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ABN AMRO HOLDING N V  
Form 425  
May 14, 2007

Filed by Banco Santander Central Hispano, S.A.

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

Subject Company: ABN AMRO Holding N.V.

Commission File Number: 001-12518

Date: May 14, 2007

**Important Information**

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

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

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

**Forward-Looking Statements**

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

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

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

PURCHASE AND SALE AGREEMENT

by and between

ABN AMRO BANK N.V.

and

RFS HOLDINGS B.V.

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Dated as of May 6, 2007  
  
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PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT, dated as of May 6, 2007 (this Agreement ), is by and between ABN AMRO Bank N.V., a company organized under the laws of The Netherlands (Seller ), and RFS HOLDINGS B.V., a private limited liability company organized under the laws of the Netherlands (Purchaser ).

RECITALS

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

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

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

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

Company shall have the meaning stated in the first Recital.

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

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

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

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

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

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

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

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

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

Consortium shall have the meaning stated in the recitals.

Controlled Group Liability means any and all liabilities (i) under Title IV of ERISA, (ii) under Section 302 of ERISA, (iii) under Sections 412 and 4971 of the Code, (iv) as a result of a failure to comply with the continuation coverage requirements of Section 601 et seq. of ERISA and Section 4980B of the Code, or (v) under corresponding or similar provisions of

foreign laws or regulations, other than such liabilities that arise solely out of, or relate solely to, the Company-Only Plans identified as such in Section 3.11(a) of the Disclosure Schedule.

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

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

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

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

CRA shall mean the Community Reinvestment Act of 1997.

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

Disclosing Party shall have the meaning stated in Section 6.9.

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

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

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

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

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

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

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

- Excluded Employees shall have the meaning stated in Section 6.4(c).
- Federal Court shall have the meaning stated in Section 10.6(b).
- Federal Reserve Board shall mean the Board of Governors of the Federal Reserve System.
- Final Net Income shall have the meaning stated in Exhibit C.
- Financing shall have the meaning stated in Section 4.4.
- Form BD shall have the meaning stated in Section 3.24(b).
- Former Excluded Employees shall have the meaning stated in Section 6.4(d).
- Fortis shall have the meaning stated in the recitals.
- GAAP means accounting principles generally accepted in the United States.
- Governmental Entity shall mean any court, administrative agency, arbitrator or commission or other governmental, prosecutorial or regulatory authority or instrumentality, or any SRO.
- HSR Act shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.
- Income Threshold shall have the meaning stated in Exhibit C.
- Indemnified Party shall have the meaning stated in Section 9.5(a).
- Indemnifying Party shall have the meaning stated in Section 9.5(a).
- Intellectual Property shall mean any or all of the following: all patents, trademarks, trade names, service marks, domain names, database rights, copyrights and any applications therefore, mask works, know-how, trade secrets, and computer software programs or applications (in both source code and object code form).
- Interest Payment Period shall mean the period commencing on the date that all of the closing conditions set forth in Article VII have been satisfied or waived and ending on the Closing Date.
- Interim Period shall mean any taxable year or period commencing on or prior to the Closing Date and ending after the Closing Date.
- IRS shall mean the U.S. Internal Revenue Service.
- Key Employees shall have the meaning stated in Section 6.5.

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

Leased Properties shall have the meaning stated in Section 3.20.

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

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

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

Matching Period shall have the meaning stated in Section 5.3.

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

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

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

Measurement Period shall have the meaning stated in Exhibit C.

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

Multiemployer Plan shall have the meaning stated in Section 3.11(b).

Multiple Employer Plan shall have the meaning stated in Section 3.11(b).

National Bank Subsidiaries shall mean LaSalle Bank N.A. and LaSalle Bank Midwest N.A.

New Plans shall have the meaning stated in Section 6.4(b).

New York Courts shall have the meaning stated in Section 10.6(b).

OCC shall mean the U.S. Office of the Comptroller of the Currency.

Owned Properties shall have the meaning stated in Section 3.20.

Parent shall mean ABN AMRO Holding N.V.

PBGC shall have the meaning stated in Section 3.11(f).

Permitted Encumbrances shall have the meaning stated in Section 3.20.

Person shall mean any individual, Corporate Entity or Governmental Entity.

Post-Closing Period shall mean any taxable year or period that begins after the Closing Date, and, with respect to any Interim Period, the portion of such Interim Period commencing after the Closing Date.

Pre-Closing Period shall mean any taxable year or period that ends on or before the Closing Date, and, with respect to any Interim Period, the portion of such Interim Period ending on and including the Closing Date.

Process Agent shall have the meaning stated in Section 10.6(d).

Public Offer shall mean the offer by the Consortium to acquire all the outstanding shares of Parent, as memorialized in the Merger Protocol, or any other transaction involving the acquisition by the Consortium of at least 80% of the outstanding shares of Parent provided that such other transaction is no less favorable to Parent's shareholders than the offer described in such Merger Protocol.

Purchase Price shall have the meaning stated in Section 2.2.

Purchaser shall have the meaning stated in the preamble.

Purchaser Indemnitees shall have the meaning stated in Section 9.2.

Purchaser Material Adverse Effect shall mean, with respect to Purchaser, any effect that prevents, or would be reasonably likely to prevent, Purchaser from consummating the transactions contemplated hereby, excluding any proceedings, claims or actions asserted against Purchaser, Seller or any of their respective Affiliates by Bank of America or any of its Affiliates to the extent arising out of or related to the Bank of America Agreement, this Agreement or the consummation of the transactions contemplated hereby.

RBS shall have the meaning stated in the recitals.

Real Property shall have the meaning stated in Section 3.20.

Regulatory Agencies shall have the meaning stated in Section 3.5.

Reports shall have the meaning stated in Section 3.5.

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

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

Sale shall have the meaning stated in Section 2.1.

Santander shall have the meaning stated in the recitals.

Seller shall have the meaning stated in the preamble.

Seller Indemnitees shall have the meaning stated in Section 9.3.

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

Specified Transfers shall have the meaning stated in Section 6.13.

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

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

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

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

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

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

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

Termination Fee shall have the meaning stated in Section 5.3.

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

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

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

## ARTICLE II

### THE SALE

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

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

2.3. Closing.

(a) Subject to the terms and conditions of this Agreement, the closing of the sale of the Company Common Stock to Purchaser (the Closing) shall take place on the first Business Day that is at least 90 days after the Unconditional Offer Date (provided that if such date is not a Business Day, then the Closing shall take place on the first Business Day thereafter), unless extended by mutual agreement of the parties. The Closing shall take place at the offices of Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, or at such other location as the parties hereto may agree.

(b) At the Closing:

(i) Purchaser shall:

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

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

(ii) Seller shall:

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

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

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

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF SELLER

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

##### 3.1. Corporate Organization.

(a) The Seller has been duly incorporated and is validly existing as a public company with limited liability under the laws of The Netherlands. The Company is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Each of Seller and the Company has the corporate or other organizational power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted, and is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect. The Company is duly



registered as a bank holding company under the BHCA and is a financial holding company pursuant to Section 4(l) of the BHCA and meets in all material respects the applicable requirements for qualification as such. True and complete copies of the Certificate of Incorporation and Bylaws, as in effect as of the date of this Agreement, have previously been furnished or made available to Purchaser. The Company is not in violation in any material respect of any of the provisions of the Certificate of Incorporation or Bylaws.

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

3.2. Capitalization. The authorized capital stock of the Company consists of 1,000 shares of Company Common Stock, of which 1,000 are issued and outstanding and have been duly authorized and validly issued, are fully paid, non-assessable and free of preemptive rights, and 2,987,538 shares of Company preferred stock, of which 2,987,538 are issued and outstanding and have been duly authorized and validly issued. The shares of Company preferred stock held by Persons other than the Company and its Subsidiaries have a liquidation preference of no more than \$200,000,000. All of the Company Common Stock is owned by Seller, free and clear of any Liens. Except as set forth above, no shares of capital stock or other voting securities, equity securities or other ownership or equity interests of the Company are issued, reserved for issuance or outstanding. There are no outstanding subscriptions, options, warrants, puts, calls, rights, exchangeable or convertible securities or other commitments or agreements of any character relating to the issued or unissued capital stock or other securities or ownership or equity interests of the Company, or otherwise obligating the Company to issue, transfer, sell, purchase, redeem or otherwise acquire any such stock, securities or interests.

3.3. Authority: No Violation.

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

(b) Neither the execution and delivery of this Agreement by Seller nor the consummation by Seller of the transactions contemplated hereby, nor compliance by Seller with any of the terms or provisions hereof, will (i) violate any provision of the Certificate of Incorporation or Bylaws or similar organizational documents of Seller or the Company or any of their respective Subsidiaries, (ii) assuming that the consents, approvals and filings referred to in Section 3.4 are duly obtained and/or made, (x) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Seller, the Company or any of their respective Subsidiaries or any of their respective properties or assets or (y) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under or in any payment conditioned, in whole or in part, on a change of control of the Company or any of its Subsidiaries or approval or consummation of transactions of the type contemplated hereby, accelerate the performance required by or rights or obligations under, or result in the creation of any Lien upon any of the respective properties or assets of the Company or any of its Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement, contract, or other instrument or obligation to which Seller, the Company or any of their respective Subsidiaries is a party, or by which they or any of their respective properties, assets or business activities may be bound or affected, except (in the case of clause (ii)(y) above) for such violations, conflicts, breaches, defaults or the loss of benefits which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

3.4. Consents and Approvals. Except for (i) the filing of any required applications or notices with the Federal Reserve Board under the BHCA or the Federal Reserve Act, as amended, and approval of such applications and notices, (ii) the filing of any required applications, filings or notices with any other U.S. federal or state banking, broker-dealer, insurance or other U.S. regulatory or self-regulatory authorities or instrumentalities, (iii) any consents, authorizations, approvals, filings or exemptions in connection with compliance with the rules and regulations of any applicable industry SRO, and the rules of the Nasdaq, or that are

required under U.S. consumer finance, mortgage banking and other similar laws, (iv) any consents, authorizations, approvals, filings with any federal authority or instrumentality, (v) any notices or filings (and, if required, approvals) under the HSR Act, and (vi) any consents, approvals, filings or registration, the absence of which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect, no consents or approvals of or filings or registrations with any Governmental Entity are necessary in connection with (A) the execution and delivery by Seller of this Agreement and (B) the consummation of the transactions contemplated by this Agreement.

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

3.6. Financial Statements.

(a) Seller has previously made available to Purchaser copies of the following financial statements, copies of which are attached as Schedule 3.6(a): (i) the audited consolidated statements of condition, consolidated statements of income, consolidated statements of stockholders' equity and consolidated statements of cash flows of the Company and its Subsidiaries as of and for the fiscal year ended December 31, 2005 and December 31, 2006 (the Audited Financial Statements ); and (ii) the unaudited pro forma consolidated statement of condition, and pro forma consolidated statement of income of the Business as of and for the fiscal year ended December 31, 2006 (the Pro Forma Financial Statements and together with the Audited Financial Statements, the Company Financial Statements ) (the unaudited pro forma consolidated statement of condition as of December 31, 2006, the Balance Sheet and December 31, 2006, the Balance Sheet Date ). The Audited Financial Statements fairly present in all material respects the consolidated financial position and results

of operations of the Company as of the respective dates or for the respective periods therein set forth and have been prepared in accordance with GAAP consistently applied during the periods involved. The Pro Forma Financial Statements fairly present in all material respects the consolidated financial position and results of operations of the Business as of the respective dates or for the respective periods therein set forth and have been prepared in accordance with GAAP consistently applied during the periods involved except for the absence of footnote disclosure. The Company Financial Statements have been prepared from, and are in accordance with, the books and records of the Company and its Subsidiaries.

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

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

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

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

3.7. Undisclosed Liabilities. Except for those liabilities that are reflected or reserved against on the Balance Sheet, and except for liabilities incurred since the Balance Sheet Date in the ordinary course of business, neither Company nor any of its Subsidiaries has any liability of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether due or to become due) that, individually or in the aggregate with any other such liabilities, would reasonably be expected to have a Material Adverse Effect.

3.8. Absence of Certain Changes or Events. Since the Balance Sheet Date: (i) the Company and its Subsidiaries have, in all material respects, carried on their respective businesses in the ordinary course consistent with their past practices; (ii) the Company has not taken any of the actions that Seller has agreed not to permit Company to take from the date hereof through the

Closing Date pursuant to Sections 5.2(a), (b), (c), (d), (f), (g), (h), (i), (j) or (l) of this Agreement, and (iii) there have been no events, circumstances, facts or occurrences that have had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

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

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

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

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

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

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

(e) There is no waiver or extension of the application of any statute of limitations of any jurisdiction regarding the assessment or collection of any Tax with respect to the Company and any of its Subsidiaries, which waiver or extension is in effect.

(f) All Taxes required to be withheld, collected or deposited by or with respect to the Company and each of its Subsidiaries have been timely withheld, collected or

deposited, as the case may be, and to the extent required by applicable law, have been paid to the relevant Governmental Entity.

(g) To the extent the Company or any of its Subsidiaries has participated in any reportable transaction, as defined in Treasury Regulation Section 1.6011-4(b)(1), or any other transaction required to be reported under a comparable provision of state, local or foreign law, such transaction has been reported in accordance with applicable law.

(h) Neither the Company nor any of its Subsidiaries is a party to, is bound by, or has any obligation under, any Tax sharing, allocation, indemnity or similar agreements or arrangement that obligates it to make any payment computed by reference to the Taxes, taxable income or taxable losses of any other Person.

(i) Neither the Company nor any of its Subsidiaries (A) has been a member of a group filing a consolidated, combined or unitary Tax Return (other than a group the common parent of which is or was the Company) or (B) has any liability for the Taxes of any person (other than the Company or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract or otherwise;

(j) Neither the Company nor any of its Subsidiaries has been, within the past two years or otherwise as part of a plan (or series of related transactions) within the meaning of Section 355(e) of the Code of which the transactions contemplated in this Agreement are also a part, a distributing corporation or a controlled corporation (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of st