included due to insufficient data. Companies for which balance sheet or income statement values are not available for a fiscal period ended after August 7, 2008, are excluded.

[2] See Appendix 3 for variable definitions.

[3] "Balboa P&C" consists of the following business units: Balboa Insurance Co, Balboa Life and Casualty, Newport Insurance, Meritplan Ins Co, Newport Manage Corp, Newport E&S, Warranty Services, and Balboa Elimination P&C. See *AM Best Credit Report*, Balboa Insurance Company published July 17, 2008, and BACMBIA-R0000006043.

Exhibit 27

Comparable Life and Fraternal Insurance Companies [1]

11/7/08

Source: *AM Best Credit Report* , Balboa Life Insurance Company, published May 23, 2008; BACMBIA-R0000006043; *Capital IQ* ;
NAIC *2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
Citigroup	$2,050,131	$98,638	$64,414	0.65	5.27%
Goldman Sachs Group	$1,081,773	$42,499	$33,290	0.78	26.93%
Metropolitan Group	$521,299	$27,832	$27,252	0.98	10.12%
Prudential of Amer Group	$460,398	$18,699	$14,764	0.79	4.04%
Aegon US Holding Group	$417,737	$19,851	$7,955	0.40	3.47%
Hartford Fire and Casualty Group	$311,485	$12,557	$4,445	0.35	-8.77%
Swiss Re Group	$241,870	$21,512	$13,825	0.64	2.23%
Lincoln National Group	$173,271	$9,500	$5,077	0.53	7.27%
John Hancock Group	$171,666	$23,164	$32,825	1.42	12.21%
AllState Insurance Group	$143,574	$16,938	$14,412	0.85	-0.33%
Principal Financial Group	$143,410	$5,613	$6,533	1.16	3.85%
Great West Group	$120,165	$10,734	$20,728	1.93	16.89%
Genworth Financial Group	$109,561	$10,498	$1,156	0.11	-1.26%
Sun Life Assur Co of CN Group	$106,833	$14,272	$13,954	0.98	6.19%
Ameriprise Financial Group	$99,150	$6,717	$4,555	0.68	4.58%
Ace Limited Group	$75,155	$15,356	$17,795	1.16	8.93%
American Family Corp Group	$70,457	$6,500	$22,060	3.39	16.27%
CNA Insurance Group	$53,708	$7,736	$3,928	0.51	1.15%
UnitedHealth Group	$53,707	$19,885	$27,312	1.37	19.11%
Unumprovident Corp Group	$49,938	$6,736	$5,566	0.83	8.53%
Wellpoint Inc	$49,759	$21,673	$19,705	0.91	10.77%
Protective Life Insurance Group	$41,153	$1,525	$735	0.48	1.09%
Cigna Health Group	$40,776	$4,642	$4,307	0.93	17.37%
Aetna Group	$37,263	$9,297	$10,827	1.16	16.29%
Conseco Group	$32,062	$2,704	$525	0.19	-4.75%
Phoenix Cos Group	$28,168	$1,527	$714	0.47	-0.14%
American Financial Group	$26,925	$2,777	$2,474	0.89	8.39%
Assurant Inc Group	$25,354	$3,732	$2,629	0.70	8.98%
American Amicable Group	$23,685	$1,686	$1,787	1.06	11.14%
White Mountains Group	$17,764	$4,062	$3,498	0.86	-5.46%
Stancorp Financial Group	$14,864	$1,420	$1,736	1.22	13.23%
Cincinnati Financial Group	$14,303	$4,687	$4,165	0.89	5.48%
Liberty National Group	$13,950	$2,441	$3,606	1.48	12.87%
Humana Group	$12,564	$4,271	$6,003	1.41	18.23%
Unitrin Group	$9,211	$1,799	$1,235	0.69	-1.52%

Exhibit 27 - Continued

Comparable Life and Fraternal Insurance Companies [1]

11/7/08

Source: *AM Best Credit Report*, Balboa Life Insurance Company, published May 23, 2008; BACMBIA-R0000006043; *Capital IQ*; NAIC *2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies*

(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
Trustmark Insurance Co Group	$9,086	$949	$1,245	1.31	9.30%
Delphi Financial Group	$5,939	$889	$759	0.85	5.27%
Horace Mann Group	$5,787	$462	$328	0.71	1.08%
Kansas City Life Insurance Group	$4,058	$577	$425	0.74	-0.41%
Erie Insurance Group	$2,735	$934	$2,080	2.23	9.82%
Triple's Vida Inc	$1,569	$484	$347	0.72	8.08%
Citizens Group	$813	$165	$385	2.34	6.95%
Balboa Life [3]	**$46**	**$35**	**-**	**-**	**-0.47%**

Comparable Life and Fraternal Insurance Companies

Minimum	$813	$165	$328	0.11	-8.77%
Median	$45,456	$6,056	$4,376	0.86	7.11%
Mean	$163,645	$11,141	$9,794	0.99	7.11%
Maximum	$2,050,131	$98,638	$64,414	3.39	26.93%
Sample Size	42	42	42	42	42

Comparables Life and Fraternal Insurance Companies with Negative Return on Common Equity [2]

Minimum	$4,058	$577	$425	0.11	-8.77%
Median	$30,115	$3,383	$1,196	0.58	-1.39%
Mean	$81,985	$6,333	$3,301	0.53	-2.83%
Maximum	$311,485	$16,938	$14,412	0.86	-0.14%
Sample Size	8	8	8	8	8

Comparables Life and Fraternal Insurance Companies with Positive Return on Common Equity [2]

Minimum	$813	$165	$328	0.40	1.08%
Median	$49,848	$6,609	$5,322	0.92	8.73%
Mean	$182,859	$12,273	$11,322	1.10	9.45%
Maximum	$2,050,131	$98,638	$64,414	3.39	26.93%
Sample Size	34	34	34	34	34

Note:

[1] The companies or groups of companies are from the Life and Fraternal Insurance companies listed in the "Top 125 Life and Fraternal Insurance Groups and Companies by Premiums Written" in *The 2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies*, published by the NAIC, that had publicly traded holding companies as of September 30, 2008, as identified from *Capital IQ*. The holding companies of the insurance companies are assumed to be the same as of September 30, 2008, and November 7, 2008. None of the fraternal insurance companies had publicly traded holding companies. Companies for which balance sheet or income statement values are not available for a fiscal period ended after August 7, 2008, are excluded.

[2] See Appendix 3 for variable definitions.

[3] "Balboa Life" consists of the following business units: Balboa Life Insurance, Balboa Life - NY, and Balboa Life Elimination. See *AM Best Credit Report,* Balboa Life Insurance Company, published May 23, 2008, and BACMBIA-R0000006043.

Exhibit 28

Regression Analysis for Valuation of Balboa Group

Source: *AM Best Credit Report*, Balboa Insurance Company, published July 17, 2008;
AM Best Credit Report, Balboa Life Insurance Company, published May 23, 2008;
BACMBIA-R0000006043; *Capital IQ*; NAIC *2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies*; NAIC *2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*

	Balboa P&C Comparables [1]		**Balboa Life Comparables [2]**	
Variable [3]	**Coefficient [4]**	**Standard Error**	**Coefficient [4]**	**Standard Error**
ROE (when Positive)	1.89 **	0.90	4.30 ***	1.53
ROE Negative Indicator	-0.25	0.17	-0.16	0.25
Constant	0.90 ***	0.12	0.70 ***	0.17
Number of Observations	54		42	
Adjusted R^2	17.8%		24.9%	
F-statistic	6.72		7.80	

Note:

[1] The comparable companies or groups of companies included in the regression are the Property and Casualty Insurance companies listed in the "Top 125 Property and Casualty Insurance Companies by Premiums Written" in *The 2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*, published by the NAIC, that had publicly traded holding companies as of September 30, 2008, as identified from *Capital IQ*. The holding companies of the insurance companies are assumed to be the same as of September 30, 2008, and November 7, 2008. Berkshire Hathaway Group and Universal Insurance Holding Group are not included due to insufficient data to calculate their respective market-to-book ratios.

[2] The comparable companies or groups of companies included in the regression are the Life and Fraternal Insurance companies listed in the "Top 125 Life and Fraternal Insurance Groups and Companies by Premiums Written" in *The 2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies* ("Life Insurers List"), published by the NAIC, that had publicly traded holding companies as of September 30, 2008, as identified from *Capital IQ*. The holding companies of the insurance companies are assumed to be the same as of September 30, 2008, and November 7, 2008.

[3] See Appendix 3 for variable definitions.

[4] ***,**, and * denote that the coefficient estimate is significantly different from zero at the 1%, 5%, or 10% level, respectively.

Exhibit 29

Valuations of Balboa Group Common Equity Using Regression Models

Source: *AM Best Credit Report*, Balboa Insurance Company, published July 17, 2008; *AM Best Credit Report*, Balboa Life Insurance Company, published May 23, 2008; BACMBIA-R0000006043; *Capital IQ*; NAIC *2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies*; NAIC *2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*

(Dollars in Millions)

		Valuation of Balboa P&C [1]	Valuation of Balboa Life [2]	Valuation of Balboa Marketing [3]
Predicted Market-to-Book Value Ratio of Common Equity of Balboa Subsidiaries	[4]	1.75	0.53	1.14
Using 10/31/08 Book Value of Common Equity				
Book Value of Equity for Balboa 10/31/08	[5]	$1,267.80	$35.41	$30.36
Predicted Market Value of Common Equity for Balboa 11/7/08	[6]	$2,212.62	$18.85	$34.58

Note:

[1] "Balboa P&C" consists of the following business units: Balboa Insurance Company, Balboa Life and Casualty, LLC, Newport Insurance Company, Meritplan Insurance Company, Newport Management Corp, Newport E&S Insurance Company, Warranty Services Corp, and Elimination Balboa P&C. See *AM Best Credit Report*, Balboa Insurance Company published July 17, 2008, and BACMBIA-

[2] "Balboa Life" consists of the following business units: Balboa Life Insurance Company, Balboa Life Insurance Co of NY, and Balboa Life Elimination. See *AM Best Credit Report*, Balboa Life Insurance Company, published May 23, 2008, and BACMBIA-R0000006043.

[3] "Balboa Marketing" consists of the following business units: Countrywide Insurance Services Inc., CA and DirectNet Insurance Agency Inc. See *AM Best Credit Report*, Balboa Insurance Company published July 17, 2008, *AM Best Credit Report*, Balboa Life Insurance Company, published May 23, 2008, and BACMBIA-R0000006043.

[4] Predicted Market-to-Book Value Ratio of Common Equity for each Balboa Entity is based on the regression coefficients from Exhibit "Regression Analysis for Valuation of Balboa Group" for the Balboa Life Comparables and the Balboa P&C Comparables multiplied by the corresponding Balboa Life or Balboa P&C variables, respectively. Return on Common Equity (ROE) for Balboa Life and Balboa P&C is the Annual Net Income, calculated as the Earnings Before Income Tax taken from BACMBIA-R0000006043 multiplied by 6/5, divided by the Total Common Equity as of October 31, 2007, calculated as the retained earnings for the 10 months ending October 31, 2008, identified as "Current RE from P&L," annualized by multiplying by a factor of 6/5, and subtracted from book value of equity, identified as "Total Equity," as of October 31, 2008, from BACMBIA-R0000006043. Balboa Marketing's predicted market-to-book value ratio is the average of those for Balboa Life and Balboa P&C.

[5] Corresponds to balance sheet values of total equity of the business units comprising each Balboa Entity with adjustments for purchase accounting using accounts "APIC - Purchase Accounting," "FAS 52 PA Contra," "Retained Earnings 2007 PA R/C," and "Retained Earnings PA Reclass" from BACMBIA-0000006043. The Balboa Entities do not have preferred stock, and therefore the Common Equity is equal to Total Equity. See BACMBIA-R0000006043.

[6] Calculated as the product of the Predicted Market-to-Book Value Ratio of Common Equity and the Book Value of Common Equity.

Exhibit 30

Valuation of Common Equity of Other Effinity Subsidiaries Using Regression Models

Source: BACMBIA-R0000006043; BACMBIA-R0000006047; *Capital IQ* ; *Federal Deposit Insurance Corporation* ; Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2007; Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2008; *Lace Financial Corporation* ; *National Information Center website of the Federal Financial Institutions Examination Council* ; *The 2010 Mortgage Market Statistical Annual, Volume I*

(Dollars in Millions)

Name of Effinity Subsidiary	Book Value of Common Equity as of 10/31/07 [1]	Book Value of Common Equity as of 10/31/08 [2]	LTM Income as of 10/31/08 [1]	LTM Revenue as of 10/31/08 [1]	Return on Common Equity as of 10/31/08 [1]	Predicted Market Value of Common Equity as of 11/7/08 [3]
	a		*b*		*c = b / a*	
Landsafe, Inc.	$272.47	$340.38	$66.82	$372.73	24.52%	$532.76
Countrywide Tax Services Corporation	$235.01	$260.64	$25.93	$98.05	11.03%	$295.68
GlobaLoans International Technology Company	$77.56	$114.25	$24.12	$116.57	31.10%	$202.81
Countrywide International Consulting Services	$84.54	$89.13	$2.63	$22.05	3.11%	$78.57
Countrywide Field Services Corporation	$29.70	$65.31	$35.94	$252.97	120.99%	$303.42
Countrywide Servicing Exchange	$23.62	$23.95	-$0.26	$0.93	-1.11%	$3.20
CTC Real Estate Services	$20.84	$21.15	$0.32	$0.70	1.52%	$17.57
Trusite Real Estate Services, Inc.	$5.41	$5.52	$0.11	$1.40	1.96%	$4.66
Total for Other Effinity Subsidiaries	**$749.16**	**$920.33**	**$155.59**	**$865.41**	**-**	**$1,438.66**

Note:

[1] See Appendix 3 for variable definitions.

[2] Book Value of Equity is obtained from BACMBIA-R0000006043. None of the entities had preferred stock as of October 31, 2008. Adjustments have been made for puchase accounting by adding accounts "APIC - Purchase Accounting," "FAS 52 PA Contra," "Retained Earnings 2007 PA R/C," and "Retained Earnings PA Reclass" together and subtracting the total purchase account adjustment from the Book Value of Common Equity from BACMBIA-0000006043.

[3] Predicted Market-to-Book Value of Equity Ratio of Common Equity for the Countrywide-legacy entities is based on the regression coefficients from Exhibit "Regression Analysis for Valuation of Countrywide Bank, FSB Common Equity as of 11/7/08" for the Comparable Mortgage Originators multiplied by the corresponding Countrywide-legacy entity predictor variables. Predicted Market Value of Common Equity is calculated as the product of the Predicted Market-to-Book Value of Equity Ratio of Common Equity and the Book Value of Common Equity as of October 31, 2008.

Exhibit 31

Valuation of Common Equity of Other CHL Subsidiaries Using Regression Models

Source: BACMBIA-R0000006043; BACMBIA-R0000006047; *Capital IQ* ; *Federal Deposit Insurance Corporation* ; Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2007; Guaranty Financial Corporation Consolidated Statement of Financial Condition as of September 30, 2008; *Lace Financial Corporation* ; *National Information Center website of the Federal Financial Institutions Examination Council* ; *The 2010 Mortgage Market Statistical Annual, Volume I*

(Dollars in Millions)

Name of CHL Subsidiary	**Book Value of Common Equity as of 10/31/07 [1]**	**Book Value of Common Equity as of 10/31/08 [2]**	**LTM Income as of 10/31/08 [1]**	**LTM Revenue as of 10/31/08 [1]**	**Return on Common Equity as of 10/31/08 [1]**	**Predicted Market Value of Common Equity as of 11/7/08 [3]**
	a		***b***		***c = b / a***	
Countrywide Warehouse Lending	$253.74	$256.22	$2.54	$6.96	1.00%	$208.56
Countrywide Hillcrest, Inc.	$11.41	$9.34	-$2.08	-$1.96	-18.21%	$1.25
Total for CHL Subsidiaries	**$265.15**	**$265.56**	**$0.46**	**$5.00**	**-**	**$209.81**

Note:

[1] See Appendix 3 for variable definitions.

[2] Book Value of Equity is obtained from BACMBIA-R0000006043. None of the entities had preferred stock as of October 31, 2008. Adjustments have been made for puchase accounting by adding accounts "APIC - Purchase Accounting," "FAS 52 PA Contra," "Retained Earnings 2007 PA R/C," and "Retained Earnings PA Reclass" together and subtracting the total purchase account adjustment from the Book Value of Common Equity from BACMBIA-0000006043.

[3] Predicted Market-to-Book Value of Equity Ratio of Common Equity for the Countrywide-legacy entities is based on the regression coefficients from Exhibit "Regression Analysis for Valuation of Countrywide Bank, FSB Common Equity as of 11/7/08" for the Comparable Mortgage Originators multiplied by the corresponding Countrywide-legacy entity predictor variables. Predicted Market Value of Common Equity is calculated as the product of the Predicted Market-to-Book Value of Equity Ratio of Common Equity and the Book Value of Common Equity as of October 31, 2008.

Exhibit 32

Bank of America Demand Notes Issued to CFC [1]

Source: BACMBIA-C0000161141–44; BACMBIA-C0000161271–75; BACMBIA-C0000161219–223; BACMBIA-C0000168237–241; BACMBIA-C0000168242–45; BACMBIA-C0000168417–421; BACMBIA-C0000168437–442; BACMBIA-C0000168502–07; BACMBIA-C0000168508–511; BACMBIA-R0000006067–071; BACMBIA-R0000006100–05; BACMBIA-R0000006150

Issue Date	Face Value at Issue Date	Updated Value		Interest Rate	Note	Source
7/1/08	$6,938,783,350			3-Month LIBOR + 0.65%	Payment of Principal. The Borrower shall repay to the Lender all or such part of the outstanding Loan Amount as the Lender may demand from time to time, together with all accrued and unpaid interest thereon, within one Business Day after written demand for such repayment... Prepayment. This Note may be repaid in full or in part at any time at the option of the Borrower, without premium, penalty or broken-funding reimbursement.	BACMBIA-C0000161141–BACMBIA-C0000161144
7/2/08	$19,676,240,840	$18,044,296,844	[2]	3-Month LIBOR + 0.65%	Payment of Principal. The Borrower shall repay to the Lender all or such part of the outstanding Loan Amount as the Lender may demand from time to time, together with all accrued and unpaid interest thereon, within one Business Day after written demand for such repayment... Prepayment. This Note may be repaid in full or in part at any time at the option of the Borrower, without premium, penalty or broken-funding reimbursement.	BACMBIA-C0000161271–BACMBIA-C0000161275
7/3/08	$2,528,722,951			3-Month LIBOR + 0.65%	Payment of Principal. The Borrower shall repay to the Lender all or such part of the outstanding Loan Amount as the Lender may demand from time to time, together with all accrued and unpaid interest thereon, within one Business Day after written demand for such repayment... Prepayment. This Note may be repaid in full or in part at any time at the option of the Borrower, without premium, penalty or broken-funding reimbursement.	BACMBIA-R0000006067–BACMBIA-R0000006071
7/3/08	$237,644,381			3-Month LIBOR + 0.65%	Payment of Principal. The Borrower shall repay to the Lender all or such part of the outstanding Loan Amount as the Lender may demand from time to time, together with all accrued and unpaid interest thereon, within one Business Day after written demand for such repayment... Prepayment. This Note may be repaid in full or in part at any time at the option of the Borrower, without premium, penalty or broken-funding reimbursement.	BACMBIA-C0000161219–BACMBIA-C0000161223
11/7/08	$3,049,393,994	$3,552,985,419		3-Month LIBOR + 0.65%	Payment of Principal. The Borrower shall repay to the Lender all or such part of the outstanding Loan Amount as the Lender may demand from time to time, together with all accrued and unpaid interest thereon, within one Business Day after written demand for such repayment... Prepayment. This Note may be repaid in full or in part at any time at the option of the Borrower, without premium, penalty or broken-funding reimbursement.	BACMBIA-C0000168237–BACMBIA-C0000168241; BACMBIA-C0000168242–BACMBIA-C0000168245
11/7/08	$7,787,837			3-Month LIBOR + 0.65%	Payment of Principal. The Borrower shall repay to the Lender all or such part of the outstanding Loan Amount as the Lender may demand from time to time, together with all accrued and unpaid interest thereon, within one Business Day after written demand for such repayment... Prepayment. This Note may be repaid in full or in part at any time at the option of the Borrower, without premium, penalty or broken-funding reimbursement.	BACMBIA-C0000168417–BACMBIA-C0000168421

Exhibit 32 - Continued

Bank of America Demand Notes Issued to CFC [1]

Source: BACMBIA-C0000161141–44; BACMBIA-C0000161271–75; BACMBIA-C0000161219–223; BACMBIA-C0000168237–241; BACMBIA-C0000168242–45; BACMBIA-C0000168417–421; BACMBIA-C0000168437–442; BACMBIA-C0000168502–07; BACMBIA-C0000168508–511; BACMBIA-R0000006067–071; BACMBIA-R0000006100–05; BACMBIA-R0000006150

Issue Date	Face Value at Issue Date	Updated Value	Interest Rate	Note	Source
11/7/08	$446,832,137		3-Month LIBOR + 0.65%	Payment of Principal. The Borrower shall repay to the Lender all or such part of the outstanding Loan Amount as the Lender may demand from time to time, together with all accrued and unpaid interest thereon, within one Business Day after written demand for such repayment... Prepayment. This Note may be repaid in full or in part at any time at the option of the Borrower, without premium, penalty or broken-funding reimbursement.	BACMBIA-C0000168437–BACMBIA-C0000168442
11/7/08	$3,464,227,515	$1,766,415,887	3-Month LIBOR + 0.65%	Payment of Principal. The Borrower shall repay to the Lender all or such part of the outstanding Loan Amount as the Lender may demand from time to time, together with all accrued and unpaid interest thereon, within one Business Day after written demand for such repayment... Prepayment. This Note may be repaid in full or in part at any time at the option of the Borrower, without premium, penalty or broken-funding reimbursement.	BACMBIA-C0000168502–BACMBIA-C0000168507; BACMBIA-C0000168508–BACMBIA-C0000168511
10/1/08	$63,200,000		3-Month LIBOR + 0.40%	Payment of Principal. The Borrower shall repay to the Lender all or such part of the outstanding Loan Amount as the Lender may demand from time to time, together with all accrued and unpaid interest thereon, within one Business Day after written demand for such repayment... Prepayment. This Note may be repaid in full or in part at any time at the option of the Borrower, without premium, penalty or broken-funding reimbursement.	BACMBIA-R0000006100–BACMBIA-R0000006105

Note:
[1] Two notes with face values of $32.05 million and $3.87 million, which were issued on July 31, 2008, for loans sold by CCREF and Countrywide Bank, respectively, are not shown in the exhibit.
[2] Updated value is based on adjustments made on July 2, 2008, and September 1, 2008, as shown in BACMBIA-R0000006150.

Exhibit 33

Bank of America Demand Note Interest Rates [1]

Source: BACMBIA-C0000161141–44; BACMBIA-C0000161271–75; BACMBIA-C0000161219–223; BACMBIA-C0000168237–241; BACMBIA-C0000168242–45; BACMBIA-C0000168417–421; BACMBIA-C0000168437–442; BACMBIA-C0000168502–07; BACMBIA-C0000168508–511; BACMBIA-R0000006067–071; BACMBIA-R0000006100–05; BACMBIA-R0000006150; *Bloomberg*

Issue Date	Face Value at Issue Date	Updated Value		Promised Interest Rate	LIBOR plus Spread [2]	3-Month NYFR Fixings Index [2]	3-Month Interest Rate Difference [2]
					a	*b*	*c = a - b*
7/1/08	$6,938,783,350			3-Month LIBOR + 0.65%	3.44%	2.81%	0.63%
7/2/08	$19,676,240,840	$18,044,296,844	[3]	3-Month LIBOR + 0.65%	3.44%	2.81%	0.63%
7/3/08	$2,528,722,951			3-Month LIBOR + 0.65%	3.44%	2.81%	0.63%
7/3/08	$237,644,381			3-Month LIBOR + 0.65%	3.44%	2.81%	0.63%
11/7/08	$3,049,393,994	$3,552,985,419		3-Month LIBOR + 0.65%	2.94%	2.29%	0.65%
11/7/08	$7,787,837			3-Month LIBOR + 0.65%	2.94%	2.29%	0.65%
11/7/08	$446,832,137			3-Month LIBOR + 0.65%	2.94%	2.29%	0.65%
11/7/08	$3,464,227,515	$1,766,415,887		3-Month LIBOR + 0.65%	2.94%	2.29%	0.65%
10/1/08	$63,200,000			3-Month LIBOR + 0.40%	4.55%	4.53%	0.02%

Note:

[1] Two notes with face values of $32.05 million and $3.87 million, which were issued on July 31, 2008, for loans sold by CCREF and Countrywide Bank, respectively, are not shown in the exhibit.

[2] See Appendix 3 for variable definitions.

[3] Updated value is based on adjustments made on July 2, 2008, and September 1, 2008, as shown in BACMBIA-R0000006150.

Exhibit 34

Liabilities of Countrywide-legacy Entities Assumed by BofA-legacy Entities
November 2008 Transactions

Source: BACMBIA-C0000168172–229; BACMBIA-C0000168443–494; BACMBIA-I0000005288–89; BACMBIA-I0000071808; *Bloomberg; Capital IQ; Federal Reserve;* Prospectuses, Pricing Supplements, and Final Terms

Fixed-Rate Securities

	Security ID [1]	Name [1]	Maturity Date	Coupon Rate	Currency	Convertible Y/N	Callable Y/N	Amount Outstanding as of 11/7/08 [2]	Rating as of 11/7/08 [3]	Transaction Price [4]	Price as % of Par as of 11/7/08 [5]	Price Date	Market Value of Securities
								a			b		c = a * b
1	XS0192950367	Euro Medium Term Note CHL	12/15/08	5.88%	GBP	N	N	$434,170,000	AA-	Yes	98.50%	11/7/08	$427,657,450
2	22238HFE5	CFC B	3/16/09	5.00%	USD	N	N	$195,000	Aa2	No	96.28%	11/7/08	$187,740
3	22238HFH8	CFC B	3/16/09	5.00%	USD	N	N	$435,000	Aa2	No	96.28%	11/7/08	$418,805
4	22238HFK1	CFC B	3/16/09	5.00%	USD	N	N	$702,000	Aa2	No	96.28%	11/7/08	$675,865
5	22238HFP0	CFC B	3/16/09	5.00%	USD	N	N	$227,000	Aa2	No	96.28%	11/7/08	$218,549
6	22238HBG4	CFC B	4/15/09	5.25%	USD	N	N	$1,215,000	AA-	No	95.99%	11/7/08	$1,166,218
7	22237LHE5	CHL H	4/15/09	6.25%	USD	N	N	$600,000,000	AA-	Yes	99.33%	11/7/08	$595,977,600
8	22238HBM1	CFC B	5/15/09	5.25%	USD	N	N	$731,000	AA-	No	95.77%	11/7/08	$700,064
9	22238HBP4	CFC B	5/15/09	5.38%	USD	N	N	$585,000	AA-	No	95.94%	11/7/08	$561,243
10	22238HBR0	CFC B	5/15/09	5.50%	USD	N	N	$1,855,000	AA-	No	95.94%	11/7/08	$1,779,668
11	22238HBT6	CFC B	5/15/09	5.38%	USD	N	N	$515,000	AA-	No	95.94%	11/7/08	$494,086
12	22237UAF9	CFC B	6/1/09	4.69%	CAD	N	N	$232,459,848	AA-	No	96.50%	11/7/08	$224,323,753
13	22238HBV1	CFC B	6/15/09	5.38%	USD	N	N	$284,000	AA-	No	95.26%	11/7/08	$270,544
14	22238HBX7	CFC B	6/15/09	5.40%	USD	N	N	$318,000	AA-	No	95.28%	11/7/08	$302,978
15	22238HBZ2	CFC B	6/15/09	5.40%	USD	N	N	$160,000	AA-	No	95.28%	11/7/08	$152,442
16	22238HCD0	CFC B	7/15/09	5.75%	USD	N	N	$1,397,000	AA-	Yes	98.63%	11/3/08	$1,377,791
17	22238HCF5	CFC B	7/15/09	5.63%	USD	N	N	$195,000	AA-	No	94.49%	11/7/08	$184,261
18	22238HCH1	CFC B	7/15/09	5.65%	USD	N	N	$1,603,000	AA-	No	94.11%	11/7/08	$1,508,615
19	22238HCK4	CFC B	7/15/09	5.60%	USD	N	N	$1,992,000	AA-	No	94.98%	11/7/08	$1,891,962
20	22237LMY5	CHL K	7/15/09	5.63%	USD	N	N	$750,000,000	AA-	Yes	97.77%	11/7/08	$733,299,750
21	22238HCM0	CFC B	8/17/09	5.50%	USD	N	N	$2,482,000	AA-	No	93.89%	11/7/08	$2,330,251
22	22238HCR9	CFC B	8/17/09	5.30%	USD	N	N	$673,000	AA-	No	93.74%	11/7/08	$630,884
23	22238HCP3	CFC B	8/17/09	5.40%	USD	N	N	$1,616,000	AA-	No	93.81%	11/7/08	$1,516,034
24	22238HCT5	CFC B	8/17/09	5.40%	USD	N	N	$5,468,000	AA-	No	93.81%	11/7/08	$5,129,750
25	22238HCX6	CFC B	9/15/09	5.25%	USD	N	N	$2,240,000	AA-	No	92.91%	11/7/08	$2,081,274
26	22238HDB3	CFC B	9/15/09	5.15%	USD	N	N	$574,000	AA-	No	92.84%	11/7/08	$532,879
27	22238HDE7	CFC B	9/15/09	5.20%	USD	N	N	$1,675,000	AA-	No	92.58%	11/7/08	$1,550,682
28	22238HDH0	CFC B	9/15/09	5.25%	USD	N	N	$503,000	AA-	No	92.72%	11/7/08	$466,402
29	22237LPM8	CHL M	9/15/09	4.13%	USD	N	N	$1,250,000,000	AA-	No	96.77%	11/7/08	$1,209,650,000
30	22238HDL1	CFC B	10/15/09	5.00%	USD	N	N	$2,115,000	AA-	No	91.95%	11/7/08	$1,944,637
31	22238HDN7	CFC B	10/15/09	5.00%	USD	N	N	$1,015,000	AA-	No	91.95%	11/7/08	$933,242
32	22238HDR8	CFC B	10/15/09	5.15%	USD	N	N	$1,715,000	AA-	No	92.07%	11/7/08	$1,579,035
33	22238HDT4	CFC B	10/15/09	5.20%	USD	N	N	$3,293,000	AA-	No	92.12%	11/7/08	$3,033,347
34	22238HDV9	CFC B	11/16/09	5.25%	USD	N	N	$3,966,000	AA-	No	91.50%	11/7/08	$3,629,049
35	22238HDX5	CFC B	11/16/09	5.05%	USD	N	N	$2,034,000	AA-	No	91.32%	11/7/08	$1,857,428
36	22238HEA4	CFC B	11/16/09	5.15%	USD	N	N	$3,497,000	AA-	No	91.41%	11/7/08	$3,196,643
37	22238HEC0	CFC B	11/16/09	5.00%	USD	N	N	$2,440,000	AA-	No	91.27%	11/7/08	$2,227,061
38	22238HEE6	CFC B	12/15/09	5.00%	USD	N	N	$8,133,000	AA-	No	91.25%	11/7/08	$7,420,956
39	22238HEG1	CFC B	12/15/09	4.80%	USD	N	N	$897,000	AA-	No	90.64%	11/7/08	$813,059

Exhibit 34 - Continued

Liabilities of Countrywide-legacy Entities Assumed by BofA-legacy Entities
November 2008 Transactions

Source: BACMBIA-C0000168172–229; BACMBIA-C0000168443–494; BACMBIA-I0000005288–89; BACMBIA-I0000071808; *Bloomberg; Capital IQ; Federal Reserve;* Prospectuses, Pricing Supplements, and Final Terms

Fixed-Rate Securities

	Security ID [1]	Name [1]	Maturity Date	Coupon Rate	Currency	Convertible Y/N	Callable Y/N	Amount Outstanding as of 11/7/08 [2]	Rating as of 11/7/08 [3]	Transaction Price [4]	Price as % of Par as of 11/7/08 [5]	Price Date	Market Value of Securities
								a			b		c = a * b
40	22238HEJ5	CFC B	12/15/09	4.88%	USD	N	N	$819,000	AA-	No	90.72%	11/7/08	$742,964
41	22238HEN6	CFC B	12/15/09	5.00%	USD	N	N	$3,149,000	AA-	No	91.25%	11/7/08	$2,873,305
42	22238HEQ9	CFC B	1/15/10	5.00%	USD	N	N	$1,362,000	Aa2	No	90.44%	11/7/08	$1,231,847
43	22238HES5	CFC B	1/15/10	5.00%	USD	N	N	$617,000	Aa2	No	90.44%	11/7/08	$558,039
44	22238HEU0	CFC B	1/15/10	5.00%	USD	N	N	$1,056,000	AA-	No	90.44%	11/7/08	$955,089
45	22238HEW6	CFC B	1/15/10	5.13%	USD	N	N	$1,340,000	AA-	No	90.58%	11/7/08	$1,213,732
46	22238HEY2	CFC B	2/15/10	5.15%	USD	N	N	$1,762,000	Aa2	No	90.26%	11/7/08	$1,590,381
47	22238HFA3	CFC B	2/16/10	5.10%	USD	N	N	$607,000	AA-	No	90.19%	11/7/08	$547,465
48	22238HFC9	CFC B	2/16/10	5.15%	USD	N	N	$1,167,000	AA-	No	90.25%	11/7/08	$1,053,206
49	22238HFM7	CFC B	3/15/10	5.00%	USD	N	N	$381,000	Aa2	No	89.74%	11/7/08	$341,902
50	22238HFR6	CFC B	4/15/10	4.90%	USD	N	N	$158,000	Aa2	No	89.33%	11/7/08	$141,134
51	22238HFT2	CFC B	4/15/10	5.00%	USD	N	N	$370,000	Aa2	No	89.45%	11/7/08	$330,976
52	22238HFV7	CFC B	4/15/10	5.10%	USD	N	N	$403,000	AA-	No	89.58%	11/7/08	$361,011
53	22238HFX3	CFC B	4/15/10	5.10%	USD	N	N	$381,000	Aa2	No	89.58%	11/7/08	$341,304
54	22237LFR8	CHL F	4/16/10	6.66%	USD	N	N	$15,000,000	AA-	No	91.69%	11/7/08	$13,753,500
55	22238HFZ8	CFC B	5/17/10	5.00%	USD	N	N	$286,000	Aa2	No	89.08%	11/7/08	$254,755
56	22238HGB0	CFC B	5/17/10	5.00%	USD	N	N	$221,000	Aa2	No	89.08%	11/7/08	$196,856
57	22238HGD6	CFC B	5/17/10	5.05%	USD	N	N	$915,000	Aa2	No	89.14%	11/7/08	$815,658
58	22238HGG9	CFC B	5/17/10	5.10%	USD	N	N	$739,000	Aa2	No	89.21%	11/7/08	$659,269
59	22238HAG5	CFC A	6/15/10	4.50%	USD	N	N	$500,000,000	AA-	No	94.44%	11/7/08	$472,220,000
60	22238HGK0	CFC B	6/15/10	5.15%	USD	N	N	$171,000	Aa2	No	89.37%	11/7/08	$152,823
61	22238HGM6	CFC B	6/15/10	5.25%	USD	N	N	$644,000	AA-	No	90.30%	11/7/08	$581,538
62	22238HGP9	CFC B	6/15/10	5.35%	USD	N	N	$301,000	Aa2	No	89.96%	11/7/08	$270,783
63	22238HGT1	CFC B	6/15/10	5.45%	USD	N	N	$2,085,000	AA-	No	90.59%	11/7/08	$1,888,739
64	22238HGV6	CFC B	6/15/10	5.50%	USD	N	N	$1,690,000	AA-	No	90.66%	11/7/08	$1,532,120
65	22238HGX2	CFC B	7/15/10	5.40%	USD	N	N	$1,377,000	AA-	No	90.65%	11/7/08	$1,248,278
66	22238HGZ7	CFC B	7/15/10	5.35%	USD	N	N	$212,000	Aa2	No	90.58%	11/7/08	$192,023
67	22238HHB9	CFC B	7/15/10	5.50%	USD	N	N	$2,911,000	AA-	No	90.80%	11/7/08	$2,643,275
68	22238HHH6	CFC B	7/15/10	5.45%	USD	N	N	$2,272,000	AA-	No	90.73%	11/7/08	$2,061,317
69	22238HHD5	CFC B	8/16/10	5.35%	USD	N	N	$290,000	AA-	No	90.03%	11/7/08	$261,073
70	22238HHF0	CFC B	8/16/10	5.30%	USD	N	N	$140,000	AA-	No	89.95%	11/7/08	$125,924
71	AU300CFCC033	Australian Medium Term Note CFC	12/16/10	6.25%	AUD	N	N	$218,595,000	AA-	No	98.49%	11/7/08	$215,304,489
72	XS0243822060	Euro Medium Term Note CFC	2/17/11	5.13%	GBP	N	N	$473,640,000	AA-	No	75.19% [6]	–	$356,144,342
73	22237LPA4	CHL L	3/22/11	4.00%	USD	N	N	$1,350,000,000	AA-	Yes	91.50%	11/7/08	$1,235,250,000
74	22238HBH2	CFC B	4/15/11	5.50%	USD	N	N	$1,456,000	Aa2	No	89.20%	11/7/08	$1,298,723
75	22238HGQ7	CFC B	6/7/12	5.80%	USD	N	N	$2,000,000,000	AA-	No	93.48%	11/7/08	$1,869,680,000
76	22237LFQ0	CHL F	4/17/13	6.73%	USD	N	N	$15,000,000	Aa2	Yes	94.98%	11/7/08	$14,246,700
77	22237LNJ7	CHL L	5/16/13	5.00%	USD	N	Y	$10,000,000	Aa2	Yes	88.51%	11/7/08	$8,850,620
78	22238HAD2	CFC A	5/11/15	5.00%	USD	N	Y	$991,000	Aa2	No	75.39%	11/7/08	$747,145
79	22238HAH3	CFC A	6/24/15	5.75% [7]	USD	N	Y	$19,155,000	Aa2	No	77.98%	11/7/08	$14,936,494
80	222372AJ3	Subordinated Debt	5/15/16	6.25%	USD	N	N	$1,000,000,000	A+	No	90.87%	11/7/08	$908,740,000
81	22237LNG3	CHL K	1/24/18	6.00%	USD	N	Y	$25,000,000	AA-	Yes	78.11%	11/7/08	$19,528,700
82	22237LNE8	CHL K	1/24/18	5.90%	USD	N	Y	$5,000,000	Aa2	Yes	87.20%	11/4/08	$4,360,000
83	22237LNK4	CHL L	5/16/18	5.50%	USD	N	Y	$5,000,000	Aa2	No	73.86%	11/7/08	$3,693,050
84	22238HAE0	CFC A	5/11/20	5.25%	USD	N	Y	$1,284,000	Aa2	No	70.50%	11/7/08	$905,207
85	22238HAF7	CFC A	5/27/20	5.25%	USD	N	Y	$20,000,000	AA-	Yes	67.34%	11/7/08	$13,468,680

Exhibit 34 - Continued

Liabilities of Countrywide-legacy Entities Assumed by BofA-legacy Entities
November 2008 Transactions

Source: BACMBIA-C0000168172–229; BACMBIA-C0000168443–494; BACMBIA-I0000005288–89; BACMBIA-I0000071808; *Bloomberg; Capital IQ; Federal Reserve;* Prospectuses, Pricing Supplements, and Final Terms

Fixed-Rate Securities

	Security ID [1]	Name [1]	Maturity Date	Coupon Rate		Currency	Convertible Y/N	Callable Y/N	Amount Outstanding as of 11/7/08 [2]	Rating as of 11/7/08 [3]	Transaction Price [4]	Price as % of Par as of 11/7/08 [5]	Price Date	Market Value of Securities
									a			b		c = a * b
86	22238HAM2	CFC A	8/25/20	6.03%		USD	N	Y	$5,000,000	Aa2	Yes	71.35%	11/7/08	$3,567,260
87	22238HAN0	CFC A	8/26/20	6.00%	[8]	USD	N	Y	$10,000,000	Aa2	Yes	76.50%	11/5/08	$7,650,000
88	22238HBC3	CFC B	3/23/21	6.00%		USD	N	Y	$4,425,000	Aa2	No	74.77%	11/7/08	$3,308,484
89	22238HBE9	CFC B	4/6/21	6.00%		USD	N	Y	$998,000	AA-	Yes	69.76%	11/7/08	$696,244
90	22238HBF6	CFC B	4/13/21	6.00%		USD	N	Y	$4,643,000	AA-	No	74.49%	11/7/08	$3,458,339
91	22238HBJ8	CFC B	4/26/21	6.13%		USD	N	Y	$4,548,000	Aa2	Yes	75.48%	10/30/08	$3,432,921
92	22237LNH1	CHL L	5/16/23	6.00%		USD	N	Y	$10,000,000	Aa2	Yes	65.40%	11/7/08	$6,540,240
93	22238HBB5	CFC B	3/16/26	6.00%		USD	N	Y	$50,000,000	AA-	Yes	62.59%	11/7/08	$31,297,350
94	22237AAB2	8.05% Subordinated Capital Income Securities, Series A (SKIS)	6/15/27	8.05%		USD	N	N	$200,000,000	A	Yes	82.47%	11/7/08	$164,932,800
95	22237LPF3	CHL M	6/25/29	6.15%		USD	N	Y	$12,500,000	Aa2	Yes	63.01%	11/7/08	$7,876,575
96	22237LPH9	CHL M	7/16/29	6.20%		USD	N	Y	$25,000,000	AA-	Yes	63.40%	11/7/08	$15,849,225
97	22237LPJ5	CHL M	7/23/29	6.00%		USD	N	Y	$13,000,000	Aa2	Yes	61.29%	11/7/08	$7,968,259
98	22238HAS9	CFC A	11/22/30	6.00%		USD	N	Y	$30,000,000	AA-	Yes	61.47%	11/7/08	$18,441,360
99	22238HAX8	CFC A	1/24/31	5.75%		USD	N	Y	$12,300,000	Aa2	Yes	59.21%	11/7/08	$7,283,371
100	22238HAY6	CFC A	1/27/31	5.80%		USD	N	Y	$10,140,000	Aa2	Yes	59.65%	11/7/08	$6,048,145
101	22238E206	6.75% Trust Preferred Securities (TRUPS IV)	4/1/33	6.75%		USD	N	Y	$500,000,000	A	Yes	68.40%	11/7/08	$342,000,000
102	22238HAR1	CFC A	11/14/35	6.00%		USD	N	Y	$46,374,000	AA-	Yes	59.32%	11/7/08	$27,508,315
103	22238HAU4	CFC A	12/14/35	6.00%		USD	N	N	$35,490,000	AA-	Yes	60.49%	11/7/08	$21,469,001
104	22238HAZ3	CFC A	2/8/36	6.00%		USD	N	Y	$53,926,000	AA-	Yes	58.40%	11/7/08	$31,490,465
105	22238HBK5	CFC B	4/28/36	6.30%		USD	N	Y	$16,205,000	Aa2	Yes	80.55%	11/4/08	$13,053,128
106	222388209	7.0% Trust Preferred Securities (TRUPS V)	11/1/36	7.00%		USD	N	Y	$1,495,000,000	A	Yes	69.08%	11/7/08	$1,032,746,000
											Fixed-Rate Securities Total:			**$10,178,583,913**

Exhibit 34 - Continued

Liabilities of Countrywide-legacy Entities Assumed by BofA-legacy Entities
November 2008 Transactions

Source: BACMBIA-C0000168172–229; BACMBIA-C0000168443–494; BACMBIA-I0000005288–89; BACMBIA-I0000071808; *Bloomberg; Capital IQ; Federal Reserve;* Prospectuses, Pricing Supplements, and Final Terms

Floating-Rate Securities

	Security ID [1]		Name [1]	Maturity Date	Coupon Rate		Currency	Convertible Y/N	Callable Y/N	Amount Outstanding as of 11/7/08 [2]	Rating as of 11/7/08 [3]	Transaction Price [4]	Price as % of Par as of 11/7/08 [5]		Price Date	Market Value of Securities
										a			b			c = a * b
1	XS0192930765		Euro Medium Term Note CHL	11/24/08	EURIBOR+0.45%		EUR	N	N	$1,277,700,000	AA-	Yes	99.54%		11/7/08	$1,271,766,361
2	22238HAW0		CFC A	12/19/08	LIBOR+0.27%		USD	N	N	$500,000,000	AA-	Yes	99.59%		11/7/08	$497,958,500
3	22238HEL0		CFC B	1/5/09	LIBOR+0.14%		USD	N	N	$600,000,000	Aa2	Yes	99.19%		11/7/08	$595,146,000
4	XS0094006482		Euro Medium Term Note CHL	1/20/09	USD-LIBOR+0.4%	[9]	USD	N	N	$50,000,000	Aa2	No	98.79%	[10]	–	$49,396,605
5	22238HBD1		CFC B	3/24/09	LIBOR+0.22%		USD	N	N	$800,000,000	AA-	Yes	98.23%		11/7/08	$785,872,800
6	XS0249988782		Euro Medium Term Note CFC	4/7/09	GBP-LIBOR+0.2%		GBP	N	N	$63,152,000	AA-	No	99.63%		11/7/08	$62,916,822
7	XS0236024310		Euro Medium Term Note CFC	11/23/10	EURIBOR+0.4%		EUR	N	N	$638,850,000	AA-	No	87.14%		11/7/08	$556,693,890
8	AU300CFCC041		Australian Medium Term Note CFC	12/16/10	BBSW+0.47%		AUD	N	N	$168,150,000	AA-	No	96.46%		11/7/08	$162,189,419
9	22238HGR5		CFC B	5/7/12	LIBOR+0.44%		USD	N	N	$500,000,000	AA-	Yes	88.00%		11/5/08	$440,000,000
10	22238HAK6		CFC A	7/28/15	5.00%	[11]	USD	N	Y	$6,302,000	AA-	Yes	85.54%		11/4/08	$5,390,731
11	222372AN4		Series A Floating Rate Convertible Senior Debentures	4/15/37	LIBOR-3.50%		USD	Y	Y	$30,000,000	AA-	Yes	99.00%		11/7/08	$29,700,000
12	222372AP9		Series B Floating Rate Convertible Senior Debentures	5/15/37	LIBOR-2.25%		USD	Y	Y	$280,000,000	AA-	Yes	98.39%		11/7/08	$275,491,720
13	CH0024763853	[12]	CFC Euro	3/16/09	CHF-LIBOR+0.17%		CHF	N	N	$173,085,200	AA-	No	92.50%		11/7/08	$160,103,810

Floating-Rate Securities Total:	**$4,892,626,658**
Fair Market Value of Assumed Liabilities Total:	**$15,071,210,571**

Note:

[1] As given in the Stock Purchase Agreement by and between Bank of America Corporation and Countrywide Financial Corporation, dated November 7, 2008. There are 40 securities listed in the Stock Purchase Agreement that had matured as of November 7, 2008, and therefore are not listed here.

[2] For certain bonds issued in a foreign currency and one issued in USD, amount outstanding as of November 7, 2008, is not available. These securities are valued using the amount outstanding at origination, which is converted to USD (if applicable) using the corresponding historical exchange rate on November 7, 2008. Adjustments to the amount outstanding for the Series A and Series B Floating Rate Convertible Seniors are obtained from BACMBIA-I0000005288.

[3] If no *Standard & Poor's* rating is available for a security through *Capital IQ* or *Bloomberg*, the *Moody's* rating is used. In this way, a rating is available for each bond. All of the bonds for which a *Moody's* rating is used are rated Aa2.

[4] Indicates whether the price is a transaction price from *Bloomberg* up to 14 days before November 7, 2008. All transaction prices are from the *Trade Reporting and Compliance Engine (TRACE)* and obtained through *Bloomberg*.

[5] See Appendix 3 for variable definitions.

[6] This security is valued using the yield to maturity of the fixed-rate, noncallable bond with ISIN XS0192950367. The value shown is exclusive of accrued interest.

[7] This is a fixed-rate bond that promised to pay 4.125% from issuance until June 24, 2007, and 5.75% from June 24, 2007, until maturity.

[8] This is a fixed-rate bond that promised to pay 4.6% from issuance until August 26, 2008, and 6% from August 26, 2006, until maturity.

[9] If the 6-month USD-LIBOR-BBA rate is greater than 4% at the time of fixing, this note pays a fixed rate of 6.1%; if not, it pays a floating rate of USD-LIBOR-BBA 6-month rate + 0.4%. On November 7, 2008, as of the fixing date for the period ending January 20, 2009 (the last coupon period of this bond), the USD-LIBOR-BBA rate was below 4%.

[10] I value this security using the yield to maturity of the floating-rate, noncallable bond with CUSIP 22238HEL0. I assume that floating-rate securities have coupon rates set as the sum of the relevant interbank rate as of the fixing date immediately preceding November 7, 2008, and the fixed spread. The price shown is exclusive of accrued interest.

[11] This note pays a fixed rate that changes periodically based on how long it has been outstanding: it paid a 4% coupon from July 22, 2005, to July 28, 2007; it paid a 5% coupon from July 28, 2007, to July 28, 2009; it promises to pay a 6% coupon from July 28, 2009, to July 28, 2011; it promises a 6.5% coupon from July 28, 2011, to July 28, 2013; it promises a 7.5% coupon from July 28, 2013, to maturity.

[12] CH0024763853 has been included as an obligation with respect to a public debt security that was assumed by BAC in the November 2008 Transactions as explained in the Amendment and Supplement to the Expert Report of John McConnell dated September 4, 2012. See also BACMBIA-I0000071808.

Exhibit 35

Market-to-Book Value Comparison for CFC and Comparable Companies [1]

Source: *AM Best Credit Report* , Balboa Insurance Company, published July 17, 2008; *AM Best Credit Report* , Balboa Life Insurance Company, published May 23, 2008; *Capital IQ* ; NAIC *2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies* ; NAIC *2008 Market Share Reports for Property/Casualty Insurance Groups and Companies* ; *The 2010 Mortgage Market Statistical Annual, Volume I*

		Median Market-to-Book Value Ratio of Common Equity		
		8/15/06 [2]	**3/15/07 [3]**	**8/15/07 [4]**
Countrywide Financial Corporation	[5]	1.46	1.46	0.85
Comparable OTS Thrifts	[6]	1.81	1.59	1.38
Comparable Mortgage Originators	[7]	1.79	1.62	1.36
Comparable Mortgage Servicer Companies	[8]	1.91	1.72	1.50
Comparable P&C Insurance Companies	[9]	1.43	1.38	1.28
Comparable Life and Fraternal Insurance Companies	[10]	1.70	1.68	1.57

Note:

[1] See Appendix 3 for variable definitions.

[2] Comparable companies for which balance sheet or income statement data for the corresponding holding company are not available as of June 30, 2006, are excluded. Comparable companies for which market value of equity of the corresponding holding company is not available as of August 15, 2006, are excluded.

[3] Comparable companies for which balance sheet or income statement data for the corresponding holding company are not available as of December 31, 2006, are excluded. Comparable companies for which market value of equity of the corresponding holding company is not available as of March 15, 2007, are excluded.

[4] Comparable companies for which balance sheet or income statement data for the corresponding holding company are not available as of June 30, 2007, are excluded. Comparable companies for which market value of equity of the corresponding holding company is not available as of August 15, 2007, are excluded.

[5] Market-to-Book Value Ratio of Common Equity for Countrywide Financial Corporation as obtained from *Capital IQ* .

[6] Comparable companies are thrifts in the list of 50 "Largest OTS-Regulated Thrift Mortgage Lenders in 2008" ("OTS Thrifts List") as reported in *The 2010 Mortgage Market Statistical Annual, Volume I* that comprise at least 90% of the total assets of their publicly traded holding companies. Countrywide Bank, FSB is ranked first in the OTS thrifts list.

[7] Comparable companies are entities in the list of "Top 50 Mortgage Originators in 2008" ("Mortgage Originators List") as reported in *The 2010 Mortgage Market Statistical Annual, Volume I* . Bank of America Mtg. & Affiliates, NC is excluded as its holding company is Bank of America. Countrywide Financial, CA is excluded as it is the holding company for Countrywide Bank, FSB.

[8] Comparable companies are entities in the list of "Top 50 Mortgage Servicers in 2008" ("Mortgage Servicers") as reported in *The 2011 Mortgage Market Statistical Annual, Volume I* . Bank of America Mtg. & Affiliates, NC, is excluded as its holding company is Bank of America.

[9] The companies or groups of companies are from the Property and Casualty Insurance companies listed in the "Top 125 Property and Casualty Insurance Companies by Premiums Written" in *The 2008 Market Share Reports for Property/Casualty Insurance Groups and Companies* , published by the NAIC, that had publicly traded holding companies as of September 30, 2008, as identified from *Capital IQ* . Berkshire Hathaway Group and Universal Insurance Holding Group are not included due to insufficient data.

[10] The companies or groups of companies are from the Life and Fraternal Insurance companies listed in the "Top 125 Life and Fraternal Insurance Groups and Companies by Premiums Written" in *The 2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies* , published by the NAIC, that had publicly traded holding companies as of September 30, 2008, as identified from *Capital IQ* . None of the fraternal insurance companies had publicly traded holding companies.

Exhibit 36A

Selected Comparable OTS Thrifts with Financial Data Available as of 8/15/07 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examination Council* ; Selected Financial Filings; *The 2010 Mortgage Market Statistical Annual, Volume I*

(Dollars in Millions)

Thrift Name	Holding Company [2]	Holding Company Assets [3]	Bank Assets [3]	Bank/Holding Asset Ratio [3]	Holding Company: Book Value of Common Equity [3]	Holding Company: Market Value of Common Equity [3]	Holding Company: Market-to-Book Value Ratio of Common Equity [3]	Holding Company: Return on Common Equity [3]
		a	*b*	*c = b / a*	*d*	*e*	*f = e / d*	
Sovereign Bank	Sovereign Bancorp Inc.	$82,737	$82,690	99.94%	$8,585	$7,949	0.93	3.14%
Hudson City Savings Bank	Hudson City Bancorp, Inc.	$39,691	$39,692	100.00%	$4,653	$6,406	1.38	5.73%
E*TRADE Bank	E*TRADE Financial Corporation	$62,975	$57,471	91.26%	$4,334	$5,890	1.36	15.44%
Astoria Federal Savings and Loan Association	Astoria Financial Corporation	$21,650	$21,632	99.92%	$1,195	$2,138	1.79	10.72%
Flagstar Bank, FSB	Flagstar Bancorp Inc.	$16,179	$16,147	99.80%	$770	$632	0.82	6.11%
BankUnited, FSB	BankUnited Financial Corporation	$14,489	$14,479	99.94%	$806	$525	0.65	13.22%
Downey Savings and Loan Association, F.A.	Downey Financial Corp.	$14,903	$14,902	99.99%	$1,464	$1,265	0.86	15.02%
Washington Federal Savings and Loan Association	Washington Federal Inc.	$9,986	$9,989	100.03%	$1,295	$2,106	1.63	10.87%
Capitol Federal Savings Bank	Capitol Federal Financial, Inc.	$7,824	$7,858	100.43%	$870	$2,410	2.77	4.25%
First Federal Bank of California, a Federal Savings Bank	FirstFed Financial Corp.	$7,669	$7,669	99.99%	$724	$603	0.83	21.69%
Investors Savings Bank	Investors Bancorp Inc.	$5,601	$5,598	99.95%	$843	$1,400	1.66	1.03%
AnchorBank, fsb	Anchor BanCorp Wisconsin, Inc.	$4,533	$4,464	98.49%	$332	$510	1.54	11.74%
TrustCo Bank	TrustCo Bank Corp. NY	$3,374	$3,379	100.13%	$230	$738	3.21	17.67%
Wilmington Savings Fund Society, FSB	WSFS Financial Corp.	$3,018	$3,015	99.88%	$201	$365	1.81	15.23%
TierOne Bank	TierOne Corp.	$3,495	$3,493	99.95%	$368	$343	0.93	10.88%
Superior Bank	Superior Bankcorp	$2,470	$2,443	98.91%	$279	$317	1.13	6.91%
ViewPoint Bank	ViewPoint Financial Group	$1,605	$1,605	100.00%	$210	$383	1.82	5.31%
First Federal Bank of the Midwest	First Defiance Financial Corp.	$1,541	$1,531	99.35%	$165	$183	1.11	8.97%
North American Savings Bank, F.S.B.	NASB Financial Inc.	$1,536	$1,515	98.64%	$149	$252	1.69	11.80%
Comparable Thrifts								
Minimum		$1,536	$1,515	91.26%	$149	$183	0.65	1.03%
Median		$7,669	$7,669	99.94%	$770	$632	1.38	10.87%
Mean		$16,067	$15,767	99.30%	$1,446	$1,811	1.47	10.30%
Maximum		$82,737	$82,690	100.43%	$8,585	$7,949	3.21	21.69%
Sample Size		19	19	19	19	19	19	19

Note:

[1] Comparable companies are thrifts in the list of 50 "Largest OTS-Regulated Thrift Mortgage Lenders in 2008" ("OTS Thrifts List") as reported in *The 2010 Mortgage Market Statistical Annual, Volume I* that comprise at least 90% of the total assets of their publicly traded holding companies. All but one thrift comprise at least 95% of the total assets of their publicly traded holding companies. Countrywide Bank, FSB is ranked first in the OTS thrifts list. Comparable holding companies for which balance sheet or income statement data are not available for a fiscal period ended after May 15, 2007, are excluded. Comparable companies for which market value of equity of the corresponding holding company is not available as of August 15, 2007, are excluded.

[2] Holding company as of May 15, 2007, and August 15, 2007, are assumed to be the same as the holding company as of September 30, 2008, as identified from the *National Information Center (NIC) website of the Federal Financial Institutions Examination Council (FFIEC)* and *Capital IQ* . First Place Bank and its holding company First Place Financial Corp. are excluded from this August 15, 2007, valuation analysis due to lack of information regarding their corporate structure.

[3] See Appendix 3 for variable definitions.

Exhibit 36B

Selected Comparable Mortgage Originators with Financial Data Available as of 8/15/07 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examination Council* ; Selected Financial Filings; *The 2010 Mortgage Market Statistical Annual, Volume I*

(Dollars in Millions)

			Holding Company				
Mortgage Originator Name	**Holding Company [2]**		**Total Assets [3]**	**Book Value of Common Equity [3]**	**Market Value of Common Equity [3]**	**Market-to-Book Value Ratio of Common Equity [3]**	**Return on Common Equity [3]**
				a	*b*	*c = b / a*	
HSBC Mortgage Corp., NY	HSBC Holdings PLC	[4]	$2,150,441	$119,780	$200,913	1.68	13.88%
HSBC Finance, IL	HSBC Holdings PLC	[4]	$2,150,441	$119,780	$200,913	1.68	13.88%
Chase Home Finance, NJ	JPMorgan Chase & Co.		$1,458,042	$119,211	$145,508	1.22	13.50%
ING Bank, DE	ING Groep NV		$1,782,655	$51,565	$84,622	1.64	19.02%
Citi, MO	Citigroup, Inc.		$2,220,866	$127,154	$226,889	1.78	17.65%
American General Finance/AIG, DE	American International Group, Inc.		$1,033,866	$104,330	$162,121	1.55	17.21%
Merrill Lynch	Merrill Lynch		$1,076,324	$37,567	$59,420	1.58	22.32%
Wachovia Corporation, NC	Wachovia Corporation		$719,922	$69,266	$86,701	1.25	17.25%
Wells Fargo & Company, IA	Wells Fargo & Company		$539,865	$47,346	$112,206	2.37	19.70%
MetLife Home Loans, TX	Metlife, Inc.		$552,564	$33,554	$44,320	1.32	13.78%
Washington Mutual, WA	Washington Mutual Inc.		$312,219	$23,718	$28,160	1.19	11.82%
US Bank Home Mortgage, MN	U.S. Bancorp		$222,530	$19,330	$51,241	2.65	21.45%
SunTrust Mortgage Inc., VA	Suntrust Banks, Inc.		$180,314	$16,869	$26,899	1.59	10.94%
Capital One Financial Corp., OH	Capital One Financial Corp.		$145,938	$25,187	$25,987	1.03	14.43%
Regions Financial Corp., AL	Regions Financial Corp.		$137,622	$19,696	$20,470	1.04	15.25%
National City Mortgage Co., OH	National City Corporation		$140,636	$12,147	$15,047	1.24	15.37%
BB&T Mortgage, NC	BB&T Corporation		$127,577	$12,125	$20,599	1.70	14.23%
Fifth Third Bank, OH	Fifth Third Bancorp		$101,390	$9,182	$20,007	2.18	10.85%
Sovereign Bank, PA	Sovereign Bancorp Inc.		$82,737	$8,585	$7,949	0.93	3.14%
M&T Bank Corp., NY	M&T Bank Corporation	[5]	$57,869	$6,175	$10,777	1.75	12.41%
Huntington Mortgage Group, OH	Huntington Bancshares Incorporated		$36,421	$3,064	$6,049	1.97	9.76%
Hudson City Savings, NJ	Hudson City Bancorp, Inc.		$39,691	$4,653	$6,406	1.38	5.73%
E*Trade Financial, CA	E*TRADE Financial Corporation		$62,975	$4,334	$5,890	1.36	15.44%
First Horizon Home Loans, TX	First Horizon National Corporation		$38,394	$2,463	$3,584	1.45	9.66%
Astoria Federal Savings, NY	Astoria Financial Corporation		$21,650	$1,195	$2,138	1.79	10.72%
Flagstar Bank, MI	Flagstar Bancorp Inc.		$16,179	$770	$632	0.82	6.11%
Downey Financial Corp., CA	Downey Financial Corp.		$14,903	$1,464	$1,265	0.86	15.02%
PHH Mortgage, NJ	PHH Corporation		$11,246	$1,540	$1,342	0.87	2.10%
DHI Mortgage (DR Horton)	DR Horton Inc.		$12,494	$5,678	$4,938	0.87	12.34%
Pulte Mortgage Corp., MI	PulteGroup, Inc.		$11,952	$5,970	$4,325	0.72	3.23%
CTX Mortgage, TX	Centex Corporation		$12,445	$4,793	$3,850	0.80	5.58%
TierOne Bank, NE	TierOne Corp.		$3,495	$368	$343	0.93	10.88%
IndyMac, CA	IndyMac Bancorp Inc.		$31,659	$2,050	$1,400	0.68	14.20%
Lehman Brothers, NY	Lehman Brothers Holdings Inc.		$605,861	$20,034	$27,373	1.37	23.81%

Exhibit 36B - Continued

Selected Comparable Mortgage Originators with Financial Data Available as of 8/15/07 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examination Council* ; Selected Financial Filings; *The 2010 Mortgage Market Statistical Annual, Volume I*
(Dollars in Millions)

Comparable Mortgage Originators	**Total Assets [3]**	**Book Value of Common Equity [3]**	**Market Value of Common Equity [3]**	**Market-to-Book Value Ratio of Common Equity [3]**	**Return on Common Equity [3]**
Minimum	$3,495	$368	$343	0.68	2.10%
Median	$127,577	$12,125	$20,007	1.36	13.78%
Mean	$423,113	$27,914	$43,011	1.38	12.99%
Maximum	$2,220,866	$127,154	$226,889	2.65	23.81%
Sample Size	33	33	33	33	33

Note:

[1] Comparable companies are mortgage originators in the list of "Top 50 Mortgage Originators in 2008" ("Mortgage Originators List") as reported in *The 2010 Mortgage Market Statistical Annual, Volume I* . Comparable holding companies for which balance sheet or income statement data are not available for a fiscal period ended after May 15, 2007, are excluded. Comparable companies for which market value of equity of the corresponding holding company is not available as of August 15, 2007, are also excluded. Bank of America Mtg & Affiliates, NC is excluded as its holding company is Bank of America. Countrywide Financial, CA is excluded as it is the holding company for Countrywide Bank, FSB.

[2] Holding company as of May 15, 2007, and August 15, 2007, are assumed to be the same as the holding company as of September 30, 2008, as identified from the *National Information Center (NIC) website of the Federal Financial Institutions Examination Council (FFIEC)* and *Capital IQ* .

[3] See Appendix 3 for variable definitions.

[4] Two HSBC Holdings PLC subsidiaries (HSBC Mortgage Corp., NY and HSBC Finance, IL) are in the listed originators. HSBC Holdings PLC data is only included once in the summary statistics of the holding level data and the market-to-book value ratios of common equity.

[5] M&T Bank Corp.'s holding company is Allied Irish Banks, PLC. M&T Bank Corp. is publicly traded, hence the market-to-book value ratio represents M&T Bank Corp.'s financial data.

Exhibit 36C

Selected Comparable Mortgage Servicers with Financial Data Available as of 8/15/07 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examinations Council* ;
The 2011 Mortgage Market Statistical Annual, Volume I
(Dollars in Millions)

Mortgage Servicer Name	Holding Company [2]	Total Assets [3]	Book Value of Common Equity [3]	Market Value of Common Equity [3]	Market-to-Book Value Ratio of Common Equity [3]	Return on Common Equity [3]
			a	*b*	*c = b / a*	
BB&T Mortgage, NC	BB&T Corporation	$127,577	$12,125	$20,599	1.70	14.23%
Goldman Sachs Bank USA, NY (Litton)	The Goldman Sachs Group, Inc.	$943,196	$35,359	$71,715	2.03	33.57%
CitiMortgage Inc., MO	Citigroup Inc.	$2,220,866	$127,154	$226,889	1.78	17.65%
First Horizon Home Loans, TX	First Horizon National Corporation	$38,394	$2,463	$3,584	1.45	9.66%
HSBC North America, IL	HSBC Holdings plc	$2,150,441	$119,780	$200,913	1.68	13.88%
IndyMac FSB, CA	IndyMac Bancorp, Inc.	$31,659	$2,050	$1,400	0.68	14.20%
Chase Home Finance, NJ	JPMorgan Chase & Co.	$1,458,042	$119,211	$145,508	1.22	13.50%
Lehman Brothers Bank FSB, DE (Aurora)	Lehman Brothers Holdings Inc.	$605,861	$20,034	$27,373	1.37	23.81%
MetLife Home Loans, NY	MetLife, Inc.	$552,564	$33,554	$44,320	1.32	13.78%
National City Mortgage Co., OH	National City Corporation	$140,636	$12,147	$15,047	1.24	15.37%
PHH Mortgage, NJ	PHH Corporation	$11,246	$1,540	$1,342	0.87	2.10%
Sun Trust Mortgage Inc., VA	SunTrust Banks, Inc.	$180,314	$16,869	$26,899	1.59	10.94%
US Bank Home Mortgage, MN	U.S. Bancorp	$222,530	$19,330	$51,241	2.65	21.45%
HomEq Servicing Corporation, CA	Wachovia Corporation	$719,922	$69,266	$86,701	1.25	17.25%
Wells Fargo & Company, IA	Wells Fargo & Company	$539,865	$47,346	$112,206	2.37	19.70%
Flagstar Bank, MI	Flagstar Bancorp, Inc.	$16,179	$770	$632	0.82	6.11%
Fifth Third Bank, OH	Fifth Third Bancorp	$101,390	$9,182	$20,007	2.18	10.85%
Merrill Lynch B&T FSB, NY (Home Loan Services)	Merrill Lynch & Co., Inc.	$1,076,324	$37,567	$59,420	1.58	22.32%
Regions Financial Corp., AL	Regions Financial Corporation	$137,622	$19,696	$20,470	1.04	15.25%
Sovereign Savings Bank, PA	Sovereign Bancorp, Inc.	$82,737	$8,585	$7,949	0.93	3.14%
Ocwen Financial Corporation, FL	Ocwen Financial Corporation	$2,113	$586	$489	0.83	11.31%
Capital One Financial (GreenPoint Mortgage), VA	Capital One Financial Corporation	$145,938	$25,187	$25,987	1.03	14.43%
M&T Mortgage, NY	M&T Bank Corporation	$57,869	$6,175	$10,777	1.75	12.41%
Hudson City Savings, NJ	Hudson City Bancorp, Inc.	$39,691	$4,653	$6,406	1.38	5.73%
Huntington Bancshares Inc., OH	Huntington Bancshares Incorporated	$36,421	$3,064	$6,049	1.97	9.76%
PNC Bank, NA, PA	The PNC Financial Services Group, Inc.	$125,651	$14,504	$23,072	1.59	14.27%
Saxon Mortgage, VA (Morgan Stanley)	Morgan Stanley	$1,199,993	$38,411	$59,606	1.55	25.52%
E*Trade Financial, CA	E*Trade Financial Corporation	$62,975	$4,334	$5,890	1.36	15.44%
American General Finance, IN	American International Group, Inc.	$1,033,866	$104,330	$162,121	1.55	17.21%
Banco Popular de Puerto Rico	Popular, Inc.	$46,985	$3,510	$3,182	0.91	8.75%
Keybank NA, OH	KeyCorp	$94,076	$7,701	$12,375	1.61	13.52%
Astoria Federal Savings, NY	Astoria Financial Corporation	$21,650	$1,195	$2,138	1.79	10.72%
Citizens Financial Group, Inc., RI	The Royal Bank of Scotland Group plc	$2,028,414	$83,330	$105,811	1.27	16.44%
ING Bank, FSB, DE	ING Groep NV	$1,782,655	$51,565	$84,622	1.64	19.02%
Bancwest Corp., HI	BNP Paribas SA	$2,247,657	$70,540	$92,684	1.31	15.79%
Select Portfolio Servicing, UT (Credit Suisse)	Credit Suisse Group	$1,155,433	$35,801	$67,791	1.89	27.05%

Exhibit 36C - Continued

Selected Comparable Mortgage Servicers with Financial Data Available as of 8/15/07 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examinations Council* ;
The 2011 Mortgage Market Statistical Annual, Volume I
(Dollars in Millions)

Comparable Mortgage Servicers	**Total Assets [3]**	**Book Value of Common Equity [3]**	**Market Value of Common Equity [3]**	**Market-to-Book Value Ratio of Common Equity [3]**	**Return on Common Equity [3]**
Minimum	$2,113	$586	$489	0.68	2.10%
Median	$143,287	$18,099	$24,530	1.50	14.25%
Mean	$595,521	$32,470	$50,367	1.48	14.89%
Maximum	$2,247,657	$127,154	$226,889	2.65	33.57%
Sample Size	36	36	36	36	36

Note:

[1] Comparable companies are mortgage servicers in the list of "Top 50 Mortgage Servicers in 2008" ("Mortgage Servicers") as reported in *The 2011 Mortgage Market Statistical Annual, Volume I* . Comparable holding companies for which balance sheet or income statement data are not available for a fiscal period ended after May 15, 2007, are excluded. Comparable companies for which market values of equity are not available for the corresponding holding companies as of August 15, 2007, are also excluded. Bank of America Mtg. & Affiliates, NC, is excluded as its holding company is Bank of America.

[2] Holding companies as of May 15, 2007, and August 15, 2007, are assumed to be the same as the holding companies as of September 30, 2008, as identified from the *National Information Center (NIC) website of the Federal Financial Institutions Examination Council (FFIEC)* and *Capital IQ* .

[3] See Appendix 3 for variable definitions.

Exhibit 36D

Comparable Property and Casualty Insurance Companies [1]

8/15/07

Source: *AM Best Credit Report* , Balboa Insurance Company, published July 17, 2008; *Capital IQ* ;
NAIC *2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
Allianz Insurance Group	$1,501,243	$65,472	$93,020	1.42	19.24%
American International Group	$1,033,866	$104,330	$162,121	1.55	17.21%
Wells Fargo Group	$539,865	$47,346	$112,206	2.37	19.70%
Metropolitan Group	$552,564	$33,554	$44,320	1.32	13.78%
Hartford Fire and Casualty Group	$345,646	$18,648	$27,184	1.46	16.50%
Munich Re Group	$295,812	$33,589	$37,494	1.12	12.88%
Swiss Re Group	$262,696	$24,098	$28,750	1.19	16.02%
AllState Insurance Group	$160,537	$21,560	$30,818	1.43	23.27%
Travelers Group	$115,361	$25,203	$32,911	1.31	16.65%
Genworth Fin Group	$111,936	$12,966	$12,754	0.98	9.75%
Ameriprise Financial Group	$108,132	$7,600	$12,912	1.70	10.59%
Ace Limited Group	$71,020	$14,627	$17,851	1.22	16.48%
Commerce Inc Group	$47,994	$5,561	$10,064	1.81	29.15%
CNA Insurance Group	$60,737	$10,011	$11,444	1.14	13.07%
Chubb and Son Inc Group	$51,733	$13,818	$19,174	1.39	18.43%
XL Amer Group	$60,197	$11,522	$13,226	1.15	16.76%
MBIA Group	$43,154	$6,784	$6,609	0.97	10.56%
Fairfax Fin Group	$26,823	$2,988	$3,302	1.11	11.48%
American Financial Group	$25,696	$2,970	$3,195	1.08	17.52%
Assurant Inc Group	$25,773	$3,814	$5,845	1.53	18.93%
Delek Group	$17,663	$958	$2,661	2.78	41.23%
Progressive Group	$21,074	$5,503	$15,951	2.90	20.76%
WR Berkley Corp Group	$16,627	$3,571	$5,111	1.43	23.78%
White Mountains Group	$19,184	$4,575	$5,812	1.27	10.91%
Everest Reins Holding Group	$17,484	$5,338	$5,943	1.11	17.93%
Arch Insurance Group	$15,294	$3,704	$4,733	1.28	17.91%
Axis Capital Group	$14,929	$4,194	$5,285	1.26	17.38%
Cincinnati Financial Group	$18,264	$6,826	$6,825	1.00	11.33%
Old Republic Group	$12,706	$4,518	$4,166	0.92	9.75%
Markel Corp Group	$10,197	$2,449	$4,648	1.90	22.51%
The Hanover Insurance Group	$9,806	$2,099	$2,135	1.02	10.55%
Unitrin Group	$9,758	$2,295	$2,654	1.16	11.20%
MGIC Group	$6,799	$4,400	$2,714	0.62	7.44%
HCC Insurance Holdings Group	$7,940	$2,195	$3,003	1.37	18.96%
Radian Group	$8,118	$4,143	$1,332	0.32	9.57%
Allied World Assur Holding Group	$8,376	$2,418	$2,803	1.16	19.36%
Endurance Group	$7,226	$2,372	$2,387	1.01	19.38%
Fidelity National Fin Group	$7,366	$3,554	$4,058	1.14	16.65%
Alleghany Group	$6,339	$2,302	$3,368	1.46	13.53%
Argonaut Group	$3,850	$860	$1,290	1.50	13.80%
Horace Mann Group	$6,477	$653	$791	1.21	15.55%
Amtrust Group	$1,654	$379	$803	2.12	20.76%
PMI Group	$5,709	$3,760	$2,381	0.63	9.62%
Selective Insurance Group	$4,852	$1,003	$1,067	1.06	12.82%
Philadelphia Consolidated Holding Group	$3,755	$1,324	$2,526	1.91	32.34%
Mercury General Group	$4,371	$1,790	$2,876	1.61	12.79%
Kingsway Group	$4,530	$988	$973	0.98	8.69%
Navigators Group	$3,093	$588	$797	1.35	15.47%
Harleysville Group	$2,989	$716	$924	1.29	12.82%
Erie Insurance Group	$3,022	$1,204	$3,482	2.89	18.20%

Exhibit 36D - Continued

Comparable Property and Casualty Insurance Companies [1]

8/15/07

Source: *AM Best Credit Report* , Balboa Insurance Company, published July 17, 2008; *Capital IQ* ;
NAIC *2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
United Fire and Casualty Group	$2,760	$734	$1,046	1.43	17.05%
Pennsylvania Manufacturers Group	$2,679	$411	$298	0.73	1.52%
Zenith National Insurance Group	$2,745	$1,024	$1,486	1.45	34.03%
RLI Ins Group	$2,808	$784	$1,332	1.70	22.69%
Infinity Property and Casualty Insurance Group	$2,159	$682	$777	1.14	11.85%
Meadowbrook Insurance Group	$1,018	$219	$324	1.48	11.58%
Safety Group	$1,418	$530	$537	1.01	20.76%
Tower Group	$1,297	$290	$566	1.95	24.21%
EMC Insurance Company Group	$1,286	$333	$333	1.00	16.28%
Universal Insurance Co Group	$556	$52	$191	3.70	337.41%
Comparable P&C Insurance Companies					
Minimum	$556	$52	$191	0.32	1.52%
Median	$10,001	$3,271	$3,335	1.28	16.57%
Mean	$95,649	$9,203	$13,260	1.41	21.97%
Maximum	$1,501,243	$104,330	$162,121	3.70	337.41%
Sample Size	60	60	60	60	60

Note:

[1] The companies or groups of companies are from the Property and Casualty Insurance companies listed in the "Top 125 Property and Casualty Insurance Companies by Premiums Written" in *The 2008 Market Share Reports for Property/Casualty Insurance Groups and Companies* , published by the NAIC, that had publicly traded holding companies as of September 30, 2008, as identified from *Capital IQ* . Comparable companies for which balance sheet or income statement data for the corresponding holding companies are not available for a fiscal period ended after May 15, 2007, are excluded. Comparable companies for which market value of equity of the corresponding holding companies is not available as of August 15, 2007, are excluded. The holding companies of the insurance companies are assumed to be the same as of September 30, 2008, August 15, 2007, and May 15, 2007. Berkshire Hathaway Group and Universal Insurance Holding Group are not included due to insufficient data.

[2] See Appendix 3 for variable definitions.

Exhibit 36E

Comparable Life and Fraternal Insurance Companies [1]

8/15/07

Source: *AM Best Credit Report* , Balboa Life Insurance Company, published May 23, 2008; *Capital IQ* ;
NAIC *2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
HSBC Group	$2,150,441	$119,780	$200,913	1.68	13.88%
ING Amer Insurance Holding Group	$1,782,655	$51,565	$84,622	1.64	19.02%
Citigroup	$2,220,866	$127,154	$226,889	1.78	17.65%
Allianz Insurance Group	$1,501,243	$65,472	$93,020	1.42	19.24%
AXA Insurance Group	$995,820	$61,778	$78,891	1.28	16.89%
Goldman Sachs Group	$943,196	$35,359	$71,715	2.03	33.57%
American International Group	$1,033,866	$104,330	$162,121	1.55	17.21%
Aviva Group	$602,868	$24,862	$35,508	1.43	12.93%
Banner Life Group	$483,538	$11,062	$17,453	1.58	30.29%
Metropolitan Group	$552,564	$33,554	$44,320	1.32	13.78%
Prudential of Amer Group	$461,813	$22,943	$38,853	1.69	16.50%
Aegon US Holding Group	$443,476	$29,002	$28,358	0.98	7.80%
Hartford Fire and Casualty Group	$345,646	$18,648	$27,184	1.46	16.50%
Old Mutual US Life Holding Group	$271,740	$13,381	$16,821	1.26	18.12%
Swiss Re Group	$262,696	$24,098	$28,750	1.19	16.02%
Lincoln National Group	$187,650	$11,835	$15,469	1.31	11.59%
John Hancock Group	$169,384	$23,320	$55,916	2.40	15.17%
AllState Insurance Group	$160,537	$21,560	$30,818	1.43	23.27%
Principal Financial Group	$150,758	$7,987	$14,094	1.76	12.83%
Great West Group	$110,191	$9,258	$28,758	3.11	19.39%
Genworth Financial Group	$111,936	$12,966	$12,754	0.98	9.75%
Nestle SA Group	$86,664	$43,195	$155,789	3.61	19.84%
Sun Life Assur Co of CN Group	$109,316	$14,963	$26,070	1.74	11.87%
Ameriprise Financial Group	$108,132	$7,600	$12,912	1.70	10.59%
Ace Limited Group	$71,020	$14,627	$17,851	1.22	16.48%
American Family Corp Group	$60,114	$8,190	$25,282	3.09	20.37%
CNA Insurance Group	$60,737	$10,011	$11,444	1.14	13.07%
UnitedHealth Group	$53,154	$21,065	$65,078	3.09	24.23%
Unumprovident Corp Group	$52,071	$7,372	$8,598	1.17	5.97%
Wellpoint Inc	$54,194	$24,989	$47,051	1.88	13.72%
Protective Life Insurance Group	$40,237	$2,294	$2,792	1.22	13.38%
Cigna Health Group	$41,526	$4,009	$13,362	3.33	20.41%
Aetna Group	$49,572	$9,681	$24,107	2.49	16.93%
Conseco Group	$33,438	$4,375	$2,719	0.62	1.04%
Phoenix Cos Group	$29,535	$2,273	$1,442	0.63	7.02%
American Financial Group	$25,696	$2,970	$3,195	1.08	17.52%
Assurant Inc Group	$25,773	$3,814	$5,845	1.53	18.93%
American Amicable Group	$23,174	$1,519	$2,844	1.87	15.32%
White Mountains Group	$19,184	$4,575	$5,812	1.27	10.91%
Stancorp Financial Group	$14,742	$1,440	$2,313	1.61	15.48%
Cincinnati Financial Group	$18,264	$6,826	$6,825	1.00	11.33%
Liberty National Group	$15,098	$3,248	$5,515	1.70	15.54%

Exhibit 36E - Continued

Comparable Life and Fraternal Insurance Companies [1]

8/15/07

Source: *AM Best Credit Report* , Balboa Life Insurance Company, published May 23, 2008; *Capital IQ* ;
NAIC *2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	**Total Assets [2]**	**Book Value of Common Equity [2]**	**Market Value of Common Equity [2]**	**Market-to-Book Value Ratio of Common Equity [2]**	**Return on Common Equity [2]**
		a	***b***	***c = b / a***	
Humana Group	$13,335	$3,375	$10,523	3.12	22.15%
Unitrin Group	$9,758	$2,295	$2,654	1.16	11.20%
Trustmark Insurance Co Group	$8,829	$886	$1,421	1.60	14.28%
National Western Life Insurance Co	$6,764	$960	$939	0.98	8.20%
Delphi Financial Group	$5,776	$1,143	$1,869	1.64	13.80%
Horace Mann Group	$6,477	$653	$791	1.21	15.55%
Kansas City Life Insurance Group	$4,355	$653	$518	0.79	5.56%
Erie Insurance Group	$3,022	$1,204	$3,482	2.89	18.20%
Universal Amer Fin Corp Group	$3,271	$747	$1,196	1.60	12.01%
Citizens Group	$724	$142	$282	1.99	10.23%
Comparable Life and Fraternal Insurance Companies					
Minimum	$724	$142	$282	0.62	1.04%
Median	$60,426	$9,469	$14,781	1.57	15.40%
Mean	$307,631	$20,019	$34,303	1.68	15.24%
Maximum	$2,220,866	$127,154	$226,889	3.61	33.57%
Sample Size	52	52	52	52	52

Note:

[1] The companies or groups of companies are from the Life and Fraternal Insurance companies listed in the "Top 125 Life and Fraternal Insurance Groups and Companies by Premiums Written" in *The 2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies* , published by the NAIC, that had publicly traded holding companies as of September 30, 2008, as identified from *Capital IQ* . Comparable companies for which balance sheet or income statement data for the corresponding holding companies are not available for a fiscal period ended after May 15, 2007, are excluded. Comparable companies for which market value of equity of the corresponding holding companies is not available as of August 15, 2007, are excluded. The holding companies of the insurance companies are assumed to be the same as of September 30, 2008, August 15, 2007, and May 15, 2007. None of the fraternal insurance companies had publicly traded holding companies.

[2] See Appendix 3 for variable definitions.

Exhibit 37A

Selected Comparable OTS Thrifts with Financial Data Available as of 3/15/07 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examination Council* ; Selected Financial Filings; *The 2010 Mortgage Market Statistical Annual, Volume I*
(Dollars in Millions)

Thrift Name	Holding Company [2]	Holding Company Assets [3]	Bank Assets [3]	Bank/Holding Asset Ratio [3]	Holding Company: Book Value of Common Equity [3]	Holding Company: Market Value of Common Equity [3]	Holding Company: Market-to-Book Value Ratio of Common Equity [3]	Holding Company: Return on Common Equity [3]
		a	*b*	*c = b / a*	*d*	*e*	*f = e / d*	
Sovereign Bank	Sovereign Bancorp Inc.	$89,642	$89,506	99.85%	$8,449	$11,598	1.37	2.12%
Hudson City Savings Bank	Hudson City Bancorp, Inc.	$35,507	$35,508	100.00%	$4,930	$7,014	1.42	5.53%
Astoria Federal Savings and Loan Association	Astoria Financial Corporation	$21,555	$21,511	99.80%	$1,216	$2,468	2.03	12.29%
People's United Bank	People's United Financial Inc.	$10,687	$10,700	100.12%	$1,340	$6,079	4.54	8.71%
Flagstar Bank, FSB	Flagstar Bancorp Inc.	$15,497	$15,465	99.79%	$812	$806	0.99	9.39%
BankUnited, FSB	BankUnited Financial Corporation	$13,811	$13,800	99.92%	$782	$788	1.01	17.27%
Downey Savings and Loan Association, F.A.	Downey Financial Corp.	$16,209	$16,209	100.00%	$1,402	$1,807	1.29	17.58%
Washington Federal Savings and Loan Association	Washington Federal Inc.	$9,151	$9,151	100.00%	$1,280	$2,035	1.59	11.24%
Capitol Federal Savings Bank	Capitol Federal Financial, Inc.	$8,206	$8,228	100.27%	$867	$2,750	3.17	5.32%
First Federal Bank of California, a Federal Savings Bank	FirstFed Financial Corp.	$9,296	$9,295	99.99%	$705	$915	1.30	24.52%
Investors Savings Bank	Investors Bancorp Inc.	$5,447	$5,437	99.81%	$901	$1,695	1.88	1.98%
AnchorBank, fsb	Anchor BanCorp Wisconsin, Inc.	$4,506	$4,392	97.47%	$337	$613	1.82	14.02%
TrustCo Bank	TrustCo Bank Corp. NY	$3,161	$3,155	99.81%	$240	$719	3.00	18.49%
Wilmington Savings Fund Society, FSB	WSFS Financial Corp.	$2,997	$2,994	99.89%	$212	$430	2.03	15.85%
TierOne Bank	TierOne Corp.	$3,431	$3,430	99.96%	$353	$452	1.28	13.76%
Superior Bank	Superior Bankcorp	$2,439	$2,410	98.79%	$276	$384	1.39	4.73%
ViewPoint Bank	ViewPoint Financial Group	$1,577	$1,530	97.02%	$215	$424	1.97	3.85%
First Federal Bank of the Midwest	First Defiance Financial Corp.	$1,528	$1,521	99.53%	$160	$200	1.25	9.53%
North American Savings Bank, F.S.B.	NASB Financial Inc.	$1,560	$1,539	98.70%	$160	$303	1.90	13.56%
Comparable Thrifts								
Minimum		$1,528	$1,521	97.02%	$160	$200	0.99	1.98%
Median		$8,206	$8,228	99.85%	$782	$806	1.59	11.24%
Mean		$13,485	$13,462	99.51%	$1,297	$2,183	1.85	11.04%
Maximum		$89,642	$89,506	100.27%	$8,449	$11,598	4.54	24.52%
Sample Size		19	19	19	19	19	19	19

Note:

[1] Comparable companies are thrifts in the list of 50 "Largest OTS-Regulated Thrift Mortgage Lenders in 2008" ("OTS Thrifts List") as reported in *The 2010 Mortgage Market Statistical Annual, Volume I* that comprise at least 90% of the total assets of their publicly traded holding companies. All thrifts comprise at least 95% of the total assets of their publicly traded holding companies. Countrywide Bank, FSB is ranked first in the OTS thrifts list. Comparable holding companies for which balance sheet or income statement data are not available for a fiscal period ended after December 15, 2006, are excluded. Comparable companies for which market value of equity of the corresponding holding company is not available as of March 15, 2007, are excluded.

[2] Holding company as of December 15, 2006, and March 15, 2007, are assumed to be the same as the holding company as of September 30, 2008, as identified from the *National Information Center (NIC) website of the Federal Financial Institutions Examination Council (FFIEC)* and *Capital IQ* . First Place Bank and its holding company First Place Financial Corp. are excluded from this March 15, 2007, valuation analysis due to lack of information regarding their corporate structure.

[3] See Appendix 3 for variable definitions.

Exhibit 37B

Selected Comparable Mortgage Originators with Financial Data Available as of 3/15/07 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examination Council* ; Selected Financial Filings; *The 2010 Mortgage Market Statistical Annual, Volume I*

(Dollars in Millions)

			Holding Company				
Mortgage Originator Name	**Holding Company [2]**		**Total Assets [3]**	**Book Value of Common Equity [3]**	**Market Value of Common Equity [3]**	**Market-to-Book Value Ratio of Common Equity [3]**	**Return on Common Equity [3]**
				a	*b*	*c = b / a*	
HSBC Mortgage Corp., NY	HSBC Holdings PLC	[4]	$1,860,758	$108,352	$195,628	1.81	14.82%
HSBC Finance, IL	HSBC Holdings PLC	[4]	$1,860,758	$108,352	$195,628	1.81	14.82%
Chase Home Finance, NJ	JPMorgan Chase & Co.		$1,351,520	$115,790	$165,679	1.43	11.49%
ING Bank, DE	ING Groep NV		$1,618,139	$50,493	$86,763	1.72	16.91%
Citi, MO	Citigroup, Inc.		$1,884,318	$118,783	$248,043	2.09	16.63%
American General Finance/AIG, DE	American International Group, Inc.		$979,414	$101,677	$174,436	1.72	15.70%
Merrill Lynch	Merrill Lynch		$841,299	$35,893	$70,880	1.97	16.77%
Wachovia Corporation, NC	Wachovia Corporation		$707,121	$69,716	$105,222	1.51	15.72%
Wells Fargo & Company, IA	Wells Fargo & Company		$481,996	$45,903	$115,211	2.51	19.66%
MetLife Home Loans, TX	Metlife, Inc.		$527,715	$33,797	$46,688	1.38	10.39%
Washington Mutual, WA	Washington Mutual Inc.		$346,288	$26,477	$35,560	1.34	11.50%
US Bank Home Mortgage, MN	U.S. Bancorp		$219,232	$20,197	$61,530	3.05	21.46%
SunTrust Mortgage Inc., VA	Suntrust Banks, Inc.		$182,162	$17,314	$29,542	1.71	10.68%
Capital One Financial Corp., OH	Capital One Financial Corp.		$149,739	$25,235	$30,956	1.23	16.21%
Regions Financial Corp., AL	Regions Financial Corp.		$143,369	$20,701	$25,340	1.22	12.19%
National City Mortgage Co., OH	National City Corporation		$140,191	$14,581	$23,598	1.62	16.99%
BB&T Mortgage, NC	BB&T Corporation		$121,351	$11,745	$22,048	1.88	13.99%
Fifth Third Bank, OH	Fifth Third Bancorp		$100,669	$10,013	$21,832	2.18	11.17%
Sovereign Bank, PA	Sovereign Bancorp Inc.		$89,642	$8,449	$11,598	1.37	2.12%
M&T Bank Corp., NY	M&T Bank Corporation	[5]	$57,065	$6,281	$12,626	2.01	13.01%
Huntington Mortgage Group, OH	Huntington Bancshares Incorporated		$35,329	$3,014	$5,233	1.74	12.65%
Hudson City Savings, NJ	Hudson City Bancorp, Inc.		$35,507	$4,930	$7,014	1.42	5.53%
E*Trade Financial, CA	E*TRADE Financial Corporation		$53,739	$4,196	$9,218	2.20	16.89%
First Horizon Home Loans, TX	First Horizon National Corporation		$37,918	$2,462	$5,158	2.09	9.58%
Astoria Federal Savings, NY	Astoria Financial Corporation		$21,555	$1,216	$2,468	2.03	12.29%
Flagstar Bank, MI	Flagstar Bancorp Inc.		$15,497	$812	$806	0.99	9.39%
Downey Financial Corp., CA	Downey Financial Corp.		$16,209	$1,402	$1,807	1.29	17.58%
DHI Mortgage (DR Horton)	DR Horton Inc.		$13,669	$6,525	$7,202	1.10	22.37%
Pulte Mortgage Corp., MI	PulteGroup, Inc.		$13,177	$6,577	$6,818	1.04	13.93%
CTX Mortgage, TX	Centex Corporation		$14,261	$4,901	$5,364	1.09	17.05%
TierOne Bank, NE	TierOne Corp.		$3,431	$353	$452	1.28	13.76%
IndyMac, CA	IndyMac Bancorp Inc.		$29,495	$2,028	$2,124	1.05	22.54%

Exhibit 37B - Continued

Selected Comparable Mortgage Originators with Financial Data Available as of 3/15/07 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examination Council* ; Selected Financial Filings; *The 2010 Mortgage Market Statistical Annual, Volume I*
(Dollars in Millions)

Comparable Mortgage Originators	**Total Assets [3]**	**Book Value of Common Equity [3]**	**Market Value of Common Equity [3]**	**Market-to-Book Value Ratio of Common Equity [3]**	**Return on Common Equity [3]**
Minimum	$3,431	$353	$452	0.99	2.12%
Median	$121,351	$11,745	$22,048	1.62	13.99%
Mean	$390,057	$28,381	$49,576	1.65	14.23%
Maximum	$1,884,318	$118,783	$248,043	3.05	22.54%
Sample Size	31	31	31	31	31

Note:

[1] Comparable companies are mortgage originators in the list of "Top 50 Mortgage Originators in 2008" ("Mortgage Originators List") as reported in *The 2010 Mortgage Market Statistical Annual, Volume I* . Comparable holding companies for which balance sheet or income statement data are not available for a fiscal period ended after December 15, 2006, are excluded. Comparable companies for which market value of equity of the corresponding holding company is not available as of March 15, 2007, are also excluded. Bank of America Mtg & Affiliates, NC is excluded as its holding company is Bank of America. Countrywide Financial, CA is excluded as it is the holding company for Countrywide Bank, FSB.

[2] Holding company as of December 15, 2006, and March 15, 2007, are assumed to be the same as the holding company as of September 30, 2008, as identified from the *National Information Center (NIC) website of the Federal Financial Institutions Examination Council (FFIEC)* and *Capital IQ* .

[3] See Appendix 3 for variable definitions.

[4] Two HSBC Holdings PLC subsidiaries (HSBC Mortgage Corp., NY and HSBC Finance, IL) are in the listed originators. HSBC Holdings PLC data is only included once in the summary statistics of the holding level data and the market-to-book value ratios of common equity.

[5] M&T Bank Corp.'s holding company is Allied Irish Banks, PLC. M&T Bank Corp. is publicly traded, hence the market-to-book value ratio represents M&T Bank Corp.'s financial data.

Exhibit 37C

Selected Comparable Mortgage Servicers with Financial Data Available as of 3/15/07 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examinations Council* ;
The 2011 Mortgage Market Statistical Annual, Volume I
(Dollars in Millions)

Mortgage Servicer Name	Holding Company [2]	Total Assets [3]	Book Value of Common Equity [3]	Market Value of Common Equity [3]	Market-to-Book Value Ratio of Common Equity [3]	Return on Common Equity [3]
			a	*b*	*c = b / a*	
BB&T Mortgage, NC	BB&T Corporation	$121,351	$11,745	$22,048	1.88	13.99%
CitiMortgage Inc., MO	Citigroup Inc.	$1,884,318	$118,783	$248,043	2.09	16.63%
First Horizon Home Loans, TX	First Horizon National Corporation	$37,918	$2,462	$5,158	2.09	9.58%
HSBC North America, IL	HSBC Holdings plc	$1,860,758	$108,352	$195,628	1.81	14.82%
IndyMac FSB, CA	IndyMac Bancorp, Inc.	$29,495	$2,028	$2,124	1.05	22.54%
Chase Home Finance, NJ	JPMorgan Chase & Co.	$1,351,520	$115,790	$165,679	1.43	11.49%
MetLife Home Loans, NY	MetLife, Inc.	$527,715	$33,797	$46,688	1.38	10.39%
National City Mortgage Co., OH	National City Corporation	$140,191	$14,581	$23,598	1.62	16.99%
Sun Trust Mortgage Inc., VA	SunTrust Banks, Inc.	$182,162	$17,314	$29,542	1.71	10.68%
US Bank Home Mortgage, MN	U.S. Bancorp	$219,232	$20,197	$61,530	3.05	21.46%
HomEq Servicing Corporation, CA	Wachovia Corporation	$707,121	$69,716	$105,222	1.51	15.72%
Wells Fargo & Company, IA	Wells Fargo & Company	$481,996	$45,903	$115,211	2.51	19.66%
Flagstar Bank, MI	Flagstar Bancorp, Inc.	$15,497	$812	$806	0.99	9.39%
Fifth Third Bank, OH	Fifth Third Bancorp	$100,669	$10,013	$21,832	2.18	11.17%
Merrill Lynch B&T FSB, NY (Home Loan Services)	Merrill Lynch & Co., Inc.	$841,299	$35,893	$70,880	1.97	16.77%
Regions Financial Corp., AL	Regions Financial Corporation	$143,369	$20,701	$25,340	1.22	12.19%
Sovereign Savings Bank, PA	Sovereign Bancorp, Inc.	$89,642	$8,449	$11,598	1.37	2.12%
Ocwen Financial Corporation, FL	Ocwen Financial Corporation	$2,010	$558	$741	1.33	14.05%
Capital One Financial (GreenPoint Mortgage), VA	Capital One Financial Corporation	$149,739	$25,235	$30,956	1.23	16.21%
M&T Mortgage, NY	M&T Bank Corporation	$57,065	$6,281	$12,626	2.01	13.01%
Hudson City Savings, NJ	Hudson City Bancorp, Inc.	$35,507	$4,930	$7,014	1.42	5.53%
Huntington Bancshares Inc., OH	Huntington Bancshares Incorporated	$35,329	$3,014	$5,233	1.74	12.65%
PNC Bank, NA, PA	The PNC Financial Services Group, Inc.	$101,820	$10,788	$20,592	1.91	14.15%
E*Trade Financial, CA	E*Trade Financial Corporation	$53,739	$4,196	$9,218	2.20	16.89%
American General Finance, IN	American International Group, Inc.	$979,414	$101,677	$174,436	1.72	15.70%
Banco Popular de Puerto Rico	Popular, Inc.	$47,404	$3,433	$4,491	1.31	9.50%
Keybank NA, OH	KeyCorp	$92,337	$7,703	$14,593	1.89	13.52%
Astoria Federal Savings, NY	Astoria Financial Corporation	$21,555	$1,216	$2,468	2.03	12.29%
Citizens Financial Group, Inc., RI	The Royal Bank of Scotland Group plc	$1,707,184	$78,807	$121,333	1.54	16.44%
ING Bank, FSB, DE	ING Groep NV	$1,618,139	$50,493	$86,763	1.72	16.91%
Bancwest Corp., HI	BNP Paribas SA	$1,900,565	$65,332	$92,419	1.41	16.26%
Select Portfolio Servicing, UT (Credit Suisse)	Credit Suisse Group	$1,029,725	$35,735	$73,787	2.06	21.22%
Harris NA, IL	Bank of Montreal	$301,402	$12,462	$29,438	2.36	16.12%

Exhibit 37C - Continued

Selected Comparable Mortgage Servicers with Financial Data Available as of 3/15/07 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examinations Council* ;
The 2011 Mortgage Market Statistical Annual, Volume I
(Dollars in Millions)

Comparable Mortgage Servicers	**Total Assets [3]**	**Book Value of Common Equity [3]**	**Market Value of Common Equity [3]**	**Market-to-Book Value Ratio of Common Equity [3]**	**Return on Common Equity [3]**
Minimum	$2,010	$558	$741	0.99	2.12%
Median	$143,369	$14,581	$25,340	1.72	14.15%
Mean	$511,127	$31,770	$55,668	1.75	14.12%
Maximum	$1,900,565	$118,783	$248,043	3.05	22.54%
Sample Size	33	33	33	33	33

Note:

[1] Comparable companies are mortgage servicers in the list of "Top 50 Mortgage Servicers in 2008" ("Mortgage Servicers") as reported in *The 2011 Mortgage Market Statistical Annual, Volume I* . Comparable holding companies for which balance sheet or income statement data are not available for a fiscal period ended after December 15, 2006, are excluded. Comparable companies for which market values of equity are not available for the corresponding holding companies as of March 15, 2007, are also excluded. Bank of America Mtg. & Affiliates, NC, is excluded as its holding company is Bank of America.

[2] Holding companies as of December 15, 2006, and March 15, 2007, are assumed to be the same as the holding companies as of September 30, 2008, as identified from the *National Information Center (NIC) website of the Federal Financial Institutions Examination Council (FFIEC)* and *Capital IQ* .

[3] See Appendix 3 for variable definitions.

Exhibit 37D

Comparable Property and Casualty Insurance Companies [1]

3/15/07

Source: *AM Best Credit Report* , Balboa Insurance Company, published July 17, 2008; *Capital IQ* ;
NAIC *2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
American International Group	$979,414	$101,677	$174,436	1.72	15.70%
Financial Security Assur Holdings Group	$747,830	$22,069	$32,252	1.46	14.68%
Wells Fargo Group	$481,996	$45,903	$115,211	2.51	19.66%
Metropolitan Group	$527,715	$33,797	$46,688	1.38	10.39%
Zurich Insurance Group	$373,855	$25,860	$39,714	1.54	19.85%
Hartford Fire and Casualty Group	$326,710	$18,876	$30,206	1.60	14.69%
Munich Re Group	$284,851	$34,236	$33,960	0.99	13.54%
Swiss Re Group	$238,829	$25,321	$30,847	1.22	15.00%
AllState Insurance Group	$157,554	$21,846	$36,902	1.69	23.08%
Travelers Group	$113,761	$25,006	$33,712	1.35	16.04%
Genworth Fin Group	$110,871	$13,330	$15,212	1.14	9.01%
Ameriprise Financial Group	$104,172	$7,925	$13,187	1.66	9.44%
Ace Limited Group	$67,135	$13,721	$17,875	1.30	15.68%
Commerce Inc Group	$37,406	$3,088	$10,785	3.49	21.11%
CNA Insurance Group	$60,283	$9,768	$11,405	1.17	12.48%
Chubb and Son Inc Group	$50,277	$13,863	$20,168	1.45	17.76%
XL Amer Group	$59,309	$10,131	$12,306	1.21	14.81%
MBIA Group	$39,763	$7,204	$8,808	1.22	10.75%
QBE Insurance Group	$25,037	$4,953	$20,009	4.04	25.08%
Fairfax Fin Group	$26,577	$2,720	$3,794	1.39	20.16%
American Financial Group	$25,101	$2,929	$3,992	1.36	17.99%
Assurant Inc Group	$25,165	$3,833	$6,457	1.68	17.33%
Delek Group	$12,431	$817	$2,038	2.49	42.84%
Progressive Group	$19,482	$6,847	$15,611	2.28	24.90%
WR Berkley Corp Group	$15,656	$3,335	$6,186	1.85	24.07%
White Mountains Group	$19,444	$4,455	$5,959	1.34	8.99%
Everest Reins Holding Group	$17,108	$5,108	$5,991	1.17	14.97%
Arch Insurance Group	$14,312	$3,590	$4,803	1.34	18.64%
Axis Capital Group	$13,665	$4,412	$5,148	1.17	17.74%
Cincinnati Financial Group	$17,222	$6,808	$7,351	1.08	13.65%
Old Republic Group	$12,612	$4,369	$5,051	1.16	10.56%
Markel Corp Group	$10,088	$2,296	$4,708	2.05	20.28%
The Hanover Insurance Group	$9,857	$1,999	$2,316	1.16	9.00%
Unitrin Group	$9,321	$2,284	$3,012	1.32	11.13%
MGIC Group	$6,622	$4,296	$4,852	1.13	10.43%
HCC Insurance Holdings Group	$7,630	$2,043	$3,382	1.66	18.85%
Radian Group	$7,929	$4,068	$4,429	1.09	13.98%
Allied World Assur Holding Group	$7,621	$2,220	$2,527	1.14	19.71%
Endurance Group	$6,926	$2,290	$2,236	0.98	17.70%
Fidelity National Fin Group	$7,260	$3,474	$5,215	1.50	17.97%
Alleghany Group	$6,179	$2,124	$3,095	1.46	11.37%
Horace Mann Group	$6,330	$657	$873	1.33	15.10%
Amtrust Group	$1,186	$341	$613	1.80	70.84%
PMI Group	$5,320	$3,569	$3,772	1.06	10.81%
Selective Insurance Group	$4,768	$1,077	$1,350	1.25	14.05%
Philadelphia Consolidated Holding Group	$3,439	$1,167	$3,100	2.66	33.27%
Mercury General Group	$4,301	$1,724	$2,856	1.66	12.26%
Kingsway Group	$4,048	$901	$1,010	1.12	10.86%
Navigators Group	$2,957	$551	$842	1.53	14.17%
Harleysville Group	$2,991	$712	$981	1.38	15.91%
Erie Insurance Group	$3,039	$1,162	$3,404	2.93	14.91%
United Fire and Casualty Group	$2,776	$681	$935	1.37	15.68%
Pennsylvania Manufacturers Group	$2,666	$419	$289	0.69	1.01%
Zenith National Insurance Group	$2,768	$941	$1,720	1.83	35.14%

Exhibit 37D - Continued

Comparable Property and Casualty Insurance Companies [1]

3/15/07

Source: *AM Best Credit Report*, Balboa Insurance Company, published July 17, 2008; *Capital IQ*;
NAIC *2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
RLI Ins Group	$2,771	$757	$1,340	1.77	16.86%
Infinity Property and Casualty Insurance Group	$2,014	$665	$913	1.37	13.97%
Meadowbrook Insurance Group	$969	$202	$329	1.63	11.15%
Safety Group	$1,356	$496	$616	1.24	26.50%
Tower Group	$954	$184	$744	4.04	18.97%
EMC Insurance Company Group	$1,206	$308	$359	1.16	18.23%

Comparable P&C Insurance Companies

Minimum	$954	$184	$289	0.69	1.01%
Median	$12,522	$3,405	$4,755	1.38	15.68%
Mean	$85,681	$8,857	$13,965	1.60	17.51%
Maximum	$979,414	$101,677	$174,436	4.04	70.84%
Sample Size	60	60	60	60	60

Note:

[1] The companies or groups of companies are from the Property and Casualty Insurance companies listed in the "Top 125 Property and Casualty Insurance Companies by Premiums Written" in *The 2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*, published by the NAIC, that had publicly traded holding companies as of September 30, 2008, as identified from *Capital IQ*. Comparable companies for which balance sheet or income statement data for the corresponding holding companies are not available for a fiscal period ended after December 15, 2006, are excluded. Comparable companies for which market value of equity of the corresponding holding companies is not available as of March 15, 2007, are excluded. The holding companies of the insurance companies are assumed to be the same as of September 30, 2008, March 15, 2007, and December 15, 2006. Berkshire Hathaway Group and Universal Insurance Holding Group are not included due to insufficient data.

[2] See Appendix 3 for variable definitions.

Exhibit 37E

Comparable Life and Fraternal Insurance Companies [1]

3/15/07

Source: *AM Best Credit Report* , Balboa Life Insurance Company, published May 23, 2008; *Capital IQ* ;
NAIC *2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
HSBC Group	$1,860,758	$108,352	$195,628	1.81	14.82%
ING Amer Insurance Holding Group	$1,618,139	$50,493	$86,763	1.72	16.91%
Citigroup	$1,884,318	$118,783	$248,043	2.09	16.63%
American International Group	$979,414	$101,677	$174,436	1.72	15.70%
Aviva Group	$586,769	$34,344	$34,657	1.01	27.81%
Liberty Life Insurance Co	$484,296	$18,522	$61,859	3.34	21.20%
Banner Life Group	$426,810	$10,628	$18,648	1.75	25.92%
Metropolitan Group	$527,715	$33,797	$46,688	1.38	10.39%
Prudential of Amer Group	$454,266	$22,892	$41,990	1.83	12.66%
Aegon US Holding Group	$415,403	$30,572	$31,314	1.02	9.38%
Zurich Insurance Group	$373,855	$25,860	$39,714	1.54	19.85%
Hartford Fire and Casualty Group	$326,710	$18,876	$30,206	1.60	14.69%
Old Mutual US Life Holding Group	$251,886	$12,830	$17,499	1.36	25.18%
Swiss Re Group	$238,829	$25,321	$30,847	1.22	15.00%
Lincoln National Group	$178,494	$12,200	$18,380	1.51	17.92%
AllState Insurance Group	$157,554	$21,846	$36,902	1.69	23.08%
Principal Financial Group	$143,658	$7,861	$15,955	2.03	10.64%
Great West Group	$103,455	$8,601	$26,357	3.06	19.45%
Genworth Financial Group	$110,871	$13,330	$15,212	1.14	9.01%
Nestle SA Group	$83,467	$41,806	$145,947	3.49	17.61%
Sun Life Assur Co of CN Group	$101,195	$13,684	$24,823	1.81	10.79%
Ameriprise Financial Group	$104,172	$7,925	$13,187	1.66	9.44%
Ace Limited Group	$67,135	$13,721	$17,875	1.30	15.68%
American Family Corp Group	$59,805	$8,341	$22,626	2.71	17.85%
CNA Insurance Group	$60,283	$9,768	$11,405	1.17	12.48%
UnitedHealth Group	$48,320	$20,810	$73,201	3.52	22.90%
Unumprovident Corp Group	$52,823	$7,719	$7,631	0.99	4.17%
Wellpoint Inc	$51,760	$24,576	$47,959	1.95	12.29%
Protective Life Insurance Group	$39,795	$2,313	$3,047	1.32	12.36%
Cigna Health Group	$42,399	$4,330	$13,732	3.17	20.15%
Aetna Group	$47,626	$9,145	$22,035	2.41	16.08%
Conseco Group	$32,717	$4,045	$2,567	0.63	5.35%
Phoenix Cos Group	$28,973	$2,236	$1,751	0.78	5.94%
American Financial Group	$25,101	$2,929	$3,992	1.36	17.99%
Assurant Inc Group	$25,165	$3,833	$6,457	1.68	17.33%
American Amicable Group	$19,147	$1,277	$2,346	1.84	13.95%
White Mountains Group	$19,444	$4,455	$5,959	1.34	8.99%
Stancorp Financial Group	$13,639	$1,465	$2,545	1.74	13.69%
Cincinnati Financial Group	$17,222	$6,808	$7,351	1.08	13.65%
Liberty National Group	$14,980	$3,459	$6,238	1.80	13.88%
Humana Group	$10,127	$3,054	$9,777	3.20	18.98%
Unitrin Group	$9,321	$2,284	$3,012	1.32	11.13%
Trustmark Insurance Co Group	$8,841	$891	$1,644	1.84	15.27%

Exhibit 37E - Continued

Comparable Life and Fraternal Insurance Companies [1]

3/15/07

Source: *AM Best Credit Report* , Balboa Life Insurance Company, published May 23, 2008; *Capital IQ* ;
NAIC *2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	***b***	***c = b / a***	
Delphi Financial Group	$5,670	$1,175	$1,947	1.66	12.59%
Horace Mann Group	$6,330	$657	$873	1.33	15.10%
Kansas City Life Insurance Group	$4,460	$684	$540	0.79	4.71%
Erie Insurance Group	$3,039	$1,162	$3,404	2.93	14.91%
Comparable Life and Fraternal Insurance Companies					
Minimum	$3,039	$657	$540	0.63	4.17%
Median	$60,283	$9,145	$17,499	1.68	14.91%
Mean	$258,003	$18,752	$34,787	1.78	14.93%
Maximum	$1,884,318	$118,783	$248,043	3.52	27.81%
Sample Size	47	47	47	47	47

Note:

[1] The companies or groups of companies are from the Life and Fraternal Insurance companies listed in the "Top 125 Life and Fraternal Insurance Groups and Companies by Premiums Written" in *The 2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies* , published by the NAIC, that had publicly traded holding companies as of September 30, 2008, as identified from *Capital IQ* . Comparable companies for which balance sheet or income statement data for the corresponding holding companies are not available for a fiscal period ended after December 15, 2006, are excluded. Comparable companies for which market value of equity of the corresponding holding companies is not available as of March 15, 2007, are excluded. The holding companies of the insurance companies are assumed to be the same as of September 30, 2008, March 15, 2007, and December 15, 2006. None of the fraternal insurance companies had publicly traded holding companies.

[2] See Appendix 3 for variable definitions.

Exhibit 38A

Selected Comparable OTS Thrifts with Financial Data Available as of 8/15/06 [1]

Source: *Capital IQ*; *National Information Center website of the Federal Financial Institutions Examination Council*; Selected Financial Filings; *The 2010 Mortgage Market Statistical Annual, Volume I*

(Dollars in Millions)

					Holding Company			
Thrift Name	**Holding Company [2]**	**Holding Company Assets [3]**	**Bank Assets [3]**	**Bank/Holding Asset Ratio [3]**	**Book Value of Common Equity [3]**	**Market Value of Common Equity [3]**	**Market-to-Book Value Ratio of Common Equity [3]**	**Return on Common Equity [3]**
		a	*b*	*c = b / a*	*d*	*e*	*f = e / d*	
Hudson City Savings Bank	Hudson City Bancorp, Inc.	$31,329	$31,329	100.00%	$4,999	$6,936	1.39	5.46%
Astoria Federal Savings and Loan Association	Astoria Financial Corporation	$21,861	$21,752	99.50%	$1,268	$2,990	2.36	14.72%
People's United Bank	People's United Financial Inc.	$11,005	$11,007	100.02%	$1,326	$5,182	3.91	9.73%
Flagstar Bank, FSB	Flagstar Bancorp Inc.	$15,226	$15,192	99.78%	$804	$937	1.17	10.18%
BankUnited, FSB	BankUnited Financial Corporation	$12,877	$12,866	99.92%	$714	$1,037	1.45	13.92%
Downey Savings and Loan Association, F.A.	Downey Financial Corp.	$17,465	$17,465	100.00%	$1,290	$1,763	1.37	18.67%
Washington Federal Savings and Loan Association	Washington Federal Inc.	$8,803	$8,803	100.00%	$1,219	$1,941	1.59	11.48%
Capitol Federal Savings Bank	Capitol Federal Financial, Inc.	$8,117	$8,151	100.41%	$860	$2,493	2.90	6.00%
First Federal Bank of California, a Federal Savings Bank	FirstFed Financial Corp.	$10,255	$10,257	100.02%	$636	$927	1.46	24.11%
Investors Savings Bank	Investors Bancorp Inc.	$5,497	$5,495	99.97%	$899	$1,589	1.77	3.44%
AnchorBank, fsb	Anchor BanCorp Wisconsin, Inc.	$4,357	$4,278	98.19%	$326	$632	1.94	14.91%
TrustCo Bank	TrustCo Bank Corp. NY	$2,968	$2,967	99.97%	$214	$823	3.84	21.73%
Wilmington Savings Fund Society, FSB	WSFS Financial Corp.	$3,037	$3,033	99.88%	$191	$412	2.15	14.67%
TierOne Bank	TierOne Corp.	$3,322	$3,320	99.94%	$331	$628	1.90	12.93%
Superior Bank	Superior Bankcorp	$1,531	$1,515	98.92%	$106	$227	2.14	2.67%
First Federal Bank of the Midwest	First Defiance Financial Corp.	$1,515	$1,507	99.52%	$154	$198	1.28	9.49%
North American Savings Bank, F.S.B.	NASB Financial Inc.	$1,550	$1,533	98.87%	$153	$278	1.81	14.62%
Comparable Thrifts								
Minimum		$1,515	$1,507	98.19%	$106	$198	1.17	2.67%
Median		$8,117	$8,151	99.94%	$714	$937	1.81	12.93%
Mean		$9,454	$9,439	99.70%	$911	$1,706	2.02	12.28%
Maximum		$31,329	$31,329	100.41%	$4,999	$6,936	3.91	24.11%
Sample Size		17	17	17	17	17	17	17

Note:

[1] Comparable companies are thrifts in the list of 50 "Largest OTS-Regulated Thrift Mortgage Lenders in 2008" ("OTS Thrifts List") as reported in *The 2010 Mortgage Market Statistical Annual, Volume I* that comprise at least 90% of the total assets of their publicly traded holding companies. All thrifts comprise at least 95% of the total assets of their publicly traded holding companies. Countrywide Bank, FSB is ranked first in the OTS thrifts list. Comparable holding companies for which balance sheet or income statement data are not available for a fiscal period ended after May 15, 2006, are excluded. Comparable companies for which market value of equity of the corresponding holding company is not available as of August 15, 2006, are excluded.

[2] Holding company as of May 15, 2006, and August 15, 2006, are assumed to be the same as the holding company as of September 30, 2008, as identified from the *National Information Center (NIC) website of the Federal Financial Institutions Examination Council (FFIEC)* and *Capital IQ*. First Place Bank and its holding company First Place Financial Corp. are excluded from this August 15, 2006, valuation analysis due to lack of information regarding their corporate structure.

[3] See Appendix 3 for variable definitions.

Exhibit 38B

Selected Comparable Mortgage Originators with Financial Data Available as of 8/15/06 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examination Council;* Selected Financial Filings; *The 2010 Mortgage Market Statistical Annual, Volume I*

(Dollars in Millions)

			Holding Company				
Mortgage Originator Name	**Holding Company [2]**		**Total Assets [3]**	**Book Value of Common Equity [3]**	**Market Value of Common Equity [3]**	**Market-to-Book Value Ratio of Common Equity [3]**	**Return on Common Equity [3]**
				a	***b***	***c = b / a***	
HSBC Mortgage Corp., NY	HSBC Holdings PLC	[4]	$1,738,138	$101,381	$203,338	2.01	16.34%
HSBC Finance, IL	HSBC Holdings PLC	[4]	$1,738,138	$101,381	$203,338	2.01	16.34%
Chase Home Finance, NJ	JPMorgan Chase & Co.		$1,328,001	$110,684	$156,353	1.41	10.41%
Citi, MO	Citigroup, Inc.		$1,626,551	$114,428	$239,336	2.09	16.19%
American General Finance/AIG, DE	American International Group, Inc.		$900,670	$87,709	$162,657	1.85	9.10%
Merrill Lynch	Merrill Lynch		$799,188	$33,394	$66,273	1.98	14.79%
Wachovia Corporation, NC	Wachovia Corporation		$553,614	$48,872	$87,708	1.79	13.72%
Wells Fargo & Company, IA	Wells Fargo & Company		$499,516	$41,932	$117,752	2.81	19.50%
MetLife Home Loans, TX	Metlife, Inc.		$500,305	$27,680	$40,802	1.47	9.53%
Washington Mutual, WA	Washington Mutual Inc.		$350,884	$26,131	$42,177	1.61	14.98%
US Bank Home Mortgage, MN	U.S. Bancorp		$213,405	$19,415	$57,385	2.96	21.51%
SunTrust Mortgage Inc., VA	Suntrust Banks, Inc.		$181,143	$17,424	$27,779	1.59	11.38%
Capital One Financial Corp., OH	Capital One Financial Corp.		$89,530	$15,897	$22,623	1.42	20.48%
Regions Financial Corp., AL	Regions Financial Corp.		$86,063	$10,698	$16,718	1.56	9.72%
National City Mortgage Co., OH	National City Corporation		$141,486	$12,610	$21,757	1.73	13.21%
BB&T Mortgage, NC	BB&T Corporation		$116,284	$11,164	$23,066	2.07	14.49%
Fifth Third Bank, OH	Fifth Third Bancorp		$106,111	$9,547	$22,137	2.32	13.91%
Sovereign Bank, PA	Sovereign Bancorp Inc.		$88,753	$8,256	$9,851	1.19	5.49%
M&T Bank Corp., NY	M&T Bank Corporation	[5]	$56,507	$6,000	$13,666	2.28	12.70%
Huntington Mortgage Group, OH	Huntington Bancshares Incorporated		$36,266	$2,939	$5,675	1.93	13.86%
Hudson City Savings, NJ	Hudson City Bancorp, Inc.		$31,329	$4,999	$6,936	1.39	5.46%
E*Trade Financial, CA	E*TRADE Financial Corporation		$48,893	$3,847	$9,553	2.48	19.40%
First Horizon Home Loans, TX	First Horizon National Corporation		$37,469	$2,442	$5,156	2.11	14.03%
Astoria Federal Savings, NY	Astoria Financial Corporation		$21,861	$1,268	$2,990	2.36	14.72%
Flagstar Bank, MI	Flagstar Bancorp Inc.		$15,226	$804	$937	1.17	10.18%
Downey Financial Corp., CA	Downey Financial Corp.		$17,465	$1,290	$1,763	1.37	18.67%
DHI Mortgage (DR Horton)	DR Horton Inc.		$14,560	$6,214	$6,482	1.04	31.71%
Pulte Mortgage Corp., MI	PulteGroup, Inc.		$13,624	$6,385	$7,225	1.13	27.66%
CTX Mortgage, TX	Centex Corporation		$21,773	$5,023	$5,764	1.15	26.69%
TierOne Bank, NE	TierOne Corp.		$3,322	$331	$628	1.90	12.93%
IndyMac, CA	IndyMac Bancorp Inc.		$23,756	$1,804	$2,858	1.58	25.10%
Lehman Brothers, NY	Lehman Brothers Holdings Inc.		$456,202	$16,887	$35,375	2.09	23.50%

Exhibit 38B - Continued

Selected Comparable Mortgage Originators with Financial Data Available as of 8/15/06 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examination Council;* Selected Financial Filings; *The 2010 Mortgage Market Statistical Annual, Volume I*
(Dollars in Millions)

Comparable Mortgage Originators	**Total Assets [3]**	**Book Value of Common Equity [3]**	**Market Value of Common Equity [3]**	**Market-to-Book Value Ratio of Common Equity [3]**	**Return on Common Equity [3]**
Minimum	$3,322	$331	$628	1.04	5.46%
Median	$89,530	$10,698	$21,757	1.79	14.49%
Mean	$326,384	$24,434	$45,894	1.80	15.85%
Maximum	$1,738,138	$114,428	$239,336	2.96	31.71%
Sample Size	31	31	31	31	31

Note:

[1] Comparable companies are mortgage originators in the list of "Top 50 Mortgage Originators in 2008" ("Mortgage Originators List") as reported in *The 2010 Mortgage Market Statistical Annual, Volume I* . Comparable holding companies for which balance sheet or income statement data are not available for a fiscal period ended after May 15, 2006, are excluded. Comparable companies for which market value of equity of the corresponding holding company is not available as of August 15, 2006, are also excluded. Bank of America Mtg & Affiliates, NC is excluded as its holding company is Bank of America. Countrywide Financial, CA is excluded as it is the holding company for Countrywide Bank, FSB.

[2] Holding company as of May 15, 2006, and August 15, 2006, are assumed to be the same as the holding company as of September 30, 2008, as identified from the *National Information Center (NIC) website of the Federal Financial Institutions Examination Council (FFIEC)* and *Capital IQ* .

[3] See Appendix 3 for variable definitions.

[4] Two HSBC Holdings PLC subsidiaries (HSBC Mortgage Corp., NY and HSBC Finance, IL) are in the listed originators. HSBC Holdings PLC data is only included once in the summary statistics of the holding level data and the market-to-book value ratios of common equity.

[5] M&T Bank Corp.'s holding company is Allied Irish Banks, PLC. M&T Bank Corp. is publicly traded, hence the market-to-book value ratio represents M&T Bank Corp.'s financial data.

Exhibit 38C

Selected Comparable Mortgage Servicers with Financial Data Available as of 8/15/06 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examinations Council* ;
The 2011 Mortgage Market Statistical Annual, Volume I
(Dollars in Millions)

Mortgage Servicer Name	Holding Company [2]	Total Assets [3]	Book Value of Common Equity [3]	Market Value of Common Equity [3]	Market-to-Book Value Ratio of Common Equity [3]	Return on Common Equity [3]
			a	*b*	*c = b / a*	
BB& T Mortgage, NC	BB&T Corporation	$116,284	$11,164	$23,066	2.07	14.49%
Goldman Sachs Bank USA, NY (Litton)	The Goldman Sachs Group, Inc.	$798,884	$29,200	$68,669	2.35	29.72%
CitiMortgage Inc., MO	Citigroup Inc.	$1,626,551	$114,428	$239,336	2.09	16.19%
First Horizon Home Loans, TX	First Horizon National Corporation	$37,469	$2,442	$5,156	2.11	14.03%
HSBC North America, IL	HSBC Holdings plc	$1,738,138	$101,381	$203,338	2.01	16.34%
IndyMac FSB, CA	IndyMac Bancorp, Inc.	$23,756	$1,804	$2,858	1.58	25.10%
Chase Home Finance, NJ	JPMorgan Chase & Co.	$1,328,001	$110,684	$156,353	1.41	10.41%
Lehman Brothers Bank FSB, DE (Aurora)	Lehman Brothers Holdings Inc.	$456,202	$16,887	$35,375	2.09	23.50%
MetLife Home Loans, NY	MetLife, Inc.	$500,305	$27,680	$40,802	1.47	9.53%
National City Mortgage Co., OH	National City Corporation	$141,486	$12,610	$21,757	1.73	13.21%
Sun Trust Mortgage Inc., VA	SunTrust Banks, Inc.	$181,143	$17,424	$27,779	1.59	11.38%
US Bank Home Mortgage, MN	U.S. Bancorp	$213,405	$19,415	$57,385	2.96	21.51%
HomEq Servicing Corporation, CA	Wachovia Corporation	$553,614	$48,872	$87,708	1.79	13.72%
Wells Fargo & Company, IA	Wells Fargo & Company	$499,516	$41,932	$117,752	2.81	19.50%
Flagstar Bank, MI	Flagstar Bancorp, Inc.	$15,226	$804	$937	1.17	10.18%
Fifth Third Bank, OH	Fifth Third Bancorp	$106,111	$9,547	$22,137	2.32	13.91%
Merrill Lynch B&T FSB, NY (Home Loan Services)	Merrill Lynch & Co., Inc.	$799,188	$33,394	$66,273	1.98	14.79%
Regions Financial Corp., AL	Regions Financial Corporation	$86,063	$10,698	$16,718	1.56	9.72%
Sovereign Savings Bank, PA	Sovereign Bancorp, Inc.	$88,753	$8,256	$9,851	1.19	5.49%
Ocwen Financial Corporation, FL	Ocwen Financial Corporation	$1,660	$516	$976	1.89	9.62%
Capital One Financial (GreenPoint Mortgage), VA	Capital One Financial Corporation	$89,530	$15,897	$22,623	1.42	20.48%
M& T Mortgage, NY	M&T Bank Corporation	$56,507	$6,000	$13,666	2.28	12.70%
Hudson City Savings, NJ	Hudson City Bancorp, Inc.	$31,329	$4,999	$6,936	1.39	5.46%
Huntington Bancshares Inc., OH	Huntington Bancshares Incorporated	$36,266	$2,939	$5,675	1.93	13.86%
PNC Bank, NA, PA	The PNC Financial Services Group, Inc.	$94,914	$8,827	$21,056	2.39	15.88%
Saxon Mortgage, VA (Morgan Stanley)	Morgan Stanley	$1,027,043	$32,255	$71,007	2.20	20.12%
E*Trade Financial, CA	E*Trade Financial Corporation	$48,893	$3,847	$9,553	2.48	19.40%
American General Finance, IN	American International Group, Inc.	$900,670	$87,709	$162,657	1.85	9.10%
Banco Popular de Puerto Rico	Popular, Inc.	$48,400	$3,276	$5,174	1.58	12.09%
Keybank NA, OH	KeyCorp	$94,794	$7,737	$15,116	1.95	13.99%
Astoria Federal Savings, NY	Astoria Financial Corporation	$21,861	$1,268	$2,990	2.36	14.72%
Citizens Financial Group, Inc., RI	The Royal Bank of Scotland Group plc	$1,552,022	$69,110	$107,174	1.55	17.15%
Bancwest Corp., HI	BNP Paribas SA	$1,816,462	$57,929	$96,983	1.67	17.13%
Select Portfolio Servicing, UT (Credit Suisse)	Credit Suisse Group	$1,146,862	$31,748	$59,339	1.87	20.48%

Exhibit 38C - Continued

Selected Comparable Mortgage Servicers with Financial Data Available as of 8/15/06 [1]

Source: *Capital IQ* ; *National Information Center website of the Federal Financial Institutions Examinations Council* ;
The 2011 Mortgage Market Statistical Annual, Volume I
(Dollars in Millions)

Comparable Mortgage Servicers	**Total Assets [3]**	**Book Value of Common Equity [3]**	**Market Value of Common Equity [3]**	**Market-to-Book Value Ratio of Common Equity [3]**	**Return on Common Equity [3]**
Minimum	$1,660	$516	$937	1.17	5.46%
Median	$128,885	$14,253	$22,844	1.91	14.26%
Mean	$478,744	$28,020	$53,064	1.92	15.14%
Maximum	$1,816,462	$114,428	$239,336	2.96	29.72%
Sample Size	34	34	34	34	34

Note:

[1] Comparable companies are mortgage servicers in the list of "Top 50 Mortgage Servicers in 2008" ("Mortgage Servicers") as reported in *The 2011 Mortgage Market Statistical Annual, Volume I* . Comparable holding companies for which balance sheet or income statement data are not available for a fiscal period ended after May 15, 2006, are excluded. Comparable companies for which market values of equity are not available for the corresponding holding companies as of August 15, 2006, are also excluded. Bank of America Mtg. & Affiliates, NC, is excluded as its holding company is Bank of America.

[2] Holding companies as of May 15, 2006, and August 15, 2006, are assumed to be the same as the holding companies as of September 30, 2008, as identified from the *National Information Center (NIC) website of the Federal Financial Institutions Examination Council (FFIEC)* and *Capital IQ* .

[3] See Appendix 3 for variable definitions.

Exhibit 38D

Comparable Property and Casualty Insurance Companies [1]

8/15/06

Source: *AM Best Credit Report*, Balboa Insurance Company, published July 17, 2008; *Capital IQ*;
NAIC *2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
Allianz Insurance Group	$1,300,448	$51,275	$67,811	1.32	17.29%
American International Group	$900,670	$87,709	$162,657	1.85	9.10%
Wells Fargo Group	$499,516	$41,932	$117,752	2.81	19.50%
Metropolitan Group	$500,305	$27,680	$40,802	1.47	9.53%
Zurich Insurance Group	$353,083	$21,214	$33,564	1.58	16.46%
Hartford Fire and Casualty Group	$294,938	$15,383	$25,167	1.64	11.36%
Munich Re Group	$270,094	$29,200	$34,419	1.18	14.20%
Swiss Re Group	$218,382	$22,100	$27,448	1.24	6.20%
AllState Insurance Group	$157,094	$20,605	$36,108	1.75	8.23%
Travelers Group	$113,886	$22,912	$30,498	1.33	8.09%
Genworth Fin Group	$103,646	$12,210	$15,629	1.28	8.57%
Ameriprise Financial Group	$96,049	$7,235	$10,945	1.51	10.32%
Ace Limited Group	$65,390	$11,909	$16,398	1.38	9.23%
Commerce Inc Group	$34,790	$2,764	$4,832	1.75	49.25%
CNA Insurance Group	$58,912	$8,185	$8,602	1.05	1.93%
Chubb and Son Inc Group	$47,774	$12,639	$19,928	1.58	16.31%
XL Amer Group	$58,527	$8,547	$11,203	1.31	-6.73%
MBIA Group	$35,632	$6,668	$8,025	1.20	10.05%
American Financial Group	$23,103	$2,475	$3,522	1.42	10.70%
Assurant Inc Group	$24,532	$3,570	$6,339	1.78	12.45%
Delek Group	$3,942	$736	$1,920	2.61	49.88%
Progressive Group	$19,603	$6,422	$17,553	2.73	23.44%
WR Berkley Corp Group	$14,692	$2,801	$6,688	2.39	22.93%
White Mountains Group	$18,728	$3,864	$5,293	1.37	0.81%
Everest Reins Holding Group	$16,536	$4,379	$6,082	1.39	-4.03%
Arch Insurance Group	$13,088	$3,016	$4,372	1.45	8.17%
Axis Capital Group	$12,799	$3,819	$4,770	1.25	4.37%
Cincinnati Financial Group	$16,936	$6,065	$7,984	1.32	14.49%
Old Republic Group	$11,653	$4,131	$4,833	1.17	11.51%
Markel Corp Group	$9,686	$1,738	$3,493	2.01	8.39%
The Hanover Insurance Group	$9,689	$1,770	$2,132	1.20	2.72%
Unitrin Group	$9,164	$2,139	$2,928	1.37	9.18%
MGIC Group	$6,303	$4,190	$4,799	1.15	10.84%
HCC Insurance Holdings Group	$7,371	$1,834	$3,444	1.88	15.16%
Radian Group	$7,507	$3,830	$5,020	1.31	14.25%
Endurance Group	$6,866	$1,929	$2,058	1.07	-9.19%
Fidelity National Fin Group	$6,200	$2,551	$3,293	1.29	16.07%
Alleghany Group	$6,193	$1,989	$2,201	1.11	2.30%
Horace Mann Group	$6,003	$539	$776	1.44	8.36%
PMI Group	$5,313	$3,294	$3,663	1.11	10.79%
Selective Insurance Group	$4,490	$1,004	$1,511	1.51	14.85%
Philadelphia Consolidated Holding Group	$3,053	$944	$2,396	2.54	25.91%
Mercury General Group	$4,180	$1,633	$2,722	1.67	12.89%
Kingsway Group	$4,049	$872	$1,169	1.34	13.07%
Navigators Group	$2,916	$490	$756	1.54	9.38%
Harleysville Group	$2,902	$634	$1,008	1.59	14.53%
Erie Insurance Group	$2,910	$1,124	$3,233	2.88	14.46%
United Fire and Casualty Group	$2,756	$626	$804	1.28	-3.44%
Pennsylvania Manufacturers Group	$2,773	$398	$293	0.74	0.30%
Zenith National Insurance Group	$2,763	$790	$1,396	1.77	27.12%

Exhibit 38D - Continued

Comparable Property and Casualty Insurance Companies [1]

8/15/06

Source: *AM Best Credit Report*, Balboa Insurance Company, published July 17, 2008; *Capital IQ*;
NAIC *2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
RLI Ins Group	$2,681	$672	$1,147	1.71	10.76%
Infinity Property and Casualty Insurance Group	$1,967	$643	$785	1.22	17.69%
Meadowbrook Insurance Group	$933	$185	$286	1.55	10.46%
Safety Group	$1,304	$435	$833	1.91	31.27%
Tower Group	$806	$160	$563	3.52	16.10%
EMC Insurance Company Group	$1,095	$279	$393	1.41	21.53%
Comparable P&C Insurance Companies					
Minimum	$806	$160	$286	0.74	-9.19%
Median	$10,671	$2,908	$4,571	1.43	10.81%
Mean	$96,547	$8,717	$14,183	1.59	12.49%
Maximum	$1,300,448	$87,709	$162,657	3.52	49.88%
Sample Size	56	56	56	56	56

Note:

[1] The companies or groups of companies are from the Property and Casualty Insurance companies listed in the "Top 125 Property and Casualty Insurance Companies by Premiums Written" in *The 2008 Market Share Reports for Property/Casualty Insurance Groups and Companies*, published by the NAIC, that had publicly traded holding companies as of September 30, 2008, as identified from *Capital IQ*. Comparable companies for which balance sheet or income statement data for the corresponding holding companies are not available for a fiscal period ended after May 15, 2006, are excluded. Comparable companies for which market value of equity of the corresponding holding companies is not available as of August 15, 2006, are excluded. The holding companies of the insurance companies are assumed to be the same as of September 30, 2008, August 15, 2006, and May 15, 2006. Berkshire Hathaway Group and Universal Insurance Holding Group are not included due to insufficient data.

[2] See Appendix 3 for variable definitions.

Exhibit 38E

Comparable Life and Fraternal Insurance Companies [1]

8/15/06

Source: *AM Best Credit Report* , Balboa Life Insurance Company, published May 23, 2008; *Capital IQ* ;
NAIC *2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
HSBC Group	$1,738,138	$101,381	$203,338	2.01	16.34%
Citigroup	$1,626,551	$114,428	$239,336	2.09	16.19%
Allianz Insurance Group	$1,300,448	$51,275	$67,811	1.32	17.29%
AXA Insurance Group	$728,034	$40,295	$68,008	1.69	13.34%
Goldman Sachs Group	$798,884	$29,200	$68,669	2.35	29.72%
American International Group	$900,670	$87,709	$162,657	1.85	9.10%
Aviva Group	$501,230	$17,615	$33,587	1.91	29.25%
Banner Life Group	$369,711	$7,862	$15,546	1.98	14.24%
Metropolitan Group	$500,305	$27,680	$40,802	1.47	9.53%
Prudential of Amer Group	$440,675	$21,494	$35,356	1.64	9.36%
Aegon US Holding Group	$379,552	$26,851	$28,932	1.08	12.92%
Zurich Insurance Group	$353,083	$21,214	$33,564	1.58	16.46%
Hartford Fire and Casualty Group	$294,938	$15,383	$25,167	1.64	11.36%
Swiss Re Group	$218,382	$22,100	$27,448	1.24	6.20%
Lincoln National Group	$167,380	$11,403	$16,468	1.44	14.15%
John Hancock Group	$158,457	$20,569	$50,757	2.47	12.63%
AllState Insurance Group	$157,094	$20,605	$36,108	1.75	8.23%
Principal Financial Group	$131,429	$6,845	$14,493	2.12	9.81%
Great West Group	$101,296	$8,128	$22,570	2.78	18.80%
Genworth Financial Group	$103,646	$12,210	$15,629	1.28	8.57%
Sun Life Assur Co of CN Group	$99,167	$13,362	$22,762	1.70	10.15%
Ameriprise Financial Group	$96,049	$7,235	$10,945	1.51	10.32%
Ace Limited Group	$65,390	$11,909	$16,398	1.38	9.23%
American Family Corp Group	$57,432	$7,169	$21,430	2.99	17.75%
CNA Insurance Group	$58,912	$8,185	$8,602	1.05	1.93%
UnitedHealth Group	$46,647	$18,156	$64,831	3.57	33.91%
Unumprovident Corp Group	$50,402	$6,987	$6,015	0.86	4.69%
Wellpoint Inc	$50,092	$23,238	$46,652	2.01	13.30%
Protective Life Insurance Group	$29,073	$2,044	$3,104	1.52	11.55%
Cigna Health Group	$42,276	$4,694	$11,768	2.51	20.60%
Aetna Group	$46,165	$9,963	$19,285	1.94	16.72%
Conseco Group	$31,551	$3,629	$3,120	0.86	8.51%
Phoenix Cos Group	$27,306	$2,132	$1,562	0.73	5.56%
American Financial Group	$23,103	$2,475	$3,522	1.42	10.70%
Assurant Inc Group	$24,532	$3,570	$6,339	1.78	12.45%
American Amicable Group	$18,320	$1,253	$2,327	1.86	10.11%
White Mountains Group	$18,728	$3,864	$5,293	1.37	0.81%
Stancorp Financial Group	$13,007	$1,374	$2,366	1.72	13.03%
Cincinnati Financial Group	$16,936	$6,065	$7,984	1.32	14.49%
Liberty National Group	$14,782	$3,127	$5,988	1.91	13.19%
Humana Group	$9,837	$2,659	$9,623	3.62	14.13%
Unitrin Group	$9,164	$2,139	$2,928	1.37	9.18%
Trustmark Insurance Co Group	$8,235	$761	$1,794	2.36	14.10%

Exhibit 38E - Continued

Comparable Life and Fraternal Insurance Companies [1]

8/15/06

Source: *AM Best Credit Report* , Balboa Life Insurance Company, published May 23, 2008; *Capital IQ* ;
NAIC *2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies*
(Dollars in Millions)

Company or Group Name	Total Assets [2]	Book Value of Common Equity [2]	Market Value of Common Equity [2]	Market-to-Book Value Ratio of Common Equity [2]	Return on Common Equity [2]
		a	*b*	*c = b / a*	
National Western Life Insurance Co	$6,479	$888	$809	0.91	7.90%
Delphi Financial Group	$5,467	$1,037	$1,890	1.82	12.11%
Horace Mann Group	$6,003	$539	$776	1.44	8.36%
Kansas City Life Insurance Group	$4,408	$639	$521	0.82	4.49%
Erie Insurance Group	$2,910	$1,124	$3,233	2.88	14.46%
Universal Amer Fin Corp Group	$2,653	$539	$914	1.70	8.47%
Citizens Group	$678	$129	$218	1.70	5.30%
Comparable Life and Fraternal Insurance Companies					
Minimum	$678	$129	$218	0.73	0.81%
Median	$53,917	$7,549	$15,020	1.70	11.83%
Mean	$237,112	$16,303	$29,985	1.77	12.42%
Maximum	$1,738,138	$114,428	$239,336	3.62	33.91%
Sample Size	50	50	50	50	50

Note:

[1] The companies or groups of companies are from the Life and Fraternal Insurance companies listed in the "Top 125 Life and Fraternal Insurance Groups and Companies by Premiums Written" in *The 2008 Market Share Reports for Life and Fraternal Insurance Groups and Companies* , published by the NAIC, that had publicly traded holding companies as of September 30, 2008, as identified from *Capital IQ* . Comparable companies for which balance sheet or income statement data for the corresponding holding companies are not available for a fiscal period ended after May 15, 2006, are excluded. Comparable companies for which market value of equity of the corresponding holding companies is not available as of August 15, 2006, are excluded. The holding companies of the insurance companies are assumed to be the same as of September 30, 2008, August 15, 2006, and May 15, 2006. None of the fraternal insurance companies had publicly traded holding companies.

[2] See Appendix 3 for variable definitions.

EXHIBIT 6

EXHIBIT 137

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MBIA INSURANCE CORPORATION, Plaintiff, -against- Countrywide Home Loans, Inc., Countrywide Securities Corp., Countrywide Financial Corp., Countrywide Home Loans Servicing, LP and Bank of America Corp., Defendants.	Index No. 602825/08 IAS Part 3 (Bransten, J.)

EXPERT REPORT OF
THOMAS L. PORTER, PH.D., C.P.A.

July 27, 2012

HIGHLY CONFIDENTIAL UNDER STIPULATION AND ORDER FOR THE PRODUCTION OF CONFIDENTIAL INFORMATION

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I. Introduction and Summary of Opinions

1. I am a Certified Public Accountant ("CPA") with more than thirty years of experience as both an accounting practitioner and accounting academic. I hold a Ph.D. in accounting and am currently an Associate Dean at the Hult International Business School. I was a member of the research and technical activities staff at the Financial Accounting Standards Board ("FASB"), the organization that establishes the generally accepted accounting principles ("GAAP") for the United States.

2. I previously submitted a report in this matter on June 25, 2012 ("Porter Initial Report" or "my initial report").[1] I have been asked by counsel for defendant Bank of America Corporation to review the report of Professor John C. Coates IV dated June 25, 2012 ("Coates Report") and to address the accounting-related points that Professor Coates raises in his report. These include statements regarding accounting fair value, the method for allocating goodwill, the recognition of contingent liabilities, and the interpretation of consolidated financial statements. I am not responding to the Coates Report in its entirety but only to the discussions that concern accounting-related points.

3. After reviewing Professor Coates' report and for the reasons explained below, my primary responses to Professor Coates are as follows:

First, Professor Coates repeatedly characterizes the July and November 2008 transactions as "Asset-Stripping Transactions." If he means this term to suggest that BofA[2] did

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1 Expert Report of Thomas L. Porter, Ph.D., C.P.A., June 25, 2012.

2 Throughout this report I use certain abbreviations, as follows: "BAC" refers to Bank of America Corporation; "BofA" refers to BAC and all of its subsidiaries other than Countrywide; "CFC" refers to Countrywide Financial Corporation; "Countrywide" refers to CFC and its subsidiaries; "CW Bank" refers to Countrywide Bank, FSB; "CHL" refers to Countrywide Home Loans, Inc.; "CHLS" refers to Countrywide Home Loans Servicing LP; "Red Oak" refers to Red Oak Merger Corporation; "NB" refers to NB Holdings Corporation; the "July transactions" refers to the various post-Acquisition asset sale transactions between BofA and Countrywide that occurred between July 1 and July 3, 2008 (as described in Porter Initial Report ¶ 72); and the "November transactions" refers to both CHL's November 7, 2008 sale of certain assets to BAC and CFC's November 7,

not pay fair value for Countrywide's assets then I disagree with his characterization.

The accounting records reflect not only that BofA bought the assets from Countrywide for billions of dollars in consideration, but also that the amount BofA paid for these assets was determined using methods designed to reasonably approximate the assets' fair value. This means that the asset sales were intentionally designed to provide Countrywide with the same economic value after the asset sales as it had before the asset sales. The July and November 2008 transactions allowed Countrywide to exchange the present value of future income streams from illiquid assets for an equivalent amount of cash and other liquid consideration.

Far from "stripping" Countrywide's assets, the asset sale transactions converted future income streams from currently illiquid assets into their equivalent net present value in liquid consideration.

Second, Professor Coates incorrectly describes the method BAC used to allocate goodwill from the Acquisition by suggesting that BofA made an initial or "preliminary" goodwill allocation and then shifted the goodwill to other Countrywide entities.

The accounting records reflect that BofA used a single multi-step process that was designed to allocate goodwill to the Countrywide subsidiaries that would own the principal operations for which BofA acquired Countrywide. This allocation—as I opined in my initial report—is an acceptable accounting approach, consistent with the principles underlying the concept of goodwill, and reflects a reasonable accounting judgment.

To the extent Professor Coates suggests or implies that BofA's approach to the allocation of goodwill was improper, I disagree.

Third, I similarly disagree with Professor Coates' suggestion or implication that goodwill resulting from the Acquisition was improperly transferred to BofA and that these "transfers" deprived Countrywide of a valuable asset.

While the goodwill allocated to CW Bank and Balboa through application of the purchase method was recorded on their respective balance sheets as assets, these were intangible assets that could not be individually sold or ordinarily converted into cash to satisfy creditors. The accounting records show that when BAC purchased CFC's equity interests in CW Bank and Balboa, BAC paid CFC $4 billion more than those entities' identifiable net assets because the goodwill recorded on those entities' balance sheets was included in calculating the value of

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2008 sale of certain subsidiaries to BAC under a stock purchase agreement (as described in Porter Initial Report ¶ 73).

CFC's equity interests in those entities.

When BAC purchased CFC's equity in CW Bank and Balboa, CFC converted the goodwill from an intangible asset to billions of dollars in liquid consideration that could (and in fact was) used to satisfy Countrywide creditors.

Fourth, Professor Coates suggests that BofA "had concerns" in June and July 2008 that Countrywide was under-reserved for contingent liabilities or would be unable to pay their potential contingent liability exposure when it came due. I disagree.

Professor Coates draws this suggestion solely from a June 25, 2008 presentation to the BAC board presenting potential litigation and representation and warranty exposures beyond the probable and reasonably estimable amount that GAAP permitted to be recorded as a reserve on the financial statements. But the accounting records demonstrate that—based on the information available as of July 1, 2008—CFC and CHL had the ability to pay these additional potential contingent liabilities if they were to come due. As of July 1, 2008, Countrywide had net assets of more than $6 billion—or approximately $4 billion more than estimated potential contingent liability in excess of the post-purchase recorded liabilities.

In other words, the accounting records reflect that Countrywide had sufficient assets to pay for the potential liability exposures presented in the June 25, 2008 BAC Board presentation.

Fifth, Professor Coates draws certain conclusions concerning whether BAC assumed Countrywide liabilities from their inclusion in BAC's consolidated financial statements. But Professor Coates fails to consider that consolidated financial statements present the parent company and all its subsidiaries as if it were a single entity and, thus, must include assets and liabilities that belong to subsidiaries and not the parent company. Thus, from an accounting perspective, the inclusion of Countrywide liabilities in BAC's consolidated financial statements says nothing about whether the BAC parent entity has assumed or intends to assume those liabilities.

4. The report I submitted on June 25, 2012, provides additional explanation of accounting-related matters and my opinions relevant to the case. Those explanations and opinions also apply to the accounting-concepts addressed in the Coates Report, and I incorporate my prior report in its entirety as if it was set out and included below.

II. Qualifications

5. I am currently an Associate Dean and member of the global faculty at the Hult International Business School ("Hult") in Cambridge, Massachusetts. Before joining Hult in April 2012, I was a vice president at NERA Economic Consulting, Inc. ("NERA"). I held faculty appointments at Boston College and Georgia State University before my employment with NERA.

6. Between the faculty appointments noted above, I was a member of the research and technical activities staff of the FASB, the organization that establishes GAAP for the United States. While at the FASB, I worked on "main agenda" projects and Emerging Issues Task Force cases. At the time, main agenda projects were projects directly related to the development of Statements of Financial Accounting Standards, which provide the primary guidance for GAAP. Emerging Issues Task Force items related to narrower issues arising within existing GAAP that required further guidance for practitioners. I was the project manager for Statement of Financial Accounting Standards ("SFAS") No. 143, Accounting for Asset Retirement Obligations, and was a member of the project team for FASB Concepts Statement ("CON") No.7, Using Cash Flow Information and Present Value in Accounting Measurements. CON No. 7 "provides a framework for using future cash flows as the basis for accounting measurements;" the "general principles that govern the use of present value, especially when the amount of future cash flows, their timing, or both are uncertain[; and] also provides a common understanding of the objective of present value in accounting measurements."[3]

[3] Statement of Financial Accounting Concepts ("CON") No. 7, *Using Cash Flow Information and Present Value in Accounting Measurements*, at CON 7–1 (2000).

7. I have been qualified as an accounting and financial expert at arbitration hearings and in courts, including the Delaware Chancery Court. I have testified in disputes involving special purpose entities, cost allocation schemes for common costs in mutual funds and hedge funds, the reasonableness of choices within GAAP, disclosure adequacy, and tax issues.

8. I received a bachelor's degree in Accounting and Finance from the University of Maryland. I have a master's degree in Business Administration (MBA) from the Georgia Institute of Technology. I have a Ph.D. in Accounting from the University of Washington. I am a Certified Public Accountant, having passed the CPA Exam in Maryland in 1981. I am currently a licensed CPA in the Commonwealth of Massachusetts. I hold the Accredited in Business Valuation ("ABV") and the Certified in Financial Forensics ("CFF") credentials issued by the American Institute of Certified Public Accountants. My curriculum vitae is attached to this report as Appendix A.

III. Accounting Overview

9. Before addressing the shortcomings I see in Professor Coates' discussion of accounting topics,[4] I first provide an overview of the accounting topics Professor Coates raises in his report and, generally, the accounting guidance that applies to these topics. I then provide my more specific responses to the accounting issues in his report.

10. Professor Coates addresses at least four accounting topics: accounting fair value, goodwill, contingent liabilities, and the interpretation of consolidated financial statements.[5] As

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[4] According to Professor Coates's report, he currently is a law professor and his professional training and experience has been in the field of law. Professor Coates does not claim to have an advanced degree in accounting. Professor Coates does not identify any role or job where he has served as an accountant or auditor. *See* Coates Report Exhibit A at 82–88. I do not believe that a non-accountant is qualified to opine on the accounting issues raised by Professor Coates's report.

[5] A Glossary of Accounting Terms is provided for reference as Exhibit 1.

described below, it is my opinion that an understanding of the applicable authoritative accounting guidance, accounting practices, and proper exercise of accounting judgment is necessary to address these topics.

- Certain assets and liabilities are recorded at fair value in a company's financial statements. "Fair value" for accounting purposes is defined as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date"[6] (*i.e.*, the price that would be received in an arm's length transaction in an orderly market). The relevant authoritative accounting guidance defines fair value and "establishes the framework for measuring fair value" under GAAP (*see* SFAS No. 157).

- Goodwill is the excess of the price paid for control of an acquired company over the fair value of the net assets acquired in a business combination (*i.e.*, merger or acquisition).[7] The authoritative accounting guidance specifies when goodwill should be recorded in a company's financial statements, the amount at which it should be recorded, and the procedures for assessing its value subsequent to its initial recognition on a company's balance sheet. The primary authoritative guidance for accounting determinations and judgments related to goodwill is contained in SFAS No. 141, *Business Combinations* (SFAS No. 141) and SFAS No. 142, *Goodwill and Other Intangible Assets* (SFAS No. 142). Accordingly, interpreting the accounting treatment of goodwill requires an understanding of the provisions contained in this guidance, applicable accounting practices, and the proper exercise of accounting judgment.

- Contingent liabilities are potential liabilities that *may or may not* give rise to an actual liability in the future. Some contingent liabilities are highly uncertain, while others are more certain. GAAP does not permit all contingent liabilities to be recognized (*i.e.*, formally recorded as an item in the financial statements).[8] Rather, under long-standing criteria in the accounting authoritative guidance, specifically, SFAS No. 5, *Accounting for Contingencies*, contingent liabilities may only be recognized in financial statements when they are both probable and reasonably estimable. Accountants must evaluate contingent liabilities to determine which ones meet SFAS No. 5's standards and which are too uncertain to be recognized in financial statements. An understanding of this accounting guidance, applicable accounting practices, and the proper exercise of accounting judgment, therefore, is necessary to consider whether the treatment of contingent liabilities was appropriate.

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6 Statement of Financial Accounting Standards ("SFAS") No. 157, *Fair Value Measurements*, ¶ 5 (2006).

7 *See* Porter Initial Report at ¶ 20.

8 CON No. 6, *Elements of Financial Statements*, ¶ 143 (1985) ("Recognition is the process of formally recording or incorporating an item in the financial statements of an entity. Thus, an asset, liability, revenue, expense, gain, or loss may be recognized (recorded) or unrecognized (unrecorded).").

- GAAP and SEC regulations require holding companies—which are parent entities with numerous subsidiaries—to report publicly their financial statements on a consolidated basis.[9] This means that a holding company must present its assets and liabilities, as well as the assets and liabilities of its controlled subsidiaries, as if they were held by a single, combined entity. Similarly, holding companies must report consolidated income statements (sometimes called profit and loss ("P&L") statements), which present the income and losses from all the holding company's subsidiaries as if they were generated by a single entity. The relevant accounting guidance describes the "purpose of consolidated statements [as] to present, primarily for the benefit of the shareholders and creditors of the parent company, the results of operations and the financial position of a parent company and its subsidiaries essentially as if the group were a single company."[10] The inclusion of a subsidiary's assets or liabilities in a consolidated financial statement, therefore, does not mean that the parent entity directly owns the assets or has directly assumed responsibility for the liabilities of its subsidiaries reflected in the consolidated financial statement. An understanding of the relevant accounting guidance, SEC regulations, and purpose of consolidated accounting are necessary to interpret properly a consolidated balance sheet.

IV. The July and November 2008 Transactions Were Asset Sales in which Countrywide Converted Illiquid Assets into Liquid Consideration Equal to Amounts Determined Using Methods Designed to Reasonably Approximate the Assets' Fair Value.

11. As described in further detail below, following CFC's July 1, 2008 merger with Red Oak ("Acquisition"), there were several post-Acquisition intercompany asset sales between Countrywide and BofA that occurred in July and November 2008. Throughout his report, Professor Coates labels these as "Asset-Stripping Transactions," and refers to them as "transfers." For example, Professor Coates claims that BofA "transferred to itself—within six months of its acquisition of control of CFC—the bulk of CFC's assets, employees, offices and facilities, know-how and technology, networks and client relationships."[11] Professor Coates's

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9 *See* Accounting Research Bulletin ("ARB") No. 51, *Consolidated Financial Statements*, ¶ 3 (1959), as amended by SFAS No. 94, *Consolidation of All Majority-Owned Subsidiaries*, ¶ 13 (1987); SEC Regulation S-X, 17 C.F.R. § 210.3-01(a) (2008).

10 ARB No. 51, ¶ 1 (1959). *See also* SFAS No. 94, ¶ 1 (1987) (quoting ARB No. 51, ¶ 1).

11 Coates Report at 29–30.

word choice suggests that BofA intended to "strip" Countrywide of its revenue-generating assets without providing fair value in exchange.

12. I disagree with Professor Coates' characterizations of these sales as "asset-stripping" and "transfers." Professor Coates ignores that the accounting records show that the methods used to price the assets sold in these transactions were designed to reasonably approximate fair value.[12] Fair value essentially represents the price that would be received in an arm's length transaction in an orderly market.[13] Far from stripping assets from Countrywide, the July and November 2008 transactions were designed to provide Countrywide consideration equal to a reasonable approximation of the assets' fair value. Moreover, the assets that Countrywide sold in the asset sales were illiquid, whereas in the July transactions Countrywide received liquid consideration that it could (and in fact did) use to satisfy obligations to creditors as they became due.

A. Description of Asset Sales

13. The July and November transactions consisted of the following asset sales:

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12 Porter Initial Report at ¶¶ 74–76.

13 As detailed in SFAS No. 157, the measurement objective for fair value is "to determine the price that would be received to sell the asset or paid to transfer the liability" in a non-distressed arm's length transaction (SFAS No. 157, ¶ 7). As I described in my initial report, to price the July and November 2008 transactions, BofA either used the fair value amounts that it had used in conjunction with the purchase method performed for the Acquisition or applied similar procedures as used in the purchase method (which were also consistent with BofA's procedures used for other fair value purposes) to determine these fair value amounts. Moreover, BofA brought in internal subject matter experts as needed to calculate the fair value of specific assets and liabilities. This is consistent with deposition testimony provided by Michael Friedlander (Friedlander Dep. Tr., Vol. I (July 11, 2012) at 52:12–13, 64:5–25, 65:2–3).

THE JULY TRANSACTIONS			
Date	**Asset**	**Description**	**Consideration** (in billions and net of note adjustments)
July 1, 2008	Residential Mortgage Loans	CHL sold a pool of residential mortgages to NB with an unpaid principal balance ("UPB") of $9,514,337,687.[A]	**$6.939** demand note[B]
July 1, 2008	Derivatives	CHL novated a portfolio of derivative instruments to BANA.[C]	**$1.519** in cash[D]
July 2, 2008	Equity Interest in CHLS, L.P.	CHL sold Countrywide, L.P. and Countrywide, G.P.—which owned 100% equity interest in CHLS— to NB. CHLS's assets consisted of MSRs and reimbursable servicing advances.[E]	**$18.044** in demand notes[F]
July 2, 2008	Trading Securities	CSC sold a pool of mortgage backed securities to BAS and Blue Ridge.[G]	**$0.147** in cash[H]
July 3, 2008	Residential Mortgage Loans	CHL sold a pool of residential mortgages with a UPB of $2,853,156,411 to NB.[I]	**$2.528** in demand notes[J]
July 3, 2008	Commercial Loans	CCREF sold a pool of commercial loans with a UPB of $258,172,937.50 to NB.[K]	**$0.237** in demand notes[L]

THE NOVEMBER TRANSACTIONS			
Date	**Asset**	**Description**	**Consideration** (in billions and net of note adjustments)
November 7, 2008	Equity Interest in Effinity	CFC sold Effinity—an intermediary holding company for several Countrywide entities including CW Bank—to BAC.[M]	**$11.494** consisting of $9.728 in assumption of public debt securities and $1.766 in demand notes[N]
November 7, 2008	Mortgage Platform Assets	CHL sold substantially all of its assets (including mortgage loans, mortgage servicing rights, and reimbursable servicing advance) to BAC.[O]	**$9.362** consisting of $5.809 in assumption of public debt securities and $3.553 in demand notes[P]
November 7, 2008	Interest-Only Mortgage Loan Securities	CWSHI sold a pool of Interest-Only Securities to BAC.[Q]	**$0.008** in demand notes[R]
November 7, 2008	Interest-Only Mortgage Loan Securities	CWIBH sold a pool of Interest-Only Securities to BAC.[S]	**$0.447** in demand notes [T]

NOTES TO TABLE

[A]	July 1, 2008 Master Mortgage Loan Purchase and Subservicing Agreement [BACMBIA-C0000161028–140]; Purchase Confirmation [BACMBIA-C0000161250–57]; CFC, Current Report (Form 8-K), at 5 (July 8, 2008); CFC, Quarterly Report (Form 10-Q), at 6 (Aug. 11, 2008).
[B]	July 1, 2008 Demand Note for $6,938,783,350 [BACMBIA-C0000161141–45]; Purchase Confirmation [BACMBIA-C0000161250–57]; List of Accounting Entries for LD1 through LD3 [BACMBIA-R0000006093]. For a schedule of note payments see Exhibit 2.1.
[C]	CFC, Quarterly Report (Form 10-Q), at 6 (Aug. 11, 2008).
[D]	List of Accounting Entries for LD1 through LD3 [BACMBIA-R0000006093]. For a schedule of adjustments to the purchase price see Exhibit 2.3.
[E]	Purchase and Sale Agreement between CHL and NB (July 2, 2008) [BACMBIA-C0000161342–350]; BACMBIA-V0000028727–46; CFC, Current Report (Form 8-K), at 5 (July 8, 2008); CFC, Quarterly Report (Form 10-Q), at 6 (Aug. 11, 2008).
[F]	July 2, 1008 Demand Note for $19,676,240,840 [BACMBIA-C0000161271–75]; List of Accounting Entries for LD1 through LD3 [BACMBIA-R0000006093]. For a schedule of note payments and adjustments see Exhibits 2.1–2.3.
[G]	CFC, Current Report (Form 8-K), at 5 (July 8, 2008); CFC, Quarterly Report (Form 10-Q), at 6 (Aug. 11, 2008).
[H]	List of Accounting Entries for LD1 through LD3, 'LD2 Entries CFC' tab, cell F:191 [BACMBIA-R0000006093].
[I]	Purchase Confirmation [BACMBIA-C0000161224–31]; CFC, Current Report (Form 8-K), at 5 (July 8, 2008); CFC, Quarterly Report (Form 10-Q), at 6 (Aug. 11, 2008).
[J]	July 3, 2008 Demand Note for $2,528,722,951 [BACMBIA-R0000006067–71]; Purchase Confirmation [BACMBIA-C0000161224–31]; List of Accounting Entries for LD1 through LD3, 'Note LD3' tab, cell B:10 [BACMBIA-R0000006093]. For a schedule of note payments see Exhibit 2.3.
[K]	July 3, 2008 Commercial Real Estate Loan Purchase and Sale Agreement [BACMBIA-C0000168443–94]; CFC, Current Report (Form 8-K), at 5 (July 8, 2008); CFC, Quarterly Report (Form 10-Q), at 6 (Aug. 11, 2008).
[L]	July 3, 2008 Demand Note for $237,644,380.50 [BACMBIA-R0000006221–26]; List of Accounting Entries for LD1 through LD3, 'LD 3 Entries' tab, cell F:14 [BACMBIA-R0000006093]. For a schedule of note payments see Exhibit 2.3.
[M]	November 7, 2008 Stock Purchase Agreement by and between BAC and CFC [BACMBIA-C0000168443–94]; BAC, Current Report (Form 8-K), at Item 8.01 (Nov. 10, 2008) ("On November 7, 2008 . . . Countrywide and its subsidiary [CHL] transferred substantially all of their assets.").
[N]	Demand Note for $3,464,227,515 [BACMBIA-C0000168502–07]; Amendment No. 1 to Demand Note [BACMBIA-Q0000001633–36]; BACMBIA-R0000006150. For a schedule of note payments and adjustments see Exhibits 2.1–2.3.

[O]	November 7, 2008 Asset Purchase Agreement by and between BAC and CHL [BACMBIA-C0000168172–229]; BAC, Current Report (Form 8-K), at Item 8.01 (Nov. 10, 2008) ("On November 7, 2008 . . . Countrywide and its subsidiary [CHL] transferred substantially all of their assets.").
[P]	Demand Note for $3,049,393,994 [BACMBIA-C0000168237–41]; Amendment No.1 to Demand Note [BACMBIA-Q0000001621–24]; BACMBIA-R0000006150. The consideration consisted of a demand note and the assumption of public debt securities. For a schedule of note payments and adjustments see Exhibits 2.1–2.3.
[Q]	November 7, 2008 IO Securities Purchase Agreement (BAC-CWSHI) [BACMBIA-C0000168406–16].
[R]	Demand Note for $7,787,837 [BACMBIA-C0000168417–21]. For a schedule of note payments see Exhibit 2.3.
[S]	November 7, 2008 IO Securities Purchase Agreement (BAC-CWIBH) [BACMBIA-C0000168422–36].
[T]	Demand Note for $446,832,137 [BACMBIA-C0000168437–42]. For a schedule of note payments see Exhibit 2.3.

B. Countrywide Received $29.3 Billion in Consideration in the July Transactions.

14. Countrywide received a mix of cash and demand notes in the July transactions described above.

15. In the July 2008 transactions, Countrywide received $27.6 billion in demand notes and $1.7 billion in cash.[14] These sums are detailed in Exhibit 2.1. The accounting records reflect that the demand note balances were adjusted both to incorporate additional information related to the fair values of the transactions that could not be obtained until after the transaction closed (such as the final unpaid principal balance of the MSRs in the Servicing LP transaction).[15]

[14] These totals for the demand notes reflect any adjustments made to the original balances. *See* Exhibit 2.2 for a schedule of adjustments.

[15] List of Accounting Entries for LD1 through LD3, 'LD1 Entries CFC' tab, rows 47–53 and 'LD2 Entries CFC' tab, rows 13–16 [BACMBIA-R0000006093].

16. Countrywide converted the majority of the demand notes to cash in the three months following the July transactions. This includes the approximately $16.2 billion in cash that BofA paid on the demand notes between July 1 through July 3, 2008.[16] (I refer to payments on demand notes as "pay downs"). As of November 1, 2008, BofA had made cash pay downs totaling $23.3 billion on the demand notes issued in the July transactions.[17]

17. The accounting records reflect the fact that Countrywide used the demand note proceeds for Countrywide purposes including repaying $11.5 billion in preexisting Countrywide bank debt that had become due on July 1, 2008, contributing $5.5 billion in capital to CFC's thrift CW Bank to maintain regulatory capital ratios, and unwinding certain derivative contracts.[18]

C. Countrywide Received $20.9 Billion in Consideration in the November Transactions.

18. The consideration in the November 2008 transactions consisted of both demand notes and BAC's assumption of CFC and CHL's public debt securities. BofA assumed $15.5 billion in CFC and CHL public debt securities, $9.7 billion related to the Stock Purchase Transaction, and

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[16] Exhibit 2.3. Several documents summarize the cash flow that occurred from July 1 through 3, 2008 with respect to the LD 2 transactions. *See, e.g.*, Summary of LD1-3 Cash Movements, 'Summary' tab [BACMBIA-R0000006061]; Summary of Cash Needs, 'Transaction Summary' tab [BACMBIA-R0000005986]; LD1-3 Funding Plan Cash Flow Summary, 'Summary' tab [BACMBIA-R0000006088] (the cash payment amount includes $6.9 billion from the Loan Sale and $9.2 billion from the Servicing LP Sale). Additionally, I have reviewed a rollforward of the related demand notes, showing both pay downs and adjustments to the associated notes. *See* NB-BAC Note Rollforward July – Dec [BACMBIA-R0000006150].

[17] In various places throughout this report and in the attached exhibits, totals may not add due to rounding.

[18] LD1-3 Funding Plan Cash Flow Summary, 'Transaction Summary' tab, rows 45, 52 [BACMBIA-R0000006088]. I understand the credit agreements for CFC and CHL had change in control provisions requiring full and immediate repayment following a "fundamental change" in ownership. *See, e.g.*, CFC, Current Report (Form 8-K), Exhibit 99.1 § 6.03, Art. 7(d) (Aug. 16, 2007). The credit agreements for CHL's lines of credit all had "substantially similar" terms. *See* CFC, Current Report (Form 8-K), at 3 (Aug. 16, 2007); CFC, Quarterly Report (Form 10-Q), at 6 (Aug. 11, 2008). Several documents summarize the cash flow that occurred from July 1 through 3, 2008 with respect to the LD 2 transactions. *See, e.g.*, BACMBIA-R0000005986; BACMBIA-R0000006061; BACMBIA-R0000006088.

\$5.8 billion related to the Asset Purchase Transaction.[19] Countrywide also obtained demand notes in the amount of \$6.5 billion, which were adjusted to the final amount of \$5.3 billion in March 2009.[20] BAC's assumption of the public debt securities removed those obligations from the liabilities recorded on Countrywide's financial statements and, thus, reduced Countrywide's total liabilities. Accordingly, from Countrywide's perspective, the debt assumption was the same as BAC paying Countrywide cash and Countrywide using the cash to pay off the public debt.

19. The accounting records and other documents provided to me show that Countrywide received payment in full for the demand notes associated with the November transactions. In December 2008, CHL received \$1.0 billion in cash.[21] Over the course of the next two years, CFC and CHL received the remaining payments on the November transactions.[22]

20. The Coates Report discusses certain adjustments to the July and November transactions,[23] and expresses confusion regarding these adjustments and the final note amounts. Professor Coates neglects to discuss that post-transaction adjustments are common for sales transactions of

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[19] In his report, Professor Coates expresses confusion about the amounts paid related to the November transactions. *See* Coates Report at 48, n.151. I reviewed the final executed versions of the purchase agreements and related promissory notes, along with related accounting documents, and can clear up Coates's confusion. As shown in more detail in Exhibit 2.2, the final amounts of demand notes that Countrywide received from BAC in the LD 100 transactions were for \$3.6 billion (preliminary purchase price of \$3.1 billion) for the Asset Purchase Agreement, and \$1.8 billion for the Stock Purchase Agreement (preliminary purchase price of \$3.5 billion). *See* Exhibit 2.1 for a listing of the preliminary and final purchase prices and adjustments.

[20] *See* Exhibit 2.2.

[21] NB-BAC Note Rollforward July–Dec, rows 39–40 [BACMBIA-R0000006150]. This rollforward is consistent with the balances shown on Countrywide's balance sheet, which show an increase of approximately \$1 billion in Account #1000050 "Warehouse B of A #06200", a cash account. 'CFC YTD' tab, row 21 [BACMBIA-R0000006048]; 'CFC Consolidation YTD' tab, row 21 [BACMBIA-R0000006049].

[22] BACMBIA-X0000205650 (showing the Demand Note Paydown for CFC); BACMBIA-X0000205651 (Showing the Demand Note Paydown for CHL).

[23] *See, e.g.*, Coates Report at 13–17.

this level. This is true for both for third party and intercompany transactions, as well as for the routine closing of a company's books, as I describe below.

21. Two factors typically drive post-transaction adjustments. First, it can take time for an organization to collect the information necessary to finalize accounting entries at period end. For this reason, accounting systems typically record effective dates (typically called a "journal date") for general ledger entries that predate the day on which the actual journal entry is entered onto the accounting system (typically called the "posting date"). During the time between a fiscal period end date and the point at which a company finalizes its financial statements, adjustments may be recorded to update or correct information that had preliminarily been recorded in the company's general ledger. Because time is naturally required to complete this process, the SEC provides registrants an interval after the end of a fiscal period before the submission of periodic filings is required (up to 45 days for quarterly filings and up to 90 days for year-end).[24]

22. Second, it is common to include post-closing "purchase price adjustments" in asset sale and acquisition transactions.[25] The need for post-closing purchase adjustments often arises because the value of the target is "determined on the basis of the most recent financial information available at the time of pricing."[26] Provisions for purchase price adjustments enable the pricing to be adjusted for "changes in certain values of the target between the signing of the acquisition agreement and the closing date."[27] I understand that the agreements between

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[24] SEC Website Form 10-Q, http://www.sec.gov/answers/form10q.htm.

[25] *See* Leigh Walton & Kevin D. Kreb, *Purchase Price Adjustments, Earnouts and Other Purchase Price Provisions*, 2005 A.L.I.-A.B.A. BUS. L. COURSE MATERIALS J., June 2006, at 4, 8, 12–13.

[26] *Id.*

[27] *Id.*

Countrywide and BofA contained adjustment provisions: for example, the November 7, 2008 Stock Purchase Agreement Section 1.3 (c) acknowledges that:

> [T]he purchase price paid at Closing reflects the parties' good faith estimate of the fair value of certain financial assets . . . and that the final determination of the fair value of the Financial Assets and Liabilities as of the Closing Date requires analysis of information that can only be obtained following the Closing. Accordingly, Purchaser and Seller shall, during the sixty (60) calendar days following Closing, cooperate to determine the fair value as of the Closing Date of the Financial Assets and Liabilities.[28]

23. I note that Professor Coates discusses an adjustment related to the CHLS Sale that was effective on July 1, 2008 (the journal date) but was not posted or input into the system until August 1, 2008 (the posting date).[29] This is well within a reasonable period of time in which adjustments would be recorded in order to finalize the recording of transactions such as those that occurred in the July transactions.[30]

D. The July and November 2008 Transactions Did Not Change the Economic Value Available to Countrywide to Satisfy its Creditors.

24. As I explained in my initial report (*see* Porter Initial Report at ¶¶ 29–30), the consideration that Countrywide received in connection with the July and November transactions was determined using methods designed to reasonably approximate the fair value of the assets being sold. This means that the method BofA used was designed to ensure that the economic benefit to Countrywide from the assets it was selling would not be affected. Instead, selling the assets would merely accelerate Countrywide's receipt of the expected future cash flows from the assets in an amount equal to their net present value, thereby maintaining an equivalent economic

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28 November 7, 2008 Stock Purchase Agreement by and between BAC and CFC §1.3(c) [BACMBIA-C0000168443–94].

29 Coates Report at 14 n.31.

30 JE 11 Adjust Sale of Texas LP [BACMBIA-V0000028968].

position for Countrywide. Further, as I discuss in more detail below, the November transaction provided Countrywide with payment for the full amount of goodwill that Countrywide had recorded in conjunction with the Acquisition, thereby monetizing the goodwill into an asset available to benefit creditors.

V. Goodwill Allocation

A. BAC Used a Reasonable Approach to Allocate Goodwill to CW Bank and Balboa

25. Goodwill is the excess of the price paid for control of the acquired company over the fair value of the net assets acquired in a business combination. Goodwill is determined through application of the purchase method.[31] After determining the total amount of goodwill, the next step is to "push down" the purchase method adjustments to the acquired company and its subsidiaries.[32] As a result of this step, the assets and liabilities of the individual entities acquired are reflected at the fair values (except for a few GAAP mandated exceptions) determined in conjunction with the purchase method. Push down accounting to CFC and its subsidiaries is required by SEC and other regulatory agencies when an entity becomes substantially owned (that is, at least 90% or 95% of voting stock, depending upon the specific regulatory agency).[33]

26. Along with the other assets and liabilities acquired, goodwill must be allocated to the appropriate subsidiary or subsidiaries under push down accounting.[34] Professor Coates incorrectly describes the method used to allocate goodwill to certain CFC subsidiaries. He states

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[31] *See* Porter Initial Report at ¶ 20; *see also* Exhibit 1.

[32] *See* Porter Initial Report, ¶ 43; *see also* Glossary of Accounting Terms, Exhibit 1.

[33] Staff Accounting Bulletin ("SAB") No. 54, *Push Down Basis of Accounting Required in Certain Limited Circumstances* (1983); Joint Report: Differences in Accounting and Capital Standards Among the Federal Banking Agencies; Report to Congressional Committees, 73 Fed. Reg. 50,326 (Aug. 26, 2008).

[34] SAB No. 54.

that "goodwill was preliminarily allocated to CFC and its subsidiaries based on a percentage allocation of historical operating income at each entity" and then reallocated to CW Bank and Balboa.[35]

27. Professor Coates mischaracterizes the goodwill allocation process to imply that goodwill was preliminarily allocated to certain CFC subsidiaries and then reallocated to other Countrywide entities stating that "[u]nder BAC's own internal calculations" the allocations would have been different "using [BAC's] operating income methodology."[36] Such a characterization ignores that no goodwill was actually allocated based on the operating income analysis; rather, the operating income analysis was only an intermediary step in BofA's goodwill allocation process. As Michael Friedlander explained during his deposition, to perform the allocation, BofA used a three-step process, the "ending objective" of which was to "record goodwill at the legal entities where . . . the future benefit of the acquisition was really going to come from."[37]

- *First*, BofA looked at the purchase accounting marks allocated to each CFC subsidiary to determine the implied goodwill for that subsidiary.
- *Second*, BofA examined the percentage of operating income that various Countrywide subsidiaries contributed to the consolidated enterprise (*i.e.*, CFC and all subsidiaries) in 2006. The year 2006 was used because 2007 was a volatile year in the financial industry.
- *Third*, BofA adjusted the allocation to reflect the expected future performance of the Countrywide entities and ultimately allocated the goodwill to the Countrywide entities

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35 Coates Report at 12.

36 *Id.*

37 Friedlander Dep. Tr., Vol. I at 164:2–25, 165:2–10. Friedlander was a Senior Vice President in Accounting Policy who coordinated the application of the purchase method. *See also, e.g.*, Purchase accounting reconcile to BAC July at 08-18 FINAL [BACMBIA-V0000029021]; Purchase accounting reconcile to BAC February updated 2-13-09 [BACMBIA-V0000029128].

(CW Bank and Balboa) that were expected to contribute the majority of the revenue and possess the insurance and mortgage operations for which BofA acquired Countrywide.[38]

28. The three-step method BofA used to allocate goodwill resulting from the Acquisition—which resulted in the goodwill being allocated to CW Bank and Balboa—was consistent with typical accounting practices and the principles underlying goodwill.[39]

29. The accounting guidance does not specify a method for allocating goodwill among business units; rather it requires accounting judgment. Indeed, mechanically applying the results of the calculation of the proportion of operating income generated by the entities during 2006 as the basis for BofA's goodwill allocation would have been inconsistent with typical accounting practices. Instead, as I described in my initial report (*see* Porter Initial Report ¶ 69), in BofA's consideration of the allocation of goodwill, it appropriately considered its plans for the entities that it had acquired and the changes that had occurred in Countrywide's operating model since 2006 (in particular, the fact that mortgage loan origination operations had been moved from CHL to CW Bank prior to the Acquisition).[40]

30. The closest authoritative guidance relevant to the allocation of goodwill in push down accounting is the guidance contained in SFAS No. 142, *Goodwill and Other Intangible Assets*. As described in my initial report, this guidance pertains to assigning goodwill to individual reporting units for purposes of evaluating impairment (*i.e.*, possible decline in value). SFAS No. 142 states that for purposes of impairment testing, goodwill should be allocated to the "reporting

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38 Friedlander Dep. Tr., Vol. I at 164:2–25, 165:2–10.

39 Porter Initial Report ¶¶ 63–71.

40 Professor Coates acknowledges that Countrywide made significant changes to its operations between December 31, 2006 and the July 1, 2008 acquisition. Specifically, Coates notes that by "December 31, 2007, over 90% of monthly mortgage loan production occurred at Countrywide Bank" (Coates Report at 9) and that by the time of the Red Oak Merger, "99% of home loan origination" was occurring at CW Bank (*id.* at 12). In other words, loan operations became concentrated at CW Bank before the Acquisition closed on July 1, 2008.

units of the acquiring entity that are expected to benefit from the synergies of the [business] combination."[41]

31. The fact that virtually all of the mortgage origination activities were occurring at CW Bank at the time of the Acquisition, as described by Professor Coates, is consistent with the majority of the goodwill being allocated to this entity (*i.e.*, reasonably viewed as the entity that would benefit most from the goodwill in the future). It is also consistent with BofA's plans for the assets and operations that were being acquired in the Acquisition: BofA publicly disclosed that it was acquiring Countrywide for its mortgage business[42] and CFO Joseph Price's June 25, 2008 presentation to the BAC Board explained that management's plan for Countrywide involved "most of the former [C]ountrywide operations . . . [being] housed in . . . Countrywide Bank, FSB."[43]

32. Based on the above, it is my opinion that BofA's approach to the allocation of the goodwill was a reasonable exercise of accounting judgment and, as described below, ultimately resulted in CFC obtaining compensation for the recorded goodwill amounts.

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41 SFAS No. 142, *Goodwill and Other Intangible Assets*, ¶ 34 (2001).

42 BAC, Current Report (Form 8-K) Item 8.01: Other Events (July 1, 2008) ("Bank of America Corporation (the 'Registrant') . . . and Countrywide Financial Corporation . . . announced that they had signed an Agreement and Plan of Merger pursuant to which Countrywide will merge with and into a wholly owned subsidiary of the Registrant.").

43 June 25, 2008 Board Presentation at 24 [BACMBIA-B0000018283–319].

B. In the November Transactions, BAC Paid CFC More than $4 Billion for the Goodwill Allocated to CW Bank and Balboa.

33. In addition to suggesting goodwill was improperly allocated, Professor Coates states in his report that the "$4.2 billion of goodwill allocated to Countrywide Bank and Balboa was transferred to BAC," implying that Countrywide did not receive any consideration for the goodwill or was deprived somehow of a valuable asset.[44] But Countrywide did receive consideration that permitted it to convert the goodwill to liquid financial assets. In the November transactions, BAC paid CFC more than $4 billion for the goodwill that had been allocated to CW Bank and Balboa.[45]

34. Goodwill resulting from an acquisition is an intangible asset. It is an asset other than a financial asset without having any physical substance. It is only recorded on a balance sheet as a result of a business combination, and, thus, the amount of goodwill recorded is specific to a particular transaction. Because goodwill conceptually represents factors related to the going concern value and the fair value of expected synergies, it is specific to a particular entity.[46] It cannot be used by another entity and, thus, cannot be sold as an individual asset. Therefore, goodwill cannot directly be used to satisfy creditors.

35. The "transfer" to BAC to which Professor Coates refers was part of CFC's sale of its equity interests in CW Bank and Balboa to BAC in the November transactions. The goodwill allocated to CW Bank and Balboa in the purchase method and push down accounting process increased the price that BAC paid to CFC for its equity in CW Bank and Balboa. This is because

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44 Coates Report at 16.

45 *See* Exhibit 3 for a schedule detailing the goodwill purchased in the Stock Purchase Transaction.

46 SFAS No. 141, *Business Combinations*, ¶¶ B102, B105 (recognizing that going concern value and fair value of expected synergies all are "conceptually part of goodwill").

the goodwill increased CW Bank and Balboa's assets by more than $4 billion, thereby increasing net assets (that is, assets minus liabilities) by this amount. The accounting records demonstrate that BAC paid CFC the value of CW Bank and Balboa's net assets (calculated including goodwill) for CFC's equity interest in those entities. Accordingly, the amount paid was $4.4 billion more than CFC would have received based on the amount determined to be the fair value of just its identifiable equity (identifiable equity excludes goodwill).[47]

36. Accordingly, in the November transactions, BAC paid Countrywide for the goodwill arising from the Acquisition that had been allocated to CW Bank and Balboa. Thus, CFC was able to convert the goodwill—an intangible asset that could not be used directly to satisfy creditors or sold as an individual asset to third parties—to an economically valuable asset that was used to satisfy Countrywide's creditors.[48] In other words, because the inclusion of the value of goodwill in the purchase price for CW Bank and Balboa increased the price for these entities, the November transactions converted the goodwill asset to a financial asset to the benefit of Countrywide's creditors in the amount of $4.4 billion.

VI. Contingent Liabilities and Discussion of SFAS No. 5 Criteria

37. I have three main points in response to Professor Coates' brief discussion of contingent liabilities.

- *First*, Professor Coates is mistaken in suggesting or implying that BofA improperly determined the amount of Countrywide's recognizable contingent liabilities. BofA properly recognized in the financial statements only the portion of the potential

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[47] The Stock Purchase transaction (*see* ¶ 33, *supra*) incorporated the goodwill that was allocated to Balboa and CW Bank as part of the purchase price paid in the transaction. *See* Exhibit 3 for the summarized balance sheets of the entities BAC purchased in the Stock Purchase Transaction. The initial goodwill amount was later updated to $4.4 billion to reflect the final purchase accounting adjustments.

[48] Exhibit 2.3 shows the total demand note pay downs.

contingent liabilities exposure it determined to have met SFAS 5's probable and reasonably estimable standard.

- *Second*, Professor Coates suggests that BofA was "concerned" that Countrywide may have contingent liabilities well above the amount BofA recognized such that Countrywide would not be able to pay the potential liabilities. I disagree that the evidence Professor Coates reviewed supports any such suggestion. To the contrary, the accounting records show that Countrywide had more than $6 billion in net assets on its own balance sheet at that time—which is $4 billion more than the maximum exposure for contingent liabilities in excess of the potential exposure that BofA had estimated for internal purposes (*i.e.*, outside of GAAP).

- *Third*, I address Professor Coates's apparent misinterpretation of the fact that BAC's subsidiaries' (including Countrywide) financial information are reflected in BAC's consolidated financial statements. BAC's consolidated financial statements present the assets and liabilities of the entire Bank of America group of companies—*i.e.*, BAC and all its subsidiaries—as if the assets and liabilities belonged to a single entity and, thus, it is impossible to infer from the consolidated financial statements which entity is responsible for a particular liability or owns a particular asset.

A. The Implications Professor Coates Attempts to Draw from BofA's Treatment and Analysis of Countrywide's Contingent Liabilities Are Unsupported by the Accounting Records or GAAP.

38. In footnote 151 to his report, Professor Coates notes that management presented to the BAC board an estimate of the full amount of Countrywide's potential exposure to contingent liabilities, including exposures that management had determined did not meet the probable and reasonably estimable standard for accrual under SFAS No. 5, *Accounting for Contingencies* (SFAS No. 5).[49] Professor Coates also notes that BAC's general counsel provided BAC's Board with "a detailed update on the legal exposure and *quantified a range of such exposures*" (emphasis added by Professor Coates).[50] Professor Coates appears to be implying that these additional potential contingent liability exposures—although not recognizable under GAAP—

[49] Coates Report at 48, n.151.

[50] *Id.* (citing to BACMBIA-W0000002083).

should have been recorded on Countrywide's balance sheets. Such an inference is unjustified and would have resulted in Countrywide's financial statements not being GAAP compliant.

39. As I explained in my initial report (*see* Porter Initial Report ¶¶ 36–39), under SFAS No. 5, only contingent liabilities that are considered both "probable" and "reasonably estimable" are recognized in the financial statements. These criteria are designed to ensure the integrity of financial statements by "prevent[ing] accrual in the financial statement of amounts so uncertain as to impair the integrity of those statements."[51] In the absence of either of these conditions, no accrual is recorded.[52]

40. BAC's financial statements acknowledge these requirements. As disclosed in Note 13 to BAC's 2008 Form 10-K:

> In view of the inherent difficulty of predicting the outcome of such litigation and regulatory matters, particularly where the claimants seek very large or indeterminate damages or where the matters present novel legal theories or involve a large number of parties, the Corporation cannot state with confidence what the eventual outcome of the pending matters will be, what the timing of the ultimate resolution of these matters will be, or what the eventual loss, fines or penalties related to each pending matter may be. In accordance with SFAS 5, the Corporation establishes reserves for litigation and regulatory matters when those matters present loss contingencies that are both probable and estimable. When loss contingencies are not both probable and estimable, the Corporation does not establish reserves.[53]

41. The mere fact that management presented potential exposure amounts to the Board does not mean that management had determined that those potential exposures represented losses from contingent liabilities that were both probable and reasonably estimable.[54] In fact,

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[51] SFAS No. 5, *Accounting for Contingencies*, ¶ 59.

[52] *Id.* ¶ 8 ("An estimated loss from a loss contingency . . . shall be accrued by a charge to income if . . . [i]nformation . . . indicates that it is probable . . . [and t]he amount of loss can be reasonably estimated.").

[53] BAC, Annual Report (Form 10-K), Note 13 at 150 (Feb. 27, 2009).

[54] SFAS No. 5, ¶ 8.

management explicitly told the BAC Board that it did not consider these exposures to be recognizable under SFAS No. 5.[55] It is entirely unremarkable that management and the Board would discuss possible contingency exposures that were not considered probable.

42. Moreover, the fact that a potential exposure was quantified for the purposes of internal discussion does not mean that these were estimates that satisfied SFAS No. 5's "reasonably estimable" provision. Internal due diligence supporting a Board's consideration of a transaction serves a different purpose from recording a contingent liability on a Company's financial statements. The requirements of SFAS No. 5 apply to financial reporting and, thus, are designed to meet the needs of users of the financial statements and impose a high standard of certainty before a contingency can be recognized. On the other hand, corporate officers and directors need different information to evaluate potential outcomes and execute their responsibilities.[56] Accordingly, in my opinion, it is frequently the case that management and Boards will consider the potential impact of uncertain and contingent events that fail to meet SFAS No. 5's probable and reasonably estimable thresholds.

43. Determination of litigation-related contingent liabilities for external reporting purposes is a complex task involving significant judgment. It is well-known that many corporations face a high volume of litigation[57] and that because of the many uncertainties involved, litigation outcomes are inherently difficult to estimate. Plaintiffs' claimed damages are often not known, and even when they are, they often bear little resemblance to amounts ultimately paid to resolve

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55 June 25, 2008 Board Presentation at 16 [BACMBIA-B0000018283–319].

56 CON No. 1, *Objectives of Financial Reporting by Business Enterprises*, ¶ 27 (observing that "[m]uch of [the information considered by management] relates to particular decisions . . . and is often provided in more detail than is considered necessary or appropriate for external financial reporting").

57 *See generally* LITIGATION WATCH: FULBRIGHT'S 7TH ANNUAL LITIGATION TRENDS SURVEY REPORT (2010).

litigation. Thus, plaintiffs' claimed damages generally do not provide a reasonable basis for determining an amount for which the litigation will ultimately be resolved. For example, several studies have found that securities class action settlements typically range from only 5% to 12% of estimated damages.[58]

44. SFAS No. 5, which establishes the criteria for recognition of contingent liabilities, is one of the longest-standing pronouncements established by the FASB. SFAS 5 was issued in March 1975 and has not been rescinded.[59] It continues to be the standard to this day, as the FASB has codified SFAS No. 5 into its current guidance.[60]

B. As of July 1, 2008, Countrywide's Net Assets Exceeded its Potential Non-SFAS 5 Contingent Liability Exposure by $4 billion.

45. Professor Coates also states that "BAC had concerns regarding whether CFC and CHL's expected contingent liabilities were greater than the amounts reserved for such liabilities and CFC and CHL's ability to pay for those liabilities."[61] In making this assertion, Professor Coates relies only upon a statement in the June 25, 2008 Board of Directors Presentation to the effect that, "[o]f the total $3.3 billion in estimated exposure, we currently anticipate covering $2.3 billion either through existing reserves or purchase accounting. The remaining $1 billion is assumed to come through our income statement over the next 4 years."[62] There is nothing in this

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58 James D. Cox et al., *Does the Plaintiff Matter? An Empirical Analysis of Lead Plaintiffs in Securities Class Actions*, 106 COLUM. L. REV. 1587, 1621 n.132 (2006).

59 It continues to be the standard to this day, as incorporated into the FASB's recent codification, which was an effort designed to consolidate the various sources of accounting authoritative literature. FASB Accounting Standards Codification ("ASC") Topic 450, *Contingencies* (2011).

60 *See generally* ASC Topic 450. SFAS No. 5 is included in many topics of the codification. *See, e.g.*, ASC Topic 450–10, *Overall*.

61 Coates Report at 48 n.151.

62 June 25, 2008 Board Presentation at 16 [BACMBIA-B0000018283–319].

statement, however, that provides support for the conclusion that BAC "had concerns" that Countrywide would not be able to meet these obligations.

46. CFC had more than \$6 billion in net assets (*i.e.*, assets in excess of liabilities) after the purchase accounting process was completed. This sum includes \$2 billion in net assets that could have been used to satisfy contingent creditors in the event that their claims became due.[63] In addition, CFC had the prospect of future income, either from the sale of assets (including the prospect of converting more than \$4 billion in goodwill resulting from the merger into tangible assets by selling CW Bank and Balboa to BAC) or future cash flows from its assets.

47. Even assuming that the entire \$2 billion in estimated potential contingent liability exposure in excess of Countrywide's reserves ultimately developed into a recognizable liability (*i.e.*, recorded on the balance sheet), this obligation and potential payment would not arise at once, but gradually over time. This is because the \$2 billion did not relate to a single potential claim, but to thousands of smaller claims that likely would be resolved at different points in time. Therefore, at the time of the statement included in the June 25, 2008 BAC Board presentation discussed by Professor Coates, the accounting records reflect that Countrywide had more than sufficient assets on its books to meet even the high end of the potential contingent liabilities exposures.

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[63] *See* CFC, Current Report (Form 8-K/A) Exhibit 99.1 (Sept. 17, 2008) (showing net assets following the preliminary purchase accounting adjustments at CFC of more than \$2 billion after adjusting for the \$4.2 billion in goodwill). While contingent liabilities represent potential liabilities (rather than known liabilities), to the extent that such liabilities became due, CFC had \$2 billion in assets available to pay off these amounts. This is because assets exceeded known liabilities by \$2 billion. *See also supra* ¶ 35; Comprehensive Red Oak Proforma, 'PA_Management Summary' tab, cell V:56 [BACMBIA-H0000007814].

C. Consolidated Financial Statements Do Not Show Which Subsidiary Owns an Asset or Liability.

48. Professor Coates appears to have confused the concepts and purpose of consolidated accounting in his description of potential payments of these contingent liabilities and related expenses. To support his conclusion that BAC assumed CFC and CHL's contingent liabilities, Professor Coates states that "these liability expenses were expected to be dealt with through the profits of the combined mortgage business at BAC."[64] This appears to be based solely on a sentence from BAC CFO Joseph Price's June 25, 2008 presentation to the BAC Board: "Of the total $3.3 billion in estimated exposure, we currently anticipate covering $2.3 billion either through existing reserves or purchase accounting. The remaining $1 billion is assumed to come through our income statement over the next 4 years at about 250 million per annum."[65] And to conclude that the parent entity BAC would have to pay these claims, Professor Coates relies on testimony from Amy Brinkley (who testified that she had no involvement in preparing the presentation) about what she "assumes" Mr. Price meant by his presentation.[66]

49. Professor Coates does not mention the testimony from Mr. Price himself about what he intended this sentence to mean. Mr. Price explained that the expenses would flow through the "consolidated accounts post-merger when the Countrywide entities were part of the family of Bank of America companies."[67] Price further stated that if the obligations belonged to a

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64 Coates Report at 70.

65 *Id.* at 48 n.151 (quoting June 25, 2008 Board Presentation at 16 [BACMBIA-B0000018293–319]); *see also* CFC, Current Report (Form 8-K/A) Exhibit 99.1 (Sept. 17, 2008).

66 Coates Report at 48 n.151, 70 n.220 (citing the Brinkley deposition where she "assum[es Joe Price] is talking about Bank of America Corporation" with regard to the future income statements where Countrywide losses would be recorded).

67 Price Dep. Tr. at 91:9–23.

particular subsidiary, "then that's where it should be booked."[68] Price's explanation is completely consistent with how consolidated accounting in a large corporate family is designed to work.

50. As I explained in my initial report (*see* Porter Initial Report ¶¶ 9–11), the "purpose of consolidated statements [is] to present, primarily for the benefit of the owners and creditors of the parent, the results of operations and the financial position of a parent and its subsidiaries as *if* the group were a single economic entity."[69]

51. Assets and liabilities in a consolidated financial statement often—and in the case of BAC typically—are held by a subsidiary, not by the parent company.[70] Consolidated financial statements are therefore designed to provide investors and creditors of the parent entity with an overview of the entire corporate family's financial position and results of operations, without regard to which specific subsidiary owns any specific asset or is responsible for any specific liability. The inclusion of a subsidiary's assets or liabilities in BAC's consolidated financial statements, therefore, does not mean that the BAC parent entity directly owns the assets or is directly responsible for the liabilities of its subsidiaries reflected on the consolidated financial statement. Consequently, the inclusion of Countrywide liabilities in BAC's consolidated financial statements does not mean that the BAC parent entity has assumed or intended to assume these liabilities.[71]

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68 *Id.* at 92:17–25, 93:1.

69 ARB No. 51, ¶ 1 (1959) (emphasis added); *see also* SFAS No. 94, ¶ 1 (1987) (quoting ARB No. 51, ¶ 1).

70 *See, e.g.*, BAC, Annual Report (Form 10-K), at 181 (Feb. 27, 2009) (reporting parent-only financial information).

71 Porter Initial Report at ¶¶ 9–13.

Thomas L. Porter

Thomas L. Porter
Dated: July 27, 2012

Appendix A

Thomas L. Porter, PhD, CPA

84 Holman Street
Shrewsbury, MA 01545
Email: tlporter@townisp.com
Website: www.tportercpa.com
Phone: 508-842-1391 (H) 774-275-0319 (C)

1. Education

University of Washington
PhD, Accounting, 1992

Georgia Institute of Technology
MBA, 1984

University of Maryland
BS, Accounting and Finance, 1980

2. Certifications

Certified Public Accountant since 1981

Accredited in Business Valuation (ABV), 2011

Certified in Financial Forensics (CFF), 2010

3. Professional Experience

- **Hult International Business School**

2012- Associate Dean

- **NERA Economic Consulting**

2008-2012 Vice President
2003-2008 Senior Consultant
Analyses of financial reporting, tax and disclosure matters in connection with securities and commercial litigation. Expert reports and testimony.

- **Boston College**

2010- Adjunct Professor
Teach Financial Statement Analysis to MBA and MSA students in the Wallace E. Carroll School of Management.

- **Georgia State University**

2001-2003 Assistant Professor
Taught graduate and undergraduate financial accounting courses.

4. Professional Experience (continued)

- **Financial Accounting Standards Board**

1998-2001 Project Manager
Participated in all aspects of standard-setting activities, including issuances of Statements of Financial Reporting Standards, Statements of Financial Accounting Concepts and Emerging Issues Task Force (EITF) pronouncements.

- **Boston College**

1993-1998 Assistant Professor of Accounting
Taught graduate and undergraduate financial accounting courses.

- **Price Waterhouse**

1984-1987 Senior Consultant

- **Aronson, Greene, Fischer & Co. (CPAs)**

1980-1982 Auditor

5. Publications

"The Hard Facts About Soft Numbers in Subprime Litigation," *Securities Litigation Journal,* ABA Litigation Section, Volume 21, Number 2, Winter 2011, pp. 14-17.

"Fussing and Fuming About Fair Value and Financial Institution: Fact or Fiction?", *Informer*, Volume 2, Issue 13, Spring 2010, pp 45-47.

"The Subprime Meltdown: Understanding Accounting-related Allegations," (with A. Chanyshev), *NERA Insights: Subprime Lending Series*, NERA Economic Consulting, (December 2007).

"Options Backdating: Accounting, Tax, and Economics," (with P. Hinton and P. Conroy), *NERA Insights: Options Backdating Series*, NERA Economic Consulting, (November 2006).

"Backdating Options: Frequently Asked Accounting Questions" *NERA Insights: Options Backdating Series*, NERA Economic Consulting, (November 2006).

Appendix B

Documents Relied On[1]

Produced Documents

2009-2012 Entity-Level Balance Sheets and Income Statements
[BACMBIA-R0000006177–215; BACMBIA-R0000013365–70; BACMBIA-R0000013374; BACMBIA-V0000028055–112; BACMBIA-V0000028184–408]

CFC Year-to-Date Consolidating Balance Sheet - June 30, 2008
[BACMBIA-R0000006045]

CFC Year-to-Date Consolidating Balance Sheet - July 31, 2008
[BACMBIA-R0000006044]

CFC Year-to-Date Consolidating Balance Sheet - August 31, 2008
[BACMBIA-R00000006041]

CFC Year-to-Date Consolidating Balance Sheet - September 30, 2008
[BACMBIA-R0000006046]

CFC Year-to-Date Consolidating Balance Sheet - October 31, 2008
[BACMBIA-R0000006047]

CFC Year-to-Date Consolidating Balance Sheet - November 30, 2008
[BACMBIA-R0000006048]

CFC Year-to-Date Consolidating Balance Sheet - December 31, 2008
[BACMBIA-R0000006049]

CFC Year-to-Date Consolidating Balance Sheet - January 31, 2009
[BACMBIA-R0000006042]

Excel Spreadsheet with First Tab: 'Transaction Summary'
[BACMBIA-R0000005986]

Excel Spreadsheet with Tab: 'Transaction Summary'
[BACMBIA-R0000006088]

Excel Spreadsheet with First Tab: 'CFC Consolidated'
[BACMBIA-R0000006043]

Excel Spreadsheet with First Tab: 'Template'
[BACMBIA-R0000006149]

Email chain between November 20, 2008 and November 25, 2008 with attachment
[BACMBIA-I0000033376–78]

E-mail chain on December 9, 2008
[BACMBIA-I0000072270]

Email between May 27, 2008 and May 29, 2008
[BACMBIA-I0000068216]

Email on June 25, 2008 with attachments
[BACMBIA-B0000018282–341]

Email chain on December 24, 2008
[BACMBIA-I0000072501]

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1 *See* Stipulation and Order Regarding Expert Discovery, at ¶ 2.

Excel Spreadsheet with First Tab: 'PA_Management Summary'
[BACMBIA-H0000007814]

Excel Spreadsheet with First Tab: 'Summary'
[BACMBIA-R0000006061]

Excel Spreadsheet with First Tab: 'LD1 Entries CFC'
[BACMBIA-R0000006093]

Excel Spreadsheet with First Tab: "Summary'
[BACMBIA-R0000006165]

Excel Spreadsheet with First Tab: 'PAA Schedule'
[BACMBIA-V0000029128]

Excel Spreadsheet with First Tab: 'Hierarchy'
[BACMBIA-V0000029129]

Presentation with First Page Title: 'Countrywide Acquisition – Loan Portfolio Accounting'
[BACMBIA-I0000005142–46]

Excel Spreadsheet with First Tab: 'Summary'
[BACMBIA-I0000068217]

Excel Spreadsheet with First Tab: '8-29 PAA Schedule'
[BACMBIA-V0000029030]

Excel Spreadsheet with First Tab: 'PAA Schedule'
[BACMBIA-V0000029113]

Excel Spreadsheet with First Tab: 'Recon by Entity'
[BACMBIA-V0000029021]

Excel Spreadsheet with First Tab: 'PAA Schedule'
[BACMBIA-V0000029072]

Excel Spreadsheet with First Tab: 'PAA Schedule'
[BACMBIA-V0000029056]

Excel Spreadsheet with First Tab: 'PAA Schedule'
[BACMBIA-V0000029080]

SOP 03-3 Summary of Accounting
[BACMBIA-I0000017326–29]

Ernst & Young LLP, Valuation Analysis in Connection with Statement of Financial Accounting Standards No. 141, Business Combinations - Bank of America Corporation
[BACMBIA-Q0000001858–936]

Investment Agreement by and between Bank of America, N.A., and Countrywide Financial Corporation (August 22, 2007)
[BACMBIA-H0000000026–59]

Mortgage Servicing Rights (MSRs) Governance Committee Presentation (October 1, 2008)
[BACMBIA-A0000108314–38]

Excel Spreadsheet with First Tab: 'JEs'
[BACMBIA-R0000006047]

Email chain on October 8, 2010
[BACMBIA-Q0000001798–99]

Excel Spreadsheet with First Tab: 'Consol Bal Sheet'
[BACMBIA-H0000008165]

Closing Set for Red Oak Merger
[BACMBIA-C0000160029–918]

Closing Set for the July Transactions
[BACMBIA-C0000160997–1640]

Closing Set for the November Transactions
[BACMBIA-C0000168035–8642; BACMBIA-Q0000001621–36]

Excel Spreadsheet with First Tab: 'Summary'
[BACMBIA-R0000006150]

List of Accounting Entries for LD1 through LD3 with certain related journal entries
[BACMBIA-V0000028757–833]

JE 11 Adjust Sale of Texas LP
[BACMBIA-V0000028968]

Excel Spreadsheet with First Tab: 'CFC VAN 6-30 Marks'
[BACMBIA-I0000003304]

Email chain on July 16, 2008
[BACMBIA-I0000069896–79]

Minutes of Meeting of Board of Directors of Bank of America Corporation (June 25, 2008)
[BACMBIA-W0000002083–117.0010]

Excel Spreadsheet Titled: "Loan Activity Report as of 07/05/2012"
[BACMBIA-X0000205650]

Excel Spreadsheet Titled: "Loan Activity Report as of 07/05/2012"
[BACMBIA-X0000205651]

Excel Spreadsheet Titled: "Loan Activity Report as of 07/09/2012"
[BACMBIA-X0000205647]

Excel Spreadsheet Titled: "Loan Activity Report as of 07/09/2012"
[BACMBIA-X0000205648]

Excel Spreadsheet Titled: "Loan Activity Report as of 07/09/2012"
[BACMBIA-X0000205649]

Emails between September 26, 2008 and September 29, 2008
[BACMBIA-I0000032976]

Excel Spreadsheet with First Tab: 'Upload'
[BACMBIA-V0000029036]

Emails between August 1, 2008 and August 6, 2008
[BACMBIA-V0000028694–97]

CFC Proforma Consolidating Balance Sheet
[BACMBIA-V0000028727–46]

Demand Note (July 3, 2008)
[BACMBIA-R0000006067–71]

Demand Note (July 3, 2008)
[BACMBIA-R0000006221–26]

CFC Proforma Consolidating Balance Sheet with handwritten note "Provided by Jennifer Jacoby" [BACMBIA-V0000028727–46]

Depositions

Deposition of Joe Lee Price, II, Vol. I, with Exhibits 3641-89 Listed but Not Included (May 23, 2012)

Deposition of Gregory Snelson, Vol. I (May 25, 2012)

Deposition of Michael E. Friedlander, Vol. I (July 11, 2012)

Deposition of Michael E. Friedlander, Vol. II (July 12, 2012)

Deposition of Greg Willis Hobby, Vol. II (Rough Transcript) at 136–140 (July 27, 2012)

SEC Filings

BAC, Current Report (Form 8-K) (Jan. 11, 2008) [BACMBIA-V0000032213–24]

BAC, Registration Statement (Form S-4) (May 28, 2008) [BACMBIA-V0000038159–347]

BAC, Current Report (Form 8-K) (July 1, 2008) [BACMBIA-V0000030606–14]

BAC, Current Report (Form 8-K) (July 21, 2008) [BACMBIA-V0000038059–158]

BAC, Quarterly Report (Form 10-Q) (Aug. 7, 2008) [BACMBIA-V0000038716–984]

BAC, Quarterly Report (Form 10-Q) (Nov. 6, 2008) [BACMBIA-V0000038348–715]

BAC, Current Report (Form 8-K) (Nov. 10, 2008) [BACMBIA-V0000033534–739]

BAC, Annual Report (Form 10-K) (Feb. 27, 2009) [BACMBIA-V0000032225–3433]

BAC, Annual Report (Form 10-K) (Feb. 26, 2010) [BACMBIA-V0000031119–2095]

CFC, Current Report (Form 8-K) (Aug. 16, 2007) [BACMBIA-V0000038985–9149]

CFC, Current Report (Form 8-K) (Aug. 28, 2007) [BACMBIA-V0000033434–533]

CFC, Current Report (Form 8-K) (Jan. 17, 2007) [BACMBIA-V0000032110–212]

CFC, Annual Report (Form 10-K) (Feb. 29, 2008) [BACMBIA-V0000030615–1118]

CFC, Current Report (Form 8-K) (July 8, 2008) [BACMBIA-V0000030459–605]

CFC, Quarterly Report (Form 10-Q) (Aug. 11, 2008) [BACMBIA-V0000033740–885]

CFC, Current Report (Form 8-K/A) (Sep. 17, 2008) [BACMBIA-V0000032096–109]

Interviews

Interview with Greg Snelson, June 20, 2012

Interview with Michael Friedlander, June 19, 2012

Accounting and Auditing Literature

Accounting Research Bulletin No. 51 (As Amended), *Consolidated Financial Statements* (August 1959) [BACMBIA-V0000033914–33]

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, PCAOB STANDARDS AND RELATED RULES § 411.02 (2007) [BACMBIA-V0000033934–35]

EITF Abstracts, Appendix D - Topic No. D-80, *Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio* (May 19–20 1999), *with* the Federal Reserve Board's Guidance on Recent Developments Regarding Loan Loss Allowances and Exhibit D-80A [BACMBIA-V0000034889–907]

EITF Issue 86-09, *IRC Section 338 and Push-Down Accounting* (March 13-14, 1986) [BACMBIA-V0000039150–52]

FASB Accounting Standards Codification, Topic 450, *Contingencies* (2011)

FASB Accounting Standard Codification, Master Glossary, *Terms Beginning with I* (2011)

Financial Accounting Standards Board Interpretation No. 14, *Reasonable Estimation of the Amount of a Loss, an interpretation of FASB Statement No. 5* (1976) [BACMBIA-V0000034908–13]

Staff Accounting Bulletin No. 54, *Push Down Basis of Accounting Required in Certain Limited Circumstances* [BACMBIA-V0000034929–32]

Statement of Financial Accounting Concepts No. 1, *Objectives of Financial Reporting by Business Enterprises* (1978)

Statement of Financial Accounting Concepts No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises* (1984) [BACMBIA-V0000034820–47]

Statement of Financial Accounting Concepts No. 6, *Elements of Financial Statements* (1985) [BACMBIA-V0000038001–58]

Statement of Financial Accounting Concepts No. 7, *Using Cash Flow Information and Present Value in Accounting Measurements* (2000) [BACMBIA-V0000034848–88]

Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* (1975) [BACMBIA-V0000035788–809]

Statement of Financial Accounting Standards No. 94, *Consolidation of All Majority-Owned Subsidiaries* (1987) [BACMBIA-V0000035810–32]

Statement of Financial Accounting Standards No. 115, *Accounting for Certain Investments in Debt and Equity Securities* (1993) [BACMBIA-V0000035309–350]

Statement of Financial Accounting Standards No. 141, *Business Combinations* (2001) [BACMBIA-V0000035351–463]

Statement of Financial Accounting Standards No. 142, *Goodwill and Other Intangible Assets* (2001) [BACMBIA-V0000035464–573]

Statement of Financial Accounting Standards No. 154, *Accounting Changes and Error Corrections* (2005) [BACMBIA-V0000035574–629]

Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* (2006) [BACMBIA-V0000035630–787]

Statement of Position 03-03, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer* (2003) [BACMBIA-V0000035833–86]

Texts, Websites, and Other Secondary Sources

Leigh Walton & Kevin D. Kreb, *Purchase Price Adjustments, Earnouts and Other Purchase Price Provisions*, 2005 A.L.I.-A.B.A. Bus. L. Course Materials J., June 2006, at 4

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, What Does it Take to Become a CPA, *available at* www.aicpa.org/BECOMEACPA/GETTINGSTARTED/Pages/default.aspx (follow "Steps to becoming a CPA" hyperlink)

Tarek Amer., et al., *Between-Auditor Differences in the Interpretation of Probability Phrases*, 13 AUDITING: A J. OF PRAC. AND THEORY 126, 126–36 (Spring 1994) [BACMBIA-V0000033886–97]

Tarek Amer., et al., *Context-Dependence of Auditors' Interpretations of the SFAS No. 5 Probability Expressions*, 12 CONTEMP. ACCT. RES. 25, 25–39 (Fall 1995) [BACMBIA-V0000033898–913]

James D. Cox et al., *Does the Plaintiff Matter?: An Empirical Analysis of Lead Plaintiffs in Securities Class Actions*, 106 COLUM. L. REV. 1537 (2006)

Facts About FASB, FINANCIAL ACCOUNTING STANDARDS BOARD, http://www.fasb.org/facts/index.shtml [BACMBIA-V0000034914–16]

Joint Report: Differences in Accounting and Capital Standards Among the Federal Banking Agencies; Report to Congressional Committees, 73 Fed. Reg. 50,326 (Aug. 26, 2008) [BACMBIA-V0000034917–20]

Kenneth E. Harrison and Lawrence A. Tomassini, *Judging the Probability of a Contingent Loss: An Empirical Study*, CONTEMP. ACCT. RES. 642, 642–48 (1989) [BACMBIA-V0000034921–28]

LITIGATION WATCH; FULBRIGHT'S 7TH ANNUAL LITIGATION TRENDS SURVEY REPORT (2010).

ROBERT LIBBY ET AL., FINANCIAL ACCOUNTING 624 (5th ed. 2005)

SEC Website Form 10-Q, http://www.sec.gov/answers/form10q.htm

Securities and Exchange Commission, http://www.sec.gov/about/whatwedo.shtml#laws [BACMBIA-V0000035292–308]

SEC DIVISION OF CORPORATION FINANCE, FINANCIAL REPORTING MANUAL § 1400 (Dec. 31, 2011) [BACMBIA-V0000034933–5291]

Securities Exchange Act of 1934 [As Amended Through P.L. 112–106, Approved Apr. 5, 2012]

SEC Regulation S-X, 17 C.F.R. § 210.3-01(a) (2008) [BACMBIA-V0000034209–10]

Reports Submitted in this Matter

Expert Report of Professor John C. Coates IV (June 25, 2012)

Expert Report of Thomas L. Porter, Ph.D., C.P.A. (June 25, 2012)

Litigation Documents

Amended Complaint (Aug. 24, 2009)

Exhibit 1
Glossary of Accounting Terms

Term	Definition	Source
Allocation period	The period that is required to identify and measure the fair value of the assets acquired and the liabilities assumed in a business combination. The allocation period ends when the acquiring entity is no longer waiting for information that it has arranged to obtain and that is known to be available or obtainable. Although the time required will vary with circumstances, the allocation period should usually not exceed one year from the consummation of a business combination.	Statement of Financial Accounting Standards No. 141, "Business Combinations"
Amortization	The systematic and rational allocation of the acquisition cost of an intangible asset over its useful life.	Libby, Robert, Patricia A. Libby and Daniel G. Short. Financial Accounting. Fifth edition, 2007, p. 421.
Amortized cost	The sum of (1) the initial investment less (2) cash collected less (3) write-downs plus (4) yield accreted to date.	Statement of Position 03-03, "Accounting for Certain Loans or Debt Securities Acquired in a Transfer"
Assets	Probable future economic benefits obtained or controlled by a particular entity as a result of past transactions or events.	Statement of Financial Accounting Concepts No. 6, "Elements of Financial Statements"
Balance sheet	Financial statement that provides information about an entity's assets, liabilities, and equity and their relationships to each other at a moment in time.	Statement of Financial Accounting Concepts No. 5, "Recognition and Measurement in Financial Statements of Business Enterprises"
Business combination	A transaction in which an entity acquires net assets that constitute a business or acquires equity interests of one or more other entities and obtains control over that entity or entities.	Statement of Financial Accounting Standards No. 141, "Business Combinations"
Consolidated financial statements	The financial statements of a consolidated group of entities that include a parent and all its subsidiaries presented as those of a single economic entity.	Accounting Research Bulletin No. 51, "Consolidated Financial Statements"
Contingent liability	A liability that arises in connection with an existing condition, situation, or set of circumstances involving uncertainty as to possible loss to an enterprise that will ultimately be resolved when one or more future events occur or fail to occur.	Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies"
Depreciation	The process of allocating the cost of buildings and equipment over their productive lives using a systematic and rational allocation of the cost of property, plant, and equipment (but not land) over their useful lives.	Libby, Robert, Patricia A. Libby and Daniel G. Short. Financial Accounting. Fifth edition, 2007, p. 407.
Equity (net assets)	The residual interest in the assets of an entity that remains after deducting its liabilities.	Statement of Financial Accounting Concepts No. 6, "Elements of Financial Statements"
Fair value	The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.	Statement of Financial Accounting Standards No. 157, "Fair Value Measurements"
Financial assets	Cash, evidence of an ownership interest in an entity, or a contract that conveys to an entity a right (a) to receive cash or another financial instrument from a second entity or (b) to exchange other financial instruments on potentially favorable terms with the second entity.	Statement of Financial Accounting Standards No. 141, "Business Combinations"

Exhibit 1
Glossary of Accounting Terms

Term	Definition	Source
Generally accepted accounting principles (GAAP)	The convention, rules, and procedures necessary to define accepted accounting practice at a particular time.	AU Section 411, "The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles"
Going concern element of the acquired entity's existing business	The ability of the established business to earn a higher rate of return on an assembled collection of net assets than would be expected if those net assets had to be acquired separately.	Statement of Financial Accounting Standards No. 141, "Business Combinations"
Goodwill	The excess of the cost of an acquired entity over the net of the amounts assigned to assets acquired and liabilities assumed.	Statement of Financial Accounting Standards No. 141, "Business Combinations"
Goodwill impairment	Impairment is the condition that exists when the carrying amount of goodwill exceeds its implied fair value. Goodwill shall be tested for impairment at a level of reporting referred to as a reporting unit. The impairment test shall consist of a comparison of the fair value of goodwill with its carrying amount. If the carrying amount of goodwill exceeds its fair value, an impairment loss shall be recognized in an amount equal to that excess. After an impairment loss is recognized, the adjusted carrying amount of goodwill shall be its new accounting basis.	Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets"
Held-to-maturity securities	Debt securities that the enterprise has the positive intent and ability to hold to maturity. These are reported at amortized cost.	Statement of Financial Accounting Standards No. 115, "Accounting for Certain Investments in Debt and Equity Securities"
Identifiable asset	An asset is identifiable if it either: (1) Is separable, that is, capable of being separated or divided from the entity and sold, transferred, licensed, rented, or exchanged, either individually or together with a related contract, identifiable asset, or liability, regardless of whether the entity intends to do so; or (2) Arises from contractual or other legal rights, regardless of whether those rights are transferable or separable from the entity or from other rights and obligations.	FASB Accounting Standards Codification, Master Glossary, *Glossary Terms Beginning With 'I'* (2011)
Impaired loans	A loan is impaired when, based on current information and events, it is probable that a creditor will be unable to collect all amounts due according to the contractual terms of the loan agreement.	Statement of Position 03-03, "Accounting for Certain Loans or Debt Securities Acquired in a Transfer"
Income statement	Financial statement that reflects the extent to which and the ways in which the equity of an entity increased or decreased from sources other than transactions with owners during a period.	Statement of Financial Accounting Concepts No. 5, "Recognition and Measurement in Financial Statements of Business Enterprises"
Intangible assets	Assets (not including financial assets) that lack physical substance.	Statement of Financial Accounting Standards No. 141, "Business Combinations"
Liabilities	Probable future sacrifices of economic benefit arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of past transactions or events.	Statement of Financial Accounting Concepts No. 6, "Elements of Financial Statements"

Exhibit 1
Glossary of Accounting Terms

Term	Definition	Source
Orderly transaction	An orderly transaction is a transaction that assumes exposure to the market for a period prior to the measurement date to allow for marketing activities that are usual and customary for transactions involving such assets or liabilities; it is not a forced transaction (for example, a forced liquidation or distress sale).	Statement of Financial Accounting Standards No. 157, "Fair Value Measurements"
Preacquisition contingency	A contingency of an entity that is acquired in a business combination that is in existence before the consummation of the combination. A preacquisition contingency can be a contingent asset, a contingent liability, or a contingent impairment of an asset.	Statement of Financial Accounting Standards No. 141, "Business Combinations"
Purchase method of accounting for a business combination	The acquiring entity allocates the cost of the acquired entity to the assets acquired and liabilities assumed based on their estimated fair values at date of acquisition.	Statement of Financial Accounting Standards No. 141, "Business Combinations"
Pushdown accounting	Use of the acquiring entity's basis of accounting in the preparation of the acquired entity's financial statements.	EITF Issue 86-09, “IRC Section 338 and Push-Down Accounting,”
Recognition	Recognition is the process of formally recording or incorporating an item in the financial statements of an entity. Thus, an asset, liability, revenue, expense, gain, or loss may be recognized (recorded) or unrecognized (unrecorded).	Statement of Financial Accounting Concepts No. 6, "Elements of Financial Statements"
Reporting unit	The level of reporting at which goodwill is tested for impairment. A reporting unit is an operating segment or one level below an operating segment.	Statement of Financial Accounting Standards No. 141, "Business Combinations"
Revenues	Inflows or other enhancements of assets of an entity or settlements of its liabilities (or a combination of both) from delivering or producing goods, rendering services, or other activities that constitute the entity's ongoing major or central operations.	Statement of Financial Accounting Concepts No. 6, "Elements of Financial Statements"
Tangible assets	Assets that have physical substance.	Libby, Robert, Patricia A. Libby and Daniel G. Short. Financial Accounting. Fifth edition, 2007, p. 399.
Trading securities	Debt and equity securities that are bought and held principally for the purpose of selling them in the near term. These are reported at fair value, with unrealized gains and losses included in earnings.	Statement of Financial Accounting Standards No. 115, "Accounting for Certain Investments in Debt and Equity Securities"

Exhibit 2.1
Schedule of July & November Transactions
(Dollar Amounts in Billions)

	Description	Effective Date*	Consideration	Description	Source
July Transactions					
$6.9 Billion Loan Sale	CHL sold a pool of residential mortgage loans to NB	7/1/2008	$6.94	demand note	[1]
Novation of Derivatives	CHL novated a portfolio of derivative instruments to BANA	7/1/2008	$1.84		[2]
		7/1/2008	($0.32)	adjustment	[3]
			$1.52	final cash	
Servicing LP Sale	CHL sold two entities that owned all of the partnership interests in the CHLS to NB	7/2/2008	$19.68	original note	[4]
		7/2/2008	($1.40)	adjustment	[5]
		9/1/2008	($0.23)	adjustment	[6]
			$18.04	final note	
Blue Ridge Sale	CSC, a CFC subsidiary, sold a pool of securities to Blue Ridge Investments, LLC, a wholly owned subsidiary of BAC	7/2/2008	$0.15	cash	[7]
$2.5 Billion Loan Sale	CHL sold a pool of residential mortgage loans to NB	7/3/2008	$2.53	demand note	[8]
Commercial Loan Sale	Countrywide Commercial Real Estate Finance, a CFC subsidiary, sold a pool of commercial mortgage loans to NB	7/3/2008	$0.24	demand note	[9]
November Transactions					
Asset Purchase Transaction	CHL sold a substantial portion of its remaining assets and operations to BAC	11/7/2008	$3.05	original note	[10]
		3/6/2009	$0.50	adjustment	[11]
			$3.55	final note	[12]
		11/7/2008	$5.79	assumption of public debt securities	[13]
			$9.35	total consideration	
Stock Purchase Transaction	CFC sold the stock of Effinity, a subsidiary that included CW Bank, Balboa, and other subsidiaries	11/7/2008	$3.46	original note	[14]
		3/6/2009	($1.70)	adjustment	[15]
			$1.77	final note	[16]
		11/7/2008	$9.74	assumption of public debt securities	[17]
			$11.51	total consideration	

Note: Dollar amounts shown in billions. Totals may not add due to rounding error.

* Countrywide updated the preliminary purchase prices to reflect information that became available after the transaction dates. For the July Transactions, the effective dates of adjustments reflect the journal date, while for the November Transactions, the effective dates of adjustments reflect the date the demand note was adjusted.

[1] 'Summary' tab, row 28 [BACMBIA-R0000006061]; 'Transaction summary' tab, row 28 [BACMBIA-R0000006088]; 'LD1 Entries CFC' tab, row 11 [BACMBIA-R0000006093]; July 1, 2008 Demand Note for $6,938,783,350 [BACMBIA-C0000161141–44].

[2] CFC, Current Report (Form 8-K), at 5 (July 8, 2008) ("On July 1, 2008, CHL novated a portfolio of derivative instruments to Bank of America, N.A. . . . in exchange for $1.8 billion in cash."); 'Summary' tab, row 32 [BACMBIA-R0000006061]; 'LD1 Entries CFC' tab, row 29 [BACMBIA-R0000006093].

[3] CFC, Quarterly Report (Form 10-Q), at 9 (August 11, 2008) ("The Company novated to Bank of America, N.A. a portfolio of derivative instruments held by CHL in exchange for $1.5 billion."); 'Summary' tab, row 32 [BACMBIA-R0000006061]; 'Transaction summary' tab, row 32 [BACMBIA-R0000006088]; 'LD1 Entries CFC' tab, rows 29-36 [BACMBIA-R0000006093].

[4] CFC, Current Report (Form 8-K), at 5 (July 8, 2008) ("On July 2, 2008, CHL completed the sale to NBHC of two entities that own all of the partnership interests in Countrywide Home Loans Servicing, LP . . . for a fair value purchase price of approximately $19.7 billion, subject to certain adjustments. In connection with this sale,…[NB] delivered to CHL a promissory note that bears interest at a rate per annum equal to three−month LIBOR plus 0.65%, is due upon demand and can be prepaid in whole or in part at any time. Approximately $10.4 billion remains outstanding under this note."); Purchase and Sale Agreement between CHL and NBHC (July 2, 2008) [BACMBIA-C0000161342–350] ("Whereas, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the Membership Interests"); Demand Note (July 2, 2008) [BACMBIA-C0000161271–75]; 'Summary' tab, row 59 [BACMBIA-R0000006061]; 'Transaction summary' tab, row 58 [BACMBIA-R0000006088]; 'LD2 Entries CFC' tab, row 8 [BACMBIA-R0000006093]; 'Summary' tab, row 7 [BACMBIA-R0000006150].

[5] 'LD2 Entries CFC' tab, row 14 [BACMBIA-R0000006093]; 'Summary' tab, row 23 [BACMBIA-R0000006150].

[6] 'Summary' tab, rows 24-25 [BACMBIA-R0000006150].

[7] CFC, Current Report (Form 8-K), at 5 (July 8, 2008) ("On July 2, 2008, Countrywide Securities Corporation completed the sale to Blue Ridge Investment, LLC, a wholly owned subsidiary of Bank of America, of a pool of securities . . . for approximately $147 million in cash."); 'Transaction summary' tab, row 79 [BACMBIA-R0000006088]; 'LD2 Entries CFC' tab, row 191 [BACMBIA-R0000006093].

[8] CFC, Current Report (Form 8-K), at 5 (July 8, 2008) ("On July 3, 2008, CHL completed the sale to NBHC of a pool of residential mortgage loans, which includes first and second lien mortgages, home equity line of credit loans, and construction loans for a fair value purchase price of approximately $2.5 billion, subject to certain adjustments. In connection with this sale, . . . [NB] delivered to CHL a promissory note that bears interest at a rate per annum equal to three−month LIBOR plus 0.65%, is due upon demand and can be repaid in whole or in part at any time."); 'LD3 Entries CFC' tab, row 8 [BACMBIA-R0000006093]; 'Summary' tab, column E [BACMBIA-R0000006150].

[9] CFC, Current Report (Form 8-K), at 5 (July 8, 2008) ("On July 3, 2008, Countrywide Commercial Real Estate Finance, a subsidiary of the Registrant, completed the sale of a pool of commercial mortgage loans to NBHC for a fair value purchase price of approximately $238 million, subject to certain adjustments. In connection with this sale, . . . [NB] delivered to CHL a promissory note that bears interest at a rate per annum equal to three−month LIBOR plus 0.65%, is due upon demand and can be repaid in whole or in part at any time."); 'Transaction summary' tab, row 109 [BACMBIA-R0000006088]; 'LD3 Entries CFC' tab, row 21 [BACMBIA-R0000006093]; 'Summary' tab, column F [BACMBIA-R0000006150].

[10] Asset Purchase Agreement by and between Bank of America Corporation and Countrywide Home Loans, Inc. (November 7, 2008) [BACMBIA-C0000168172–229] (Note that the preliminary purchase amount was $3.049 billion. I have rounded up to accommodate rounding error); 'Summary' tab, column D, row 37 [BACMBIA-R0000006150].

[11] *See* Exhibit 2.2.

[12] Supplemental Agreement to the Asset Purchase Agreement [BACMBIA-Q0000001625–28]; Amendment No. 1 to the Demand Note [BACMBIA-Q0000001621–24].

[13] Asset Purchase Agreement by and between Bank of America Corporation and Countrywide Home Loans, Inc. (November 7, 2008) [BACMBIA-C0000168172–229]; 'Summary' tab, column D, row 31 [BACMBIA-R0000006150].

[14] Stock Purchase Agreement by and between Bank of America Corporation and Countrywide Financial Corporation (November 7, 2008) [BACMBIA-C0000168443–94]; 'Summary' tab, column C , row 37 [BACMBIA-R0000006150].

[15] *See* Exhibit 2.2.

[16] Amendment No. 1 to the Demand Note [BACMBIA-Q0000001633–36]; Supplemental Agreement No. 1 to the Stock Purchase Agreement [BACMBIA-Q0000001629–32].

[17] Stock Purchase Agreement by and between Bank of America Corporation and Countrywide Financial Corporation (November 7, 2008) [BACMBIA-C0000168443–94]; 'Summary' tab, column C, row 31 [BACMBIA-R0000006150].

Exhibit 2.2
Demand Note Adjustments
(Dollar Amounts in Billions)

	Entity	Date	Demand Note (in billions)	Adjustments (in billions)	Description[1]	Source
July Transactions Adjustments						
Servicing LP Sale	**CHL**	7/2/2008	**$19.68**		**Original note**	
		7/2/2008		($1.40)	Valuation adjustment to update purchase accounting estimates to reflect June 30, 2008 information on MSRs and Servicing advances	[2]
		9/1/2008		($0.23)	Transfer of allowance for loan and lease losses (ALLL) reserve	[3]
			($1.63)		Total adjustment	
			$18.05		**Final note**	
November Transactions Adjustments						
Asset Purchase Transaction	**CHL**	11/7/2008	**$3.05**		**Original note**	[4]
		12/2008		($0.05)	Adjustment to reflect the credit mark to bring loans sold to fair value	[5]
		12/2008		$0.10	Adjustment to loans sold on July 1 resulting from rescoping of SOP 03-3 criteria	[5]
		12/2008		$0.56	Adjustment to reflect lifetime losses based on June 30 credit loss assumptions for loans sold on July 1 and July 3	[5]
		2/2009		($0.18)	Adjustment to demand note for Q3 2008 updated purchase accounting marks	[6]
		2/2009		$0.11	Adjustment to demand note for Q4 2008 updated purchase accounting marks	[6]
		2/2009		($0.04)	Decrease to reflect the value of loans for which NB paid on July 1 and July 3, 2008 but did not receive due to a sale to third-parties	[6]
		2/2009		($0.03)	Decrease to reflect the value of loans for which BAC paid on November 7, 2008 but did not receive due to commitments to sell to third-parties	[6]
		2/2009		$0.02	Adjustment to correct purchase accounting mark on CHL loans originally booked to CW Bank	[6]
		3/6/2009	$0.50		Total adjustment	
			$3.55		**Final note**	[7]
Stock Purchase Transaction	**CFC**	11/7/2008	**$3.46**		**Original note**	[8]
		12/2008		($1.45)	Adjustment to reflect lifetime losses on CW Bank loans based on October 31 credit loss assumptions	[9]
		12/2008		($0.33)	Adjustment to reflect the fair value of CFC public debt securities asumed by BAC	[9]
		12/2008		$0.08	Adjustment to reflect the gain resulting from the retirement of CFC public debt securities assumed by BAC	[9]
		3/6/2009	($1.70)		Total adjustment	
			$1.77		**Final note**	[10]

Note: Dollar amounts shown in billions. Total may not add due to rounding error.

[1] Descriptions reflect journal entries recorded for the Notes Receivable accounts. *See* 'Entry 12 08 w Special Elim' tab, row 78, 'Entry 02 09' tab, row 74 [BACMBIA-H0000008165].

[2] BACMBIA-V0000028694–97; BACMBIA-V0000028727–29.

[3] Amount is net of offsetting adjustments. *See* BACMBIA-R0000006150; BACMBIA-V0000028884–89 at 87–89.

[4] Asset Purchase Agreement by and between Bank of America Corporation and Countrywide Home Loans, Inc. (November 7, 2008) [BACMBIA-C0000168172–229 at 182].

[5] *See* 'Entry 12 08 w Special Elim' tab, cells D:33, D:41, D:50, D:67 [BACMBIA-H0000008165].

[6] *See* 'Entry 02 09' tab, cells D:9, D:20, D:31, D:42, D:63 [BACMBIA-H0000008165].

[7] Supplemental Agreement to the Asset Purchase Agreement [BACMBIA-Q0000001625–28]; Amendment No. 1 to the Demand Note [BACMBIA-Q0000001621–24].

[8] Stock Purchase Agreement by and between Bank of America Corporation and Countrywide Financial Corporation (November 7, 2008) [BACMBIA-C0000168443–94 at 46].

[9] *See* 'Entry 12 08 w Special Elim' tab, cells C:12, C:18, C:23 [BACMBIA-H0000008165].

[10] Amendment No. 1 to the Demand Note [BACMBIA-Q0000001633–36]. Supplemental Agreement No. 1 to the Stock Purchase Agreement [BACMBIA-Q0000001629–32].

Exhibit 2.3
Schedule of July & November Transactions
Demand Note Paydown
(Dollar Amounts in Billions)

	Current Status	Consideration	Payment Date	Payment Amount	Form of Payment	Source
July Transactions						
$6.9 Billion Loan Sale	Paid In Full	$6.9				[1]
			7/1/2008	$6.9	Cash	
Servicing LP Sale	Paid In Full	$18.0				[2]
			7/2/2008	$9.3	Cash	
			8/22/2008	$0.3	Cash	
			9/22/2008	$0.3	Cash	
			9/24/2008	$1.4	Cash	
			10/15/2008	$0.5	Cash	
			10/16/2008	$0.7	Cash	
			10/22/2008	$1.4	Cash	
			10/24/2008	$2.3	Cash	
			10/29/2008	$0.3	Cash	
			11/7/2008	$1.6	$1.41 assumption of public debt securities and $0.22 reissued in the Asset Purchase Transaction	[3]
$2.5 Billion Loan Sale	Paid In Full	$2.5				[4]
			11/7/2008	$2.5	$2.28 assumption of public debt securities and $0.25 reissued in the Asset Purchase Transaction	
Commercial Loan Sale	Outstanding	$0.2				[5]
Total		**$27.7**		**$27.5**		
November Transactions						
Asset Purchase Transaction	Paid In Full	$3.6				[6]
			12/17/2008	$0.6	Cash	
			12/22/2008	$0.4	Cash	
			8/18/2009	$0.9		
			9/30/2009	$1.6	Tax Settlement	
Stock Purchase Transaction	Paid In Full	$1.8				[7]
			5/26/2009	$0.3	Cash	
			6/29/2009	$1.5	Cash	
CWSHI IO/PO Securities	Outstanding	$0.0				[8]
CWIBH IO/PO Securities	Outstanding	$0.4				[9]
Total		**$5.8**		**$5.3**		

Note: Dollar amounts shown in billions. Totals may not add due rounding error.

[1] 'Summary' tab, row 28 [BACMBIA-R0000006061]; 'Transaction summary' tab, row 28 [BACMBIA-R0000006088]; 'LD1 Entries CFC' tab, row 11 [BACMBIA-R0000006093].

[2] 'Summary' tab, rows 12-21 [BACMBIA-R0000006150].

[3] 'Summary' tab, row 28 [BACMBIA-R0000006150].

[4] CFC, Current Report (Form 8-K), at 5 (July 8, 2008) ("On July 3, 2008, CHL completed the sale to NBHC of a pool of residential mortgage loans, which includes first and second lien mortgages, home equity line of credit loans, and construction loans for a fair value purchase price of approximately $2.5 billion, subject to certain adjustments. In connection with this sale,…[NB Holdings] delivered to CHL a promissory note that bears interest at a rate per annum equal to three−month LIBOR plus 0.65%, is due upon demand and can be repaid in whole or in part at any time."); 'LD3 Entries CFC' tab, row 8 [BACMBIA-R0000006093]; 'Summary' tab, column E [BACMBIA-R0000006150].

[5] CFC, Current Report (Form 8-K), at 5 (July 8, 2008) ("On July 3, 2008, Countrywide Commercial Real Estate Finance, a subsidiary of the Registrant, completed the sale of a pool of commercial mortgage loans to NBHC for a fair value purchase price of approximately $238 million, subject to certain adjustments. In connection with this sale,…[NB Holdings] delivered to CHL a promissory note that bears interest at a rate per annum equal to three−month LIBOR plus 0.65%, is due upon demand and can be repaid in whole or in part at any time."); 'Transaction summary' tab, row 109 [BACMBIA-R0000006088]; 'LD3 Entries CFC' tab, row 21 [BACMBIA-R0000006093]; 'Summary' tab, column F [BACMBIA-R0000006150].

[6] BACMBIA-R0000006150, 'Summary' tab, rows 37-40; BACMBIA-X0000205651, 'Sheet1' tab, rows 12-13; BACMBIA-I0000076556, '8-31-09' tab, rows 4 and 14 and 'Balance Sheet' tab, rows 16 and 27. This document shows the planned "Collection of remaining $1.64 billion receivable from BAC" (tab '8-31-09') and the use of these funds to make a tax payment (tab 'Balance Sheet'). These amounts appear to have been offset; i.e., CHL extinguished the receivable it held from BAC in exchange for BAC extinguishing a tax liability CHL owed. Hobby Dep. Rough Tr., Vol. I (July 27, 2012), at 136:19–140:5. This had the same effect on the balance sheet as if BAC paid CHL in cash and CHL then settled the liability in cash simultaneously.

[7] 'Summary' tab, column H [BACMBIA-R0000006150]; BACMBIA-X000205651. The balance sheet for CHL shows a corresponding increase in cash that approximates these two payments in May and June. This is consistent with the receipt of a cash payment; There are corresponding increases in the Intercompany Surplus accounts of $300 million in May 2009 and June 2009. These increase would be consistent with a corresponding capital contribution to CHL. I note that the cash account, "Time Dep Placed Interco/Intrabk" June also increased more than the relevant payments in June. Cells I:73, H:838, I:838 [BACMBIA-R0000013374].

[8] 'Summary' tab, column K [BACMBIA-R0000006150]; 'Sheet1' tab, row 892 [BACMBIA-X0000205648].

[9] 'Summary' tab, column J [BACMBIA-R0000006150]; 'Sheet1' tab, row 893 [BACMBIA-X0000205649].

Exhibit 3
Countrywide October 2008 Balance Sheet
Entities Sold in Stock Purchase Transaction
(Dollar Amounts In Millions)

Business Unit Description	Countrywide Bank, FSB[1]	Balboa Consolidated[2]	CW Int'l Consulting Services Consolidated[3]	GlobaLoans Int'l Tech Co Consolidated[4]	LandSafe Consolidated[5]	CW Tax Services Corp.	ReconTrust Company, N.A.	CWB Community Assets, Inc.	Other Subs[6]	Effinity[7]
Assets										
Identifiable Assets	$98,012	$2,991	$89	$126	$419	$271	$144	$184	$277	$102,512
Goodwill[8]	$3,826	$200	$0	$0	$0	$0	$0	$0	$0	$4,027
Total Assets	**$101,839**	**$3,191**	**$89**	**$126**	**$419**	**$271**	**$144**	**$184**	**$277**	**$106,538**
Liabilities	**$91,457**	**$1,683**	**$4**	**$13**	**$80**	**$10**	**$15**	**$36**	**$107**	**$93,404**
Equity[9]	**$10,382**	**$1,508**	**$85**	**$113**	**$339**	**$261**	**$129**	**$148**	**$170**	**$13,134**
Consideration Paid for CFC's Equity Interest in Effinity[10]										**$13,135**

Source: BACMBIA-R0000006047; BACMBIA-R000006150

Notes:

[1] The equity value of Countrywide Bank, FSB, is net of eliminations performed at business unit E0239.

[2] "Balboa Consolidated" is comprised of the following entities: Warranty Services Corp., Newport E&S Insurance Co., Newport Management Corp., Meritplan Insurance Co., Newport Insurance Co., Balboa Life and Casualty, LLC, Balboa P&C, Balboa Life Insurance Co. of NY, Balboa Life Insurance Co., Directnet Insurance Agency Inc., and CW Insurance Services Inc. - California.

[3] "CW Int'l Consulting Services Consolidated" is comprised of the following entities: CW Int'l Consulting Services, CW Int'l Holdings, Inc, CW Int'l GP Holdings LLC, GlobalLoans JV LP, GHL Services Ltd, GHL Mortgage Services Ltd., GHL Mortgage Originations Ltd., CFC Int'l Cap Mkts Ltd., UK Valuation Ltd., CW (UK) Services Ltd, Global Home Loans Ltd., and CFC Int'l (Processing Services) Ltd.

[4] GlobaLoans Consolidated is comprised of the following entities: CW Int'l Tech Holdings Ltd., CW JV Tech. Holdings, Ltd., CW Tech Solutions Ltd., GHL Tech LP, GHL Int'l Tech LP, CFC Int'l Mauritius Ltd., CW UK Technology Ltd., CFC India Services Private Ltd.

[5] "LandSafe Consolidated" is comprised of the following entities: LandSafe Inc., LandSafe Appraisal Services, LandSafe Title - California, LandSafe Title - Texas, LandSafe Title - Florida, LandSafe Credit Reporting, LandSafe Flood Determination, Inc., and LandSafe Services, Inc.

[6] "Other Subs" is comprised of the following entities: CTC Real Estate Services - California, Countrywide Field Services, Trusite Real Estate Services, Inc., Countrywide Servicing Exchange, Countrywide Investment Services, Inc., and ReconTrust Company

[7] As of November 7 2008, all purchased entities were subsidiaries of Effinity. *See, e.g.*, BACMBIA-C0000168443–94. Thus, CFC's equity interest in Effinity represents the aggregate equity of each of the entities transferred. BACMBIA-R0000006150.

[8] Total Assets are separated into Identifiable Assets and Goodwill to show the entities in which it is recorded for purposes of this table.

[9] The equity value of the consolidated companies includes all necessary elimination companies.

EXHIBIT 7

EXHIBIT 5

EXHIBIT 28

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MBIA INSURANCE CORPORATION,

Plaintiff,

-against-

COUNTRYWIDE HOME LOANS, INC., COUNTRYWIDE SECURITIES CORP., COUNTRYWIDE FINANCIAL CORP., COUNTRYWIDE HOME LOANS SERVICING, LP, (n/k/a Bank of America, N.A., successor by *de jure* merger to BAC Home Loans Servicing, LP), and BANK OF AMERICA CORP.,

Defendants.

Index No. 602825/2008

IAS Part 3 (Bransten, J.)

EXPERT REPORT OF JOHN C. COFFEE, JR.

July 27, 2012

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I. INTRODUCTION AND SCOPE OF ASSIGNMENT

1. I have been requested by counsel for Bank of America Corporation ("BAC") to respond to the expert report submitted in this case by John C. Coates IV, dated June 22, 2012 (the "Coates Report"), and to focus on (a) the acquisition of Countrywide Financial Corporation ("CFC") by BAC, which closed on July 1, 2008, (b) certain subsequent asset and stock sales by CFC and its subsidiaries to certain pre-existing BAC subsidiaries in July and November, 2008, and (c) certain capital contributions made by BAC to CFC and/or its subsidiaries.

2. As has been discussed at length in both the Coates Report and the expert report submitted by Guhan Subramanian, dated June 25, 2012 (the "Subramanian Report"), BAC's acquisition of CFC was effected by means of a forward triangular merger under which CFC merged into Red Oak Merger Corporation ("Red Oak"), which was then renamed Countrywide Financial Corporation. Each of CFC, Red Oak and BAC were Delaware corporations. As a result of this transaction, all the wholly-owned subsidiaries of CFC, including Countrywide Home Loans, Inc. ("CHL"), a New York corporation, became indirect subsidiaries of BAC (CFC and its former subsidiaries being hereinafter called "Countrywide"). Shortly after the merger transaction closed, in order to achieve a variety of efficiencies that I discuss below, BAC began to rearrange Countrywide's corporate structure (a process that CFC had already begun at least a year before the merger) and to redeploy Countrywide's assets and subsidiaries across the BAC corporate family of companies.

3. To effect this rearrangement, BAC caused certain Countrywide assets and subsidiaries to be sold to BAC's pre-existing subsidiaries in return for cash, demand notes, and the assumption of certain Countrywide liabilities. These transactions occurred in two sets of transactions in July and November of 2008, as next described:

4. The July Transactions. Between July 1 and 3, 2008, CFC and its subsidiaries entered into a series of transactions with BAC and its subsidiaries that included the following:

a) On July 1, 2008, CHL sold a pool of residential mortgage loans to NB Holdings Corporation ("NB Holdings"), a wholly owned subsidiary of BAC, for approximately $6.9 billion in demand notes;

b) Also on July 1, 2008, CHL entered into a novation transaction with Bank of America, N.A. ("BANA") with respect to a portfolio of derivative instruments pursuant to which BANA assumed CHL's position and paid CHL $1.8 billion in cash;

c) On July 2, 2008, Countrywide Securities Corporation ("CSC") sold to Blue Ridge Investments LLC, a wholly owned subsidiary of BAC, a pool of securities for approximately $147 million in cash;

d) On July 3, 2008, CHL sold another pool of residential mortgage loans to NB Holdings for approximately $2.5 billion in demand notes;

e) On July 3, 2008, Countrywide Commercial Real Estate Finance ("CCREF"), a wholly owned subsidiary of CFC, sold a pool of commercial mortgage loans to NB Holdings for $238 million in demand notes;

f) On July 2, 2008, CHL also sold Countrywide GP and Countrywide LP (the two entities that owned all the partnership interests in Countrywide Home Loans Servicing LP ("CHLS")) to NB Holdings for approximately $19.7 billion in demand notes.[1]

[1] Countrywide Fin. Corp. Current Report (Form 8-K), at 5, § 2, Item 2.01 (July 8, 2008). These prices are from CFC's public filings and I have been advised that they were subject to certain adjustments, which I do not address.

5. The November Transactions. Pursuant to an Asset Purchase Agreement, dated November 7, 2008, BAC purchased substantially all of CHL's remaining assets and operations. Also on that date, BAC purchased the stock of several significant CFC subsidiaries (comprising substantially all of CFC's assets) pursuant to a Stock Purchase Agreement. In connection with these purchases, BAC (i) issued a demand promissory note to CHL for approximately \$3.05 billion,[2] (ii) issued a demand promissory note to CFC for approximately \$3.5 billion,[3] and (iii) assumed \$16.6 billion in CFC and CHL debt obligations.[4]

6. Professor Coates and I agree that through these July and November, 2008 transactions, CFC (and its subsidiaries) became subsidiaries of BAC and sold most (but not all) of their assets to BAC (and its pre-existing subsidiaries) for approximately \$50 billion in consideration. While we agree on this much, our opinions regarding these transactions thereafter diverge. Professor Coates describes these transactions as the "Asset-Stripping Transactions." This pejorative phrase (which is never justified with any evidence that fair value was not paid) seems unsupported and simply assumes what has not been proven by MBIA: namely, that CFC and its subsidiaries were overreached and did not receive fair value for the assets and stock transferred.

7. More importantly, this characterization also overlooks what happened to the Countrywide assets purchased by BAC and its subsidiaries. Put simply, Countrywide's illiquid assets (for which there was virtually no market in late 2008) were converted into cash or cash equivalents and used for legitimate purposes that benefitted Countrywide and its creditors, including directly repaying creditors, satisfying contractual payment obligations, and recapitalizing Countrywide

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[2] BACMBIA-C0000168237-168241.

[3] BACMBIA-C0000168502-168507.

[4] Bank of Am. Corp. Current Report (Form 8-K), at Item 8.01 (Nov. 10, 2008). These prices are from BAC's public filings and I have been advised that they were subject to certain adjustments, which I do not address.

Bank so that it met regulatory capital requirements. For example, after NB Holdings purchased CHLS and the pools of residential mortgages from CHL on July 1–3, 2008, it contributed those assets to its wholly-owned operating subsidiary BANA as a non-cash capital contribution. This enabled BANA to distribute nearly $30 billion in cash (with the prior approval of the Controller of the Currency (OCC)) to NB Holdings,[5] which then repaid $16.1 billion in the demand notes that it had given to CHL in connection with the July 1–3, 2008 asset-sale transactions.[6] This in turn allowed CHL to (i) repay an $11.5 billion revolving credit facility (which, as later discussed, had change-in-control provisions requiring immediate repayment on the occurrence of the Red Oak/CFC merger),[7] and (ii) to make a $5.5 billion capital contribution (by means of a loan to CFC) to Countrywide Bank, which was needed in order to ensure that Countrywide Bank could meet the OTS's minimum Tier 1 (Core) Capital Requirement and thus maintain its "well capitalized" status.[8] In short, especially once we follow the flow of funds between BAC and CFC and its subsidiaries after the date of these July and November transactions, we see that assets were not "stripped"; rather, they were in large measure converted from illiquid to liquid in a manner that provided CFC and CHL with the cash necessary to meet their obligations as they became due.

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[5] *See* BACMBIA-C0000161609-161612 (Contribution Agreement between BANA and NB Holdings); BACMBIA-C0000161591-161594 (Master Contribution Agreement between BANA and NB Holdings); BACMBIA-Q0000000853-855 (OCC letter approving $4.598 billion distribution); BACMBIA-Q0000000856-858 (OCC letter approving $26.9 billion distribution); BACMBIA-R0000006088, at Row 100 (showing NB Holdings' receipt of capital from BANA).

[6] *See* BACMBIA-R0000006088, at Rows 28, 102 (showing NB Holdings demand note repayments).

[7] *See* BACMBIA-R0000005986, at "Transaction Summary," Row 45.

[8] *See id.* at "Transaction Summary," Row 73; Countrywide Bank, F.S.B., Thrift Financial Report, Schedule CCR for the quarter ending September 31, 2008, at 1–2 (showing CW Bank had $8,148,383,000 in Tier 1 (Core) Capital after receiving CFC's $5.5 billion capital contribution, which brought it above the minimum requirement of $4,385,149,000 in Tier 1 (Core) Capital).

8. By branding these transactions as the "Asset-Stripping Transactions," Professor Coates loads the rhetorical dice without conducting any fuller or fairer evaluation of them. In response, I will therefore begin my report by focusing on the sound business reasons that underlay the July and November transactions (which far from "stripping" assets from Countrywide infused Countrywide with the liquidity it needed).[9] Thereafter, I will survey the evidence that shows that the July and November transactions actually benefitted the vast majority of CFC's creditors; indeed, they were a virtual windfall for them, because these creditors were in many cases neither owed any duties by BAC nor had reasonable grounds to believe that BAC was obligated to protect them.

9. Professor Coates and I fundamentally disagree on what the factual record shows to have been the motives for the July and November transactions and on what the effects of these transactions were on BAC, Countrywide, and Countrywide's creditors. I will attempt to analyze that record in some detail below.

10. We also disagree more generally over the customs, norms and conventions that normally characterize acquisitions of public companies. Professor Coates argues that acquiring firms always follow one of two techniques for the post-acquisition assimilation and integration of the acquired firm. In his view, acquirers face a binary choice; they either follow (i) an "absorption" policy (in which case, he asserts that they assume all the acquired firm's liabilities), or (ii) a limited "confederation" policy and only combine some "back office" operations. In my view, this analysis is empirically unsupported and inaccurate. The real world does not subdivide neatly into his binary division. In preparing this report, I have collected evidence to support my opinion

[9] Thus if we were to conduct a war of epithets, I might call these the "Liquidity and Capital Infusion Transactions."

that particularly, in bank acquisitions, major asset and stock sale transactions between the acquiring and acquired corporation commonly follow in the acquisition's immediate wake. The motive of these post-acquisition transactions is not to strip assets, but to manage risk, achieve synergies, and more efficiently deploy assets. Such asset redeployment transactions can occur with or without the assumption of the acquired firm's liabilities by the acquirer.

11. In general, acquirers selectively assume liabilities, seldom assuming remote or contingent liabilities, except in what I term "marriage of equals" transactions (which BAC's acquisition of CFC was certainly not). Even in such "marriage of equals" cases, universal assumption of the acquired firm's liabilities is not automatic, but does occur in some cases, based on the acquiring firm's judgment of what strategy will best maximize value for its shareholders. Above all, recent transactions show the diversity of strategies, and thus that creditors cannot reasonably expect across-the-board liability assumption.

12. Not only do acquirers have sound reasons for adopting halfway positions on Professor Coates's continuum from "confederation" to "absorption" that do not involve assuming all the acquired company's liabilities, but creditors probably benefit from their doing so (as they did in the BAC acquisition of CFC). Faced with an "all or nothing" choice, prudent acquirers might assume no liabilities or even call off the transaction. This conclusion will lead to the final contention in this report: namely, that if courts were to adopt the broad brushstroke standards favored by Professor Coates for determining successor liability, most recent large acquisitions of financial institutions would be subject to attack, despite the careful use of triangular mergers by transaction planners to avoid precisely this result. The bottom line consequence would be to destabilize the banking industry and deter any acquisition of a troubled financial institution. From a policy perspective, no outcome could be worse in terms of its impact on financial

stability, because if financial institutions are dissuaded from making such rescues, either the troubled firm might fail or public taxpayers might be forced to fund a bailout. In either case, a banking panic would be risked (as the Lehman failure and the AIG bailout showed).

II. SUMMARY OF OPINIONS

a) Legitimate Business Reasons, Including Regulatory Conditions and Bond Covenants, Justified the July and November, 2008 Transactions

b) CFC's Creditors Benefitted From These Transactions And Have No Basis for Objection

c) BAC Never Generally Assumed CFC's or CHL's Liabilities And Professor Coates Here Misreads The Evidence

d) Acquirers Commonly Redeploy The Assets of The Acquired Firm Without Assuming All Their Liabilities. No Evidence Supports Professor Coates's Claim That a General Assumption of Liabilities Is Customary Whenever Significant Absorption Occurs.

e) Acquirers Normally Replace The Directors of The Acquired Firm In Triangular Mergers and No Customary Norm or Governance Standard Was Breached By BAC.

f) Professor Coates's Interpretation of The De Facto Merger Doctrine Ignores Its History and Logic, Which Require a Focus on Continuity of Share Ownership. Worse, The Implications of His Theory Would Deter Acquisitions of Troubled Financial Institutions And Destabilize The Banking System.[10]

[10] Exhibit A contains a list of materials I relied upon in preparing my report.

III. BACKGROUND AND EXPERIENCE

13. I am the Adolf A. Berle Professor of Law at Columbia University Law School, the Director of its Center on Corporate Governance, a Fellow of the American Academy of Arts and Sciences, a Fellow of the European Corporate Governance Institute, and a Life Fellow of the American Bar Foundation.

14. I have practiced or taught in the fields of corporate and securities law for over forty years. In my professional work as a scholar of corporate governance and securities law, I have served as a member of the Legal Advisory Committee to the New York Stock Exchange ("NYSE"), the Legal Advisory Board of the NASD, the Economic Advisory Board to Nasdaq, the Subcouncil on Capital Markets of the United States Competitiveness Policy Council (a U.S. governmental agency), and the Market Regulation Committee of the NASD (which is a disciplinary committee). I currently serve as (a) a member of a special Task Force created by the Securities Investor Protection Corporation ("SIPC") to propose legislative amendments to its statute in light of the Madoff and Stanford Ponzi scheme scandals, and (b) a member of the Advisory Committee of the Public Company Accounting Oversight Board ("PCAOB"), a body created by the Sarbanes-Oxley Act of 2002. I have also served as a member of the SEC's Advisory Committee on the Capital Formation and Regulatory Processes, which recommended certain changes in the Federal securities laws that were largely adopted by the SEC in 2005.

15. I have testified on a number of occasions (probably well over twenty-five) before U.S. Congressional committees on issues relating to securities regulation. I have testified four times over the last year, including earlier this week before a Subcommittee of the House Financial Services Committee. In addition, I have similarly testified before the SEC (and served as an expert witness for it). In connection with both the Sarbanes-Oxley Act of 2002, the Dodd-Frank Act of 2010 and the JOBS Act (adopted this year), I served as a drafting consultant to the Senate

Banking Committee and either helped draft or consulted on drafting sections of each statute. In addition, I served as a Reporter for the American Law Institute for over thirteen years in connection with its codification in a Restatement-like format of the basic principles of corporate governance. *See* AMERICAN LAW INSTITUTE, PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS (1992). I have also served as Chairperson of the Section on Business Associations of the American Association of Law Schools (which position is annually filled by an election in which all law professors teaching Corporations are invited to participate).

16. I am the co-author of J. COFFEE AND H. SALE, SECURITIES REGULATION: CASES AND MATERIALS (12th ed. 2012), the oldest and first casebook in this field, which casebook closely covers the field of mergers and acquisitions (and I have drafted that chapter for the last four editions of this casebook). I have also co-authored a corporations casebook that focuses extensively on a corporation's disclosure obligations. *See* CHOPER, COFFEE AND GILSON, CASES AND MATERIALS ON CORPORATIONS (7th ed. 2008) (Aspen Law and Business). Finally, I have written an introductory text on business law with Professor William Klein (which Professor Frank Partnoy has now joined) that has been widely used in U.S. law schools. *See* KLEIN, COFFEE AND PARTNOY, BUSINESS LAW AND FINANCE (11th ed. 2010) (Foundation Press). It also covers the M&A field more briefly.

17. I have testified on several occasions in U.S. federal and state courts as an expert witness in securities law cases, including as an expert witness for the SEC in civil cases and on several occasions for the United States Department of Justice in criminal securities fraud cases. In some of these cases, I have testified on customs and practices in the "M&A" field. *See United States v. Bilzerian*, 926 F.2d 1285 (2d Cir. 1991) (upholding admissibility of my testimony concerning the federal securities laws in a criminal case dealing with standard customs, conventions, and

procedures in mergers and takeovers). I also interact regularly with securities practitioners and have served at various times as a member of the Corporations Committee, the Securities Regulation Committee, and the Special Committee on Mergers and Acquisitions of the New York City Bar Association. It may also be relevant that I currently co-teach a seminar on corporate litigation with Justice Jack Jacobs of the Delaware Supreme Court (which course has focused heavily on "M&A" litigation) and a seminar on White Collar Crime with United States District Court Judge Jed Rakoff.

18. Prior to entering academia, I was a corporate lawyer at Cravath, Swaine & Moore in New York City for six years, where I worked in the corporate and securities area (with an emphasis on both public offerings and merger transactions).

19. I am admitted to the Bars of New York State and the District of Columbia and also the federal courts of the Southern and Eastern Districts of New York and the Second Circuit.

20. I have recurrently written extensively on the topic of mergers and acquisitions. Among my books is: COFFEE, LOWENSTEIN AND ROSE-ACKERMAN (eds.) KNIGHTS, RAIDERS AND TARGETS: THE IMPACT OF THE HOSTILE TAKEOVER (Oxford University Press 1988). As the title implies, this book focuses closely on actual practices in the M&A field and was aimed at practitioners as well as academics. Finally, for well over twenty years, I have served as the regular securities law columnist for both the National Law Journal and the New York Law Journal, which are long-established legal newspapers, and I have written numerous columns dealing with "M&A" issues.

21. Lastly, I have recently served as a member of Chief Judge Lippman's Task Force on Commercial Litigation in the 21st Century, which was co-chaired by Judith S. Kaye and Martin Lipton.

22. A copy of my curriculum vitae is attached as Exhibit B.

IV. OPINIONS

A. Legitimate Business Reasons Underlay the July and November, 2008 Transactions.

23. In this section, I will survey specific business reasons that necessitated the July and November 2008 asset sales and related transactions in which BAC and its subsidiaries acquired the illiquid assets of CFC and CHL and CFC and CHL received cash, cash equivalents, and the assumption of certain public debt as consideration. Professor Coates gives almost no attention to these business motivations in his report. In my judgment, but for these transactions, the new entity created by the merger of Red Oak and CFC might have had great difficulty in weathering the 2008–2009 financial crisis.

1. *The "Change-in-Control" Provisions in CHL's Revolving Credit Facilities Required Immediate Repayment of Approximately $11.5 Billion Following the Merger.*

24. It is uncontested that the credit agreements that CHL negotiated with its banks years before CFC's July 1, 2008 merger with Red Oak had change-in-control provisions requiring CHL to repay the debt immediately following the acquisition. Because CHL had borrowed $11.5 billion under these credit agreements in the Summer of 2007, CHL needed $11.5 billion in cash to repay these loans as of its merger with BAC on July 1, 2008.[11] Failing to repay these

[11] *See* Price Tr. 135:10-136:22; *see also* Five-Year Credit Agreement Between CFC, CHL, and J.P. Morgan, Countrywide Fin. Corp. Current Report (Form 8-K), at Ex. 10.1 §§ 2.08(d), 2.09 (May 10, 2006); First Amendments to Five Year Credit Agreement Between CFC, CHL, and J.P. Morgan, Countrywide Fin. Corp. Current Report (Form 8-K), at Ex. 99.2 (May 9, 2007); 364-Day Credit Agreement Between CFC, CHL, and William Street Credit Corp., Countrywide Fin. Corp. Current Report (Form 8-K), at Ex. 10.108A §§ 2.08(d), 2.09 (May 9, 2007); 364 Day-Credit Agreement Between CFC, CHL, and J.P. Morgan, Countrywide Fin. Corp. Current Report (Form 8-K), Ex. 99.1 §§ 2.08(d), 2.09 (May 9, 2007); Five-Year Credit Agreement Between CFC, CHL, and William Street Credit Corp., Countrywide Fin. Corp. Current Report (Form 8-K), at Ex. 10.109A §§ 2.08(d), 2.09 (May 10, 2006); First Amendments to Five-Year Credit Agreement Between CFC, CHL, and William Street Credit Corp., Countrywide Fin. Corp. Current Report (Form 8-K), at Ex. 10.109C (May 9, 2007); Five-Year Credit

loans would have triggered cross-defaults under CFC's bond indentures, accelerating billions of dollars in additional debt obligations.[12] Such change-in-control provisions are by no means unusual in my experience—and are common in bank credit agreements.[13] Nonetheless, Professor Coates attempts to counter this hard objective fact by insisting that it was "an open question whether or not BAC could seek to renegotiate those lines of credit or pay them off."[14] Even viewed in the light most favorable to Professor Coates, his "open question" interpretation rests on little more than speculation. The only factual evidence cited by Professor Coates is that (i) BANA was the administrative agent on two of these six credit agreements (from which fact he appears to infer that BAC could have persuaded the other banks to continue the credit facility),[15] and (ii) a checklist in the draft merger documents, written months before the merger, indicated that the credit facilities should be investigated to see if repayment was necessary or if renegotiation was possible.[16]

Agreement Between CFC, CHL, CW Bank, and Barclays Capital, Countrywide Fin. Corp. Current Report (Form 8-K), at Ex. 10.2 §§ 2.08(d), 2.09 (Nov. 17, 2006); Countrywide Fin. Corp., 364-Day Credit Agreement Between CFC, CHL, CW Bank, and Barclays Capital, Form 8-K, Ex. 10.1 §§ 2.08(d), 2.09 (Nov. 17, 2006).

[12] *See, e.g.*, Countrywide Fin. Corp. Current Report (Form 8-K) at Ex.4.1§ 6.01(f) (May 29, 2007) (Indenture as of May 22, 2007 defining Event of Default to include "default by [CFC] or [CHL] . . . resulting in acceleration of maturity of any other indebtedness for borrowed money in an amount exceeding $100,000,000"); *id.* at § 6.02 (providing acceleration as the remedy for an Event of Default).

[13] *See* RICHARD WIGHT ET AL., THE LSTA'S COMPLETE CREDIT AGREEMENT GUIDE § 4.7.7 (2009) ("One of the fundamental principles of sound banking is the 'know your customer' rule. Knowing the customer includes knowing who ultimately controls the customer. This principle is the genesis of the change of control provision in the typical credit agreement. If the control of the customer devolves upon a new entity, the lenders may want the right to exit the facility. Credit agreements vary as to whether a change of control is an event of default or a mandatory prepayment event . . . [but] [t]here is little substantive difference.").

[14] Coates Report, at 73.

[15] *Id.* However, the managing administrative agent on both these credit agreements was JPMorgan. (as Professor Coates acknowledges). *Id*

[16] *Id.* at 73, n. 229.

25. Professor Coates's interpretation that renegotiation was possible is too facile for at least three independent reasons: First, JP Morgan Chase was the "managing administrative agent" (a more senior position) on the two (out of six) loans where BAC was an administrative agent,[17] and it would predictably look to protect its own best interests. Of course, in the case of the other four loans, BAC was not even an administrative agent and so had even less ability to influence the other banks. Second, by the time of the July, 2008 transactions, the credit markets had deteriorated seriously, in part because of the financial collapse of Bear Stearns in March, 2008.[18] Because CHL and Bear Stearns were both leading players in the subprime mortgage securitization industry, Bear Stearns's insolvency was certain to have made lenders apprehensive about CHL and eager to find any justification for calling their loans to it at a time when major banks were facing their own liquidity concerns and needed to hoard cash. Thus, although Professor Coates relies on a checklist that indicated that "all debt agreements will be examined for change-in-control" and implied that such provisions would lead to either "repayment or modification,"[19] this language, on its face, is merely definitional (i.e., all change-in-control provisions do lead to one outcome or the other), and hence this language did not express any judgment about the feasibility or likelihood of modification. More importantly, this wording that Professor Coates reads to imply that there was at least an "open question" about modification

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[17] *See id.* at 73.

[18] This deterioration was well recognized within BAC. *See* Press Release, Bank of Am. Corp., Bank of America Announces Third Quarter Earnings and Capital Raising Initiatives (Oct. 6, 2008) ("'These are the most difficult times for financial institutions that I have experienced in my 39 years in banking,' said Kenneth D. Lewis, chairman and chief executive officer. . . . Credit quality continued to weaken during the quarter with more rapid deterioration noted recently. The economy has moved to a recessionary environment and the risk of a prolonged recession has increased. Consumers are experiencing higher levels of stress from depreciating home prices, rising unemployment and tighter credit conditions. Higher levels of bankruptcies are occurring and delinquencies and losses have increased in all consumer portfolios.").

[19] Coates Report, at 73, n.229.

was written in February, 2008, well before the debt crisis worsened in mid-2008 following Bear Stearns's collapse. After that point, debt markets began to freeze, and major banks rushed to increase their own liquidity by recalling loans when possible.[20] By November, after Lehman's bankruptcy, the financial markets were in free fall, and all banks were looking to maximize their liquidity (with the result that lending froze).[21]

26. Finally, the idea that CHL's debt agreements might be modified by its lenders, if BAC had requested, ignores the key point (which Professor Coates elsewhere concedes)[22] that beginning in 2007, well before the merger was contemplated, CFC had begun to "migrate" CHL's mortgage-lending operations to Countrywide Bank. As publicly disclosed, CFC decided to shift its lending from CHL to Countrywide Bank because the securitization markets (on which CHL relied for capital) had dried up and Countrywide Bank had a depository base that could be used to fund its mortgage-lending operations. If CFC planned to downsize CHL and rely instead on Countrywide Bank, it would be unrealistic, even in the best of times, to expect that CHL's lenders would remain passive and keep in place over $11 billion in loans to an entity (CHL) that

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[20] *See, e.g.*, David Leonholdt, *Can't Grasp Credit Crisis? Join the Club*, N.Y. TIMES, Mar. 19, 2008 (stating that the housing crisis "has shocked Wall Street into a state of deep conservatism. The soundness of any investment firm depends largely on other firms having confidence that it has real assets standing behind its bets. So firms are now hoarding cash instead of lending it, until they understand how bad the housing crash will become and how exposed to it they are.").

[21] *See* Bloomberg News, *Banks Cut Cross-Border Lending Most Since Lehman: BIS*, BUSINESSWEEK, June 3, 2012, (stating that "interbank lending markets froze worldwide following the collapse of Lehman Brothers Holdings Inc."); David Goldman, *Credit Freeze: What Lehman Wrought*, CNNMONEY.COM, Nov. 16, 2008 (noting that following Lehman's declaration of bankruptcy credit markets froze and private lending and liquidity dropped sharply); Dealbook, *What Really Caused the Credit Crunch*, N.Y. TIMES, Sept. 9, 2009 (stating that Lehman's bankruptcy filing "prompt[ed] a flood of withdrawal requests," causing the "commercial paper market [to] seize[] up.").

[22] *See* Coates Report at 8 ("The Mortgage Banking business was historically housed at CHL until late 2007 when CFC began migrating the mortgage origination business to Countrywide Bank"). This migration actually began during the summer of 2007 when the credit markets began to freeze. *See* Countrywide Fin. Corp. Annual Report (Form 10-K), at 4 (Feb. 29, 2008) ("Historically, mortgage banking loan production has occurred in Countrywide Home Loans. Over the past several years, we have been transitioning this production to our bank subsidiary, Countrywide Bank, FSB.").

was gradually being downsized, when those lenders had a contractual right to demand immediate repayment. In short, if CHL was no longer CFC's own preferred vehicle for mortgage lending (as Professor Coates has acknowledged), CHL's lenders would logically want to close down their credit facilities with it (and could use the change-in-control provisions to achieve that result). To sum up, both because of the credit crisis that was rapidly worsening by July, 2008 and because of CFC's own earlier decision to move its mortgage lending operations away from CHL, CHL lenders would be highly unlikely to keep in place a large credit facility to an entity that had been effectively sidelined.

2. *CFC And CHL Needed to Improve Their Liquidity Position By Converting Illiquid Assets Into Cash to Meet Their Funding Needs.*

27. Beyond the need to repay $11.5 billion in credit-line borrowing as the result of the change-in-control provisions,[23] Countrywide faced other liquidity problems following CFC's merger with Red Oak on July 1, 2008. Specifically, CHL needed $800 million to pay off repos to Countrywide Bank, and it needed to return approximately $1.1 billion in cash collateral to derivative counterparties.[24] CFC also had large cash needs, requiring approximately $400 million to pay off repos to Countrywide Bank, and it also was required to make a $5.5 billion capital contribution to Countrywide Bank to maintain the latter's Tier 1 status.[25] In addition, CSC needed approximately $1.5 billion to repay borrowings to the Federal Reserve.[26]

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[23] *See* BACMBIA-R0000005986, at "Transaction Summary," Row 45.

[24] *See* BACMBIA-R0000005986, at "Transaction Summary," Rows 60, 62; BACMBIA-R0000006088, at Rows 54, 55.

[25] *See* BACMBIA-R0000005986, at "Transaction Summary", Rows 69, 73; Countrywide Bank, F.S.B., Thrift Financial Report, Schedule CCR for the quarter ending September 31, 2008, at 1–2 (showing CW Bank had only $8,148,383,000 in Tier 1 (Core) Capital and would have failed its capital requirements (which required CW Bank have a minimum of $4,385,149,000 in Tier 1 (Core) Capital) without the additional equity from CFC's capital contribution).

[26] BACMBIA-R00000006061, at "Summary," Row 80.

28. When these amounts are added to the $11.5 billion that CHL needed to repay debts under its revolving credit facilities (as just discussed), CFC and CHL needed to quickly convert illiquid assets into approximately $20 billion in cash or otherwise liquid assets at a time when the financial markets were freezing up. This need for $20 billion (or more) in liquidity comes into clearer focus when one realizes that immediately prior to the Red Oak-CFC merger, CFC's consolidated balance sheet showed that it only had $6.6 billion in cash on hand.[27] Possibly, there were means by which CFC could have resolved the liquidity crisis that it faced in 2008, other than through the July and November transactions, but Professor Coates does not suggest them or even face this problem. In my judgment, the July and November asset sales (which when coupled with BAC's contribution of those assets to BANA permitted BAC to free up liquidity from BANA) were a logical and appropriate response and probably the only feasible answer.

3. *Fannie Mae and Ginnie Mae Conditioned Their Consent to the CFC/Red Oak Merger on BANA Guaranteeing CHLS's Obligations, Which Guarantee Could Only Be Given if CHLS Became a Subsidiary of BANA.*

29. Although Professor Coates insists that "asset-stripping" was the motive for the July and November, 2008 transactions, the record is clear that the demands of the key Government Sponsored Entities ("GSEs") on whom CFC and CHL were dependent substantially shaped the structure of BAC's acquisition of CFC and its subsidiaries. BAC needed to obtain the consents of both Fannie Mae and Ginnie Mae to the CFC/Red Oak merger because both CHL and CHLS's mortgage servicing contracts with those two GSEs gave each "change-in-control" consent rights.[28] When BAC requested permission to acquire CHLS, both GSEs insisted that BANA

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[27] *See* BACMBIA-R0000006045, at "Consolidation YTD," Row 276.

[28] *See* Fannie Mae Servicing Guide § 201.10.04 (June 10, 2011) ("[S]ervicer must obtain Fannie Mae's prior approval of any transfers of servicing (including one that results from a change in the servicer's

guarantee CHLS's obligations as a condition to their consent.[29] It was hardly surprising that the two GSEs wanted some entity larger and more senior in the BAC hierarchy than CHLS to guarantee CHLS's obligations, because CFC had itself already begun to downsize CHL and had recognized that mortgage lending was easier to finance when conducted through a depository bank. In seeking to reposition CHLS (in exchange for billions of dollars in consideration) so that it was associated with BANA, BAC was only following in CFC's path, because CFC had already initiated the migration of its mortgage lending from CHL to Countrywide Bank, and this transfer of CHLS was based on the same logic.

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name or corporate ownership or structure). If a servicer fails to obtain Fannie Mae's prior approval of a proposed transfer—or does not submit its request for approval at least 30 days in advance of the effective date for the transfer of servicing— Fannie Mae may assess a compensatory fee and exercise any other available remedy. The fee Fannie Mae charges can vary depending on the circumstances; however, it will not exceed 1% of Fannie Mae's share of the UPBs of the mortgage loans that are being transferred."); Ginnie Mae Servicing Guide Chapter 3-13 (B)(2) (Mar. 1, 2012) ("In the case of a merger where the surviving entity is an approved Ginnie Mae Issuer or a change in ownership or control of the Issuer , the Issuer must reconfirm in writing that, following the proposed change, it will still meet all of the Ginnie Mae Issuer requirements. "Change in ownership or control" means, for purposes of this Section 3-13(B) a change in ownership of 20 percent or more of the stock or other ownership interest in the Issuer. The Issuer must submit the following for Ginnie Mae to review prior to Ginnie Mae's determination whether to approve of the change in ownership or control: . . ."); *see also* Fannie Mae Guide Servicing § 201 (stating that the Mortgage Selling and Servicing Contract "incorporates by reference the terms of the *Guides* and other lender or servicing announcements, letters, and *Guide* changes, as well as Master Agreements, technology licensing agreements, and any other agreement entered into by Fannie Mae and the lender.") (emphasis in original); Ginnie Mae Guide Chapter 3-1 ("Once an applicant is approved as a Ginnie Mae Issuer, it must thereafter comply with the applicable Guaranty Agreement and this Guide, and it must advise Ginnie Mae immediately of any default or impending default under the applicable Guaranty Agreement as soon as it becomes apparent."); *see also* BACMBIA-C0000089055-89058 (April 18, 2009 email from Ofcharsky to D'Adamo forwarding update on government agencies and noting that BAC expected final consent from Fannie Mae and Ginnie Mae on charter collapse requirements by end of April 2009).

[29] *See* BACMBIA-R0000006216-617 (letter from Fannie Mae consenting to CHLS sale on condition that BANA issue guaranty in favor of CHLS); BACMBIA-R0000006346-6353 (BANA guarantee on behalf of CHLS); BACMBIA-R0000006218-6220 (letter from Ginnie Mae consenting to CHLS sale on condition that BANA issue guaranty in favor of CHLS); *see also* BACMBIA-O0000035341-35345, at 35343-35345 (May 23, 2008 email from Kathleen Gibbons, from Ginnie Mae, regarding the "organizational location of the Countrywide entities that are currently acting as Ginnie Mae issuers." Gibbons stated that "[o]ne formulation under consideration is the placement on . . . [LD1] of . . . [CHLS], under Bank of America, N.A." This option would give Ginnie Mae "a corporate guaranty" of CHLS by BANA.).

30. Not only was the fit between BANA and CHLS natural and efficient, but it was necessitated by banking rules. Regulation W effectively prohibited BANA from guaranteeing CHLS's obligations, unless CHLS first became a BANA subsidiary.[30] Regulation W places a quantitative ceiling on a national bank's transactions with its affiliates, and I am advised that BANA had already reached that ceiling because of other aspects of BAC's acquisition of CFC.[31] As a result, BAC structured the post-closing transactions so that CHLS became a BANA subsidiary, thus enabling BANA to guarantee CHLS's obligations without exceeding Regulation W's ceiling. Nowhere in this simple and factual explanation of these transactions does an "asset stripping" motive play any role.

4. *BAC Structured the July and November 2008 Transactions to Reduce Its Regulatory Costs and Consolidate The Supervision of Its Mortgage Lending Activities Under A Single Federal Regulator.*

31. Any rational business would seek to generate cost savings by minimizing duplicative regulatory oversight. CHL was particularly subject to this problem, because, prior to its July 1, 2008 merger into Red Oak, both it and CHLS were required to obtain separate licenses and comply with different regulations in every state in which it did business.[32] (This status continued even after CHL ceased to make new mortgage loans in 2008, because I am advised that CHL continued to engage in mortgage servicing and other activities subject to state regulations.)

32. Federal banking law provided an easy way for BAC to avoid such inefficient 50-state oversight and compliance. The National Bank Act preempts state law, and thus a federally

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[30] *See* 12 C.F.R. § 223.3(h) (2002) (defining covered transaction to included issuance of guarantee to affiliate); 12 C.F.R. § 223.2(b) (2002) (defining affiliate to exclude subsidiaries unless the subsidiary is a depository institution, financial subsidiary, or directly controlled by affiliate or shareholder).

[31] BACMBIA-C0000005039-5045 (Regulation W Presentation).

[32] *See* BACMBIA-C0000005961-5963 (May 2008 email exchange between Ofcharsky and Gangi discussing need to "turn[] our lending licenses in on a state by state basis").

chartered bank need not register with individual states to conduct mortgage lending and servicing activities.[33] Thus, to obtain the benefits of federal preemption, CHL's mortgage-related operating assets (including certain mortgage servicing assets) and CHLS were sold to BAC and NB Holdings, respectively, and then contributed to BANA, a federally chartered bank. CHLS was later renamed BAC Home Loans Servicing and eventually merged into BANA on July 1, 2011.[34] Thus, BAC restructured CFC's assets to take advantage of federal preemption — an explanation for the July and November, 2008 transactions that again has nothing to do with asset stripping.[35] Nor is there anything sinister or evasive about this purpose, as federal regulation of banking tends to be more sophisticated and rigorous.

33. This goal of regulatory simplification and consolidation was also advanced by merging Countrywide Bank into BANA. Countrywide Bank had historically been regulated by the Office of Thrift Supervision ("OTS"), while BANA was regulated by the OCC.[36] Reducing the number of regulators that oversee a bank to a single federal regulatory agency obviously implied cost savings and eliminated the danger of inconsistent regulatory regimes. Further, so long as Countrywide Bank maintained a thrift charter, Countrywide Bank needed to file regulatory

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[33] *See Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 21 (2006) (holding that National Bank Act preempts state regulation of national-bank subsidiaries).

[34] This merger was necessitated by the Dodd-Frank Act, which eliminated federal preemption for operating subsidiaries of national banks. *See* Press Release, Office of the Comptroller of the Currency, OCC Issues Final Rule to Implement Provisions of the Dodd-Frank Act (July 20, 2011).

[35] *See* BACMBIA-C0000005961-5963 (May 2008 email exchange between Ofcharsky and Gangi stating that CFC was "continuing to proceed down the path of preemption."); BACMBIA-X0000104144-104414, at 104367 (March 2008 Transition Leadership Team presentation noting that there was a "[business] opportunity to take greater advantage of federal preemption thru moving more activities under federally chartered activities."); BACMBIA-O0000075531-75539, at 75537 (October 2008 Consumer Lending presentation stating that as part of the transition process, BAC continued to "[e]valuat[e] BAC and CFC's positions on preemption to determine approach in states where we are using different practices.").

[36] To facilitate the merger with BANA, Countrywide Bank filed an application in February 17, 2009 to convert from a thrift to a national bank charter. *See* BACMBIA-Q0000000859-872.

reports to the OTS that were different in form and substance from those BAC had experience preparing for BANA. Merging Countrywide and BANA alleviated the extra costs and burden of having to prepare multiple reports. Given the advantages of regulatory consolidation, I believe that any large financial institution planning an acquisition would have sought to pursue this benign end.

5. *BAC Understandably Preferred to Promote a Single Brand Rather Than Sponsor Competing Brands.*

34. An implicit assumption of the Coates Report seems to be that BAC was under some obligation to preserve the brand and marketing independence of the "Countrywide" brand — or to assume all its liabilities if it did not. Thus, Professor Coates objects repeatedly to the fact that BAC combined CFC's and CHL's operating assets in the mortgage lending field with its own. Earlier, it has been explained that these transfers for billions of dollars in cash and other consideration were necessary to gain liquidity for CHL. But even apart from this explanation, it was entirely proper and appropriate for BAC to combine the two businesses to achieve greater efficiency. Had BAC preserved the "Countrywide" name and brand, it would be essentially competing with itself. Mortgage borrowers in the many jurisdictions in which both operated would have to decide whether to go to BANA or Countrywide Bank for mortgage loan (and might seek to play one off against the other). Resources would also have to be spent to advertise and market two different brands in competition.[37]

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[37] *See* Clamp Dep. Tr. at 72:25-73:19 ("Q. During the assessment phase, what exactly were you assessing? A. During the assessment phase under the commercial banking and commercial lending small sort of the lending practice, we were assessing the offers, services, the operations of the legacy organization that we discussed that was delivering products and services and commercial banking and commercial lending under the Countrywide brand, and making a decision or we didn't make a decision, we made a recommendation as a result of that assessment as we compared that output with the products and services offered within the legacy Bank Of America commercial banking unit what the target state would be.").

35. Moreover, in preserving the "Countrywide" brand, BAC would be linking its own name with that of an entity that, as of 2007, already was subject to both regulatory inquiries and private litigation and incurring some reputational harm in the public mind.[38]

36. Nor was this decision to back away from the Countrywide name and brand in any way unusual. If one looks at the financial services industry over the last thirty years, one can observe other notable instances in which other acquirers bought the assets of a major firm, but did not preserve its name or brand. Examples here would include such financial firms as Drexel, Burnham, Lehman Brothers, and Bear Stearns. Any legal rule or decision that penalized acquirers for doing so would be profoundly ill-advised.

B. CFC's and CHL's Creditors Benefitted from the July and November, 2008 Transactions.

37. Despite Professor Coates's insistence on an "asset-stripping" motivation for the July and November, 2008 transactions, the July and November 2008 transactions actually benefitted the majority of CFC's creditors (including contingent creditors whose representation and warranty claims have been paid). That certain unsecured contingent creditors like MBIA may not have similarly benefitted is irrelevant. There is no rule in law, or any generally recognized custom or practice, that required BAC to treat all of CFC's creditors identically or equally. An acquirer is free to decide in its own best interests to pay off some creditors of an acquired business, but not others.

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[38] *See* Gretchen Morgenson, *Countrywide Chief is Said to Face S.E.C. Inquiry*, N.Y. Times, Oct. 18, 2007; Class Action Complaint for Violation of §§ 11, 12(a)(2) and 15 of the Securities Act of 1933, *Luther v. Countrywide Home Loans Servicing, LP, et al.*, No. BC380698 (Cal. Super. Ct. Nov. 14, 2007); BACMBIA-B0000009921-9923, at 9922 (April 8, 2008 Presentation to the Transition Steering Committee) (noting that "31% [of consumers] say CFC is the company consumers would most prefer NOT to do business. rising from 18% in November 07, more than any other lender," while "BAC (18%), in the same time period, has inched closer to Wells Fargo (19%) as the lender MOST preferred to do business.").

1. *The 2008 Transactions Infused Capital and Liquidity Into CFC While Removing a Risky and Illiquid Portfolio of Subprime Mortgages From CFC's Balance Sheet.*

38. If we look simply at CHL, the July 1–3, 2008 transactions provided it with $30.9 billion in cash and demand notes.[39] Then, the November, 2008 transactions resulted in it receiving another $3.05 billion in demand notes.[40] In addition, CFC separately received $3.5 billion in demand notes in November from BAC.[41] Meanwhile, BAC assumed $16.6 billion in debt securities and related guarantees.[42] Effectively, these transactions, coupled with NB Holdings' repayment of $16.1 billion of the demand notes it gave to CHL in July, 2008, monetized the illiquid assets of CFC and CHL, enabling them to pay creditors.

39. To the extent MBIA is challenging these conveyances based on the value paid, neither Professor Coates nor I are valuation experts who should be heard on this score, and BAC will rely on other experts to establish that fair value was paid. All that Professor Coates and I can legitimately debate, as M&A experts, is whether the July and November transactions deviated from standard M&A customs and practices in similar acquisitions of large financial institutions and whether any possible deviations were justified by reasonable business considerations. Here, the initial point that I would make is very simple: if BAC had just merged CFC into Red Oak and not engaged in the July and November transactions, most of CFC's creditors would be far worse off.

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[39] *See* Countrywide Fin. Corp. Current Report (Form 8-K), at 5 § 2, Item 2.01 (July 8, 2008).

[40] BACMBIA-C0000168237-168241.

[41] BACMBIA-C0000168502-168507.

[42] Bank of Am. Corp. Current Report (Form 8-K), at Item 8.01 (Nov. 10, 2008).

2. *The July and November Transactions Were Not the Economic Equivalents of* De Jure *Mergers of CFC, CHL and the Other CFC Subsidiaries into BAC or its Subsidiaries.*

40. Professor Coates asserts in his summary of opinions at the outset of his report that:

> The Asset-Stripping Transactions had equivalent economic effects on CFC, CHL and the Other Subs and their business operations as if they had been *de jure* merged into BAC and its subsidiaries . . .[43]

As Professor Subramanian has shown in his expert report, direct mergers between the acquirer and the target rarely happen (they were only 9% in his sample[44]), and triangular mergers dominate the field. Thus, triangular mergers are the norm in M&A custom and practice.

41. Let us suppose then that BAC merged CFC into a wholly-owned subsidiary (as in fact happened). Would such a merger have produced the equivalent of the July and November transactions? The answer, of course, is no. Such a merger would have given CFC's former shareholders stock in BAC, but it would have yielded no benefit for the creditors of CFC or its subsidiaries (so long as the merger subsidiary (i.e., Red Oak) had little capital). In this sense then, the July and November transactions were the precise opposite of a *de jure* triangular merger because such a merger normally gives stockholders something (stock in BAC) and creditors nothing. In contrast, the July and November transactions gave creditors something (cash and notes) and stockholders nothing. As Professor Coates clearly understands, triangular mergers do not by themselves result in the parent of the acquisition subsidiary assuming the liabilities of the target. This occurs only in a rare form of acquisition (i.e., a direct merger of BAC and CFC). But such direct mergers are themselves a major deviation from normal M&A custom and practice that stand well outside the mainstream of transactions. Otherwise, as in the case of

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[43] Coates Report, at 1 (emphasis in original).

[44] Subramanian Report, at 26.

triangular mergers, the directors of the acquirer must make a business decision to assume the liabilities of the target and its subsidiaries, and normally to do that they must rationally believe that they are enhancing value for their shareholders.

42. In this light, MBIA's real objection may be that some CFC creditors (such as public debt holders and indenture holders) had their liabilities assumed or repaid, but MBIA did not. Not only did BAC not owe any duty to MBIA or other contingent creditors, but CFC did owe a contractual obligation to its public bondholders based on indenture covenants which required their debt to be repaid on a sale of substantially all CFC's or CHL's assets, and BAC had to be concerned that it not aid or abet CFC's breach of this duty.[45] In this light, MBIA's grievance is that it failed to negotiate contractual protections that others did. In any event, Professor Coates has produced no empirical evidence that all liabilities to creditors are normally assumed in standard triangular mergers (and later we will see closely parallel instances in which they were not). Indeed, any such evidence supporting Professor Coates's view would be surprising because a basic purpose of a triangular merger is to protect the parent of the acquisition subsidiary from the liabilities of the acquired corporation.[46]

43. Finally, there is nothing suspicious or improper in assuming some (but not all) of the liabilities of the target's subsidiaries. To see this, let us begin with a simple example. Acquirer Corp. wishes to buy Target Corp. in a stock merger. Target Corp. is a holding company with two subsidiaries: Internet Co. and Horse-and-Buggy Co. Acquirer Corp. sees great prospects for Internet Co., but could not care less about the troubled Horse-and-Buggy Co. After the merger

[45] *See, e.g.*, Bank of Am. Corp. Current Report (Form 8-K), at Exs. 4.3, 4.4, 4.6 (Nov. 10, 2008).

[46] *See, e.g.*, WILLIAM J. CARNEY, MERGERS AND ACQUISITIONS 90 (2d ed. 2007) ("[A] triangular merger isolates the target's liabilities from the parent corporation, which may be important where contingent liabilities, such as product liabilities or environmental liabilities are a risk.").

with Target Corp., Acquirer Corp. assumes all the debt of Internet Corp. in order to keep it viable, but does not do the same for Horse-and-Buggy Co. In my judgment, this would be a rational business judgment for Acquirer to make, which is entirely consistent with the norms and customs of M&A practice. To the extent that Professor Coates feels otherwise, he is asking courts to subsidize inefficiency for no good reason. Nothing in sound economic policy or prevailing standards of corporate governance should cause or invite courts to accept his invitation to rewrite the law.

3. *Creditors Cannot Have a Legitimate Expectation That Companies Will Not Sell Their Operating Assets at Fair Value, and Thus the July and November Transactions Could Not Frustrate Creditor Expectations.*

44. Although this report does not seek to advise this Court in any way on the law of fiduciary duties, the simple truth is that creditors' expectations derive largely from what they understand their legal rights to be. Delaware law predominates on all issues of corporate governance. And here CFC is incorporated in Delaware (as is BAC) and it is undeniably true that CFC's directors' duties are governed by Delaware law. Thus, it is relevant that Delaware has repeatedly stated, with firmness and clarity, that directors do not owe fiduciary duties to creditors, even when their corporation is operating in the "zone of insolvency."[47] As a result, creditors understand that they must look to their contract and statutory rights, but cannot expect the directors of their debtor to recognize any broader fiduciary or other duty that would conflict with their unremitting duty to their shareholders.

[47] *See N. Am. Catholic Educ. Programming Found. Inc. v. Gheewalla*, 930 A.2d 92, 98 (Del. 2007). In so ruling, the Delaware Supreme Court started from the basic legal difference between shareholders and creditors: "[w]hile shareholders rely on directors acting as fiduciaries to protect their interests, creditors are afforded protection through contractual agreements, fraud and fraudulent conveyance law, implied covenants of good faith and fair dealing, general commercial law and other sources of creditor rights." *Id.* at 99.

45. It is important to underscore here that the approach of insolvency does not change matters, either from a legal or creditor expectation standpoint. As the Delaware Supreme Court said in *Gheewalla*:

> When a solvent corporation is navigating in the zone of insolvency, the focus for . . . [the board of directors] does not change: directors must continue to discharge their fiduciary duties to the corporation and its shareholders by exercising their business judgment in the best interests of the corporation for the benefit of its shareholder owners.

930 A.2d at 101. The problem with requiring directors to owe duties to creditors, it recognized, is the age old one that "no man can serve two masters." Thus, it concluded that, even once the corporation became insolvent, no new duties arose:

> Recognizing that directors . . . owe direct fiduciary duties to creditors would create uncertainty for directors who have a fiduciary duty to exercise their business judgment in the best interest of the insolvent corporation . . . [and] . . . would create a conflict between those directors' duty to maximize the value of the insolvent corporation for the benefit of all those having an interest in it, and the newly recognized direct fiduciary duty to individual creditors.

Id. at 103.

46. I anticipate the possible rebuttal (from Professor Coates or others) that creditors might for some reason assume (mistakenly, I believe) that New York law instead controlled. But even if they were to make such a misjudgment, the outcome does not change. The New York Court of Appeals has unanimously ruled this year, in a case involving the purchase of impaired mortgage-backed securities, that no fiduciary duty is owed by a debtor to a note-holding creditor. The relationship, it said, was contractual and not fiduciary in character. *See Oddo Asset Management v. Barclays Bank PLC*, 2012 N.Y. LEXIS 1841, at *13-16 (June 27, 2012). My point here is not to argue the correctness of this decision (and I understand that attempts can be made to distinguish any case). Rather, my point is that because Delaware and New York's highest courts

seem to have rejected theories of fiduciary duty in this context, creditors could hardly have any reasonable expectation that ran counter to these decisions by the two leading state courts in the commercial field.

47. In my judgment, the prevailing standard and the danger of conflicting duties is well-known in the commercial world and thus shapes the expectations of reasonable creditors. In particular, because the duties of directors are well understood by the corporate and commercial world, it is difficult to believe that sophisticated creditors could have a view about their rights that was inconsistent with Delaware and New York law. Creditors would (and do) thus understand that directors of an acquirer will assume liabilities of another firm only when they believe that doing so is in the best interests of their own corporation.

48. Quite apart from legal standards, creditor expectations are also shaped by experience. On several recent occasions, public corporations have allowed subsidiaries to file for bankruptcy and have not bailed them out or assumed their liabilities.[48] In May of this year, Ally Financial Inc. (formerly known as GMAC) let its wholly-owned subsidiary, Residential Capital LLC, file for bankruptcy.[49] This example is noteworthy because Residential Capital (or "ResCap" to the industry) was long the mortgage servicing arm of GMAC and was the "fifth largest servicer of residential mortgage loans in the United States," ranking just after BAC, JPMorgan, Wells Fargo

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[48] *See* Michael J. de la Merced, *Ally's Mortgage Unit, ResCap, Files for Bankruptcy*, N.Y. TIMES, May 14, 2012. For other examples, *see AES Corp. subsidiary files for bankruptcy*, ASSOCIATED PRESS, January 3, 2012, *available at* http://online.wsj.com/article/AP1f9c04ea06d24cdbb3d438e962c94633.html; *EnPro unit files for bankruptcy over asbestos claims*, REUTERS, June 7, 2010, *available at* http://www.reuters.com/article/2010/06/07/enproindustries-idUSSGE6560HZ20100607.

[49] *See* Merced, *supra note* 48.

Bank, and the mortgage subsidiary of Citicorp.[50] Thus, it was a close functional analogue to CHL.

49. Possibly, some creditors were surprised at the first of these subsidiary bankruptcies, but ultimately experience is the best teacher. Hence, reasonable creditors had to have learned from these episodes that parent corporations do not automatically bail out subsidiaries.

50. Although BAC did assume some liabilities of Countrywide's creditors, its board was not simply picking and choosing favored creditors. Rather BAC was obligated by CFC's and CHL's indentures with their bondholders to assume the liabilities under those indentures once it purchased substantially all the assets of CFC and CHL.[51] Again, MBIA's real complaint here is that it did not have the contractual protections other creditors had bargained for.

51. To sum up, the reasonable expectation of creditors is not that the liabilities owed them will be automatically assumed, but rather that their contractual rights will control. In addition, acquirers can appropriately make case-by-case judgments in terms of what is in the best interests of their own corporation. Any broader expectation on the part of creditors leads only to confusion, uncertainty and disappointment.

52. That creditors do not in fact have broader expectations is shown by the fact that the credit ratings on the debt of wholly-owned subsidiaries are often different from the credit ratings on the

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[50] *See* Aff. of James Whitlinger, Chief Financial Officer of Residential Capital LLC, at ¶ 9 (May 14, 2012). This affidavit is available in the New York Times DealBook for May 15, 2012. *See* Steven J. Lubben, *The Challenges in ResCap's Bankruptcy*, N.Y. TIMES, May 15, 2012.

[51] *See, e.g.*, Bank of Am. Corp. Current Report (Form 8-K), Ex. 4.3 (Nov. 10, 2008) ("Section 901(1) of the Indenture provides that in the case of a conveyance or transfer of substantially all of Issuer's assets to another corporation, the acquiring corporation shall expressly assume by supplemental indenture all the obligations and covenants under the Securities and the Indenture to be performed and observed by Issuer.").

parent entity's debt.[52] The subsidiary's credit rating would not be lower if the market assumed that the parent would assume its liabilities. Here, it is noteworthy that Standard & Poor's did in fact cut CFC's credit rating on its debt to below investment grade on or about May 2, 2008, even though BAC then had a credit ratings of AA.[53] Standard & Poor's cited "speculation that Countrywide might go bankrupt and would not pay its debts."[54] Apparently, the market did not share Professor Coates's conviction that liability assumption by the parent is automatic in a triangular merger.

C. Although Professor Coates Argues that BAC Voluntarily Assumed Most of CFC's and CHL's Liabilities to Their Creditors in a Manner That He Deems Consistent With a *De Jure* Merger, He Consistently Misreads the Evidence.

53. Professor Coates's argument that BAC's "conduct *vis- à-vis* creditors of CFC and CHL is consistent with BAC having assumed the remaining contingent liabilities of CFC and CHL, as it would have done in a *de jure* merger"[55] can be rebutted on two distinct levels. First, the assumption of some liability does not mean the assumption of all. No rational person would argue that because someone assumed a $1,000 liability in order to keep a business operating that this implied that the same person would willingly assume $100 million in liabilities. The formal assumption of a specific liability actually carries a negative implication for reasonable creditors about whether the parent corporation intends to pay other liabilities not specifically assumed.

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[52] The credit ratings of bank holding companies and their subsidiaries are not identical. *See* Credit Ratings for Bank of Am. and Selected Legal Entities as of June 30, 2008, Bank. of Am. Investor Relations, http://investor.bankofamerica.com/phoenix.zhtml?c=71595&p=creditratings#fbid=gmq0PHI_Ys_/BofA; Credit Ratings, JPMorgan Chase & Co., http://investor.shareholder.com/jpmorganchase/ratings.cfm; Citigroup Credit Ratings, http://www.citigroup.com/citi/investor/rate.htm.

[53] David Mildenberg, *Countrywide Rating Cut to 'Junk' By Standard & Poor's (Update1)*, Bloomberg, May 2, 2008.

[54] *Id.*

[55] *See* Coates Report, at 59–68.

That is, the very act of assuming a specific liability distinguishes it from other liabilities; by definition, extending a contractual guarantee to one creditor demonstrates that other creditors were not similarly treated.

54. Second, whatever the merits of Professor Coates's theory that assuming some liabilities means you have assumed them all, the record actually shows that BAC was careful not to assume the liabilities of CFC and CHL. On this score, Professor Coates has seriously overstated the evidence. To demonstrate this, it is necessary to proceed, on a step-by-step basis, through several distinct transactions, as next discussed.

1. *The 2008 Settlement with State Attorneys General*

55. Professor Coates asserts that "on October 6, 2008 . . . BAC agreed to incur an estimated $8.4 billion in mortgage principal and interest rate adjustments" as a result of a settlement with state attorney generals.[56] This summary ignores one critical detail: BAC was not a party to those settlements. The settlement agreements were signed only by CFC and CFC subsidiaries.[57]

56. Instead of citing the actual agreements with the state attorneys general in his report, which MBIA's counsel had introduced as deposition exhibits,[58] Professor Coates cites to "talking points" that instead declare that BAC "announced the creation of a proactive home retention program" for CFC customers.[59] In fact, as Barbara Desoer explained during her deposition,

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[56] Coates Report, at 62.

[57] *See* Pls.' Exs. 3661–3686 (State AG Settlement Agreements).

[58] Price Dep. Tr. at 335:10-339:4, 343:4-344:24, 345:2-346:3.

[59] *See* Coates Report, at 62, n.185 (citing Pls.' Ex. 3602).

those talking points did not refer to the legal entity BAC, but rather to the consolidated Bank of America enterprise.[60]

57. Professor Coates also asserts that BAC agreed to "indemnify legacy CHL in connection with its loan modification responsibilities" under these settlements.[61] This is also incorrect. Although BAC did sign assurance letters in which it agreed to indemnify CHL for any court-entered fines or penalties for failure to comply with the settlement agreements, it did not agree to assume CHL's liabilities under those agreements.[62] There is an order-of-magnitude difference between such an undertaking (i.e., to indemnify potential fines or penalties that might never be incurred) and a much greater undertaking to indemnify CHL for the settlement agreements themselves. CHL's obligations under the settlement agreements remained unchanged by the BAC letters. In fact, the assurance letters expressly provide that:

> It is understood and agreed that this letter agreement shall not afford CFC or any other person the right to require BAC or any of its affiliates (other than CFC), directly or indirectly, to perform specifically the obligations of CFC, any CFC Affiliate or any CFC Servicer (each as defined in the Order) under the Order.[63]

Finally, because Professor Coates cites no evidence that there have been any fines or penalties against CHL since BAC executed the letters, this point seems largely academic.

58. Professor Coates also broadly asserts that "because BAC agreed to cover the costs of CFC and CHL liabilities and to modify Countrywide loans, several State Attorney Generals

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[60] *See* Desoer Dep. Tr. at 384-87; *id*. at 385:3-16 ("Q. 'What was Bank Of America's role in this announcement?' Underneath this it states 'Bank Of America worked with the State Attorneys General to develop the program.' Do you see that? A. Yes. Q. Does that suggest that it was Bank Of America Corporation to you? A. No, it would be referencing Bank Of America and its group of companies generically as opposed to Bank Of America Corporation per se.").

[61] Coates Report, at 62.

[62] *See, e.g.*, Pls.' Exs. 3604-05, 3360.

[63] Pls.' Exs. 3604, 3605, 3360.

dismissed their lawsuits against Countrywide, and several others agreed to not bring suit."[64] Professor Coates provides no support for this statement. Again, Professor Coates cites to another talking points memo, which merely states that:

> [The] AGs of California, Connecticut, Florida, and Illinois have agreed to dismiss their lawsuits and we hope other AGs who filed such suits will do the same. Further, AGs of other states participating in the agreements have agreed not to file such lawsuits.[65]

59. This informal memo does not state or even suggest that BAC assumed Countrywide's liabilities to the state AGs, nor did it, or could it, suggest that any such assumption of liabilities was the reason the state AGs dismissed their suits.

2. *$70 Billion Mortgage Modification Program*

60. Professor Coates asserts that "BAC committed a total of $70 billion to its home loan modification program" and that this program "'targeted [] a subset of just the Countrywide borrowers'" and did not cover liabilities related to "'legacy Bank of America borrowers.'"[66] This summary misses the mark in three respects. First, Professor Coates appears to have taken this $70 billion dollar figure from another "talking points" memo concerning the attorney-general settlements, which states that "[w]hen combined with our previously announced loan modification commitments, this represents a $70 billion program."[67] Yet, this language does not state or even suggest that BAC itself assumed $70 billion in mortgage-modification liabilities. Rather, it speaks only to the value of the <u>*enterprise-wide*</u> loan-modification programs. Second,

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[64] Coates Report, at 63.

[65] *Id*. at 63 n.189 (citing Pls. Ex. 3602).

[66] Coates Report, at 62-63.

[67] *See* Pls.' Ex. 3597.

Professor Coates mischaracterizes the testimony of Barbara Desoer,[68] who did _not_ testify that the $70 billion mortgage-modification program was limited to a "subset" of Countrywide borrowers. Rather, Desoer testified that the state attorney general settlement described above (total value $8.4 billion) was limited to Countrywide borrowers.[69] Deseor did not speak to the other approximately $62 billion in "previously announced loan modification commitments." Third, Desoer actually testified that BAC did not bear the cost of these loan modifications, rather that cost was passed on to investors holding the underlying loans:

> Bank of America executed loss mitigation activities at the — as part of our contract with the investors. And depending on who the investor was, Bank Of America would incur, certainly we incurred the operational expense of enabling our team to be able to take care of our customers and then the cost of doing different workouts were attributed to different investors.[70]

To sum up, there is no evidence that BAC assumed $70 billion in mortgage-modification liabilities.

3. *$600 Million Class Action Settlement*

61. Professor Coates concludes that "BAC paid $600 million to settle a class action lawsuit by investors alleging that Countrywide's risky mortgage portfolio endangered the company's economic viability."[71] Again, this is incorrect. Professor Coates's sole support for this statement appears to be an Associated Press article.[72] But that article actually stated that "*Countrywide Financial* agreed to pay $600 million to settle shareholder lawsuits in the largest payout so far from the mortgage crisis," and the article does not even mention BAC, let alone suggest that

[68] Coates Report, at 62-63, 63 n.188.

[69] Desoer Dep. Tr. at 346:9-23.

[70] *Id.* at 26:7-14.

[71] Coates Report, at 63.

[72] *Id*. n.190.

BAC paid the settlement.[73] In fact, BAC was not a party to the underlying litigation and did not sign the settlement agreement.[74] Thus, Professor Coates lacks any colorable evidence that BAC assumed CFC's liability for this settlement.

4. *$2.8 Billion Payment to Fannie Mae and Freddie Mac*

62. Professor Coates asserts that "BAC also paid $2.8 to Fannie Mae and Freddie Mac, *i.e.*, the GSEs, to settle repurchase claims."[75] Although Professor Coates is correct that BAC made this payment, there was a legitimate business purpose behind this payment that was unrelated to any assumption of CFC's liabilities: namely, BAC faced liability in its own right. As Professor Coates's sources show, CFC was not the only BAC affiliate liable for the GSEs' representation and warranty claims, rather BACHLS (a BANA subsidiary) was jointly and severally liable with CHL:

> Under the terms of the agreements with the GSEs, both the seller (CHL) and the servicer (BACHLS) are jointly and severally liable for the obligations under the reps and warranties given to the GSEs at the time of sale.[76]

63. As noted earlier, in order to obtain Fannie and Ginnie Mae's consent to the CFC merger, BANA had been required to guarantee CHLS's (which became BACHLS) liabilities.[77] After the merger closed, BANA was thus jointly and severally liable with CHL to the GSEs. In addition, BAC was required by the OCC to indemnify BANA for any losses arising from the

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[73] ASSOCIATED PRESS, *$600 million Countrywide Settlement*, N.Y. TIMES, Aug. 3, 2010 (emphasis added).

[74] *See* NY Funds Settlement Agreement, CV 07-05295 (MRP) (MANx) (C.D. Cal.).

[75] Coates Report, at 63 (emphasis in original).

[76] Pls.' Ex. 3397, at BACMBIA-L0000003643 ("Explanation 8").

[77] BACMBIA-R0000006216-617 (letter from Fannie Mae consenting to CHLS sale on condition that BANA issue guaranty in favor of CHLS); BACMBIA-R0000006346-6353 (BANA guarantee on behalf of CHLS in favor of Fannie Mae); BACMBIA-R0000006218-6220 (letter from Ginnie Mae consenting to CHLS sale on condition that BANA issue guaranty in favor of CHLS).

Countrywide-related assets that were contributed to BANA—including BACHLS.[78] As a result of that indemnity, BAC was thus jointly and severally liable for the full amount of the GSEs' claims against CHL and BACHLS. Accordingly, when BAC agreed to assume the GSE representation-and-warranty liability through a contractual arrangement with its subsidiaries in September 2010,[79] BAC and its subsidiaries were already subject in their own right to that liability. This agreement to consolidate enterprise-wide liability on BAC's books both recognized liabilities that already existed by contract and strengthened CHL's balance sheet. Because no new liability was recognized, this cannot be fairly interpreted as an assumption of CHL's liabilities for successor liability purposes.

5. *Assured Guaranty Settlement*

64. Professor Coates here contends that "[o]n April 14, 2011, BAC also announced an agreement with Assured Guaranty Ltd (***Assured***) to settle claims relating to twenty-nine RMBS transactions insured by Assured, consisting of both BAC and Countrywide-sponsored RMBS."[80] Professor Coates does not present any evidence that BAC assumed Countrywide's liabilities for this settlement. In fact, both CFC and CHL signed the settlement agreement,[81] and Coates concedes that "[u]nder a cost sharing agreement with BAC, CHL paid [redacted] million of the case payments ([redacted] of the total)."[82] Indeed, that agreement makes clear that "the Settlement Agreement resolves potential liabilities of the Bank of America parties . . . and potential liabilities of the Countrywide parties" and "the Countrywide parties and BAC will pay respective

[78] *See* BACMBIA-Q0000000853-855; BACMBIAQ0000000856-858.

[79] *See* Pls.' Ex. 3397, at BACMBIA-L0000003643 ("Explanation 8").

[80] Coates Report, at 64 (emphasis in original).

[81] BACMBIA-Y0000001271-1594, at 1302-03.

[82] Coates Report, at 65.

portions of the costs and expenses incurred in connection with the Settlement Agreement."[83] Here Professor Coates admits that CHL made payments to cover its share of the liability, but he contends that it did so using capital it received from BAC for that purpose. That misses the point. The mere fact that BAC made a capital contribution to its wholly-owned subsidiary CFC to assist it in funding a settlement does not suggest that BAC assumed CFC's liability for that settlement.[84]

6. *$8.5 Billion RMBS Settlement*

65. Professor Coates asserts that "[o]n June 28, 2011, BAC announced that it had agreed to pay $8.5 billion in cash plus related fees and expenses of $100 million to settle investor claims relating to 530 legacy Countrywide residential mortgage backed private label trusts."[85] Professor Coates ignores, however, that the institutional investors sought to hold both BAC and Countrywide liable. The settlement agreement explained that:

> [T]he Institutional Investors have asserted that Bank of America is liable for the obligations of Countrywide with respect to the Covered Trusts, and Bank of America disputes that contention and waives no rights, and preserves all of its defenses, with respect to such contention.[86]

66. The institutional investors also sought to hold BACHLS liable,[87] with whom BAC was arguably jointly and severally liable as a result of its agreement with the OCC to indemnify BANA for any losses arising from Countrywide-related assets—including BACHLS.[88]

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[83] BACMBIA-Y0000001263-1267, at 1263.

[84] *See* Subramanian Report, at 30-34.

[85] Coates Report, at 65.

[86] BACMBIA-Y0000000603-695, at 604.

[87] *Id.* at 603.

[88] *See* BACMBIA-Q0000000853-855; BACMBIAQ0000000856-858.

67. In short, because BAC was already potentially liable for these liabilities, the settlement cannot constitute an assumption of those liabilities.

68. Professor Coates also admits that under a cost-sharing agreement "CHL's share of the settlement is [redacted] billion."[89] He contends that this is irrelevant, however, because "[i]f . . . the $8.5 billion settlement is approved, the entire cost will be borne by BAC,"[90] as the cost-sharing agreement requires BAC to make a capital contribution to CHL (or, at BAC's option, a direct settlement payment) to cover the cost of the settlement.[91] Again, this is definitional: a parent corporation's agreement to assist a subsidiary in making a settlement payment through a capital infusion does not constitute an assumption of liabilities.[92] Nor is there any sound reason why the law should discourage such capital infusions by treating them as the equivalent of a general assumption of liability. To the contrary, the law should encourage parent corporations to make capital contributions to avoid insolvencies by its subsidiaries, but the law will do exactly the reverse if it attaches an adverse inference to a parent's contribution so that the parent risks assuming additional (and potentially astronomic) liability by making such a contribution.[93]

7. *DOJ Settlement of Racial Discrimination Claims.*

69. Professor Coates asserts that "BAC also announced it agreed to pay $335 million to settle with the U.S. Department of Justice over allegations that CFC racially discriminated against

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[89] Coates Report, at 67.

[90] *Id.*

[91] CWMBIA0018539208-224, at 215.

[92] *See* BACMBIA-Y0000000537-548.

[93] This same point applies at least as strongly to voluntary assumptions of debt by a parent in a triangular merger. BAC did assume liability on CFC's bonds as part of the consideration for the November 2008 asset sales. Had BAC not done so the bondholders would have suffered considerable losses following Standard & Poor's downgrading of that debt on May 2, 2008. *See supra* n.53. If this liability assumption could be used as evidence to support the *de facto* merger doctrine, it would discourage future assumptions of liabilities following triangular mergers, and many creditors might suffer needlessly.

mortgage applicants."[94] Again, this statement is unsupported by the cited evidence. Professor Coates cites to a *New York Times* article entitled "*Countrywide Will Settle a Bias Suit*," which does not even mention BAC, let alone suggest that BAC assumed this liability.[95] Moreover, Professor Coates admits that the Consent Order was signed "on behalf of CFC and CHL."[96] Indeed, a review of that Order shows that BAC was not even a party to the suit.[97]

8. *$1 Billion Settlement of FHA Claims*

70. Professor Coates asserts that "[i]n February 2012, BAC announced that it would pay $1 billion to settle claims that Countrywide defrauded the FHA by making loans to unqualified buyers."[98] But Coates offers no support for this statement. Instead, he mischaracterizes the testimony of Brian Moynihan. Rather than testifying that this settlement covered Countrywide-specific liability, Mr. Moynihan actually testified that "the liabilities came from different parts of the companies" and "it's a broader settlement than legacy Countrywide only."[99]

9. *Policy Impact*

71. Beyond the mistakes or overstatements that Professor Coates makes in overreading the record, there is a broader policy question that his analysis raises but does not address. Repeatedly, he argues that if BAC assumed some specific liability of a CFC subsidiary, this shows that it was approaching closer and closer to making a general assumption of liabilities consistent with a *de jure* merger. But if a court were to place any weight on such an argument, the policy consequences are ominous. Even a judicial hint that assuming a specific liability

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[94] Coates Report, at 67.

[95] *Id*. at n.209; *see* Charlie Savage, *Countrywide Will Settle a Bias Suit*, N.Y. TIMES, Dec. 21, 2011.

[96] Coates Report, at 68.

[97] BACMBIA-Y0000000834-850.

[98] Coates Report, at 68.

[99] Moynihan Tr. at 94:24-95:8.

could place the acquirer in greater danger of being deemed to have assumed all liabilities would deter acquirers from picking up even trivial liabilities of acquired companies.

72. A decision of the New York State Supreme Court's Commercial Division will predictably be given serious attention by corporate lawyers and transaction planners, particularly when it involves a defendant as well known as BAC. If, after reading the ultimate decision in this case, transaction planners and corporate attorneys concluded that the actions of a parent of an acquiring corporation in assuming liabilities in order to resolve business disputes or keep customer or creditor relationships intact could lead to a judicial conclusion that the parent assumed other unwanted liabilities as a matter of law, then acquirer behavior would quickly change. Acquirers would be compelled by their attorneys and advisors to become more parsimonious and tight-fisted, even in cases where it was commercially reasonable and in the best interests of the parent corporation to assume the liability. This is very likely socially undesirable, but where billions are at stake, major financial institutions cannot afford to take chances. Unfortunately, there is an *in terrorem* threat underlying successor liability that will force acquirers to steer far wide of any perceived risk. Thus, of all the evidence that might be used to demonstrate that a *de jure* merger has occurred, the assumption of specific liabilities by the acquiring firm's parent seems the most dangerous for a court to rely upon.

D. Professor Coates Asserts That Acquirers Either (i) Pursue a Policy of Complete "Absorption" (In Which Case They Assume All the Acquired Company's Liabilities), or (ii) They Effect a Limited "Confederation" " (In Which Case Liabilities Tend Not to Be Assumed). No Basis Exists For This Generalization, and Much Evidence Contradicts It.

73. Professor Coates asserts that, with respect to the post-acquisition integration of acquired company, all acquisitions subdivide into two categories: (1) complete "absorption" (in which

case all liabilities are assumed), or (2) limited "confederation" (in which few or none are).[100] Reality, however, does not subdivide this neatly, as the case histories cited in this section indicate. Equally important, the data about the prevalence of triangular mergers also contradicts his claim. If it were actually true that acquirers normally assume all liabilities of the target when they completely absorb the target (as he asserts), there would be little reason for them to use the triangular merger in such cases (because the basic purpose of the triangular merger is to protect the parent of the acquisition subsidiary from the target's liabilities). Because the triangular merger dominates all other merger techniques in frequency of use by an overwhelming margin (only 9% of the mergers in the survey conducted by Professor Subramanian did not involve mergers of the target into a subsidiary of the acquiring company[101]), this pervasive use of triangular mergers shows that acquirers are using this merger form even when they intend to completely absorb the target. That is, the percentage of mergers that result in complete absorptions (as opposed to "confederations") are vastly in excess of 9% and probably amount to a majority of all mergers.[102] This in turn implies that acquirers do not intend to assume all liabilities in these more common complete "absorption" cases, as otherwise the use of a triangular merger would make little sense. In short, whether acquirers intend complete

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[100] *See* Coates Report, at 27–28. More specifically, he asserts: "Of course, the absorption method customarily results in all the creditors of the acquired company (including contingent creditors) having a full claim on all the assets of the combined businesses." *Id.* at 28. No data or even a footnote is attached to support this assertion, which is instead symptomatically prefaced with the introductory words "Of course."

[101] *See* Subramanian Report, at 26.

[102] Professor Coates seems to concede this point in acknowledging that M&A consultants "recommend that the purchaser plan to integrate the target within the first 100 days after the acquisition, so as to most quickly achieve synergies and cost-savings . . . ." *Id.* at 28 n.84. Such synergies and cost savings define the complete absorption route and are much less possible in a more limited "confederation."

"absorption," limited "confederation," or something in between, they generally wish to avoid assumption of certain liabilities (particularly remote and contingent ones, as next discussed). '

1. *Sound Business Reasons Support Intermediate Approaches.*

74. In contrast to Professor Coates's "all or nothing" approach to liability assumption, I believe that acquirers are far more selective and make individualized decisions about the liabilities they will assume. Sometimes, the acquirer will be buying an "iconic" brand name (such as Merrill Lynch, as discussed below), and will want to preserve relationships with its customers and creditors. But even then, they typically assume some, but not all, liabilities. Other times, the acquirer will be buying a firm primarily to increase its own market share in the industry and have no interest in preserving the acquired firm's "brand name" or identity. Alternatively, the acquirer may be making a bargain purchase of a failing firm with serious reputational problems and does not wish to preserve the acquired firm's damaged brand name. JPMorgan's acquisitions of Bear Stearns and Washington Mutual Bank ("WaMu") probably both fall into this latter category. Yet, even in this latter case, there may still be a desire to effect a complete consolidation of the acquiring and the acquired companies to achieve efficiencies — without generally assuming liabilities. In a few cases, there may be a "merger of equals" and a complete assumption of all liabilities by the surviving firm. But in these cases, a key signal of such a "merger of equals" will be an equal division of the board of directors between the two firms (and possibly the use of a direct merger, rather than a triangular merger).

75. Although the odds may be marginally greater that the acquirer will assume more liabilities when it wishes to preserve the brand name of the acquired firm, even these cases simply do not follow Professor Coates's dichotomy under which the "complete absorption means assumption of all liabilities" and "limited confederation means no assumption." Reality is more

subtle and nuanced, and most transactions fall into intermediate categories in which there should be no implication that the acquirer assumed all liabilities because it assumed some specific ones.

76. The following cases illustrate that the degree of absorption and the degree of liability assumption do not go hand in hand.

2. *The Bear Stearns Example*

77. On March 16, 2008, in a transaction having many similarities to this case, JPMorgan Chase & Co. ("JPMorgan") announced that it was acquiring The Bear Stearns Companies Inc. ("Bear Stearns") in a stock-for-stock exchange.[103] My information regarding this transaction comes completely from the public record. This transaction, which closed on May 30, 2008, was functionally similar to BAC's acquisition of CFC in that: (1) it was effected pursuant to a triangular merger; (2) the target company became a wholly owned subsidiary of the acquirer; (3) the board of directors of the acquired company (i.e., Bear Stearns) immediately resigned and all directors were replaced by employees of the acquirer (i.e., JPMorgan), who were not independent of the acquirer; (4) shortly after the merger, the acquirer purchased "substantially all" of the acquired company's assets (in June, 2008); (5) the acquirer assumed significant liabilities of the acquired firm, but not many of its most significant liabilities; and (6) the acquirer made a number of public statements broadly stating that it "stood behind" the acquired company.

78. Under Professor Coates's theory, it might be argued that JPMorgan was the "successor" to Bear Stearns and thus liable for the debt of both it and all of its subsidiaries. Still, JPMorgan is the largest bank holding company in the United States, and Bear Stearns was itself a sizable

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[103] *See* Press Release, JPMorgan Chase & Co., JPMorgan Chase To Acquire Bear Stearns (Mar. 16, 2008) ("JPMorgan Chase & Co. . . . announced it is acquiring The Bear Stearns Companies Inc.. . . . The transaction will be a stock-for-stock exchange.").

financial institution. Both were represented by skilled and sophisticated legal counsel. Similarly, BAC is the second largest bank holding company in the United States, and CFC was obviously a large financial institution, and they too were represented by highly skilled counsel. In both cases, the acquirer was willing to assume some, but not all, of the liabilities of the acquired entity and its subsidiaries. In both cases, Professor Coates's theory of successor liability and *de facto* merger would probably insist that the acquirer was liable to all creditors, notwithstanding the efforts of their counsel to avoid such an assumption. This strongly suggests that Professor Coates's theory of successor liability sweeps overbroadly.

79. In this light, it is useful to look more closely at the JPMorgan/Bear Stearns transaction to see how vulnerable it would also be under the broad reach of the principles announced by Professor Coates. In its original announcement of the merger, JPMorgan stated that, effective immediately it was "guaranteeing the trading obligation of Bear Stearns and its subsidiaries."[104] JPMorgan CEO James Dimon added:

> JPMorgan Chase stands behind Bear Stearns. Bear Stearns' clients and counterparts should feel secure that JPMorgan is guaranteeing Bear Stearns' counterparty risk.[105]

80. Still, JPMorgan did not indicate at that time whether it would assume Bear Stearns's public debt and preferred stock obligations. Only later, in June, 2008 (slightly over a month later), JPMorgan announced that it had acquired "substantially all" of Bear Stearns's assets, which primarily consisted of Bear Stearns's broker-dealer subsidiary, Bear Stearns & Co. Inc.[106] In connection with this asset transfer, JPMorgan agreed to assume responsibility for Bear

[104] *Id.*

[105] *Id.*

[106] *See* Press Release, JPMorgan Chase & Co., JPMorgan Chase Announces Internal Restructuring Transactions and Guarantees Related to Bear Stearns Acquisition (June 30, 2008) ("Bear Stearns plans to

Stearns's preferred stock and debt securities.[107] Three months later, on October 1, 2008, JPMorgan merged its existing broker-dealer, J.P. Morgan Securities Inc., with and into Bear Stearns & Co., and the surviving entity was renamed J.P. Morgan Securities Inc.[108] JPMorgan also acquired additional assets from Bear Stearns on February 27, 2009, in exchange for assuming certain additional liabilities.[109] In short, this was much closer to a complete absorption than to a limited "confederation" in Professor Coates's terminology (although it was not a pure example of either, as next explained).

81. Despite assuming these liabilities, JPMorgan did not acquire Bear Stearns's mortgage business, which was housed in a subsidiary named EMC Mortgage Corporation ("EMC").[110] Rather, EMC remained a Bear Stearns subsidiary and continued its mortgage-servicing operations after the JPMorgan acquisition, although its mortgage-acquisition and securitization businesses were shut down.[111] On April 1, 2011, EMC sold its mortgage servicing right to

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transfer its broker-dealer subsidiary Bear, Stearns & Co. Inc. to JPMorgan Chase, resulting in a transfer of substantially all of Bear Stearns' assets to JPMorgan Chase.").

[107] *Id.* ("JPMorgan Chase & Co. . . . announced today that it intends to take several steps over the next several weeks related to the integration of the business of The Bear Stearns Companies Inc. that will result in the assumption of Bear Stearns' preferred stock and debt securities by JPMorgan Chase and the termination of Bear Stearns' reporting obligations under the Securities Exchange Act of 1934.").

[108] *See* JPMorgan Chase & Co. Annual Report (Form 10-K), at 85 (Mar. 2, 2009) ("On October 1, 2008, J.P. Morgan Securities Inc. merged with and into Bear, Stearns & Co. Inc., and the surviving entity changed its name to J.P. Morgan Securities Inc.").

[109] *See* JPMorgan Chase & Co. Current Report (Form 8-K), at 1 (Mar. 3, 2009) ("Immediately prior to and in connection with these assumptions, Bear Stearns transferred additional assets to JPMorgan Chase.").

[110] Aff. of Chris Collins on Behalf of JPMorgan Chase Bank N.A. at ¶ 6, *In the Matter of Residential Mortgage Foreclosure Pleadings and Document Irregularities* (N.J. Super. Ct. July 28, 2011) ("Collins Aff.").

[111] *See* JPMorgan Corporate Hierarchy, available at http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx; *see also* Bear Stearns Asset Backed Securities I Trust 2007-HE7, Prospectus Supplement (Mar. 31, 2008) (I am advised that this is the last mortgage securitization where EMC Mortgage Corporation is listed as the Sponsor).

JPMorgan Chase Bank, N.A. ("Chase"), and ceased all operations.[112] At no point did JPMorgan assume EMC's liabilities; thus this is a clear counter-example to Professor Coates's generalization that liabilities are assumed in an absorption.

82. Obviously, numerous similarities are apparent between JPMorgan's post-acquisition transactions with Bear Stearns and BAC's transactions with CFC and its subsidiaries. In both cases: (i) substantially all of the target's company's assets were sold to the acquirer or its subsidiaries shortly after the merger (1 month in JPMorgan's case and approximately 4 months in BAC's case);[113] (ii) the target company's primary operating subsidiary was *de jure* merged into the acquirer's primary operating subsidiary (Bear Stearns & Co. was merged into J.P. Morgan Securities and Countrywide Bank was merged into BANA); (iii) the target company's legacy mortgage business was left behind (EMC in JPMorgan's case and CHL in BAC's case); and (iv) the acquirer did not assume all of the target company's contingent liabilities (both JPMorgan and BAC assumed only specific debt obligations in connection with the asset sales). Together, these cases suggest that the normal custom and practice (at least within the banking sector) is for the acquiring firm to seek selectively to avoid the assumption of some liabilities.

83. Both JPMorgan and BAC — the nation's two largest bank holding companies — are being sued by assorted contingent creditors,[114] relying on nearly identical theories of liability. Plaintiffs in these cases (and in many other cases against other banks) are repeating the same

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[112] Collins Aff., at ¶ 8.

[113] *See* Bank of America Corp. Current Report (Form 8-K), at Item 8.01 (Nov. 10, 2008) ("Countrywide and its subsidiary Countrywide Home Loans, Inc. ("CHL") transferred substantially all of their assets and operations to the Registrant, and as part of the consideration for such transfer, the Registrant assumed debt securities and related guarantees of Countrywide in an aggregate amount of approximately $16.6 billion.").

[114] *See e.g.,* Am. Compl., *Ambac Assurance Corp. v. EMC Mortgage LLC, et al.,* No. 650421/2011 (N.Y. Sup. Ct.) (July 18, 2011).

litany of claims that the acquirer rendered the subsidiary whose liabilities were not assumed a "mere shell" through "asset stripping."[115] But once one penetrates through the rhetoric, both acquiring banks were simply acquiring a troubled financial institution in which they were willing to assume certain known and specific liabilities of subsidiaries (basically where they were contractually required to do so, where necessary approvals were contingent on such assumption, or where the transaction structure required it), but not more remote, open-ended or contingent liabilities that could not be safely estimated or that involved a more troubled subsidiary. From a business perspective, this makes perfect sense.

84. The key point here is that if the two largest banks in the United States independently behaved in the same fashion at the same time, this is highly probative evidence of normal custom and practice in the banking industry and also in standard M&A practice. Moreover, if banks were denied the ability to make such acquisitions, in which some liabilities are assumed and others are not, any such judicial invalidation of standard banking practices could destabilize banking and chill acquisitions of troubled banks or other institutions.

3. *The WaMu Acquisition*

85. JPMorgan's acquisition of WaMu shows the same highly selective approach to the assumption of liabilities that was evident in the Bear Stearns and CFC acquisitions.

86. As of June 30, 2008, WaMu was the United States' largest savings and loan association, with over $300 billion in total assets, but on September 25, 2008, the OTS shut down WaMu and appointed the FDIC as receiver.[116] On that same day, the FDIC announced that JPMorgan had agreed to acquire WaMu's banking assets, assume qualified financial contracts, and make a

[115] *See id.* at ¶ 302.

[116] *See* OTS Order No. 2008-36.

payment of $1.9 billion.[117] The FDIC also announced that JPMorgan was not assuming claims by equity, subordinated, or senior debt holders.[118] In pending litigation, JPMorgan has taken the position that it did not assume any contingent liabilities of WaMu that did not expressly appear on WaMu's balance sheet. Specifically, JPMorgan contends:

> While JPMC purchased all of the assets of WMB, it assumed only specified liabilities: those that had been reduced to a dollar amount on WMB's "general ledger and subsidiary ledgers and supporting schedules which support the general ledger balances." The unliquidated liabilities that Deutsche Bank seeks to impose in this case are not alleged to be among those specified in the P&A Agreement, and JPMC has clearly stated in its filings with the Securities and Exchange Commission that this liability remains with the FDIC.[119]

Although the Court in this case has declined to decide the issue on the pleadings and will permit factual discovery, this example shows again that major banks do not believe (and do not consider it normal custom or practice) that they assume contingent liabilities in acquiring another financial institution.

4. *The Merrill Lynch Acquisition*

87. Pursuant to an Agreement and Plan of Merger, dated as of September 15, 2008, and publicly filed with the SEC, BAC acquired Merrill Lynch & Co., Inc. ("Merrill Lynch") by means of a reverse triangular merger (with a merger subsidiary merging into Merrill Lynch,

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[117] *See* Press Release, FDIC, JPMorgan Chase Acquires Banking Operations of Washington Mutual (Sept. 25, 2008). My information about this transaction comes entirely from the public record.

[118] *Id.*

[119] Mem. of Pts. and Auth. in Supp. of JPMorgan Chase Bank, N.A. and Wash. Mut. Mortg. Sec. Corp.'s Mot. to Dismiss and Mot. for Partial Summ. J., at 27, *Deutsche Bank*, No. 09-CV-1656-RMC (D.D.C. Nov. 22, 2010).

which was the surviving company).[120] My information regarding this transaction comes completely from the public record. This merger was consummated on January 1, 2009. Although Merrill Lynch thus became a wholly owned subsidiary of BAC, Moody's noted shortly after this merger that BAC had "not guaranteed or assumed any outstanding debt of Merrill Lynch or any of its subsidiaries other than Merrill Lynch's outstanding preferred stock."[121] Moody's also noted that:

> Bank of America typically imposes its own system and practices upon an acquired firm, which, as noted, has worked effectively with commercial banks.[122]

88. From this and other public evidence, I view the Merrill Lynch acquisition as falling somewhere in the intermediate range between "absorption" and "confederation." Assets were significantly redeployed but the Merrill Lynch brand name was preserved. BAC replaced all the directors of Merrill Lynch as of the merger,[123] but it also added three of Merrill Lynch's former directors to its own board.[124] As Moody's noted, BAC was selective about assuming liabilities and picked up only the very limited liabilities on Merrill Lynch's preferred stock. As Moody's also noted, this system has worked well for BAC and allowed it to achieve efficiencies in integrating bank acquisitions within its overall structure.[125]

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[120] *See* Bank of Am. Corp. Current Report (Form 8-K), at Ex. 2.1 (Sept. 18, 2008) (Agreement and Plan of Merger By and Between Merrill Lynch & Co., Inc. and Bank of America Corporation, dated as of September 15, 2008).

[121] *See* Stephen Taub, *Moody Downgrades BofA, Lifts Merrill*, CFO, January 8, 2009.

[122] *Id.* (quoting Moody's).

[123] *See* Bank of Am. Corp. Current Report (Form 8-K), at Ex. 2.1 § 1.7 (Sept. 18, 2008) ("The directors of Company and its Subsidiaries immediately prior to the Effective Time shall submit their resignations to be effective as of the Effective Time.").

[124] Press Release, Bank of Am. Corp., Bank of America Names Three Merrill Directors to Board (Jan. 28, 2008).

[125] *See* Stephen Taub, *Moody Downgrades BofA, Lifts Merrill,* CFO, January 8, 2009 (quoting Moody's).

89. Not only did BAC absorb only a portion of Merrill Lynch's outstanding liabilities, but it also made substantial post-acquisition transfers of assets to and from its new subsidiary. Merrill Lynch's Form 10-Q for Third Quarter of 2009 reports that:

> Subsequent to the Bank of America acquisition, certain assets and liabilities were transferred at fair value between Merrill Lynch and Bank of America . . . . During the nine months ended September 30, 2009, these transfers included approximately $47 billion each of assets and liabilities transferred from Merrill Lynch to Bank of America . . . . Approximately, $42 billion of assets and $19 billion of liabilities were transferred from Bank of America to Merrill Lynch, primarily equity-related positions.[126]

In short, these transfers went both ways and "were made in connection with efforts to manage risk in a more effective and efficient manner at the consolidated Bank of America level."[127]

90. In addition to these asset transfers, Merrill Lynch sold two banks to a subsidiary of BAC during the third quarter of 2009 for approximately $13.4 billion,[128] and two BAC subsidiaries (Bank of America Securities LLC and Bank of America Securities Holdings) were later merged into Merrill Lynch or one of its wholly owned subsidiaries.[129] Finally, during the second quarter of 2009, Merrill Lynch sold nearly $15 billion in securities to BAC.

91. All in all, the public records indicate that this was a "hybrid" transaction involving much more than a limited "confederation" (in Professor Coates's terminology), but rather a major redeployment of assets and liabilities. BAC preserved Merrill Lynch's identity, but did not assume Merrill Lynch's liabilities to any significant degree. In short, everything about this example is in conflict with Professor Coates's model.

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[126] Merrill Lynch & Co., Quarterly Report (Form 10-Q), at 22 (Nov. 6 2009).

[127] *Id.*

[128] *Id.* at 82.

[129] Merrill Lynch & Co., Quarterly Report (Form 10-Q), at 19 (Nov. 5 2010); Merrill Lynch & Co., Quarterly Report (Form 10-Q), at 9 (Aug. 5, 2011).

5. *"Merger of Equals" Transactions*

92. Sometimes, the two parties to a merger do wish to indicate to the world that they are effecting a "merger of equals" in which all liabilities of both parties will be assumed. But they typically use a very different structure to achieve and express this result: namely, a direct merger, rather than a triangular merger. Typically, these are mergers of companies of similar size, and the board is usually split evenly between the two companies. Recent examples of such mergers would include the 2004 merger by which JPMorgan acquired Bank One Corporation (in which Bank One merged directly into JPMorgan and not into or with a subsidiary[130]) and the 1997 merger of Morgan Stanley with Dean Witter, Discover & Co. (in which Morgan Stanley merged directly into Dean Witter[131]). In these cases, creditors do expect that all liabilities will be assumed, but they are given a very different signal, which contrasts sharply with the signal that a triangular merger gives. Creditors can easily distinguish these very different signals and are not confused.

6. *Conclusion*

93. In contrast to Professor Coates, I do not offer any iron laws or immutable generalizations about M&A practice. My bottom line conclusions are two-fold: First, significant post-acquisition asset redeployment between the acquiring and acquired firms is normal and does not support any inference of "asset-stripping." Second, large financial institutions tend to be selective in assuming the liabilities of acquired companies. In part, this is because acquired financial institutions can come with very large and hidden liabilities. Imagine, for example, the consequences under Professor Coates's theory if a "too big to fail" bank had acquired Bernard

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[130] *See* JPMorgan Chase & Co, Current Report (Form 8-K), at 1, Item 2 (July 1, 2004).

[131] *See* Morgan Stanley Group Inc., Current Report (Form 8-K), at Ex. 2.1 (Feb. 14, 1997).

Madoff's investment firm in a triangular merger. Even though they had carefully sought to avoid assuming hidden liabilities, they would be stuck (and likely rendered insolvent) under Professor Coates's theory.

94. This custom and practice among banks of avoiding assuming hidden liabilities is prudent and sound, particularly with regard to banks that are "too big to fail." Any judicial rule that expanded successor liability so that hidden liabilities had to be assumed (despite the use of a triangular merger to avoid exactly this result) is contrary to public policy and works in diametric opposition to the expressed policies of the Dodd-Frank Act (which seeks to protect bank solvency and avoid the banking panic that the failure of a large financial institution, such as Lehman, can cause). At the heart of the Dodd-Frank Act is the recognition that a bank that is 'too big to fail" should not be allowed to fail and also should not be bailed out at taxpayer expense. Forcing a bank that makes an acquisition by triangular merger to assume all the acquired firm's liabilities (at least if it assumes any liability) undercuts that policy and heightens systemic risk.

E. No Custom or Recognized Corporate Governance Standard Was Violated by BAC.

1. *Public Companies Rarely Place Independent Directors on the Boards of 100% Owned Subsidiaries and Usually Replace the Incumbent Directors At or Shortly After the Time of the Merger.*

95. Professor Coates objects repeatedly to the fact that, after the merger, "the directors and officers of CFC, CHL and the Other Subs reported to and were directed by management of BAC."[132] He seems shocked to discover that

> In fact, all of the former CFC directors were replaced by veteran BAC employees after the Red Oak Merger.[133]

[132] Coates Report, at 39.

In fact, this is exactly how the real world works. In the wake of a merger, the directors of the acquired firm are almost invariably replaced, either at the time of the merger or within days thereafter. Much empirical literature has explained at length that the directors of the target firm are rarely retained in the wake of a successful merger or takeover bid.[134] Indeed, when Bank of America merged into Nationsbank in early 1999 to form the current BAC, eighteen Bank of America directors were replaced shortly after the merger.[135]

96. Less research has been done, however, on the composition of the board at the subsidiary level. I have surveyed what happened to the boards of subsidiaries in the wake of the forward triangular mergers in Professor Subramanian's sample (*i.e.*, forward triangular mergers between 2005 and 2011 with a deal value greater than $1 billion).[136] Some 48 such forward triangular mergers were identified,[137] and in 47 of these 48 cases the target's board was replaced immediately following the merger.[138] A chart showing these cases is attached to my report as Exhibit C. Although the data released by these companies did not enable me to identify the affiliations of the incoming directors at the subsidiary (i.e., were they insider employees or independent outsiders), it was clear that the size of the board was greatly reduced following the

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[133] *Id.*

[134] *See*, *e.g.*, Jarrad Harford, *Takeover bids and target directors' incentives: the impact of a bid on directors' wealth and board seats*, 69 J. FIN. ECON. 51, 53 (2003). (reporting that "all directors, and outside directors in particular, are unlikely to be retained on the new board following a successful merger").

[135] *Id.* at 52.

[136] *See* Subramanian Report, at Table 1.

[137] While Professor Subramanian's original sample included fifty such mergers, my review of the merger agreements revealed that two appear to have been miscoded by MergerMetrics and were not triangular in structure (Mellon Financial/Bank of New York, CBOT Holdings/Chicago Mercantile Exchange).

[138] In the lone exception, the acquirer still reserved the right to elect additional directors and expand the size of the board to ensure its control. In a few cases, the board of the acquired corporation resigned, but several of its members were added to the board of the surviving acquisition. And in a number of others, the acquired corporation was merged into an LLC, thus eliminating the director positions.

merger. In those cases where information was released about the employment status of the directors of the surviving subsidiary after a triangular merge, the general pattern seems to have been to replace the old directors of the target firm with a small number of employees of the acquiring firm. For example, M&T Bank recently acquired Wilmington Trust Corporation in May, 2011 in a triangular merger. In the Form 8-K announcing this acquisition, M&T also announced that the board of the surviving subsidiary (i.e., the old Wilmington Trust) would be replaced by three in-house employees of M&T (who would also become the principal officers of Wilmington Trust).[139] Similarly, BAC required the resignation of all of Merrill Lynch's directors as a condition of its acquisition.[140] This pattern in these cases makes obvious sense because the parent wants a subsidiary board that can be quickly assembled at low cost.

2. *BAC Needed the Ability to Replace CFC's Directors Promptly.*

97. Although replacement of the acquired firm's directors is standard across most acquisitions, it was particularly appropriate in the case of CFC. In 2007, well before BAC's acquisition of CFC, there had been public disclosure that Angelo Mozilo was the subject of an SEC investigation.[141] As the housing crisis deepened in 2008, and with litigation and regulatory inquiries already pending, BAC could reasonably have concluded that it would be better to have new CFC directors, who could bring objectivity and industry knowledge without being potentially associated in the public mind with the subprime crisis.

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[139] *See* Wilmington Trust Corp., Current Report (Form 8-K) (May 19, 2011).

[140] *See* Bank of Am. Corp., Current Report (Form 8-K), at Ex. 2.1 § 1.7 (Sept. 18, 2008) ("The directors of Company and its Subsidiaries immediately prior to the Effective Time shall submit their resignations to be effective as of the Effective Time.").

[141] *See* Morgenson, *supra* note 38.

3. *Directors of a Wholly-Owned Subsidiary Are Expected To Manage The Subsidiary in The Best Interests of Their Parent.*

98. Throughout his reports, Professor Coates takes the view that the directors of CFC and its subsidiaries were obligated to act in the long-term best interests of the subsidiary and that transactions between BAC and CFC after their merger were "conflict-of-interest" transactions that required the use of independent directors. Further, he characterizes the new directors of CFC as "interested parties."[142] These assumptions and characterizations miss the forest for the trees. What they ignore is that CFC, after the merger, had become a wholly-owned subsidiary of BAC and hence both companies had the same shareholders to whom they were accountable, thereby eliminating any conflict of interest. Both BAC and CFC are Delaware corporations, and the black letter law of Delaware could hardly be clearer on this point: namely, the directors of a parent corporation and the directors of a 100% owned subsidiary both owe their fiduciary duties to the shareholders of the parent. Thus, there was no conflict, because there were no minority shareholders for the directors of CFC to protect.

99. The Delaware law on this question was most clearly stated in *Anadarko Petroleum Corporation v. Panhandle Eastern Corporation*, 545 A.2d 1171 (Del. 1988). In that case, the parent corporation (Panhandle Eastern) was proposing to spin off its wholly-owned subsidiary (Anadarko) to a group of prospective shareholders. The two sides had elaborate negotiations, after which the board of the still 100% owned subsidiary voted to revise some contracts with its parent in a manner that was clearly advantageous to the parent and disadvantageous to the subsidiary and its prospective shareholders. Nonetheless, the Delaware Supreme Court ruled that (i) no fiduciary duty was (or could be) violated because none was owed to the prospective

[142] *See* Coates Report at 46–47.

shareholders, and (ii) the subsidiary's directors were obligated to act only in the best interest of its parent:

> [I]n a parent and wholly-owned subsidiary context, the directors of the subsidiary are obligated only to manage the affairs of the subsidiary in the best interests of the parent and its shareholders.

545 A.2d at 1174.

100. In short, parent and subsidiary are not expected to bargain at arm's length, and the wholly-owned subsidiary is expected to obey its parent's lawful commands. Thus, although Professor Coates suggests that CFC should have retained its operating assets and possibly its marketing identity, ensuring CFC's preservation was not the obligation of CFC's directors. Instead, it was up to BAC to determine whether to continue CFC as an independent brand, and CFC's directors were obligated to follow their parent's lawful instructions.

101. Precisely for this reason, there was no practical need or justification for independent directors. Not only would the use of independent directors be costly (as some parents may have many, even hundreds of, subsidiaries), but it would be difficult and time consuming to assemble such a board in a crisis (whereas a small number of directors who are all employees of the parent are usually easily available). Finally, the independence of such outside directors could never truly be protected because a 100% shareholder can normally remove a director or directors at any time by simply executing a written consent. As a result, the market would not attach much significance to the presence of such easily removed directors.

102. Although the directors of a wholly-owned subsidiary are not obligated to maximize the profits or economic value of the subsidiary,[143] they are obligated to cause their firm to comply

[143] To give a simple illustration, subsidiaries are often asked to guarantee the obligations of another affiliated subsidiary, even though this guarantee will in no way benefit them. This is entirely appropriate where the parent expects to benefit from such a guarantee.

with applicable law. Professor Coates suggests that little effort was made to advise CFC's directors as to their legal duties, but the record shows otherwise. The minutes for CFC's Board of Directors Meeting on August 6, 2008 reflect a legal presentation to the board on this issue,[144] and Merrily S. Gerrish, an Associate General Counsel, prepared PowerPoint slides on exactly this topic.[145]

4. *Other Financial Acquirers Behave Exactly the Same As BAC Did.*

103. It has earlier been suggested that the JPMorgan acquisition of Bear Stearns in 2008 was a close parallel to the BAC acquisition of CFC. Thus, it is relevant to note that upon consummation of the Bear Stearns merger, the existing Bear Stearns directors resigned immediately and were replaced by three senior JPMorgan executives.[146] Similarly, as earlier noted, M&T and BAC required all the directors of Wilmington Trust and Merrill Lynch, respectively, to resign on the dates of their mergers.[147]

104. In contrast, in "merger of equals" transactions (such as JPMorgan's acquisition of Bank One or Morgan Stanley's merger with Dean Witter), the board in each case was carefully split between the two merging parties.[148] But this is the exception that proves the rule. In such

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[144] CWMBIA-G0000198896-198899, at 198897.

[145] CWMBIA-G0000198902-199055, at 199046-199053.

[146] The Bear Stearns Companies Inc. Current Report (Form 8-K), Item 5.01 (May 28, 2008) ("Upon the consummation of the Merger, James E. Cayne, Henry S. Bienen, Carl D. Glickman, Michael Goldstein, Alan C. Greenberg, Donald J. Harrington, Frank T. Nickell, Paul A. Novelly, Frederic V. Salerno, Alan D. Schwartz, Vincent Tese and Wesley S. Williams, Jr. ceased to be directors of the Company. The board of directors of the Company immediately following the Merger consists of Michael Cavanagh, Paul Compton and David Brigstocke."); *see also* S&P Capital IQ Professional Summarys for Michael Cavanagh, Paul Compton and David Brigstocke (showing pre-merger JPMorgan employment history).

[147] *See supra* text and notes accompanying notes 133, 134.

[148] In the case of the 2004 merger of Bank One Corporation into JPMorgan, the board of directors of JPMorgan (the surviving company) was expanded to sixteen directors and split equally between the two merging parties. *See* JPMorgan Chase & Co. Current Report (Form 8-K), at 1, Item 5 (July 1, 2004). *See*

"merger of equals" cases, a direct merger, rather than a triangular merger, was used, and the board was split evenly between the two merging parties. In these cases, it is possible that creditors may expect that all liabilities will be assumed, and in the case of a direct merger, they are as a matter of law. But outside this limited context, no such assumption prevails.

F. Based On An Explanation of The De Facto Merger Doctrine That Ignores History and Logic, Professor Coates Proposes That Its Role Is to Relax the Law of Fraud in the Case of Corporate Mergers. The Policy Consequences of His Proposed Rule Are Ominous. If Triangular Mergers Cannot Assure the Acquirer That It Will Not Automatically Assume the Target's Liabilities, Financial Acquisitions Will Be Deterred, Banking Destabilized, and "Rescue" Mergers Rendered Infeasible.

105. Professor Coates offers this Court a theory of the de facto merger doctrine that is all economics and no history. Citing no cases or history, he explains that "last period" problems justify relaxing the law of fraud and holding the acquirer liable, even in the case of triangular mergers, at least when there is any deviation from what he views as corporate "best practices" or accepted governance standards. To the best of my knowledge, no court or legislature has ever adopted such a position (and, if they had, Professor Coates had every incentive to cite them).

106. The historical origins of the "de facto merger" doctrine are well known, but before turning to them, it is important to understand the real world consequences of the novel (and indeed creative) theory that Professor Coates has spun. The most obvious consequence of his theory, if adopted, would be to deter acquisitions, particularly of troubled financial institutions. Here it is important to remember that the 2008–2009 crisis saw major financial acquisitions

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also JPMorgan Chase & Co. Current Report (Form 8-K), at Ex. 2.1, § 5.10 (Jan. 14, 2004) (providing for equal division of board between JP Morgan and Bank One).

In the case of the 1997 merger of Morgan Stanley Group Inc. into Dean Witter , Discover & Co., the merger agreement provided that the board of the merged company would have fourteen members, with half being designated by each of the merging parties. *See* Morgan Stanley Group Inc. Current Report (Form 8-K), at Ex. B (Feb. 4, 1997).

consummated for Bear Stearns, CFC, Merrill Lynch, WaMu, Wachovia and several other firms. These acquisitions were strongly encouraged by the Federal Reserve, the FDIC, the Department of the Treasury and other regulators in order to avoid a banking panic. The market collapse in the wake of the insolvency of Lehman and AIG shows that such panics are not imaginary. Indeed, government-sponsored mergers of troubled financial institutions have long been the policy tool that regulators have used the most frequently (with bailouts being reserved for special and extraordinary cases). Equally important, the Dodd-Frank Act has now largely prohibited the Federal Reserve and the FDIC from structuring the type of bailout that saved AIG and several banks in 2008 and 2009 because of public outrage that the cost of such bailouts fell on the taxpayer.

107. As a result, a rescue through a merger, possibly assisted and encouraged by banking authorities, may be the only feasible response if a major bank or financial institution were to totter again on the precipice of insolvency. In this light, the expansive and liberalized doctrine of successor liability espoused by Professor Coates has by itself the ability to frustrate and shut off this last remaining option by which to rescue a troubled financial institution.

108. Nor is this a loose unsupported prediction. The two largest banks in the United States — JPMorgan and BAC — are being sued based on this theory for their acquisitions of financial institutions.[149] So are many other banks.[150] Moreover, as articulated by Professor Coates,

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[149] *See, e.g.*, *Stichting Pensioenfonds ABP v. JPMorgan Chase & Co., et al.*, No. 653383/2011 (N.Y. Sup. Ct.); *Sealink Funding Ltd. v. Bear Stearns & Co. Inc., et al.*, No. 652681/2011 (N.Y. Sup. Ct.); *Federal Housing Finance Agency v. JP Morgan Chase & Co., et al.*, No. 11-cv-6188 (S.D.N.Y.).

[150] Indeed, in some actions, multiple banks have been sued under a variety of successor and de facto merger theories of liability. One extreme example is *Federal Home Loan Bank of Boston v. Ally Financial, Inc.*, No. 11–1533 (Mass. Sup. Ct., Suffolk Cnty), in which the plaintiff asserts successor liability against six different financial institutions based on their acquisitions. In the case of BAC, plaintiffs further assert that it is the successor to eight different entities as the result of its acquisitions.

plaintiff's theory of successor liability is easy to plead and ultimately depends on how the factfinder weights and responds to very subjective evidence. That is, Professor Coates places great weight on how creditors might interpret press releases, other quickly written statements, and even oral remarks. Similarly, he would ask the factfinder to impose liability if the transaction deviated from what he opines are customary standards of corporate governance and best practices. He would further advise courts to impose astronomic liabilities based on whether a transaction was the "economic equivalent" of a *de jure* merger. Nowhere in his proposed theory are there any safe harbors or bright lines by which the potential acquirer can achieve certainty and relative safety.

109. To see just how sweeping Professor Coates's proposed theory of liability is, one needs only to turn to his concluding pages. There, he announces that his interpretation of the de facto merger doctrine "reduces some of the burdens on a plaintiff . . . where the following threats to economic efficiency are present . . . ."[151] What are these "threats" that justify tilting the law of fraud far in the plaintiff's favor? In reality, he lists only two: "(a) the use of the corporate form, which as noted above can increase the risk of fraud or opportunism;" and "(b) one or more significant business combination transactions, in which the legitimate expectations of creditors regarding the ongoing business and operations of a counterparty can be dramatically changed and which are . . . uncommon and not in the ordinary course of business . . . ."[152]

(*See* Compl. at 314). In my judgment, this suggests just how easily and loosely the doctrine can be invoked.

[151] Coates Report, at 79.

[152] *Id.* Professor Coates also lists a third factor, which is really an empty catchall: "(c) various other factual factors, articulated in different ways by different courts in different jurisdictions, that are viewed as "badges" of fraud." *Id.*

110. Effectively, his conditions apply to most large mergers. Thus, if we step back and consider the impact of his proposed rule, it becomes obvious that his asserted "threats to economic efficiency," which in his view justify relaxing the law of fraud, are present in most every sizable merger and hence could threaten with insolvency a financial institution that made multiple acquisitions. First, almost all large-scale business activity is conducted in "the corporate form," (which was his first above-quoted justification). Second, "significant business combinations transactions" between the merging parties are not "uncommon" (as he asserts), but rather follow normally in the wake of a major financial acquisition (as this report has shown). In short, Professor Coates's special factors (his "threats to economic efficiency") that justify a liberal fraud remedy are not special at all, but are instead relatively standard. Because his special "threats" do not distinguish anything from anything, his liberalized fraud remedy would apply in most cases — and chaos could follow.

111. Worse yet, there could be a "bunching" effect. If, in a future economic downturn, one or more subsidiaries of major financial institutions were to file for bankruptcy, all their creditors would have an incentive to sue their parents, thereby possibly destabilizing the banking system.

112. If this were the state of the law, it would be reckless for one financial institution to acquire another, particularly if the target might have hidden liabilities. It is particularly this need to avoid assumption of hidden and remote contingent liabilities that has made the triangular merger so pervasively popular. At a stroke, Professor Coates's broad interpretation of the de facto merger doctrine would render the triangular merger meaningless (at least where the acquirer wanted to integrate aspects of the target into its existing business) — and thereby likely deter mergers between financial institution as a result. In so doing, he also removes from center stage what should be the fundamental judicial inquiry: was fair value paid in an arm's length

transaction? Although he does not acknowledge this, the practical impact of his proposed test is largely to render "fairness" only a peripheral consideration. Whether fair value was paid is subordinated under his proposed test to whether his view of corporate best practices has been followed.

113. Professor Coates's description of the purposes of the de facto merger lacks any foundation in either the case law or legal history (and he cites none). Although he takes the view that the doctrine's purpose was to relax the law of fraud whenever factors that he deems suspicious are present, the historical origins of the doctrine are clear (and ignored by him). The doctrine was a response to the common law rule that, on dissolution, a corporation was civilly dead and could not be sued.[153] That rule gave rise to a perverse incentive for shareholders in a troubled firm to liquidate it and then reincorporate a new firm with its assets. Imagine that, a century ago, the shareholders of a corporation saw the liabilities of their business mounting. Fearing insolvency, these shareholders might liquidate their company, distributing the assets to themselves pro rata as a liquidating dividend. Then, they could contribute these same assets as the capital of a newly incorporated firm with the same shareholders. The goal was to leave the liabilities behind, but move the assets to a new corporation owned by the same shareholders in the same proportions.

114. To prevent this abuse, courts developed the "de facto merger" doctrine.[154] As usually happens in the common law, the scope of rule was shaped by, and limited to, the reasons for the rule. Thus, courts looked to whether the new firm was a "mere continuation" of the old firm.

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[153] *See Okla. Natural Gas Co. v. Oklahoma*, 273 U.S. 257, 259 (1927) (recognizing this rule as long established).

[154] *See* Matt Acosta, *A Vanishing Remedy: Questioning the Constitutionality of the Current State of Sale of Assets, Post-Dissolution Tort Liability in Texas*, 60 BAYLOR L. REV. 655, 658–660 (2008).

Here, the key test was whether there was continuity between the two firms in terms of their shareholders and senior management. Under this test, it seems obvious that BAC was not a "mere continuation" of CFC, because it is far larger, with far broader operations, a different senior management, and far more and different shareholders. Indeed, BAC can hardly be seen as a "mere continuation" of CFC, where (i) CFC's shareholders received only 2% of BAC's common stock,[155] and (ii) over four years later, CFC has not been dissolved. Symptomatically, Professor Coates never discusses these "mere continuation" factors. Possibly he recognized that the traditional understanding of the de facto merger doctrine would not apply to the BAC acquisition of CFC with its trivial overlap in ownership. Thus, he has had to spin a more novel — and indeed highly creative — theory to reach this case. Still, his ahistorical account of the doctrine blinds this Court as to the doctrine's scope, history and purpose.

115. Nothing in what I said denies that if significant assets are moved between affiliated companies for less than fair value, then the creditors of the firm whose assets have been depleted should have a remedy. But that is the key question that Professor Coates subordinates to a host of unrelated issues involving best practices and his general suspicion of mergers.

116. In my judgment, if the Commercial Division were to adopt Professor Coates's proposed standard, it would be a radical departure from current law and would render financial acquisitions much less feasible in any case where there was any uncertainty as to the potential hidden liabilities. Worse still, because multiple financial institutions could be impacted at the same time by this doctrine, it could constitute a hidden trapdoor under our banking system. That, in turn, would aggravate the problem of systemic risk that continues to overhang the American economy.

[155] Bank of Am. Corp. Quarterly Report (Form 10-Q), at 11 (Aug. 7, 2008).

Dated: July 27, 2012

John C Coffee Jr

John C. Coffee, Jr.

Exhibit A

Documents Relied Upon

<u>Produced Documents</u>

Demand promissory note to CHL on November 7, 2008
[BACMBIA-C0000168237-241]

Demand promissory note to CFC on November 7, 2008
[BACMBIA-C0000168502-507]

Contribution Agreement between BANA and NB Holdings, dated July 2, 2008
[BACMBIA-C0000161609-612]

Master Contribution Agreement between BANA and NB Holdings, dated July 1, 2008
[BACMBIA-C0000161591-594]

Funding Plan Cash Flow Summaries
[BACMBIA-R0000006088, BACMBIA-R0000005986]

Funding Plan Cash Flow Summary with Accounting Entries
[BACMBIA-R0000006061]

Consolidated Balance Sheet for Countrywide Fin. Corp. and subsidiaries for the date of June 30, 2008
[BACMBIA-R0000006045]

Email chain on April 18, 2009
[BACMBIA-C0000089055-89058]

Communications with GSEs
[BACMBIA-R0000006216-17, BACMBIA-R0000006218-20, BACMBIA-O0000035341-45, BACMBIA-Q0000000859-72, BACMBIA-Q000000853-855, BACMBIA-Q000000856-858, BACMBIA-R0000006346-53]

Transition Presentations
[BACMBIA-C0000005039-45, BACMBIA-X0000104144-414, BACMBIA-Q0000075531-39, BACMBIA-B0000009921-9923]

Email chain on May 22, 2008
[BACMBIA-C0000005961-63]

Settlement Agreement and Release, dated April 14, 2011
[BACMBIA-Y0000001271-1594]

Cost Sharing Agreement, dated April 14, 2011
[BACMBIA-Y0000001263-1267]

Settlement Agreement, dated June 28, 2011
[BACMBIA-Y0000000603-695]

Guaranty, dated June 28, 2011
[BACMBIA-Y0000000537-548]

Consent Order
[BACMBIA-Y0000000834-850]

<u>MBIA Insurance Corp. v. Countrywide Home Loans, Inc., et al., Index No. 602825/2008</u>

Deposition of Joe Lee Price, II, Vol I., with Exhibits 3661-3686, (May 23, 2012)

Deposition of Len G. Clamp, Vol. I., (Feb. 24, 2012)

Deposition of Barbara Desoer, Vols. I and II, with Exhibits 3604-05, 3597, (May 15-16, 2012)

Deposition of Brian Moynihan, with Exhibit 3360, (May 2, 2012)

Pls. Ex. 3397

Countrywide Financial Corp. Selected Consolidated Financial Information, as of Sept. 30, 2011
[CWMBIA0018539208-224]

Subramanian Report (filed with this Court on July 25, 2012)

Coates Report (filed with this Court on June 22, 2012)

Minutes of Meeting of Board of Directors of Countrywide Fin. Corp., and supporting materials, dated Aug. 6, 2008
[CWMBIA-G0000198896-899, CWMBIA-G0000198902-199055]

<u>SEC Filings</u>

Countrywide Fin. Corp. Current Reports (Forms 8-K) (May 10, 2006)

Countrywide Fin. Corp. Current Reports (Forms 8-K) (Nov. 17, 2006)

Countrywide Fin. Corp. Current Reports (Forms 8-K) (May 9, 2007)

Countrywide Fin. Corp. Current Report (Form 8-K) (May 29, 2007)

Countrywide Fin. Corp. Current Report (Form 8-K) (July 8, 2008)

Bank of Am. Corp. Quarterly Report (Form 10-Q) (Aug. 7, 2008)

Bank of Am. Corp. Current Report (Form 8-K) (Sept. 18, 2008)

Bank of Am. Corp. Current Report (Form 8-K) (Nov. 10, 2008)

* * *

Amegy Bancorporation, Current Report (Form 8-K), Ex. 2.1 (July 8, 2005)

Arden Realty Inc., Current Report (Form 8-K), Ex. 2.1 (Dec. 28, 2005)

Ascential Software Corp., Current Report (Form 8-K), Ex. 2.1 (Mar. 13, 2005)

The Bear Stearns Companies Inc. Current Report (Form 8-K) (May 28, 2008)

Bear Stearns Asset Backed Securities I Trust 2007-HE7, Prospectus Supplement (Mar. 31, 2008)

BJ Services Company, Current Report (Form 8-K), Ex. 2.1 (Aug. 30, 2009)

BJ Services Company, Joint Proxy Statement/Prospectus (Feb. 12, 2010)

Bois D'Arc Energy, Inc. Current Report (Form 8-K), Ex. 2.1 (Apr. 30, 2008)

Broadwing Corp., Current Report (Form 8-K), Ex. 2.1 (Oct. 16, 2006)

Burlington Northern Santa Fe Corp., Current Report (Form 8-K), Ex. 2.1 (Nov. 2, 2009)

Burlington Resources Inc., Current Report (Form 8-K) (Dec. 12, 2005)

Caremark Rx, Inc., Current Report (Form 8-K), Ex. 2.1 (Nov. 1, 2006)

Catellus Dev. Corp., Current Report (Form 8-K), Ex. 2.1 (June 8, 2005)

Chevron Corp., Current Report (Form 8-K), Ex. 20.1 (July 25, 2005)

Complete Production Services, Inc., Current Report (Form 8-K), Ex. 2.1 (Oct. 9, 2011)

Crescent Real Estate Equities Co., Current Report (Form 8-K), Ex. 2.01 (May 25, 2007)

Cytyc Corp., Current Report (Form 8-K), Ex. 2.1 (May 20, 2007)

Dex Media, Inc., Current Report (Form 8-K), Ex. 2.1 (Oct. 3, 2005)

Enterprise GP Holdings L.P., Current Report (Form 8-K), Ex. 2.1 (Sept. 3, 2010)

Federated Dept. Stores, Inc. Current Report (Form 8-K), Ex. 2.1 (Feb. 27, 2005)

First Charter Corp., Current Report (Form 8-K), Ex. 2.1 (Aug. 15, 2007)

First Republic Bank, Proxy Statement (Jan. 29, 2007)

Global Signal Inc., Current Report (Form 8-K), Ex. 2.1 (Oct. 5, 2006)

Golden West Fin. Corp., Current Report (Form 8-K), Ex. 2.1 (May 7, 2006)

Integrated Device Tech., Current Report (Form 8-K), Ex. 2.1 (June 20, 2005)

Jefferson Pilot Corp., Current Report (Form 8-K), Ex. 2.1 (Oct. 9, 2005)

JPMorgan Chase & Co., Current Report (Form 8-K) (Jan. 14, 2004)

JPMorgan Chase & Co., Current Report (Form 8-K) (July 1, 2004)

JPMorgan Chase & Co., 2008 Annual Report (Form 10-K) (Mar. 2, 2009)

JPMorgan Chase & Co., Current Report (Form 8-K) (Mar. 3, 2009)

Mariner Energy, Current Report (Form 8-K) (Apr. 14, 2010)

Medco Health Solutions, Current Report (Form 8-K), Ex. 2.1 (Feb. 23, 2005)

Merrill Lynch & Co., Quarterly Report (Form 10-Q) (Nov. 6, 2009)

Merrill Lynch & Co., Quarterly Report (Form 10-Q) (Nov. 5, 2010)

Merrill Lynch & Co., Quarterly Report (Form 10-Q) (Aug. 5, 2011)

Metavante Technologies, Inc., Current Report (Form 8-K) (Mar. 31, 2009)

Morgan Stanley Group Inc., Current Report (Form 8-K) (Feb. 14, 1997)

Nalco Holding Co., Current Report (Form 8-K) (Dec. 2, 2011)

Nat’l Oilwell Varco, Inc., Form S-4/A (Mar. 17, 2008)

Nationwide Health Properties, LLC, Current Report (Form 8-K) (July 1, 2011)

Western Wireless LLC, Current Report (Form 8-K), Ex. 2.1 (Jan. 13, 2005)

NYMEX Holdings, Inc., Current Report (Form 8-K), Ex. 2.1 (Mar. 17, 2008)

Pacificare Health Sys., Inc., Current Report (Form 8-K), Ex. 2.1 (July 6, 2005)

Pharmion Corp., Current Report (Form 8-K) (Nov. 18, 2007)

Pogo Producing Co., Current Report (Form 8-K), Ex. 2.1 (July 17, 2007)

Prentiss Properties Trust, Current Report (Form 8-K) (Oct. 3, 2005)

Remington Oil and Gas Corp., Current Report (Form 8-K), Ex. 2.1 (Jan. 22, 2006)

Shurgard Storage Ctrs., Inc., Current Report (Form 8-K), Ex. 2.1 (Mar. 6, 2006)

Sky Fin. Group, Inc., Current Report (Form 8-K), Ex. 2.1 (Dec. 20, 2006)

Smurfit-Stone Container Corp., Current Report (Form 8-K), Ex. 2.1 (Jan. 23, 2011)

Smurfit-Stone Container Corp., Current Report (Form 8-K) (May 27, 2011)

SpectraSite, Inc., Current Report (Form 8-K), Ex. 2.1 (May 3, 2005)

SpectraSite, Inc., Current Report (Form 8-K) (Aug. 8, 2005)

Talx Corp., Current Report (Form 8-K), Ex. 2.1 (Feb. 14, 2007)

Todco, Current Report (Form 8-K), Ex. 2.1 (Mar. 18, 2007)

Transatlantic Holdings, Inc., Current Report (Form 8-K), Ex. 2.1 (Nov. 20, 2011)

URS Corp, Current Report (Form 8-K), Ex. 2.1 (May 27, 2007)

Verizon Commc'ns, Current Report (Form 8-K), Ex. 1 (Feb. 14, 2005)

Vintage Petroleum, Inc., Current Report (Form 8-K), Ex. 2 (Oct. 13, 2005)

Wachovia Corp., Form S-4/A (Aug. 28, 2007)

Wilmington Trust Corp., Current Report (Form 8-K) (May 19, 2011)

YRC Regional Transp., Inc. Current Report (Form 8-K), Ex. 2.1 (May 2, 2005)

<u>Cases</u>

N. Am. Catholic Educ. Programming Found. Inc. v. Gheewalla, 930 A.2d 92 (Dec. 2007)

Oddo Asset Mgmt. v. Barclays Bank PLC, 2012 N.Y. LEXIS 1841 (June 27, 2012)

Okla. Natural Gas Co. v. Oklahoma, 273 U.S. 257 (1927)

Watters v. Wachovia Bank, N.A., 550 U.S. 1 (2006)

Press Releases

Press Release, Bank of Am. Corp., Bank of Am. Names Three Merrill Directors to Board (Jan. 28, 2008)

Press Release, JPMorgan Chase & Co., JPMorgan Chase To Acquire Bear Stearns (Mar. 16, 2008)

Press Release, JPMorgan Chase & Co., JPMorgan Chase Announces Internal Restructuring Transactions and Guarantees Related to Bear Stearns Acquisition (June 30, 2008)

Press Release, FDIC, JPMorgan Chase Acquires Banking Operations of Washington Mutual (Sept. 25, 2008)

Press Release, Officer of the Comptroller of the Currency, OCC Issues Final Rule to Implement Provisions of the Dodd-Frank Act (July 20, 2011)

News Articles

Gretchen Morgenson, *Countrywide Chief is Said to Face S.E.C. Inquiry*, N.Y. TIMES, Oct. 18, 2007.

Stephen Taub, *Moody Downgrades BofA, Lifts Merrill*, CFO, Jan. 8, 2009

David Mildenberg, *Countrywide Rating Cut to 'Junk' By Standard & Poor's (Update1)*, Bloomberg, May 2, 2008

EnPro unit files for bankruptcy over asbestos claims, Reuters, June 7, 2010

Associated Press, *$600 million Countrywide Settlement*, N.Y. TIMES, Aug. 3, 2010

Charlie Savage, *Countrywide Will Settle a Bias Suit*, N.Y. TIMES, Dec. 21, 2011

AES Corp. subsidiary files for bankruptcy, Associated Press, Jan. 3, 2012

Michael J. de la Merced, *Ally's Mortgage Unit, ResCap, Files for Bankruptcy*, N.Y. TIMES, May 14, 2012

Steven J. Lubb, *The Challenges in ResCap's Bankruptcy*, N.Y. TIMES, May 15, 2012

<u>Statutes</u>

12 C.F.R. § 223.3(h) (2002)

12 C.F.R. 223.2(b) (2002)

<u>Texts, Websites, and Other Secondary Sources</u>

Countrywide Bank, F.S.B., Thrift Financial Report, Schedule CCR for the quarter ending Sept. 31, 2008

Fannie Mae Servicing Guide §§ 201, 2.01.10.04 (June 10, 2011)

Ginne Mae Servicing Guide Chapter 3-13 (B)(2) (Mar. 1, 2012)

Jarrad Harford, *Takeover bids and target directors' incentives: the impact of a bid on director's wealth and board seats*, 69 J. Fin. Econ. 51 (2003)

WILLIAM J. CARNEY, MERGERS AND ACQUISITIONS 90 (2d ed. 2007)
Press Release, Bank of Am. Corp., Bank of America Announces Third Quarter Earnings and Capital Raising Initiatives (Oct. 6, 2008)

Matt Acosta, *A Vanishing Remedy: Questioning the Constitutionality of the Current State of SAle of Assets, Post-Dissolution Tort Liability in Texas*, 60 Baylor L. Rev. 655 (2008)

RICHARD WIGHT ET AL., THE LSTA'S COMPLETE CREDIT AGREEMENT GUIDE § 4.7.7 (2009)

Aff. of Chris Collins on Behalf of JPMorgan Chase Bank, N.A. (July 28, 2011)

Aff. of James Whitlinger, Chief Financial Officer of Residential Capital LLC (May 14, 2012).

Credit Ratings for Bank of Am. and Selected Legal Entities as of June 30, 2008

Credit Ratings, JPMorgan Chase & Co.

Citigroup Credit Ratings

N.Y. Funds Settlement Agreement, CV 07-05295 (MRP) (MANx) (C.D. Cal.)

JPMorgan Corporate Hierarchy, available at
http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx

Compl., *Fed. Home Loan Bank of Bos. v. Ally Fin., Inc.*, Civil Action No. 11-1533 (Mass. Sup. Ct., Suffolk Cnty.) (Apr. 20, 2011)

Am. Compl., *Ambac Assurance Corp. v. EMC Mortgage LLC, et al.*, No. 650421/2011 (N.Y. Sup. Ct.) (July 18, 2011)

OTS Order No. 2008-36

Mem. of Pts. and Auth. in Supp. of JPMorgan Chase Bank, N.A. and Wash. Mut. Mortg. Sec. Corp.'s Mot. to Dismiss and Mot. for Partial Summ. J., *Deutsche Bank*, No. 09-CV-1656-RMC (D.D.C. Nov. 22, 2010)

Exhibit B

John Collins Coffee, Jr.
320 Wyoming Avenue
Maplewood, New Jersey 07040

POSITION: Adolf A. Berle Professor of Law, Columbia University Law School
Director, Center on Corporate Governance, Columbia University Law School

EDUCATION: Amherst College 1966 B.A. (*magna cum laude*) Bond Fifteen (highest fifteen ranking seniors); Phi Beta Kappa

LAW SCHOOLS: Yale Law School 1969, LL.B; New York University Law School, 1976 LL.M (in Taxation).

OCCUPATIONAL HISTORY:

Columbia Law School 1980 - present; Berle Chair since 1986

Harvard Law School 2001 -- Joseph H. Flom Visiting Professor of Law, Fall 2001

Stanford Law School - Visiting Professor, Spring 1987

Virginia Law School - Visiting Professor, Fall 1979

Michigan Law School - Visiting Professor, Summer 1979

Georgetown University Law School - Professor and Associate Professor, 1976-1980

Cravath, Swaine and Moore - Associate, 1970-1976

Reginald Heber Smith Fellowship, 1969-1970

SPECIALIZATIONS: My academic and teaching specialties include corporate and securities law, corporate governance, class actions and complex litigation, criminal law, and white collar crime.

OTHER ACTIVITIES and HONORS:

1. Fellow, American Academy of Arts and Sciences

2. Order of the Coif Visiting Lecturer for 2005 (each year Order of the Coif selects one visiting lecturer to speak at a series of law schools)

3. Reporter (for Litigation Remedies), American Law Institute, PRINCIPLES OF CORPORATE GOVERNANCE AND STRUCTURE (1980-1993: Final Draft 1993)

4. Donald Cressey Award for Lifetime Achievement (awarded by the ACFE in 2011)

5. Member, Advisory Council, Public Company Accounting Oversight Board (PCAOB) (2007-)

6. Fellow, European Corporate Governance Institute

7. Clarendon Lectures (Oxford University 2006)

8. Anton Phillips Chair, University of Tilburg (2005-2006)

9. Reporter, American Bar Association,
MINIMUM STANDARDS FOR CRIMINAL JUSTICE (2nd ed. 1980)

10. Member, Advisory Committee on Capital Formation and Regulatory Processes, Securities and Exchange Commission (1995-1996)

11. Member, Legal Advisory Committee to the Board of Directors, New York Stock Exchange (1992-1995) (currently,emeritus member)

12. Member, Legal Advisory Board, National Association of Securities Dealers (NASD) (1996-2000)

13. Member, Economic Advisory Board, Nasdaq (2001-2004)

14. Member, Market Practices Committee, NASD Regulation, Inc. (1997-2000)

15. Member, Subcouncil on Capital Allocation, United States Competitiveness Policy Council (created by Omnibus Trade and Competitiveness Act of 1988) (1993-1995)

16. Member, Standing Committee on Law and Justice, Commission on Behavioral and Social Sciences and Education, National Research Council (elected to 1990-1994 term)

17. Member, National Academy of Sciences Panel on Research on Sentencing (1979-1982)

18. General Counsel, American Economic Association (1992-1998)

19. Life Fellow, American Bar Foundation

20. Member, American Law Institute

21. Chairperson, Section on Business Associations, Association of American Law Schools (AALS) (1981-1982)

22. Chairperson, Audit and Investment Policy Committee, AALS (1992-1994) and former member, Nominating Committee, AALS (1990-1991)

23. Chairperson, Committee on Sections, AALS (1984-1985)

24. Board of Editors, M&A and Corporate Governance Law Reporter

25. Board of Contributing Editors, American Lawyer Newspaper Group

26. Columnist on Corporate and Securities Law, New York Law Journal

27. Businesswatch Columnist, National Law Journal

28. Member, Special Committee on Mergers, Acquisitions and Corporate Control, Contests (1996-), and former member, Committee on Corporate Laws (1994-1995), Committee on Securities Regulation (1991-1994) and Committee on Corporate Laws (1983-1985), Association of the Bar of the City of New York

29. Member, Executive Committee, Securities Regulation Institute (1992-2002) (currently, member, Board of Advisors).

30. Chairperson, Appointments Committee, Columbia Law School (1987-1990)

31. Chair, ALI-ABA National Institute on Corporate Governance (1995-2005)

32. Frequent Panelist at PLI, ABA,, ALI-ABA, SEC and other Seminars and Institutes and have testified before Congress on approximately eight occasions.

33. In 1998, in 2001, and again in 2006, Professor Coffee was listed by the National Law Journal as one of its "100 Most Influential Lawyers" in the United States.

BOOKS, AND CASEBOOKS

1. Coffee, GATEKEEPERS: The Professions and Corporate Governance (Oxford University Press 2006)

2. Choper, Coffee and Gilson, CASES AND MATERIALS ON CORPORATIONS, (Little Brown & Co.) (7th ed. 2007)

3. Coffee and Sale, CASES AND MATERIALS ON SECURITIES REGULATION (11^{th} ed. 2009) (formerly, Jennings, Marsh, Coffee and Seligman)

4. Reporter, ABA MINIMUM STANDARDS FOR CRIMINAL JUSTICE (2d ed. 1980) (Chapter 18)

5. Klein and Coffee, BUSINESS ORGANIZATION AND FINANCE (10th ed. 2007)

6. Coffee, Lowenstein and Rose-Ackerman, KNIGHTS RAIDERS AND TARGETS: The Impact of The Hostile Takeover (Oxford University Press, 1988)

LAW REVIEW ARTICLES: (in reverse chronological order)

1. Coffee, The Political Economy of Dodd-Frank: Why Financial Reform Tends to Be Frustrated and Systemic Risk Perpetuated, 97 Cornell L. Rev. 1019 (2012).

2. Coffee, Systemic Risk After Dodd-Frank: Contingent Capital And the Need for Regulatory Strategies, 111 Colum. L. Rev. 795 (2011).

3. Coffee, Ratings Reform: The Good, The Bad, and The Ugly, 1 Harv. Bus. L. Rev. 231 (2011).

4. Coffee, Litigation Governance: Taking Accountability Seriously, 110 Colum. L. Rev. 288 (2010).

5. Coffee and Sale, Redesigning the SEC: Does the Treasury Have A Better Idea?, 95 Va. L. Rev. 707 (2009).

6. Coffee, Law and the Market: The Impact of Enforcement, 156 U. Penn. L. Rev. 299 (2007).

7. Coffee, Reforming the Securities Class Action: An Essay on Deterrence and Its Implementation, 106 Colum. L. Rev. 1534 (2006).

8. Coffee, Can Lawyers Wear Blinders?: Gatekeepers and Third Party Opinions, 84 Texas L. Rev. 59 (2005).

9. Coffee, A Theory of Corporate Scandals: Why the U.S. and Europe are Different, 21 Oxford Review of Economic Policy 198 (2005).

10. Coffee, Causation by Presumption? Why the Supreme Court Should Reject Phantom Losses and Reverse Broudo, 60 Bus. Law. 533 (2005).

11. Coffee, Gatekeeper Failure and Reform: The Challenge of Fashioning Relevant Reforms, 84 B.U. L. Rev. 301 (2004).

12. Coffee, What Caused Enron?: A Capsule Social and Economic History of the 1990s, 89 Cornell L. Rev. 269 (2004).

13. Coffee, The Attorney As Gatekeeper: An Agenda for the SEC, 103 Colum. L. Rev. 1293 (2003).

14. Coffee, Racing Towards the Top?: The Impact of Cross-Listings and Stock Market Competition on International Corporate Governance, 102 Colum L. Rev. 1757 (2002).

15. Coffee, Understanding Enron: "It's About the Gatekeepers, Stupid", 57 Bus. Law. 1403 (2002).

16. Coffee, Law and Regulatory Competition: Can They Co-Exist? 80 Texas L. Rev. 1657 (2002).

17. Coffee, The Rise of Dispersed Ownership: The Roles of Law and the State in the Separation of Ownership and Control, 111 Yale L. J. 1 (2001).

18. Coffee, Do Norms Matter? A Cross-Country Evaluation, 149 U. Pa. L. Rev. 2151 (2001).

19. Coffee, Class Action Accountability: Reconciling Exit, Voice and Loyalty in Representative Litigation, 100 Colum. L. Rev.370 (2000).

20. Coffee, Privatization and Corporate Governance: The Lessons from Securities Market Failure, 25 J. Corp. L. 1 (1999).

21. Coffee, The Future as History: The Prospects for Global Convergence in Corporate Governance and its Implications, 93 Nw. U. L. Rev. 641 (1999).

22. Coffee, Modern Mail Fraud: The Restoration of the Public/Private Distinction, 35 Amer. Crim. L. Rev. 427 (1998).

23. Coffee, Brave New World?: The Impact(s) of the Internet on Modern Securities Regulation, 52 Bus. Law. 1195 (1997).

24. Coffee, The Bylaw, Battlefield: Can Institutions Change the Outcome of Corporate Control Contests, 51 U. Miami L. Rev. 605 (1997).

25. Coffee, Transfers of Corporate Control and the Triggering Thesis: Can Delaware Law Encourage Efficient Transactions While Chilling Inefficient Ones?, 21 Del. J. Corp. L. 359 (1996).

26. Coffee, The Future of the Private Securities Litigation Reform Act of 1995: or Why the Fat Lady Has Not Yet Sung, 51 Bus. Law. 975 (1996).

27. Coffee, Class Wars: The Dilemma of the Mass Tort Class Action, 95 Colum. L. Rev. 1343 (1995).

28. Coffee, Competition versus Consolidation: The Significance of Organizational Structure in Financial and Securities Regulation, 50 Bus. Law. 447 (1995).

29. Black and Coffee, Hail Britannia?: Institutional Investor Behavior Under Limited Regulation, 92 Mich. L. Rev. 1997 (1994) (with Bernard Black).

30. Coffee, The SEC and the Institutional Investor: A Half-Time Report, 15 Cardozo Law Review 837 (1994).

31. Coffee, New Myths and Old Realities: The American Law Institute Faces the Derivative Action, 48 Bus. Law. 1407 (1993).

32. Coffee, Paradigms Lost: The Blurring of the Criminal and Civil Law Models--And What Can Be Done About It, 101 Yale L.J. 1875 (1992).

33. Coffee, Liquidity Versus Control: The Institutional Investor as Corporate Monitor, 91 Colum. L. Rev. 1277 (1991).

34. Coffee and Klein, Bondholder Coercion: The Problem of Constrained Choice in Debt Tender Offers and Recapitalizations, 58 U. Chi. L. Rev. 1207 (1991).

35. Coffee, Does "Unlawful" Mean "Criminal"? Reflections on the Disappearing Tort/Crime Distinction in American Law, 71 B.U.L. Rev. 193 (1991).

36. Coffee, Unstable Coalitions: Corporate Governance as a Multi-Player Game, 78 Geo. L.J. 1495 (1990).

37. Coffee, The Mandatory/Enabling Balance in Corporate Law: An Essay on the Judical Role, 89 Columbia. L. Rev. 1618 (1989).

38. Coffee, Hush!: The Criminal Law Status of Confidential Business Information After McNally and Carpenter and the Enduring Problem of Overcriminalization, 26 Amer. Crim. L. Rev. 121 (1989).

39. Coffee, The Uncertain Case for Takeover Reform: An Essay on Stockholders Stakeholders and Bust-ups, 1988 Wisc. L. Rev. 435.

40. Coffee, The Regulation of Entrepreneurial Litigation: Balancing Fairness and Efficiency in the Large Class Action, 54 U. Chi. L. Rev. 877 (1987).

41. Coffee, Rethinking the Class Action: A Policy Primer on Reform, 62 Ind. L. Rev. 625 (1987).

42. Coffee, Shareholders Versus Managers: The Strain in the Corporate Web, 85 Michigan L. Rev. 1 (1986).

43. Coffee, Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions, 86 Colum. L. Rev. 669 (1986).

44. Coffee, The Future of Corporate Federalism, 8 Cardozo L. Rev. 759 (1987).

45. Coffee, The Unfaithful Champion: The Plaintiff as Monitor in Shareholder Litigation, 48 Law and Contemporary Problems 5 (1985).

46. Coffee, Partial Justice: Balancing Fairness and Efficiency in Partial Bids, 3 Companies and Securities Law Review 216 (Australian Law Review).

47. Coffee, Litigation and Corporate Governance: An Essay on Steering Between Scylla and Charybdis, 52 Geo. Wash. L. Rev. 789 (1985).

48. Coffee, Market Failure and the Economic Case for a Mandatory Disclosure System, 70 Va. L. Rev. 717 (1984).

49. Coffee, Regulating the Market for Corporate Control: A Critical Assessment of the Tender Offer's Role in Corporate Governance, 84 Colum. L. Rev. 1145 (1984).

50. Coffee, Rescuing the Private Attorney General: Why the Model of the Lawyer As Bounty Hunter is Not Working, 42 Maryland Law Review 215 (1983).

51. Coffee, The Metastasis of Mail Fraud: The Continuing Story of the Evolution of a White Collar Crime, 21 Am. Crim. L. Rev. 1 (1983).

52. Coffee and Schwartz, The Survival of the Derivative Suit: An Evaluation and a Proposal Legislative Reform, 81 Colum. L. Rev. 261 (1981).

53. Coffee, "No Soul To Damn; No Body Kick," An Unscandalized Inquiry into the Problem of Corporate Punishment, 79 Mich. L. Rev. 386 (1981).

54. Coffee, "Twisting Slowly In the Wind": A Search for Constitutional Limits on Coercion of the Criminal Defendant, 1980 Supreme Court Review 211 (1981).

55. Coffee, From Tort to Crime: Some Reflections on the Criminalization of Fiduciary Breaches and the Problematic Line Between Law and Ethics, 19 Am. Crim. L. Rev. 117 (1981).

56. Coffee, Beyond the Shut-Eyed Sentry: Toward a Theoretical View of Corporate Misconduct and an Effective Legal Response, 62 Va. L. Rev. 1099 (1977).

57. Coffee, The Repressed Issues in Sentencing: Accountability, Predictability and Equality in the Era of the Sentencing Commission, 66 Geo. L.J. 975 (1978).

58. Coffee, The Future of Sentencing Reform, 73 Mich. L. Rev. 1361 (1975).

59. Coffee, Making the Punishment Fit the Corporation: The Problems of Finding an Optimal Corporate Criminal Sanction, 1 N. Ill. L. Rev. 1 (1980).

60. Coffee, Privacy versus Parens Patriae, 57 Cornell L. Review 571 (1972).

ENDOWED LECTURES

Professor Coffee served as the Order of the Coif Visiting Lecturer in 2005 and has delivered annual endowed lectures at numerous American and foreign law schools. He has also served as a Distinguished Visiting Scholar at the University of Toronto Law School and Osgoode Hall Law School, and taught as a visiting professor at the University of Tokyo and the University of Sydney. He has also given numerous faculty workshops at other law schools in the United States, Europe and Asia.

Exhibit C
Forward Triangular Mergers 2005-2011, >$1B Deal Value
Analysis of Target Company Boards Replaced at Closing

Announcement Date	Completion Date	Target Company Name	Acquirer Company Name	Transaction Value ($MM)	Target Company Board Replaced
1/10/2005	8/1/2005	Western Wireless Corporation	ALLTEL Corporation	$3,926	X
2/14/2005	1/6/2006	MCI, Inc	Verizon Communications Inc	$7,205	X
2/23/2005	8/18/2005	Accredo Health, Incorporated	Medco Health Solutions, Inc	$2,118	X
2/27/2005	5/23/2005	USF Corporation	Yellow Roadway Corporation	$1,403	X
2/28/2005	8/30/2005	The May Department Stores Company	Federated Department Stores, Inc	$10,406	X
3/14/2005	5/2/2005	Ascential Software Corporation	International Business Machines Corporation	$1,104	X
4/4/2005	8/10/2005	Unocal Corporation	ChevronTexaco Corporation	$17,049	X
5/4/2005	8/8/2005	SpectraSite, Inc	American Tower Corporation	$2,862	X
6/6/2005	9/15/2005	Catellus Development Corporation	ProLogis	$3,512	X
6/15/2005	9/22/2005	Integrated Circuit Systems, Inc	Integrated Device Technology, Inc	$1,639	X
7/6/2005	12/5/2005	Amegy Bancorporation, Inc	Zions Bancorporation	$1,636	
7/6/2005	12/21/2005	PacifiCare Health Systems, Inc	UnitedHealth Group Incorporated	$6,975	X
10/3/2005	1/5/2006	Prentiss Properties Trust	Brandywine Realty Trust	$1,989	X
10/3/2005	1/31/2006	Dex Media, Inc	R H Donnelley Corporation	$4,150	X
10/10/2005	4/3/2006	Jefferson-Pilot Corporation	Lincoln National Corporation	$7,542	X
10/13/2005	1/30/2006	Vintage Petroleum, Inc	Occidental Petroleum Corporation	$3,504	X
12/12/2005	3/31/2006	Burlington Resources Inc	ConocoPhillips	$34,779	X
12/22/2005	5/2/2006	Arden Realty, Inc	General Electric	$3,032	X
1/23/2006	7/1/2006	Remington Oil and Gas Corporation	Cal Dive International, Inc	$1,333	X
3/7/2006	8/22/2006	Shurgard Storage Centers, Inc	Public Storage, Inc	$3,057	X
5/7/2006	10/2/2006	Golden West Financial Corporation	Wachovia Corporation	$25,992	X
10/6/2006	1/12/2007	Global Signal, Inc	Crown Castle International Corp	$3,873	X
10/17/2006	1/3/2007	Broadwing Corporation	Level 3 Communications, Inc	$1,344	X
11/1/2006	3/22/2007	Caremark Rx, Inc	CVS Corporation	$22,372	X
12/20/2006	7/1/2007	Sky Financial Group, Inc	Huntington Bancshares Incorporated	$3,294	X
1/29/2007	9/21/2007	First Republic Bank	Merrill Lynch & Co , Inc	$1,693	X
2/14/2007	5/15/2007	TALX Corporation	Equifax Inc	$1,127	X
3/19/2007	7/11/2007	TODCO	Hercules Offshore, Inc	$2,425	X
5/20/2007	10/22/2007	Cytyc Corporation	Hologic, Inc	$5,421	X
5/22/2007	8/3/2007	Crescent Real Estate Equities Company	Morgan Stanley	$2,344	X
5/28/2007	11/15/2007	Washington Group International, Inc	URS Corporation	$2,857	X
5/31/2007	10/1/2007	A G Edwards, Inc	Wachovia Corporation	$6,775	X
7/17/2007	11/6/2007	Pogo Producing Company	Plains Exploration & Production Company	$3,497	X
8/16/2007	6/6/2008	First Charter Corporation	Fifth Third Bancorp	$1,075	X
11/18/2007	3/7/2008	Pharmion Corporation	Celgene Corporation	$2,682	X
12/17/2007	4/21/2008	Grant Prideco, Inc	National Oilwell Varco, Inc	$7,367	X
1/28/2008	8/22/2008	NYMEX Holdings, Inc	CME Group Inc	$9,287	X
4/30/2008	8/28/2008	Bois d'Arc Energy, Inc	Stone Energy Corporation	$1,651	X
4/1/2009	10/1/2009	Metavante Technologies, Inc	Fidelity National Information Services, Inc	$2,944	X
8/31/2009	4/28/2010	BJ Services Company	Baker Hughes Incorporated	$5,241	X
11/3/2009	2/12/2010	Burlington Northern Santa Fe Corporation	Berkshire Hathaway Inc	$26,366	X
4/15/2010	11/10/2010	Mariner Energy, Inc	Apache Corporation	$2,669	X
9/7/2010	11/22/2010	Enterprise GP Holdings L P	Enterprise Products Partners L P	$8,028	X
1/23/2011	5/27/2011	Smurfit-Stone Container Corporation	Rock-Tenn Company	$3,208	X
2/28/2011	7/1/2011	Nationwide Health Properties, Inc	Ventas, Inc	$5,689	X
7/20/2011	12/1/2011	Nalco Holding Company	Ecolab Inc	$5,383	X
10/10/2011	2/7/2012	Complete Production Services, Inc	Superior Energy Services, Inc	$2,609	X
11/21/2011	3/6/2012	Transatlantic Holdings, Inc	Alleghany Corporation	$3,431	X
			Totals	**48**	**47**

EXHIBIT 8

EXHIBIT 30

CONFIDENTIAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MBIA INSURANCE CORPORATION, Plaintiff, -against- COUNTRYWIDE HOME LOANS, INC., COUNTRYWIDE SECURITIES CORP., COUNTRYWIDE FINANCIAL CORP., COUNTRYWIDE HOME LOANS SERVICING, LP (n/k/a Bank of America, N.A., successor by *de jure* merger to BAC Home Loans Servicing, LP), and BANK OF AMERICA CORP., Defendants.	Index No. 602825/2008 IAS Part 3 (Bransten, J.)

REBUTTAL REPORT OF GUHAN SUBRAMANIAN

July 27, 2012

CONFIDENTIAL UNDER STIPULATION AND ORDER FOR THE PRODUCTION OF CONFIDENTIAL INFORMATION

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I. Introduction

1. I have reviewed the expert report provided by Professor John C. Coates IV in the above-captioned matter ("Coates Report"). The Coates Report does not change any of the conclusions that I offered in my original report, dated June 25, 2012 ("Subramanian Original Report"). In this Rebuttal Report I briefly explain the reasons for my assessment and respond to those aspects of the Coates Report described below.

II. Summary of Opinions

2. Professor Coates's assertion that the July and November 2008 transactions achieved the "economic equivalent" of a *de jure* merger and "could have been accomplished" through a *de jure* merger should have no bearing on whether the *de facto* merger doctrine is applied in this case. If either of these situations were sufficient to invoke the *de facto* merger doctrine it would wreak havoc on transactional practice, because (i) the benefits of asset partitioning, entity shielding, and internal capital markets described in my original report would be eviscerated, and (ii) *de facto* merger would become the norm rather than the exception. This would deter economically beneficial transactions, as transactional planners could no longer predict the legal consequences of the structures that they use.

3. Professor Coates assertion that, as a matter of custom and practice, there are only two customary post-acquisition integration strategies – "absorption" and "confederation" – conflicts with the systematic evidence presented in my original report. The more logical interpretation of the data is that absorption strategies are

regularly paired with triangular mergers and designed to take advantage of potential synergies while preserving separation between the acquirer and the target entities.

4. Professor Coates incorrectly characterizes what is "customary" practice at wholly-owned subsidiary boards. Contrary to Professor Coates's assertions, boards of wholly-owned subsidiaries often act by written consent – as the subsidiary boards did here – and do not generally meet and deliberate on the merits of transactions initiated by their corporate parents before approving them.

5. Professor Coates provides five quotes from Bank of America Corporation ("BAC," and together with its subsidiaries, "BofA") executives that allegedly stand for the proposition that BAC's CEO and other executives have made statements indicating that BAC planned to assume Countrywide Financial Corporation's ("CFC," and together with its subsidiaries, "Countrywide") and Countrywide Home Loans, Inc.'s ("CHL") liabilities. But these quotes do not stand for that proposition. Rather, these quotes merely reflect the fact that BAC officials understood and priced into the acquisition the claims against Countrywide. This is something that any acquirer would do. Acknowledging a subsidiary's potential liabilities is not the same thing as assuming those liabilities.

6. Professor Coates asserts that the *de facto* merger doctrine can provide a remedy when fraud is found. I agree with this general statement but believe the converse also to be true: in the absence of fraud, there are strong policy reasons not to apply the *de facto* merger doctrine. Without finding fraud, Professor Coates incorrectly

concludes that applying the *de facto* merger doctrine in this matter would be consistent with the underlying rationale for successorship doctrines.

7. Professor Coates contends that the July and November 2008 transactions were uncommon, not in the ordinary course of business, uncharacteristically complex, and had the practical effect of a *de jure* merger. But even if true, applying the *de facto* merger doctrine on this basis would represent unwise public policy and a dramatic expansion of the *de facto* merger doctrine. This is because (i) it is precisely when transactions are complex that transactional planners and their clients need most to be able to rely on the structures that they create, and (ii) the fact that a transaction could have been structured a certain way does not mean that the law requires that structure to be used or that the use of a lawful alternative structure is improper.

III. Relevance of the Economic Effect of the July and November 2008 Transactions

8. Professor Coates relies heavily on his repeated assertion that the transition of Countrywide's and BofA's mortgage-related operations into a new mortgage business following the July and November 2008 transactions (collectively, the "Transactions") "achieve[d] the economic equivalent of a *de jure* merger"[1] and "could have been accomplished through a *de jure* merger."[2] Even assuming that

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[1] Coates Report at 7.

[2] *Id.* at 7; *see also id.* at 30-31 (Transactions "had the same economic effects" and "could have been accomplished" through a *de jure* merger); *id.* at 32 (Transactions "accomplish[ed] what would traditionally be done through a *de jure* merger"); *id.* at 33 ("CFC and its subsidiaries would have had the same owners had CFC *de jure* merged into BAC"); *id.* at 33 ("CFC and BAC's Business Operations Were Combined Which is Consistent With a *De Jure* Merger");

Professor Coates's assertions were correct, it would have no bearing on whether the *de facto* merger doctrine should be applied to hold BAC liable as Countrywide's successor. Indeed, if either of these situations were sufficient to invoke the *de facto* merger doctrine, as Professor Coates suggests,[3] it would wreak havoc on corporate transactional practice because (i) the benefits of asset partitioning, entity shielding, and internal capital markets described in my original report would be eviscerated,[4] and (ii) it would make the *de facto* merger the norm rather than the exception. This would deter economically beneficial transactions, as transactional planners could no longer predict the legal consequences of the structures that they use.

9. The BofA-Countrywide Transactions illustrate these risks. If the *de facto* merger doctrine could be invoked simply because the Transactions "achieve[d] the economic equivalent" of or "could have been accomplished" through a statutory merger, then there would be no obvious way for BAC to acquire Countrywide without risking exposure to Countrywide's liabilities. In my opinion, BAC likely would not have acquired Countrywide at the price it did (if at all) if it risked becoming responsible directly for all of Countrywide's liabilities. As I noted in

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id. at 46 ("[T]he operations of CFC and CHL were effectively merged into BAC . . . accomplishing what would traditionally be done through a *de jure* merger."); *id.* at 80 ("[T]he economic result is the same as though a *de jure* merger had occurred.").

3 *Id.* at 80; *see also infra* Part VI.

4 Subramanian Original Report at 6-17.

my original report, "[t]his is undesirable from a policy perspective because troubled companies are often most in need of acquisition."[5]

10. For these reasons, corporate law generally takes a formalistic approach to business organization. For example, the Delaware courts have squarely rejected the proposition that an asset acquisition triggers appraisal rights simply because "it achieves[s] the economic equivalent" or "could have been accomplished" through a statutory merger.[6] Whether deals "achieve the same economic equivalent" or "could have been accomplished" through other deals that were not done should be irrelevant, in my opinion, in determining the legal treatment of the deal that was done.

11. In my opinion, limiting the scope of doctrines such as the *de facto* merger doctrine, implied assumption of liability, substantive consolidation, and piercing the corporate veil represents good policy because it maximizes the benefits of asset partitioning, entity shielding, and predictability in transaction planning, while guarding against a narrow set of abuses.[7]

IV. Transactional Form and Post-Integration Strategies

12. Professor Coates asserts that, as a matter of custom and practice, there are only two general post-acquisition integration strategies: "absorption" and "confederation."[8]

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[5] *Id.* at 24.

[6] Coates Report at 7; *see Hariton v. Arco Electronics*, 182 A.2d 22 (Del. Ch. 1962), *aff'd*, 188 A.2d 123 (Del. 1963).

[7] Subramanian Original Report at 17-19.

[8] Coates Report at 27-28.

Professor Coates contends that the absorption strategy, which he describes as "integrating all of the newly acquired target's assets, business and operations with the purchaser's pre-acquisition business,"[9] is the "most common method" of integration and is "traditionally" executed as a direct merger.[10] He also contends that the confederation strategy, which he describes as "leav[ing] the newly acquired business . . . largely intact,"[11] is a "less common" integration strategy that is typically executed as a triangular merger.[12]

13. Professor Coates's analytical framework – which he offers without support – is contradicted by the empirical evidence presented in my original report. I show that approximately 90% of large public-company strategic deals from 2005-2011 use a triangular method of acquisition.[13] There are only two possibilities that could square this empirical reality with Professor Coates's assertions. *First*, only 10% of deals follow Professor Coates's "absorption" strategy while the other 90% of deals follow the "confederation" strategy. This conclusion flies in the face of the common understanding that synergies from operational integration are very often an important motivation for strategic M&A,[14] as well as Professor Coates's own

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[9] *Id.* at 28.

[10] *Id.* at 27-28; *see also id.* at 32 (absorption strategy "would traditionally be done through a *de jure* merger.").

[11] *Id.* at 28-29.

[12] *Id.*

[13] Subramanian Original Report at 26-27.

[14] *See, e.g.*, ROBERT F. BRUNER, APPLIED MERGERS & ACQUISITIONS 326 (2004) ("Synergy assessment should be the centerpiece of M&A analysis.").

admission that the absorption strategy is "most common" and the confederation strategy is "less common" among strategic buyers.[15]

14. The second and more logical interpretation of the data is that absorption strategies are regularly paired with triangular mergers and designed to take advantage of potential synergies while preserving separation between the acquirer and the target entities. In such a circumstance, the absorption then takes place through transactions between the parents and the subsidiary, as described in my original report.[16]

15. In general, the data shows that Professor Coates's dichotomy of "absorption" and "confederation" is too simplistic to capture the complexity of post-merger integration strategies. According to Professor Coates, the "absorption" method involves the "purchaser integrating all of the newly acquired target's assets, business, and operations"[17] and assuming all of its liabilities.[18] This would preclude the use of the common triangular merger structure.

16. In his authoritative M&A treatise *Applied Mergers & Acquisitions*, current Darden Business School Dean Robert Bruner describes other "classic" post-merger

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15 Coates Report at 27, 28.

16 Subramanian Original Report at 29-30.

17 Coates Report at 28.

18 *Id.* ("[T]he absorption method customarily results in all the creditors of the acquired company (including contingent creditors) having a full claim on all of the assets of the combined businesses.").

integration strategies in addition to "absorption" and "confederation,"[19] and observes that:

> A particular merger might be a candidate for two or more strategies – the deciding factor in any choice among strategies should be the fit with the rationale for the merger. Also, numerous other strategies are possible. The main point is that one size does not fit all.[20]

17. Professor Coates asserts (again without support) that BAC used a "non-customary, hybrid" transition method, because BAC "carried out a near-complete integration of operating assets and employees consistent with . . . an absorption strategy"[21] but "did not follow an absorption strategy" because it left certain assets at Countrywide.[22] But as discussed above, both empirical data and scholarly commentary show that a transaction does not have to fall into one of Professor Coates's "absorption" or "confederation" buckets to be typical.

V. Customary Board Practices at Subsidiary Boards

18. Professor Coates does not dispute that the BofA subsidiary boards followed the requisite corporate formalities in approving the Transactions.[23] For example, as Professor Coates acknowledges, the CFC and CHL directors unanimously approved the Transaction by formal written consents.[24] Instead, Professor Coates asserts that the processes used by these boards "fell far short of customary

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19 BRUNER, *supra* note 14, at 899-900.

20 *Id.* at 900.

21 Coates Report at 29.

22 *Id.* at 30.

23 *Id.* at 52 (noting that subsidiary directors acted through written consents, which is permissible under Delaware corporate law).

24 *Id.* at 20, 52.

corporate governance practices."[25] According to Professor Coates: "Customary corporate governance practices would involve an effort by the directors to meet and deliberate on the merits of the transactions before approving them, and to document the information they had considered and the reasons for approving the transactions, as compared to any available alternatives."[26]

19. Since 2002, I have been a core member of the faculty for an HBS executive education course entitled *Making Corporate Boards More Effective*, which is offered two to three times per year. Participants in this course must serve on one or more boards of public companies. Through MCBME I have discussed and taught the customs, practices, and duties of directors and officers, including the customs, practices, and duties at wholly-owned subsidiaries, to more than 1,000 public company directors. I have been invited by participants in these programs to present corporate governance topics to their own boards of directors. I also present on developments in corporate governance to the Corporate Directors Group, a national group of public-company directors, two to three times each year. Based on these interactions, as well as my general experience as documented in Appendix A of my original report, it is my opinion that Professor Coates incorrectly characterizes what is "[c]ustomary" practice at wholly-owned subsidiary boards. Contrary to Professor Coates's assertions, boards of wholly-owned subsidiaries often act by written consent, as the subsidiary boards did here.

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[25] *Id.* at 46; *see also id.* at 59 (asserting "massive gap between good or even minimal corporate governance practices and the process by which [the Transactions] were approved").

[26] *Id.* at 50.

20. Specifically, Professor Coates asserts that "[c]ustomary corporate governance practices would involve disclosing the terms of the proposed transactions to relevant parties, including creditors."[27] I am aware of no wholly-owned subsidiary board that has done this (putting aside public filings after-the-fact), nor does Professor Coates provide an example of this "customary" practice. According to Professor Coates, customary corporate governance practices at wholly-owned subsidiary boards also involve "the retention of new, independent directors, who could review the transactions free of any bias or conflict."[28] Again, I am aware of no wholly-owned subsidiary board that has done this, nor does Professor Coates provide an example of this "customar[y]" practice. It is my opinion that such practices are not customary.

21. As a specific critique of the BofA subsidiary boards, Professor Coates states that "there is sworn testimony consistent with the boards of CFC and CHL not understanding that those entities were distinct from BAC and were owed duties by them that were distinct from their obligations to BAC as employees of BAC."[29] As the sole evidence to support this claim, Professor Coates cites deposition testimony that "Houston [a CFC board member] considered herself to be a Bank of America employee" and "Houston did not recall receiving any remuneration from Countrywide in exchange for her service on CFC's Board."[30]

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[27] *Id.*

[28] *Id.*

[29] Coates Report at 21.

[30] *Id.* at 21 n.62.

22. In my opinion, the deposition testimony cited by Professor Coates simply states facts that are true, and has nothing to do with the fiduciary duties of Ms. Houston on the CFC board. That she considered herself a Bank of America employee (which she was, by her own admission) and did not get paid for her service on the CFC board says nothing about whether Ms. Houston acted in the best interests of CFC or BAC. And nothing in the cited testimony suggests that Ms. Houston did not understand CFC to be "distinct from BAC." To the contrary, there is testimony from Ms. Houston that she *did* understand CFC to be distinct from BAC.[31]

23. Moreover, testimony from Ms. Houston says nothing about the knowledge of the other directors. As such, it is sweeping and unwarranted to say, based solely on that testimony, that "the boards of CFC and CHL [did] not understand[]" their fiduciary obligations.[32]

24. Professor Coates seeks to impose what is customary practice at parent-company boards on their wholly-owned subsidiaries as well.[33] Practical business realities make this approach unworkable. Consider a financial services company with multiple businesses organized as wholly-owned corporate subsidiaries (similar to

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31 Houston Dep. Tr. at 56 6 ("Q: So when you sat on Countrywide Financial Corporation's board of directors, did you consider that to be a separate legal entity from Bank of America? . . . A: Yes.").

32 Coates Report at 21.

33 Professor Coates characterizes the Transactions as "last period" transactions, but his opinions do not seem to depend on this fact. *See id.* at 50 ("Such a lack of due diligence and oversight by a board of directors, even without the heightened standards applicable to 'last period' conflict of interest transactions, is contrary to ordinary customs and practices of corporate governance, much less 'best practices.'").

BAC). Imagine further that the parent company board has decided to shift the strategic direction of the company, and there are certain benefits across the businesses from having them all follow the same strategy. To have to convince each subsidiary board of the wisdom of this strategy, with the possibility of hold-out and negotiation with each separate subsidiary board, would likely make the strategy impossible to execute. In fact, under Professor Coates's theory the subsidiary boards of wholly-owned subsidiaries might be obligated to hold out, as a matter of fiduciary duty, to extract the best possible terms from the parent company on behalf of their particular subsidiary.[34]

25. This simple example illustrates why implementation of corporate strategy requires subsidiary boards to be responsive to their parent board's dictate.[35] Holding company structures would not be feasible, as an operational matter, without this custom and practice. Without being able to tell their subsidiaries what to do, parent company directors would regularly be faced with the untenable choice of

[34] *Cf. id.* at 50 ("[T]he new directors or advisor or agent could be tasked with negotiating on behalf of the [subsidiary] companies with BAC, to try to improve the terms of the transactions for CFC and CHL.").

[35] *See also Anadarko Petroleum Corp. v. Panhandle Eastern Corp.*, 545 A.2d 1172, 1174 (Del. 1988) ("[I]n a parent and wholly-owned subsidiary context, the directors of the subsidiary are obligated only to manage the affairs of the subsidiary in the best interests of the parent and its shareholders."); *Cochran v. Stifel Financial Corp.*, 2000 WL 286722, at *11 ("[A] wholly-owned subsidiary is to be managed solely so as to benefits its corporate parent."); *Grace Bros. v. UniHolding Corp.*, 2000 WL 982401, at *12 (Del. Ch. 2000) ("It is by no means a novel concept of corporate law that a wholly-owned subsidiary functions to benefit its parent."); *Trenwick America Litigation Trust v. Ernst & Young LLP*, 906 A.2d 168 at 173, 201 (Del. Ch. 2006) ("Wholly-owned subsidiary corporations are expected to operate for the benefit of their parent corporations; that is why they are created. Parent corporations do not owe such fiduciary duties. That is established Delaware law. . . . This is even so if the Trenwick America board [the wholly-owned subsidiary] took actions that made Trenwick America less valuable as an entity.") (citations omitted).

either violating their own fiduciary duties (in the example above, by not pursuing a value-maximizing strategic re-direction), replacing the subsidiary directors, or consolidating the subsidiary into the parent company.

26. The sheer number of subsidiary boards also reveals why imposing parent-company board practices on subsidiary boards is not possible. As documented in my original report,[36] virtually all significant U.S. corporations today operate at least in part through corporate subsidiaries. For example, BAC had approximately 1,250 subsidiaries in 2007.[37] Assume that each subsidiary board had 9 members, a typical number at the parent-company level, each of whom spend 220 hours per year on board activities.[38] This yields 1,980 hours of director time per year per subsidiary board, or approximately 1.0 full-time equivalents (FTEs) per board. Assume further that these subsidiary boards are staffed with mid- to high-level BAC employees, as befits their substantive role, with an average fully-loaded cost of $500,000 per FTE. Across 1,250 boards, this yields a total annual cost of $625 million.

27. While this is admittedly a ballpark estimate, I believe it to be a conservative one. For example, in addition to the conservative assumptions throughout the

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[36] Subramanian Original Report at 14.

[37] *See* Bank of America Corp. Annual Report (Form 10-K), at Ex. 21.1 (Feb. 28, 2008). This number is not unusual for large financial institutions. *See, e.g.*, Citigroup Inc. Annual Report (Form 10-K), at Ex. 21.1 (Feb. 22, 2008) (reporting 2,276 subsidiaries), Morgan Stanley Annual Report (Form 10-K), at Ex. 21.1 (Jan. 28, 2008) (1,191 subsidiaries), Wachovia Corp. Annual Report (Form 10-K), at Ex. 21.1 (Feb. 28, 2008) (661 subsidiaries), Wells Fargo & Co. Annual Report (Form 10-K), at Ex. 21.1 (Feb. 29, 2008) (555 subsidiaries).

[38] *See* 2009 NACD PUBLIC COMPANY GOVERNANCE SURVEY 15, 25 (reporting average public-company board size of 9.1 directors in 2009, and approximately 220 hours per year for public company directors in both 2008 and 2009).

calculation, the estimate does not include the logistical costs of running board meetings (*e.g.*, travel to board meetings, accommodations) or the cost of outside advisors that the subsidiary boards would presumably need to retain.

28. Taken as a whole, the analysis suggests that the operational and financial costs that would be imposed on companies if subsidiary boards were expected to have the same processes as parent-company boards would be significant. Under such a regime, corporations would likely consolidate some or all of their operations into the parent company, thereby reducing the benefits of asset partitioning and internal capital markets described in my original report.[39]

29. This analysis demonstrates why customary practices at the subsidiary board level are not, cannot be, and should not be the same as customary practices at the parent-company level. Professor Coates presents no evidence that what he describes as "customary practices" are employed at *any* wholly-owned subsidiary, let alone *customarily* employed at such subsidiaries.

VI. Relevance of Business Commentary

30. Professor Coates provides five quotes from BAC executives that allegedly stand for the proposition that "BAC's CEO and its other senior executives and spokespersons have made statements indicating that BAC planned to assume the liabilities of CFC and CHL:"[40]

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[39] Subramanian Original Report at 13-17.

[40] Coates Report at 60. For this assertion to make sense, the BofA officials must have known the magnitude of the Countrywide liabilities at the various times the comments were made. Professor Coates asserts that "[t]he evidence establishes that BAC was aware of the

> **Scott Silvestri, BofA spokesperson:** "*We are aware of the claims and potential claims against the company* and have factored those into the purchase."[41]
>
> **Ken Lewis, former BofA CEO:** "We looked at every aspect of the deal, *from their assets to potential lawsuits* and we think we have a price that is a good price."[42]
>
> **Brian Moynihan, current BofA CEO:** "Our company bought it [Countrywide] and we'll stand up; we'll clean it up."[43]
>
> **E-mail from Brian Moynihan to Barbara Desoer, President of the combined mortgage company:** "I want to keep stressing we are cleaning up someone else's mess."[44]
>
> **Joe Price, BofA CFO: "**The cost of restructuring these loans is within the range of losses we [BAC] estimated when we acquired Countrywide."[45]

31. These quotes simply do not support the conclusion that BAC "planned to assume the liabilities of CFC and CHL." If there are other quotes that do support this proposition, Professor Coates does not cite them in his report.

32. In my opinion, these quotes merely reflect the fact that BAC officials understood and priced the claims against Countrywide into its acquisition. This is something

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magnitude of CFC's contingent liabilities as of June 30, 2008." *Id.* at 68. As evidence he notes that BofA added $2.3 billion to the existing $1.0 billion for representation & warranty reserves in June 2008. But as of June 2011 BofA had taken a total representation & warranty expense of approximately $22 billion over the prior six quarters, more than six times the June 2008 reserves. *See* Pl.'s Ex. 3370, BAC Public Presentation, "Addressing Legacy Mortgage Issues" dated June 29, 2011, at 4. The quotes that allegedly stand for the proposition that BofA "planned to assume the liabilities" of Countrywide are completely meaningless in view of the evidence that BofA officials did not know the magnitude of the Countrywide liabilities at the time the statements were made.

[41] Coates Report at 60 (italics from Coates Report).

[42] *Id.* at 60 (italics from Coates Report).

[43] *Id.* at 60.

[44] *Id.* at 61.

[45] *Id.*

that any acquirer would do. To argue that acknowledging this fact gives Countrywide's creditors access to BAC's assets simply does not follow. Acknowledging that a soon-to-be subsidiary has potential liabilities is not the same thing as assuming those liabilities.

33. Professor Coates also asserts that these statements "impact investors' and creditors' expectations regarding BAC's satisfaction of legitimate claims against CFC and CHL."[46] Professor Coates presents no evidence that creditors or contingent creditors to CFC and CHL actually relied on these statements. In my opinion, no reasonable investor or creditor would draw such inferences, nor should they be able to as a policy matter. Even accepting for purposes of argument that these comments have anything to do with whether "BAC planned to assume the liabilities of CFC and CHL," it is highly implausible, in my opinion, that Countrywide's creditors (actual or potential) would reasonably regard their access to BAC's assets to turn on these kinds of comments.

34. As documented in my original report, businesspeople regularly use shorthand expressions.[47] To draw conclusions or even give substantive weight to these informal businessperson comments when assessing the legal structure or legal effect of a transaction would call into question general norms and understandings that have developed in the M&A arena, and would not adequately acknowledge the

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[46] *Id.*; *see also id.* at 68 ("BAC's participation in negotiating and funding these settlements of claims and litigation . . . is consistent with what creditors and investors would expect had BAC *de jure* merged with CFC and CHL.").

[47] Subramanian Original Report at 38-40.

different roles that businesspeople and lawyers play in M&A transactions.[48] Observers—especially those with financial stakes, such as creditors—should examine the legal documentation, such as the merger agreement or proxy statement, in order to understand the legal structure of the transaction.

VII. Policy Considerations

35. In a final section Professor Coates states that the *de facto* merger doctrine and other successorship doctrines are intended to address abuses that can arise from the following "threats to economic efficiency": "(a) the use of the corporate form . . . (b) one or more significant business combination transactions . . . and (c) various other factual factors . . . that are viewed as 'badges' of fraud or . . . are correlated with fraud risk."[49] I agree with Professor Coates that the *de facto* merger doctrine can provide a remedy when fraud is found.

36. The converse is also true: in the absence of fraud, there are strong policy reasons to not apply the *de facto* merger doctrine. For reasons described in my original report,[50] applying the *de facto* merger doctrine in the absence of fraud would subvert fundamental principles of business organization and would severely reduce social welfare.

37. Without finding fraud, Professor Coates nevertheless concludes that applying the *de facto* merger doctrine to the BofA-Countrywide Transactions "would be

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48 Subramanian Original Report at 38-40.

49 Coates Report at 79.

50 Subramanian Original Report at 17-19.

consistent with the underlying rationale for successorship doctrines."[51] Professor Coates explains that he reaches this conclusion because the Transactions were "uncommon and not in the ordinary course of business and uncharacteristically complex and had the practical effect of a *de jure* merger."[52]

38. Even if it were true that the Transactions were "uncommon," "not in the ordinary course of business," and/or "uncharacteristically complex," applying the *de facto* merger doctrine on this basis would represent unwise public policy and a dramatic expansion of the *de facto* merger doctrine. In fact, it is precisely when transactions are complex that transactional planners and their clients need most to be able to rely on the structures that they create.

39. To apply the *de facto* merger doctrine because a set of transactions "ha[s] the practical effect of a *de jure* merger" would also represent unwise public policy and a dramatic expansion of the *de facto* merger doctrine. The fact that a transaction could have been structured a certain way does not mean that the law requires that structure to be used or that the use of a lawful alternative structure is improper. As described in Part II of this report, whether deals "achieve the same economic equivalent"[53] or "could have been accomplished"[54] through other deals that were not done should be irrelevant in determining the legal treatment of the deal that was done.

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[51] Coates Report at 80.

[52] *Id.*

[53] *Id.* at 7.

[54] *Id.*

40. In the scenario where fraud is found by the finder of fact, corporate law provides a more narrowly-tailored tool than the *de facto* merger doctrine, namely, the fraudulent conveyance doctrine. Fraudulent conveyance reverses the transaction rather than subverting the corporate structure, as the *de facto* merger doctrine does. As a result, fraudulent conveyance doctrine protects creditors' reasonable expectations in the debtor/creditor relationship, while also preserving the benefits of asset partitioning, entity shielding, internal capital markets, and the other benefits of formalism noted above. *De facto* merger, in contrast, exceeds creditors' expectations and gives them an unfair windfall by providing them with access to an entirely new pool of assets. For these reasons, it is my opinion that fraudulent conveyance doctrine is a better tool to address fraud against creditors than the *de facto* merger doctrine.

41. Of course, invoking fraudulent conveyance requires a factual determination that the Transactions were unfair to creditors. Professor Coates seems to have made such a determination with his repeated references (110 in total) to the "Asset-Stripping Transactions," without any basis or support.[55] When creditors pursue *de facto* merger rather than fraudulent conveyance claims it suggests that they are seeking a windfall rather than an unwinding of allegedly unfair transactions.

[55] In contrast, I was asked to assume that fair value was transferred in the Transactions, *see* Subramanian Original Report at 33, thereby leaving the actual determination on this important question to the finder of fact, as needed.

Signed:

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Guhan Subramanian

Appendix: Documents Relied Upon

Academic Publications

ROBERT CHARLES CLARK, CORPORATE LAW (1986)

ROBERT F. BRUNER, APPLIED MERGERS & ACQUISITIONS (2004)

CHARLES P. KINDLEBERGER & ROBERT ALIBER, MANIAS, PANICS, AND CRASHES: A HISTORY OF FINANCIAL CRISES (5th ed. 2005)

WILLIAM J. CARNEY, MERGERS AND ACQUISITIONS (2nd ed. 2007)

WILLIAM T. ALLEN, REINIER KRAAKMAN & GUHAN SUBRAMANIAN, COMMENTARIES & CASES ON THE LAW OF BUSINESS ORGANIZATION (3rd ed. 2009)

LEE T. WYATT III, THE INDUSTRIAL REVOLUTION (2009)

CARMEN M. REINHART & KENNETH ROGOFF, THIS TIME IS DIFFERENT: EIGHT CENTURIES OF FINANCIAL FOLLY (2009)

DONALD R. LESSARD & CATE REAVIS, CEMEX: GLOB ALIZATION "THE CEMEX WAY," MIT SLOAN MANAGEMENT CASE STUDY (Mar. 5, 2009) [BACMBIA-V0000035887]

R. H. Coase, *The Nature of the Firm*, 4 ECONOMICA 386 (1937) [BACMBIA-V0000035908]

Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. CHI. L. REV. 89 (1985) [BACMBIA-V0000035985]

Kevin F. Forbes, *Limited Liability and the Development of the Business Corporation*, 2 J. L. ECON. & ORG. 163 (1986) [BACMBIA-V0000036005]

Michael C. Jensen & William H. Meckling, *The Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure*, 3 J. FIN. ECON. 305 (1976) [BACMBIA-V0000036096]

George G. Triantis, *Organizations as Internal Capital Markets: The Legal Boundaries of Firms, Collateral, and Trusts in Commercial and Charitable Enterprises*, 117 HARV. L. REV. 1103 (2004) [BACMBIA-V0000036223]

GUHAN SUBRAMANIAN, A WHITE PAPER ON THE FEDERAL DEPOSIT INSURANCE CORPORATION'S PROPOSED STATEMENT OF POLICY ON QUALIFICATIONS FOR FAILED BANK ACQUISITIONS (August 10, 2009), *available at* http://www.fdic.gov/regulations/laws/federal/2009/09c37AD47.PDF [BACMBIA-V0000036171]

Jeffrey N. Gordon & Christopher Muller, *Avoiding Eight-Alarm Fires in the Political Economy of Systemic Risk Management*, COLUMBIA LAW SCHOOL WORKING PAPER (Mar. 2010) [BACMBIA-V0000036021]

John C. Coffee, Jr., *Bail-Ins versus Bail-Outs: Using Contingent Capital to Mitigate Systemic Risk*, COLUMBIA LAW SCHOOL WORKING PAPER No. 380 (Sept. 2010) [BACMBIA-V0000035928]

GUHAN SUBRAMANIAN & RHEA GHOSH, REMICADE-SIMPONI (HBS Case Study N9-911-071) (Jan. 27, 2011) [BACMBIA-V0000036152]

Judicial Decisions

Anadarko Petroleum Corp. v. Panhandle Eastern Corp., 545 A.2d 1172 (Del. 1988)

Cochran v. Stifel Financial Corp., 2000 WL 286 WL 286722

Grace Bros. v. UniHolding Corp., 2000 WL 982401 (Del. Ch. 2000)

Hariton v. Arco Electronics, Inc., 182 A.2d 22 (Del. Ch. 1962), *aff'd*, 188 A.2d 123 (Del. 1963)

In re CNX Gas Corp. Shareholder Litigation, 4 A.3d 397 (Del. Ch. 2010)

In re Compellent Technologies, Inc. Shareholder Litigation, 2011 WL 6382523 (Del. Ch. Dec. 9, 2011)

In re Del Monte Foods Co. Shareholder Litigation, 25 A.3d 813 (Del. Ch. 2011)

Trenwick America Litigation Trust v. Ernst & Young LLP, 906 A.2d 168 (Del. Ch. 2006)

Books

ROBERT F. BRUNER, APPLIED MERGERS & ACQUISITIONS (2004)

Expert Reports

Expert Report of Professor John C. Coates IV, June 22, 2012

Expert Report of Professor Guhan Subramanian, June 25, 2012

Documents Produced in Litigation

Amended Complaint, *MBIA Ins. Corp. v. Countrywide Home Loans, Inc., et al.*, No. 08/602825 (N.Y. Sup. Ct. Aug. 24, 2009)

BACMBIA-C0000160048 to 160113 (Agreement and Plan of Merger)

Pl.'s Ex. 3370, BAC Public Presentation, "Addressing Legacy Mortgage Issues," dated June 29, 2011

Agenda, CFC August 6, 2008 Board of Directors Meeting.("Review of Director Responsibilities") [CWMBIA-G0000198902].

Deposition Transcripts

Helga Houston Deposition Transcript

Regulatory Filings

Bank of America Corp. Annual Report (Form 10-K), at Ex. 21.1 (Feb. 28, 2008).

Bank of America Corp. Current Report (Form 8-K) (November 10, 2008) [BACMBIA-V0000037064]

Citigroup Inc. Annual Report (Form 10-K), at Ex. 21.1 (Feb. 22, 2008)

Countrywide Financial Corp. Current Report (Form 8-K) (January 17, 2008) [BACMBIA-V0000037270]

Countrywide Financial Corp. Current Report (Form 8-K) (July 8, 2008) [BACMBIA-V0000030459]

Morgan Stanley Annual Report (Form 10-K), at Ex. 21.1 (Jan. 28, 2008)

Wachovia Corp. Annual Report (Form 10-K), at Ex. 21.1 (Feb. 28, 2008)

Wells Fargo & Co. Annual Report (Form 10-K), at Ex. 21.1 (Feb. 29, 2008)

Press Articles and Releases

3M Completes Acquisition of CUNO Incorporated, 3M Press Release (August 2, 2005) [BACMBIA-V0000037058]

American Tower Corporation and SpectraSite, Inc. Agree to Merge, American Tower Corp. Press Release (May 4, 2005) [BACMBIA-V0000037040]

Bank of America Agrees to Purchase Countrywide Corp: Creates Largest U.S. Mortgage Lender and Servicer, Bank of America Corp. Press Release (January 11, 2008) [BACMBIA-V0000036296]

Bank of America Completes Countrywide Financial Purchase, Bank of America Corp. Press Release (July 1, 2008) [BACMBIA-V0000037046]

Bank of America Corporation and Countrywide Financial Corporation, Public Meeting Held April 28, 2008, at the Federal Reserve Bank, Los Angeles, California, Tr. at 39:07-15 [BACMBIA-V0000036662]

Bank of America Corporation and Countrywide Financial Corporation, Public Meeting Held April 22, 2008, at the Federal Reserve Bank, Chicago, Illinois, Tr. at 10:13-12:21 [BACMBIA-V0000036562]

Bio-Matrix Scientific Group, Inc. Announces Newly Formed Stem Cell Subsidiary – Regen BioPharma, Inc., MARKETWIRE (April 30, 2012) [BACMBIA-V0000037032]

CVS-Caremark: A Drug-Benefit Behemoth, BLOOMBERG BUSINESSWEEK (Nov. 1, 2006) [BACMBIA-V0000036280]

Carol Hymowitz, *How to Be a Good Director*, WALL ST. J. (Oct. 27, 2003)

Capital One Completes Acquisition of Hibernia Corporation, Capital One Press Release (November 16, 2005) [BACMBIA-V0000036282]

Caremark Says Shareholders Approve CVS Merger, NYTIMES DEALBOOK (Mar. 16, 2007) [BACMBIA-V0000036553]

DM Products Establishes Film Industry Division, DM Products Press Release (May 1, 2012) [BACMBIA-V0000037035]

The Economist (Dec. 18, 1926) [BACMBIA-V0000037059]

Michael M. Grynbaum, *Home Sales And Prices Fall Sharply*, NEW YORK TIMES (Sept. 28, 2007) [BACMBIA-V0000039153]

Kikkoman Corporation to Adopt a Holding Company Management Structure, Kikkoman Corp. Press Release (Jan. 26, 2009) [BACMBIA-V0000036278]

E. Scott Reckard, *The Mortgage Meltdown; A rush to pull out cash; Unsure about the future of home-loan giant Countrywide, bank customers line up to withdraw their money*, Los Angeles Times (Aug. 24, 2007). [BACMBIA-V0000037054]

New Century Financial Corporation Files for Chapter 11, New Century Financial Corp. Press Release (Apr. 2, 2007) [BACMBIA-V0000036559]

Sandra M. Jones, *Sears to Shift to Independently Run Units*, CHICAGO TRIBUNE (Jan. 20, 2008) [BACMBIA-V0000036302]

Nelson D. Schwartz, *Batting Cleanup at Bank of America*, NEW YORK TIMES (Dec.11, 2010) [BACMBIA-V0000036284]

John B. Taylor, *Rules for America's Road to Recovery*, WALL ST. J. (June 1, 2012) [BACMBIA-V0000037037]

Signature Bank Establishes Signature Financial, LLC Subsidiary, Marking Its Entry into the Specialty Financing Arena, Signature Bank Press Release (April 18, 2012) [BACMBIA-V0000036555]

Eric A. Taub, *Satellite Radio May Try a Merger*, NEW YORK TIMES, January 1, 2007 [BACMBIA-V0000036293]

Testimony of Brian T Moynihan, President and Chief Executive Officer, Bank of America, to Financial Crisis Inquiry Commission, January 13, 2010 [BACMBIA-V0000036305]

The XM-Sirius Deal May Not Fly, BLOOMBERG BUSINESSWEEK (Feb. 20, 2007) [BACMBIA-V0000036291]

UnitedHealth Group to Merge with Pacificare Health Systems Inc., UnitedHealth Group Press Release (July 6, 2005) [BACMBIA-V0000037049]

Wells Fargo, Greater Bay Bancorp Agree To Merge, Wells Fargo Company Press Release (May 4, 2007) [BACMBIA-V0000037044]

<u>Databases</u>

MergerMetrics

<u>Websites</u>

http://www.bloomberg.com/quote/CFC:US/chart, accessed on June 21, 2012.

<u>Miscellaneous</u>

2009 NACD PUBLIC COMPANY GOVERNANCE SURVEY 15

EXHIBIT 9

EXHIBIT 29

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MBIA INSURANCE CORPORATION,

Plaintiff,

-against-

COUNTRYWIDE HOME LOANS, INC., COUNTRYWIDE SECURITIES CORP., COUNTRYWIDE FINANCIAL CORP., COUNTRYWIDE HOME LOANS SERVICING, LP (n/k/a Bank of America, N.A., successor by *de jure* merger to BAC Home Loans Servicing, LP), and BANK OF AMERICA CORP.,

Defendants.

Index No. 602825/2008

IAS Part 3 (Bransten, J.)

EXPERT REPORT OF TIMOTHY J. GALPIN, Ph.D.

July 27, 2012

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I. Introduction and Summary of Opinions

1. I serve as an Assistant Professor in the Department of Business at Colorado Mesa University. My research focuses on post-merger-and-acquisition integration methods, strategy formulation and execution, and leadership development. MBIA's expert, Professor John C. Coates IV, cites my textbook (Timothy J. Galpin & Mark Herndon, *The Complete Guide to Mergers and Acquisitions* (2007) (hereinafter, "Galpin" or "*The Complete Guide*")) in his report when discussing post-acquisition methods of managing a newly acquired company.[1]

2. Professor Coates rests his discussion of post-acquisition management methods on his central opinion that there are only two customary post-acquisition integration methods: "absorption" and "confederation."[2] While Professor Coates provides no direct support for this opinion, his report cites my book to bolster his view. But as I explain in more detail below, my book does not support Professor Coates's opinion; it contradicts it. *The Complete Guide* explains that post-acquisition transition management occurs on a continuum and, even within a single post-acquisition management process, will vary depending on the particular decision. In some circumstances, integration will be full, in others partial, and in others not at all. Professor Coates's opinion omits entirely this broad continuum falling between his extremes of absorption and confederation.

3. I have been asked by counsel for Bank of America Corporation ("BAC") to review Professor Coates's report and to address his opinions concerning:

   a) Customary transition management methods following mergers and acquisitions;

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[1] Report of Professor John C. Coates IV, dated June 25, 2012 ("Coates Report"), at 27 n.84.

[2] Coates Report at 27–28.

b) Bank of America's post-acquisition transition management methods and operating structure following its July 1, 2008 acquisition of Countrywide Financial Corporation ("Countrywide"); and

c) Whether Bank of America's strategic intent can be inferred from its post-acquisition transition management methods or results.[3]

4. Based on my experience, numerous publicly available articles and publications, and documents and depositions from this proceeding, my opinions are summarized as follows:

a) Professor Coates's opinion that there are only two customary post-acquisition methods of transition management—"absorption" or "confederation"—is incorrect, and contradicted by both my own experience and a wide body of research in the fields of mergers and acquisitions and organizational development. Rather, as noted, there is a continuum of post-acquisition transition management methods, not just two extremes. Most post-acquisition transition management processes and methods produce results that fall between Coates's two extremes of "absorption" and "confederation." And even within the same post-acquisition transition, different aspects of the transition will have different levels of integration.

b) Because Bank of America's management approach to the Countrywide transition fell between "absorption" and "confederation," Professor Coates inaccurately asserts that Bank of America did not employ a customary or generally accepted transition-management approach. On the contrary, Bank of America's post-acquisition transition management process used methods and practices that are consistent with industry norms.

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3 Professor Coates addresses several additional topics in his report; I only address post-acquisition integration as identified above and in my summary of opinions explained in this report.

c) Professor Coates erroneously asserts that Bank of America's strategic intent can be inferred from the operating structure that resulted from the post-acquisition transition process. In my experience, however, because each organization has unique characteristics that often create unexpected synergies, efficiencies, and challenges, one cannot reliably determine intent from the post-transition operating structure.

II. Qualifications

5. I serve as an Assistant Professor in the Department of Business at Colorado Mesa University. My research is focused on post-merger-and-acquisition integration, strategy formulation and execution, and leadership development. I teach undergraduate and graduate level courses, including Strategic Management, Foundations of Entrepreneurship, Managing Complex Organizations, Strategic Human Resource Management, and Value Based Leadership. Before my current appointment, I held a similar position at the University of Dallas Graduate School of Management.

6. I hold a Ph.D. in Organizational Development from the University of California at Los Angeles and a Master's degree in Management from Southern Illinois University, Carbondale.

7. I have been published on topics related to business transactions and organizational development in both peer and non-peer-reviewed journals, such as *Mergers & Acquisitions, Journal of Business Strategy, Handbook of Business Strategy, Training and Development*, and *HR Magazine*. I have also been featured on CNBC, Reuters Television, and National Public Radio on topics related to strategy, mergers, and organizational transformation.

I am the author or co-author of *Making Strategy Work: Building Sustainable Growth Capability*, *The Human Side of Change: A Practical Guide to Organization Redesign*, and, as noted above, *The Complete Guide to Mergers and Acquisitions*.

8. Before entering academia, I spent sixteen years advising companies in the field of organizational development, holding senior positions at Arthur Anderson & Company; Booz, Allen & Hamilton, Inc.; Prichett & Associates, Inc.; Watson Wyatt Worldwide; and Katzenbach Partners, LLC. In this context, I was directly involved in a number of significant transactions and subsequent transitions regarding companies such as Amdahl Corporation, ARCO Chemical Company, Dell Financial Services, General Electric Capital, Macrovision, and London Life Insurance. My curriculum vitae is attached as Appendix A.

III. There is a Continuum of Post-Acquisition Transition Methods, Not Just Two as Professor Coates Opines.

A. Professor Coates's Support Contradicts His Core Opinion That Only Two General Post-Acquisition Transition Methods Exist.

9. Professor Coates opines that:

> As a matter of custom and practice, purchasers in the M&A context employ one of two general post-acquisition methods of managing a newly acquired target with its own stand-alone business: absorption and confederation. The most common method is "absorption"—to integrate the newly acquired target into the purchaser's existing business—customarily on a rapid basis.[4]

10. Professor Coates cites no authority for the first sentence quoted above. And yet, as I read his report, this false dichotomy of absorption or confederation underpins his analysis and other opinions.

11. To support the second sentence quoted above, Professor Coates states in a footnote that M&A consultants commonly recommend that the target's integration occur within 100 days, citing the textbook that I co-authored with Mark Herndon, *The Complete Guide to Mergers and Acquisitions* (2007). Professor Coates is incorrect to the extent he implies that my book supports the existence of his dichotomy.

[4] Coates Report at 27–28 (footnote omitted).

12. Post-acquisition transitions do not involve a single binary choice, but many decisions that fall on a continuum of post-acquisition transition methods. As *The Complete Guide* observes, each decision in an acquisition presents a key question: Will the integration of that particular operation, system, or function be full, partial, or limited?[5] This reflects not only the common-sense notion that post-acquisition transition management is not one size fits all (or, in Professor Coates's view, two sizes fit all), but also my own experience advising a diverse group of companies on transition issues.

B. In My Experience, Companies Employ a Range of Post-Acquisition Transition Methods, Not Just Two as Professor Coates Opines.

13. My experience working with companies on post-acquisition transitions contrasts sharply with Professor Coates's bipolar model. Without exception, the companies with which I have worked have attempted to identify and implement a level of integration that maximizes the benefit for the enterprise, rather than rigidly adhering to one of the two integration extremes that Professor Coates postulates. While this flexible approach could sometimes result in an acquirer completely absorbing the target company or completely maintaining the independence of the target company's business operations, it more often yields a result falling somewhere between those two extremes. Some businesses and processes are absorbed, while others are discontinued, sold off, modified, or kept independent.

14. For example, I have advised on transition issues arising from transactions involving: (i) Amdahl Corporation and DMR Consulting Group, (ii) London Life Insurance and Prudential of Canada, (iii) Inmac and MicroWarehouse, (iv) Equistar Chemicals and Occidental Chemical, (v) Lyondell Chemical and ARCO Chemical, (vi) the formation of Arcelor Steel (at the time the world's largest steel company) from a combination of Aceralia (Spain), Usinor (France) and Arbed (Luxembourg), (vii) Macrovision and InstallShield Corporation, and (viii) Cooper

[5] *See* Galpin at 251 ("Will the integration be full? partial? limited?"); *see also id.* at 16.

Companies and Ocular Sciences. While these transactions had different legal forms, the transition processes were very similar. In each instance, the acquirer and the target dedicated teams of employees for months or even years to determine the optimal level of integration for a business operation, system, function, or process from a broad spectrum of possible outcomes. And there was never an assumption in our transition-management approach that the outcome was an all-or-nothing choice between complete absorption or confederation. In fact, in nearly every instance, the post-transaction operating model fell between the two extremes that Professor Coates describes.

15. The Amdahl Corporation and DMR Consulting Group transition illustrates this principle. Decisions featured aspects of both confederation and absorption: For example, the new post-acquisition entity maintained separate global headquarters, with several hundred employees based at the Amdahl facility in Sunnyvale, California, and several hundred based at the DMR facility in Montreal, Quebec, yet among those employees were a number from DMR who relocated to Amdahl's Sunnyvale location and several from Amdahl who relocated to DMR's Montreal facility. Other decisions resembled confederation, such as the decision to maintain separate sales forces, while others resembled absorption, such as the combination of several functions including Marketing, Human Resources (HR), Finance and Accounting, and Information Technology (IT) in Sunnyvale. The newly formed company also went to market with a common brand and sold the full suite of integrated products to its collective clientele.

16. Amdahl and DMR devoted approximately 100 transition-team members to an integration assessment that lasted three months and an implementation that lasted another nine. This effort included numerous site visits and joint planning meetings by Amdahl and DMR transition-team members. Collectively, they determined that the new organization would benefit most from a

careful, issue-by-issue transition analysis, rather than forcing the entire company into one of Professor Coates's two paradigms.

17. The Macrovision and InstallShield transition followed a similar pattern, combining confederation and absorption aspects. Tending towards confederation, the new post-acquisition entity maintained two core operating facilities, with several hundred employees at the Macrovision facility in San Jose, California (including several InstallShield employees who relocated to California) and several hundred employees at the InstallShield facility in Chicago, Illinois (including some from Macrovision who relocated to Illinois). Tending toward absorption were the company's decisions during the initial transition to bring together in San Jose (i) support functions like Sales, Marketing, HR, IT, Finance and Accounting; (ii) several core departments like Product Sales (adopting protocols and processes largely drawn from the legacy Macrovision organization); and (iii) the global headquarters for the post-acquisition company.

18. Macrovision and InstallShield assigned over 100 transition-team members to the transition assessment and execution. The assessment and planning phase lasted approximately two months and included site visits, and the implementation of the majority of planned transition actions lasted approximately six months.

19. The transition following Lyondell Chemical's acquisition of ARCO Chemical is yet another example of companies adopting a hybrid model over Professor Coates's bipolar approach. The companies consolidated global headquarters and support functions such as HR, IT, Purchasing, and Marketing in Houston, Texas, including the relocation to Houston of more than two hundred personnel from ARCO Chemical's Pennsylvania facilities. Importantly, production facilities across various geographies utilized a combination of Lyondell and ARCO management, employees, facilities, equipment, and processes.

20. The analysis and planning phase for the Lyondell-ARCO transition lasted approximately four months and involved numerous site visits and joint planning meetings by more than two hundred Lyondell and ARCO transition-team members. The new operating model's implementation required more than two years.

21. This hybrid approach is built into the standardized transition processes that I have helped to build with companies such as GE Capital, Reliant Energy, TECO Energy (Tampa Electric Company), MedImmune, Cisco Systems, and Cargill, for use across multiple transactions. Key to each of these companies' processes is determining the appropriate degree of integration across a wide spectrum of corporate functions and possible operating models. Thus, contrary to Professor Coates's assertion that purchasers have a "custom and practice" of employing either absorption or confederation, sophisticated market participants do not simply choose full absorption or full confederation. Rather, these companies work to develop processes for making the thousands of necessary transition decisions (*e.g.,* selecting the appropriate systems and employees) and selecting a profitable operating model that contains aspects of *both* absorption *and* confederation. The end result more often than not is a transition that falls between Professor Coates's two extremes.

C. M&A Literature Supports the Continuum Paradigm of Post-Acquisition Integration, Not Professor Coates's False Dichotomy.

22. Professor Coates cites no authority to support his absorption-confederation dichotomy. By contrast, my experience with companies using methods that fall between his two extremes is confirmed by academic and practitioner literature, which recognize the continuum of post-acquisition transition methods:

- **Schweiger and Walsh (1990)** present the prevailing position among researchers in this field: "[M]ost fundamentally the various choices sit on a continuum from autonomy to absorption. For example, units of either acquiring, acquired or merged firms may be (1) managed autonomously, (2) fully assimilated by those of the other firm, (3) blended together, (4) required to coordinate with units with whom they have no history or contact, or even (5) liquidated or spun-off."[6]

- **Pablo (1994**) also recognizes that "[i]ntegration design choices have been described as sitting on a continuum from autonomy to absorption," and explains that "this view reflects the notion that levels of integration can range from low to high, and a number of researchers have suggested the changes associated with each level."[7]
- **Shrivastava (1986)** cautions that the optimal degree of integration must be determined on a case-by-case basis because each M&A transaction is different: "The different types of post-merger integration described here are neither required nor recommended in every merger situation. Non-integration of the acquired business can be satisfactory in some situations, over-integration can be expensive, and under-integration can be unproductive. Therefore, it is important to determine the optimal degree of integration for each situation."[8]

23. These views are consistent with my own view and with *The Complete Guide*, which observes that post-acquisition transition "should be customized to each organization and adapted to each specific deal."[9]

24. Nor is Professor Coates's bipolar model the prevailing approach in the business community. In *Managing The Merger: Making It Work*, Phillip Mirvis and Mitchell Marks

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[6] David M. Schweiger & J. P. Walsh, *Mergers and Acquisitions: An Interdisciplinary View*, *in* 8 RESEARCH IN PERSONNEL AND HUMAN RESOURCE MANAGEMENT (Gerald R. Ferris & Kendrith M. Rowland eds., 1990).

[7] Amy L. Pablo, *Determinants of Acquisition Integration Level: A Decision-Making Perspective*, 37 ACADEMY OF MANAGEMENT JOURNAL 803 (1994).

[8] Paul Shrivastava, *Postmerger Integration*, 7 JOURNAL OF BUSINESS STRATEGY 65 (1986).

[9] Galpin at 18.

recite the business community's widely held view that "[i]ntegration is not an 'all or nothing' proposition. Operations range from full integration and consolidation to near separation of the firms in a holding company model with various levels of 'coupling' in between."[10]

25. The academic literature also contains examples of transition methods falling on the continuum between absorption and confederation, similar to the examples described above. In *Mergers and Acquisitions, Human Resources Issues and Outcomes: A Review and Suggested Typology*, Nancy Napier describes the combination of Norfolk and Western Railway Company ("NW") and Southern Railway Company ("Southern"), which demonstrated aspects of both absorption and confederation. As to absorption, "[t]he new firm attempted to create synergy by (1) combining names (changed to Norfolk & Southern), (2) locating its headquarters in a neutral city (Norfolk, VA), (3) balancing the Board membership with representatives from each company, and (4) cross-training key managers." But each rail carrier became a separate subsidiary of a newly formed holding company and continued to operate its own rail line separately, with some coordinated operations.[11] Thus, this is a prime example of a major transition falling between Coates's two extremes. NW did not absorb Southern at the outset, nor did they remain completely independent. To the contrary, they combined names, headquarters, and key personnel, while keeping much of their operations separate.

IV. Bank of America's Post-Acquisition Transition Process Is Consistent with Industry Custom and Practice.

26. I also disagree more generally with Professor Coates's assertion that Bank of America did not follow a "customary method of post-acquisition integration."[12] Based on my review of Bank of America's transition documentation and deposition testimony, I conclude that Bank of

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[10] PHILIP H. MIRVIS & MITCHELL L. MARKS, MANAGING THE MERGER 92 (1992).

[11] Norfolk S. Corp.—Control—Norfolk & W. Ry. Co. & S. Ry. Co., 366 I.C.C. 173 (1982).

[12] Coates Report at 29.

America's transition process followed standard industry practice and is consistent with industry norms.

A. Bank of America Used a Standard "Six Sigma" Process to Guide Its Transition.

27. According to the testimony of James Eckerle, Bank of America's Enterprise Transition Executive during the Countrywide transition, Bank of America followed a standard transition process for all its transition projects.[13] The process divided broadly into two phases—an assessment phase and an execution phase. Within the assessment phase, there were three sub-phases: (i) documenting the current environment, (ii) documenting the target environment, and (iii) describing the implementation plan for the execution phase.[14]

28. Bank of America's process during the Countrywide transition was based on the Six Sigma Improvement Process,[15] a commonly used five-phase improvement cycle that has gained wide acceptance among Fortune 500 companies.[16] The acronym for the improvement cycle is DMAIC, or "define," "measure," "analyze," "improve," and "control." Each of these stages has a set of typical activities:

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[13] *See* Eckerle Dep. Tr. at 28:24–25 (Apr. 6, 2012) ("Bank of America did have a standard process that we followed.").

[14] *See id.* at 29:4–12 ("The process had two phases, an assessment phase and an execution phase. The assessment phase had three subcomponents of it, which was documenting your current environment, documenting your target environment and your plan to get there. And execution phase was taking that project list and managing those projects."); *accord* BACMBIA-M0000000001–61 at BACMBIA-M0000000030 (slide showing the three assessment phases).

[15] *See* BACMBIA-A0000071194–373 at BACMBIA-A0000071258 ("The Enterprise Change Management System (ECMS) is a Six Sigma based change management system that provides consistency in the use of process and tools across project phases."); *id.* at BACMBIA-A0000071327 ("ECMS is a world-class end-to-end change management system, both process and tools, that is leveraged by change managers across the enterprise" that incorporates "Six Sigma, PMI, and internal best practices").

[16] *See* PETER S. PANDE, ROBERT P. NEUMAN & ROLAND R. CAVANAGH, THE SIX SIGMA WAY: HOW GE, MOTOROLA, AND OTHER TOP COMPANIES ARE HONING THEIR PERFORMANCE (McGraw Hill 2000); *see also* Eckerle Dep. Tr. at 29:17–20 ("A. Our standard process followed a six sigma methodology of DMAIC which is define, measure, analyze, approval [sic]and control. So those were the five phases."); BACMBIA-A0000071194–373 at BACMBIA-A000007125 (showing the five phases of the Six Sigma-based ECMS at Bank of America).

- In the "define" step, the business managers define the problem (whether specific or broad), set goals, clarify scope, and understand customer requirements.
- In the "measure" step, the managers refine the approach, define the means of measuring performance, and begin gathering data.
- The "analyze" step entails identifying the prevailing best practices for executing a particular process, assessing the efficiency and effectiveness of existing processes, and continuously refining customer (or end-user) requirements.
- In the "improve" stage, a new process is designed and implemented over a period that can vary dramatically on a case-by-case basis.
- In the "control" stage, business managers establish the performance measures and periodic reviews to assess the new processes' impact on the specific business function, and make corrective changes as required.[17]

29. Here, the "assessment" portion of the Countrywide transition encompassed Six Sigma's "define" phase.[18] As the following slide shows, the first assessment phase in the Countrywide transition included a side-by-side comparison of then-existing environments at Countrywide and BofA; the second phase involved defining the "target environment," *i.e.*, how the new business would look after completing the transition; and the third assessment phase was defining a plan to achieve that target state:[19]

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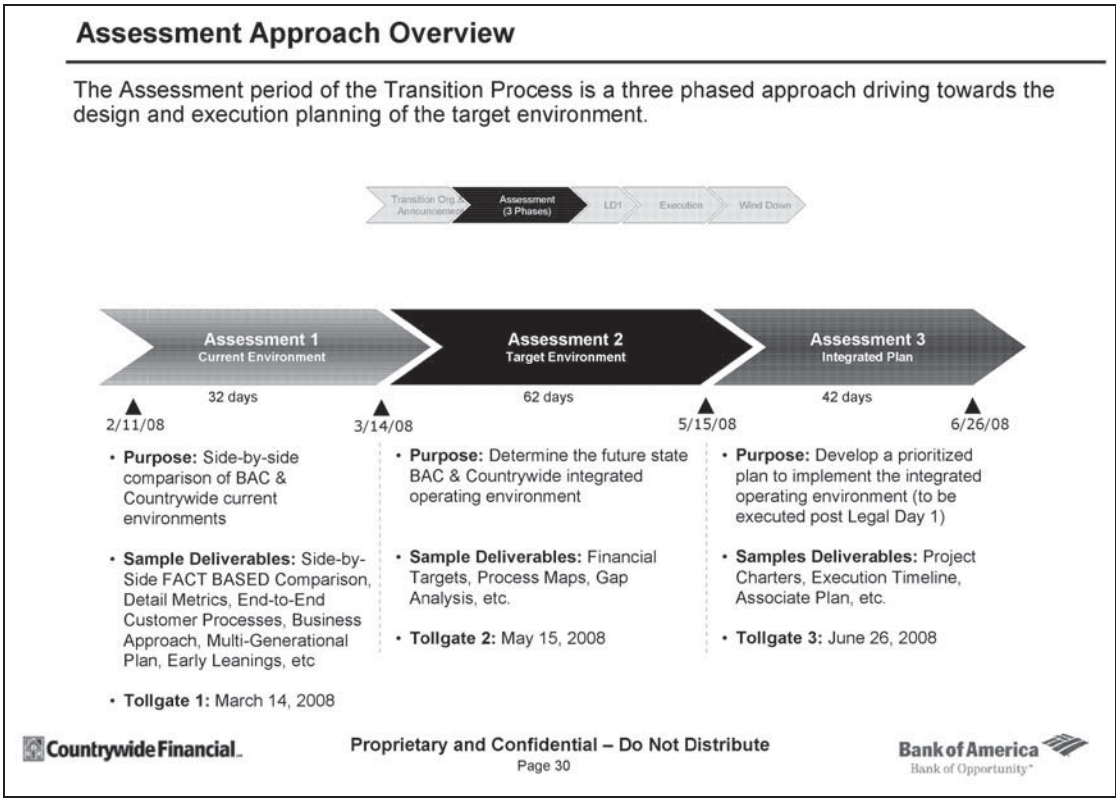
[17] *See* PANDE ET AL., *supra* note 15, at 37–39.

[18] *See* BACMBIA-M0000000001–61 at BACMBIA-M0000000032.

[19] *See id*. at BACMBIA-M0000000030.



30. The remaining Six Sigma stages fall within the Countrywide transition's "execution" phase.[20] The "measure" stage involved a deeper, more detailed plan to implement the transition.[21] The "analyze" stage involved examining the technical details of design and system specifications.[22] The "improve" stage involved the steps to implement the transition plan and improve the process the company was trying to change.[23] And the "control" stage began after the transition work was complete to ensure that the new, post-transition environment was stable.[24]

[20] *Id.*at BACMBIA-M0000000032.

[21] *See* Eckerle Dep. Tr. at 30:13–18; *see also* BACMBIA-M0000000062–124 at BACMBIA-M0000000075.

[22] *See* Eckerle Dep. Tr. at 30:13–18; *see also* BACMBIA-M0000000062–124 at BACMBIA-M0000000075.

[23] *See* Eckerle Dep. Tr. at 30:19–25; *see also* BACMBIA-M0000000062–124 at BACMBIA-M0000000075.

[24] *See* Eckerle Dep. Tr. at 31:2–9; *see also* BACMBIA-M0000000062–124 at BACMBIA-M0000000075.

31. This five-phase, Six Sigma-based process is, in my experience, standard in the transition industry, employed both to manage post-acquisition transition and more generally to manage organizational change. The Six Sigma process generally allows business managers to achieve consistent, repeatable results, and many Fortune 500 companies use it to drive their processes for that reason. In fact, the term "Six Sigma" itself refers to the narrowing of the number of standard deviations of variation contained in a process, enabling the organization to realize the benefits of efficiency: "The objective in driving for Six Sigma performance is to reduce or narrow variation to such a degree that six Sigmas – or standard deviations of variation – can be squeezed within the limits defined by the customer's specifications. For many products, services, and processes that means a huge, and tremendously valuable, degree of improvement."[25]

32. There are numerous examples of this framework producing extraordinary results, including notably the turnaround of Motorola. "What Six Sigma offered Motorola – though it involves much more today – was a simple consistent way to track and compare performance to customer requirements (the Sigma measure) and an ambitious target of nearly perfect quality (the Six Sigma goal)."[26] This success led to a following that includes many household names in corporate America and abroad, including Black & Decker, Bombardier, Dupont, Dow Chemical, Federal Express, Johnson & Johnson, Sony, Toshiba, and others.

33. Bank of America employed this transition process as many other companies do. As Mr. Eckerle testified, Bank of America used it not just for post-merger-and-acquisition transition, but also for any major corporate project that necessitated significant change.[27] In my experience performing corporate transition work for more than 16 years, this is consistent with the industry

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[25] PANDE ET AL., *supra* note 15, at 25.

[26] *Id*. at 7.

[27] *See* Eckerle Dep. Tr. at 18:23–19:4 ("Q. Now you used the word transition, what do you mean by that? A. At Bank of America how we describe a transition is you have something today, you're going to move to something different. We call that process transition."); *accord id*. at 30:10–14.

view of transition processes. While transition processes are often employed in post-merger or post-acquisition transition management, these processes are also used to accomplish many objectives where a company is undertaking significant change, even though the change does not itself involve a merger or acquisition.

34. While every transition is unique to an organization's business model, Bank of America's general transition process resembled that of many other companies with which I have worked on other types of large-scale organizational change efforts. These include major process improvement and organizational restructuring initiatives, as well as major culture change programs, for Mobil Oil, Armstrong World Industries, New York Life Insurance, Sears, Saks Fifth Avenue, and the US Army. In each of these projects, the company employed a sound, step-by-step, analytically robust transition assessment and implementation process (including the use of project management tools and templates, a transition team infrastructure, and regular transition communications) such as the kind used by Bank of America during the Countrywide transition.

B. BAC's Fluid Transition Process Fostered an Evolving Target Environment, Precluding Any Inference About BAC's Strategic Intent at the Transition's Outset.

35. Like many companies I have advised, Bank of America's transition process, as described in its documents and testimony, was intended to be a fact-based, objective process.[28] Documents from the Bank of America-Countrywide transition orientation meetings (or "kickoff" sessions) repeatedly emphasize this framework:

- "The assessment will be *fact-based* taking an *unbiased and fair* approach; the Transition Assessment team is a center post, creating framework, managing interdependencies, gathering/consolidating data, and controlling dissemination of sensitive information from

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[28] *See* BACMBIA-A0000071194–373 at BACMBIA-A0000071258 ("Together Six Sigma and the ECMS give us a fact-based, data driven, customer focused project and change management system which yields success for the business and the enterprise.")

LOB transition teams; cross-functional sub-teams will include business, technology, and operational participants to ensure a comprehensive view of the current environment."[29]

- "*Fact-based* decision—non-parochial customer and process view."[30]
- "Together Six Sigma and the ECMS give us a *fact-based, data-driven, customer focused project* and change management system which yields success for the business and the enterprise."[31]

36. The goal of the Countrywide transition process, according to Bank of America's documents, was to find and enact the "best practices" for the new mortgage business:

- According to one of the assessment kick-off presentations, the assessment's "Fundamental Tenet" was to "Achieve corporate goals through the application of Enterprise Transition Governance, shared financial goals and 'best practice' change discipline."
- Another kick-off presentation stated, in the context of discussing the new business's culture, "Everything is not changing—we will take the best from both companies."[32]

37. Bruce Hammonds, the leader of the Countrywide transition through the first two phases, echoed this in his deposition testimony, explaining that the assessment phase involved:

> hundreds of people essentially looking at literally . . . thousands and thousands of operational details. And what happens is there are people who are experts in their field lined up from Countrywide with people who are experts from Bank of America and looking at every process that goes on between the two companies and deciding after the deal is consummated what is the best way to do everything going forward, whether to adopt the Countrywide way of doing things, the Bank of America way of doing things, or to do them in a totally separate way.[33]

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[29] BACMBIA-M0000000001–61 at BACMBIA-M0000000022.

[30] BACMBIA-M0000000062–124 at BACMBIA-M0000000068.

[31] BACMBIA-A0000071194–373 at BACMBIA-A0000071258.

[32] *Id*. at BACMBIA-A0000071240 (emphasis in original).

[33] Hammonds Dep. Tr. at 18:15-25; 19:1-3; *see also* Dep. Tr. of Barbara Desoer at 214:9–17 ("I was talking about this target state that we would work to create that would bring component parts of legacy Countrywide, component parts of legacy Bank Of America and newly created capabilities to ensure that we could meet the needs of Bank Of America's 59 million consumer households with mortgage, home equity and insurance products."); Hammonds Dep. Tr. at 73:18–74:2 ("[A] business line is mortgage, and how those two would operate after the two business lines came together. So you can see in here 300-some pages and all the issues that were dealt with and how all those issues would be dealt with after or at some future point down the road when we reached target state."); Dep. Tr. of

38. During the first part of the assessment phase (*i.e.*, documenting the current environment), Bank of America assessed the companies' respective operating environments and developed side-by-side process comparisons (*e.g.*, flow diagrams and metrics such as cost, head count, and cycle-time) for core processes at both Bank of America and Countrywide.[34] This is a standard practice for determining the similarities and differences between the two organizations. These process comparisons provide transition teams with the data required to identify opportunities for cost savings, productivity gains, and customer-service enhancements that will maximize the transaction's value.

39. During the assessment's second stage (*i.e.*, documenting the target environment), Bank of America set preliminary financial targets, selected leadership, determined its target headcount, identified target systems, and formulated a detailed target environment for each line of business, including consumer lending, correspondent lending, warehouse lending, wholesale lending, secondary marketing, capital markets, operations/fulfillment, servicing, insurance, enterprise operations, risk, communications, technology, and human resources.[35]

40. Bank of America's development of target environments during this phase is consistent with my experience and leading practice. In every transaction I have been involved in, transition teams, across functions, regularly map out and analyze alternatives for the target environment, including legacy acquirer processes, legacy target-company processes, some combination of legacy processes, or developing new processes that neither entity previously used. After the transition teams have evaluated the various alternatives' pros and cons, management chooses for

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Joseph Jones at 27:17–20 ("It ultimately was a combination of best practices and efficiencies that would make the new mortgage business."); Dep. Tr. of Kenneth D. Lewis at 28:17–23 ("Q: You intended to take advantage of the best capabilities in each platform? A: Correct.").

[34] *See* BACMBIA-M0000000062–124 at BACMBIA-M0000000078.

[35] *See* BACMBIA-A0000061344–414 at BACMBIA-A0000061352–94.

the target environment the option that adds the most value (*e.g.*, improved customer service, reduced cost, or improved cycle time) to the new business model.

41. Bank of America built in several structural elements to the Countrywide transition process that appear designed to ensure that the process was fact-based, unbiased, and geared toward selecting best practices. Some examples from the orientation materials include:

- Ensuring that the important decisions concerning the design and operation of the new mortgage business were made "within the confines of the corporate structure and process."[36]
- Encouraging the transition team to make decisions that are in the enterprise's, not the particular line of business's, best interest.[37]
- Using assessment teams that included representatives of both Countrywide and Bank of America.[38]
- Focusing primarily on the customer/client's perception of the new business.[39]
- Encouraging transition team members to challenge preconceived notions and ask questions.[40]

42. These elements are consistent with my experience on transition projects at other companies. In each of those projects, the transition teams were instructed during their orientation meetings and throughout their transition assessment work to (i) challenge current

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36 *See* BACMBIA-M0000000001–61 at BACMBIA-M0000000021 ("Key business decisions will be made within the confines of the corporate structure and process.").

37 *See* BACMBIA0000000062–124 at BACMBIA-M0000000117 ("Think Enterprise—not line of business; there will be compromise."); *see also id.* ("Overarching issues need consideration—if we don't have strategic clarity, we can't get aligned.").

38 *See id*. at BACMBIA-M0000000071 ("One transition lead will be assigned from Bank of America and one from Countrywide for each LOB/Support.").

39 *See* BACMBIA-M0000000001–61 at BACMBIA-M0000000022 ("The assessment, while addressing multiple elements (risk, stability, financial, etc.) will be primarily focused on the client/customer view of the options."); *see also id.* at BACMBIA-M0000000021 ("Design organization around clients/customers and process as opposed to people and/or current environment.")

40 *See* BACMBIA-M0000000062–124 at BACMBIA-M0000000068 (setting the expectation that Assessment Leads have "Candor: 'trust the process, but challenge everything' "); *id*. at BACMBIA-M0000000117 (listing as a Transition Key Tenet that "There are no dumb questions"); *id.* ("Challenge everything, but once a decision is final, get behind it.").

ways of operating in both companies, (ii) use robust analyses on which to base target environment decisions and recommendations, (iii) focus on what is best for the customer, and (iv) use a "best of both" approach to develop the target environment.

43. Because Bank of America adopted a similar objective, fact-based process that emphasized investigation and analysis, the target environments evolved throughout the transition. Bank of America transition documents indicate that many decisions to define the target state later changed when the assessment team began work on the implementation plan.[41] Such changes included, for example, (i) modifying a financial center pilot program,[42] (ii) reducing the scope of a project to support Countrywide investment and brokerage clients in Bank of America's Premier Banking and Investments division,[43] and (iii) adjusting the timeline and guidelines for cross-selling Bank of America products to Countrywide mortgage customers.[44]

44. The evolving target environments resulted not only from Bank of America's fact-driven, objective process, but also from the unprecedented conditions in the mortgage and financial markets at the time. As one of the transition presentations noted:

> The public opinions, media coverage and market conditions in which we will transact the merger are unprecedented; fluid

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[41] *See generally* BACMBIA-C0000008511–82 at BACMBIA-C0000008523–33 (describing "major changes to the Target Environment defined in Phase 2").

[42] *See id*. at BACMBIA-C0000008532 ("Financial Center (FC) pilot has been cancelled and FCs will be closed over a phased ramp-down approach through 2Q2009. Original target environment included 10 Miami locations to test a different CFC-inspired sales approach with Mass Affluent customers, and keeping another 90 non-pilot FCs open in steady state pending results of the test").

[43] *See id.* ("Premier Banking & Investments: Project scope has been reduced to accommodate hiring of only CFC Financial Consultants and the associated infrastructure necessary to accommodate the existing 8,000 CWIS brokerage customers.").

[44] *See id*. (describing "Major Changes to Target Environment" including "[n]o co-mingling of brands to CFC mortgage customers. Cross sell of BAC deposit products to CFC mortgage customers will not occur until Customer Day One" and "[n]o BAC card sales to CFC mortgage customers will occur until after termination of the marketing exclusivity provisions of the Chase contract").

> business environment dictates continuing strategic discussions on selected areas.[45]

45. For these reasons, I disagree with Professor Coates's conclusion that Bank of America's intent with respect to the Countrywide transition can be inferred from the transition's outcome.[46] That opinion is inconsistent with how Bank of America conducted the transition—consistent with industry practices—to assess objectively the two businesses, challenge their assumptions and methods, determine the best practices for each line of business and functional support area, and implement those decisions.

C. Bank of America's Transition Structure Employed Elements Commonly Used in Transition Management.

46. Bank of America created a separate transition management and reporting structure, as many companies do in post-acquisition transition management. For the Countrywide transition, this transition infrastructure included elements commonly used in transition management, including a transition steering committee, a transition advisory panel, and a transition leadership team.[47] The steering committee consisted of senior executives whose role was to oversee the transition process and ensure that it stayed on course.[48] The transition advisory panel was formed to discuss the overall status of transition activities, key decisions, and other issues that arose.[49] And the transition leadership team was selected to lead the assessment process and make decisions regarding the target environment.[50]

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[45] BACMBIA-A0000061344–414 at BACMBIA-A0000061346.

[46] *See* Coates Report at 29 (asserting that Bank of America did not follow any "customary method of post-acquisition integration" and its transition method had "no apparent purpose other than to extract the ongoing business generated by the assets owned by CFC without taking on all its contingent obligations").

[47] *See* BACMBIA-M0000000001–61 at BACMBIA-M0000000027.

[48] *See* Eckerle Dep. Tr. at 34:11–35:12.

[49] *See* BACMBIA-M0000000001–61 at BACMBIA-M0000000027.

[50] *See id.*

47. Bank of America also established a Transition Program Office ("TPO") to guide the production of deliverables and adherence to the overall transition schedule.[51] The TPO conducted training sessions for the transition team regarding "tollgate" templates, project management protocols, and key deliverable dates.[52] This is a leading practice for organizational transition, intended to ensure that everyone involved in the process knows their roles and responsibilities, as well as the transition timeframe. Numerous companies that I have advised have employed this practice, including Dell, GE Capital, Lyondell, Cargill, and Amdahl.

48. Bank of America also used comprehensive and high-quality standardized materials, such as "tollgate" briefings and weekly status update deliverables, to memorialize its systematic assessment and analysis.[53] Incorporating standardized tools and templates like these is a standard practice that I have utilized during transition projects on which I have worked. These materials create consistency of process and deliverables across numerous transition teams.

49. Bank of America also developed detailed transition plans for various business lines.[54] For example, the following slide, which was prepared as a supplement to the third "tollgate" presentation, describes the planned steps of the mortgage-lending business transition:[55]

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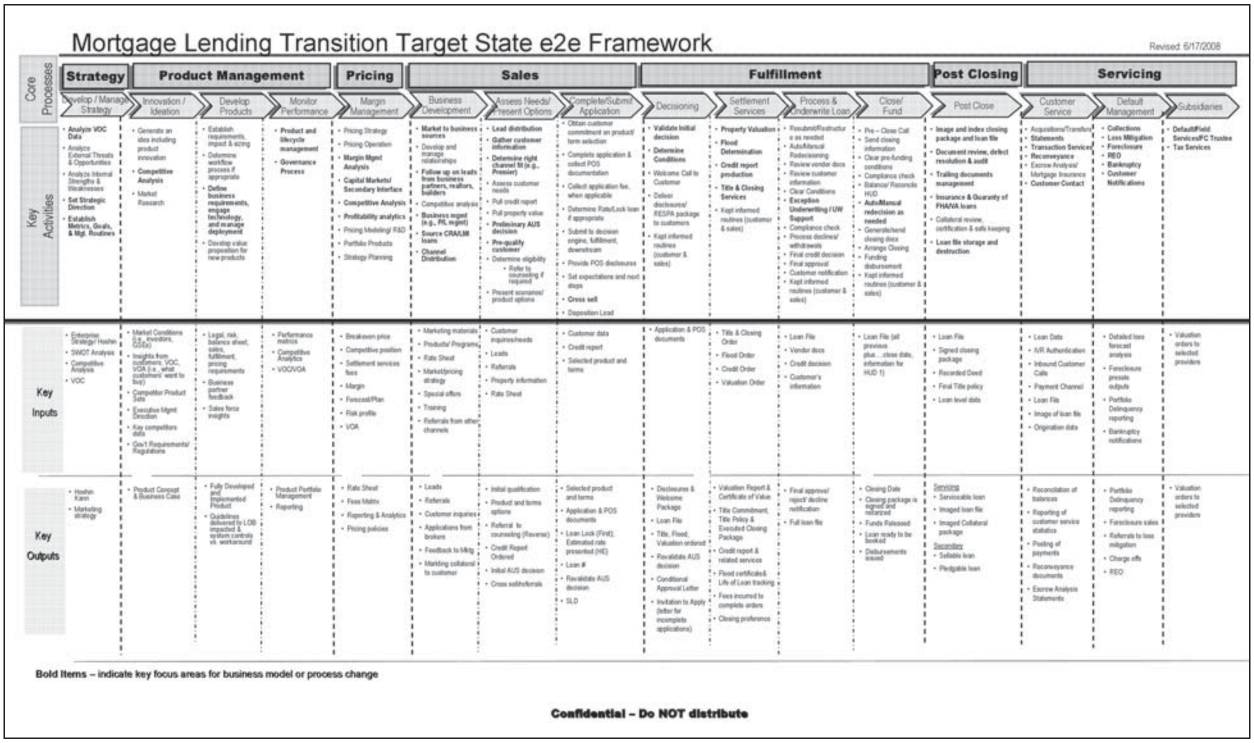
[51] *See* Eckerle Dep. Tr. at 42:19–43:9.

[52] *See* BACMBIA-M0000000062–124 at BACMBIA-M0000000080.

[53] *See, e.g.*, BACMBIA-A0000029692–30006 (Tollgate 1 presentation); *see also* BACMBIA-M0000000062–124 at BACMBIA-M0000000085, BACMBIA-M0000000104–06.

[54] *See* BACMBIA-A0000062299–310.

[55] *Id*. at BACMBIA-A0000062301.



50. Although the analysis was unique and tailored to its mortgage business, Bank of America's development of an integrated plan and standardized materials memorializing that plan is consistent with industry custom and practice. In each of the transactions I have been involved in, transition teams consistently developed integrated plans, using standard project management templates (*e.g.*, flow diagrams, action plans, and timelines) to lay out the scope and timing of transition implementation activities.

51. In addition to these assessment activities, Bank of America employed other standard transition practices throughout the execution process, including:

- staffing project managers and transition teams with both legacy Bank of America and Countrywide personnel;[56]
- using town hall meetings, executive progress briefings, "early leans," and stakeholder meetings to obtain input from various constituents as well as generate consensus for transition actions;[57]

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[56] *See* Eckerle Dep. Tr. at 69:5–18.

[57] *See* BACMBIA-M0000000001–61 at BACMBIA-M0000000031–32.

- developing and delivering transition communications to stakeholders, including employees and customers, with the purpose of building momentum, demonstrating the benefits of transition, and keeping people informed of the transition progress;[58]
- conducting a cultural comparison to identify similarities and differences between the organizational cultures of Bank of America and Countrywide, and to "[r]ecommend an approach to mitigate risks and integrate the cultures";[59]
- organizing visits between legacy-Bank of America and legacy-Countrywide team members to each other's locations to learn the other organization's processes, facilities, and systems;[60]
- using a talent assessment and selection process to "[l]earn about each organization's structure & talent" to "[f]inalize [the] target environment organization structure" and to "assess and select the right leaders for the right jobs."[61]

52. Based on my review of the transition documents, there is overwhelming evidence that Bank of America followed industry custom and practice during the transition's assessment phase. Bank of America recognized that post-acquisition assessment and transition is a complex process of project management and undertook the formal steps necessary to guide a transition of this size and complexity. Each of Bank of America's transition activities was standard practice in each of the transactions I have advised, and is also part of the standard transition process employed by large firms such as GE Capital, Cisco, and Cargill. Professor Coates's opinion that Bank of America used non-customary transition-management methods is therefore mistaken.

Respectfully Submitted by:

Timothy J. Galpin
July 27, 2012

58 *See id*. at BACMBIA-M0000000043.

59 BACMBIA-M0000000062–124 at BACMBIA-M0000000097.

60 BACMBIA-M0000000001–61 at BACMBIA-M0000000036–37.

61 BACMBIA-M0000000062–124 at BACMBIA-M0000000097.

APPENDIX A - CURRICULUM VITAE

TIMOTHY J. GALPIN, PH.D
Colorado Mesa University
Department of Business
1100 North Avenue
Grand Junction, CO 81501
Phone: 970-248-1213
Email: tim.galpin@aol.com
Website: www.tjginfo.com

OVERVIEW:

Current Assistant Professor of Management at Colorado Mesa University teaching Strategy, Leadership, and Entrepreneurship. Experience with in class and online course delivery. Recipient of the first annual 2010 University of Dallas Haggerty Teaching Excellence Award, as voted by the University of Dallas College of Business students and alumni. Research interests in Leading Sustainable Organizations, Leadership Effectiveness, Mergers and Acquisitions, Strategy formulation and execution, and Entrepreneurship. The author of four best-selling management books, academic and professional journal publications, a regular contributor to the business media, and an accomplished public speaker. Academic experience combined with extensive professional experience as a management consultant and business manager based in Europe and North America.

EDUCATION:

Ph.D. University of California, Los Angeles, CA, Organization Development, 1989

M.S. Southern Illinois University, Carbondale, IL, Management, 1985

B.A. State University of New York, Plattsburgh, NY, Liberal Arts, 1983

ACADEMIC APPOINTMENTS – TEACHING AND UNIVERSITY EXPERIENCE:

Assistant Professor, Colorado Mesa University, 2011 - Present
Courses Taught:

- MANG 491 Strategic Management
- MANG 450 Entrepreneurship
- MANG 373 Leadership
- MANG 301 Organizational Behavior

Associate Professor, University of Dallas, College of Business, 2005 – 2011
Courses Taught:

- MANA 6305 Value-Based Leadership
- MANA 7343 Management Consulting
- MANA 8310 Strategic Management
- MANA 6340 Entrepreneurship
- MANA 7369 Strategic Human Resources Management
- MANA 7355 Planning and Control of Services
- BUAD 8310 Business and Society
- BUAD 8390 Capstone (final MBA course, `live' client consulting assignment)

- BUAD 8101 Professional Internship (coaching and oversight of student internships)

Course Evaluations:

- Course evaluation scores consistently at 95% or above "Percent Favorable Rating" on all dimensions measured. Course ratings have been formally acknowledged in letters from the Dean of the College of Business for all terms taught at the University of Dallas. Sample of teaching ratings can be viewed at www.ratemyprofessors.com.

SCHOLARSHIP:

Dissertation:

"The impact of a three-day outdoor management development program on selected self-perceptions of the participants" University of California, Los Angeles, 1989.

Books:

Galpin, T. J., Whittinton, J.L. & Bell, R.G. 2012. *Leading the Sustainable Organization: Development, Implementation, and Assessment*. New York: Routledge.

Galpin, T. J. & Herndon, M. 2007. *The Complete Guide to Mergers & Acquisitions: Process Tools and Templates for Merger Integration at Every Level*. 2nd Edition. San Francisco: Jossey-Bass.

Galpin, T. J. & Herndon, M. 2000. *The Complete Guide to Mergers & Acquisitions: Process Tools and Templates for Merger Integration at Every Level*. San Francisco: Jossey-Bass.

Galpin, T. J. 1997. *Making Strategy Work: Building Sustainable Growth Capability*. San Francisco: Jossey-Bass.

Galpin, T. J. 1996. *The Human Side of Change: A Practical Guide to Organization Redesign*. San Francisco: Jossey-Bass.

Refereed Book Chapters:

Galpin, T. J. & Whittington, J. L. 2012. Creating Culture of Sustainability in Entrepreneurial Enterprises, in M. Wagner (Ed.), *Entrepreneurship, innovation and sustainability*. (pp. 68-87). Shefield, UK: Greenleaf Publishing.

Whittington, J.L, Maellaro, R., & Galpin, T.J. 2011. Redefining success: The foundation for creating work-life balance, in S. Kaiser, M. J. Ringlstetter, D. R. Eikhof , & M. Pina e Cunha (Eds.), *Creating balance? International perspectives on the work-life integration of professionals*. (pp. 65-77). Springer: Berlin/Heidelberg.

Galpin, T. J. 2010. Redefining Due Diligence to Jump Start Effective Integration, in R. Gleich, G. Kierans, & T. Hasselbach (Eds.), *Value in Due Diligence*. (pp.139-153). Farnham, United Kingdom: Gower.

Academic Journal Articles:

Galpin, T. J., Maellaro, R., & Whittington, J. L. 2012, Evidence From the Field: OD tools and methods that positively impact M&As, *OD Practitioner*, 44(3), 13-18.

Galpin, T. J., & Whittington, J. L. 2012, Sustainability Leadership: From strategy to results, *Journal of Business Strategy*, 33(4), 40-48.

Galpin, T. J., Whittington, J. L., & Maellaro, R. 2012. Identifying, Retaining, and Re-Engaging Key Talent during Mergers and Acquisitions: A best practices framework, *People & Strategy*, 35(1), 42-48.

Galpin, T. J. & Bell, R. G. 2010. Social Entrepreneurship and the L3C Structure: Bridging the gap between non-profit and for-profit ventures. *Journal of Business and Entrepreneurship*, 22(2), 29-39.

Galpin, T. J. & Whittington, J. L. 2010. Merger Repair: A conceptual framework for restoring employer/employee relationships. *Journal of Behavioral and Applied Management*, 12(1), 48-68.

Whittington, J. L. & Galpin, T. J. 2010. The Engagement Factor: Building a high-commitment organization in a low-commitment world. *Journal of Business Strategy*, 31(5), 14-24.

Galpin, T.J., & Whittington, J.L. 2009. Creating a Culture of Candor in the Leadership Classroom. *Journal of Leadership Education*, 8 (2), 10-19.

Galpin, T. J. 2008. From the Deal World to the Real World: Maximizing M&A value after the deal is done. *Business Strategy Series*, 9 (2), 57-64.

Galpin, T.J. & Herndon, M. 2008. Merger Repair: When M&As go wrong. *Journal of Business Strategy*, 29(1), 4-12.

Galpin, T. J., Hilpirt, R., & Evans, B. 2007. The Connected Enterprise: Beyond division of labor. *Journal of Business Strategy*, 28 (2), 38-47.

Galpin, T.J. 1998. When Leaders Really Walk the Talk: Making strategy work through people. HR. *Human Resource Planning*, 21(3), 38-45.

Galpin, T.J. 1997. Making Strategy Work. *Journal of Business Strategy*, 18(1), 12-15.

Academic Conference Presentations/Papers:

Whittington, J. L., Bell, R.G., & Galpin, T. J. 2012, "Evaluating Potential Substitutes for Leader-Member Exchange Using Fuzzy Set Methodology" Presented at the *Western Academy of Management*, Annual Meeting, La Jolla, CA.

Galpin, T. J., Rosenberg, M., & Bridge, M. 2011, "Teaching Essential Merger and Acquisition (M&A) Skills" Presented at the *Mountain Plains*, Annual Meeting, Grand Junction, CO.

Galpin, T. J., Whittington, J. L., & Bell, R.G. 2011, "Leading the Sustainable Organization" Presented at the *Mountain Plains*, Annual Meeting, Grand Junction, CO.

Galpin, T. J., & Whittington, J. L. 2011, “Green Leadership: Toward a comprehensive process model of corporate sustainability, from strategy to results” Accepted for presentation at the *Western Academy of Management*, Annual Meeting, Victoria, British Columbia.

Whittington, J. L., Galpin, T. J., & Watters, J. 2011, “The Prison Entrepreneurship Program (PEP): Social entrepreneurship in the Texas prison system” Presentation at the *United States Association for Small Business and Entrepreneurship*, Annual Meeting, Hilton Head Island, SC.

Galpin, T. J. & Bell, R. G. 2010. “Social Entrepreneurship and the L3C Structure: Bridging the gap between non-profit and for-profit ventures” Presentation at the *Association for Small Business & Entrepreneurship*, Annual Meeting, Fort Worth, TX. Best Paper Award – Runner Up.

Galpin, T. J., & Whittington, J. L., 2010. “How Deals Flow: Toward a comprehensive process model of mergers and acquisitions”, Presentation at the *Academy of Management*, Annual Meeting, Montreal, Canada.

Galpin, T. J., Whittington, J. L., & Maellaro, R. 2010. “Retention and Re-engagement: Identifying, keeping, and re-engaging key talent during mergers and acquisitions” Presentation at the *Eastern Academy of Management*, Annual Meeting, Portland, ME.

Maellaro, R., Whittington, J.L., Galpin, T.J., & Peregoy, R. 2010. “Leadership Across the Curriculum: One business school’s response to the criticism of MBA programs” Presentation at the *Southwest Academy of Management*, Annual Meeting, Dallas, TX.

Galpin, T. J. & Whittington, J. L. 2009. “Merger Repair: A conceptual framework for restoring employer/employee relationships” Presentation at the *Southern Management Association*, Annual Meeting, Ashville, NC.

Whittington, J. L. & Galpin, T. J. 2009. “The Engagement Factor: Building a high-commitment organization in a low-commitment world”, Presentation at the *Academy of Management*, Annual Meeting, Chicago, IL.

Academic Conference Proceedings:

Whittington, J. L., Galpin, T. J., & Watters, J. 2011, “The Prison Entrepreneurship Program (PEP): Social entrepreneurship in the Texas prison system” Manuscript in initial submission status to the *United States Association for Small Business and Entrepreneurship*, Annual Meeting, Hilton Head Island, SC.

Galpin, T. J. & Bell, R. G. 2010. “Social Entrepreneurship and the L3C Structure: Bridging the gap between non-profit and for-profit ventures” Proceedings of the *Association for Small Business & Entrepreneurship*, Annual Meeting, Fort Worth, TX. Best Paper Award – Runner Up.

Galpin, T. J., Whittington, J. L., & Maellaro, R. 2010. “Retention and Re-engagement: Identifying, keeping, and re-engaging key talent during mergers and acquisitions” Proceedings of the *Eastern Academy of Management*, Portland, ME.

Galpin, T. J. & Whittington, J. L. 2009. "Merger Repair: A conceptual framework for restoring employer/employee relationships" Proceedings of the *Southern Management Association*, Annual Meeting, Ashville, NC.

Manuscripts Under Review:

Galpin, T. J., & Whittington, J. L. 2012, "Pitfalls and Best Practices throughout the M&A Process: An integration of the literature and proposed process model", Manuscript under review by *Journal of General Management*.

Working Papers (in process):

"Hardiness as a predictor of entrepreneurial aspirations"

"Addressing the differences: Culture comparison and integration during mergers and acquisitions"

"The Ten Levers of Change"

"The Human Side of Strategy"

"M&A Communications: Pitfalls and Best Practices"

"The Seven Deadly Sins of M&A"

"Post-Merger Motivation"

"The M&A stampede: An application of herd theory to mergers and acquisitions"

Professional Journal/Magazine Articles:

Galpin, T.J. & Alleman, J. 2003. Maximizing deal value: What every director needs to know about M&A integration. *Director's Monthly*, 16-18.

Galpin, T.J. 1999. The real deal in mergers and acquisitions. *Human Resource Professional*, 12(2), 7-11.

Galpin, T.J. 1999. Creating shareholder value through people. *Handbook of Business Strategy*, 307-311.

Galpin, T.J. 1998. Making the Deal Work, *The Pfeiffer Annual*.

Galpin, T.J. & Murray, P. 1997. Connect human resource strategy to the business plan. *HR Magazine*, 42(3), 99-104.

Galpin, T.J. 1997. Raising the bar of change management. *Human Resource Professional*, 10(2) 15-19.

Galpin, T.J. 1997. Merger integration: The ultimate change management challenge. *Mergers & Acquisitions: The Dealmaker's Journal*, 31(4), 24-28.

Robinson, D.E., & Galpin, TJ. 1996. In for a change: Re-recruiting your 'human capital' during turbulent times. *HR Magazine*, 41(7), 90-93.

Galpin, T.J. 1996. Connecting culture to organizational change. *HR Magazine*, 41(3), March, 1996, 84-90.

Galpin, T.J. 1995. Changing the change leader. *Employment Relations Today*, 22(3), 83-90.

Galpin, T.J. 1995. Pruning the grapevine: The role of effective communications in the process of organizational change. *Training and Development Journal*, 49(4), 28-33.

Galpin, T.J. 1994. Managing human performance. *Employment Relations Today*, 21(2), 207-225.

INVITED PRESENTATIONS, INTERVIEWS, AND MEDIA CITATIONS

Presentations:

- TECO Energy (Tampa Electric Company)
- New York University, Stern School of Business Mergers & Acquisitions Program
- GE
- Intel
- Comerica Bank
- MedImmune
- Mobil Oil
- Lyondell Petrochemicals
- Philadelphia Chamber of Commerce
- Bayer (Milan, Italy)
- Latin America HR Congress (Mexico City, Mexico)
- Arcelor Steel (Barcelona, Spain)
- Harrods of London (London, England)
- Bangkok Chamber of Commerce (Bangkok, Thailand)
- Banco do Brasil (Brasilia, Brazil)
- Salon Capital Humanos (Madrid, Spain)
- IESE Business School (Barcelona, Spain)
- Hong Kong Chamber of Commerce (Hong Kong, China)
- Executive HR Forum (Irving, TX)
- The Indus Entrepreneurs, The Emerging Tri-Polar World: USA-India-China (Dallas, TX)

Radio and Television Interviews:

- KERA (Dallas Public Radio) "Morning Edition"
- National Business Radio Network "Business Day"
- KMNY Money Radio, Los Angeles
- TCI Television Network "Business Talk"
- KOAI Radio business news, Dallas
- CNBC Asia "Market Wrap"
- Reuters Television

Print Media Interviews and Citations:

Reasons for mergers vary, but not the rules for success. The Dallas Business Journal, January 18, 2008, pp24-25.

Merging? Then mind the culture gap. Fund Strategy Magazine, 2008.

"Can Speed Kill? Experts have differing views on how companies should pace themselves throughout merger integration," Mergers & Acquisitions Magazine, October 2007, pp34.

"Energy Drives Potential Record M&A Year" The Dallas Business Journal, July 27, 2007, pp8.

"Integrating Companies can be Tricky" The Houston Business Journal, July 20, 2007.

"Why Integration Success Eludes Many Buyers," Mergers & Acquisitions: The dealmakers' journal, March 2007, pp18-20.

Dallas Daybook Expert Network, Topic: Mergers & Acquisitions: Strategy Execution, Workforce Productivity and Organizational Transformation, 2007.

UC San Diego Rady School of Management - Book Reviews: Making Strategy Work: Building Sustainable Growth Capability (Jossey-Bass Business and Management Series).

MEMBERSHIPS:

- Academy of Management
- Western Academy of Management

SERVICE TO THE UNIVERSITY:

Colorado Mesa University

Committee Member:
2012-Present: CMU Department of Business Strategy Committee.
2011-Present: CMU Talking about Teaching Committee, to develop university-wide teaching best practices.
2011-Present: CMU Entrepreneurship Day (E-Day) Committee.
2011-Present: CMU Department of Business Marketing Committee.
2012-Present: CMU Department of Business Management Search Committee.
2011-Present: CMU Department of Business Newsletter Editor.

University of Dallas College of Business

MBA Core Curriculum Course Coordinator:
2008-2011: Value-Based Leadership

Faculty Advisor:
2006-2011: University of Dallas Business Plan Competition: Co-Organizer
2005-2011: University of Dallas Entrepreneurship Association: Advisor

Committee Member:
2010-2011: UD COB Strategic Planning Committee

2010-2011: UD COB Dean's Council
2006-2011: UD COB Academic Review Board (Chair)
2009-2011: UD COB Retention Committee
2005-2006; 2009-2011: Center for Professional Development Committee
2006-2007: UD COB Intellectual Contributions Committee
2006-2007: UD COB Academic Program Directors Committee
2006-2007: UD COB Core Curriculum Committee
2005-2006: UD COB Strategic Planning Committee

Academic Director:
2005-2009: UD COB Entrepreneurship Concentration

Other Institutional Service Activities:
2010: Coordinator for UD COB participation in the Association for Corporate Growth MBA competition – resulting in UD COB placing first in the competition out of four DFW MBA programs
2009: Master of Ceremonies and Presenter, University of Dallas Center for Professional Development Year-End Project Management Seminar
2009: Presenter, University of Dallas Center for Professional Development luncheon "The Role of Project Management in Mergers and Acquisitions"
2009: Panel Member with Ruth May and Greg Bell, University of Dallas International Student Association luncheon. "Understanding the Global Economic Crisis"
2006-2010: University of Dallas Business Plan Competition: Co-organizer and Judge
2005-2011: Career counseling for numerous UD COB students (approximately 30-50 students per year), in response to regular student requests
2005-2011: Regularly attend UD COB 'Information Sessions' for potential new students (attending approximately 10-15 sessions per year)
2005-2011: Regularly attend UD COB graduation each term
2005-2009: UD COB Pre-MBA strategy course final project reviewer

SERVICE TO THE PROFESSION:

2011: Manuscript Reviewer, California Management Review
2011: Manuscript Reviewer, Western Academy of Management annual meeting
2010: Manuscript Reviewer, Academy of Management annual meeting
2010: Manuscript Reviewer, Association for Small Business & Entrepreneurship annual meeting
2009: Manuscript Reviewer, Southern Management Association annual meeting
2005-2009: Senior Fellow, Katzenbach Partners, Advisor regarding setting and executing aspects of the organization's business strategy in the areas of post-merger integration and strategy execution professional services
2006: Advisory Council Member, Research Advisor. HR's Role in Mergers and Acquisitions: Tools for the Chief Human Resources Officer
2006: Advisory Council Member, Research Advisor. Pedagogy in an Online Graduate Business Course: A Delphi Study, Alicia Gallegos-Butters, Doctoral Dissertation, San Diego, CA

PROFESSIONAL DEVELOPMENT:

2011: CMU Desire2Learn online learning course development training
2011: CMU information technology use and risk management online training
2011: CMU new faculty orientation

2010: UD e-College online teaching faculty training
2009: UD faculty development workshop, Faculty Research Forum
2009: UD faculty development workshop, AACSB Assurance of Learning
2009: UD faculty development workshop, Experiential Learning
2009: UD Library Database search tutorial
2009: UD e-College online tutorial
2008: UD Risk Management Training seminar for faculty advisors of student organizations, as the faculty advisor for the UD Entrepreneurship Association

INDUSTRY EXPERIENCE:

Managing Partner, Integration Partners, 2002 – 2005

A Dallas and Chicago based strategy execution consulting firm, with a focus on post-merger integration and merger repair. Responsible for setting and executing all aspects of the company's strategy, including: product/service offerings, go to market strategy, project delivery, and client service.

Global Practice Leader, Merger & Acquisition Services, Watson Wyatt Worldwide, 1996 - 2002

Lead a team to build all M&A related consulting services to clients of Watson Wyatt Worldwide - in 90 offices and 30 countries. Responsible for leading and managing all M&A consulting services including: consulting process design, material development, project sales, delivery, and measurement, and consultant hiring and development.

Principal, Merger and Acquisition Integration Services, Pritchett & Associates, Inc., 1995 - 1996

Responsible for leading and managing all M&A consulting services, including: M&A integration consulting process design, materials development, project sales, project delivery, and consulting staff hiring and development.

Principal, Process Reengineering and Change Management Services, Booz, Allen & Hamilton, Inc., 1993 - 1995

Responsible for leading and managing business process redesign and change management consulting services, including: consulting process design, material development, project sales, project delivery, and consulting staffing hiring and development.

Manager, Operational Consulting, Arthur Andersen & Co., 1989 - 1993

Responsible for leading and managing Business Process Redesign consulting services, including: consulting process design, material development, project sales, project delivery, and consulting staffing hiring and development.

Manager, Organization Development, Hughes Aircraft Company, 1985 - 1989

Responsible for leading and managing business process redesign projects, including: project design, planning, delivery, and measurement.

Instructor, National Outdoor Leadership School (NOLS), 1984 - 1985

Responsible for planning and leading 35-day mountaineering courses, along with teaching the NOLS outdoor leadership curriculum to course participants.

HONORS AND AWARDS:

- Recipient of the first annual 2010 University of Dallas Haggerty Teaching Excellence Award, as voted by the University of Dallas College of Business students and alumni.

- Best Paper Award – Runner Up; 2010 *Association for Small Business & Entrepreneurship*, Annual Meeting, Fort Worth, TX; "Social Entrepreneurship and the L3C Structure: Bridging the gap between non-profit and for-profit ventures."

- University of Dallas College of Business "Eclipse Award", for advising the winning team of the first annual Association of Corporate Growth's 2010 Strategic Case Competition between the four major business schools in Dallas and Fort Worth, Texas.

REFERENCES:

- Available upon request.

APPENDIX B - DOCUMENTS RELIED UPON

Depositions

Deposition of Christopher Dumont (Jan. 27, 2012)

Deposition of Bradley E. Williams (Feb. 2, 2012)

Deposition of Bruce L. Hammonds (Mar. 21, 2012)

Deposition of James Eckerle (Apr. 6, 2012)

Deposition of Kenneth D. Lewis (Apr. 19, 2012)

Deposition of Mary K. Kanaga (May 10, 2012)

Deposition of Barbara Desoer, Vol. I (May 15, 2012)

Deposition of Barbara Desoer, Vol. II (May 16, 2012)

Deposition of Joseph Jones (May 16, 2012)

Deposition of Edward J. Ofcharsky, Vol. I (May 18, 2012)

Deposition of Edward J. Ofcharsky, Vol. II (May 25, 2012)

Produced Documents

BAC/Countrywide Transition: Steering Committee Checkpoint (Apr. 8, 2008)
BACMBIA-B0000008774–79

BAC/Countrywide Transition: Tollgate 1 - Current Environment (Mar. 14, 2008)
BACMBIA-A0000029692–30006

BAC/Countrywide Transition: Transition Leadership Team Meeting (May 19, 2008)
BACMBIA-A0000049550–707

Deliverable 3.1 Aggregated Project List (as of June 27, 2008)
BACMBIA-A0000087327

BAC/Countrywide Transition: Tollgate 2 - Target Environment (May 15, 2008)
BACMBIA-A0000061344–414

Deliverable 2.3's by Assessment Team:
BACMBIA-O0000153100–599

BAC/Countrywide Transition: Tollgate 3 - Integrated Plan (June 26, 2008)
BACMBIA-C0000008511–82

Tollgate 3 Supplemental Material:
BACMBIA-A0000062299–310

Transition Update for Business Executives (July 28, 2008)
BACMBIA-A0000073420–42

Customer & Associate Impacts (July 24, 2008)
BACMBIA-R0000006597–622

BAC/Countrywide Transition Assessment Phase Kickoff Session #1 (Feb. 11, 2008)
BACMBIA-M0000000001–61

BAC/Countrywide Transition Assessment Phase Kickoff Session #2 (Feb. 11, 2008)
BACMBIA-M0000000062–124

Bank of America/Countrywide Transition Execution Kick-off (July 22-24, 2008)
BACMBIA-A0000071194–373

Transition Team Organizational Chart
BACMBIA-B0000001843

BAC/CFC Transition CFO Kick Off Meeting (Feb. 20, 2008)
BACMBIA-O0000081579–623

Enterprise Transition Steering Committee (Sept. 30, 2008)
BACMBIA-A0000107011–26

Bank of America - Enterprise Transition Executive Report
BACMBIA-A0000108051–65

Print Advertising - Phase 1: “Building Credibility” (Oct. 2008)
BACMBIA-Q0000026022–27

Charter Collapse - Readiness Recap
BACMBIA-A0000080652–69

Customer Day One
BACMBIA-O0000075212–22

Countrywide Transition Execution Mortgage Lending Kickoff
BACMBIA-A0000072518–37

Mortgage Lending - Chris Dumont - In Scope / Out of Scope

BACMBIA-A0000076410–36

CFC Transition Execution - BRD Status Summary
BACMBIA-A0000120075–84

CFC Transition Organization - Change Execution
BACMBIA-C0000053598–617

CD1 Update (Mar. 9, 2009)
BACMBIA-C0000071681–721

Transition Leadership Review (May 20, 2009)
BACMBIA-C0000099653–66

Bank of America/Countrywide Transition Mortgage Lending Deployment Timeline (May 20, 2009)
BACMBIA-C0000101452–59

BAC/CFC Customer Day 1 Update
BACMBIA-N0000000211–21

Bank of America - Enterprise Transition Executive Report (June 2008)
BACMBIA-C0000011096–110

Bank of America - Enterprise Transition Executive Report (Dec.2008)
BACMBIA-E0000007959–76

Bank of America - Enterprise Transition Executive Report (Oct. 2008)
BACMBIA-K0000001162–79

Bank of America - Enterprise Transition Executive Report (Nov. 2008)
BACMBIA-P0000064710–28

Bank of America - Enterprise Transition Executive Report (Sept. 2008)
BACMBIA-R0000041034–49

Bank of America - Enterprise Transition Executive Report (Feb. 2008)
BACMBIA-S0000039317–33

Bank of America - Enterprise Transition Executive Report (July 2008)
BACMBIA-X0000144167–81

Bank of America - Enterprise Transition Executive Report (Jan. 2009)
BACMBIA-X0000003326–41

Enterprise Transition Steering Committee (Mar. 6, 2008)

BACMBIA-B0000003487–96

Enterprise Transition Steering Committee Update (Feb. 28, 2010)
BACMBIA-E0000031207–12

Enterprise Transition Steering Committee Update (Oct. 1, 2009)
BACMBIA-E0000032675–80

Enterprise Transition Steering Committee (Mar. 6, 2008)
BACMBIA-E0000033141–58

Enterprise Transition Steering Committee Update (Sept. 30, 2009)
BACMBIA-E0000033458–61

Enterprise Transition Steering Committee (Sept. 30, 2008)
BACMBIA-K0000000577–94

Enterprise Transition Steering Committee (Aug. 7, 2008)
BACMBIA-N0000000177–91

Enterprise Transition Steering Committee (Jan. 30, 2008)
BACMBIA-P0000052824–35

Enterprise Transition Steering Committee (July 10, 2008)
BACMBIA-Q0000022511–23

Enterprise Transition Steering Committee Meeting (Oct. 22, 2009)
BACMBIA-Q0000042755–61

Enterprise Transition Steering Committee Meeting (Jan. 28, 2010)
BACMBIA-R0000029047–56

Enterprise Transition Steering Committee Meeting (July 30, 2009)
BACMBIA-X0000186668–74

Countrywide Transition - Transition Leadership Team 1-on-1 Meetings (Feb. 24, 2009)
BACMBIA-O0000014137–70

Countrywide Transition - Transition Leadership Team 1-on-1 Meetings (Mar. 24, 2009)
BACMBIA-O0000028603–36

Countrywide Transition - Transition Leadership Team 1-on-1 Meetings (Oct. 15, 2008)
BACMBIA-O0000004389–403

Countrywide Transition - Transition Leadership Team Meeting (July 30, 2008)
BACMBIA-O0000054135–75

Countrywide Transition - Transition Leadership Team Meeting (Nov. 19, 2008)
BACMBIA-P0000016927–82

Countrywide Transition - Transition Leadership Team Meeting (Aug. 6, 2008)
BACMBIA-P0000059966–83

Countrywide Transition - Transition Leadership Team Meeting (Oct. 1, 2008)
BACMBIA-P0000062653–65

Countrywide Transition - Transition Leadership Team 1-on-1 Meetings (Jan. 13, 2009)
BACMBIA-P0000065358–65388

Countrywide Transition - Transition Leadership Team Meeting (Dec. 10, 2008)
BACMBIA-R0000043294–366

Countrywide Transition - Transition Leadership Team Meeting (Aug. 13, 2008)
BACMBIA-S0000012462–82

Countrywide Transition - Transition Leadership Team Meeting (Sept. 17, 2008)
BACMBIA-S0000015382–410

Countrywide Transition - Transition Leadership Team Meeting (July 9, 2008)
BACMBIA-S0000009638–50

Countrywide Transition - Transition Leadership Team Meeting (Oct. 8, 2008)
BACMBIA-V0000005970–80

BAC / Countrywide Transition - Transition Leadership Team Meeting (Dec. 10, 2008)
BACMBIA-X0000121293–356

Countrywide Transition - Transition Leadership Team Meeting (Aug. 27, 2008)
BACMBIA-X0000144065–92

Reports Submitted in this Matter

Expert Report of Professor John C. Coates IV (June 25, 2012)

Administrative Decisions

Norfolk S. Corp.—Control—Norfolk & W. Ry. Co. & S. Ry. Co., 366 I.C.C. 173 (1982).

Books

TIMOTHY J. GALPIN & MARK HERNDON, THE COMPLETE GUIDE TO MERGERS AND ACQUISITIONS (2007)

PHILIPPE C. HASPESLAGH & DAVID B. JEMISON, MANAGING ACQUISITIONS: CREATING VALUE THROUGH CORPORATE RENEWAL (1991)

ALEXANDRA REED LAJOUX, THE ART OF M&A INTEGRATION: A GUIDE TO MERGING RESOURCES, PROCESSES AND RESPONSIBILITIES (2d ed. 2006)

PHILIP H. MIRVIS & MITCHELL L. MARKS, MANAGING THE MERGER (1992)

8 RESEARCH IN PERSONNEL AND HUMAN RESOURCE MANAGEMENT (Gerald R. Ferris & Kendrith M. Rowland eds., 1990)

DAVID SCHWEIGER, M&A INTEGRATION: A FRAMEWORK FOR EXECUTIVES AND MANAGERS (2002)

JAMES D. THOMPSON, ORGANIZATIONS IN ACTION (2003)

HARVARD BUSINESS PRESS, HARVARD BUSINESS REVIEW ON MERGERS & ACQUISITIONS (2001)

PETER S. PANDE, ROBERT P. NEUMAN & ROLAND R. CAVANAGH, THE SIX SIGMA WAY: HOW GE, MOTOROLA, AND OTHER TOP COMPANIES ARE HONING THEIR PERFORMANCE (McGraw Hill 2000)

Journals, Articles, and Working Papers

Duncan N. Angwin & Maureen Meadows, *The Choice of Insider or Outsider Top Executives in Acquired Companies*, 42 LONG RANGE PLANNING 359 (2009)

Ronald N. Ashkenas & Suzanne C. Francis, *Integration Managers: Special Leaders for Special Times*, HARVARD BUSINESS REVIEW, Nov. 2000, at 108

Bryan Borys & David B. Jemison, *Hybrid Arrangements As Strategic Alliances: Theoretical Issues in Organizational Combinations*, 14 THE ACADEMY OF MANAGEMENT REVIEW 234 (1989)

Robert A. Burgelman & Webb McKinney, *Managing the Strategic Dynamics of Acquisition Integration: Lessons From HP and Compaq*, 48 CALIFORNIA MANAGEMENT REVIEW 6 (Spring 2006)

Clayton M. Christensen, Richard Alton, Curtis Rising & Andrew Waldeck, *The Big Idea: The New M&A Playbook*, HARVARD BUSINESS REVIEW, Mar. 2011, at 49

Deepak K. Datta & John H. Grant, *Relationships Between Type of Acquisition, the Autonomy Given to the Acquired Firm, and Acquisition Success: An Empirical Analysis*, 16 JOURNAL OF MANAGEMENT 29 (1990)

Wallace N. Davidson III, Sameh Sakr & Yixi Ning, *Competition for Board Seats Following Stock-For-Stock Mergers*, 27 THE JOURNAL OF FINANCIAL RESEARCH 55 (2004)

Marc J. Epstein, *The Drivers of Success in Post-Merger Integration*, 33 ORGANIZATIONAL DYNAMICS 174 (2004)

Ronald N. Ashkenas, Lawrence J. DeMonaco & Suzanne C. Francis, *Making the Deal Real: How GE Capital Integrates Acquisitions*, HARVARD BUSINESS REVIEW, Jan.–Feb. 1998, at 165

Melissa E. Graebner, *Momentum and Serendipity: How Acquired Leaders Create Value in the Integration of Technology Firms*, 25 STRATEGIC MANAGEMENT JOURNAL 751 (2004)

Jarrad Harford, *Takeover Bids and Target Directors' Incentives: The Impact of a Bid on Directors' Wealth and Board Seats*, 69 JOURNAL OF FINANCIAL ECONOMICS 51 (2003)

Rikard Larsson & Sydney Finkelstein, *Integrating Strategic, Organizational, and Human Resource Perspectives on Mergers and Acquisitions: A Case Survey of Synergy Realization*, 10 ORGANIZATION SCIENCE 1 (1999)

Afsaneh Nahavandi & Ali R. Malekzadeh, *Acculturation in Mergers and Acquisitions*, 13 THE ACADEMY OF MANAGEMENT REVIEW 79 (1988)

Nancy K. Napier, *Mergers and Acquisitions, Human Resource Issues and Outcomes: A Review and Suggested Typology*, 26 JOURNAL OF MANAGEMENT STUDIES 271 (1989)

Amy L. Pablo, *Determinants of Acquisition Integration Level: A Decision-Making Perspective*, 37 ACADEMY OF MANAGEMENT JOURNAL 803 (1994)

Annette L. Ranft & Michael D. Lord, *Acquiring New Technologies and Capabilities: A Grounded Model of Acquisition Implementation*, 13 ORGANIZATION SCIENCE 420 (2002)

David M. Schweiger & J. P. Walsh, *Mergers and Acquisitions: An Interdisciplinary View*, *in* 8 RESEARCH IN PERSONNEL AND HUMAN RESOURCE MANAGEMENT 41 (Gerald R. Ferris & Kendrith M. Rowland eds., 1990)

Paul Shrivastava, *Postmerger Integration*, 7 JOURNAL OF BUSINESS STRATEGY 65 (1986)

Julie Wulf & Harbir Singh, *How Do Acquirers Retain Successful Target CEOs? The Role of Governance*, 57 MANAGEMENT SCIENCE 2101 (2011)

Maurizio Zollo & Harbir Singh, *Deliberate Learning in Corporate Acquisitions: Post-Acquisition Strategies and Integration Capability in U.S. Bank Mergers*, 25 STRATEGIC MANAGEMENT JOURNAL 1233 (2004)

David Bastien & Andrew H. Van de Ven, *Managerial and Organizational Dynamics of Mergers and Acquisitions* (Strategic Management Research Center, University of Minnesota, Discussion Paper No. 46, 1986)

David A. Becher & Terry L. Campbell II, *Director Incentives, Board Seat Retention, and Merger Negotiations* (University of Delaware, Working Paper, 2005)

Hamid Bouchikhi & John R. Kimberly, *Making 1 + 1 = 1: The Central Role of Identity in Merger Math* (ESSEC Business School, Working Paper No. 1204, 2012)

Martin de Sa'Pinto, *Managing Subsidiary Boards*, CORPORATE SECRETARY, Oct. 1, 2005, http://www.corporatesecretary.com/articles/case-studies/11828/managing-subsidiary-boards/

Ayse Olcay Costello & Thomas G. Costello, *Aligning the Interests of Subsidiaries and Headquarters in Multinational Corporations: Empirical Evidence*, 17 MULTINATIONAL BUSINESS REVIEW 163 (2009)

Kevin W. McLaughlin & Chinmoy Ghosh, *The Dynamics of Post-Merger Boards: Retention Decisions and Performance Effects* (University of Connecticut, Working Paper, 2008)

Thomas J. Sabatino & Susan Ellen Wolf, *Subsidiary Governance: What It Is, Why It Matters and How to Build a Good System*, 18 CORPORATE GOVERNANCE ADVISOR, no. 3, 2010, at 5

Caren Siehl, Dayle Smith & Ann Omura, *After the Merger: Should Executives Stay or Go?*, 4 ACADEMY OF MANAGEMENT EXECUTIVE 50 (1990)

Ulrich Steger & Jochen Bellochs, *Herding Your Subsidiaries Towards Good Governance*, FINANCIAL TIMES, Apr. 6, 2006, http://www.ft.com/cms/s/2/6ab84478-f0da-11da-9338-0000779e2340.html#axzz21qbcaj1S

J. Strikwerda, *An Entrepreneurial Model of Corporate Governance: Devolving Powers to Subsidiary Boards*, 3 CORPORATE GOVERNANCE, no. 2, 2003, at 38

Judith R. Thoyer, *Protection for Negotiated Post-Merger Corporate Governance Arrangements - An Update*, *in* CONTESTS FOR CORPORATE CONTROL 2007: CURRENT OFFENSIVE & DEFENSIVE STRATEGIES IN M&A TRANSACTIONS, at 339 (PLI Corporate Law and Practice, Course Handbook Ser. No. 11243, 2007)

EXHIBIT 10

EXHIBIT 138

CONFIDENTIAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MBIA INSURANCE CORPORATION, Plaintiff, -against- COUNTRYWIDE HOME LOANS, INC., COUNTRYWIDE SECURITIES CORP., COUNTRYWIDE FINANCIAL CORP., COUNTRYWIDE HOME LOANS SERVICING, LP (n/k/a Bank of America, N.A., successor by *de jure* merger to BAC Home Loans Servicing, LP), and BANK OF AMERICA CORP., Defendants.	Index No. 602825/2008 IAS Part 3 (Bransten, J.)

EXPERT REPORT OF GUHAN SUBRAMANIAN

June 25, 2012

CONFIDENTIAL UNDER STIPULATION AND ORDER FOR THE PRODUCTION OF CONFIDENTIAL INFORMATION

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I. Introduction

A. Qualifications

1. I serve as the H. Douglas Weaver Professor of Business Law at the Harvard Business School (HBS) and the Joseph Flom Professor of Law and Business at the Harvard Law School (HLS). I hold degrees in Economics, Law, and Business from Harvard University, and I chair its JD/MBA program. I am a member of the New York bar.

2. My research and publications focus on issues of business organization, corporate governance, corporate law, and negotiations. I am a co-author of *Commentaries and Cases on the Law of Business Organization* (3rd ed. 2009), a leading textbook on corporate law. This textbook is used at many top law schools in the United States, including Harvard, Yale, and Stanford law schools. Between 1999 and 2009, I published more "top ten" articles in corporate and securities law, as selected by academics in the field, than any other scholar in the country.

3. Delaware courts regularly cite and endorse my research in deciding important policy questions of Delaware corporate law. For example, in the past few years my research has been cited in *In re CNX Gas Corp. Shareholder Litigation*[1] (endorsing my approach to the judicial review of freeze-out transactions); *In re Del Monte Foods Co. Shareholder Litigation*[2] (citing my empirical work on deal process in leveraged buyouts); and *In re Compellent Technologies, Inc.*

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[1] 4 A.3d 397 (Del. Ch. 2010).

[2] 25 A.3d 813 (Del. Ch. 2011).

Shareholder Litigation[3] (using my empirical work on deal jumping to estimate the likelihood of a higher bid).

4. At HLS, I teach the basic course on Corporate Law to 125-140 students each year. This course has a module on "Fundamental Transactions," which includes a detailed examination of transactional form in mergers and acquisitions ("M&A"). At HBS, I teach in numerous executive education programs, such as the *Advanced Management Program*, *Strategic Negotiations*, and *Changing the Game*. As Harvard JD/MBA program chair, I also teach the JD/MBA seminar every other year to 15-20 JD/MBA students.

5. My Curriculum Vitae, which includes a complete listing of my academic publications, is attached as Appendix A.

B. Statement of Assignment

6. I have been asked by counsel for Bank of America Corporation ("Bank of America" or "BofA") to answer the following questions:

   (1) Do limited liability, corporate separateness, and respecting the corporate form promote corporate welfare and overall economic growth?

   (2) What is the purpose of triangular merger structures, and how common are they?

[3] 2011 WL 6382523 (Del. Ch. Dec. 9, 2011).

(3) Do parent/subsidiary transactions (including asset sales and capital contributions) promote corporate welfare and overall economic growth?

(4) As a matter of public policy, what effect, if any, should these transactions have on the ability of the asset seller's creditors to reach the asset buyer's assets?

(5) How are M&A transactions commonly described in press releases and by businesspeople involved in the deal, and what implications, if any, should these descriptions have for disregarding the corporate form or imposing liability on one of the companies involved in the transaction for the other company's pre-transaction obligations?

7. I have also been asked to apply my analysis of and conclusions on these questions to (i) BofA's acquisition of Countrywide Financial Corporation ("Countrywide"), which closed on July 1, 2008, (ii) subsequent asset sales by Countrywide and its subsidiaries to legacy-BofA subsidiaries in July and November 2008, and (iii) capital contributions by BofA to Countrywide and its subsidiaries following the acquisition.

8. Research assistants at Subramanian Advisory Services, LLC, acting under my direction and supervision, have assisted me in preparing this report.

9. Appendix B contains a list of materials I relied upon in preparing my report. I reserve the right to revise this report based on additional materials that I might review, including materials that have not yet been made available for review.

C. Summary of Conclusions

10. My opinions are set out and explained in this report. In summary, based on the materials on which I have relied, along with my general knowledge and expertise as described in Appendix A, I have reached the following conclusions:

    (1) The principles of limited liability and asset partitioning[4] are essential building blocks for business organizations, because they encourage entrepreneurship and investment, promote diversification, lower monitoring costs for shareholders (including corporate parents) and creditors, and make stock markets feasible. By respecting the corporate form, corporate law maximizes these benefits.

    (2) Triangular merger structures allow corporate buyers and sellers to achieve these benefits in the M&A marketplace. These structures have been used in approximately 90% of large, public-company M&A transactions since 2005. The BofA-Countrywide transaction was a standard triangular merger, directly comparable

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[4] Asset partitioning, sometimes called "entity shielding," is the concept that limited liability allows an investor to partition the assets from which a creditor can recover from other assets the investor does not want to put at risk.

to the deals in my sample that were also executed as triangular mergers.

(3) Transactions following a triangular merger between the parent and subsidiary (such as asset sales and capital contributions) can move assets to where they can be most efficiently deployed within the corporate enterprise. Through these efficiencies, these asset sales and capital contributions can create substantial value for the corporate enterprise (including stockholders) and the overall economy.

(4) These types of follow-on transactions between BofA and Countrywide (including asset sales and capital contributions) should not, by themselves, allow Countrywide's creditors to reach BofA's balance sheet. Doing so would be bad policy because it would: (a) reduce the benefits of asset partitioning, entity shielding, and internal capital markets (*i.e.*, efficient deployment of assets within the enterprise); (b) chill value-creating transactions between the parent and subsidiary; (c) deter potential buyers from initiating value-creating deals, which would reduce "allocational efficiency" in the M&A marketplace and reduce overall societal wealth; and (d) give Countrywide's creditors an unfair and unexpected windfall at the expense of BofA's shareholders and creditors.

(5) Businesspeople and press releases typically reference transactions using colloquial shorthand, which is often easier to understand but is not always legally precise. These practices and norms indicate that third parties to the BofA-Countrywide transaction could not reasonably rely on businessperson comments to draw conclusions about that transaction's legal structure or effect. Such third parties could, among other things, review the publicly filed transaction documents that describe the transactions precisely. It would severely inhibit businesspeople's ability to discuss transactions publicly if their imprecise formulations related to legal entity structures could later have unintended legal consequences, including disregarding the corporate form and forfeiting limited liability.

II. The Core Building Blocks for Business Organization

A. The Importance of Limited Liability for Economic Development

11. The modern corporate form provides separate legal status for the business enterprise. This is an "extraordinarily important" legal concept.[5] Corporate separateness facilitates creditor/debtor relations by clearly delineating the assets on which corporate creditors can rely for repayment—all of the corporation's assets (or their fair-value equivalents), but none of the shareholders' assets. Thus, the notion of a separate person vastly reduces the costs of contracting in business

[5] WILLIAM T. ALLEN, REINIER KRAAKMAN & GUHAN SUBRAMANIAN, COMMENTARIES & CASES ON THE LAW OF BUSINESS ORGANIZATION 87 (3rd ed. 2009).

because it establishes the reasonable expectations on both sides of the creditor/debtor relationship.

12. Limited liability is a legal manifestation of corporate separateness. While it is now taken for granted that shareholders (including parent companies that own subsidiaries or shares of subsidiaries) are not ordinarily liable for a corporation's obligations, liabilities, or debts, the movement from unlimited to limited liability was perhaps the most important development in corporate law. Limited liability took hold in the U.S. in the first half of the 1800s, coincident with the beginning of the American Industrial Revolution.[6] New York allowed limited liability for corporations in 1811; New Hampshire in 1816; Connecticut in 1818; and Massachusetts in 1830, to name a few states.[7] A brief summary of how limited liability developed is set out in my textbook:

> Because limited liability represented a radical break with the common law liability rules of agency and partnership, its development took time. Shareholders only gradually won the protection of limited liability for private business ventures in the United States during the first half of the nineteenth century. Great Britain established it later, with the Limited Liability Act of 1855. Only gradually did limited liability come to be seen as a device that assisted people in arranging voluntary contractual relations. . . But limited liability ultimately emerged as the general default rule for corporations everywhere, and there are sound economic reasons for its prevalence.[8]

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6 *See*, *e.g.*, LEE T. WYATT III, THE INDUSTRIAL REVOLUTION 86 *et seq.* (2009) ("Beginning in 1800 the pace of change quickened in the United States. By the late 19th century, the United States would grow to rival Great Britain as the most powerful industrial nation in the world. The rate of change was dramatic.").

7 Kevin F. Forbes, *Limited Liability and the Development of the Business Corporation*, 2 J. L. ECON. & ORG. 163, 172 (1986).

8 ALLEN, KRAAKMAN & SUBRAMANIAN, *supra* note 5, at 96-97 (citations omitted).

13. By the early 1900s, it had become clear that limited liability contributed enormously to wealth creation in any market economy. For example, in 1926 *The Economist* noted:

> The economic historian of the future may assign to the nameless inventor of the principle of limited liability, as applied to trading corporations, a place of honour with Watt and Stephenson, and other pioneers of the Industrial Revolution. The genius of these men produced the means by which man's command of natural resources has multiplied many times over; the limited liability company the means by which huge aggregations of capital required to give effect to their discoveries were collected, organized and efficiently administered.[9]

14. Limited liability promotes corporate and societal wealth in at least five specific ways. First, it fosters economic growth by promoting investment. Because individuals and companies looking to start a new business can limit their risk to the size of their investment, limited liability encourages them to engage in entrepreneurial risk-taking. Similarly, limited liability encourages individuals and companies to invest in or acquire an existing business because only their investment, and not their personal or other assets, will be put at risk.

15. Second, limited liability encourages investors to diversify their portfolios. This is because, absent limited liability, all of an investor's personal or other assets would be put at risk with each small investment. As Judge Easterbrook and Professor Fischel have observed, absent limited liability, "the rational strategy . . . would be to minimize the number of securities held," which would effectively force

[9] *The Economist*, Dec. 18, 1926, at 1053.

investors "to bear risk that could have been avoided by diversification."[10] This, in turn, would raise the cost of capital and hinder economic growth.

16. To make this point tangible, consider an investor contemplating an investment in two companies, say Facebook and Ford Motor Co. Without limited liability, a rational investor would buy shares in only one company or the other to minimize the risk of personal liability. With limited liability, the shareholder (including companies) can optimally diversify his or her or its portfolio across the two companies, thereby reducing exposure to firm-specific risk. With lower risk, the investor will demand a lower "risk premium" for holding shares of either company, which in turn reduces the cost of capital for both companies.

17. Third, limited liability reduces monitoring costs for creditors and shareholders, thus further lowering borrowing and investment costs. Limited liability enables creditors to have a claim against a business's assets without having to share those assets with either the shareholders' personal creditors or affiliated businesses' creditors. As numerous commentators have recognized, this "asset partitioning" (sometimes also referred to as "entity shielding") facilitates lending by lowering monitoring costs for creditors.[11]

18. For example, absent limited liability, if a parent corporation had five wholly owned subsidiaries, the parent corporation's creditors would need to monitor and evaluate the credit risk of not only the parent, but also each of the five subsidiaries.

[10] Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. CHI. L. REV. 89, 97 (1985).

[11] *See, e.g.*, ALLEN, KRAAKMAN & SUBRAMANIAN, *supra* note 5, at 60, 98.

Because the parent would be liable for its subsidiaries' debts, the parent's creditors would face greater risk, would need to expend more funds on monitoring, and would demand a higher rate of return. Overall, this would raise the cost of capital and dampen economic activity. Without limited liability, no potential creditor could do business with any company without also analyzing each of its subsidiaries' creditworthiness and exposures. This is because, absent limited liability, the subsidiaries' creditors could lay claim to the parent company's assets to satisfy the subsidiaries' obligations. While many parent companies currently report their financial results on a consolidated basis, a parent company's creditors would need to obtain and monitor substantially more information about the subsidiaries than is provided on a consolidated balance sheet.

19. Fourth, limited liability reduces the shareholders' management monitoring costs. Shareholders risk financial losses from the actions of their agents—*i.e.*, the corporation's managers—who control corporate decision-making and strategy. The more financial risk shareholders bear, the more they will monitor their agents.[12] Thus, without limited liability, rational shareholders would assume an active role in monitoring management (which they may lack the expertise to do) or forego investing altogether—both of which are undesirable results from an economic perspective. With limited liability, shareholders face significantly less risk, so there is no need to monitor management as closely as if the shareholders'

[12] Easterbrook & Fischel, *supra* note 10, at 94.

personal assets were at risk. This substantially reduces the shareholders' investment costs.

20. Without limited liability, shareholders must also monitor the wealth of other shareholders, since the lower their wealth, the greater the probability that the shareholder's own assets would be needed to pay a judgment.[13] This would be both time consuming and costly. It would also prevent the free transfer of shares because potential buyers would need to assess both the wealth of other shareholders and the risk that that wealth may decline. Limited liability, in contrast, makes the identity of other shareholders irrelevant, thus rendering shares fungible and freely transferable.

21. Fifth, by making shares freely transferable, limited liability makes it feasible for these shares to trade on impersonal markets, such as our modern stock exchanges. Without limited liability, stock markets—and the ability they provide for a wide range of investors to participate in value creation and economic growth—could not exist. This also allows "price discovery" through the buying and selling of shares, which allows capital to flow to its highest and best use. Tradable shares also introduce a "market for corporate control" in which companies can be bought and sold, which in turn allows horizontal and vertical integration, economies of scale and scope, and numerous other efficiencies that can be gained through mergers and acquisitions.

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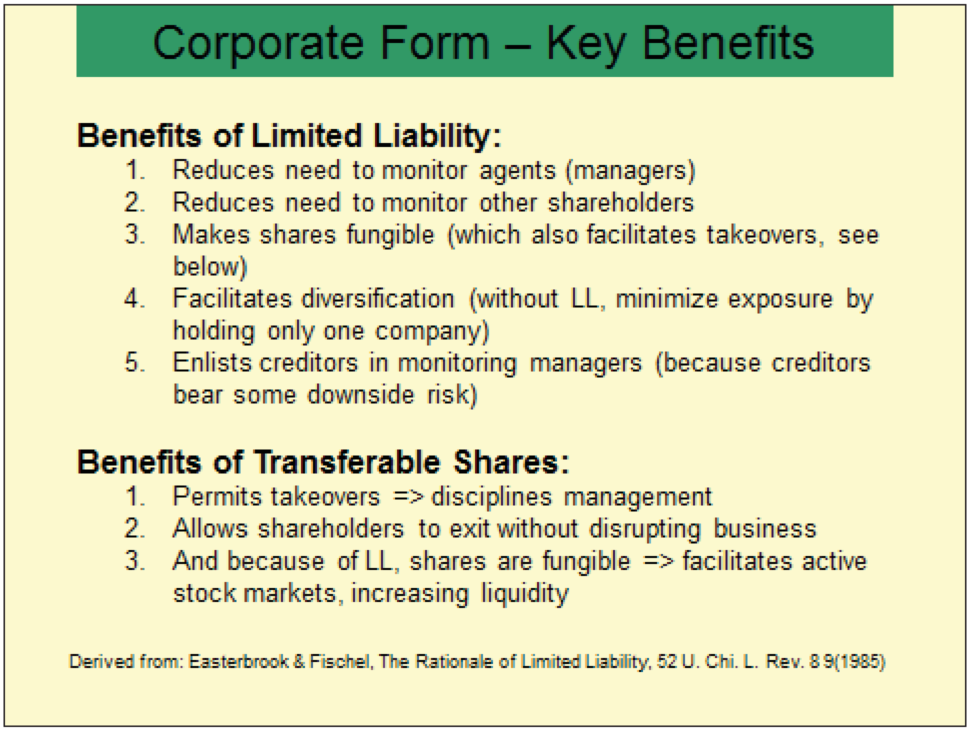
[13] *Id.* at 95.

22. In summary, limited liability is the lynchpin of the modern capital markets. Limited liability encourages entrepreneurship and investment, promotes diversification, lowers shareholder and creditor monitoring costs, and makes stock fungible. Indeed, without limited liability, the large-scale separation of corporate ownership from management would not have occurred (the monitoring costs would be too high), which would have deprived shareholders of management's specialized skill and expertise. Nor would there be mass and diffuse ownership of freely transferable stock, which offers many benefits of its own, including increased market efficiency and lower transaction costs. Without limited liability, today's capital markets would not exist, there would be significantly less investment, and economic growth would be substantially reduced.

23. These benefits are emphasized in my introductory course on corporate law in the following slide:



24. "Piercing the corporate veil" is a doctrine that undermines limited liability, allowing a corporation's creditors to reach its shareholders' assets. Because of the many significant limited liability benefits described above, "[a]ll courts agree that veil piercing should be done sparingly."[14]

B. The Parent-Subsidiary Relationship and the Economic Benefits of Holding-Company Structures

25. The general rule—and the underlying strong policy rationales—that a shareholder is not liable for a corporation's liabilities applies with equal force when the shareholder is itself a corporation (*i.e.*, there is a parent/subsidiary relationship). In the 1890s, New Jersey became the first U.S. state to permit corporations to own other corporations' stock, effectively authorizing structures in which a parent

---

14 *See* ALLEN, KRAAKMAN & SUBRAMANIAN, *supra* note 5, at 152

company owns multiple operating subsidiaries.[15] Since then, holding-company structures have become virtually ubiquitous forms of business organization, to the point where I am not aware of any significant U.S. corporation today that does not operate, at least in part, through corporate subsidiaries. For example, I examined the corporate structures of the 20 largest financial institutions in the U.S. (measured by market capitalization as of January 2008) and found that all of them operated through corporate structures that included a number of subsidiary companies.[16] I also examined the corporate structure of the 20 largest non-financial companies in the U.S. (measured by market capitalization as of March 2008) and also found that all of them operated through corporate structures that included a number of subsidiary companies.[17]

26. Holding-company structures amplify the benefits of asset partitioning and entity shielding by allowing the organizational form to reflect the modern business enterprise's complexities. For example, a holding-company structure facilitates decentralized management, which can make subsidiary companies more

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15 ALLEN, KRAAKMAN & SUBRAMANIAN, *supra* note 5, at 91.

16 The 20 companies were (in descending order of market capitalization): Berkshire Hathaway, Bank of America, AIG, Citigroup, JPMorgan Chase, Wells Fargo, Goldman Sachs, Wachovia, American Express, Morgan Stanley, Bank of New York Mellon, US Bancorp, Merrill Lynch, MetLife, Prudential Financial, CME Group, Travelers, Lehman Brothers, State Street, and AFLAC. In each case, the corporate structure was examined using Exhibit 21.1 of the company's 2008 annual report filed with the SEC on Form 10-K.

17 The 20 companies were (in descending order of market capitalization): Exxon Mobil, General Electric, Microsoft, AT&T, Procter & Gamble, Wal-Mart, Johnson & Johnson, Chevron, IBM, Cisco Systems, Pfizer, Coca-Cola, Apple, Intel, ConocoPhillips, Pepsico, Hewlett Packard, Philip Morris International, Verizon Communications, and Google. In each case, the corporate structure was examined using Exhibit 21.1 of the company's 2008 annual report filed with the SEC on Form 10-K.

responsive to local markets and changing conditions. This phenomenon is well recognized. When Sears reorganized into a holding-company structure around each of its major brands in 2008, a spokesman explained that the move was intended to give the operating businesses "greater control, authority and autonomy."[18] CEMEX, the Mexico-based multinational cement company, operates through subsidiaries in each country in which it does business. A Sloan School of Management case study on the company notes that "the CEMEX way" creates value by "standardiz[ing] business processes, technology, and organizational structure across all countries while simultaneously granting countries certain operational flexibility, enabling them to react more nimbly to local operating environments."[19]

27. A holding-company structure also enhances the ability to track performance at the individual-business level. This, in turn, facilitates "internal capital markets," in which corporate managers direct capital to the businesses where opportunities are the largest.[20] For example, when Kikkoman Corporation shifted to a holding-company structure in October 2009, its first justification was "to strengthen its

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[18] Sandra M. Jones, *Sears to Shift to Independently Run Units*, CHICAGO TRIBUNE (Jan. 20, 2008).

[19] DONALD R. LESSARD & CATE REAVIS, CEMEX: GLOBALIZATION "THE CEMEX WAY," MIT SLOAN MANAGEMENT CASE STUDY (Mar. 5, 2009).

[20] *See* George G. Triantis, *Organizations as Internal Capital Markets: The Legal Boundaries of Firms, Collateral, and Trusts in Commercial and Charitable Enterprises*, 117 HARV. L. REV. 1103 (2004).

strategic planning capabilities and optimize allocation of the Group's corporate resources."[21]

28. Holding companies also encourage risk-taking because they allow parent companies to start new businesses without putting their existing assets at risk. Without this ability, existing companies would be at a competitive disadvantage because they would have to (in effect) serve as guarantor for the new business, while start-up ventures could not (and therefore would not have to) provide such a guarantee.

29. A few examples, all from April/May 2012:

    a. Signature Bank, a New York commercial bank, formed a new subsidiary, Signature Financial LLC, in order to enter into the specialty financing area.[22]

    b. Bio-Matrix Scientific Group, Inc. formed a new subsidiary, Regen BioPharma, Inc., to acquire patents, perform accelerated preclinical and clinical development, and license technology in the area of stem cells.[23]

    c. DM Products, Inc., a company specializing in health, beauty, fashion, and fitness products, formed a new subsidiary, Elk Films, Inc., to produce films.[24]

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[21] *Kikkoman Corporation to Adopt a Holding Company Management Structure*, Kikkoman Corp. Press Release (Jan. 26, 2009).

[22] *Signature Bank Establishes Signature Financial, LLC Subsidiary, Marking Its Entry into the Specialty Financing Arena*, Signature Bank Press Release (April 18, 2012).

[23] *Bio-Matrix Scientific Group, Inc. Announces Newly Former Stem Cell Subsidiary – Regen BioPharma, Inc.*, MARKETWIRE (April 30, 2012).

[24] *DM Products Establishes Film Industry Division*, DM Products Press Release (May 1, 2012).

These kinds of holding-company structures allow existing companies to begin new ventures on a level playing field with new entrants.

C. Implications for *De Facto* Merger Doctrine and Related Doctrines

30. Reflecting the acknowledged benefits of limited liability, asset partitioning, entity shielding, and holding-company structures, corporate law generally takes a formalistic approach to business organization—sometimes called an "independent legal significance" approach to assessing corporate transactions.[25] As explained in my textbook:

> Corporate law contains a large element of formalism. Corporations exist as entities because certain formal steps are taken. Incorporators sign incorporation documents containing designated information, they hold an organizational meeting at which designated acts are performed, they file a charter in a prescribed form . . . All of this is not "mere formality"; it is a source of utility. It permits people to accurately predict the legal consequences of their activities.[26]

31. One application of this general approach is a narrow application of doctrines that ignore legal structures, such as *de facto* merger doctrine, implied assumption of liability, substantive consolidation, and piercing the corporate veil. These doctrines could all be used to achieve the same outcome, namely, access to some portion, or in some cases, all of the shareholders' assets by the corporation's creditors. In the parent-subsidiary context, the parent company is the shareholder

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[25] *See, e.g.*, *Hariton v. Arco Electronics, Inc.*, 182 A.2d 22 (Del. Ch. 1962), *aff'd*, 188 A.2d 123 (Del. 1963). *See also* ALLEN, KRAAKMAN & SUBRAMANIAN, *supra* note 5, at 480 ("The provisions of the Delaware statute are said to have 'equal dignity' or 'independent legal significance.'").

[26] ALLEN, KRAAKMAN & SUBRAMANIAN, *supra* note 5, at 480.

of the subsidiary, so the creditors would gain recourse against the parent company's assets. In my opinion, the contours and limits of these doctrines represent sound policy because they maximize the benefits of asset partitioning and entity shielding, while guarding against a narrow set of abuses.

32. With respect to voluntary creditors, who became creditors to the company through a negotiated commercial arrangement, *de facto* merger and related doctrines protect the creditors' reasonable expectations, thereby reducing transaction costs in the creditor/debtor relationship. Voluntary creditors, for example, reasonably expect the debtor's shareholders not to make fraudulent misrepresentations to them. They also expect the debtor not to abscond with the corporation's assets that the creditor was reasonably relying on to provide a source of payment for the debt. As explained in my textbook: "[D]on't business debtors implicitly represent that their assets, as affected by normal business (e.g., sales for fair value) or diminished by normal wear and tear and legal distributions, will be available to creditors in the event of default?"[27]

33. If *de facto* merger and related doctrines were expanded to apply in the scenario involving voluntary creditors who have not received misrepresentations from the shareholder/parent, those creditors would receive an unfair windfall, going beyond their reasonable expectations as creditors; the benefits of asset partitioning, entity shielding, and internal capital markets would be substantially reduced; value-creating transactions between the parent (shareholder) and subsidiary (corporation)

[27] *See* ALLEN, KRAAKMAN & SUBRAMANIAN, *supra* note 5, at 144.

would be chilled; and potential buyers would be deterred from initiating value-creating deals in the first place because of the risk of exposure to the subsidiary's creditors.

34. Voluntary creditors take on the risk that the debtor corporation will default on the debt; if this risk is unacceptable to the creditor, they can negotiate for security or other guarantees, or can, of course, choose not to provide credit. For example, voluntary creditors can negotiate change-of-control provisions, such as those that required Countrywide to repay approximately $11.5 billion under certain credit agreements upon completion of its merger with Red Oak.[28] From a policy perspective, there is no reason to provide an equitable remedy when contract can allocate risk effectively and efficiently.

III. The Triangular Merger Mechanism

A. Business Purposes and Economic Benefits

35. The triangular merger structure is a common method for acquiring a company. To use this technique, the acquiring corporation ("Buyer Co.") creates a new wholly owned subsidiary ("New Co."). New Co. and the target company ("Target Co.") then merge in a statutory merger under state law. The result is that Target Co. becomes a wholly owned subsidiary of Buyer Co.

36. Triangular mergers can be executed as either "forward" or "reverse" mergers. In a forward triangular merger, the selling company merges into a wholly owned subsidiary of the buying company. In a reverse triangular merger, a subsidiary of

[28] *See* Countrywide Financial Corp. Current Report (Form 8-K) (July 8, 2008), at 2-4.

the buyer merges into the seller. BofA's acquisition of Countrywide was structured as a forward triangular merger.

37. One of the benefits of triangular structures (which I emphasize in my teaching) is to preserve the separateness of the buying company and its shield against the selling company's liabilities. Triangular merger mechanisms promote capital investment and economic growth by allowing buyers and sellers to realize the benefits of asset partitioning, entity shielding, and internal capital markets in M&A transactions. In addition, triangular merger mechanisms help buyers and sellers mitigate the information asymmetry problem. In most situations, the buyer will know less than the seller about the seller's assets and liabilities, and the seller will know less than the buyer about the buyer's assets and liabilities. While the due diligence process can mitigate these information asymmetries to some extent, the problem cannot be eliminated completely. For these reasons, the triangular structure allows the buyer to purchase the seller without becoming liable for the seller's liabilities. That is perfectly consistent with the reasonable expectations of the creditors and others who did business with the seller and could never have expected to have access to anything except the seller's assets to cover the seller's obligations. Indeed, such creditors never had anything to do with the buying company.

38. If the buyer could not protect itself against the seller's liabilities, and (in a stock deal) the seller could not protect itself against the buyer's liabilities, then many value-creating deals would be deterred. To avoid this outcome, most acquisitions in the United States today are executed through a triangular structure, so that the

two companies' assets and liabilities remain separate. In this way, triangular merger mechanisms facilitate valuable transactions that might otherwise not happen.

39. In addition to preserving the buyer's liability shield, a triangular structure can provide other benefits as well. For example, a triangular structure can keep the subsidiary separate for legal, regulatory, tax, or marketing reasons. In fact, most private equity firms use a triangular merger structure to acquire banking assets to ensure that their other portfolio companies are not subject to bank regulators' authority.[29]

40. Thus, there is strong policy support for allowing triangular acquisition structures to avoid imposing the liabilities of the selling company on the buying company. If the only permitted acquisition structure were a direct (non-triangular) merger, every acquisition would expose the buying company to the selling company's potential liabilities. That would deter beneficial transactions, foster significant inefficiencies, and prevent societal wealth creation that an M&A market can provide.

41. The benefits of the triangular merger structure are described in my textbook as follows:

> [T]he surviving corporation in a merger assumes the liabilities of both constituent corporations by operation of law. But to expose

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[29] *See* GUHAN SUBRAMANIAN, A WHITE PAPER ON THE FEDERAL DEPOSIT INSURANCE CORPORATION'S PROPOSED STATEMENT OF POLICY ON QUALIFICATIONS FOR FAILED BANK ACQUISITIONS (August 10, 2009) at 13, *available at* http://www.fdic.gov/regulations/laws/federal/2009/09c37AD47.PDF.

> the acquirer's assets to the (imperfectly known) liabilities of a new acquisition is inevitably a risky step. Thus, the acquirer has a strong incentive to preserve the liability shield that the target's separate incorporation confers. This can easily be done by merging the target into a wholly owned subsidiary of the acquirer (or reversing this, by merging the subsidiary into the target). And this is precisely what is done. Preserving the liability protection that separate incorporation provides to the acquirer is almost always a highly desirable business goal. Most mergers are accomplished in a way that permits two separate corporate entities to survive the merger. This maintenance of the liability shield is the premise for the triangular merger form. . . .[30]

42. It is universally accepted among corporate planners, legal practitioners, and academics that a triangular merger preserves the buyer's liability shield against the seller's liabilities.[31] Our M&A marketplace, and our economy overall, relies on this assumption.

43. In a stock-for-stock transaction, preserving the liability shield works in the other direction too: the buying company's (*i.e.*, the parent's) creditors cannot look to the selling company's (*i.e.*, the subsidiary's) assets to satisfy their claims until the seller's company's creditors have been satisfied. This is not a trivial thing: if it were not the case, then the seller's creditors would have to compete with the buyer's creditors for the seller's assets. This constant jostling (in effect) among the two company's creditors would destabilize creditor/debtor relations.

44. From my personal knowledge of scholarly and practitioner-oriented treatises, as well as my further review of these sources in conjunction with this report, I am not aware of a single academic or practitioner source suggesting that a triangular

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[30] ALLEN, KRAAKMAN & SUBRAMANIAN, *supra* note 5, at 461.

[31] *See infra*, n.32.

merger structure would not preserve the liability shield of the buyer against the seller's liabilities.[32] Any conclusion to the contrary, then, would represent a radical break with the universal understanding among academics and practitioners, and would defeat the capital markets' expectations.

45. In my opinion, the idea that a triangular merger structure preserves the liability shield of the buyer against the seller's liabilities also represents wise public policy. As described in Part II, asset partitioning, entity separateness, and internal capital markets are important drivers of wealth creation in any market economy. Disregarding corporate structures would diminish the benefits of these devices, thereby reducing overall wealth creation.[33]

46. Corporate planners rely on the benefits of asset partitioning and entity separateness when they structure a deal. If courts were to ignore the structures that corporate planners used, the businesspeople on one or both sides would be less likely to do the deal in the first place. The result would be reduced "allocational efficiency"

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[32] *See, e.g.*, WILLIAM J. CARNEY, MERGERS AND ACQUISITIONS (2nd ed. 2007) at 90 ("[A] triangular merger isolates the target's liabilities from the parent corporation, which may be important where contingent liabilities, such as product liabilities or environmental liabilities are a risk."); ROBERT CHARLES CLARK, CORPORATE LAW (1986) at §10.4 (noting that triangular form insulates parent from subsidiary liabilities and that "[s]eparation will be particularly important when P[urchaser] is worried that the putative acquired company T may have large unknown liabilities or contingent liabilities whose risk of actualization is larger than P was led to believe."); ROBERT F. BRUNER, APPLIED MERGERS & ACQUISITIONS (2004) at 556-557 (noting that one of the advantages of both forward and reverse triangular mergers is that the buyer is insulated from the target's liabilities).

[33] *See, e.g.*, John B. Taylor, *Rules for America's Road to Recovery*, WALL ST. J. (June 1, 2012) at A13 (op-ed) ("It is deviation from a rule or a strategy that creates uncertainty and hinders prosperity.").

(because assets would not flow to their highest and best use) and lower overall societal wealth.

47. Acquisitions of troubled companies would be particularly deterred. This is undesirable from a public-policy perspective because troubled companies are often most in need of acquisition. The reasoning is straightforward: companies often become troubled because of poor management, and buyers can remedy that by bringing their managerial expertise to the target company. This, in turn, delivers value for shareholders, including the target's shareholders. But if there were a risk of importing unlimited liability from the target company—that is, if the buying company risks importing the troubled target company's exposures—buyers would likely stay away. That result is undesirable from any perspective: the troubled company continues its decline, while the potential buyer loses the opportunity to acquire those assets and create value.

48. Consider the specific scenario of a troubled company with a potential "ticking time bomb"—for example, large potential liability for injuries caused by alleged negligence in its manufacturing operations. Assume a potential buyer could create value by improving the troubled company's manufacturing operations, including improving the safety of these operations. An acquisition by a successful company would certainly be a societal benefit. A buyer would initiate the acquisition if it felt comfortable that a triangular structure would be respected. But if there were any chance that the ticking time bomb would (to continue the analogy) explode in the buyer's face, the buyer would likely stay away. Manufacturing and safety standards would remain lower than they could have been had the acquisition taken

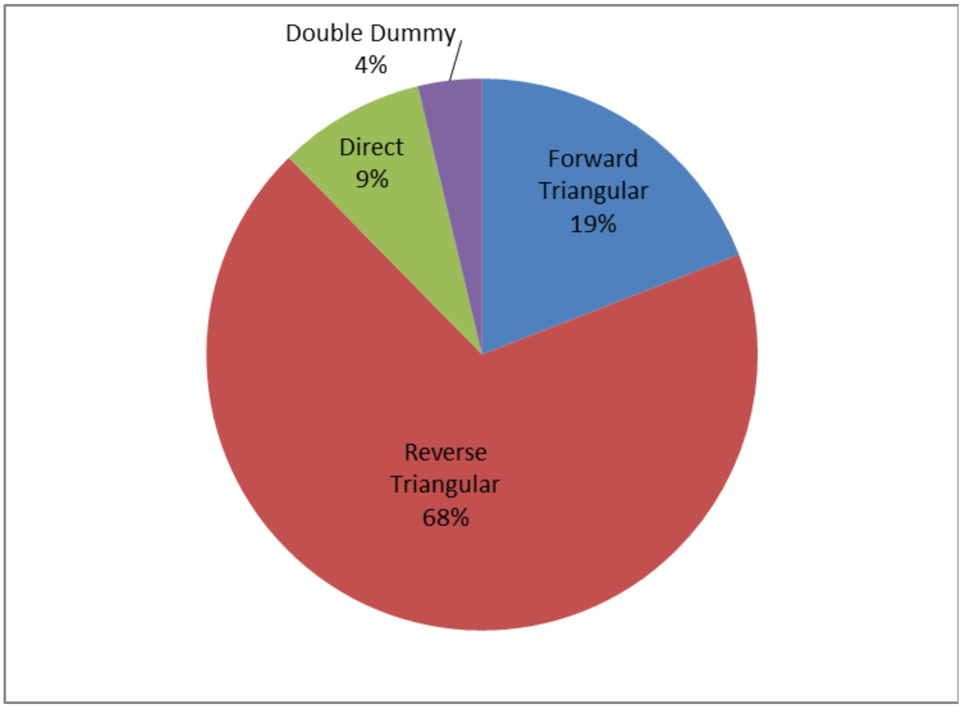
place. And if the company were to fail, other innocent parties (e.g., employees) would be harmed.

B. Empirical Evidence on Choice of Transactional Form

49. To determine whether triangular mergers are a common transactional form, I conducted empirical research on the merger structures that were used during the approximate timeframe of the Bank of America-Countrywide transaction. I used the MergerMetrics database to construct a sample of all completed, friendly M&A deals involving U.S. public-company targets and strategic (non-financial) U.S. buyers, announced between January 2005 and December 2011, and completed by May 1, 2011, in which the transaction value was greater than $1.0 billion. I excluded BofA-Countrywide, which otherwise would be included in the sample. The resulting database contains 267 transactions.

50. The mean (median) deal size in the sample is $5.3 billion ($2.7 billion), which is roughly comparable to BofA-Countrywide ($4.1 billion). I examined the sample to determine if there were any other sources of potential bias, e.g., skewed industry or deal timing, and found none. I concluded from this analysis that the sample deals are comparable to BofA-Countrywide.

51. I examined the transactional form used in each of the transactions in my sample, as coded by MergerMetrics.[34] The results of this analysis are summarized in the following chart:



52. The chart shows that, of these 267 transactions, 233 (or 87%) used a triangular structure: 183 transactions (69%) were structured as reverse triangular mergers, and 50 transactions (19%) were structured as forward triangular mergers. Another 10 transactions (4%) were structured as double-dummy transactions, in which the buyer and the seller both merged into subsidiaries of a newly formed holding company. Like triangular structures, double-dummy structures also preserve the

[34] I have not independently verified the accuracy of the MergerMetrics data. I believe it to be a reliable data source, however, based on my experience using MergerMetrics for my academic work.

corporate shield between the buyer and the seller, and are sometimes preferred over the more common triangular structures for tax reasons.

53. When forward triangular, reverse triangular, and double-dummy structures are considered together, 91% of the deals in the sample were structured to preserve the liability shield between the buyer and the seller. This figure represents an increase in the use of triangular structures relative to earlier periods. In a prior (unpublished) analysis of 92 large, public-company acquisitions announced between 1998 and 2002, I found that 77% of them used either the forward triangular, reverse triangular, or double-entity structure. Applying the methodology described above to the years 2003-2004, I found that 82% of transactions were structured to preserve the buyer's liability shield through one of these three structures.

54. I conclude that transactions are regularly structured to preserve the liability shield between buyer and seller. In fact, the use of such structures has increased over the past fifteen years. These findings are consistent with the theoretical points noted in Part II regarding the benefits of asset partitioning, entity separateness, and internal capital markets.

C. Application to BofA-Countrywide

55. As noted, BofA's acquisition of Countrywide was structured as a forward triangular merger. BofA created a wholly owned subsidiary called Red Oak Merger Corporation, and on July 1, 2008, Countrywide merged with and into Red

Oak, with Red Oak as the surviving company.[35] The merger agreement required Red Oak to be renamed Countrywide immediately thereafter.[36]

56. I have examined the BofA-Countrywide merger agreement, as well as other SEC filings by BofA and Countrywide pertaining to the forward triangular merger, and find nothing unusual about its structure.[37] In my opinion, it is a standard triangular merger, directly comparable to the 87% of deals in my sample that were also executed as triangular mergers.

57. BofA's use of a triangular merger structure is consistent with an expectation that Countrywide's liabilities would remain at Countrywide, except, of course, where expressly assumed. In other words, it was reasonable to expect that the Countrywide acquisition would not put BofA's existing assets at risk. And in view of the overall economic environment at the time, as well as Countrywide's condition, this was likely an important expectation. Beginning in the summer and fall of 2007, credit markets were severely disrupted.[38] For its part, Countrywide Bank FSB (a Countrywide subsidiary that operated a thrift) experienced a "run" on its deposits in August 2007,[39] and Countrywide's stock price steadily declined

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[35] Countrywide Financial Corp. Current Report (Form 8-K) (January 17, 2008), Ex. 2.1 ("Merger Agreement"); *see also* BACMBIA-C0000160048–160113.

[36] Merger Agreement § 1.6.

[37] *See, e.g.*, *id.* § 1.1.

[38] *See, e.g.*, Michael M. Grynbaum, *Home Sales And Prices Fall Sharply*, NEW YORK TIMES (Sept. 28, 2007).

[39] *See, e.g.*, E. Scott Reckard, *The Mortgage Meltdown; A rush to pull out cash; Unsure about the future of home-loan giant Countrywide, bank customers line up to withdraw their money*, LOS ANGELES TIMES (Aug. 17, 2007).

through the latter half of the year.[40] Housing markets were also declining, causing other major mortgage lenders (such as New Century Financial) to apply for bankruptcy protection.[41] In view of these substantial risks, BofA would likely not have acquired Countrywide if it risked becoming responsible directly for all of Countrywide's liabilities.

IV. Parent/Subsidiary Transactions Following Triangular Mergers

A. Parent/Subsidiary Asset Transfers

58. After a triangular merger has closed, the business rationale for the transaction typically requires management to consider the most efficient use of the assets that will generally exist at subsidiaries of both the buyer and seller. In some instances, there may be important business reasons to move assets among subsidiaries, or between the parent and a subsidiary, to deploy assets more efficiently and unlock value for the corporation as a whole. Parent/subsidiary transactions can also be motivated by regulatory, tax, or accounting reasons. Regardless of the specific business motivation, the common theme is that the transaction creates value for the corporate structure overall.

59. In some instances, the parent might be able to capture this value just by having the buyer's subsidiary and the seller's subsidiary contract with each other. But, as a practical matter, the transaction costs involved typically make this approach

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[40] *See* http://www.bloomberg.com/quote/CFC:US/chart, accessed on June 21, 2012.

[41] *See New Century Financial Corporation Files for Chapter 11*, New Century Financial Corp. Press Release (Apr. 2, 2007).

difficult, or at least unlikely to achieve the full synergies that are feasible.[42] More often, value is achieved by transferring assets at fair value between subsidiaries of the two firms, or between the parent and a subsidiary of the acquired company. In this way, the holding company can deploy its overall asset portfolio more effectively, creating value for the company and increasing overall societal wealth.

60. Note that these benefits arise regardless of the transfers' magnitude. In general, the greater the magnitude of such transfers, the more societal wealth is unlocked through the transactions.

B. Capital Contributions from Parent to Subsidiary

61. Just as assets might not be deployed efficiently after a triangular merger, capital may not be deployed efficiently across a holding-company structure. A classic example—one that is studied extensively in business schools and management textbooks—is the situation in which a holding company has both "cash cow" businesses and "cash hungry" businesses. Cash-cow businesses are typically slower-growth but generate large free cash flows. Cash-hungry businesses are typically higher-growth but often cash-flow negative. Without the ability to transfer capital from a cash-cow business to the parent and, in turn, to a cash-hungry business, the parent would not be able to optimize its capital allocation and overall corporate value would be diminished.

62. Part II.B describes the benefits of "internal capital markets," *i.e.*, the ability to move capital among affiliated companies within holding-company structures.

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[42] *See* R. H. Coase, *The Nature of the Firm*, 4 ECONOMICA 386 (1937).

Capital contributions by parents to subsidiaries are the mechanism by which internal capital markets are achieved.[43] Without the ability to make capital contributions, capital would be deployed less efficiently within the holding-company structure. Returning to the example above, the cash-cow business would keep the large free cash flows that it generates (potentially deploying it in inefficient ways[44]), while the cash-hungry business would have to self-fund its growth, thereby growing more slowly than would be optimal from the corporate perspective.

C. Policy Assessment

63. In my opinion, if parent/subsidiary transactions and/or capital contributions from the parent to the subsidiary were thought to allow the subsidiary's creditors to reach the parent company's assets, social welfare would be reduced in three ways.

64. <u>First</u>, parent companies would be less willing to move assets among subsidiaries or make capital contributions for fear of triggering exposure to the subsidiaries' creditors. This means that both assets and capital would be deployed less efficiently within the corporate enterprise. The deterrence effect is particularly troublesome because these transactions are often "win-win" for the parent and the

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[43] Parental guarantees, which are essentially contingent capital contributions, can be used for this same purpose. My opinions concerning capital contributions therefore generally apply to parental guarantees. *See, e.g.*, Office of the Comptroller of the Currency, *Bank Accounting Advisory Series* (March 2012 (revised)), at 193 ("Upon execution of the guarantee, accounting entries are not required, because the guarantee is considered a contingent capital contribution"), *available at* http://www.occ.treas.gov/publications/ publications-by-type/other-publications-reports/BAAS.pdf.

[44] *See generally* Michael C. Jensen & William H. Meckling, *The Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

subsidiary. In the case of capital contributions, for example, the parent and the subsidiary both benefit from strengthening the subsidiary's balance sheet. The subsidiary's creditors are also better off by virtue of these capital contributions. To chill such transactions, then, would have negative social-welfare effects.

65. Second, if moving assets among subsidiaries at fair value or making capital contributions to a subsidiary exposed the parent company's assets to the subsidiary's creditors, those creditors would receive an inequitable windfall, in the sense that they did not bargain for access to the parent company's assets when they became creditors to the subsidiary. Nor could they have reasonably expected such access in view of well-accepted norms in transactional practice, the regular use of triangular merger structures, and the approach generally taken by courts of honoring the corporate form. Providing such a windfall to creditors that goes beyond their reasonable expectations would blur the boundaries of what assets are available to creditors, which would in turn impose additional transaction costs on creditors/debtors in an effort to re-establish those boundaries. To the extent that this effort were not completely successful, the benefits of asset partitioning and entity separateness described in Part II would be reduced.

66. Third, foreseeing these negative consequences, potential buyers would likely be deterred from initiating value-creating deals because they would have to either (i) avoid re-deploying assets and capital post-deal, or (ii) risk exposure to the seller's liabilities by doing so, which (as described in Part III) are imperfectly known at the time of the deal. As described in Part III.A, many companies—in particular, troubled companies, which may be most in need of acquisition—would

likely become "untouchable" in the M&A marketplace. The result would be deterred deals, reduced allocational efficiency, and lower overall societal wealth.

D. Application to BofA-Countrywide

67. It is my understanding that, in a series of transactions occurring in July and November 2008, Countrywide and its subsidiaries sold substantially all of their assets to BAC and legacy-BAC subsidiaries.[45]

68. I have been instructed by BofA's counsel to assume that the July and November 2008 asset sales were undertaken for and/or motivated by typical business reasons at both the parent and subsidiary levels. I have also been instructed by BofA's counsel to assume that the July and November 2008 asset sales occurred at fair value. I have been further instructed by BofA's counsel to assume that since the Countrywide-Red Oak merger, BofA has made certain capital contributions to Countrywide and/or its subsidiaries to help meet their cash needs.

69. Under these assumptions, these capital contributions are consistent with the view that Countrywide was cash-hungry (though admittedly not for growth reasons, as in the standard model) and BofA reasonably believed that deployment of capital to Countrywide would maximize overall corporate value, and thus are consistent with the reasons for such capital contributions described in Part IV.B.

70. It follows then that if these transactions and/or capital contributions allowed Countrywide's creditors to reach BofA's assets, social welfare would be reduced

[45] Countrywide Financial Corp. Current Report (Form 8-K) (July 8, 2008); Bank of America Corp. Current Report (Form 8-K) (November 10, 2008).

in the ways identified in Part III.C: (1) buyers would be unwilling to move assets among subsidiaries or make capital contributions, even if such transactions might be "win-win" among the buyers, sellers, and creditors to each company; (2) parents would be deterred from supporting their subsidiaries, thus increasing subsidiary defaults and forcing the parent, subsidiary, and the subsidiary's creditors into costly and inefficient bankruptcy proceedings that could otherwise be avoided; (3) where transactions or capital contributions do occur, creditors would receive an inequitable windfall by gaining access to the buyer's assets to satisfy the sellers' debts; and (4) future potential buyers would likely be deterred from initiating value-creating deals because they would not be able to rationalize assets and/or capital across the overall business once the deal was closed.

V. Business References to M&A Transactions

A. Empirical Evidence on Press Releases

71. MBIA alleges in its complaint that the language used in BofA's press release announcing the Countrywide acquisition constitutes an admission that BofA and Countrywide engaged in a *de facto* merger.[46] I examined the language in press releases issued by buyers in connection with the announcement of all the forward triangular mergers in my sample (n=50). Table 1 shows the results of this analysis. Companies routinely refer to their transactions in their press releases by using short-hand, high-level references rather than legally precise descriptions. If one wants to understand the legally precise description of a transaction, one would

[46] Amended Complaint ¶¶ 119–125, *MBIA Ins. Corp. v. Countrywide Home Loans, Inc., et al.*, No. 08/602825 (N.Y. Sup. Ct. Aug. 24, 2009) ("Amd. Compl.").

review the companies' transaction agreements, not press releases or similar shorthand statements and references. The BofA-Countrywide merger agreement was filed publicly in Countrywide's January 17, 2008 Form 8-K.[47]

72. Among the 50 forward triangular mergers, only 8 disclosed the triangular structure of the deal in the press release. The remaining 42 deals (representing 84% of the sample) described the deal in more general, less legally precise, terms.[48]

73. For example:

a. When UnitedHealth Group acquired PacifiCare Health Systems in July 2005, the press release stated that: "UnitedHealth Group (NYSE: UNH) announced today that it has signed a definitive agreement to merge with PacifiCare Health Systems, Inc. (PacifiCare) (NYSE: PHS), for a combination of cash and stock, furthering the efforts of both companies to make a broad range of health care services more affordable, more available and easier to use for people nationwide."[49]

b. When American Tower acquired SpectraSite in May 2005, the press release stated: "American Tower Corporation (NYSE: AMT) and SpectraSite, Inc. (NYSE: SSI) announced today an agreement for American Tower to merge

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[47] Countrywide Financial Corp. Current Report (Form 8-K) (January 17, 2008), Ex. 2.1.

[48] The 8 press releases include those that either expressly disclosed the triangular structure of the transaction or contained language from which the triangular structure could be inferred. It should also be noted that disclosure of the triangular structure became more common in more recent deals. Examining deals up to the announcement date of the BofA-Countrywide transaction, Table 1 shows that 35 out of 38 press releases (92%) did not disclose the triangular structure of the transaction.

[49] *UnitedHealth Group to Merge with Pacificare Health Systems Inc.*, UnitedHealth Group Press Release (July 6, 2005).

with SpectraSite, in a transaction that would bring together two tower industry leaders with a combined portfolio of over 22,600 communications sites."[50]

Neither press release makes reference to the triangular structure of the deal.

74. I also examined the press releases issued by buyers in connection with a random sample of the reverse triangular mergers in my sample (n=27). Table 2 shows the results of this analysis, which are similar to Table 1: only 6 out of 27 deals disclosed the triangular structure in the press release. The remaining 21 deals (amounting to 78% of the total) described the deal in more general, less legally precise, terms.[51]

75. For example:

a. When 3M acquired CUNO Inc. in May 2005, the press release stated: "3M (NYSE:MMM), and CUNO Inc. (Nasdaq: CUNO) announced today that they have entered into a definitive agreement for 3M's acquisition of CUNO in an all cash merger for $72 dollars per share, valuing the transaction at approximately $1.35 billion including the assumption of $60 million of existing net debt."[52]

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[50] *American Tower Corporation and SpectraSite, Inc. Agree to Merge*, American Tower Corp. Press Release (May 4, 2005).

[51] As in Table 1, the 6 press releases include those that either expressly disclosed the triangular structure of the transaction or contained language from which the triangular structure could be inferred. Table 2 reveals the same time trend as Table 1: examining deals up to the announcement date of the BofA-Countrywide transaction, 12 out of 14 press releases in Table 2 (86%) did not disclose the triangular structure of the transaction.

[52] *3M Completes Acquisition of CUNO Incorporated*, 3M Press Release (August 2, 2005).

b. When Wells Fargo acquired Greater Bay Bancorp in May 2007, the press release stated: "Wells Fargo & Company (NYSE: WFC) and Greater Bay Bancorp (NASDAQ: GBBK) have signed a definitive agreement for the acquisition of Greater Bay Bancorp by Wells Fargo in a stock-for-stock merger."[53]

Neither press release makes reference to the triangular structure of the deal.

76. For completeness, I examined the press releases issued by buyers in connection with all the direct mergers in my sample (n=23). I found that the press releases in direct mergers described the deal in very similar terms to the press releases in the forward and reverse merger samples. For example, when Capital One bought Hibernia in March 2005 in a direct merger, the press release stated: "Capital One Financial Corporation (NYSE: COF) and Hibernia Corporation (NYSE: HIB) today announced a definitive agreement under which Capital One will acquire Hibernia in a stock and cash transaction valued at approximately $5.3 billion."[54]

77. These findings indicate that the press release language in conjunction with M&A transactions is rarely sensitive to, or reflective of, the legal structure of the deal. Instead, these press releases regularly use shorthand references that are less technically accurate, but make clear to the investing public that a significant transaction has occurred. It follows that observers would not expect press releases

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53 *Wells Fargo, Greater Bay Bancorp Agree To Merge*, Wells Fargo Company Press Release (May 4, 2007).

54 *Capital One Completes Acquisition of Hibernia Corporation*, Capital One Press Release (November 16, 2005).

to reflect the legal transaction specifics, nor could observers reasonably rely on the press release to draw legal conclusions. They can, however, review the actual transaction agreements in public filings. It is highly implausible, in my opinion, that the acquired company's creditors (actual or potential) would reasonably regard their access to the buying company's assets to turn on the use of various formulations in press releases or other informal statements, as opposed to the actual legal documents reflecting the transaction structure.

B. Empirical Evidence on Businessperson Comments

78. MBIA also alleges that statements by BofA officials cited by the media constitute admission that BofA and Countrywide engaged in a *de facto* merger.[55] I examined comments by top executives cited by the media in the same sample of forward triangular mergers (n=50) and the same random sample of reverse triangular mergers (n=27) as examined in Part V.A. Specifically, I looked for any quotes by the CEOs or other senior executives reported in the *Wall Street Journal*, the *New York Times*, Reuters, *BusinessWeek*, the *Financial Times*, or in the press release announcing the transaction. The results are reported in Table 3 for the forward triangular merger sample and in Table 4 for the reverse triangular merger sample.

79. As reported in greater detail in the tables, not a single senior executive made statements in any of these media outlets describing the triangular structure of the deal. For example, when CVS acquired Caremark in November 2006, the

[55] Amd. Compl. ¶ 125.

New York Times quoted CVS CEO Tom Ryan as saying that "[t]oday's vote reinforces the compelling logic underpinning the merger of the nation's largest pharmacy chain with the leading pharmacy services company. . . ."[56] *Businessweek* quoted Caremark CEO Mac Crawford as saying: "This merger creates a significant platform…"[57] Neither CEO referenced the fact that the deal was structured as a forward triangular merger.

80. When Sirius Satellite Radio acquired XM Satellite Radio in February 2007, Sirius CEO Mel Karmazin repeatedly described the deal as a "merger," as quoted in the *New York Times*.[58] And *BusinessWeek* quoted him as saying: "[t]his combination is the next logical step in the evolution of audio entertainment."[59] Sirius CFO David Frear was quoted in the *New York Times* as saying that "a merger makes sense from an investor's point of view to reduce costs. . . ."[60] Again, neither of these executives referenced the fact that the deal was structured as a reverse triangular merger.

81. In view of the empirical evidence as well as my experience teaching law to lawyers and businesspeople for the past fourteen years, it is my opinion that observers to a deal cannot reasonably rely on businessperson comments in press releases and press statements (or other cursory or informal references) to draw conclusions

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56 *Caremark Says Shareholders Approve CVS Merger*, NEW YORK TIMES DEALBOOK (Mar. 16, 2007).

57 *CVS-Caremark: A Drug-Benefit Behemoth*, BLOOMBERG BUSINESSWEEK (Nov. 1, 2006).

58 Eric A. Taub, *Satellite Radio May Try a Merger*, NEW YORK TIMES (Jan. 1, 2007).

59 *The XM-Sirius Deal May Not Fly*, BLOOMBERG BUSINESSWEEK (Feb. 20, 2007).

60 Eric A. Taub, *Satellite Radio May Try a Merger*, NEW YORK TIMES (Jan. 1, 2007).

about the precise legal structure of the deal. Instead, observers—especially those with financial stakes, such as creditors—should examine the legal documentation, such as the merger agreement or proxy statement, in order to understand the legal structure of the transaction.

C. Application to BofA-Countrywide

82. BofA announced "a definitive merger agreement to purchase Countrywide Financial Corp." in a press release issued on January 11, 2008.[61] When the transaction closed on July 1, 2008, BofA announced in a press release that "Bank of America Corporation today completed its purchase of Countrywide Financial Corp."[62] Neither of these press releases disclosed the triangular structure of the deal, nor would one expect such legal precision in a press release.

83. Top executives also did not identify the triangular structure in their public comments. For example, in a January 11, 2008 press release, Angelo Mozilo, then CEO of Countrywide, stated that "the combination of Countrywide and Bank of America will create one of the most powerful mortgage franchises in the world."[63] Brian Moynihan, Bank of America's CEO, testified before the Financial Crisis Inquiry Commission in January 2010 that "our primary window into the mortgage crisis came through the acquisition of Countrywide. . . . The Countrywide

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[61] *Bank of America Agrees to Purchase Countrywide Corp: Creates Largest U.S. Mortgage Lender and Servicer*, Bank of America Corp. Press Release (Jan. 11, 2008).

[62] *Bank of America Completes Countrywide Financial Purchase*, Bank of America Corp. Press Release (July 1, 2008).

[63] *Bank of America Agrees to Purchase Countrywide Corp: Creates Largest U.S. Mortgage Lender and Servicer*, Bank of America Corp. Press Release (Jan. 11, 2008).

acquisition has positioned the bank in the mortgage business on a scale it had not previously achieved."[64] Moynihan also told the *New York Times* in December 2010 that "[o]ur company bought it [Countrywide] and we'll stand up; we'll clean it up."[65] Neither of these CEOs referenced the triangular structure of the deal in these public statements. In public filings, however, the BofA-Countrywide merger agreement was publicly available.[66]

84. Lower-level BofA executives also made public statements that did not reflect the triangular structure of the deal. Liam McGee, President of Global Consumer and Small Business Banking for BofA, testified that: "With approval of the merger, Bank of America's values and business practices will govern the combined mortgage company."[67] Bruce Hammonds, President of Consumer/Credit at BofA, testified that: "Upon completion of the merger we will continue our long established policy not to offer subprime mortgage loans."[68] Barbara Desoer, president of the combined mortgage, home equity, and insurance businesses, stated

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64 Testimony of Brian T. Moynihan, President and Chief Executive Officer, Bank of America, to Financial Crisis Inquiry Commission (Jan. 13, 2010).

65 Nelson D. Schwartz, *Batting Cleanup at Bank of America*, NEW YORK TIMES at BU1 (Dec.11, 2010).

66 Countrywide Financial Corp. Current Report (Form 8-K) (January 17, 2008), Ex. 2.1.

67 Bank of America Corporation and Countrywide Financial Corporation, Public Meeting Held April 28, 2008, at the Federal Reserve Bank, Los Angeles, California, Tr. At 39:07-15.

68 Bank of America Corporation and Countrywide Financial Corporation, Public Meeting Held April 22, 2008, at the Federal Reserve Bank, Chicago, Illinois, Tr. At 10:13-12:21.

in a July 2008 press release that "Now we begin to combine the two companies and prepare to introduce our new name and way of operating."[69]

85. In my opinion, BofA's press releases are similar to the statements that appear in the press releases in the vast majority of other triangular mergers, as documented in Tables 1-2. Specifically, BofA and Countrywide followed the general norm of not describing the triangular structure in the press releases surrounding the transaction. They set out the precise legal structure in their publicly filed merger agreement.

86. Although I did not conduct a comprehensive assessment of all the comments made by BofA executives in connection with the Countrywide transaction, the fact that at least some of these executives did not reference the triangular structure is consistent with my findings compiled in Tables 3-4, as well as my general knowledge as a long-time observer of the M&A environment of how businesspeople discuss transactions, namely, using shorthand expressions, not precise legal terms (which can be found in public filings and the deal documents). In my opinion, to draw conclusions or even give substantive weight to these press releases or other informal businessperson comments when assessing the legal structure or legal effect of a transaction would call into question general norms and understandings that have developed in the M&A arena, and would not adequately acknowledge the different roles that businesspeople and lawyers play in M&A transactions.

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69 *Bank of America Completes Countrywide Financial Purchase*, Bank of America Corp. Press Release (July 1, 2008).

VI. Conclusion

87. In my opinion, applying *de facto* merger doctrine or other related doctrines so that the Countrywide creditors could reach the Bank of America assets would represent unwise public policy, because doing so would: (1) reduce the benefits of asset partitioning, entity shielding, and internal capital markets; (2) chill value-creating transactions between parent and subsidiary companies going forward; (3) deter buyers from initiating value-creating deals, which would reduce allocational efficiency in the M&A marketplace and reduce overall societal wealth, and (4) give the seller's creditors an unfair windfall.

88. As a policy matter, the broader context in which the BofA-Countrywide transaction took place should also be considered. If *de facto* merger doctrine or similar concepts to bypass corporate structures and separateness were invoked to allow Countrywide's creditors to reach BofA's assets, in the next financial crisis,[70] healthy corporations would be loathe to acquire financially troubled corporations or their assets for fear that the target corporation's liabilities would be imported to the buying corporation. BofA acquired Countrywide during what turned out to be one of the worst financial crises in history. While BofA was willing to take a

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[70] *See, e.g.*, CHARLES P. KINDLEBERGER & ROBERT ALIBER, MANIAS, PANICS, AND CRASHES: A HISTORY OF FINANCIAL CRISES (5th ed. 2005); Jeffrey N. Gordon & Christopher Muller, *Avoiding Eight-Alarm Fires in the Political Economy of Systemic Risk Management*, COLUMBIA LAW SCHOOL WORKING PAPER (Mar. 2010) at 8-26 (documenting five reasons why systemic crises are inevitable); John C. Coffee, Jr., *Bail-Ins versus Bail-Outs: Using Contingent Capital to Mitigate Systemic Risk*, COLUMBIA LAW SCHOOL WORKING PAPER No. 380 (Sept. 2010) at 4 ("Sooner or later (but within the foreseeable future), a systemically significant financial institution will fail again."). *See generally* CARMEN M. REINHART & KENNETH ROGOFF, THIS TIME IS DIFFERENT: EIGHT CENTURIES OF FINANCIAL FOLLY (2009).

chance on Countrywide, in my opinion it would have been unlikely to do so if it meant putting BofA's own assets at risk.

89. Imposing Countrywide's liabilities on BofA's balance sheet would subvert fundamental building blocks of business organization, and would significantly reduce the likelihood that similar acquisitions of troubled companies could be arranged in the future. The result would be additional economic costs beyond those noted throughout this report, such as avoidable government bailouts and avoidable bankruptcies when private companies are unwilling to get involved in rescue efforts.

Signed:

Guhan Subramanian

Appendix A: Subramanian CV

Guhan Subramanian

Griswold 405
Harvard Law School
Cambridge, MA 02138
subraman@law.harvard.edu

Baker Library 451
Harvard Business School
Boston, MA 02163
gsubramanian@hbs.edu
617-495-9784

Academic Positions Held

H. Douglas Weaver Professor of Business Law, Harvard Business School, 2007-present

Joseph Flom Professor of Law and Business, Harvard Law School, 2004-present

H. Douglas Weaver Visiting Professor of Business Law, Harvard Business School, 2006-07

Joseph Flom Assistant Professor of Law and Business, Harvard Law School, 2002-2004

Assistant Professor of Business Administration, Harvard Business School, 2001-2002

Lecturer in Business Administration, Harvard Business School, 1999-2001

Education

J.D., *magna cum laude*, Harvard Law School, 1998. Moot court competition winner. Editor, *Harvard Law Review*.

M.B.A., Harvard Business School, 1998.

A.B., *magna cum laude* (Economics), Harvard University, 1992. Phi Beta Kappa. Elected undergraduate student government president.

Books

Commentaries and Cases on the Law of Business Organization (Aspen 4th ed. forthcoming 2012) (with William T. Allen & Reinier Kraakman).

Negotiauctions: New Dealmaking Strategies for a Competitive Marketplace (W. W. Norton 2010).

Commentaries and Cases on the Law of Business Organization (Aspen 3rd ed. 2009) (with William T. Allen & Reinier Kraakman).

Commentaries and Cases on the Law of Business Organization (Aspen 2nd ed. 2007) (with William T. Allen & Reinier Kraakman).

Published Papers

Does Shareholder Proxy Access Improve Firm Value? Evidence from the Business Roundtable Challenge, *Journal of Law & Economics* (forthcoming Feb. 2013) (with Bo Becker and Dan Bergstresser).

Improving Director Elections, *Harvard Business Law Review* (forthcoming Fall 2012) (with Bo Becker).

A New Era for Raiders, *Harvard Business Review* (Nov. 2010).

Is Delaware's Antitakeover Statute Unconstitutional? Evidence from 1988-2008, *The Business Lawyer* 65, no. 1 (May 2010) (with Steven Herscovici & Brian Barbetta). Selected by academics as one of the "top ten" articles in corporate/securities law for 2010, out of 447 articles published in that year.

Is Delaware's Antitakeover Statute Unconstitutional? Further Evidence and A Reply to Symposium Commentators, *The Business Lawyer* 65, no. 1 (May 2010) (with Steven Herscovici & Brian Barbetta).

Negotiation? Auction? A Deal Maker's Guide, *Harvard Business Review* (Dec. 2009).

Go-Shop Provisions in Private Equity Deals: Evidence and Implications, *The Business Lawyer* 63, no. 1 (May 2008). Selected by academics as one of the "top ten" articles in corporate/securities law for 2008, out of 480 articles published in that year.

The Emerging Problem of Embedded Defenses: Lessons from *Air Line Pilots Ass'n Intl. v. UAL Corp.*, *Harvard Law Review* 120, no. 5 (March 2007).

Post-*Siliconix* Freeze-Outs: Theory & Evidence, *Journal of Legal Studies* 36 (Jan. 2007). Selected by academics as one of the "top ten" articles in corporate/securities law for 2007, out of 484 articles published in that year.

Oracle vs. PeopleSoft: A Case Study, *Harvard Negotiation Law Review* 12 (Winter 2007) (with D. Millstone).

Bargaining in the Shadow of PeopleSoft's (Defective) Poison Pill, *Harvard Negotiation Law Review* 12 (Winter 2007).

Fixing Freezeouts, *Yale Law Journal* 115, no. 1 (Oct. 2005). Selected by academics as one of the "top ten" articles in corporate/securities law for 2005, out of 410 articles published in that year.

Takeover Defenses and Bargaining Power, Journal of Applied Corporate Finance 17, no. 4 (Fall 2005).

The Disappearing Delaware Effect, *Journal of Law, Economics & Organization* 20, no. 1 (April 2004). Selected by academics as one of the "top ten" articles in corporate/securities law for 2004, out of 439 articles published in that year.

Bargaining in the Shadow of Takeover Defenses, *Yale Law Journal* 113, no. 3 (Dec. 2003). Selected by academics as one of the "top ten" articles in corporate/securities law for 2004, out of 439 articles published in that year.

The Drivers of Market Efficiency in *Revlon* Transactions, *Journal of Corporation Law* 28, no. 4 (Summer 2003).

The Trouble With Staggered Boards: A Reply to Georgeson's John Wilcox, *Corporate Governance Advisor* 10, no. 6 (Nov./Dec. 2002) (with L. Bebchuk, & J. Coates).

The Influence of Antitakeover Statutes on Incorporation Choice: Evidence on the "Race" Debate and Antitakeover Overreaching, *University of Pennsylvania Law Review* 150, no. 6 (June 2002).

The Powerful Antitakeover Force of Staggered Boards: Further Findings and a Reply to Symposium Commentators, *Stanford Law Review* 55, no. 3 (Dec. 2002) (with L. Bebchuk & J. Coates). Selected by academics as one of the "top ten" articles in corporate/securities law for 2003, out of 450 articles published in that year.

The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence & Policy, *Stanford Law Review* 54, no. 9 (June 2002) (with L. Bebchuk & J. Coates). Selected by academics as one of the "top ten" articles in corporate/securities law for 2002, out of 350 articles published in that year.

A Buy-Side Model of M&A Lockups: Theory and Evidence, *Stanford Law Review* 53, no. 2 (Nov. 2000) (with J. Coates). Selected by academics as one of the "top ten" articles in corporate/securities law for 2001, out of 300 articles published in that year.

A New Takeover Defense Mechanism: Using an Equal Treatment Agreement as an Alternative to the Poison Pill, *Delaware Journal of Corporate Law* 23, no. 2 (1998).

Note, Using Capital Cash Flows to Value Dissenters' Shares in Appraisal Proceedings, *Harvard Law Review* 111, no. 7 (May 1998).

Courses Taught

Corporations, Harvard Law School (2002-present).

Advanced Negotiation: Deal Setup, Design & Implementation, Harvard Law School (2004-present).

Law & Business Seminar, Harvard Law School/Harvard Business School (2002-present).

Negotiation Workshop, Harvard Law School (2002-2004).

Analytic Methods for Lawyers (Accounting & Finance module), Harvard Law School (2002-2005).

First-Year Negotiations, Harvard Business School (1999-2002).

Law and the Global Manager, Harvard Business School (2001-2002).

Harvard Business School Executive Education: Advanced Management Program, Making Corporate Boards More Effective, Changing the Game, Strategic Negotiations, Program for Management Development, Managing Negotiators and the Deal Process.

Harvard Law School Executive Education: Program of Instruction for Lawyers, Program on Negotiation for Senior Executives, Dealing with Difficult People, Designing Complex Deals.

Kennedy School of Government Executive Education: Senior Leaders in Government (Negotiations module).

Other Activities

Referee for: *Journal of Finance*; *Journal of Law, Economics & Organization*; *Journal of Legal Studies*; *American Law & Economics Review*.

Invited presentations at: Berkeley, Chicago, Columbia, Fordham, Georgetown, Michigan, NYU, University of Pennsylvania, Stanford, Texas, Vanderbilt, Virginia, Yale, National Bureau of Economic Research, American Law & Economics Association.

Faculty Chair, JD/MBA Program, Harvard University.

Co-Chair, Program on Negotiation, Harvard Law School.

Non-Resident Tutor in Law & Business, Dunster House.

Member, American Law & Economics Association.

Member, New York State Bar.

Member, Entry-Level Appointments Committee (2005-06), Committee on Curriculum Innovation (2002-04), Committee on Physical Planning (2003-2005), Harvard Law School.

Course head, first-year required course on Negotiations, Harvard Business School (2001-2002; 2008-2009).

Appendix B: Documents Relied Upon[71]

Judicial Decisions

Hariton v. Arco Electronics, Inc., 182 A.2d 22 (Del. Ch. 1962), *aff'd*, 188 A.2d 123 (Del. 1963)

In re CNX Gas Corp. Shareholder Litigation, 4 A.3d 397 (Del. Ch. 2010)

In re Compellent Technologies, Inc. Shareholder Litigation, 2011 WL 6382523 (Del. Ch. Dec. 9, 2011)

In re Del Monte Foods Co. Shareholder Litigation, 25 A.3d 813 (Del. Ch. 2011)

SEC Filings

Countrywide Financial Corp. Current Report (Form 8-K) (January 17, 2008)

Countrywide Financial Corp. Current Report (Form 8-K) (July 8, 2008)

Bank of America Corp. Current Report (Form 8-K) (November 10, 2008)

Academic Publications

ROBERT CHARLES CLARK, CORPORATE LAW (1986)

ROBERT F. BRUNER, APPLIED MERGERS & ACQUISITIONS (2004)

CHARLES P. KINDLEBERGER & ROBERT ALIBER, MANIAS, PANICS, AND CRASHES: A HISTORY OF FINANCIAL CRISES (5th ed. 2005)

WILLIAM J. CARNEY, MERGERS AND ACQUISITIONS (2nd ed. 2007)

WILLIAM T. ALLEN, REINIER KRAAKMAN & GUHAN SUBRAMANIAN, COMMENTARIES & CASES ON THE LAW OF BUSINESS ORGANIZATION (3rd ed. 2009)

LEE T. WYATT III, THE INDUSTRIAL REVOLUTION (2009)

CARMEN M. REINHART & KENNETH ROGOFF, THIS TIME IS DIFFERENT: EIGHT CENTURIES OF FINANCIAL FOLLY (2009)

DONALD R. LESSARD & CATE REAVIS, CEMEX: GLOBALIZATION "THE CEMEX WAY," MIT SLOAN MANAGEMENT CASE STUDY (Mar. 5, 2009)

R. H. Coase, *The Nature of the Firm*, 4 ECONOMICA 386 (1937)

Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. CHI. L. REV. 89 (1985)

Kevin F. Forbes, *Limited Liability and the Development of the Business Corporation*, 2 J. L. ECON. & ORG. 163 (1986)

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[71] *See* Stipulation and Order Regarding Expert Discovery, at ¶ 2.

Michael C. Jensen & William H. Meckling, *The Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure*, 3 J. FIN. ECON. 305 (1976)

George G. Triantis, *Organizations as Internal Capital Markets: The Legal Boundaries of Firms, Collateral, and Trusts in Commercial and Charitable Enterprises*, 117 HARV. L. REV. 1103 (2004)

GUHAN SUBRAMANIAN, A WHITE PAPER ON THE FEDERAL DEPOSIT INSURANCE CORPORATION'S PROPOSED STATEMENT OF POLICY ON QUALIFICATIONS FOR FAILED BANK ACQUISITIONS (August 10, 2009), *available at* http://www.fdic.gov/regulations/laws/federal/2009/09c37AD47.PDF

Jeffrey N. Gordon & Christopher Muller, *Avoiding Eight-Alarm Fires in the Political Economy of Systemic Risk Management*, COLUMBIA LAW SCHOOL WORKING PAPER (Mar. 2010)

John C. Coffee, Jr., *Bail-Ins versus Bail-Outs: Using Contingent Capital to Mitigate Systemic Risk*, COLUMBIA LAW SCHOOL WORKING PAPER No. 380 (Sept. 2010)

GUHAN SUBRAMANIAN & RHEA GHOSH, REMICADE-SIMPONI (HBS Case Study N9-911-071) (Jan. 27, 2011)

<u>Litigation Documents</u>

Amended Complaint, *MBIA Ins. Corp. v. Countrywide Home Loans, Inc., et al.*, No. 08/602825 (N.Y. Sup. Ct. Aug. 24, 2009)

BACMBIA-C0000160048 to 160113 (Agreement and Plan of Merger)

<u>Press Articles and Releases</u>

3M Completes Acquisition of CUNO Incorporated, 3M Press Release (August 2, 2005)

American Tower Corporation and SpectraSite, Inc. Agree to Merge, American Tower Corp. Press Release (May 4, 2005)

Bank of America Agrees to Purchase Countrywide Corp: Creates Largest U.S. Mortgage Lender and Servicer, Bank of America Corp. Press Release (January 11, 2008)

Bank of America Completes Countrywide Financial Purchase, Bank of America Corp. Press Release (July 1, 2008)

Bank of America Corporation and Countrywide Financial Corporation, Public Meeting Held April 28, 2008, at the Federal Reserve Bank, Los Angeles, California, Tr. at 39:07-15

Bank of America Corporation and Countrywide Financial Corporation, Public Meeting Held April 22, 2008, at the Federal Reserve Bank, Chicago, Illinois, Tr. at 10:13-12:21

Bio-Matrix Scientific Group, Inc. Announces Newly Formed Stem Cell Subsidiary – Regen BioPharma, Inc., MARKETWIRE (April 30, 2012)

CVS-Caremark: A Drug-Benefit Behemoth, BLOOMBERG BUSINESSWEEK (Nov. 1, 2006)

Capital One Completes Acquisition of Hibernia Corporation, Capital One Press Release (November 16, 2005)

Caremark Says Shareholders Approve CVS Merger, NYTIMES DEALBOOK (Mar. 16, 2007)

DM Products Establishes Film Industry Division, DM Products Press Release (May 1, 2012)

The Economist (Dec. 18, 1926)

Michael M. Grynbaum, *Home Sales And Prices Fall Sharply*, NEW YORK TIMES (Sept. 28, 2007)

Kikkoman Corporation to Adopt a Holding Company Management Structure, Kikkoman Corp. Press Release (Jan. 26, 2009)

E. Scott Reckard, *The Mortgage Meltdown; A rush to pull out cash; Unsure about the future of home-loan giant Countrywide, bank customers line up to withdraw their money*, Los Angeles Times (Aug. 17, 2007).

New Century Financial Corporation Files for Chapter 11, New Century Financial Corp. Press Release (Apr. 2, 2007)

Sandra M. Jones, *Sears to Shift to Independently Run Units*, CHICAGO TRIBUNE (Jan. 20, 2008)

Nelson D. Schwartz, *Batting Cleanup at Bank of America*, NEW YORK TIMES (Dec.11, 2010)

John B. Taylor, *Rules for America's Road to Recovery*, WALL ST. J. (June 1, 2012)

Signature Bank Establishes Signature Financial, LLC Subsidiary, Marking Its Entry into the Specialty Financing Arena, Signature Bank Press Release (April 18, 2012)

Eric A. Taub, *Satellite Radio May Try a Merger*, NEW YORK TIMES, January 1, 2007

Testimony of Brian T Moynihan, President and Chief Executive Officer, Bank of America, to Financial Crisis Inquiry Commission, January 13, 2010

The XM-Sirius Deal May Not Fly, BLOOMBERG BUSINESSWEEK (Feb. 20, 2007)

UnitedHealth Group to Merge with Pacificare Health Systems Inc., UnitedHealth Group Press Release (July 6, 2005)

Wells Fargo, Greater Bay Bancorp Agree To Merge, Wells Fargo Company Press Release (May 4, 2007)

<u>Databases</u>

MergerMetrics

<u>Websites</u>

http://www.bloomberg.com/quote/CFC:US/chart, accessed on June 21, 2012.

Table 1
Forward Triangular Mergers 2005-2011, >$1B Deal Value
Analysis of Deal Structure Disclosure in Press Releases

Announcement Date	Completion Date	Target Company Name	Acquirer Company Name	Transaction Value ($MM)	Triangular Structure Disclosed or Implied in Press Release
1/10/2005	8/1/2005	Western Wireless Corporation	ALLTEL Corporation	$3,926	
2/14/2005	1/6/2006	MCI, Inc.	Verizon Communications Inc.	$7,205	
2/23/2005	8/18/2005	Accredo Health, Incorporated	Medco Health Solutions, Inc.	$2,118	
2/27/2005	5/23/2005	USF Corporation	Yellow Roadway Corporation	$1,403	
2/28/2005	8/30/2005	The May Department Stores Company	Federated Department Stores, Inc.	$10,406	
3/14/2005	5/2/2005	Ascential Software Corporation	International Business Machines Corporation	$1,104	
4/4/2005	8/10/2005	Unocal Corporation	ChevronTexaco Corporation	$17,049	
5/4/2005	8/8/2005	SpectraSite, Inc.	American Tower Corporation	$2,862	
6/6/2005	9/15/2005	Catellus Development Corporation	ProLogis	$3,512	
6/15/2005	9/22/2005	Integrated Circuit Systems, Inc.	Integrated Device Technology, Inc.	$1,639	
7/6/2005	12/5/2005	Amegy Bancorporation, Inc.	Zions Bancorporation	$1,636	X
7/6/2005	12/21/2005	PacifiCare Health Systems, Inc.	UnitedHealth Group Incorporated	$6,975	
10/3/2005	1/5/2006	Prentiss Properties Trust	Brandywine Realty Trust	$1,989	
10/3/2005	1/31/2006	Dex Media, Inc.	R.H. Donnelley Corporation	$4,150	
10/10/2005	4/3/2006	Jefferson-Pilot Corporation	Lincoln National Corporation	$7,542	
10/13/2005	1/30/2006	Vintage Petroleum, Inc.	Occidental Petroleum Corporation	$3,504	
12/12/2005	3/31/2006	Burlington Resources Inc.	ConocoPhillips	$34,779	
12/22/2005	5/2/2006	Arden Realty, Inc.	General Electric	$3,032	X
1/23/2006	7/1/2006	Remington Oil and Gas Corporation	Cal Dive International, Inc.	$1,333	
3/7/2006	8/22/2006	Shurgard Storage Centers, Inc.	Public Storage, Inc.	$3,057	
5/7/2006	10/2/2006	Golden West Financial Corporation	Wachovia Corporation	$25,992	
10/6/2006	1/12/2007	Global Signal, Inc.	Crown Castle International Corp.	$3,873	
10/17/2006	1/3/2007	Broadwing Corporation	Level 3 Communications, Inc.	$1,344	
10/17/2006	7/12/2007	CBOT Holdings, Inc.	Chicago Mercantile Exchange Holdings Inc.	$11,494	
11/1/2006	3/22/2007	Caremark Rx, Inc.	CVS Corporation	$22,372	
12/4/2006	7/2/2007	Mellon Financial Corporation	The Bank of New York Company, Inc.	$16,495	
12/20/2006	7/1/2007	Sky Financial Group, Inc.	Huntington Bancshares Incorporated	$3,294	
1/29/2007	9/21/2007	First Republic Bank	Merrill Lynch & Co., Inc.	$1,693	
2/14/2007	5/15/2007	TALX Corporation	Equifax Inc.	$1,127	
3/19/2007	7/11/2007	TODCO	Hercules Offshore, Inc.	$2,425	
5/20/2007	10/22/2007	Cytyc Corporation	Hologic, Inc.	$5,421	X
5/22/2007	8/3/2007	Crescent Real Estate Equities Company	Morgan Stanley	$2,344	
5/28/2007	11/15/2007	Washington Group International, Inc.	URS Corporation	$2,857	
5/31/2007	10/1/2007	A.G. Edwards, Inc.	Wachovia Corporation	$6,775	
7/17/2007	11/6/2007	Pogo Producing Company	Plains Exploration & Production Company	$3,497	
8/16/2007	6/6/2008	First Charter Corporation	Fifth Third Bancorp	$1,075	
11/18/2007	3/7/2008	Pharmion Corporation	Celgene Corporation	$2,682	
12/17/2007	4/21/2008	Grant Prideco, Inc.	National Oilwell Varco, Inc.	$7,367	
1/28/2008	8/22/2008	NYMEX Holdings, Inc.	CME Group Inc.	$9,287	
4/30/2008	8/28/2008	Bois d'Arc Energy, Inc.	Stone Energy Corporation	$1,651	
4/1/2009	10/1/2009	Metavante Technologies, Inc.	Fidelity National Information Services, Inc.	$2,944	X
8/31/2009	4/28/2010	BJ Services Company	Baker Hughes Incorporated	$5,241	
11/3/2009	2/12/2010	Burlington Northern Santa Fe Corporation	Berkshire Hathaway Inc.	$26,366	X
4/15/2010	11/10/2010	Mariner Energy, Inc.	Apache Corporation	$2,669	
9/7/2010	11/22/2010	Enterprise GP Holdings L.P.	Enterprise Products Partners L.P.	$8,028	X
1/23/2011	5/27/2011	Smurfit-Stone Container Corporation	Rock-Tenn Company	$3,208	X
2/28/2011	7/1/2011	Nationwide Health Properties, Inc.	Ventas, Inc.	$5,689	
7/20/2011	12/1/2011	Nalco Holding Company	Ecolab Inc.	$5,383	X
10/10/2011	2/7/2012	Complete Production Services, Inc.	Superior Energy Services, Inc.	$2,609	
11/21/2011	3/6/2012	Transatlantic Holdings, Inc.	Alleghany Corporation	$3,431	
			Totals	**50**	**8**

Table 2
Reverse Triangular Mergers 2005-2011 (random sample), >$1B Deal Value
Analysis of Deal Structure Disclosure in SEC Filings and Press Releases

Announcement Date	Completion Date	Target Company Name	Acquirer Company Name	Transaction Value ($MM)	Triangular Structure Disclosed or Implied in Press Release
5/12/2005	8/2/2005	CUNO Incorporated	3M Company	$1,238	
7/22/2005	10/14/2005	Priority Healthcare Corporation	Express Scripts, Inc.	$1,230	
10/24/2005	6/1/2006	Independence Community Bank Corp.	Sovereign Bancorp, Inc.	$3,471	
2/27/2006	5/25/2006	Stewart & Stevenson Services, Inc.	Armor Holdings, Inc.	$1,077	
8/15/2006	6/1/2007	Delta and Pine Land Company	Monsanto Company	$1,507	X
10/30/2006	2/26/2007	Trustreet Properties, Inc.	General Electric	$1,151	
11/16/2006	2/1/2007	Conor Medsystems, Inc.	Johnson & Johnson	$1,263	
11/19/2006	3/19/2007	Phelps Dodge Corporation	Freeport-McMoRan Copper & Gold Inc.	$25,796	
12/20/2006	5/1/2007	John H. Harland Company	M & F Worldwide Corp.	$1,348	X
2/19/2007	7/29/2008	XM Satellite Radio Holdings Inc.	Sirius Satellite Radio Inc.	$5,203	
5/4/2007	10/1/2007	Greater Bay Bancorp	Wells Fargo & Company	$1,454	
6/29/2007	11/15/2007	Dobson Communications Corporation	AT&T Inc.	$2,227	
8/16/2007	10/1/2007	RARE Hospitality International, Inc.	Darden Restaurants, Inc.	$1,168	
11/5/2007	4/1/2008	American Financial Realty Trust	Gramercy Capital Corp.	$1,094	
5/15/2008	6/30/2008	CNET Networks, Inc.	CBS Corporation	$1,752	
8/12/2008	10/30/2008	Longs Drug Stores Corporation	CVS/Caremark Corporation	$2,569	X
10/6/2008	11/24/2008	ImClone Systems Incorporated	Eli Lilly and Company	$6,203	X
8/31/2009	12/31/2009	Marvel Entertainment, Inc.	The Walt Disney Company	$3,925	
5/17/2010	11/15/2010	Psychiatric Solutions, Inc.	Universal Health Services, Inc.	$1,929	
6/30/2010	10/15/2010	Abraxis BioScience, Inc.	Celgene Corporation	$3,555	
1/27/2011	4/11/2011	Terremark Worldwide, Inc.	Verizon Communications Inc.	$1,281	X
3/28/2011	6/17/2011	GSI Commerce, Inc.	eBay Inc.	$2,112	
4/27/2011	7/15/2011	SAVVIS, Inc.	CenturyLink, Inc.	$2,301	
4/28/2011	3/12/2012	Constellation Energy Group, Inc.	Exelon Corporation	$7,756	
5/4/2011	11/10/2011	Varian Semiconductor Equipment Associates, Inc.	Applied Materials, Inc.	$4,751	
9/12/2011	2/17/2012	NetLogic Microsystems, Inc.	Broadcom Corporation	$3,450	
11/21/2011	1/17/2012	Pharmasset, Inc.	Gilead Sciences, Inc.	$10,378	X
		Totals		**27**	**6**

Table 3
Forward Triangular Mergers 2005-2011, >$1B Deal Value
Press Comments by Senior Executives on the Deal

Target Company Name	Acquirer Company Name	Quoted Company Leadership	Source	Relevant Quotes
Western Wireless Corporation	ALLTEL Corporation	AT: CEO Scott Ford, WWCA: CEO John Stanton	NYT FT PR	**Ford:** "We would like to continue to grow the wireless business through acquisitions as long as it is on terms that make sense." **Stanton:** "The combination of Western Wireless with Alltel creates a rural operator…" **Stanton:** "...we are very excited with today's overwhelming approval of the merger by our shareholders." "By combining with Alltel…" "...we felt that combining with Alltel..."
MCI, Inc.	Verizon Communications Inc.	VZ: CEO Ivan Seidenberg, MCIP: CEO Michael D. Capellas	NYT FT FT PR	**Seidenberg:** "This is the right deal at the right time." **Seidenberg:** "This is the right deal at the right time." **Cappellas:** "We are working to complete our merger agreement with Verizon as soon as possible." **Seidenberg:** "This is the right deal at the right time." "We have been evaluating a transaction with MCI for some time…" "This acquisition builds on and accelerates Verizon's growth plan…" "The acquisition will significantly enhance…" **Capellas:** "...MCI is the right partner for Verizon."
Accredo Health, Incorporated	Medco Health Solutions, Inc.	MHS: CEO David B. Snow Jr., ACDO: CEO David D. Stevens	PR PR	**Snow:** "We believe the addition of Accredo's specialty pharmacy expertise to Medco's leading pharmacy benefit model…" **Stevens:** "The transaction unites two complementary best-of-class pharmacy operations…" **Snow:** "The acquisition of Accredo…"
USF Corporation	Yellow Roadway Corporation	YELL: CEO Bill Zollars, USFC: Chairman Paul Liska, CEO Thomas Bergmann	PR PR	**Zollars:** "With the addition of USF…" "Our strategic rationale for this transaction…" **Liska:** "This transaction creates significant value…" **Bergmann:** "This transaction positions the combined company for long-term success." **Zollars:** "The acquisition of USF further confirms our position…"
The May Department Stores Company	Federated Department Stores, Inc.	FD: CEO Terry Lundgren	FT PR	**Lundgren:** "Our first quarter indicates that the integration of Federated and May Company continues solidly on track." **Lundgren:** "Today, we have taken the first step toward combining two of the best department store companies…" "For the customers of both companies, joining together means…" "For shareholders and employees, joining together means…" "And for the communities we serve, joining these companies together means..." "We expect the sales of the combined company to grow..." "It will take us until mid-2007 to implement all of the changes we would anticipate as a result of this acquisition..."
Ascential Software Corporation	International Business Machines Corporation	IBM: IBM Software Group Senior VP Steve Mills, ASCL: CEO Peter Gyenes	NYT PR	**Mills:** "The avalanche of data, the sheer quantity of information that exists within a company, makes this acquisition even more important." **Mills:** "The acquisition of Ascential Software expands IBM's open information integration platform…" **Gyenes:** "...this transaction offers Ascential Software shareholders…"
Unocal Corporation	ChevronTexaco Corporation	CVX: CEO David J. O'Reilly	NYT FT PR	**O'Reilly:** "...the successful completion of U.S. regulatory requirements demonstrates that our transaction can be brought to a quick and successful conclusion." **O'Reilly:** "But even at this higher price it remains a compelling transaction for Chevron stockholders and is accretive…" **O'Reilly:** "This merger provides current and long-term investment value…"
SpectraSite, Inc.	American Tower Corporation	AMT: CEO Jim Taiclet, SSI: CEO Steve Clark	FT PR PR	**Taiclet:** "This combination is a defining event in the tower industry …" **Taiclet:** "This combination is a defining event in the tower industry…" "Combining with SpectraSite creates an even stronger company…" "As a combined company, we will be able to offer more than 20,000 sites..." **Clark:** "The combination of SpectraSite and American Tower will ensure our ability to compete…" **Taiclet:** "We look forward to closing the merger…" **Clark:** "We are very pleased that our stockholders recognize and support the compelling strategic and economic benefits of the merger."
Catellus Development Corporation	ProLogis	PLD: CEO Jeffrey Schwartz	PR	**Schwartz:** "We are pleased that both companies' investors have so overwhelmingly approved the merger, recognizing the significant opportunities created by consolidating two of the leading providers of industrial property…"
Integrated Circuit Systems, Inc.	Integrated Device Technology, Inc.	IDT: CEO Greg Lang, ICS: CEO Hock Tan	PR	**Lang:** "We believe that the merger will enable customers to benefit…" "The merged company will have an outstanding base of technology, customers and talent…" "...the transaction will be accretive to IDT's fiscal year 2007 earnings per share." "...will allow the combined company to increase its ability..." **Tan:** "Combining IDT with ICS will allow us to complement..." "I am confident that the merged company..."

Target Company Name	Acquirer Company Name	Quoted Company Leadership	Source	Relevant Quotes
			PR	**Lang:** "This merger represents an important step in the transformation of IDT." **Tan:** "We are excited about the pending close of the merger." "...significant benefits from the merger of these two strong companies."
Amegy Bancorporation, Inc.	Zions Bancorporation	ZION: CEO Harris Simmons, ABNK: CEO Paul Murphy	PR	**Simmons:** "We're very excited about this new partnership with Amegy Bancorporation." "It is a combination that will allow Amegy…" **Murphy:** "We will keep our name, our management, our board and even our charter. We will continue to make loan decisions locally. We have a new partner in Zions that will preserve the heritage of community banking with the efficiencies of a large company."
PacifiCare Health Systems, Inc.	UnitedHealth Group Incorporated	PHS: CEO Howard Phanstiel, UNH: CEO Dr. William McGuire	NYT PR	**McGuire:** "We expect to be more savvy, more capable with this combination to make sure we operate through any kind of changes." **Phanstiel:** "This merger joins together two highly complementary companies…" "We believe combining UnitedHealth Group's national health service capabilities with PacifiCare's brand prominence and deep relationships in the Western United States…"
Prentiss Properties Trust	Brandywine Realty Trust	Prentiss: CEO Thomas August, BDN: CEO Gerard Sweeney	PR	**August:** "We are pleased to announce this important transaction with Brandywine Realty Trust." **Sweeney:** "This transaction perfectly reflects the continued execution of our market concentration strategy. We are delighted to have entered into this agreement with Prentiss Properties."
Dex Media, Inc.	R.H. Donnelley Corporation	RHD: CEO David C. Swanson, Dex: CEO George Burnett	PR	**Swanson:** "Today's closing marks an important milestone for R.H. Donnelley…" **Burnett:** "This is a merger of two strong companies -- both market leaders -- that will be even stronger together."
Jefferson-Pilot Corporation	Lincoln National Corporation	LNC: CEO Jon Boscia, JP: CEO Dennis Glass	PR	**Boscia:** "This combination will further round out both companies' product offerings…" "...the combined company will also benefit…" **Glass:** "Lincoln Financial Group is an ideal partner to merge with…" "The merger of equals of Lincoln Financial Group and Jefferson Pilot is a compelling combination..." "For shareholders, this merger presents a tremendous value creation opportunity..."
Vintage Petroleum, Inc.	Occidental Petroleum Corporation	OXY: CEO Dr. Ray R. Irani, VPI: CEO Charles Stephenson	FT PR	**Stephenson:** "The structure of this transaction allows Vintage shareholders…" **Irani:** "...we expect the acquisition to be immediately accretive to cash flow, free cash flow and earnings."
Burlington Resources Inc.	ConocoPhillips	BR: CEO Bobby Shackouls	NYT PR	**Shackouls:** "The combination of ConocoPhillips and Burlington Resources…" **Shackouls:** "While this merger marks the end of Burlington Resources as an independent company…"
Arden Realty, Inc.	General Electric	ARI: CEO Richard Ziman, GE Real Estate CEO Michael Pralle, TRZ: CEO Tim Callahan	PR	**Pralle:** "This transaction brings us…" "This transaction also gives GE Real Estate the opportunity to work with Trizec...to structure a transaction that creates positive results for all three parties." **Ziman:** "This merger cements the relationship between the global endeavors of GE Real Estate and the dominant regional leverage of Arden." "This transaction also demonstrates..." **Callahan:** "The high quality office properties we will be acquiring..." "This transaction will also allow Trizec to continue its strategy..."
Remington Oil and Gas Corporation	Cal Dive International, Inc.	CDIS: CEO Owen Kratz	PR	**Kratz:** "The acquisition of Remington is the next key step…"
Shurgard Storage Centers, Inc.	Public Storage, Inc.	PSA: CEO Ronald Havner, SHU: CEO David Grant	PR PR	**Havner:** "The combination of Public Storage and Shurgard…" "This transaction provides Shurgard's shareholders…" "…shareholders of the combined company." **Grant:** "This merger represents…" "…it is clear that this transaction is the best option…" **Havner:** "We are pleased to have successfully completed the transaction combining Public Storage and Shurgard…"
Golden West Financial Corporation	Wachovia Corporation	WB: CEO Kenneth Thompson, Vice Chairman Ben Jenkins, GDW: CEOs Herb and Marion Sandler	NYT PR	**Thompson:** "This is an incredible franchise that we're buying for a 15 percent premium." **Ms. Sandler:** "I will stay with this company and I will do what needs to be done to make this merger a success." **Thompson:** "We believe this combination of our two companies…" **Jenkins:** "We're very excited to partner with such strong management…" "We'll work hard with our new partners to achieve merger efficiencies…" **Ms. Sandler:** "Together, we will strengthen our community leadership, and our shared commitment to the communities we serve will be made more powerful by this merger."
Global Signal, Inc.	Crown Castle International Corp.	CCI: CEO John P. Kelly, CFO Ben Moreland, GSL: Chairman Wesley R. Edens	WSJ PR	**Kelly:** "This is not a transaction done for synergies; this is all about growth." **Kelly:** "We expect this extraordinary combination of companies with the most towers in the best markets to create significant value…" "This transaction reflects our continued commitment …" "We believe this combination enhances our ability…" **Edens:** "This is a merger of best-in-class assets and people." **Moreland:** "We are excited about bringing together Crown Castle and Global Signal to create a powerful growth platform with a very efficient capital structure." "We believe that this transaction enhances..."
Broadwing Corporation	Level 3 Communications, Inc.	LVLT: CEO James Q. Crowe, CFO Sunit Patel, BWNG: CEO Steve Courter	PR	**Crowe:** "The acquisition of Broadwing…" "We believe the combination of Level 3 and Broadwing will create…" **Courter:** "The combination of our two operations will create…" **Patel:** We expect the combined operations to directly benefit from…" "...this transaction is free cash flow positive in 2008..." "We expect the transaction to..."

Target Company Name	Acquirer Company Name	Quoted Company Leadership	Source	Relevant Quotes
CBOT Holdings, Inc.	Chicago Mercantile Exchange Holdings Inc.	CBOT: Chairman Charles Carey, CEO Bernard Dan, CME: Chairman Terry Duffy	NYT	**Duffy:** "No question about it: there is hugely broad support for a CME-CBOT combination…" **Carey:** "The revised merger agreement with CME…"
			NYT	**Carey:** "the Boards of CBOT Holdings and the CBOT concluded that the revised merger agreement with CME continues to offer greater overall benefits…"
			Reuters	**Carey:** "...greatest trade in the history of Chicago…"
			Reuters	**Carey:** "This is the greatest trade in the history of Chicago and I think it's one of the few trades that both sides are big winners."
			Reuters	**Carey:** "the Boards of BOT Holdings and the BOT concluded that the revised merger agreement with CME continues to offer greater overall benefits…" "Our Boards and advisors reviewed this latest proposal...and found that it was not superior to the revised CME merger agreement."
			BW	**Carey:** "A combination makes us both able to compete as global players."
			PR	**Carey:** "the Boards of CBOT Holdings and the CBOT concluded that the revised merger agreement with CME continues to offer greater overall benefits…" **Dan:** "A combination with the CME will create the most extensive and diverse…" "Going forward, this combination will allow us to better compete..."
Caremark Rx, Inc.	CVS Corporation	CMX: CEO Mac Crawford, CVS: CEO Tom Ryan	NYT	**Ryan:** "Today's vote reinforces the compelling logic underpinning the merger of the nation's largest pharmacy chain with the leading pharmacy services company…"
			BW	**Crawford:** "This merger creates a significant platform…" **Ryan**: "This merger is a logical evolution for CVS, Caremark and the entire pharmacy industry."
			PR	**Crawford:** "Combining Caremark's expertise in serving employers and health plans with CVS's expertise in serving consumers will create a powerful force…" "This merger creates a significant platform…" **Ryan:** "This merger is a logical evolution for CVS, Caremark and the entire pharmacy industry."
Mellon Financial Corporation	The Bank of New York Company, Inc.	BK: CEO Thomas A. Renyi, MEL: CEO Robert P. Kelly	FT	**Kelly:** "The merger creates an extraordinarily strong and rapidly growing global competitor in our core businesses." **Renyi:** "It became even more obvious to us that a combination today might be even more attractive than ever."
			PR	**Kelly:** "The merger creates an extraordinarily strong and rapidly growing global competitor…" "Today's action is clearly in the best long-term interests…"
Sky Financial Group, Inc.	Huntington Bancshares Incorporated	HBAN: Chairman Thomas Hoaglin, SKYF: CEO Marty Adams	PR	**Hoaglin:** "This merger is consistent…" "For shareholders, this transaction is immediately accretive…" "As a result of the merger…" "We also share a passion for community involvement, and this merger will provide…" **Adams:** "This is an exciting transaction that provides Sky shareholders..." "We expect this transaction to benefit our loyal customers..."
First Republic Bank	Merrill Lynch & Co., Inc.	MER: Global Private Client Business President Robert J. McCann, FRC: CEO Jim Herbert	PR	**McCann:** "We are very pleased that First Republic will join Merrill Lynch as a separately run business…" **Herbert:** "We are pleased with the value that this transaction will create for our shareholders." "...our partnership with Merrill Lynch will bring for our clients..." "...our partnership with Merrill Lynch will provide more opportunities..."
TALX Corporation	Equifax Inc.	EFX: CEO Richard F. Smith	Reuters	**Smith:** "This is not an acquisition that is being driven by (taking) costs out. It is an acquisition driven by innovation, growth (and) share wallet penetration in the marketplace…"
			PR	**Smith:** "By acquiring TALX, Equifax has expanded into a high-growth market…"
TODCO	Hercules Offshore, Inc.	HERO: CEO Randy Stilley, THE: CEO Jan Rask	PR	**Stilley:** "This transaction positions Hercules Offshore…" **Rask:** "...and believe this transaction maximizes value for shareholders."
Cytyc Corporation	Hologic, Inc.	HOLX: CEO Jack Cumming, CYTC: CEO Patrick Sullivan	NYT	**Cumming:** "This merger is not about cutting costs, it is about creating growth." **Sullivan:** "...and this merger will let us maximize the use…"
			PR	**Cumming:** "We appreciate the support that ISS has given to our combination with Cytyc…" "We look forward to realizing the many benefits this combination creates."
Crescent Real Estate Equities Company	Morgan Stanley	CEI: CEO John Goff, Morgan Stanley Real Estate Managing Director Michael Franco	Reuters	**Goff:** "This transaction accelerates the realization of that goal by delivering value to our shareholders more quickly and with greater certainty."
			PR	**Franco:** "We are excited to acquire the unique portfolio of properties that Crescent put together."
Washington Group	URS Corporation	URS: CEO Martin M.	Reuters	**Koffel:** "This whole deal was strategically driven, but it's got attractive financial metrics as well."

Target Company Name	Acquirer Company Name	Quoted Company Leadership	Source	Relevant Quotes
International, Inc.		Koffel, WNG: CEO Stephen G. Hanks, Chairman Dennis Washington	PR	**Koffel:** "...this transaction is the next logical step in building for future growth. Through this combination, both companies will be better positioned…" "...our clients will benefit from the combined firm's expanded capabilities…" "The transaction is an exceptional opportunity that offers significant benefits..." "The combination is expected to enhance..." "In addition, the combined company's diversified revenue and client base..." **Hanks:** "This transaction will create a new leader..." "The combined company also will have a significant presence..." **Washington:** "I strongly support the transaction with URS..."
			PR	**Koffel:** "This transaction has important benefits…" "The combined company also has enhanced scale and expertise …" "We are looking forward to capturing the tremendous potential of the combined company." "We believe the combined company is unrivaled …"
A.G. Edwards, Inc.	Wachovia Corporation	WB: CEO Ken Thompson, Capital Mgmt Group President David Carroll, PRU Vice Chairman John Strangfeld, AGE: CEO Robert L. Bagby	PR	**Thompson:** "...we have long expressed our interest in growing this business both organically and through acquisition." "This combination with A.G. Edwards…" **Bagby:** "This combination will bring together two similar companies…" "In Wachovia Securities, we believe we found the perfect partner." **Carroll:** "...productivity and efficiency of our combined firm." **Strangfeld:** "...our investment in Wachovia Securities and our partnership with Wachovia management. We believe the combination of A.G. Edwards and Wachovia Securities..." "...make this deal successful."
Pogo Producing Company	Plains Exploration & Production Company	PXP: CEO James Flores, POGO: CEO Paul Van Wagenen	Reuters	**Flores:** "This accretive transaction..." "Along with asset diversification and significant cost savings, the combined company..." "This transaction almost doubles PXP's production..."
			PR	**Flores:** "This accretive transaction…" "...the combined company will have…" "This transaction almost doubles PXP's production…" **Wagenen:** "This transaction with Plains Exploration & Production Company creates a combined company…"
First Charter Corporation	Fifth Third Bancorp	FITB: CEOs Kevin Kabat and George Schaefer, FCTR: CEO Bob James	NYT	**Schaefer:** "First Charter was a very attractive strategic acquisition."
			PR	**Kabat:** "The addition of First Charter…" **James:** "We are very pleased to have chosen Fifth Third as our strategic partner." "First Charter customers will benefit significantly from the transaction..." "We believe this combination is a great result for our shareholders, customers and employees…" "First Charter will become a new Fifth Third affiliate..."
			PR	**Kabat:** "The finalization of this acquisition gives Fifth Third Bank…" **James:** "We are excited to be a part of the Fifth Third family…"
Pharmion Corporation	Celgene Corporation	CELG: CEO Sol J. Barer, PhD, PHRM: CEO Patrick J. Mahaffy	Reuters	**Mahaffy:** "The combination of our two product portfolios and organizations represents the opportunity…"
			PR	**Barer:** "The acquisition of Pharmion…" **Mahaffy:** "The combination of our two product portfolios and organizations represents the opportunity…"
Grant Prideco, Inc.	National Oilwell Varco, Inc.	NOV: CEO Pete Miller, GRP: CEO Michael McShane	FT	**Miller:** "We are delighted with the way this transaction advances…"
			PR	**Miller:** "We are delighted with the way this transaction advances…" "We believe this transaction will afford excellent opportunities…" "...working together to realize the new opportunities we expect to achieve from this combination." **McShane:** "This is a great transaction for our shareholders..." "We are looking forward to a successful combination with National Oilwell Varco. The combination with a world class organization such as National Oilwell Varco..."
NYMEX Holdings, Inc.	CME Group Inc.	CME: CEO Craig Donohue, Chairman Terry Duffy, NMX: CEO James Newsome, Chairman Richard Schaeffer, Board of Directors and General Atlantic LLC CEO Bill Ford	Reuters	**Duffy:** "... and today's revised merger agreement makes that opportunity a reality." "...to achieve a seamless and successful integration." **Schaeffer:** "We believe that the merger with CME..." "CME Group remains the best partner ..." "...we are absolutely committed to delivering the benefits of this combination..." "We look forward to proceeding to our vote and focusing on a smooth integration so that our combined company can quickly achieve its significant growth potential." **Donohue:** "...we are committed to completing this transaction..." "This transaction will also produce..." "...better position our combined company..." **Newsome:** "We are pleased today to move closer to completing our transaction with CME Group." "We continue to believe that a combination with CME Group..." "...further evidence of our confidence in and dedication to this transaction." **Ford:** "As a growth investor and a prospective significant shareholder in the combined company, General Atlantic fully supports this transaction..." "...we believe the revised terms of the merger agreement..." "General Atlantic will vote all of our shares in favor of the merger..." "...growth and success of the combined company."
			FT	**Schaeffer:** "…CME Group was 'the right partner at the right time'"
			FT	**Duffy:** "This is a transaction we were committed to…" "We've made a change that will appease the members and secure the vote...I've never seen that in any transaction or any deal." **Donohue:** "Both Terry and I have received a number of calls since we announced the revised agreement…"
			FT	**Duffy:** "The addition of NYMEX to CME Group…" **Donohue:** "Following the closing of this transaction…"
			FT	**Duffy:** "We have to integrate the Nymex."
			PR	**Duffy:** "We are extremely pleased to complete our transaction…" "As a united company…" **Donohue:** "Our NYMEX and COMEX acquisition…"

Target Company Name	Acquirer Company Name	Quoted Company Leadership	Source	Relevant Quotes
Bois d'Arc Energy, Inc.	Stone Energy Corporation	BDE: CEO Gary Blackie, CRK: CEO M. Jay Allison, SGY: CEO David Welch	Reuters PR	**Allison:** "We are very excited about this combination and are enthusiastic about our 13% ownership interest in Stone Energy. In combination with Bois d'Arc, Stone is now one of the largest Gulf of Mexico focused operating companies. The completion of this transaction allows Comstock to focus entirely on..." **Welch:** "...the combined company will be a leading Gulf of Mexico producer. The transaction will be accretive to Stone on a 2008 cash flow basis and the combined entity is expected…" **Blackie:** "The case for combining the two companies is extremely compelling to the Bois d'Arc stockholders." **Allison:** "We are very excited about this combination and are enthusiastic about our 13% post-merger ownership in Stone Energy."
Metavante Technologies, Inc.	Fidelity National Information Services, Inc.	FIS: CEO Lee A. Kennedy, MV: CEO Frank R. Martire	PR	**Kennedy:** "This transaction will further strengthen…" **Martire:** "By bringing these two companies together…"
BJ Services Company	Baker Hughes Incorporated	BHI: CEO Chad C. Deaton, BJS: CEO Bill Stewart	NYT PR PR	**Deaton:** "The proposed merger will make Baker Hughes…" **Deaton:** "The transaction further enhances Baker Hughes' position…" "The proposed merger will make Baker Hughes…" **Stewart:** "We are very pleased to be joining forces with Baker Hughes…" **Deaton:** "With the completion of the BJ Services merger today…" "…BJ Services strengthens the combined company's integrated services offering..." "The combined company is better positioned…" **Stewart:** "The merger of BJ Services into Baker Hughes marks an important milestone…" "The combination creates new opportunities..."
Burlington Northern Santa Fe Corporation	Berkshire Hathaway Inc.	BNSF: CEO Matthew Rose, BRK: CEO Warren Buffet	NYT PR	**Rose:** "We are thrilled to have the opportunity to become a part of the Berkshire Hathaway family." **Buffet:** "Tomorrow begins the first century of ownership of BNSF by Berkshire Hathaway." **Rose:** "...demonstrates how well our business model is aligned with our new parent company."
Mariner Energy, Inc.	Apache Corporation	APA: CEO G. Steven Farris, President Roger Plank, ME: CEO Scott D. Josey	WSJ Reuters Reuters PR PR	**Plank:** "We can't tell you how pleased we are to confirm the rumors of the Mariner transaction that were prompted by our premature email." **Farris:** "We have every intention of closing the Mariner deal." **Plank:** "We can't tell you how pleased we are to confirm the rumors of the Mariner transaction that were prompted by our premature email..." **Josey:** "The combination with Apache is an excellent outcome for Mariner's stakeholders." "...further benefit from the upside provided from the merger." **Farris:** "Combining with Mariner enhances Apache's global portfolio…" "This transaction is similar to our earlier strategic steps..." **Farris:** "The Mariner merger — along with our $7 billion acquisition of BP's upstream operating regions in the Permian Basin, Canada and Egypt and our earlier $1 billion acquisition of Devon's Gulf of Mexico Shelf assets…" "The Mariner merger also adds a new dimension to our portfolio..."
Enterprise GP Holdings L.P.	Enterprise Products Partners L.P.	EPD: CEO Michael A. Creel, EPE: CEO Ralph S. Cunningham	WSJ PR PR	**Creel:** "We are pleased to announce our agreement to combine these two partnerships…" **Creel:** "We are pleased to announce our agreement to combine these two partnerships…" "...this transaction would not be possible without the continued support of EPCO…" "...we believe this merger will support the long-term growth…" "…we believe the merger will not impact..." **Cunningham:** "We fully support the combination of these two successful partnerships." "We believe EPE unitholders will benefit from the immediate increase in the value of their post-merger partnership units and the distributions they will receive after the merger. We also believe EPE unitholders will benefit from their ownership of EPD units received in the exchange as this merger will enhance..." **Cunningham:** "Enterprise GP Holdings is pleased to complete this merger." "Our voting unitholders overwhelmingly supported the merger with over 99 percent of the votes cast voted in favor of the merger." **Creel:** "The completion of this merger is a major event in the history of Enterprise Products Partners." "The merger also simplifies our ownership structure."
Smurfit-Stone Container Corporation	Rock-Tenn Company	RKT: CEO James Rubright	Reuters PR	**Rubright:** "We are pleased with the strong support that both RockTenn and Smurfit-Stone shareholders had for this transaction..." "The acquisition of Smurfit-Stone..." **Rubright:** "We are pleased with the strong support that both RockTenn and Smurfit-Stone shareholders had for this transaction..." "The acquisition of Smurfit-Stone..."
Nationwide Health Properties, Inc.	Ventas, Inc.	VTR: CEO Debra A. Cafaro, NHP: CEO Douglas M. Pasquale	Reuters PR	**Cafaro:** "When we sat down with the combined profile of the company, it was an absolutely killer profile." **Cafaro:** "The combination of Ventas and NHP…" "...the combined company will have a unique opportunity…" "This combination unites two similar cultures…" **Pasquale:** "...Ventas is the right partner…" "...we look forward to joining forces with Ventas…" "We're pleased that this all-stock transaction offers NHP shareholders a premium and also the opportunity to participate in the combined company's future prospects for dividends and growth. I am personally committed to ensuring a smooth transition and the completion of the transaction as expeditiously as possible."
Nalco Holding Company	Ecolab Inc.	NLC: CEO J. Erik Fyrwald, ECL: CEO Douglas M. Baker	NYT Reuters FT	**Baker:** "By bringing Nalco and Ecolab together…" **Frywald:** "The combined company is stronger than either company was before the merger…" **Baker:** "(Nalco's) geographic exposure to high-growth emerging markets offers terrific future potential for the combined companies." **Baker:** "...terrific potential for the combined companies..."

Target Company Name	Acquirer Company Name	Quoted Company Leadership	Source	Relevant Quotes
			PR	**Frywald:** “This is a strategically and financially compelling transaction that brings together two highly complementary businesses…" "Moreover, this transaction delivers substantial value…" "We are pleased to be partnering with Ecolab…" **Baker:** "This merger brings together two high-quality organizations..."
Complete Production Services, Inc.	Superior Energy Services, Inc.	SPN: CEO David Dunlap, CPX: CEO Joe Winkler	NYT	**Dunlap:** “The combination of Superior and Complete…"
			FT	**Dunlap:** “The combination of Superior and Complete…" “We anticipate that the proposed merger…"
			PR	**Dunlap:** "The combination of Superior and Complete..." "We anticipate that the proposed merger ..." "We expect significant operational and customer benefits from the combination..." **Winkler:** "This transaction provides Complete shareholders..." "We look forward to working with Superior to realize all of the benefits of this combination..."
Transatlantic Holdings, Inc.	Alleghany Corporation	Y: CEO Weston Hicks, TRH: Chairman Richard Press, CEO Michael Sapnar	WSJ	**Hicks:** The transaction will significantly increase our capital base…"
			NYT	**Hicks:** “This transaction is an outstanding opportunity…"
			PR	**Hicks:** “This transaction is an outstanding opportunity…" "...this is a transformational transaction…" "The transaction will significantly increase our capital base…" **Press:** "...partnering with Alleghany delivers immediate value…" "A combination with Alleghany clearly meets these criteria."
			PR	**Sapnar:** “We are delighted to join...the entire Alleghany team in working to realize the great potential that this combination offers."

Table 4
Reverse Triangular Mergers 2005-2011 (random sample), >$1B Deal Value
Press Comments by Senior Executives on the Deal

Target Company Name	Acquirer Company Name	Quoted Company Leadership	Source	Relevant Quotes
CUNO Incorporated	3M Company	MMM: Exec VP Harold Wiens, CUNO: CEO Mark Kachur	PR	**Wiens:** "...believe that combining 3M's technology and global presence with CUNO's large and expanding installed base and strong product portfolio…" **Kachur:** "This all cash merger will deliver…"
Priority Healthcare Corporation	Express Scripts, Inc.	ESRX: CEO Georege Paz, CuraScript CEO Dom Meffe, PHCC: CEO Steve Cosler	PR PR	**Paz:** "This acquisition strengthens CuraScript's position…" **Meff:** "We are creating one of the largest and most comprehensive specialty platforms in the industry." **Cosler:** "This transaction demonstrates our commitment…" **Paz:** "With the addition of Priority…" **Meffe:** "Our new organization…"
Independence Community Bank Corp.	Sovereign Bancorp, Inc.	SOV: CEO Jay Sidhu, ICBC: CEO Alan Fishman, SAN: VP Juan Rodríguez Inciarte	FT PR	**Inciarte:** "...merits of the deal…" **Sidhu:** "We are very pleased to welcome Santander as a major shareholder and look forward to a long and very profitable relationship..." "This partnership is, of course, facilitating Sovereign's accretive acquisition of Independence..." "Santander's global strength and Sovereign's local expertise in the northeast United States are what makes this partnership so valuable." "By partnering with Santander..." "This transaction provides Santander an opportunity...by establishing a partnership with Sovereign and Independence." "The acquisition of Independence is a logical next step..." "We expect to execute long-term contractual relationships with the senior management of Independence..." **Fishman:** "Sovereign is an outstanding partner for our employees, customers and communities." "With Sovereign's and Santander's support, this partnership will provide..."
Stewart & Stevenson Services, Inc.	Armor Holdings, Inc.	AH: President Robert Schiller, President Aerospace & Defense Group Robert Mecredy, SVC: CEO Max Lukens	PR PR	**Lukens:** "Our Board of Directors unanimously concluded that this transaction with Armor Holdings…" "...expanded opportunities for the combined businesses." **Schiller:** "Based on this expectation and potential synergies from the combination, we expect the acquisition to be accretive to earning in 2007." **Mecredy:** "...specifically to identify the many benefits that might arise from our combination." **Schiller:** "We are very pleased that our merger with Stewart & Stevenson has been completed…" "...smoothly integrate their operations into our Aerospace & Defense Group." "This combination dramatically enhaces our ability to offer..." "In addition to the clear strategic benefits of this combination..." "We expect the acquisition to be accretive to earnings in 2007…" "We also believe this transaction will provide..." "...leveraging this partnership to deliver significant value..." **Lukens:** "...with the Armor Holdings transaction." "...integrating our operations and capitalizing on the power of this combination."
Delta and Pine Land Company	Monsanto Company	MON: CEO Hugh Grant, DLP: CEO Tom Jagodinski	NYT PR	**Grant:** "...we're both genuinely committed to make the transaction work." **Grant:** "Delta and Pine Land represents an excellent fit for our company…" **Jagodinski:** "Our companies are a natural fit…"
Trustreet Properties, Inc.	General Electric	GE: CEO Richard Laxer, GE Franchise Finance CEOs Diane Cooper and Darren Kowalske, TSY: CEO Curtis McWilliams	FT PR PR	**Laxer:** "...adds strong and long-term relationships in the restaurant segment." **McWilliams:** "This transaction provides the opportunity to combine Trustreet's and GE Capital Solutions' complementary industry best practices…" **Cooper:** "Bringing these two very strong organizations together will dramatically expand our breadth of offerings..." "It's a terrific development on many levels." **Kowalske:** "We have assumed Trustreet operations…" "…the restaurant 1031 trading platform (www.Trustreet1031.com) is now part of GE Capital Solutions, Franchise Finance…"
Conor Medsystems, Inc.	Johnson & Johnson	JNJ: Worldwide Chairman Nicholas Valeriani, Group Chairman Rick Anderson, CFO Dominick Caruso, CONR: CEO Frank Litvack	NYT BW PR	**Valeriani:** "With Conor Medsystems, we are now positioned…" **Caruso:** "We didn't buy this asset for the results of that clinical trial. We bought it because…" **Valeriani:** "The addition of Conor Medsystems to the Johnson & Johnson Family of Companies…" **Anderson:** "By combining the unique capabilities of Conor Medsystems and Cordis…" **Litvack:** "This transaction couples…" "Cordis...is the ideal partner..."
Phelps Dodge Corporation	Freeport-McMoRan Copper & Gold Inc.	FCX: CEO Richard Adkerson	PR	**Adkerson:** "We are pleased with the approval from shareholders which will allow us to complete the acquisition of Phelps Dodge."

Target Company Name	Acquirer Company Name	Quoted Company Leadership	Source	Relevant Quotes
John H. Harland Company	M & F Worldwide Corp.	MFW: CEO Howard Gittis, Clarke: CEO Chuck Dawson, JH: CEO Timothy Tuff	PR	**Gittis:** "This acquisition will combine the firms' complementary products and services…" "This transaction is the right response…" "M & F Worldwide, Clarke American and Harland have extensive experience in acquiring and integrating companies…" **Tuff:** "Combining the resources of Harland and Clarke American..." **Dawson:** "Bringing together the impressive offerings of Clarke American and Harland will benefit the combined company's financial institution partners..." "This transaction reflects our continued goal..."
XM Satellite Radio Holdings Inc.	Sirius Satellite Radio Inc.	XMSR: Chairman Gary Parsons, CEO Hugh Panero, President Nate Davis, SIRI: CEO Mel Karmazin, CFO David Frear	NYT	**Karmazin:** "I don't want to make promises to suggest I'll do anything to get the merger done."
			NYT	**Parsons:** "We have said that we do not need the merger to go forward." "The most extraordinary thing has been the visceral nature with which the N.A.B. jihad has progressed against the merger." "If I got to that point where I believed the merger was going forward..." "That's something they had concurred with prior to the announcement of our merger." "Prior to the merger, we were clearly on a continuing growth path..." "But combined, you will turn cash flow positive and positive earnings much more rapidly." **Davis:** "That's not something we can do if we do not merge." "If the merger does not happen..."
			NYT	**Karmazin:** "...because I think there is a lot of misinformation out there about the merger."
			NYT	**Frear:** "Clearly, a merger makes sense from an investor's point of view to reduce costs…"
			Reuters	**Parsons:** "We would not have entered into this transaction ... if we were not confident this was in the public interest."
			Reuters	**Karmazin:** "If our merger is approved, we will offer consumers a much more attractive choice…"
			Reuters	**Karmazin:** "The Combined co will offer consumers more choice at lower prices…" "The merger will allow us to lower prices."
			Reuters	**Karmazin:** "Anyway, I don't think it has much to do with this merger." "We believe that the combination of Sirius and XM will be good for consumers…"
			BW	**Karmazin:** "We want to get the deal done."
			BW	**Karmazin:** "This combination is the next logical step in the evolution of audio entertainment."
			BW	**Karmazin:** "In this merger, lawyers will make more money than the bankers."
			FT	**Karmazin:** "...it has become imperative for our two companies to get together." "The merger is essential to our future ability to compete."
			FT	**Karmazin:** "We remain confident that the regulatory authorities will weigh the merits of the transaction and that we will be able to close the transaction by the end of the year."
			PR	**Parsons and Panero:** "The combined company will be better positioned…" **Karmazin:** "This combination is the next logical step…" "The combined company will be positioned to capitalize…" "We look forward to sharing the benefits...this combination will provide..."
			PR	**Karmazin:** "I am delighted to announce the completion of this exciting merger between SIRIUS and XM." "We have worked diligently to close this transaction…" "Combined, SIRIUS XM Radio will deliver superior value…" "...the completion of the merger will eliminate any confusion..." "...most exciting benefits of this transaction..." "...many analysts have predicted for this combination." "We have all the tools necessary to begin executing as a combined company..."
Greater Bay Bancorp	Wells Fargo & Company	WFC: COO John Stumpf, Chairman Dick Kovacevich, California Business Banking Exec VP Bob Worth, WFIS CEO Dave Zeurcher, GBBK: CEO Byron Scordelis	Reuters	**Kovacevich:** "Our primary activity will continue to be acquiring smaller institutions like the two we did this year."
			PR	**Scordelis:** "We are genuinely pleased and proud to be joining the Wells Fargo organization…" **Stumpf:** "…we look forward to partnering with Greater Bay Bancorp's team members…" **Worth:** "We look forward to combining our resources…" **Zuercher:** "We look forward to welcoming ABD's more than 700 team members..."
Dobson Communications Corporation	AT&T Inc.	T: CEO Randall Stephenson, CEO AT&T Mobility Stan Sigman, DCEL: CEO Everett Dobson	NYT	**Dobson:** "...they would not have access without this merger." **Stephenson:** "...the addition of Dobson to our wireless family…"
			FT	**Stephenson:** "...the addition of Dobson to our wireless family…"
			PR	**Stephenson:** "...the addition of Dobson to our wireless family…" "The combination of our two companies…" "This combination brings two key assets…" **Dobson:** "This transaction reflects the natural evolution…" "...the acquisition will expand AT&T's reach..." "...we also take pride that these operations will become part of a company with the resources and potential of AT&T." "...they would not have access without this merger." **Sigman:** "This acquisition is an excellent fit for AT&T."
RARE Hospitality International, Inc.	Darden Restaurants, Inc.	DRI: CEO Clarence Otis, RARE: CEO Philip Hickey	PR	**Otis:** "The combined organization is strongly positioned…" "...we believe the combination of Darden and RARE…" **Hickey:** "We believe this transaction represents…" "...it means becoming a part of…"

Target Company Name	Acquirer Company Name	Quoted Company Leadership	Source	Relevant Quotes
American Financial Realty Trust	Gramercy Capital Corp.	GKK: CEO Marc Holliday, AFR: Chairman Lewis Ranieri	PR	**Holliday:** "We believe that this major strategic acquisition will provide a powerful growth engine for the future." "By combining Gramercy's financial resources and capital markets expertise with SL Green's recognized portfolio investment and asset management skills..." **Ranieri:** "...by the blending of our portfolio and Gramercy's strong balance sheet and capital markets expertise, our board unanimously approved this transaction." "When this deal is finalized..."
			PR	**Holliday:** "In one transaction, we have effectively doubled the Company's size…" "…as we executed this merger."
CNET Networks, Inc.	CBS Corporation	CNET: CEO Neil Ashe, CBS: CEO Leslie Moonves	NYT	**Moonves:** "There are very few opportunities to acquire a profitable, growing, well-managed internet company like CNET Networks."
			FT	**Moonves:** "There are very few opportunities to acquire a profitable, growing, well-managed internet company like CNET Networks."
			PR	**Moonves:** "There are very few opportunities to acquire a profitable, growing, well-managed Internet company like CNET Networks." "We could not be more pleased with the prospect of adding CNET Networks and its tremendous team of people to the CBS family." "We look forward to completing the acquisition of CNET Networks and the terrific benefits it brings to CBS..." **Ashe:** "Today's announcement brings together two organizations that complement each other..."
			PR	**Moonves:** "...the combination of CBS and CNET Networks…"
Longs Drug Stores Corporation	CVS/Caremark Corporation	CVS: CEO Tom Ryan, LDG: CEO Warren Bryant	PR	**Ryan:** "This transaction provides tremendous benefits…" "With this acquisition…" "We look forward to completing the transaction…" **Bryant:** "The transaction represents an excellent opportunity for Longs…" "...we believe this combination is the logical next step for Longs."
ImClone Systems Incorporated	Eli Lilly and Company	LLY: CEO John Leckleiter, IMCL: Chairman Carl Icahn	WSJ	**Icahn:** "We feel that the Eli Lilly transaction…"
			Reuters	**Lechleiter:** "For the kinds of the things we'll need to do and for the kinds of acquisition we'll need to make…"
			FT	**Icahn:** "We feel that the Eli Lilly transaction vindicates our decision…"
			PR	**Lechleiter:** "This transaction will broaden our portfolio…" "By bringing together ImClone's and Lilly's marketed oncology products, pipelines, and biotech capabilities…"
Marvel Entertainment, Inc.	The Walt Disney Company	DIS: CEO Robert Iger, CFO Tom Skaggs	WSJ	**Iger:** "We did not have any situation that in any way suggested that this was a must-do deal." **Staggs:** "We are acquiring a premium company at a premium set of assets…"
			NYT	**Iger:** "We paid a price that reflects the value they've created and the value we can create as one company."
			Reuters	**Staggs:** "With conversations over time we came to believe in the value of a combination."
			PR	**Iger:** "This transaction combines…" "We believe that adding Marvel to Disney's unique portfolio…"
			PR	**Iger:** "We believe the creative and business potential of this combination…"
Psychiatric Solutions, Inc.	Universal Health Services, Inc.	UHS: CEO Alan Miller, CFO Steve Filton	WSJ	**Miller:** "The combination with PSI…"
			Reuters	**Filton:** "This transaction is transformative for UHS…"
			FT	**Miller:** "The combination with PSI…" "Importantly, the combined company will have …"
			PR	**Miller:** "This transformative transaction…" "The combination with PSI…" "Importantly, the combined company will have ample opportunities for further growth..."
Abraxis BioScience, Inc.	Celgene Corporation	CELG: CEO Bob Hugin, ABII: Exec. Chairman Patrick Soon-Shiong	WSJ	**Hugin:** "The acquisition of Abraxis is a natural evolution…"
			NYT	**Hugin:** "The acquisition of Abraxis is a natural extension…"
			Reuters	**Hugin:** "Abraxis was a very strategic acquisition. Our job is to show it was not just a strategic acquisition but a financial acquisition."
			PR	**Hugin:** "The acquisition of Abraxis BioScience…" **Soon-Shiong:** "In Celgene we have found the ideal partner to further expand…"
			PR	**Hugin:** "We...look forward to bringing together the talent and resources of both organizations unified in vision, mission and values, and aligned through a commitment…"
Terremark Worldwide, Inc.	Verizon Communications Inc.	VZ: COO Lowel McAdam, Verizon Business President Robert Toohey, TMRK: CEO Manuel Medina	NYT	**McAdam:** "...and this combination helps create a tipping point…"
			FT	**McAdam:** "...and this combination helps create a tipping point…"
			PR	**McAdam:** "...and this combination helps create a tipping point…" **Medina:** "This transaction, first and foremost, provides Terremark's stockholders…" "This agreement represents an exciting opportunity…"
			PR	**Toohey:** "...and concluding this transaction is a turning point…"
GSI Commerce, Inc.	eBay Inc.	EBAY: CEO John Donahue	WSJ	**Donahue:** "We want to be a partner, not a competitor."
			WSJ	**Donahue:** "The acquisition of GSI…"
			FT	**Donahue:** "The acquisition of GSI…"
			PR	**Donahue:** "The acquisition of GSI…"
SAVVIS, Inc.	CenturyLink, Inc.	CTL: CEO Glen Post, III, SVVS: CEO James Ousley	WSJ	**Post:** "...and this transaction helps us meet these needs…" **Ousley:** "The CenturyLink combination definitely brings both of those…" "...a strategic combination was a natural choice…"
			NYT	**Post:** "The transaction creates…" "...and this transaction helps us meet these needs…"
			FT	**Post:** "The transaction creates…" "...and this transaction helps us meet these needs…" **Ousley:** "...a strategic combination was a natural choice…" "We believe that combining our proven capabilities…"

Target Company Name	Acquirer Company Name	Quoted Company Leadership	Source	Relevant Quotes
			PR	**Post:** "The transaction creates…" "...and this transaction helps us meet these needs…" **Ousley:** "...a strategic combination was a natural choice…" "We believe that combining our proven capabilities…"
Constellation Energy Group, Inc.	Exelon Corporation	EXC: CEO John Rowe, COO Christopher Crane, CEG: CEO Mayo Shattuck	WSJ	**Crane:** "We are confident that the proposed merger is good for BGE, its customers and the state of Maryland."
			WSJ	**Rowe**: "This merger creates the number one competitive energy provider…"
			NYT	**Shattuck:** "The combination of these two companies…" "This enterprise will have the scale and financial strength…" **Rowe:** "This merger creates the number one competitive energy provider…"
			Reuters	**Shattuck:** "Our merger was ultimate affirmation of those ideals…"
			Reuters	**Shattuck:** "We are...moving forward with our merger with Exelon."
			Reuters	**Crane:** "We are pleased to have reached yet another important milestone in completing our merger with Constellation." "We continue to expect that we will finalize the merger in early 2012."
			Reuters	**Rowe:** "You made it clear that you were buying Exelon for its long run upside, and this deal preserves that long term upside."
			BW	**Rowe:** "This merger meets all of those tests."
			BW	**Rowe:** "This merger creates the number one competitive energy provider…"
			FT	**Crane:** "We are pleased to have reached yet another important milestone in completing our merger with Constellation." "We continue to expect that we will finalise the merger in early 2012."
			PR	**Rowe:** "This merger creates…" **Shattuck:** "The combination of these two companies…" "This enterprise will have…" **Crane:** "This transaction offers clear financial upside…" "The combination will optimize…"
			PR	**Crane:** "We are pleased that the FERC has approved our merger with Constellation." "FERC's approval is the final regulatory requirement to completing the transaction. We look forward to combining our operations and becoming one company." **Shattuck:** "We are pleased to now be able to proceed with this transaction and unite our two companies."
Varian Semiconductor Equipment Associates, Inc.	Applied Materials, Inc.	AMAT: CEO Mike Splinter	NYT	**Splinter:** "Combined, Applied and Varian will be better positioned…"
			PR	**Splinter:** "Combined, Applied and Varian will be better positioned…"
			PR	**Splinter:** "The combination of Applied and Varian…"
NetLogic Microsystems, Inc.	Broadcom Corporation	BRCM: CEO Scott McGregor, CFO Eric Brandt, NETL: CEO Ron Jankov	NYT	**Brandt:** "It's certainly a full price for the transaction…"
			BW	**McGregor:** "This acquisition expands our market into additional networking opportunities."
			PR	**McGregor:** "This transaction delivers on all fronts…" "...Broadcom is acquiring…" "Today's transaction is consistent with…" **Jankov:** "...which will enable the combined company to offer…"
			PR	**McGregor:** "The NetLogic acquisition is a significant milestone…" "This acquisition adds…"
Pharmasset, Inc.	Gilead Sciences, Inc.	GILD: CEO John Martin, COO John Milligan, VRUS: CEO Schaefer Price	BW	**Milligan:** "Value investors are less excited about the deal…" "So we made a very difficult decision to do an acquisition which is much larger than we typically like to do…"
			FT	**Martin:** "The acquisition of Pharmasset…"
			PR	**Martin:** "The acquisition of Pharmasset…" "This transaction will serve to drive the long-term growth of our business…" **Price:** "We are excited to join together with Gilead…" "...make this partnership an ideal step…"

EXHIBIT 11

EXHIBIT 19

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MBIA INSURANCE CORPORATION, Plaintiff, -against- Countrywide Home Loans, Inc., Countrywide Securities Corp., Countrywide Financial Corp., Countrywide Home Loans Servicing, LP and Bank of America Corp., Defendants.	X	Index No. 602825/08 IAS Part 3 (Bransten, J.)

EXPERT REPORT OF THOMAS L. PORTER, PH.D., C.P.A.

June 25, 2012

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I. INTRODUCTION AND SUMMARY OF OPINIONS

1. I am a Certified Public Accountant with more than thirty years of experience as both an accounting practitioner and accounting academic. I hold a Ph.D. in accounting and am currently an Associate Dean at the Hult International Business School. I was a member of the research and technical activities staff at the Financial Accounting Standard Board ("FASB"), the organization that establishes the generally accepted accounting principles ("GAAP") for the United States.

2. I have been asked by counsel for BAC[1] to opine both on BofA's application of GAAP[2] with regard to the accounting methods used for recording the acquisition of Countrywide through CFC's July 1, 2008 merger with Red Oak ("Acquisition") and on accounting issues related to certain post-Acquisition intercompany transactions that occurred in July and November 2008. I have not been asked to (nor have I) audited BAC's financial statements. I present seven primary opinions. My opinions are as follows:

First, The inclusion of Countrywide liabilities on BAC's consolidated financial statements—which both GAAP and federal securities law require—does not imply that BAC has assumed Countrywide's liabilities. This is true today, as it was at the time of the Acquisition.

Second, BofA properly applied the "purchase method" required by GAAP to record the Acquisition.

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[1] Throughout this report I use certain abbreviations, as follows: "BAC" refers to Bank of America Corporation; "BofA" refers to BAC and all of its subsidiaries other than Countrywide; "CFC" refers to Countrywide Financial Corporation; "Countrywide" refers to CFC and its subsidiaries; "CW Bank" refers to Countrywide Bank, FSB; "CHL" refers to Countrywide Home Loans, Inc.; "Red Oak" refers to Red Oak Merger Corporation and "NB" refers to NB Holdings Corporation; the "July transactions" refers to the various post-Acquisition asset sale transactions between BofA and Countrywide that occurred between July 1 and July 3, 2008 (described in paragraph 72); the "November transactions" refers to both CHL's November 7, 2008 sale of certain assets to BAC and CFC's November 7, 2008 sale of certain subsidiaries to BAC under a stock purchase agreement (described in paragraph73).

[2] Although at times in this report, I occasionally refer to GAAP and its requirements in the present tense (*e.g.*, "GAAP requires . . ."), except as noted otherwise, this report discusses GAAP in effect at the time of the Acquisition. My report does not discuss, and my opinions do not cover, subsequent changes to GAAP.

Third, The procedures that BofA used in applying the purchase method and to price assets sold in the July and November 2008 transactions were designed to reasonably approximate fair value (the value that would be received or paid for an asset or liability in an arms' length transaction in an orderly market).

Fourth, Countrywide's sale of assets at fair value did not affect Countrywide's solvency, as determined by (i) the value or amount of assets available to repay Countrywide's creditors; and (ii) the fair value of Countrywide's net assets. Rather, Countrywide's asset sales at fair value merely accelerated Countrywide's receipt of the expected future cash flows from those assets equal to their net present value (*i.e.*, the sales converted the revenue stream into the present value of the cash Countrywide expected to derive from the assets). This did not change the expected future economic benefits associated with the assets.

Fifth, BofA reasonably allocated the goodwill from the Acquisition to CW Bank and Balboa Life & Casualty—the CFC subsidiaries that would (following the Acquisition) be associated with the Countrywide mortgage and insurance business operations for which BAC paid for in the Acquisition.

Sixth, In accordance with GAAP, BofA accrued and increased the preexisting Countrywide reserves to reflect only the portion of the potential Countrywide litigation and representation-and-warranty exposures that BofA determined to be "probable" and "reasonably estimable" as of July 1, 2008.

Seventh, Based on my review of the accounting methods for the July and November 2008 Transactions, Countrywide received consideration in an amount equal to the values for its assets that BofA calculated using its fair value accounting methods.

The materials that I relied upon in forming these opinions are identified below and in Appendix B to this report. In addition to these opinions, I also explain GAAP, SEC regulations, and accounting practices that pertain to my opinions.

II. OVERVIEW OF REPORT

3. After listing my qualifications in Section III, my report is organized as follows:

- In Section IV, I address the use of GAAP in public company accounting, consolidated reporting, and the purchase method of accounting that GAAP requires for acquisitions. I explain the principles underlying the purchase method of accounting and provide an overview of the process under GAAP that requires an acquirer to record the acquired company's assets on the acquirer's consolidated financial statements at fair value.[3]

I also explain, in Section IV, that GAAP and SEC rules require the presentation of consolidated financial statements that report all assets and liabilities of a single corporate family (*i.e.*, BAC and all of its subsidiaries, including Countrywide) as if all of those assets and liabilities were held by a single entity; why the inclusion of CFC, CHL or any other BAC subsidiary's assets or liabilities on BAC's consolidated financial statement does not mean that the BAC parent entity directly owns or has assumed those assets or liabilities; and why the separate entity-level balance sheets maintained for each subsidiary are typically the proper balance sheets at which to look to determine the responsibility for a particular asset or obligation.

- In Section V, I examine BofA's application of the purchase method of accounting to the Acquisition. Here, I address how BofA used accounting methods that complied with GAAP in (i) calculating the purchase price for 100% of CFC's common equity, (ii) recording Countrywide's assets and liabilities at fair value, (iii) calculating and recording goodwill from the Acquisition, and (iv) allocating the purchase accounting adjustments and resulting goodwill to Countrywide's subsidiaries.

- Finally, in Section VI, I discuss the accounting methods for the July and November 2008 transactions and my conclusion that BofA's methods were designed to reasonably approximate fair value to determine the consideration it paid Countrywide in the July and November transactions.

III. QUALIFICATIONS

4. I am currently an Associate Dean and member of the global faculty at the Hult International Business School ("Hult") in Cambridge, Massachusetts. Before joining Hult in April 2012, I was a vice president at NERA Economic Consulting, Inc. ("NERA"). I held faculty appointments at Boston College and Georgia State University before my employment with NERA.

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[3] In this transaction, the purchase price exceeded the fair value of the acquired company's net assets. Therefore, the acquired company's net assets are recorded at fair value. GAAP provides different guidance for instances where the purchase price is less than the fair value of the acquired company's net assets. I do not discuss that situation here.

5. Between the faculty appointments noted above, I was a member of the research and technical activities staff of the FASB, the organization that establishes GAAP for the United States.[4] While at the FASB, I worked on "main agenda" projects and Emerging Issues Task Force cases. At the time, main agenda projects were projects directly related to the development of Statements of Financial Accounting Standards, which provide the primary guidance for GAAP. Emerging Issues Task Force items related to narrower issues arising within existing GAAP that required further guidance for practitioners. I was the project manager for Statement of Financial Accounting Standards ("SFAS") No. 143, *Accounting for Asset Retirement Obligations*, and was a member of the project team for FASB Concepts Statement ("CON") No. 7, *Using Cash Flow Information and Present Value in Accounting Measurements.* CON No. 7 "provides a framework for using future cash flows as the basis for an accounting measurement;"[5] the "general principles that govern the use of present value, especially when the amount of future cash flows, their timing, or both are uncertain(;) [and] also provides a common understanding of the objective of present value in accounting measurements."[6]

6. I have been qualified as an accounting and financial expert at arbitration hearings and in court, including the Delaware Chancery Court. I have testified in disputes involving special purpose entities, cost allocation schemes for common costs in mutual funds and hedge funds , the reasonableness of choices within GAAP, disclosure adequacy, and tax issues.

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4 The FASB website notes that "Since 1973, the Financial Accounting Standards Board (FASB) has been the designated organization in the private sector for establishing standards of financial accounting that govern the preparation of financial reports by nongovernmental entities." http://www.fasb.org/facts/index.shtml (last visited June 22, 2012).

5 Statement of Financial Accounting Concepts ("CON") No. 7, *Using Cash Flow Information and Present Value in Accounting Measurements*, ¶ 11 (2000).

6 *Id.* at CON7-L.

7. I received a bachelor's degree in Accounting and Finance from the University of Maryland. I have a master's degree in Business Administration (MBA) from the Georgia Institute of Technology. I have a Ph.D. in Accounting from the University of Washington. I am a Certified Public Accountant, having passed the CPA Exam in Maryland in 1981. I am currently a licensed CPA in the Commonwealth of Massachusetts. I hold the Accredited in Business Valuation ("ABV") and the Certified in Financial Forensics ("CFF") credentials issued by the American Institute of Certified Public Accountants. My curriculum vitae is attached to this report as Appendix A.

IV. USE OF GAAP IN PUBLIC COMPANY ACCOUNTING

8. GAAP provides a framework for the preparation of financial statements. GAAP refers to "the convention, rules, and procedures necessary to define accepted accounting practice at a particular time,"[7] and includes both written principles prepared by the FASB and prevalent industry practices. Federal securities laws and regulations require large publicly traded corporations like BAC to report their financial statements in compliance with GAAP.[8] In addition to GAAP, public companies also must comply with the rules and regulations of the Securities and Exchange Commission ("SEC") concerning GAAP guidance and interpretation. GAAP provides broad principles in some instances and detailed procedures in others. Even

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7 AU Section 411.02.

8 The SEC website notes that "Companies with more than $10 million in assets whose securities are held by more than 500 owners must file annual and other periodic reports. These reports are available to the public through the SEC's EDGAR database." *The Investor's Advocate*, SEC, http://www.sec.gov/about/whatwedo.shtml (last visited June 25, 2012). *See also* SEC DIVISION OF CORPORATION FINANCE, FINANCIAL REPORTING MANUAL § 1400 (December 31, 2011) ("Regulation S-X and U.S. GAAP must be followed by domestic issuers. Financial statements not prepared in accordance with U.S. GAAP are presumed to be inaccurate or misleading.").

though there is an extensive body of accounting guidance, applying GAAP to a particular circumstance requires accountants to exercise professional judgment.

A. Consolidation and Individual Subsidiary Accounting

9. BAC is a holding company—a parent entity with numerous subsidiaries. CFC (itself a holding company) became one of those subsidiaries as a result of the Acquisition. GAAP and SEC regulations require BAC as a holding company to publicly report its financial statements on a consolidated basis.[9] This means that BAC must present its assets and liabilities, as well as the assets and liabilities of its majority-owned subsidiaries, as if they were held by a single, combined entity.

10. The relevant accounting guidance describes the "purpose of consolidated statements [as] to present, primarily for the benefit of the shareholders and creditors of the parent company, the results of operations and the financial position of a parent company and its subsidiaries essentially *as if* the group were a single company."[10] Consolidation of the financial statements is therefore designed to provide investors and creditors of the parent entity with an overview of the entire corporate family's financial position and results of operations, without regard to which specific subsidiary owns any specific asset or is responsible for any specific liability.

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9 Accounting Research Bulletin ("ARB") No. 51, *Consolidated Financial Statements*, ¶ 3 (1959), as amended by SFAS No. 94, *Consolidation of All Majority-Owned Subsidiaries*, ¶ 13 (1987) ("All majority-owned subsidiaries—all companies in which a parent has a controlling financial interest through direct or indirect ownership of a majority voting interest—shall be consolidated."); SEC Regulation S-X, 17 C.F.R. § 210.3-01 ("There shall be filed, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.").

10 ARB No. 51, ¶ 1 (1959) (emphasis added). *See also* SFAS No. 94, ¶ 1 (1987) (quoting ARB No. 51, ¶1).

11. The inclusion of a subsidiary's assets or liabilities on BAC's consolidated financial statement, therefore, does not mean that the BAC parent entity directly owns the assets or is directly responsible for the liabilities of its subsidiaries reflected on the consolidated financial statement.

12. Despite being consolidated for financial reporting purposes, BAC's individual subsidiaries maintain independent balance sheets and income statements upon which the assets and liabilities, revenues and expenses, specific to that legal entity have been recorded. Accordingly, it is reasonable to assume that the entity with responsibility for a particular liability is typically the one that has that liability recorded on its individual balance sheets. For example, I observe an amount recorded for the "Cfc-Monoline Repurchase Re" (Account # 281252), on CHL's balance sheet.[11] As described, this suggests that CHL is the legal entity within the Bank of America consolidated group of companies that is responsible for this particular liability, even though the amount is ultimately included in BAC's consolidated financial statements.

13. In its complaint, Plaintiff uses the fact that Countrywide's "assets and liabilities have been included in Bank of America's recent financial statements" as support for an allegation that BAC has "taken steps to expressly and impliedly assume Countrywide's liabilities."[12] As explained above, this argument is inconsistent with basic accounting principles concerning proper interpretation of consolidated financial statements. Simply because a liability is included in the consolidated financial statements for BAC does not mean that from an accounting perspective the BAC parent-entity has assumed or is responsible for the liability. To

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11 *See, e.g.*, CHL 2009 Entity-Level Balance Sheet, [BACMBIA-R0000013374].

12 Am. Compl. ¶ 126, *MBIA Ins. Corp. v. Countrywide Home Loans, Inc., et al.*, No. 08/602825 (N.Y. Sup. Ct. Aug. 24, 2009).

the contrary, it would be improper and misleading to draw conclusions from the parent-entity's consolidated financial statements about which entity within a corporate family of companies owns a particular asset or is responsible for a particular liability.

B. The Purchase Method of Accounting for Acquisitions

14. On January 11, 2008, Countrywide and BAC entered into an Agreement and Plan of Merger, pursuant to which Countrywide would merge with a wholly-owned BAC subsidiary, Red Oak.[13] Under the terms of that agreement, BAC was to acquire 100% of Countrywide's outstanding common equity in a stock-for-stock transaction that valued Countrywide's common equity at approximately $4 billion, and Countrywide would merge into Red Oak.[14]

15. On July 1, 2008, BAC issued a press release announcing that the Acquisition closed on July 1, 2008, and Red Oak was renamed "Countrywide Financial Corporation" immediately afterwards.[15] As discussed above (*see* ¶ 9, *supra*), when the Acquisition closed Countrywide became a BofA subsidiary, and BAC was required to include its new subsidiary Countrywide's assets and liabilities in BAC's consolidated financial statements. The accounting method used to accomplish this and to account for BAC's acquisition of Countrywide is known as the purchase method of accounting for a business combination.

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[13] CFC, Quarterly Report (Form 10-Q), at 5 (August 11, 2008) ("On January 11, 2008, Countrywide and Bank of America entered into an Agreement and Plan of Merger, pursuant to which Countrywide would merge (the 'Merger') with and into Red Oak Merger Corporation, a wholly-owned merger subsidiary of Bank of America ('Merger Sub'), with Merger Sub continuing as the surviving company. The details of this agreement are contained in a Current Report on Form 8-K filed with the Securities and Exchange Commission on January 17, 2008, and the Amended Registration Statement on Form S-4 of Bank of America filed on May 28, 2008. The Merger was concluded on July 1, 2008. On July 1, 2008, Merger Sub was renamed Countrywide Financial Corporation.").

[14] BAC, Current Report (Form 8-K), Exhibit 99.1 (January 11, 2008); CFC, Current Report (Form 8-K), Item 1.01 (January 17, 2008).

[15] BAC, Current Report (Form 8-K), Exhibit 99.1 (July 1, 2008).

1. The Purchase Method

16. Under GAAP, acquirers must apply the purchase method when accounting for a business combination. A business combination occurs upon the acquisition of "equity interests of one or more other entities" in which the acquirer thereby obtains control of the other entity.[16] Under GAAP, "control is generally indicated by ownership by 'one company, directly or indirectly, of over fifty percent of the outstanding voting shares of another company.'"[17]

17. Under the purchase method, the acquirer calculates the price paid to acquire control of the acquired company, identifies and records all of the acquired company's assets and liabilities on its consolidated balance sheet at their fair values as of the acquisition date, calculates goodwill resulting from the transaction by comparing the net assets acquired at fair value to the price paid to acquire those assets, and, under "push down accounting," allocates the assets and liabilities, including goodwill, to the acquired company's subsidiaries.

18. Thus, the purchase method can be thought of as having four main steps. *First*, the acquirer determines the amount of consideration the acquirer paid (*i.e.*, the purchase price) for the business it bought as of the date of the agreement to effectuate a business combination.

19. *Second,* the acquirer allocates the purchase price to the individual assets and liabilities acquired in the business combination. This is referred to as the "purchase price allocation" and requires the acquirer to:

(i) identify any unrecorded tangible and intangible assets and liabilities;

(ii) determine the fair value of the acquired company's identifiable tangible and intangible assets and liabilities, as of the date on which the transaction closed; and

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[16] SFAS No. 141, *Business Combinations*, ¶ 9 (2001).

[17] *Id.* at 109 n. 5 (citing ARB No. 51, ¶ 2).

(iii) record the acquired company's updated identifiable tangible and intangible assets and liabilities at fair value as of the transaction's closing date (except for certain assets or liabilities that may not be reflected at fair value under the purchase method).

The guidance contained in SFAS No. 141 (the accounting standard applicable to "business combinations") recognizes that "completion of the allocation process . . . may sometimes require an extended period of time" because acquirers often lack sufficient information on the date on which an acquisition closes to perform the valuations and other tasks necessary to record the final purchase price allocations.[18] SFAS No. 141 provides the acquirer with up to a year to complete the purchase method process.[19]

20. *Third*, the intangible asset of "goodwill" has to be measured and recorded on the consolidated balance sheet. Goodwill is the excess of the fair value of net assets acquired in the business combination over the price paid for control of the acquired company.[20] To illustrate, if a company purchased for \$100,000 a corner dry-cleaning business with assets having a fair value of \$90,000 and liabilities having a fair value of \$10,000, then the purchased equity has a value of \$80,000 (the net assets) and the acquiring company would record \$20,000 of goodwill on its consolidated balance sheet.

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[18] *Id.* ¶ B183 (recognizing that time may be necessary because "[f]or example, appraisals might be required to determine replacement cost of plant and equipment acquired, a discovery period may be needed to identify and value intangible assets acquired, and an actuarial determination may be required to determine the pension liability to be accrued").

[19] *Id.* Appendix F (providing that the allocation period ends "when the acquiring entity is no longer waiting for information that it has arranged to obtain . . . usually not [to] exceed one year form the consummation of a business combination").

[20] *Id.* ¶ 43 ("The excess of the cost of an acquired entity over the net of the amounts assigned to assets acquired and liabilities assumed shall be recognized as an asset referred to as goodwill.")

21. *Fourth*, for individual entities with separate reporting requirements, the acquirer "pushes down" the purchase accounting adjustments and allocates the goodwill to the acquired company and its subsidiaries.

22. The requirement to record the acquired company's assets and liabilities at fair value is one key difference between the purchase method and how assets and liabilities are normally recorded on an entity's balance sheet. Absent a business combination, assets and liabilities on a balance sheet are "measured by different attributes (for example, historical cost, current [replacement] cost, current market value, net realizable value, and present value of future cash flows), depending on the nature of the item and the relevance and reliability of the attribute measured."[21] For example, whether to apply, absent a business combination, the historical cost (*i.e.*, the original purchase price less depreciation or amortization) or fair value method (*i.e.* marked-to-market on a regular basis) to a financial asset primarily depends on the intended use of the asset; GAAP distinguishes between securities intended to be held for investment (typically retained for an extended time), which are recorded at historical cost, and those intended to be held for trading (typically purchased and sold relatively quickly), which are updated to fair value at each reporting date. Thus, absent a business combination, some assets are carried on the balance sheet at historical cost while other assets are carried at fair value.[22]

23. Because the purchase method requires fair-value recording for assets and liabilities that would, absent applying the purchase method, normally be recorded at historical

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[21] CON No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises*, Highlights, at CON5–3 (2008).

[22] SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, ¶¶ 7, 12 (1993) (requiring "held-to-maturity securities" to be recorded at amortized cost and "trading securities" to be recorded at fair value).

values, there can be differences between the values of specific assets or liabilities recorded on the acquired company's pre-purchase books and the values of those same assets or liabilities that the business acquirer records under the purchase method. For example, land typically is carried on a balance sheet at its historical cost. If the acquired company holds land, and real estate values were to decline between the date the land was purchased and the date the company was acquired, as part of the purchase method application there would be an adjustment to revise the historical cost of the land to bring it to its current fair value on the acquisition date. This would require lowering the value of that real estate on the acquired company's books as part of the purchase accounting process.

2. Purchase Method Concepts

24. I next explain three of the accounting concepts that are utilized in the purchase method applied to the Acquisition: (a) fair value accounting, including application of Statement of Position ("SOP") 03-3, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer*—which governs accounting for expected losses on impaired loans newly acquired by non-governmental investors; (b) recognition of contingent liabilities under GAAP; and (c) "push down accounting"—*i.e.,* allocation of purchase accounting adjustments to subsidiaries acquired in a business combination.

a. Fair Value Accounting

25. GAAP defines "fair value" as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the

measurement date"[23]—*i.e.*, the price that would be received in an arm's length transaction in an orderly market. The guidance on fair values applies equally to assets and liabilities.

26. SFAS No. 157 requires valuation techniques consistent with the market approach,[24] income approach,[25] and/or cost approach[26] be used to measure fair value. For certain assets it is easy to obtain fair value through market-based sources. For example, the value of a publicly traded corporation's stock (such as IBM) can be readily determined from the latest available public trading price. But the accounting literature recognizes that there may be little or no market activity at any given time relevant to a particular asset or liability. In such circumstances, GAAP requires the entity to use "assumptions developed based on the best information available in the circumstances"[27] to model the asset's fair value.[28] Regardless of the method used, the measurement objective for fair value is the same: "to determine the price that would be received to sell the asset or paid to transfer the liability" in a non-distressed arm's length transaction.[29]

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23 SFAS No. 157, *Fair Value Measurements*, ¶ 5 (2006).

24 *Id.* ¶18a ("The market approach uses prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities (including a business).")

25 *Id.* ¶18b ("The income approach uses valuation techniques to convert future amounts (for example, cash flows or earnings) to a single present amount (discounted). The measurement is based on the value indicated by current market expectations about those future amounts. Those valuation techniques include present value techniques.").

26 *Id.* ¶18c ("The cost approach is based on the amount that currently would be required to replace the service capacity of an asset (often referred to as current replacement cost).")

27 *Id.* at Summary.

28 *Id.* ¶ 21 (requiring the use of "assumptions that market participants would use in pricing the asset or liability, including assumptions about risk, for example, the risk inherent in a particular valuation technique used to measure fair value (such as a pricing model)").

29 *Id.* ¶ 7.

27. As noted above, the purchase method generally required that all Countrywide's assets and liabilities be recorded on BAC's consolidated balance sheet at fair value following the Acquisition.

28. Aside from the purchase method, GAAP also prescribes that, even absent a business combination, fair value accounting methods be used to update the values of certain assets and liabilities that were originally recorded at fair value, such as investments held for trading purposes (*see* ¶¶ 22–23, *supra*). Where an entity has existing methods for calculating fair value for the assets already on its consolidated balance sheet, it is acceptable under GAAP to apply the same methods to determine the fair value of similar assets when applying the purchase method.

(1) Fair Value and Expected Future Cash Flows

29. I have been informed that Plaintiff has argued that Countrywide became insolvent as a result of BofA buying Countrywide's revenue generating assets in the July and November 2008 transactions. I have not performed a solvency analysis nor was I retained to perform one as part of this report. But it follows from the fair-value accounting principles discussed above that from an accounting perspective, Countrywide's sale at fair value of assets with expected future cash flows would have no effect on Countrywide's solvency, as determined by (i) the total value of assets available to repay Countrywide's creditors, and (ii) the fair value of Countrywide's net assets. To the contrary, a sale of future cash flows at fair value would merely accelerate the receipt of the expected future cash flows in the amount of their net present value. And it follows that accelerating receipt of the expected future cash flows at their net present value would have

increased Countrywide's liquidity and, as the cash flow worksheets demonstrate, permitted Countrywide to meet its near-term obligations as they came due.[30]

30. The foregoing discussion stems from the fact that the fair value of an asset is equal to the net present value of all expected future cash flows associated with that asset. For example, a large portion of the assets Countrywide sold to BAC were mortgage loans—*i.e.*, the right to receive future cash flows from borrowers' repaying their loans. As SFAS No. 157 explains, fair value accounting methods are designed to reflect the market's view of "an asset['s] . . . utility, future cash flows, the uncertainties surrounding those cash flows, and the amount that marketplace participants demand for bearing those uncertainties"—*i.e.*, to calculate the appropriate "exit price" for the asset.[31]

(2) Applying SOP 03-3 and Accounting for Expected Loan Losses

31. Under the purchase method, held-for-investment loans are recorded two different ways, depending on whether the loans are considered to be "impaired" or "non-impaired."

32. SOP 03-3 covers "loan[s] with evidence of deterioration of credit quality since origination . . . for which it is probable, at acquisition, that the investor will be unable to collect all contractually required payments receivable"[32] (referred to as "impaired loans"). Those loans are recorded at fair value and receive both an adjustment for lifetime credit losses and a discount

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30 Several documents summarize the cash flow that occurred from July 1 through 3, 2008 with respect to the July transactions. *See, e.g.*, Summary of LD1-3 Cash Movements, tab 'Summary' [BACMBIA-R0000006061]; Summary of Cash Needs, tab 'Transaction Summary' [BACMBIA-R0000005986].

31 SFAS No. 157, ¶ C32 (quoting CON No. 7, ¶26).

32 Statement of Position ("SOP") 03-3, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer*, ¶ .03 (December 12, 2003).

rate adjustment. Impaired loans includes loans that are not in default and where all payments have been made.

33. Loans where there has been "no evidence of deterioration of credit quality from the date of origination" (referred to as "non-impaired loans") fall outside SOP 03-3's scope.[33] Purchase accounting for non-impaired loans is governed by SFAS No. 141 (the accounting standard that applies to business combinations), under which the value of non-impaired loans acquired in a business combination can be adjusted only for changes in discount rates but not for expected lifetime credit losses. Non-impaired loans, thus, are recorded on the consolidated balance sheet at "present values of amounts to be received determined at appropriate current interest rates, less allowances for uncollectibility and collection costs, if necessary." [34]

34. SOP 03-3 does not define the specific criteria for determining to which loans the standard applies. Instead accountants must use their professional judgment to create a reasonable set of criteria consistent with GAAP and the SOP 03-3's purpose. SOP 03-3 does, however, provide guidance that certain factors such "as Fair Isaac Company (FICO) scores . . . , downgrading, decline in value of collateral, or past-due status" may be evidence of credit quality decline.[35]

b. Accounting for Contingent Liabilities

35. Companies routinely have to decide if a potential or contingent liability facing it can be reflected in its financial statements. SFAS No. 5 provides guidance for making this determination. It requires that two criteria be satisfied before a particular contingent liability

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[33] *Id.* ¶ B-9.

[34] SFAS No. 141, ¶ 37b.

[35] SOP 03-3, ¶ B-9.

may be recorded in the financial statements: the potential liability must be both "probable" and "reasonably estimable."[36] These two criteria are designed to ensure the integrity of financial statements by "prevent[ing] accrual in the financial statements of amounts so uncertain as to impair the integrity of those statements."[37]

36. The "probable" criterion means that management must find that it is "probable that an asset had been impaired or a liability had been incurred at the date of the financial statements" before it can accrue the liability on the company's balance sheet.[38] SFAS No. 5 defines a contingent liability as "probable" if it is "likely to occur," but does not specify what "likely" means other than not a "virtual certainty."[39] One empirical study found that the phrase "probable" is interpreted in accounting and financial reporting contexts by experienced auditors to mean at least a 75% to 80% likelihood of occurring. [40]

37. The "reasonably estimable" criterion means that there is a "reasonable basis for quantifying the amount of the loss."[41] Even when a contingent liability is determined to be

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36 SFAS No. 5, *Accounting for Contingencies*. ¶ 8 (1975) ("An estimated loss from a loss contingency . . . shall be accrued by a charge to income if . . . [i]nformation . . . indicates that it is probable . . . [and t]he amount of loss can be reasonably estimated.").

37 *Id.* ¶ 59.

38 *Id.* ¶ 8.

39 *Id.* ¶ 84 ("Those conditions are not intended to be so rigid that they require virtual certainty before a loss is accrued. They require only that it be probable that an asset has been impaired or a liability has been incurred and that the amount of loss be reasonably estimable.").

40 Tarek Amer, et al., *Between-Auditor Differences in the Interpretation of Probability Phrases*, 13 AUDITING: A J. OF PRAC. AND THEORY 126, 126–36 (Spring 1994). *See also* Tarek Amer, et al., *Context-Dependence of Auditors' Interpretations of the SFAS No. 5 Probability Expressions*, 12 CONTEMP. ACCT. RES. 25, 25–39 (Fall 1995); Kenneth E. Harrison and Lawrence A. Tomassini, *Judging the probability of a contingent loss: An empirical study*, 5 CONTEMP. ACCT. RES. 642, 642–48 (1989).

41 EITF Topic D-80 ("Losses should not be recognized before it is probable that they have been incurred, even though it may be probable based on past experience that losses will be incurred in the future . . . . Statement 5 requires recognition of a loss when (a) information available prior to issuance of the financial statments indicates that it is probable that an asset has been impaired at the date of the financial statements.").

probable, it cannot be accrued on the company's financial statements if a reasonable estimate for the exposure cannot be calculated. And when an analysis of the exposure results in a *range* of reasonable potential outcomes, only the outcome that is determined to be most likely to occur can be accrued in the financial statements.[42] If no amount in the range is more likely than any other, the minimum amount within the range must be accrued.[43]

38. Because of these criteria, the amount accrued on a company's balance sheet for contingent liabilities is often less than the maximum potential exposure the company faces and different from the amount ultimately paid on the liability—especially given the uncertainty of some claims. As SFAS No. 5 explains:

> As a condition for accrual of a loss contingency, [SFAS No. 5] requires that the amount of loss can be reasonably estimated. In some cases, it may be determined that a loss was incurred because an unfavorable outcome of the litigation, claim, or assessment is probable . . . but the range of possible loss is wide. For example, an enterprise may be litigating an income tax matter. In preparation for the trial, it may determine that, based on recent decisions involving one aspect of the litigation, it is probable that it will have to pay additional taxes of $2 million. Another aspect of the litigation may, however, be open to considerable interpretation, and depending on the interpretation by the court the enterprise may have to pay taxes of $8 million over and above the $2 million. In that case, [SFAS No. 5] requires accrual of the $2 million if that is considered a reasonable estimate of the loss.[44]

39. That the maximum potential risk that a company faces from exposure to actual or potential litigation, disputed claims, or other contingent liabilities may exceed the amount

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42 FASB Interpretation No. 14, *Reasonable Estimation of the Amount of a Loss, an interpretation of FASB Statement No. 5*, ¶ 3 (September 1976) ("When some amount within the range appears at the time to be a better estimate than any other amount within the range, that amount shall be accrued.").

43 *Id.* ¶ 3 ("When no amount within the range is a better estimate than any other amount, however, the minimum amount in the range shall be accrued.").

44 SFAS No. 5, ¶ 39.

recorded on the company's balance sheet for the contingent liabilities does not suggest that the company's accrual was improperly calculated or that it was too low. Rather, it is a reflection of the uncertainty inherent in estimating contingent liabilities and the proper application of the limitations on recognizing contingent liabilities contained in SFAS No. 5.

40. GAAP also recognizes that estimates of contingent liabilities may change over time. Thus, a subsequent increase in the amount accrued for a contingent liability is treated as a change based on new information and not as a mistake requiring restatement of prior period accounting entries.[45]

41. The purchase method requires that preacquisition contingent liabilities be recorded on the balance sheet consistent with SFAS No. 5's "probable" and "reasonably estimable" criteria.[46] SFAS No. 141 defines a "preacquistion contingency" as any contingency that "is in existence before the consummation of the combination"[47] and includes loan losses, obligations related to representations and warranties (such as agreements to repurchase loan receivables that have been sold), and potential future litigation payments.[48] Thus, the acquired company's pre-acquisition contingent liabilities can only be recorded on the acquirer's

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[45] *Compare* SFAS No. 154, *Accounting Changes and Error Corrections, a replacement of APB Opinion No. 20 and FASB Statement No. 3*, ¶ 2d (May 2005) ("Changes in accounting estimates result from new information. Examples of items for which estimates are necessary are uncollectible receivables, inventory obsolescence, service lives and salvage values of depreciable assets, and warranty obligations); *see id.* ¶ 19 ("A change in accounting estimate shall not be accounted for by restating or retrospectively adjusting amounts reported in financial statements of prior periods or by reporting pro forma amounts for prior periods.").

[46] SFAS No. 141, ¶ 40.

[47] *Id.* Appendix F.

[48] *Id.* ¶ 40; SFAS No. 5, ¶ 4 ("Examples of loss contingencies include [among others] . . . Pending or threatened litigation[,] Actual or possible claims and assessments[, and] Agreements to repurchase receivables (or to repurchase the related property) that have been sold.").

consolidated balance sheets through the purchase method to the extent that they are both "probable" and "reasonably estimable."

c. Push-Down Accounting

42. After applying the purchase method and calculating goodwill on a consolidated basis, the next step is to "push down" the purchase accounting adjustments to the acquired company and its subsidiaries. Following an acquisition, the acquired companies often continue to maintain entity-level balance sheets and income statements separate from the acquirer.[49] This is because acquisitions are often structured such that the acquired company remains a separate legal entity from the acquirer and, thus, has liabilities and assets separate from the acquirer (albeit rolling up into the acquirer's consolidated balance sheet for financial reporting purposes) that are recorded on its entity-level balance sheets.[50] But the acquired company does not simply continue to record the assets and liabilities on its balance sheet at their pre-acquisition historical values. Rather, under "push down" accounting, new values are assigned to the assets and liabilities based on the allocation of the purchase price through applying the purchase method. In other words, the values assigned under the purchase method, including goodwill, are "pushed down" to the acquired entity and to its individual subsidiaries with reporting needs.[51]

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[49] Countrywide is no exception and continues to maintain entity-level balance sheets and income statements separate from BAC, which I understand have been produced in this litigation. *See, e.g.*, 2009 CHL Balance Sheet [BACMBIA-R0000013374]; 2009 CHL Income Statement [BACMBIA-V0000028298]; 2009 CFC Balance Sheet [BACMBIA-R0000006215]; 2009 CFC Income Statement [BACMBIA-V0000028296].

[50] ROBERT LIBBY ET AL., FINANCIAL ACCOUNTING 624 (5th ed. 2005) ("Basically, consolidated statements can be thought of as the adding together of the separate financial statements for two or more companies to make it appear as if a single company exists. . . . Remember that consolidated statements make it appear as though a single company exists when in fact there are two or more separate legal entities.").

[51] SEC Staff Accounting Bulletin ("SAB") No. 54, *Push Down Basis of Accounting Required in Certain Limited Circumstances* (1983).

43. "Push down" accounting is required by, for example, the Office of the Comptroller of Currency, the Office of Thrift Supervision, the Federal Reserve Board, and the Federal Deposit Insurance Corporation "for regulatory reporting purposes when an institution's voting stock becomes at least 95 percent owned."[52] The rationale for applying "push down" accounting is that when an entity becomes substantially owned, the "basis of accounting for purchased assets and liabilities should be the same [as the parent's] regardless of whether the entity continues to exist or is merged into the parent's operations."[53]

44. SFAS No. 142, *Goodwill and Other Intangibles Assets,* provides related guidance that reasonably extends to "push down" accounting for goodwill. Specifically, SFAS No. 142 requires goodwill to be evaluated regularly for possible impairment (*i.e.*, possible reduction in the value recorded on the books). This may occur, for example, if deterioration in a business's condition suggests that a reduction in the going concern value recorded is warranted. SFAS No. 142 requires that, for purposes of testing for impairment, "[g]oodwill shall be assigned to reporting units of the acquiring entity that are expected to benefit from the synergies of the [business] combination."[54] Therefore, in business combinations where the acquired company is a collection of entities, the total goodwill acquired should be allocated among the individual subsidiaries to facilitate measuring possible impairment.

45. SFAS No. 142 further notes, "The methodology used to determine the amount of goodwill to assign to a reporting unit shall be reasonable and supportable and shall be applied in

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52 Joint Report: Differences in Accounting and Capital Standards Among the Federal Banking Agencies; Report to Congressional Committees, 73 Fed. Reg. 50,326 (August 26, 2008).

53 SAB No. 54.

54 SFAS No. 142, *Goodwill and Other Intangible Assets*, ¶ 34 (2001).

a consistent manner."[55] In other words, GAAP does not necessarily dictate a specific method for allocating goodwill, but rather requires judgment to determine an appropriate allocation on a case-by-case basis. In exercising that judgment, it is reasonable to take into account the theoretical basis for recognizing goodwill and to allocate it to the subsidiaries that are associated with ongoing business operations.

V. BOFA PROPERLY APPLIED THE PURCHASE METHOD TO THE COUNTRYWIDE ACQUISITION

46. Based on my analysis of accounting principles and the materials cited here and in Appendix B, I conclude that BofA's application of the purchase method complied with GAAP.

Step 1: Determine the Purchase Price

47. BofA's first step in applying the purchase method was to calculate the purchase price it paid to acquire control of CFC's outstanding common equity. I understand that BAC acquired 100% of CFC's common equity through the stock-for-stock transaction valued at $4.2 billion that closed on July 1, 2008.[56] As set by the January 11, 2008 merger agreement, BAC issued Countrywide's shareholders 0.1822 shares of BAC stock for each share of Countrywide stock.[57] As of December 31, 2007, Countrywide had 583 million shares of publicly traded common stock shares.[58] In total, BAC issued 107 million BAC shares for 100% of Countrywide's outstanding common shares.[59]

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55 *Id.* ¶ 34.

56 BAC, Annual Report (Form 10-K), at 17 (February 27, 2009) ("On July 1, 2008, we acquired Countrywide through its merger with a subsidiary of the Corporation in exchange for stock with a value of $4.2 billion.").

57 *Id.* ("Under the terms of the agreement, Countrywide shareholders received 0.1822 of a share of Bank of America Corporation common stock in exchange for each share of Countrywide common stock.").

58 *Id.* at 125 ("As provided by the merger agreement, 583 million shares of Countrywide common stock were exchanged for 107 million shares of the Corporation's common stock.").

59 *Id.*

48. To determine the value of the acquired company's shares, BofA used the average of the closing market prices for its common stock on the two trading days before and after January 11, 2008—the date on which the merger agreement was signed and announced.[60] This was appropriate under GAAP at the time of the Acquisition: SFAS No. 141 provided that "the quoted market price of an equity security issued to effect a business combination generally should be used to estimate the fair value of an acquired entity" and should be based on the "market price for a reasonable period before and after the date that the terms of the acquisition are agreed to and announced."[61] BofA thus valued the consideration exchanged in the Acquisition at $4.1 billion.

49. Under SFAS No. 141, BofA also had to include in the purchase price the Acquisition's direct costs such as the costs associated with issuing equity securities, cashing-out stock options and restricted stock awards to Countrywide employees, and SEC filing fees.[62] This added approximately $100 million to the purchase price BAC paid for Countrywide.[63]

50. Accordingly, the total purchase price that BAC paid for Countrywide common equity was approximately $4.2 billion, as disclosed in BAC's SEC filings providing its audited financial statements.[64]

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60 *Id.* at 125 ("The value of the shares of common stock exchanged with Countrywide shareholders was based upon the average of the closing prices of the Corporation's common stock for the period commencing two trading days before, and ending two trading days after January 11, 2008, the date of the Countrywide merger agreement.").

61 SFAS No. 141, ¶ 22.

62 *Id.* ¶ 24 ("The cost of an entity acquired in a business combination includes the direct costs of the business combination.").

63 Comprehensive Red Oak Proforma, tab 'WP10_Deal costs_equity conv' tab [BACMBIA-H0000007814].

64 BAC, Annual Report (Form 10-K), at 125 (February 27, 2009).

Step 2: Determine the Fair Value of the Acquired Company's Assets and Liabilities

51. BAC completed the acquisition of Countrywide on July 1, 2008 through CFC's merger with Red Oak.[65] BofA therefore needed to determine the fair value of all of Countrywide's identifiable tangible and intangible assets and liabilities as of July 1, 2008, the effective date of the Acquisition.

52. Consistent with GAAP, in its application of the purchase method, BofA used fair value procedures, adjusted for CFC's company-specific experience, that were in line with those that BofA used to determine fair values for other purposes at BAC.[66] For example, BofA generally used the same method to value Countrywide's mortgage servicing rights ("MSRs"), as adjusted for Countrywide's individual company-specific experience, that it used to fair value the MSRs already on BAC's consolidated balance sheet.[67] BofA also brought in internal subject matter experts to calculate the fair value of specific assets and liabilities.

53. For certain specialized intangible assets, including Countrywide's internally developed software, CW Bank's core deposits, the Balboa Life & Casualty trademark / trade name, and the wholesale lending division's relationships with mortgage brokers, BofA retained

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[65] *Id.* at 125 ("On July 1, 2008, the Corporation acquired Countrywide through its merger with a subsidiary of the Corporation.").

[66] *See, e.g.*, Price Dep. Tr. at 99:7–12 ("My understanding is that [the fair values for the July and November transactions were determined using methods] consistent with how we would have fair valued assets, you know, generally speaking, you know, for other purposes."). *See also* July 16, 2008 email from Robert Reeves, Subject: Valuation Comments re: CFC Book [BACMBIA-I0000069896–97].

[67] The Purchase Accounting Workpapers identify sources for the purchase accounting adjustments for specific assets and liabilities. For example, the worksheet identifies "Mike Vandenberg and Marc Abraham, Corp Investments" as providing the fair value adjustments to Countrywide's debt, 'WP7_Debt marks' tab [BACMBIA-H000007814]. Further, I have been informed by Michael Friedlander, who was responsible for coordinating application of the purchase method to the Acquisition, that internal subject matter experts were sought out to perform the necessary valuations. June 19, 2012 Michael Friedlander Interview.

Ernst & Young ("E&Y") (a top accounting firm) to conduct the valuation. I have reviewed the report that E&Y provided BAC detailing its valuation process and conclusions.[68]

1. Loan Valuation

54. Held-for-investment loans represented a major part of Countrywide's assets, and the first step in valuing Countrywide's loans was for BofA to determine which loans were required to be recorded at fair value under SOP 03-3 (*see* ¶¶ 31–34, *supra*). To do this, BofA had to determine which loans were considered impaired or non-impaired. GAAP required BofA to record impaired loans at fair value by adjusting the loan for both (i) the appropriate discount rate and (ii) lifetime credit loss estimates.[69] For non-impaired loans, GAAP only permitted the discount rate for the loan to be adjusted, and otherwise, the existing Countrywide loan loss reserve was to be carried forward.

55. BofA identified loans as impaired loans if they exhibited certain "higher risk" characteristics, including factors related to days past due, drops in FICO ratings (ratings of the borrower's credit-worthiness), loan-to-value percentages (a measurement of exposure considering the collateral value), and negative amortization (loans for which the amount owed is actually increasing, rather than decreasing, over time).[70] I have reviewed the supporting materials that the BofA accounting team prepared describing the SOP 03-3 criteria, and conclude

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68 Ernst & Young, Valuation Analysis in Connection with Statement of Financial Accounting Standards No. 141, *Business Combinations*, Bank of America Corporation as of 7/1/08, [BACMBIA-Q0000001858–1936].

69 SOP 03-03, ¶ 01 ("The difference between the price and the contractually required payments receivable is attributable to the time value of money and may also be attributable to (a) changes in interest rates between the loan's origination and transfer dates, [and] (b) changes in credit quality of the borrower between the loan's origination and transfer dates.").

70 June 19, 2012 Michael Friedlander Interview.

that these criteria were consistent with SOP 03-3 and are reasonable factors to consider when identifying impaired loans.[71]

56. Through this process, BofA initially identified a set of impaired loans with an unpaid principal balance of approximately $54.5 billion and an allowance for loan losses of $3.7 billion.[72] The credit risk adjustment with respect to these impaired loans was to reflect expectations of lower cash flows collected over the life of the loan in comparison to the contractually required payments.[73] The discount rate adjustment is designed to reflect the present value of expected future cash flows from principal and interest payments on the loans as of July 1, 2008 by accounting for changes in interest rates between the date the loans were originated and the date the Acquisition closed.[74] Based on these calculations, BofA recorded a net pre-tax purchase accounting adjustment for these impaired loans of $8.16 billion.[75]

57. The non-impaired loans had an unpaid principal balance of approximately $39.1 billion.[76] Consistent with GAAP, BofA adjusted only the discount rate for these non-impaired loans. The discount rate adjustment resulted in a pre-tax purchase accounting adjustment to these non-impaired loans of approximately $1.6 billion.[77]

58. I understand that although BofA could not record a purchase accounting adjustment for lifetime credit losses on non-impaired loans, it nevertheless calculated the

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[71] *See, e.g.*, Countrywide Acquisition – Loan Portfolio Accounting [BACMBIA-I0000005142–5146]; SOP 03-3 Summary of Accounting [BACMBIA-I0000017326–329].

[72] Comprehensive Red Oak Proforma, tab 'WP1_Loans' [BACMBIA-H0000007814].

[73] SOP 03-03, ¶ 01.

[74] SOP 03-03, ¶ 01.

[75] Purchase Accounting Worksheet 'PA_Management Summary' tab [BACMBIA-H000007814].

[76] *Id.* 'WP1_Loans' tab [BACMBIA-H000007814].

[77] *Id.* 'PA_Management Summary' tab [BACMBIA-H000007814].

estimated lifetime losses for the entire loan portfolio including non-impaired loans as part of its due diligence for the Acquisition.[78] I further understand that BofA's CFO, Joe Price, reported the results of this analysis to the BAC Board of Directors on June 25, 2008. According to the presentation, which I have reviewed, BofA calculated an additional $1.1 billion in losses above CFC's existing loan loss allowance attributable to non-impaired loans.[79] The additional $1.1 billion in losses was not recorded on BofA's consolidated balance sheet.[80] This was the correct approach to take under GAAP. In fact, it would have been inconsistent with the purchase method under GAAP for BofA to record an additional $1.1 billion in losses related to loans that it had determined to be non-impaired.

59. As is appropriate, BofA continued to revise its purchase accounting adjustments for the loans in the months after the Acquisition as new information concerning the loans' characteristics as of July 1, 2008, became available.[81] In some cases, loans were reclassified from non-impaired to impaired status because BofA received previously unavailable information concerning the loan characteristics as of July 1, 2008, such as updated borrower FICO scores and CLTVs that were not previously available.[82] This information revealed that loans in addition to those included in the initial $54.5 billion impaired loan pool met the SOP 03-3 impaired loan

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78 Board Presentation at 9–12 [BACMBIA-B0000018283–319].

79 *Id.*

80 *Id.*

81 Price Dep. Tr. at 38:7–17 ("[Y]ou did preliminary [purchase accounting], and they were preliminary based on that date. And then they may have been refined because you may not have been able to get computations done that fast or, you know, you may have learned of more information that existed at that date that you didn't have at that time, you know, or something like that, that might have finalized those, but they would have been preliminary. But the as-of date, you know, would have been the merger date, is the way the accounting worked.").

82 December 9, 2008 e-mail from Michael Friedlander, Subject: RE: Non-Impaired CFC Loans [BACMBIA-I0000072270] (noting receipt of CLTV and FICO scores that were unavailable on July 1, 2008 would change the scope of the SOP 03-3 population)

criteria on July 1, 2008.[83] As GAAP required, BofA reclassified these loans as impaired and calculated an estimated lifetime credit loss for those loans as of July 1, 2008. This then required an additional pre-tax downward purchase accounting adjustment of approximately $560 million (or $353 million after being adjusted for tax benefits).[84]

2. Contingent Liabilities

60. To allocate the purchase price, BofA also needed to calculate the fair value of Countrywide's contingent liabilities. There were two primary contingent liabilities on CFC's consolidated balance sheet that were considered in the application of the purchase method: the litigation reserve and the representation-and-warranty reserve.[85]

61. As discussed above (*see* ¶¶ 35–41, *supra*), only the portion of potential litigation exposures that BofA determined met SFAS No. 5's "probable" and "reasonably estimable" standard could be accrued as contingent liability. I understand that BofA determined that only $200 million of the $1.2–1.3 billion potential exposure range it had estimated met that standard.[86] It was therefore appropriate to accrue under the purchase method only that $200 million.[87] The accounting workpapers for the Countrywide acquisition allocation indicate that

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83 November 25, 2008 Email from Michael E. Friedlander, Subject: FW: SOP 03-3 rescoping for CFC [[BACMBIA-I0000033376–77] with attachment [BACMBIA-I0000033378]]; June 19, 2012 Michael Friedlander Interview.

84 Calculation of Adjustments for True-Up Journal Entries, 'Entry 12 08 w Special Elim' tab [BACMBIA-H0000008165].

85 Purchase Accounting Worksheet, 'PA_Management Summary' tab [BACMBIA-H000007814]; [BACMBIA-B0000018282–336].

86 Board Presentation at 17–18 [BACMBIA-B0000018283–319].

87 *Id.*; Purchase Accounting Worksheet [BACMBIA-H000007814].

BofA's legal department was involved in determining which portion of the exposure was probable and reasonably estimable as of the Acquisition.[88]

62. A similar approach was taken to determine the value to accrue for the representation-and-warranty reserve. Countrywide had accrued approximately $1 billion for its representation-and-warranty reserve as of March 31, 2008.[89] I understand that BAC conducted its own analysis of Countrywide's potential representation-and-warranty exposure.[90] BAC calculated the total potential exposure to be $3.3 billion, a sum that was approximately $2.3 billion more than the amount that had already been reserved on Countrywide's books.[91] This estimated increase in total potential exposure included "a little more than $1 billion" that BofA management determined was not "probable" or "reasonably estimable" in part because, as I understand it, the sum included representation-and-warranty claims for which counterparties had not yet submitted claims and for which BofA management determined it lacked sufficient prior experience to estimate a SFAS No. 5 reserve.[92] Consistent with SFAS No. 141 and No. 5, BAC increased the representation-and-warranty reserve to $2.2 billion, which represented the portion of the exposure that BofA's management determined to be "probable" and "reasonably estimable."[93]

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88 Purchase Accounting Worksheet, 'Notes to PA' tab [BACMBIA-H000007814] ("Includes amounts needed per legal (David Onerato) to reserve for cases that are probable and estimable @ 6/30.").

89 Board Presentation at slide 10 [BACMBIA-B0000018320–35].

90 *Id.*

91 *Id. See also* Comprehensive Red Oak Proforma, 'WP3_R&W' tab [BACMBIA-H0000007814] (listing $1.7 billion in CFC's existing reserves as of June 30, 2008 ($1.6 billion, $81 million, and $56 million)); CFC Consolidated Balance Sheet, 'Consolidation_YTD' tab, rows 1292 and 1463 [BACMBIA-R000006045].

92 Price Dep. Tr. at 88:1–91:7; Board Presentation at slide 10 [BACMBIA-B0000018320–35].

93 Comprehensive Red Oak Proforma, 'WP3_R&W' tab [BACMBIA-H0000007814]. This workpaper shows that the $450 million purchase accounting mark for Countrywide's representation and warranty reserve was calculated by subtracting the existing representation and warranty reserves of $1.6 billion, $81 million, and $56

Step 3: Determine the Goodwill

63. Once the fair values of Countrywide's assets and liabilities as of July 1, 2008 were calculated, BofA was required to compare the price it paid to acquire 100% of CFC's common equity to the fair value of CFC's consolidated net assets to determine if the transaction resulted in goodwill. It did. CFC reported BofA's preliminary goodwill calculation of $4.1 billion in its September 17, 2008 Current Report on Form 8-K/A.[94] The 8-K/A also explained the formula that BofA used for calculating goodwill:[95]

- BofA started with the $10.4 billion in book equity (total assets minus liabilities) on CFC's consolidated balance sheet before purchase method adjustments were applied.[96] BofA needed to adjust the $10.4 billion book equity to take into account the 20,000 shares of issued and outstanding 7.25% Series B Non-Voting Convertible Preferred Stock ("Convertible Preferred") that CFC had in addition to common stock. (BAC had purchased the Convertible Preferred in August 2007 for $2 billion.) The Convertible Preferred included a liquidation preference whereby the preferred shareholders would be paid $2 billion in any liquidation before the common stockholders (but after CFC's creditors were fully paid).[97] Because BofA was purchasing only the common shares in the Acquisition, it needed to exclude the $2 billion in book equity that would go to the preferred stock (and not to the common stock) in liquidation.[98] Thus, the book value of the net assets acquired in the Acquisition was $8.4 billion.

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million recoded on Countrywide's financial statements as of June 30, 2008 from the $2.2 billion in Countrywide representation and warranty exposure that BofA determined to be "probable" and "reasonably estimable" as of July 1, 2008. Thus, the $2.2 billion representation and warranty reserve that was recorded on Countrywide's post-acquisition financial statements consisted of a $450 million purchase accounting adjustment and Countrywide's previously recorded $1.7 billion reserve.

94 CFC, Current Report (Form 8-K/A) Exhibit 99.1, at 2 (September 17, 2008).

95 *Id.* Exhibit 99.1, at 5–7 (September 17, 2008).

96 *Id.* Exhibit 99.1, at 2 (September 17, 2008).

97 Investment Agreement by and between Bank of America, N.A., and Countrywide Financial Corporation, Art. II, § 2.01(August 22, 2007) [BACMBIA-H0000000026–59]; CFC, Current Report (Form 8-K), at 2 (August 28, 2007).

98 BofA had purchased all of CFC's Convertible Preferred for $2 billion in August 2007. The Convertible Preferred was cancelled as a result of the Acquisition; CFC, Current Report (Form 8-K/A) Exhibit 99.1 (September 17, 2008).

- BofA then subtracted $8.3 billion in (after tax) purchase method adjustments[99] (*i.e.*, the sum of the changes necessary to adjust the assets and liabilities on CFC's consolidated balance sheet after any tax savings are deducted) from the $8.4 billion pre-acquisition book value of net assets acquired (which excluded the $2 billion in net equity for which the Convertible Preferred had a liquidation preference). This provided the fair value of the net assets that BofA acquired in the Acquisition, which was $100 million.

- BofA then subtracted the $100 million in net assets acquired in the Acquisition from the $4.2 billion that BofA paid for 100% of CFC's common stock to obtain $4.1 billion in goodwill.

64. Consistent with SFAS No. 141, BofA continued to update its goodwill calculation as it obtained additional information until it finalized the figures it had reported in its December 31, 2008 Form 10-K.[100] The ultimate amount of goodwill that BofA recorded in in its December 31, 2008 Form 10-K was $4.4 billion, an increase of approximately $300 million from the preliminary calculation disclosed in the September 8-K/A.[101] The primary driver of this increase in goodwill was updated information that BofA obtained regarding certain Countrywide loans as of July 1, 2008. (*See* ¶ 59, *supra.*)

65. In my opinion, BofA's methods and procedures for accounting for the Acquisition complied with GAAP, including SFAS No. 141.

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99 The pre-tax purchase accounting marks were $13.057 billion (consisting of a $9.313 billion aggregate loan portfolio mark, a $1.644 MSR mark; a $323 million mark on investments; a $779 mark for "other assets"; a $179 million mark on deposits; an $819 million mark on notes payable and other Countrywide liabilities) from which BofA subtracted $4.761 billion in deferred tax assets resulting from the purchase accounting adjustments. This provided a net after tax purchase accounting adjustment of $8.296 billion. *See, e.g.*, Purchase Accounting Worksheet [BACMBIA-H000007814]; CFC, Current Report (Form 8-K/A), Exhibit 99.1 (September 17, 2008).

100 BAC disclosed the same purchase accounting results in the audited financial statements filed in its 2008 and 2009 Form 10-Ks. *Compare* BAC, Annual Report (Form 10-K), at 125 (February 27, 2009) (disclosing after tax purchase accounting adjustments of $8.6 billion and goodwill of $4.4 billion resulting from Countrywide acquisition), *with* BAC, Annual Report (Form 10-K), at 125 (February 26, 2010) (same).

101 BAC, Annual Report (Form 10-K), 142 (February 27, 2009); CFC, Current Report (Form 8-K/A) Exhibit 99.1 (September 17, 2008).

Step 4: Allocate Purchase Method Values and Goodwill to CFC's Subsidiaries

66. The three steps described above allowed BofA to record Countrywide's assets and liabilities onto its consolidated balance sheet. BofA then undertook the fourth step, applying "push-down accounting" to certain entities. This meant BofA adjusted the carrying value of the assets and liabilities on CFC and its subsidiaries' entity-level balance sheets to reflect the fair values determined through the purchase method's application.[102]

67. I have reviewed Countrywide's reconciliations of the purchase accounting adjustments, which indicate adjustments to the entity book values necessary to reflect the fair value of their assets and liabilities.[103] I understand that after the legacy-BofA team calculated the amounts of the purchase accounting adjustments, a team of legacy-Countrywide accountants were responsible for implementing those adjustments and recording them as necessary to the various accounts on Countrywide's consolidated balance sheets.[104] The valuations that resulted from the purchase method were "pushed down" and recorded on the entity-level balance sheets for certain CFC subsidiaries, including (among others), CHL, CW Bank, several Balboa entities,

102 See CFC 8-K/A filed on September 17, 2008 for preliminary purchase price allocation applied to CFC. In addition, there are journal entries and entity level schedules analyzing the purchase price allocation on a subsidiary level basis. *See, e.g.*, Purchase accounting reconcile to BAC July at 08-18 FINAL [BACMBIA-V0000029021]; Purchase accounting reconcile to BAC February updated 2-13-09 [BACMBIA-V0000029128].

103 List of Accounting Entries for LD1 through LD3, [BACMBIA-R0000006093]; 'Allocation' tab [BACMBIA-I0000068217]. *See, e.g.*, Purchase accounting reconcile to BAC February updated 2-13-09 [BACMBIA-V0000029128].

104 *See, e.g.*, Purchase accounting reconcile to BAC July at 08-18 FINAL [BACMBIA-V0000029021]; Purchase accounting reconcile to BAC February updated 2-13-09 [BACMBIA-V0000029128].

and CHL Servicing.[105] Accordingly, the assets and liabilities recorded on the entity-level balance sheets for these subsidiaries reflected the purchase accounting valuations.

68. As part of the "push-down" accounting, BofA also recorded the goodwill onto the subsidiaries' entity-level balance sheets. To do this, BofA first determined an allocation based on the proportion of CFC's overall operating income that each CFC subsidiary generated in 2006.[106] I reviewed this analysis, which shows the 2006 quarterly income produced by the Countrywide subsidiaries (*see* Pro Rata Income Calculation).[107] Operating income from 2006 was chosen because it reflected a more stable economy.[108] This is a reasonable application of accounting judgment.

69. BofA then considered both its plans for the entities acquired and changes that had occurred in Countrywide's operating model since 2006.[109] For example, over the past several years prior to the Acquisition and continuing through 2007, Countrywide had begun transitioning new originations to CW Bank, which by December 2007 accounted for 80% of Countrywide's

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105 June 20, 2012 Interview with Greg Snelson. *See also, e.g.*, Purchase accounting reconcile to BAC July at 08-18 FINAL [BACMBIA-V0000029021]; Purchase accounting reconcile to BAC February updated 2-13-09 [BACMBIA-V0000029128].

106 May 27, 2008 Email from Nathan Hrinsin, Subject: RE: Preliminary Allocation of GW and Marks [BACMBIA-I0000068216] ("We have used a % of pro rata income as the guideline to develop our baseline methodology."); October 10, 2010 Email from Michael E. Friedlander, Subject: PWC Due Diligence Audit Request – Purchase Accounting Adjustments [BACMBIA-Q0000001798–9] (describing three step process used to allocated goodwill); 'Pro Rata Income Calculation' tab [BACMBIA-I0000068217].

107 'Pro Rata Income Calculation' tab [BACMBIA-I0000068217].

108 October 10, 2010 Email from Michael E. Friedlander, Subject: PWC Due Diligence Audit Request – Purchase Accounting Adjustments [BACMBIA-Q0000001798–9] ("We used 2006 operating income as we thought that would represent pre-disruption income and would be more indicative of future income.").

109 *See, e.g.*, October 10, 2010 Email from Michael E. Friedlander, Subject: PWC Due Diligence Audit Request – Purchase Accounting Adjustments [BACMBIA-Q0000001798–9] (describing three step in goodwill allocation process as making "qualitative adjustments based on what we knew about certain entities"); May 28, 2008 Email from R. Shearer, Subject: RE: Preliminary Allocation of GW and Marks [BACMBIA-I0000068216] ("[C]hl servicing has moved its operations into the bank, move the goodwill to the bank[.]").

loan production.[110] The full effect of this shift would not have been reflected in the 2006 revenue information. Further, BofA publicly disclosed that it was acquiring Countrywide for its mortgage business[111] and Joe Price's June 25, 2008 presentation to the BAC Board explained that management's plan for Countrywide involved "most of the former [C]ountrywide operations [being] housed in . . . Countrywide Bank, FSB."[112]

70. BofA then adjusted the goodwill implied from 2006 revenue to allocate goodwill only to those entities that would own revenue-generating assets following the Acquisition. Ultimately, goodwill was allocated to two CFC subsidiaries: CW Bank and Balboa Life & Casualty, LLC.[113] Based on the final adjusted goodwill calculation which was disclosed in BAC's 2008 Form 10-K, BofA allocated approximately $4.2 billion of goodwill to CW Bank and $200 million to Balboa Life & Casualty, LLC, respectively.[114] BofA's allocation of the bulk of the goodwill to CW Bank was consistent with the concepts underlying goodwill.[115]

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110 CFC, Annual Report (Form 10-K), at 4 (February 29, 2008) ("Historically, mortgage banking loan production has occurred in Countrywide Home Loans. Over the past several years, we have been transitioning this production to our bank subsidiary, Countrywide Bank, FSB.").

111 BAC, Current Report (Form 8-K) Item 8.01: Other Events (July 1, 2008) ("Bank of America Corporation (the 'Registrant') . . . and Countrywide Financial Corporation . . . announced that they had signed an Agreement and Plan of Merger pursuant to which Countrywide will merge with and into a wholly owned subsidiary of the Registrant.").

112 Board Presentation at 24 [BACMBIA-B0000018283–319].

113 *See, e.g.*, Countrywide Financial Corporation and Subsidiaries, Consolidated Balance Sheet, 'Consolidation_YTD' tab [BACMBIA-R0000006047] (rows 813–814 show that goodwill is allocated to 2 business units. Business unit "10239" is Countrywide Bank, FSB (CWB). Business unit "10149" is Balboa Life and Casualty. *See* tab 'List of BUs Sold' for business unit code definition.).

114 *See, e.g.*, PAA Goodwill Information as of 3-12-09.xls 'Hierarchy' tab [BACMBIA-V0000029129]; Feb PAA with JEs and recon.xls 'PAA schedule' tab, row 193 [BACMBIA-V0000029128].

115 SFAS No. 141 ¶¶ B102, B105 ("As the Board noted in both the 1999 Exposure Draft and the 2001 Exposure Draft, [going concern] and the [fair value of the expected synergies] are conceptually part of goodwill. [Going concern] . . . reflects the excess assembled value of the acquired entity's net assets. It represents the preexisting goodwill that was either internally generated by the acquired entity or acquired by it in prior business combinations. The [fair value of the expected synergies] . . . reflects the . . . value that is created by the combination . . . . The Board described [these] components collectively as 'core goodwill.'").

71. Thus, in my opinion, BofA's approach to allocating goodwill resulting from the Acquisition was a reasonable application of accounting judgment.

VI. ACCOUNTING FOR THE POST-ACQUISITION INTERCOMPANY TRANSACTIONS

72. BofA and Countrywide conducted two sets of intercompany sale transactions after the acquisition. The first set of transactions occurred in July 2008: (i) on July 1 and 3, 2008, CHL sold a pool of residential mortgage loans to NB Holdings Corporation ("NB Holdings," a BofA-legacy entity); (ii) on July 2, 2008, CHL sold its equity interest in Countrywide GP and Countrywide LP (the two Countrywide-legacy entities that owned 100% of the equity of Countrywide Home Loans Servicing LP) to NB Holdings;[116] and (iii) Countrywide Securities Corporation (a Countrywide-legacy entity) sold a portfolio of securities to a BofA-legacy entity.[117]

73. A second set of transactions occurred on November 7, 2008. In these transactions, CFC sold its equity interest in Effinity Financial Corporation (which owned the equity of certain other Countrywide-legacy entities including CW Bank and the Balboa insurance entities) to BAC, and CHL sold a substantial portion of its remaining assets (*i.e.*, assets not sold

[116] Purchase and Sale Agreement between CHL and NBHC, at 1 (July 2, 2008) [BACMBIA-C0000161342–350] ("Whereas, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the Membership Interests"); Demand Note between CHL and NBHC (July 2, 2008) [BACMBIA-C0000161271–75]; List of Accounting Entries for LD1 through LD3, [BACMBIA-R0000006093].

[117] CFC, Current Report (Form 8-K), at 5 (July 8, 2008) ("On July 2, 2008, Countrywide Securities Corporation completed the sale to Blue Ridge Investment, LLC, a wholly owned subsidiary of Bank of America, of a pool of securities."); List of Accounting Entries for LD1 through LD3 [BACMBIA-R0000006093].

in the July 2008 Transactions) including certain mortgage servicing rights, residential mortgage loans, and premises and equipment, to BAC.[118]

74. I understand that to establish the prices for the assets that Countrywide sold in the July transactions, BofA used (with one exception) the fair values calculated when BofA applied the purchase method.[119] The exception was the price paid for the non-impaired loans, for which SFAS No. 141 does not allow a lifetime credit loss estimate to be recorded.[120] For purposes of determining those loans' fair value and the appropriate consideration BAC should provide Countrywide in buying those loans, BAC had to adjust those loans for lifetime losses. BofA therefore calculated lifetime credit loss estimates using the same method that was used for the SOP 03-3 impaired loan population in purchase accounting.[121] Because the non-impaired loans had not previously been adjusted for lifetime loan losses, this was an appropriate process to calculate a market price for the sale of loans at fair value.

75. I understand that to establish the prices in the November 2008 transactions, BofA used the same or similar calculations to determine fair values for those transactions.[122] For non-impaired loans, which were not recorded at fair value under the purchase method, BofA adjusted them to reflect lifetime loan losses using the same method that had been used for the non-

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[118] Demand Note between BAC and CHL, (November 7, 2008) [BACMBIA-C0000168172–229]; Amendment No.1 to the Demand Note dated 11/7/08 and amended 1/5/09 and 3/6/09 [BACMBIA-Q0000001621–24]; LD100 Asset Transfer Proforma [BACMBIA-R0000006043].

[119] Board Presentation at 23 [BACMBIA-B0000018283–319] ("This transfer will be at fair value, consistent with how we value the assets in purchase accounting.").

[120] CFC's Quarterly Report noted "[t]he Company expects to record no material gain or loss on . . . [the LD2] transactions after giving effect to purchase price adjustments." CFC, Quarterly Report (Form 10-Q), at 5 (August 11, 2008)

[121] *See, e.g.*, Calculation of Adjustments for True-Up Journal Entries, 'Calc of Adjustments' tab [BACMBIA-H0000008165].

[122] *See, e.g., id.*

impaired loans in the July 2008 transactions. (*See* ¶ 74, *supra*.) Assets that GAAP required Countrywide to carry at fair value—such as MSRs, impaired loans, and investments held for sale—were already recorded at their fair value as of October 31, 2008. BAC thus used the value recorded on Countrywide's October 31, 2008 balance sheet to set the consideration for CHL's sale of these assets.[123] And for other assets—such as property, plant, and equipment—their valuation likely would not have changed materially since purchase accounting, and, thus, the value recorded on Countrywide's balance sheet, which I understand BAC used to set these assets' consideration, was a reasonable proxy for these assets' fair value.[124] Further, the price BofA paid when it acquired CFC's equity interest in CW Bank and Balboa in the November 2008 transactions, included the $4.4 billion attributable to the goodwill from the Acquisition, which was allocated to those entities.[125]

76. As discussed above (*see* ¶¶ 25–30, 52, *supra*), BAC's methods for calculating fair values were designed to produce values that approximated the prices at which those assets would be exchanged in an arms' length sales transaction in an orderly market. Thus, from an accounting perspective, using these fair-value methods should have provided prices for those transactions that should have reasonably approximated an arms' length transaction in an orderly market. And once the values were determined, consideration was paid to the Countrywide entities based on those values.[126]

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[123] *See, e.g.*, *id.* at 'Consol Bal Sheet' tab.
[124] *See, e.g.*, *id.*
[125] *See, e.g.*, LD100 Asset Transfer Proforma 'CFC Proforma 10.31.08' tab, row 814 [BACMBIA-R0000006043]; Calculation of Adjustments for True-Up Journal Entries [BACMBIA-H0000008165].
[126] *See, e.g.*, Closing Set of Transaction Documents for the July and November 2008 Transactions [BACMBIA-C0000160997–161640; BACMBIA-C0000168035–168642]; Demand Note between BAC and CFC (November 7, 2008) [BACMBIA-C0000168237–241]; Amendment 1 to the Demand Note dated 11/7/2008 and amended 1/5/09 and 3/6/09 [BACMBIA-Q0000001633–6]; NB Holdings BAC Note Rollforward July – Dec [BACMBIA-R0000006150] (reflecting payments and adjustments to demand notes).

My work is ongoing and my opinions are subject to revision based on new information (including reports or testimony by plaintiff's experts), which subsequently may be provided to or obtained by me. I also reserve the right to prepare and present demonstrative exhibits if I am called upon to testify in this matter.

Thomas L. Porter

Thomas L. Porter

Dated: June 25, 2012

Appendix A

Thomas L. Porter, PhD, CPA

84 Holman Street
Shrewsbury, MA 01545
Email: tlporter@townisp.com
Website: www.tportercpa.com
Phone: 508-842-1391 (H) 774-275-0319 (C)

Education

University of Washington
PhD, Accounting, 1992

Georgia Institute of Technology
MBA, 1984

University of Maryland
BS, Accounting and Finance, 1980

Certifications

Certified Public Accountant since 1981

Accredited in Business Valuation (ABV), 2011

Certified in Financial Forensics (CFF), 2010

Professional Experience

	Hult International Business School
2012-	Associate Dean
	NERA Economic Consulting
2008-2012	Vice President
2003-2008	Senior Consultant Analyses of financial reporting, tax and disclosure matters in connection with securities and commercial litigation. Expert reports and testimony.
	Boston College
2010-	Adjunct Professor Teach Financial Statement Analysis to MBA and MSA students in the Wallace E. Carroll School of Management.
	Georgia State University
2001-2003	Assistant Professor Taught graduate and undergraduate financial accounting courses.

Professional Experience (continued)

	Financial Accounting Standards Board
1998-2001	Project Manager Participated in all aspects of standard-setting activities, including issuances of Statements of Financial Reporting Standards, Statements of Financial Accounting Concepts and Emerging Issues Task Force (EITF) pronouncements.
	Boston College
1993-1998	Assistant Professor of Accounting Taught graduate and undergraduate financial accounting courses.
	Price Waterhouse
1984-1987	Senior Consultant
	Aronson, Greene, Fischer & Co. (CPAs)
1980-1982	Auditor

Publications

"The Hard Facts About Soft Numbers in Subprime Litigation," *Securities Litigation Journal,* ABA Litigation Section, Volume 21, Number 2, Winter 2011, pp. 14-17.

"Fussing and Fuming About Fair Value and Financial Institution: Fact or Fiction?", *Informer*, Volume 2, Issue 13, Spring 2010, pp 45-47.

"The Subprime Meltdown: Understanding Accounting-related Allegations," (with A. Chanyshev), *NERA Insights: Subprime Lending Series*, NERA Economic Consulting, (December 2007).

"Options Backdating: Accounting, Tax, and Economics," (with P. Hinton and P. Conroy), *NERA Insights: Options Backdating Series*, NERA Economic Consulting, (November 2006).

"Backdating Options: Frequently Asked Accounting Questions" *NERA Insights: Options Backdating Series*, NERA Economic Consulting, (November 2006).

Appendix B
Documents Relied Upon[1]

Produced Documents

2009-2012 Entity-Level Balance Sheets and Income Statements
[BACMBIA-R0000006177–215; BACMBIA-R0000013365–70; BACMBIA-R0000013374; BACMBIA-V0000028055–112; BACMBIA-V0000028184–408]

CFC Year-to-Date Consolidating Balance Sheet - June 30, 2008
[BACMBIA-R0000006045]

CFC Year-to-Date Consolidating Balance Sheet - July 31, 2008
[BACMBIA-R0000006044]

CFC Year-to-Date Consolidating Balance Sheet - August 31, 2009
[BACMBIA-R00000006041]

CFC Year-to-Date Consolidating Balance Sheet - September 30, 2008
[BACMBIA-R0000006046]

CFC Year-to-Date Consolidating Balance Sheet - October 31, 2008
[BACMBIA-R0000006047]

CFC Year-to-Date Consolidating Balance Sheet - November 30, 2008
[BACMBIA-R0000006048]

CFC Year-to-Date Consolidating Balance Sheet - December 31, 2008
[BACMBIA-R0000006049]

CFC Year-to-Date Consolidating Balance Sheet - January 31, 2009
[BACMBIA-R0000006042]

Excel Spreadsheet with First Tab: 'Transaction Summary'
[BACMBIA-R0000005986]

Excel Spreadsheet with First Tab: 'Summary Tab'
[BACMBIA-R0000006061]

Excel Spreadsheet with First Tab: 'Transaction Summary'
[BACMBIA-R0000006088]

Excel Spreadsheet with First Tab: 'CFC Consolidated'
[BACMBIA-R0000006043]

Email chain between November 20, 2008 and November 25, 2008 with attachment
[BACMBIA-I0000033376–8]

E-mail chain on December 9, 2008
[BACMBIA-I0000072270]

Email between May 27, 2008 and May 29, 2008
[BACMBIA-I0000068216]

Email on June 25, 2008 with attachments
[BACMBIA-B0000018282–341]

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1 *See* Stipulation and Order Regarding Expert Discovery, at ¶ 2.

Excel Spreadsheet with First Tab: 'CFC Consolidated'
[BACMBIA-R0000006043]

Excel Spreadsheet with First Tab: 'Transaction Summary'
[BACMBIA-R0000005986]

Excel Spreadsheet with First Tab: 'PA_Management Summry'
[BACMBIA-H0000007814]

Excel Spreadsheet with First Tab: 'Summary'
[BACMBIA-R0000006061]

Excel Spreadsheet with First Tab: 'LD1 Entries CFC'
[BACMBIA-R0000006093]

Excel Spreadsheet with First Tab: 'Summary'
[BACMBIA-R0000006165]

Excel Spreadsheet with First Tab: 'PAA Schedule'
[BACMBIA-V0000029128]

Excel Spreadsheet with First Tab: 'Hierarchy'
[BACMBIA-V0000029129]

Presentation with First Page Title: 'Countrywide Acquisition - Loan Portfolio Accounting'
[BACMBIA-I0000005142–6]

Excel Spreadsheet with First Tab: 'Summary'
[BACMBIA-I0000068217]

Excel Spreadsheet with First Tab: '8-29 PAA Schedule'
[BACMBIA-V0000029030]

Excel Spreadsheet with First Tab: 'PAA Schedule'
[BACMBIA-V0000029113]

Excel Spreadsheet with First Tab: 'Recon by Entity'
[BACMBIA-V0000029021]

Excel Spreadsheet with First Tab: 'PAA Schedule'
[BACMBIA-V0000029072]

Excel Spreadsheet with First Tab: 'PAA Schedule'
[BACMBIA-V0000029056]

Excel Spreadsheet with First Tab: 'PAA Schedule'
[BACMBIA-V0000029080]

SOP 03-3 Summary of Accounting
[BACMBIA-I0000017326–9]

Ernst & Young LLP, Valuation Analysis in Connection with Statement of Financial Accounting Standards No. 141, Business Combinations - Bank of America Corporation
[BACMBIA-Q0000001858–936]

Investment Agreement by and between Bank of America, N.A., and Countrywide Financial Corporation (August 22, 2007)
[BACMBIA-H0000000026–59]

Mortgage Servicing Rights (MSRs) Governance Committee Presentation (October 1, 2008)
[BACMBIA-A0000108314–38]

Excel Spreadsheet with First Tab: 'JEs'
[BACMBIA-R0000006047]

Email chain on October 8, 2010
[BACMBIA-Q0000001798–9]

Excel Spreadsheet with First Tab: 'Consol Bal Sheet'
[BACMBIA-H0000008165]

Closing Set for Red Oak Merger
[BACMBIA-C0000160029–918]

Closing Set for the July Transactions
[BACMBIA-C0000160997–1640]

Closing Set for the November Transactions
[BACMBIA-C0000168035–8642; BACMBIA-Q0000001621-36]

Excel Spreadsheet with First Tab: 'Summary'
[BACMBIA-R0000006150]

List of Accounting Entries for LD1 through LD3 with certain related journal entries
[BACMBIA-V0000028757–833]

Excel Spreadsheet with First Tab: 'CFC VAN 6-30 Marks'
[BACMBIA-I0000003304]

Email chain on July 16, 2008
[BACMBIA-I0000069896–7]

Depositions

Deposition of Joe Lee Price, II, Vol. I, with Exhibits 3641-89 Listed but Not Included (May 23, 2012)

Deposition of Gregory Snelson, Vol. I (May 25, 2012)

SEC Filings

BAC, Current Report (Form 8-K) (January 11, 2008)

BAC, Registration Statement (Form S-4) (May 28, 2008)

BAC, Current Report (Form 8-K) (July 1, 2008)

BAC, Current Report (Form 8-K) (July 21, 2008)

BAC, Quarterly Report (Form 10-Q) (August 7, 2008)

BAC, Quarterly Report (Form 10-Q) (November 6, 2008)

BAC, Current Report (Form 8-K) (November 7, 2008)

BAC, Annual Report (Form 10-K) (February 27, 2009)

BAC, Annual Report (Form 10-K) (February 26, 2010)

CFC, Current Report (Form 8-K) (August 16, 2007)

CFC, Current Report (Form 8-K) (August 28, 2007)

CFC, Current Report (Form 8-K) (January 17, 2008)

CFC Annual Report (Form 10-K) (February 29, 2007)

CFC, Current Report (Form 8-K) (July 8, 2008)

CFC, Quarterly Report (Form 10-Q) (August 11, 2008)

CFC, Current Report (Form 8-K/A) (September 17, 2008)

Interviews

Interview with Greg Snelson, June 20, 2012

Interview with Michael Friedlander, June 19, 2012

Accounting and Auditing Literature

Accounting Research Bulletin No. 51 (As Amended), *Consolidated Financial Statements* (August 1959)

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, PCAOB STANDARDS AND RELATED RULES (2007)

EITF Abstracts, Appendix D - Topic No. D-80, *Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio* (May 19–20 1999), *with* the Federal Reserve Board's Guidance on Recent Developments Regarding Loan Loss Allowances and Exhibit D-80A

EITF Issue 86-09, *IRC Section 338 and Push-Down Accounting* (March 13-14, 1986)

Financial Accounting Standards Board Interpretation No. 14, *Reasonable Estimation of the Amount of a Loss, an interpretation of FASB Statement No. 5* (1976)

Staff Accounting Bulletin No. 54, *Push Down Basis of Accounting Required in Certain Limited Circumstances*

Statement of Financial Accounting Concepts No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises* (1984)

Statement of Financial Accounting Concepts No. 6, *Elements of Financial Statements* (1985)

Statement of Financial Accounting Concepts No. 7, *Using Cash Flow Information and Present Value in Accounting Measurements* (2000)

Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* (1975)

Statement of Financial Accounting Standards No. 94, *Consolidation of All Majority-Owned Subsidiaries* (1987)

Statement of Financial Accounting Standards No.115, *Accounting for Certain Investments in Debt and Equity Securities* (1993)

Statement of Financial Accounting Standards No. 141, *Business Combinations* (2001)

Statement of Financial Accounting Standards No. 142, *Goodwill and Other Intangible Assets* (2001)

Statement of Financial Accounting Standards No. 154, *Accounting Changes and Error Corrections* (2005)

Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* (2006)

Statement of Position 03-03, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer* (2003)

Texts, Websites, and Other Secondary Sources

Tarek Amer, et al., Between-Auditor Differences in the Interpretation of Probability Phrases, 13 AUDITING: A J. OF PRAC. AND THEORY 126, 126–36 (Spring 1994)

Tarek Amer, et al., Context-Dependence of Auditors' Interpretations of the SFAS No. 5 Probability Expressions, 12 CONTEMP. ACCT. RES. 25, 25–39 (Fall 1995)

Facts About FASB, FINANCIAL ACCOUNTING STANDARDS BOARD, http://www.fasb.org/facts/index.shtml

Kenneth E. Harrison and Lawrence A. Tomassini, *Judging the Probability of a Contingent Loss: An Empirical Study*, 5 CONTEMP. ACCT. RES. 642, 642–48 (1989)

Securities and Exchange Commission, http://www.sec.gov/about/whatwedo.shtml#laws

ROBERT LIBBY ET AL., FINANCIAL ACCOUNTING 624 (5th ed. 2005)

Securities Exchange Act of 1934 [As Amended Through P.L. 112–106, Approved April 5, 2012]

Litigation Documents

Amended Complaint ¶ 126 (August 24, 2009)

EXHIBIT 12

EXHIBIT 94

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MBIA INSURANCE CORPORATION,

Plaintiff,

-against-

COUNTRYWIDE HOME LOANS, INC., COUNTRYWIDE SECURITIES CORP., COUNTRYWIDE FINANCIAL CORP., COUNTRYWIDE HOME LOANS SERVICING, LP (n/k/a Bank of America, N.A., successor by *de jure* merger to BAC Home Loans Servicing, LP), and BANK OF AMERICA CORP.,

Defendants.

Index No. 602825/2008

IAS Part 3 (Bransten, J.)

AMENDMENT AND SUPPLEMENT TO THE EXPERT REPORT OF JOHN McCONNELL

September 4, 2012

1. I have been retained by counsel for Defendant, BAC, in the matter of *MBIA Insurance Company v. Countrywide Home Loans, Inc. et al*. to calculate the fair market value of certain assets that Countrywide-legacy entities sold to BofA-legacy entities in the July and November 2008 Transactions and the fair market value of consideration that BofA-legacy entities paid to Countrywide-legacy entities in the July and November 2008 Transactions.[1] I prepared an expert report in this matter dated August 2, 2012 ("report") in which I provided my opinion regarding the fair market value of the assets sold and consideration paid in the July and November 2008 Transactions. The purpose of this amendment and supplement is to incorporate information that I recently became aware of and to amend my valuation opinions, as appropriate.

2. In Paragraphs 3, 4, 10, 12, 30, 50, 55, 57–58, and 416–37 of the report I opine on the fair market value of obligations with respect to certain public debt securities that BAC assumed as part of the consideration it paid for the assets that CFC and CHL sold in the November 2008 Transactions. I was provided with transaction agreements, i.e. the November 2008 Asset Purchase Agreement ("APA") and Stock Purchase Agreement ("SPA"), that listed the

[1] As detailed in my expert report filed on August 2, 2008, I use certain abbreviations as follows: "BAC" refers to Bank of American Corporation; "CFC" refers to Countrywide Financial Corporation; "CHL" refers to Countrywide Home Loans, a subsidiary of CFC; "Countrywide-legacy entities" refers to CFC and its direct and indirect subsidiaries as of July 1, 2008; "BofA-legacy entities" refers to BAC and its subsidiaries, except for the Countrywide-legacy entities; "July 2008 Transactions" refers to transactions that occurred between Countrywide-legacy entities and BofA-legacy entities on July 1–3, 2008, and on July 31, 2008; "November 2008 Transactions" refers to transactions that occurred between Countrywide-legacy entities and BofA-legacy entities on November 7, 2008; and "July and November 2008 Transactions" refers to both the July 2008 Transactions and the November 2008 Transactions.

CUSIPs of the public debt securities subject to assumption by BAC[2]. I used *Capital IQ* to determine the amount of principal outstanding as of November 7, 2008 for each security listed in those schedules. I valued the public debt securities listed in the APA and the SPA, as listed in Exhibit 34 of my report, that had principal outstanding as of November 7, 2008.

3. I recently became aware of information indicating that two of the public debt securities listed in the SPA (and in Exhibit 34 of my report)—the CFC Series B Floating Rate Senior Debentures identified by CUSIP 222372AP9 ("Series B") and the CFC Series A Floating Rate Senior Debentures identified by CUSIP 222372AN4 ("Series A")—had a lower amount of principal outstanding as of November 7, 2008 than reported in the *Capital IQ* database. Specifically, I now understand that (i) the Series B Debentures had approximately $280 million outstanding as of November 7, 2008—rather than the $2 billion amount outstanding reported by *Capital IQ* and listed in column 8 of Exhibit 34—due to $1.72 billion in cash tenders made during an ongoing tender offer that CFC commenced on October 20, 2008[3]; and (ii) the Series A Debentures had approximately $30 million outstanding as of November 7, 2008—rather than the $2 billion amount outstanding as reported by *Capital IQ* and shown in column 8 of Exhibit 34—due to $1.97 billion in put backs by bondholders before the November 2008 Transactions.[4]

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[2] *See* November 7, 2008 Asset Purchase and Sale Agreement by and between BAC and CHL, at Schedule 2.3 (BACMBIA-C0000168172–8229); November 7, 2008 Stock Purchase Agreement by and between BAC and CFC, at Schedule 1.2(a) (BACMBIA-C0000168443–494).

[3] BACMBIA-I0000005288; Bank of America, Press Release (October 20, 2008), available at: http://investor.bankofamerica.com/phoenix.zhtml?c=71595&p=irol-newsArticle&ID=1214370&highlight=#fbid=gZ2pPczyIzY

[4] BACMBIA-I0000005288.

4. I have also become aware of a CFC floating-rate Euro Medium Term Note, identified with ISIN CH0024763853, which was not listed in the schedules attached to the APA or the SPA. I have been asked to assume that the obligation with respect to this security was assumed by BAC. This assumption is consistent with documents produced in this litigation, including an internal BAC document listing the security among foreign exchange-only notes.[5] The internal document shows that the principal amount outstanding for this security was CHF 200,000,000 as of October 31, 2008. According to CFC's November 2008 balance sheet, CFC had no notes outstanding, which is consistent with the assumption of this security by BAC.[6] Further, *Capital IQ* provides evaluated prices for this security through March 2009, the month in which the security matured, which is consistent with the security being outstanding through March 2009. I valued this security using the methodology explained in paragraphs 421–435 of my report by using an evaluated price as of November 7, 2008, from the *Capital IQ* database. My opinion of the fair market value of this security is $160.1 million.

5. The valuation methodology described in Section X of my report is unchanged by this information. Thus, I have recalculated the fair market value of the public debt securities obligations assumed by BAC in the November 2008 Transactions with the same methodology but (i) using the revised amounts outstanding for the Series A and Series B

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[5] BACMBIA-I0000071808 and BACMBIA-I0000071804-07. This document lists 11 CUSIP or ISIN identifiers of foreign currency denominated bonds and corresponding notional amounts. Ten of the 11 securities appear on either the APA or SPA. The remaining security is CH0024763853 and the document indicates that it was issued by CFC.

[6] BACMBIA-R0000006048.

Debentures, and (ii) including the additional CFC Euro Medium Term Note. I have kept the amounts outstanding of the other securities listed in Exhibit 34 of my report unchanged.

6. My recalculations lead to a change in my opinion of the fair market value of CFC's obligations with respect to certain public debt securities that BAC assumed in the November 2008 Transactions. In my opinion, the fair market value of CFC's and CHL's obligations with respect to the public debt securities that BAC assumed in the November 2008 Transactions was $15.07 billion as of the date of the November 2008 Transactions (as opposed to $18.55 billion as set forth in my report). My opinion of the fair market value of the obligations that BAC assumed with respect to public debt securities that CHL issued is unchanged from the opinion in my report.

7. My opinion that the Countrywide-legacy entities received aggregate consideration from the BofA-legacy entities in the July and November 2008 transactions that exceeded the aggregate value, as defined in Paragraph 3 of my report, of the assets sold is unchanged because the Countrywide-legacy entities received aggregate consideration from the BofA-legacy entities in the July and November 2008 transactions that exceeded the aggregate value of the assets they sold by $1.41 billion.

8. Also unchanged are my opinions that (i) the aggregate fair market value of the consideration that CFC received exceeded the aggregate value, as defined in Paragraph 3 of my report, of the assets it sold in the November 2008 Transactions; and (ii) the aggregate fair market value of the consideration that CHL received exceeded the aggregate value, as defined in Paragraph 3 of my report, of the assets it sold in the July and November 2008 Transactions are also unchanged. In my opinion, the aggregate fair market value of the consideration that CFC

received exceeded the aggregate value of the assets it sold in the November 2008 Transactions by $0.43 billion and the aggregate fair market value of the consideration that CHL received exceeded the aggregate value of the assets it sold in the July and November 2008 Transactions by $1.32 billion.

9. Also unchanged are the methodologies I used to calculate the fair values of the assets and entities sold and the consideration paid in cash or demand notes, in the July and November 2008 Transactions.

10. As a result of this revised calculation of the fair market value of the obligations with respect to certain public debt securities assumed by BAC in the November 2008 Transactions, Paragraphs 416-437 of my report should read as follows:

    a. Paragraph 416 of my report should read, including all footnotes therein:

    > The liabilities assumed in the November 2008 Transactions were public debt securities (henceforth, "bonds") issued by either CFC and guaranteed by CHL or bonds issued by CHL and guaranteed by CFC. The total face or par value of the bonds outstanding as of November 7, 2008, was $16.64 billion.[7]

    b. Paragraph 418 of my report should read, including all footnotes therein:

    > Characteristics of the bonds are summarized in Exhibit 34. In total, 119 bonds were assumed.[8] Of the bonds, 103 were fixed-rate nonconvertible bonds with a total face value

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[7] Calculated as the total amount outstanding of November 7, 2008 based on amount outstanding of each of the assumed liabilities presented in column 9 of Exhibit 34. *See* November 7, 2008 Asset Purchase and Sale Agreement by and between BAC and CHL, at Schedule 2.3 (BACMBIA-C0000168172–8229); November 7, 2008 Stock Purchase Agreement by and between BAC and CFC, at Schedule 1.2(a) (BACMBIA-C0000168443–494); BACMBIA-I0000071808.

[8] I identify the liabilities assumed based on CUSIPs and other identifiers found in (i) Schedule 2.3 of the November 7, 2008 Asset Purchase Agreement by and between BAC and CHL (BACMBIA-C0000168172–8229), and (ii) Schedule 1.2(a) of the November 7, 2008 Stock Purchase Agreement by and between BAC and CFC (BACMBIA-C0000168443–494). As of November 7, 2008, 40 of the bonds that had already matured

of $9.36 billion, ten were floating-rate nonconvertible bonds with a total face value of $4.77 billion, two were floating-rate convertible bonds with a total face value of $310 million, two were fixed-rate nonconvertible debentures supporting trust preferred securities ("TRUPS") with a total face value of $2.00 billion, one was a fixed-rate nonconvertible subordinated capital income security ("SKIS") with a face value of $0.20 billion, and one was a nonconvertible Step-Up bond with a face value of $6.3 million.

c. Paragraph 419 of my report should read:

All of the bonds are public debt securities and all but nine are denominated in U.S. dollars.

d. Paragraph 429 of my report should read, including all footnotes therein:

As shown in Exhibit 34, *Bloomberg* reports a transaction price on November 7, 2008, or on another date between October 24, 2008, and November 6, 2008, for 26 of the 103 fixed-rate bonds with a total face value of $3.55 billion and for five of the nine floating-rate bonds with a total face value of $3.68 billion. *Bloomberg* also reports transaction prices for both of the TRUPS, for the SKIS, for the two convertible bonds, and for the Step-Up bond between October 24, 2008, and November 7, 2008.[9] These bonds with prices from *Bloomberg* had an approximate total face value outstanding of $9.74 billion as of November 7, 2008.

e. Paragraph 430 of my report should read:

Therefore, in total, *Bloomberg* provides transaction prices for bonds with a face value of $9.74 billion in outstanding principal out of the total face value of bonds of $16.64 billion.

f. Paragraph 431 of my report should read:

As also shown in Exhibit 34, for bonds with no transaction price on any date between October 24, 2008, and November 7, 2008, an evaluated price is available as of at least one date within that interval for 76 of the fixed-rate bonds and for four of the floating rate bonds.

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appear on the lists of debt securities assumed as part of the November 2008 Transactions. I do not value the matured bonds and they are not included in the estimated fair market value of the liabilities assumed.

9 Only the Step-Up bond has a transaction price on November 4, 2008. All other bonds have transaction prices on November 7, 2008.

g. Paragraph 432 of my report should read:

> In sum, using the pricing algorithm described above, I have a transaction price or an evaluated price for 117 of the 119 bonds for which BAC assumed liability in the November 2008 Transactions.

h. Paragraph 436 of my report should read:

> To estimate the market value of CFC's and CHL's liabilities that were assumed by BAC in the November 2008 Transactions, I multiply the prices in column 12 of Exhibit 34 by the outstanding principal balance in column 9 of the exhibit. These give the estimated market values as of November 7, 2008. These market values are given in column 14. The sum of the values in column 14 is $15.07 billion.

i. Paragraph 437 of my report should read:

> In my opinion, the fair market value of CFC's and CHL's obligations with respect to certain public debt securities that were assumed by BAC in the November 2008 Transactions was $15.07 billion as of the date of the November 2008 Transactions.

11. The changes to Section X above further affect the language in Paragraphs 3, 4, 10, 12, 30, 50, 55, 57, and 58, which should read as follows:

a. Paragraph 3 of my report should read:

> In my opinion, the assets that the Countrywide-legacy entities sold to the BofA-legacy entities had a value of $44.78 billion, consisting of $37.58 billion of assets that I independently value, $5.67 billion of assets for which I provide a maximum value, and $1.53 billion of assets stated at book value that I do not value. In my opinion, the consideration that the BofA-legacy entities paid to the Countrywide legacy entities had an aggregate fair market value of $46.20 billion. In sum, the Countrywide-legacy entities received aggregate consideration from the BofA-legacy entities in the July and November 2008 transactions that exceeded the aggregate value, as defined above, of the assets they sold by $1.41 billion.

b. Paragraph 4 of my report should read:

In my opinion, the aggregate fair market value of the consideration that CFC received ($11.11 billion) exceeded the aggregate value, as defined above, of the assets it sold ($10.68 billion) in the November 2008 Transactions by $0.43 billion.

c. Paragraph 10 of my report should read:

To arrive at the second figure—the $46.20 billion fair market value of the consideration paid by the BofA-legacy entities to the Countrywide-legacy entities—I evaluated three categories of consideration:

d. Paragraph 12 of my report should read:

Liabilities assumed. In addition to issuing demand notes, BAC assumed CFC's and CHL's obligations with respect to certain public debt securities. These public debt securities were in the form of notes and bonds that CFC and CHL had previously issued and guaranteed. By relying primarily on observable transaction prices and third-party valuations, I determine that the fair market value of the obligations with respect to certain public debt securities assumed by BAC was $15.07 billion, as of the dates of the transactions.

e. Paragraph 30 of my report should read:

Liabilities assumed. In November 2008, BAC assumed CFC's and CHL's obligations with respect to certain public debt securities—specifically, 119 public notes and bonds, with various characteristics and interest rates—with a total face value of $16.64 billion. The securities' face values are the amount of principal outstanding on the notes and bonds that CFC and CHL had issued and guaranteed before the merger as of the date of the November 2008 Transactions. For notes and bonds that traded on or near the date of the November 2008 Transaction, I use their transaction prices as their fair market values. For notes and bonds with no transaction prices during that period, I use their evaluated price assigned by independent third-party vendors as the fair market values of the notes and bonds. In this way, I am able to value all but two of the 119 securities. For those remaining two, I estimate values using comparable bonds. In my opinion, the fair market value of CFC's and CHL's obligations with respect to certain public debt securities that BAC assumed was $15.07 billion, as of November 2008.

f. Paragraph 50 of my report should read, including all footnotes therein:

I have valued certain assets of the Countrywide-legacy entities that were sold to BofA-legacy entities in the July and November 2008 Transactions. I have also valued the consideration paid in those transactions by the BofA-legacy entities to Countrywide-legacy entities. In my opinion, the aggregate value of the assets sold by Countrywide-legacy entities in the July and November 2008 Transactions was $44.78 billion consisting of the sum of: (1) $37.58 billion in assets whose fair market value I independently assess; (2) $5.67 billion in assets for which I provide a maximum market value; and (3) $1.53 billion of property, plant, and equipment, and *de minimis* other assets stated at book value that I do not independently value.[10] In my opinion, the fair market value of the consideration paid by BofA-legacy entities to Countrywide-legacy entities in exchange for these assets was $46.20 billion. In sum, the fair market value of the consideration paid by BofA-legacy entities to Countrywide-legacy entities was $1.41 billion greater than the value, as defined above, of the assets sold by Countrywide-legacy entities to BofA-legacy entities.

g. Paragraph 55 of my report should read:

Based on the analysis set forth in Section X below, in my opinion, the aggregate fair-market value of the CFC and CHL obligations with respect to certain public debt securities that BAC assumed in the November 2008 Transactions was $15.07 billion as of the dates of the transactions.

h. Paragraph 57 of my report should read:

In my opinion, the fair market value of the demand notes that BAC and NB Holdings issued to Countrywide-legacy entities plus the fair market value of the CFC and CHL obligations with respect to certain public debt securities that BAC assumed plus the cash that BofA-legacy entities paid to Countrywide-legacy entities in consideration for assets purchased was $46.20 billion ($29.45 billion + $15.07 billion + $1.67 billion = $46.20 billion), as of the dates of the July and November 2008 Transactions.

i. Paragraph 58 of my report should read, including all footnotes therein:

Of the $44.78 billion, as defined above, the value of the assets that CFC sold to the BofA-legacy entities was $10.68 billion. Of the $46.20 billion in consideration paid, the fair market value of the consideration paid by BofA-legacy entities to CFC was $11.11 billion.[11] The value, as defined above, of the assets that CHL sold to BofA-legacy

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10 *See* Exhibit 1.

11 $10.68 billion is the fair market value of the common stock of Effinity as described in section VIII.J. The $11.11 billion of fair market value of consideration paid includes the value of demand notes issued to CFC and CFC's obligations with respect to certain public debt securities assumed. The value of obligations with respect to certain public debt securities assumed was allocated to CFC based on BACMBIA-C0000168443–494.

entities was $32.89 billion and the fair market value of the consideration paid by BofA-legacy entities to CHL was $34.21 billion.[12]

[12] $32.89 billion is the sum of the fair market values of residential mortgage loans sold by CHL, novated derivatives, certain interest-only and principal-only securities sold by CHL, rights to service mortgage loans sold by CHL, common stock of Countrywide Warehouse Lending and Countrywide Hillcrest, common stock of Countrywide GP and Countrywide LP, the maximum value of servicing advances sold by CHL, and the book value of certain other assets sold by CHL and not independently valued of $1.50 billion. The $34.21 billion of fair market value of consideration paid includes the value of cash paid to CHL, demand notes issued to CHL, and CHL's obligations with respect to certain public debt securities assumed. The value of obligations with respect to certain public debt securities assumed was allocated to CHL based on BACMBIA-C0000168172–229.

Dated: September 4, 2012

By: John J. McConnell

John J. McConnell

EXHIBIT 13

Summary of Successor Liability Cases

	Case	Date	Court	Judge	MBS?	Choice of Law Analysis?	State Law Applied	Δ's Motion to Dismiss
1	Leyvas v. Bank of America Corp. 601 F.Supp.2d 1201 (S.D. Cal. 2009)	02/05/09	S.D. Cal.	Sabraw, J.	N	N	None Specified	DENIED
2	Argent Classic Convertible Arbitrage Fund LP v. Countrywide Fin. Corp. 2009 WL 8572340 (C.D. Cal. Mar. 19, 2009)	03/19/09	C.D. Cal.	Pfaelzer, J.	Y	N	None[1]	GRANTED
3	MBIA Ins. Corp. v. Countrywide Home Loans, Inc. Case No. 602825/08 (N.Y. Supr. Ct. April 9, 2010)	04/29/09	N.Y. Sup. Ct.	Bransten, J.	Y	N	New York	DENIED
4	Pantoja v. Countrywide Home Loans, Inc. 640 F. Supp. 2d 1177 (N.D. Cal. 2009)	07/09/09	N.D. Cal.	Ware, J.	N	N	California	GRANTED
5	Infante v. Bank of America Corp. 680 F. Supp. 2d 1298 (S.D. Fla. 2009)	12/18/09	S.D. Fla.	Gold, J.	N	N	Florida	GRANTED
6	Jones v. Countrywide Home Loans, Inc. 2010 WL 551418 (N.D. Ill. Feb. 11, 2010)	02/11/10	N.D. Ill.	Kendall, J.	N	N	Illinois	GRANTED
7	Crawford v. Countrywide Home Loans, Inc. 2010 WL 597942 (N.D. Ind. Feb. 12, 2010)	02/12/10	N.D. Ind.	Simon, J.	N	N	Indiana	N/A[2]
8	Ralston v. Mortgage Investors Group, Inc. 2010 WL 1136317 (N.D. Cal. Mar. 22, 2010)	03/22/10	N.D. Cal.	Fogel, J.	N	N	None Specified	GRANTED
9	MBIA Ins. Corp. v. Bank of America Corp. Case No. BC417572 (Cal. Super. Ct. May 10, 2010)	05/17/10	Cal. Super. Ct.	Elias, J.	Y	N	None Specified	N/A[3]
10	In re IndyMac Mortgage-Backed Secs. Litig. 718 F. Supp. 2d 495 (S.D.N.Y. 2010)	06/21/10	S.D.N.Y.	Kaplan, J.	Y	N	New York	GRANTED
11	Madura v. Bank of America, N.A. 2010 WL 2821936 (M.D. Fla. July 16, 2010)	07/16/10	M.D. Fla.	Covington, J.	N	N	Florida	GRANTED
12	Pajarillo v. Bank of America 2010 WL 4392551 (S.D. Cal. Oct. 28, 2010)	10/28/10	S.D. Cal.	Sabraw, J.	N	N	None Specified	GRANTED
13	Araki v. Bank of America 2010 WL 5625970 (D. Haw. Dec. 14, 2010)	12/14/10	D. Haw.	Seabright, J.	N	N	None Specified	GRANTED
14	Maine State Ret. Sys. v. Countrywide Fin. Corp. 2011 WL 1765509 (C.D. Cal. Apr. 20, 2011)	04/20/11	C.D. Cal.	Pfaelzer, J.	Y	Y	Delaware	GRANTED
15	Rodenhurst v. Bank of America 2011 WL 4625696 (D. Haw. Sept. 30, 2011)	09/30/11	D. Haw.	Kobayashi, J.	N	N	None Specified	GRANTED
16	Allstate Ins. Co. v. Countrywide Fin. Corp. (Allstate I) 824 F. Supp. 2d 1164 (C.D. Cal. 2011)	10/21/11	C.D. Cal.	Pfaelzer, J.	Y	Y	Delaware	GRANTED
17	Allstate Ins. Co. v. Countrywide Fin. Corp. (Allstate II) 842 F. Supp. 2d 1216 (C.D. Cal. 2012)	02/02/12	C.D. Cal.	Pfaelzer, J.	Y	*See Allstate I* analysis	Delaware	GRANTED

[*] Red dotted line above indicates date of settlement (June 28, 2011).

[1] "The Court expresses no opinion on the correct body of law because (1) given Argent's pleading defects, any opinion would lack a basis in alleged facts; and (2) the result would be the same."

[2] Denying plaintiffs' motion to add Bank of America as additional defendant on successor liability grounds.

[3] Overruling defendants' demurrer regarding successor liability issue.

	Case	Date	Court	Judge	MBS?	Choice of Law Analysis?	State Law Applied	Δ's Motion to Dismiss
18	Thrivent Fin. for Lutherans v. Countywide Fin. Corp. 2012 WL 1799028 (C.D. Cal. Feb. 17, 2012)	02/17/12	C.D. Cal.	Pfaelzer, J.	Y	Y	Delaware	GRANTED
19	Dexia Holdings, Inc. v. Countrywide Fin. Corp. 2012 WL 2161498 (C.D. Cal. June 1, 2012)	06/01/12	C.D. Cal.	Pfaelzer, J.	Y	N	(Delaware)	GRANTED
20	Thrivent Fin. for Lutherans v. Countywide Fin. Corp. 2012 WL 2161002 (C.D. Cal. June 1, 2012)	06/01/12	C.D. Cal.	Pfaelzer, J.	Y	N	(Delaware)	GRANTED
21	Serna v. Bank of America, N.A. 2012 WL 2030705 (C.D. Cal. June 4, 2012)	06/04/12	C.D. Cal.	Snyder, J.	N	N	California	GRANTED
22	Nat'l Integrity Life Ins. Co. v. Countrywide Fin. Corp. 2012 U.S. Dist. LEXIS 184429 (C.D. Cal. June 29, 2012)	06/29/12	C.D. Cal.	Pfaelzer, J.	Y	*See Allstate I* analysis	Delaware	GRANTED
23	Mass. Mut. Life Ins. Co. v. Countrywide Fin. Corp. 2012 WL 3578666 (C.D. Cal. Aug. 17, 2012)	08/17/12	C.D. Cal.	Pfaelzer, J.	Y	Y	Delaware	GRANTED
24	Minnesota Life Ins. Co. v. Countrywide Fin. Corp. 2012 WL 6742119 (C.D. Cal. Dec. 6, 2012)	12/06/12	C.D. Cal.	Pfaelzer, J.	Y	*See Thrivent* analysis	Delaware	GRANTED
25	Bank Hapoalim B.M. v. Bank of America Corp. 2012 WL 6814194 (C.D. Cal. Dec. 21, 2012)	12/21/12	C.D. Cal.	Pfaelzer, J.	Y	N	(Delaware)	GRANTED
26	F.D.I.C. v. Countrywide Fin. Corp. 2013 WL 49727 (C.D. Cal. Jan. 3, 2013)	01/03/13	C.D. Cal.	Pfaelzer, J.	Y	Y	Delaware	GRANTED
27	Marino v. Bank of America Home Loans 2013 WL 715611 (D.Vt. Feb. 27, 2013)	02/27/13	D. Vt.	Sessions, J.	N	N	None Specified	DENIED

[*] Red dotted line above indicates date of settlement (June 28, 2011).

[1] "The Court expresses no opinion on the correct body of law because (1) given Argent's pleading defects, any opinion would lack a basis in alleged facts; and (2) the result would be the same."

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