
**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 30, 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 30, 2008, Prudential Financial, Inc. (“Prudential”) closed the sale of \$800,000,000 of Prudential’s 9.0% 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 24, 2008, among Prudential and Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated, UBS Securities LLC, Wachovia Capital Markets, LLC and J.P. Morgan Securities Inc., 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;
- Second Supplemental Indenture, dated June 30, 2008, between Prudential and The Bank of New York, as Trustee;
- Form of Junior Subordinated Note;
- Tax Opinion of Debevoise & Plimpton LLP, dated June 30, 2008; and
- Replacement Capital Covenant, dated June 30, 2008.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
1.1	Underwriting Agreement, dated June 24, 2008, among Prudential and Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated, UBS Securities LLC, Wachovia Capital Markets, LLC and J.P. Morgan Securities Inc., 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 (incorporated by reference to Exhibit 4.1 to Prudential’s Current Report on Form 8-K, filed with the Commission on June 17, 2008).
4.2	Second Supplemental Indenture, dated June 30, 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 30, 2008.
99.1	Replacement Capital Covenant, dated June 30, 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 30, 2008

PRUDENTIAL FINANCIAL, INC.

By: /s/ Stephen W. Gauster

Name: Stephen W. Gauster

Title: Vice President and Assistant Secretary

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Exhibit Index

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4.2	Second Supplemental Indenture, dated June 30, 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 30, 2008.
99.1	Replacement Capital Covenant, dated June 30, 2008.

\$800,000,000

Prudential Financial, Inc.

9.0% Junior Subordinated Notes due 2068

Underwriting Agreement

June 24, 2008

Citigroup Global Markets Inc.
J.P. Morgan Securities Inc.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley & Co. Incorporated
UBS Securities LLC
Wachovia Capital Markets, LLC
As Representatives of the
several Underwriters listed
in Schedule 1 hereto

c/o Citigroup Global Markets Inc.
388 Greenwich Street
New York, NY 10013

J.P. Morgan Securities Inc.
270 Park Avenue
New York, NY 10017

Merrill Lynch, Pierce, Fenner & Smith Incorporated
WFC – North Tower
250 Vesey Street
New York, NY 10080

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

UBS Securities LLC
677 Washington Blvd.
Stamford, CT 06807

Wachovia Capital Markets, LLC
One Wachovia Center
301 S. College Street
Charlotte, NC 28288

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 Citigroup Global Markets Inc., J.P. Morgan Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated, UBS Securities LLC and Wachovia Capital Markets, LLC are acting as representatives (the “Representatives”), \$800,000,000 principal amount of its 9.0% Junior Subordinated Notes due 2068 (the “Underwritten Securities”), and, at the option of the Representatives acting on behalf of the Underwriters, up to an additional \$120,000,000 aggregate principal amount of such 9.0% Junior Subordinated Notes due 2068 (the “Option Securities”), solely to cover over-allotments. The Underwritten Securities and the Option Securities are herein referred to collectively as the “Securities.” The Securities will be issued pursuant to an Indenture 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 second supplemental indenture, to be dated as of June 30, 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 at 4:45 P.M. (Eastern time) on June 24, 2008 (the “Time of Sale”), the Company had prepared the following information (collectively, the “Time of Sale Information”): a Preliminary Prospectus dated June 23, 2008 (including the Base Prospectus), 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 Underwritten 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 Underwritten Securities set forth opposite such Underwriter’s name in Schedule 1 hereto at a price equal to (i) 98.00% of the principal amount thereof (the “Institutional Purchase Price”), in the case of sales made by the Underwriters to certain institutional purchasers (the “Institutional Purchasers”) and (ii) 96.85% of the principal amount thereof (the “Retail Purchase Price”), in the case of sales made by the Underwriters in all other cases, plus, in each case, accrued interest, if any, from June 24, 2008 to the Initial Closing Date (as defined below). The Representatives confirm to the Company that for this purpose, the number of Underwritten Securities sold to Institutional Purchasers is 657,380.

Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company hereby grants a one-time option to the several Underwriters to purchase, severally and not jointly, the Option Securities at the Retail Purchase Price or Institutional Purchase Price, as applicable. Upon the exercise of such option, the Underwriters agree to purchase the Option Securities in accordance the terms set forth herein. Said option may be exercised solely to cover over-allotments in the sale of the Underwritten Securities by the Underwriters. Said option may be exercised in whole or in part at any time on or before the 30th day after the date of the Prospectus upon written notice by the Representatives to the Company setting forth the aggregate principal amount of Option Securities as to which the several Underwriters are exercising the option and the settlement date, which may be the same date as the Closing Date (as defined below) but shall not be (i) earlier than the Closing Date nor (ii) earlier than the third business day after the date of such notice, except as the Company and the Representatives may otherwise agree. The principal amount of Option Securities to be purchased by each Underwriter shall be the same percentage of the aggregate principal amount of Option Securities to be purchased by the several Underwriters as such Underwriter is purchasing of the Underwritten Securities, subject to such adjustments as the Representatives in their absolute discretion shall make to eliminate any fractional shares.

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 Underwritten Securities will be made at 10:00 A.M., New York City time, on June 30, 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 and payment for and delivery of the Option Securities will be made at 10:00 A.M., New York City time, on the date specified by the Representatives in the written notice of the Underwriters' election to purchase such Option Securities, 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 for the Underwritten Securities is referred to herein as the "Initial Closing Date," and the time and date for such payment for the Option Securities, if other than the Closing Date, is herein referred to as the "Additional Closing Date." The Initial Closing Date and the Additional Closing Date are herein referred to collectively as the "Closing Dates" and individually as a "Closing Date."

(d) Payment for the Securities to be purchased on any Closing Date 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 applicable 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 any 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; since the respective dates as of which information is given in the Time of Sale Information and the Prospectus, as then amended or supplemented, and prior to the Initial Closing Date, 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 Company's 8.875% Fixed-to-Floating Rate Junior Subordinated Notes due 2068); and, 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 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 Final Term Sheet) 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 any 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 of 30 days after the date of the Prospectus, neither Company, nor any of its subsidiaries or other affiliates over which it exercises management or voting control, nor any person acting on their behalf, will, without the prior written consent of the Representatives, directly or indirectly, offer, sell, contract to sell or otherwise dispose of any securities that are *pari passu* with and otherwise substantially similar to the Securities.

(j) *Exchange Listing.* The Company will use its commercially reasonable efforts to list, subject to notice of issuance, the Securities on the New York Stock Exchange within 30 days of the Initial Closing Date.

(k) *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.

(l) *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.”

(m) *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.

(n) *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.

Hong Kong

The Securities may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a “prospectus” within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation or document relating to the Securities may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to Securities which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

Japan

The Securities offered in the Prospectus have not been registered under the Securities and Exchange Law of Japan. The Securities have not been offered or sold and will not be offered or sold, directly or indirectly, in Japan or to or for the account of any resident of Japan, except (i) pursuant to an exemption from the registration requirements of the Securities and Exchange Law and (ii) in compliance with any other applicable requirements of Japanese law.

Singapore

The Prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, the Prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the Securities may not be circulated or distributed, nor may the Securities be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the “SFA”), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to compliance with conditions set forth in the SFA.

Where the Securities are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

- a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the Securities pursuant to an offer made under Section 275 of the SFA except:

- to an institutional investor (for corporations, under Section 274 of the SFA) or to a relevant person defined in Section 275(2) of the SFA, or to any person pursuant to an offer that is made on terms that such shares, debentures and units of shares and debentures of that corporation or such rights and interest in that trust are acquired at a consideration of not less than S\$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets, and further for corporations, in accordance with the conditions specified in Section 275 of the SFA;
- where no consideration is or will be given for the transfer; or
- where the transfer is by operation of law.

6. Conditions of Underwriters' Obligations. The obligation of each Underwriter to purchase Securities on any 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 any Closing Date (it being understood that in the case of any Additional Closing Date the representations and warranties in Sections 3(ii) and (xv) shall be limited to the Option Securities); 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 any 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 any 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 such Closing Date (it being understood that in the case of any Additional Closing Date the representations and warranties in Sections 3(ii) and (xv) shall be limited to the Option Securities), (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, and prior to the Initial Closing Date, 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 Company's 8.875% Fixed-to-Floating Rate Junior Subordinated Notes due 2068), (iii) 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 Adverse Change, or any development which will involve a prospective Material Adverse Change, and (iv) 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 Initial 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 Initial Closing Date shall use a "cut-off" date no more than three business days prior to the Initial 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 any 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 (it being understood that in the case of any Additional Closing Date, the opinion shall only cover the opinion in paragraphs (2) and (5) and with respect to the Option Securities, the opinions in paragraphs (6) and (9)).

(h) *Opinion and 10b-5 Statement of Counsel for the Underwriters.* The Representatives shall have received on and as of (i) the Initial Closing Date an opinion and 10b-5 Statement of Cleary Gottlieb Steen & Hamilton LLP and (ii) any Additional Closing Date, an opinion 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 any 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 Initial 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 any 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 such 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); (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; and (ix) all expenses and application fees related to the listing of the Securities on the New York Stock Exchange.

(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 :

- Citigroup Global Markets Inc., 388 Greenwich Street, New York, New York 10013 (fax: 212-816-7912), Attention: General Counsel;

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- J.P. Morgan Securities Inc., 270 Park Avenue, New York, New York 10017 (fax: 212-834-6081), Attention: Investment Grade Syndicate Desk;
 - Merrill Lynch, Pierce, Fenner & Smith Incorporated, WFC – North Tower, 250 Vesey Street, New York, New York 10080 (fax: 212-449-2234), Attention: Scott Primrose;
 - Morgan Stanley & Co. Incorporated, 1585 Broadway, 29th Floor, New York, New York 10036 (fax: 212-507-8999), Attention: Investment Banking Division;
 - UBS Securities LLC, 677 Washington Blvd., Stamford, CT 06807 (fax: 203-719-0495), Attention: Fixed Income Syndicate; and
 - Wachovia Capital Markets, LLC, Wachovia Capital Markets, LLC, One Wachovia Center, 301 S. College Street, 6th Floor, Charlotte, NC 28288 (fax: 704-383-9165), Attention: Transaction Management Group.

Notices to the Company shall be given to it at 751 Broad Street, 23rd Floor, Newark, New Jersey 07102, (fax: 973-802-5267); Attention: Yanela Frias, 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/ YANELA C. FRIAS

Name: Yanela C. Frias

Title: Assistant Treasurer

Accepted: June 24, 2008

CITIGROUP GLOBAL MARKETS INC.

By /s/ JACK D. MCSADDEN, JR.

Authorized Signatory

J.P. MORGAN SECURITIES INC.

By /s/ STEPHEN L. SHEINER

Authorized Signatory

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By /s/ STEPHEN HOSTETLER

Authorized Signatory

MORGAN STANLEY & CO. INCORPORATED

By /s/ YURIJ SLYZ

Authorized Signatory

UBS SECURITIES LLC

By /s/ SCOTT YEAGER
Authorized Signatory

By /s/ DEMETRIOS TSAPRALIS
Authorized Signatory

WACHOVIA CAPITAL MARKETS, LLC

By /s/ JEREMY SCHWARTZ
Authorized Signatory

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

<u>Underwriter</u>	<u>Principal Amount</u>
Citigroup Global Markets Inc.	\$ 116,533,625
Merrill Lynch, Pierce, Fenner & Smith Incorporated	116,533,275
Morgan Stanley & Co. Incorporated	116,533,275
UBS Securities LLC	116,533,275
Wachovia Capital Markets, LLC	116,533,275
J.P. Morgan Securities Inc.	116,533,275
Banc of America Securities LLC	24,000,000
RBC Capital Markets Corporation	24,000,000
Charles Schwab & Co., Inc.	2,400,000
Fidelity Capital Markets, a division of National Financial Services LLC	2,400,000
H&R Block Financial Advisors, Inc.	2,400,000
J.J.B. Hilliard, W.L. Lyons, LLC	2,400,000
Janney Montgomery Scott LLC	2,400,000
Morgan Keegan & Company, Inc.	2,400,000
Oppenheimer & Co. Inc	2,400,000
Raymond James & Associates, Inc	2,400,000
Robert W. Baird & Co. Incorporated	2,400,000
Stifel, Nicolaus & Company, Incorporated	2,400,000
TD Ameritrade, Inc.	2,400,000
Wells Fargo Securities, LLC	2,400,000
BB&T Capital Markets, a division of Scott & Stringfellow, Inc	1,200,000
Blaylock Robert Van, LLC	1,200,000
CastleOak Securities, LP	1,200,000
City Securities Corporation	1,200,000
Crowell, Weedon & Co.	1,200,000
D.A. Davidson & Co.	1,200,000
Davenport & Company LLC	1,200,000
Ferris, Baker Watts, Incorporated	1,200,000
Fixed Income Securities, LP	1,200,000
Keefe, Bruyette & Woods, Inc.	1,200,000
Loop Capital Markets, LLC	1,200,000
Mesirow Financial, Inc.	1,200,000
Muriel Siebert & Co., Inc.	1,200,000
Pershing LLC	1,200,000
Piper Jaffray & Co.	1,200,000
Samuel A. Ramirez & Co., Inc.	1,200,000
Stone & Youngberg LLC	1,200,000
The Williams Capital Group, L.P.	1,200,000
Wedbush Morgan Securities Inc.	1,200,000
Williams Blair & Company, L.L.C.	1,200,000
Total	\$ 800,000,000

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).

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- (6) The issuance and sale of the Securities have been authorized by the Company. The Securities to be delivered on the relevant Closing Date 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 to be delivered on the relevant Closing Date, 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.

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- (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 applicable 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 applicable 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 24, 2008.

**PRUDENTIAL FINANCIAL, INC.**Final Term Sheet

Dated June 24, 2008

\$800,000,000

9.0% Junior Subordinated Notes due 2068

Issuer:	Prudential Financial, Inc.
Securities:	9.0% Junior Subordinated Notes due 2068
Principal Amount:	\$800,000,000
Over-allotment:	The underwriters may also purchase up to an additional \$120,000,000 principal amount of notes at the public offering price minus the applicable underwriting commission within 30 days of the Pricing Date to cover over-allotments, if any.
Denominations:	Minimum denominations of \$25 and integral multiples of \$25 in excess thereof.
Scheduled Maturity Date:	June 15, 2038
Final Maturity Date:	June 15, 2068
Interest Rate and Interest Payment Dates:	9.0%, accruing from and including June 30, 2008, payable quarterly in arrears on each March 15, June 15, September 15 and December 15, commencing September 15, 2008.
Day Count Convention:	30/360
Redemption at Par:	On or after June 15, 2013, the notes are redeemable, in whole or in part, at 100% of the principal amount of the notes being redeemed, plus any accrued and unpaid interest to the redemption date, at the Issuer's election.

Prior to June 15, 2013, the notes are redeemable, in whole but not in part, upon the occurrence of a “tax event” (as defined in the preliminary prospectus supplement) at 100% of the principal amount of the notes being redeemed, plus any accrued and unpaid interest to the redemption date, at the Issuer’s election.

Redemption at Make-Whole:

Prior to June 15, 2013, the notes are redeemable, in whole but not in part, at the greater of (i) 100% of their principal amount and (ii) the present value of a principal payment on June 15, 2013 and scheduled payments of interest that would have accrued from the redemption date to June 15, 2013, discounted to the redemption date on a quarterly basis at a discount rate equal to the treasury rate (as defined in the preliminary prospectus supplement) plus 0.50%, in each case plus any accrued and unpaid interest to the redemption date, at the Issuer’s election.

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:

100.00%

Proceeds to the Issuer before Commissions and Expenses:

\$800,000,000

Pricing Date:

June 24, 2008

Settlement Date:

June 30, 2008 (T+4), which is the fourth business day following the initial sale of the notes. Under Rule 15c6-1 under the Securities Exchange Act of 1934, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the Notes prior to the third business day before the delivery of the Notes will be required, by virtue of the fact that the Notes initially will settle on a delayed basis, to agree to a delayed settlement cycle at the time of any trade to prevent a failed settlement. Purchasers of the Notes who wish to make such trades should consult their own advisors.

Listing:

Application will be made to list the notes on the New York Stock Exchange.

CUSIP/ISIN:	744320508 / US7443205080
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	Morgan Stanley & Co. Incorporated J.P. Morgan Securities Inc.
Joint Book-Running Managers:	Citigroup Global Markets Inc. Merrill Lynch, Pierce, Fenner & Smith Incorporated Morgan Stanley & Co. Incorporated UBS Securities LLC Wachovia Capital Markets, LLC J.P. Morgan Securities Inc. (Passive)
Co-Managers:	Banc of America Securities LLC RBC Capital Markets Corporation

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 Citigroup Global Markets Inc. toll free at 1-877-858-5407, Merrill Lynch, Pierce, Fenner & Smith Incorporated toll free at 1-866-500-5408, Morgan Stanley & Co. Incorporated toll free at 1-866-718-1649 (institutional investors) or 1-800-584-6837 (retail investors), UBS Securities LLC toll free at 1-877-827-6444 extension 561-3884 or Wachovia Capital Markets, LLC toll free at 1-800-326-5897.

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

Second Supplemental Indenture

Dated as of June 30, 2008

9.0% Junior Subordinated Notes
due 2068

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SECOND SUPPLEMENTAL INDENTURE

Second Supplemental Indenture, dated as of June 30, 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 in connection with a Rating Agency Event, 0.50%, and (ii) in all other cases, 0.50%.

“**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 or (iii) a day on which the Corporate Trust Office is closed for business.

“**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.

“**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 ten 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 compounded interest on such deferred amounts) 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-to-Floating Rate Notes” means the Company’s 8.875% Fixed-to-Floating Rate Junior Subordinated Notes due 2068.

“Indenture” has the meaning specified in the Recitals.

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

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

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

“Make-Whole Redemption Price” means, with respect to a redemption of the Notes in whole but not in part prior to June 15, 2013, the greater of (i) 100% of the principal amount of the Notes and (ii) the present value of a principal payment on June 15, 2013 and scheduled payments of interest that would have accrued from the Redemption Date to June 15, 2013, discounted to the Redemption Date on a quarterly 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.

“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 and the Fixed-to-Floating Rate 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 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 30, 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).

“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.

“Treasury Dealer” means Citigroup Global Markets Inc., J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated (or their successors) or, if Citigroup Global Markets Inc., J.P. Morgan Securities Inc. or Morgan Stanley & Co. Incorporated (or their successors) refuse to act as Treasury Dealers 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 quarterly 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 9.0% 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 \$800,000,000, 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. The Company may execute and deliver to the Trustee, and the Trustee shall thereupon authenticate and deliver said Notes in accordance with a Company Order, up to an additional \$120,000,000 principal amount of Notes pursuant to the exercise of the underwriters’ over-allotment option under the Underwriting Agreement, dated as of June 24, 2008, among the Company and Citigroup Global Markets Inc., Merrill, Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated, UBS Securities LLC, Wachovia Capital Markets, LLC and J.P. Morgan Securities Inc., as representatives of the several underwriters. 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, in addition to the \$800,000,000 initial aggregate principal amount previously provided for and in addition to the principal amount of any Notes delivered pursuant to the exercise of the underwriters’ over-allotment option, 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 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 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 (including the Fixed-to-Floating Rate 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 (and any *Pari Passu* Securities having the same scheduled maturity date as the Notes, as described in the proviso to the first sentence of this clause (vi)) 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 Depositary for the Notes initially shall be the Depositary 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 from and including June 30, 2008 to but excluding the Final Maturity Date or such earlier date of repayment at an annual rate of 9.0% per annum, computed on the basis of a 360-day year consisting of twelve 30-day months. Defaulted Interest and interest deferred pursuant to Section 2.05 will bear interest, to the extent permitted by law, at such interest rate, 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 quarterly in arrears on March 15, June 15, September 15 and December 15 of each year (each such date, an “**Interest Payment Date**”), beginning on September 15, 2008, to the Holders of the Notes on the immediately preceding March 1, June 1, September 1 or December 1, as the case may be.

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 155 million (or 310 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. The Corporation's authorized and unissued shares of Common Stock, as reduced by the Fixed Commitments, will be allocated *pro rata* based on relative principal amounts using the Notes, the Fixed-to-Floating Rate Notes and other instruments subject to similar alternative payment mechanisms. If the Company issues additional Notes after the date hereof (including, for the avoidance of doubt, any additional Notes issued pursuant to the exercise of the underwriters' over-allotment option, as described in Section 2.01(b)), 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 (including the Fixed-to-Floating Rate Notes) 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 subclause (1) or (2) of 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, including any interest accrued after such event occurs, 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, (2) indebtedness that is by its terms subordinate, or not superior, in right of payment to the Notes or (3) the Fixed-to-Floating Rate 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

The Notes shall be redeemable at the election of the Company: (1) in whole or in part at any time and from time to time on or after June 15, 2013; *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 and (2) in whole but not in part at any time after the date hereof and prior to June 15, 2013. The Redemption Price shall be equal to: (x) in the case of any redemption on or after June 15, 2013 or after the occurrence of a Tax Event, 100% of the principal amount of the Notes being redeemed and (y) in the case of any other redemption at the applicable Make-Whole Redemption Price, in each case plus any accrued and unpaid interest to the Redemption Date. 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 the 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 the Supplemental Indenture in order to conform the Indenture and the 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/ Yanela C. Frias

Name: Yanela C. Frias

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

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: 744320508

PRUDENTIAL FINANCIAL, INC.

9.0% 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 30, 2008 until the principal hereof is paid or made available for payment, at the annual rate of 9.0% (computed on the basis of a 360-day year consisting of twelve 30-day months) quarterly in arrears on March 15, June 15, September 15 and December 15 of each year (each such date, an “*Interest Payment Date*”), beginning on September 15, 2008, subject to deferral as set forth herein. In the event that any interest payment date 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. 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 rate of 9.0% per annum, 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 or (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) a day on which the Corporate Trust Office is closed for business. 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 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. 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 the Fixed-to-Floating Rate Notes, 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: Yanela C. Frias

Title: Vice President and Assistant Treasurer

Attest:

Assistant Secretary

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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 Second Supplemental Indenture, dated as of June 30, 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: (i) in whole or in part at any time on or after June 15, 2013; *provided* that in the case of a redemption in part and not in whole, at least \$25 million aggregate principal amount of the Securities, excluding any Securities held by the Company or any of its Affiliates, remain outstanding after giving effect to such redemption and (ii) in whole but not in part at any time after June 30, 2008 and prior to June 15, 2013. The Redemption Price shall be equal to: (a) in the case of any redemption on or after June 15, 2013 or after the occurrence of a Tax Event, 100% of the principal amount of the Securities being redeemed and (b) in the case of any other redemption at the applicable Make-Whole Redemption Price, in each case plus any accrued and unpaid interest to the Redemption Date.

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 \$25.00 and any integral multiples of \$25.00 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:

<u>Date of Repayment or Redemption</u>	<u>Principal Amount Repaid or Redeemed</u>	<u>Principal Amount Remaining</u>	<u>Notation Made by or on Behalf of the Trustee</u>
	\$	\$	

June 30, 2008

Prudential Financial, Inc.
751 Broad Street
Newark, NJ 07102
United States of America

9.0% 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 24, 2008 and filed with the Commission pursuant to Rule 424(b) of the Act (the “Prospectus Supplement”), relating to the issuance and sale of \$800,000,000 aggregate principal amount of Prudential’s 9.0% 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 Second Supplemental Indenture, dated as of June 30, 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 30, 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 30, 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 \$800,000,000 aggregate principal amount of its 9.0% Junior Subordinated Notes due 2068 (together with any 9.0% 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 24, 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 (determined as of the date of delivery or issuance) of any Common Stock that the Corporation and its Subsidiaries have delivered to persons other than the Corporation and its Subsidiaries as consideration for property or assets in an arm's-length transaction or issued 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/ Yanela C. Frias
Name: Yanela C. Frias
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, 2018, (b) 150% with respect to any repayment, redemption or purchase on or after June 15, 2018 and prior to June 15, 2038, and (c) 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 or (c) a day on which the corporate trust office of The Bank of New York, as Trustee, is closed for business.

“**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 or recapitalization or other similar event.

“**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.

“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.

"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 successor to JPMorgan Chase Bank, N.A.), as Trustee, as amended and supplemented by the Second 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.

“**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 another 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.

“Second Supplemental Indenture” means the Second Supplemental Indenture, dated as of June 30, 2008, between the Corporation and The Bank of New York, as Trustee, to the Indenture.

“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).