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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): June 17, 2008

PRUDENTIAL FINANCIAL, INC.

(Exact name of registrant as specified in its charter)

New Jersey
(State or other jurisdiction
of incorporation)

001-16707
(Commission File Number)

22-3703799
(I.R.S. Employer
Identification No.)

751 Broad Street
Newark, New Jersey 07102
(Address of principal executive offices and zip code)

(973) 802-6000
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 8.01 Other Events.

On June 17, 2008, Prudential Financial, Inc. (“Prudential”) closed the sale of \$600,000,000 of Prudential’s 8.875% Fixed-to-Floating Rate Junior Subordinated Notes due 2068 (the “Junior Subordinated Notes”).

The following documents relating to the sale of the Junior Subordinated Notes are filed as exhibits to this Current Report on Form 8-K:

- Underwriting Agreement, dated June 12, 2008, among Prudential and J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated, as representatives of the several underwriters named therein;
- Subordinated Debt Securities Indenture, dated June 17, 2008, between Prudential and The Bank of New York, as Trustee;
- First Supplemental Indenture, dated June 17, 2008, between Prudential and The Bank of New York, as Trustee;
- Form of Junior Subordinated Note;
- Tax Opinion of Debevoise & Plimpton LLP, dated June 17, 2008; and
- Replacement Capital Covenant, dated June 17, 2008.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
1.1	Underwriting Agreement, dated June 12, 2008, among Prudential and J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated, as representatives of the several underwriters named therein.
4.1	Subordinated Debt Securities Indenture, dated June 17, 2008, between Prudential and The Bank of New York, as Trustee.
4.2	First Supplemental Indenture, dated June 17, 2008, between Prudential and The Bank of New York, as Trustee.
4.3	Form of Junior Subordinated Note (included in Exhibit 4.2).
8.1	Tax Opinion of Debevoise & Plimpton LLP, dated June 17, 2008.
99.1	Replacement Capital Covenant, dated June 17, 2008.

SIGNATURES

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

Date: June 17, 2008

PRUDENTIAL FINANCIAL, INC.

By: /s/ Stephen W. Gauster

Name: Stephen W. Gauster

Title: Vice President and Assistant Secretary

Exhibit Index

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\$600,000,000

Prudential Financial, Inc.

8.875% Fixed-to-Floating Rate Junior Subordinated Notes due 2068

Underwriting Agreement

June 12, 2008

J.P. Morgan Securities Inc.
Morgan Stanley & Co. Incorporated
As Representatives of the
several Underwriters listed
in Schedule 1 hereto

c/o J.P. Morgan Securities Inc.
270 Park Avenue
New York, New York 10017

Morgan Stanley & Co. Incorporated
1585 Broadway, 29th Floor
New York, NY 10036

Ladies and Gentlemen:

Prudential Financial, Inc., a New Jersey corporation (the “Company”), proposes to issue and sell to the several Underwriters listed in Schedule 1 hereto (the “Underwriters”), for whom J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated are acting as representatives (the “Representatives”), \$600,000,000 principal amount of its 8.875% Fixed-to-Floating Rate Junior Subordinated Notes due 2068 (the “Securities”). The Securities will be issued pursuant to an Indenture to be dated as of June 17, 2008 (the “Base Indenture”) between the Company and The Bank of New York, as trustee (the “Trustee”), as supplemented by a first supplemental indenture, to be dated as of June 17, 2008 (the “Supplemental Indenture” and, together with the Base Indenture, the “Indenture”).

The Company hereby confirms its agreement with the several Underwriters concerning the purchase and sale of the Securities, as follows:

1. Registration Statement. The Company has prepared and filed with the Securities and Exchange Commission (the “Commission”) an automatic shelf registration statement, as defined under Rule 405 under the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder (collectively, the “Securities Act”), on Form S-3 (File Nos. 333-132469, 333-132469-01 and 333-132469-02), including a prospectus (the “Base Prospectus”), relating to securities, including the Securities, to be issued from time to time by the Company. Such registration statement, as amended as of

its most recent effective date, is referred to herein as the "Registration Statement"; and as used herein, the term "Preliminary Prospectus" means any preliminary prospectus supplement specifically relating to the Securities filed with the Commission pursuant to Rule 424(b) under the Securities Act, together with the Base Prospectus, and the term "Prospectus" means the prospectus supplement specifically relating to the Securities, together with the Base Prospectus, in the form first used (or made available upon request of purchasers pursuant to Rule 173 under the Securities Act) in connection with confirmation of sales of the Securities. Any reference in this Agreement to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, as of the most recent effective date of the Registration Statement or the date of such Preliminary Prospectus or the Prospectus, as the case may be and any reference to "amend", "amendment" or "supplement" with respect to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any documents filed after such date under the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Exchange Act") that are deemed to be incorporated by reference therein. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Registration Statement and the Prospectus.

At or prior to the time when sales of the Securities were first made (the "Time of Sale"), the Company had prepared the following information (collectively, the "Time of Sale Information"): the Base Prospectus, a Preliminary Prospectus dated June 12, 2008, and each "free-writing prospectus" (as defined pursuant to Rule 405 under the Securities Act) listed on Annex B hereto as constituting part of the Time of Sale Information. The final term sheet relating to the Securities in substantially the form of Annex C hereto is referred to herein as the "Final Term Sheet."

2. Purchase of the Securities by the Underwriters. (a) The Company agrees to issue and sell the Securities to the several Underwriters as provided in this Agreement, and each Underwriter, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, agrees, severally and not jointly, to purchase from the Company the respective principal amount of Securities set forth opposite such Underwriter's name in Schedule 1 hereto at a price equal to 98.714% of the principal amount thereof plus accrued interest, if any, from June 12, 2008 to the Closing Date (as defined below). The Company will not be obligated to deliver any of the Securities except upon payment for all the Securities to be purchased as provided herein.

(b) The Company understands that the Underwriters intend to make a public offering of the Securities as soon after the effectiveness of this Agreement as in the judgment of the Representatives is advisable, and initially to offer the Securities on the terms set forth in the Prospectus. The Company acknowledges and agrees that the Underwriters may offer and sell Securities to or through any affiliate of an Underwriter and that any such affiliate may offer and sell Securities purchased by it to or through any Underwriter.

(c) Payment for and delivery of the Securities will be made at 10:00 A.M., New York City time, on June 17, 2008, or at such other time on the same or such other date,

not later than the fifth business day thereafter, as the Representatives and the Company may agree upon in writing. The time and date of such payment and delivery is referred to herein as the “Closing Date”.

(d) Payment for the Securities shall be made by wire transfer in immediately available funds to the account(s) specified by the Company to the Representatives against delivery to the nominee of The Depository Trust Company, for the account of the Underwriters, of one or more global notes representing the Securities (collectively, the “Global Note”), with any transfer taxes payable in connection with the sale of the Securities duly paid by the Company. The Global Note will be made available for inspection by the Representatives not later than 1:00 P.M., New York City time, on the business day prior to the Closing Date.

(e) The Company acknowledges and agrees that the Underwriters are acting solely in the capacity of an arm’s length contractual counterparty to the Company with respect to the offering of Securities contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or an agent of, the Company or any other person. Additionally, neither the Representatives nor any other Underwriter is advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Company shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Underwriters shall have no responsibility or liability to the Company with respect thereto. Any review by the Underwriters of the Company, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriters and shall not be on behalf of the Company.

3. Representations and Warranties of the Company. The Company represents and warrants to each Underwriter that:

(i) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of New Jersey, with power and authority (corporate and other) to own its properties and conduct its business as described in the Time of Sale Information and the Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties, or conducts any business, so as to require such qualification, except to the extent that the failure to be so qualified would not have, individually or in the aggregate, a material adverse effect on the business, management, financial position, shareholders’ equity or results of operations (in each case considered on a U.S. generally accepted accounting principles (“GAAP”) basis) of the Company and its subsidiaries, considered as a whole (a “Material Adverse Effect”); and The Prudential Insurance Company of America, a New Jersey stock life insurance company (the “Principal Subsidiary”), has been duly incorporated and is validly existing as a stock life insurance company in good standing under the laws of the State of New Jersey, with power and authority (corporate and other) to own its properties and conduct its business as described in the Time of Sale Information and the Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties, or

conducts any business, so as to require such qualification, except to the extent that the failure to be so qualified would not have, individually or in the aggregate, a Material Adverse Effect.

(ii) The Securities have been duly authorized by the Company, and, when the Securities are issued and delivered pursuant to this Agreement, the Securities will have been duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of the Company entitled to the benefits provided by the Indenture; the Indenture has been duly authorized by the Company and upon effectiveness of the Registration Statement was duly qualified under the Trust Indenture Act and, assuming due authorization, execution and delivery of the Indenture by the Trustee, when executed and delivered by the Company, will constitute a valid and legally binding instrument of the Company, enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, moratorium, reorganization, fraudulent transfer and other laws of general applicability relating to or affecting creditors' rights and to general equity principles; the Indenture and the Securities will conform, in all material respects, to the descriptions thereof contained in the Time of Sale Information and the Prospectus; and this Agreement has been duly authorized, executed and delivered by the Company.

(iii) The Company has an authorized capitalization as set forth in the Time of Sale Information and the Prospectus; the capital stock of the Company conforms to the description thereof contained in the Time of Sale Information and the Prospectus; and, except as set forth in the Registration Statement, the Time of Sale Information and the Prospectus, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of or ownership interests in the Company are authorized or outstanding.

(iv) No order preventing or suspending the use of any Preliminary Prospectus has been issued by the Commission, and each Preliminary Prospectus, at the time of filing thereof, complied in all material respects with the Securities Act and did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representation or warranty as to the information contained in or omitted from any Preliminary Prospectus in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of the Representatives specifically for inclusion therein.

(v) The Time of Sale Information, as of the Time of Sale, did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representation or warranty as to the information contained in or omitted from the Time of Sale Information in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of the Representatives specifically for inclusion therein.

(vi) The Company (including its agents and representatives, other than the Underwriters in their capacity as such) has not made and will not make any offer to sell or solicitation of an offer to buy the Securities that would constitute an “Issuer Free Writing Prospectus” without the prior consent of the Representatives other than the documents listed in Annex B hereto as constituting the Time of Sale Information for which the Company has received such consent. Each such Issuer Free Writing Prospectus complied or complies in all material respects with the Securities Act, and has been or will be (within the time period specified in Rule 433) filed in accordance with the Securities Act (to the extent required thereby).

(vii) The Registration Statement is an “automatic shelf registration statement” as defined under Rule 405 of the Securities Act that has been filed with the Commission not earlier than three years prior to the date hereof; and no notice of objection of the Commission to the use of such registration statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act has been received by the Company. No order suspending the effectiveness of the Registration Statement has been issued by the Commission and, to the knowledge of the Company, no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering has been initiated or threatened by the Commission; as of the applicable effective date of the Registration Statement and any amendment thereto, the Registration Statement complied and will comply in all material respects with the Securities Act and the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder (collectively, the “Trust Indenture Act”), and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading; and as of the date of the Prospectus and any amendment or supplement thereto and as of the Closing Date, the Prospectus will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representation and warranty with respect to (i) that part of the Registration Statement that constitutes the Statement of Eligibility and Qualification (Form T-1) of the Trustee under the Trust Indenture Act or (ii) the information contained in or omitted from the Registration Statement, the Prospectus or any amendment or supplement thereto in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of the Representatives specifically for inclusion therein.

(viii) The documents incorporated by reference in the Prospectus and the Time of Sale Information, when they were filed with the Commission conformed in all material respects to the requirements of the Exchange Act, and none of such documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and any further documents so filed and incorporated by reference in the Prospectus or the Time of Sale Information, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(ix) The consolidated financial statements of the Company and its subsidiaries, together with the related schedules, notes and supplemental information, set forth or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus, comply in all material respects with the requirements of the Securities Act and the Exchange Act and interpretations thereof, as applicable, and present fairly in all material respects the financial position, the results of operations and the changes in cash flows of such entities in conformity with GAAP at the respective dates or for the respective periods to which they apply; such statements and related schedules, notes and supplemental information have been prepared in accordance with GAAP consistently applied throughout the periods involved, except for any normal year-end adjustments and except as described therein.

(x) PricewaterhouseCoopers LLP, who has certified certain financial statements of the Company and its subsidiaries and delivered its report with respect to the audited consolidated financial statements and schedules included or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus, is an independent registered public accounting firm with respect to the Company within the meaning of the Securities Act and the rules and regulations thereunder.

(xi) Other than litigation (none of which is reasonably likely to be material) incidental to the kinds of business conducted by the Company and its subsidiaries, there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property of the Company or any of its subsidiaries is the subject which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, other than as set forth in the Time of Sale Information and the Prospectus; and, to the best of the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others, other than as set forth in the Time of Sale Information and the Prospectus.

(xii) None of the Company or any of its subsidiaries has sustained since the date of the latest audited financial statements included or incorporated by reference in the Time of Sale Information and the Prospectus any loss or interference with its business that is, individually or in the aggregate, material to the Company and its subsidiaries, considered as a whole, from fire, explosion, flood or other calamity, whether or not covered by insurance (excluding, for the avoidance of doubt, any insurance underwriting losses of the Company or its subsidiaries), or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Time of Sale Information and the Prospectus; and, since the date as of which information is given the Time of Sale Information and the Prospectus, there has not been any material decrease in the capital or surplus of the Company, any material decrease in the capital stock of the Company or any material increase in the consolidated long-term debt of the Company (other than as a result of the sale of (i) Securities, (ii) notes issued pursuant to the Company's Medium-Term Note program, Retail Medium-Term Note Program, Euro Medium-Term Note Programme or InterNotes® retail note program, (iii) notes issued pursuant to the Commercial Paper Program of either the Company or Prudential Funding,

LLC, (iv) equity securities issued in connection with the Company's Floating Rate Convertible Senior Notes due 2036, (v) equity securities issued in connection with the Company's Floating Rate Convertible Senior Notes due 2037, or (vi) the Japanese Yen Bonds – First Series (2008), Japanese Yen Bonds – Second Series (2008) and Japanese Yen Floating Bonds – First Series (2008) of the Company), or any material adverse change, or any development that will involve a prospective material adverse change, in or affecting the business, financial condition or results of operations of the Company and its subsidiaries considered as a whole (a "Material Adverse Change"), otherwise than as set forth or contemplated in the Time of Sale Information and the Prospectus.

(xiii) Neither the Company nor any of its subsidiaries is in violation of its Amended and Restated Certificate of Incorporation or By-laws or other organizational documents or instruments.

(xiv) Neither the Company nor any of its subsidiaries is in default in the performance or observance of any obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, which violation or default would have, individually or in the aggregate, a Material Adverse Effect.

(xv) The issue and sale of the Securities, the compliance by the Company with all of the provisions of the Securities, the Indenture and this Agreement and the consummation of the transactions herein and therein contemplated, will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, except where such conflict, breach, violation or default would not have, individually or in the aggregate, a Material Adverse Effect; nor will any such action result in any violation of the provisions of the Amended and Restated Certificate of Incorporation or By-laws of the Company or the organizational documents of any of its subsidiaries or any statute or any order, rule or regulation of any court or insurance regulatory agency or other governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties, except where such violation (other than with respect to the provisions of the Amended and Restated Certificate of Incorporation or By-laws of the Company) would not have, individually or in the aggregate, a Material Adverse Effect; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental or public regulatory body or authority is required for the issue and sale of the Securities or the consummation by the Company of the transactions contemplated by this Agreement or the Indenture, except (i) for the registration of the Securities under the Securities Act, the qualification of the Indenture under the Trust Indenture Act and such consents, approvals, authorizations, orders, registrations or qualifications as may be required under applicable state securities or Blue Sky laws of any jurisdiction in which the Securities are offered and sold in connection with the purchase and distribution of the Securities by the Underwriters or (ii) where the failure to obtain such consent, approval, authorization, order, registration or qualification would not have, individually or in the aggregate, a Material Adverse Effect.

(xvi) As of the date of this Agreement, neither the Company nor, to the Company's knowledge, any of its affiliates, has taken, directly or indirectly, any action designed to or that has constituted or that might reasonably be expected to cause or result in, under the Exchange Act or otherwise, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(xvii) The Company is not, and after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Time of Sale Information and the Prospectus, will not be, an "investment company," as defined in the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder (the "Investment Company Act").

(xviii) The Company has not paid or agreed to pay to any person any compensation for soliciting another to purchase any securities of the Company (except as contemplated in this Agreement).

(xix) The Company is subject to and in full compliance with the reporting requirements of Section 13 or Section 15(d) of the Exchange Act.

(xx) The statements in the Preliminary Prospectus and the Prospectus under the headings "Description of the Junior Subordinated Notes," "Description of the Replacement Capital Covenant," and "Material United States Federal Income Tax Consequences" fairly summarize the matters therein described.

(xxi) The Company is not an ineligible issuer and is a well-known seasoned issuer, in each case as defined under the Securities Act, in each case at the times specified in the Securities Act in connection with the offering of the Securities.

4. Further Agreements of the Company. The Company covenants and agrees with each Underwriter that:

(a) *Required Filings.* The Company will file the final Prospectus with the Commission within the time periods specified by Rule 424(b) and Rule 430A, 430B or 430C under the Securities Act, will file any Issuer Free Writing Prospectus (including the Term Sheet in the form of Annex C hereto) to the extent required by Rule 433 under the Securities Act; and will file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the Prospectus and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Securities. The Company will pay the required Commission filing fees for this offering within the time period required by Rule 456(b)(1)(i) under the Securities Act (without giving effect to the proviso therein) and otherwise in accordance with Rules 456(b) and 457(r) under the Securities Act.

(b) *Delivery of Copies.* The Company will deliver, without charge, during the Prospectus Delivery Period (as defined below), as many copies of the Prospectus (including all amendments and supplements thereto and documents incorporated by

reference therein) and each Issuer Free Writing Prospectus as the Representatives may reasonably request. As used herein, the term “Prospectus Delivery Period” means such period of time after the first date of the public offering of the Securities as in the opinion of counsel for the Underwriters a prospectus relating to the Securities is required by law to be delivered (or required to be delivered but for Rule 172 under the Securities Act) in connection with sales of the Securities by any Underwriter or dealer.

(c) *Amendments or Supplements; Issuer Free Writing Prospectuses.* Before making, using or filing any Issuer Free Writing Prospectus, and before filing any amendment or supplement to the Registration Statement or the Prospectus, the Company will furnish to the Representatives and counsel for the Underwriters a copy of the proposed Issuer Free Writing Prospectus, amendment or supplement for review and will not make, use or file any such Issuer Free Writing Prospectus or file any such proposed amendment or supplement to which the Representatives reasonably object; provided that the foregoing requirement shall not apply to any of the Company’s periodic filings with the Commission pursuant to Section 13(a), 13(c), 14 or 15 of the Exchange Act.

(d) *Notice to the Representatives.* The Company will advise the Representatives promptly, (i) when any amendment to the Registration Statement has been filed or becomes effective; (ii) when any supplement to the Prospectus or any amendment to the Prospectus or any Issuer Free Writing Prospectus has been filed; (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or the receipt of any comments from the Commission relating to the Registration Statement or any other request by the Commission for any additional information; (iv) of the issuance by the Commission of any order suspending the effectiveness of the Registration Statement or preventing or suspending the use of any Preliminary Prospectus or the Prospectus or the initiation or threatening of any proceeding for that purpose pursuant to Section 8A of the Securities Act; (v) of the occurrence of any event within the Prospectus Delivery Period as a result of which the Prospectus, the Time of Sale Information or any Issuer Free Writing Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus, the Time of Sale Information or any such Issuer Free Writing Prospectus is delivered to a purchaser, not misleading; (vi) of the receipt by the Company of any notice of objection of the Commission to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act; and (vii) of the receipt by the Company of any notice with respect to any suspension of the qualification of the Securities for offer and sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and the Company will use its reasonable efforts to prevent the issuance of any such order suspending the effectiveness of the Registration Statement, preventing or suspending the use of any Preliminary Prospectus or the Prospectus or suspending any such qualification of the Securities and, if any such order is issued, will use promptly its commercially reasonable efforts to obtain the withdrawal thereof.

(e) *Time of Sale Information.* If at any time prior to the Closing Date (i) any event shall occur or condition shall exist as a result of which the Time of Sale Information

as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances, not misleading or (ii) if in the discretion of the Company it is necessary to amend or supplement the Time of Sale Information to comply with law, the Company will promptly notify the Underwriters thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission (to the extent required) and furnish to the Underwriters and to such dealers as the Representatives may designate, such amendments or supplements to the Time of Sale Information as may be necessary so that the statements in the Time of Sale Information as so amended or supplemented will not, in the light of the circumstances, be misleading or so that the Time of Sale Information will comply with law.

(f) *Ongoing Compliance.* If during the Prospectus Delivery Period (i) any event shall occur or condition shall exist as a result of which the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, not misleading or (ii) if in the discretion of the Company or the Representatives it is necessary to amend or supplement the Prospectus to comply with law, the Company will promptly notify the Underwriters thereof and forthwith prepare and, subject to paragraph (c) above, file with the Commission (to the extent required) and furnish to the Underwriters and to such dealers as the Representatives may designate, such amendments or supplements to the Prospectus as may be necessary so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus will comply with law.

(g) *Blue Sky Compliance.* The Company will endeavor, in cooperation with the Representatives, to qualify the Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Representatives shall reasonably request and will continue such qualifications in effect so long as required for distribution of the Securities; provided that the Company shall not be required to (i) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (ii) file any general consent to service of process in any such jurisdiction or (iii) subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(h) *Earning Statement.* The Company will make generally available to its security holders as soon as practicable, but in any event no later than 16 months after the effective date of the Registration Statement (as defined in Rule 158(c) under the Securities Act), an earning statement that satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 of the Commission promulgated thereunder.

(i) *Clear Market.* During the period from the date hereof through and including the Closing Date, the Company will not, without the prior written consent of the Representatives, directly or indirectly, offer, sell, contract to sell or otherwise dispose of any securities that are substantially similar to the Securities.

(j) *Conflicts with Registration Statement.* The Company agrees that each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Securities or until any earlier date that the issuer notified or notifies the Representatives as described in the next sentence, did not, and does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement, the Preliminary Prospectus or the Prospectus, as then amended or supplemented. The Company further agrees that if at any time following the issuance of an Issuer Free Writing Prospectus any event occurred or occurs as a result of which such Issuer Free Writing Prospectus, if not amended, would conflict with the information in the Registration Statement, the Preliminary Prospectus or the Prospectus, as then amended or supplemented, or would include any untrue statement of material fact or omit to state any material fact necessary in order to make the statement therein, in light of the circumstances in which they were made, not misleading, the Company will give prompt notice thereof to the Representatives and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission. The foregoing two sentences do not apply to statements in or omissions from any Issuer Free Writing Prospectus in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of the Representatives specifically for inclusion therein.

(k) *Use of Proceeds.* The Company will apply the net proceeds from the sale of the Securities as described in the Time of Sale Information and the Prospectus under the heading “Use of Proceeds”.

(l) *No Stabilization.* The Company will not take, directly or indirectly, any action designed to or that constitutes or that might reasonably be expected to cause or result in, under the Exchange Act or otherwise, any stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(m) *Record Retention.* The Company will, pursuant to reasonable procedures developed in good faith, retain copies of each Issuer Free Writing Prospectus that is not filed with the Commission in accordance with Rule 433 under the Securities Act.

5. Certain Agreements of the Underwriters. Each Underwriter hereby represents and agrees that:

(a) It has not made and will not make any offer relating to the Securities that constitutes or would constitute a “free writing prospectus” as defined in Rule 405 under the Securities Act (which term includes use of any written information furnished to the Commission by the Company and not incorporated by reference into the Registration Statement and any press release issued by the Company) required to be filed (i) by the Company with the Commission or retained by the Company under Rule 433 under the Securities Act, other than the information contained in the Final Term Sheet, or (ii) by such Underwriter pursuant to Rule 433(d)(1)(ii) under the Securities Act, in each case without the prior consent of the Company, and that Annex B will include all such free writing prospectuses for which the Underwriters have received such consent.

(b) It is not subject to any pending proceeding under Section 8A of the Securities Act with respect to the offering (and will promptly notify the Company if any such proceeding against it is initiated during the Prospectus Delivery Period).

(c) It will, pursuant to reasonable procedures developed in good faith, (i) retain copies of each free writing prospectus used or referred to by it, in accordance with Rule 433 under the Securities Act and (ii) file any free writing prospectus used or referred by it as set forth in Rule 433(d)(1)(ii) under the Securities Act.

(d) The Underwriters further represent the following:

European Economic Area

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive (each, a “relevant member state”), with effect from and including the date on which the Prospectus Directive is implemented in that relevant member state (the “relevant implementation date”), an offer of the Securities may not be made to the public in that relevant member state prior to the publication of a prospectus in relation to the Securities that has been approved by the competent authority in that relevant member state or, where appropriate, approved in another relevant member state and notified to the competent authority in that relevant member state, all in accordance with the Prospectus Directive, except that, with effect from and including the relevant implementation date, an offer of Securities may be offered to the public in that relevant member state at any time:

- to any legal entity that is authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;
- to any legal entity that has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;
- to fewer than 100 natural or legal persons (other than qualified investors as defined below) subject to obtaining the prior consent of the representatives for any such offer; or
- in any other circumstances that do not require the publication of a prospectus pursuant to Article 3 of the Prospectus Directive.

Each purchaser of the Securities located within a relevant member state will be deemed to have represented, acknowledged and agreed that it is a “qualified investor” within the meaning of Article 2(1)(e) of the Prospectus Directive.

For purposes of this provision, the expression an “offer to the public” in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and the Securities to be offered so as to enable an investor to decide to purchase or subscribe the securities, as the expression may be varied in that member state by any measure implementing the Prospectus Directive in that member state, and the expression “Prospectus Directive” means Directive 2003/71/EC and includes any relevant implementing measure in each relevant member state.

The Company has not authorized and does not authorize the making of any offer of the Securities through any financial intermediary on their behalf, other than offers made by the Underwriters with a view to the final placement of the Securities as contemplated in this Agreement. Accordingly, no purchaser of the Securities, other than the Underwriters, is authorized to make any further offer of the Securities on behalf of the Company or the Underwriters.

United Kingdom

The Prospectus is only being distributed to, and is only directed at, persons in the United Kingdom that are qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive that are also (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended) (the “Order”) or (ii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as “relevant persons”). The Prospectus and its contents are confidential and should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other persons in the United Kingdom. Any person in the United Kingdom that is not a relevant person should not act or rely on the Prospectus or any of its contents. Any investment activity to which the Prospectus relates is available in the United Kingdom only to relevant persons, and will be engaged in only with such persons.

France

Neither the Prospectus nor any other offering material relating to the Securities described in the Prospectus has been submitted to the clearance procedures of the *Autorité des Marchés Financiers* or of the competent authority of another member state of the European Economic Area and notified to the *Autorité des Marchés Financiers*. The Securities have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France. Neither the Prospectus nor any other offering material relating to the Securities has been or will be:

- released, issued, distributed or caused to be released, issued or distributed to the public in France; or
- used in connection with any offer for subscription or sale of the Securities to the public in France.

Such offers, sales and distributions will be made in France only:

- to qualified investors (*investisseurs qualifiés*) and/or to a restricted circle of investors (*cercle restreint d'investisseurs*), in each case investing for their own account, all as defined in, and in accordance with, Article L.411-2, D.411-1, D.411-2, D. 411-4, D.734-1, D.744-1, D.754-1 and D.764-1 of the French *Code monétaire et financier*; or
- to investment services providers authorized to engage in portfolio management on behalf of third parties.

The Securities may only be resold directly or indirectly to the public in compliance with Articles L.411-1, L.411-2, L.412-1 and L.621-8 through L.621-8-3 of the French *Code monétaire et financier*.

Italy

The offering of the Securities has not been cleared by the Italian Securities Exchange Commission (*Commissione Nazionale per le Società e la Borsa*, or the “CONSOB”) and, accordingly, the Securities may not and will not be offered, sold or delivered, nor may or will copies of the Prospectus or any other documents relating to the Securities, be distributed in Italy, other than to qualified investors (*investitori qualificati*), as defined (i) in Article 2, paragraph (e)(i) to (iii) of the Prospectus Directive (with the exception of (a) management companies (*società di gestione del risparmio*) authorized to manage individual portfolios on behalf of third parties and (b) fiduciary companies (*società fiduciarie*) authorized to manage individual portfolios pursuant to Article 60(4) of the Legislative Decree No. 415 of July 23, 1996, as amended) or (ii) pursuant to another exemption from the requirements of Articles 94 et seq. of Legislative Decree No. 58 of February 24, 1998, as amended (the “Italian Finance Law”) and CONSOB Regulation No. 11971 of May 14, 1999 (“Regulation No. 11971”).

Any offer, sale or delivery of the Securities or distribution of copies of the Prospectus, or any other document relating to the Securities, in Italy may and will be effected in accordance with all Italian securities, tax, exchange control and other applicable laws and regulations, and, in particular, will be:

- made by an investment firm, bank or financial intermediary permitted to conduct such activities in Italy in accordance with the Legislative Decree No. 385 of September 1, 1993, as amended (the “Italian Banking Law”), the Italian Finance Law, Regulation No. 16190, and any other applicable laws and regulations;
- in compliance with Article 129 of the Italian Banking Law and the implementing guidelines of the Bank of Italy; and
- in compliance with any other applicable notification requirement or limitation which may be imposed upon the offer of the Securities by the CONSOB or the Bank of Italy.

The Prospectus and the information contained therein are intended only for the use of its recipient and are not to be distributed to any third-party resident or located in Italy for any reason. No person resident or located in Italy other than the original recipients of the Prospectus may rely on it or its contents.

Article 100-bis of the Italian Finance Law affects the transferability of the Securities in the Republic of Italy to the extent that any placing of the Securities is made solely with qualified investors and such Securities are then systematically resold to non-qualified investors on the secondary market at any time in the 12 months following such placing. Where this occurs, if a prospectus compliant with the Prospectus Directive has not been published, purchasers of Securities who are acting outside of the course of their business or profession may in certain circumstances be entitled to declare such purchase void and to claim damages from any authorized person at whose premises the Securities were purchased, unless an exemption provided for under the Italian Finance Law applies.

In addition to the above (which shall continue to apply to the extent not inconsistent with the implementing measures of the Prospectus Directive in Italy), after the implementation of the Prospectus Directive in Italy, the restrictions, warranties and representations set out under the heading “European Economic Area” above shall apply to Italy.

6. Conditions of Underwriters’ Obligations. The obligation of each Underwriter to purchase Securities on the Closing Date as provided herein is subject to the performance by the Company of its covenants and other obligations hereunder and to the following additional conditions:

(a) *Registration Compliance; No Stop Order.* No order suspending the effectiveness of the Registration Statement shall be in effect, and no proceeding for such purpose, pursuant to Rule 401(g)(2) or pursuant to Section 8A under the Securities Act shall be pending before or threatened by the Commission; the Prospectus and each Issuer Free Writing Prospectus shall have been timely filed with the Commission under the Securities Act (in the case of a Issuer Free Writing Prospectus, to the extent required by Rule 433 under the Securities Act) and in accordance with Section 4(a) hereof; and all requests by the Commission for additional information shall have been complied with to the reasonable satisfaction of the Representative.

(b) *Representations and Warranties.* The representations and warranties of the Company contained herein shall be true and correct on the date hereof and on and as of the Closing Date; and the statements of the Company and its officers made in any certificates delivered pursuant to this Agreement shall be true and correct on and as of the Closing Date.

(c) *No Downgrade.* Subsequent to the earlier of (A) the Time of Sale and (B) the execution and delivery of this Agreement, there shall not have occurred any downgrading nor shall any notice have been given of (i) downgrading, (ii) any intended or potential downgrading or (iii) any review or possible change with possible negative implications in the rating accorded the Securities or any other debt securities or preferred stock of or guaranteed by the Company or any of its subsidiaries by any “nationally recognized statistical rating organization”, as such term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act.

(d) *No Material Adverse Change.* No event or condition of a type described in Section 3(xii) hereof shall have occurred or shall exist, which event or condition is not described in the Time of Sale Information (excluding any amendment or supplement thereto) and the Prospectus (excluding any amendment or supplement thereto) and the effect of which in the judgment of the Representatives makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Prospectus.

(e) *Officer's Certificate.* The Representatives shall have received on and as of the Closing Date a certificate of any Senior Vice President or any Vice President, and the Treasurer or any Assistant Treasurer of the Company to the effect that (i) the representations and warranties of the Company in this Agreement are true and correct and that the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date, (ii) since the respective dates as of which information is given in the Time of Sale Information and the Prospectus, as then amended or supplemented, there has not been any material change in the stockholders' equity or long-term debt of the Company (other than as a result of the sale of (u) the Securities, (v) notes issued pursuant to the Company's Medium-Term Note program, Retail Medium-Term Note program, Euro Medium-Term Note Programme or InterNotes® retail note program, (w) notes issued pursuant to the Commercial Paper Program of either the Company or Prudential Funding, LLC, (x) equity securities issued in connection with the Company's Floating Rate Convertible Senior Notes due 2036, (y) equity securities issued in connection with the Company's Floating Rate Convertible Senior Notes due 2037, or (z) the Japanese Yen Bonds – First Series (2008), Japanese Yen Bonds – Second Series (2008) and Japanese Yen Floating Bonds – First Series (2008) of the Company), or any Material Adverse Change, or any development which will involve a prospective Material Adverse Change, and (iii) the conditions set forth in paragraphs (a), (c) and (d) above have been satisfied.

(f) *Comfort Letters.* On the date of this Agreement and on the Closing Date, PricewaterhouseCoopers LLP shall have furnished to the Representatives, at the request of the Company, letters, dated the respective dates of delivery thereof and addressed to the Underwriters, in form and substance satisfactory to the Representatives, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in the Registration Statement, the Time of Sale Information and the Prospectus; provided that the letter delivered on the Closing Date shall use a "cut-off" date no more than three business days prior to the Closing Date.

(g) *Opinion and 10b-5 Statement of Counsel for the Company.* The Representatives shall have received the opinion or opinions of corporate and tax counsel for the Company, dated the Closing Date and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Annex A hereto.

(h) *Opinion and 10b-5 Statement of Counsel for the Underwriters.* The Representatives shall have received on and as of the Closing Date an opinion and 10b-5 Statement of Cleary Gottlieb Steen & Hamilton LLP, counsel for the Underwriters, with respect to such matters as the Representatives may reasonably request, and such counsel shall have received such documents and information as they may reasonably request to enable them to pass upon such matters.

(i) *Additional Documents.* On or prior to the Closing Date, the Company shall have furnished to the Representatives such further certificates and documents as the Representatives may reasonably request.

All opinions, letters, certificates and evidence mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters.

7. Indemnification and Contribution.

(a) *Indemnification of the Underwriters.* The Company agrees to indemnify and hold harmless each Underwriter against any and all losses, claims, damages and liabilities (and will reimburse each Underwriter for any legal or other expenses reasonably incurred by it in connection with investigating or defending any action or claim as to which it is entitled to indemnification hereunder as such expenses are incurred), joint or several, that arise out of, or are based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, not misleading, (ii) or any untrue statement or alleged untrue statement of a material fact contained in the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus or any Time of Sale Information, or caused by any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, in each case except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use therein.

(b) *Indemnification of the Company.* Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company to the same extent as the indemnity

set forth in paragraph (a) above, but only with respect to any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to such Underwriter furnished to the Company in writing by such Underwriter through the Representatives expressly for use in the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus or any Time of Sale Information, it being understood and agreed that the only such information consists of the following: (i) the initial public offering price, (ii) the names of the Underwriters on the cover pages of the Preliminary Prospectus and the Prospectus and (iii) under the heading "Underwriting" in the Preliminary Prospectus and the Prospectus, (A) the list of Underwriters, (B) the fourth paragraph related to concessions and reallowances and (C) the seventh and eighth paragraphs related to stabilization and syndicate covering transactions.

(c) *Notice and Procedures.* Promptly after receipt of notice of the commencement of any action by any person in respect of which indemnification may be sought pursuant to paragraph (a) or (b) above, such person (the "Indemnified Person"), shall, if a claim in respect thereof is to be made against the person against whom such indemnification may be sought under such paragraph (the "Indemnifying Person"), notify the Indemnifying Person in writing of the commencement thereof; but the omission so to notify the Indemnifying Person shall not relieve it from any liability which it may have to any Indemnified Person otherwise than under such paragraph. In case any such action shall be brought against any Indemnified Person and it shall notify the Indemnifying Person of the commencement thereof, the Indemnifying Person shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other Indemnifying Person similarly notified, to assume the defense thereof, with counsel satisfactory to such Indemnified Person (who shall not, except with the consent of the Indemnified Person, be counsel to the Indemnifying Person) and, after notice from the Indemnifying Person to such Indemnified Person of its election so to assume the defense thereof, the Indemnifying Person shall not be liable to such Indemnified Person under such paragraph for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such Indemnified Person, in connection with the defense thereof other than reasonable costs of investigation. No Indemnifying Person shall, without the written consent of the Indemnified Person, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the Indemnified Person is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the Indemnified Person (or such other release of the Indemnified Person as shall be satisfactory to the Indemnified Person) from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any Indemnified Person.

(d) *Contribution.* If the indemnification provided for in paragraphs (a) and (b) above is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such

Indemnified Person as a result of such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) is not permitted by applicable law or if the Indemnified Person failed to give the notice required under paragraph (c) above, then each Indemnifying Person shall contribute to such amount paid or payable by such Indemnified Person, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities (or actions or proceedings in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same respective proportions as the net proceeds (before deducting expenses) received by the Company from the sale of the Securities and the total underwriting discounts and commissions received by the Underwriters in connection therewith, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate offering price of the Securities. The relative fault of the Company on the one hand and the Underwriters on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) *Limitation on Liability.* The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Person in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 7, in no event shall an Underwriter be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by such Underwriter with respect to the offering of the Securities exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 7 are several in proportion to their respective purchase obligations hereunder and not joint.

(f) The obligations of the Company under this Section 7 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to affiliates of the Underwriters and to each person, if any, who controls any Underwriter within the meaning of the Securities Act or the Exchange Act; and the obligations of the Underwriters under this Section 7 shall be in addition to any liability

which the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company (including any person who, with his or her consent, is named in the Preliminary Prospectus or the Prospectus as about to become a director of the Company) and to each person, if any, who controls the Company within the meaning of the Securities Act.

8. Effectiveness of Agreement. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

9. Termination. This Agreement may be terminated by the Representatives, by notice to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date (i) since the date as of which information is given in the Time of Sale Information and the Prospectus, any Material Adverse Change or any development involving a prospective Material Adverse Change, whether or not arising in the ordinary course of business; (ii) suspension of trading in securities generally on the New York Stock Exchange, the American Stock Exchange or the Nasdaq National Market or limitation on prices (other than limitations on hours or numbers of days of trading) for securities on any such exchange or market; (iii) the suspension of trading of the Company's securities by the New York Stock Exchange, the Commission, or any other governmental authority; (iv) the enactment, publication, decree or other promulgation of any statute, regulation, rule or order of any court or other governmental authority which in the opinion of the Representatives materially and adversely affects or may materially and adversely affect the business or operations of the Company; (v) the declaration of a banking moratorium by United States, New York State or New Jersey State authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States or other relevant jurisdiction; (vi) the taking of any action by any governmental body or agency in respect of its monetary or fiscal affairs which in the reasonable opinion of the Representatives has a material adverse effect on the securities markets in the United States, or (vii) any outbreak or escalation of hostilities or declaration of war or national emergency or other national or international calamity or crisis or change in economic or political conditions if the effect of such outbreak, escalation, declaration, emergency, calamity, crisis or change on the financial markets of the United States would, in the sole judgment of the Representatives, make it impracticable or inadvisable to market the Securities or to enforce contracts for the sale of the Securities.

10. Defaulting Underwriter. (a) If, on the Closing Date, any Underwriter defaults on its obligation to purchase the Securities that it has agreed to purchase hereunder (the "Defaulted Securities"), the non-defaulting Underwriters may in their discretion arrange for the purchase of the Defaulted Securities by one or more of the non-defaulting Underwriters or any other persons satisfactory to the Company on the terms contained in this Agreement. If, within 36 hours after any such default by any Underwriter, the non-defaulting Underwriters do not arrange for the purchase of the Defaulted Securities, then the Company shall be entitled to a further period of 36 hours within which to procure other persons satisfactory to the non-defaulting Underwriters to purchase the Defaulted Securities on such terms. If other persons become obligated or agree to purchase the Defaulted Securities of a defaulting Underwriter, either the non-defaulting Underwriters or the Company may postpone the Closing Date for up to five full business days in order to effect any changes that in the opinion of counsel for the Company or counsel for the Underwriters may be necessary in the

Registration Statement and the Prospectus or in any other document or arrangement, and the Company agrees to promptly prepare any amendment or supplement to the Registration Statement and the Prospectus that effects any such changes. As used in this Agreement, the term "Underwriter" includes, for all purposes of this Agreement unless the context otherwise requires, any person not listed in Schedule 1 hereto that, pursuant to this Section 10, purchases Defaulted Securities that a defaulting Underwriter agreed but failed to purchase.

(b) If, after giving effect to any arrangements for the purchase of the Defaulted Securities of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the aggregate principal amount of the Defaulted Securities that remains unpurchased does not exceed one-eleventh of the aggregate principal amount of all the Securities, then the Company shall have the right to require each non-defaulting Underwriter to purchase the principal amount of the Defaulted Securities that such Underwriter agreed to purchase hereunder plus such Underwriter's pro rata share (based on the principal amount of Securities that such Underwriter agreed to purchase hereunder) of the Defaulted Securities of such defaulting Underwriter or Underwriters for which such arrangements have not been made.

(c) If, after giving effect to any arrangements for the purchase of the Defaulted Securities of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the aggregate principal amount of such Defaulted Securities that remains unpurchased exceeds one-eleventh of the aggregate principal amount of all the Securities, or if the Company shall not exercise the right described in paragraph (b) above, then this Agreement shall terminate without liability on the part of the non-defaulting Underwriters. Any termination of this Agreement pursuant to this Section 10 shall be without liability on the part of the Company, except that the Company will continue to be liable for the payment of expenses as set forth in Section 11 hereof and except that the provisions of Section 7 hereof shall not terminate and shall remain in effect.

(d) Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Company or any non-defaulting Underwriter for damages caused by its default.

11. Payment of Expenses. (a) Whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, the Company will pay or cause to be paid all costs and expenses incident to the performance of its obligations hereunder, including without limitation, (i) the costs incident to the authorization, issuance, sale, preparation and delivery of the Securities and any taxes payable in that connection; (ii) the costs incident to the preparation, printing, reproduction, delivery to or at the direction of the Representatives and filing under the Securities Act of the Preliminary Prospectus, any Issuer Free Writing Prospectus, any Time of Sale Information and the Prospectus (including all exhibits, amendments and supplements thereto); (iii) the costs of reproducing and distributing each of this Agreement, the Securities, the Indenture and the Replacement Capital Covenant; (iv) the fees and expenses of the Company's counsel and independent accountants; (v) the fees and expenses incurred in connection with the qualification of the Securities under the laws of such jurisdictions as the Representatives may designate

(including the reasonable fees and expenses of counsel for the Underwriters); (vi) any fees charged by rating agencies for rating the Securities; (vii) the fees and expenses of the Trustee and any paying agent (including related fees and expenses of any counsel to such parties); and (viii) if required, all expenses and application fees incurred in connection with any filing with, and clearance of the offering by, the Financial Industry Regulatory Authority.

(b) If (i) this Agreement is terminated pursuant to Section 9, (ii) the Company for any reason fails to tender the Securities for delivery to the Underwriters or (iii) the Underwriters decline to purchase the Securities for any reason permitted under this Agreement, the Company agrees to reimburse the Underwriters for all out-of-pocket costs and expenses (including the fees and expenses of their counsel) reasonably incurred by the Underwriters in connection with this Agreement and the offering contemplated hereby.

12. Persons Entitled to Benefit of Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and the Indemnified Persons referred to in Section 7 hereof. Nothing in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein. No purchaser of Securities from any Underwriter shall be deemed to be a successor merely by reason of such purchase.

13. Survival. The respective indemnities, rights of contribution, representations, warranties and agreements of the Company and the Underwriters contained in this Agreement or made by or on behalf of the Company or the Underwriters pursuant to this Agreement or any certificate delivered pursuant hereto shall survive the delivery of and payment for the Securities and shall remain in full force and effect, regardless of any termination of this Agreement or any investigation made by or on behalf of the Company or the Underwriters.

14. Certain Defined Terms. For purposes of this Agreement, (a) except where otherwise expressly provided, the term “affiliate” has the meaning set forth in Rule 405 under the Securities Act; (b) the term “business day” means any day other than a day on which banks are permitted or required to be closed in New York City; and (c) the term “subsidiary” has the meaning set forth in Rule 405 under the Securities Act.

15. Miscellaneous. (a) *Authority of the Representative*. Any action by the Underwriters hereunder may be taken by the Representatives on behalf of the Underwriters, and any such action taken by the Representatives shall be binding upon the Underwriters.

(b) *Notices*. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted and confirmed by any standard form of telecommunication. Notices to the Underwriters shall be given to the Representatives c/o J.P. Morgan Securities Inc., 270 Park Avenue, New York, New York 10017 (fax: 212-834-6081); Attention: Investment Grade Syndicate Desk and Morgan Stanley & Co. Incorporated, 1585 Broadway, 29th Floor, New York, NY 10036, (fax: 212-507-8999); Attention: Investment Banking Division. Notices to the Company shall be given to it at 751 Broad Street, 23rd Floor, Newark, New Jersey 07102, (fax: 973-802-5267); Attention: Jonathan Hunt, Senior Vice President & Assistant Treasurer.

(c) *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(d) *Counterparts.* This Agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument.

(e) *Amendments or Waivers.* No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

(f) *Headings.* The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

If the foregoing is in accordance with your understanding, please indicate your acceptance of this Agreement by signing in the space provided below.

Very truly yours,

PRUDENTIAL FINANCIAL, INC.

By: /s/ JONATHAN P. HUNT

Name: Jonathan P. Hunt

Title: Assistant Treasurer

Accepted: June 12, 2008

J.P. MORGAN SECURITIES INC.

By /s/ STEPHEN L. SHEINER

Authorized Signatory

Stephen L. Sheiner

Vice President

MORGAN STANLEY & CO. INCORPORATED

By /s/ YURIJ SLYZ

Authorized Signatory

For themselves and on behalf of the
several Underwriters listed
in Schedule 1 hereto.

<u>Underwriter</u>	<u>Principal Amount</u>
J.P. Morgan Securities Inc.	\$ 180,000,000
Morgan Stanley & Co. Incorporated	180,000,000
Wachovia Capital Markets, LLC	60,000,000
Citigroup Global Markets Inc.	30,000,000
Credit Suisse Securities (USA) LLC	30,000,000
Goldman, Sachs & Co.	30,000,000
Lehman Brothers Inc.	30,000,000
UBS Securities LLC	30,000,000
BMO Capital Markets Corp.	5,000,000
BNP Paribas Securities Corp.	5,000,000
BNY Capital Markets, Inc.	5,000,000
Greenwich Capital Markets, Inc.	5,000,000
Loop Capital Markets, LLC	5,000,000
The Williams Capital Group, L.P.	5,000,000
Total	\$ 600,000,000

Form of Opinion of Counsel for the Company

- (1) The Registration Statement is an “automatic shelf registration statement” as defined under Rule 405 of the Securities Act that has been filed with the Commission not earlier than three years prior to the date of the Underwriting Agreement; each of the Preliminary Prospectus and the Prospectus was filed with the Commission pursuant to the subparagraph of Rule 424(b) under the Securities Act specified in such opinion on the date specified therein; and no order suspending the effectiveness of the Registration Statement has been issued, no notice of objection of the Commission to the use of such registration statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act has been received by the Company and, to the knowledge of such counsel, no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or in connection with the offering has been initiated or threatened by the Commission.
- (2) The Company has been duly incorporated and is an existing corporation in good standing under the laws of the State of New Jersey. The Company has power and authority, corporate and other, to conduct its business as described in the Time of Sale Information and the Prospectus, and to enter into and perform its obligations under this Agreement and the Securities.
- (3) Prudential Holdings, LLC has been duly organized and is an existing limited liability company in good standing under the laws of the State of New Jersey; and (B) The Prudential Insurance Company of America has been duly organized and is an existing stock life insurance company in good standing under the laws of the State of New Jersey.
- (4) To the extent that each of The Gibraltar Life Insurance Company, Ltd. and The Prudential Life Insurance Company, Ltd. is a “significant subsidiary” of the Company within the meaning of Rule 1-02 of Regulation S-X under the Securities Act, each subsidiary has been duly incorporated and is an existing Japanese *kabushiki kaisha* in good standing under the laws of Japan.
- (5) This Agreement has been duly authorized, executed and delivered by the Company. The Indenture has been duly authorized, executed and delivered by the Company and has been duly qualified under the Trust Indenture Act and is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, moratorium, reorganization, fraudulent transfer and other similar laws relating to or affecting enforcement of creditors’ rights generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- (6) The issuance and sale of the Securities in an aggregate principal amount of up to \$600,000,000 have been authorized by the Company. The Securities have been duly

-
- executed and delivered by, and constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, moratorium, reorganization, fraudulent transfer or other similar laws relating to or affecting enforcement of creditors' rights generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- (7) Such counsel does not know of any litigation or governmental proceeding instituted or threatened against the Company or any of its consolidated subsidiaries that would be required to be described in the Time of Sale Information and the Prospectus, and is not so described; and, to such counsel's knowledge, no legal or governmental proceeding is pending or is currently being threatened challenging the offering of the Securities by the Underwriters that would be required to be described in the Time of Sale Information and the Prospectus, and is not so described.
- (8) No authorization, decree, approval, consent, order registration or qualification of or with any court or governmental authority, agency or official is required to be obtained by the Company in connection with the execution, delivery or performance by the Company of this Agreement, the Indenture or the Securities, or in connection with the offering, issuance or sale of the Securities or the consummation of any of the transactions contemplated therein, except such as have been obtained and made under the Securities Act and the Trust Indenture Act and such as may be required under state securities or "Blue Sky" laws (as to which counsel need express no opinion).
- (9) The execution and delivery of this Agreement, the Indenture and the Securities, and the consummation by the Company of the transactions contemplated therein, and compliance by the Company with its obligations thereunder will not result in a breach of, or default under, any material contract, indenture, mortgage, loan agreement, note, lease or other material agreement or instrument known to such counsel (after due inquiry and investigation) to which the Company is a party or by which it may be bound or to which any of the property or assets of the Company is subject, nor will such action result in any violation of any New York, New Jersey or United States federal statute or law or any order, rule or regulation of any court or insurance regulatory agency or other governmental agency or body having jurisdiction over the Company or any of its properties, except (other than with respect to the provisions of the Amended and Restated Certificate of Incorporation and By-Laws of the Company) to the extent that such breach, default or violation would not have individually or in the aggregate a Material Adverse Effect; provided, however, that for purposes of this opinion (9), such counsel need not express any opinion with respect to federal and state securities laws, other antifraud laws or fraudulent transfer laws.
- (10) (A) To such counsel's knowledge, each of the Company, and, to the extent that each of the following entities is a "significant subsidiary" of the Company within the meaning of Rule 1-02 of Regulation S-X under the Securities Act, each of Prudential Holdings, LLC and the Principal Subsidiary is registered in all capacities with each federal, state, local or other governmental authority and is registered with, a member of, or a

- participant in, each self-regulatory organization, in each case, as is necessary to conduct its business as described in or contemplated by the Time of Sale Information and the Prospectus except as set forth in the Time of Sale Information and the Prospectus, except where failure to be so registered would not have, individually or in the aggregate, a Material Adverse Effect; (B) to such counsel's knowledge, all such registrations and memberships are in full force and effect and neither the Company nor any of its subsidiaries has received any notice of any event, inquiry, investigation or proceeding that would reasonably be expected to result in the suspension, revocation or limitation of any such registrations or memberships, except as set forth in the Time of Sale Information and the Prospectus and except as would not have, individually or in the aggregate, a Material Adverse Effect; and (C) to such counsel's knowledge, each of the Company and its subsidiaries is in compliance with all applicable laws, rules, regulations, orders, By-Laws and similar requirements in connection with such registrations or memberships, as the case may be, except as set forth in the Time of Sale Information and the Prospectus and except as would not have, individually or in the aggregate, a Material Adverse Effect.
- (11) To such counsel's knowledge, and, to the extent that each of the following entities is a "significant subsidiary" of the Company within the meaning of Rule 1-02 of Regulation S-X under the Securities Act, (A) each of The Gibraltar Life Insurance Company, Ltd. and The Prudential Life Insurance Company, Ltd. is registered with the Japanese Financial Supervisory Authority; (B) such registration is in full force and effect and neither The Gibraltar Life Insurance Company, Ltd. nor The Prudential Life Insurance Company, Ltd. has received any notice of any event, inquiry, investigation or proceeding that would reasonably be expected to result in the suspension, revocation or limitation of any such registration, except as set forth in the Time of Sale Information and the Prospectus and except as would not have, individually or in the aggregate, a Material Adverse Effect; and (C) each of The Gibraltar Life Insurance Company, Ltd. and The Prudential Life Insurance Company, Ltd. is in compliance with all applicable laws, rules, regulations, orders, By-Laws and similar requirements in connection with such registration, except as set forth in the Time of Sale Information and the Prospectus and except as would not have, individually or in the aggregate, a Material Adverse Effect.
- (12) The Securities and the Indenture conform in all material respects to the descriptions thereof in the Time of Sale Information and the Prospectus. The statements set forth under the headings "Description of the Notes" and "Description of the Replacement Capital Covenant" in the Preliminary Prospectus and the Prospectus, insofar as such statements purport to summarize certain provisions of the Indenture and the Replacement Capital Covenant, provide a fair summary of such provisions.
- (13) The Company has the authorized capitalization set forth in the Time of Sale Information and the Prospectus and all its outstanding shares of common stock are duly authorized, validly issued, fully paid and non-assessable.
- (14) Subject to the limitations, qualifications and assumptions set forth in the Preliminary Prospectus and the Prospectus, the statements in the discussion under the heading "Material United States Federal Income Tax Considerations" in the Preliminary

Prospectus and the Prospectus, to the extent they constitute matters of United States federal income tax law or legal conclusions with respect thereto, are correct in all material respects.

In rendering such opinion, such counsel may state that such counsel expresses no opinion as to the laws of any jurisdiction other than the federal laws of the United States, the laws of the State of New York and the laws of the State of New Jersey and that such counsel is expressing no opinion as to the effect of the laws of any other jurisdiction; that, as to certain factual matters, such counsel has relied upon certificates of officers of the Company and its subsidiaries and certificates of public officials and other sources believed by such counsel to be responsible; and that such counsel has assumed that the Indenture has been duly authorized, executed and delivered by the Trustee, that the Securities conform to the form thereof examined by such counsel, and that the signatures on all documents examined by such counsel (or members of the Company's legal department) are genuine (assumptions that such counsel has not independently verified). In addition, such counsel may state that such counsel has examined or caused to be examined under such counsel's direction certificates of public officials, and copies, certified or otherwise identified to such counsel's satisfaction, of such corporate documents and records of the Company, and of such other records, certificates, documents and other instruments, as such counsel has deemed relevant and necessary or appropriate as a basis for such opinion. Such counsel may also state that such counsel has consulted with certain attorneys in the Company's Law Department and has relied, to the extent such counsel deemed such reliance proper, upon certificates of officers of the Company with respect to the accuracy of material factual matters that were not independently established.

Such counsel also may state that to the extent any of the opinions in this Annex A involve the law of Japan, such counsel has relied with your permission on the opinion of the opinion of the Chief Legal Officer of each of The Gibraltar Life Insurance Company, Ltd. and The Prudential Life Insurance Company, Ltd., addressed to the Representatives.

In addition, such counsel shall confirm that, on the basis of such counsel's own knowledge and knowledge such counsel has gained from attorneys in the Company's law department, with whom such counsel has consulted for the purpose of preparing the Company's disclosure documents incorporated by reference in the Registration Statement and the Prospectus, considered in the light of such counsel's understanding of the applicable law and experience such counsel has gained through such counsel's practice in this field, (i) the Registration Statement, as of its most recent effective date determined pursuant to Rule 430B(f)(2) under the Securities Act, and the Prospectus, as of the date thereof and as of the Closing Date, appeared or appear on their face to be appropriately responsive in all material respects to the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder and (ii) nothing has come to such counsel's attention that has caused such counsel to believe that (x) the Registration Statement, as of its most recent effective date determined pursuant to Rule 430B(f)(2) under the Securities Act, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the

statements therein not misleading, (y) the Time of Sale Information, as amended or supplemented at the Time of Sale, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (z) the Prospectus, as of the date thereof and as of the Closing Date, included or includes an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Such counsel may also state that the limitations inherent in the independent verification of factual matters and the character of determinations involved in the preparation of the Registration Statement, the Time of Sale Information and the Prospectus are such, however, that (except to the extent expressly set forth in numbered paragraphs 12 and 14) such counsel does not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement, the Time of Sale Information or the Prospectus. Such counsel may state that he or she does not express any opinion or belief as to the financial statements or other financial data contained in the Registration Statement, the Time of Sale Information or the Prospectus, or as to the statement of the eligibility of the Trustee under the Indenture under which the Securities are being issued.

The opinion of counsel described above shall be rendered to the Underwriters at the request of the Company and shall so state therein.

Time of Sale Information

Final Term Sheet, dated June 12, 2008.



PRUDENTIAL FINANCIAL, INC.

Final Term Sheet

Dated June 12, 2008

\$600,000,000

8.875% Fixed-to-Floating Rate Junior Subordinated Notes due 2068

Issuer:	Prudential Financial, Inc.
Securities:	8.875% Fixed-to-Floating Rate Junior Subordinated Notes due 2068
Principal Amount:	\$600,000,000
Denominations:	Minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof.
Scheduled Maturity Date:	June 15, 2038
Final Maturity Date:	June 15, 2068
Interest Rate and Interest Payment Dates during Fixed-Rate Period:	8.875%, accruing from and including June 17, 2008 to but excluding June 15, 2018, payable semi-annually in arrears on each June 15 and December 15, commencing December 15, 2008.
Interest Rate and Interest Payment Dates during Floating-Rate Period:	Three-month LIBOR plus 5.00%, accruing from and including June 15, 2018, payable quarterly in arrears on each March 15, June 15, September 15 and December 15, commencing September 15, 2018, or if any such day is not a Business Day, the following Business Day.
Day Count Convention:	30/360 during the Fixed-Rate Period and Actual/360 during the Floating-Rate Period
Reference Treasury Benchmark:	3.875% due May 15, 2018
Treasury Rate:	4.219%
Spread to Benchmark Treasury:	470 basis points (4.70%)
Redemption at Par:	On or after June 15, 2018, the notes are redeemable at 100% of the principal amount of the notes being redeemed, plus any accrued and unpaid interest.

Redemption at Make-Whole:	Prior to June 15, 2018, the notes are redeemable, in whole or in part, at any time at the greater of (i) 100% of the principal amount of the notes being redeemed and (ii) the present value of a principal payment on June 15, 2018 and scheduled payments of interest that would have accrued from the redemption date to June 15, 2018 on the notes being redeemed, discounted to the redemption date on a semi-annual basis at a discount rate equal to the Treasury Rate plus 75 basis points, in each case plus any accrued and unpaid interest to the redemption date.
Redemption for Tax Event or Rating Agency Event:	Prior to June 15, 2018, the notes are redeemable in whole upon the occurrence of a “tax event” or “rating agency event” (as defined in the Preliminary Prospectus Supplement) at the greater of (i) 100% of the principal amount of the notes being redeemed and (ii) the present value of a principal payment on June 15, 2018 and scheduled payments of interest that would have accrued from the redemption date to June 15, 2018 on the notes being redeemed, discounted to the redemption date on a semi-annual basis at a discount rate equal to the Treasury Rate plus 87.5 basis points, in each case plus any accrued and unpaid interest to the redemption date.
Replacement Capital Covenant:	Any repayment, redemption, defeasance or purchase of the notes by the Company prior to June 15, 2048 will be subject to the terms of the replacement capital covenant described in the preliminary prospectus supplement.
Offering Price:	99.714%
Proceeds to the Issuer before Commissions and Expenses:	\$598,284,000
Pricing Date:	June 12, 2008
Settlement Date:	June 17, 2008 (T+3)
CUSIP/ISIN:	744320AK8/US744320AK85
Anticipated Security Ratings:	Moody’s Investors Service: Baa1 Standard & Poor’s: A- The rating of the notes should be evaluated independently from similar ratings of other securities. A credit rating of a security is not a recommendation to buy, sell or hold securities and may be subject to review, revision, suspension, reduction or withdrawal at any time by the assigning rating agency.
Joint Structuring Advisors:	J.P. Morgan Securities Inc. Morgan Stanley & Co. Incorporated

Joint Book-Running Managers:

J.P. Morgan Securities Inc.
Morgan Stanley & Co. Incorporated
Wachovia Capital Markets, LLC

Senior Co-Managers:

Citigroup Global Markets Inc.
Credit Suisse Securities (USA) LLC
Goldman, Sachs & Co.
Lehman Brothers Inc.
UBS Securities LLC

Junior Co-Managers:

BMO Capital Markets Corp.
BNP Paribas Securities Corp.
BNY Mellon Capital Markets, LLC
Greenwich Capital Markets, Inc.
Loop Capital Markets, LLC
The Williams Capital Group, L.P.

The issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling J.P. Morgan Securities Inc. collect at 1-212-834-4533 or Morgan Stanley & Co. Incorporated toll free at 1-866-718-1649.

Any disclaimer or other notice that may appear below is not applicable to this communication and should be disregarded. Such disclaimer or notice was automatically generated as a result of this communication being sent by Bloomberg or another email system.

PRUDENTIAL FINANCIAL, INC.

TO

THE BANK OF NEW YORK
Trustee

INDENTURE

Dated as of June 17, 2008

SUBORDINATED DEBT SECURITIES

Prudential Financial, Inc.
Reconciliation and tie between Trust Indenture Act of 1939, as amended,
and Indenture, dated as of June 17, 2008

<u>Trust Indenture Act Section</u>	<u>Indenture Section</u>
§ 310(a)(1)	609
(a)(2)	609
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(b)	608
	610
§ 311(a)	613
(b)	613
§ 312(a)	701
(b)	702(a)
(c)	702(b)
§ 313(a)	702(a)
(b)	703(a)
(c)	703(a), 703(b)
(d)	703(a)
§ 314(a)	703(b)
(b)	704
(c)(1)	Not Applicable
(c)(2)	102
(c)(3)	102
(d)	Not Applicable
(e)	Not Applicable
§ 315(a)	102
(b)	601
(c)	602
(d)	601
(e)	601
§ 316(a)	514
(a)(1)(A)	101
	502
(a)(1)(B)	512
(a)(2)	513
(b)	Not Applicable
§ 317(a)(1)	508
(a)(2)	503
(b)	504
§ 318(a)	1003
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NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

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INDENTURE, dated as of June 17, 2008, between Prudential Financial, Inc., a corporation duly organized and existing under the laws of the State of New Jersey (herein called the “Company”), having its principal office at 751 Broad Street, Newark, New Jersey 07102, and The Bank of New York, a New York banking corporation, as Trustee (herein called the “Trustee”).

RECITALS

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its direct, unsecured and subordinated debentures, notes or other evidences of indebtedness (herein called the “Securities”), to be issued in one or more series as in this Indenture provided.

All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities or of series thereof, as follows:

ARTICLE ONE

Definitions and Other Provisions of General Application

Section 101. Definitions.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;

(4) unless the context otherwise requires, any reference to an “Article” or a “Section” refers to an Article or a Section, as the case may be, of this Indenture; and

(5) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

“Act”, when used with respect to any Holder, has the meaning specified in Section 104.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Authenticating Agent” means any Person authorized by the Company pursuant to Section 614 to act on behalf of the Trustee to authenticate Securities of one or more series.

“Board of Directors” means any of the board of directors of the Company or any duly authorized committee of that board or any officer of the Company, to which authority to act on behalf of the Board of Directors has been duly delegated.

“Board Resolution” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors or any duly authorized committee of that board or any officer of the Company, to which authority to act on behalf of the Board of Directors has been duly delegated, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“Business Day”, when used with respect to any Place of Payment, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment are authorized or obligated by law or executive order to close.

“Commission” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“Common Securities” means undivided common beneficial interests in a Prudential Financial Trust.

“Company” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Person.

“Company Request” or “Company Order” means a written request or order signed in the name of the Company by its Chairman of the Board, its Vice Chair, its President or a Vice President, and by its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

“Corporate Trust Office” means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date hereof is located at 101 Barclay Street, 8W, New York, New York 10286.

“corporation” means a corporation, association, company, joint stock company, statutory trust or business trust.

“Covenant Defeasance” has the meaning specified in Section 1403.

“Defaulted Interest” has the meaning specified in Section 307.

“Defeasance” has the meaning specified in Section 1402.

“Depository” means, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more Global Securities, the clearing agency registered under the Exchange Act specified for that purpose as contemplated by Section 301.

“Event of Default” has the meaning specified in Section 501.

“Exchange Act” means the Securities Exchange Act of 1934 and any statute successor thereto, in each case as amended from time to time.

“Expiration Date” has the meaning specified in Section 104.

“Global Security” means a Security that evidences all or part of the Securities of any series and bears the legend set forth in Section 204 (or such legend as may be specified as contemplated by Section 301 for such Securities).

“Holder” means a Person in whose name a Security is registered in the Security Register.

“Incur” means, with respect to any indebtedness or other obligation of any Person, to create, issue, incur (by conversion, exchange or otherwise), assume, guarantee or otherwise become liable in respect of such indebtedness or other obligation or the recording, as required pursuant to generally accepted accounting principles or otherwise, of any such indebtedness or other obligation as a liability on the balance sheet of such Person (and “Incurrence,” “Incurred,” “Incurable” and “Incurring” shall have meanings correlative to the foregoing); *provided, however*, that a change in generally accepted accounting principles that results in an obligation of such Person that exists at such time becoming indebtedness shall not be deemed an Incurrence of such indebtedness.

“Indenture” means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively. The term “Indenture” shall also include the terms of particular series of Securities established as contemplated by Section 301.

“interest”, when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity at the rate prescribed in such Original Issue Discount Security.

“Interest Payment Date”, when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

“Investment Company Act” means the Investment Company Act of 1940 and any statute successor thereto, in each case as amended from time to time.

“Junior Subordinated Payment” has the meaning specified in Section 1102.

“Maturity”, when used with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

“Notice of Default” means a written notice of the kind specified in Section 501(4).

“Officers’ Certificate” means a certificate signed by the Chairman of the Board, a Vice Chair, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee. One of the officers signing an Officers’ Certificate given pursuant to Section 1005 shall be the principal executive, financial or accounting officer of the Company.

“Opinion of Counsel” means a written opinion of counsel, who may be counsel for the Company.

“Original Issue Discount Security” means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502.

“Outstanding”, when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

- (1) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (2) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; *provided* that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;
- (3) Securities as to which Defeasance has been effected pursuant to Section 1302; and
- (4) Securities which have been paid pursuant to Section 306 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given, made or taken any request, demand, authorization, direction, notice, consent, waiver or other action hereunder as of any date, (i) the principal amount of an Original Issue Discount Security which shall be deemed to be Outstanding shall be the amount of the principal thereof which would be due and payable as of such date upon acceleration of the Maturity thereof pursuant to Section 502, (ii) if, as of such date, the principal amount payable at the Stated Maturity of a Security is not determinable, the principal amount of such Security which shall be deemed to be Outstanding shall be the amount as specified or determined as contemplated by Section 301, (iii) the principal amount of a Security denominated in one or more foreign currencies or currency units which shall be deemed to be Outstanding shall be the U.S. dollar equivalent, determined as of such date in the manner provided as contemplated by Section 301, of the principal amount of such Security (or, in the case of a Security

described in Clause (i) or (ii) above) of the amount determined as provided in such Clause, and (iv) Securities owned by the Company or any other obligor upon the Securities of any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other action, only Securities which the Trustee knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

"Paying Agent" means any Person authorized by the Company to pay the principal of (and premium, if any) or interest on any Securities on behalf of the Company.

"Payment Blockage Period" has the meaning specified in Section 1103.

"Periodic Offering" means an offering of Securities of a series from time to time the specific terms of which Securities, including without limitation the rate or rates of interest or formula for determining the rate or rates of interest thereon, if any, the Stated Maturity or Maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company upon the issuance of such Securities.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.

"Place of Payment", when used with respect to the Securities of any series, means the place or places where the principal of (and premium, if any) and interest on the Securities of that series are payable as specified as contemplated by Section 301.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"Preferred Securities" means undivided preferred beneficial interests in a Prudential Financial Trust.

"Proceeding" has the meaning specified in Section 1102.

“Prudential Financial Trust”, means one or more statutory trusts, business trusts, partnerships or limited liability companies created by the Company for the purpose of issuing undivided beneficial interests therein in connection with the purchase of Securities under this Indenture.

“Redemption Date”, when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

“Redemption Price”, when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

“Regular Record Date” for the interest payable on any Interest Payment Date on the Securities of any series means the date specified for that purpose as contemplated by Section 301.

“Responsible Officer”, when used with respect to the Trustee, means any officer of the Trustee with direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Securities” has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

“Securities Act” means the Securities Act of 1933 and any statute successor thereto, in each case as amended from time to time.

“Securities Payment” has the meaning specified in Section 1102.

“Security Register” and “Security Registrar” have the respective meanings specified in Section 305.

“Senior Indebtedness” means the principal of, premium, if any, and interest on and any other payment due pursuant to any of the following, whether Incurred on or prior to the date hereof or hereafter Incurred:

- (i) all obligations of the Company for money borrowed;
- (ii) all obligations of the Company evidenced by securities, notes, debentures, bonds or other similar instruments (other than the Securities), including obligations Incurred in connection with the acquisition of property, assets or businesses;
- (iii) all capital lease obligations of the Company;

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- (iv) all reimbursement obligations of the Company with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of the Company;
 - (v) all obligations of the Company issued or assumed as the deferred purchase price of property or services, including all obligations under master lease transactions pursuant to which the Company or any of its subsidiaries have agreed to be treated as owner of the subject property for federal income tax purposes;
 - (vi) all payment obligations of the Company under interest rate swap or similar agreements or foreign currency hedge, exchange or similar agreements at the time of determination, including any such obligations incurred by the Company solely to act as a hedge against increases in interest rates that may occur under the terms of other outstanding variable or floating rate indebtedness of the Company; and
 - (vii) all obligations of the type referred to in clauses (i) through (vi) above of another Person and all dividends of another Person the payment of which, in either case, the Company has assumed or guaranteed or for which the Company is responsible or liable, directly or indirectly, jointly or severally, as obligor, guarantor or otherwise;

provided, however, that "Senior Indebtedness" shall not include: (1) indebtedness or monetary obligations to trade creditors created or assumed by the Company in the ordinary course of business in connection with the obtaining of materials or services; (2) indebtedness that is by its terms subordinate, or not superior, in right of payment to the Securities; or (3) any indebtedness of the Company to its Affiliates (including all debt securities and guarantees in respect of those debt securities, issued to (a) any Prudential Financial Trust or (b) any other trust, partnership or other entity affiliated with the Company that is a financing vehicle of the Company (a "financing entity") in connection with the issuance by such financing entity of common securities and preferred securities or other securities guaranteed by the Company) unless otherwise expressly provided in the terms of any such indebtedness.

"Senior Nonmonetary Default" has the meaning specified in Section 1103.

"Senior Payment Default" has the meaning specified in Section 1103.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 307.

"Stated Maturity", when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

“Subsidiary” means a corporation more than 50% of the outstanding voting stock of which at the time of determination is owned, directly or indirectly, by the Company (or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries). For the purposes of this definition, “voting stock” means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

“Trust Indenture Act” means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after such date, “Trust Indenture Act” means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

“Trustee” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

“U.S. Government Obligations” has the meaning specified in Section 1404.

“Vice President”, when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president”.

Section 102. Compliance Certificates and Opinions.

(a) Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee such certificates and opinions as may be required under the Trust Indenture Act. Each such certificate or opinion shall be given in the form of an Officers’ Certificate, if to be given by an officer of the Company, or an Opinion of Counsel, if to be given by counsel, and shall comply with the requirements of the Trust Indenture Act and any other requirements set forth in this Indenture.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (except for certificates provided for in Section 1005) shall include:

- (1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 103. Form of Documents Delivered to Trustee.

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of any officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(c) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 104. Acts of Holders; Record Dates.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in

writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 601) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Securities shall be proved by the Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) The Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities of such series, *provided* that the Company may not set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving or making of any notice, declaration, request or direction referred to in the next paragraph. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; *provided* that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of

no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 106.

(f) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration referred to in Section 502, (iii) any request to institute proceedings referred to in Section 507(2) or (iv) any direction referred to in Section 512, in each case with respect to Securities of such series. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of such series on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; *provided* that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 106.

(g) With respect to any record date set pursuant to this Section, the party hereto which sets such record dates may designate any day as the "Expiration Date" and from time to time may change the Expiration Date to any earlier or later day; *provided* that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Securities of the relevant series in the manner set forth in Section 106, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section, the party hereto which set such record date shall be deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph.

(h) Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

Section 105. Notices, Etc., to Trustee and Company.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, Attention: Global Corporate Trust, or

(2) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company, Attention: Secretary.

Section 106. Notice to Holders; Waiver.

(a) Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

(b) In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 107. Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act which is required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or excluded, as the case may be.

Section 108. Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 109. Successors and Assigns.

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 110. Separability Clause.

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 111. Benefits of Indenture.

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the holders of Senior Indebtedness and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 112. Governing Law.

This Indenture and the Securities shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflicts of laws.

Section 113. Legal Holidays.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security or any other specified date with respect to any Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities (other than a provision of any Security which specifically states that such provision shall apply in lieu of this Section)) payment of interest or principal (and premium, if any) need not be made at such Place of Payment on

such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, Redemption Date, at the Stated Maturity or such other specified date, *provided* that no interest, principal or premium (if any) shall accrue with respect to such payment, for the period from and after such Interest Payment Date, Redemption Date, Stated Maturity or such other specified date, as the case may be. However, if such next succeeding Business Day is in the next succeeding calendar month or calendar year, as applicable, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such Interest Payment Date, Redemption Date, Stated Maturity or otherwise.

Section 114. Waiver of Jury Trial.

EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE.

ARTICLE TWO

Security Forms

Section 201. Forms Generally.

(a) The Securities of each series shall be in substantially the form set forth in this Article, or in such other form as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or Depositary therefor or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution thereof. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 303 for the authentication and delivery of such Securities.

(b) The Trustee's certificates of authentication shall be in substantially the form set forth in this Article.

(c) The definitive Securities shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

Section 202. Form of Face of Security.

[Insert any legend required by the Internal Revenue Code and the regulations thereunder.]

Prudential Financial, Inc.

No. _____ \$ _____

Prudential Financial, Inc., a corporation duly organized and existing under the laws of the State of New Jersey (herein called the "Company", which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to _____ or registered assigns, the principal sum of _____ Dollars on _____ [If the Security is to bear interest prior to Maturity, insert -, and to pay interest thereon from _____ or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on _____ and _____ in each year, commencing _____, at the rate of ___% per annum, until the principal hereof is paid or made available for payment [If applicable insert -, provided that any principal and premium, and any such installment of interest, which is overdue shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand]. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the _____ or _____ (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture]. [If the Security is not to bear interest prior to Maturity, insert - The principal

of this Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the overdue principal and any overdue premium shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment. Interest on any overdue principal or premium shall be payable on demand.] [If applicable, insert – Any such interest on overdue principal or premium which is not paid on demand shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest on interest shall be legally enforceable), from the date of such demand until the amount so demanded is paid or made available for payment. Interest on any overdue interest shall be payable on demand.]

Payment of the principal of (and premium, if any) and [if applicable, insert – any such] interest on this Security will be made at the office or agency of the Company maintained for that purpose in _____, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts [if applicable, insert – ; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register]].

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: _____

PRUDENTIAL FINANCIAL, INC.

By _____

Attest:

Section 203. Form of Reverse of Security.

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under a Subordinated Debt Securities Indenture, dated as of June 17, 2008 (herein called the "Indenture", which term shall have the meaning assigned to it in such instrument), between the Company and The Bank of New York, as Trustee (herein called the "Trustee", which term includes any successor trustee under the Indenture), and reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior Indebtedness and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof [if applicable, insert –, limited in aggregate principal amount to \$_____].

[If applicable, insert – The Securities of this series are subject to redemption upon not less than 30 days' notice, [if applicable, insert – (1) on _____ in any year commencing with the year ____ and ending with the year ____ through operation of the sinking fund for this series at a Redemption Price equal to 100% of the principal amount, and (2)] at any time [if applicable, insert – on or after _____, 20__], as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [if applicable, insert – on or before _____, __%, and if redeemed] during the 12-month period beginning _____ of the years indicated.

<u>Year</u>	<u>Redemption Price</u>	<u>Year</u>	<u>Redemption Price</u>
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and thereafter at a Redemption Price equal to __% of the principal amount, together in the case of any such redemption [if applicable, insert – (whether through operation of the sinking fund or otherwise)] with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[If applicable, insert – The Securities of this series are subject to redemption upon not less than 30 days’ notice by mail, (1) on _____ in any year commencing with the year ____ and ending with the year ____ through operation of the sinking fund for this series at the Redemption Prices for redemption through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below, and (2) at any time [if applicable, insert – on or after _____.] as a whole or in part, at the election of the Company, at the Redemption Prices for redemption otherwise than through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below: If redeemed during the 12-month period beginning _____ of the years indicated,

<u>Year</u>	<u>Redemption Price For Redemption Through Operation of the Sinking Fund</u>	<u>Redemption Price For Redemption Otherwise Than Through Operation of the Sinking Fund</u>
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and thereafter at a Redemption Price equal to __% of the principal amount, together in the case of any such redemption (whether through operation of the sinking fund or otherwise) with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[If applicable, insert – The sinking fund for this series provides for the redemption on _____ in each year beginning with the year _____ and ending with the year _____ of [if applicable, insert – not less than] \$_____ [“(mandatory sinking fund)”] and not more than \$_____] aggregate principal amount of Securities of this series. [Securities of this series acquired or redeemed by the Company otherwise than through [if applicable, insert – mandatory] sinking fund payments may be credited against subsequent [mandatory] sinking fund payments otherwise required to be made – in the inverse order in which they become due.]

[If the Security is subject to redemption of any kind, insert – In the event of redemption of this Security in part only, a new Security or Securities of this series and of a like tenor for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.]

[If the Security is not subject to redemption, insert – This Security is not redeemable prior to Stated Maturity.]

[The Indenture contains provisions for defeasance at any time of [the entire indebtedness of this Security or] [certain restrictive covenants and Events of Default with respect to this Security] [, in each case] upon compliance with certain conditions set forth therein.]

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his or her behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each Holder hereof, by his or her acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter created, Incurred, assumed or guaranteed, and waives reliance by each such Holder upon said provisions.

[If the Security is not an Original Issue Discount Security, insert – If an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.]

[If the Security is an Original Issue Discount Security, insert – If an Event of Default with respect to Securities of this series shall occur and be continuing, an amount of principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture. Such amount shall be equal to – insert formula for determining the amount. Upon payment (i) of the amount of principal

so declared due and payable and (ii) of interest on any overdue principal, premium and overdue interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company's obligations in respect of the payment of the principal of and premium and interest, if any, on the Securities of this series shall terminate.]

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the majority of the Holders in principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium, and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any

place where the principal of and any premium and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities of this series are issuable only in registered form without coupons in denominations of \$_____ and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

Section 204. Form of Legend for Global Securities.

Any Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form:

“This Security is a Global Security within the meaning of the Indenture hereinafter referred to and is registered in the name of a Depositary or a nominee thereof. This Security may not be exchanged in whole or in part for a Security registered, and no transfer of this Security in whole or in part may be registered in the name of any Person other than such Depositary or a nominee thereof, except in the limited circumstances described in the Indenture.”

Section 205. Form of Trustee’s Certificate of Authentication.

The Trustee’s certificates of authentication shall be in substantially the following form:

“This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

THE BANK OF NEW YORK,
as Trustee

By _____
Authorized Officer”

ARTICLE THREE

The Securities

Section 301. ~~Amount Unlimited; Issuable in Series.~~

(a) The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

(b) The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution and, subject to Section 303, set forth, or determined in the manner provided, in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series,

(1) the title of the Securities of the series (which shall distinguish the Securities of the series from Securities of any other series);

(2) any limit upon the aggregate principal amount of the Securities of the series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 304, 305, 306, 906 or 1207 and except for any Securities which, pursuant to Section 303, are deemed never to have been authenticated and delivered hereunder);

(3) the Person to whom any interest on a Security of the series shall be payable, if other than the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest;

(4) the date or dates on which the principal of the Securities of the series is payable;

(5) the rate or rates at which the Securities of the series shall bear interest, if any, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable and the Regular Record Date for the interest payable on any Interest Payment Date;

(6) the place or places where the principal of (and premium, if any) and interest on Securities of the series shall be payable;

(7) the period or periods within which, the price or prices at which, and the terms and conditions upon which, Securities of the series may be redeemed, in whole or in part, at the option of the Company and, if other than by a Board Resolution, the manner in which any election by the Company to redeem the Securities shall be evidenced;

(8) the obligation, if any, of the Company to redeem or purchase Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which, Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(9) any provisions necessary to permit or facilitate the issuance, payment or conversion of any Securities of the series that may be converted into securities or other property (including shares of the Company's common or preferred stock or other securities of the Company) other than Securities of the same series and of like tenor, whether in addition to, or in lieu of, any payment of principal or other amount and whether at the option of the Company or otherwise;

(10) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

(11) the currency or currencies, including composite currencies, in which payment of the principal of and any premium and interest on the Securities of the series shall be payable if other than the currency of the United States of America;

(12) if the principal of or any premium or interest on any Securities of the series is to be payable, at the election of the Company or the Holder thereof, in one or more currencies, composite currencies or currency units other than that or those in which such Securities are stated to be payable, the currency, currencies, composite currency, composite currencies or currency units in which the principal of or any premium or interest on such Securities as to which such election is made shall be payable, the periods within which and the terms and conditions upon which such election is to be made and the amount so payable (or the manner in which such amount shall be determined);

(13) if the amount of payments of principal of and any premium or interest on the Securities of the series may be determined with reference to an index, a formula or any other method, the manner in which such amounts shall be determined;

(14) if other than the principal amount thereof, the portion of the principal amount of Securities of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502;

(15) if the principal amount payable at the Stated Maturity of any Securities of the series will not be determinable as of any one or more dates prior to the Stated Maturity, the amount which shall be deemed to be the principal amount of such Securities as of any such date for any purpose thereunder or hereunder, including the principal amount thereof which shall be due and payable upon any Maturity other than the Stated Maturity or which shall be deemed to be Outstanding as of any date prior to the Stated Maturity (or, in any such case, the manner in which such amount deemed to be the principal amount shall be determined);

(16) if applicable, that the Securities of the series, in whole or any specified part, shall be defeasible pursuant to Section 1402 or Section 1403 or both such Sections and, if other than by a Board Resolution, the manner in which any election by the Company to defease such Securities shall be evidenced;

(17) if applicable, that any Securities of the series shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the respective Depositaries for such Global Securities, the form of any legend or legends which shall be borne by any such Global Security in addition to or in lieu of that set forth in Section 204 and any circumstances in addition to or in lieu of those set forth in paragraph (h) of Section 305 in which any such Global Security may be exchanged in whole or in part for Securities registered, and any transfer of such Global Security in whole or in part may be registered, in the name or names of Persons other than the Depositary for such Global Security or a nominee thereof;

(18) any addition to, elimination of, or other change in the Events of Default which applies to any Securities of the series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 502;

(19) any addition to, elimination of, or other change in the covenants set forth in Article Ten which applies to Securities of the series;

(20) any proposed listing on any national or foreign securities exchange of the Securities of the series; and

(21) any other terms of the series, including any terms necessary, customary or desirable to facilitate the issuance of Common Securities or Preferred Securities by a Prudential Financial Trust.

(c) All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to the Board Resolution referred to above and (subject to Section 303) set forth, or determined in the manner provided, in the Officers' Certificate referred to in paragraph (a) above or in any such indenture supplemental hereto.

(d) If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the series.

(e) With respect to Securities of a series offered in a Periodic Offering, the Board Resolution (or action taken pursuant thereto), Officers' Certificate or supplemental indenture referred to above may provide general terms or parameters for Securities of such series and provide either that the specific terms of particular Securities of such series shall be specified in a Company Order or that such terms shall be determined by the Company in accordance with other procedures specified in a Company Order as contemplated by Section 303(c).

(f) Notwithstanding Section 301(b)(2) and unless otherwise expressly provided with respect to a series of Securities, the aggregate principal amount of a series of Securities may be increased and additional Securities of such series may be issued up to the maximum aggregate principal amount authorized with respect to such series as increased.

(g) The Securities shall be subordinated in right of payment to Senior Indebtedness as provided in Article Eleven.

Section 302. Denominations.

The Securities of each series shall be issuable in registered form without coupons in such denominations as shall be specified as contemplated by Section 301. In the absence of any such provisions with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of \$1,000 and any integral multiple thereof.

Section 303. Execution, Authentication, Delivery and Dating.

(a) The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chair, its President or one of its Vice Presidents. The signature of any of these officers on the Securities may be manual or facsimile.

(b) Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities; provided, however, that in the case of Securities offered in a Periodic Offering, the Trustee shall authenticate and deliver such Securities from time to time in accordance with such other procedures (including, without limitation, the receipt by the Trustee of oral or electronic instructions from the Company or its duly authorized agents, promptly confirmed in writing) acceptable to the Trustee as may be specified by or pursuant to a Company Order delivered to the Trustee prior to the time of the first authentication of Securities of such series. If the form or terms of the Securities of the series have been established in or pursuant to one or more Board Resolutions as permitted by Sections 201 and 301, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, an Opinion of Counsel stating:

(1) if the form of such Securities has been established by or pursuant to Board Resolution as permitted by Section 201, that such form has been established in conformity with the provisions of this Indenture;

(2) if the terms of such Securities have been, or in the case of Securities of a series offered in a Periodic Offering, will be, established by or pursuant to a Board Resolution as permitted by Section 301, that such terms have been, or in the case of Securities of a series offered in a Periodic Offering, the manner of determining such terms have been, established in conformity with the provisions of this Indenture, subject, in the case of Securities of a series offered in a Periodic Offering, to any conditions specified in such Opinion of Counsel; and

(3) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding

obligations of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting the enforcement of creditors' rights and to general equity principles.

If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

(d) (i) Notwithstanding the provisions of Section 301 and of the preceding paragraph, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate otherwise required pursuant to Section 301 or the Company Order and Opinion of Counsel otherwise required pursuant to such preceding paragraph at or prior to the time of authentication of each Security of such series if such documents are delivered at or prior to the time of authentication upon original issuance of the first Security of such series to be issued.

(ii) with respect to Securities of a series offered in a Periodic Offering, the Trustee may rely, as to the authorization by the Company of any of such Securities, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and the other documents delivered pursuant to Section 201 and 301 and this Section, as applicable, in connection with the first authentication of Securities of such series.

(e) Each Security shall be dated the date of its authentication.

(f) No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature of an authorized officer, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 309 together with a written statement (which need not comply with Section 102 and need not be accompanied by an Opinion of Counsel) stating that such Security has never been issued and sold by the Company, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

Section 304. Temporary Securities.

(a) Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

(b) If temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of the same series and of a like tenor of authorized denominations. Until so exchanged the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 305. Registration, Registration of Transfer and Exchange.

(a) The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office being herein sometimes referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided.

(b) Upon surrender for registration of transfer of any Security of any series at the office or agency in a Place of Payment for that series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series, of any authorized denominations and of a like aggregate principal amount and tenor.

(c) At the option of the Holder, Securities of any series may be exchanged for other Securities of the same series of any authorized denominations and of a like aggregate principal amount and tenor, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

(d) All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

(e) Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

(f) No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, 906 or 1207 not involving any transfer.

(g) If the Securities of any series (or of any series and specified tenor) are to be redeemed in part, the Company shall not be required (i) to issue, register the transfer of or exchange Securities of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of that series selected for redemption under Section 1203 and ending at the close of business on the day of such mailing, or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

(h) Each Global Security authenticated under this Indenture shall be registered in the name of the Depositary designated for such Global Security or a nominee thereof and delivered to such Depositary or a custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture. Notwithstanding the foregoing, except as otherwise specified as contemplated by Section 301, no Global Security shall be registered for transfer or exchange, or authenticated or delivered, pursuant to this Section 305 or Sections 304, 306, 906 or 1207 in the name of a Person other than the Depositary for such Security or its nominee until (i) the Depositary with respect to a Global Security notifies the Company that it is unwilling or unable to continue as Depositary for such Global Security or the Depositary ceases to be a clearing agency registered under the Exchange Act and the Company notifies the Trustee that it is unable to locate a qualified successor Depositary, (ii) the Company executes and delivers to the Trustee a Company Order that such Global Security shall be so transferable and exchangeable or (iii) there shall have occurred and be continuing an Event of Default with respect to the Securities of such series. Upon the occurrence in respect of any Global Security of any series of any one or more of the conditions specified in clauses (i), (ii) or (iii) of the preceding sentence or such other conditions as may be specified as contemplated by Section 301 for such series, such Global Security may be registered for transfer or exchange for Securities registered in the names of, or authenticated and delivered to, such Persons as the Depositary with respect to such series shall direct.

(i) Except as provided in the preceding paragraph, any Security authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, any Global Security or any portion thereof, whether pursuant to this Section, Section 304, 306, 906 or 1207 or otherwise, shall also be a Global Security and bear the legend specified in Section 204. Notwithstanding any other provision of this Indenture, a Global Security may not be transferred except as a whole by the Depositary for such Global Security to a nominee of such Depositary or to another Depositary or a nominee thereof or by a nominee of such Depositary to such Depositary or another nominee of such Depositary or to another Depositary or a nominee thereof.

Section 306. Mutilated, Destroyed, Lost and Stolen Securities.

(a) If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

(b) If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a protected purchaser, the Company shall execute and upon its request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

(c) In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security upon compliance with the foregoing conditions.

(d) Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(e) Every new Security of any series issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series duly issued hereunder.

(f) The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 307. Payment of Interest; Interest Rights Preserved.

(a) Unless otherwise provided as contemplated by Section 301 with respect to any series of Securities, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

(b) Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Securities of such series at such Holder's address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).

(2) The Company may make payment of any Defaulted Interest on the Securities of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee.

(c) Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 308. Persons Deemed Owners.

(a) Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of (and premium, if any) and (subject to Section 307) interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

(b) Notwithstanding the foregoing, with respect to any Global Security, nothing herein shall prevent the Company, the Trustee, or any agent of the Company or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by any depositary, as a Holder, with respect to such Global Security or impair, as between such depositary and owners of beneficial interests in such Global Security, the operation of customary practices governing the exercise of the rights of such depositary as a Holder of such Global Security.

(c) None of the Company, the Trustee or any agent of the Company or the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 309. Cancellation.

All Securities surrendered for payment, redemption, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any

Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be disposed of in accordance with its normal procedures unless otherwise directed by a Company Order.

Section 310. Computation of Interest.

Except as otherwise specified as contemplated by Section 301 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

ARTICLE FOUR

Satisfaction and Discharge

Section 401. Satisfaction and Discharge of Indenture.

(a) This Indenture shall upon Company Request cease to be of further effect with respect to any series of Securities (except as to any surviving rights of registration of transfer or exchange of Securities of such series herein expressly provided for), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture as to such series, when:

(1) either

(A) all Securities of such series theretofore authenticated and delivered (other than (i) Securities of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306 and (ii) Securities of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 1003) have been delivered to the Trustee for cancellation; or

(B) all such Securities of such series not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount sufficient to pay and discharge the entire indebtedness on the Securities of such series not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to the relevant series of Securities have been complied with.

(b) Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 607, the obligations of the Company to any Authenticating Agent under Section 614 and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the obligations of the Trustee under Section 402 and the last paragraph of Section 1003 shall survive.

Section 402. Application of Trust Money.

Subject to provisions of the last paragraph of Section 1003, all money deposited with the Trustee pursuant to Section 401 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee. Money so held in trust under this Article Four shall not be subject to the provisions of Article Eleven, provided the applicable conditions of Section 401 have been satisfied.

ARTICLE FIVE

Remedies

Section 501. Events of Default.

“Event of Default”, wherever used herein with respect to Securities of any series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be occasioned by the provisions of Article Eleven, or be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any interest upon any Security of that series when it becomes due and payable, and continuance of such default for a period of 30 days;
or

(2) default in the payment of the principal of (or premium, if any, on) any Security of that series at its Maturity; or

(3) default in the deposit of any sinking fund payment, when and as due by the terms of a Security of that series; or

(4) default in the observance or performance of any other covenant or agreement contained in this Indenture which default continues for a period of 90 days after the Company receives written notice specifying the default (and demanding that such default be remedied) from the Trustee or the Holders of at least 25% of the Outstanding Securities (with a copy to the Trustee if given by Holders) (except in the case of a default with respect to Section 801 of this Indenture, which will constitute an Event of Default with such notice requirement but without such passage of time requirement); provided, that neither the failure to comply with the requirements of Section 314(a) of the Trust Indenture Act or Section 704(1) of this Indenture nor the failure to file a report with the Commission as contemplated by Section 704(1) or otherwise shall constitute an event, which with the giving of notice and the passage of time pursuant to this clause (4), would constitute an Event of Default; or

(5) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar

official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 90 consecutive days; or

(6) the commencement by the Company of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action; or

(7) any other Event of Default provided with respect to Securities of that series.

Section 502. Acceleration of Maturity; Rescission and Annulment.

(a) If an Event of Default with respect to Securities of any series at the time Outstanding occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount (or, if any of the Securities of that series are Original Issue Discount Securities, such portion of the principal amount of such Securities as may be specified in the terms thereof) of all of the Securities of that series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) shall become immediately due and payable.

(b) At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Outstanding Securities of that series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) the Company has paid or deposited with the Trustee a sum sufficient to pay:

(A) all overdue interest on all Securities of that series,

(B) the principal of (and premium, if any, on) any Securities of that series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Securities,

(C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel;

and

(2) all Events of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 513.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 503. Collection of Indebtedness and Suits for Enforcement by Trustee.

(a) The Company covenants that if

(1) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of (or premium, if any, on) any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal (and premium, if any) and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal (and premium, if any) and on any overdue interest, at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities, wherever situated.

(b) If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 504. Trustee May File Proofs of Claim.

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(i) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Securities and to file such other papers or documents and take any and all actions authorized under the Trust Indenture Act as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of

such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 607.

(b) Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 505. Trustee May Enforce Claims Without Possession of Securities.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

Section 506. Application of Money Collected.

Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 607;

SECOND: Subject to Article Eleven, to the payment of the amounts then due and unpaid for principal of (and premium, if any) and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal (and premium, if any) and interest, respectively; and

THIRD: The balance, if any, to the Company.

Section 507. Limitation on Suits.

No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

- (1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that series;
- (2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;
- (4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

Section 508. Unconditional Right of Holders to Receive Principal, Premium and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to Section 307) interest on such Security on the Stated Maturity or Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 509. Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or

abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 510. Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 511. Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 512. Control by Holders.

The Holders of not less than a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, *provided* that

- (1) such direction shall not be in conflict with any rule of law or with this Indenture,
- (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and
- (3) subject to the provisions of Section 601, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability, for which the security or indemnity offered pursuant to Section 603(e) would not be sufficient.

Section 513. Waiver of Past Defaults.

(a) Subject to Section 502, the Holders of not less than a majority in principal amount of the Outstanding Securities of any series may, by notice to the Trustee, waive an existing or past default with respect to the Securities of such series and its consequences, except a default

(1) in the payment of principal of (or premium, if any) or interest on any Security of such series, or in the deposit of any sinking fund payment when and as due, or

(2) in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

(b) Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 514. Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Company.

Section 515. Waiver of Stay or Extension Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE SIX

The Trustee

Section 601. Certain Duties and Responsibilities.

The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act. Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

Section 602. Notice of Defaults.

If a default known to the Trustee occurs hereunder with respect to the Securities of any series, the Trustee shall transmit by mail to all Holders of Securities of such series, as their names and addresses appear in the Security Register by the time required by the Trust Indenture Act, notice of such default hereunder, unless such default shall have been cured or waived; *provided, however*, that, in the case of any default of the character specified in Section 501(4) with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term “default” means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 603. Certain Rights of Trustee.

Subject to the provisions of Section 601:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order or as otherwise expressly provided herein and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

(d) the Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney; and

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

Section 604. Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee or any Authenticating Agent assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder and that the statements made by it in a Statement of Eligibility on Form T-1 supplied to the Company are true and accurate, subject to the qualifications set forth therein. The Trustee or any Authenticating Agent shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

Section 605. May Hold Securities.

The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 608 and 613, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other agent.

Section 606. Money Held in Trust.

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 607. Compensation and Reimbursement.

(a) The Company agrees:

(1) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(3) to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

(b) As security for the performance of the obligations of the Company under this Section, the Trustee shall have a lien for any amounts owing it prior to the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of particular Securities.

(c) Without limiting any rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 501(5) or Section 501(6), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

(d) The provisions of this Section shall survive the satisfaction and discharge of this Indenture.

Section 608. Disqualification; Conflicting Interests.

The Trustee for the Securities of any series issued hereunder shall be subject to the provisions of Section 310(b) of the Trust Indenture Act during the period of time provided for therein. In determining whether the Trustee has a conflicting interest as defined in Section 310(b) of the Trust Indenture Act with respect to the Securities of any specific series, this Indenture shall be excluded with respect to Securities of any series other than that specific series.

Section 609. Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 610. Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 611.

(b) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(c) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company.

(d) If at any time:

(1) the Trustee shall fail to comply with Section 608(a) after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

(2) the Trustee shall cease to be eligible under Section 609 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company by a Board Resolution may remove the Trustee with respect to all securities, or (ii) subject to Section 514, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 611. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any Series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 611, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any Series shall

have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 611, any Holder who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series to all Holders of Securities of such series in the manner provided for in Section 106. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 611. Acceptance of Appointment by Successor.

(a) In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the

execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (a) and (b) of this Section, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

Section 612. Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, *provided* that such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 613. Preferential Collection of Claims Against Company.

The Trustee shall comply with Section 311(a) of the Trust Indenture Act with respect to each series of Securities for which it is Trustee.

Section 614. Appointment of Authenticating Agent.

(a) At any time when any of the Securities remain Outstanding the Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 306, and Securities so authenticated

shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

(b) Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, *provided* that such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

(c) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall give written notice of such appointment in the manner provided for in Section 106 to all Holders of Securities of the series with respect to which such Authenticating Agent will serve. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

(d) The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section.

(e) If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

"This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

THE BANK OF NEW YORK,
as Trustee

By _____
As Authenticating Agent

By _____
Authorized Officer"

ARTICLE SEVEN

Holders' Lists and Reports by Trustee and Company

Section 701. Company to Furnish Trustee Names and Addresses of Holders.

The Company will furnish or cause to be furnished to the Trustee:

(a) semi-annually, not later than June 30 and December 31 in each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of the preceding June 15 or December 15, as the case may be, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

excluding from any such list names and addresses received by the Trustee in its capacity as Security Registrar; *provided* that the Company shall not be obligated to provide such a list of Holders at any time that such list would not differ from the last such list provided by the Company to the Trustee under this Section 701.

Section 702. Preservation of Information; Communications to Holders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 701 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with Section 702(b), regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 702(b).

Section 703. Reports by Trustee.

(a) Within sixty days of each May 15, the Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to Section 313(a) of the Trust Indenture Act in the manner provided pursuant thereto. The Trustee shall also comply with the other provisions of Section 313 of the Trust Indenture Act.

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which the Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when the Securities are listed on any stock exchange.

Section 704. Reports by Company.

The Company shall:

(1) file with the Trustee, within 15 days after the Company has filed the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Trustee and the Commission, in accordance

with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit by mail to all Holders, as their names and addresses appear in the Security Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

ARTICLE EIGHT

Consolidation, Merger, Conveyance, Transfer or Lease

Section 801. Company May Consolidate, Etc., Only on Certain Terms.

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease all or substantially all of its properties and assets to any Person, and the Company shall not permit any Person to consolidate with or merge into the Company or convey, transfer or lease all or substantially all of its properties and assets to the Company, unless:

(1) in case the Company shall consolidate with or merge into another Person or convey, transfer or lease all or substantially all of its properties and assets to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, all or substantially all of the properties and assets of the Company shall be a corporation, partnership or trust organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of (and premium, if any) and interest on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

(2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Company or a Subsidiary as a result of such transaction as having been incurred by the Company or such Subsidiary at the time of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing;

(3) if, as a result of any such consolidation or merger or such conveyance, transfer or lease, properties or assets of the Company would become subject to a mortgage, pledge, lien, security interest or other encumbrance which would not be permitted by this Indenture, the Company or such successor Person, as the case may be, shall take such steps as shall be necessary effectively to secure the Securities equally and ratably with (or prior to) all indebtedness secured thereby; and

(4) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 802. Successor Person Substituted.

Upon any consolidation by the Company with or merger by the Company into any other Person or any conveyance, transfer or lease of all or substantially all of the properties and assets of the Company in accordance with Section 801, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE NINE

Supplemental Indentures

Section 901. Supplemental Indentures without Consent of Holders.

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Securities; or

(2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company; or

(3) to add any additional Events of Default for the benefit of the Holders of all or any series of Securities (and if such additional Events of Default are to be for the benefit of less than all series of Securities, stating that such additional Events of Default are expressly being included solely for the benefit of such series); or

(4) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities in bearer form, registerable or not registerable as to principal, and with or without interest coupons, or to permit or facilitate the issuance of Securities in uncertificated form; or

(5) to add to, change or eliminate any of the provisions of this Indenture in respect of one or more series of Securities, *provided* that any such addition, change or elimination (A) shall neither (i) apply to any Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (ii) modify the rights of the Holder of any such Security with respect to such provision or (B) shall become effective only when there is no such Security Outstanding; or

(6) to establish the form or terms of Securities of any series as permitted by Sections 201 and 301; or

(7) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 611(b); or

(8) to add to or change any of the provisions of this Indenture with respect to any Securities that by their terms may be converted into securities or other property other than Securities of the same series and of like tenor, in order to permit or facilitate the issuance, payment or conversion of such Securities; or

(9) to qualify or maintain qualification of this Indenture under the Trust Indenture Act; or

(10) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, *provided* such action shall not adversely affect the interests of the Holders of Securities of any series in any material respect.

Section 902. Supplemental Indentures with Consent of Holders.

(a) With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

(1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502, or change any Place of Payment where, or the coin or currency in which, any Security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or

(3) modify any of the provisions of this Section, Section 513 or Section 1006, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby, *provided*,

however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to “the Trustee” and concomitant changes in this Section and Section 1006, or the deletion of this proviso, in accordance with the requirements of Sections 611(b) and 901(8).

(b) A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

(c) It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 903. Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, in addition to the documents required by Section 102, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee’s own rights, duties or immunities under this Indenture or otherwise.

Section 904. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 905. Conformity with Trust Indenture Act.

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

Section 906. Reference in Securities to Supplemental Indentures.

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series

so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

ARTICLE TEN

Covenants

Section 1001. Payment of Principal, Premium and Interest.

The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of (and premium, if any) and interest on the Securities of that series in accordance with the terms of the Securities and this Indenture.

Section 1002. Maintenance of Office or Agency.

(a) The Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

(b) The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 1003. Money for Securities Payments to Be Held in Trust.

(a) If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or before each due date of the principal of (and premium, if any) or interest on any of the Securities of that series, segregate and

hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

(b) Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, on or before each due date of the principal of (and premium, if any) or interest on any Securities of that series, deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

(c) The Company will cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(1) hold all sums held by it for the payment of the principal of (and premium, if any) or interest on Securities of that series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment of principal (and premium, if any) or interest on the Securities of that series; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

(d) The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

(e) Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium, if any) or interest on any Security of any series and remaining unclaimed for one year after such principal (and premium, if any) or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an

unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease.

Section 1004. Corporate Existence.

Subject to Article Eight, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and all licenses and permits material to the normal conduct of its business; *provided, however*, that the Company shall not be required to preserve any such right or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

Section 1005. Statement by Officers as to Default.

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions, covenants and conditions of this Indenture, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 1006. Waiver of Certain Covenants.

The Company may, with respect to the Securities of any series, omit in any particular instance to comply with any term, provision or condition set forth in any covenant provided pursuant to Section 301(b)(19), 901(2) or 901(7) for the benefit of the Holders of such series or in any of Sections 1002, 1004 and 1005, inclusive, if before the time for such compliance the Holders of not less than a majority in principal amount of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition but no such waiver contemplated by this Section 1006 shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

Section 1007. Calculation of Original Issue Discount

The Company shall file with the Trustee as promptly as possible after the end of each calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on Outstanding Securities as of the end of such year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

ARTICLE ELEVEN

Subordination of Securities

Section 1101. Securities Subordinate to Senior Indebtedness.

(a) The Company covenants and agrees, and each Holder of a Security, by his acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article (subject to Article Four), the payment of the principal of (and premium, if any) and interest on each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full in cash of all Senior Indebtedness.

(b) This Article Eleven shall constitute a continuing offer to all Persons who become holders of, or continue to hold, Senior Indebtedness, and such provisions are made for the benefit of the holders of Senior Indebtedness and such holders are made obligees hereunder and any one or more of them may enforce such provisions. Holders of Senior Indebtedness need not prove reliance on the subordination provisions hereof.

Section 1102. Payment Over of Proceeds Upon Dissolution, Etc.

(a) Upon any payment or distribution of assets of the Company to creditors upon (i) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relative to the Company or to its assets, or (ii) any liquidation, dissolution or other winding up of the Company, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (iii) any assignment for the benefit of creditors or any other marshalling of assets or liabilities of the Company, then and in any such event specified in (i), (ii) or (iii) above (each such event, if any, herein sometimes referred to as a "Proceeding");

(A) the holders of Senior Indebtedness shall be entitled to receive payment in full in cash of all amounts due on or to become due on or in respect of all Senior Indebtedness, before the Holders of the Securities are entitled to receive any payment or distribution of any kind or character whether in cash, property or securities (including any payment or distribution which may be payable or deliverable to Holders of the Securities made in respect of any other indebtedness of the Company subordinated to the payment of the Securities, such payment or

distribution being hereinafter referred to as a "Junior Subordinated Payment"), on account of the principal of or interest on the Securities or on account of any purchase, redemption or other acquisition of Securities by the Company, any Subsidiary of the Company, the Trustee or any Paying Agent (all such payments, distributions, purchases, redemptions and acquisitions, whether or not in connection with a Proceeding, herein referred to, individually and collectively, as a "Securities Payment"); and

(B) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, by set-off or otherwise, to which the Holders of the Securities or the Trustee would be entitled but for the provisions of this Article Eleven (including, without limitation, any Junior Subordinated Payment) shall be paid by the liquidating trustee or agent or other Person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably according to the aggregate amounts remaining unpaid on account of the Senior Indebtedness held or represented by each, to the extent necessary to make payment in full in cash of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment to the holders of such Senior Indebtedness.

(b) In the event that, notwithstanding the foregoing provisions of this Section, the Trustee or the Holder of any Security shall have received in connection with any Proceeding any Securities Payment before all Senior Indebtedness is paid in full or payment thereof provided for in cash, then and in such event such Securities Payment shall be paid over or delivered forthwith to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of the Company for application to the payment of all Senior Indebtedness remaining unpaid, to the extent necessary to pay all Senior Indebtedness in full in cash after giving effect to any concurrent payment to or for the holders of Senior Indebtedness.

(c) For purposes of this Article only, the words "any payment or distribution of any kind or character, whether in cash, property or securities" shall not be deemed to include a payment or distribution of stock or securities of the Company provided for by a plan of reorganization or readjustment authorized by an order or decree of a court of competent jurisdiction in a reorganization proceeding under any applicable bankruptcy law or of any other corporation provided for by such plan of reorganization or readjustment which stock or securities are subordinated in right of payment to all then outstanding Senior Indebtedness to substantially the same extent, or to a greater extent than, the Securities are so subordinated as provided in this Article. The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of the Company following the conveyance or transfer of all or substantially

all of its properties and assets as an entirety to another Person upon the terms and conditions set forth in Article Eight shall not be deemed a Proceeding for the purposes of this Section if the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer such properties and assets as an entirety, as the case may be, shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions set forth in Article Eight.

Section 1103. No Payment When Senior Indebtedness in Default.

(a) In the event that any Senior Payment Default (as defined below) shall have occurred, then no Securities Payment shall be made, nor shall any property of the Company or any Subsidiary of the Company be applied to the purchase, acquisition, retirement or redemption of the Securities, unless and until such Senior Payment Default shall have been cured or waived in writing or shall have ceased to exist or all amounts then due and payable in respect of such Senior Indebtedness (including amounts that have become and remain due by acceleration) shall have been paid in full in cash. "Senior Payment Default" means any default in the payment of principal of (or premium, if any) or interest on any Senior Indebtedness when due, whether at the Stated Maturity of any such payment or by declaration of acceleration of maturity, call for redemption, mandatory payment or prepayment or otherwise.

(b) In the event that any Senior Nonmonetary Default (as defined below) shall have occurred and be continuing, then, upon the receipt by the Company and the Trustee of written notice of such Senior Nonmonetary Default from the holder of such Senior Indebtedness (or the agent, trustee or representative thereof), no Securities Payment shall be made, nor shall any property of the Company or any Subsidiary of the Company be applied to the purchase, acquisition, retirement or redemption of the Securities, during the period (the "Payment Blockage Period") commencing on the date of such receipt of such written notice and ending (subject to any blockage of payments that may then or thereafter be in effect as the result of any Senior Payment Default) on the earlier of (i) the date on which the Senior Indebtedness to which such Senior Nonmonetary Default relates is discharged or such Senior Nonmonetary Default shall have been cured or waived in writing or shall have ceased to exist and any acceleration of Senior Indebtedness to which such Senior Nonmonetary Default relates shall have been rescinded or annulled or (ii) the 179th day after the date of such receipt of such written notice. No more than one Payment Blockage Period may be commenced with respect to the Securities during any period of 360 consecutive days and there shall be a period of at least 181 consecutive days in each period of 360 consecutive days when no Payment Blockage Period is in effect. Following the commencement of any Payment Blockage Period, the holders of any Senior Indebtedness will be precluded from commencing a subsequent Payment Blockage Period until the conditions set forth in the preceding sentence are satisfied. For all purposes of this paragraph, no Senior Nonmonetary Default that existed or was continuing on the date of commencement of any Payment Blockage Period with respect to the Senior Indebtedness initiating such Payment Blockage Period shall be, or be made, the basis for the commencement of a subsequent

Payment Blockage Period by holders of Senior Indebtedness or their representatives unless such Senior Nonmonetary Default shall have been cured for a period of not less than 90 consecutive days. "Senior Nonmonetary Default" means the occurrence or existence and continuance of any default (other than a Senior Payment Default) or any event which, after notice or lapse of time (or both), would become an Event of Default (other than a Senior Payment Default), under the terms of any instrument or agreement pursuant to which any Senior Indebtedness is outstanding, permitting (after notice or lapse of time or both) one or more holders of such Senior Indebtedness (or a trustee or agent on behalf of the holders thereof) to declare such Senior Indebtedness due and payable prior to the date on which it would otherwise become due and payable.

(c) In the event that, notwithstanding the foregoing, the Company shall make any payment to the Trustee or the Holder of any Security prohibited by the foregoing provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Company.

(d) The provisions of this Section shall not apply to any Securities Payment with respect to which Section 1102 hereof would be applicable.

Section 1104. Payment Permitted If No Default.

Nothing contained in this Article or elsewhere in this Indenture or in any of the Securities shall prevent the Company, at any time except during the pendency of any Proceeding referred to in Section 1102 hereof or under the conditions described in Section 1103 hereof, from making Securities Payments.

Section 1105. Subrogation to Rights of Holders of Senior Indebtedness.

Subject to the payment in full in cash of all Senior Indebtedness, the Holders of the Securities shall be subrogated (equally and ratably with the holders of all indebtedness of the Company which by its express terms is subordinated to indebtedness of the Company to substantially the same extent as the Securities are subordinated and is entitled to like rights of subrogation) to the rights of the holders of such Senior Indebtedness to receive payments and distributions of cash, property and securities applicable to the Senior Indebtedness until the principal of and interest on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Indebtedness of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article, and no payments over pursuant to the provisions of this Article to the holders of Senior Indebtedness by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Indebtedness and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Indebtedness.

Section 1106. Provisions Solely to Define Relative Rights.

The provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders on the one hand and the holders of Senior Indebtedness on the other hand. Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as among the Company, its creditors other than holders of Senior Indebtedness and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional (and which, subject to the rights under this Article of the holders of Senior Indebtedness, is intended to rank equally with all other general obligations of the Company), to pay to the Holders of the Securities the principal of and interest on the Securities as and when the same shall become due and payable in accordance with their terms; or (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than the holders of Senior Indebtedness; or (c) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Indebtedness to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

Section 1107. Trustee to Effectuate Subordination.

Each Holder of a Security by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee his attorney-in-fact for any and all such purposes, including, in the event of any dissolution, winding-up, liquidation or reorganization of the Company whether in bankruptcy, insolvency, receivership proceedings, or otherwise, the timely filing of a claim for the unpaid balance of the indebtedness of the Company owing to such Holder in the form required in such proceedings and the causing of such claim to be approved. If the Trustee does not file a proper claim at least 30 days before the expiration of the time to file such claim, then the holders of the Senior Indebtedness and their agents, trustees or other representatives are authorized to do so (but shall in no event be liable for any failure to do so) for and on behalf of the Holders of the Securities.

Section 1108. No Waiver of Subordination Provisions.

(a) No right of any present or future holder of any Senior Indebtedness to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness may, at any time and from time to time,

without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to the Holders of the Securities and without impairing or releasing the subordination provided in this Article or the obligations hereunder of the Holders of the Securities to the holders of Senior Indebtedness, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Indebtedness, or otherwise amend or supplement in any manner Senior Indebtedness or any instrument evidencing the same or any agreement under which Senior Indebtedness is outstanding; (ii) permit the Company to borrow, repay and then reborrow any or all of the Senior Indebtedness; (iii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness; (iv) release any Person liable in any manner for the collection of Senior Indebtedness; (v) exercise or refrain from exercising any rights against the Company and any other Person; and (vi) apply any sums received by them to Senior Indebtedness.

Section 1109. Notice to Trustee.

(a) The Company shall give prompt written notice to the Trustee of any fact known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Securities or that would end such prohibition. Notwithstanding the provisions of this Article or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Trustee in respect of the Securities or that would end such prohibition, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company, any holder of Senior Indebtedness or from any trustee, fiduciary or agent thereof; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 601 hereof, shall be entitled in all respects to assume that no such facts exist; *provided, however*, that if the Trustee shall not have received the notice of any prohibition provided for in this Section at least three Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal of or interest on any Security), then, anything herein contained to the contrary notwithstanding, but without limiting the rights and remedies of the holders of Senior Indebtedness or any trustee, fiduciary or agent thereof, the Trustee shall have full power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it within two Business Days prior to such date. Any notice required or permitted to be given to the Trustee by a holder of Senior Indebtedness or by any agent, trustee or representative thereof shall be in writing and shall be sufficient for every purpose hereunder if in writing and either (i) sent via facsimile to the Trustee, the receipt of which shall be confirmed via telephone, or (ii) mailed, first class postage prepaid, or sent by overnight carrier, to the Trustee addressed to its Corporate Trust Office or to any other address furnished in writing to such holder of Senior Indebtedness by the Trustee.

(b) Subject to the provisions of Section 601 hereof, the Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness (or a trustee, fiduciary or agent thereof) to establish that such notice has been given by a holder of Senior Indebtedness or a trustee, fiduciary or agent thereof. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

(c) Notwithstanding anything else contained herein, no notice, request or other communication to or with the Trustee shall be deemed given unless received by a Responsible Officer at the Corporate Trust Office.

Section 1110. Reliance on Judicial Order or Certificate of Liquidating Agent.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee, subject to the provisions of Section 601 hereof, and the Holders of the Securities shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article, *provided* that the foregoing shall apply only if such court has been apprised of the provisions of this Article.

Section 1111. Trustee Not Fiduciary for Holders of Senior Indebtedness.

The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article or otherwise.

Section 1112. Rights of Trustee as Holder of Senior Indebtedness; Preservation of Trustee's Rights.

(a) The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Senior Indebtedness which may at any time be held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

(b) Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 607 hereof.

Section 1113. Article Applicable to Paying Agents.

In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; *provided, however*, that Section 1111 hereof shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

ARTICLE TWELVE

Redemption of Securities

Section 1201. Applicability of Article.

Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 301 for Securities of any series) in accordance with this Article.

Section 1202. Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Securities shall be evidenced by a Board Resolution or in another manner specified as contemplated by Section 301 for such Securities. In case of any redemption at the election of the Company of less than all the Securities of any series (including any such redemption affecting only a single Security), the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed and, if applicable, of the tenor of the Securities to be redeemed. In the case of any redemption of Securities (A) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture or (B) pursuant to an election of the Company that is subject to a condition specified in the

terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction or condition.

Section 1203. Selection by Trustee of Securities to Be Redeemed.

(a) If less than all the Securities of any series are to be redeemed (unless all the Securities of such series and of a specified tenor are to be redeemed or unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Security of such series, *provided* that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security. If less than all the Securities of such series and of a specified tenor are to be redeemed (unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series and specified tenor not previously called for redemption in accordance with the preceding sentence.

(b) The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

(c) The provisions of the two preceding paragraphs shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

(d) For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

Section 1204. Notice of Redemption.

Notice of redemption shall be given in the manner provided in Section 106 not less than 30 days nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the Redemption Price, or, if not then ascertainable, the manner of calculation thereof,
- (3) if less than all the Outstanding Securities of any series consisting of more than a single Security are to be redeemed, the identification (and, in the case of partial redemption of any such Securities, the principal amounts) of the particular Securities to be redeemed and, if less than all the Outstanding Securities of any series consisting of a single Security are to be redeemed, the principal amount of the particular Security to be redeemed,
- (4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date,
- (5) the place or places where such Securities are to be surrendered for payment of the Redemption Price, and
- (6) that the redemption is for a sinking fund, if such is the case.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company.

Section 1205. Deposit of Redemption Price.

On or prior to 10:00 a.m., New York City time, on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date unless otherwise specified as contemplated by Section 301) accrued interest on, all the Securities which are to be redeemed on that date.

Section 1206. Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; *provided, however*, that, unless

otherwise specified as contemplated by Section 301, installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

Section 1207. Securities Redeemed in Part.

Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series and of like tenor, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE THIRTEEN

Sinking Funds

Section 1301. Applicability of Article.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 301 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an "optional sinking fund payment". If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1302. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

Section 1302. Satisfaction of Sinking Fund Payments with Securities.

The Company (1) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such series; *provided* that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

Section 1303. Redemption of Securities for Sinking Fund.

Not less than 90 days prior to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 1302 and stating the basis for such credit and that such Securities have not been previously so credited and will also deliver to the Trustee any Securities to be so delivered. Not less than 60 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 1203 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 1204. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1206 and 1207.

ARTICLE FOURTEEN

Defeasance and Covenant Defeasance

Section 1401. Applicability of Article; Company's Option to Effect Defeasance or Covenant Defeasance.

If pursuant to Section 301 provision is made for either or both of (a) Defeasance of the Securities of a series under Section 1402 or (b) Covenant Defeasance of the Securities of a series under Section 1403, then the provisions of such Section or Sections, as the case may be, together with the other provisions of this Article Fourteen, shall be applicable to the Securities of such series, and the Company may at its

option, at any time, with respect to the Securities of such series, elect to have either Section 1402 (if applicable) or Section 1403 (if applicable) be applied to the Outstanding Securities of such series upon compliance with the conditions set forth below in this Article Fourteen. Any such election shall be evidenced by a Board Resolution or in another manner specified as contemplated by Section 301 for such Securities.

Section 1402. Defeasance and Discharge.

Upon the Company's exercise of its option (if any) to have this Section applied to any Securities or any series of Securities, as the case may be, the Company shall be deemed to have been discharged from its obligations with respect to such Securities as provided in this Section, and the provisions of Article Eleven shall cease to be effective, on and after the date the conditions set forth in Section 1404 are satisfied (hereinafter called "Defeasance"). For this purpose, such Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such Securities and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), subject to the following which shall survive until otherwise terminated or discharged hereunder:

- (1) the rights of Holders of such Securities to receive, solely from the trust fund described in Section 1404 and as more fully set forth in such Section, payments in respect of the principal of and any premium and interest on such Securities when payments are due,
- (2) the Company's obligations with respect to such Securities under Sections 304, 305, 306, 1002 and 1003,
- (3) the rights, powers, trusts, duties and immunities of the Trustee hereunder, and
- (4) this Article Fourteen.

Subject to compliance with this Article Fourteen, the Company may exercise its option (if any) to have this Section applied to any Securities notwithstanding the prior exercise of its option (if any) to have Section 1403 applied to such Securities.

Section 1403. Covenant Defeasance.

Upon the Company's exercise of its option (if any) to have this Section applied to any Securities or any series of Securities, as the case may be,

(1) the Company shall be released from its obligations under Section 801(3) and any covenants provided pursuant to Section 301(b)(19), 901(2) or 901(7) for the benefit of the Holders of such Securities, and

(2) the occurrence of any event specified in Sections 501(4) (with respect to any of Section 801(3) and any such covenants provided pursuant to Section 301(b)(19), 901(2) or 901(7)), and 501(7) shall be deemed not to be or result in an Event of Default,

in each case with respect to such Securities as provided in this Section on and after the date the conditions set forth in Section 1404 are satisfied (hereinafter called "Covenant Defeasance"). For this purpose, such Covenant Defeasance means that, with respect to such Securities, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified Section (to the extent so specified in the case of Section 501(4)), whether directly or indirectly by reason of any reference elsewhere herein to any such Section, Clause or Article or by reason of any reference in any such Section, Clause or Article to any other provision herein or in any other document, but the remainder of this Indenture and such Securities shall be unaffected thereby. Following a Covenant Defeasance, payment of the Securities of such series may not be accelerated because of or by reference to the Sections specified above in this Section 1403.

Section 1404. Conditions to Defeasance or Covenant Defeasance.

The following shall be the conditions precedent to application of either Section 1402 or Section 1403 to the Outstanding Securities of such series:

(1) the Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 609 who shall agree to comply with the provisions of this Article Fourteen applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities,

(A) money in an amount, or

(B) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or

(C) a combination thereof,

sufficient, without reinvestment, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof

delivered to the Trustee (in case U.S. Government Obligations have so been deposited), to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (i) the principal of (and premium, if any) and interest on the Outstanding Securities of such series to maturity or redemption, as the case may be, and (ii) any mandatory sinking fund payments or analogous payments applicable to the Outstanding Securities of such series on the due dates thereof. Before such a deposit the Company may make arrangements satisfactory to the Trustee for the redemption of Securities at a future date or dates in accordance with Article Eleven, which shall be given effect in applying the foregoing. For this purpose, "U.S. Government Obligations" means securities that are (x) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (y) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligation or a specific payment of principal of or interest on any such U.S. Government Obligation held by such custodian for the account of the holder of such depositary receipt, *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal of or interest on the U.S. Government Obligation evidenced by such depositary receipt.

(2) In the event of an election to have Section 1402 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this instrument, there has been a change in the applicable federal income tax law, in either case (A) or (B) to the effect that, and based thereon such opinion shall confirm that, the Holders of such Securities will not recognize gain or loss for federal income tax purposes as a result of the deposit, Defeasance and discharge to be effected with respect to such Securities and will be subject to federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit, Defeasance and discharge were not to occur.

(3) In the event of an election to have Section 1403 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Securities will not recognize gain or loss for federal income tax purposes as a result of the deposit and Covenant Defeasance to be effected with respect to

such Securities and will be subject to federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and Covenant Defeasance were not to occur.

(4) The Company shall have delivered to the Trustee an Officers' Certificate to the effect that neither such Securities nor any other Securities of the same series, if then listed on any securities exchange, will be delisted as a result of such deposit.

(5) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to the Securities of such series shall have occurred and be continuing (A) on the date of such deposit or (B) insofar as subsections 501(5) and (6) are concerned, at any time during the period ending on the 90th day after the date of such deposit or, if longer, ending on the day following the expiration of the longest preference period applicable to the Company in respect of such deposit (it being understood that the condition in this clause (B) is a condition subsequent and shall not be deemed satisfied until the expiration of such period).

(6) Such Defeasance or Covenant Defeasance shall not (A) cause the Trustee for the Securities of such series to have a conflicting interest as defined in Section 608 or for purposes of the Trust Indenture Act with respect to any securities of the Company or (B) result in the trust arising from such deposit to constitute, unless it is qualified as, a regulated investment company under the Investment Company Act of 1940, as amended.

(7) Such Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound.

(8) No event or condition shall exist that, pursuant to the provisions of Article Eleven, would prevent the Company from making payments of the principal of (and any premium) or interest on the Securities of such series on the date of such deposit.

(9) The Company shall have delivered to the Trustee an Opinion of Counsel substantially to the effect that (i) the trust funds deposited pursuant to this Section will not be subject to any rights of holders of Senior Indebtedness, including those arising under Article Eleven, and (ii) after the 90th day following the deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, except that if a court were to rule under any such law in any case or proceeding that the trust funds remained property of the Company, no opinion is given as to the effect of such laws on the trust funds except the following: (A) assuming such trust funds remained in the possession of the trustee with

whom such funds were deposited prior to such court ruling to the extent not paid to Holders of such Securities, such trustee would hold, for the benefit of such Holders, a valid and perfected security interest in such trust funds that is not avoidable in bankruptcy or otherwise, (B) such Holders would be entitled to receive adequate protection of their interests in such trust funds if such trust funds were used and (C) no property, rights in property or other interests granted to such trustee for the Trustee or such Holders in exchange for or with respect to any such funds would be subject to any prior rights of holders of Senior Indebtedness, including those arising under Article Eleven.

(10) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to either the Defeasance under Section 1402 or the Covenant Defeasance under Section 1403 (as the case may be) have been complied with.

Section 1405. Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions.

(a) Subject to the provisions of the last paragraph of Section 1003, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee – collectively, for purposes of this Section 1405, the “Trustee”) pursuant to Section 1404 in respect of the Outstanding Securities of such series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent (but not including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Securities, of all sums due and to become due thereon in respect of principal (and premium, if any) and interest, but such money need not be segregated from other funds except to the extent required by law. Money and U.S. Government Obligations (including the proceeds thereof) so held in trust shall not be subject to the provisions of Article Eleven, *provided* that the applicable conditions of Section 1404 have been satisfied.

(b) The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the money or U.S. Government Obligations deposited pursuant to Section 1404 or the principal and interest received in respect thereof.

(c) Anything herein to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 1404 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (in case U.S. Government Obligations are so being held by the Trustee), are in excess of the amount thereof which would then be required to be deposited to effect an equivalent Defeasance or Covenant Defeasance.

Section 1406. Reinstatement.

If the Trustee or the Paying Agent is unable to apply any money in accordance with Section 1402 or 1403 by reason of any order or judgment or any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under the Securities of such series shall be revived and reinstated as though no deposit had occurred pursuant to this Article Fourteen until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 1402 or 1403; *provided, however*, that if the Company makes any payment of principal of (and premium, if any) any such Security following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money held by the Trustee or the Paying Agent.

Section 1407. Qualifying Trustee.

Any trustee appointed pursuant to Section 1404 for the purpose of holding trust funds deposited pursuant to that Section shall be appointed under a written agreement not inconsistent with the provisions of this Indenture, and the Company shall provide to the Trustee an Officers' Certificate and an Opinion of Counsel, upon which certificate and opinion the Trustee shall be entitled to conclusively rely, that all conditions precedent provided for herein to the related Defeasance or Covenant Defeasance have been complied with. In no event shall the Trustee be liable for any acts or omissions of said trustee.

* * * * *

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, all as of the day and year first above written.

PRUDENTIAL FINANCIAL, INC.

By /s/ Jonathan P. Hunt

Name: Jonathan P. Hunt

Title: Vice President and Assistant Treasurer

THE BANK OF NEW YORK

By /s/ Scott I. Klein

Name: Scott I. Klein

Title: Assistant Treasurer

INDENTURE

PRUDENTIAL FINANCIAL, INC.

TO

THE BANK OF NEW YORK
Trustee

First Supplemental Indenture

Dated as of June 17, 2008

8.875% Fixed-to-Floating Rate Junior Subordinated Notes due 2068

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FIRST SUPPLEMENTAL INDENTURE

First Supplemental Indenture, dated as of June 17, 2008 (the “*Supplemental Indenture*”), between Prudential Financial, Inc., a New Jersey corporation (the “*Company*”), having its principal office at 751 Broad Street, Newark, New Jersey 07102, and The Bank of New York, a national banking association, as trustee (hereinafter called the “*Trustee*”).

RECITALS OF THE COMPANY

The Company and the Trustee executed and delivered an indenture, dated as of June 17, 2008 (the “*Indenture*”), to the Trustee to provide for the future issuance of the Company’s subordinated debt securities, to be issued from time to time in one or more series as might be determined by the Company under the Indenture.

Section 901 of the Indenture provides that the Company and the Trustee, without the consent of any Holder, may enter into a supplemental indenture to establish the form or terms of Securities of any series as permitted by Sections 201 and 301 thereof.

Pursuant to the terms of the Indenture, the Company desires to provide for the establishment, authentication and issuance of a new series of its Securities, the form and terms thereof, as hereinafter set forth.

The Company has requested that the Trustee execute and deliver this Supplemental Indenture. The Company has delivered to the Trustee an Opinion of Counsel and an Officers’ Certificate pursuant to Sections 102 and 903 of the Indenture to the effect, among other things, that all conditions precedent provided for in the Indenture to the Trustee’s execution and delivery of this Supplemental Indenture have been complied with. All acts and things necessary have been done and performed to make this Supplemental Indenture enforceable in accordance with its terms, and the execution and delivery of this Supplemental Indenture has been duly authorized in all respects.

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH: For and in consideration of the premises and the purchase of the Notes (as herein defined) by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Notes, as follows:

ARTICLE ONE Definitions

Section 1.01 Definitions

For all purposes of this Supplemental Indenture, except as otherwise expressly provided herein or unless the context otherwise requires:

- (a) the terms defined in the Indenture have the same meanings when used in this Supplemental Indenture unless otherwise defined herein;

(b) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(c) any reference to an Article, Section, other subdivision or Exhibit refers to an Article, Section or other subdivision of, or Exhibit to, this Supplemental Indenture;
and

(d) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision.

In addition, the following terms used in this Supplemental Indenture have the following respective meanings:

“**Applicable Spread**” means (i) in the case of a redemption of all outstanding Notes in connection with a Tax Event or Rating Agency Event, 0.875%, and (ii) in all other cases, 0.750%.

“**Business Day**” means any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed, (iii) a day on which the Corporate Trust Office is closed for business or (iv) on or after June 15, 2018, a day that is not a London Banking Day.

“**Business Combination**” means a merger, consolidation, amalgamation, binding share exchange or conveyance, transfer or lease of assets substantially as an entirety to any other Person or a similar transaction involving the Company.

“**Calculation Agent**” means, with respect to the Notes, The Bank of New York, or any other firm appointed by the Company, acting as calculation agent in respect of the Notes.

“**Commercially Reasonable Efforts**” to sell Qualifying Capital Securities means commercially reasonable efforts to complete the offer and sale of Qualifying Capital Securities to third parties other than Subsidiaries in public offerings or private placements; provided that the Company shall not be considered to have made Commercially Reasonable Efforts to effect a sale of Qualifying Capital Securities if it determines not to pursue or complete such sale due to pricing, coupon or dividend rate considerations.

“**Common Equity Issuance Cap**” has the meaning specified in Section 2.06(a)(i).

“**Common Stock**” means (i) shares of the Company’s common stock, including common stock issued pursuant to any dividend reinvestment plan or the Company’s employee benefit plans, (ii) a security of the Company ranking upon the Company’s liquidation, dissolution or winding up junior to Qualifying Preferred Stock and *pari passu* with the common stock that tracks the performance of, or relates to the

results of, a business, unit or division of the Company or its Subsidiaries, and (iii) any securities that have no preference in the payment of dividends or amounts payable upon liquidation, dissolution and winding up and are issued in exchange for the securities described in clause (i) or (ii) above in connection with a merger, consolidation, binding share exchange, business combination, recapitalization or other similar event.

“**Company**” has the meaning specified in the Recitals.

“**Current Market Price**” means, with respect to the Common Stock on any date, (i) the closing sale price per share of Common Stock (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date (a) as reported in composite transactions by the New York Stock Exchange or (b) if the Common Stock is not then listed on the New York Stock Exchange, as reported by the principal U.S. securities exchange on which the Common Stock is traded or quoted or (ii) if the Common Stock is not so traded or quoted, the average of the mid-point of the last bid and ask prices for the shares of Common Stock on such date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“**Cut-off Date**” with respect to any Repayment Date means a date, selected by the Company, no more than 15 and no less than 10 Business Days prior to such Repayment Date.

“**Deferral Period**” means the period commencing on an Interest Payment Date with respect to which the Company defers interest pursuant to Section 2.05 and ending on the earlier of (i) the tenth anniversary of that Interest Payment Date and (ii) the next Interest Payment Date on which the Company has paid all deferred and unpaid amounts (including compound interest on such deferred interest) and all other accrued interest on the Notes.

“**Eligible Proceeds**” means, for each relevant Interest Payment Date, the net proceeds (after deducting underwriters’ or placement agents’ fees, commissions or discounts and other expenses relating to the issuance or sale of the relevant securities, where applicable) that the Company has received during the 180 days prior to such Interest Payment Date from the issuance or sale of Qualifying APM Securities, up to the Preferred Stock Issuance Cap in the case of Qualifying APM Securities that are Qualifying Preferred Stock or Mandatorily Convertible Preferred Stock, to Persons that are not Subsidiaries.

“**Final Maturity Date**” has the meaning specified in Section 2.02(b).

“**Fixed Commitments**” means, as of any date, the maximum number of shares of Common Stock that can be issued on or after such date under options, warrants, convertible securities, equity-linked contracts and other agreements of any type that are outstanding or existing on such date and require the Company to issue a determinable number of shares of Common Stock.

“Fixed-Rate Interest Payment Date” has the meaning specified in Section 2.04(b).

“Fixed-Rate Interest Period” means the period beginning on and including the date hereof and ending on but excluding the first Fixed-Rate Interest Payment Date thereafter and each successive period beginning on and including a Fixed-Rate Interest Payment Date and ending on but excluding the next Fixed-Rate Interest Payment Date.

“Floating-Rate Interest Payment Date” shall have the meaning specified in Section 2.04(b).

“Floating-Rate Interest Period” means the period beginning on and including June 15, 2018 and ending on but excluding the next Floating-Rate Interest Payment Date and each successive period beginning on and including a Floating-Rate Interest Payment Date and ending on but excluding the next Floating-Rate Interest Payment Date.

“Indenture” has the meaning specified in the Recitals.

“Intent-Based Replacement Disclosure” has the meaning specified in the Replacement Capital Covenant.

“Interest Period” means a Fixed-Rate Interest Period or a Floating-Rate Interest Period, as the case may be.

“LIBOR Determination Date” means the second London Banking Day immediately preceding the first day of the relevant Floating-Rate Interest Period.

“London Banking Day” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“Make-Whole Redemption Price” means, with respect to a redemption of the Notes in whole or in part prior to June 15, 2018, the present value of a principal payment on June 15, 2018 and scheduled payments of interest that would have accrued from the Redemption Date to June 15, 2018 on the Notes being redeemed, discounted to the Redemption Date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at a discount rate equal to the Treasury Rate (as determined and provided to the Company by the Treasury Dealer) plus the Applicable Spread, plus any accrued and unpaid interest to the Redemption Date.

“Mandatorily Convertible Preferred Stock” means Preferred Stock with (i) no prepayment obligation of the liquidation preference on the part of the Company, whether at the election of the holders or otherwise, and (ii) a requirement that the Preferred Stock mandatorily convert into Common Stock within three years from the date of its issuance at a conversion ratio within a range established at the time of issuance of such Preferred Stock, subject to customary anti-dilution provisions.

“**Market Disruption Event**” means, with respect to the issuance or sale of Qualifying Capital Securities pursuant to Section 2.02 or Qualifying APM Securities pursuant to Section 2.06, the occurrence or existence of any of the following events or set of circumstances:

- (i) the Company would be required to obtain the consent or approval of its stockholders or a regulatory body (including, without limitation, any securities exchange) or governmental authority to issue or sell Qualifying APM Securities pursuant to Section 2.06 or to issue Qualifying Capital Securities pursuant to Section 2.02, as the case may be, and such consent or approval has not yet been obtained notwithstanding the Company’s commercially reasonable efforts to obtain such consent or approval;
- (ii) trading in securities generally, or in shares of the Company’s Common Stock specifically, on the New York Stock Exchange or any other national securities exchange, or in the over-the-counter market on which the Company’s Common Stock is then listed or traded, shall have been suspended or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or market by the United States Securities and Exchange Commission, the relevant exchange or by any other regulatory body or governmental agency having jurisdiction and the establishment of such minimum prices shall have materially disrupted trading in, and the issuance and sale of, the Company’s Common Stock;
- (iii) a banking moratorium shall have been declared by the federal or state authorities of the United States such that the issuance of, or market trading in, the Qualifying APM Securities or the Qualifying Capital Securities, as applicable, has been materially disrupted or ceased;
- (iv) a material disruption shall have occurred in commercial banking or securities settlement or clearance services in the United States such that the issuance of, or market trading in, the Qualifying APM Securities or the Qualifying Capital Securities, as applicable, has been materially disrupted or ceased;
- (v) the United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States, there shall have been a declaration of a national emergency or war by the United States or there shall have occurred any other national or international calamity or crisis such that the issuance of, or market trading in, the Qualifying APM Securities or the Qualifying Capital Securities, as applicable, has been materially disrupted or ceased;
- (vi) there shall have occurred such a material adverse change in general domestic or international economic, political or financial conditions (including, without limitation, as a result of terrorist activities or the effect of international conditions on the financial markets in the United States) such that trading in the Qualifying APM Securities or Qualifying Capital Securities, as the case may be, shall have been materially disrupted or ceased;

(vii) an event occurs and is continuing as a result of which the offering document for such offer and sale of Qualifying APM Securities or Qualifying Capital Securities, as applicable, would, in the reasonable judgment of the Company, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and either (x) the disclosure of that event at such time, in the reasonable judgment of the Company, is not otherwise required by law and would have a material adverse effect on the business of the Company or (y) the disclosure relates to a previously undisclosed proposed or pending material business transaction, and the Company has a *bona fide* reason for keeping the same confidential or its disclosure would impede the Company's ability to consummate the transaction, provided that no single suspension period contemplated by this clause (vii) shall exceed 90 consecutive days and multiple suspension periods contemplated by this clause (vii) shall not exceed an aggregate of 180 days in any 360-day period; or

(viii) the Company reasonably believes that the offering document for such offer and sale of Qualifying APM Securities or Qualifying Capital Securities, as the case may be, would not be in compliance with a rule or regulation of the United States Securities and Exchange Commission (for reasons other than those referred to in clause (vii) above), and the Company determines it is unable to comply with such rule or regulation or such compliance is impracticable, provided that no single suspension period contemplated by this clause (viii) shall exceed 90 consecutive days and multiple suspension periods contemplated by this clause (viii) shall not exceed an aggregate of 180 days in any 360-day period.

"**Notes**" has the meaning specified in Section 2.01(a).

"**Pari Passu Securities**" means debt securities of the Company that rank in right of payment upon liquidation of the Company on a parity with the Notes, and includes the Notes.

"**Permitted Remedies**" has the meaning specified in the Replacement Capital Covenant.

"**Preferred Stock**" means the preferred stock of the Company.

"**Preferred Stock Issuance Cap**" has the meaning specified in Section 2.06(a)(ii).

"**Qualifying APM Securities**" means Common Stock, Qualifying Preferred Stock, Qualifying Warrants and Mandatorily Convertible Preferred Stock, provided that the Company may amend this definition without the consent of any Holder of the Notes in accordance with Section 2.06(e).

“Qualifying Capital Securities” has the meaning specified in the Replacement Capital Covenant.

“Qualifying Preferred Stock” means the Company’s non-cumulative perpetual Preferred Stock that (i) ranks *pari passu* with or junior to all other outstanding Preferred Stock, other than Preferred Stock that is issued or issuable pursuant to a stockholders’ rights plan or similar plan or arrangement, (ii) contains no remedies other than Permitted Remedies and (iii)(a) is redeemable, but is subject to Intent-Based Replacement Disclosure, and has a provision that provides for mandatory suspension of distributions upon its failure to satisfy one or more financial tests set forth therein or (b) is subject to a Qualifying Replacement Capital Covenant.

“Qualifying Replacement Capital Covenant” has the meaning specified in the Replacement Capital Covenant.

“Qualifying Warrants” means any net share-settled warrants to purchase Common Stock that have an exercise price at the time of pricing greater than the Current Market Price and that the Company is not entitled to redeem for cash and the holders of which are not entitled to require the Company to purchase for cash in any circumstances.

“Rating Agency Event” means that any nationally recognized statistical rating organization within the meaning of Section 3(a)(62) of the Exchange Act that then publishes a rating for the Company (a **“rating agency”**) amends, clarifies or changes the criteria it uses to assign equity credit to securities such as the Notes, which amendment, clarification or change results in:

(i) the shortening of the length of time the Notes are assigned a particular level of equity credit by that rating agency as compared to the length of time they would have been assigned that level of equity credit by that rating agency or its predecessor on the issue date of the Notes, or

(ii) the lowering of the equity credit (including up to a lesser amount) assigned to the Notes by that rating agency as compared to the equity credit assigned by that rating agency or its predecessor on the issue date of the Notes.

“Repayment Date” means the Scheduled Maturity Date, each Floating-Rate Interest Payment Date thereafter until the Company shall have repaid or redeemed all of the Notes and, to the extent that any principal is repaid thereon, the Final Maturity Date.

“Replacement Capital Covenant” means the Replacement Capital Covenant, dated as of June 17, 2008, of the Company, as the same may be amended or supplemented from time to time in accordance with the provisions thereof and Section 2.02(a)(vii).

“Reuters Page LIBOR01” means the display so designated on the Reuters 3000 Xtra (or such other page as may replace that page on that service, or such other service as may be nominated by the Company as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

“**Scheduled Maturity Date**” has the meaning specified in Section 2.02(a)(i).

“**Share Cap Amount**” has the meaning specified in Section 2.06(a)(iii).

“**Supplemental Indenture**” means this instrument as originally executed or as it from time to time may be supplemented or amended by one or more agreements supplemental hereto.

“**Tax Event**” means the receipt by the Company of an opinion of counsel experienced in such matters to the effect that, as a result of any:

(i) amendment to or change (including any officially announced proposed change) in the laws or regulations of the United States or any political subdivision or taxing authority of or in the United States that is enacted or effective on or after the date hereof;

(ii) official administrative decision or judicial decision or administrative action or other official pronouncement (including a private letter ruling, technical advice memorandum or other similar pronouncement) by any court, government agency or regulatory authority interpreting or applying those laws or regulations that is announced on or after the date hereof; or

(iii) threatened challenge asserted in connection with an audit of the Company, or a threatened challenge asserted in writing against any taxpayer that has raised capital through the issuance of securities that are substantially similar to the Notes, which challenge is asserted against the Company or becomes publicly known on or after the date hereof,

there is more than an insubstantial increase in the risk that interest payable by the Company on the Notes is not, or within 90 days of the date of such opinion will not be, deductible by the Company, in whole or in part, for U.S. federal income tax purposes.

“**Three-Month LIBOR**” means, with respect to any Floating-Rate Interest Period, the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three-month period commencing on the first day of that Floating-Rate Interest Period that appears on Reuters Page LIBOR01 as of 11:00 a.m., London time, on the LIBOR Determination Date for that Floating-Rate Interest Period. If such rate does not appear on Reuters Page LIBOR01, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Floating-Rate Interest Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Calculation Agent (after consultation with the Company), at approximately 11:00 a.m., London time, on the LIBOR Determination Date for that Floating-Rate Interest Period. The Calculation Agent will request the principal

London office of each of these banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Floating-Rate Interest Period will be the arithmetic mean (rounded upward if necessary to the nearest whole multiple of 0.00001%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Floating-Rate Interest Period will be the arithmetic mean (rounded upward if necessary to the nearest whole multiple of 0.00001%) of the rates quoted by three major banks in New York City selected by the Calculation Agent (after consultation with the Company), at approximately 11:00 a.m., New York City time, on the first day of that Floating-Rate Interest Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Floating-Rate Interest Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Calculation Agent to provide quotations are quoting as described above, Three-Month LIBOR for that Floating-Rate Interest Period will be the same as Three-Month LIBOR as determined for the previous Floating-Rate Interest Period or, in the case of the first Floating-Rate Interest Period, 2.776%. The establishment of Three-Month LIBOR for each Floating-Rate Interest Period by the Calculation Agent shall (in the absence of manifest error) be final and binding.

“Treasury Dealer” means J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated (or their successors) or, if J.P. Morgan Securities Inc. or Morgan Stanley & Co. Incorporated (or their successors) refuse to act as Treasury Dealer for the purpose of determining the Make-Whole Redemption Price or cease to be primary U.S. government securities dealers, another nationally recognized investment banking firm that is a primary U.S. government securities dealer specified by the Company to act as Treasury Dealer for the purpose of determining the Make-Whole Redemption Price.

“Treasury Price” means, with respect to a Redemption Date, the bid-side price for the Treasury Security as of the third trading day preceding the Redemption Date, as set forth in the Wall Street Journal in the table entitled “Treasury Bonds, Notes and Bills”, except that: (i) if that table (or any successor table) is not published or does not contain that price information on that trading day or (ii) if the Treasury Dealer determines that the price information is not reasonably reflective of the actual bid-side price of the Treasury Security prevailing at 3:30 p.m., New York City time, on that trading day, then Treasury Price will instead mean the bid-side price for the Treasury Security at or around 3:30 p.m., New York City time, on that trading day (expressed on a next trading day settlement basis) as determined by the Treasury Dealer through such alternative means as are commercially reasonable under the circumstances.

“Treasury Rate” means, with respect to a Redemption Date, the semi-annual equivalent yield to maturity of the Treasury Security that corresponds to the Treasury Price (calculated by the Treasury Dealer in accordance with standard market practice and computed as of the second trading day preceding the Redemption Date).

“Treasury Security” means the United States Treasury security that the Treasury Dealer determines would be appropriate to use, at the time of determination and in accordance with standard market practice, in pricing the Notes being redeemed in a tender offer based on a spread to United States Treasury yields.

ARTICLE TWO
General Terms and Conditions of the Notes

Section 2.01 Designation and Principal Amount

(a) Designation

Pursuant to Section 301 of the Indenture, there is hereby established a series of Securities of the Company designated as the 8.875% Fixed-to-Floating Rate Junior Subordinated Notes due 2068 (the “**Notes**”), the principal amount of which to be issued shall be in accordance with Section 2.01(b) and as set forth in a Company Order for the authentication and delivery of Notes pursuant to the Indenture, and the form and terms of which shall be as set forth hereinafter.

(b) Principal Amount: Additional Notes

Notes in an initial aggregate principal amount of \$600,000,000, upon execution of this Supplemental Indenture, shall be executed by the Company and delivered to the Trustee, and the Trustee shall thereupon authenticate and deliver said Notes in accordance with a Company Order. At any time and from time to time after the date hereof, without the consent of any Holders of the Notes, the Company may execute and deliver additional Notes to the Trustee for authentication, together with a Company Order for the authentication and delivery of such additional Notes, so long as such additional Notes are fungible for U.S. tax purposes with the Notes issued as of the date of this Supplemental Indenture. Any additional Notes so issued shall be governed by this Supplemental Indenture and shall rank equally and ratably in right of payment with the Notes issued on the date of this Supplemental Indenture and, together with the Notes issued as of the date of this Supplemental Indenture, shall be treated as a single series of Notes for all purposes.

Section 2.02 Repayment

(a) Scheduled Maturity Date

(i) The principal amount of, and all accrued and unpaid interest on, the Notes shall be payable in full on June 15, 2038 or, if such day is not a Business Day, the following Business Day (the “**Scheduled Maturity Date**”), to the extent of the net proceeds received by the Company during the 180-day period ending on the Cut-off Date from the issuance of Qualifying Capital Securities as contemplated by Section 2.02(a)(iv). In the event the Company has delivered an Officers’ Certificate to the Trustee pursuant to Section 2.02(a)(v) in connection with the Scheduled Maturity Date, (x) the principal amount of Notes payable on the Scheduled Maturity Date, if any, shall be the principal amount set forth in the notice of repayment, if any, accompanying such Officers’ Certificate, (y) such principal amount of Notes shall be repaid on the Scheduled Maturity Date

pursuant to Article Five, and (z) subject to Section 2.02(a)(ii), the unpaid principal amount of the Notes shall remain outstanding. The Company shall repay the unpaid principal amount of the Notes on the immediately succeeding Floating-Rate Interest Payment Date to the extent of the net proceeds received by the Company during the 90-day period ending on the Cut-Off Date from the issuance of Qualifying Capital Securities as contemplated by Section 2.02(a)(iv), and to a like extent on each Floating-Rate Interest Payment Date thereafter until the Company has repaid the Notes in full, or such earlier date on which they are redeemed pursuant to Article Four or become due and payable pursuant to Sections 501 and 502 of the Indenture.

(ii) In the event the Company has delivered an Officers' Certificate to the Trustee pursuant to Section 2.02(a)(v) in connection with any Repayment Date following the Scheduled Maturity Date, (x) the principal amount of the Notes payable on such Repayment Date shall be the principal amount set forth in the notice of repayment, if any, accompanying such Officers' Certificate, (y) such principal amount shall be repaid on such Repayment Date pursuant to Article Five to the extent of net proceeds received by the Company during the 90-day period ending on the Cut-Off Date from the issuance of Qualifying Capital Securities as contemplated by Section 2.02(a)(iv), and (z) the unpaid principal amount shall remain outstanding. The Company shall repay the unpaid principal amount of the Notes on the immediately succeeding Repayment Date to the extent of the net proceeds received by the Company during the 90-day period ending on the Cut-Off Date from the issuance of Qualifying Capital Securities as contemplated by Section 2.02(a)(iv), and on each Repayment Date thereafter to like extent until the Notes are paid in full, or such earlier date on which they are redeemed pursuant to Article Four or become due and payable pursuant to Sections 501 and 502 of the Indenture.

(iii) The obligation of the Company to repay the Notes pursuant to this Section 2.02(a) on any date prior to the Final Maturity Date shall be subject to (x) its obligations under Article Eleven of the Indenture to the holders of Senior Indebtedness and (y) its obligations under Section 2.05 with respect to the payment of deferred interest on the Notes.

(iv) Until the Company has repaid the Notes in full, or such earlier date on which the Notes are redeemed pursuant to Article Four or become due and payable pursuant to Sections 501 and 502 of the Indenture:

(A) the Company shall use Commercially Reasonable Efforts, subject to a Market Disruption Event, to raise sufficient net proceeds from the issuance of Qualifying Capital Securities during the 180-day period ending on the Cut-off Date to permit repayment of the Notes in full on the Scheduled Maturity Date pursuant to Section 2.02(a)(i); and

(B) if the Company is unable for any reason to raise sufficient net proceeds from the issuance of Qualifying Capital Securities to permit repayment in full of the Notes on any Repayment Date (other than the Final Maturity Date), the Company shall continue to use its Commercially Reasonable Efforts, subject to a Market Disruption Event, to raise sufficient net proceeds from the sale of Qualifying Capital Securities during the 90-day period ending on each subsequent Cut-off Date to permit repayment of the Notes on such following Repayment Date pursuant to Section 2.02(a)(i); and

(C) the Company shall repay the Notes to the extent required by Section 2.02(a)(vi).

For the avoidance of doubt, the Company is not obligated to sell any securities other than Qualifying Capital Securities to raise net proceeds for repayment of the Notes pursuant to this Section 2.02(a), or to apply the proceeds of any such sale of other securities for repayment of the Notes pursuant to this Section 2.02(a), and no Holder of Notes may require the Company to issue any such other securities in satisfaction of its obligations under this Section 2.02(a).

(v) The Company, if it has not raised sufficient net proceeds from the issuance of Qualifying Capital Securities pursuant to Section 2.02(a)(iv) to permit repayment of the Notes in full on any Repayment Date (other than the Final Maturity Date) pursuant to Section 2.01(a)(i) or (ii), as applicable, shall deliver an Officers' Certificate to the Trustee (who shall forward such certificate to each Holder of the Notes) on and dated the Cut-off Date stating the amount of net proceeds, if any, raised pursuant to Section 2.02(a)(iv) in connection with such Repayment Date. The Company shall not be obligated to sell Qualifying Capital Securities pursuant to Section 2.02(a)(iv) if such Officers' Certificate further certifies that: (A) a Market Disruption Event was existing during the entire 180-day period ending on the Cut-off Date or, in the case of any Repayment Date after the Scheduled Maturity Date, the entire 90-day period preceding the Cut-off Date; or (B) the Market Disruption Event continued for only part of the 180-day period or 90-day period, as the case may be, but the Company was unable after Commercially Reasonable Efforts to raise sufficient net proceeds during the rest of that period to permit repayment of the Notes in full. In the event that the Company was unable, although no Market Disruption Event occurred, after Commercially Reasonable Efforts to raise sufficient net proceeds during the 180-day or 90-day period, as the case may be, to permit repayment of the Notes in full on such Repayment Date, the Company shall deliver an Officers' Certificate that certifies the same to the Trustee (who shall forward such certificate to each Holder of the Notes) on the Cut-off Date. Each Officers' Certificate delivered pursuant to this clause (v), unless no principal amount of Notes is to be repaid on the applicable Repayment Date, shall be accompanied by a notice of repayment pursuant to Section 5.01 setting forth the principal amount of the Notes to be repaid on such Repayment Date, which amount shall be determined after giving effect to Section 2.02(a)(vi). In the event the Company fails to deliver an

Officer's Certificate to the Trustee in the manner described herein in connection with a Repayment Date, the Company shall be deemed to have confirmed that sufficient proceeds have been raised from an issuance of Qualifying Capital Securities, and all outstanding principal of the Notes will be due on such Repayment Date.

(vi) Payments in respect of the Notes on any Repayment Date will be applied as follows: first, to deferred interest on the Notes (including compounded interest thereon) to the extent of Eligible Proceeds raised pursuant to Section 2.06; second, to pay current interest on the Notes to the extent not paid from other sources; and third, to the principal amount of the Notes; provided that if the Company is obligated to sell Qualifying Capital Securities and repay principal on any outstanding *Pari Passu* Securities in addition to the Notes in respect thereof, then on any date and for any period, such payments shall be made on the Notes and those other *Pari Passu* Securities having the same scheduled maturity date as the Notes *pro rata* in accordance with their respective outstanding principal amounts, and no such payments shall be made to any other such *Pari Passu* Securities having a later scheduled maturity date until the principal of and all accrued and unpaid interest on the Notes have been paid in full, except to the extent permitted by Sections 3.01 and 2.06(c). If at any time the Company is obligated to sell Qualifying Capital Securities and repay principal on any outstanding *Pari Passu* Securities having an earlier scheduled maturity date in addition to the Notes, then no payment shall be made on the Notes until the principal of and all accrued and unpaid interest on such *Pari Passu* Securities having an earlier scheduled maturity date is paid in full. If the Company raises less than \$5,000,000 of net proceeds from the sale of Qualifying Capital Securities during the relevant 180-day or 90-day period, the Company will not be required to repay any Notes on the Scheduled Maturity Date or the next Repayment Date, as applicable. On the next Repayment Date as of which the Company has raised at least \$5,000,000 of net proceeds during the 180-day period (or, if shorter, the period beginning on the date on which the Company last repaid any principal amount of Notes) ending on the Cut-off Date, the Company shall be required to repay a principal amount of the Notes equal to the entire net proceeds from the sale of Qualifying Capital Securities during such 180-day or shorter period on such Repayment Date.

(vii) The Company shall not amend the Replacement Capital Covenant to impose additional restrictions on the type or amount of Qualifying Capital Securities that the Company may include for purposes of determining whether or to what extent repayment, redemption or purchase of the Notes is permitted under the Replacement Capital Covenant, except with the consent of Holders of a majority in principal amount of the Notes. Except as aforesaid, the Company may amend or supplement the Replacement Capital Covenant in accordance with its terms and without the consent of the Holders of the Notes.

(b) Final Maturity Date

The principal of, and all accrued and unpaid interest on, all outstanding Notes shall be due and payable on June 15, 2068 or, if such date is not a Business Day, the following Business Day (the “**Final Maturity Date**”), or upon acceleration following an Event of Default of the Notes as provided in Section 2.07, regardless of the amount of Qualifying Capital Securities the Company may have issued and sold by that time.

Section 2.03 Form

The Notes shall be substantially in the form of Exhibit A, shall include the Trustee’s certificate of authentication in the form required by Section 205 of the Base Indenture and shall be issued in fully registered definitive form without interest coupons.

The Notes initially are issuable solely as Global Securities and shall bear the legend required by Section 204 of the Indenture.

The Depository for the Notes initially shall be the Depository Trust Company (or any successor thereto).

Section 2.04 Rate of Interest; Interest Payment Dates

(a) Rate of Interest; Accrual

The Notes shall bear interest on their principal amount: (i) from and including June 17, 2008, to but excluding, June 15, 2018, at the rate of 8.875% per annum, computed on the basis of a 360-day year consisting of twelve 30-day months, and (ii) from and including June 15, 2018 to but excluding the Final Maturity Date or such earlier date of repayment at an annual rate equal to Three-Month LIBOR plus 5.0%, computed on the basis of a 360-day year and the actual number of days elapsed. Defaulted Interest and interest deferred pursuant to Section 2.05 will bear interest, to the extent permitted by law, at the interest rate in effect from time to time provided in this Section 2.04(a), from and including the relevant Interest Payment Date, compounded on each subsequent Interest Payment Date.

(b) Interest Payment Dates

Subject to Section 2.05, accrued interest on the Notes shall be payable (i) semi-annually in arrears on June 15 and December 15 of each year, beginning on December 15, 2008, or if any such day is not a Business Day, the next Business Day (but no interest will accrue as a result of that postponement) and ending on June 15, 2018 (each such date, a “**Fixed-Rate Interest Payment Date**”), to the Holders of the Notes on the immediately preceding June 1 or December 1, as the case may be, and (ii) quarterly in arrears on March 15, June 15, September 15 and December 15 of each year (each such date, a “**Floating-Rate Interest Payment Date**”), beginning on September 15, 2018, or if any such day is not a Business Day, the next Business Day, or if such Business Day is in the immediately succeeding calendar month, the immediately preceding Business Day, to the Holders of the Notes on the immediately preceding March 1, June 1, September 1 or December 1, as the case may be. We refer to each Floating-Rate Interest Payment Date and each Fixed-Rate Interest Payment Date as an “**Interest Payment Date**”.

Section 2.05 Interest Deferral

(a) Option to Defer Interest Payments

(i) The Company shall have the right, at any time and from time to time, to defer the payment of interest on the Notes for one or more consecutive Interest Periods that do not exceed ten years for any single Deferral Period, provided that no Deferral Period shall extend beyond the Final Maturity Date, any earlier accelerated maturity date arising from an Event of Default or any other earlier repayment in full or redemption of the Notes. If the Company has paid all deferred interest (including compounded interest thereon) on the Notes, the Company shall have the right to elect to begin a new Deferral Period pursuant to this Section 2.05(a).

(ii) At the end of any Deferral Period, the Company shall pay all deferred interest (including compounded interest thereon) on the Notes to the Persons in whose names the Notes are registered in the Securities Register at the close of business on the Regular Record Date with respect to the Interest Payment Date at the end of such Deferral Period.

(iii) The Company may elect to pay interest on any Interest Payment Date during any Deferral Period to the extent permitted by Section 2.05(b).

(b) Payment of Deferred Interest

The Company may not pay any deferred interest (including compounded interest thereon) on the Notes from any source other than Eligible Proceeds prior to the Final Maturity Date, except at any time that the principal amount of the Notes has been accelerated and such acceleration has not been rescinded or in the case of a Business Combination to the extent set forth in Section 2.05(c). Notwithstanding the foregoing, the Company may pay current interest from any available funds.

(c) Business Combination Exception

If the Company is involved in a Business Combination where immediately after the consummation of the Business Combination more than 50% of the surviving or resulting entity's voting stock is owned by the shareholders of the other party to such Business Combination, then the surviving or resulting entity may settle any deferred interest on the next Interest Payment Date following the date of consummation of the Business Combination with any available funds; provided that any Deferral Period that commences after the consummation of the Business Combination shall be subject to the provisions of Section 2.06 and provided, further, that, if the surviving or resulting entity does not elect to settle deferred interest as provided in this Section 2.05(c), the Deferral Period will be subject to the provisions of Sections 2.05(b) and 2.06.

(d) Notice of Deferral

The Company shall give written notice of its election to commence or continue any Deferral Period to the Trustee and the Holders of the Notes at least one Business Day and not more than 60 Business Days before the next Interest Payment Date. Such notice shall be given to the Trustee and each Holder of Notes at such Holder's address appearing in the Security Register by first-class mail, postage prepaid.

Section 2.06 Alternative Payment Mechanism

(a) Obligation to Issue Qualifying APM Securities

Immediately following the earlier of (i) the first Interest Payment Date during a Deferral Period on which the Company pays any current interest on the Notes and (ii) the fifth anniversary of the commencement of the Deferral Period if on such date such Deferral Period has not ended, the Company, subject to Sections 2.05(b), 2.06(b) and 2.06(c), shall issue one or more types of Qualifying APM Securities until the Company has raised an amount of Eligible Proceeds at least equal to the aggregate amount of accrued and unpaid deferred interest (including compounding interest thereon) on the Notes and has applied such Eligible Proceeds on the next Interest Payment Date to the payment of such deferred interest in accordance with this Section 2.06. The requirement set forth in this Section 2.06(a) shall be in effect until the end of such Deferral Period. Notwithstanding (and as a qualification to) the foregoing:

(i) the Company shall not be required to issue Common Stock (or, if the Company has amended the definition of Qualifying APM Securities to eliminate Common Stock, Qualifying Warrants) prior to the fifth anniversary of the commencement of a Deferral Period, to the extent that the number of shares of Common Stock issued (or issuable upon exercise of Qualifying Warrants) to be applied for purposes of funding deferred interest hereunder, together with the number of shares of Common Stock previously issued (or issuable upon exercise of still-outstanding Qualifying Warrants) during such Deferral Period and applied for such purposes, would exceed an amount equal to 2% of the total number of shares of issued and outstanding Common Stock reported in the Company's then most recent publicly available consolidated financial statements immediately prior to the date of such issuance (the "*Common Equity Issuance Cap*"); provided that the Common Equity Issuance Cap will cease to apply with respect to a Deferral Period following the fifth anniversary of the commencement of such Deferral Period, at which point the Company must pay any deferred interest, regardless of the time at which it was deferred, pursuant to this Section 2.06, subject to Sections 2.05(b) and 2.06(a)(iii), (b) and (c); and provided, further, that if the Common Equity Issuance Cap is reached during a Deferral Period and the Company subsequently repays all deferred interest, the Common Equity Issuance Cap will cease to apply with respect to such Deferral Period at the termination thereof and will not apply again unless and until the Company starts a new Deferral Period;

(ii) the Company shall not be permitted to issue Qualifying Preferred Stock or Mandatorily Convertible Preferred Stock to the extent that the net proceeds of any issuance of Qualifying Preferred Stock and Mandatorily Convertible Preferred Stock, together with the net proceeds of all prior issuances of Qualifying Preferred Stock and still-outstanding Mandatorily Convertible Preferred Stock applied during the current and all prior Deferral Periods to pay interest on the Notes, would exceed 25% of the aggregate principal amount of the Notes (the “**Preferred Stock Issuance Cap**”); and

(iii) (A) the Company is not required to sell shares of Common Stock or Mandatorily Convertible Preferred Stock (or, if the Company has amended the definition of Qualifying APM Securities to eliminate Common Stock, Qualifying Warrants) for purposes of paying deferred interest on the Notes if the number of shares of Common Stock to be sold (or which would be issuable upon exercise or conversion of Mandatorily Convertible Preferred Stock or Qualifying Warrants sold), together with the number of shares of Common Stock previously sold (or issued upon conversion or exercise of Mandatorily Convertible Preferred Stock or Qualifying Warrants that the Company was required to sell as a result of an amendment to the definition of Qualifying APM Securities, or issuable upon conversion or exercise of still-outstanding Mandatorily Convertible Preferred Stock or such Qualifying Warrants) for purposes of paying deferred interest on the notes would be in excess of 110 million (or 220 million if the Company has amended the definition of Qualifying APM Securities to eliminate Common Stock), as adjusted for any stock split, reverse stock split, stock dividend, reclassification, recapitalization, split-up, combination, exchange of shares or other similar transaction (such number, as adjusted pursuant to the following paragraph, the “**Share Cap Amount**”).

(B) If at any time interest has been deferred under the Notes and remains unpaid, the Company shall increase the Share Cap Amount, as necessary, such that it is at least equal to the number of shares of Common Stock that the Company would need to issue to raise sufficient proceeds to pay (assuming a price per share equal to the average of the Current Market Price of shares of Common Stock over the ten-trading day period preceding such date) three times the then outstanding deferred interest on the Notes (including compounded interest thereon) up to a maximum of ten years of interest (including compounded interest thereon); provided that the Company will only be required to increase the Share Cap Amount to the extent that such increase does not result in a Share Cap Amount that is greater than (i) the number of authorized and unissued shares of Common Stock at the time of such increase minus (ii) the Fixed Commitments. If the increase in the Share Cap Amount is limited due to the proviso in the immediately preceding sentence, or if the number of authorized and unissued shares of Common Stock reduced by the Fixed Commitments is less than the Share Cap Amount, the Company

shall use commercially reasonable efforts to obtain shareholder consent at the next annual meeting of its shareholders to increase the number of shares of its authorized Common Stock so that such proviso does not limit the Share Cap Amount and the number of authorized and unissued shares of Common Stock reduced by the Fixed Commitments is at least equal to the increased Share Cap Amount. For purposes of determining the amounts accruing during the period after June 15, 2018, the interest (other than interest that has been deferred under the Notes and remains unpaid) will be computed by reference to spot three-month London Interbank Offered Rate for deposits in U.S. dollars on the calculation date plus a margin equal to 5.0%. If the Company issues additional Notes after the date hereof, the Share Cap Amount shall increase automatically in proportion to the principal amount of such additional Notes.

(C) If, as of a date no more than 15 and no less than ten Business Days in advance of any Interest Payment Date, the Company has not raised sufficient Eligible Proceeds to pay all deferred interest (including compounded interest thereon) on the Notes in accordance with this Section 2.06 on such Interest Payment Date as a result of the limitation set forth in clause (iii) above, the Company shall provide written certification to the Trustee (which the Trustee will promptly forward upon receipt to each Holder of record of the Notes) of the Company's calculation of the Share Cap Amount, the number of authorized and unissued shares of the Company's Common Stock, the Fixed Commitments and the number of shares of Common Stock issued (or issuable upon exercise of such Qualifying Warrants) that the Company has sold pursuant to this Section 2.06 during the 180-day period preceding the date of such notice.

(b) Market Disruption Event

Section 2.06(a) shall not apply with respect to any Interest Payment Date if the Company shall have provided to the Trustee (which the Trustee will promptly forward upon receipt to each Holder of Notes) no more than 15 and no less than ten Business Days prior to such Interest Payment Date an Officers' Certificate stating that (i) a Market Disruption Event was existing after the immediately preceding Interest Payment Date and (ii) either (A) the Market Disruption Event continued for the entire period from the Business Day immediately following the preceding Interest Payment Date to the Business Day immediately preceding the date on which such Officers' Certificate is provided or (B) the Market Disruption Event continued for only part of such period, but the Company was unable to raise sufficient Eligible Proceeds during the rest of that period to pay all accrued and unpaid interest. The Company shall not be excused from its obligations pursuant to this Section 2.06 if it determines not to pursue or complete the sale of Qualifying APM Securities due to pricing, coupon, dividend rate or dilution considerations.

(c) Partial Payment of Deferred Interest

(i) If the Company has raised some, but not all, Eligible Proceeds necessary to pay all deferred interest on the Notes on any Interest Payment Date pursuant to this Section 2.06, such Eligible Proceeds shall be applied to pay accrued and unpaid interest on the applicable Interest Payment Date in chronological order based on the date each payment was first deferred, and payment on each installment of deferred interest shall be distributed to Holders of the Notes on a *pro rata* basis.

(ii) If the Company has outstanding *Pari Passu* Securities under which it is obligated to sell securities that are Qualifying APM Securities and apply the Eligible Proceeds to the payment of deferred interest or distributions, then on any date and for any period the amount of Eligible Proceeds received by the Company from those sales and available for payment of the deferred interest and distributions shall be applied to the Notes and those other *Pari Passu* Securities on a *pro rata* basis up to the Common Equity Issuance Cap or the Preferred Stock Issuance Cap and the Share Cap Amount (or comparable provisions in the instruments governing those other *Pari Passu* Securities) in proportion to the total amounts that are due on the Notes and such other *Pari Passu* Securities.

(d) Qualifying Warrants

If the Company sells Qualifying Warrants to pay deferred interest to satisfy its obligations pursuant to this Section 2.06, the Company shall use commercially reasonable efforts, subject to the Common Equity Issuance Cap and Section 2.06(a)(iii), to set the terms of such Qualifying Warrants so as to raise sufficient proceeds from their issuance, together with the proceeds of other Qualifying APM Securities that the Company is selling, to pay all deferred interest on the Notes in accordance with this Section 2.06. So long as the definition of Qualifying APM Securities has not been amended to eliminate Common Stock pursuant to Section 2.06(e), the sale of Qualifying Warrants to pay deferred interest is an option that may be exercised at the Company's sole discretion, and the Company shall not be obligated to sell Qualifying Warrants or to apply the proceeds of any such sale to pay deferred interest on the Notes.

(e) Qualifying APM Securities Definition Change

The Company may, without the consent of any Holders of the Notes, amend the definition of Qualifying APM Securities to eliminate Common Stock or Qualifying Warrants (but not both) and/or Mandatorily Convertible Preferred Stock from the definition of Qualifying APM Securities if, after the date hereof, an accounting standard or interpretive guidance of an existing accounting standard issued by an organization or regulator that has responsibility for establishing or interpreting accounting standards used by the Company in its principal public financial reports becomes effective or applicable to the Company such that there is more than an insubstantial risk that failure to eliminate Common Stock or Qualifying Warrants and/or Mandatorily Convertible Preferred Stock, as the case may be, from the definition would

result in a reduction in the Company's earnings per share as calculated in accordance with such accounting standards or interpretive guidance. The Company shall send written notice to the Trustee (who shall promptly forward such notice to each Holder of the Notes) in advance of any such change in the definition of Qualifying APM Securities.

Section 2.07 Events of Default

(a) Clauses (1) through (4) of Section 501 of the Indenture shall not apply to the Notes. In addition to clauses (5) and (6) of Section 501 of the Indenture, the following Events of Default shall apply to the Notes:

(1) the failure to pay interest, including compounded interest thereon, in full on any Notes for a period of 30 days after the conclusion of a ten-year period following the commencement of any Deferral Period if such Deferral Period has not ended prior to the conclusion of such ten-year period; and

(2) the failure to pay principal on the Notes when due, subject to the limitations set forth in Section 2.02(a).

(b) Notwithstanding anything in Section 502 of the Indenture to the contrary, if an Event of Default specified in (5) or (6) of Section 501 of the Indenture occurs, the principal amount of all the Notes shall automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable.

(c) The Trustee shall provide to the Holders of the Notes notice of any Event of Default or event that, with the giving of notice or lapse of time, or both, would become an Event of Default with respect to the Notes within 90 days after the actual knowledge of a Responsible Officer of the Trustee of such Event of Default or other event. However, except in cases of a default or an Event of Default in payment on the Notes, the Trustee will be protected in withholding the notice if one of its Responsible Officers determines that withholding of the notice is in the interest of such Holders.

Section 2.08 Securities Registrar; Paying Agent; Place of Payment

The Company appoints the Trustee as Securities Registrar and Paying Agent with respect to the Notes. The Place of Payment for the Notes will be as specified in the Notes.

Section 2.09 Limitation on Claims in the Event of Bankruptcy, Insolvency or Receivership

Each Holder, by such Holder's acceptance of the Notes, agrees that if an event described in clause (5) or (6) of Section 501 in the Indenture shall occur prior to the redemption or repayment of such Notes, whether voluntary or not, such Holder shall have no claim for, and thus no right to receive, any deferred interest (including compounded interest thereon) pursuant to Section 2.05 that has not been paid pursuant to Section 2.05

to the extent the amount of such interest exceeds an amount equal to the earliest two years of accumulated and unpaid interest (including compounded interest thereon) on such Holder's Notes.

Section 2.10 No Sinking Fund

The Notes shall not be subject to Article Thirteen of the Indenture.

Section 2.11 Subordination

The subordination provisions of Article Eleven of the Indenture shall apply to the Notes, except that solely for purposes of the Notes, Section 1103 of the Indenture shall be amended as follows:

(a) Clauses (a) and (b) of Section 1103 of the Indenture shall be deleted and replaced with the following (capitalized terms used in the following text that are not defined in the Indenture but are defined herein shall have the meanings ascribed to such terms herein):

“(a) (1) In the event and during the continuation of any default in the payment of principal, premium, if any, or interest on any Senior Indebtedness beyond any applicable grace period with respect thereto, (2) in the event that any event of default with respect to any Senior Indebtedness shall have occurred and be continuing, permitting the direct holders of that Senior Indebtedness (or a trustee on behalf of the holders thereof) to accelerate maturity of that Senior Indebtedness, whether or not the maturity is in fact accelerated (unless, in the case of either subclause (1) or (2) of this clause (a), the payment default or event of default has been cured or waived or ceased to exist and any related acceleration has been rescinded), or (3) in the event that any judicial proceeding shall be pending with respect to a payment default or event of default described in this clause (a), no payment or distribution of any kind or character, whether in cash, securities or other property, shall be made by the Company on account of the principal of or interest on the Notes unless and until all amounts then due and payable in respect of such Senior Indebtedness shall have been paid in full.”

(b) Clause “(c)” of Section 1103 of the Indenture shall be renumbered clause “(b)”;

(c) Clause “(d)” of Section 1103 of the Indenture shall be renumbered clause “(c)”.

Section 2.12 Senior Indebtedness

Solely for the purposes of the Notes, the definition of “Senior Indebtedness” in Section 101 of the Indenture shall be deleted and replaced by the following (capitalized terms used in the following text that are not defined in the Indenture but are defined herein shall have the meanings ascribed to such terms herein):

“Senior Indebtedness” means the principal of, premium, if any, and interest on and any other payment due pursuant to any of the following, whether Incurred on or prior to the date hereof or hereafter Incurred:

- (i) all obligations of the Company (other than obligations pursuant to the Notes and obligations pursuant to the Indenture with respect thereto) for money borrowed;
- (ii) all obligations of the Company evidenced by securities, notes, debentures, bonds or other similar instruments (other than the Notes), including obligations Incurred in connection with the acquisition of property, assets or businesses;
- (iii) all capital lease obligations of the Company;
- (iv) all reimbursement obligations of the Company with respect to letters of credit, bankers’ acceptances or similar facilities issued for the account of the Company;
- (v) all obligations of the Company issued or assumed as the deferred purchase price of property or services, including all obligations under master lease transactions pursuant to which the Company or any of its subsidiaries have agreed to be treated as owner of the subject property for U.S. federal income tax purposes;
- (vi) all payment obligations of the Company under interest rate swap or similar agreements or foreign currency hedge, exchange or similar agreements at the time of determination, including any such obligations Incurred by the Company solely to act as a hedge against increases in interest rates that may occur under the terms of other outstanding variable or floating rate indebtedness of the Company; and
- (vii) all obligations of the type referred to in clauses (i) through (vi) above of another Person and all dividends of another Person the payment of which, in either case, the Company has assumed or guaranteed or for which the Company is responsible or liable, directly or indirectly, jointly or severally, as obligor, guarantor or otherwise;

provided, however, that “Senior Indebtedness” shall not include: (1) obligations to trade creditors created or assumed by the Company in the ordinary course of business or (2) indebtedness that is by its terms subordinate, or not superior, in right of payment to the Notes.”

Section 2.13 Defeasance

The provisions of Section 1402 of the Indenture (relating to discharge of the Indenture) shall apply to the Notes. For purposes of Section 1404(2) of the Indenture as applicable to the Notes, the Opinion of Counsel referred to therein shall be an independent counsel satisfactory to the Trustee, and the words “gain or loss” in the eighth line of Section 1404(2) shall be replaced by the words “income, gain or loss”.

ARTICLE THREE

Covenants

Section 3.01 Dividend and Other Payment Stoppages

So long as any Notes remain outstanding, (a) if the Company has given notice of its election to defer interest payments on the Notes but the related Deferral Period has not yet commenced, or (b) a Deferral Period is continuing, the Company shall not, and shall not permit any Subsidiary to:

- (i) declare or pay any dividends or other distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of capital stock of the Company;
- (ii) make any payment of principal of, or interest or premium, if any, on, or repay, purchase or redeem any of the Company’s debt securities that rank upon the Company’s liquidation on a parity with or junior to the Notes; or
- (iii) make any guarantee payments regarding any guarantee issued by the Company of securities of any Subsidiary if the guarantee ranks upon the Company’s liquidation on a parity with or junior to the Notes;

provided, however, the restrictions in clauses (i), (ii) and (iii) above do not apply to:

- (A) any purchase, redemption or other acquisition of shares of its capital stock by the Company in connection with:
 - (1) any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more of its employees, officers, directors, consultants or independent contractors;
 - (2) the satisfaction of the Company’s obligations pursuant to any contract entered into in the ordinary course of business prior to the beginning of the applicable Deferral Period;

(3) a dividend reinvestment or shareholder purchase plan; or

(4) the issuance of shares of the Company's capital stock, or securities convertible into or exercisable for such shares, as consideration in an acquisition transaction, the definitive agreement for which is entered into prior to the applicable Deferral Period;

(B) any exchange, redemption or conversion of any class or series of the Company's capital stock, or shares of the capital stock of one of its Subsidiaries, for any other class or series of the Company's capital stock, or of any class or series of the Company's indebtedness for any class or series of the Company's capital stock;

(C) any purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such shares or the securities being converted or exchanged;

(D) any declaration of a dividend in connection with any shareholder rights plan, or the issuance of rights, stock or other property under any shareholder rights plan, or the redemption or purchase of rights pursuant thereto; or

(E) any dividend in the form of stock, warrants, options or other rights where the dividend stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equally with or junior to such stock;

(F)(i) any payment of current or deferred interest on *Pari Passu* Securities that is made *pro rata* to the amounts due on such *Pari Passu* Securities; provided that such payments are made in accordance with Section 2.06(c)(ii) to the extent it applies, and (ii) any payments of principal or current or deferred interest on *Pari Passu* Securities that, if not made, would cause the Company to breach the terms of the instrument governing such *Pari Passu* Securities; or

(G) any payment of principal in respect of *Pari Passu* Securities having the same scheduled maturity date as the Notes, as required under a provision of such other *Pari Passu* Securities that is substantially the same as the provisions in Section 2.02(a), and that is made on a *pro rata* basis among one or more series of *Pari Passu* Securities having such a provision and the Notes.

For the avoidance of doubt, notwithstanding anything herein to the contrary, no terms of the Notes will restrict in any manner the ability of any of the Subsidiaries to pay dividends or make any distributions to the Company or to any other Subsidiaries.

Section 3.02 Additional Limitation on Deferral Over One Year

If any Deferral Period lasts longer than one year, the Company may not, and may not permit any of its Subsidiaries to, redeem or purchase any securities of the Company that on the Company's liquidation rank *pari passu* with or junior to any of its Qualifying APM Securities the proceeds of which were applied, pursuant to Section 2.06, to fund deferred interest on the Notes during the relevant Deferral Period until the first anniversary of the date on which all deferred interest on the Notes has been paid. However, if the Company is involved in a Business Combination where immediately after its consummation more than 50% of the surviving or resulting entity's voting stock is owned by the shareholders of the other party to such Business Combination, then the immediately preceding sentence shall not apply if the surviving or resulting entity settles all deferred interest on the next Interest Payment Date following the date of consummation of such Business Combination.

ARTICLE FOUR

Redemption of the Notes

Section 4.01 Redemption Price

The Notes shall be redeemable in whole or in part at the election of the Company at any time and from time to time after the date hereof; provided that in the case of a redemption in part and not in whole, at least \$25 million aggregate principal amount of the Notes, excluding any Notes held by the Company or any of its Affiliates, remain outstanding after giving effect to such redemption. In the case of any redemption, the Redemption Price shall be equal to (1) in the case of any redemption on or after June 15, 2018, 100% of the principal amount of the Notes being redeemed plus accrued and unpaid interest to the Redemption Date or (2) in the case of any redemption prior to June 15, 2018, the greater of (i) 100% of the principal amount of the Notes being redeemed plus accrued and unpaid interest to the Redemption Date and (ii) the Make-Whole Redemption Price. The Notes shall be redeemable in accordance with the procedures in Article Twelve of the Indenture.

Section 4.02 Limitation on Partial Redemption

Notwithstanding the foregoing, the Company may not redeem the Notes in part if the principal amount of the Notes has been accelerated pursuant to Sections 501 and 502 of the Indenture (as amended by Section 2.07(a)) and such acceleration has not been rescinded. In addition, the Company may not redeem the Notes in part unless all accrued and unpaid interest, including deferred interest, has been paid in full on all Outstanding Notes for all Interest Periods terminating on or before the Redemption Date.

ARTICLE FIVE
Repayment of Notes

Section 5.01 Repayments

The Company, not more than 15 nor less than ten Business Days prior to each Repayment Date (unless a shorter notice shall be satisfactory to the Trustee), shall notify the Trustee of the principal amount of Notes to be repaid on such date pursuant to Section 2.02(a).

Section 5.02 Selection of the Notes to be Repaid

If less than all the Notes are to be repaid on any Repayment Date (unless the Notes are issued in the form of a Global Security), the particular Notes to be repaid shall be selected not more than 60 days prior to such Repayment Date by the Trustee, from the Outstanding Notes not previously repaid or called for redemption, by such method as then may be required by law or if no such legal requirement shall then exist, by lot or such other method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Notes, provided that the portion of the principal amount of any Notes not repaid shall be in an authorized denomination (which shall not be less than the minimum authorized denomination).

The Trustee shall promptly notify the Company in writing of the Notes selected for partial repayment and the principal amount thereof to be repaid. For all purposes hereof, unless the context otherwise requires, all provisions relating to the repayment of Notes shall relate, in the case of any Notes repaid or to be repaid only in part, to the portion of the principal amount of such Notes which has been or is to be repaid.

Section 5.03 Notice of Repayment

Notice of repayment shall be given by first-class mail, postage prepaid, mailed not earlier than the 60th day, and not later than the 30th day, prior to the Repayment Date, to each Holder of Notes to be repaid, at the address of such Holder as it appears in the Security Register.

Each notice of repayment shall identify the Notes to be repaid (including the Notes' CUSIP number, if a CUSIP number has been assigned to the Notes) and shall state:

(a) the Repayment Date;

(b) if less than all outstanding Notes are to be repaid, the identification (and, in the case of partial repayment, the respective principal amounts) of the particular Notes to be repaid;

(c) that on the Repayment Date, the principal amount of the Notes to be repaid will become due and payable upon each such Notes or portion thereof, and that interest thereon, if any, shall cease to accrue on and after said date; and

(d) the place or places where such Notes are to be surrendered for payment of the principal amount thereof.

Notice of repayment shall be given by the Company or, if the Company timely notifies the Trustee, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice, if mailed in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holders receive such notice. In any case, a failure to give such notice by mail or any defect in the notice to any Holder of any Notes designated for repayment as a whole or in part shall not affect the validity of the proceedings for the repayment of any other Notes.

Section 5.04 Deposit of Repayment Amount

Prior to 11:00 a.m. New York City time on the Repayment Date specified in the notice of repayment given as provided in Section 5.03, the Company will deposit with the Trustee or with one or more Paying Agents (or if the Company is acting as its own Paying Agent, the Company will segregate and hold in trust as provided in Section 402 of the Indenture) an amount of money, in immediately available funds, sufficient to pay the principal amount of, and any accrued interest on, all the Notes which are to be repaid on that date.

Section 5.05 Repayment of Notes

If any notice of repayment has been given as provided in Section 5.03, the Notes or portion of the Notes with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice. On surrender of such Notes at a place of payment in said notice specified, the said Notes or the specified portions thereof shall be paid by the Company at their principal amount, together with accrued interest to but excluding the Repayment Date; provided that, except in the case of a repayment in full of all outstanding Notes, installments of interest due on or prior to the Repayment Date will be payable to the Holders of such Notes, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 1001 of the Indenture.

Upon surrender of any Notes repaid in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to the Holders thereof, at the expense of the Company, a new Note, of authorized denominations, in aggregate principal amount equal to the portion of the Notes not repaid and so presented and having the same Scheduled Maturity Date and other terms. If a Global Security is so surrendered, such new Notes will be a new Global Security.

If any Notes required to be repaid shall not be so repaid upon surrender thereof, the principal of such Notes shall bear interest from the applicable Repayment Date until paid at the rate prescribed therefor in the Notes.

ARTICLE SIX
Original Issue of Notes

Section 6.01 Calculation of Original Issue Discount

If during any calendar year any original issue discount shall have accrued on the Notes, the Company shall file with each Paying Agent (including the Trustee if it is a Paying Agent) promptly at the end of each calendar year (a) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on Outstanding Securities as of the end of such year and (b) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time, or Treasury Regulations enacted thereunder, or other administrative or judicial guidance.

ARTICLE SEVEN
Supplemental Indentures

Section 7.01 Supplemental Indentures without Consent of Holders

Solely for purposes of the Notes, Section 901 of the Indenture shall be deleted and replaced with the following (capitalized terms used in the following text that are not defined in the Indenture but are defined herein shall have the meanings ascribed to such terms herein):

“Section 901. Supplemental Indentures without Consent of Holders.

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may supplement or amend the Indenture and this Supplemental Indenture for any of the following purposes:

- (1) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Notes; or
- (2) to add to or modify the covenants of the Company for the benefit of the Holders of Notes or to surrender any right or power herein conferred upon the Company; provided that no such amendment or modification may add Events of Default or acceleration events with respect to the Notes; or
- (3) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Notes; or
- (4) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein or in any supplemental indenture, or to make any other provisions with respect to matters or questions arising under this Indenture, provided such action shall not adversely affect the interests of the Holders of Notes in any material respect; or

(5) to make any changes to the Indenture or this Supplemental Indenture in order to conform the Indenture and this Supplemental Indenture to the final prospectus supplement provided to investors in connection with the offering of the Notes.”

Section 7.02 Supplemental Indentures with Consent of Holders

Solely for purposes of the Notes, clauses (1) through (3) of Section 902(a) of the Indenture shall be deleted and replaced with the following clauses (1) through (6) (capitalized terms used in the following text that are not defined in the Indenture but are defined herein shall have the meanings ascribed to such terms herein):

“(1) change the Stated Maturity of any payment of principal of or interest (including any additional interest) on the Notes, including the Scheduled Maturity Date and the Final Maturity Date;

(2) change the manner of calculating payments due on the Notes in a manner adverse to Holders;

(3) reduce the requirements contained in the Supplemental Indenture or in the Indenture for quorum or voting;

(4) change the Place of Payment for any payment on the Notes that is adverse to the Holders or change the currency in which any payment on the Notes is payable;

(5) impair the right of any Holder to institute suit for the enforcement of any payment on the Notes;

(6) reduce the percentage in principal amount of Outstanding Notes, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with certain provisions of the Indenture or this Supplemental Indenture or certain defaults hereunder and their consequences;

(7) reduce the principal amount of, the rate of interest on or any premium payable upon the redemption of the Notes; or

(8) modify any of the provisions of this Section.”

ARTICLE EIGHT
Miscellaneous

Section 8.01 Effectiveness

This Supplemental Indenture will become effective upon its execution and delivery.

Section 8.02 Successors and Assigns

All covenants and agreements in the Indenture, as supplemented and amended by this Supplemental Indenture, by the Company shall bind its successors and assigns, whether so expressed or not.

Section 8.03 Effect of Recitals

The recitals contained herein and in the Notes, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee does not assume any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Supplemental Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of the Notes or the proceeds thereof.

Section 8.04 Ratification of Indenture

The Indenture, as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 8.05 Tax Treatment

The Company and, by acceptance of the Notes or a beneficial interest in the Notes, each Holder and beneficial owner of a Note agree to treat the Notes as indebtedness for United States federal income tax purposes.

Section 8.06 Governing Law

This Supplemental Indenture and the Notes shall be governed by and construed in accordance with the laws of the State of New York.

Section 8.07 Severability

If any provision of the Indenture, as supplemented and amended by this Supplemental Indenture, shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

* * *

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the day and year first above written.

PRUDENTIAL FINANCIAL, INC.

By: /s/ Jonathan P. Hunt
Name: Jonathan P. Hunt
Title: Vice President and Assistant Treasurer

THE BANK OF NEW YORK, as Trustee

By: /s/ Scott I. Klein
Name: Scott I. Klein
Title: Assistant Treasurer

INDENTURE

FORM OF NOTE

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

No.
Issue Date:

Principal Amount: \$
CUSIP: 744320AK8

PRUDENTIAL FINANCIAL, INC.
8.875% FIXED-TO-FLOATING RATE
JUNIOR SUBORDINATED NOTES DUE 2068

Prudential Financial, Inc., a corporation organized and existing under the laws of the State of New Jersey (hereinafter called the “*Company*”, which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to _____ or registered assigns, the principal sum of _____ dollars (\$) as may be revised from time to time on Schedule I hereto, on June 15, 2038, or if such day is not a Business Day (as defined below), the following Business Day (the “*Scheduled Maturity Date*”) or any subsequent Interest Payment Date (as defined below) to the extent set forth in the Indenture hereinafter referred to. If that amount is not paid in full on the Scheduled Maturity Date or any subsequent Interest Payment Date, the remaining principal amount will be due and payable on June 15, 2068, or if such day is not a Business Day, the following Business Day.

The Company further promises to pay interest on said principal sum from and including June 17, 2008 to but excluding June 15, 2018, at the annual rate of 8.875% (computed on the basis of a 360-day year consisting of twelve 30-day months) semi-annually in arrears on June 15 and December 15 of each year, beginning on December 15, 2008, subject to deferral as set forth herein. In the event that any interest payment date prior to June 15, 2018 falls on a day that is not a Business Day, the interest payment due on that date will be postponed to the next day that is a Business Day, and no interest will accrue as a result of that postponement. From and including June 15, 2018 until the principal thereof is paid or made available for payment, the Company promises to pay such interest at an annual rate equal to Three-Month LIBOR (as defined in the Indenture) plus 5.0% (computed on the basis of a 360-day year and the actual number of days elapsed) quarterly in arrears on March 15, June 15, September 15 and December 15, beginning on September 15, 2018 (or if any of these days is not a Business Day, on the next Business Day, except that if such Business Day is in the next succeeding calendar

month, the immediately preceding Business Day), subject to deferral as set forth herein. We refer to each such date on which interest is payable as an “**Interest Payment Date**”. Defaulted Interest and interest deferred pursuant to Section 2.05 of the Supplemental Indenture will bear interest to the extent permitted by law, at the interest rate in effect from time to time provided in Section 2.01(a) of the Supplemental Indenture, from and including the relevant Interest Payment Date, compounded on each subsequent Interest Payment Date.

A “**Business Day**” shall mean any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed or (iii) on or after June 15, 2018, a day that is not a London Banking Day. “**London Banking Day**” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date, as provided in such Indenture, will be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be June 1 or December 1 (whether or not a Business Day), as the case may be, immediately preceding such Interest Payment Date until June 15, 2018, and March 1, June 1, September 1 and December 1 (whether or not a Business Day), as the case may be, immediately preceding such Interest Payment Date after June 15, 2018. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid, in the case of deferred interest, as provided in the following paragraph, and otherwise to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

The Company shall have the right at any time or from time to time during the term of this Security to defer payment of interest on this Security for one or more consecutive Interest Periods (each a “**Deferral Period**”) that do not exceed ten years for the applicable Deferral Period, during which Deferral Periods the Company shall have the right, subject to Sections 2.05 and 2.06 of the Supplemental Indenture, to make partial payments of interest on any Interest Payment Date, and at the end of which the Company shall pay all interest then accrued and unpaid; provided, however, that no Deferral Period shall extend beyond June 15, 2068 (or if such day is not a Business Day, the following Business Day) or the earlier repayment in full or redemption of the Securities. Upon the termination of any Deferral Period and upon the payment of all deferred interest then due, the Company may elect to begin a new Deferral Period, subject to the above requirements. Except as provided in Section 2.06 of the Supplemental Indenture, no interest shall be due and payable during a Deferral Period except at the end thereof.

So long as any Securities of this series remain outstanding, if the Company has given notice of its election to defer interest payments on the Securities but the related Deferral Period has not yet commenced or a Deferral Period is continuing, the Company shall not, and shall not permit any Subsidiary to, (i) declare or pay any dividends or other distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of the Company's capital stock, (ii) make any payment of principal of, or interest or premium, if any, on or repay, purchase or redeem any debt securities of the Company that rank upon the Company's liquidation on a parity with this Security (including this Security, the "*Pari Passu Securities*") or junior to this Security or (iii) make any guarantee payments regarding any guarantee issued by the Company of securities of any Subsidiary if the guarantee ranks upon the Company's liquidation on a parity with or junior to this Security (other than (a) any purchase, redemption or other acquisition of shares of its capital stock in connection with (1) any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more of its employees, officers, directors, consultants or independent contractors, (2) the satisfaction of the Company's obligations pursuant to any contract entered into in the ordinary course of business prior to the beginning of the applicable Deferral Period, (3) a dividend reinvestment or shareholder purchase plan, or (4) the issuance of shares of the Company's capital stock, or securities convertible into or exercisable for such shares, as consideration in an acquisition transaction entered into prior to the applicable Deferral Period, (b) any exchange, redemption or conversion of any class or series of the Company's capital stock, or the capital stock of one of its Subsidiaries, for any other class or series of its capital stock, or of any class or series of its indebtedness for any class or series of its capital stock, (c) any purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such shares or the securities being converted or exchanged, (d) any declaration of a dividend in connection with any shareholder rights plan, or the issuance of rights, stock or other property under any shareholder rights plan, or the redemption or purchase of rights pursuant thereto, (e) any dividend in the form of stock, warrants, options or other rights where the dividend stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equally with or junior to such stock, (f) (1) any payment of current or deferred interest on *Pari Passu Securities* that is made *pro rata* to the amounts due on such *Pari Passu Securities* (including this Security); provided that such payments are made in accordance with Section 2.06(c)(ii) of the Supplemental Indenture to the extent it applies, and (2) any payments of principal or current or deferred interest on *Pari Passu Securities* that, if not made, would cause the Company to breach the terms of the instrument governing such *Pari Passu Securities*; or (g) any payment of principal in respect of *Pari Passu Securities* having the same scheduled maturity date as this Security, as required under a provision of such other *Pari Passu Securities* that is substantially the same as Section 2.02(a) of the Supplemental Indenture, and that is made on a *pro rata* basis among one or more series of *Pari Passu Securities* (including this Security) having such a provision. In addition, if any Deferral Period lasts longer than one year, neither the Company nor any Subsidiary may redeem or purchase any securities of the Company that on the Company's liquidation rank *pari passu* or junior to any of its Qualifying APM Securities the proceeds of which were used to settle deferred interest on the Securities of

this series during the relevant Deferral Period until the first anniversary of the date on which all deferred interest on this Security has been paid. However, if the Company is involved in a Business Combination where immediately after its consummation more than 50% of the surviving or resulting entity's voting stock is owned by the shareholders of the other party to such Business Combination, then the immediately preceding sentence will not apply if the surviving or resulting entity settles all deferred interest on the next Interest Payment Date following the date of consummation of such Business Combination.

The Company shall give written notice of its election to commence or continue any Deferral Period to the Trustee and the Holders of all Securities then Outstanding at least one Business Day and not more than 60 Business Days before the next Interest Payment Date. Such notice shall be given to the Trustee and the Holder of this Security at such Holder's address appearing in the Security Register by first-class mail, postage prepaid.

Payment of the principal of (and premium, if any) and interest on this Security will be made at the paying agency office or agency of the Company maintained for that purpose in the United States, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that, at the option of the Company, payment of interest may be made (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the Securities Register or (ii) by wire transfer in immediately available funds at such place and to such bank account number as may be designated by the Person entitled thereto as specified in the Securities Register in writing not less than ten days before the relevant Interest Payment Date.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Indebtedness, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on such Holder's behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee such Holder's attorney-in-fact for any and all such purposes. Each Holder hereof, by such Holder's acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such Holder upon said provisions.

The Company and, by acceptance of this Security or a beneficial interest in this Security, each Holder and beneficial owner of this Security agree to treat this Security as indebtedness for United States federal income tax purposes.

By acceptance of this Security or a beneficial interest in this Security, each Holder hereof and any person acquiring a beneficial interest herein, agree that either (A) no portion of the assets used by such purchaser to acquire and hold this Security or a

beneficial interest in this Security constitutes assets of any (i) employee benefit plan subject to Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), (ii) any plan, individual retirement accounts and other arrangement subject to Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”) or provisions under any federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of ERISA or the Code (collectively, “**Similar Laws**”), and (iii) entities whose underlying assets are considered to include “plan assets” of any such plan, account or arrangement or (B) the purchase and holding of this Security or a beneficial interest in this Security by such purchaser will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or similar violation under any applicable Similar Laws.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Date:

PRUDENTIAL FINANCIAL, INC.

By: _____
Name: Jonathan P. Hunt
Title: Vice President and Assistant Treasurer

Attest: _____

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Securities designated therein referred to in the within-mentioned Indenture.

Date:

THE BANK OF NEW YORK,
as Trustee

By

Authorized Officer

A-7

(FORM OF REVERSE OF NOTES)

This Security is one of a duly authorized issue of securities of the Company (herein called the “**Securities**”), issued and to be issued in one or more series under the Subordinated Debt Securities Indenture, dated as of June 17, 2008 (herein called the “**Base Indenture**”), between the Company and The Bank of New York, as trustee (the “**Trustee**”), as amended and supplemented by the First Supplemental Indenture, dated as of June 17, 2008, between the Company and the Trustee (the “**Supplemental Indenture**”, and together with the Base Indenture, the “**Indenture**”), to which Indenture and all other indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Trustee, the Company, the holders of the Senior Indebtedness and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. By the terms of the Indenture, the Securities are issuable in series that may vary as to amount, date of maturity, rate of interest, rank and in any other respect provided in the Indenture.

All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The Securities of this series shall be redeemable at the election of the Company in accordance with the terms of the Indenture; provided that in the case of a redemption in part and not in whole, at least \$25 million aggregate principal amount of the Notes, excluding any Notes held by the Company or any of its Affiliates, remain outstanding after giving effect to such redemption. The Securities are redeemable in whole or in part at the election of the Company at any time after the date hereof. In the case of any redemption, the Redemption Price shall be equal to (1) in the case of any redemption on or after June 15, 2018, 100% of the principal amount of the Securities being redeemed plus accrued and unpaid interest to the Redemption Date or (2) in the case of any redemption prior to June 15, 2018, the greater of (i) 100% of the principal amount plus accrued and unpaid interest to the Redemption Date, and (ii) the Make-Whole Redemption Price.

Notwithstanding the foregoing, the Company may not redeem the Securities in part if the principal amount of the Securities has been accelerated pursuant to Sections 501 and 502 of the Base Indenture (as amended by Section 2.07(a) of the Supplemental Indenture) and such acceleration has not been rescinded. In addition, the Company may not redeem the Securities in part unless all accrued and unpaid interest, including deferred interest, has been paid in full on all Outstanding Securities for all Interest Periods terminating on or before the Redemption Date.

In the event of a redemption of this Security in part only, a new Security or Securities of this Series and of a like tenor for the unredeemed portion hereof will be issued in the name of the Holder hereof based upon cancellation hereof.

No sinking fund is provided for the Securities.

The Indenture contains provisions for satisfaction and discharge of the entire indebtedness of this Security upon compliance by the Company with certain conditions set forth in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities to be affected by such supplemental indenture. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Securities at the time Outstanding, on behalf of the Holders of all Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, (i) if an Event of Default (other than an Event of Default relating to certain insolvency events, as set forth in the Indenture) with respect to the Securities at the time Outstanding occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities may declare the entire principal amount and all accrued but unpaid interest of all the Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and (ii) if an Event of Default relating to insolvency events as set forth in the Indenture occurs, the principal amount of the Securities shall automatically become due and payable; provided that in any such case the payment of principal and interest on such Securities shall remain subordinated to the extent provided in Article Eleven of the Base Indenture.

The Holder of this Security, by such Holder's acceptance hereof, agrees that if a bankruptcy event of the Company shall occur prior to the redemption or repayment of such Securities, whether voluntary or not, such Holder shall have no claim for, and thus no right to receive, any deferred interest pursuant to Section 2.05 of the Supplemental Indenture to the extent the amount of such interest exceeds an amount equal to the earliest two years of accumulated and unpaid interest (including compounded interest thereon) on such Holder's Securities.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and premium, if any) and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company

maintained under Section 1002 of the Base Indenture duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee shall have the right to treat and shall treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Securities are issuable only in registered form without coupons in minimum denominations of \$1,000 and any integral multiples of \$1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities are exchangeable for a like aggregate principal amount of Securities of a different authorized denomination, as requested by the Holder surrendering the same.

THIS SECURITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Security to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

agent to transfer this Security on the books of the Securities Registrar. The agent may substitute another to act for him or her.

Dated:

Signature:

Signature Guarantee:

(Sign exactly as your name appears on the other side of this Security)

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Securities Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Securities Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

SCHEDULE I

SCHEDULE OF PRINCIPAL AMOUNT REDUCTIONS

Principal amount of Notes outstanding represented by this Security as of , : \$.

Thereafter, the following decreases have been made:

Date of Repayment or Redemption	Principal Amount Repaid or Redeemed	Principal Amount Remaining	Notation Made by or on Behalf of the Trustee
	\$	\$	

[Letterhead of Debevoise & Plimpton LLP]

June 17, 2008

Prudential Financial, Inc.
751 Broad Street
Newark, NJ 07102
United States of America

8.875% Fixed-to-Floating Rate Junior Subordinated Notes Due 2068 of Prudential Financial, Inc.

Ladies and Gentlemen:

We have acted as special United States tax counsel to Prudential Financial, Inc., a New Jersey corporation (“Prudential”), in connection with the preparation and filing with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Act”), by Prudential, of a prospectus supplement, dated June 12, 2008 and filed with the Commission pursuant to Rule 424(b) of the Act (the “Prospectus Supplement”), relating to the issuance and sale of \$600,000,000 aggregate principal amount of Prudential’s 8.875% Fixed-to-Floating Rate Junior Subordinated Notes due 2068 (the “Notes”), which are being issued pursuant to the Subordinated Debt Indenture, dated as of June 17, 2008 (the “Base Indenture”) as amended and supplemented by the First Supplemental Indenture, dated as of June 17, 2008 (the “Supplemental Indenture” and, together with the Base Indenture, the “Indenture”), in each case between Prudential and The Bank of New York, as indenture trustee.

In furnishing this opinion letter, we have reviewed (i) the automatic shelf registration statement of Prudential, as defined under Rule 405 of the Act, on Form S-3 dated March 16, 2006 (File Nos. 333-132469, 333-132469-01 and 333-132469-02) (the “Registration Statement”), including a prospectus of Prudential relating to securities dated March 16, 2006 (the “Prospectus”), (ii) the Prospectus Supplement, (iii) the Replacement Capital Covenant, dated as of June 17, 2008 (the “Replacement Capital Covenant”), by Prudential in favor of and for the benefit of each Covered Debtholder (as defined therein), (iv) the Indenture, (v) the form of Note attached to the Supplemental Indenture and (vi) such other records, documents, certificates or other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below (the “Transaction Documents”). In this examination, we have assumed without independent investigation or inquiry the legal capacity of all natural persons executing documents, the genuineness of all signatures on original or certified copies, the authenticity of all original or certified copies, the conformity to original or certified documents of all copies submitted to us as conformed or reproduction copies, the enforceability of all the Transaction Documents and that the Notes will be in a form

substantially identical to the form of the Notes attached to the Supplemental Indenture. Our opinion is based on the facts and circumstances set forth in the Prospectus Supplement, the Indenture, the Supplemental Indenture, the Replacement Capital Covenant and the other documents reviewed by us. In addition, we have relied as to factual matters upon, and have assumed the accuracy of, representations, statements and certificates of or from public officials and of or from officers and representatives of all persons whom we have deemed appropriate, including representations made by Prudential to us, and we have assumed that all covenants and undertakings set forth in the Transaction Documents are performed in accordance with their terms, that none of the material terms and conditions of the Transaction Documents have been or will be waived or modified, the valid existence and good standing of all parties to the Transaction Documents and that there are no documents or understandings between the parties that would alter, or are inconsistent with, the terms set forth in the Transaction Documents.

Based on the foregoing, and subject to the limitations, qualifications and assumptions set forth herein and in the Prospectus Supplement, the statements of law and legal conclusions under the heading "Material United States Federal Income Tax Considerations" in the Prospectus Supplement represent our opinion.

Our opinion is based upon the Internal Revenue Code of 1986, as amended, Treasury Regulations (including proposed Treasury Regulations) issued thereunder, Internal Revenue Service rulings and pronouncements and judicial decisions, all as now in effect and all of which are subject to change, possibly with retroactive effect. Our opinion is limited to the matter expressly stated herein, and no opinion is implied or may be inferred beyond such matter. Our opinion is rendered only as of the date hereof, and could be altered or modified by changes in facts or circumstances, events, developments, changes in the documents reviewed by us, or changes in law subsequent to the date hereof. We have not undertaken to advise you or any other person with respect to any such change subsequent to the date hereof.

We consent to the filing of this opinion letter as an exhibit to Prudential's Form 8-K to be filed in connection with the issuance and sale of the Notes, incorporated by reference in the Registration Statement and to the use of our name under the headings "Material United States Federal Income Tax Considerations" and "Validity of the Notes" in the Prospectus Supplement. In giving such consent, we do not thereby concede that we are within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Debevoise & Plimpton LLP

REPLACEMENT CAPITAL COVENANT

REPLACEMENT CAPITAL COVENANT, dated as of June 17, 2008 (this “**Replacement Capital Covenant**”), by Prudential Financial, Inc., a corporation duly organized and existing under the laws of the State of New Jersey (together with its successors and assigns, the “**Corporation**”), in favor of and for the benefit of each Covered Debtholder (as defined below).

RECITALS

A. On the date hereof, the Corporation is issuing \$600,000,000 aggregate principal amount of its 8.875% Fixed-to-Floating Rate Junior Subordinated Notes due 2068 (together with any 8.875% Fixed-to-Floating Rate Junior Subordinated Notes due 2068 that the Corporation may issue after the date hereof, the “**Notes**”).

B. This Replacement Capital Covenant is the “**Replacement Capital Covenant**” referred to in the Corporation’s Prospectus Supplement, dated June 12, 2008, to the Corporation’s prospectus, dated March 16, 2006, included in the registration statement on Form S-3 (File Nos. 333-132469, 333-132469-01 and 333-132469-02), relating to the Notes.

C. The Corporation is entering into and disclosing the content of this Replacement Capital Covenant in the manner provided below with the intent that the covenants provided for in this Replacement Capital Covenant be enforceable by each Covered Debtholder and that the Corporation be estopped from disregarding the covenants in this Replacement Capital Covenant, in each case to the fullest extent permitted by applicable law.

D. The Corporation acknowledges that reliance by each Covered Debtholder upon the covenants in this Replacement Capital Covenant is reasonable and foreseeable by the Corporation and that, were the Corporation to disregard its covenants in this Replacement Capital Covenant, each Covered Debtholder would have sustained an injury as a result of its reliance on such covenants.

NOW, THEREFORE, the Corporation hereby covenants and agrees as follows in favor of and for the benefit of each Covered Debtholder.

SECTION 1. Definitions

Capitalized terms used in this Replacement Capital Covenant (including the Recitals) have the meanings set forth in **Schedule I** hereto.

SECTION 2. Limitations on Repayment, Redemption and Purchase of Notes

The Corporation hereby promises and covenants to and for the benefit of each Covered Debtholder that the Corporation shall not repay, redeem or purchase, nor shall

any Subsidiary of the Corporation purchase, any of the Notes prior to the Termination Date except to the extent that the principal amount repaid or the applicable redemption or purchase price does not exceed the sum of:

- (i) the Applicable Percentage of the aggregate amount of net cash proceeds received by the Corporation and its Subsidiaries from the sale of Common Stock, rights to acquire Common Stock, Mandatorily Convertible Preferred Stock, Debt Exchangeable for Common Equity and Qualifying Capital Securities, plus
- (ii) the Applicable Percentage of the market value of any Common Stock that the Corporation and its Subsidiaries have issued (determined as of the date of issuance) in connection with the conversion of any convertible or exchangeable securities, other than securities for which the Corporation or any of its Subsidiaries has received equity credit from any NRSRO,

in each case to Persons other than the Corporation and its Subsidiaries since the most recent Measurement Date (without double counting proceeds received in any prior Measurement Period). For purposes of this Replacement Capital Covenant, the terms “*repay*” and “*repayment*” include the defeasance by the Corporation of the Notes as well as the satisfaction and discharge of its obligations under the Indenture with respect to the Notes.

SECTION 3. Covered Debt

(a) The Corporation represents and warrants that the Initial Covered Debt is Eligible Debt.

(b) On or during the 30-day period immediately preceding any Redesignation Date with respect to the Covered Debt then in effect, the Corporation shall identify the series of Eligible Debt that will become the Covered Debt on and after such Redesignation Date in accordance with the following procedures:

- (i) the Corporation shall identify each series of its then-outstanding long-term indebtedness for money borrowed that is Eligible Debt;
- (ii) if only one series of the Corporation’s then outstanding long-term indebtedness for money borrowed is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;
- (iii) if the Corporation has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the related Redesignation Date;

(iv) the series of outstanding long-term indebtedness for money borrowed that is determined to be Covered Debt pursuant to clause (ii) or (iii) above shall be the Covered Debt for purposes of this Replacement Capital Covenant for the period commencing on the related Redesignation Date and continuing to but excluding the Redesignation Date as of which a new series of outstanding long-term indebtedness for money borrowed is next determined to be the Covered Debt pursuant to the procedures set forth in this Section 3(b); and

(v) in connection with such identification of a new series of Covered Debt, the Corporation shall, as provided for in Section 3(c), give a notice and file with the Commission a current report on Form 8-K (or any successor form) including or incorporating by reference this Replacement Capital Covenant as an exhibit within the time frame provided for in Section 3(c).

(c) *Notice.* In order to give effect to the intent of the Corporation described in Recital C, the Corporation covenants that:

(i) simultaneously with the execution of this Replacement Capital Covenant or as soon as practicable after the date hereof, it shall (x) give notice to the Holders of the Initial Covered Debt, in the manner provided in the indenture relating to the Initial Covered Debt, of this Replacement Capital Covenant and the rights granted to such Holders hereunder and (y) file a copy of this Replacement Capital Covenant with the Commission as an exhibit to a Form 8-K (or any successor form) under the Securities Exchange Act;

(ii) upon succession of any new entity as the Corporation hereunder as a result of a Business Combination of the Corporation as it existed prior thereto, notice of such occurrence shall be given within 30 days to the Holders in the manner provided for in the indenture or other instrument under which the Covered Debt then in effect was issued and the Corporation shall report such change in a current report on Form 8-K (or any successor form), which must include or incorporate by reference this Replacement Capital Covenant, and in the Corporation's next quarterly report on Form 10-Q (or any successor form) or annual report on Form 10-K (or any successor form), as applicable;

(iii) so long as the Corporation is a reporting company under the Securities Exchange Act, the Corporation shall include in each annual report filed with the Commission on Form 10-K (or any successor form) under the Securities Exchange Act a description of the covenant set forth in Section 2 and identify the series of long-term indebtedness for borrowed money that is Covered Debt as of the date such Form 10-K is filed with the Commission;

(iv) if a series of the Corporation's long-term indebtedness for money borrowed (1) becomes Covered Debt or (2) ceases to be Covered Debt the

Corporation shall give notice of such occurrence within 30 days to the holders of such long-term indebtedness for money borrowed in the manner provided for in the indenture, fiscal agency agreement or other instrument under which such long-term indebtedness for money borrowed was issued and report such change in a current report on Form 8-K (or any successor form) including or incorporating by reference this Replacement Capital Covenant, and in the Corporation's next quarterly report on Form 10-Q (or any successor form) or annual report on Form 10-K, as applicable;

(v) if, and only if, the Corporation ceases to be a reporting company under the Securities Exchange Act, the Corporation shall (x) post on its website (or any other similar electronic platform generally available to the public) the information otherwise required to be included in Securities Exchange Act filings pursuant to clauses (ii) and (iii) of this Section 3(c) and (y) cause a notice of the execution of this Replacement Capital Covenant to be posted on the Bloomberg screen for the Covered Debt or any successor Bloomberg screen and each similar third-party vendor's screen the Corporation reasonably believes is appropriate (each an "**Investor Screen**") and cause a hyperlink to a definitive copy of this Replacement Capital Covenant to be included on the Investor Screen for each series of Covered Debt, in each case to the extent permitted by Bloomberg or such similar third-party vendor, as the case may be; and

(vi) promptly upon request by any Holder of Covered Debt, the Corporation shall provide such Holder with a copy of this Replacement Capital Covenant as executed.

(d) The Corporation agrees that, if at any time the Covered Debt is held by a trust (for example, where the Covered Debt is part of an issuance of trust preferred securities), a holder of the securities issued by such trust may enforce (including by instituting legal proceedings) this Replacement Capital Covenant directly against the Corporation as though such holder owned Covered Debt directly, and such holder shall be deemed to be a holder of Covered Debt for purposes of this Replacement Capital Covenant for so long as the indebtedness held by such trust remains Covered Debt hereunder.

SECTION 4. Termination, Amendment and Waiver

(a) The obligations of the Corporation pursuant to this Replacement Capital Covenant shall remain in full force and effect until the earliest date (the "**Termination Date**") to occur of (i) the date, if any, on which the Holders of a majority in principal amount of the then-effective series of Covered Debt consent or agree in writing to the termination of this Replacement Capital Covenant and the obligations of the Corporation hereunder, (ii) the date on which the Corporation ceases to have any series of outstanding Eligible Senior Debt or Eligible Subordinated Debt (in each case without giving effect to

the rating requirement in clause (b) of the definition of each such term), (iii) June 15, 2048 or, if earlier, the date on which the Notes are otherwise repaid, redeemed or purchased in full in accordance with this Replacement Capital Covenant, and (iv) the date on which the Notes become accelerated due to the occurrence of an event of default. From and after the Termination Date, the obligations of the Corporation pursuant to this Replacement Capital Covenant shall be of no further force and effect.

(b) This Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed by the Corporation with the consent of the Holders of a majority in principal amount of the then-effective series of Covered Debt, provided that this Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed only by the Corporation (and without the consent of any Covered Debtholder) if (i) such amendment or supplement eliminates Common Stock, Debt Exchangeable for Common Equity, rights to acquire Common Stock and/or Mandatorily Convertible Preferred Stock as a Replacement Capital Security and, in the case of this clause (i), an accounting standard or interpretive guidance of an existing accounting standard issued by an organization or regulator that has responsibility for establishing or interpreting accounting standards used by the Corporation in its principal public financial reports becomes effective or applicable to the Corporation such that there is more than an insubstantial risk that the failure to do so would result in a reduction in the Corporation's earnings per share as calculated for financial reporting purposes, (ii) the effect of such amendment or supplement is solely to impose additional restrictions on the types of securities qualifying as Replacement Capital Securities, or eliminate any of those securities other than the securities described in clause (i), and one of the Corporation's officers has delivered to the Holders of the Covered Debt in the manner provided for in the junior subordinated indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate to that effect, or (iii) such amendment or supplement is not adverse to the Covered Debtholders and one of the Corporation's officers has delivered to the Covered Debtholders in the manner provided for in the junior subordinated indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate stating that, in his or her determination, such amendment or supplement is not adverse to such Covered Debtholders. For this purpose, an amendment or supplement that adds new types of securities qualifying as Replacement Capital Securities or modifies the requirements of securities qualifying as Replacement Capital Securities will not be deemed adverse to the Covered Debtholders if, following such amendment or supplement, this Replacement Capital Covenant would constitute a Qualifying Replacement Capital Covenant.

(c) For purposes of Sections 4(a) and 4(b), the Holders whose consent or agreement is required to terminate, amend or supplement the obligations of the Corporation under this Replacement Capital Covenant shall be the Holders of the then-effective Covered Debt as of a record date established by the Corporation that is not more than 30 days prior to the date on which the Corporation proposes that such termination, amendment or supplement becomes effective.

SECTION 5. Miscellaneous

(a) **This Replacement Capital Covenant shall be governed by and construed in accordance with the laws of the State of New York.**

(b) This Replacement Capital Covenant shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of the Covered Debtholders as they exist from time-to-time (it being understood and agreed by the Corporation that any Person who is a Covered Debtholder shall retain its status as a Covered Debtholder for so long as the series of long-term indebtedness for borrowed money owned by such Person is Covered Debt and if such Person initiates an action, claim or proceeding to enforce its rights under this Replacement Capital Covenant after the Corporation has violated its covenants in Section 2 and before the series of long-term indebtedness for money borrowed held by such Person is no longer Covered Debt, such Person's rights under this Replacement Capital Covenant shall not terminate by reason of such series of long-term indebtedness for money borrowed no longer being Covered Debt).

(c) All demands, notices, requests and other communications to the Corporation under this Replacement Capital Covenant shall be deemed to have been duly given and made if in writing and (i) if served by personal delivery upon the Corporation, on the day so delivered (or, if such day is not a Business Day, the next succeeding Business Day), or (ii) if delivered by registered post or certified mail, return receipt requested, or sent to the Corporation by a national or international courier service, on the date of receipt by the Corporation (or, if such date of receipt is not a Business Day, the next succeeding Business Day), and in each case to the Corporation at the address set forth below, or at such other address as the Corporation may thereafter notify to Covered Debtholders or post on its website as the address for notices under this Replacement Capital Covenant:

Prudential Financial, Inc.
751 Broad Street
Newark, New Jersey 07102
Attention: Treasurer

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IN WITNESS WHEREOF the Corporation has caused this Replacement Capital Covenant to be executed by its duly authorized officer, as of the day and year first above written.

PRUDENTIAL FINANCIAL, INC.

By: /s/ Jonathan P. Hunt
Name: Jonathan P. Hunt
Title: Vice President and Assistant Treasurer

SCHEDULE I

DEFINITIONS

“**Alternative Payment Mechanism**” means, with respect to any Qualifying Capital Securities, provisions in the related transaction documents permitting the Corporation, in its sole discretion, to defer or skip in whole or in part payment of Distributions on such Qualifying Capital Securities for one or more consecutive Distribution Periods not to exceed ten years without any remedy other than Permitted Remedies and requiring the Corporation to issue (or use Commercially Reasonable Efforts to issue) one or more types of APM Qualifying Securities raising eligible proceeds at least equal to the deferred Distributions on such Qualifying Capital Securities and apply the proceeds to pay unpaid Distributions on such Qualifying Capital Securities, commencing on the earlier of (x) the first Distribution Date after commencement of a deferral period on which the Corporation pays current Distributions on such Qualifying Capital Securities and (y) the fifth anniversary of the commencement of such deferral period, and that:

(i) define “**eligible proceeds**” to mean, for purposes of such Alternative Payment Mechanism, the net proceeds (after underwriters’ or placement agents’ fees, commissions or discounts and other expenses relating to the issuance or sale of the relevant securities, where applicable) that the Corporation has received during the 180 days prior to the related Distribution Date from the issuance of APM Qualifying Securities, up to the Preferred Cap in the case of APM Qualifying Securities that are Qualifying Preferred Stock or Mandatorily Convertible Preferred Stock;

(ii) permit the Corporation to pay current Distributions on any Distribution Date out of any source of funds but (x) require the Corporation to pay deferred Distributions only out of eligible proceeds and (y) prohibit the Corporation from paying deferred Distributions out of any source of funds other than eligible proceeds, unless an event of default has occurred that results in an acceleration of such Qualifying Capital Securities;

(iii) may include a provision that, notwithstanding the Common Cap and the Preferred Cap, for purposes of paying deferred Distributions, limits the Corporation’s right or obligation to sell Common Stock, Qualifying Warrants and Mandatorily Convertible Preferred Stock in excess of a specified amount (the “**Share Cap**”), *provided* that (A) the Corporation shall agree to increase, or to use Commercially Reasonable Efforts to increase, the Share Cap not later than the time it has been reached to allow the Corporation to raise sufficient proceeds to pay deferred Distributions in full (or, at the option of the Corporation, a greater amount of deferred Distributions as specified in the transaction documents); (B) the Corporation shall only be required to increase, or to use Commercially Reasonable Efforts to increase, the Share Cap to the extent that such increase does not result in a Share Cap that is greater than (i) the number of authorized and unissued shares of Common Stock at the time of such increase minus (ii) the Fixed Commitments; and (C) if the increase in the Share Cap is limited due to clause (B) or, if

so provided, if the number of authorized and unissued shares of Common Stock reduced by the Fixed Commitments is less than the Share Cap, the Corporation shall use Commercially Reasonable Efforts to obtain shareholder consent at the next annual meeting of its shareholders to increase the number of shares of its authorized Common Stock so that clause (B) does not limit the Share Cap and the number of authorized and unissued shares of Common Stock reduced by the Fixed Commitments is at least equal to the increased Share Cap;

(iv) include a Repurchase Restriction;

(v) in the case of Qualifying Capital Securities other than non-cumulative preferred stock, include a Bankruptcy Claim Limitation Provision;

(vi) permit the Corporation, at its option, to provide that if it is involved in a Business Combination where immediately after the consummation of the Business Combination more than 50% of the surviving or resulting entity's voting stock is owned by the shareholders of the other party to the Business Combination, then the surviving or resulting entity may settle all deferred interest on the next Distribution Date following the date of consummation of the Business Combination with any available funds;

(vii) limit the obligation of the Corporation to issue (or use Commercially Reasonable Efforts to issue) APM Qualifying Securities that are Common Stock and Qualifying Warrants to settle deferred Distributions pursuant to the Alternative Payment Mechanism either (A) during the first five years of any deferral period or (B) before an anniversary of the commencement of any deferral period that is not earlier than the fifth such anniversary and not later than the ninth such anniversary (as designated in the terms of such Qualifying Capital Securities) with respect to deferred Distributions attributable to the first five years of such deferral period, either:

(X) to an aggregate amount of such securities, the net proceeds from the issuance of which is equal to 2% of the product of the average of the Current Market Price of the Common Stock on the ten consecutive trading days ending on the fourth trading day immediately preceding the date of issuance multiplied by the total number of issued and outstanding shares of Common Stock as of the date of the Corporation's most recent publicly available consolidated financial statements; or

(Y) to a number of shares of Common Stock and shares purchasable upon the exercise of Qualifying Warrants, in the aggregate, not in excess of 2% of the outstanding number of shares of Common Stock (such limitation set forth in (X) or (Y), the "**Common Cap**"); and

(viii) limit the right of the Corporation to issue APM Qualifying Securities that are Qualifying Preferred Stock and Mandatorily Convertible Preferred Stock to settle deferred Distributions pursuant to the Alternative Payment Mechanism to an aggregate

amount of Qualifying Preferred Stock and still-outstanding Mandatorily Convertible Preferred Stock, the net proceeds from the issuance of which with respect to all deferral periods is equal to 25% of the liquidation or principal amount of such Qualifying Capital Securities (the “**Preferred Cap**”);

provided (and it being understood) that:

(A) the Corporation shall not be obligated to issue (or use Commercially Reasonable Efforts to issue) APM Qualifying Securities for so long as a Market Disruption Event has occurred and is continuing;

(B) if, due to a Market Disruption Event or otherwise, the Corporation is able to raise and apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the Corporation will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Common Cap, Preferred Cap and Share Cap, as applicable; and

(C) if the Corporation has outstanding more than one class or series of securities under which it is obligated to sell a type of APM Qualifying Securities and apply some part of the proceeds to the payment of deferred Distributions, then on any date and for any period the amount of net proceeds received by the Corporation from those sales and available for payment of deferred Distributions on such securities shall be applied to such securities on a *pro rata* basis up to the Common Cap, the Preferred Cap and the Share Cap, as applicable, in proportion to the total amounts that are due on such securities.

“**APM Qualifying Securities**” means, with respect to an Alternative Payment Mechanism, or any Mandatory Trigger Provision, one or more of the following (as designated in the transaction documents for any Qualifying Capital Securities that include an Alternative Payment Mechanism or a Mandatory Trigger Provision, as applicable):

(i) Common Stock;

(ii) Qualifying Warrants;

(iii) Qualifying Preferred Stock; or

(iv) Mandatorily Convertible Preferred Stock;

provided (and it being understood) that:

(i) if the APM Qualifying Securities for any Alternative Payment Mechanism or Mandatory Trigger Provision include both Common Stock and Qualifying Warrants, (a) such Alternative Payment Mechanism or Mandatory Trigger Provision may permit,

but need not require, the Corporation to issue Qualifying Warrants, and (b) the Corporation may, without the consent of the holders of the Qualifying Capital Securities, amend the definition of “APM Qualifying Securities” to eliminate Common Stock or Qualifying Warrants (but not both) from the definition if, after the issue date, an accounting standard or interpretive guidance of an existing accounting standard issued by an organization or regulator that has responsibility for establishing or interpreting accounting standards followed by the issuer becomes effective or applicable to the Corporation such that there is more than an insubstantial risk that failure to eliminate common stock or qualifying warrants from the definition would result in a reduction in the Corporation’s earnings per share as calculated in accordance with generally accepted accounting principles; and

(ii) if the APM Qualifying Securities for any Alternative Payment Mechanism or Mandatory Trigger Provision include Mandatorily Convertible Preferred Stock, (a) such Alternative Payment Mechanism or Mandatory Trigger Provision may permit, but need not require, the Corporation to issue Mandatorily Convertible Preferred Stock, and (b) the Corporation may, without the consent of the holders of the Qualifying Capital Securities, amend the definition of “APM Qualifying Securities” to eliminate Mandatorily Convertible Preferred Stock from the definition if, after the issue date, an accounting standard or interpretive guidance of an existing accounting standard issued by an organization or regulator that has responsibility for establishing or interpreting accounting standards followed by the issuer becomes effective or applicable to the Corporation such that there is more than an insubstantial risk that failure to eliminate Mandatorily Convertible Preferred Stock from the definition would result in a reduction in the Corporation’s earnings per share as calculated in accordance with generally accepted accounting principles.

“Applicable Percentage” means:

(i) in the case of any Common Stock or rights to acquire Common Stock, (a) 133% with respect to any repayment, redemption or purchase prior to June 15, 2018, (b) 200% with respect to any repayment, redemption or purchase on or after June 15, 2018 and prior to June 15, 2038 and (c) 400% with respect to any repayment, redemption or purchase on or after June 15, 2038;

(ii) in the case of any Mandatorily Convertible Preferred Stock, Debt Exchangeable for Common Equity or any Qualifying Capital Securities described in clause (i) of the definition of such term, (a) 100% with respect to any repayment, redemption or purchase prior to June 15, 2038, and (b) 300% with respect to any repayment, redemption or purchase on or after June 15, 2038;

(iii) in the case of any Qualifying Capital Securities described in clause (ii) of the definition of such term, (a) 100% with respect to any repayment, redemption or purchase prior to June 15, 2038 and (b) 200% with respect to any repayment, redemption or purchase on or after June 15, 2038; and

(iv) in the case of any Qualifying Capital Securities described in clause (iii) of the definition of such term, 100%.

“Bankruptcy Claim Limitation Provision” means, with respect to any Qualifying Capital Securities that have an Alternative Payment Mechanism or a Mandatory Trigger Provision, provisions that, upon any liquidation, dissolution, winding up or reorganization or in connection with any insolvency, receivership or proceeding under any bankruptcy law with respect to the issuer, limit the claim of the holders of such Qualifying Capital Securities to Distributions that accumulate during (A) any deferral period, in the case of Qualifying Capital Securities that have an Alternative Payment Mechanism but no Mandatory Trigger Provision or (B) any period in which the issuer fails to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in the case of Qualifying Capital Securities having a Mandatory Trigger Provision, to:

(i) in the case of Qualifying Capital Securities that have an Alternative Payment Mechanism or Mandatory Trigger Provision with respect to which the APM Qualifying Securities do not include Qualifying Preferred Stock or Mandatorily Convertible Preferred Stock, 25% of the stated or principal amount of such Qualifying Capital Securities then outstanding; and

(ii) in the case of any other Qualifying Capital Securities, an amount not in excess of the sum of (x) the first two years of accumulated and unpaid Distributions and (y) an amount equal to the excess, if any, of the Preferred Cap over the aggregate amount of net proceeds from the sale of Qualifying Preferred Stock and Mandatorily Convertible Preferred Stock that is still outstanding that the issuer has applied to pay such Distributions pursuant to the Alternative Payment Mechanism or the Mandatory Trigger Provision; *provided* that the holders of such Qualifying Capital Securities are deemed to agree that, to the extent the claim for deferred interest exceeds the amount set forth in clause (x), the amount they receive in respect of such excess shall not exceed the amount they would have received had the claim for such excess ranked *pari passu* with the interests of the holders, if any, of Qualifying Preferred Stock.

In the case of any cumulative preferred stock that includes a Bankruptcy Claim Limitation Provision, such provision shall limit the liquidation preference of such cumulative preferred stock to its stated amount, plus an amount in respect of accumulated and unpaid dividends not in excess of the amount set forth in either clause (i) or (ii) above, as applicable.

“Business Combination” means a merger, consolidation, amalgamation, binding share exchange or conveyance, transfer or lease of assets substantially as an entirety to any other Person or a similar transaction.

“Business Day” means any day other than (a) a Saturday or Sunday, (b) a day on which banking institutions in The City of New York are authorized or required by law or

executive order to remain closed, (c) a day on which the corporate trust office of The Bank of New York, as Trustee, is closed for business or (d) on or after June 15, 2018, a day that is not a London banking day.

“Commercially Reasonable Efforts” means, for purposes of selling APM Qualifying Securities, commercially reasonable efforts to complete the offer and sale of APM Qualifying Securities to third parties that are not Subsidiaries of the Corporation in public offerings or private placements. The Corporation shall not be considered to have made Commercially Reasonable Efforts to effect a sale of APM Qualifying Securities if it determines not to pursue or complete such sale due to pricing, coupon, dividend rate or dilution considerations.

“Commission” means the United States Securities and Exchange Commission.

“Common Cap” has the meaning specified in clause (vii) of the definition of Alternative Payment Mechanism.

“Common Stock” means (i) shares of the Corporation’s common stock, including common stock issued pursuant to any dividend reinvestment plan or employee benefit plan of the Corporation, (ii) a security of the Corporation, ranking upon the Corporation’s liquidation, dissolution or winding up junior to its Qualifying Preferred Stock and *pari passu* with its Common Stock, that tracks the performance of, or relates to the results of, a business, unit or division of the Corporation, and (iii) any securities that have no preference in the payment of dividends or amounts payable upon liquidation, dissolution or winding-up and are issued in exchange for the securities described in clause (i) or (ii) above in connection with a Business Combination.

“Corporation” has the meaning specified in the introduction to this instrument.

“Covered Debt” means (a) at the date of this Replacement Capital Covenant and continuing to but excluding the first Redesignation Date, the Initial Covered Debt and (b) thereafter, commencing with each Redesignation Date and continuing to but excluding the next succeeding Redesignation Date, the Eligible Debt identified pursuant to Section 3(b) as the Covered Debt for such period.

“Covered Debtholder” means each Person to the extent that such Person holds (whether as a Holder or a beneficial owner holding through a participant in a clearing agency) long-term indebtedness for money borrowed of the Corporation during the period that such long-term indebtedness for money borrowed is Covered Debt.

“Current Market Price” means, with respect to the Common Stock on any date, (i) the closing sale price per share of Common Stock (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions by the New York Stock Exchange or, (ii) if the Common Stock is

not then listed on the New York Stock Exchange, as reported by the principal U.S. securities exchange on which the shares of Common Stock is traded or quoted on the relevant date or, (iii) if the Common Stock is not so traded or quoted, the average of the mid-point of the last bid and ask prices for the shares of Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Corporation for this purpose.

“Debt Exchangeable for Common Equity” means a security or combination of securities (together in this definition, **“such securities”**) that:

(i) gives the holder a beneficial interest in (a) subordinated debt securities of the Corporation that are not redeemable prior to the settlement date of a related stock purchase contract and (b) a fractional interest in the related stock purchase contract for a share of Common Stock that will be settled in three years or less, subject to deferral by up to four quarterly periods in the event any remarketing (as described below) is unsuccessful, with the number of shares of Common Stock purchasable pursuant to such stock purchase contract to be within a range established at the time of issuance of such subordinated debt securities, subject to customary anti-dilution provisions;

(ii) provides that the holders directly or indirectly grant the Corporation a security interest in such subordinated debt securities and their proceeds (including any substitute collateral permitted under the transaction documents) to secure the holders’ direct or indirect obligation to purchase Common Stock pursuant to such stock purchase contracts;

(iii) includes a remarketing feature pursuant to which such subordinated debt securities are remarketed to new investors commencing not later than the last Distribution Date that is at least one month prior to the settlement date of the stock purchase contract; and

(iv) provides for the proceeds raised in the remarketing to be used to purchase Common Stock under the stock purchase contracts and, if there has not been a successful remarketing by the settlement date of the stock purchase contract, provides that the stock purchase contracts will be settled by the holders being deemed to exercise a right to put the subordinated debt securities to the Corporation, or by the Corporation exercising its remedies as a secured party with respect to the subordinated debt securities or other collateral directly or indirectly pledged by holders in the Debt Exchangeable for Common Equity.

“Distribution Date” means, as to any Qualifying Capital Securities or Debt Exchangeable for Common Equity, the dates on which Distributions on such securities are scheduled to be made.

“Distribution Period” means, as to any Qualifying Capital Securities or Debt Exchangeable for Common Equity, each period from and including a Distribution Date for such securities to but excluding the next succeeding Distribution Date for such securities.

“Distribution Rate Step-Up” means, as to any Qualifying Capital Securities or Debt Exchangeable for Common Equity, that the rate at which Distributions accrue or are paid on such securities increases over time (including by an increase in the fixed rate of Distributions in the case of securities that accrue and pay Distributions at a fixed rate or by an increase in the margin above the applicable index in the case of securities that accrue and pay Distributions based upon a margin above an index, but not including an increase in the rate of Distributions merely because the index used in calculating such rate increases).

“Distributions” means, as to any Qualifying Capital Securities or Debt Exchangeable for Common Equity, dividends, interest or other income distributions to the holders thereof that are not Subsidiaries of the Corporation.

“Eligible Debt” means, at any time, Eligible Subordinated Debt or, if no Eligible Subordinated Debt is then outstanding, Eligible Senior Debt.

“Eligible Senior Debt” means, at any time in respect of any issuer, each series of outstanding unsecured long-term indebtedness for money borrowed of such issuer that (a) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks most senior among the issuer’s then outstanding classes of unsecured indebtedness for money borrowed, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding senior long-term indebtedness for money borrowed that satisfies the requirements of clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than \$100,000,000, and (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer’s long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

“Eligible Subordinated Debt” means, at any time in respect of any issuer, each series of the issuer’s then-outstanding unsecured long-term indebtedness for money borrowed that (a) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks subordinate to the issuer’s then outstanding series of unsecured indebtedness for money borrowed that ranks most senior and ranks senior to the Notes, (b) is then assigned a rating by at least one NRSRO (provided that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding subordinated long-term indebtedness for money borrowed that satisfies the requirements in clauses (a),

(c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than \$100,000,000, and (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

"First Supplemental Indenture" means the First Supplemental Indenture, dated as of June 17, 2008, between the Corporation and The Bank of New York, as Trustee, to the Indenture.

"Fixed Commitments" means the maximum number of shares of Common Stock that can be issued under existing options, warrants, convertible securities, equity-linked contracts and other agreements of any type that require the Corporation to issue a determinable number of shares of Common Stock.

"Holder" means, as to the Covered Debt then in effect, each holder of such Covered Debt as reflected on the securities register maintained by or on behalf of the Corporation with respect to such Covered Debt.

"Indenture" means the Subordinated Debt Indenture, dated as of June 17, 2008, between the Corporation and The Bank of New York, as Trustee, as amended and supplemented by the First Supplemental Indenture.

"Initial Covered Debt" means the Corporation's 6.625% Senior Notes due 2037, which have CUSIP No. 74432QBD6.

"Intent-Based Replacement Disclosure" means, as to any Qualifying Preferred Stock or Qualifying Capital Securities, that the issuer has publicly stated its intention, either in the prospectus or other offering document under which such securities were initially offered for sale or in filings with the Commission made by the issuer under the Securities Exchange Act prior to or contemporaneously with the issuance of such securities, that the issuer and its subsidiaries, to the extent such securities provide the issuer with equity credit for rating purposes, will repay, redeem or purchase such securities only with the proceeds of replacement capital securities that have terms and provisions at the time of repayment, redemption or purchase that are as or more equity-like than the securities then being repaid, redeemed or purchased, raised within 180 days prior to the applicable repayment, redemption or purchase date.

"Mandatorily Convertible Preferred Stock" means cumulative preferred stock with (a) no prepayment obligation on the part of the issuer thereof, whether at the election

of the holders or otherwise, and (b) a requirement that such preferred stock convert into common stock of the issuer within three years from the date of its issuance at a conversion ratio within a range established at the time of issuance of such preferred stock, subject to customary anti-dilution provisions.

“**Mandatory Trigger Provision**” means, as to any Qualifying Capital Securities, provisions in the terms thereof or of the related transaction agreements that:

(i) upon a failure to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, prohibit the issuer of such securities from making payment of Distributions on such securities (including without limitation all deferred and accumulated amounts) other than out of the net proceeds of the issuance and sale of APM Qualifying Securities; *provided* that the amount of Qualifying Preferred Stock and Mandatorily Convertible Preferred Stock the net proceeds of which the issuer may apply to pay such Distributions pursuant to such provision may not exceed the Preferred Cap;

(ii) in the case of securities other than non-cumulative perpetual preferred stock, require the issuance and sale of APM Qualifying Securities in an amount at least equal to the unpaid Distributions on such securities (including without limitation all deferred and accumulated amounts) and the application of such net proceeds to the payment of such Distributions within two years of such failure; *provided* that if the Mandatory Trigger Provision does not require such issuance and sale within one year of such failure, the amount of Common Stock or Qualifying Warrants the net proceeds of which the issuer must apply to pay such Distributions pursuant to such provision may not exceed the Common Cap;

(iii) if the provisions described in clause (i) above do not require such issuance and sale within one year of such failure, include a Repurchase Restriction;

(iv) prohibit the issuer of such securities from redeeming or purchasing any of its securities ranking upon the Corporation’s liquidation, dissolution or winding up junior to or *pari passu* with any APM Qualifying Securities the proceeds of which were used to settle deferred interest during the relevant Deferral Period prior to the date six months after the issuer applies the net proceeds of the sales described in clause (i) to pay such deferred Distributions in full (other than purchases, redemptions or other acquisitions described in clauses (i) through (iii) of the definition of Repurchase Restriction); and

(v) include a Bankruptcy Claim Limitation Provision;

provided (and it being understood) that:

(A) the issuer will not be obligated to issue (or use Commercially Reasonable Efforts to issue) APM Qualifying Securities for so long as a Market Disruption Event has occurred and is continuing;

(B) if, due to a Market Disruption Event or otherwise, the issuer is able to raise and apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the issuer will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Common Cap, Preferred Cap and Share Cap, as applicable; and

(C) if the issuer has outstanding more than one class or series of securities under which it is obligated to sell a type of APM Qualifying Securities and applies some part of the proceeds to the payment of deferred Distributions, then on any date and for any period the amount of net proceeds received by the issuer from those sales and available for payment of deferred Distributions on such securities shall be applied to such securities on a pro rata basis up to the Common Cap and the Preferred Cap, as applicable, in proportion to the total amounts that are due on such securities.

No remedy other than Permitted Remedies will arise by the terms of such securities or related transaction agreements in favor of the holders of such Qualifying Capital Securities as a result of the issuer's failure to pay Distributions because of the Mandatory Trigger Provision until Distributions have been deferred for one or more Distribution Periods that total together at least ten years.

"Market Disruption Event" means the occurrence or existence of any of the following events or sets of circumstances:

(i) the Corporation would be required to obtain the consent or approval of the Corporation's shareholders or a regulatory body (including, without limitation, any securities exchange) or governmental authority to issue or sell APM Qualifying Securities pursuant to the Alternative Payment Mechanism and that consent or approval has not yet been obtained notwithstanding the Corporation's Commercially Reasonable Efforts to obtain that consent or approval;

(ii) trading in securities generally, or shares of the Common Stock specifically, on the New York Stock Exchange or any other national securities exchange, or in the over-the-counter market on which the Common Stock is then listed or traded, shall have been suspended or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or market by the Commission, the relevant exchange or by any other regulatory body or governmental agency having jurisdiction and the establishment of such minimum prices shall have materially disrupted trading in, and the issuance and sale of, the Common Stock;

(iii) a banking moratorium shall have been declared by the federal or state authorities of the United States such that the issuance of, or market trading in, the APM Qualifying Securities has been materially disrupted or ceased;

(iv) a material disruption shall have occurred in commercial banking or securities settlement or clearance services in the United States such that the issuance of, or market trading in, the APM Qualifying Securities has been materially disrupted or ceased;

(v) the United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States, there shall have been a declaration of a national emergency or war by the United States or there shall have occurred any other national or international calamity or crisis, such that the issuance of, or market trading in the APM Qualifying Securities has been materially disrupted or ceased;

(vi) there shall have occurred such a material adverse change in general domestic or international economic, political or financial conditions (including, without limitation, as a result of terrorist activities or the effect of international conditions on the financial markets in the United States) such that trading in the APM Qualifying Securities has been materially disrupted or ceased;

(vii) an event occurs and is continuing as a result of which the offering document for the offer and sale of APM Qualifying Securities would, in the reasonable judgment of the Corporation, contain an untrue statement of a material fact or omit to state a material fact required to be stated in that offering document or necessary to make the statements in that offering document not misleading and either (a) the disclosure of that event at such time, in the reasonable judgment of the Corporation, is not otherwise required by law and would have a material adverse effect on the Corporation or (b) the disclosure relates to a previously undisclosed proposed or pending material business transaction and the Corporation has a *bona fide* reason for keeping the same confidential or its disclosure would impede the Corporation's ability to consummate the transaction, *provided* that no single suspension period described in this clause (vii) shall exceed 90 consecutive days and multiple suspension periods described in this clause (vii) shall not exceed an aggregate of 180 days in any 360-day period; or

(viii) the Corporation reasonably believes that the offering document for the offer and the sale of APM Qualifying Securities would not be in compliance with a rule or regulation of the Commission (for reasons other than those described in clause (vii) above) and the Corporation determines that it is unable to comply with such rule or regulation or such compliance is impracticable, *provided* that no single suspension period described in this clause (viii) shall exceed 90 consecutive days and multiple suspension periods described in this clause (viii) shall not exceed an aggregate of 180 days in any 360-day period.

The definition of "**Market Disruption Event**" as used in any Qualifying Capital Securities may include less than all of the paragraphs outlined above, as determined by the Corporation at the time of issuance of such securities, and in the case of clauses (i), (ii) and (iii) above, as applicable to a circumstance where the Corporation would

otherwise endeavor to issue preferred shares, shall be limited to circumstances affecting markets where the Corporation's preferred shares traded or where a listing for their trading is being sought.

"Measurement Date" means (a) with respect to any repayment, redemption or purchase of the Notes on or prior to June 15, 2038, or, if such day is not a Business Day, on the next Business Day, the date that is 180 days prior to delivery of notice of such repayment or redemption or the date of such purchase; and (b) with respect to any repayment, redemption or purchase of the Notes after June 15, 2038, the date that is 90 days prior to delivery of notice of such repayment or redemption or the date of such purchase, except that, if during the 90-day (or any shorter) period preceding the date that is 90 days prior to delivery of notice of such repayment or redemption or the date of such purchase, the Corporation or its Subsidiaries issued Replacement Capital Securities to Persons other than the Corporation and its Subsidiaries but no repayment, redemption or purchase was made pursuant to Section 2 in connection therewith, the date upon which such 90-day (or any shorter) period began.

"Measurement Period" means, with respect to any date on which notice of repayment or redemption is delivered with respect to the Notes or on which the Corporation purchases, or any Subsidiary of the Corporation purchases, any Notes, the period beginning on the Measurement Date with respect to such notice or purchase date and ending on such notice or purchase date, as the case may be. Measurement Periods cannot run concurrently.

"No Payment Provision" means a provision or provisions in the transaction documents for securities (referred to in this definition as "**such securities**") that include the following:

(i) an Alternative Payment Mechanism; and

(ii) an Optional Deferral Provision modified and supplemented from the general definition of that term to provide that the issuer of such securities may, in its sole discretion, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to five years or, if a Market Disruption Event has occurred and is continuing, ten years, without any remedy other than Permitted Remedies and the obligations (and limitations on obligations) described in the definition of Alternative Payment Mechanism applying.

"Non-Cumulative" means, with respect to any Qualifying Capital Securities, that the issuer may elect not to make any number of periodic Distributions without any remedy arising under the terms of the securities or related agreements in favor of the holders, other than one or more Permitted Remedies.

"Notes" has the meaning specified in Recital A.

“**NRSRO**” means a nationally recognized statistical rating organization within the meaning of Section 3(a)(62) of the Securities Exchange Act.

“**Optional Deferral Provision**” means, as to any Qualifying Capital Securities, a provision in the terms thereof or of the related transaction agreements to the effect that:

(a) (i) the issuer of such Qualifying Capital Securities may, in its sole discretion, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to five years or, if a Market Disruption Event is continuing, ten years, without any remedy other than Permitted Remedies and (ii) such Qualifying Capital Securities are subject to an Alternative Payment Mechanism (provided that such Alternative Payment Mechanism need not apply during the first five years of any deferral period and need not include a Common Cap, Preferred Cap, Share Cap, Bankruptcy Claim Limitation Provision or Repurchase Restriction); or

(b) the issuer of such Qualifying Capital Securities may, in its sole discretion, defer or skip in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to ten years without any remedy other than Permitted Remedies.

“**Permitted Remedies**” means, with respect to any securities, one or more of the following remedies:

(a) rights in favor of the holders of such securities permitting such holders to elect one or more directors of the issuer (including any such rights required by the listing requirements of any stock or securities exchange on which such securities may be listed or traded); and

(b) complete or partial prohibitions preventing the issuer from paying Distributions on or repurchasing shares of common stock or other securities that rank *pari passu* with or junior as to Distributions to such securities for so long as distributions on such securities, including unpaid distributions, remain unpaid.

“**Person**” means any individual, corporation, partnership, joint venture, trust, limited liability company or corporation, unincorporated organization or government or any agency or political subdivision thereof.

“**Preferred Cap**” has the meaning specified in clause (viii) of the definition of Alternative Payment Mechanism.

“**Qualifying Capital Securities**” means securities or combinations of securities (other than Common Stock, Qualifying Warrants, securities convertible into or exchangeable for Common Stock (such as Mandatorily Convertible Preferred Stock and Debt Exchangeable for Common Equity)) that, in the determination of the Corporation’s Board of Directors reasonably construing the definitions and other terms of this Replacement Capital Covenant, meet one of the following criteria:

(i) in connection with any repayment, redemption or purchase of Notes prior to June 15, 2018:

(A) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon the liquidation, dissolution or winding up of the Corporation, (2) have no maturity or a maturity of at least 60 years and (3) either:

(x) (I) are subject to a Qualifying Replacement Capital Covenant and (II) have either a No Payment Provision or are Non-Cumulative, or

(y) (I) have a Mandatory Trigger Provision and are subject to Intent-Based Replacement Disclosure and have an Optional Deferral Provision;

(B) preferred stock issued by the Corporation or its Subsidiaries that (1) is non-cumulative, (2) has no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, (3) has no maturity or a maturity of at least 60 years and (4) either:

(x) is subject to a Qualifying Replacement Capital Covenant, or

(y) has a Mandatory Trigger Provision and is subject to Intent-Based Replacement Disclosure; or

(C) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* or junior to the Notes upon the liquidation, dissolution or winding-up of the Corporation, (2) have no maturity or a maturity of at least 40 years, (3) are subject to a Qualifying Replacement Capital Covenant and (4) have an Optional Deferral Provision and a Mandatory Trigger Provision; or

(ii) in connection with any repayment, redemption or purchase of Notes at any time on or after June 15, 2018 but prior to June 15, 2038:

(A) securities described under clause (i) of this definition that would be Qualifying Capital Securities prior to June 15, 2018;

(B) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Corporation, (2) have no maturity or a maturity of at least 60 years,

(3) are subject to a Qualifying Replacement Capital Covenant and (4) have an Optional Deferral Provision;

(C) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Corporation, (2) have no maturity or a maturity of at least 60 years, (3) are Non-Cumulative or have a No Payment Provision and (4) are subject to Intent-Based Replacement Disclosure;

(D) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Corporation, (2) have no maturity or a maturity of at least 40 years, (3) are Non-Cumulative or have a No Payment Provision and (d) are subject to a Qualifying Replacement Capital Covenant;

(E) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Corporation, (2) have no maturity or a maturity of at least 40 years, (3) have an Optional Deferral Provision and a Mandatory Trigger Provision and (4) are subject to Intent-Based Replacement Disclosure;

(F) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Corporation, (2) have no maturity or a maturity of at least 25 years, (3) are subject to a Qualifying Replacement Capital Covenant and (4) have an Optional Deferral Provision and a Mandatory Trigger Provision;

(G) cumulative preferred stock issued by the Corporation or its Subsidiaries that (1) has no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise, (2) has no maturity or a maturity of at least 60 years and (3) is subject to a Qualifying Replacement Capital Covenant; or

(H) securities issued by the Corporation or its Subsidiaries that rank (i) senior to the Notes and securities that are *pari passu* with the Notes but (ii) junior to all other debt securities of the Corporation (other than (x) the Notes and securities that are *pari passu* with the Notes and (y) securities that are *pari passu* with such Qualifying Capital Securities) upon its liquidation, dissolution or winding-up, and (2) either:

(x) have no maturity or a maturity of at least 60 years and either (I) are (a) Non-Cumulative or subject to a No Payment Provision and (b) subject to a Qualifying Replacement Capital Covenant or (II) have a Mandatory Trigger Provision and an Optional Deferral Provision and are subject to Intent-Based Replacement Disclosure, or

(y) have no maturity or a maturity of at least 40 years, are subject to a Qualifying Replacement Capital Covenant and have a Mandatory Trigger Provision and an Optional Deferral Provision; or

(iii) in connection with any repayment, redemption or purchase of Notes at any time on or after June 15, 2038:

(A) securities described under clause (ii) of this definition that would be Qualifying Capital Securities prior to June 15, 2038;

(B) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Corporation, (2) have an Optional Deferral Provision and (3) either:

(x) have no maturity or a maturity of at least 60 years and are subject to Intent-Based Replacement Disclosure, or

(y) have no maturity or a maturity of at least 40 years and are subject to a Qualifying Replacement Capital Covenant;

(C) securities issued by the Corporation or its Subsidiaries that (1) rank *pari passu* with or junior to the Notes upon a liquidation, dissolution or winding-up of the Corporation, (2) have no maturity or a maturity of at least 40 years and are subject to Intent-Based Replacement Disclosure and (3) are Non-Cumulative or have a No Payment Provision;

(D) securities issued by the Corporation or its Subsidiaries that rank (1) senior to the Notes and securities that are *pari passu* with the Notes but junior to all other debt securities of the Corporation (other than (x) the Notes and securities that are *pari passu* with the Notes and (y) securities that are *pari passu* with such Qualifying Capital Securities) upon its liquidation, dissolution or winding-up, and (2) either:

(x) have no maturity or a maturity of at least 60 years and either (i) have an Optional Deferral Provision and are subject to a Qualifying Replacement Capital Covenant or (ii) (a) are Non-Cumulative or have a No Payment Provision and (b) are subject to Intent-Based Replacement Disclosure, or

(y) have no maturity or a maturity of at least 40 years and either (i) (a) are Non-Cumulative or have a No Payment Provision and (b) are subject to a Qualifying Replacement Capital Covenant or (ii) are subject to Intent-Based Replacement Disclosure and have a Mandatory Trigger Provision and an Optional Deferral Provision; or

(E) cumulative preferred stock issued by the Corporation or its Subsidiaries that either (1) have no maturity or a maturity of at least 60 years and are subject to Intent-Based Replacement Disclosure or (2) have a maturity of at least 40 years and are subject to a Qualifying Replacement Capital Covenant;

provided that if any of the securities described above is structured at the time of issuance with a Distribution Rate Step-Up (whether interest or dividend) of more than 25 basis points prior to the 25th anniversary of such issuance, then such security shall be subject to a Qualifying Replacement Capital Covenant that will remain in effect until at least June 15, 2038.

“Qualifying Preferred Stock” means the non-cumulative perpetual preferred stock of the Corporation that (i) ranks *pari passu* with or junior to all other outstanding preferred stock of the issuer, other than preferred stock that is issued or issuable pursuant to a stockholders’ rights plan or similar plan or arrangement, (ii) contains no remedies other than Permitted Remedies and (iii)(a) is redeemable, but is subject to Intent-Based Replacement Disclosure, and has a provision that provides for mandatory suspension of Distributions upon its failure to satisfy one or more financial tests set forth therein or (b) is subject to a Qualifying Replacement Capital Covenant.

“Qualifying Replacement Capital Covenant” means a replacement capital covenant that is substantially similar to this Replacement Capital Covenant or a replacement capital covenant, as identified by the Corporation’s Board of Directors acting in good faith and in its reasonable discretion and reasonably construing the definitions and other terms of this Replacement Capital Covenant, (i) entered into by a company that at the time it enters into such replacement capital covenant is a reporting company under the Securities Exchange Act and (ii) that restricts the related issuer from repaying, redeeming or purchasing, and its Subsidiaries from purchasing, identified securities, except to the extent of the applicable percentage of the net proceeds from the issuance of specified replacement capital securities that have terms and provisions at the time of repayment, redemption or purchase that are as or more equity-like than the securities then being repaid, redeemed or purchased within the 180-day period prior to the applicable repayment, redemption or purchase date; *provided* that the term of such replacement capital covenant shall be determined at the time of issuance of the related Replacement Capital Securities taking into account the other characteristics of such securities.

“Qualifying Warrants” means any net share-settled warrants to purchase the Common Stock that have an exercise price at the time of pricing greater than the Current Market Price of the Common Stock, and the Corporation is not entitled to redeem for cash and the holders of which are not entitled to require the Corporation to purchase for cash in any circumstances. The Corporation will state in the prospectus or other offering document its intention that any Qualifying Warrants issued in accordance with an Alternative Payment Mechanism will have exercise prices at least 10% above the Current Market Price of its Common Stock on the date of issuance of the warrants.

“Redesignation Date” means, as to the Covered Debt in effect at any time, the earliest of (a) the date that is two years prior to the final maturity date of such Covered Debt, (b) if the Corporation elects to redeem, or the Corporation or a Subsidiary of the Corporation elects to repurchase, such Covered Debt either in whole or in part with the consequence that after giving effect to such redemption or repurchase the outstanding principal amount of such Covered Debt is less than \$100,000,000, the applicable redemption or repurchase date and (c) if such Covered Debt is Eligible Senior Debt of the Corporation, the date on which the Corporation issues Eligible Subordinated Debt.

“Replacement Capital Covenant” has the meaning specified in the introduction to this instrument.

“Replacement Capital Securities” means Common Stock, rights to acquire Common Stock, Mandatorily Convertible Preferred Stock, Debt Exchangeable for Common Equity and Qualifying Capital Securities.

“Repurchase Restriction” means, with respect to any Qualifying Capital Securities that include an Alternative Payment Mechanism or a Mandatory Trigger Provision, provisions that require the Corporation or any of its Subsidiaries, if deferral of Distributions continues for more than one year (or such shorter period as provided for in the terms of such securities), not to repay, redeem or purchase any of the Corporation’s securities ranking junior to or *pari passu* with any APM Qualifying Securities upon the Corporation’s bankruptcy or liquidation, the proceeds of which were used to settle deferred interest during the relevant deferral period until at least one year after all deferred distributions have been paid, other than the following (none of which shall be restricted or prohibited by a Repurchase Restriction):

- (i) purchases of such securities by the Corporation’s Subsidiaries in connection with the distribution thereof or market-making or other secondary market activities;
- (ii) purchases, redemptions or other acquisitions of shares of Common Stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors or consultants; or
- (iii) purchases of shares of Common Stock pursuant to a contractually binding requirement to buy shares of the Corporation’s Common Stock entered into prior to the beginning of the related deferral period, including under a contractually binding stock repurchase plan;

provided that the foregoing restrictions shall cease to apply if the Corporation is involved in a Business Combination where immediately after its consummation more than 50% of the voting stock of the surviving entity of the Business Combination or the Person to whom all or substantially all of its property or assets are conveyed, transferred or leased in such Business Combination is owned, directly or indirectly, by the shareholders of the other party to the Business Combination and the deferral period is terminated on the next Distribution Date following the date of the Business Combination.

“Securities Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Share Cap” has the meaning specified in clause (iii) of the definition of Alternative Payment Mechanism.

“Subsidiary” means, at any time, any Person the shares of stock or other ownership interests of which having ordinary voting power to elect a majority of the board of directors or other managers of such Person are at the time owned, or the management or policies of which are otherwise at the time controlled, directly or indirectly through one or more intermediaries (including other Subsidiaries) or both, by another Person.

“Termination Date” has the meaning specified in Section 4(a).